

CARIM INDIA – DEVELOPING A KNOWLEDGE BASE FOR POLICYMAKING ON INDIA-EU MIGRATION

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Integration Conditions – Conducive to a European Integration Policy or an Obstacle for Mobility to the EU?

Katharina Eisele

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Developing a knowledge base for policymaking on India-EU migration

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Integration Conditions:
Conducive to a European Integration Policy or
an Obstacle for Mobility to the EU?

Katharina Eisele
PhD Candidate at the Law Faculty of Maastricht University

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European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy

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CARIM-India – Developing a knowledge base for policymaking on India-EU migration

This project is co-financed by the European Union and carried out by the EUI in partnership with the Indian Council of Overseas Employment, (ICOE), the Indian Institute of Management Bangalore Association, (IIMB), and Maastricht University (Faculty of Law).

The proposed action is aimed at consolidating a constructive dialogue between the EU and India on migration covering all migration-related aspects. The objectives of the proposed action are aimed at:

- Assembling high-level Indian-EU expertise in major disciplines that deal with migration (demography, economics, law, sociology and politics) with a view to building up migration studies in India. This is an inherently international exercise in which experts will use standardised concepts and instruments that allow for aggregation and comparison. These experts will belong to all major disciplines that deal with migration, ranging from demography to law and from economics to sociology and political science.
- Providing the Government of India as well as the European Union, its Member States, the academia and civil society, with:
 1. Reliable, updated and comparative information on migration
 2. In-depth analyses on India-EU highly-skilled and circular migration, but also on low-skilled and irregular migration.
- Making research serve action by connecting experts with both policy-makers and the wider public through respectively policy-oriented research, training courses, and outreach programmes.

These three objectives will be pursued with a view to developing a knowledge base addressed to policy-makers and migration stakeholders in both the EU and India.

Results of the above activities are made available for public consultation through the website of the project: <http://www.india-eu-migration.eu/>

For more information:

CARIM-India

Robert Schuman Centre for Advanced Studies (EUI)

Convento

Via delle Fontanelle 19

50014 San Domenico di Fiesole

Italy

Tel: +39 055 46 85 817

Fax: + 39 055 46 85 770

Email: India-EU.Migration@eui.eu

Robert Schuman Centre for Advanced Studies

<http://www.eui.eu/RSCAS/>

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Abstract

This report discusses the emergence of a European integration policy with a view to analysing the policy of EU Member States to require third-country immigrants (including Indian nationals) to comply with so-called integration conditions. Integration policies developed only gradually in the EU, and received a new impetus with the proclamation of the Tampere milestones in 1999 building the foundation for an EU Framework on Integration. From 2003 onwards some Member States started to adopt integration conditions, the use of which has been widely contested: academics argued that integration conditions have been (mis)used by policy makers to restrict immigration rather than to facilitate the integration of newcomers into the host societies. This report examines integration conditions as provided for in EU and national law and their specific role in integration policies. Do integration conditions promote the integration process or do they primarily constitute an obstacle for mobility to the EU? The report provides examples of how Member States condition (pre- and post-entry) integration in their national policies to illuminate the current state of affairs.

1. Introduction

It is an open secret that demographic changes, which the European societies are confronted with, pose a considerable challenge in the decades to come. The working-age population in the EU will decrease by 48 million people between 2006 and 2050 and the proportion of elderly people will increase. These developments will have a major impact on the European labour markets.¹

To cope with such bleak prospects, the EU has been keen to develop a common European immigration policy. At the Tampere summit in Finland in 1999, the European Council emphasised the objective of creating a common EU immigration policy. This objective was integrated into the Treaty of Lisbon, which entered into force in December of 2009, as a task for the EU.² One core element of such a common EU immigration policy, as highlighted by the EU Heads of State or Government, concerned the fair treatment of third-country nationals legally residing in the Member States, which the EU should ensure. The EU political leaders moreover pointed out that a more vigorous integration policy should aim at granting third-country nationals rights and obligations comparable to those of EU citizens.³ On the highest political level in the EU the need to integrate third-country immigrants into the Member States and societies was thus attached great importance to.

Since the proclamation of the Tampere Conclusions, the EU has, on the basis of the competences in the field of immigration conferred upon it by the Treaty of Amsterdam, adopted a number of EU legislative instruments that regulate the entry and residence of third-country nationals in the EU. These legislative instruments - in the form of EU Directives - have rendered the legal status of third-country nationals more secure and have thereby enhanced their protection. To date such Directives have established a right to family reunification⁴, long-term resident status⁵, a combined work and residence permit and a core set of rights⁶, as well as specific entry and residence conditions for students⁷, researchers⁸, and highly-skilled immigrants.⁹

With a view to promoting the integration of third-country nationals, the EU and the Member States have taken action on different levels. In this context, so-called integration conditions for third-country nationals have been introduced. However, it appears that such conditions have also been (mis)used as a measure to prevent third-country immigrants from coming to the EU in the first place. This report first investigates and discusses the emergence and development of integration policies for third-country nationals in the EU leading to an EU Framework on Integration (section 2). Next, the report explores the concepts of “integration” and “integration conditions” in the EU discourse. This part explains the context in which integration conditions were introduced, and sheds light on their meaning,

¹ European Commission Communication, COM(2006) 571, 12.10.2006, pp. 4-5.

² Article 79(1) TFEU.

³ Tampere Presidency Conclusions of 15 and 16 October 1999, para. 18.

⁴ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

⁵ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

⁶ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

⁷ Council Directive 2004/114/EC of 14 December 2004 on the conditions of admission of non-EU nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

⁸ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.

⁹ 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.

nature and use in EU immigration law (section 3). Subsequently, the report explains how EU immigration legislation allows for the introduction of integration conditions (section 4). The reports provides examples as to how integration requirements and integration programmes have been implemented into some Member States' national laws, both pre- and post-entry (section 5). Finally, some critical reflections on the purpose and use of integration requirements are presented. It is argues that if Member States apply integration conditions in a way that runs counter to their aim, such conditions may impede the mobility of third-country nationals, including Indian nationals, to the EU (section 6).

2. Gaining a Foothold: Integration Policies for Third-Country Nationals in the EU

2.1. Early Endeavours to Put Integration on the Agenda

Integration policies for migrants were on the EU agenda prior to the aims announced at the Tampere European Council in 1999 thanks to the leading role of the Commission. In 1974, the Commission published an "Action Programme in Favour of Migrant Workers and their Families" that stressed the need to enhance the economic and social conditions for migrant workers and their families in the Community, in particular by granting equality of treatment for living and working conditions.¹⁰ The Commission furthermore underscored that migration policies should be better coordinated by means of a common strategy that should include a number of matters, including "the choice, for policies of *assimilation or integration* of migrant workers and their families."¹¹ The Council acknowledged this Action Programme in a Resolution of 1976 but reacted to it in much less proactive way. The Council Resolution concentrated primarily on the situation of Community nationals, stressing merely *to encourage* the achievement of equality for third-country workers and their family members legally resident in the Member States with regard to living and working conditions, wages and economic rights.¹²

In 1985, the Commission issued Guidelines for a Community Policy on Migration asking for third-country nationals to be put on a stable footing when compared to Community nationals.¹³ It has been pointed out that, for the first time, the Commission referred to a "Community approach" applying to third-country workers, and that equality of treatment was identified as a constant factor of that common approach.¹⁴ The Treaty of Maastricht introduced an intergovernmental mechanism for the Member States to cooperate in the field of justice and home affairs, including immigration policy.¹⁵ However, the sensitivity surrounding migration matters as well as the unanimity voting in the Council, which slowed down the law-making procedure considerably, hampered the adoption of legislation.

2.2. The Tampere Milestones: Integration as an EU Policy Objective

The Treaty of Amsterdam that provided the Community with competences in the area of migration and asylum under former Title IV EC on visas, immigration and other policies related to the free movement of persons marked a turning point as the Community could use such powers to create a body of European immigration law. With regard to immigration policy the powers conferred dealt

¹⁰ European Commission, COM(74) 2250, 14.12.1974, Action programme in favour of migrant workers and their families (transmitted by the Commission to the Council on 18 December 1974).

¹¹ *Ibid.*, p. 22.

¹² Council of the European Union, Council Resolution of 9 February 1976 on an action programme for migrant workers and members of their families, paragraph 2(c).

¹³ European Commission Communication, Guidelines for a Community Policy on Migration, COM(85) 48, 7.3.1985.

¹⁴ S. Carrera, *In Search of the Perfect Citizen? The Intersection between Integration, Immigration, and Nationality in the EU* (Martinus Nijhoff Publishers, Leiden 2009), p. 27.

¹⁵ See former Article K.1 TEU.

with conditions of entry and residence, family reunion, irregular migration and measures defining the rights and conditions under which legally residing third-country nationals may reside in other Member States.¹⁶ In the same year as the entry into force of the Treaty of Amsterdam, in 1999, the Tampere milestones were presented by the European Council. The Tampere milestones set out ambitious policy objectives for the EU that, in the field of immigration and integration, related *inter alia* to the fair treatment of legally residing third-country nationals and a more vigorous integration policy aimed at granting third-country nationals rights and obligations comparable to those of EU citizens. Hence, with the Tampere summit and the Treaty of Amsterdam the conceptualisation of integration policies at EU level gained momentum. However, as S. Carrera explained, a differentiation was made between EU immigration law adopted under Title IV EC (“EU hard-law approach”) and the EU Framework on Integration (“EU soft-law or policy approach”) seeing that the Member States considered integration issues as their territory.¹⁷

In a Communication of 2000 on a Community Immigration Policy, the Commission stressed that immigration and integration are closely connected to each other. The Commission made clear that “it is [also] essential to create a welcoming society and to recognise that integration is a two-way process involving adaptation on the part of both the immigrant and of the host society”, and that “successful integration policies need to start as soon as possible after admission.”¹⁸

2.3. The Emergence of an EU Framework on Integration: Developments and Initiatives

In the subsequent years a new impetus allowed for the creation of a framework for integration of third-country nationals on EU level. Following the Commission’s call for a more coherent European framework for integration based on a holistic approach in 2003, a “First Annual Report on Migration and Integration” was issued a year later.¹⁹ In this First Annual Report, the Commission outlined the migration trends and patterns in Europe, described actions taken regarding the admission and integration of immigrants at national and European level with the aim to review the development of a common immigration policy. Only months later, in November 2004, the First Handbook on Integration for Policy Makers and Practitioners was presented on behalf of DG JLS of the Commission.²⁰ The main objective of the Handbook was to act as a driver for the exchange of information and best practices between the Member States. Two kinds of integration programmes were identified in the Member States’ practice: introduction courses for newly arrived immigrants and recognised refugees, and civic participation.

With the Hague Programme determining the multiannual programme for justice and home affairs for 2004 to 2009, the European governments explicitly recognised the need for the integration of third-country nationals to prevent the isolation of certain groups.²¹ The European Council moreover emphasised the need to actively eliminate obstacles to integration and to better coordinate national integration policies and EU initiatives. While the Council Conclusions indicated that the development and implementation of an integration policy is the primary responsibility of the individual Member States – an annex to the Hague Programme contained in addition the Common Basic Principles for

¹⁶ See former Articles 61-63 EC Treaty.

¹⁷ S. Carrera, *In Search of the Perfect Citizen? The Intersection between Integration, Immigration, and Nationality in the EU* (Martinus Nijhoff Publishers, Leiden 2009), p. 51.

¹⁸ European Commission Communication, COM(2000) 575, 22.11.2000, pp. 19-20.

¹⁹ European Commission Communication, COM(2003) 336, 3.6.2003; European Commission Communication, COM(2004) 508, 16.7.2004.

²⁰ J. Niessen and Y. Schibel, *Handbook on Integration for policy makers and practitioners*, European Commission (DG JLS), November 2004.

²¹ Council of the European Union: “The Hague Programme: strengthening freedom, security and justice in the European Union”, document number: 16054/04 JAI 559 of 13 December 2004, p. 4.

Immigrant Integration Policy in the European Union.²² Importantly, these eleven principles (detailed below in section 2.3.) constituted a first explanation of integration and successful integration policies.

In follow-up to the previous initiatives and communications, the Commission presented in 2005 the Common Agenda for Integration.²³ The Common Agenda set forth more concrete measures to implement the Common Basic Principles for Immigrant Integration at national and EU level. In 2007, the Second Handbook on Integration for Policy Makers and Practitioners was released focusing on mainstreaming immigrant integration, housing in an urban environment, economic integration and integration governance. The Second and Third Annual Reports on Migration and Integration were issued in 2006, and 2007 respectively, building on the First Annual Report.²⁴ In section 3.3. of the Second Annual Report the Commission stated that some Member States require immigrants to fulfill certain “integration obligations.”²⁵ The Third Annual Report contained an annex on a “Summary Report on Integration Policies in the EU-27” prepared in cooperation with the National Contact Points on Integration in the Member States and indicated that in some instances the Common Basic Principles have been integrated into the national integration strategies.²⁶

The European Integration Forum was established as a platform in April 2009 by the Commission in cooperation with the European Economic and Social Committee. The Forum promotes a comprehensive approach to integration and brings together EU umbrella organisations dealing with integration issues. Moreover, the Commission created the European Website on Integration that provides policy makers and practitioners with a tool for information exchange on integration matters.²⁷ The European Integration Fund is a financial instrument that supports national and EU initiatives that facilitate the integration of third-country immigrants into European societies. For the period 2007 to 2013 the European Integration Fund, which primarily targets newly arriving immigrants, provides for a budget of EUR 825 million (EUR 57 million for EU actions). The Stockholm Programme, the third multiannual justice and home affairs roadmap, called for proactive policies for migrants and their rights and stated in clear terms that the successful integration of legally residing third-country nationals was the key to maximising the benefits of immigration.²⁸

The European Agenda for Integration was proposed by the Commission in 2011 focusing on action to increase economic, social, cultural and political participation by third-country nationals and putting the emphasis on local action and the involvement of countries of origin.²⁹ The concept of integration was communicated as a way of realising the potential of migration. Importantly, today the Treaty of Lisbon contains a legal basis for the EU to establish measures to provide incentives and support for Member States’ action with a view to promoting the integration of third-country nationals.³⁰

²² Council of the European Union, JHA Council 2618th Meeting, document number: 14615/04, 19 November 2004, p. 19.

²³ European Commission Communication, COM(2005) 389, 1.9.2005.

²⁴ European Commission Staff Working Document, SEC(2006) 892, 30 June 2006; European Commission Communication, COM(2007) 512, 11.9.2007.

²⁵ European Commission Staff Working Document, SEC(2006) 892, 30 June 2006, p. 16.

²⁶ European Commission Communication, COM(2007) 512, 11.9.2007, pp. 11-18.

²⁷ See website: <http://ec.europa.eu/ewsi/en/>.

²⁸ The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, *OJ C* 115, 4 May 2010, p. 1; see also Council of the European Union, “European Council 10/11 December 2009 Conclusions”, document number: EUCO 6/09 of 11 December 2009.

²⁹ European Commission Communication, COM(2011) 455, 20.7.2011.

³⁰ See Article 79(4) TFEU.

3. The Concepts of “Integration” and “Integration Conditions” in the EU Discourse

3.1. Defining “Integration” in EU Policy

While the EU discourse on the integration of third-country nationals continuously intensified in the last decades, there was no consensus regarding a common definition of “integration.” There was, however, evidence of what the term could mean. As early as in 1985, the Commission emphasised that integration should only be the result of joint efforts by the host population and the migrants themselves: “This is a dynamic process based on joining the system of the host society because it permits participation by those belonging to it. The Member States enshrine this fundamental principle of integration in their national legislation by using the parameter of the length of legal and permanent residence.”³¹ The idea that integration relates to a two-way process involving adaptation on the part of the immigrant and of the host society was reiterated in 2000.³² This working definition was further refined, when the Commission called for a holistic approach, in that integration “should be understood as a two-way process based on mutual rights and corresponding obligations of legally resident third-country nationals and the host society which provides for full participation of the immigrant.” It was specified that this implied the host society’s responsibility to ensure that the formal rights of immigrants are in place and that immigrants respect the fundamental norms and values of the host society and participate actively in the integration process, without having to relinquish their own identity.³³

According to the First Handbook on Integration the overall goal of integration is often considered to be *self-sufficiency*: governments seek to enable immigrants to lead an independent life concerning housing, job, education, social networks and participation in society.³⁴ The Common Basic Principles for Immigrant Integration Policy as defined by the Council build on the previous findings.³⁵ In a summarised form the eleven Common Principles stated that: integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States; integration implies respect for the basic values of the EU; employment is a key part of the integration process; education is vital for immigrants’ participation in the host society; access for immigrants to institutions on a non-discriminatory basis supports better integration; frequent interaction between immigrants and Member State citizens is a fundamental mechanism for integration; the practice of diverse cultures and religions in accordance with European rights and national laws is guaranteed; the participation of immigrants in the democratic process and in the formulation of integration policies is crucial; mainstreaming integration policies and measures in all relevant policy portfolios and levels of government and public services is an important consideration; developing clear goals, indicators and evaluation mechanisms are necessary to adjust policy, and evaluate progress on integration. With the objective to compare, assess and improve integration policy, the Migration Policy Group together with the British Council launched the Migrant Integration Policy Index (MIPEX) as an interactive tool and reference guide.³⁶ The MIPEX uses policy indicators to evaluate migrants’ opportunities to participate in society by assessing governments’ commitment to integration. Attempts of benchmarking the integration of third-country nationals in the EU have, however, also been challenged indicating certain weaknesses, such as the lack of a common approach, the lack of neutrality, difficulties in relation to the personal and territorial scope, and defects in the methodology.³⁷

³¹ See European Commission Staff Working Document, SEC(1991) 1855, 23 October 1991, p. 10.

³² European Commission Communication, COM(2000) 575, 22.11.2000, pp. 19-20.

³³ European Commission Communication, COM(2003) 336, 3.6.2003.

³⁴ J. Niessen and Y. Schibel, *Handbook on Integration for policy makers and practitioners*, European Commission (DG JLS), November 2004.

³⁵ Council of the European Union, JHA Council 2618th Meeting, document number: 14615/04, 19 November 2004, p. 19.

³⁶ See website: <http://www.mipex.eu/>; MIPEX measures integration policies in all EU Member States plus Norway, Switzerland, Canada, the USA, Australia, Japan and Serbia; for more information see J. Niessen and T. Huddleston (eds.), *Legal Frameworks for the Integration of Third-Country Nationals* (Martinus Nijhoff Publishers, Leiden 2009).

³⁷ See S. Carrera, *Benchmarking Integration in the EU – Analysing the debate on integration indicators and moving it forward*, Bertelsmann Foundation (2008), pp. 45-57.

3.2. The Meaning and Use of “Integration Conditions” and “Integration Measures”

The concept of integration conditions only emerged after the turn of the new millennium in EU migration policy. In 2002, the Council considered that integration as a crucial element of a European immigration and asylum policy could include integration requirements.³⁸ The Council added that “newly arrived immigrants should have quick and appropriate access to information on their host society and language courses should be established in accordance with national law.”³⁹ Integration requirements can relate to language, culture, politics and history of the host state in form of courses and tests in order to assess the “integration ability.”

K. Groenendijk pointed out that the specific perspective on integration that related to “the lack of integration or the assumed unfitness to integrate as a ground for refusal of admission to the country was unknown in EC law until September 2003.” Pointing to Regulation 1612/68, he emphasised that under the EU law the free movement rights of EU citizens was never made contingent on previous integration or knowledge of the language of the host Member State.⁴⁰ Against this backdrop it is striking, that integration conditions have been widely applied since 2008 in a majority of the Member States making access to and residence in their territories, as well as the acquisition of nationality, contingent on the fulfillment of such conditions.⁴¹

The 2006 Second Annual Report on Migration and Integration recognised that some Member States required new immigrants to fulfill certain integration obligations. The Report indicated obligatory integration courses, containing both language instruction and civic orientation, or compulsory integration measures. In the case of the Netherlands, it is specified so-called pre-departure standards were planned for immigrants relocating because of family formation or reunification. Several Member States considered possible sanctions in case of non-compliance with obligations arising from compulsory integration measures; such sanctions could comprise cuts in financial support or welfare aid, the issuing of fines or the refusal of compensation for the costs for integration courses. The Report in addition stated that as a general rule the successful completion of compulsory integration courses would more or less directly be linked to the granting or extension of residence permits. The exchange of information at EU level about the design and impact of these courses would provide useful information as to their success as integration measures – one may wonder how the “success” of integration measures could look like.⁴²

Importantly, the Second Annual Report also made clear that “in any case, care must be taken to ensure that national integration measures and integration conditions fully comply with Community legislation. The integration measures, as well as integration conditions authorised under Directive 2003/86 on family reunification and Directive 2003/109 on the status of third-country nationals who are long-term residents, should be applied without any discrimination (see in particular recital 5 of the two Directives). The definition of integration conditions and integration measures should not undermine the efficiency (‘effet utile’) of the Directives.”⁴³

Why were the two concepts of “integration conditions” and “integration measures” introduced and what is the difference in meaning? It was explained that the provisions concerning integration triggered heated debates among the Member States when negotiating Council Directive 2003/86/EC

³⁸ Council of the European Union, JHA Council 2455th Meeting, document number: 12894/02, 14 and 15 October 2002, p. 25.

³⁹ Ibid.

⁴⁰ K. Groenendijk, ‘Legal Concepts of Integration in EU Migration Law’, 6 *European Journal of Migration and Law* (2004), pp. 111-126, 116.

⁴¹ S. Carrera, ‘Integration as a Process of Inclusion for Migrants? The Case of Long-Term Residents in the EU’, in: H. Schneider (ed.), *Migration, Integration and Citizenship* (Forum Maastricht, Maastricht 2005), pp. 109-138.

⁴² European Commission Staff Working Document, SEC(2006) 892, 30 June 2006, p. 5.

⁴³ Ibid.

(Family Reunification Directive) as well as Council Directive 2003/109/EC (Long-Term Residents' Directive).⁴⁴ The compromise reached entailed a distinction between “integration conditions” and “integration measures.” Integration conditions allowed for more far-reaching obligations, and could include passing tests or requiring a certain language level. By contrast, integration measures allowed Member States “to require that the immigrants make a certain effort. It allows a Member State to require participation in language or integration courses.”⁴⁵ It has been highlighted that integration conditions are compulsory in nature as opposed to integration measures on the basis of which Member States cannot introduce mandatory integration conditions.⁴⁶ The difference in meaning was later confirmed by the Commission (see section 3 below).⁴⁷

It has been underlined that integration can be conditioned for third-country immigrants at three different stages in their integration process, depending on the country of residence: at the pre-departure stage as a precondition for entry; directly after admission to their new Member State of residence in form of compulsory integration measures; or after having resided in the host state for a number of years integration tests can be required when applying for citizenship.⁴⁸ In this report the focus is on the first two categories.

4. EU Immigration Legislation allowing for Integration Conditions

Some of the EU instruments that regulate the legal migration of third-country nationals to the EU provide Member States with the possibility to impose integration conditions. These instruments concern the right to family reunification, long-term resident status, and special admission and residence conditions for highly qualified third-country nationals. It is interesting to note that the Commission Proposal on the Recast Directive on Students and Researchers also contains a reference to integration conditions.

4.1. Council Directive 2003/86/EC on the Right to Family Reunification

Council Directive 2003/86/EC adopted in September of 2003 first created the right to family reunification for third-country nationals in the EU.⁴⁹ Recital 4 of this Directive states that family reunification is a necessary way of making family life possible; moreover, it helps to create sociocultural stability facilitating the integration of third-country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty. Based on Article 7(2) of the Directive a Member State may require third-country nationals to comply with integration measures, in accordance with national law. Special rules apply to refugees and/or their family members seeing that the integration measures may only be applied once the persons concerned have been granted family reunification.

⁴⁴ K. Groenendijk, ‘Family Reunification as a Right under Community Law’, 8 *European Journal of Migration and Law* (2006), pp. 215-230, 224.

⁴⁵ *Ibid.*; see also Council of the European Union, Outcome of Proceedings, document number: 8213/03, 8 April 2003, p. 27.

⁴⁶ S. Carrera, *In Search of the Perfect Citizen? The Intersection between Integration, Immigration, and Nationality in the EU* (Martinus Nijhoff Publishers, Leiden 2009), p. 193.

⁴⁷ European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, COM(2011) 585, 28.9.2011, p. 7.

⁴⁸ A. Wiesbrock, ‘Discrimination Instead of Integration? Integration Requirements for Immigrants in Denmark and Germany’, in: E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal States – Immigration, Citizenship and Integration in the EU* (Ashgate, Surrey 2009), pp. 299-314, 300; for a detailed analysis on citizenship tests, see R. van Oers, *Deserving Citizenship – Citizenship Tests in Germany, the Netherlands and the United Kingdom*, (Wolf Legal Publishers, Oosterwijk 2013).

⁴⁹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification; the Directive is not applicable, however, to Denmark, Ireland and the UK, see Recitals 17 and 18 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

In a report on the application of Council Directive 2003/86/EC, the Commission made clear that the objective of integration measures is to facilitate the integration of family members and emphasised that the admissibility of integration measures under the Directive is dependent on whether they serve the purpose of integration and whether they observe the principle of proportionality. The Commission stated explicitly that “*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).*”⁵⁰ Finally, it was pointed out that the procedural safeguard to ensure the right to start a legal challenge should be respected.⁵¹ Some Member States have introduced such integration measures as specified below.

Moreover, Council Directive 2003/86/EC provided for another possibility for the Member States to introduce integration conditions. Article 4(1) of Council Directive 2003/86/EC sets forth that where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.⁵² Only two Member States apply this derogation: Germany and the Czech Republic, however, the Czech Republic adopted national provisions introducing such integration conditions only after the deadline for the implementation of the Directive. Therefore, these conditions are arguably nugatory.⁵³

Why was this specific derogation on integration conditions for children over 12 years who arrive independently in a Member State integrated? The 12th Recital of Council Directive 2003/86/EC specifies that “*the 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.*” The European Parliament challenged some provisions of the Directive, including the latter, and sought their annulment before the Court of Justice of the European Union. The European Parliament held the view that the respective provisions were incompatible with protection of the family as a human rights, as well as with the principle of equal treatment. The Court of Justice rejected this view but emphasised that the Member States must still have due regards to the best interests of the child.⁵⁴

4.2. Council Directive 2003/109/EC on Long-Term Resident Status

Likewise Council Directive 2003/109/EC provides in Article 5(2) for Member States the option to impose integration conditions on third-country nationals, in accordance with national law, to obtain long-term resident status.⁵⁵ For residence in a second Member State, the national authorities of that state may only require third-country nationals to comply with integration measures provided that the long-term residents concerned have not been required to comply with integration conditions in the first Member State. However, the persons concerned may still be required to attend language courses.⁵⁶

⁵⁰ European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification, COM(2008) 610, 8.10.2008, pp. 7-8.

⁵¹ *Ibid.*, p. 8.

⁵² Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

⁵³ European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification, COM(2008) 610, 8.10.2008, p. 5.

⁵⁴ Case C-540/03 *European Parliament v. Council* [2006] ECR I-05769, para. 73.

⁵⁵ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

⁵⁶ Article 15(3) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

The Commission pointed out that in line with Article 5(2) of Council Directive 2003/109/EC, about half of the Member States make use of integration conditions.⁵⁷ The Commission stressed furthermore in the report on the application of the Directive that the Member States, when transposing the provision, “*must be in line with the purpose of the Directive and take due account of the general principles of EU law, such as the principle of preserving its effectiveness ("effet utile") and the proportionality principle.*” For this, the nature and level of the knowledge expected from the applicant, the expenses of the exam, the accessibility of the integration courses and tests, the comparison between the integration requirements imposed on prospective long-term residents and those applied to prospective citizens (which are expected to be higher), can be taken into account.⁵⁸

Article 15 of Council Directive 2003/109/EC sets out the conditions for residence in a second Member State. Article 15(3) provides Member States with the possibility to ask from long-term residents applying for a residence permit in a second Member State to comply with integration measures, in case that integration conditions have not been applied to them in the first Member State. The persons concerned may, without prejudice to the previous rule, be required to attend language courses. The Commission highlighted in the report on the application of the Directive that the integration “measures” referred to in Article 15(3) cannot be considered as equivalent to the integration “conditions” mentioned in Article 5(2) of the Directive because of the wording and the limitations provided for in view of their application and content.⁵⁹ The Commission queried that the national laws of Austria, Estonia, France, Germany and Latvia violated the norm considering that these Member States required from long-term residents to comply with integration measures entailing more than the mere attendance of a language course despite the fact that integration condition had already been applied to them in a first Member State.⁶⁰

4.3. Council Directive 2009/50/EC on Highly Qualified Immigrant Workers (EU Blue Card Directive)

Council Directive 2009/50/EC that aims to attract immigrants from countries outside of the EU for the purpose of highly qualified employment sets out specific rules on integration conditions: the family members of a Blue Card holder benefit from a derogatory, more favourable regime because integration conditions and measures referred to in Council Directive 2003/86/EC may only be applied after the persons concerned have been granted family reunification.⁶¹ The 23rd Recital of Council Directive 2009/50/EC details that “*the derogation included in Article 15(3) of this Directive does not preclude Member States from maintaining or introducing integration conditions and measures, including language learning, for the members of the family of an EU Blue Card holder.*”

4.4. Commission Proposal on the Recast Directive on Students and Researchers

On 25 March 2013, the Commission published a proposal for a Recast Directive on students and researchers, which combines the current two Directives (Council Directive 2004/114/EC and Council

⁵⁷ European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, COM(2011) 585, 28.9.2011, p. 3.

⁵⁸ Ibid.

⁵⁹ Ibid., p. 7.

⁶⁰ Ibid.

⁶¹ See Article 15(3) of 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.

Directive 2005/71/EC).⁶² While the former two Directives do not contain any references to integration conditions, the Commission proposal determines in Article 25(2) that “*by way of derogation from the last subparagraph of Article 4(1) and Article 7(2) of Directive 2003/86/EC, the integration conditions and measures referred to in those provisions may only be applied after the persons concerned have been granted family reunification.*” This echoes the same rule as existent in the EU Blue Card Directive. Despite the fact that such integration conditions and measures could only be applied after family reunification has taken place, arguably, the standards are made stricter than under the current applicable rules.

5. Integration Requirements and Programmes at National Level

Some Member States have introduced integration measures when implementing EU law into their national legislations. However, also Member States that are not bound by certain legal measures under EU immigration law have started to require immigrants to comply with integration obligations.

5.1. Pre-Departure Integration Requirements

Certain Member States, such as the Netherlands, Germany, France and Austria apply pre-departure standards by virtue of which the states condition admission to their territories.⁶³ **In the Netherlands** the Act on Civic Integration Abroad (*Wet inburgering buitenland*) entered into force in 2006 that allows to reject the issuance of a residence permit to an immigrant who does not possess knowledge at an elementary level of the Dutch language and society.⁶⁴ This knowledge is tested by means of an oral test, which costs EUR 350, in the country of residence via a computer that provides the connection to a Dutch embassy or consulate. The visa or residence permit requested can be refused in case one fails the test. It has been stressed that the introduction of the test has led to a dramatic drop in applications for visa for long-term stays, and that most candidates who take the test pass at first attempt.⁶⁵ The Dutch authorities justified the adoption of the integration abroad requirement for family reunification and formation by pointing to a ‘marginalisation process’ and a lack of integration of an increasing number of immigrants in the Netherlands (most of which come from Morocco and Turkey) that had to be tackled.⁶⁶ Contrary to the indicated official purpose of the Integration Abroad Act – to enhance the integration process of newcomers in the Netherlands – there was also “the hidden objective of reducing the number of persons who are willing to undertake the effort and financial risk involved in taking the test to qualify for a provisional residence permit.”⁶⁷ Importantly, certain nationalities, groups and highly skilled migrants are exempted from taking the test.⁶⁸

⁶² European Commission, Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing, COM(2013) 151, 25.3.2013.

⁶³ For a more detailed analysis on integration tests abroad, see T. Strik, Chapter 2 of *The INTEC Project: Draft Synthesis Report – Integration and Naturalisation Tests: The New Way To European Citizenship*, drafted by T. Strik, A. Böcker, M. Luiten and R. van Oers, Centre for Migration Law – Radboud University Nijmegen, December 2010, pp. 11-44.

⁶⁴ Article 16(1) *Vreemdelingenwet*, see also: L.F.M. Besselink, ‘Integration and Immigration: The Vicissitudes of Dutch ‘Inburgering’’, in: E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal States – Immigration, Citizenship and Integration in the EU* (Ashgate, Surrey 2009), pp. 241-257, 245.

⁶⁵ *Ibid.*, p. 246.

⁶⁶ *Memorie van Toelichting*, Kamerstukken II, 2003–2004, 29 700 nr. 3.

⁶⁷ S. Carrera and A. Wiesbrock, Civic Integration of Third-Country Nationals – Nationalism versus Europeanisation in the Common EU Immigration Policy, *ENACT Report October 2009* (Centre for European Policy Studies), pp. 12-13.

⁶⁸ European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification, COM(2008) 610, 8.10.2008, p. 7.

Under German immigration law the spouse applying for family reunification must demonstrate basic knowledge of German before admission is granted.⁶⁹ However, certain nationalities are exempted from this requirement. This incited a Turkish spouse who was refused a visa for the purpose of family reunification because of a lack of basic German language skills to mount a legal challenge.⁷⁰ The Federal Administrative Court of Germany decided that the rule requiring basic knowledge of German language was compatible with the German Constitution (providing for the protection of family life and the principle of equal treatment), with the European Convention on Human Rights, and with EU law, including Council Directive 2003/86/EC specifying the right to family reunification and the general principle of non-discrimination. In the view of the Federal Administrative Court Germany enjoyed wide discretion in maintaining foreign relations with third countries, which included the possibility to grant certain third-country nationals advantageous treatment in view of entry and residence rights. Therefore, the exemption of certain third-country nationals from visa requirements (and thus from the language requirement) was in line with national and EU law in view of the German court.⁷¹

In France the *loi relative à la maîtrise de l'immigration, à l'intégration et à l'asile* no. 2007-1631 of 20 November 2007 introduced an 'integration abroad' requirement for family members applying to be reunited in France: the issuance of the requested visa is dependent on an evaluation of knowledge of French and where the language proficiency is insufficient, on the attendance of languages courses.⁷² The French authorities explained the adoption of this rule in the explanatory memorandum by referring to the need to implement Council Directive 2003/86/EC into national law. Yet, it has been illustrated that the original proposal of Loi no. 2007-1631 aimed primarily at restricting the number of third-country nationals for the purpose of family reunification "by using the concept of 'Republican integration of the family into French society' as a condition in French immigration policy."⁷³ Upon admission to France, the family member concerned has to sign a "reception and integration contract" (*contrat d'accueil et d'intégration pour la famille*).⁷⁴ This contract requires the family member to take civic courses and, when needed, language courses.

Austria followed other Member States by codifying a pre-entry test: the new rule requires newcomers as of 1 July 2011 who wish to reside on Austrian territory on a permanent basis to prove basic German knowledge (level A1 CEFR) before admission.⁷⁵

5.2. Integration Requirements in the Territory of the Member States

A considerable number of the Member States apply integration requirements once the third-country migrant has been admitted to their respective territories. As regards family reunification the Commission emphasised that certain Member States, including Austria, Cyprus and Greece demand family members to take part in integration courses, which are predominantly language courses, or to pass language exams after admission.⁷⁶ With regard to the long-term resident status, the Commission

⁶⁹ § 6 Abs. 4 Satz 2 i.V.m. § 30 Abs. 1 Satz 1 Nr. 2 *Aufenthaltsgesetz*; see also R. Marx, 'Sprachnachweis und Ehegattennachzug', *Zeitschrift für Ausländerrecht und Ausländerpolitik* (2011), p. 15.

⁷⁰ Urteil des Bundesverwaltungsgerichts of 30 March 2010, BVerwG 1 C 8.09 (VG 35 V 47.08).

⁷¹ Despite the fact that the case concerned the interpretation and application of EU law the Federal Administrative Court did ask the Court of Justice for a preliminary ruling in accordance with Article 267 TFEU.

⁷² *Loi relative à la maîtrise de l'immigration, à l'intégration et à l'asile* no. 2007-1631, 20 novembre 2007.

⁷³ S. Carrera, 'Nationality, Immigration and the 'Republican Integration' in France: Normativisation, Expansionism and Externalisation', in: E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal States – Immigration, Citizenship and Integration in the EU* (Ashgate, Surrey 2009), pp. 315-335, 331.

⁷⁴ Article L 311-9 *Code de l'entrée et du séjour des étrangers et du droit d'asile*.

⁷⁵ § 21a. *Niederlassungs- und Aufenthaltsgesetz*; CEFR = Common European Framework of References for Languages.

⁷⁶ European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification, COM(2008) 610, 8.10.2008, p. 7.

stated in 2011 that 14 Member States applied integration conditions.⁷⁷ Such integration conditions relate to language proficiency, as well as knowledge about the host society, including history, legal order and values. Some Member States have introduced compulsory integration courses, while others in addition require the persons concerned to pass an exam. Other Member States, such as France, only make it compulsory to attend integration courses.⁷⁸

In Austria third-country immigrants who wish to settle are required to participate in a language and integration course (with an emphasis of language proficiency), which was labeled as “integration accord” (*Integrationsvereinbarung*).⁷⁹ This integration accord was first introduced in 2003, but subsequently amended in 2005 and 2011 gradually increasing the required language level.⁸⁰ In the literature the nature of the integration accord was commented with “clearly, the *Integrationsvereinbarung* was meant to be understood as exclusionary.”⁸¹ The author casted doubt on whether the integration accord was formulated and transposed with a view to reduce the influx of immigrants, curtail rights and produce cultural assimilation pointing, *inter alia*, to the inclusionary objective of the integration accord of promoting the autonomy of immigrants and fostering their capacity to participate in social, economic and cultural life in Austria.⁸² Furthermore, based on her analysis, the author concluded that until 2011 the integration accord did not have the effect of excluding immigrants from equal treatment or long-term residence, or being used as a tool of selection. While certain privileged groups of immigrants (on the basis of their socio-economic position) are exempted from the integration accord, it did not aim at “preventing the most economically disadvantaged from becoming entitled to rights.” She backed this argument by referring to the introduction of fully subsidised literacy courses for low-educated immigrants that – although insufficient to entirely balance out the differences – indicated that the policy did not purposefully exclude the latter group.⁸³

Belgian legislation in the region of Flanders provides for an integration programme (*inburgeringstraject*) for newcomers since 2003.⁸⁴ While some immigrants in Flanders are entitled to follow the integration programme, others are obliged to participate.⁸⁵ Importantly, the compulsory part is limited to attend the courses and there is no official end exam for an evaluation.⁸⁶ Immigrants who have attended 80 percent of the courses receive a certificate. In addition, immigrants who belong to the target group are required to sign and fulfill a ‘contract of civic integration’ that specifies the content of their integration programme.⁸⁷ The integration programme comprises two parts: the first part envisages to improve self-sufficiency so that the persons concerned can actively build their life careers

⁷⁷ European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, COM(2011) 585, 28.9.2011, p. 3.

⁷⁸ Ibid.

⁷⁹ § 14. *Niederlassungs- und Aufenthaltsgesetz*.

⁸⁰ See *Fremdenrechtsänderungsgesetz 2011 – FrÄG 2011*, BGBl. I Nr. 38/2011.

⁸¹ J.M. Permoser, ‘The *Integrationsvereinbarung* in Austria: Exclusion in the Name of Integration?’ in: I. Ataç, and S. Rosenberger (eds.), *Politik der Inklusion und Exklusion* (Vienna University Press, Vienna 2013), pp. 155-174, 163.

⁸² Ibid.

⁸³ Ibid., p. 170.

⁸⁴ *Decreet van 28 februari 2003 betreffende het Vlaams inburgeringsbeleid*.

⁸⁵ See Article 5 of the *Decreet van 28 februari 2003 betreffende het Vlaams inburgeringsbeleid, zoals gewijzigd bij de decreten van 14 juli 2006, 1 februari 2008 en 17 februari 2012*.

⁸⁶ A. Böcker, Chapter 2 of *The INTEC Project: Draft Synthesis Report – Integration and Naturalisation Tests: The New Way To European Citizenship*, drafted by T. Strik, A. Böcker, M. Luiten and R. van Oers, Centre for Migration Law – Radboud University Nijmegen, December 2010, pp. 45-75, 47.

⁸⁷ Ibid.

and master the Dutch language adequately.⁸⁸ The first part includes a Dutch language course, an introductory course concerning Flemish and Belgian society, as well as careers advice. The second part of the integration programme is targeted at supporting immigrants to fully participate in society displaying an educational and socio-cultural perspective.⁸⁹

Denmark, a Member State that is neither bound by the Family Reunification Directive nor by the Long-Term Residents' Directive, applies an integration programme to third-country nationals since 2002. When arriving in Denmark newly arrived immigrants must conclude an integration accord with the authorities at local level that determines their rights and obligations.⁹⁰ Based on this integration accord, which is tailored to the specific background and competences of the person in question, the immigrants *inter alia* agree to take part in a language course and become economically self-sufficient.⁹¹ It has been stressed that even though immigrants are not formally obliged to sign the integration accord, the refusal to do so delays as a general rule the acquisition of a permanent residence permit.⁹² Next to the integration accord, immigrants must moreover sign a declaration of integration, attesting their willingness to participate actively in the activities offered within the context of the Danish integration programme.⁹³ The Danish Integration Act specifies that the integration programme aims at the participation of newcomers in the Danish society, a rapid process of becoming economically self-sufficient and a sound understanding of the fundamental values and norms of Danish society. Though, it has been queried that the implicit purpose of the integration programme was to curb immigration to Denmark.⁹⁴

6. Reflections and Concluding Remarks

It is true that (legal) migration and integration are inseparable and should mutually reinforce one another as highlighted by the Commission.⁹⁵ This report explained how integration has step by step been integrated into EU policy-making forming today an integral part of the EU's migration policy. Starting with the 1974 Commission Action Programme for Migrant Workers and their Families, the policy discourse first recognised the importance to promote the economic and social conditions for migrants residing in the Community. Equal treatment of migrant workers should be a key feature of an envisaged common approach. With the Tampere Council Conclusions of 1999 the EU Heads of State or Government officially called for a common EU immigration policy. Such common EU immigration policy included a "more vigorous integration" policy aimed at granting third-country nationals rights and obligations comparable to those of EU citizens.

It was the Treaty of Amsterdam that provided the legal basis to adopt a set of Directives successively building an EU legal framework for immigration matters. As has been elucidated, the subject of integration of third-country nationals developed on the basis of a policy-oriented approach. It must be acknowledged that measures based on a soft-law approach cannot be legally enforced.

⁸⁸ P. de Cuyper and J. Wets, *Diversiteit in integratie – Een evaluatie van de vormgeving, efficiëntie en effectiviteit van het Vlaamse inburgeringsbeleid* (K.U. Leuven, Leuven 2007), pp. 5-7.

⁸⁹ Ibid.

⁹⁰ Article 3 of the *Lov om ændring af integrationsloven (Individuelle kontrakter)* Nr. 364 of 6 June 2002.

⁹¹ A. Wiesbrock, 'Discrimination Instead of Integration? Integration Requirements for Immigrants in Denmark and Germany', in: E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal States – Immigration, Citizenship and Integration in the EU* (Ashgate, Surrey 2009), pp. 299-314, 302.

⁹² S. Carrera and A. Wiesbrock, Civic Integration of Third-Country Nationals – Nationalism versus Europeanisation in the Common EU Immigration Policy, *ENACT Report October 2009* (Centre for European Policy Studies), p. 22.

⁹³ Section 1 of the Danish Integration Act.

⁹⁴ S. Carrera and A. Wiesbrock, Civic Integration of Third-Country Nationals – Nationalism versus Europeanisation in the Common EU Immigration Policy, *ENACT Report October 2009* (Centre for European Policy Studies), p. 22.

⁹⁵ European Commission Communication, COM(2005) 389, 1.9.2005, p. 14.

However, this does not necessarily mean that such measures are not effective. Within the context of the Hague Programme EU policy makers released the Common Basic Principles for Immigrant Integration Policy in 2004. These Common Basic Principles have the aim to give guidance to the Member States to evaluate their distinct integration policies; to examine possibilities for interaction for authorities on EU, national, regional and local level; and to assist the Council to agree on EU mechanisms that support national and local integration policies. The Common Agenda for Integration issued by the Commission presented more concrete actions to put into practice the Common Basic Principles at national and EU level. In this context, the Common Agenda left it to the Member States to set priorities and select the actions while considering the main elements of all national and EU integration policies. S. Carrera underscored that despite the “indicative and non-exhaustive” catalogue of such actions of the Common Agenda that built on the soft-law based First Handbook on Integration and the financial Community measures on integration, the Common Agenda represented one direct, concrete soft-law response to the Handbook.⁹⁶ Therefore, the non-binding nature of the EU Framework on Integration does not prevent it from bearing fruit.

Integration obligations were for the first time discussed in 2002 on EU level and they were introduced in some Member States in 2003. Official explanations suggest that integration obligations aim at promoting the integration of immigrants into the host society. When discussing the meaning of “integration conditions” in the Council, the Member States agreed that the latter term allowed for more far-reaching obligations, whereas “integration measures” allowed Member States to require that the immigrants make a certain effort only.⁹⁷ In accordance with the Common Basic Principles relating to integration as a two-way process; the respect for basic EU values; and the importance of basic knowledge of the host society’s language, history and institutions, the Commission proposed integration programmes linked with “integration abroad” elements first within the scope of the Common Agenda on Integration.⁹⁸ The 2006 Second Annual Report on Migration and Integration illuminated that some Member States required newcomers to meet certain integration obligations referring to mandatory integration courses, such as language instruction and civic orientation, or compulsory integration measures. On the Member States’ request the use of integration conditions and integration measures have been authorised under Directive 2003/86/EC on family reunification and Directive 2003/109/EC on the status of third-country nationals who are long-term residents. A considerable number of Member States decided to introduce integration requirements that apply pre-entry and/or post-entry to immigrants.

The Second Annual Report on Migration and Integration stated that care must be taken to guarantee that national integration requirements fully comply with EU legislation. The integration measures and conditions authorised under the two Directives should be applied without any discrimination and the definition of both terms should not undermine the *effet utile* of the Directives. Concerning the Family Reunification Directive, the Commission emphasised that the goal of integration measures is to facilitate the integration of family members and that the admissibility of integration measures under the Directive is contingent on whether they serve the purpose of integration and whether they observe the principle of proportionality.⁹⁹

⁹⁶ S. Carrera, *In Search of the Perfect Citizen? The Intersection between Integration, Immigration, and Nationality in the EU* (Martinus Nijhoff Publishers, Leiden 2009), p. 83.

⁹⁷ See K. Groenendijk, ‘Family Reunification as a Right under Community Law’, 8 *European Journal of Migration and Law* (2006), pp. 215-230, 224.

⁹⁸ *Ibid.*, pp. 83-84.

⁹⁹ European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification, COM(2008) 610, 8.10.2008, pp. 7-8.

This relates exactly to what some scholars questioned.¹⁰⁰ Doubts have been raised whether integration requirements are actually used for the claimed official purpose and whether they are in conformity with EU law. Serious concerns have been expressed as to whether the primary objective of integration requirements was not the promotion of integration but the reduction of immigration.¹⁰¹ Indicating the effect of the Dutch integration abroad-test (namely, a major decrease in applications for long-term visas), and the fact that most candidates pass the test pass at first attempt (which implied in the author's eyes that the test has not significantly contributed to preparing the candidates in a significant way for their integration), L.F.M. Besselink concluded that (Dutch) “*inburgering* is not a social measure but a migration law instrument with as a consequence and principal effect in practice the exclusion of aliens.”¹⁰²

The fact that certain nationalities, groups and highly-skilled migrants are exempted from taking the test raises questions concerning non-discrimination under EU law, including the general principle of non-discrimination, as well as the two non-discrimination directives (Council Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation).¹⁰³ It has been emphasised that one of the major deficiencies of Council Directive 2000/43/EC concerned its restricted application to third-country nationals.¹⁰⁴

In view of the actual framing of integration requirements the Member States enjoy wide discretion as no definitions were stipulated. This, in turn, is critical for the protection and security of third-country nationals.¹⁰⁵ In particular, national integration requirements have to comply the principle of proportionality. In a comparative study on civic integration programmes in Denmark, France, Germany and the Netherlands, the authors concluded that “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.”¹⁰⁶ Integration conditions used by the Member States must observe pertinent EU law.

¹⁰⁰ See S. Carrera and A. Wiesbrock, *Civic Integration of Third-Country Nationals – Nationalism versus Europeanisation in the Common EU Immigration Policy*, *ENACT Report October 2009* (Centre for European Policy Studies); K. Groenendijk, ‘Family Reunification as a Right under Community Law’, 8 *European Journal of Migration and Law* (2006), pp. 215-230; L.F.M. Besselink, ‘Integration and Immigration: The Vicissitudes of Dutch ‘*Inburgering*’’, in: E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal States – Immigration, Citizenship and Integration in the EU* (Ashgate, Surrey 2009), pp. 241-257.

¹⁰¹ For a more nuanced view, see J.M. Permoser, ‘The *Integrationsvereinbarung* in Austria: Exclusion in the Name of Integration?’ in: I. Ataç, and S. Rosenberger (eds.), *Politik der Inklusion und Exklusion* (Vienna University Press, Vienna 2013), pp. 155-174.

¹⁰² L.F.M. Besselink, ‘Integration and Immigration: The Vicissitudes of Dutch ‘*Inburgering*’’, in: E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal States – Immigration, Citizenship and Integration in the EU* (Ashgate, Surrey 2009), pp. 241-257, 246-247.

¹⁰³ A. Wiesbrock, ‘Discrimination Instead of Integration? Integration Requirements for Immigrants in Denmark and Germany’, in: E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal States – Immigration, Citizenship and Integration in the EU* (Ashgate, Surrey 2009), pp. 299-314, 312-313; Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

¹⁰⁴ *Ibid.*, see Article 3(2) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

¹⁰⁵ S. Carrera, *In Search of the Perfect Citizen? The Intersection between Integration, Immigration, and Nationality in the EU* (Martinus Nijhoff Publishers, Leiden 2009), p. 193.

¹⁰⁶ S. Carrera and A. Wiesbrock, *Civic Integration of Third-Country Nationals – Nationalism versus Europeanisation in the Common EU Immigration Policy*, *ENACT Report October 2009* (Centre for European Policy Studies), p. 39.

Finally, it should be borne in mind that integration has been conceptualised as a dynamic, two-way process. However, as research showed the integration programmes developed with the support of the European Integration Fund intend to go beyond the acquisition of language. The content of the integration programmes mean to enhance the knowledge and understanding of the receiving country's social, cultural, economic and legal environment and they mainly concentrate on providing the migrant with knowledge of the receiving society.¹⁰⁷ Considering the aforementioned critical points one can conclude that integration conditions can indeed impede, or even frustrate, the mobility of third-country nationals, including Indian nationals, to the EU.

¹⁰⁷ S. Carrera and A.F. Atger, *Integration as a Two-Way Process in the EU? Assessing the Relationship between the European Integration Fund and the Common Basic Principles on Integration*, *Centre for European Policy Studies* (2011), p. 43.