

# Chapter 1

## Understanding the Contest of Community: Illiberal Practices in the EU?

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Understanding the dynamics of illiberal practices in liberal states is increasingly important in Europe today. As democratic institutions, civil society and academics have categorised as ‘illiberal’ a growing list of state practices such as extraordinary rendition, indefinite detention of third-country nationals (TCNs), new practices and technologies of border controls, etc., the question of who is entitled to contest has become increasingly fraught (Bigo et al. 2007). Here the politics of identity form the framework within which tensions around illiberal practices are played out. Both at the national and the EU level, political actors claim competing rights to legitimacy and authority based on their representation of ‘the people’ and the nation. As those debates regarding the source of authority become increasingly vocal, so too is attention focusing on the underlying community in whose name security actions are being taken.

In this contested territory, fixing the identity of the community has come under scrutiny. The central debate about what identity is and to whom it belongs, and the much larger contest about legitimacy and authority in the EU, has engulfed the world of migration. Suddenly it is the image of the immigrant that acts as a magnet for the understanding of what community is and who is entitled to belong to it. In seeking to find their own image, the EU and its member states have turned to look at the ‘other’ that they are not, in so doing hoping to find clarity about ‘who they are’. The question ‘what is integration into a community and who determines this’ has become a subject of struggle and controversy. While the EU is charged with harmonising the rules on TCNs, the member states, on the basis of integration and the principle of subsidiarity-related arguments, seek to recover sovereignty over the constituency of their communities. The result, as this book shows, is a challenging new influx of illiberal practices among states that are supposed to bestow and adhere to the principles of liberalism and the rule of law.

The integration of TCNs is subject to multifaceted dynamics, policy processes and strategies in Europe. A normative nexus has been progressively developed in law and policy between migration, citizenship and integration both at the national and EU level. This evolving relationship is gradually transforming the classical understanding, conceptual premises and functions that integration has traditionally performed at EU level as a process of social inclusion, and as

a mechanism facilitating equality and non-discrimination while exercising the freedom of movement.

The transfer to EU competence of the domain of immigration policy in 1999 constituted an historical stage in the European integration processes. On the basis of the Treaty of Amsterdam, the EU has striven to build a common immigration policy. Its establishment, however, has encountered resistance from certain member states attempting to keep intact their discretionary powers over the understanding and normative framing of their 'community of citizens'. While the domain of integration has been seen as representing a key strategic policy priority within the so-called Area of Freedom, Security and Justice (AFSJ) by the 2004 Hague Programme (Balzacq and Carrera 2006),<sup>1</sup> national competence has predominated. The member states have made of integration one of those areas at the heart of national sovereignty: a central tool for the perpetuation of the nation upon which they legitimise their authority and powers of discipline over their societies. The tensions emerging between the European integration machinery on immigration and the principle of subsidiarity have provoked the development of a dual normative setting in the EU covering the field of integration of TCNs, i.e. European immigration law and the EU Framework on Integration.

The development of the so-called 'Framework for the Integration of Third-Country Nationals in the European Union' (EU Framework on Integration) constitutes a good illustration of the struggles taking place between the European and national arenas over the competences surrounding integration and the politics of the identity of nationals and others. The EU Framework on Integration has defined itself as an innovative policy regime making use of a series of tools and methods, which raises a number of questions when compared to the traditional structures and paths of Europeanisation that characterise the Community method of cooperation. The adoption by the Council in 2004 of a set of Common Basic Principles for Immigration Integration Policy (CBPs), the exchange of 'best practices' on national integration policies, the use of benchmarking techniques and the increasing role of supranational networks of representatives from the member states' ministries in charge of integration (the National Contact Points on Integration) constitute an alternative web of policy coordination intending to move policy convergence onwards through means that are different from those provided by the substantive and institutional elements of EU law. These 'soft' policy instruments and transnational structures have been coupled with a 'hard' financial framework (the European Integration Fund), which is facilitating the transformation of policy ambitions into visible results as regards domestic and EU integration policies.

This book examines the changing interaction between immigration, citizenship and integration in EU law and policy. It studies some of the effects and open questions regarding the exchange and coordination of public responses affecting

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<sup>1</sup> Brussels European Council, Presidency Conclusions, 4-5 November 2004, 14292/1/04, Brussels, 8 December 2004, OJ C53/1, 3.3.2005.

the status of TCNs at national level, as well as the compatibility of their results with a common EU immigration guided by a rights-based and social inclusion approach. It reviews a selection of national experiences and philosophies on immigration and citizenship laws in the EU, and the use that they are performing for integration. The framing and practices of civic integration in immigration and citizenship law and policy as a mandatory norm, and the ways in which increasing policy convergence is being achieved at EU level over this concept raises a number of dilemmas. These dilemmas might put liberty at stake in the EU legal landscape, and provide us with yet another illustration of ‘illiberal practices in liberal regimes’. The question as to what the limits are in the discretionary powers enjoyed by the nation-state around ‘the conditionality of integration’ for TCNs to have access to EU rights and common standards stipulated by EU immigration law provides us with a key testing ground for evaluating the illiberal or liberal nature of the exceptionalism inherent in the applicability of mandatory civic integration.

This opening chapter is structured in five main sections: the first starts by setting the *habitus* of integration in EU immigration law and policy. Section two looks at the case of integration tests as an example of the changing dynamics affecting integration and the laws on citizenship. The relationship between integration and the enlargement processes of the EU, and the transformation that this relationship provokes over national and European identities, is developed in section three. After offering some theoretical reflections about the ‘illiberalism’ underlying certain usages, approaches and practices on integration in Europe in section four, the outline of the various chapters composing this book is provided in section five.

## **The Habitus of Integration in EU Immigration Law and Policy**

### *Integration as a Mandatory Norm in EU Immigration Law*

The integration of persons on the move has been a fundamental component throughout the European integration processes, not least as regards the establishment of an internal market and a common European space within which the freedom of movement constitutes a fundamental right.<sup>2</sup> The function that integration has played within this context was that of facilitating the mobility of EU national migrant workers and ensuring that, while doing so, they enjoy equality, non-discrimination, family reunification and a secure juridical status (Groenendijk 2006a, 9-11).

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2 Article 45 of the Charter of Fundamental Rights states that ‘1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States. 2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State’. Charter of Fundamental Rights of the European Union, OJ 2007/ C303/ 01, 14.12.2007.

The traditional understanding and functions of integration have experienced dynamic mutations in EU law when developing a common legal framework covering the conditions of entry and residence of TCNs – a common immigration policy. Indeed, integration has suffered multifaceted normative processes since the transfer of immigration to EU competence with the Amsterdam Treaty in 1999 and the adoption of the European Council Tampere Conclusions on 15 and 16 October 1999.<sup>3</sup> The Tampere Programme called for the adoption of the following tenets to guide the EU's policy approach on integration: the principle of fair treatment to legally-residing TCNs; the need to develop a more vigorous integration policy granting to legal TCNs rights and obligations 'comparable' to EU citizens; and the granting to long-term residents of a set of rights that are 'as near as possible' (near-equality) to those of EU citizens.

The European Commission presented a package of legislative proposals to start building EU immigration law. The Council Directives 2003/109 on the status of long-term residents who are TCNs (Guild 2004c; Carrera 2005a; Groenendijk 2007)<sup>4</sup> and 2003/86 on the right to family reunification (Groenendijk et al. 2007; Oosterom-Staples 2007; Groenendijk 2006b)<sup>5</sup> are among the most relevant EU acts so far adopted in the area labelled as 'legal immigration' (i.e. conditions for a legal admission and stay to TCNs who have not applied for international protection) where integration has been expressly included among their provisions as a legal 'measure' or 'condition'. These two Directives provide common standards and EU-wide rights/guarantees in the domain of immigration. They also constitute a regime of partial harmonisation, leaving certain margins of appreciation to the member states at times of national transposition and implementation. Notwithstanding this, the degree of 'exceptionalism' permitted to national public authorities when acting within the scope of EU immigration law is limited to the principles provided by the EU legal system in order to protect the individual against illiberal interferences or unlawful derogations to EU rights and supranational freedoms. The rule of law and the respect of fundamental rights lie at the heart of this set of general principles safeguarded beyond national remits (*inter alia* Schwarze 1992; de Witte 2000; Bernitz and Nergelius 2000; Schermes and Waelbroeck 2001; Trimidas 2006; Craig 2006).

On the other hand, it was during the negotiation of these two measures inside the Council during 2001 and 2002 when the functionalities attributed to the category of integration in some provisions mutated significantly from the premises advocated at the Tampere Programme toward a more restrictive and 'immigration-control' trend. A group of member states (the Netherlands, Austria

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3 Tampere European Council, 15-16 October 1999, Presidency Conclusions, SN 200/99, Brussels.

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

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

and Germany) pushed for the transfer of a new understanding of integration in EU law in line with their current or planned national legislations on immigration. As a consequence integration now often acts as an obligatory ‘condition’ or ‘measure’ for the management of international human mobility and its attributed diversities in EU immigration law. It becomes a norm in the hands of the state conditioning admission (integration abroad) and/or access to rights and security of residence by those falling within the category of ‘legally residing TCNs’ in this way. Integration functions as a tool for practising an immigration policy aimed at limiting the legal channels of international human mobility and the inclusion and security of TCNs inside the EU. Member states that voted for the insertion of integration clauses in the two Directives probably intended to reserve their discretionary powers and national competences over these domains.

Some authors have mainly stressed the large margin of appreciation left to the member states when defining and interpreting the conditionality of integration at the national level within the scope of these Directives. While these claims might be right in intent, they are wrong in effect. It is our view that the transformations surrounding integration during the negotiations of these Directives and the inclusion of precise provisions dealing expressly with integration,<sup>6</sup> have also involved a considerable degree of Europeanisation of this domain in the scope of EU immigration law. By expressly inserting integration inside their provisions, the member states have seen their discretionary powers diminished when determining the content and reach of integration as an exceptional condition for having access to European rights and guarantees applicable to certain groups of TCNs. The inclusion of the category of integration inside the main body of the EU Directives creates a fundamental Community interest when assessing and monitoring the member states’ application (and national transposition) of these integration-related provisions (and the EU rights and common standards provided therein) in their respective domestic legal systems. It is also here where the force played by the general principles of EC law restricting member states’ discretion at times of national implementation comes sharply into focus once taken seriously by national lawyers and judges.

This has been confirmed by the European Court of Justice (ECJ) in the Case C-540/03, *European Parliament v Council* of 27 June 2006.<sup>7</sup> This judgement has major implications in relation to the action of member states regarding the respect of fundamental rights while implementing EU immigration law, and the margin of appreciation that the Directive leaves them in relation to derogations and restrictions from these common set of rights and standards (Martin 2007; Carrera 2009). When looking at the substance of each of the exceptional clauses provided by the Directive 2003/86, the ECJ interpreted them in conformity with

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6 See in particular Articles 5 (2) and 15 (3) of Directive 2003/109 and Articles 4 (1) and 7 (2) of Directive 2003/86.

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

the fundamental rights as provided by the European Convention of Human Rights. While doing so, the Court rewrote the derogations included in the Directive.<sup>8</sup>

In addition, the ECJ sent the hot potato to the national tribunals while reviewing the implementation of the Directive. If those courts encounter difficulties relating to the ‘interpretation’ or ‘validity’ of the Directive, it is incumbent upon them to refer a question to the ECJ for a preliminary ruling in the circumstances set out in 234 EC Treaty. By doing this the ECJ acknowledged that it might be possible that in practice the domestic implementation of these derogatory provisions could contravene fundamental rights, and even that a certain application of these provisions would provide grounds for challenging the sustainability of their very substance. Indeed, the role of the Courts (judicial oversight) when determining the legality of interferences (the liberal test) by national and EU public authorities over rights and freedoms of individuals is central, including those conferred by European immigration law to TCNs.

### *The EU Framework on Integration*

Since the end of 2002 the EU Framework on Integration has been developing slowly but steadily, and is now composed of a set of Common Basic Principles for Immigration Integration policy,<sup>9</sup> two handbooks on integration for policy-makers and practitioners, three Annual Reports on migration and integration, the setting up of the National Contact Points on Integration and the upcoming European integration forum. All these tools have been accompanied by the European integration fund, which aims at contributing to efforts by the member states to develop and implement integration policies enabling third-country nationals ‘to fulfil the conditions of residence and to facilitate their integration into European societies, in accordance with the CBPs’.

The framework constitutes an innovative multilevel method of governance in the field of integration of TCNs at EU level, involving the interaction of a package of non-binding or soft regulatory tools and diversified supranational networks that have given birth to a quasi-Open Method of Coordination (OMC) (Carrera 2008). The constitutive features characterising the conceptual framing of integration have also evolved in a highly dynamic fashion since the first policy steps taken in the scope of the EU Framework on Integration. In fact, a similar conceptual transformation to the one highlighted in EU immigration law can also be seen

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8 For instance, paragraph 60 of the ruling stated that ‘Article 4 (1) of the Directive imposes precise positive obligations, with corresponding clearly defined individual rights on the member states since it requires them, in the cases determined by the Directive, to authorise family reunification of certain members of the sponsor’s family, without being left a margin of appreciation’.

9 Council of the European Union, Justice and Home Affairs Council Meeting 2618th, Brussels. ‘Common Basic Principles on Immigrants Integration’, 14615/04, 19 November 2004.

in the EU framework of integration (refer to Kostakopoulou, Carrera and Jesse, Chapter 9 of this book). Integration functions as a civic programme, a course or a module (common European Modules for Migrant Integration, EMMI)<sup>10</sup> that will need to be followed and/or successfully passed by TCNs (often understood as an obligation), and which includes as constitutive elements the knowledge and respect of ‘national and European values and fundamental norms’, principles and ‘ways of life’ (cultural life of ‘the host’) of the member states and the EU. This ‘paradigm shift’ has mainly occurred as a consequence of the increasing exchange of information or ‘moving of ideas’ on national experiences, programmes and policies between member states’ representatives, and particularly due to the active role of the network of National Contact Points on Integration and the adoption of the two editions of the handbook on integration (Niessen and Schibel 2004; Niessen and Schibel 2007).

The Treaty of Lisbon, whose destiny remains in the balance after the results of the Irish referendum on 12 June 2008, would introduce substantial innovations to the current configurations applicable to European cooperation on integration.<sup>11</sup> Article 79 (4) of the Treaty on the Functioning of the Union would provide the basis for developing common measures to encourage and support the work of the member states on integration. It would therefore facilitate the formalisation of the EU Framework on Integration into a proper OMC through the application of the ordinary legislative procedure (co-decision).<sup>12</sup> This policy area would also gain from the increased involvement of the European Parliament, national parliaments, the Committee of Regions and the ECJ (Carrera and Geyer 2008).

### **Integration and Citizenship: Testing Identity as a Condition for Membership?**

The innovative element of the new ‘integration’ policies has been the introduction of formal language and citizenship tests in several member states as a new instrument for the selection of migrants from outside the EU who are accepted as potential or full members of the country of residence. Most (not all) member states have

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10 On the EMMI see Commission Communication, Third Annual Report on migration and integration, COM(2007)512, 11 September 2007, Brussels; refer also to the Commission Communication, A common immigration policy for Europe: Principles, actions and tools”, COM(2008) 359 final, 17.6.2008, Brussels.

11 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed in Lisbon, 13 December 2007, OJ C306/01.

12 Article 79 (4) says that ‘The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member State’.

applied a language or integration condition for naturalisation for already more than fifty years. The examination as to whether an application met this condition used to be conducted through a personal interview with a municipal civil servant or a local representative of the state. This used to be the dominant means for checking whether an immigrant with the required residence, income and clean criminal record had sufficiently integrated into society in order to acquire full legal membership as well. Before 2000 the only member state with a language condition for acquiring permanent residence was Germany.

Since the beginning of the new century these tests have been formalised. They are now practised at an earlier stage in the migratory process. The level of knowledge required has also been raised considerably both in the process of formalisation and after the introduction of the first formal test. Finally, the tests are not longer administered by the state but through private companies.

This surprisingly quick transformation in the selection methods of future citizens raises questions about the principles of fairness, effectiveness and lawfulness. The choice that has been made to formalise citizenship tests also raises questions about the content of the identity that is being tested. The need to specify the identity of the nation as part of the formalisation process has brought exclusionary issues into the public debate. It is also important to highlight that in several member states this process of specification of national identity was delegated to private companies.

### *Fairness*

The issue of fairness arises where migrants with little education or low income are required to pass the same test and to have the same level of knowledge as highly educated or wealthy migrants. This is particularly the case when passing the test requires some knowledge of how to use a computer and if no real language-learning facilities are made available for the migrant. Migrants with a lower income and level of education will have to invest more time, money and energy to meet the minimum standard required to pass the test. They also run a greater risk of suffering the financial immigration status or other administrative sanctions provided for in the new integration legislation.

The political debate in several member states tends to result in steadily higher levels of knowledge being required on the part of the immigrant. Indeed while 'integration' seems to be a central theme in the political spectacle, the majority of test candidates are perfectly aware that one of the main purposes of the new tests is a reduction in the number of immigrants and the restriction of immigrants' access to security of residence and nationality. This lack of honesty in the debate detracts attention from the social unfairness of requiring a standard level for all migrants and narrows the attention for the implementation of alternative methods, such as testing the relative language competence rather than requiring everybody to pass the same test. The exemption of persons with several years of schooling, diplomas certifying successful completion of schooling in the country of residence or formal language training will free most of the second generation immigrants (not the drop-

outs). But the tests may well be an insurmountable barrier for the less-educated people among the first generation of immigrants. The use of computers in the selection processes suits the state (appearance of fairness; obscuring responsibility for the outcome) and the companies administering the test (quick profits).

### *Effectiveness*

The introduction of formal tests raises additional questions about their effectiveness since their effects for large groups of migrants may be counterproductive. The application of a test will postpone the entry of family members and thus the beginning of their actual integration processes. Spouses and children will be older at entry; they may feel obliged to stay illegally with their family (overstaying their tourist visa) in order to learn the language once inside the country. Non-acquisition of a permanent residence status or withholding the nationality of the country of residence will reduce rather than enhance the chance of getting a stable job, a job in the public service, access to housing, scholarships or bank loans to start a business.

Offering a language course to immigrants will be perceived both by immigrants and the native population as a sign that immigrants are welcome, that they are going to stay and are able to adapt to the host country. Introducing a test that many immigrants will never be able to pass will cause frustration and create the impression that immigrants are unwanted and will never be accepted as full members of society. It may well result in less rather than more participation in society. Moreover, it will support the idea among the majority of the population that immigrants are unable to integrate. Integration is not a one-way process. It also requires a positive attitude from the receiving society.

This counterproductive effect is increased if large categories of immigrants are exempted from the test and if this requirement is seen as focusing selectively on certain immigrant groups or categories. This may explain the fierce opposition of organisations of Turkish immigrants to the introduction of the 'integration test abroad' in German legislation. Both in Germany and the Netherlands the introduction of the integration test abroad resulted in a sharp reduction of the applications for visa or the admissions for family reunification. In the Netherlands the introduction of a new Integration Act in 2007 with the obligation to pass an extensive language test (speaking, listening, reading and writing Dutch) and a computerised knowledge test of Dutch society, both being used previously as the naturalisation test, resulted in a sharp reduction of the number of new participants in integration courses during the first year following the introduction of the legislation.

### *Lawfulness*

The lawfulness of the new integration tests has been questioned on at least four different grounds. Firstly, the exemption of citizens of certain countries from the

obligation to take the test solely on the basis of their nationality is difficult to justify, since this exemption has no relation to the potential or actual integration of the persons exempted but is clearly related primarily to considerations of immigration control. This raises questions about the compatibility with Article 14 ECHR and Article 12 EC Treaty, both provisions forbid discrimination on the basis of nationality, one implicitly and the other explicitly.

Secondly, the integration test abroad raises questions about its compatibility with Article 8 ECHR if no real opportunities to learn the foreign language are available in the country of origin or if repeated failure to pass the test makes it impossible for a married couple to live together somewhere in the world. This issue arises particularly with family members of refugees or beneficiaries of other forms of international protection.

Thirdly, it also raises questions as to its compatibility with international norms against racial discrimination. Human Rights Watch in its extensive report<sup>13</sup> on the Dutch integration test abroad explains why the test amounts to indirect discrimination on the basis of race. On the face of it the requirement applies both to Dutch nationals and to TCNs of countries not covered by the exemptions. But the countries exempted are mainly rich Western countries with a white majority population (two of these three characteristics – rich, Western and white – apply only to non-Western countries whose nationals are exempt: Japan and South Korea). Moreover, the new requirement is aimed primarily at certain immigrant groups and in practice affects members of those categories disproportionately. In the Netherlands the introduction of this test was intended to stimulate young persons of Turkish and Moroccan origin to look for a spouse already living in the Netherlands. The measure affects Dutch nationals of Turkish and Moroccan origin far more often than native Dutch nationals. In several EU member states the majority of sponsors applying for family reunification are nationals of the country. But many of these nationals are of immigrant origin. Either they or their parents have been naturalised. Their membership is disputed (in)directly by the new ‘integration’ legislation.

Fourthly, it is a subject of dispute whether the integration test abroad is compatible with Directive 2003/86 on the right to family reunification. Article 7 (2) of the Directive only allows for integration ‘measures’ not for integration ‘conditions’ abroad. In any case the integration measures abroad have to be applied in individual cases with due respect for the general principles of Community law, such as the principle of non-discrimination and the proportionality principle.<sup>14</sup> The European Commission, in its first communication on the application of the

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13 Human Rights Watch (2008), *The Netherlands: Discrimination in the Name of Integration, Migrants Rights under the Integration Abroad Act*, Vienna, 14 May, available from <<http://www.hrw.org/en/news/2008/05/14/netherlands-discrimination-name-integration>>, accessed 18 December 2008.

14 See paragraph 106 of the Case C-540/03, *European Parliament v Council*, 27 June 2006.

Directive, has made it clear that the freedom of a member state to refuse admission for family reunification on the basis of integration tests is restricted by Community law and subject to the control of national judges, the European Commission and, potentially, the ECJ.<sup>15</sup>

### *Which Identity is Tested?*

The introduction of formalised tests coupled with the political desire to test not only the knowledge of the language but also the ‘knowledge of society’ as a substitute for citizenship, has also sparked a debate on the concept of national identity. Which questions and what themes would make for a proper test for (potential) membership? In each member state where the Government has chosen to go down that road, a public debate has emerged, by way of illustration, on the relevant questions to be included in the test, the correct answers to be assigned to those questions, the desirability of multiple or single answers, the share of the native population able to answer those questions correctly, etc. The basic question is, however, the extent to which the knowledge of the right answers is actually the most relevant factor for becoming or being considered a (good) citizen at all.

To what extent do the questions and answers represent the knowledge and conventions of the social class of the politicians and civil servants setting the tests or of the language experts in private companies responsible for developing them? The tests not only present new barriers for many migrants, they also project the image that migrants should become like ‘us’, i.e. white, highly educated, middle class persons. Implicitly, the tests send out the message that poorly educated immigrants are disqualified and that they are less or not welcome.

The practice of the test also points to the fact that integration is primarily a cognitive process; learning the language and the correct answers to the questions, rather than an emotional one. Moreover, the introduction of the tests has also involved a further step in the privatisation processes surrounding immigration control. The level of trust in the discretion of local or state officers has been replaced by a surprising reliance and confidence in private companies and educational institutions that develop and administer the tests. According to a Dutch observer (Schinkel 2008), nationalism is thus being promoted by private companies that in

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15 European Commission Report on the application of Directive 2003/86/EC on the right to family reunification, COM(2008) 610 final, 8 October 2008, Brussels, paragraph 4.3.4, which says that the admissibility of the national measures transposing Article 7 (2) of the Directive ‘depends on whether they serve this purpose and whether they respect the principle of proportionality. Their admissibility can be questioned on the basis of 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 safeguard to ensure the right to mount a legal challenge, should also be respected’, pp. 7-8.

cooperation with the Government select the ‘marginal persons’ who have to be serviced by ‘the integration market’.

An extreme example is the US firm Ordinate that succeeded in selling its computerised language test, developed originally for testing US military going abroad, to a Dutch Minister who used it for the reduction of family migration flows into the Netherlands. When the first experiences indicated that 90 per cent of the considerably reduced number of applicants for a visa who did take the test passed, several MPs requested that 25 per cent of the applicants should fail the test. The compromise arrived at early in 2008 was to aim at a 15 per cent fail rate and the computer was instructed accordingly after experts had certified that the pass/fail level had been too low.

### *Imitation or Quick Learning?*

The new idea of a formal language and integration test abroad is spreading among some of the member states at surprising speed. In only a few years several member states have recently introduced language or citizenship test for the admission of family migrants. This represents a completely new policy in Europe. Previously language requirements had only been used in the case of admission of foreign students. It is also true that some member states had already applied language requirements for the admission of third-country workers or of migrants who were deemed to be so called ‘co-ethnics’.

Have the member states copied the instruments used by other member states or have certain elements been left out? What is the role of the Family Reunification Directive in these processes?

The introduction of an integration test abroad as a condition for the admission of family members was part of the 2003 coalition agreement of the first Government in the Netherlands after the short-lived government with ministers from the Pim Fortuyn party. The new Government made considerable efforts to provide a legal basis for such tests by proposing an amendment to Article 7 of the Family Reunification Directive at the final stage of the negotiations inside the Council. It took several years to develop the test and to get the relevant legislation through Parliament. Finally, in March 2006 the legislation entered into force.<sup>16</sup> The applicant for a visa for family reunification has to pass the test in a telephone conversation at a Dutch embassy with a computer in the USA. Citizens of EEA states and seven rich countries are exempted. Both knowledge of the Dutch language and of Dutch society are tested by simple questions. If the computer reports that the applicant has failed the only redress at their disposal is by taking the test again (and therefore paying €350 once more). The applicants can buy a book and a video in order to prepare for the test (for more detailed information refer to Besselink, Chapter 13; Michalowski, Chapter 14 of this book).

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<sup>16</sup> Act of 22 December 2005, Staatsblad 2006, no. 28.

In Germany the integration test was introduced in 2007 by the act transposing the Family Reunification Directive and ten other EC migration Directives into the German legal system.<sup>17</sup> The German approach was different from the Dutch on several points. The law requires a basic knowledge of the German language rather than passing a specific examination by computer. The German Government gave an important role to the Goethe Institutes that organise language courses in several countries outside the EU, whilst there are no comparable facilities to learn Dutch abroad (see Michalowski, Chapter 14; and Wiesbrock, Chapter 16). The Government suggested that a language certificate issued by a Goethe Institute was required as a condition for family reunification. However, an appeal court has held that knowledge of the language may also be proven in other ways, e.g. in a conversation with a consular officer. German diplomatic posts were instructed to apply the language requirement also to TCN family members of EU migrants. This German instruction was withdrawn shortly after the *Metock* judgement of the ECJ in July 2008.<sup>18</sup>

The Danish Government introduced a bill on the integration test abroad in 2007 more or less along the lines of the Dutch model. The main difference is that in Danish law there is no exemption on the basis of nationality for nationals of certain states outside the EU, a feature that enhances the legal vulnerability of the system in the Netherlands and Germany. The test has not yet been introduced, pending the development of a computerised test in Danish. The development of a similar test in the Netherlands took several years. All independent experts consulted by the Dutch Government advised that the validity of the test used had not been proven. But that advice did not prevent the introduction of the test. Denmark is not bound by the Family Reunification Directive. Hence, it can apply its legislation to family reunification with TCN sponsors without Community law restrictions.

In France integration measures abroad were provided for in the *Loi Hortefeux* of November 2007.<sup>19</sup> During debate of the bill repeated reference was made to ‘the Dutch model’. But French legislation is different from the Dutch in many aspects (see Carrera, Chapter 17 of this book). The level of knowledge of the French language is tested by the French consul. If the level is considered to be insufficient a language course of up to two months will be offered. Once the applicant has participated in the course the visa will be granted. If, following the course, the consul deems the knowledge to still be insufficient family migrants will have to follow an additional course after their arrival in France. In October 2008 the decree was published with details on the implementation of the new legislation.<sup>20</sup>

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17 Richtlinienumsetzungsgesetz of 28 August 2007, Bundesgesetzblatt I, p. 1970.

18 Case C-127/08, *Metock*, 25 July 2008.

19 Loi n° 2007-1631 of 20 November 2007 relative à la maîtrise de l’immigration, à l’intégration et à l’asile, Journal Officiel no. 270 of 21 November 2007.

20 Décret no. 2008-1115 of 30 October 2008 relatif à la preparation de l’integration en France des étrangers souhaitant s’y installer durablement, Journal Officiel of 1 November 2008.

Exemptions are provided if the applicant is unable to learn French due to physical inability or the absence or inaccessibility of language training in the country of origin, after several years of schooling in a francophone country or at a French school abroad. It is clear that the new legislation will create an additional obstacle for a considerable number of applicants for family reunification.<sup>21</sup> But the French Government has apparently tried to model its national legislation in such a way as to avoid clear violation of the Family Reunification Directive, without ever mentioning the Directive in the legislative documents.

In the UK a proposal to apply an English language requirement for the admission of spouses or partners of settled persons was elaborated in a government consultation document. However, the idea was reformulated as a long-term goal on the basis of the availability of English language courses in the countries of origin. But spouses or partners may be required to enter into an agreement as part of the entry clearance process according to which they would learn English after arrival in the UK (refer to Ryan, Chapter 15).

The negotiations on the Family Reunification Directive provided free publicity for the Dutch-German idea of an integration test abroad (see Kostakopoulou, Carrera and Jesse, Chapter 9). The clause inserted in the Directive at the insistence of those member states was used to legitimise the introduction of such tests at home. In France the Directive probably influenced the form of the new integration measures: offering a course rather than requiring a test. Denmark and the UK are not bound by the Directive, but have to comply with other international norms, such as the ECHR and CERD.

## **Integration and Enlargement**

The use of the concept of integration and its contents are subject to a number of incoherencies. Where the concept is used as a ring-fence around citizenship and national identity, its symbolic nature becomes apparent as soon as one considers the longer term. Few liberal democracies are comfortable with nationality laws which leave generation after generation born and resident on the territory without the citizenship of the state. A mix of residence status and birth on the territory generally determines the way in which children gain citizenship in liberal democracies. Thus it is the generation that moves that is subject to integration measures and conditions. Of course the state has a much more comprehensive tool kit to turn children living on its territory into the kind of citizens it wants – a compulsory education system.

In the EU context, the objective of the ever-closer union of the peoples of Europe, found in the opening lines of the EC Treaty, sits uneasily with the idea of compulsory integration of a coercive nature. While EU nationals may be subject to convergence in living standards and educational attainment, for instance, as

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21 Un obstacle de plus à l'intégration, *Plein Droit* no. 79, December 2008.

measured by Eurostat and encouraged by EU programmes such as student mobility, they are not the objects of integration conditions or measures in themselves. When they exercise free movement rights, indeed, they cannot be obliged to even learn the language of the host country though many member states provide assistance to migrant EU nationals in this respect. When EU nationals move – rather than being subject to coercive measures by the state – they are rights-holders and as such are entitled to the best integration conditions. Integration has quite a different meaning; it is the right of the individual to equal treatment and social advantages within the host state.

As the EU has grown in the early part of the 21st century, so has the meaning of integration been put to the test. In 2004 ten states in Central and Eastern Europe, the Baltic area, Slovenia and two Mediterranean island states joined in the EU. One could hardly imagine a group of states with greater differences between them – some with fairly long communist pasts, others former British colonies! Again in 2007 the EU grew to include two Balkan states, Bulgaria and Romania – the former bringing with it a new written script for the EU to adapt to. Nationals of these 12 countries had the right of free movement and self-employment as soon as their state joined the EU (for some the right to take a job was delayed for up to seven years). For those who were already resident in the pre-2004 member states, they changed overnight from being TCNs subject to integration conditions and measures to citizens of the Union entitled to the best conditions of integration. Because these people became citizens of the Union, by definition they were placed beyond the conceptual framing of immigrants as a threat to identity. Instead they were entitled to participate in the new identity of the EU's full partners. Not only were they entitled to equality, but for them, the claim that the strength of the EU is based on its diversity (Article 151 EC Treaty) was suddenly applicable.

Instead of having to become more like someone else, the rest of the EU embraced the diversity that they brought with them. These are not just empty words – when one considers the fact that the 12 member states brought into the Union eleven new languages and that the whole of the EU *acquis*, laws, judgements of the ECJ, etc. had to be translated into eleven new languages, the meaning of 'the best conditions of integration' becomes more tangible. It costs the EU vast sums to carry out translations and to provide simultaneous interpretation at all official meetings into these languages, but this was the right of the newcomers.

### **Illiberal Practices of Liberal States: Integration as an Exception to the Laws of Citizenship and Immigration**

The traditional place of the framing of civic mandatory integration into law has been in member states' legislation dealing with access to nationality through naturalisation (Bauböck et al. 2006a). The main functions that integration intends

to perform in this context are securing and protecting the constructed citizenry. It constitutes an exception in the hands of the state to grant membership and participation to the non-national.

Integration in nationality law aims at protecting, managing and safeguarding the traditional notion of the nation. This notion is based on a compendium of features and characteristics often composed of stereotypes, traditional perceptions and visions of the past and the present, principles and classic 'values' deemed to rule 'the one and only' society, and conceptions of the self.

The role of the nation-state in the promulgation and protection of 'the citizen' is decisive for its own sovereignty and legitimacy (Habermas 1998b). Integration becomes another tool for the state to manage the nation and to determine who belongs to its imagined community. The relationship between integration and the laws on nationality aims at preventing the erosion of the bond of citizenship.

One of the managerial techniques in the hands of the state is the enactment of norms: its normative power. The use of integration by the branch of law dealing with nationality forces an active and corrective process of 'nationalisation' aimed at disciplining difference and making possible the endurance of the homogeneous nation, culture and identity. It aims at turning the abnormal into the natural or naturalised citizen (Foucault 1999).

In the context of immigration law, integration becomes a tool to control the non-national 'inside' the nation-state and even 'abroad'. The moving of integration from the traditional normative contextualisation of nationality to that of immigration raises a number of questions. Integration functions as another regulatory technique for the state to manage the access by the non-national – not to the status of citizen – but to the act of entry, the security of residence, family reunification and protection against expulsion. TCNs may not be willing to renounce their own identity(ies) and differences by acquiring the receiving state's nationality, but the state will anyway demand from them the renunciation of the latter as the *sine qua non* for benefiting from security. Integration determines the 'legality' or 'illegality' of human mobility, and constitutes another frontier to being considered as a 'legal immigrant'. It functions as the exception provided by immigration law for TCNs to have access to rights and inclusion (Carrera 2009).

Non-EU nationals aiming at becoming immigrants in accordance with national immigration laws will be required to pass a test to show that they are 'successfully' integrated, and that they fully meet the criteria attached to the notion of the citizen before having access to security (Guild 2005). The immigrant will need to disappear into the presumed unity of the nation, and exhibit a transformation from the abnormal non-national to the juridical construction of the citizen. Integration in this way facilitates the state practice of a restrictive immigration policy.

The Europeanisation processes and politics have not only further developed these functions in the context of the common EU immigration policy, but they

seem to have consolidated them by prioritising certain national policies and programmes fostering nationalistic approaches to integration at the EU level. The normativity of integration in the context of immigration in some member states has somehow been transferred to the European arena. It has become a part of EU law and policy. It is at times presented as a 'best practice' in need of promotion in the EU, including those states whose national legislations and histories have not at all shared these understandings and public philosophies. The EU has perhaps not realised the potential dangers subsumed in the use of the EU Framework on Integration (Carrera 2008).

Joppke (2007a) has argued that the increasing convergence of European policies on immigrants' integration towards obligatory civic introductory courses and tests for newcomers constitutes an example of what he calls 'repressive liberalism' or 'illiberal social policy in a liberal state'. In his view, 'contemporary civic integration or workfare policies are of the same kind, because illiberal means are put to the service of liberal goals'. Integration implies the continuance of the nation-state and its nationhood and identity, as well as its degree of discretion to determine and categorise people according to a subjective test of perfection in an increasingly supranational legal and policy-setting environment. The illiberalism emerges sharply beyond the limits of the exceptionalism granted to the nation-state by EU immigration law when applying integration as a mandatory condition derogating access to European rights and freedoms by TCNs. The limits of the exceptionalism characterising certain integration policies in contemporary Europe however reside in the rule of law, the respect of individual fundamental rights as well as in the EU's substantive (general principles of EC law) and institutional mechanisms (Community Courts). These mechanisms limit and review the discretionary powers and illiberal practices of liberal regimes in the EU legal landscape, and aim at protecting the rights and liberties of every person (including of course also TCNs) in relation to unacceptable actions and restrictions by national and EU public authorities. This is in our view what it is really at stake when assessing illiberal liberal regimes and the limits of the nexus between integration, immigration and citizenship in the EU.

## **Outline of the Book**

This book examines the relationship between integration, citizenship and immigration in contemporary Europe. It has been structured around two overarching sections: 1. Citizenship and Integration and 2. Immigration and Integration. Both are then divided into two subsections comprising the European and national arenas.

This introductory chapter provides the overall framing and premises of the volume and raises the key issues at stake when examining the EU and member states' policies and legal frameworks on the integration of TCNs in the context of citizenship and immigration. The first part of the book, entitled

‘Citizenship and Integration’, kicks off at the European Union level with Jo Shaw (Chapter 2) providing an assessment of political rights and multilevel citizenship in Europe. Shaw’s contribution focuses in particular on the rights of non-nationals to vote in local elections on the basis of residence, rather than nationality. This is already well-established in the EU context, as a result of the introduction of local electoral rights in the citizenship package of the Treaty of Maastricht. A number of member states go further and confer the right to vote in local elections on TCNs as well, but this extension has by no means been universal. Chapter 2 further explores some of the political and legal tensions that arise when there are debates and conflicts within states, across different territorial and political units, about whether or not to extend electoral rights to non-nationals. It also seeks to explore the types of arguments made for the exercise of regional or local autonomy, e.g. within federal states, in favour of extending electoral rights where the national policy is more restrictive. In particular it emphasises the significance of constitutional barriers in a number of states where experimentation at the subnational level has been attempted, notably in Germany and Austria. It also suggests that the case for subnational experimentation can be linked, as it may increasingly be in Scotland as the UK’s current devolution scheme continues to evolve, to broader political questions about a state’s political and territorial settlement.

The study of integration as a requirement for naturalisation is the topic addressed by Gerard-René de Groot, Jan-Jaap Kuipers and Franziska Weber’s contribution (Chapter 3). This chapter provides a comparative assessment of citizenship tests where integration is a requirement for naturalisation, paying particular attention to the ways in which the evaluation of the applicants’ degree of integration is being examined across a number of selected EU member states, in particular Austria, Germany, the Netherlands and the UK. On the basis of this comparative assessment, the chapter then draws conclusions about the desirability of a common EU policy fostering the development of European integration tests.

The role of European citizenship as a tool for integration is the main issue of Zeynep Yanasmayan’s contribution (Chapter 4). Coping with cultural diversity and ensuring the integration of non-European nationals has turned out to be a major challenge for most Western societies. Despite the development of cooperation with regards to the management of migration, the EU member states have shown themselves to be rather reluctant to share their sovereignty when it comes to the field of integration. This chapter takes as its departure point the need for further EU involvement and thus focuses on European citizenship as an integration tool. It attempts to analyse the extent to which European citizenship can effectively contribute to the integration process of Turkish immigrants. It deals with the construction of European citizenship through the interplay of domestic integration policies. The examples of the Netherlands and Germany demonstrate how Turkish immigrants have lost out compared to EU nationals. The underlying argument is that European citizenship not only highlights national boundaries among residents but also enhances it by adding another

layer of exclusion. Through a comparative analysis of nationality legislation and of rights attributed to non-citizens, the author advocates the necessity for a (re)formulation of European citizenship that would include all residents within its framework. This would constitute a major move towards a more democratic and inclusive Europe.

The subsection on the national arenas in the context of citizenship and integration, starts with a chapter authored by Judit Tóth that studies the impacts of EU enlargement on nation-building and citizenship law (Chapter 5). Recent enlargement processes have extended not only the geographical scope of the EU but also the debates as to whether ethnic or civic citizenship policy is able to receive and integrate more TCNs through nationality law. The author sets out the major characteristics of nationality legislation in the twelve newest member states, which includes for instance the role of the legal principles of *jus sanguinis*, tolerated dual citizenship and ethnic preferences in the acquisition of nationality. It also offers statistics on the acquisition of nationality via naturalisation. Compared to the absorption capacity of the old member states, the naturalisation rate is lower across new member states of the EU. This, the chapter argues, might be justified due to the fact that nationality law and policy patterns follow a different rationale that is based on the existence of kin-minority and diaspora of expatriated citizens, something that has strongly influenced recent legislative changes rather than European integration processes and enhanced efforts to establish the rule of law across these newly established democracies. The nation-building strategy of newly independent states may explain the numerous compensatory measures of weak statehood in a transition period. The author gives examples of how the bumpy road leads towards liberal and civic-driven nationality status and laws across this region.

Ricky Van Oers then moves to an examination of the justification of citizenship tests in the Netherlands and the UK (Chapter 6). The chapter analyses the political debates preceding the introduction of citizenship tests as a requirement for naturalisation in the Netherlands and the UK. In her analysis, Van Oers uses three models for naturalisation policy that are discerned in literature for the justification of naturalisation requirements: a liberal, a republican and a communitarian model. These models serve as a tool to locate the centres of gravity in the arguments used by politicians to defend the introduction of these tests in the countries under consideration. The chapter also addresses the question of whether the way in which the tests have eventually been put into practice can be defended on the basis of the models.

Barbara Kejžar focuses on the role of dual citizenship as an element of integration processes in receiving societies taking Slovenia as a case study (Chapter 7). Dual citizenship was until recently considered to be an undesirable and anomalous social phenomenon that contradicted the established modern definition of (only one) national citizenship and should therefore be abandoned. But this mission has apparently not been successful, since the number of dual citizens is constantly on the rise. On the basis of reconsideration about the

complexity of modern societies, where multiple loyalties and identities co-exist and there are redefinitions of the concept of citizenship in academic spheres and states, the positive effects of possessing a second citizenship are being increasingly recognised. In the context of such changed attitudes towards dual citizenship, this chapter (re-)examines the role of dual citizenship in the integration processes of immigrants in receiving societies. The author argues that dual citizenship can positively influence the integration of long-term immigrants in two ways in particular: by facilitating a naturalisation process and by encouraging (further) integration into the receiving society. As an example the author presents the case study of Slovenia and its policy of dual citizenship in the integration processes of immigrants. Kejžar concludes with a suggestion that future research on this issue should be complemented with an analysis on the individual level and concentrate on subjective meanings and interpretations that individuals subscribe to this element of integration policies.

In Chapter 8, Julia Mourão Permoser and Sieglinde Rosenberger assess religious citizenship as a substitute for immigrant integration with special attention given to the case of Austria. Throughout Europe, concerns over the integration of immigrants have grown considerably in recent years. At the same time, debates over the public display of religious symbols and practices of Muslim immigrants have figured prominently in the European public sphere. The relationship between policies of religious accommodation and immigrant integration is far from simple. At the national level, Austria is a case in point. Here restrictive immigration policies are coupled with generous policies of accommodating religious diversity. Similarly, Directive 2000/78/EC grants the right to non-discrimination on the grounds of religion to all persons residing legally in the EU, whereas for most immigrants discrimination on the basis of nationality remains legal. The chapter uses Islam in Austria as a case study to analyse the tensions between the religious rights and restrictive immigration and integration policies that create barriers to the acquisition of political and socio-economic rights by immigrants. It suggests that the increasing number of rights derived from religious membership amount to a form of 'religious citizenship' that transcends nationality. The effect of these contradictory dynamics is discussed, as well as the importance of religious citizenship for the social and political integration of migrants.

The contribution by Dora Kostakopoulou, Sergio Carrera and Moritz Jesse on 'Doing and Deserving: Competing Frames of Integration in the EU' (Chapter 9) opens the second half of the book titled 'Immigration and Integration', as well as the subsection on the EU level. In the new millennium there has been a shift away from multiculturalism and the politics of difference towards integration. Governments frequently comment on the alleged weaknesses of the multicultural model and the advantages of thicker, communitarian notions of community. In this chapter the EU institutions' understanding of integration is investigated by comparing and contrasting ideas, frames, laws and policies in the fields of the free movement of persons and migration, respectively. The comparison of the rights-

based and participatory approach characterising the free movement of persons and Union citizenship with the common framework for the co-ordination of national integration policies toward TCNs highlights the need for a fundamental rethink of integration, a more coherent frame and for critical interventions at EU level.

Moritz Jesse's contribution continues our journey by studying the effective protection of TCNs from discrimination under Community law, taking as a case study the *hollow* interplay between the racial equality Directive 2000/38/EC and the long term residents Directive 2003/109/EC, and its detrimental consequences for integration (Chapter 10). The chapter exemplifies the weak protection from discrimination for immigrants from non-member states of the EU. It takes a closer look at the combined effect of the two Directives mentioned above. Sovereignty concerns from the member states have created a hollow circle of references, in which the racial equality Directive accepts discrimination on the basis of nationality and the legal status of immigrants from its application even in the event that this amounts to [indirect] racial discrimination. It is assumed that at least for long-term residents this gap in protection is filled by Directive 2003/109/EC. The latter Directive, however, does not provide for such protection and instead refers back to the legislative framework of protection against discrimination under Community law, which is thought to offer sufficient protection. It is shown that this 'circular relation' functions as an example for much of, if not all, European immigration legislation. Gaps in protection do exist in the application of immigration law and cannot be filled satisfactorily relying on, e.g. Article 12 EC Treaty or general principles of community law. Equal treatment and non-discrimination are vital elements of immigrant integration; thus protection gaps will have to be filled in order to enable real integration.

The role of free movement as a precondition for the integration of TCNs in the EU is then addressed by Sara Iglesias Sánchez (Chapter 11). Bearing in mind the historical development of the European Communities, free movement is the main feature that defines the relationship between the EU and the individual. The possibility to travel, to reside and to work across the territory of the member states, enjoying at the same time a legal status characterised by equal treatment are the elements that constitute the hard core of the concept of European citizenship. Thus, any comprehensive Union policy aiming at the integration of aliens has to bear in mind the fact that free movement is the element that better defines the added value of an internal market which is, at the same time an area of freedom, security and justice. A number of elements aiming to achieve free movement have been included in the main norm concerning the integration of TCNs: the long-term residents Directive. The EC long-term resident status is the expression of a double identity similar to the one created by European citizenship. Nonetheless, through the long-term residents Directive the connection between the Union and the long-term resident remains at a very preliminary stage. Chapter 11 argues that, by failing to implement a system that enables mobility throughout the member states, the opportunity to develop a successful and comprehensive

approach to integration in the new political community formed by the EU could be missed.

In the next chapter Paul Minderhoud focuses on the access to social assistance benefits as a tool for integration in an enlarged EU and its framing in the scope of Council Directive 2004/38 (Chapter 12). It looks at the issues relating to the implementation of Directive 2004/38 in light of access to social assistance benefits for EU citizens in other member states. This Directive regulates the entry and residence of EU citizens and their family members in another member state. A problem with the implementation of Directive 2004/38 is that the point at which an EU citizen becomes an 'unreasonable burden' to the social assistance system is not clearly defined. Leeway is given to member states to examine whether financial difficulties may be temporary. As a result, member states have developed their own definitions. Some legal experts hold the view that before EU citizens receive a permanent residence right, it is not possible to deny them access to social benefits. The policy and practice in Ireland and the UK, however, show a different picture. By using a habitual residence test and a right to reside test, the social benefits systems of these countries appear to exclude inactive EU citizens effectively from entitlement during a certain period of time. The idea that states can only expel people if they are proved to be an 'unreasonable burden' has fuelled discussion over welfare tourism and fear for social welfare systems. This fear is needless since there is no unconditional access to social benefits in most member states. Concerns about the potential abuse of social welfare systems are so far unfounded.

The last subsection of the book comes back to the national arenas in order to address the relationship between the mobility of TCNs and integration across various EU member states. Leonard F.M. Besselink starts the section by studying the vicissitudes of Dutch integration programmes (Chapter 13). The chapter describes the legislative approach to integration in the case of the Dutch integration requirements, *inburgering*, against the populist political background of the period between 2004 and 2008. It describes how, instead of increased integration, it has resulted in a dwindling of the numbers of persons participating in integration programmes. Besselink shows how the 'integration of minorities' turned from an inclusionary social policy issue into an exclusionary immigration issue, from a problem to be addressed with social measures based on 'soft law' to one that is to be tackled with legislation enforced with sanctions. It submits that this has largely contributed to its failure to achieve the intended objectives of integration and participation.

In the past ten years North-Western European member states such as France, Germany and the Netherlands have repeatedly modified their integration policies for new immigrants in search of more (cost-) effective solutions. Ines Michalowski's chapter looks at the ways in which immigrant integration policy can become a private task by looking at the cases of the afore-mentioned countries (Chapter 14). Policy and research documents have described these changes as paradigmatic. The chapter analyses the past two changes, which

are the subsequent introduction of integration programmes and of alternative strategies such as legally fixed integration requirements that migrants have to meet at their own responsibility and asks which of these changes can be described as paradigmatic.

The integration agenda in British migration law is studied by Bernard Ryan in Chapter 15. This chapter details the integration requirements that have been introduced into UK migration law since 2002, or which have been the subject of government proposals. The first innovations concerned the addition of knowledge requirements of the official language and of life in the UK to the rules governing naturalisation and indefinite leave. A second stream of developments saw the introduction of English language requirements for highly-skilled migrants and skilled workers, and a proposal to require the partners of settled persons to learn English either before or after migration to the UK. The Government also plans to introduce a criterion of 'active citizenship', compliance with which would lead to a shorter qualifying-period for naturalisation and for a new 'permanent residence' status. The chapter argues that it is paradoxical to seek to improve the social and economic position of migrants through these integration conditions within migration law. Instead, the new integration agenda is to be understood as a problematic aspect of the policy of promoting 'community cohesion'.

Chapter 16, by Anja Wiesbrock, focuses on integration requirements for immigrants in Denmark and Germany. TCNs are faced with integration conditions at three stages in the process of settling in a country of the EU: before entry, after arrival and when applying for citizenship. This chapter provides a critical analysis of the integration requirements faced by TCNs at each of these three stages in Denmark and Germany. A comparison of Danish and German integration results on the basis of the recent OECD study reveals that member states are not likely to improve their integration results by further intensifying integration programmes or tightening immigration and citizenship rules. On the contrary, extremely restrictive rules could hamper the integration process, especially if they are perceived to amount to direct or indirect discrimination. Furthermore, the chapter scrutinises the compatibility of German and Danish integration measures with fundamental principles of EU law, including Directives 2003/86 and 2003/109, the principles of proportionality and non-discrimination and Directives 2000/43/EC and 2000/78/EC as interpreted by the ECJ.

The relation between integration and the legal frameworks of immigration and nationality in France is analysed by Sergio Carrera in Chapter 17. This chapter studies the nature and impact of the normative articulation between integration, nationality and immigration in French law. After offering some theoretical reflections on the French Republican paradigm of integration, it addresses the ways in which integration is being used and practised in nationality law by looking at the key provisions contained in the civil code dealing with the condition of assimilation for naturalisation. The relationship between immigration legislation and integration is then analysed. It is argued that Republican integration has experienced a number of multifaceted processes of

normativisation, expansionism and externalisation: first, it is currently presented in a mandatory contractual relationship between the state and the TCN, taking the form of the so-called welcome and integration contract (CAI). The CAI applies as a prerequisite for the non-national to have access to permanent residence and the right to family life. Second, integration has been subject to gradual expansionist logic from its traditional place within the realm of nationality law to the regime covering the wider area of immigration. It now functions as a condition for the regular nature of the entry, permanent settlement and family reunification of TCNs. Third, there is a consistent trend calling for the application of integration as a requirement already in the country of origin to obtain a visa for the purposes of family reunification ('integration abroad'). The main features and scope of these various processes in the French legal system are addressed.

Immigration and the construction of public philosophy(ies) of integration in Spain are analysed by Ruth Ferrero-Turrión and Gemma Pinyol-Jiménez in Chapter 18. Because of its recent conception as a destination country and unlike other European countries of immigration, Spain is just examining the links between immigration and social integration, and its transposition in a legal framework. In recent years, Spain has been involved in defining its own interpretative framework and constructing an argumentative discourse to sustain its public philosophy of integration. Furthermore, public and academic debates point out how, in such a decentralised country, rather than talking about a philosophy, it could rather be considered as presenting various philosophies of integration. This chapter will analyse how the central Spanish Government has articulated its own public philosophy on integration, but it also focuses on how this philosophy has been built in the region of Catalonia. The main aim is to reflect how, in Spain in general and in Catalonia more particularly, the debates on migration, citizenship and national community are still open and how, within this framework, instruments to manage plurality and diversity should be implemented to grant social cohesion and peaceful coexistence in a decentralised Spain.

Finally, the book concludes with a chapter by Salvatore Palidda dealing with the insertion, integration and rejection of immigration in Italy (Chapter 19). This process has been marked, on the one hand, by a sometimes exaggerated interpretation of the strictest points of the guidelines adopted by the EU concerning the 'countering' of irregular immigration and, on the other hand, by the ignorance of recommendations that are more favourable to integration. This becomes critical when taking into account the existence of an excessive discretionary power by the police in each province, non-effective protection for migrants against over-exploitation in underground economies, against the money-lenders in the housing market, against discrimination, racism and violence, etc. There is no law on humanitarian and political asylum in accordance with European norms. The chapter argues that Italy is the least favourable country for a stable and peaceful integration of immigrants. The most recent estimates indicate that there is an increase in the 'shadow economy'

and of irregular immigration against a background of hostility, discrimination and racism that has also provoked the growth of the number of foreign prisoners in prisons and in retention centres.