

WP 4

**INTEGRATION FROM ABROAD?
PERCEPTION AND IMPACTS OF PRE-ENTRY
TESTS
FOR THIRD COUNTRY NATIONALS**

by

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About the Project

While integration policies as such are not new, and in some countries date back to the 1980s and beyond, there have been important shifts in the debates on integration and in related re-configurations of integration policymaking in the past decade or so. One of the main recent trends is the linkage of integration policy with admission policy and the related focus on recent immigrants. A second trend is the increasing use of obligatory integration measures and integration conditions in admission policy, and third, integration policymaking is increasingly influenced by European developments, both through vertical (more or less binding regulations, directives etc.) and through horizontal processes (policy learning between states) of policy convergence.

An increasing number of EU Member States have, in fact, adopted integration related measures as part of their admission policy, while the impact of such measures on integration processes of immigrants is far less clear. In addition, Member States' policies follow different, partly contradictory logics, in integration policy shifts by conceptualising (1) integration as rights based inclusion, (2) as a prerequisite for admission residence rights, with rights interpreted as conditional, and (3) integration as commitment to values and certain cultural traits of the host society.

The objective of *PROSINT* is to *evaluate the impact* of admission related integration policies on the integration of newcomers, to *analyse the different logics* underlying integration policymaking and to *investigate the main target groups* of compulsory and voluntary integration measures.

The project investigated different aspects of these questions along five distinct workpackages. These analysed (1) the **European policy framework on migrant integration** (WP1), (2) the **different national policy frameworks for the integration of newcomers** in the 9 countries covered by the research (WP2), **the admission-integration nexus at the local level** in studied in 13 localities across the 9 countries covered by the research (WP3), **the perception and impacts of mandatory pre-arrival measures** in four of the nine countries covered (WP4) and a methodologically oriented study **of the impact of admission related integration measures** (WP5). The countries covered by the project were Austria, the Czech Republic, Germany, Italy, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom.

For more information about the project visit <http://research.icmpd.org/1429.html>.

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I Introduction

Whereas most European countries nowadays have firmly established (post-admission) integration policies, the last decade has witnessed new policy initiatives to begin integration already in the country of origin. In some countries, passing a pre-entry integration test has become a condition for admission. The Netherlands, Germany and the UK are amongst the first European countries to establish (more or less) extensive pre-admission integration policies, in 2006, 2007 and 2010 respectively. On a more limited scale, some countries already applied similar pre-entry measures to specific categories of migrants, such as the language proficiency requirements for German repatriates that date back to 1996 (Lechner, 2011) or to ministers of religion (2004) and highly skilled migrants (November 2006) in the UK. However, the Dutch, German and UK pre-entry measures recently implemented clearly introduced a more comprehensive approach where large groups of newcomers are required to meet specific integration criteria in their countries of origin before being admitted.

The development of pre-admission integration policies clearly forms a trend in (North-West) European countries. Pre-entry tests have become a central feature of the nexus between migration and integration policies which has become more and more institutionalized over the last decade or so. Though currently enforced and implemented only in Germany, the Netherlands and the UK (though only very recently since November 2010, see Kofman 2011), these examples are seemingly being followed in more European countries (Bonjour, 2010). Austria has already decided upon the installation of a pre-entry policy, starting from July 2011. Furthermore, in 2010 Denmark established a policy that requires immigrants to complete an immigration test within three months from arrival in the country, before being admitted for a longer period. In addition, France already enforced a policy of pre-entry testing for family reunion in 2008, though without directly relating test results to legal admission. However, there are also distinct differences in the precise form of these policies and also the reasons for introducing them in the first place. For instance, Dutch policy involves formal tests at embassies or consulates that focus on language proficiency as well as basic knowledge of Dutch society, whereas German policy requires language certificates (obtained for instance at Goethe Institutes around the world) and less of a focus on knowledge of German society.

Yet, in spite of the introduction of pre-entry policies being a clear European trend, we know little about the extent to which the types of policies adopted converge or diverge across these countries (see also Goodman, 2010, 2011). What forms have pre-entry policies taken in various countries? Do these policies reveal a specific national distinctiveness for the different countries, or are there cross-European commonalities? This concerns the formal goals of these pre-entry policies, as well as the discourse through which these policies are legitimated, the way target groups are selected and, more specifically, how tests are designed, and extent these are attached to specific legal consequences.

In addition, we know little about why so many countries are now formulating or have recently formulated pre-entry policies. What has brought these policies onto the agenda? What drives the policy initiatives in the various countries? For instance, such policy initiatives can be driven by political considerations and political discourse, but also by public discourse and mediatisation. At the same time, it is also important to consider the international legal setting in which these policies developed; in terms as a

possible constraint on initiatives that would conflict with European and international law, as well as a sphere where new initiatives can be created through intergovernmental cooperation (take for instance the European Common Basic Principles of Integration and the European Family Reunification Directive).

Finally, an element that has been addressed relatively seldom in the literature concerns the effectiveness of these policies. This is partly due to the lack of data as most policies have been only very recently established. Though even for the Dutch and German cases material is scarce on indications of effectiveness, it is a key question in terms of policy accountability. This refers not just to the question of whether these policies have been implemented successfully, but also to how these policies are perceived in terms of their effectiveness. In this analysis we will focus on direct indicators of effectiveness as determined in policy reports and other policy studies, as well as on perceptions of effectiveness by policy actors, experts and involved migrant TCN's themselves. Effectiveness is examined in particular in relation to the formal goals of pre-entry policies, that is the promotion of integration of TCN's. However, indirectly the analysis of integration effects also relates to the ongoing debates on whether pre-entry policies are in fact targeted at limiting immigration of specific categories rather than promoting integration (see for instance Strik 2010, Goodman 2010). These questions will be central in this comparative analysis of pre-entry policies in Germany, the Netherlands, the UK and the latest country to install pre-entry policies, Austria.

I.1 Research methods

For this analysis, a combination of research methods was used. First of all, for all country cases an extensive *literature review* was made of secondary material available on pre-entry policies in the respective countries. This includes academic literature as well as available policy evaluation studies and monitoring reports.¹ In addition, *policy documents and parliamentary records* were analysed. Especially for the reconstruction of formal policy goals and measures and for the analysis of political discourse, use has been made of (digitally available) archives of national parliaments in the various countries (and from the UK Border Agency), including both policy documents as well as records of parliamentary hearings.

Furthermore, a more extensive empirical analysis was made, focusing also on the experiences with and the (perceived) impacts of the pre-entry tests in these countries. As the UK pre-entry policies entered into force as recently as November 2010 and in Austria are still to be implemented in July 2011, this analysis was less extensive for these two countries. This analysis involved a series of interviews and focus groups. The semi-structured qualitative *interviews* were primarily targeted at (key) policymakers and in some cases also academics and NGO-experts in the various countries. In the Netherlands 21 interviews were held, 17 interviews were held in Germany, 5 in the UK and 10 in Austria. *Focus groups* were held with experts and policy-makers as well as with migrants that had completed pre-entry tests before their admission to Germany

¹ Such as from Regioplan, B&A and Significant in the Netherlands, and for Germany the evaluation of the Federal Foreign Office, the Federal Ministry of the Interior and the Federal Government Commissioner for Migration, Refugees, and Integration on the legal provisions and the practical implementation of the requirement to demonstrate basic German language skills in the event of subsequent spouse immigration with respect to visa procedures as well as language courses and examinations

and the Netherlands (in the UK and Austria no focus groups were held as the pre-entry tests had been introduced only recently). These focus groups involved a total of 18 persons for the Netherlands (6 experts, 12 migrants) and 18 for Germany (15 migrants, 3 experts).²

Finally, an analysis was made of *media reporting* on pre-entry tests. In Germany this focused on the centre-left Süddeutsche Zeitung (SZ) and the more conservative Frankfurter Allgemeine Zeitung (FAZ), in the Netherlands, on the Volkskrant and the NRC Handelsblad, in the UK on the Guardian and the Daily Telegraph and in Austria and in Austria on the Die Kronenzeitung (the newspaper with the largest coverage), and on the more liberal Der Standard.

² In the Netherlands, these focus groups were organized with the cooperation of Overbruggen and Nieuwland, both established in the City of Rotterdam. In Germany the focus groups were organized through local NGO's (integration course providers as AWO (Arbeiterwohlfahrt) and/or people of the same ethnic or linguistic background. The group of migrants was composed as follows for Germany: Turkey (5), Thailand (2), Tunisia, Kosovo (2), Albania, Ecuador, Morocco, Egypt, Nepal (1); 11 women, 4 men; between 20 and 55 years old; 4 with university degree. And as follows for the Netherlands: (4 from Turkey, 3 from Morocco, 2 from Thailand and 1 from the Cape Verdes). In the Dutch case, some focus groups were conducted in Moroccan-Arabic language, others in Dutch. In Germany, all focus groups were conducted in German or English, though some with an interpreter.

II The pre-admission integration policies

This section compares the content of the pre-admission integration policies as formulated in Germany, the Netherlands, the UK and Austria. It focuses on the legal basis of the policies, the policy goals and policy legitimization (or ‘policy theory’) as formulated in official documents, the selection of target groups, the design of the pre-entry measure (‘test’) itself (in terms of testing structure, implementation structure, costs, etc.) and the legal consequences that are directly related to the pre-entry measure. So, when were the pre-entry policies established, what were the formal policy aims and what (causal) beliefs inspired these aims, how were involved target groups defined and selected, how were the pre-entry tests designed and what were the legal consequences if the test was passed/failed? Furthermore, an analysis is provided of pre-entry conditions in the four countries, as these conditions are often closely related to the pre-admission integration policies.

II.1 Germany

The German pre-entry integration policies entered into force on 28 August 2007 with an amendment to the Immigration Act (of 2005). This amendment was an outcome of the Directive Implementation Act for EU Directives on residence and asylum issues (EU-RLUmsG), more specifically article 7 sect. 2 Council Directive 2003/86/EC on the Right to Family Reunification which enables member states to require third country nationals who submit an application for family reunification to comply with integration measures in accordance with national law (Kreienbrink/Rühl 2007: 22).³ One of the new provisions required foreign spouses of a German or third country national to demonstrate a basic knowledge of the German language as a precondition for admission.

The revision of the Immigration Act in 2007 introduced a stronger focus on the integration of TCNs. The introduction of the provision for spouses who seek to immigrate for reasons of family reunification to demonstrate preliminary integration efforts before entering the country as a prerequisite for a permanent residency in Germany further strengthened the link between immigration and integration. Moreover, it puts more demands on migrants themselves. While the Immigration Act of 2005 had declared integration as a responsibility of the state by introducing state-run integration courses, the amended version of 2007 seeks to hand this responsibility over to the migrant to a greater extent by introducing requirements of preventative integration processes before permitting immigration to Germany and by leaving these preventative integration efforts and the associated organisational and monetary costs to the responsibility of the prospective immigrant (Michalowski 2009: 273).

Thus, it reflected a shift in the understanding of role of governments in promoting integration. The lack of integration or an assumed inability for integration is considered as a reason for refusal of admission to and residency in the country (Groenendijk 2004: 124). The rationale behind this change can be seen as an increasing orientation towards ‘an immigration that is less demanding with regard to state integration provisions’ (Michalowski 2009: 273). According to Michalowski, ‘the extension of language tests to

³ Deutscher Bundestag 2007, Drucksache 16/5065: 173f

family migrants as a way of introducing screening for skills among this group, which has the reputation of being low skilled and needing a lot of support for a successful integration process, can be interpreted as an attempt to reduce state investments into immigrant integration' (Ibid.).

II.1.1 Policy objectives and policy theory

In terms of policy objectives, two primary objectives have been stated for these new measures: to promote integration and to prevent forced marriages. Limiting immigration, however, was rejected as an aim – although the experiences after the introduction of pre-entry language tests for family members of ethnic German repatriates in 2005 had indicated that this was a consequence that was to be expected.

The provision of demonstrating a basic knowledge of the German language before migrating to Germany was meant to facilitate integration after the arrival on the Federal Territory. According to the Federal Government, as the obligation to participate in a post-arrival integration course could not guarantee its successful completion,⁴ it was considered necessary that the respective person prove his/her ability for linguistic integration into the country by demonstrating to be at least able to communicate in German in a simple manner while still residing in the country of origin (Hillgruber 2006: 315f.).

With respect to the objective of preventing forced marriages it was argued that newly arriving victims of forced marriages lacking German language skills might be prevented from leading independent social lives by their in-laws. As the attendance of an integration course and the opportunity to learn German might only start after some period of time, the victim would remain subject to the constraints of the in-laws for that period. The provision was also attributed a potential preventive effect, since educated persons were harder to control and therefore less attractive in terms of a traditional perception of family.⁵ Moreover, Maria Böhmer (CDU), the Federal Government Commissioner for Migration, Refugees, and Integration, stated during a visit to Turkey in November 2007, that the aim of the provision would be 'to allow women who join their spouses a self-determined life and opportunities to really participate in social life' (efms Migration Report November 2007).⁶

II.1.2 Target groups

The target group of the pre-entry provision involves third country national spouses who wish to immigrate in order to reunify with their foreign (TCN) or German spouse and settle permanently in Germany. De-facto, the regulations seem to focus primarily on low educated, illiterates and spouses from non-western third countries, whereas high skilled and family migrants from western countries are exempted. It is important to note that the provision does not apply as a rule to all third country national spouses. One group that is exempted are spouses joining a citizen of a member state of the European Union

⁴ Deutscher Bundestag 2007, Drucksache 16/5065: 173

⁵ Ibid.

⁶ http://www.efms.uni-bamberg.de/dnov07_e.htm

(excluding Germany) or to a foreigner who is holder of a permanent right of residence from other EU countries (§ 38a AufenthG). Additionally, several other groups of spouses are exempted from the requirement of showing evidence of a basic knowledge of the German language.⁷ This includes spouses subsequently joining a foreigner who may, because of his/her nationality, and may enter into the Federal Territory without a visa for a period that exceeds a short stay and who may legally stay in Germany. This is the case for citizens of Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand or the United States as well as for Andorra, Monaco, San Marino and Honduras (§ 41 AufenthVO). Also, the Council of the European Union 'adopted two agreements between the EU and Brazil which allow their citizens to travel to the other territory without a visa for stays of up to three months during a six month period. [...] Travellers who wish to carry out paid activities or be employed are [...] excluded from the agreement.'⁸ Exempted are also spouses immigrating with a foreigner who has a residence permit as a highly-skilled worker (according to § 19 AufenthG), as a researcher (§ 20 AufenthG) or as a company founder (§ 21 AufenthG).

Moreover spouses with a 'recognizably small need for integration' ('erkennbar geringer Integrationsbedarf') are not obliged to do the pre-entry test. This however, leaves room for interpretation. In general, those spouses are seen as having small need for integration that is those who hold an university degree or an equivalent qualification and whose language skills probably enable them to find work in Germany and that they will integrate into the economic, social and cultural life in Germany without public assistance (§ 4 Abs. 2 IntV). However, although some of the interviewed migrants had a university degree, they had to do the test. As stated by a representative of the Immigration Authorities the decision about who exactly is perceived as someone with a small need for integration is made in the individual case by the authorities (German embassies, Immigration Authorities). Also, it does not apply to spouses subsequently joining foreigners who are entitled to asylum (§ 25 (1) or § 26 (3) AufenthG) or to recognized refugees (§ 25 (2) and § 26 (3) AufenthG) – in both cases the exception is bound to the condition that the marriage already existed before the central focus of life was shifted to the Federal Republic of Germany.

There is, moreover, a general hardship regulation for spouses who are incapable of demonstrating basic knowledge of the German language due to a physical or mental illness or handicap (Kreienbrink/Rühl 2007: 23).⁹ For certain other groups, such as those who are illiterate, a general hardship regulation is not foreseen by the law.¹⁰

The exemption of certain nationalities etc. was often criticized by NGOs etc. as discrimination. However, as stated by the federal government, the privilege that is granted to spouses of certain nationalities (according to § 41 Abs. 1 AufenthVO) did not violate the principle of non-discrimination on the grounds of nationality as it was justified by the fact that Germany had particular interests in immigration of nationals from these countries (Kreienbrink/Rühl: 24). This is the same for spouses joining a

⁷ According to § 30 (1) sentence 2 and 3 of the German Residence Act (AufenthG) and § 41 of the Residence Ordinance (AufenthVO)

⁸ <http://www.migrationsrecht.net/nachrichten-auslaenderrecht-europa-und-eu/1640-rat-nimmt-visa-abkommen-eu-basilien-an-visa-waiver-agreements-with-brazil.html>

⁹ see also: Federal Office for Migration and Refugees 2009; Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration 2007: 155; Bundesministerium des Innern 2010: 129f.

¹⁰ Deutscher Bundestag 2010, Drucksache 17/1577: 1

foreigner who has a residence permit as a highly-skilled worker, as a researcher or as a company founder (Uhl 2008: 2f).

At the hearing of the Interior Policy Committee of the Bundestag on 21 May 2007, Kay Hailbronner, (legal expert from the University of Konstanz) stated that there would be an objective reason for exempting migrants from some countries, as nationalities differed according to their integration conditions. Additionally, it was set out, that nationalities also varied with respect to their residence perspective. While spouse immigration from some countries would mostly result in a long-term residence, there was no substantial permanent immigration from Japan or the USA.¹¹ During a session of the German Bundestag in March 2009, Reinhard Grindel (CDU) once again stressed that the objectives pursued by this provision were to combat forced marriages and to promote integration but not to erect another obstacle for highly qualified persons entering the German labour market. Grindel stated that it was not acceptable that a highly qualified researcher e.g. from Japan or the USA was confronted with the condition that his wife, who might have English, French or Spanish language skills, had to demonstrate a basic knowledge of the German language, particularly in the case that he was only staying in Germany for three years (Plenarprotokoll 16/209: 22635). Moreover, Hans-Peter Uhl, spokesman on internal affairs for the CDU/CSU parliamentary group in the Bundestag, explained that the list of nationalities in § 41 AufenthV (Residence Ordinance) referred to states that Germany cultivated close economic relations with. Nationals of these states who move to Germany were typically higher or high qualified persons. Another criterion for listing these states in § 41 AufenthV (Residence Ordinance) had been the fact that there was no migratory pressure in these countries and no illegal border crossings or repatriation problems occurred. Against this background, nationals of these states are allowed to enter Federal Territory without a visa for a period that exceeds a short stay and, as far as the list of states in § 41 AufenthV (Residence Ordinance) corresponds with the list of states mentioned in § 34 BeschV (Ordinance on the admission of foreigners for the purpose of taking up employment), they can also take up employment under facilitated conditions. The exemption from the requirement of demonstrating basic German language skills followed this privilege in order to not undermine it by increasing the preconditions for spouse immigration. In addition, Uhl pointed out that the evidence of pre-entry language skills aimed at combating forced marriages, a phenomenon that was not known in the countries listed in § 41 AufenthV (Residence Ordinance).

II.1.3 Pre-entry integration measures and legal consequences

The pre-entry test in the form of a language test constitutes a pre-condition for admission to Germany (to obtain a residence permit for a maximum of 3 years¹²). The required language skills have to be demonstrated before entering the country by handing in an approved language certificate when the application for the visa for subsequent spouse immigration is filed at the German embassy or consulate general

¹¹ Deutscher Bundestag 2007, Drucksache 16/40: 42

¹² Whether the immigrating spouse gets a residence permit for one year with a possibility to get two more years or gets three years from the beginning depends on the individual Immigration Authority that is responsible for the application.

(Federal Office for Migration and Refugees 2009).¹³ Only in those cases where it becomes evident beyond any doubt during the personal interview in the embassy or consulate general that an applicant has the required basic knowledge of the German language, no special language certificate is required (Ibid.).

The evidence of a basic knowledge of the German language which has to be given requires language skills at competence level A1 of the Common European Framework of Reference for Languages (CEFR) which allows for an elementary use of language in listening, speaking, reading and writing.¹⁴ In order to guarantee the same quality standards as well as comparable and fair conditions all over the world, the required language skills have to be confirmed with the successful completion of a standardized language exam that complies with the standards of the Association of Language Testers in Europe (ALTE). At present, compliance with ALTE is given for the following certificates: 'Start Deutsch 1' developed jointly and issued by the Goethe Institute and by the telc GmbH¹⁵, 'Grundstufe Deutsch 1' of the Österreichisches Sprachdiplom (ÖSD) and 'TestDaF' issued by the TestDaFinstitut e.V (Federal Office for Migration and Refugees 2009). The examination for the Goethe-certificate A1 can be taken in Germany as well as abroad at the Goethe Institute or the telc GmbH.

The language test 'Start Deutsch 1' comprises two parts: a written part¹⁶, dealt with individually, and an oral part within a group. The oral part is taken jointly with the other test candidates, requiring the participant to introduce himself to the group and to discuss everyday topics with another participant (question-and-answer-session).¹⁷ They also must have contextual knowledge about the country and culture in order to answer the question correctly.

Migrants are free to choose how they prepare for the test.¹⁸ As soon as a candidate feels prepared to meet the requirements, he/she can enroll for the exam. The candidate can either learn through self-study, private lessons or language courses (provided by the Goethe Institute or other course providers).¹⁹ Germany has a great offer of state-run language institutes in the main countries of origin. However, those are primarily concentrated in larger urban centers, whereas little information about language courses is available in rural areas. As stated by the respondents, there are also e.g. private

¹³ It is further noted by the Federal Office for Migration and Refugees that only the German diplomatic mission processing the visa application can rule on the validity of the language certificate (Federal Office for Migration and Refugees 2009).

¹⁴ According to the Goethe Institute, a successful participation implies that the candidate is able to understand around 650 German words and holds an active vocabulary of 300 words. Moreover, in order to be able to take the written part of the test, candidates must be familiar with the Latin alphabet.

¹⁵ telc GmbH is a subsidiary of the German Adult Education Association (DVV)

¹⁶ Reading comprehension: participants are required to read short texts such as brief notes, information signs, notice boards or classified ads and to answer related exercises.

Listening comprehension: participants have to listen to short phone messages, everyday conversations or public loud speaker announcements and complete related practical exercises.

Writing skills: test candidates have to fill in simple forms and write a short personal text about an everyday situation.

¹⁷ <http://www.goethe.de/lrn/prj/egn/ogf/en4379046.htm>

¹⁸ Depending on the participant's previous knowledge and learning requirements, between 80 to 200 teaching units of 45 minutes each will be required, according to the Goethe Institute, in order to be able to pass the test.

¹⁹ <http://www.goethe.de/lrn/prj/egn/ogf/en4376121.htm>

language courses being offered in rural areas. However, some of them argued that the German embassy recommended the Goethe Institute. Therefore, many respondents chose to enroll in a course at the Goethe Institute even though it was far away from their places of residence.

The fees for the tests differ by location with reference to the local price level. However, the fees are often higher in rural areas, because of higher expenses for the provider. At the Goethe Institute internal course participants pay about €50.21 for the test, whereas externals pay a little bit more (€66.94 on average). The average fee for a test in other organisations is €71.54.

The attendance at a language courses offered by the Goethe Institute is voluntary and at the participants' own expense. The fees for the courses as well as for the examination offered by Goethe Institute differ by location with reference to the local price level. A regular language course for beginners without previous knowledge leading to language level A1, e.g. at Goethe Institute Ankara, comprises 180 teaching units (spread over three months) for a price of €700. Worldwide, the average fee for a comparable language course is approximately €600.²⁰

II.1.4 Pre-entry conditions

Besides the pre-entry test that is primarily oriented at language acquisition, Germany imposes several pre-entry conditions to immigrating TCN's. In cases of family migration, both spouses have to be at least 18 years old. While these requirements apply to foreign spouses who either wish to follow their spouse, who already lives in Germany, or to move to Germany together with their spouse and to persons who wish to come to Germany to get married and live with their spouse in Germany, the requirement of having a means of livelihood²¹ without recourse to social security benefits applies to the reunification with German sponsors only in particular circumstances. These particular circumstances occur if it is reasonable for a person to start the marital relationship abroad, which especially applies to persons of dual nationality as well as for German nationals who have already been living and working in the spouse's country of origin and speak the language of the respective country.²² In other cases the latter only applies to foreigners who want to reunify with their foreign spouses.

Moreover, children between 16 and 18 who wish to follow their parents who immigrated to Germany have to prove that they are able to integrate into German society, for instance by showing a good knowledge of German (at level C1).

II.2 The Netherlands

The Dutch Civic Integration Abroad Act was passed in 2006. It made an explicit connection between immigration and integration policies (TK 2003-2004, 29700, nr.3: 2); 'as immigration and integration are inherently connected – in the sphere of

²⁰ Deutscher Bundestag 2007, Drucksache 16/7288: 5

²¹ This prerequisite which had already applied to family reunification with a foreigner was extended by the EU-RLUmsG to the reunification with German sponsors in the case of particular circumstances.

²² Deutscher Bundestag 2007, Drucksache 16/5065: 171

integration no sustainable effects can be achieved as long as immigration is not regulated and immigration is not well regulated if it takes no consideration of the conditions for integration of newcomers – the government chooses to connect integration conditions to immigration.'

II.2.1 Policy objectives and policy theory

The primary objective of the Civic Integration Abroad Act is to promote the integration of newcomers. It aims to prevent the process of successive reproduction of integration problems due to ongoing immigration. It stresses that 'ongoing immigration in combination with lack of integration can lead to processes of marginalization of specific groups in the sense of declining capacities to social participation, weak chances on the labour market and structural dependence on income support'.²³ Furthermore, the government also considered this new act to be in the interest of the migrants themselves. The act stresses the 'successive reproduction of marginalization' because as immigration continues, especially in the form of family migration, this will have consequences for the settled migrant as well; 'as many newcomers have child-nurturing tasks and in due course can also request the admission of a foreign family member, while the child will also form a family in the future, this process will be carried on from generation to generation'.²⁴

The Civic Integration Abroad Act also has an objective in terms of migration control. First of all, the government expects that the new act will help migrants to make a more deliberate and informed choice before coming to the Netherlands. Moreover, government refers to pre-entry programs as a 'selection criterion'.²⁵ Those who fail to pass the pre-entry tests will not be admitted to the Netherlands, and the restriction of immigration of 'non-integratable' migrants will help 'reduce the integration problem'.²⁶ Furthermore, it is mentioned as an 'expected side-effect', that 'potential migrants that are not directly willing or able to acquire the language proficiency and knowledge of society that is required for being admitted to the Netherlands, this law will mean delay or possibly even cancellation of settlement in the Netherlands'.²⁷ If the pre-entry test in individual cases results in delay or cancellation of migration due to lack of motivation or perseverance, government states it 'prefers this situation to a situation where integration is already delayed after admission (..) which benefits neither the migrant and his/her family and (future) social position, nor Dutch society as a whole'.²⁸ The government even expected a decrease of family migration of about 25%.²⁹ However, the level of the pre-entry tests was determined in a way that 'shall not select based on level of education but rather on motivation and perseverance of the migrant (..) as these are qualities that are of crucial importance to the further integration in the Netherlands'.³⁰

²³ TK 2003-2004, 2900, nr. 3: 4

²⁴ Ibid.: 4

²⁵ Ibid.: 6

²⁶ Ibid.

²⁷ TK2003-2004, 29700, nr.3: 14

²⁸ Ibid.: 14

²⁹ TK 2003-2004, 29700, nr. 3: 14-15

³⁰ TK 2003-2004, 29700, nr.3: 11

These policy objectives are legitimated primarily with reference to the position of family migrants; it is stressed that family migration from countries as Turkey and Morocco is the problem that the pre-entry tests are supposed to address. The Memorandum of Understanding provides a grim picture of the position of family migrants, especially from (explicitly mentioned) Morocco and Turkey.³¹ In particular the number of family formation migrants (in contrast to family reunification migrants) was believed to have increased rapidly. The Memorandum observes that 'this group of migrants has characteristics that are unfavourable for a good integration in Dutch society'.³² They would have a weak starting position on the labour market because of their educational background, their levels of unemployment are much above average, they find mostly low-skilled jobs, and in terms of social-cultural integration 'family migrants are closer to the first generation than the second generation'.³³ Moreover, the Memorandum observes that in particular women would be in weak positions, as they mostly become 'housewives, unemployed or unfit for labour'.³⁴ Finally, the task of government to preserve 'public order' and to safeguard 'national security' as key arguments why it should be able to renounce the right of family life in specific cases³⁵, thereby making explicit connections to potential radicalisation and anti-western sentiments of migrants.³⁶

II.2.2 Target groups

The target population of the pre-entry programs includes all foreigners between 18 and 65 year that wish to settle permanently in the Netherlands and are not exempted from the obligation to acquire a temporary residence permit for being admitted to the Netherlands (Lodder, 2009: 8). In addition, religious servants have been addressed as a special category that is obliged to take part in pre-entry tests. Specific categories are exempted from taking part in the pre-entry programs. This includes foreigners with one of the nationalities that have been indicated by the Minister of Foreign Affairs as exemptions, members of the EU/EEA, persons that cannot travel due to health reasons, those who have been victim of human trade, those who already have a residence permit and those who have been appointed by general government measures as exemptions (Ibid.: 8). For asylum migrants and other categories that cannot be required to follow pre-entry tests due to international obligations or for humanitarian reasons, exemptions are made. Also, migrants coming for specific temporary reasons, such, such as for study, au-pair, exchange or medical treatment are exempt. Finally, migrants coming with a working permit, self-employed migrants and highly educated migrants are exempt (Strik, 2010: 12).

This way of selecting the target groups does not seem to violate the international legal principle of equality, as it does not involve selection based on origin, race, colour of skin, sex, language or religion. De-facto this categorization leaves only family migrants from non-western countries as target groups of pre-entry tests. Several 'developed and

³¹ TK 2003-2004, 2900, nr.3: 4

³² Ibid.

³³ Ibid.: 5

³⁴ Ibid.: 5

³⁵ TK 2004-2005, 29700, nr. 6: 47

³⁶ TK, 2004-2005, 29700, nr. 6: 4

western (-oriented) countries', that also provide family migrants, are exempted; this includes Australia, Canada, Japan, New Zealand, the US and Switzerland. Migrants from these countries are exempted because they 'come from countries that are comparable to the European countries in social, economic and political respects and for that reason do not lead to undesirable and uncontrollable migration flows to the Netherlands and to substantial integration problems in Dutch society' (Ibid.: 19). Furthermore, government states that imposing pre-entry tests for migrants from these countries was found to be 'potentially harmful to our foreign and economic relations'.³⁷ This shows that political-economic arguments also played a role in the selection of policy target groups.

II.2.3 Pre-entry integration measures and legal consequences

The pre-entry tests are conducted at Dutch embassies and consulates abroad through direct phone connections with a computer in the Netherlands. The level of the tests has been determined at A1minus according to the European Common Framework of Modern Languages. This level involves only very basic listening and speaking skills. Passing at A1 minus means, according to Strik (2010), that 'the examination candidate understands announcements and instructions, simple questions and answers which are related to his/her immediate personal life, can give elementary information on his/her identity and personal life and can express himself/herself to a very limited degree (with the assistance of isolated words and standard formulas). The test in itself involves a set of questions, involving exercises where migrants repeat sentences and short stories.

Dutch government has raised the required level to A1 starting from January 2011.³⁸ This was motivated by the seemingly small effect on language proficiency of migrants after completing the pre-entry tests.³⁹ De facto, the testing level was already raised to A1 in March 2008, though the required level for passing the test had remained on A1-minus.⁴⁰ In addition, the pre-entry tests were expanded with a literacy test. This test does not include writing skills, but does include reading Dutch, pronunciation of Dutch texts and understanding of Dutch texts.⁴¹ This also means that the current system of computerized examinations could be continued.

In addition to the language test, the pre-entry test also includes a test of elementary knowledge of Dutch society. This test focuses on 'abstract knowledge of the Netherlands and Dutch society', including 'values, norms and basic rights' such as 'equal treatment, ban on discrimination, respect for people's private sphere (..), respect, tolerance, integrity, responsibility', as well as on a number of more practical and concrete issues.⁴² The following parts are included in this societal test: 'law and democracy, history and culture of the Netherlands, religion in the Netherlands, geography and people of the Netherlands, housing and transportation, education and nurturing, health care, labour and income, the first time of newcomers in the Netherlands and the proceedings during the pre-entry tests.' This part of the pre-entry test includes 30 questions, based on a

³⁷ TK 2004-2005, 29700, nr. 6: 32

³⁸ Staatsblad, 2010: 679

³⁹ TK 2009-2010, 32175, nr.1: 9

⁴⁰ Ibid.: 4

⁴¹ Staatsblad 2010, 679: 7

⁴² TK 2004-2005, 29700, nr. 6: 2

movie that may be purchased as part of the training material that migrants can pursue as part of their preparation for the pre-entry tests.

Dutch government does not provide pre-entry courses in the countries of origin. Migrants are entirely free in choosing how they prepare for the pre-entry tests. Recent studies show that indeed a significant supply of courses has emerged in most migrants' countries of origin (Triarii, 2009: 16). The Dutch government does supply an information and training package that migrants may (but are not obliged) buy, including a movie ('Coming the Netherlands'), a booklet, and access codes for test exams. By providing the material but not actively organizing courses, the pre-entry policy seeks to appeal to the individual responsibility of the migrants themselves for their migration to the Netherlands.

The pre-entry tests form a condition for admission to the Netherlands (with a temporary residence permit). Proof of successful passing of the pre-entry test has to be handed in at a Dutch embassy or consulate in order to be eligible for a regular temporary residence permit. There are no opportunities for legal appeal against the decision about passing or failing a test; there are opportunities for filing complaints.

II.2.4 Pre-entry conditions

In addition to the pre-entry tests that mostly put demands on the family migrant, the Dutch government has also stepped up pre-entry conditions that apply primarily to the 'referent', or the Dutchman or person with a non-temporary residence permit that asks for the admission of the family migrant. Already before, Dutch government had posed an age condition (both the referent and the family migrant should be at least 18 years) and an income condition for the referent, of 100% of the minimum wage level (basically meaning that the referent should not be dependent on social security). Important is that both criteria applied to instances of family formation migration (not to family reunification migration). In October 2004, the government decided to increase these criteria significantly. From then, both the referent and the migrant should be at least 21 years old. The elevation of the age requirement would stimulate migrants to continue studying until a later age (Ibid.: 18). In addition, the income condition was increased to 120% of minimum wage level. The elevation of the income requirement would motivate the referent to participate on the labour market, also for women referents (WODC, 2010: 16). The amelioration of the social-economic position of the referent would then also have an indirect positive effect on the starting position of the foreign partners (Ibid.). Furthermore, an issue-connection is made with the problem of forced marriages; 'the period of delay of migration (due to the age level requirement, PS) will contribute to the prolonging of studies and especially for women also the possibility to make a more independent choice of marriage partners and possible prevention of forced marriages'⁴³. Finally, these pre-entry conditions would lead to a limitation of immigration, in particular family formation.⁴⁴

However, on March 4th 2010, the European Court of Justice ruled against two basic premises in these Dutch pre-entry conditions, in the so-called Chakroun-case.⁴⁵ The

⁴³ TK 2009-2010, 32175, nr. 1: 16

⁴⁴ TK 2004-2005, 19637, nr. 873: 13

⁴⁵ C-578/08J

Court ruled that it was not allowed to differentiate between family formation and family reunification migration. This had concrete implications in particular for the age condition that the government had raised for family formation migrants. As a consequence, it decided to raise the age requirement for both family formation and family reunification migration to 21 years, thereby toughening the criteria for family reunification in particular (though still within the legal boundaries set by the European Family Reunification Directive).⁴⁶ Secondly, the European Court ruled that the Netherlands was not allowed to pose a general income requirement of 120% in all cases of family migrants. It is not allowed to reject applications based on a general income requirement without any assessment of the circumstances of each individual application (Ibid.). Governments are allowed to pose income requirements to applicants, but the Dutch requirement of 120% of minimum wage level is too high to posit without assessing the individual consequences of this general rule. Consequently, Dutch government changed the income requirement to 100% of minimum wage level for families and 70% of minimum wage level for single parents (Ibid.). In addition, the Dutch government will assess for every individual case what the consequences will be if the application is to be rejected and a legal check will take place whether these consequences are in line with art. 8 ECHR.

II.3 The United Kingdom

The UK has formally implemented pre-entry language tests only as recent as 29 November 2010, under the current Conservative-Lib Dem coalition government. However, before, pre-entry tests had already been introduced for ministers of religion, who were the first to have to demonstrate knowledge of English in August 2004, and for skilled labour migrants. Initially this was at a level of IELTS 4 but when they were incorporated into the tier 2 of the Points Based System, this was raised to B2 (CEFR B2). The first labour migrants for whom compulsory knowledge of language (IELTS 6 or B2 CEFR) was required were the highly skilled entering through the Highly Skilled Migrants Programme as from 7 November 2006. When this category became Tier 1 of the Points Based System from 30 June 2008, the level was raised to C1 for General and Entrepreneurs and counted for 10 points towards the total number of points a migrant had to achieve. If they came from a majority speaking English country or had obtained their degree from an English language university, they were exempt from the language requirement. For skilled migrants (tier 2), as from 27 November 2008, the intention was that they would reach A1 level in all four components (listening, speaking, reading and writing). This did not apply to the large numbers entering through intra-company transferees who only needed to obtain this level if they wished to remain beyond 3 years.

The rationale for the introduction of this measure for skilled labour migrants and ministers of religion did not mention economic integration but social integration, that is the ability to participate in society. As with tier 1, successful linguistic achievement at the appropriate level is awarded 10 points towards the overall score for entry. There appears to have been no opposition to these language requirements due to the fact these migrants are entering as skilled and highly skilled workers. Indeed there have been

⁴⁶ TK 2009-2010, 32175, nr. 8

some populist media stories about labour migrants, such as health workers, not being able to administer medication because of insufficient linguistic competence. The recent changes to the Points Based System, announced on 23 November 2010, and tabled in Parliament on 16 March 2011, will, as from 6 April 2011, abolish tier 1 under the general category i.e. the vast majority, and cap tier 2 to 20,700 per annum (which does not include dependants or intra-company transferees). A significant change is that tier 2 will only be open to graduates and the linguistic level has been raised to B1 for general applicants but remains at B2 for ministers of religion (see following section for analysis).

For the first time as from 29 November 2010, compulsory pre-entry language tests for family members, in particular spouses of non-EU migrants were introduced. It should be noted that there is a small group who are immediately eligible for indefinite leave to enter i.e. the partner of a British citizen or those with indefinite leave to remain (ILR) who have been living outside the UK for the previous 4 years. Since those obtaining ILR have to pass the two knowledge tests (language and life in the UK), which has to be done in the UK, they are given limited leave for a period of up to 27 months (Immigration Rules para 28 (c) and 295B(c)). Once they pass the tests they do not have to wait for the end of the probationary period of 2 years to obtain ILR (Immigration Rules 287 (a)(i)(c) and 295G(c)).

For the majority of spouses the introduction of these tests stems from the debate on arranged and forced marriages a decade ago. In 2001, Ann Cryer, a Labour MP, raised the problem of forced marriages, the lack of knowledge of English and the necessity to take action on it; David Blunkett in *Safe Haven, Secure Borders* (2001) also discussed the problems of marriages with overseas partners. A *Forced Marriage Unit (FMU)*, jointly run by the Home Office and Foreign and Commonwealth Office, was set up in 2005. It stated that the phenomenon was on the rise. The subsequent debate on forced marriages conducted by the Home Affairs Select Committee pointed to the increasing numbers contacting the FMU and used this as evidence of the seriousness of the problem. In 2005, the FMU dealt with 300 largely female cases with 12% of those entering for marriage under 21 years. By 2009 the FMU gave advice or support to 1,682 cases. 86% of these cases involved females and 14% involved males.

In March 2007, the Government published a strategy document, *Securing the UK Border; our vision and strategy for the future*, outlining its new philosophy of off-shore border controls and fixing people's identity before they reached the UK. The Government stated that it intended to consult on new measures to combat forced marriage, including a Code of Practice for interviews with couples and raising the minimum age of the spouse and sponsor from 18 to 21. It also stated that it would examine the case for the introduction of an English language test before entry for spouses who intended to settle in the UK. These measures were presented as 'protection for the vulnerable and providing them with skills to integrate' (p. 13). The latter development was partly argued on grounds of being in line with the recent changes to regulations for obtaining a settlement status in the UK (see WP2). However in the original proposal to reform marriage visas, the initial measure was to require spouses to enter into an agreement to learn English as part of the visa process but this would only be verified once they arrived in the UK. Introducing a pre-entry test was to be a medium term possibility because there was insufficient access to English classes overseas.

In December 2007, the Home Office Border and Immigration Authority proceeded to publish two consultation documents, *Marriage to partners from overseas* and *Marriage visas: pre-entry English requirement for spouses*. In its introduction to the first

consultation, the Home Office placed certain aspects of family migration within the broader context of an updating of immigration policies more generally. It went on to state that 'forced marriage is a form of aggression that puts women in particular at risk of harm and of being exploited'. It also commented that it needs to be seen to be doing something since other (unspecified) governments have recognized the problem.

The minimum age for sponsors and applicants for marriage visas was raised from 18 to 21 years on 27 November 2008. In the consultation exercise, 45 of 89 responses were in favour of it so opinion was fairly split. The Government argued that the change in the age of marriage was intended to help prevent forced marriages, and could be put into effect through a change to the Immigration Rules. There has been some criticism that the change is a disproportionate response to the problem (Library Standard Note SN/HA/4927, *Immigration: raising the age for marriage visas*).

In terms of the consultation on English language tests, 101 responded of whom 68 were against. The majority felt it was less discriminatory and more effective for migrants to learn the language once in the country. Spouses will have to demonstrate an ability to speak (but not read or write) English to a basic level, which the Government considered that this would require approximately 40 – 50 hours of tuition time. The changes would be implemented by amending the Immigration Rules.

Furthermore, in the consultation document *Earning the Right to Stay: A new points test for Citizenship*, the (Labour) Government announced its intention to bring forward implementation of the pre-entry English language requirement for spouses to summer 2011. Persons already in the UK who switched into the marriage category would also have to meet the requirement (which was therefore renamed a 'pre-application' requirement). The Act arising from this document was passed by the Labour Government but is not being implemented by the Conservative-Liberal Democratic Coalition government although pre-entry tests were advanced considerably.

II.3.1 Policy objectives and policy theory

Pre-entry tests were originally seen as a sensitive issue needing public consultation and debate in Parliament. The aims of the pre-entry policy as set out in the original paper (*Marriage Visas: pre-entry requirement for spouses* consultation paper) were the following: a) to assist the spouse's integration into British society at an early stage; b) to improve employment chances for those who access the labour market, c) and to raise awareness of the importance of language and to prepare the spouse for the tests they will need to pass for settlement (Life in the UK test or demonstration of language progression). This means that linguistic competence is stressed as a key integration condition. The consultation document cites the Commission for Integration and Cohesion (2007) affirming that a common language is fundamental for integration and cohesion for communities. It also refers to research which showed that fluency in English improved employment chances and earnings (Dustmann and Fabbri 2003). In a later Equality Assessment Impact document (Home Office 2010b), it is argued that linguistic knowledge by parents is also beneficial for children but the argument used, namely that children whose first language is English do better than those for whom it is an additional language, conflates being able to speak English and speaking it at home. It is completely unwarranted to think that an individual with a low level of English will speak it at home and demonstrates a poor appreciation of the benefits of bilingualism. It

is also stated that better language skills enable spouses and partners to access educational and health services. It is thus seen as a way of reducing the need to provide interpreting and translation and hence costs for local authorities. In the Multi-Annual Programme, it states the 'UK has taken the view that the use of English language is probably the single most important element in enabling diverse communities to participate in a common culture with key values in common.' It is crucial for employment and feeling less alienated from the host community (p.9).

Although the reasons are similar to those of the Labour Government, the objective of reducing immigration has become uppermost for the Coalition. Family migration is after all a route leading to entry in the shortest time compared to other routes. Damian Green commented that the vast majority have been granted settlement. 'We have started to take action in this area by requiring, from November, a minimum level of English from those applying for marriage visas' (speech by Damian Green 7 September 2010, Home Office). It is thought that the tests will affect about 25,000 potential entrants. The impact of the pre-entry tests on immigration levels will be uneven in relation to the main nationalities (USA being exempt as a majority English speaking country). In 2009, the top five nationalities of spouses include Pakistan (5075), India (3375), USA (1815), Bangladesh (1605) and Thailand (1380). UKBA estimated that it would lead to a reduction of about 10% from where South Asia where the largest numbers come. A reduction of numbers was also identified as one of two objectives by the Conservative MP, Andrew Rosindell, a right-winger, during a televised debate on this issue (The Politics Show, BBC 1, 13 June 2010).

In relation to the changes to the pre-entry language requirements for tier 2 of the PBS, the overwhelming objective is a reduction in the number entering. The issue of raising the linguistic level was asked in the consultation (Question 12) (Home Office UK 2010a) to which 3,201 answers were received. The government stated that it considered the level too low but did not offer any concrete evidence to back up its claim. It asked respondents whether there was merit in raising the level and, if so, to specify to which level it should be raised. 2146 responded to this question with the majority (60%) in favour, of whom 42% of the 1,867 thought it should be increased to intermediate level. It is not at all clear what difference this change actually makes given that tier 2 will be limited to graduates and is dominated by nationalities from English speaking countries (US, Australia) or where English would be understood by graduates (eg. India). Furthermore, spouses of skilled migrants do have to pass pre-entry language tests. In the subsequent Impact Assessment Study (Home Office 2011), a number of studies concerning the benefits of a reasonable linguistic competence were cited but these seemed to concern settlement rather than to entry. The studies referred to participation in the community (Markova and Black 2007), higher earnings (in Canada) (Chiswick and Miller 2003), increased productivity and communications (and market wage) and increased employment probabilities (Dustmann and van Soest 2002).

II.3.2 Target groups

The groups targeted by the pre-entry tests are nationals from the countries supplying the largest numbers of family members and permanent settlement. In particular those from South Asia have been specifically mentioned as being affected by the tests, that is, it has been estimated that their numbers would be reduced by 10%. There are several

exemptions for the obligation to take part in the pre-entry tests. This involves first of all nationals from specified countries where English is spoken by the majority.⁴⁷ This is not a Western/non-Western divide as such but outside of the white settler societies, the countries are small and their migratory flows to the UK are small. In 2008 these countries covered only 11.4% of those granted leave to enter. In addition, those living in a number of countries where tests are not available are also exempt. Apart from Somalia, this only applies to number of small countries.⁴⁸

In addition, an exemption is made for those with specified academic qualifications deemed by NARIC (United Kingdom National Recognition Information Centre), which provides information and advice on the comparability of international qualifications with those in the UK) to meet the standard of a Bachelors degree in the UK. Ironically it does not include higher degrees (Masters, PhD) which NARIC is unable to judge. This reflects a belief that more educated individuals are capable of picking up a language and being integrated through employment. In the Multi-Annual Programme for the European Fund for Integration 2007-2013, it is pointed out 'foreign born women fare far worse in comparison to UK born women. This is particularly the case for Pakistani women and for Bangladeshi women. This discrepancy may arise for a combination of reasons, such as English language ability, limited own-language literacy, lack of formal educational opportunities, discrimination and cultural issues' (p.7)

Finally, exemptions are made for those aged 65 and over, those with physical and mental conditions that the *Secretary of State* thinks would prevent them meeting the requirement, those cases in which the *Secretary of States* thinks there are exceptional and compassionate circumstances which would prevent an applicant meeting the requirement, and in those cases where grounds of disability apply (which was already the case for applicants for settlement and citizenship). It should also be noted that dependants who accompany skilled migrants (tier 1 and tier 2) are not subject to these tests.

II.3.3 Policy measures and legal consequences

The tests involve only listening and speaking at the most basic level (A1). There is no Knowledge of Life in the UK test. Proof of reaching the required level must be supplied through tests supplied by accredited providers listed by UK BA. The list of providers was initially the same as for the tests for tier 2 economic migrants but they were reviewed with a new list now posted on the UK Border Agency website. If a test was passed with a provider that is no longer on the list, the applicant must redo the test with an accredited provider. Applicants must pay the cost themselves. There is no fixed cost which will vary according to provider and country of application.

Unless applicants for entry are exempt, they cannot gain an entry visa. Pre-entry represents the first stage and they are expected to go on to the further stage of tests, which consists of language and knowledge of life, to obtain permanent residence which

⁴⁷ Antigua, , Australia, the Bahamas, Barbados, Belize, Canada, Dominica, Grenada, Guyana, Jamaica, New Zealand, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Trinidad and Tobago, USA

⁴⁸ Somalia, Togo, Swaziland, Gabon, Wallis and Futuna Islands, Lesotho, Sao Tome Principe, Samoa, , Seychelles, Maldives , Guinea-Bissau, Kiribati, Comoros,

they can apply for at the end of the second year of marriage/cohabitation. It is argued that pre-entry is a good preliminary experience for the subsequent stages.

For labour migrants under tiers 1 and 2, the appropriate language levels, which give them 10 points, are compulsory. The arguments are about economic integration for tier 1 and social integration for tier 2.

II.3.4 Pre-entry conditions

Labour migrants must demonstrate they have adequate maintenance for themselves and for their family for the first 3 months of their residence in the UK. Sponsors of family migrants have to demonstrate that they have adequate housing, which they have to own or occupy exclusively ie. not shared but there is no specific income requirement. They only have to demonstrate they have adequate income to maintain themselves without recourse to public funds, that is a range of benefits that are given to people on low incomes as well as housing support. However some, such as child benefit can be claimed by the sponsor but not by the sponsored. New migrants may not access public funds until they obtain a permanent residence status but they are, however, eligible for funds derived from national insurance, such as maternity allowance and statutory pay.

II.4 Austria

Austria will implement a pre-entry policy in July 2011 that requires third country nationals who are not highly skilled to acquire German language skills at a very basic level before immigration. This new policy provision was foreseen in the 2010 National Action Plan on Integration (NAPI) and finally adopted by parliament in the end of April 2011. This action plan stated that integration is mainly an individual achievement by migrants, expressed through learning the language, economic self-sustainability, accepting the norms and values of Austrian society, and the 'willingness to integrate'. The Austrian state in turn has to create conditions, in which this integration process can take place.⁴⁹ This provided the basic argumentation for Austrian government to frame integration requirements as conditions for admission to Austria.

For decades, 'integration before new immigration' has been a major political slogan in Austria. Minimum income requirements have been a main regulatory mechanism to restrict new immigration to Austria. The underlying assumption is that economic self-sufficiency is a precondition to integrate in Austrian society and economy. Related to this, immigration regulations have to consider the domestic labour market situation.⁵⁰ On the basis of this principle, immigration for other than family reasons was restricted to highly skilled migration in 2002. Moreover, income conditions for family migration have been raised substantially in 2005.

Besides income requirements, language is another major integration condition. Language is considered to facilitate the participation of immigrants in social and economic life in Austria.⁵¹ In 2002, the Integration Agreement (IA) introduced the

⁴⁹ See National Action Plan on Integration, Ministry of Interior (2010), pp. 8-9

⁵⁰ Ibid.

⁵¹ Ibid.

requirement to learn German at a basic level as a precondition to obtain long-term residence. This principle mainly applies to family migrants from third countries, while highly skilled workers are exempted. As of July 2011, third country nationals who are not highly skilled and their family members will have to prove basic German skills already before immigration.

Along with the introduction of pre-entry language tests, also the labour immigration system was reorganized in 2011 allowing for demand-oriented immigration of foreign workers in a more flexible manner than before.⁵² The respective amendments will enter into force in July 2011 and partly overturned the principle 'integration before new immigration'. The law foresees that foreign workers can apply for a residence permit ('Red-White-Red – Card') on the basis of a points-based system similar to systems of immigration in Canada or Australia, or the Blue Card of the EU. The system will not only consider income, but also other criteria such as previous work experience, qualifications and skills, age, and language skills. With regard to pre-entry language tests, all holders of a Red-White-Red Card are exempted from this regulation. Regulations on their family members are more complex: While family members of extraordinarily highly-skilled workers do not have to proof German skills before immigration, family members of skilled workers and key workers are obliged to do so. Thus, the higher the qualification profile, the lower the perceived need to learn German as a precondition to integrate into Austrian society.

II.4.1 Policy objectives and policy theory

The Austrian government considers language acquisition a 'core element' on the pathway to successful integration.⁵³ This is reflected in the Integration Agreement (IA), which is hitherto the only federally coordinated integration programme that requires all resident third country nationals (with some exceptions) to learn German at a basic level after immigration. Introduced in 2002, the target group of the agreement was considerably extended already in 2005, and the required language levels will be significantly raised as of July 2011. Moreover, the National Action Plan on Integration (NAPI) announced in 2010 that integration measures for new immigrants will be further developed and foresaw the introduction of a pre-entry language requirement for third country nationals.⁵⁴ The requirement to prove German skills already before immigration was included in the 2011 draft law that amended the Aliens and Settlement Act and will enter into force in July 2011. The foreseen changes in the draft law are titled 'Integration through language acquisition'. Pre-entry language tests are regarded as an important first step towards post-arrival 'successful integration', and thus a 'valuable contribution to the integration of third country nationals in Austria', as the draft amendment says. Acquiring language skills already before immigration shall enable TCN to participate in

⁵² The two main pieces of legislation are the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz - NAG*) and the Aliens Employment Act (*Ausländerbeschäftigungsgesetz*; available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/index.shtml; http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01077/index.shtml (28.3.2011). On April 29th 2011, the parliament voted on the draft law to amend the NAG; the Aliens Employment Act was adopted on 31st March 2011.

⁵³ Ibid., p. 4

⁵⁴ Ministry of Interior (2010), p. 15

the new society as soon as they arrive, and to invest all their capabilities and qualifications into Austrian society and the labour market.⁵⁵

The discussions on the pre-entry tests were strongly focused on family migration, while the integration requirements for labour migrants were defined differently. In this context, the Minister of the Interior explained that the current immigration system would not prevent persons from immigrating whose qualifications were not needed by the Austrian labour market.⁵⁶ Family migration is associated with immigrants having a lower qualification profile and persons who are not actively employed. In relation to this group, women were a specific group of concern for the government. The Minister of the Interior argued that the requirement to learn German before immigration promotes the emancipation of women coming from rural and patriarchal backgrounds (see also public discourses below). Another measure in this regard was to elevate the marriage age of foreign spouses to 21 years of age in 2009, while the general marriage age is 18.⁵⁷

By contrast to family migration and fuelled by employer representatives as well as opposition parties,⁵⁸ a debate on a more flexible labour immigration policy arose. The government programme of the coalition between the Social Democrats (SPÖ) and the Austrian Peoples Party (ÖVP) issued in 2008 expresses the principle that 'a responsible immigration policy has to be guided by the interests of Austria'.⁵⁹ The currently applied quota system which defines maximum annual numbers of persons allowed to immigrate was considered out-dated and not adequate to meet the demands of the Austrian labour market and society. In the same year, the Federation of Austrian Industries in collaboration with the Austrian Chamber of Commerce presented a discussion paper highlighting inter alia the gap between the required number of highly-qualified workers and the available supply of these persons in Austria.⁶⁰ In summer 2010, a proposal by the Minister of Foreign Affairs and chairman of the Austrian Workers' and Employees' Association (ÖAAB) Michael Spindelegger, to introduce a more flexible labour immigration scheme newly fuelled discussions on the desirability of creating a framework to attract skilled foreign workers. Consequently, a commission including the Austrian social partners⁶¹ and the Federation of Austrian Industries was established in order to identify relevant immigration selection criteria. Following this process, the Red-White-Red card was introduced in April 2011. The aim of the amendment is to 'strengthen Austria as a business location through intelligent immigration'.⁶² 'Intelligent immigration' is associated with (highly) skilled migration guided by the needs of the Austrian labour market. Secondly, skilled migration is associated with having a positive

⁵⁵ Explanation report to the draft law amendment of Settlement and Residence Act, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (31.3.2011), p.4

⁵⁶ Mayer, Stefanie/Spång, Mikael (2009), p.59

⁵⁷ Amendment to the Settlement and Residence Act 2005, Federal Law Gazette 122/2009, §2 par. 1, sentence 9

⁵⁸ See e.g. the election programme of the Greens Party in 2006 'Migration in Green', available at: http://www.gruene.at/uploads/media/Migrationsfolder_2006.pdf (12.5.2011).

⁵⁹ Austrian Federal Chancellery (2008) Government Program for the XXIV. Legislative Period (2008-2013), p. 104, available at: <http://www.austria.gv.at/DocView.axd?CobId=32966> (28.3.2011); also expressed by Maria Fekter in Der Standard, 10.12.2010

⁶⁰ WKÖ/IOM/IV (2008)

⁶¹ Union of the largest Austrian economic interest associations, the Chamber of Labour, Chamber of Commerce, Chamber of Agriculture and Austrian Trade Unions Association.

⁶² Explanation report to the draft law amendment of Settlement and Residence Act, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (31.3.2011), p.1

impact on the capability of immigrants to integrate after arrival as well as on security-related aspects.⁶³ Thus, pre-entry language tests were considered undesirable for highly skilled workers, as was voiced by business representatives in particular.⁶⁴

II.4.2 Target groups

The target group of the pre-entry language tests are all adult third country nationals who wish to settle permanently in Austria and are not highly skilled. Thus, the regulation mainly targets non-EU-family members of third country nationals. Highly skilled migrants who immigrate for the purpose of work are considered to show ‘a noticeably lower integration need’,⁶⁵ and are thus exempted from the pre-entry language test. Also family members of specifically highly skilled workers are exempted from the pre-entry language requirement. By contrast, family members of migrants for certain demanded key professions (*Mangelberufe*, see below)⁶⁶ and key workers applying for jobs for which no Austrian or EU employee can be found, have to proof German skills before immigration.

In the public and political discourse, certain categories of immigrants were linked with particular socio-demographic characteristics and are thus viewed as groups with more or less integration needs. This viewpoint is based on the federal understanding of integration that puts most responsibility for integration on immigrants. Following the NAPI, different groups of persons show different integration requirements, ‘determined by factors such as origin, gender, social status, cultural or religious background of migrants, as well as belonging to a generation.’⁶⁷ In this vein, family migrants are considered the most problematic group in relation to integration, as they are generally associated with unskilled, mostly female, immigrants from rural areas and/or Muslim countries (see public and political discourse below).

II.4.3 Pre-entry integration measures and legal consequences

Article 21a of the draft amendment to the New Aliens and Settlement Act (NAG) foresees that all third country nationals who are not highly skilled or family members of very high skilled workers and who intend to stay for a longer period of time in Austria have to prove that they have acquired basic German language skills already before immigration. The requirement is fulfilled, if a) the applicant shows a diploma or a certification at the level A1 obtained by a language institute certified by the Ministry of the Interior or the Ministry of European and International Affairs, or b) a proof of advanced German language skills (A2 or more) can be produced. Moreover, the language diploma must not be older than one year. Thus, if the existing annual quota for family

⁶³ Ibid., p.3

⁶⁴ See for example Statement by the Federation of Austrian Industries on the draft amendment to the alien law, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (31.3.2011).

⁶⁵ Ministry of Interior (2010), p. 15

⁶⁶ The scheme for immigration of workers covering demanded professions was cancelled for one year recently after the law amendment, due to the opening of the labour market for nationals from the 2004 EU acceding countries (see Der Standard, 29th April 2011).

⁶⁷ Ministry of Interior (2010), pp. 8-9

reunification is exhausted and the applicant must wait for another year, the diploma will have to be renewed.⁶⁸ The draft law does not foresee any financial support for the course participation or the costs for the exam. Despite the certification process foreseen for the language institutes, the authorities in charge under specific conditions may reject a diploma obtained by such an institution, if they assess that the language skills do not comply with the legally required level.

- Similar to the , post arrival language requirement (Integration Agreement) the following groups of persons are exempted from pre-entry language tests:
- Persons who fulfill the conditions of the IA (speak German at the level of A2 or B1 of the common European Reference Framework of Languages)
- Minors (at the time of the application)
- Persons whose mental or physical health does not allow them to learn a foreign language (certification by medical authority required)
- Family members of specifically highly skilled migrants (holders of a Red-White-Red – Card/Tier 1 and Blue Card EU).

The pre-entry tests require immigrants to prove German language skills ‘elementary language use at a very elementary level’.⁶⁹ The text of the law however is not entirely clear, whether this encompasses abilities in listening comprehension and speaking only, or also in reading and writing. The explanatory remarks to the law amendment however suggest the latter; it is argued that literacy courses, which are hitherto offered *in* Austria, will be cancelled, because in future immigrants will be expected to ‘be able to read and write’ in German already before immigration.⁷⁰ For illiterate persons or persons literate in another alphabet the latter option would mean that they have to attend both, a literacy and basic German course at their own expense in the country of origin.

II.4.4 Pre-entry conditions

In addition to the pre-entry policies, there are several other pre-entry conditions that link admission to integration requirements. First of all, the Austrian government also stipulates an income requirement. To be granted a residence permit in Austria, generally all immigrants have to prove that they earn a sufficient income to sustain their own livelihood, have health insurance coverage and accommodation, and she/he does not pose a threat to public order and security. Most importantly, the principle of economic self-sufficiency has been anchored in the Austrian immigration regulations already after World War II⁷¹ and has endured to be a major immigration control mechanism ever since.⁷² Following this, destitution, for example as a result of losing one’s job, may result in losing the residence permit and ultimately in deportation. Generally, the upper

⁶⁸ See Statement by the Caritas Austria concerning the amendment to the alien law 2011, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (31.3.2011)

⁶⁹ Draft amendment to the NAG 2011, article 21a (1) (own translation)

⁷⁰ Comment on §14 in the Explanation report to the draft law amendment of Settlement and Residence Act, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (31.3.2011), p. 10

⁷¹ Davy/Gächter (1993), p. 163

⁷² Aliens Police Law (*Fremdenpolizeigesetz*), §10 (2): „der Aufenthalt eines/einer Fremden darf zu keiner finanziellen Belastung einer Gebietskörperschaft führen, es sei denn, Belastung ergibt sich aus der Erfüllung eines gesetzlichen Anspruchs’.

threshold for the income requirement has been constantly elevated since the first immigration law of 1992.

In 2002, labour immigration was mainly limited to highly skilled migrants (and temporary seasonal workers) by defining a minimum wage requirement for so-called 'key personnel'. The income requirement is set at the level of 60 per cent of the upper income threshold used for the calculations of social security contributions. It is understood as gross monthly income not including the special bonus payments (13th and 14th salaries for Christmas and annual leave). In 2003, the first year of application, this corresponded to €2016 gross per month, €2,250 in 2006, and €2,520 per month in 2011.⁷³ Following the 2005 aliens law package, specifically needed professions such as nurses exempted from the minimum income requirement for key personnel and have to earn only a substantially lower amount.⁷⁴

The New Aliens and Settlement Act of 2005 also marked a major fraction to the conditions regulating family migration. The law introduced new income target rates for persons who apply for family reunification.⁷⁵ While the level of social benefits was used as a target rate before 2005, as of 2006, immigrants have to have a monthly net income which is above the legally defined minimum income levels (compensatory allowance – *Ausgleichszulage*). The monthly required net income under the new regulation exceeded the old income level by several hundred Euros.⁷⁶ Immigrants were thus required to have a monthly net income of several hundred Euros more than before. In 2011 these amounted to €793 for a single person and to €1,189 for a couple.⁷⁷ In practice this means that a person has to have a steady income and a full time job throughout the year. Part-timers as well as self-employed will find it specifically difficult to fulfill the income requirements. This adds a gendered dimension to the income condition, as women earn disproportionately less than men.⁷⁸ The 2011 amendment foresees that the authorities will be able to check the compliance with the income requirement any time throughout the year, and not only when applying for (prolongation of) a residence permit.⁷⁹

Secondly, besides the income requirement, the Austrian government has introduced a specific minimum age requirement for spouse marriages. An amendment to the aliens law in 2009 raised the marriage age for spouses from third countries to 21 years of age, while the general marriage age is 18.⁸⁰ Thus, spouses from third countries of Austrian citizens or of settled immigrants have to have turned 21 at the time of the application in order to be eligible for family reunification.

⁷³ See: <http://www.help.gv.at/Content.Node/12/Seite.120300.html#Voraussetzungen> (17.3.2011)

⁵⁵ Kraler, A. (forthcoming). Immigrant and Immigration Policy Making in Austria.

⁷⁵ Presentation of J. Ecker and T. Neugschwendtner at the workshop by the Austrian Chamber of Labour '3 Jahre Fremdenrechtspaket – eine erste juristische Evaluierung', 21 January 2009, Vienna.

⁷⁶ The monthly net income for a single person increased from 704 Euro under the old regulation to 1,158 Euro under the new regulation in 2006 (see Kraler/Hollomey 2010, p. 59).

⁷⁷ See <http://www.help.gv.at/Content.Node/27/Seite.270224.html> (17.3.2011)

⁷⁸ See also Petrovic, the Greens Party in Der Standard, 28.3.2002

⁷⁹ See the amendment at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (15.3.2011)

⁸⁰ Amendment to the Settlement and Residence Act 2005, Federal Law Gazette 122/2009, §2 par. 1, sentence 9

Finally, Austria recently introduced a points-based system for the immigration of labour migrants. In March 2011, the Aliens Employment Act (*Ausländerbeschäftigungsgesetz*) was amended on the basis of which labour immigration to Austria was reorganized. 'The rigid quota system', which defined maximum annual numbers of foreign workers who could immigrate, was replaced by a 'criteria-based system' that allows for a more flexible and demand-oriented immigration of skilled workers from third countries, so the Minister of the Interior, who together with the Austrian social partners took the lead in preparing the amendment.⁸¹ Third country nationals may apply for a Red-White-Red – Card. Apart from fulfilling the general admission criteria, they have to reach at least 50 points out of 100 to immigrate as a skilled worker, and 70 to immigrate as a highly-skilled worker. The evaluated criteria are (previous) income, qualification, work experience, German or English language skills, and age. The Austrian Labour Market Service will be the responsible authority to evaluate the applications on the basis of these criteria.

- Specifically high-skilled persons, i.e. persons with a completed university degree such as doctors or managers are allowed to immigrate to Austria without presenting a concrete job offer. They will then need to find a job in Austria within six months after immigration.
- Skilled workers for certain demanded understaffed professions (*Mangelberufe*; e.g. nurses, tillers; the professions shall be defined by decree flexibly according to the needs of the Austrian labour market) have to present a concrete job offer and an income that is in accordance with the legal regulations (envisaged at €1,786 gross per month)⁸².
- Other key workers (jobs which cannot be covered by domestic job seekers) have to produce a concrete job offer and a monthly income of at least €2,100 (gross), key employees over the age of 30 of at least €2,520 (gross).⁸³ This largely corresponds to the old regulation on key workers (see above).
- Persons who have completed a university degree at an Austrian university may also apply for a RWR – Card, if they earn at least €1,980 per month (gross).
- Moreover, the legal amendment introduces the *Blue Card EU* and so implements the

II.5 Comparison

There are clear similarities as well as some distinctly national differences in the pre-entry integration policies adopted in Germany, the Netherlands, the UK and Austria (although the Austrian policy has not become operational yet). First of all, an important commonality involves the focus on family migrants: concerns about family migration seem to have been the trigger for the establishment of pre-entry policies each of the countries examined. In the UK language requirements pre-entry policies had already been in place since 2008 for labour migrants, before the new measures for family

⁸¹ Fekter in Der Standard, 10.12.2010

⁸² Bericht des Ausschusses für Arbeit und Soziales über die Regierungsvorlage (1077 der Beilagen), available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01092/fnameorig_209633.html (31.3.2011).

⁸³ The basis of the calculations is the value of the upper income threshold used for the calculations of social security contributions (*ASVG Höchstbeitragsgrundsätze*) of 2011. Value one corresponds to 50% of the ASVG, value 2 to 60% of the ASVG.

migrants were announced in late 2010. Policy documents and parliamentary records in all four countries confirm this link between family migration and pre-entry policies.

Secondly, in terms of policy goals and policy theory, all four countries primarily stress the need for promoting the integration (of TCN family migrants) by imposing pre-entry integration conditions. So, a second commonality concerns the stated objective of promoting immigrant integration of family migrants. At the same time however, there are differences between the four countries in how integration is framed. Germany, the UK and Austria stress in particular the role of language proficiency as a key condition for integration, whereas the Dutch framing of integration is broader, encompassing language proficiency as well as social-cultural integration into society at large - that is not only the labour market, but also civil society (e.g. through volunteer work). The UK puts integration more in relation to participation in UK society, seeing language proficiency as a key to improving employment chances of newcomers. In addition, it was very evident that all countries particularly stress the emancipation of migrant women as a key objective and even central *raison-d'être* of the pre-entry measures. Germany focuses in particular on preventing forced marriages, whereas the Dutch rather stress that the need for integration for migrant women is most significant, also to prevent the 'successive reproduction of integration problems' in the Netherlands. In Austria, pre-entry tests are considered empowering for women coming from rural areas and patriarchal families, who would otherwise have no access to education and would not know what human dignity means, so the Minister of the Interior Maria Fekter.⁸⁴ Finally, Germany does not define restricting immigration as a policy objective, whereas this objective seems much more explicit in both the UK and Dutch cases (with the Dutch framing it as an 'anticipated side effect' and the British increasingly portraying it as a desired outcome). Also for Austria, restricting immigration is not an overtly stated policy aim, but an anticipated side effect. This is also supported by the fact that highly skilled migrants were exempted from this regulation by arguing that a pre-entry language requirement would pose an obstacle to immigration for this group.

Though each of the four countries de-facto target primarily family migrants from their main sending countries, there are differences in how the target groups are formally defined. The Netherlands has the most generic definition of target population, obliging everyone between 18 and 65 years old who wishes to settle permanently in the Netherlands and originates from sending countries that require a temporary residence permit, to pass the pre-entry tests before being admitted. The German, Austrian and UK definitions of target groups are more narrowly oriented at family migrants (spouses). Also, all countries except from Germany converge in terms of explicitly including religious ministers as a policy target group: also in Germany, plans have emerged in this direction.

Furthermore, the four countries seem to converge in most respects in terms of the exemptions that are made to the pre-entry test obligations. This includes exemptions based on age, mental or physical limitations, or indications that a migrant's language proficiency is already sufficient. This also includes exemptions based on nationality, as all four countries exempt migrants from specific countries because of language proficiency (UK, Austria), or for cultural and political economic reasons (Germany and the Netherlands). However, whereas both Germany and the UK have a special exemption for individuals for whom the tests would bring about exceptional hardship, in the

⁸⁴ Der Standard, 11. August 2010

Netherlands such a clause is still on the agenda. In addition, Austria, Germany and the UK allow exemptions to be made for high-skilled family migrants, whereas this is not the case for the Netherlands. In the UK, skilled migrants do have to demonstrate that they have the required linguistic competence but this is not through a specific test but through supplying a language certificate, a university diploma from a university where teaching was in English or that they come from a majority English speaking country. In 2009, the first full year of the current PBS, 72,284 obtained a tier 1 permit (19% of those entering through labour routes) and 52,589 in tier 2 (13% of those entering through labour routes (Salt 2010).

The fact that most countries exempt migrants from the integration-abroad obligation (directly or indirectly, such as in the British case) based on nationality has however raised important questions concerning the direct link that is made between family migrants and integration problems. Precisely this point has been closely watched and criticized by Human Rights Watch, who claimed this to be discrimination based on nationality. In this respect, Goodman (2011: 240) argues that 'if integration were the primary objective, we would not see such an uneven category of exemptions, spanning categories of immigrants, in terms of both visa type and nationality.'

In terms of the pre-entry tests and their legal consequences there are both important similarities in terms of the level and character of the test as well as distinct national differences in terms of how the test is implemented and conducted in the four countries. All four countries define passing the test as a condition for admission (which differs for instance with the French case where this is not always the case); a temporary residence permit is only granted after proof is handed over that the migrant has passed the pre-entry test. In all four countries, migrants are subsequently required to participate in post-entry integration programs as well. The level of language proficiency required for passing the test is defined at A1 in Germany, Austria, the UK and the Netherlands (though only recently in the Netherlands and higher for high-skilled migrants in the UK), and at A1-minus in Denmark. The German test is the only test to include writing skills, whereas the UK and Dutch tests only focus on listening, speaking and (in the Dutch case marginal) reading skills. The Dutch case differs from the other countries by including a test of basic knowledge of Dutch society, though passing the tests in both Germany and UK has also been interpreted as requiring a basic knowledge of life in these countries. Also, all four countries do not provide language courses in the sending countries and require migrants to organize and pay for their own preparation for the tests. A key difference lies however in how the tests are administered in the various countries. Germany has the most elaborate global infrastructure, with Goethe Institutes that play a central role in providing language courses and certificates that are accepted as proof of language proficiency by the German embassies and consulates. The UK registers providers of language courses. Austria seems to be adopting a similar system to the UK, where providers of language courses are certified by government. The Dutch have no intervention in language courses but do provide a training package that can be obtained in most sending countries.

Finally, besides the pre-entry tests, all four countries also pose specific pre-entry conditions that are considered to be related to the potential for integration of these migrants. The Netherlands, Austria and Germany have set a minimum age level requirement for spouses at 21 and 18 respectively, and under specific circumstances referents must have means of livelihood without recourse to social security. In addition, Germany also requires children between 16 and 18 who wish to follow their parents to

Germany to provide proof of sufficient knowledge of German language. In the UK, the marriage age was raised to 21 years for both partners, but this was successfully contested in December 2010, but government is appealing against the judgement.

Table 1: Summary of analysis of pre-entry policies in Germany, the Netherlands, the UK and Austria

	Germany	The Netherlands	The UK	Austria
<i>Legal basis (date of enforcement)</i>	- Amendment to Immigration Act (August 2007)	- Civic Integration Abroad Act (March 2006)	- For labour migration: Highly Skilled Migrants Programme (November 2006) which became Points Based System in Tier 1 (February 2008) and later tier 2 (November 2008) - For ministers of religion since 2004 - For family migration: November 2010	- Amendment to the Alien Act (Anticipated approval in parliament: April 2011, entry into force: July 2011)
<i>Policy goals and policy theory</i>	- Promoting integration (basic knowledge of German language is condition for integration in society) - Preventing forced marriages (Raising the level of language proficiency of migrant women helps them to lead independent lives)	- Promoting integration (to prevent the successive reproduction of integration problems) - Furthering the emancipation of migrant women - Limitation of immigration is anticipated and positively valued 'side effect'	- Promoting the spouse's integration - Improving employment chances of newcomers - Raising awareness of importance of language proficiency (language proficiency is stressed as key condition for integration). - Reducing immigration	- Promoting integration through language Empower migrant women - Facilitating post-arrival integration (participation in social and economic life) - Strengthen the domestic economy - Benefit from the skills and capacities of migrant workers
<i>Target groups</i>	- TCN spouses that wish to immigrate in order to unify with their TCN or German spouse and settle permanently - Exemptions for spouses of EU citizens, who can show evidence of adequate language proficiency (from a number of western countries), whose need for integration is recognizable small (high skilled), and those exempted out of exceptional hardship	- all foreigners between 18 and 65 year that wish to settle permanently in the Netherlands and are not exempted from the obligation to acquire a temporary residence permit for being admitted to the Netherlands - religious ministers - exemptions for medical reasons, EU/EEA citizens, and citizens from specific (Western) countries	- TCN spouses who wish to join British citizen or someone with settled status - Exemptions for EU citizens, all nationals from specified English speaking countries, those with specific academic qualifications, elderly over 65, those with physical or mental disabilities, those exempted on reasons of exceptional hardship - Spouses of skilled migrants (tiers 1 and 2) not included	- Pre-entry language requirement: TCN with the exception of skilled migrants for the purpose of work, thus mainly family members who intend to stay for a longer period of time in Austria (i.e. not on the basis of a short-term residence permit) - RWR Card: (Highly) skilled TCN
<i>Pre-entry measures and legal consequences</i>	- Pre-entry test as condition for admission - Language test (A1), including reading and listening comprehension and writing skills - No state-sponsored but state accredited courses - Migrants can obtain language certificates at Goethe Institutes around the world - Migrants have to finance the tests and courses themselves	- Pre-entry test as condition for admission - Language test (A1), including reading, speaking and listening comprehension - Test of basic knowledge of Dutch society - No state-sponsored courses - State provides training material (at costs of participant) - Computerized tests at Embassies/ Consulates - Migrants have to finance the tests and courses themselves	- Pre-entry tests are condition for admission - Language test (A1) including listening and speaking skills - No state-sponsored but state accredited providers of courses. - Migrants have to finance the tests and courses themselves	- Pre-entry language test at 'very elementary level' (scope not entirely clear) - No state sponsored courses - Exams at certified language institutes in the CoO - Migrants have to finance the tests and the courses themselves - yet unclear what skills are precisely included in the tests.
<i>Pre entry conditions</i>	- Both the family migrant and the resident referent must be over 18 - Foreign and under specific circumstances also German referents must have means of livelihood without social security. - Children between 16 and 18 who wish to follow their parents have to prove sufficient knowledge of German	- Both the family migrant and the resident referent must be over 21 - Income requirement of 100% of minimum wage level.	- Both family migrant and resident referent must be over 21 years but legally contested - Both partners have to have met - No specific income but adequate to maintain family without recourse to public funds - Housing to be owned or occupied exclusively	- General admission criteria: Income requirement, health insurance, accommodation, no threat to national security - Criteria-based immigration: Age, qualification, language skills, work experience - Marriage age over 21

III Social and political background of pre-entry tests

The preceding section has revealed similarities as well as differences in the pre-entry integration policies in Austria, Germany, the Netherlands and the UK. This section will delve deeper into how the policies developed in these four countries, in particular the social and political background and discussions about of these pre-entry policies. In addition, this section will discuss how policies in these countries have interacted with EU policies and with other European countries' policy initiatives, as well as to how specific legal cases have influenced the development of policies in these four countries.

III.1 Germany

III.1.1 Political discourse

The political debates around the implementation of pre-entry programmes primarily focused on two issues. First, the focus was laid on the insufficient language competences of sections of the migrant population, since language deficits were perceived as the major barrier for integration.⁸⁵ Secondly, the debates focused on 'misogynistic parallel societies', referring to the fact that there are women living in Germany who are trapped in a forced marriage and deprived of their rights.⁸⁶ In this respect, often references were made to the pre-entry requirements introduced in the Netherlands.

In May 2005, Minister of Interior Uwe Schünemann (CDU), initiated the discussion about pre-entry language tests and a minimum age requirement for immigrating spouses with the intention of preventing forced marriages.⁸⁷ He argued that, due to the fact that there was no minimum age for spouse immigration and immigrating spouses were not required to demonstrate a basic knowledge of the German language before entering the country, very young women from Turkey and other Islamic countries would often get married to a person living in Germany. While the young women's relatives in the countries of origin hoped to obtain extended possibilities for travelling, the families already living in Germany often held the opinion that marrying a women e.g. from Turkey was more suitable for a traditional marriage than marrying a spouse who has been raised in Germany. Drawing from past experience, these marriages often took place against the will of the marrying partners. The affected wives came to Germany without speaking a word of German and thus became completely dependent on their husbands and in-laws. According to Schünemann, there were only few chances that these women were able to pursue their own objectives and interests in an equal relationship.

After his proposal had already met with agreement at a conference of the Interior Ministers of the CDU-/CSU-governed Länder, at the end of April 2005, Schünemann also put it on the agenda of the next federal meeting of the Interior Ministers. At the 179th Standing Conference of the Interior Ministers and Senators (IMK) in June 2005 in Stuttgart, the decision was made to insert a provision in the planned amendment of the Immigration Act that – following the Netherlands - tied spouse immigration to being 21

⁸⁵ Deutscher Bundestag 2007, Plenarprotokoll 16/103: 10588

⁸⁶ Deutscher Bundestag 2007, Plenarprotokoll 16/103: 10587

⁸⁷ FAZ 23 June 2005, No. 143: 4

years of age as well as to the evidence of a basic knowledge of the German language (Walter 2006: 110).⁸⁸

Moreover, the 'honour killing' of a young Turkish woman of Kurdish origin by family members in Berlin in February 2005 increased general debates about honour killings, forced marriages and securing equal rights for women. Debates about religious and cultural differences, which have been conducted since 9/11, gained more importance and especially the integration processes of Muslims were critically discussed. This involved in particular problems of participation in a democratic civil society and experiences with an increase in Islamist propaganda among Muslim youngsters. Ethnic segregation in cities was interpreted as a tendency to the establishment of 'parallel societies'. The murder of the Islamic critic Theo van Gogh in November 2004 led Otto Schily, the German Minister of the Interior at that time, to state: 'The Netherlands is everywhere'.

Furthermore, welfare-state restructuring – associated with the aim of reducing the 'costs of non-integration' – led to the introduction of integration courses as the central part of a national integration programme. They are supposed to help qualify newcomers and thus promote their (labour market) integration. Nevertheless, concerns regarding its immediate prospects of success, which had been expressed by various parties even before the national integration course programme was introduced, were relatively soon confirmed. Already in August 2005, integration course providers reported that, due to their poor educational level and unfavourable learning preconditions, many participants were not expected to successfully complete the integration course and thus called on the government to expand the number of teaching units.^{89 90}

This has led to the following situation: On the one hand, ongoing debates about an alleged failure of integration raised public awareness of problems in this area and further pressured the government to act. The limited success of the national integration courses, on the other hand, questioned the government's ability to control processes of integration (Michalowski 2006b: 157). At the same time, there was the continuing necessity to reduce welfare state costs which is reflected in the fact that the new Minister of the Interior, Wolfgang Schäuble (CDU), reduced the federal budget for the integration courses in 2006, although this was met with strong protest from a variety of stakeholders, who were in contrast pointed to further needs for improvement and investment (Bommes 2006: 53; Hentges 2006: 3).

Again, at a cabinet meeting on the Directive Implementation Act on 28 March 2007, the focus was on the phenomenon of arranged marriages as an obstacle for integration of a

⁸⁸ see also: Ständige Konferenz der Innenminister und -senatoren der Länder 2005: 18

⁸⁹ Deutscher Bundestag 2006, Drucksache 16/639: 1

⁹⁰ This early estimation was also verified by the evaluation study conducted by Rambøll Management in 2006 which revealed that a proportion of approximately 40% of all integration course participants were not able to achieve language skills at level B1 within 600 teaching units (Rambøll Management 2006: iv). In the same study, it was revealed that sanctions that were in principal planned in case of non-compliance with the obligation to participate in an integration course were limited in their effectiveness, especially in the relevant cases (in quantitative terms) of obliged family migrants and persons recognised as entitled to political asylum. The refusal of a renewal of the residence permit was usually not court-firm, as a deportation in most cases was against Article 6 of the German Basic Law (protection of marriage, family and children born out of wedlock) or Article 16 of the German Basic Law (Asylum Law) (Rambøll Management 2006: 70f.).

certain part of the migrant population.⁹¹ Wolfgang Schäuble (CDU) pointed out that up to 50 % of the migrants of Turkish descent born in Germany married spouses who were not raised in Germany.⁹² According to Schäuble, these figures were an indicator that marriages with immigrating spouses were often arranged marriages which he declared to be an inadvertent use of the right of family reunification that prevented integration and therefore had to be combated.⁹³ Particularly the situation that young people who have been living in Germany for 18 or 20 years were searching for their marital partners, or in some cases were forced to search for their marital partners in their (parents') country of origin, was, according to Reinhard Grindel (CDU) – apart from some exceptions – an indicator that they were living in parallel societies. It was known, that in these families the German language was often not spoken and that German language skills often did not exist.⁹⁴

Consequently, with the newly implemented provisions two objectives are pursued concerning spousal immigration: (1) to prevent forced marriages and (2) to promote integration and combat the misuse of family reunification which has been preventing integration processes in the third migrant generation.⁹⁵ Against the background that the federal government considered a basic knowledge of the German language including basic German reading and writing skills to be the key precondition for a successful integration in Germany, Reinhard Grindel (CDU) pointed out that the pre-entry provision of demonstrating basic German language skills aimed at sending the message to migrants that 'without German language skills, it will not work' at an early point in time. German language skills were necessary in order to provide a good perspective for oneself as well as for one's own children.⁹⁶ The pre-entry language provision as well as the minimum age requirement were intended to create the preconditions for subsequently immigrating spouses to have better opportunities in life.⁹⁷ Wolfgang Schäuble explicitly pointed to the aspect of labour market integration: 'We want those people who are living in Germany to have as good opportunities as possible to organise their lives by taking up employment'.⁹⁸ With regard to the second objective of preventing forced marriages, it was argued that spouses had to have at least basic German language skills in order to be able to communicate with other persons than their own family members, as well. If subsequently immigrating spouses held basic language skills, the risk that they might become subject to the constraints of the in-laws in Germany was lower while at the same time the chances for integration increased.⁹⁹

One of the key objections raised by the Greens and the Left Party (that the provisions concerning spouse immigration would aim at the limitation of family reunification) was strictly rejected.¹⁰⁰ Besides that, parts of the SPD also implied the creation of a 'lex

⁹¹ Deutscher Bundestag 2007, Plenarprotokoll 16/90: 9065

⁹² Deutscher Bundestag 2007, Plenarprotokoll, 16/90: 9065; also see: Deutscher Bundestag 2007, Plenarprotokoll 16/103: 10594

⁹³ Deutscher Bundestag 2007, Plenarprotokoll, 16/90: 9065

⁹⁴ Deutscher Bundestag 2009, Plenarprotokoll 16/209: 22636

⁹⁵ Deutscher Bundestag 2007, Plenarprotokoll, 16/103: 10595

⁹⁶ Deutscher Bundestag 2009, Plenarprotokoll, 16/209: 22636

⁹⁷ Deutscher Bundestag 2007, Plenarprotokoll 16/90: 9065

⁹⁸ Deutscher Bundestag 2007, Plenarprotokoll, 16/90: 9066

⁹⁹ Deutscher Bundestag 2007, Plenarprotokoll 16/103: 10595

¹⁰⁰ Uhl, in: Deutscher Bundestag 2007, Plenarprotokoll 16/103: 10587; Deutscher Bundestag 2007, Drucksache 16/7288: 12

Turkey' and Josef Winkler (of the Greens) called the regulation an 'anti-Turkey clause' as the majority of those affected by the new provision would be of Turkish origin (efms Migration Report, June 2007).¹⁰¹

The CDU/CSU parliamentary group was most supportive of these new regulations and eventually able to enforce the new regulations in the debates around the Directive Implementation Act for EU Directives on residence and asylum issues (EU-RLUmsG) and in particular the pre-entry language test provision for subsequently immigrating spouses as well as the minimum age requirement of 18 years for both spouses in order to become eligible for spouse immigration. The social democrats (SPD), coalition partner of the CDU/CSU Union in the Great Coalition (2005-2009), on the other hand, considered the EU-RLUmsG a painful compromise.¹⁰² Many SPD representatives voted against the draft bill or combined their agreement with a written explanation wherein they pointed out their concerns and criticism concerning, among other things, the new regulations for subsequent spouse immigration.¹⁰³

The amendments concerning the subsequent immigration of foreign spouses continued to be criticised once the law had been amended. At regular intervals of several weeks the Left Party (Die Linke) addressed enquiries to the federal government, asking about experiences with and effects resulting from the newly introduced provisions as well as requesting the federal government to make statements on problems that have become known in this context. In May 2010, a number of representatives from the Left Party (Die Linke) once again criticised the implicit motive and the objective function of the provision of demonstrating basic German language skills for immigrating spouses was supposedly a selection with regard to 'utility criteria', as particularly socio-economically weak, elderly and poorly educated persons were affected by the legal restrictions. This was a disproportionate and inadmissible curtailment of fundamental rights putting an enormous burden on many persons affected.¹⁰⁴

Besides that, criticism was also raised by a variety of stakeholders including immigrant organisations, churches, NGOs and trade unions. Concerning the pre-entry provision to demonstrate a basic knowledge of the German language, various actors (NGOs, charity organisations, refugee organisations, business associations, unions) criticised the concept of requiring the successful completion of such measures was unconstitutional and discriminatory against people from some countries in general (no direct access to language courses, some countries exempted) and against certain groups (rural populations, illiterates, pregnant women or those with children) in particular.

While the objectives of preventing forced marriages and promoting integration were not criticized as being wrong in general, the way these objectives were pursued as well as the reason for pursuing them obviously met with a lot of criticism. Sybille Schreiber from Terre des Femmes stated for example that impeding forced marriages was an 'alibi argument', thereby putting the motivation for the new regulations into question. The two charity organisations Caritas and Diakonie as well as the Confederation of Trade Unions in Germany all claimed that the way the aims are approached at the moment will lead to marriages with foreign spouses and family migration being made suspicious in

¹⁰¹ Deutscher Bundestag 2007, Plenarprotokoll 16/103: 10645

¹⁰² http://www.efms.uni-bamberg.de/djun07_e.htm

¹⁰³ Deutscher Bundestag 2007, Plenarprotokoll 16/103: 10641ff.

¹⁰⁴ Deutscher Bundestag 2010, Drucksache 17/1577: 1f.

general. The effectiveness of the restrictions was highly questioned amongst others by the Association of Bi-national Families and Relationships, criticising the general concept that language tests could prevent forced marriages at all.

III.1.2 Public discourse

The linkage between migration and integration policies and the implementation of the pre-entry regulations evolved against the background of the public perception of a 'crisis of migration' and a 'crisis of integration' as well as the general social developments and challenges Germany is facing (demographic change, global economic competition). A central aspect in the discussions about the 'failure of integration' in Germany has been the persistently low educational success of the second and subsequent migrant generations.¹⁰⁵ Lacking language competences, even after a long period of residence within the country, was seen as another indicator of a 'crisis of integration' as was migrants' (on average) lower participation in the labour market and their (on average) higher dependency on social benefits (Michalowski 2006a: 61).

The political discussions are therefore reflected in the public discourse and the media. It can be also observed that newspaper articles are sometimes used as references in political debates or parliamentary enquiries.¹⁰⁶ Often the government is asked to comment on or assess the facts presented in an article. Sometimes politicians are confronted with statements they had made in an interview for a certain newspaper and are asked to make further explanations.

On the one hand, in the context of the legislative process for the EU-RLUMsG (2005-August 2007) as well as after its implementation, articles on this issue were regularly published, presenting the planned amendments as well as the accompanying reactions and assessments by different actors. On the other hand, certain events that were perceived as indicators for a failure of integration in Germany (e.g.: incidents of violence at a school in Berlin in March/April 2006 (Rütli-Schule), Premier Erdoğan's speech in Cologne on 10 February 2008) entailed the publication of articles discussing fundamental questions (e.g. on integration, assimilation, identity). Moreover, the 'honour killing' of a young Turkish woman of Kurdish origin by her family members in Berlin in February 2005 further fuelled the debates about 'honour killings', forced marriages and securing equal rights for women.

On 2 May 2005, the news magazine Der Spiegel reported with the headline 'Bill against the Import of Women' about a draft bill amending the Residence Act that the red-green coalition had presented in April 2005 in order to implement several EU-Directives (Der Spiegel 18/2005: 18)¹⁰⁷. It was explained that in the future the federal government

¹⁰⁵ This became particularly evident with the results of the PISA-studies conducted in 2000, 2003 and 2006. The observed differences in performance between migrant students and students without a migration background were explained by an (on average) lower socio-economic status of their families, but additional to that, also the language spoken within their families at home has been identified as a decisive factor (Stanat 2008: 723).

¹⁰⁶ e.g. see Deutscher Bundestag 2008, Plenarprotokoll 16/144: 15187; Deutscher Bundestag 2008, Plenarprotokoll 16/169: 17852

¹⁰⁷

<http://wissen.spiegel.de/wissen/image/show.html?did=40254079&aref=image035/E0517/ROSP200501800180018.PDF&thumb=false>

wanted to prevent Turks who live in Germany and hold traditional conceptions bringing young wives who are unaffected by western influences from Turkey to Germany. Therefore, the government wanted to implement a minimum age provision for immigrating spouses of 21 years and the pre-entry requirement of a basic knowledge of the German language. Thus, it was stated, forced marriages could be prevented. Subsequently immigrating spouses, particularly women from Turkey and other Islamic countries (so-called 'import-brides'), are perceived as difficult to integrate due to their often low educational level.¹⁰⁸ Regina Mönch, journalist of the FAZ, points out that despite compulsory school education in Turkey, approx. 600,000 girls are still refused school attendance. In some provinces every second girl between six and 14 years of age is affected. In Germany, families of Turkish descent with a traditional orientation, tended to buy young Turkish women for their sons with the intention of obedience and dependency being preserved also in the ethnic colonies in Germany.¹⁰⁹ In an interview given for the FAZ, Maria Böhmer, Federal Government Commissioner for Migration, Refugees and Integration, pointed out that the objective of the pre-entry provision of demonstrating a basic knowledge of the German language was to help those who come to Germany as subsequently immigrating spouses to have a better starting position and to promote an accelerated integration.¹¹⁰ With regard to subsequently immigrating wives, Böhmer pointed out that the pre-entry language requirement would enable them to lead a self-determined life. Going in the same direction, Armin Laschet, Integration Minister of North Rhine-Westphalia, stated in an interview in the SZ that the intention of the pre-entry language provision as well as the implementation of a minimum age requirement of 18 years for both spouses in order to become eligible for spouse immigration, was to strengthen the position of women.¹¹¹ However, there was no intention to limit or prevent spouse immigration.

Contrary to this point of view, it was argued in an SZ-article entitled 'loveless law' that the hidden agenda pursued by the Federal Ministry of the Interior was to limit the immigration of poor foreigners with a low education level from countries like Kosovo or Turkey.¹¹² This way, the last big loophole for immigration to Germany was closed: It was stated that while struggling with the problem that although hardly any highly qualified migrants were coming to Germany, it was at least possible to keep unqualified persons out. The real losers of this law against forced marriages were those couples, where love and not duress was the reason for marriage. These couples were deprived of their right of cohabitation – in a country where the protection of marriage and family is part of the constitution.

The main actors in the media discourse are politicians of the federal government and most attention is given to politicians of the CDU/CSU (particularly in the Frankfurter Allgemeine Zeitung, FAZ): Wolfgang Schäuble (Federal Minister of the Interior 2005-2009), Maria Böhmer (Federal Government Commissioner for Migration, Refugees and Integration); Armin Laschet (Integration Minister of North Rhine-Westphalia); Hans-Peter Uhl (spokesman on internal affairs for the CDU/CSU parliamentary group in the Bundestag). Considerably less attention is given to politicians of the SPD, mostly reduced

¹⁰⁸ SZ, 23.10.2007 / SZ, 24.11.2007 / SZ, 15.02.2008

¹⁰⁹ FAZ 14.07.2008, No. 162: 29

¹¹⁰ FAZ 24.11.2007, No. 274: 4

¹¹¹ SZ 12.07.2007

¹¹² SZ 20.02.2009

to short statements or comments mostly in opposition to the arguments of the CDU/CSU parliamentary group (e.g. Dieter Wiefelspütz, Sebastian Edathy). Occasionally, there are articles published by scientists / experts in the field (Stefan Luft (political scientist at the University of Bremen), Necla Kelek (sociologist)) commenting on the political course or particular events from a scientific point of view. A third category of actors in the media discourse are specialised journalists, also taking in the role of critical commentators (depending on the newspaper either more in one or the other direction).

III.1.3 The influence of court rulings

The German approach to pre-entry tests has in recent years been reviewed in numerous legal cases, and has thus far been seen as compliant with national as well as European and international law. On 19 December 2007, the Administrative Court in Berlin ruled that the provision of demonstrating a basic knowledge of the German language violated neither German Basic Law nor European Law.¹¹³ The plaintiff, an Indian national born in 1982, had – after the wedding with her German spouse (who is living in Germany) – since 2004 been applying in vain for a visa for subsequent spouse immigration at the German Embassy in New Delhi. The German Embassy finally rejected the application in March 2007 on grounds of the supposed fact of a fictitious marriage. Although the Fifth Chamber of the Administrative Court in Berlin negated the existence of a fictitious marriage, the complaint was not successful after all, since the plaintiff did not fulfil the statutory minimum requirements concerning a basic knowledge of the German language. She was able to pronounce single German words, which, according to the Administrative Court, was not sufficient. The ability to communicate in German in a simple manner required that the foreigner was at least able to build sentences containing a subject, predicate and object and was able to understand such sentences more often than rarely.

In a recent ruling on 30 March 2010, the Federal Administrative Court in Leipzig confirmed that the provision of demonstrating a basic knowledge of the German language violated neither German Basic Law nor European Law (Bundesverwaltungsgericht 2010.¹¹⁴ The plaintiffs, a Turkish woman and her five children (born between 1994 and 2006), requested the issuance of visas for family reunification with their Turkish husband and father. The latter had been living in Germany since 1998, at first as an asylum seeker and between 2001 and 2006 as the husband of a German national. He now possesses a permanent residence permit. After the divorce from his German wife, he married the mother of his children in December 2006. In the previous years, he had regularly visited his family in Turkey. In July 2007, the plaintiffs applied for visas on grounds of family reunification. These applications were rejected by the German embassy in Ankara. Actions against this decision were rejected by the Administrative Court in Berlin because the wife – according to her own

¹¹³ AZ: VG 5 V 22.07;

<http://www.berlin.de/sen/justiz/gerichte/vg/presse/archiv/20080128.1525.92893.html>

¹¹⁴ BVerwG 1 C 8.09

information an illiterate – did not have any German language skills.¹¹⁵ Among others, the following reasons were presented in the judgment:

It was confirmed that the pre-entry requirement of demonstrating a basic knowledge of the German language was compatible with Community Law as article 7 section 2 Council Directive 2003/86/EC on the Right to Family Reunification enabled member states to require third country nationals to comply with integration measures in accordance with national law (Bundesverwaltungsgericht 2010).¹¹⁶ The objection which had been raised in the literature (Groenendijk, ZAR 2006: 195), criticising the requirement of demonstrating basic language skills (as an integration requirement) went beyond the wording of the Directive which only enabled to require compliance with integration measures, was rejected by the Federal Administrative Court. It was stated that this interpretation had not found expression in the protocols of the negotiations of the Directive. In the judgment it was referred to the fact that besides Germany other member states (the Netherlands and France) also made use of article 7 section 2 by requiring results-oriented language skills and not only the attendance of a language course. As stated by the European Commission in its report to the European Parliament and the Council 'on the Application of Directive 2003/86/EC on the Right to Family Reunification' of 8 October 2008 (COM (2008) 610/3), these national regulations were in principle permitted by article 7 section 2 Council Directive 2003/86/EC:

'The objective of such measures is to facilitate the integration of family members. Their admissibility under the Directive depends on whether they serve this purpose and whether they respect the principle of proportionality. Their admissibility can be questioned on the basis of the accessibility of such courses or tests, how they are designed and/or organised (test materials, fees, venue, etc.), whether such measures or their impact serve purposes other than integration (e.g. high fees excluding low-income families). The procedural safeguard to ensure the right to mount a legal challenge, should also be respected' (European Commission 2008, COM 610/3: 7f).

Against this background it was argued in the judgment of the Federal Administrative Court that the admissibility could be considered as an 'acte claire', thus making a submission to the Court of Justice of the European Union unnecessary (Bundesverwaltungsgericht 2010).¹¹⁷

The pre-entry requirement of demonstrating basic language skills was compatible with the protection of marriage and family, granted by article 6 of the German Basic Law, article 8 of the European Convention on Human Rights and article 7 of the Charter of Fundamental Rights (Ibid.: 16). Compliance with the German Basic Law was given, as article 6 of the German Basic Law did not grant a right for residence. There was a considerable public interest in an accelerated integration of the immigrating spouse into the economic and social conditions in Germany and in a prevention of forced marriages by means of residence rights. The obligations imposed on the migrant were in a reasonable proportion to this. There was no reason for the concern that the acquisition of basic German language skills was totally impossible for a foreigner or would take such a long period of time that it was not acceptable with respect to the constitutional nature of marriage and family. A period of about one year was considered reasonable. The language courses offered by the Goethe Institute took considerably less than one year.

¹¹⁵ <http://www.migazin.de/2010/03/31/sprachtest-vor-dem-ehegattennachzug-im-einklang-mit-grundgesetz-und-europarecht/>

¹¹⁶ BVerwG 1 C8.09: 12f.

¹¹⁷ BVerwG 1 C8.09: 16

Basic skills of a foreign language could also be acquired by the use of audio and video language courses. Besides that, the foreigner could also be assisted by his/her spouse who already lived in Germany. Additionally, those who come from remoter areas of the country of residence as well as those who are illiterate can be reasonably expected to pass the exam.

The pre-entry language requirement was not a violation of the general principle of equality (article 3 section 1 of the German Basic Law) because of the exemption for immigrating spouses of foreigners with certain nationalities from the requirement of demonstrating a basic knowledge of the German language (§ 30 Abs. 1 Satz 3 Nr. 4 AufenthG). These exemptions fulfilled intergovernmental agreements and the preserved public interests. Foreign policy related considerations were appropriate to justify a preferential treatment of certain nationalities. Further exemptions were based on a respective public interest, significant humanitarian reasons as well as on rules in European law (Bundesverwaltungsgericht 2010).¹¹⁸

It was also argued that the extension of the pre-entry language requirements to German writing skills also complied with the sense and purpose of § 30 (1) sentence 1 no. 2 of the Residence Act (AufenthG). The provision aimed at motivating the affected persons to acquire basic German language skills already before entering the country in order to facilitate their integration on Federal Territory. Besides that, the regulation served, according to the draft bill, to prevent forced marriages, which would potentially at least be impeded. In addition, the acquisition of language skills was supposed to enable persons who have already become victims of forced marriages to lead an independent social life in Germany. An accelerated integration into the conditions in Germany, however, required that the foreigner was able to read and write at least simple German sentences, as this form of communication was of great importance in many areas. A basic knowledge of the written language facilitated the use of offers of support and the development of independent opportunities for social development for victims of forced marriages too (Ibid.: 8).

While according to the CDU/CSU representatives in the Bundestag the judgment was 'to be greatly welcomed' it was on the other hand met with harsh criticism from other parties as well as NGOs, migrant organisations and churches and triggered various debates on this issue.¹¹⁹ Hiltrud Stöcker-Zafari, director of the Association of Binational Families and Relationships commented on the judgment that it was unrealistic, hostile to families and disappointing.¹²⁰ Particularly the fact that the Federal Administrative Court had not submitted the issue to the Court of Justice of the European Union was criticised.¹²¹ It was argued that it was therefore not yet answered conclusively whether it was actually violating European Law or not. Sevim Dağdelen, spokeswoman of the Left Party, noted that the Court of Justice of the European Union had only recently decided

¹¹⁸ BVerwG 1 C8.09: 4

¹¹⁹ e. g. see: MIGAZIN (1 April 2010): Sprachtest-Entscheidung stößt auf unterschiedliches Echo. <http://www.migazin.de/2010/04/01/sprachtest-entscheidung-stosst-auf-unterschiedliches-echo/>
Katholische Arbeitsgemeinschaft Migration (2010): Newsletter 22/2010 <http://www.kam-info-migration.de/newsletter.asp?NLID=2336>

¹²⁰ http://www.verband-binationaler.de/fileadmin/user_upload/Regionalgruppen/BGSt/BVerwG-Urteil_30_Maerz_2010.pdf

¹²¹ According to the Federal Administrative Court, the issue was an 'acte clair', making a submission to the Court of Justice of the European Union unnecessary (Bundesverwaltungsgericht 2010, BVerwG 1 C8.09: 16).

that there was a natural individual right for family reunification according to European Law.¹²²

III.1.4 The influence of the EU and other European countries

The pre-entry tests have been justified by article 7 (2), an optional clause of the Directive 2003/86/EC on the Right to Family Reunification, which enables member states to require that third country nationals comply with integration measures. However, it has to be considered in this context that this optional clause had neither been included in the initial proposal of the directive of December 1999 (COM (1999) 638 final) nor in the amending proposal of May 2002 (COM (2002) 225 final). With the initial directive proposal (of 1999), the Commission had made a serious effort to transpose the Tampere mission to guarantee rights and responsibilities for third-country nationals that are as near as possible to those of EU citizens.

However, it was regarded as being too liberal by some member states which resulted in two amending proposals. Following requests from the Netherlands, Germany and Austria, the optional requirement for third country nationals to comply with integration measures was incorporated in November 2002, while Belgium and Sweden, on the contrary, firmly countered it (Rat der Europäischen Union 2002: 13 Footnote 2; Groenendijk 2004: 127). Obviously, the negotiating partners presumed that requiring adequate language skills was covered by this clause: When Austria pronounced the opinion that adequate language skills could be foreseen as a prerequisite within article 7, it was argued that this prerequisite should be covered by the general formulation of requiring compliance with integration measures in article 7 section 2 (Rat der Europäischen Union 2002: 12 Footnote 1). A few months later, the objection that had been entered by Belgium and Sweden was also withdrawn after a second sentence had been included according to which the first sentence could only be applied to the case of family reunification with refugees if the family members immigrated subsequently to the refugee (Groenendijk 2004: 127). It has been remarked that the obvious reason for incorporating this special regulation in article 7 section 2 no. 2 was the fact that the Netherlands was already planning the introduction of pre-entry language tests during the negotiations (Bundesverwaltungsgericht 2010: 14 with reference to Hauschild, ZAR 2003: 266; Breitzkreuz/Franßen-de la Cerda/Hübner, ZAR 2007: 382).

For Germany it can be said that since 2001 family reunification policy has partially been developed parallel to the European legislative procedure. This not only resulted in anticipation of a part of the European regulations set out in the Family Reunification Directive in German law, rather, Germany exercised significant influence on the negotiations about the Directive in Brussels in order to keep subsequent amendments as small as possible (Kreienbrink/Rühl 2007: 36). Acting on the maxim 'no changes in national law', Germany was perceived to be the most difficult negotiating partner and can (although not exclusively) be attributed with the most important restrictions to family reunification (Walter 2006: 97f.). Overall, the political debate on family

¹²² MIGAZIN (1 April 2010): Sprachtest-Entscheidung stößt auf unterschiedliches Echo. <http://www.migazin.de/2010/04/01/sprachtest-entscheidung-stosst-auf-unterschiedliches-echo/>
Katholische Arbeitsgemeinschaft Migration (2010): Newsletter 22/2010 <http://www.kam-info-migration.de/newsletter.asp?NLID=2336>

reunification in Germany 'took place on a national level and only marginally touched upon the necessary implementation of the Directive, even though the Directive provided a background for the new regulations and defined the scope for the new provisions' (Kreienbrink/Rühl 2007: 37).

III.2 The Netherlands

III.2.1 Political discourse

The idea of starting the integration process already in the migrants' countries of origin first emerged on the agenda as early as 2002. This year constituted one of the most controversial years in Dutch politics since the Second World War (Andeweg and Irwin, 2005), following the 9/11 attacks in New York in 2001, the rise and murder of the populist politician Pim Fortuyn in Dutch politics, and the dramatic electoral turnover toward Fortuyn's populist party (LPF) in the 2002 parliamentary elections. It provided the political stage for a revision of the 1998 Civic Integration Act. By 2002, there was already a more broadly shared feeling that the prevailing civic integration was not entirely satisfactory in terms of furthering the integration of newcomers. Various studies emerged in 2002, showing that the civic integration policies that had been introduced in the late 1990s were insufficiently successful (such as Taskforce Inburgering, 2002; Regioplan, 2002). Also, the policy memorandum by Minister Van Boxtel in 2002 on 'Integration in the Perspective of Immigration' already planned for a more direct connection between integration and immigration policies. However, these plans did not yet include any ideas for integration abroad: also in the report from the Temporary Parliamentary Investigative Committee on Integration Policy, no mention is made of an idea for pre-entry programmes. Rather than an idea from the realm of research, this idea seems to have emerged from the political arena; which is also confirmed by the interviews.

In this 'long year of 2002' in Dutch politics (Andeweg and Irwin, 2005), during parliamentary debates on the budget of the Department of Justice (then responsible for the civic integration of newcomers, under minister Nawijn for 'immigration and integration'), a group of parliamentarians (led by Mr. Blok of the Liberal Party, but also including Ms. Sterk of the Christian Democrat Party, Mr. Varela from the of Fortuyn Party and Mr. Teeven of Liveable Netherlands) submitted a parliamentary motion on November 7th 2002 that asked government to develop plans to 'involve the importance of essential Dutch values, norms and constitutional rights already during the application procedure for residence permits in the country of origin'.¹²³ About a month later, in the context of parliamentary debates on the Civic Integration Act, a similar motion was submitted by a group of parliamentarians (this time led by Ms. Sterk from the Christian Democrat Party) that again asked the government 'to develop concrete plans to have the integration of newcomers in the context of family formation or family reunification start already in the migrants' country of origin'.¹²⁴

This idea for civic integration programs starting in migrants' countries of origin, but also the more general political pressure for a reform of the civic integration structure more

¹²³ TK 2002-2003, 28600 VI, nr. 60

¹²⁴ TK 2002-2003, 27083, nr. 25

at large, were included in the coalition agreement of the second Balkenende government that was formed in May 2003 (with Christian Democrats, Liberals and Liberal-Democrats). This government succeeded the Balkenende I government that was formed after the Fortuyn revolt in Dutch politics and that had imploded already in late 2002. The Balkenende II coalition agreement included a paragraph that contained the core of the reform of the civic integration structure that would follow in this decade:

*'Who wants to settle permanently in our country must participate actively in society, acquire proficiency in the Dutch language, be aware of Dutch values and abide by its norms. Every newcomer who comes to the Netherlands on a voluntary basis and is part of the target population for the Civic Integration of Newcomers Act, should first acquire a basic level of Dutch language proficiency in the country of origin as a condition for admission. Once in the Netherlands, that person should further familiarize himself or herself with Dutch society.'*¹²⁵

These plans were further developed in a government letter on the contours of an 'Integration Policy New Style'¹²⁶ and in a memorandum on the 'Revision of the civic integration system'¹²⁷, both presented by the new minister of immigration and integration, Ms. Verdonk. The plans that were presented by Minister Verdonk included pre- and post-entry integration programs, including a pre- as well as a post-entry test. Already before being admitted to the Netherlands, the migrants should be able to prove 'basic language proficiency and elementary knowledge of Dutch society'.¹²⁸ Subsequently, the acquisition of 'a more advanced level of language proficiency and social knowledge and skills' would be a condition for the acquisition of a permanent residence permit.¹²⁹

The Civic Integration Abroad Act was passed by the Dutch Second House of Parliament in 2006, with an overwhelming 'yes' of 118 out of 150 votes. Only the Socialist Party (25 votes) and the Green Left (7 votes) voted 'no'. The Green Left had fundamental objections, whereas the Socialist Party felt that if immigrant integration was to start already abroad, this would also have to involve government investment in actual training programs in order to be effective tools for integration. This meant that also the Social Democrat Party voted in favour of the new law. Sarah Goodman quotes a Dutch civil servant who explained that everyone was nervous about how unusual the law was, but no one was going to risk voting no on it as they would be called a multiculturalist' (Goodman, 2011: 248).

There was a broad consensus in Dutch politics that cultural integration should be part of pre-entry integration measures, and henceforth that a test of basic knowledge of Dutch society should be part of the pre-entry test. The premise that acceptance of Dutch norms and values, such as concerning the relationship between the sexes and homosexuality, should be a condition for admission of newcomers seems broadly shared across the spectrum of political parties. This became very clear in parliamentary debates surrounding a DVD that was distributed in various countries for the preparations for the pre-entry tests. This DVD included pictures of kissing gays and topless women, which implies that the possession of this DVD is considered illegal in a number of (Islamic) countries. In response to plans of the minister to develop a special edition of the tape for these countries, the main political parties reacted with indignation, arguing that 'these

¹²⁵ TK 2002-2003, 28637, nr. 19: 14

¹²⁶ TK 2003-2004, 29203, nr.1

¹²⁷ TK, 2003-2004, 29543, nr. 2

¹²⁸ TK 2003-2004, 29203, nr.1: 15

¹²⁹ Ibid.

aspects are part of Dutch society' (Social Democrats), 'a liberal perspective on sexuality is part of the Netherlands' (Green Left), and that 'it should be made evident that these things are normal in the Netherlands and that one is not immediately a whore when you're topless on the beach and that homosexuals and heterosexuals enjoy equal rights in the Netherlands' (Christian Democrats) (Spijkerboer, 2007: 34-35).

In addition, the interviews reveal that politicians are also rather explicit in mentioning the limitation of immigration as one of the key objectives for the plans for an Integration Abroad Act. Policy documents as well as the interviews all reflect a problematization of family migration in particular. This explains why family migrants from specific (non-Western) countries are considered the main target population for the Civic Integration Abroad Act.

Furthermore, beyond concerns about furthering integration and limiting immigration, our analysis of political discourse shows connections with a number of topics. First, there is a strong link between the issue of reinforcing civic integration demands and the emancipation of immigrant women.¹³⁰ For instance, during parliamentary debates on the proposals for the pre-entry programmes, the minister stated that she had 'begun with the Integration Abroad Act precisely to reinforce the emancipation of women' (in: Spijkerboer, 2007: 36). When passed to the First Chamber of Parliament, the Minister again stated that 'the goal of the proposal is to avoid social, cultural and economic isolation of newcomers, in particular women'¹³¹ (see also, Spijkerboer, 2007: 36). The role of the Christian-Democrat parliamentarian responsible for this issue, Ms. Miriam Sterk, seems of particular relevance in this context. During parliamentary debates, she clearly claimed that civic integration programs were especially important for migrant women ('it's important that women know their rights before they come to the Netherlands, for instance in relation to honour-related killings, work or education'¹³²; see also, Spijkerboer, 2007: 34). This is also confirmed by the interviews with policy-makers from the Department of Justice. One respondent says: 'the protection of women was an important factor <in the development of the civic integration abroad act>, as it was considered undesirable that women in the cities were oppressed after having entered arranged marriages from their country of origin, often at a young age, being illiterate, having no education, etc.' This respondent adds that the only way to target this category without discrimination, is to impose a general law and a general obligation for civic integration abroad.

This issue linkage with women emancipation seems reinforced by a very specific image that was created of immigrant women (see also Kirk, 2010). A recent parliamentary document on family migration¹³³ even starts with a reference to an actual case of forced marriage (Fayza Oum'Hamed, also published in her book 'The Chosen', or 'De Uitverkorene'); 'the story of Fayza Oum'Hamed bears witness to the terrible circumstances that women can face as a consequence of forced marriage'. In the policy memorandum on the new pre-entry programs, the position of migrant women is described as follows:

'The position of women from these categories (Turks and Moroccans) seems to be especially weak. (...) they are clearly less educated (...) their level of labour market

¹³⁰ Interviews Ms. Vogelaar, Ms. Verdonk, Ms. Sterk.

¹³¹ EK 2004-2005, 29700, B: 1

¹³² Treaties of Second Chamber of Parliament, 60-3889

¹³³ TK 2009-2010, 32175, Nr. 1: 1

participation is very low, (...) they are mainly housewives, unemployed or disabled (...) they barely have any contact with natives and have relatively the most traditional ideas in relation to emancipation. The ongoing and radically increased immigration of family migrants has a limiting effect on their integration, emancipation and amelioration of their position in the Netherlands. Their (...) position is much worse than that of women from the second generation who have gone to school in the Netherlands. (...) In addition, the fact that many Turks and Moroccans of the second generation marry a relatively low-educated partner from the country of origin, with weak Dutch language skills, will not have a positive effect on the acquisition of a better position for the third generation'.¹³⁴

Interviews reveal that this issue connection has played a central role in establishing a broad political coalition in favour of the new civic integration plans of Minister Verdonk.¹³⁵ More specifically, it supported the obligatory nature of the civic integration programmes; 'the group in the worst position, that often finds difficulties in leaving their homes, will be helped by an obligation to participate'.¹³⁶ In other words, a civic integration obligation would be required in order to effectively reach migrant women. The increase in the age requirement is also meant to protect women in particular from forced marriages (interview with civil servant from Department of Justice).

III.2.2 Public discourse

The politicization of the migration-integration nexus, as discussed above, clearly shows how a broad political consensus was created in favour of the new pre- as well as post-entry integration measures. This is also reflected in public discourse and in particular media reporting that very much focused on how government was attempting to realize its challenging goals in terms of limiting immigration and furthering integration, rather than entertaining critical debates on these plans. However, in public debate, at least several actors can be mentioned who did raise their voice against (parts of) the new civic integration abroad policies in the context of the broader policy subsystem, also addressing what they saw as more fundamental objections to the new policy measures.

First of all, significant attention was attributed to the criticism by the Franssen Committee on the initial plans for the pre-entry tests.¹³⁷ This committee of experts from the educational field had been established by the government to determine the level of the pre-entry tests so as to avoid that the tests would become an impossible task for specific categories. The committee raised the fundamental matter that *if* the main objective of the pre-entry tests was to promote integration, *then* 'government should be willing to pull its wallet'.¹³⁸ This would imply that the government should play an active role in the provision of language courses and of course material. If the government would refrain from doing so, this would form a serious impediment to the possibilities of making the test mandatory as a condition for admission. This report from the Franssen committee recommended that, especially given the absence of government involvement

¹³⁴ TK 2003-2004, 29700, nr. 3: 5

¹³⁵ Interviews with Ms. Verdonk, Ms. Vogelaar, Ms. Sterk.

¹³⁶ Interview with expert from the Advisory Committee on Aliens Affairs: also, interview with Ms. Sterk.

¹³⁷ For instance; 'Integratie kost veel geld', NRC Handelsblad 3 March 2004; 'Coalitie snel met neerhalen van kritisch rapport', NRC Handelsblad 5 March 2004; 'Commissie twijfelt aan inburgering in herkomstland', Volkskrant, March 4 2004;

¹³⁸ 'Integratie kost veel geld', NRC Handelsblad 3 March 2004.

in the provision of courses, no higher level than A1 minus could be required (Committee Franssen, 2004: 8). This would also mean that the test (which did not yet include a written test) should be feasible for illiterates as well (Spijkerboer, 2007: 31). Also, it recommended not to include an additional test on knowledge of Dutch society, as such a test would be infeasible given the weak language comprehension of the migrants and given the fact that migrants would much more easily acquire a basic knowledge of Dutch society after their admission to Netherlands (Committee Franssen, 2004: 8).

This triggered a fierce response from various parliamentarians; for instance, Ms. Hirsi Ali, then a member of the Liberal Party, argued in defence of the new policy plans that one of the goals of the new pre-entry test was to prevent illiterates and low-educated people from coming to the Netherlands.¹³⁹ She claimed that the goal of the pre-entry tests was indeed to limit immigration rather than to promote integration. The media coverage about this debate at least reveals (rather than questions) that limiting (family) migration was indeed one of the objectives of the new policy proposals and that this goal seems to be broadly shared in Dutch politics.

Some public debate was also triggered by the government's decision in 2010 to raise the required level of language proficiency for passing the test from A1 minus to A1. With this decision to not only raise the required level to A1 but also include a written language test, the government chose to ignore two concrete recommendations that this would not be possible without investing in preparatory programs for these tests as well. First of all, the research institute Triarii (2009: 33-34) recommended that, based on the high pass rates of the current tests, government could raise the required level for a spoken pre-entry test to A1 without having to invest in more course material, course infrastructure, information facilities, etc. It argued however that it would not be feasible to raise the required level to A1 for a written pre-entry test without significant additional investments in material, courses and information with local, frequent and personal educational programmes (Ibid.: 26); doing so without these investments, would 'most probably lead to the exclusion of large groups of family migrants, such as illiterates (Ibid.).

The Advisory Committee on Aliens Affairs also advised against this increase of the test level to A1 (ACVZ, 2010). It too argued that there is too much uncertainty about potential exclusionary effects on specific groups or categories (Ibid.: 4-5), and hence raising the required level would risk violating art. 8 ECHR. Remarkable is that the ACVZ stated very explicitly that the most recent evaluation of the Civic Integration Abroad Act 'did not provide clarity about the question whether it is currently already so that for specific persons or groups it is permanently impossible to practice the right of family life as codified in art. 8 ECHR' (Ibid.: 5). Another argument that ACVZ added (also in comparison to the Triarii report) was that it was insufficiently clear whether raising the level for the pre-entry tests would effectively promote the integration of the participants; as such effects have been insufficiently identified, there would be insufficient argumentation for raising the testing level (Ibid.: 4, 8). In fact, the ACVZ made a more general critical comment concerning the new government plans to strengthen its policies toward immigrants, arguing that the proposed measures were often unclearly founded in terms of argumentation of effectiveness and efficiency (Ibid.: 7).

¹³⁹ NRC Handelsblad, March 4, 2004.

The government, however, concluded, based on the data elaborated in table 1, that a 74% pass rate would still mean that no large categories are a-priori excluded: research indicated that about 74% of the participants would also have passed the test if the required level had been A1 (Significant, 2010: 44). This would mean that an increase of the required level to A1 'would not lead to the a-priori exclusion of large groups of family migrants'.¹⁴⁰ Furthermore, it argued that 'when asking a higher level from the candidates, these will probably prepare better for the exams, having a positive effect on the expected pass rates'.¹⁴¹ Note that the data collected by Significant (2009) do not account for the potential effects of the inclusion of a reading test. Concerning the mentioned objections to a reading test, the government indicated that it held on firmly to the principle of individual responsibility of the migrant for the preparations of the pre-entry exams, as a test of their motivation, determination and self-reliance in preparing for their migration to the Netherlands (Ibid.: 8). Only very marginally the government conceded to investing more in self-study facilities (Ibid.: 9), though not in the much more active ways of government involvement in the preparation of the tests as recommended by Triarii. In addition, in the preparation of the new course materials, the government would explicitly take notice of those who are illiterate.

III.2.3 European 'constraints' to the Dutch approach

The Dutch case has been closely monitored internationally for its relation to international and European law. In Dutch political and public discourse, this relation also played a central role. At times, the Dutch government has tried to push the boundaries of the international and European legal setting in which it operates (which has also been framed openly as such in national political and public debates).. Also, this international setting was often framed as an obstacle to the Dutch discretion in limiting immigration. At the same time, the Dutch have been very active as well in voicing their preferences on the European level. This way, Dutch government has been trying to expand the boundaries within which it can toughen its approach to immigrant integration and immigration.

Several key issues have played a central role in this intractable relationship between the Dutch and the EU in particular. First of all, the pre-entry tests have been closely watched in terms of their potential discriminatory effects on specific groups or categories. This involves in particular the relation between the selection of target groups for pre-entry tests and art. 8 ECHR on the right of family life. It is generally accepted, and in the Netherlands it has also been acknowledged by various institutions, such as the Advisory Committee on Aliens Affairs (ACVZ, 2004), that imposing pre-entry conditions is in broad terms in agreement with art. 8 ECHR. Member-states have a broad margin of appreciation in striking a balance (a 'fair balance') between the interests of the applicant and the interests of the State in operating a restrictive immigration policy (Lodder, 2009: 38; De Vries, 2006: 8). However, the Dutch case has been closely watched precisely in how this balance is struck.

Perhaps one of the most distinct instances where Dutch policies were challenged not by EU legal agencies but by a European NGO, was in a report from Human Rights Watch

¹⁴⁰ Staatsblad, 2010, 679: 3-4

¹⁴¹ Staatsblad 2010, 679: 6

(2008) that called for the abolition of the new Civic Integration Abroad Act. One argument was that it basically involved discrimination between Western and Non-Western migrants. In addition, HRW argued (2008: 33) that the preparation that is required for passing the pre-entry test may in some cases result in such a long period of separation of partners that a violation of art. 8 ECHR would take place. However, not long before publication of this report, a Dutch court ruled that Dutch policy was not out of bounds in this respect (Strik, 2010: 17), as the protection of economic relations with specific countries was a justified reason for exempting specific categories from the general obligation of civic integration abroad.¹⁴²

In addition, experts like Groenendijk (2005) have argued that the lack of government involvement in preparatory courses for passing the pre-entry tests can also endanger this balance. If the preparation for the pre-entry tests would be too hard to organize for some, the test could become a disproportionate obstacle for the immigration of specific categories.

An important argument of Dutch government in this respect, is that the required level for passing the pre-entry tests is set so low that everybody who is seriously motivated to prepare the test and to take it, will eventually be able to pass (see also, Lodder, 2009: 39). If the test would be too hard for large categories of migrants, it would become an exclusion mechanism rather than a selection mechanism, and thereby potentially in conflict with international legal obligations (De Vries, 2006: 4). In addition, the government has made exemptions for those situations where it may be unreasonable to expect migrants to take part in the pre-entry tests (Lodder, 2009: 39). It is unclear what the consequences of the recent upgrading of the required level of language proficiency for passing the pre-entry tests (to A1) will be in this respect.

Another central issue is the relation between the pre-entry test and art. 14 of ECHR, which bans all forms of racial discrimination and art. 7 of the European Family Reunification Directive. If the pre-entry exams would form a much more severe obstacle for specific groups than for others, this could be a form of discrimination. A central concern here is the proportionality of the imposed measure in relation to the goal of the measure (Lodder, 2009: 40); in casu, this means that the severity of the measure in terms of for instance costs, time, consequences of failure) should be proportional with the aim of improving the integration of the selected categories. The ECHR seems to provide countries with a large margin of appreciation when it comes to differentiating between migrants with different residence statuses. Dutch government legitimates its selection of categories that are obliged to take part in the pre-entry tests without direct reference to specific nationalities (see above); at the same time, it explicitly singles out a number of western countries, based on the argument that these are social-economically, socially and politically similar to the Netherlands (see above).

In this respect it is again very important for the legal acceptability that the pre-entry tests do not disproportionately affect a specific category of migrants, or migrants from a specific nationality. In this respect, Human Rights Watch (2008: 29-30) has argued that the Dutch system of pre-entry tests discriminates against Turkish and Moroccan migrants, as they seem to have smaller passing-rates and since these categories have showed the largest decrease in number of applications for temporary residence permits (see above). In addition, Dutch government has slightly stepped up its efforts in helping

¹⁴² *The Hague Court*, 23 April 2008, AWB 07/35128, JV 2008/282

migrants to prepare for their integration tests, for instance by ameliorating the information provision about potential language courses and by including a language training module in the training packages (which was primarily meant for the social knowledge training).¹⁴³

So far it has remained unclear if the pre-entry tests have an impact on the migrants' integration process after they have settled in the Netherlands. In principle, the imposed measures could be ruled as disproportionate (and in violation with art 7 of the Family Reunification Directive) if no significant positive effect is found on the integration of those who passed the test. However, thus far there seems to be too little data (due to the recent launch of the pre-entry tests) to determine such effects.

There have been only very few instances where EU court rulings actually led to the cancellation of specific policy measures. One of the most significant cases has been the Chakroun case where the Dutch government was forced to abandon its 120% of minimum wage level condition for admission. Another regulation that has significantly curtailed the government scope of action in particular in imposing a civic integration requirement to Turkish migrants in the Netherlands is the Associate Membership Treaty between the EU and Turkey and the so-called Standstill Agreement for Turkish accession to the EU. These regulations imply that government cannot impose new and stricter measures on the integration of Turkish 'oldcomers' in Dutch society (the regulation does not apply to newcomers).

The Dutch government has also become increasingly pro-active in voicing its preferences at the EU level. This applies in particular to the debates in the European Commission on changes in the European Family Reunification Directive. Even before new proposals are presented, the Dutch governments 'tries to encourage Europe to take measures in the harmonisation of immigration and integration criteria (..) so that already at an early stage, efforts can be made to create support for Dutch measures in the next stage of harmonisation of family migration'.¹⁴⁴

An important example of this pro-active attitude is the so-called The Hague program of the European Council on 'Freedom, Liberty and Law in the EU', which was for a large part based on a Dutch initiative. During the Dutch presidency of the European Commission, the Dutch Minister Ms. Verdonk presided a ministerial conference in November 2004, which focused on civic integration programmes. This set the contours for more international co-ordination of integration policies, which put much stress on the preservation of national competencies. This case clearly reveals how the Dutch government has actively tried to take the role of a guiding country when it comes to civic integration.¹⁴⁵ This The Hague Programme laid the foundations for the Common Basic Principles for Integration which provided a basic set of principles to guide the development of immigrant integration policies in various European countries.¹⁴⁶

¹⁴³ Tk 2009-2010, 32175, nr. 1: 22

¹⁴⁴ TK 2009-2010, 32175, nr.1: 12

¹⁴⁵ 'Dwang is Nederlands stokpaardje', in NRC Handelsblad, November 11 2004.

¹⁴⁶ Interview with policymaker from Justice Department.

III.2.4 International policy learning

In the Netherlands, few comparisons have been made between the Dutch case and the situation in other countries. The obvious reason for this will be that the Netherlands was the first country in Europe to have adopted pre-entry programs. Furthermore, the strong embedding in Dutch political discourse also seems to have voided the demand for international policy learning.

More recently, specific comparisons do seem to have played a relatively minor role. In particular, in the context of the debate on raising the required level of language proficiency for the pre-entry tests from A1-minus to A1, reference was made to the German case. In Germany, the required language level had already been set at A1. However, this comparison does not seem to hold entirely; Germany has a well-established system of language institutes across the globe (Goethe Institutes) that play a central role in the provision of language courses, whereas the Netherlands does not have a similar structure. Furthermore, Germany requires migrants to obtain a language certificate from these institutes that has to be submitted to the embassy in order to become eligible for a residence permit; whereas in the Netherlands the embassies organize the pre-entry tests themselves.

III.3 **United Kingdom**

III.3.1 Political and public discourse

In the UK pre-entry tests for family reunification have stemmed from political intervention rather than as the result of a public debate. What public debate there has been ensued initially from the UK Border Agency consultation and later the announcement of its imminent introduction. One should remember that the consultation was not supportive of this measure, rather pointing out that a more effective means of improving English language knowledge would be for spouses to be allowed to enter to learn English in situ. They would anyway have to demonstrate linguistic competence at the end of two years when they can apply for settlement.

However, as some academics have commented (Blackledge 2009), debates about language use and choice have become more common and need to be understood as debates about immigration and the potential for assimilation. In this vein, particular languages have ‘become gatekeeping devices to determine who is permitted to become a member of the community of citizens’ (p.9). At the beginning of the decade, the lack of proficiency in English by spouses was presumed, especially by politicians, to be a threat to social cohesion. Lord Rooker, the Home Office Minister, suggested that language testing for citizenship was necessary on the grounds that some minority women are not encouraged or persuaded to learn English by the men in their family (cited in Blackledge 2009: 1).

David Blunkett, (2002: 77) the Home Secretary from 2001 to 2004, stated that “speaking English... helps overcome the schizophrenia which bedevils generational relationships”.¹⁴⁷ The Nationality, Immigration and Asylum Act (2002) took up this

¹⁴⁷ Blunkett was widely attacked for this comment

.<http://www.guardian.co.uk/politics/2002/sep/16/immigrationpolicy.race>

proposal and included provisions to extend the language requirement to those applying for naturalisation as the spouse of a British citizen or a British overseas territories citizen (Home Office 2002). He exhorted Asian parents not to speak other languages than English in the home (Brown 2001 cited in Wilson 2007:33). Bernard Crick (The Guardian April 12 2004), the advisor to the Home Secretary on citizenship, referred to the necessity of compulsory English tests directed at isolated women, supposedly prevented by patriarchal community structures from participating in the public sphere. This was the image of the subordinate and passive women generated by the disturbances in three Northern cities in the summer of 2001 (Kofman 2005).

Blunkett had also problematised marriages of settled migrant communities with partners from abroad in the White Paper *Secure Borders Safe Haven* (Home Office 2001). Yet it accepted arranged marriages within the UK as genuine arrange marriages (Dustin and Phillips 2004; Gedalof 2007). Ann Cryer, former Labour MP for Keighly in West Yorkshire (a constituency with a large Muslim Asian population), spearheaded the fight against forced marriages which has led to a change in the law in the rules for bringing spouses to the UK. In 1999 she launched a debate in the House of Commons in which she appealed to the Muslim community 'to encourage their people to put their daughters' happiness, welfare and human rights first' (Wilson 2007: 31). And she has repeatedly highlighted the problem of domestic violence and the so-called 'honour' killings of young Asian women in Britain by their families. Imposing an English language requirement was seen as a means of overcoming 'ghettoisation and under-achievement'. She had already generated controversy in raising this issue after the Bradford riots in the summer of 2001 when she made a direct connection between arranged marriages, difficulties in learning English and the success of different ethnic communities in the UK.¹⁴⁸ These disturbances marked a turning point when the community cohesion agenda began to be developed in response to what was seen as communities living parallel lives in the Cattle Report (see WP2). She said: 'A great deal of the poverty in the Asian community in Bradford and Keighley is down to the fact that many of our Asian community do not speak English or very little. What I am saying is that if Asian parents who arrange marriages for their kids were to look around the Asian Muslim community here then they would do better for their children, their family and their community.' And well ahead of her parliamentary proposals in 2007, she had suggested in 2001 that if this population did not voluntarily learn English, then it might have to be accomplished through immigration regulations.

Cryer was also at the forefront of efforts to ban forced marriages and honour killings. The Forced Marriage (Civil Protection) Act, which she supported, came into effect in November 2008. It was deemed to help give women the right to apply for an injunction in court and prevent a ceremony going ahead (Beckford 2008). Her campaigning also led to the Government raising the minimum age for a marriage visa from 18 to 21. The Act, which received Royal Assent on 26 July 2007, was introduced originally in the House of Lords by Lord Lester, a human rights lawyer, as a private member's Bill, but was adopted by the government and passed by both Houses of Parliament without dissent. The change was announced by the then Home Secretary Jacqui Smith on 23 July 2008, and implemented on 27 November 2008. In announcing it, she said that forced marriages had no place in our society. However, the House of Common Home Affairs

¹⁴⁸ ['MP calls for English tests for immigrants'](#). [BBC News Online](#). 13 July 2001

Committee (2008) suggested that the government needed to do more research before embarking on such a change (see Justice Lord Sedley's judgement).

In effect, as a result of the change of government we can divide the debates into two periods of public and political discussion. The first period under the former Labour government (2007-2010) covers the initial proposals and consultation at the end of 2007 to the beginning of 2008, which attracted a diverse range of organizations (ESOL providers, language research centres, women's groups, migrant organisations, civil and human rights, local authorities, law centres, law firms, racial equality councils). Overall 68 of the 101 respondents were against the introduction of pre-entry tests, believing that the acquisition of a language was much more effective in the country itself.

The second follows (June 2010 onwards) the announcement by the Conservative-led coalition of its intention to bring the tests forward. It is at this point that the debate comes to the fore and results in the involvement of campaigning organisations, such as None is Illegal, women's groups which had not previously responded (Rights of Women, Imkaan), media articles, legal opinions and a parliamentary debate on 25 October 2010. It should be noted that in opposition the Conservatives strongly supported measures to combat and minimise forced marriages (Damian Green 2007)¹⁴⁹, Shortly afterwards David Cameron stated that they intended 'to clamp down on the 'frankly unacceptable' practice of forced marriages'.¹⁵⁰

On 1 October 2010, the Immigration Law Practitioners Association and JCWI wrote a joint letter asking for explanations about the implementation of the pre-entry tests and pointing out the potentially discriminatory nature and the quality of the tests by untested providers.¹⁵¹ They were particularly concerned about the fate of those who failed the test and their right to marry and reside in the UK. Subsequently, the two organisations submitted evidence where they argued that the rule changes should be withdrawn, that they were discriminatory, especially towards women, those from rural areas, those without access to language classes and those from South Asia. It was felt that the tests were unnecessary and an ineffective tool for integration. The critique cited a radio talk by Andrew Blackledge, Professor of Bilingualism at Birmingham University, that there is little evidence that testing English language learners is in itself an effective way to develop linguistic skills and that The National Association for Teaching English and other Community Languages to Adults (Natecla) argues that the UK is the best place for people to learn the English language.

Others such as Rights for Women and Imkaan, who had not previously responded to the earlier consultations, wrote on 23 November 2010 that:

'We believe that the best place to learn English is in the UK. The introduction of this language requirement will discriminate against:

- *nationals from countries who do not speak English as a first language, for example, those from south Asia;*
- *poor people who may be unable to access the required education;*
- *those who live in remote and / or rural areas who may be unable to access the required education;*

¹⁴⁹ Damian Green, 'We can rid Britain of forced marriages', *The Observer*, 12 August 2007

¹⁵⁰ Cited in House of Commons Library Forced Marriages SN/HA/1003, 27 November 2009: 15

¹⁵¹ ILPA/JCWI Joint letter to Damian Green Re: New English language requirement for migrant spouses / partners / fiancé(e)s, 1 October 2010.
<http://www.jcwi.org.uk/Resources/JCWI/PDF%20Documents/JCWIILPALETTER.pdf>

- *those from less developed counties or areas in conflict who may be unable to access the required education;*
- *those with learning difficulties, disabilities or mental health problems as they may face difficulties accessing any education that is available; and*
- *women because of the barriers that they face accessing education’.*¹⁵²

So what began as a response targeted towards a specific group of younger female migrants developed into a generalized policy tackling supposedly low levels of language proficiency and participation in society. However there has been no attempt to undertake studies to confirm what are the general characteristics of spouses nor their language proficiency (Blackledge 2009). The extreme case is therefore extrapolated and used as justification to develop a blanket policy for all migrants, as we have seen for the use of policies of age of marriage and the pre-entry tests based on the need to deal with forced marriage.

III.3.2 The influence of court rulings

There has been a successful legal challenge to the raising of the age of marriage and pre-entry tests are now also being brought to court. It should be noted that both of these measures originally stemmed from arguments about helping vulnerable women, especially those forced into marriage. The challenge to raising the age of marriage was successfully won at an appeal to an earlier unsuccessful challenge. [DQ \(Chile\) and SB & Anr v SSHD \[2010\] EWCA Civ 1482](#) Two couples -Diego Andres Aguilar Quila and Amber Aguilar and Shakira Bibi and Suyhal Mohammed brought a case against the Secretary of State for the Home Department, Defendant to appeal against an earlier judgment by the Court of Appeal Burnett J in [Quila v Secretary of State for the Home Department \[2009\] EWHC 3189](#). Submissions were made by the AIRE Centre (Advice on Individual Rights in Europe), Southall Black Sisters together with the Henna Foundation.

The case arose out of rule 277 of the Immigration Rules which was introduced on 27 November 2008 which prevented the granting of entry clearance / leave in circumstances where either the applicant or the sponsor would be aged under 21 years. It was said that the rule affected some 5000 or so young couples per year 96% of whom were believed to be in genuine marriages. The rationale for the introduction of the scheme was to prevent forced marriages from taking place. In both cases it was accepted by all parties concerned that there was no question of forced marriage, yet both parties were refused on the basis of rule 277 and were unable to bring themselves within any of the specified exceptions. The appellant JCWI requested that the rule was waived, however the Secretary of State refused to do so on the grounds that this would damage the rigidity of the scheme which was said to be a deliberate feature. The Court allowed this appeal on the grounds that rule 277 as it applied to British citizens was a disproportionate interference with fundamental common law and human rights. It did not strike the rule down but left it to the Secretary of State to either devise it in a more limited form or drop it altogether.

The Secretary of State is appealing but whatever the outcome, it is unlikely that a same kind of blanket coverage of all marriages between 18 and 21 years will be possible (Webber 2010). In giving the lead judgement, Lord Justice Sedley held that:'. In my

¹⁵² Letter to the Immigration Minister

judgment rule 277 represents a direct interference with what the common law and Convention both value as a fundamental right. In the eyes of the common law it is not simply the right to marry and not simply the right to respect for family life but their combined effect which constitutes the material right".¹⁵³ Whilst accepting that discouraging forced marriage was a legitimate objective, Sedley stated that the blanket rule subjecting all young couples to a presumption that their marriage was a forced one exceeded what was necessary and proportionate. Nicola Smith for UK Border Agency (UK BA) had stated that 'We concluded that as the policy would affect less than 3% of those granted both leave to enter and leave to remain in the UK as a spouse in 2007, and as the evidence demonstrated that the rates of forced marriage were highest among those aged 17-20 in 2005-2008, the policy would represent a proportionate response to the issue of forced marriage, and the importance of protecting the rights and freedoms of vulnerable persons who might be forced into marriage would outweigh the significance of any adverse impact on particular communities or age groups, in accordance with ECHR Article 8(2), and that the policy would not therefore contravene ECHR Article 14.' However Sedley considered that the level of proportionality is both inadequate and muddled. Proportionality is not gauged by headcount. The critical question was *why* the protection of the vulnerable justified a blanket rule which invaded the fundamental rights of a far greater number of innocent people. This was apparently not addressed.

However the marriage visa age ruling was not struck down and the Supreme Court has given the Secretary of State permission to appeal against the Court of Appeal's judgement. Furthermore, requests for reconsideration of cases or new applications based on the Court of Appeal's judgement will not be dealt with until the issue has been finally resolved. The case is listed for hearing 8-9 June 2011 (JCWI 29 March 2011).

In relation to pre-entry language tests, Liberty, a civil and human rights organization, requested advice from Matrix (Singh and McColgan 21 September 2010), a legal chamber, on the compatibility of the pre-entry test with the European Convention on Human Rights. Matrix raised a number of concerns which they argued might breach Articles 8 and 14 of the European Convention on Human Rights, and may also be capable of challenge of the positive obligations imposed on public bodies under the Race Relations Act 1976. Some of the key issues were that pre-entry tests would be used more for reduction in numbers of immigrants rather than for purposes of integration (there is increasing evidence of this), the scarcity of accessible and relevant language classes e.g. English language classes may be available but at a much higher level, and the absence of provision in rural areas. The government response to the previous consultation had acknowledged an adequate lead in time before introducing such tests. However the reduction in lead time from 2 years, previously announced as being in summer 2011, to 15 months might not give applicants sufficient time to prepare and the disparate impact, particularly in relation to women. A number of their points related to the duty to ensure that the impact was not disproportionate in terms of ethnicity, nationality or national origin. Under the 1976 Race Relations Act, there is a positive duty to minimise any disproportionate effect.. Article 8 is concerned with proportionality and not offering exceptionality in a few cases of hardship as might occur where English language is particularly scarce or expensive. They argued that a blanket pre-entry requirement seems to threaten a disproportionate interference with the UK's

¹⁵³ *Quila & Ors v Secretary of State for the Home Department & Ors* [2010] EWCA Civ 1482

non resident article 8 rights and is hard to see that this measure is proportionate when integration objectives could be reached effectively through tests applied post entry.

The UK Border Agency is aware that imposing higher language requirements might lead to a human rights challenge. The intent of the Conservatives prior to the elections was to apply a much higher level (B1), or the ESOL level 3 required for settlement, but this would have been open to the charge of discrimination. However, at the lower level of A1, the argument in the Equality Impact Assessment is that any differential impact or indirect discrimination on equality and human rights grounds is justified on the grounds that English language skills are necessary to assist migrants' integration into British life.

Legal challenges have just begun and are only at a permission stage where one has to show an arguable case. Mr Justice Beatson sitting at the Birmingham Administrative Court on 1st March 2011 granted permission to apply for Judicial Review to three Claimants (nationals of Pakistan, Yemen and India) who had each sought to have their spouses join them in this country. They do not speak, read or write English. The claimants had contended that a new amendment to the Immigration Rules which was brought in very recently was discriminatory as the change of rules applied only to certain countries and not for example to Canada or Australia or the European Union. The Claimants had also asserted that the Government's Rule meant that their Article 8 family life and other human rights were breached contrary to the European Convention of Human Rights. In a landmark judgement, Mr Justice Beatson has granted permission to apply for Judicial Review to each of the Claimants after a contested hearing.

The Government had contended that the English language requirement was being applied for good reasons stating that 'The new rules will help promote the economic well-being of the UK, for example by encouraging integration and protecting public services. It will also assist in removing cultural barriers, broaden opportunities for migrants and help to ensure that they are equipped to play a full part in British life' The statistics presented to the Court showed that this would affect many thousands of potential immigrants to the United Kingdom. Many believe that this was an attempt to reduce the numbers seeking entry from outside the EU and from outside of the USA, Canada and Australia. If that was the Government's attempts then it leaves its policy in disarray and will mean yet another question mark over the Government's commitment to seeing a reduction in the numbers of immigrants that will be granted entry to the United Kingdom. The Court has listed the cases for a substantive Judicial Review hearing on 18-19 July 2011.

III.3.3 The influence of the EU and other European countries

The UK has not signed up to the Family Reunification Directive but the implementation of pre-entry tests in other states (Denmark, France, Germany and the Netherlands) has been cited as legitimisation for what has been proposed (Multi-Annual Programme 2007; *Earning the Right to Stay*, 2009). UK Border Agency (2007) *Marriage Visas: the way forward* notes the measures in key European states but does not discuss any of the critiques levelled against these measures. This does not mean they are unaware of the critiques in developing the pre-entry tests.

III.4 Austria

In general, public and political debates on the introduction of pre-entry language tests were not very extensive in Austria. This is because the requirement to learn German before entry was just one amendment in a far more comprehensive revision of the aliens legislation. Changes to the asylum law and the abolition of the quota-based labour immigration system received much more attention in public and political debates than the duty to learn German before entry. With regard to all these changes, the guiding principle in Austrian public and political discourse was that 'responsible immigration policies have to be guided by Austrian interests'.¹⁵⁴ This principle was reiterated by government as well as business representatives.¹⁵⁵ 'Austrian interests' are mainly associated with the labour market situation, but also with issues of national security, such as maintaining the national identity and preventing 'parallel societies'.

The dominant actor in these debates was the Ministry of Interior (MoI) under the Minister Maria Fekter (ÖVP), who is the main responsible for integration and immigration affairs in Austria. Its coalition partner, the Social Democrats (SPÖ), although the strongest party was not dominant in the discussions, but rather occupied a contradictory role. For example, the highest SPÖ officials did not proactively promote the establishment of an independent integration department – a claim they had followed over the past years as opposition party – in order not to disturb the relations to the coalition partner.¹⁵⁶ But also other actors increasingly publicly voiced their positions in the course of these debates, in particular business and employees' representatives, the Ministry of Economics and the Ministry of Social Affairs, who were also involved in drafting the points-based immigration system (RWR Card). Experts and NGOs provided statements and inputs assessing the foreseen legal amendments, however, they were not given a major role in the discussions on the law amendment. Anton Pelinka, a policy expert, criticized that the government would not allow for a real discourse on the foreseen changes that could involve all kinds of societal actors.¹⁵⁷ In this regard, the government was criticized by opposition parties and civil society actors for not explaining transparently the far-reaching consequences of some seemingly minor changes to the law text. Similarly, also the speed with which the aliens legislation had been regularly amended over the past years was a major point of critique. In this context, the president of the Caritas Austria Franz Küberl highlighted that immigration policy making has developed its own dynamics and is based on populist considerations, yet at the same time detached from real concerns of the population.¹⁵⁸

In the course of the debates the separation between skilled and unskilled immigrants was reinforced, which corresponds to the concepts of 'wanted' and 'unwanted immigration' (*erwünschte vs. unerwünschte Zuwanderung*). To skilled migrants, a new paradigm was applied: Austria wants to choose from the 'best ones', a view that was supported by the MoI, but also by the opposition party BZÖ (*Bündnis Zukunft Österreich*) for example.¹⁵⁹ On the other hand, family reunification of persons already residing in Austria was seen as most undesirable for both the economy and integration outcomes.

¹⁵⁴ Fekter in *Der Standard*, 10.12.2010

¹⁵⁵ See for example representative of the Chamber of Commerce in *Kronenzeitung*, 12.11.2010

¹⁵⁶ See *Der Standard*, 28.08.2010.

¹⁵⁷ Pelinka in *Der Standard*, 22.2.2011

¹⁵⁸ Küberl in *Der Standard*, 9.2.2011

¹⁵⁹ *Der Standard*, 14.10.2010, *Kronenzeitung* 26.07.2010

At the same time, the instruments to regulate family migration are limited due to human rights regulations.¹⁶⁰ The MoI took the view that low German language skills and a low qualification profile of immigrants together with high domestic unemployment rates aggravate integration into the labour market and society. A lack of integration would constitute a 'burden' for the majority society and reinforce exclusionary identities.¹⁶¹ The underlying understanding of integration, which is also reflected in the official documents like the NAPI (see above), puts the main responsibility for integration on the immigrants, and their socio-demographic characteristics are regarded as determinants of integration outcomes. Family migrants, associated with unskilled immigrants from rural areas and/or Muslim countries, are thus considered as most problematic immigrant group.¹⁶²

Consequently, the obligation to pass a German language exam before immigration was presented by the government as a way to facilitate and accelerate integration into the society of residence. The obligation to learn German before immigration was legitimized by government representatives by saying that German skills are a necessary precondition to participate in the labour market and in social life.¹⁶³ This argument is specifically put forward with regard to female family migrants, coming from rural regions (in Muslim countries). Especially women ('the woman from the Anatolian mountain village', as Maria Fekter put it¹⁶⁴) would benefit of this 'emancipatory' approach, as it allows them to access education for the first time in their lives. Inspired by the obligation to learn German before immigration, women would come to know 'what human rights and human dignity mean after all', the Minister of Interior said in an interview.¹⁶⁵ This way, 'gendered ideas of 'the Other' coincided with ethnicity and class, and so certain immigrant groups were constructed as more problematic in regard to their integration capacities than others. In turn, the 'liberal' and 'open' Austrian society has to be protected from certain patriarchal and traditional gender roles and traditions.¹⁶⁶ The discourse of the right-wing Austrian Freedom Party (FPÖ), which has been more and more adopted by the major political parties over the past years, fuelled such fears by saying that immigrants with a different culture and low education are 'the unemployed of the future'.¹⁶⁷ The FPÖ thus suggested to withdraw the residence permits of all those who are 'not willing to integrate',¹⁶⁸ without exactly defining whom this might include. By contrast, the Greens Party rejected this assimilationist approach and recommended to introduce support and orientation programmes for immigrants before coming to Austria and to offer voluntary support measures after arrival.¹⁶⁹

The main critique on the pre-entry language requirement can be aligned along two axes, which were voiced from positions of very different political influence: 1) the adverse effect of the requirement on the economy, and 2) on the human right to family life. Regarding the first, business and employers representatives strongly lobbied for

¹⁶⁰ *Der Standard*, 15.11.2010; Mitterlehner in *Der Standard*, 28.07.2010

¹⁶¹ Fekter, *Der Standard*, 11. 08. 2010

¹⁶² Mayer, Stefanie/Spång, Mikael (2009), p.59

¹⁶³ Darabos, Fekter in *Der Standard*, 23.3.2011

¹⁶⁴ Felter in *Der Standard*, 06.12.2010

¹⁶⁵ Fekter in *Der Standard*, 11.08.2010

¹⁶⁶ Fekter in *Der Standard*, 6. 12.2010

¹⁶⁷ *Kronenzeitung*, 28.07.2010

¹⁶⁸ Vilimsky in *Der Standard*, 06.12.2009

¹⁶⁹ Alev Korun in *Der Standard*, 28.07.2010

exempting highly-skilled persons and their family members from the obligation to learn German before immigration, as it represents a considerable immigration barrier. Consequently, they feared, highly skilled persons would rather migrate to other countries than to Austria. The president of the Federation of Austrian Industries stated that 'restrictions for family reunification for family members of key workers are not indeed helpful for the economy', and such 'barriers' would hopefully be eradicated with the introduction of the RWR – Card.¹⁷⁰ Given a strong economic lobby, in the law amendment family members of very high-skilled migrants (but not of skilled migrants) were exempted from the pre-entry language tests.

Hence, the argument that German skills are a necessary precondition to participate in economic and social life in Austria was not applied consistently. In contrast to family migration, language was not considered a necessary integration condition for labour migrants who are highly skilled or cover demanded professions. Moreover, the focus on language disregards the fact, that for jobs in very high skilled or very low skilled segments of the labour market, German skills are not the main criteria for getting a job or not. Integration of highly-skilled persons was per se perceived as unproblematic, because by definition they have to have a job at the time of arrival (or find one in a few months),¹⁷¹ and are thus considered to fulfill another major integration requirement: economic self-sufficiency. Moreover, highly skilled migrants were considered to come from countries with a similar educational and cultural system and thus adapt more smoothly into Austrian society.¹⁷² Thus, skilled migrants were exempted from the pre-entry language tests. Although the changes to the labour immigration system were generally appreciated, several experts and NGOs criticized, that the system introduces different integration requirements for different groups of persons. Furthermore, experts and NGOs criticized this focus on language as sole precondition for integration, while other integration-relevant areas – also defined in the NAPI – and scientifically acknowledged integration indicators such as residence security or anti-discrimination policies were not addressed.¹⁷³

Secondly, experts (e.g. linguists, legal experts, migration experts) and NGOs voiced more general and very substantive concerns in regard to the pre-entry language obligation. The requirement was criticized for being discriminatory with regard to nationality (EU vs. non-EU citizens) and social background of immigrants and ultimately, for violating the right to family life as established in the ECHR. Due to a lack of infrastructure in the countries of origin, of financial support for the courses, and politically unstable conditions, the pre-entry measure would prevent family reunification especially of those persons who come from peripheral regions and who are socially and economically disadvantaged.¹⁷⁴ By contrast, according to experts and civil society stakeholders, the requirement to learn German before immigration restricts the right to family reunion

¹⁷⁰ Veit Sorger in *Kronenzeitung*, 20.11.2010

¹⁷¹ Family migrants are excluded from access to the labour market in the first year of residence.

¹⁷² See Ministry of Interior (2010)

¹⁷³ See Perchinig in *Der Standard*, 14.10.2010; Franz Küberl in *Der Standard*, 15 October 2010; Willi Resitarits, *Der Standard*, 28 August 2010; Statements to the draft amendment to the alien law by Caritas and Professor Krumm, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (31.3.2011)

¹⁷⁴ Statements to the draft amendment to the alien law by Caritas and Professor Krumm, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (31.3.2011); Caritas and Diakonie in *Der Standard*, 13.12.2010

and violate the human right to family life.¹⁷⁵ The anticipated effects on the integration of those already living in Austria were assessed very negative, as many will be deprived of an intact and functioning family life.¹⁷⁶ In the parliamentary debates, this aspect did not surface prominently, as other issues, such as conditions for the detention of families with children, were discussed more intensely.

As a summary, in the course of the debates, the primary principle of Austrian integration policies since the 1990s – ‘integration before new immigration’ – was challenged with regard to labour migration of highly skilled persons, but reinforced in regard to family migration.

III.4.1 The influence of the EU and other European countries

In relation to the foreseen introduction of pre-entry language tests, the interviewed stakeholders (representatives of academia, Ministries and other governmental bodies, civil society, and business representatives) generally identified a close link of Austrian policies to other European states. According to a representative of the Ministry of the Interior for example, Austria follows the successful models of Germany, the Netherlands, France, or Denmark in this regard.¹⁷⁷

In relation to EU framework directives and ECHR court rulings, Caritas, one of the two main faith-based civil society organizations in Austria and a very engaged and acknowledged actor in public debates on poverty and social exclusion, in its statement concerning the amendment to the alien legislation regretted that the Austrian government would not regard these as chance to bring about improvements, but only to transpose EU law to the most minimum extent possible.¹⁷⁸ In particular, experts and NGOs expressed their concerns that the pre-entry tests violate the right to family life as laid down in article 8 of the European Convention of Human Rights and confirmed by rulings of the European Court of Human Rights.¹⁷⁹ These objections however were not taken up by the government.

The debates on the so-called Red-White-Red Card were clearly connected to the Blue Card at EU-level. The 2011 amendment to the alien legislation also introduces the Blue Card EU according to the obligation derived from the Council Directive 2009/50/EC that defines common standards for entry and residence for highly qualified workers from third countries who want to work in a EU country.¹⁸⁰ Thus, instead of integrating the Blue Card into the newly introduced criteria-based immigration system, it was introduced as an additional work permit regulated by different conditions. The Minister

¹⁷⁵ See *Sen vs. the Netherlands*, ECHR Judgement No. 31465/96 of December 21st, 2001.

¹⁷⁶ Statements to the draft amendment to the alien law by Caritas and Professor Krumm, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (31.3.2011); Spokesperson of the association ‚Marriage without Borders‘ in *Der Standard*, 2.2.2011.

¹⁷⁷ Interview Experts K3, 11; Q3, 11f

¹⁷⁸ Statement to the draft amendment of the alien law by Caritas, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (31.3.2011)

¹⁷⁹ *Sen vs. the Netherlands*, ECHR Judgement No. 31465/96 of December 21st, 2001.

¹⁸⁰ See also Explanation report to the draft law amendment of Settlement and Residence Act, available at: http://www.parlament.gv.at/PAKT/VHG/XXIV/ME/ME_00251/index.shtml (31.3.2011)

of Interior argued though that the RWR – Card will be far more attractive than the Blue Card and so reduce the importance of the EU Blue Card.¹⁸¹

III.5 Comparison

These country case studies of the social and political background of pre-entry policies reveal that there are many similarities between Germany and the Netherlands in particular. In spite of minor differences between the two countries, political and public discourse seem to have been remarkably similar, the legal cases have in both countries been very similar, in the European context the two countries have operated almost shoulder-to-shoulder and Germany also very often refers to the Dutch case as a frame of reference for its own policies. The UK case seems to have chosen a somewhat different path of development, in part due to the fact that it is not a signatory to the Family Reunification Directive and has a different pattern of migration flows, particularly because the UK receives a substantial number of skilled migrants and their dependents.

Political discourse in Germany and the Netherlands stresses the alleged integration and immigration crises as the main background for the development of the new pre-entry integration policies. Faced with these crises and faced with disappointing effects of current policies (such as the 1998 Civic Integration of Newcomers Act in the Netherlands), the governments had to step up efforts to promote integration (and restrict immigration). There are however differences in both countries in terms of political consensus about these plans. German policies were supported primarily by the CDU/CSU, while parts of its coalition partner, the SPD, stood in opposition to them. Yet, the main opposition came from the Greens and the Left Party. In the Netherlands, the political consensus seems to have been even broader (with only the relatively minor party Green Left raising more fundamental objections). The strength of populist parties in Dutch politics since 2002 provide a powerful explanation for the rise of the new pre-entry policies in that period; the rise of populism in Germany has been much less substantive in this respect.

In all four countries, the analysis has revealed remarkably strong issue connections between pre-entry measures for family migrants and the emancipation of women in particular. In the UK, pre-entry policies even seem to have begun as a policy specifically oriented at migrant women, only to become more generic for all family migrants later. Germany put particular emphasis on arranged marriages and honour killings, also in response to related incidents in Germany. In the Netherlands, the need to make pre-entry tests obligatory for all family migrants was linked to the need to furthering the integration of women in particular. Austria also clearly links pre-entry policies to the need for an emancipatory approach for migrant women in particular. Besides the focus on migrant women, political discourse in Germany and the Netherlands also have a special focus on migrants from Muslim countries; Turks and Moroccans in the Netherlands, and Turks in Germany.

The degree of mediatisation of public discourse on the pre-entry tests differs between the UK and Austria, on the one hand, and the Netherlands and Germany on the other. UK media coverage seems to have been relatively less intense as compared to the other two countries, with the British press primarily in a mode of responsiveness towards the new

¹⁸¹ Fekter in *Der Standard*, 10.12.2010

political initiatives. Also in Austria, the media debates focused mainly on other amendments of the immigration law that were adopted simultaneously with the pre-entry tests and attracted far more public attention, such as changes relating to the asylum law and the introduction of a points-based labour migration system (the Red-White-Red Card).

The analysis reveals that the new policy plans were clearly not a response to a broad and open public debate. There has also been a lot of media and public concern about high levels of immigration, especially from Eastern Europe, and pressure on local services. In contrast, in Germany and the Netherlands media coverage and public debate have been extensive. In both countries, public debate tended to focus on incidents (such as the honour killings in Germany and acts of terrorism in the Netherlands) and to have influenced public policy making significantly. German public debate does seem to have focused more on fundamental policy assumptions than Dutch public debate, possibly in response to the overwhelming political consensus about the new policy measures in the Netherlands. Furthermore, what stands out from Dutch media coverage is that the Dutch government deviated on several occasions from expert recommendations, sometimes even from committees that had been established by the government itself. This only further underlines the politicized nature of the development of pre-entry policies in the Netherlands.

Though for the UK and Austria, it is still too early to see the full impact of legal cases (also because the UK did not sign up to the Family Reunification Directive), these tests are already being fought in the courts. Both the German and Dutch policies have already been brought before national and European courts at various occasions. For the Dutch case, this has resulted in annulment of specific pre-entry conditions. However, by and large the approaches of both countries have been supported by the legal cases, confirming that the obligations imposed on migrants are proportional to the aim of furthering integration and that differentiation in obligations for migrants from different nationalities is also sufficiently legitimized.

Finally, it is obvious from the Dutch and German cases that these countries do not merely perceive the European legal setting as a constraint on national policies, but also as a sphere that provides opportunities for new policy measures. In this respect, both countries have been at the forefront in European politics in advocating the inclusion of integration obligations and stricter conditions for newcomers into European regulations, such as the Family Reunification Directive. This shows that it is important to see the European context not just from a top-down perspective where European regulations impact national policies, but as a multi-level setting where countries and EU institutions interact in designing new policies.

Table 2: Summary of analysis of social and political background of pre-entry measures

	Germany	The Netherlands	The UK	Austria
<i>Political discourse</i>	<ul style="list-style-type: none"> - Debates on the failure of integration and crisis of migration as background for new policies - Welfare state frame links integration deficiencies to participation gap - Strong issue connections with women emancipation (especially preventing forced marriages and honour killings) - New policy measures supported primarily by CDU/CSU - Focus on Turkey and 'other Islamic countries' - Link to debates on German 'Leitkultur' 	<ul style="list-style-type: none"> - Generic policy developments and incidents in the period 2001-2002 make migration and integration into issue of high politics - Effects of 1998 integration act considered to be insufficient - Strong issue connections with women emancipation, especially in relation to the obligatory nature of the pre-entry tests - Broad political consensus in favour of social-cultural integration and installation of pre-entry tests - Focus on migrants from Turkey and Morocco 	<ul style="list-style-type: none"> - Consensus on language proficiency as condition for integration as well as gatekeeper - Strong connection with issue emancipation and forced marriages and to a lesser extent public participation 	<ul style="list-style-type: none"> - Call for demand-oriented immigration - Increasing differentiation between 'wanted' (skilled) and 'unwanted' migration (unskilled, family migrants) - Language proficiency regarded as key to integration for family migrants (understood as participation in social and economic life) - Also strong link to adaptation to cultural norms and values - Connection to emancipation of women coming from rural and patriarchal backgrounds
<i>Public discourse</i>	<ul style="list-style-type: none"> - High degree of mediatization - Focus on incidents (honour killings, Erdogan speech) and on issue of 'import brides' - Less attention to criticism from SPD, the Greens and the Left Party 	<ul style="list-style-type: none"> - High degree of mediatization - Focus on practicalities of the debate (Legal constraints, practical feasibility) rather than fundamental policy assumptions - Government ignores various critical reports by experts 	<ul style="list-style-type: none"> - Media coverage relatively marginal; in that it follows to political initiatives rather than itself a motor of policy developments 	<ul style="list-style-type: none"> - Media coverage rather marginal, because overshadowed by farther reaching amendments to the labour immigration system and the asylum law - NGOs and experts point to the potential risk of the law with regard to the right to family life
<i>Legal cases</i>	<ul style="list-style-type: none"> - The obligations raised to the migrant (in terms of preparation / required skills) were in proportion to the need of furthering integration - Exemption of specific countries was lawful due to international obligations and the public interest - Inclusion of writing skills in the test also seen as proportional 	<ul style="list-style-type: none"> - European Court of Justice annuls strict pre-entry conditions and distinction between family formation and family reunification - NGO's unsuccessfully challenge discrimination based on nationality 	<ul style="list-style-type: none"> - A challenge to pre-entry tests has been made and will be heard in July 2011 	<ul style="list-style-type: none"> - N.a.
<i>Europeanization</i>	<ul style="list-style-type: none"> - Debate concentrated primarily on national level - Germany one of the advocates of incorporating integration requirements into European law - Strong reference to Dutch policy developments and Dutch incidents 	<ul style="list-style-type: none"> - Dutch government very active in European context in uploading of national policy preferences. - Little cross-national policy learning 	<ul style="list-style-type: none"> - UK has not signed up to the Family Reunification Directive, but reference to developments in other EU countries is used for purposes of policy legitimisation 	<ul style="list-style-type: none"> - Reference to the Dutch, Danish and German case as 'good examples'

IV Pre-entry programmes in practice

One of the aspects that makes pre-entry policies so special as a policy field is that it needs to be implemented in the migrants' countries of origin around the world. This can be challenging in various respects, for instance in terms of the organizational infrastructure for administering the pre-entry tests. Therefore, this section discusses how the pre-entry tests have been put in practice in Germany, the Netherlands and the UK. The implementation has been extensively evaluated in the Netherlands, providing much material to this research. Unfortunately, this is less so for the German case and, because of its recent enactment, not for the UK case. Obviously, no information is available on the practice of Austrian pre-entry tests as these are only on the verge of being introduced.

IV.1 Germany

IV.1.1 Implementation of the test

The German pre-entry tests demand that migrants demonstrate the required basic German language skills at a German embassy or consulate abroad when applying for a visa for subsequent spouse immigration. The German embassies or consulates generally do not test the language skills of the migrants themselves; instead, they require an approved language certificate (see above) that gives evidence of the language skills – unless it is obvious that these skills already exist.¹⁸² In order to obtain such a language certificate, a standardised language exam has to be passed that complies with the standards of the Association of Language Testers in Europe (ALTE).

The Goethe Institute was given the task of implementing the new regulation, after the pre-entry provision to demonstrate a basic knowledge of the German language had been set out in the EU-RLUmsG (Directive Implementation Act). It was determined by the Federal Ministry of the Interior that in principle only the language certificate 'Start Deutsch 1' issued by the Goethe Institute is accepted. Besides that, other language certificates issued by the Goethe Institute as well as by the TestDaF-Institute and their licensees on higher language levels are also accepted ('A2' to 'C2').¹⁸³ The Federal Foreign Office has instructed all German diplomatic missions abroad (in a letter on 17 July 2007) that in those countries where the Goethe Institute is active, the evidence of a basic knowledge of the German language is in principle only proven by a language certificate 'Start Deutsch 1' issued by the Goethe Institute or its partner organisations or licencees (Ibid.). While on the one hand receiving a de facto monopoly position, the Goethe Institute was at the same time, according to the respondents of the Goethe Institute, facing the challenge of expanding and restructuring its offers (strong increase in demand; new target group) without being given any time for

¹⁸² However, as stated by the respondents, the German embassy or consulates often test the language skills again face-to-face although if they submit the language certificate.

¹⁸³ Deutscher Bundestag 2008, Drucksache 16/10921: 1

preparation. Financial support was provided by the Federal Ministry of the Interior and by subsidies from the European Integration Fund. How to establish the required worldwide network of course and test-providers and how the language courses and tests are actually arranged and conducted was left to the Goethe Institute and its experts at the language courses and tests department.

The monopoly of the Goethe Institute in providing language certificates was challenged in May 2008 when the Higher Administrative Court Berlin-Brandenburg ruled that there was no legal basis for approving only language certificates issued by the Goethe Institute.¹⁸⁴ Now other providers have also implemented pre-entry tests and language courses but the Goethe Institute has remained the main provider of the pre-entry language tests as well as of the voluntary preparatory language courses.

Currently the test 'Start Deutsch 1' can be completed at 130 Goethe Institutes, located in Germany¹⁸⁵ as well as abroad, and in 21 language learning centres, which are supervised by the Goethe Institute. Moreover, 259 private and public institutions¹⁸⁶ worldwide were authorized by the Goethe Institute by way of a licensing procedure¹⁸⁷ to hold the exams¹⁸⁸ as well as 56 additional test centres, in which testers of the Goethe Institute are active, if needed.

In countries where there is no Goethe Institute or other approved language tester available, the German diplomatic mission has to ensure by other appropriate means that the applicant has the required basic language skills.¹⁸⁹ In those cases, whether the respective applicant holds German language skills according to level A1 (Bundesministerium des Innern 2010: 130) is tested during a personal visit to the German diplomatic mission.¹⁹⁰ For countries in which a Goethe Institute had to be closed in the past couple of years, the responsibility was passed on to the Institute in a neighbouring countries.

Altogether there are preparatory courses for the test 'Start Deutsch 1' in 483 course locations in 108 countries. The Goethe Institute and their official partners are the main providers; however, the official partners of the Goethe Institute are

¹⁸⁴ AZ OVG 3 M 13.08; Deutscher Bundestag 2009, Drucksache 16/11753: 2

¹⁸⁵ Within Germany, preparatory courses for the language test 'Start Deutsch 1' can be visited in 12 Goethe Institutes as well as in centres of 19 licensed partners.

¹⁸⁶ This mostly involves universities, local cultural organisations and renowned local language schools.

¹⁸⁷ Preconditions for achieving a licence by the Goethe Institute are an already existing close collaboration in the field of language tuition for many years as well as a sufficient equipment and qualification of the staff. The examiners of the licensees receive regular and verifiable training for quality standards and examination rules by the Goethe Institute (Deutscher Bundestag 2008, Drucksache 16/10921: 3).

¹⁸⁸ Deutscher Bundestag 2009, Drucksache 16/11753: 2

¹⁸⁹ Deutscher Bundestag 2007, Drucksache 16/7259: 5

¹⁹⁰ In its brochure on personal experiences of persons affected by the newly implemented provisions for subsequent spouse immigration, the Association of Binational Families and Relationships reports about problems in this context. In the Dominican Republic, a woman made the experience that the official in the German agency abroad was not only testing her language skills but also asked questions about the relationship with her German husband (how they met, how long the relationship lasted, how the relationship was working via internet, etc.) (Verband binationaler Familien und Partnerschaften 2008: 22).

usually limited to the larger urban centres of a country, whereas private language schools or private German teachers can sometimes also be found in rural areas. Many migrants (about 80%) who participate in the language tests of the Goethe Institute, however, did not take part in one of the language courses by this institute.¹⁹¹ Some applicants stated that they had learned German in self-study. Some of them use material that is available on the internet (for example the internet site of the German international radio dw-world.com) or through radio courses of the German international radio, Deutsche Welle (DW).

Furthermore, though testing conditions are more or less equal all around the world, there seem to be differences in quality and possibilities concerning test preparation. It is stated by authorities abroad as well as by examiners of the Start Deutsch 1 tests that the quality of the teaching of many external language course providers is not as good as the quality of the Goethe Institute and its partners. This has been confirmed in interviews we have held with migrants. This is assumed to be one reason why those who did not attend the language course at the Goethe Institute fail the test more often. Another reason for this is that many people sign up for the test before they are ready for it. On the other hand, all measures of self-study (internet, radio etc.) are practically impossible for illiterates or for those who do not know the Latin alphabet; this is also difficult in many rural areas, where internet access is scarce. Yet, self-study is in some cases the only possible way to learn German. In sum, people from rural areas face more difficulties in their efforts to learn German, though this varies from country to country.

IV.1.2 Preparation for the test

There is no obligation to participate in a pre-entry programme such as the language courses offered by the Goethe Institute. It is irrelevant whether a test candidate prepares himself or herself for the exam through a language course provided by the Goethe Institute or another course provider, whether he or she learned German through self-study, using books, audio or video materials, or by taking private lessons.

The focus of the voluntary pre-entry courses offered at the Goethe Institutes primarily lies on language tuition. But in this context, cultural background information is given as well which is also regarded as necessary in order to be able to pass the language test ('Start Deutsch 1'). As the teachers at the Goethe Institutes are often returned migrants who grew up in Germany or at least lived there for several years, they are able to provide relevant information about cultural differences and life in Germany. For this purpose, several material packages (audio and visual materials) were developed in order to prepare course participants for their life in Germany. Because the language test further requires the ability to read and write the Latin alphabet, the Goethe Institutes have started to expand their offers for migrants with low education and/or without knowledge of the Latin alphabet as well as basic learning strategies ('to

¹⁹¹ Unfortunately there is no data available about the relation between whether a migrant chooses for self-study or a specific training courses and the pass/fail rates.

learn how to learn a foreign language'). General alphabetisation courses, however, are not provided by the Goethe Institutes.

Besides on-site courses, the Goethe Institute also offers *distance learning courses* with professional tutors.¹⁹² In order to support the candidates' preparation for the exam, some free online exercises are provided by the Goethe Institute which can be downloaded on the website. Besides written materials there are also audio files (mp3) containing exercises for listening comprehension. Two different exercise sets for the exam (sample tests including solutions) can be ordered. There is also a 'Handbook for Start Deutsch 1' informing about examination goals and providing a test description available.¹⁹³ An additional or alternative way of learning German is provided by *radio programmes* and *internet offers* from Deutsche Welle (www.dw-world.de). An audio course 'Radio D' for beginners with no or little previous knowledge can be downloaded and is broadcast in 16 languages on DW radio. Furthermore an interactive online language course with more than 1,000 interactive exercises can be accessed free of charge via the Deutsche Welle website; furthermore, a portable phrasebook, e.g. for mobile phones, containing a dictionary as well as short lessons with interactive exercises is available (Federal Office for Migration and Refugees 2009).

Moreover, the Goethe Institutes abroad have implemented telephone hotlines and consulting hours where experienced teachers give advice to prospective participants about the right course to attend. In order to cope with lacking experiences of learning a foreign language or taking exams as well as with problems with reading and writing, many institutions abroad offer remedial courses free of charge which are held in the afternoons or on Saturdays. In some countries (e.g. Turkey) psychological and socio-pedagogical counselling is also offered.

Aside from that, the Goethe Institute headquarters developed a package of teaching materials for spouses, entitled 'Photobox: Life in Germany'. In Turkey a so-called 'integration suitcase' has additionally been assembled containing visual and audio teaching materials. The most recently published manual 'My Language and Germany Companion' contains language material as well as general information about Germany, covering key everyday issues (e.g. health, environment) and particularly intends to motivate immigrants to continue with their learning even after they have taken the test.

Currently the Goethe Institute has also reacted to the fact that the language skills, acquired by the migrants for passing the pre-entry test, often vanish in the transition from pre-integration to the integration course.¹⁹⁴ Thus they recently conduct a research project with the aim of improving the language teaching and orientation and advisory offers during the transition period.

¹⁹² <http://www.goethe.de/lrn/prj/fer/enindex.htm>

¹⁹³ <http://www.goethe.de/lrn/prj/egn/ogf/en4379069.htm>

¹⁹⁴ <http://www.goethe.de/lhr/prj/daz/inf/ueb/enindex.htm>

IV.1.3 Experiences with the test

Most of the migrants interviewed (two third) perceived the test to be quite easy to pass (it has to be taken into consideration that half of them were highly educated). Nevertheless, as there are different test sections that have to be passed, such as writing, speaking, listening and reading, some parts were perceived as more difficult than others. The listening comprehension part, in which they had to listen to recordings and answer questions, caused the most problems for the respondents. They argued that the recorded speech was sometimes too fast to understand and the fact that it was only possible to listen to the recordings once or twice also caused problems. Those who did not participate in a language course at a Goethe Institute also considered the speaking part as difficult, because, according to them, they had not practiced enough conversation – regardless of whether they had prepared for the test in self-study or by participating in a private language course. Furthermore, it is noteworthy that those who had previously learnt other languages such as English did not consider the test too difficult, whereas those who had never studied a foreign language encountered more difficulties.

While all respondents passed the test at the first try, they stated that they had met others for whom it was very difficult to pass or who did not pass the test at all. Some argued that some candidates, still in the country of origin, had to do the test for the fifth or sixth time. Especially older and low educated women had encountered a lot of problems with the test. The experience of the embassies and consulates that the number of cases in which the assessment was not successful at the first attempt depended mainly on the difference in the level of education of the spouses and on differences in language-learning possibilities is shared also by the interviewed migrants.

All interviewees stated that passing the test or not would be depended on the quantity and quality of preparation for the test. On average, the interviewed migrants studied for about 3-4 months for the test. Most of them attended a language course at the Goethe Institute or at a public / private course in their hometown. Some of them prepared themselves solely through self-study at home by using language books and the internet. Additionally, friends or / and family members who have German language skills proved to be helpful for test preparation.

The respondents agreed with the assumption stated in the evaluation of the government that the quality of the teaching of many external language course providers is not as good as the quality of the Goethe Institute and its partner institutes. However, it was also argued by most of them that attending a course at the Goethe Institute was not easily affordable. For most of the respondents the test fees amount to 50% of their monthly salary, which caused a high financial burden to them.

Others pointed out that the Goethe Institutes are only located in two or three cities in their country, far away from their hometown. They all came from smaller cities or rural areas where there was no Goethe Institute and therefore had to travel 150 km on average to get to the next Goethe Institute. Those who did not have any relatives or friends in the city where the Goethe Institute is situated had to travel many hours every day to attend the preparation courses at

the next Goethe Institute. Some of them could not afford the course of the Goethe Institute or had no choice but to attend a course at a public institution or a private course. Especially these respondents stated that there is too little preparation in these courses and that they had to do a lot of self-study at home.

What was criticised by all respondents is the scarce and inconsistent information on the visa procedure, the test and possibilities for test preparation given by the embassy or consulate. One respondent who holds a university degree stated 'the embassy first told me that I would not need a test, because I have a university degree. However, when I applied for the visa, they said I should hand in a language certificate. They told me only those are exempted that have a university degree in informatics [IT].' Some of them misunderstood the employees of the embassy, assuming that they were obliged to do the test as well as the course at a Goethe Institute. Some migrants also complained that they were tested again at the embassy, although they had already handed in their language certificate. Moreover, they were asked very sensitive questions on their family situation as if they were suspected of lying on their reason for migration.

IV.2 The Netherlands

IV.2.1 Implementation at the embassies and consulates

The pre-entry tests are implemented by Dutch embassies and consulates abroad. The pre-entry tests themselves are however organized from the Netherlands. A phone connection is made between the embassy or consulate where the examinee is situated, and an exam computer at the Department of Foreign Affairs in the Netherlands. This applies both to the test on Dutch language comprehension and the test on Dutch society. In spite of the initial cynicism about the possibilities to implement this test structure in all the Dutch embassies and consulates, the 2009 evaluation by Regioplan shows that most embassies and consulates are rather satisfied with how the tests work in practice and with the instructions and the administrative support they receive from the Department of Foreign Affairs (Regioplan, 2009: 19-20).

Most examinees are also rather positive about the way the tests are conducted (Ibid.: 27-28). There have been only few official complaints, such as on waiting lists for participating in the exams and about difficulties in getting to an embassy or consulate (Significant, 2010: 29). There are also no known cases of fraud with the exams (Ibid.). From our own focus group, one immigrant from Cape Verde had the experience that he could not conduct a pre-entry test in his home country, and therefore had to travel to Senegal instead to do the test there.

IV.2.2 Preparation by the immigrants

The Dutch government does not provide pre-entry integration courses. This means that migrants have to prepare for the pre-entry tests themselves; they have to find relevant courses, course material and also have to finance their preparation (and eventually the pre-entry test) by themselves. Also, migrants

have to actively find information about the formalities and the preparation for pre-entry tests. In most cases (78%), the partner in the Netherlands plays a key role in finding relevant information (other important sources of information are the internet, the Dutch embassies and relatives and friends). For many migrants (40%), the total preparation for the tests takes less than 3 months (Regioplan, 2009: 27). However, for 20% of the participants the preparation took more than 6 months or even more than a year.

A recent study by Triarii (2009) shows that in all examined countries, independent course providers have emerged on the market (2009: 15-16). Furthermore, providers have emerged in the Netherlands as well, aiming at migrants who have come to the Netherlands on a tourist visa and who are planning to apply for a pre-entry test later (Ibid.). However, criticism has emerged concerning the quality of the provided courses (Tk 29700, nr. 40: 4; Regioplan, 2009: 25).

The Dutch government does provide official 'training material' that migrants can pursue in (of from) their home countries. This training material consists of a DVD 'To the Netherlands', a book with photos related to the film, an audio-cd with questions and answers related to the film, and a set of (so-called TIN-) codes that migrants can use to make test-exams through a phone connection.

This training material has sparked controversy, primarily because of the image it portrays about Dutch society. Specific parts of the film with gays kissing and with a topless woman on a Dutch beach, would even make the possession of this movie illegal in a number of countries. That is why Dutch government also provides an expurgated version of the movie in some countries. This version now amounts to about one-third of the total number of training packages sold in 2009 (Significant, 2009: 14).

In 2009, 87% of the participants used this training material, and 39% also used additional training material. Overall, the migrants evaluated the training material rather positively, though many migrants do consider the material insufficient for really effectively learning Dutch (Regioplan, 2009: 26). Only 41% indicated having followed language training in their home countries, with in additional 15% following language courses (on a tourist visa) in the Netherlands (Regioplan, 2009: 24). The percentage of participants following language courses seems to differ strongly between the countries; for instance, in China only 20% followed language courses either in China or the Netherlands, compared to 73% of Moroccan migrants.

IV.2.3 Experiences with the test

There are important differences in how migrants experience the test on Dutch society and the language test. Most migrants consider the test about Dutch society 'not so difficult' (40%) or even easy (28%). The language test, however, is considered difficult by more than two thirds of the participants ('difficult' by 42%, 'very difficult' by 25%) (Regioplan, 2009: 28).

This is also confirmed by our focus groups with immigrants who did pre-entry tests before coming to the Netherlands. From these focus groups also emerged

that many participants seem to have passed the language test without really understanding it. For instance, migrants simply repeated texts (which is part of the pre-entry test) without having a clue what the text was about. For the test on Dutch society, the focus groups show that memorization played an important role. The test contains a random selection from a pool of questions that is also included in the test material that migrants can pursue. Some participants indicated that they had simply memorized the answer to specific questions, without knowing what it meant. One respondent observes; 'we did not learn a lot from the test, as I didn't really know what I was learning, I just memorized the entire book. 'Furthermore, some participants stated that they experienced some questions as 'patronizing', for instance questions about whether it is permitted to hit your wife.

A surprising finding is that there is no significant difference in test results between those who used the training material and those who did not. (Regioplan 2009: 29). This is surprising, as most migrants positively evaluated the training material. This could mean that those migrants who did not use the training material were entirely confident that they would (or would not) pass the test anyway. It is not clear how many participants actually enrolled for (private) training programs. However, participants in the focus groups indicate that taking such courses is often seen as unnecessary;

The costs for the preparation and for taking the pre-entry test amount to an average of €719 (Ernst & Young, 2009: 40); this includes the costs for the exam (€350), for the training material (€41), additional material and test-exam codes, lessons in the home countries, lessons in the Netherlands and travel and hotel costs for going to the embassy. However the differences in costs made by individual migrants are great. About 50% % spend less than €480. However, in individual cases the costs may well exceed the average of €719. About one in four spends more than this average, and in some cases (about 2-3%) the costs exceed €2,000 (Begeleidingscommissie, 2009: 8).

IV.3 The United Kingdom

The UK pre-entry test came into force as recently as 29 November 2010.

As mentioned previously, the main organisations involved in the programme are accredited providers. Currently there are 21 providers (list published on 16 August 2010 on the UK BA website), many of whom offer the full range of levels. Some are linked to universities, for example University of Cambridge ESOL, or the British Council and have extensive coverage at all levels. Most are based in London. They also have coverage across a number of countries, especially the larger providers. A new tender for providers closed on 31 January 2011. Some ESOL teachers in the UK are concerned about how tests would be monitored and standards maintained (interview with Karen Dudley). There has also been some discussion of the politics of the way the English tests are aligned with European standards designed for a different purpose (Travis 27 September 2010).

There is an innovative project in Bangladesh financed by the European Fund for the Integration of Third Country Nationals Preparing for Life in the UK in which

organisations in Britain such as UK Bangladesh Education Trust, Bangladeshi volunteers from the UK, and LLU+ at London South Bank University are collaborating to run workshops in three districts. The aim is to help participants learn about Life in the UK, provide initial language assessment and signpost participants to key agencies regarding visa applications and / or English testing.

IV.4 Comparison

Whereas the preceding chapter revealed many similarities between the Dutch and German pre-entry policies in particular, this chapter has shown distinct differences in how the pre-entry tests are administered in countries around the world. This refers primarily to differences in the organizational infrastructure of the pre-entry tests. Germany can rely on the extensive organizational infrastructure of the Goethe Institute in most countries around the world for the provision of (non-obligatory) language courses and for certified language certificates. In the Netherlands, the embassies and consulates play a more central role as a venue for pre-entry tests (through computer connections with the Netherlands). Besides this, Dutch government does not intervene in the market for language courses. In both countries, many participants in the pre-entry tests did not take part in any language course prior to taking the test.

However, an important similarity between Dutch and German policies remains the strong emphasis on individual responsibility of the migrant for his or her own preparation for the pre-entry test. For both countries, certified (by either the Dutch government or the Goethe Institute) training material is available at the migrant's own expenses. Also, in both countries migrants have to cover the costs for the pre-entry tests themselves.

Evaluations of experiences of migrants with the Dutch pre-entry tests show that many migrants as well as staff of the embassies and consulates consider the required level of language proficiency for passing the test (then A1 minus) insufficient for being self-reliant in Dutch society. Also, it was clear that many migrants positively value the practical knowledge of life in Dutch society that they acquire in the pre-entry tests (such as going to the doctor, relations with schools, etc.).

Table 3: Summary of implementation and practice of pre-entry policies

	Germany	The Netherlands	The UK	Austria (as of July 2011)
<i>Implementation of pre-entry tests</i>	<ul style="list-style-type: none"> - Licensed institutes (primarily the Goethe Institutes) provide certificates that are accepted at embassies/consulates as proof of sufficient language comprehension 	<ul style="list-style-type: none"> - Pre-entry tests have to be completed at Dutch embassies / consulates around the world, via computer connection with the Netherlands 	<ul style="list-style-type: none"> - The UK BA has licensed institutes around the world to provide language courses. - Each provider supplies their own material 	<ul style="list-style-type: none"> - Licensed institutes (primarily the Goethe Institutes) provide certificates that are accepted at embassies/consulates as proof of sufficient language comprehension - The certificate is only valid until one year after issuance
<i>Organization of preparation for the tests</i>	<ul style="list-style-type: none"> - Responsibility of the migrants, as long as they pass the exam and provide the certificate - Goethe Institute provides training material and offers courses - Many migrants (80%) do not take part in Goethe Institute's courses 	<ul style="list-style-type: none"> - Participants can pursue training material that is licensed by Dutch government 	- n.a.	<ul style="list-style-type: none"> - Left to the migrants, as long as they pass the exam and provide the certificate
<i>Experiences with the tests</i>	<ul style="list-style-type: none"> - The test fee is often considered as a high financial burden - For older and low educated, the test is quite difficult to pass - The part on listening skills is considered to be most difficult - Information given by the embassy or consulate on the visa procedure, the test and possibilities for test preparation is often inconsistent 	<ul style="list-style-type: none"> - Costs for preparation and the test can vary considerably for different individual circumstances - required language is seen as insufficient also by migrants themselves - Practical knowledge of Dutch society is most valued by the participants 	<ul style="list-style-type: none"> - Costs vary according to country and provider 	n.a.

V The perceived impacts of pre-entry tests

As in all four countries the new pre-entry measures have entered into force only recently, very little data is available that allows for a long-term analysis of the effectiveness of the pre-entry policies. Only in the Netherlands, though still on a limited scale, evaluations are available that provide first indications of the effects of the pre-entry policies on the integration of migrants. As the new UK pre-entry measures only came into operation on 29 November 2010, these will be left out from this part of the comparison. This also holds for the Austrian measures, that have not even become operational yet.

Various impacts can be identified. First of all, the effects in terms of promoting the integration of TCN's in the countries of destination. Given that all four countries state promoting integration as the primary objective of their pre-entry policies, identifying integration effects is of central importance in the legitimization of these policies. Secondly, effects in terms of immigration are much discussed in political discourse in the various countries as well as in a European legal setting. Thirdly, effects on the perception of TCN's. As discussed in Chapter III, the pre-entry policies are directed at distinct target groups. Therefore, it is important to assess the impact of these policies on the images of these target groups in the host societies. Finally, effects on the perception by TCN's. This refers to experiences of members from these target groups themselves with these tests.

V.1 Germany

In Germany there is not yet an evaluation focusing on the impact of pre-entry tests on integration and/or migration. However, an evaluation of the implementation of the pre-entry programmes for immigrating spouses was presented by the Federal Government on 24 September 2010. The parties involved in producing the evaluation were the Ministry of Foreign Affairs, the Ministry of the Interior, the Federal Government Commissioner for Migration, Refugees and Integration, the Goethe Institute and the Federal Office for Migration and Refugees. In the course of the evaluation, interviews were conducted with the German diplomatic missions, the Goethe Institute and the Deutsche Welle in order to examine the language acquisition in the countries of origin. Goethe Institutes abroad were also interviewed about the implementation and the results of the language examinations. Those German diplomatic missions that, due to a lack of local test providers, examined the required language skills on their own were asked about the implementation and the results of their test-method. In addition, the diplomatic missions in the top-15 countries of origin provided information about their experiences with the procedure for granting visas.¹⁹⁵

¹⁹⁵ Deutscher Bundestag 2009, Drucksache 17/194: 6f.

V.1.1 Integration effects

Information is available on the success rates of the candidates who already participated in the language examination conducted by the Goethe Institute. Success rates differentiate according to country as well as to whether a preparatory language course offered by the Goethe Institute has been attended (internal success rate) or not (external success rate).

Table 4: Candidates and success rates for German pre-entry tests

	exam candidates and success rates								
	2008				2009				
	SD1-exam candidates (absolute)	success rate internal SD1-candidates (in %)	success rate external SD1-candidates (in %)	overall success rate	SD1-exam candidates (absolute)	success rate internal SD1-candidates (in %)	success rate external SD1-candidates (in %)	overall success rate	share of external SD1-candidates in overall number of SD1-candidates
top 15 countries of origin	46,567	80%	54%	59%	34,402	81%	61%	65%	80%
Turkey	15,531	92%	57%	60%	10,775	92%	64%	68%	87%
worldwide (total)	60,111	73%	54%	59%	45,242	74%	61%	64%	73%

Source: Deutscher Bundestag 2010, Drucksache 17/3090: 22f; statistical data from the Goethe Institute.

In 2008, a total of 60,111 third country nationals worldwide took the language exam 'Start Deutsch 1 (SD1)' in order to obtain the 'Goethe-Zertifikat A1'. The worldwide overall success rate in 2008 was 59%, with a success rate of 73% for internal exam candidates, i.e. candidates who participated in a preparatory language course offered by the Goethe Institute, and 54% for external exam candidates who prepared through self-study, by attending language courses offered by other course providers than the Goethe Institute or by means of private lessons.¹⁹⁶ In 2009, the worldwide overall success rate was 64% (internal success rate: 74%; external success rate: 61%). Amongst the total number of 45,242 exam candidates in 2009, a proportion of 73% were external candidates, which indicates that the majority of the persons affected either do not have access to language courses offered by the Goethe Institute or cannot afford it.¹⁹⁷

In both years, success rates varied according to country of origin. Focusing on the 15 main countries of origin for spouse immigration to Germany, the highest success rates in 2009 were registered for Morocco (82%), Russia (82%) and the Ukraine (79%), the lowest success rates on the other hand were found in Macedonia (33%), Iran (35%) and Kosovo (51%).¹⁹⁸ In Turkey, a number of 10,775 exam candidates were registered for 2009 with an above average overall

¹⁹⁶ Deutscher Bundestag 2009, Drucksache 16/13978: 13

¹⁹⁷ Deutscher Bundestag 2010, Drucksache 17/1112; Deutscher Bundestag 2009, Drucksache 17/194: 2

¹⁹⁸ Deutscher Bundestag 2010, Drucksache 17/1112: 9f.

success rate of 68%. The improvement compared to the previous year with an overall success rate of 62% in 2008 was due to an increase in the success rate for external candidates from 57% in 2008 to 64% in 2009, whereas the internal success rate was 92% for both years.¹⁹⁹

Table 5: Success rates & spouse immigration from various countries of origin to Germany (2008, 2009)

Country	success rates & spouse immigration from 15 top/main countries of origin in 2009							
	2008				2009			
	SD1-exam candidates (absolute)	Success rate internal SD1-candidates (in %)	Success rate external SD1-candidates (in %)	Overall success rate (in %)	SD1-exam candidates (absolute)	Success rate internal SD1-candidates (in %)	Success rate external SD1-candidates (in %)	Overall success rate (in %)
Bosnia-Herzegovina	809	100	61	99	824	97	70	71
China	646	84	53	77	1,223	83	75	78
India	1,721	77	47	73	993	79	70	73
Iran	1,043	69	68	68	813	80	69	73
Kazakhstan	2,009	71	42	49	926	82	67	71
Kosovo	4,988	-	47	47	4,571	-	51	51
Morocco	2,321	88	70	74	1,878	86	82	82
Macedonia	4,467	99	30	31	2,862	85	32	33
Russia	2,707	90	70	72	987	89	80	82
Serbia	1,190	-	66	66	865	-	57	57
Thailand	3,161	61	52	56	3,219	78	60	69
Tunisia	1,226	91	63	69	1,232	82	61	64
Turkey	15,531	92	57	60	10,775	92	64	68
Ukraine	2,395	65	60	60	1,060	81	78	79
Vietnam	2,353	73	53	65	2,174	71	62	69
Total	46,567	80	54	59	34,402	81	61	65

Source: Deutscher Bundestag 2010, Drucksache 17/3090: 22f; statistical data from the Goethe Institute.

As for those cases in which the diplomatic missions have to conduct an assessment themselves, the missions estimate that the number of cases in which

¹⁹⁹ Deutscher Bundestag 2009, Drucksache 16/13978: 13; Deutscher Bundestag 2010, Drucksache 17/1112: 10

the assessment was not successful at the first try depended mainly on the difference in the level of education of the spouses and on differences in language-learning possibilities. According to the missions concerned, the pass rate is higher for female spouses than for male spouses.²⁰⁰

It should be noted that the numbers displayed above also contain candidates who have retaken the SD1-exam once or even several times. The Goethe Institute is currently not collecting any data on whether candidates enrolling for the exam are taking it for the first time or have to retake it after they had not been successful in an earlier trial. The Left Party criticized the results for being biased due to this kind of data presentation and further pointed out that it had to be assumed that probably only half of the persons affected succeeded in passing the exam at the first try.²⁰¹ The federal government explained that more detailed data on this issue will be collected in the long term, but as this requires the implementation of a new technical infrastructure, detailed data will only be available in some years.²⁰²

Furthermore, the Goethe Institute recently conducted surveys with post-arrival integration course participants in Germany and asked them about their experiences with the new legislation for spouse immigration and the pre-entry language courses offered by the Goethe Institute (Goethe Institute 2010). The interviewed persons stressed that the pre-entry acquisition of German language skills proved very helpful after their arrival in Germany and most of the persons recognized the need of demonstrating a basic knowledge of the German language.

'The vast majority of participants consider the courses to be valuable preparation for life in Germany, which make it much easier to get used to everyday life and work. Many migrants, especially women, report that the courses not only offer them completely new opportunities for education, but that the new language also gives them a new world view' (Goethe Institute).²⁰³

While the representative of the BMI stated that the pre-entry language requirements are an effective tool for promoting integration, also in terms of completing the integration course, especially the integration course providers that were interviewed argued that they cannot perceive an impact on the language proficiency of migrants who passed the pre-entry test and presume that those measures do not have any sustainable effects.

V.1.2 Immigration effects

In Germany, two data sources are available for determining the numbers of spouses immigrating. On the one hand, the visa statistics of the Foreign Office which date back to 1996 register all cases in which a German embassy approved a spouse's or dependent's application for joining the sponsor in Germany. Since 1 January 2005, the Central Aliens Register (AZR) on the other hand records all

²⁰⁰ Deutscher Bundestag 2010, Drucksache 17/3090: 31

²⁰¹ Deutscher Bundestag 2009, Drucksache 17/194: 2

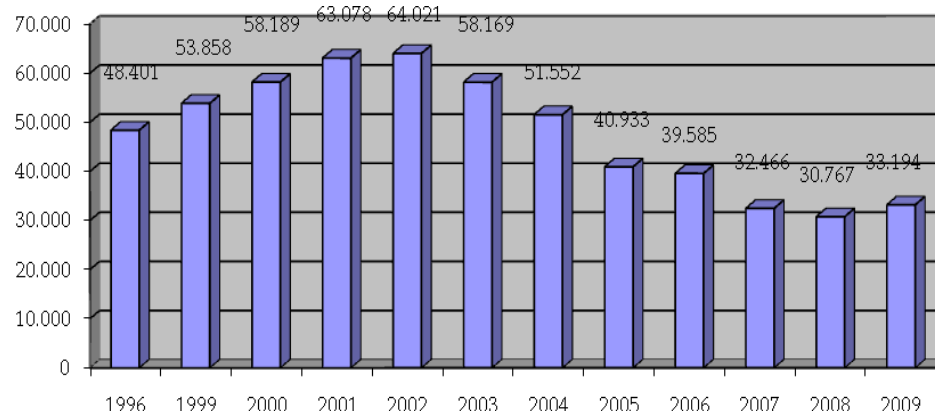
²⁰² Deutscher Bundestag 2009, Drucksache 16/13978: 7

²⁰³ <http://www.goethe.de/lhr/prj/daz/inf/egn/en5123470.htm>

residence permits granted according to the purpose of the application and thus gives evidence on the amount of spouse immigration that has actually taken place in a certain year (Kreienbrink/Rühl 2007: 37).

According to the visa statistics of the Foreign Office, the number of issued visas in 2009 (33,194) was almost halved in comparison with the maximum of 64.021 visas for spouse immigration in 2002. Nonetheless, spouse and family migration still remained a major channel for immigration to Germany (Bundesministerium des Inneren 2010: 133). The decline in the number of visas during the last years can be explained partly by the EU accession of 10 countries in 2004 and another 2 countries in 2007.²⁰⁴

Figure 1: Number of visas issued for spouse immigration



Source: Bundesministerium des Innern 2007: 270; Bundesministerium des Innern 2008: 258; Bundesministerium des Innern 2010: 302.

Besides that, the decrease partly reflects the effects of the pre-entry provision of demonstrating basic German language skills, which had been implemented for non-ethnic Germans who wish to immigrate to Germany together with their ethnic-German spouses in 2005, and the provision of 28 August 2007, concerning foreign spouses who wish to join a third country national or a German national in Germany. Compared to the first three quarters of 2007, which all showed relatively constant numbers of visas issued for spouse immigration, there was a sharp overall decline of 40% in the fourth quarter of 2007. While a comparison of the number of visas issued in the third and the fourth quarter of 2007 showed only insignificant changes for some countries (e.g. India), other countries were affected considerably. For Turkish nationals a decline in the number of visas of almost two thirds was observed (-67%). Above average drops in spouse immigration were also registered for Thailand (-56%), Serbia (-54%) and Morocco (-51%).

²⁰⁴ EU-citizens who enjoy the right of free movement according to EU law do not need a visa for spouse immigration.

Table 6: Number of visa issues for spouse migration to Germany

	Number of visa issued for spouse immigration (top 15 countries of origin)				
	2005	2006	2007	2008	2009
Turkey	12,323	10,208	7,636	6,886	6,905
Kosovo	-	-	2,811	2,688	2,849
Russia	3,448	3,404	2,451	2,017	2,157
India	1,017	1,008	1,203	1,638	1,765
Syria	-	-	395	671	1,498
Morocco	1,637	1,592	1,257	1,289	1,413
Thailand	2,474	2,196	1,653	1,332	1,325
China	631	791	843	922	1,086
Ukraine	964	801	599	924	928
Pakistan	691	544	515	594	763
Bosnia-Herzegovina	1,352	1,183	913	819	747
Serbia	-	-	884	871	714
Tunisia	922	884	746	653	702
Macedonia	952	873	650	577	609
Philippines	452	526	497	564	544

Source: Bundesministerium des Innern 2007: 271 (own calculation); Deutscher Bundestag 2009, Drucksache 16/11997: 14; Deutscher Bundestag 2010, Drucksache 17/1112: 6.

A more detailed investigation reveals that immigrating wives were more affected than husbands. The number of visas issued for Turkish wives decreased by 74% between the third and the fourth quarter of 2007, for Turkish husbands the decrease amounted to about 57% (Bundesministerium des Innern 2008: 124f.).

Table 7: Number of visa issues for immigration of wives to German or Foreign husbands

	Number of visa issued for subsequent immigration of wives to German husbands					Number of visa issued for subsequent immigration of wives to foreign husbands				
	1 st quarter	2 nd quarter	3 rd quarter	4 th quarter	total 2007	1 st quarter	2 nd quarter	3 rd quarter	4 th quarter	total 2007
Turkey	542	434	416	78	1,470	1,020	929	843	251	2,043
Serbia	133	143	128	48	452	660	626	587	180	2,053
Russia	491	495	444	327	1,757	57	69	56	67	249

Thailand	487	509	423	178	1,597	9	16	7	10	42
India	25	44	34	31	134	224	257	250	232	963
Morocco	162	155	134	51	502	86	71	72	21	250
Total (all nationalities)	3,378	3,328	3,045	1,841	11,592	3,229	3,130	3,099	1,719	11,177

Table 8: Number of visa issues for immigration of husbands to German/foreign wives

	Number of visa issued for subsequent immigration of husbands to German wives					Number of visa issued for subsequent immigration of husbands to foreign wives				
	1 st quarter	2 nd quarter	3 rd quarter	4 th quarter	total 2007	1 st quarter	2 nd quarter	3 rd quarter	4 th quarter	total 2007
Turkey	667	638	543	237	2,075	354	311	266	107	1,038
Serbia	173	162	144	142	621	165	142	159	103	569
Russia	172	196	145	64	577	11	15	19	10	55
Morocco	138	114	102	80	434	26	18	18	9	71
Total (all nationalities)	1,931	1,959	1,700	1,095	6,685	911	850	759	492	3,012

Source: Migrationsberichte 2007 des BMI: 124. AZR.

It was assumed by the federal government that the decline in the numbers of visas in the fourth quarter of 2007 was only temporary, as it resulted from the fact that the applicants at first had to prepare for the language test before they could finally file their application. After a certain conversion period had passed, the numbers would increase again, it was estimated. In fact, a slight increase in the number of visas was registered already in the first and the second quarter of 2008 and the number of issued visas continued to increase in 2009 (+7,89% compared to 2008).²⁰⁵ With a total amount of 33,194 there were even more visas issued in 2009 than in 2007. But this increase did not apply equally to all countries. Particularly for Turkey, the number of visas issued for spouse immigration was, with 6,905 visas issued in 2009, still considerably below the respective number of 7,636 visas in 2007.²⁰⁶

²⁰⁵ Deutscher Bundestag 2010, Drucksache 17/1112: 2

²⁰⁶ The *Central Aliens Register* also reveals a decrease in spouse immigration from a number of 43,159 residence permits granted for this purpose in 2006 to a number of 40,978 in 2007 and a number of 37,052 residence permits for spouse immigration in 2008. According to the Central

Moreover, there are also indications of a growing number of attempts to evade the new rules. It has been observed, for example, by authorities abroad (German embassies, etc.) as well as by Immigration Authorities that recently there has been an increasing number of third-country nationals travelling with a Schengen visa for visiting the EU and applying for a visa of spousal reunification after the expiry date of their visitor's visa. This has also been noted by integration course providers, who observed an increasing demand for A1 courses. It was also observed, that an increasing number of German nationals in the case of reunification with a TCN spouse, move to another EU country such as Austria, where it is not necessary for the spouses of EU members to provide a language test.

V.1.3 Effects on the public perception of TCN's

Around the issues of migration and integration of migrants similar debates recur again and again. Before as well as after the implementation of the pre-entry tests certain events that were perceived as indicators for a failure of integration in Germany entailed the publication of articles, discussing fundamental questions on integration, assimilation and identity. In particular, one highly discussed topic in the public debates was the 'failure of integration' in Germany, which is reduced to a lack of language competences that often still exists after a long period of residence in the country. Moreover, the below average participation in the labour market and the migrants' dependence on social benefits are seen as other indicators for a 'crisis of integration'.

While the public perception does not make a clear difference between newcomers and established migrants, special groups of migrants were, and are, perceived as more difficult to integrate into German society. Turkish women especially have been portrayed as a group with a poor social economic position and oppressed by their husbands, which makes their integration into German society impossible. Securing equal rights for women and the emancipation of these women were therefore important issues in the media. An issue that was frequently discussed as a human rights question was the issue of forced marriages.

It can be observed that debates about religious and cultural differences also recurred again and again since 2001 (9/11) and especially the integration process of Muslims was repeatedly discussed. These debates have been further intensified with the recent debate on integration triggered by Sarrazin in 2010.

Consequently, the media analysis as well as the interviews with involved actors can neither confirm a clear effect of the implementation of the pre-entry test on

Aliens Register (AZR), the share of people that moved to Germany and were granted a residence permit for family reasons (spouses and other family members) was 27.9% in 2006, 28.9% in 2007 and 26.4% in 2008 (Bundesministerium des Innern 2007: 32; Bundesministerium des Innern 2008: 32; Bundesministerium des Innern 2010: 34). Focusing on migration from Turkey, the respective share of people that moved to Germany and were granted a residence permit for family reasons (spouses and other family members) decreased from 49.9% in 2006 to 49.6% in 2007 and 45.8% in 2008 (Bundesministerium des Innern 2007: 32; Bundesministerium des Innern 2008: 32; Bundesministerium des Innern 2010: 36).

the public perception of TCNs nor can any substantial changes on the image of the TCNs be observed.

V.1.4 Effects on the perceptions of integration by TCN's

The results of a survey among migrants who have passed the pre-entry test, conducted by the Goethe Institute, indicate that the pre-entry acquisition of German language skills proves to be very helpful for migrants after their arrival in Germany and most of the persons recognised the need for demonstrating a basic knowledge of the German language (Goethe Institute 2010). This is also confirmed by the statements of migrants within the focus group discussions. Yet, whereas all respondents considered it to be positive to gain German language skills in the country of origin before entering Germany in order to get by in the new country, most of them criticised the obligation to do a test, as it causes a lot of stress and proves to be a high financial burden for some of them. For most of the respondents the test fees amount to 50% of their monthly salary.

Concerning the test, all argued that they only learnt German because they needed the certificate in order to get a visa. Some migrants perceived their obligation to prove German language skills as a sign that they are inferior to other nationalities who are not obliged to pass such a language test. Moreover, as observed by authorities abroad (German embassy, etc.) as well as by the Immigration Authority, there has recently been an increasing number of third-country nationals travelling with a Schengen visa to visit the EU and take the test in Germany. However, as stated by the respondents, they could not apply for a Schengen visa.

Yet, in principle all agreed that it is necessary to acquire language skills to get by in a new country. They stated that, in principle, the language course had made their life easier in Germany. One woman stated that 'if I had not learnt German to pass the test, I would have had problems to come here alone, to go shopping alone. As my husband is always at work, I would stay at home the whole day'. Many of the women agreed that gaining German language skills helped them live quite independently from their husbands in Germany, and knowing the language may also lead to more self-consciousness. Controversially, there have also been voices that stated that the regulations increased women's economic and emotional dependency on their husbands, because the preparation for the test and the test cost a lot and cause a lot of pressure.

While all migrants perceived language skills as generally helpful for orienting themselves in Germany, some of them argued that they could not deal with the German language when arriving in Germany. This view is also supported by some of the integration course providers who were interviewed. According to them, most of the migrants who passed the test abroad cannot speak a word of German and have to attend a course at level A1 again. This might, on the one hand, be due to the long period they had to wait after they passed the test before they received the visa for Germany. The average waiting time of the respondents between passing the test and entering Germany had been between three and four months. During this time, most of the respondents neither studied German further nor had the possibility to talk German and consequently forgot a lot of

what they had learnt. On the other hand, due to the fact that there are many dialects in Germany, interviewees argued that they had problems understanding people in some parts of Germany. Some of the migrants interviewed further stated that the language skills at level A1 are perceived as too low for being able to get by in Germany, especially for integration into the labour market. Furthermore, they considered it easier to learn German in Germany than in their country of origin.

In sum, migrants perceived pre-entry language skills as reasonable and necessary and they appreciate the possibility to learn the language in language courses as the Goethe Institute; however, as they are bound to the test in the visa procedure it is regarded as a burden rather than as an incentive. As admission is tied to language skills, equal opportunities in preparing for the test must be guaranteed. Moreover, according to most of the migrants, more and clearer information on the visa procedure, test and preparation possibilities should be given by the embassy or consulate.

V.2 The Netherlands

V.2.1 Integration effects

The Dutch pre-entry tests have been extensively evaluated (Begeleidingscommissie, 2009: 8). These evaluations show that implementation of the pre-entry tests has been mostly effective. However, the results in terms of the integration effects of these tests are more differentiated. First of all, most migrants do appear to be able to pass the test. On average, 89% of the participants manage to pass the test (with the language test at the level of A1minus). Only 11% do not manage to pass the test (unsuccessful result, or quitting the test). Even when the required level for passing the language test will be raised to A1, the pass rate would still be 74% (Significant, 2009). Also, the number of retakes is very limited, on average 1,12 exams are required for passing the exam (Ibid.: 20).

There are however clear differences in pass rates. These differences reflect the level of schooling, sex, age and nationality. On average, men (90%) are slightly more successful than women. On average, young adults (18-35) are also much more successful (87-91%) than migrants over 45 (78-74%). These differences in terms of sex and age are related to the even larger differences in terms of level of schooling: highly educated are much more successful (95%) than low educated (82%). Furthermore, the differences in terms of country of origin also seem significant (Ibid.: 24-26). Especially migrants from Ukraine, Indonesia, Brazil, Tunisia and Thailand appear very successful (with pass rates over 94%), whereas Afghans, Vietnamese and Iraqis, in particular, perform much worse (with pass rates under 80%).

Table 9: Pass / fail rates for pre-entry tests after and before the raise of required level to A1 (Significant 2009)²⁰⁷

Category	Passed (now)	Failed (now)	Passed (after raised to A1)	Failed (after raise to A1)
<i>Average</i>	<i>89</i>	<i>11</i>	<i>74</i>	<i>26</i>
Sex				
Men	90	10	79	21
Women	88	12	71	29
Education				
Literate	89	11	73	27
Low educated	82	18	65	35
Average educated	90	10	74	26
High Educated	95	5	84	16
Age				
18-25	87	13	71	29
26-35	91	9	78	22
36-45	87	13	72	28
46-55	78	22	63	37
56-65	74	26	60	40
Nationality				
Turkish	87	13	68	32
Moroccan	91	9	83	17
Thais	93	7	73	27
Chinese	81	19	59	41
Brazilian	93	7	83	17
Other	89	11	75	25

Participation in a pre-entry test appears to have a limited impact on the migrant's integration process once he or she has settled in the Netherlands. There is a very moderate but positive relationship between the score in the pre-entry tests and the scores of these migrants at the intake for the post-entry

²⁰⁷ Note that these figures, based on pass rates in pre-entry tests before the required level was actually raised, do not incorporate the potential effects of introducing the reading part in the pre-entry tests. It should be expected that the fail rates, especially for particular categories, will increase further due to this test.

integration programs (as compared with the cohorts before the introduction of the pre-entry tests) (Regioplan, 2009). This involved in particular a slight amelioration in the level of understanding Dutch language; no amelioration was discovered in terms of speaking abilities (Regioplan, 2009: 70). Remarkable is that the level of writing and reading Dutch also increased slightly in comparison to immigrants who arrived in the Netherlands before the introduction of the pre-entry programs; this is remarkable because these qualities are neither trained nor tested in the country or origin (Ibid.).

The Begeleidingscommissie (2009: 9) argues that these effects can be only limited, given the fact that the level of language proficiency required for passing the pre-entry test is set very low. There was, unfortunately, still too little data available for determining the effect of the pre-entry tests on the subsequent integration of these participants into Dutch society (Regioplan, 2009: 20). However, spokespersons from municipalities involved in post-entry programs indicate that there seems to be a slight amelioration in preparation, motivation and language proficiency of those who arrive in the Netherlands for post-entry programs after having completed the pre-entry programs (Ibid.: 20). The participants in the pre-entry tests (about 85%) themselves also seem to agree that the pre-entry tests help them prepare for their integration in the Netherlands (Ibid.: 33).

However, both the personnel at embassies and consulates and the examinees in the countries of origin themselves are very critical of the required level of language proficiency. This level is so low (about 500 words) that one can hardly speak of a significant increase in language proficiency that would enable the migrant to be self-sufficient in the Netherlands (Regioplan, 2009: 18). Examiners indicate that they are startled by how some examinees with hardly any apprehension of Dutch language were able to pass the test (Ibid.: 19). This is also confirmed by our own focus groups. Migrants clearly indicate that they passed the language test by repeating texts that they did not understand. Furthermore, both the 2009 evaluation by Regioplan (p. 18) and our own focus groups confirm the role of memorization as a factor explaining the successful pass rates in the test on Dutch society.

Finally, concerning the Dutch pre-entry conditions (that several years ago were raised to a minimum age level requirement of 21 and an income level requirement of 120% of the Dutchy minimum income), an evaluation by the government agency WODC indicates that the effects of these criteria on the integration of both partners have been limited (WODC, 2010). In particular, there have not been any effects on labour market participation of the referent, that is the partner who already lives in the Netherlands. Moreover, in some instances it was observed that referents stopped their studies in order to meet the income requirement. There was a small positive effect on the labour market position of the newly arrived partners, in particular in the case of male partners. This effect seems to be situated in particular in the period before and during the application for family migration, but seems to fade away in the period after family migration has been achieved (WODC, 2010). In particular the age requirement seems to have had little to no effect on the integration of newcomers, as compared with the income requirement. However, according to the evaluation by WODC, the

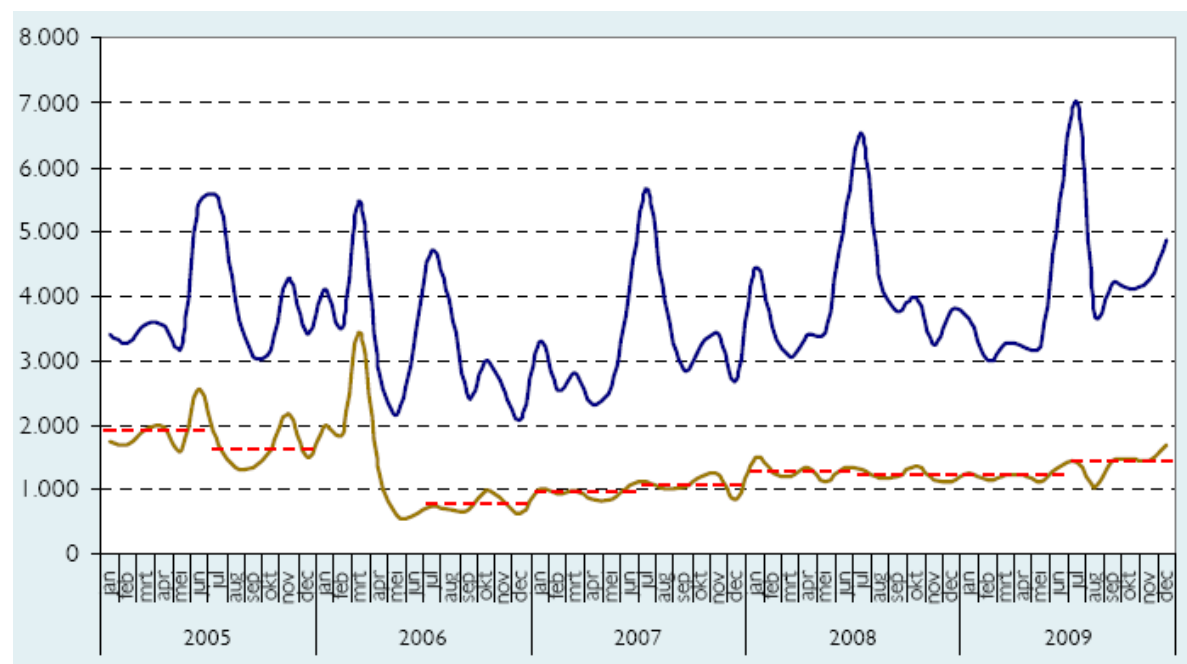
measures did have a significant lowering effect on the number of applications for family formation migration (a decrease of 37%) (WODC, 2010: 3-4). This decrease was strongest amongst Moroccans, Turks and Surinamese. In particular women seem to apply much less than before as a referent for family migration, possibly due to the fact that many women work part time.

V.2.2 Immigration effects

A strong negative effect was found on the number of applications for temporary residence permits for those categories obliged to take part in pre-entry tests (Lodder, 2009: 22). Although it is difficult to determine to what extent this (sharp) decrease in some countries is an actual effect of the pre-entry tests or, rather, of other newly introduced pre-entry conditions, such as those imposed in November 2004, the fact that this decrease occurred fairly 'immediately' after the enactment of the pre-entry tests, makes it reasonable to assume that this is largely the effect of these pre-entry tests (see also, Begeleidingscommissie, 2009: 10, Lodder 2009: 33).

Figure 1 clearly shows that the number of applications for temporary residence permits has declined sharply since the enactment of the Integration Abroad Act in 2006 (there was also a peak in applications in the period immediately before the introduction of the pre-entry tests. This decrease was very significant for those groups that were obliged to take part in the pre-entry test. This figure also shows that since 2008 and in particular since 2009, the number of applications has been increasing again, though still at a lower level than before the enactment of the Civic Integration Abroad Act.

Figure 2: Number of applications for temporary residence permit (blue line for entire population, brown line for those required to pass a pre-entry test)



Source: Significant, 2009: 38.

Though the effects differ little for different categories of applicants, the decrease was slightly larger for elderly persons and for low-educated persons. This seems to point at a degree of 'self-selection' amongst migrants (Regioplan, 2009: 60-62); migrants who fear not being able to pass or who are not motivated to take part in the pre-entry tests do not apply for family migration. It is also possible also that the partners selected for family migration are more highly educated than before. In terms of countries, in particular the number of applications from Turkey, Morocco, Brazil and Indonesia seems to have decreased relatively strongly (Ibid.: 70). An important finding in relation to European regulations is that pre-entry tests seem to bring about little selection effects in terms of pass or fail-rates; almost 96% of the participants who take part in the pre-entry tests eventually manage to pass the test. Therefore, Lodder (2009: 34) concludes that 'the imposition of the pre-entry tests has posed a more severe obstacle to low-educated, family reunification migrants, specific nationalities and in particular Turkish and Moroccans than for other categories of migrants (..), but for none of these groups is this obstacle so severe that it results in the exclusion of specific groups.'

In various reports, the effect on the levels of immigration of specific groups is defined as 'self-selection.' This would mean that the pre-entry tests themselves, because of the high passing rates, do not so much select migrants, but that migrants determine for themselves whether they consider themselves capable of passing a pre-entry test and based thereon they decide whether or not to engage in such a test. This is also reflected in the changing composition of the group of applicants for temporary residence permits in the concerned countries (see table 2): the percentage of female applicants has increased (further) to more than two-thirds, the applicants have on average become more highly educated (increase of percentage of highly educated from 20 to 33%) and they have become younger on average (from 33 to 31 years of age). Furthermore, differences in terms of countries or origin were detected (Moroccans and Ghanians, for example, have scores below average, while Chinese, Thai and Brazilians score above the average). Of course, these trends cannot be simply causally related to the pre-entry tests alone.

Table 10: Characteristics of applicants for temporary residence permits before and after effectuation of the Integration Abroad Act (in %) (Significant 2009: 61-62)

	Before effectuation of the Integration Abroad Act	After effectuation of the Integration Abroad Act
Sex		
Men	38	33
Women	62	67
Education		
Low	34	28
Average	46	39

High	20	33
Age		
Average age	33	31
Nationality		
Turkish	18	18
Moroccan	18	14
Chinese	4	7
Thais	2	5
Brazilian	3	5
Ghanians	10	3
Other	46	48

However, Regioplan (2009: 62) assumes that these figures do indicate a certain degree of 'self-selection', meaning that 'especially the elderly and the lower educated are more often discouraged to apply for a temporary residence permit than others because of the mandatory pre-entry tests.' The Begeleidingscommissie (2009) also describes this self-selection effect, as it concludes that 'the Integration Abroad Act does influence the choice of partner by the partner in the Netherlands (...) who is more inclined to choose a more highly educated partner with a greater chance of passing the exam' (p. 11).

V.2.3 Perception by TCN's

The evaluation by Regioplan (2009) reveals that migrants do not perceive the pre-entry tests in a particularly negative manner. Most migrants consider the information that is provided on the pre-entry tests as sufficient (78-81%), the material provided as adequate and the tests as doable. As argued, in particular the language test is however seen as difficult or for a large group (25%) as too difficult.

The focus groups reveal that migrants do question the added value of the pre-entry tests. The test in basic knowledge of Dutch society is seen as simple, but many migrants also seem to pass this test through the memorization of example-questions. An often mentioned positive effect of this part of the pre-entry test was that it did provide migrants basic knowledge for finding one's way into Dutch society: for instance, knowing how things work in relation to general practitioners in the Netherlands.

Many migrants also indicated the presence of questions that they did not consider very relevant for their participation in Dutch society. Especially questions about Dutch culture and history (such as about Rembrandt's 'Nightwatch') were referred to in this respect. Moreover, some migrants also perceived the test as patronizing, especially in the case of migrants who had already obtained an adequate level of knowledge of Dutch society and Dutch language proficiency in another manner.

Finally, both the applicants themselves and the representatives of Dutch embassies and consulates indicate that the level of language proficiency required for passing the tests is too low for actually being able to find ones way in Dutch society. This is also confirmed by the focus groups with immigrants in the Netherlands.

V.2.4 Perception of TCN's

It is very difficult to single-out the effect of the government policies on pre-entry programs or the public and political discourse on the pre-entry tests, on the images of TCN's. However, it is clear that in these policies and in public and political discourse, distinct images are portrayed of migrants planning to migrate to the Netherlands.

First of all, much can be said about the gendered images of family migrants in this respect. As discussed above, the emancipation of migrant women was a key issue in the political debate on the need for (obligatory) pre-entry tests. The image portrayed of women migrants, especially family migrants from Turkey and Morocco, was that of a group in a very poor social-economic position (poor level of schooling, poor chances on labour market) (e.g. TK 2003-2004, 29700, nr. 3: 5) and thus a very poor starting position for integration into Dutch society. Furthermore, interviews reveal that this image also contained reference to socio-cultural aspects. For instance, the obligation to do pre-entry tests (and later to follow civic integration courses in the Netherlands) was also legitimized with reference to the social-cultural constraints that these women would face for participating and integrating into Dutch society.

V.3 Comparison

Whereas UK pre-entry policies have been implemented too recently to be able to analyse their possible impact, the impact of German and Dutch pre-entry policies are currently becoming more and more evident. Though the policies in these countries and the data on various types of impacts are also too recent to be able to assess long-term effects, we can at least speak of some clear indications. The fact that, as has become evident, the impact of the Dutch and German policies is similar in many respects, supports the validity of these indications.

First of all, as the primary objective of pre-entry policies is to promote the integration of newcomers, it is important to assess indications of their impact on integration trajectories. For both countries, there are clear indications that the impact on language competences after passing the test is modest at best. In Germany, course providers have expressed doubts about such effects. In the Netherlands, a slight positive effect was found on language competences, though again course providers argue that this effect is almost insignificant. Furthermore, for the Dutch case no positive effect has been established from the pre-entry conditions in particular on the social-economic position of migrants. Also, no effect whatsoever was found on social-cultural integration, which also does not seem to be monitored by government. What was found to be more significant for

the Dutch case was the effect on the motivation and level of preparation of migrants for their migration to the Netherlands.

Secondly, both countries show a clear effect of pre-entry policies on the number of visa applications for family migration to the respective countries. Immediately after the new policies entered into force, both countries showed a sharp decrease of the number of visa applications from the policy target groups. This effect seems to have diminished gradually in both countries, though the number of visa applications in both countries has not recovered to the old level prior to the pre-entry policies. Also, in both countries this immigration effect is differentiated in terms of nationality; some countries show a significantly larger decrease in number of visa applications than others did. This is the case, for example, for applications from Turkey and Serbia in Germany, and from Morocco and Ghana in the Netherlands). In the Dutch case evidence has been found that, in general, the elderly, low-skilled as well as male migrants applied less for visas after the introduction of the new policies than before. Finally, the establishment of the new policies in both countries seems to have triggered a growing number of evasions, for instance family migration through Austria in the German case and through Belgium in the Dutch case.

In terms of the perceptions of the pre-entry policies and their perceived effects, the interviews and focus groups in both countries reveal that overall migrants are positive about the tests. They consider the level of the tests as feasible (or in the Dutch case on average even as 'easy') and both the courses provided by the Goethe Institute and the training material licensed by the Dutch government are seen as adequate. For the Dutch case, the most obvious positive effect as perceived by the migrants was the practical knowledge of Dutch society (e.g. going to the doctor, relations with school, etc.). However, in both countries migrants clearly evaluate the level of language skills they acquire as insufficient to get by in society. For the Dutch case, many migrants also experienced the basic knowledge of society tests as paternalistic. Similarly, in Germany some migrants saw the obligation to do the test more as a burden (even discriminatory in some sense) than as an incentive. Finally, specifically in the German case, many migrants were complaining about the information on the visa procedures.

Table 11: Summary of perceived effects of pre-entry policies in Germany and the Netherlands

	Germany	The Netherlands
<i>Integration effects</i>	Course providers doubt effects on language proficiency, especially due to the fact that up to now there is no strong linkage between pre-entry and post-arrival integration courses	<ul style="list-style-type: none"> - Proven modest amelioration of language proficiency at introduction of post-entry programs - Amelioration of motivation and preparation - No effects of pre-entry conditions on labour market position - No evidence of impacts on social-cultural integration
<i>Immigration effects</i>	<ul style="list-style-type: none"> - Sharp decrease in visa applications after introduction of pre-entry policy. In particular from specific countries. - Number of applicants gone up since introduction of the new policy, but did not achieve the level before introduction of the policy - Growing number of evasions (e.g. via Austria) 	<ul style="list-style-type: none"> - Sharp decrease in visa applications after introductions of pre-entry policy'. In particular from specific countries, from low-skilled, elderly and male participants. - Number of applicants have gone up since introduction of the new policy, but did not reach the level before the introduction of the policy - Growing number of evasions (e.g. via Belgium)
<i>Perception by TCN's</i>	<ul style="list-style-type: none"> - Participants positively value language training and practical knowledge of society - Obligation to do the test is viewed more as burden than as incentive, and sometimes also as discriminatory - Quality of course providers other than Goethe Institute is viewed critically - Language skills experienced too low to get by in German society 	<ul style="list-style-type: none"> - Participants positively value language training and practical knowledge of society - Test is perceived as relatively easy - Test on basic knowledge of society is sometimes viewed as paternalistic - Taking preparatory language courses is seen as unnecessary; training material is seen as sufficient - Language skills experienced too low to get by in Dutch society
<i>Effects on perception of TCN's</i>	<ul style="list-style-type: none"> - No sustained effects on image of TCN's were identified - Negative social construction of Turkish migrant women in particular 	<ul style="list-style-type: none"> - Reification of negative stereotypes of immigrant Women (Turkish and Moroccan women) in particular.

VI Conclusions

The establishment of pre-entry integration policies marks the latest stepping-up of European countries' efforts to integrate TCN's. Defining specific integration requirements as a condition for admission reveals how the migration-integration nexus now begins in migrants' country of origin. Additionally, the countries hope that by starting integration abroad, a self-selection mechanism is triggered that enhances integration before admission, rather than these countries constantly being forced to respond to integration problems after admission. In this respect, the pre-entry policies are clear efforts to shape immigration for integration.

This report has compared the development of pre-entry integration policies in the Netherlands, Germany, the UK and Austria in terms of the precise form these policies have taken, the social and political background of these policies, the way these policies have been put into practice and to what extent the policies are actually being perceived as effective by policymakers, experts as well as migrant TCN's themselves. The successive introduction of pre-entry policies in the Netherlands (2006), Germany (2007), the UK (2010) and Austria (2011) reveals that shaping immigration for integration by means of moving integration abroad forms a clear trend throughout Europe. Whereas this applies to these four countries that have implemented mandatory pre-entry tests as conditions for admission, it also applies to other countries like France and Denmark which have developed similar pre-entry policies though without a direct relation to admission (France) or with a test within a short period after immigration in the host country itself (Denmark).

VI.1 Focus on (female) family migrants

A clear commonality between policies in all four examined countries is the focus on the integration of family migrants. Though the countries have somewhat different formal ways of depicting the policy target populations, the policies de-facto apply primarily to family migrants. The Netherlands and Austria have broader target groups constructions in formal terms, but through the various exemptions made in these countries the de-facto target population still involves primarily family migrants. In terms of exemptions made to the pre-entry policies, all countries (except perhaps to some extent Austria), differentiate both directly and indirectly on the basis of nationality. Though challenged before various courts at various occasions, this differentiation seems to pass the test for now (with the UK case still in court), due to the significant margin of appreciation of countries in exempting specific nations from pre-entry obligations for cultural, linguistic or political-economic reasons.

Moreover, in all four countries these policies are legitimized with particular reference to the need to promote the integration of migrant women who are usually represented as being vulnerable and requiring protection as well as forming a relatively homogeneous group. For instance, policies in all four countries make strong reference to the need to emancipate migrant women in particular. Furthermore, Germany and the UK make a strong issue connection with forced marriages and honour killings in this respect.

VI.2 Focus on (socio-economic / socio-cultural) integration of the individual migrant

The four countries strongly converge in their emphasis on individual responsibility of the migrant. Migrants have to cover the costs for their preparation and the test itself, as well as

having to choose their own preparation. However, the countries diverge in terms of their framing of integration as either a social-economic or social-cultural process. Austria, Germany and, in particular, the UK frame immigrant integration as primarily a social-economic process, and cite language skills as the key factor for integration. In contrast, the Dutch government also includes social-cultural integration or the acquisition of basic knowledge of Dutch life as part of the pre-entry tests. However, the analysis of policies in the other countries, in particular Germany, revealed that cultural elements indirectly also played a role in the pre-entry tests. Also, in Germany and Austria (and less so in the UK), cultural integration does play a central role in policy discourses.

The Dutch government has been, when compared to the other countries, most explicit in mentioning the limitation of immigration as an anticipated side-effect or side-goal of policies. None of the other countries explicitly mentions this as a direct or indirect goal, although the UK states that it anticipates a reduction of 10% of family migrants from South Asia. However, though the public and political discourses of all four countries focus attention to the expected effects of limiting immigration of family migrants,, in the Netherlands, Austria and Germany, this is often directly connected in public debate to the issue of limiting immigration from Muslim countries in particular.

VI.3 Pre-entry policies as political initiatives

The analysis of the social and political background of the pre-entry policies shows that these were triggered by politicization (high politics) in all four countries. The crisis of migration and, for Austria, Germany and the Netherlands in particular, the crisis of integration, has become an issue of central political urgency. The pre-entry policies should therefore be seen as efforts by these governments to meet with these challenges; on the one hand, they face severe political pressure as well as pressure from strongly mediated public debates (though initially seemingly less so in the UK) to develop new means for promoting integration and limiting immigration, whereas on the other hand the (formal and practical) opportunities for governments to do so are very limited.

One of the constraints that has often been raised in this respect, beyond the mere practical constraints on how governments could promote integration at all, concerns the European and international legal setting in which these policies are to be generated. The European Charter of Human Rights (ECHR) and the Family Reunification Directive in particular are often mentioned as constraints on the scope of action for national governments. However, this analysis shows that this image of legal constraints has to be nuanced in two specific ways. First of all, the European Family Reunification Directive enables government efforts to pose

integration requirements as condition for admission as well. Rather than being top-down imposed by European institutions, this directive must be seen as a product of intergovernmental negotiation (see WP1). The Dutch and German governments are generally perceived as governments that have been very proactive in moulding this directive to enlarge the scope for national policy action, in particular in relation to the pre-entry policies. The same would apply to the European Common Basic Principle of Integration. Secondly, whereas the Family Reunification Directive seems to be a product of intergovernmental cooperation, the ECHR is much more supragovernmental in character. However, the European Court of Human Rights has reiterated that countries enjoy a fairly broad margin of appreciation in setting immigration requirements and differentiating based on the nationality of TCN's. It remains unclear however whether this interpretation of the national margin of appreciation will change when clear indications of the effects on integration of these policies emerge.

To this it should be added that the public and political pressure for pre-entry policies comes at a moment when the underlying policy problem, family migration, seems to be diminishing. In several older immigration countries in Europe, levels of family immigration from outside the EU have been going down in recent years. To some extent this will have been an effect of the introduction of stricter conditions for admission of spouses and family members, of which pre-entry tests are only one example. However, there is also strong evidence that, as the average length of residence of certain communities of immigrant origin goes up, their attachment to the country of origin diminishes, certainly among the second and subsequent generations. They are not as interested any more in finding a spouse in the country from which their (grand)parents once emigrated, and prefer to find a spouse in the place where they have been raised and where they actually live. Of course, there are also new immigrants who have settled more recently, and who may still wish to find a spouse in their country of origin. However, on average these newer migrants tend to be more highly educated than their predecessors, so that passing a pre-entry test should be less of a problem for their potential spouses.

VI.4 National differences in policy implementation

In spite of the many similarities between the countries, especially between Germany and the Netherlands, the tests appear to be administered very differently according to national organizational infrastructures in migrants countries of origin. Whereas Germans can make use of the extensive global infrastructure of the Goethe Institutes for language courses and for language certificates, the Dutch can only rely on embassies and consulates around the world. The British seem to apply a solution somewhat in between the Dutch and German approaches, by licensing agencies around the world to provide language courses and perform language tests. The Austrian government seems to be developing a similar system to that of Germany and the UK.

These differences matter in particular as to what integration effects can be expected from the pre-entry programs in the various countries. All four countries have set the required level of language proficiency at A1. However, it is

clear that especially the German global infrastructure of language training through the Goethe Institutes allows for more significant integration effects than the other countries. The Dutch infrastructure appears relatively thin, with no certified language courses (though an infrastructure of language courses does seem to have emerged in various countries) and only a government-certified training package that migrants can pursue to prepare for their test. This may relate to complaints by TCN participants in Dutch courses that the pre-entry programme is fairly useless as the acquired level of language proficiency is very weak (only recently raised to A1) and the test on knowledge of society can be attained by memorizing the sample questions from the government training package. It seems that without violating European regulations, the only way to enhance the leverage in terms of integration effects would be to step-up government involvement in significant training programs in the countries of origin.

VI.5 Integration effects thus far seem modest at best, immigration effects more significant

Public (and academic) debate on pre-entry policies has (have) thus so far focused primarily on whether these policies would be discriminatory in terms of obstructing the immigration of specific groups or nationalities. However, less has been focused on whether the policies are really legitimate in terms of achieving the formal policy goal of promoting immigrant integration. This concerns not so much whether they are in accordance with national, European and international law, but rather whether they do what they are supposed to do. This study has therefore tried to shift attention to these policy goals (why we have such policies in the first place) and it's supposed effects (whether they do what they ought to do). As this research shows such integration effects appear modest at best and thus shed a new light on how pre-entry policies need to be assessed. Rather than from a legal perspective, it questions the current policies from a more socio-scientific perspective.

Thus far, integration effects seem to be modest at best. Dutch policy reports have revealed a slight positive impact on language competences, though still considered too weak to be able to get by according to course providers as well as the migrant participants themselves. In Germany as well, the course providers are cynical about the leverage in terms of integration effects that the pre-entry programs could provide. Perhaps the most distinct positive effect that was found in focus groups in Germany and the Netherlands concerns the practical knowledge of life that migrants acquire when doing the tests, and their motivation and preparation for their migration which seems to have been enhanced. At the same time, many migrants see the obligation to pass the test as a burden rather than as an incentive. For the Netherlands, the test on knowledge of society is often considered both paternalistic and ritualistic; the test includes many culturalised and historical questions that can easily be memorized based on the government training package.

In addition, it is evident that the pre-entry policies have had distinct immigration effects (at least in Germany and the Netherlands; for the UK it is still too early to

tell). In both countries, the number of visa applications from the target population dropped significantly after introduction of the pre-entry measures.²⁰⁸ However, in both countries there is also evidence of growing use of alternative immigration routes (such as the Belgium-route in the Netherlands) as well as a gradual increase in the number of visa applications for target groups (though not returning to the preceding levels). There may well also be a process of (self) selectivity at play with increasing levels of human capital amongst applicants which enables them to pass the tests.

Therefore, this study reiterates the importance of further studies on the integration effects of pre-entry policies. On the one hand, this analysis shows that promoting integration clearly is the primary stated objective of these policies (especially in relation to migrant women). However, on the other hand, the absence of clear data on integration effects (and to some extent also the absence of clear efforts to monitor integration effects) in combination with the explicit political discourse on limiting immigration, may give the impression that limiting immigration is indeed a more important objective than suggested in formal policy documents. This may reinforce impression by some scholars (Strik, 2010; Goodman, 2011) that rather than shaping immigration to promote integration, pre-entry policies are oriented at shaping integration as a means for reshaping immigration flows, and in the case of family migration, even discouraging immigration flows.

²⁰⁸ Though in the Netherlands this effect could not immediately be established due to the almost simultaneous enactment of the higher income and age level requirement for family migrants, the occurrence of similar effects in Germany does seem to reinforce evidence of a direct connection between the pre-entry tests and the drop in levels of visa applications.

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