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INTEGRATION REQUIREMENTS IN EU MIGRATION LAW

Karin de Vries



**EUROPEAN UNIVERSITY INSTITUTE, FLORENCE**  
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**KARIN DE VRIES**

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**Abstract**

In recent years, integration requirements have come to play a role in EU immigration law. Several directives – the Family Reunification Directive (2003/86), the Long-Term Residents Directive (2003/109) and the Blue Card Directive (2009/50) – allow Member States to demand third country nationals' compliance with such requirements. A definition of integration requirements has not, however, been provided. This paper distinguishes between two functions of integration requirements: one is to equip migrants with the right skills to further their participation in society, whereas the other is to operate as a selection criterion, determining, which third country nationals are granted admission, residence or access to other rights, and who is to be excluded. An analysis of the three directives shows that the integration clauses in those directives do not all have the same function and that there is room for a more uniform and consistent concept of integration in EU immigration law. The paper also considers, on a more theoretical level, the role played by integration requirements in shaping a European concept of citizenship for third county nationals.

**Keywords**

Migration; immigrant integration; citizenship; European integration; EU law.

*Karin de Vries*

*Max Weber Fellow, 2011-2012*



## 1. Introduction

EU law guarantees, to a considerable extent, the free movement and residence of EU citizens and their family members within the territories of the Member States. Under the provisions of the Treaty on the Functioning of the European Union (TFEU) on citizenship and free movement of persons, as well as Directive 2004/38 (the Residence Directive), the migration of EU citizens and their family members to other Member States is subject to two main conditions: the persons concerned must not make disproportionate use of public resources in the host state and they must not pose a threat to public policy, public security or public health. Integration requirements, such as tests of the immigrants' language skills and knowledge of the host Member State, are not foreseen. Rather, the dominant conception with regard to EU citizens and their family members is that their integration will be furthered through a strong legal position and equal treatment with nationals.<sup>1</sup>

In a parallel development, since the Treaty of Amsterdam, the body of EU law has come to also include measures on the entry and residence of third-country nationals who are not family members of EU citizens. A number of legislative instruments have been adopted as part of the Union's common policy on asylum and immigration, several of which contain clauses on integration requirements. This reflects a development in several Member States whereby considerations regarding the capacity of immigrants to integrate have increasingly come to play a role in determining their eligibility for membership, including residence rights and naturalisation.<sup>2</sup> A report by the European Commission on the application of the Long-term Residents Directive indicates that in 2011 fourteen Member States had enacted some form of integration requirement for the acquisition of long-term resident status by third country nationals.<sup>3</sup> In addition, six Member States (Austria, Denmark, France, Germany, the Netherlands and the United Kingdom) have now adopted 'pre-departure' integration requirements that immigrants – mostly family migrants – must meet before they are admitted to the host state.<sup>4</sup>

The legislative history of the various migration directives shows that several Member States, in particular Austria, the Netherlands and Germany, have pushed for the possibility to apply integration requirements.<sup>5</sup> Yet, the incorporation of integration clauses in the EU migration directives means that integration has also become a condition of *European* immigration law, which has its own dynamic and cannot be understood solely by reference to national systems. The purpose of this paper is, therefore, to investigate the European concept of integration as it emerges from the said directives. My aim is not to explain the political processes that have led to the adoption of integration requirements at the EU level, or to see how the insertion of the integration clauses can be traced back to the influence of certain Member States or other actors. Instead I will attempt to link these clauses to underlying legal concepts of integration, in order to better understand the role they play in shaping the membership of third country nationals in the EU. Section 2 distinguishes between two concepts of integration, both of which could explain the adoption of integration requirements. Section 3 analyses the integration clauses in three directives, the Family Reunification Directive, the Long-term Residents Directive and the Blue Card Directive, in relation to the previously identified concepts. Lastly, section 4 connects both concepts to broader theoretical discussions on citizenship and integration.

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<sup>1</sup> Groenendijk 2004, pp. 124-125.

<sup>2</sup> This development has been addressed in a growing body of literature over the past years. See, notably, Michalowski 2005; Carrera 2009; Guild *et al* 2009; Van Oers *et al* 2010; Groenendijk 2011; Michalowski 2011 and Bonjour 2012.

<sup>3</sup> COM(2011) 585 final, published on 28 September 2011.

<sup>4</sup> Groenendijk 2011; Austria enacted a pre-departure integration requirement as per 1 July 2011, see Art. 21a Niederlassungs- und Aufenthaltsgesetz (accessible at [www.bmi.gv.at](http://www.bmi.gv.at)).

<sup>5</sup> Groenendijk 2004, pp. 119-124; Carrera 2009, pp. 163-183; Bonjour 2012, p. 6.

## 2. Legal concepts of integration

### 2.1. Selection versus facilitation

In an important article published in 2004, Kees Groenendijk distinguishes between three perspectives on integration.<sup>6</sup> The first perspective is that immigrant integration is enhanced through equal treatment and a secure residence status. From the second and third perspectives this relationship is inverted: integration comes before legal status. Successful integration, or at least the demonstrated ability to integrate, is seen as a condition for naturalisation or permanent resident status (the second perspective) or even for admission into the country (the third perspective).<sup>7</sup>

In this paper I seek to build on the above distinction by making a further refinement. In particular, I differentiate between two views that can explain the adoption of integration requirements. By integration *requirements*, I understand legal provisions that oblige or coerce immigrants to obtain or demonstrate a capacity for successful integration. Both views presented below presuppose that integration depends, at least to a certain extent, on certain individual skills or qualities (e.g. literacy or language proficiency) that migrants must possess. However, one view sees integration requirements as an instrument to control immigration and access to rights (*selection*), whereas taken from the other viewpoint the objective is to ensure the acquisition by migrants of the said skills and qualities without excluding them (*facilitation*).<sup>8</sup> Whereas, in practice, integration requirements usually entail that immigrants must learn the language of the host Member State or become acquainted with the country and its society,<sup>9</sup> it will be seen that the EU directives do not define what is to be understood by 'integration', thus potentially leaving room for other types of requirements.

In the first approach, the function of integration requirements is to differentiate between aliens who are, and those who are not, eligible for admission and residence in a Member State. In other words, integration requirements are used as an instrument of immigration control, to *select* immigrants on the basis of their capacity for integration. This corresponds to the second and third perspectives described by Groenendijk. Where integration requirements are used as a selection criterion, this will usually occur on the premise that immigrants who lack the skills or qualities deemed necessary for successful integration will place too much of a burden on the host society and therefore should not be admitted or granted the rights attached to legal residence. An alternative but closely related motive is to reserve access to certain membership rights for immigrants who have 'earned' such access through prior integration, in other words membership is seen as the reward for successful integration.<sup>10</sup> An important feature of integration requirements, used as selection criteria, is that those who are not able or not willing to comply with them are subsequently *excluded*. The purpose of such requirements is therefore not primarily to enhance the individual integration capacity of those immigrants who seek admission or residence, but rather to ensure that persons who lack this capacity are not admitted, so as not to disrupt the integration process within the host Member State.<sup>11</sup> Conceptually, the possibility of integration as a selection criterion is not limited to situations where integration is a condition for admission or residence but can apply to other rights as well. A common example is the use of naturalisation tests to govern access to nationality. Another, rather more extreme, example is the proposal, made two years ago by an MP of the Dutch Liberal party (*VVD*), to make immigrants'

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<sup>6</sup> Groenendijk 2004, p. 113. See, in a similar vein, Kostakopoulou *et al* 2009.

<sup>7</sup> On this 'reversal' of integration concepts see also Vermeulen 2010, pp. 87-89.

<sup>8</sup> Cp. Bonjour 2010, p. 305.

<sup>9</sup> Michalowski 2005; Van Oers *et al* 2010. On naturalisation tests see also Michalowski 2011.

<sup>10</sup> Groenendijk 2004, p. 113.

<sup>11</sup> Michalowski 2005, p. 77; Bonjour 2010, pp. 306-307; De Vries 2011, pp. 55-56. Of course, it is likely that immigrants who pass an integration test before being admitted will have a greater capacity for integration upon arrival. In this sense, selective integration requirements can also function as an instrument of preparation or facilitation. However, the objective of preparation alone does not explain why those who do not meet the requirement are subsequently excluded.

access to social assistance dependent on their level of proficiency in the Dutch language.<sup>12</sup> However, under the EU directives discussed in this paper access to naturalisation and social benefits are either not covered or are not subject to integration requirements.

Besides functioning as selection criteria, integration requirements can also serve to *facilitate* the integration of immigrants. A study by Michalowski shows that several Member States introduced mandatory integration programmes before including integration conditions in their immigration laws, in general with the aim of increasing the autonomy and labour market skills of newly arrived immigrants.<sup>13</sup> Such obligatory integration programmes can be considered as a form of compulsory education, meant to ensure that immigrants obtain the knowledge and skills they are believed to lack because they did not go to school in the host Member State. Like in the case of compulsory education, there are broadly two reasons why integration may be obligatory. Governments may impose integration requirements on paternalistic grounds; because they believe it to be in the best interest of the migrants themselves.<sup>14</sup> They may also do so because they believe that a lack of the skills or abilities deemed necessary for integration will constitute a burden for the rest of society. Hence, the underlying motive may be the same as when the purpose is selection. When a state seeks to facilitate integration, however, the underlying premise will be that the immigrants who must integrate are, or will be, *included* rather than excluded. Where integration requirements are introduced to facilitate integration, this does not have to clash with the first perspective outlined by Groenendijk, which entails that integration follows the granting of a secure residence status. Rather, a strong residence status, equal treatment and participation in integration courses or programmes can all be seen as instruments to further immigrant inclusion. Both integration conditions and mandatory integration programmes are, however, based on the assumption that integration is, at least partly, a result that depends on the existence of particular qualities or characteristics on the part of individual immigrants.<sup>15</sup>

## 2.2. The legal character of integration requirements

It can be expected that the choice for one of the above concepts of integration (as a selection criterion for immigrants or as inclusion to be realised through mandatory courses or programmes) will affect the form in which integration requirements are implemented in national or European legislation in various ways. First, it can be expected that there will be a difference in terms of the legal effect of the requirements. Where integration is seen as a selection criterion, integration requirements will normally be formulated as *conditions* for the acquisition of rights. Such conditions do not, in themselves, compel immigrants to participate in an integration programme or to study the language of the host state. However, in case of non-compliance the sanction will be one of exclusion from access to residence or other benefits. Conversely, where the purpose is inclusion this kind of exclusionary sanction does not fit. In this case integration requirements are more likely to take the form of an *obligation*: immigrants may be obliged, by law, to learn the language or to attend a course. Usually such obligations will also be backed by some kind of sanction, such as a (penal or administrative) fine. Unlike in the case of conditions, however, the effect of the sanction will not be to exclude the person concerned.

Second, the chosen perspective on integration is also likely to influence the content of integration requirements. Such requirements can take the form of an obligation of result, for example a test, whereby immigrants must demonstrate that they have reached a certain level of language proficiency and/or knowledge of the host society. Alternatively, they can consist of an obligation of effort, requiring the immigrant to participate in an integration course or programme (possibly preceded by a

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<sup>12</sup> *Parliamentary Papers (Kamerstukken) II* 2009-2010, 32 328, No. 2. At the time of writing the proposal was still pending before the Dutch Parliament. Notwithstanding the amendments made after a critical opinion from the Council of State, it still contains the possibility to fully withdraw social assistance benefits if the recipient does not meet the language requirement (*Parl. Papers II* 2010-2011, 32 328, No. 6).

<sup>13</sup> Michalowski 2005, pp. 80-81.

<sup>14</sup> Fermin 2000b

<sup>15</sup> Michalowski 2005, p. 88.

test to determine their level). Where the integration requirement is meant to serve as a selection criterion, it seems rational that it is formulated as an obligation of result. This may also be the case where the purpose is facilitation, namely if it is considered that a minimum level of knowledge is necessary for the person concerned to get by (compare high school exams, whereby pupils must also show they have reached a certain level). However, where the purpose is facilitation it will have to be taken into account that the obligation that can be imposed is necessarily limited by the capability of the person concerned. To impose sanctions on persons for not doing something they are simply unable to do would have to be regarded as unreasonable. The Dutch Integration Act 2007, for example, contains an exemption for persons who are unable, despite demonstrated efforts, to pass the civic integration exam. This notwithstanding, the obligation to attend an integration course (an obligation of effort) fits more comfortably with the purpose of facilitation.

Third, it can be expected that the choice between facilitation and selection also influences the phase of the immigration process in which integration requirements play a role. If the purpose is selection, the requirement will have to be met before the right in question is granted. This may be before admission (integration abroad) or after admission but before the person is granted permanent residence, naturalisation or access to other rights. On the other hand, the objective of facilitation will only come into play once the immigrant has been legally included, that is after admission or even long-term residence has been granted.

In practice, of course, all the elements above do not always point in the same direction. For example, in France, immigrants must meet an integration requirement before entry but they are not expected to demonstrate a certain level of knowledge or language skills. Instead, their level is tested and, if found to be too low, they are required to participate in a course. Entry will not, however, be denied because the person's capacities to integrate have not sufficiently improved.<sup>16</sup> Another example is Denmark, where integration tests are administered after the person concerned has been granted entry on a short-term visa.<sup>17</sup> The above distinctions may be used, however, to categorise different types of integration requirements and also to point out potential inconsistencies in their implementation. They are summarised in the table below.

Purpose of the integration requirement	<b>Selection</b> (integration condition)	<b>Facilitation</b> (integration obligation)
Sanction in case of non-compliance	Exclusion from admission, residence or other rights	Fine
Content	Obligation of result (test)	Obligation of effort (programme or course)
Timing	Before acquisition of right	After legal admission or granting of long-term residence

### 3. Integration requirements in the EU migration directives

Integration requirements can be found in three of the EU migration directives, namely the Family Reunification Directive (2003/86/EC), the Long-term Residents Directive (2003/109/EC) and the Blue Card Directive (2009/50/EC). All three directives were adopted on the basis of Art. 63 (3) and (4) of the Treaty on European Community (currently Art. 79 (2)(a) and (b) TFEU). This section first discusses the legal basis provided in the Treaty and then reviews the integration clauses in the separate directives.

<sup>16</sup> Bonjour 2010, p. 303.

<sup>17</sup> Bonjour 2012, p. 4.

### **3.1. The Treaty basis: Article 79 TFEU**

According to Article 79 (1) TFEU, the EU is to develop a common immigration policy which aims to ensure the efficient management of migration flows, the fair treatment of legally residing third country nationals and the prevention of illegal immigration and human trafficking. For this purpose, the EU may adopt measures regarding ‘the conditions of entry and residence’ of third country nationals and ‘the conditions governing freedom of movement and of residence in other Member States’ (Art. 79 (2)(a) and (b) TFEU). In addition, Article 79 (4) TFEU provides a legal basis, newly inserted by the Lisbon Treaty, for ‘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’. The latter provision, however, expressly excludes ‘any harmonisation of the laws and regulations of the Member States’. As Article 79 TFEU shows, the European immigration policy pursues different aims, which include controlling immigration and promoting the integration and fair treatment of migrants who are already there. The Treaty thus provides a basis for measures that exclude migrants as well as for measures enabling their inclusion into the Member States. The tension that may exist between these aims becomes manifest, for example, with regard to the issue of family reunification or the rights of third country nationals to move between the Member States.

With regard to integration requirements, in particular, the Treaty does not contain any express references, hence it remains unclear from Article 79 TFEU what such requirements can entail or for what purpose they can be adopted. The terms of Article 79 (2)(a) and (b) are nevertheless sufficiently broad to allow for the enactment of integration requirements, especially where compliance with these requirements is a condition for the acquisition or non-withdrawal of entry or residence rights or freedom of movement. On the other hand, it is less clear whether the above provisions also grant a legal basis for integration requirements that are not also immigration requirements, but are merely aimed at facilitating the inclusion of migrants who already have (or certainly will obtain) legal residence. It could perhaps be argued that such integration requirements, where they apply specifically to legally admitted immigrants, are still ‘conditions of residence’ within the meaning of Article 79 (2)(a) and (b), even if non-compliance is not sanctioned by a denial of residence status. Since such requirements are aimed, despite their coercive nature, at immigrant inclusion, it may be also argued that they are instrumental to the purpose of ensuring the fair treatment of third country nationals. Yet this interpretation does appear to be stretching the terms of Article 79 (1) and (2) rather broadly. Instead, integration requirements that are used to control entry and residence seem to fit more easily within the legal framework of these provisions.

Article 79 (4) TFEU, on the other hand, does not provide a basis for any coercive measures or requirements in the field of integration. The measures proposed in this provision do not directly relate to the legal position of third country nationals but instead concern the relationship between the Union and the Member States, stating that the latter may be provided with incentives and support for national policies to promote integration. Such incentives and support are currently provided through the EU Framework on Integration, for which Article 79 (4) TFEU provides a legal basis.<sup>18</sup> While national policies can also include integration requirements, including compulsory integration programmes for legally resident immigrants, the application of such requirements is not circumscribed by Article 79 (4). Nevertheless, Article 79 (4) does reinforce the question raised above with regard to integration requirements that are not aimed at immigration control. If the Union has only a limited competence to promote the integration of legally residing immigrants, excluding any harmonisation, then it seems even less likely that the measures mentioned in Article 79 (2)(a) and (b) TFEU could also include integration obligations that are aimed at facilitation and inclusion.

In view of the above, it might be concluded that the integration clauses in the various migration directives have to be understood as integration conditions, which have the purpose of selecting immigrants. As the analysis below will show, however, the language of the directives is often much more ambiguous. Lastly, before continuing, it should be noted that none of the directives actually *require* Member States to impose integration conditions or obligations. Rather they leave it up to the Member States to decide if they want to impose such requirements in accordance with their national

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<sup>18</sup> Carrera 2009, p. 108.

law. In doing so, however, EU law does frame the room for discretion that is left to the Member States and as such contributes to determining the role that integration requirements can fulfil.

### 3.2. *The Family Reunification Directive*

The Family Reunification Directive (FRD) determines the conditions for the exercise of the right to family reunification by third-country nationals. It contains two clauses relating to integration.

Art. 4 (1), final subparagraph, FRD reads:

[...] 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.

Article 7 (2) FRD reads:

Member States may require third country nationals to comply with integration measures, in accordance with national law.

With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.

Because of the standstill clause included in Article 4 (1), final subparagraph, FRD this provision only has real meaning for Germany, which was the only country to have included integration requirements for children over 12 in its legislation on the date of implementation of the Directive (3 October 2005).<sup>19</sup> Nevertheless, the provision can still give useful indications as regards the integration concept expressed in the FRD.

It seems quite clear from the terms of the above provisions that they contain the possibility for Member States to impose integration requirements as a condition for the acquisition of the right to family reunification, meaning that this right can be denied if the condition is not met. Article 7 forms part of Chapter IV, entitled 'requirements for the exercise of the right to family reunification'. Apart from integration requirements, Article 7 mentions a number of other conditions that must be met if family reunification is to be granted, relating to income, accommodation and sickness insurance. Evidence of these conditions being met must be provided when the application for family reunification is made (Art. 7 (1) FRD). It also follows from Article 4 (1), final subparagraph, ('before authorising entry and residence') and *a contrario* from the second sentence of Article 7 (2) that third-country nationals may be required to comply with integration requirements *before* family reunification is granted. This is confirmed by Article 15 (3) of the Blue Card Directive.<sup>20</sup> It is therefore plausible that the integration requirements mentioned in Article 7 (2) FRD are meant to function as selection criteria, rather than instruments for the facilitation of integration.

Several authors have argued that the use of the term 'integration measures', instead of 'integration conditions', in Article 7 (2) implies that non-compliance with such measures may not result in the refusal of admission to the Member State where family reunification is sought, or at least that the obligation must be one of effort and not of result.<sup>21</sup> These authors mostly rely on the legislative history of the Long-term Residents Directive, adopted shortly after the FRD, which shows that the term

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<sup>19</sup> 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 final, p. 5. According to the same report, Cyprus also introduced integration conditions under Art. 4 (1), final subparagraph, but only after the implementation deadline.

<sup>20</sup> Art. 15 (3) BCD states that 'by way of derogation from the final subparagraph of Article 4 (1) and Article 7 (2) of Directive 2003/86/EC, the integration conditions and measures referred to therein may only be applied *after* the persons concerned have been granted family reunification [*emph. KV*]'.

<sup>21</sup> See, amongst others, Groenendijk 2004, pp. 122-124; Brinkmann 2008, p. 40; Carrera 2009, p. 195 and Pascouau 2010, pp. 445-446.

'integration conditions' was favoured by those Member States supporting a restrictive immigration policy (notably Austria, Germany and the Netherlands).<sup>22</sup> However, while the legislative history does indeed confirm that a distinction was made by certain Member States between 'integration measures' and 'conditions', it does not indicate that a specific meaning was attributed to these terms, nor does it give insight into the reasons why the use of either term was supported or rejected by the other Member States. In fact, when looking at the different language versions of the FRD and of other migration Directives, there seems to be little consistency: 'integration conditions' and 'integration measures' are sometimes used interchangeably, whereas at other times they are replaced by different terms altogether.<sup>23</sup>

Nevertheless, there are also elements in the FRD that collide with the understanding of integration requirements as an instrument of selection. Recital 4 of the preamble to the Directive reads:

Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty.

According to this, the integration of third-country nationals is furthered if family reunification is allowed. Of course, this view is not as such incompatible with the idea that family reunification may also lead to integration-related problems if the family members who are admitted have trouble settling in (which, as we saw above, is normally the reason for selecting third-country nationals on the basis of their integration capacity). However, one would expect the Member States to decide what they consider to be more harmful to the integration process: the fact that third-country nationals already resident in their territories would be deprived of the company of their family members, or the fact that allowing family reunification will result in the presence of a new group of third-country nationals who must also be integrated. In this respect, the makers of the Directive seem to have been torn between two alternatives, one of which is reflected in the preamble and the other in the text of the Directive (even if, as a matter of legal interpretation, the latter prevails).

This conflict between different concepts of integration was also at stake in a case decided by the EU Court of Justice (CoJ) in 2006, in which the European Parliament sought annulment of various provisions of the Family Reunification Directive, including Article 4 (1), final subparagraph.<sup>24</sup> Before the Court, the Parliament contended that the Community legislator had 'confused the concepts "condition for integration" and "objective of integration"'. It held that, 'since one of the most important means of successfully integrating a minor child is reunification with his or her family', it is incongruous to impose a condition for integration before the child [...] joins the sponsor'.<sup>25</sup> This reasoning was not followed by the CoJ, as appears from the following considerations:<sup>26</sup>

Contrary to the Parliament's submissions, the Community legislature has not confused conditions for integration referred to in the final subparagraph of Article 4(1) of the Directive and the objective of integration of minors which could, according to the Parliament, be achieved by means such as measures facilitating their integration after they have been allowed to enter. Two different matters are indeed involved. As follows from the 12th recital in the preamble to the Directive, 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 is to ensure that they acquire the necessary education and language skills in school.

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<sup>22</sup> Groenendijk 2004, pp. 122-124; Carrera 2009, pp. 175-183.

<sup>23</sup> De Vries 2011, pp. 193-194.

<sup>24</sup> CoJ 27 June 2006, C-540/03, [2006] ECR, p. I-5769 (*Parliament v. Council*).

<sup>25</sup> *Parliament v. Council* judgment, para. 40.

<sup>26</sup> *Parliament v. Council* judgment, paras. 67-69.

The Community legislature thus considered that, beyond 12 years of age, the objective of integration cannot be achieved as easily and, consequently, provided that a Member State has the right to have regard to a minimum level of capacity for integration when deciding whether to authorise entry and residence under the Directive.

A condition for integration within the meaning of the final subparagraph of Article 4(1) of the Directive may therefore be taken into account when considering an application for family reunification and the Community legislature did not contradict itself by authorising Member States, in the specific circumstances envisaged by that provision, to consider applications in the light of such a condition in the context of a directive which, as is apparent from the fourth recital in its preamble, has the general objective of facilitating the integration of third country nationals in Member States by making family life possible through reunification.

In the above case, no challenge was brought against Article 7 (2) FRD and the Court does not refer to it. Instead, it found that the general objective of the Directive is to facilitate integration through family reunification and that the possibility to set integration conditions for children over 12 only presents a minor exception to this rule. As said before, however, the fact that integration conditions may be imposed on the basis of Article 7 (2) makes it hard to maintain that the facilitation of integration, through family reunification, is indeed the primary integration concept underlying the Directive. The contradiction thus remains.

Lastly, the concept of ‘integration as selection’ also does not apply in the case of family reunification of refugees. Here, Member States may impose integration requirements only *after* family reunification has been granted (Art. 7 (2) and Art. 10 (1) FRD). This can be explained by the specific plight of refugees, for whom family reunification in the country of origin is not an option. This is recalled in the preamble to the Directive (recital 8), which adds that ‘more favourable conditions should therefore be laid down for the exercise of [the right to family reunification of refugees]’. In view of these circumstances, it must be concluded that for family members of refugees the integration conditions referred to in Article 7 (2) FRD cannot be understood as constituting conditions for residence in the Member State, either before or after family reunification has taken place. Instead, integration requirements for this group can be imposed only after the family has been reunited and only as a form of facilitation. This implies that non-compliance may be sanctioned, for example by a fine, but not through termination of residence.

### ***3.3. The Long-term Residents Directive***

The Long-term Residents Directive (LRD) determines both the conditions under which third-country nationals must be granted long-term resident status in a Member State (a strong status which can be obtained after five years of legal residence) and the conditions under which those who have been granted this status can take up residence in another Member State. As such, the Directive goes some way towards extending the right to free movement in the EU from EU citizens to third-country nationals, although its provisions are rather more restrictive. The LRD also contains two clauses on integration requirements.

Article 5 (2) LRD concerns the conditions for acquiring long-term resident status and reads:  
Member States may require third country nationals to comply with integration conditions, in accordance with national law.

Article 15 (3) LRD concerns the conditions for residence in a second Member State and reads:  
Member States may require third country nationals to comply with integration measures, in accordance with national law.

This condition shall not apply where the third country nationals concerned have been required to comply with integration conditions in order to be granted long-term resident status, in accordance with the provisions of Article 5 (2).

Without prejudice to the second subparagraph, the persons concerned may be required to attend language courses.

Looking at the above provisions, the Long-term Residents Directive (LRD) also presents a somewhat ambiguous picture. Both provisions allow the Member States to ask that third-country nationals comply with integration requirements in accordance with national law. Article 5 LRD is headed ‘Conditions for acquiring long-term resident status’, whereas Article 15 LRD is headed ‘Conditions for residence in a second Member State’. This suggests that both long-term resident status and the right to reside in a second Member State can be denied if the integration requirements imposed by a Member State are not met. With regard to Article 15 (3) this is reinforced by Articles 14 (1), 19 (2) and 22 (1)(b) LRD, which state that the right to reside in a second Member State can be denied, withdrawn or not be renewed if the conditions set out in Article 15 are not met. From Article 9 LRD it can be derived that long-term resident status as such cannot be lost or withdrawn because of the failure to comply with integration requirements. This would mean that such requirements could only be applied before the status is granted. With regard to residence in the second Member State, however, it can be derived from Article 15 (3), read in combination with 19 (2) and 22 (1)(b), that integration requirements can form a condition for the denial as well as withdrawal of this right. This suggests that integration requirements could possibly also be imposed after entry, although if they are they would still be functioning as selection criteria.

There are, however, also elements in the LRD that do not sit comfortably with the conclusion that integration requirements may be used to select immigrants. Article 15 (3) provides that, if the third-country national has already complied with integration requirements to obtain the status of long-term resident in the first Member State, the second Member State may only require participation in language courses.<sup>27</sup> As explained in paragraph 2, such an obligation functions better as a form of facilitation than as a selection criterion. It will moreover not always be practically feasible to ask, for example, that a person holding long-term resident status in Estonia takes a Dutch course there before moving to the Netherlands. Arguably, therefore, the exemption in Article 15 (3) LRD must be understood thus: that long-term residents who have already complied with integration requirements in the first Member State cannot be denied admission to the second Member State on this ground. The second Member State may, however, require that these persons participate in a language course as a way of facilitating their integration.

The preamble of the LRD also points more towards an inclusionary perspective on integration. Recitals 1 and 12 state that the aim of the Directive is to give long-term resident third-country nationals a number of uniform rights that are as close as possible to those of EU citizens, and that the social integration of long-term residents will be enhanced by ensuring that they enjoy ‘equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive’. Here again, it seems that the preamble and the text of the LRD reflect two different conceptions of integration: the idea that integration is furthered by a strong legal status and the idea that integration functions as a condition for the acquisition of rights.<sup>28</sup>

### ***3.4. The Blue Card Directive***

The Blue Card Directive (BCD) concerns the conditions for entry to, and residence in, the EU Member States of highly qualified workers and their family members. The purpose of this Directive, as stated in the preamble, is to enhance the competitiveness of the EU economy by making the EU a more attractive place to work for highly qualified third country nationals. The Directive also grants EU Blue Card holders and their family members a right to move to another Member State, thus creating a limited form of free movement for third country nationals. An integration clause is included in Article 15, which concerns the conditions under which Blue Card holders can be joined by their family members. It reads:

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<sup>27</sup> The Council documents show that this exception was introduced because it was considered undesirable for third-country nationals to have to pass an integration test twice. See Council doc. 12624/02 of October 2002, p. 2.

<sup>28</sup> See also Iglesias Sánchez 2009.

‘Directive 2003/86/EC [the Family Reunification Directive, KV] shall apply with the derogations laid down in this Article.

[...]

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 therein may only be applied after the persons concerned have been granted family reunification.’

On the point of integration requirements the BCD is quite straightforward. Applicants for, or holders of, an EU Blue Card are not themselves subject to integration requirements, either when entering the EU for the first time or when moving to a second Member State. For family members, integration requirements may be imposed by the first Member State but only after family reunification has been granted. This means that the admission of family members of EU Blue Card holders in the first Member State is not conditional on the fulfilment of integration requirements, which is in line with the purpose of the Directive: if family members could be denied access on the ground that they are insufficiently integrated this could of course make the EU a less attractive destination for highly qualified workers. This is also reflected in recital 23 of the preamble, which states that: ‘favourable conditions for family reunification [...] should be a fundamental element of this Directive which aims to attract highly qualified third-country workers. Specific derogations to [the FRD] should be provided for in order to reach this aim.’

The BCD thus allows integration requirements for family members only after admission has been granted. The Directive does not indicate whether the residence permit of family members could be withdrawn or not renewed on the ground that integration requirements have not been met. However it seems clear that this would also work against the purpose of the Directive. It therefore seems more likely that, in the context of the BCD, integration requirements function as an instrument of facilitation rather than selection.

As to the type of integration requirements that may be imposed, recital 23 of the preamble continues by stating that ‘The derogation included in Article 15 (3) [...] 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.’ As was remarked above, language courses, as opposed to language tests, fit well with the purpose of facilitating integration. However other types of integration requirements – including tests – are not as such excluded by the BCD.

Before concluding the legal analysis, it may be observed that the meaning of the integration clauses must not be determined only by reference to the directives but must instead take into account the broader context of EU law. This includes the provisions of the TFEU, which were already discussed at the beginning of this section, as well as the general principles of EU law. These principles, including the principles of effectiveness, proportionality and respect for fundamental rights, co-determine the boundaries within which Member States must act when adopting and applying integration requirements.<sup>29</sup> It follows that Member States will be precluded, *inter alia*, from enacting integration requirements that effectively preclude the exercise of the rights granted in the directives or that would result in a denial of family reunification in violation of the right to respect for family life. I do not believe, however, that the general principles affect the conditional or obligatory character of integration requirements, nor do they point in the direction of different concepts of integration than those emerging from the analysis above.

#### **4. Integration requirements and theories of citizenship**

Whereas the previous section examined which concept of integration is best suited to explain the integration requirements in the various directives, this section aims to put both of the concepts presented in section 2 in a broader theoretical perspective. While not attempting to present a fully-fledged theoretical or normative framework, it seeks to identify possible justifications for, and

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<sup>29</sup> E.g. ECJ 4 March 2010, C-578/08, [2010] ECR, p. I-1839 (*Chakroun*), par. 43.

objections to, integration requirements by linking them to political theories of citizenship and integration. Section 4.2. specifically considers the obligatory or even exclusionary character of integration requirements.

#### **4.1. The content of integration requirements – how is citizenship defined?**

The term ‘citizenship’ is commonly used to indicate membership in a political community. Citizenship normally entails the existence of a legal bond that links individuals to a political entity (a state, the EU). In this sense, any legal status granted to immigrants (temporary or permanent resident status) can also be considered partial forms of citizenship. Citizenship is, however, not a matter of legal status alone. Different theories of citizenship have considered citizens as persons who are entitled to certain rights, who participate in the political, economic or social life of a community or who share a sense of mutual loyalty and belonging.<sup>30</sup> The question of who is a citizen is closely linked to the question of how the substance of citizenship is defined. The definition of citizenship that is chosen will therefore influence the criteria or requirements that immigrants must meet in order to become members of the community, be it as nationals or as legal residents.

Much of the criticism that has been brought to bear against integration requirements concerns the tendency of such requirements to present an overly thick or culturally loaded conception of citizenship, especially where programmes or tests include country knowledge or topics such as shared values and social norms. This criticism is often grounded in the principles of liberal political theory, which do not allow an exceedingly prescriptive state-sponsored idea of ‘the good citizen’.<sup>31</sup> A related concern is that integration tests present ‘the culture’ or ‘the identity’ of the host state as something static and essential, disregarding the many different views and attitudes existing within the host society and necessarily excluding those coming from outside.<sup>32</sup>

As the integration provisions in the EU migration directives do not prescribe the content of integration programmes or tests, or the objectives to be pursued in terms of substantive citizenship, the above criticisms may have more relevance at the national level. What remains, nevertheless, is the fact that integration requirements by definition place a demand on immigrants to make some effort or to demonstrate some quality or skill. Integration requirements are not, therefore, compatible with a liberal account whereby citizenship is defined only in terms of rights and integration, meaning only that immigrants are granted the same rights as the citizens of the host state. Other accounts of citizenship are, however, available, which attribute certain qualities to the status of being a citizen and so provide motives for the adoption of integration requirements, without going so far as to require cultural assimilation or adaptation to a single national identity.<sup>33</sup>

With regard to the rights dimension, a more liberal-egalitarian view of citizenship stresses not only that citizens have legal rights but also that the state has a responsibility to resolve differences in starting positions which lead to social inequality. From this perspective, integration programmes can serve to enhance emancipation as they provide immigrants with language skills and practical information about everyday life in a new country. Alternatively, (neo-)republican and (national-)communitarian citizenship theories have drawn attention to the dimensions of participation and belonging. At least theoretically, integration requirements could fulfil a role with regard to each of these dimensions. Language and vocational training, or courses explaining the host state’s democratic system, may serve to equip citizens with the skills and abilities needed to participate in political life or in the labour market. Participation, as well as knowledge of the language of the host state, can perhaps

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<sup>30</sup> See the very illuminating analysis of the idea of citizenship in Bosniak 2006, in particular on pp. 17-36.

<sup>31</sup> For example, Spijkerboer 2007, pp. 67-72; Vermeulen 2010, pp. 136-139; On the liberal nature of citizenship tests see also Michalowski 2011 and Bauböck & Joppke 2010.

<sup>32</sup> Spijkerboer 2007, *op. cit.*; Carrera 2009, pp. 441-449; see also the contributions by Kostakopoulou and Carrera & Guild in Bauböck & Joppke 2010.

<sup>33</sup> For an overview of theories of citizenship see, for example, Fermin 2000a. See also Van Blom & Van Schilt-Mol 2001.

also play a positive role in enhancing identification with the host society and interaction amongst different groups of the population.<sup>34</sup>

An important criticism of integration tests has been made by Kostakopoulou, who claims that integration happens as a result of social interaction and cannot be reduced to a unilateral process of learning on the part of newcomers.<sup>35</sup> While I agree to a large extent with the characterisation of integration as a dynamic and interactive process, I also believe that it is not unreasonable to suppose that such processes maybe helped when immigrants acquire certain skills, especially language proficiency. Whether, and to what extent, this is indeed the case is a matter to be determined through empirical evidence. It is furthermore important to note that integration requirements do not need to stand by themselves, instead they may form part of a broader integration policy that also includes, for example, measures to prevent discrimination and to ensure the accessibility of public benefits and institutions.

#### **4.2. Obligations and conditions- how can citizenship be assured?**

Although, as can be seen above, the way in which integration is promoted cannot be fully detached from the ideal of citizenship that is pursued, theoretically a distinction can be drawn between the definition of the substance of citizenship and the way in which states seek to ensure that immigrants become full citizens. The latter aspect, which relates to the question of why integration measures take the form of obligations or conditions, is rarely addressed in citizenship theory. Nevertheless, in the following I will attempt to address some of the issues that come up in this regard.

##### Integration obligations

Probably prompted by the developments in the Member States, the literature on integration requirements has thus far focused mostly on the exclusionary effects of integration conditions, whereas not much attention has been paid to the coercive nature of integration obligations.<sup>36</sup> Such obligations do affect third country nationals' access to citizenship because they are not sanctioned by exclusion. Nevertheless, a justification seems required for the fact that integration is pursued through obligatory measures, which interfere with the freedom of immigrants to make their own decisions. It has already been suggested above that obligatory integration programmes can be perceived as a form of compulsory education, and it might be argued that such programmes are in the best interest of immigrants themselves because they make it easier for them to find their way in the new country, get a job, etc. Even if this is the case, however, this does not seem enough to justify the compulsory nature of integration programmes. In the case of (young) children, who are not yet considered fully autonomous, compulsory education can be seen as a restriction of the right of the parents to decide on their children's upbringing.<sup>37</sup> Adult immigrants, by contrast, must in principle be considered capable to decide about their need for education themselves. While this assumption may not apply in all cases, exceptions would need to be well-motivated.<sup>38</sup>

Alternatively, the justification for compulsory integration programmes may be found in the public interest that is served by such measures: ensuring immigrant participation, preventing unemployment

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<sup>34</sup> I take the term 'identification' from the Dutch Scientific Council for Government Policy (WRR) report, 'Identification with the Netherlands' (*Identificatie met Nederland*), published in 2007 (Dutch version available on [www.wrr.nl](http://www.wrr.nl) and from Amsterdam University Press). The Council juxtaposes the notion of 'identification' to the more static notion of 'identity' and distinguishes between processes of functional, normative and emotional identification.

<sup>35</sup> Kostakopoulou 2010; although she focuses on integration *tests* and not on other integration requirements (such as an obligation to attend language courses), the course of Kostakopoulou's argument suggests that she would probably not endorse any compulsory integration measures. As will be explained below, I nevertheless believe that, also from a theoretical perspective, it is worthwhile to distinguish between different types of integration requirements.

<sup>36</sup> An exception is Fermin 2000b.

<sup>37</sup> De Graaf 1999.

<sup>38</sup> An interesting case in this respect is the Dutch integration legislation, which identifies one of the reasons for its compulsory character to be the enabling of the social participation of (predominantly Muslim) immigrant women who, in the absence of an obligation, would not be allowed by their husbands to take an integration course.

and reliance on social security schemes, and so forth.<sup>39</sup> While such interests may be legitimate, it is submitted that integration programmes should only be compulsory if it is clear that participation cannot be achieved on a voluntary basis. This is necessary to protect the autonomy of third country nationals, and to avoid the possibility of integration programmes obtaining a punitive character or being used to discourage immigrant settlement.

#### Integration conditions

Unlike integration obligations, which are ultimately meant to equip immigrants for citizenship, integration conditions result in the exclusion of individuals from entry, residence or other rights. The idea that being integrated requires having certain skills or abilities is thus translated into exclusion from citizenship of those who do not possess these abilities or skills. It is sometimes claimed that the exclusionary nature of integration conditions is in fact opposed to the goal of integration.<sup>40</sup> This argument seems to rely on the (often implicit) premise that immigrants who are targeted by integration conditions are to be included in the community or polity to which the integration policy is addressed. In other words, the determination of who is entitled to citizenship is taken to precede the question of who must be integrated. As explained above, however, integration conditions are based on the assumption that integration, or the capacity to integrate, is precisely one of the criteria to determine who has access to citizenship. The purpose of integration conditions is not (or not primarily) to include, but to select and thereby to reserve citizenship to those who have a certain capacity or skills deemed necessary for further integration.

Following this account of integration as a selection criterion, the idea that integration can be promoted by excluding certain immigrants is not a *contradictio in terminis*. However, where a capacity for integration becomes a decisive criterion for access to residence or other rights, it thereby takes priority over other criteria such as family relationships or social ties. In EU law, for example, the Family Reunification Directive reflects that the existence of family ties with a person residing in the EU is a ground for the admission of third-country nationals. Where the admission of family members is made dependent on integration conditions, however, integration capacity overrides those family ties as the criterion determining whether or not admission ought to be granted. The same occurs with regard to other rights: where successfully passing an integration test becomes a condition for obtaining permanent residence, it is given more weight than other criteria, such as the duration of residence or the extent of the social ties that have been built up during such residence. The question with regard to integration conditions is therefore what role integration should play in determining access to membership, especially in relation to other elements that may justify inclusion.

As stated above, I agree with the view of integration as an interactive process between immigrants and the host society. Participation and a sense of belonging may be aided when immigrants are familiar with the language and ways of the host country, or have a certain level of education, but will not come about as a result of such attributes alone.<sup>41</sup> For this reason, giving a lot of weight to a person's capacity for integration when deciding upon their claim for residence or admission is not recommended. Moreover, when taking such decisions, a person's lack of integration capacity will need to be considered together with the reasons for migration and other corresponding interests that plead in favour of admission.<sup>42</sup> Strong grounds for admission will exist, regardless of considerations of integration, where there are pressing humanitarian reasons for admission (i.e. in asylum cases) and, to a somewhat lesser extent, where entry is sought for the purpose of family reunification. In this regard, the fact that integration conditions often apply precisely to family migrants is especially problematic.<sup>43</sup> Where, on the other hand, there is no family relationship or a need for protection, integration conditions will be more easily justified.

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<sup>39</sup> Fermin 2000b.

<sup>40</sup> E.g. Guild *et al* 2009, p. 9.

<sup>41</sup> Cf. Klaver & Odé 2009.

<sup>42</sup> Cp. Vermeulen 2010, pp. 141-142.

<sup>43</sup> *Idem* Groenendijk 2011, pp. 29-30.

## **5. Conclusion**

What conclusions can we draw from the analysis conducted above? Section 3 has shown that there is no single unambiguous concept of integration, or citizenship, that explains the inclusion of integration requirements in the various EU migration directives. While these requirements often seem to primarily have a selective purpose, they are sometimes framed more as measures to support the integration of immigrants who have already been admitted.

To a certain extent, which concept of integration prevails depends on the target group and the purpose for which residence is sought. For family members of refugees, the use of selection criteria is not indicated because the family as a whole is unable to return to the country of origin; whereas for family members of Blue Card holders, selection on the basis of integration criteria is deemed undesirable because of the wish to attract highly qualified workers. These reasons can explain why, for both of these categories, integration requirements can only be applied once admission has been granted and cannot constitute actual conditions for residence. It must be concluded that these requirements are, instead, instrumental to facilitating the inclusion of the said family members. On the other hand, for ‘regular’ family migrants, as for third-country nationals who were already admitted and seek to obtain long-term resident status, selection on the basis of their integration capacity is possible. Here, however, the preambles to both the FRD and LRD bear witness to the existence of a conflicting notion of integration, which is based on rights and equal treatment and to which integration conditions form an obstacle. There is thus an internal contradiction in these directives as to the underlying concept of integration,

A somewhat different, but related, question concerns the locus of integration: are third-country nationals expected to integrate into the different Member States where they seek admission or into the EU as a whole? It is generally left to the discretion of the Member States to decide on the content of integration requirements, suggesting the absence of a European conception of integration. An exception was found, however, in Article 15 (3) LRD, which exempts long-term residents who have already met an integration requirement in the first Member State from any further requirements but participation in language courses. This suggests a certain level of mutual recognition by Member States of the standards of integration applied elsewhere in the EU, which in turn stands in contradiction to the express exemption of harmonising measures in Article 79 (4) TFEU.

It follows that there is room for a more uniform and consistent concept of integration in EU immigration law, regarding both the way in which integration is to be achieved (through selection or facilitation) and the level at which it is to occur. Section 4 has explored, on a more theoretical level, the role of integration requirements in relation to conceptions of integration and citizenship. It was established that integration requirements necessarily require some form of ‘active’ contribution by immigrants, presupposing an understanding of citizenship that sees citizens as individuals capable of autonomous decision making, as participants in the public sphere or as persons with a shared sense of belonging. Integration requirements can fit into a vision of integration as an interactive and dynamic process, provided that they are combined with other measures that also address the recipient society. Lastly, the form of integration requirements has important consequences for the question of who becomes a citizen. In the case of integration obligations, the immigrants concerned are already members of the community (be it as nationals or legal residents). While a justification is needed to subject them to coercive measures, non-compliance will not result in their exclusion. This is different in the case of integration conditions, which make integration, or integration capacity, into a decisive criterion for membership. As argued above, this criterion will need to be balanced against other grounds for inclusion, including the social or family ties that may already exist. It is submitted that, especially where family reunification is concerned, the use of integration capacity as an admission requirement deserves to be reconsidered.

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