WP 1

CONNECTIONS BETWEEN ADMISSION POLICIES AND INTEGRATION POLICIES AT EU-LEVEL AND GIVEN LINKAGES WITH NATIONAL POLICY MAKING

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

Table of Contents

I   Introduction

This paper has two interconnected aims: to establish the linkages between admission policies and integration policies that exist at the EU level (the migration-integration policy nexus), and to consider the nature of the relationship between EU and national-level policymaking in these areas. Our focus is on measures pertaining to the rights and status of legally-resident Third Country Nationals (TCNs). We thus address specific issues related to the EU common migration and asylum policy and do not explore issues such as asylum or measures on border control and irregular migration.

The timeframe is largely focused on the period between 1999-2011, which begins with the ratification of Amsterdam Treaty[1] and agreement by member states on the Tampere objectives[2] (which discussed admission of migrants and included a commitment to 'fair treatment' for TCNs) and ends with the adoption of the Stockholm Programme[3] and entry into force in the same year of the Lisbon Treaty[4]. The paper does, however, also note progress made by subsequent measures covering: seasonal workers, intra-corporate transferees and proposals for a single permit for TCNs to reside and work in the territory of a member state and on a common set of rights for TCN workers legally resident in a member state. Developments during this period were relatively limited, but as the Lisbon Treaty came into force in 2009 it is also the case that a legal basis for action on migration and integration was created that fell within 'Pillar 1' of the EU's legal framework. This makes migration and integration subject to the ordinary decision-making process, which involves co-decision-making powers shared between the Council (of Ministers) and the European parliament. The powers of the European Court of Justice also increased with the ERCJ able to issue preliminary rulings to clarify issues concerning EU law in national legal systems.

It is also helpful to briefly reflect on some aspects of the EU's institutional setting. In general terms, there has been a shift towards forms of policy development and decision-making that involve a greater role for the Commission, European parliament and ECJ. However, this is quite a broad perspective and it is necessary to look inside' these institutions. In summer 2010, for example, the old Justice and Home Affairs directorate was split into two new units. One would deal with Home Affairs and it is within this new DG that predominantly lies responsibility for migration and integration. However, a new Justice DG was also created and does have rights-based focus. This became immediately apparent in summer 2010 when the new Justice Commissioner, Viviane Reding, was a very strong critic of the French government's deportation of Roma migrants.

I.1   European policy debates over admission/integration

The context of this period is one of marked shifts in the ways that many European countries have dealt with immigration as a policy issue, but only gradual, or patchy,

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[1] Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and certain related Acts, Amsterdam, October 2 1997.
[2] Tampere European Council Presidency Conclusions, October 15-16 1999.
[3] European Council (2009) The Stockholm Programme: An Open and Secure Europe Serving and Protecting its Citizens, Official Journal of the EU, C115/1, May 4 2010.
[4] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, Lisbon, December 13 2007

convergence across the EU, and little sign of unproblematic consensus over the EU's role in the policy field. While it has been noted that the immigration policies of labour-importing countries are coming to resemble each other in important ways (Cornelius and Tsuda 2004), this is a phenomenon that includes non-EU countries (OECD 2009), and there continues to be some diversity in the ways in which Member States deal with immigration. However, we can identify a re-orientation of the debate since 2000, particularly in terms of the economic, social and security dimensions of immigration: recognition of the potential economic benefits of immigration has led to admissions policies that are increasingly selective (Balch 2010a); the integration of migrants has been affected by a wider questioning of multicultural policies (Vertovec and Wessendorf 2010); and security concerns have become increasingly relevant to immigration policies, particularly with respect to border controls and irregular entry and residence of immigrants (Huysmans 2006). These developments are all highly contested due to the well-known propensity for immigration to be politicized, touching as it does upon underlying liberal dilemmas over community and justice (Balch 2010b).

The linkage in policy terms between admission and integration is particularly relevant here because it has emerged as a significant point of friction between competing policy frames. The EU has been seen by many as central to these struggles (Guild, Groenendijk and Carrera 2009), but these are based on assumptions regarding the way in which the EU allows (and/or encourages) the spread of certain ideas and provides a legislative arena for the institutionalization of those ideas. The specific aims of this Work Package relate directly to these issues because it seeks to contribute to understanding of:

- Underlying assumptions that inform policy
- The subsequent 'battle of ideas' about the migration-integration nexus
- And, the EU's role in this process.

I.2 Analytical framework of the paper

While we include analysis of relevant EU measures the point here is not to rehearse or repeat the full range of legislation and instruments that the EU has developed during this period. Instead we propose to map them in terms of how they speak to ongoing debates about the migration-integration nexus in European policymaking. When combined with the analysis of national policy frames conducted elsewhere in the Prosint project, this thus provides important insights into the multi-level dynamics of policymaking in the EU. The term multi-level governance expression is a shorthand expression used by EU specialists to refer to the organisation of policy processes and decision-making across sub-national, national and supranational levels of political authority, but also points to the involvement of a wider range of public and private actors in policy and decision-making. Taken together, these suggest – at the very least – that migration policy becomes more complex as a result of EU action and that we need to consider the organisation of political authority across these various levels and to think about the role of key actors in the process. This doesn't mean that power is so dispersed that we use multi-level governance as signifying a rehashed form of pluralism. In the areas of migration and integration policy power still remains concentrated in the hands of national interior ministries. This points to the pre-eminent role held by the executive branches of national governments in the development of EU policy and also helps to account for the emphasis in interpretations of policy

development that has been placed on a 'security' frame, i.e. immigration represented as a threat. Over the last ten years or so it has become apparent that even in an area such as migration that is closely linked to state sovereignty, member states now work with each other on a systematic basis share, understandings, ideas and knowledge . This can be understood as a horizontal dimension to MLG as member states work together. There is also a vertical dimension as member states share power with EU institutions and other actors. Indeed, the Lisbon Treaty marks out a far more significant role in both shaping and making policy for EU institutions. It is too soon to judge the effects of the Lisbon Treaty, but experience from member states in the 1970s and 1980s does suggest that a greater role for judicial authority can help to open 'social and political spaces' for migrants and, to some extent, challenge the power of executive authority (Hollifield, 1992).

Consideration of the role of the EU in converging national policy paradigms and as a supranational venue for policymaking relates to a very basic analytical issue. This is namely that the EU is both an arena for the accommodation of member states' policy preferences but also possesses the capacity to shape those preferences and feed into domestic settings. There is thus a need to consider both *European integration*, which can be understood as the process by which member states' interests are accommodated in law and policy at supranational level and *Europeanisation* which can be understood as the effects (among other factors) that European integration can then have on member states.

In empirical terms, the evidence presented here is not only formal legal and non-legal measures at the EU level, but also the negotiation processes, legal dynamics and the creation of networks around policy. An examination of negotiations can reveal those member states such as Austria, Germany and the Netherlands that have been advocates of the link between admissions and integration. This doesn't mean that they were the only states keen to pursue this agenda, but they were particularly prominent in the negotiation of the various directives that are analysed later in this paper, particularly those on family reunion and the rights of long-term residents (both agreed in 2003). This also shows that it is not necessarily the 'biggest' states that hold sway in EU negotiations. The negotiation dynamics are far more complex than this and it is possible to have powerful coalitions of smaller and larger states that have strong effects on the content of negotiations. It should also be borne in mind that the 2003 directives on family reunion and the rights of long-term residents required unanimity amongst member states. The point here – as analyses of negotiation in international relations show us – is that the preferences of the more reluctant states don't necessarily determine the outcome, but do have a strong limiting effect on the range of possible outcomes. Thus, in a negotiation setting with reliance on unanimity a small group of states with strongly held views can have a powerful effect on outcomes. It is in this context that we see a focus on 'integration measures' in both of the 2003 directives.

It is also the case that EU legislation can have different effects within Member States. It can represent no change, a significant leveling-up or a leveling-down in national legislation. We show that there was some leveling-up in the case of the 2 anti-discrimination directives of June and November 2000, but a far more ambiguous outcome from the family reunion and long-term residents directives. Legal dynamics are particularly important with respect to infringement proceedings (i.e. the monitoring by the Commission of the application of EU law).

The 'multi-levelness' that we have identified also points towards the creation and function of different kinds of networks organized around policy. These could be comprised of government, officials, and representatives of EU institutions, scientific experts, NGOs or some combination of these. It is then relevant to examine mobilization dynamics, particularly of 'expert-based' interventions into the EU process and the scope for EU objectives and/or action to shape and/or influence developments in member states. The kinds of networks that develop around policy, their organisation and participation within them is an important aspect of policy development because it can shape the ways in which EU action develops and also the ways in which EU decisions are then 'received' in member states. Put another way, political action is often understood as the mobilisation of bias. In any policy area, it is important to identify the sources of bias in the policy process, i.e. to ask who drives policy and in which direction are they driving it?

We begin by considering the politico-legal context of integration in this area, and then go on to develop a conceptual framework for subsequent analysis by considering the insights of the literature on Europeanisation for immigration policies before using this as an analytical tool to assess concrete developments in the field of admissions and integration of migrants.

II The politico-legal context of EU competency in the policy field

From its formal inception in Title IV of the Treaty of Amsterdam (agreed in 1997 and entered into force in 1999) developments in the area of migration have been characterised by a complex, multi-speed process resulting in different competences and styles of policy- and law-making. The scope of this legal and policy development on immigration can be characterised as partial, limited, asymmetric and flexible.

- Partial in the sense of applying to some but not all aspect of migration policy – admissions policy is a notable exception
- Limited in the sense that, until recently, the involvement of institutions such as the European Parliament and European Court of Justice was severely constrained
- Asymmetric in the sense that the effects on member states can differ. We could, for example, hypothesise that the effects on 'newer' countries of immigration and/or recently joined member states are more pronounced than the effects on 'older', longer-standing countries of immigration. We realise that it can be an unhelpful caricature to talk about 'old' and 'new' countries of immigration, but 'time' does make a difference, so we'd expect experience of integration and length of membership to be factors affecting relations between member states and the EU and, more specifically, shaping how the migration-integration nexus plays out in different member states.
- Flexible in the sense that the UK, Ireland and Denmark have opt-out arrangements from Title IV provisions and their subsequent development.

On the integration of migrants the most important EU directives have been those on anti-discrimination (agreed in June and November 2000), the rights of long-term residents (2003) and the right to family reunion (2003). Both the directive on family reunion and the directive on the rights of long-term residents contain 'integration measures'. They are the two pieces of EU legislation that most directly relate to the migration-integration nexus. The point here is that they do not so much represent a distinct EU perspective on these issues as they do the projection of the interests of member states into EU legislation.

On admissions policy, the Treaty of Lisbon (2009) expressed the intention to create a common migration and asylum policy but importantly made clear that this 'shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed' (Article 79.5). This is very important as EU member states have ceded authority when it comes to the free movement rights of EU citizens, but have not done so for TCN entry and admission. Our focus in this paper is on legally resident TCNs so we do not analyse mobility by EU citizens, although, clearly, recent controversies, such as the expulsion of 8000 Roma to Romania and Bulgaria by the French government do raise questions about the transposition of the EU's 2004 free movement directive and about discrimination on the basis of ethnic origin given that a certain ethnic group was clearly targeted for expulsion.

Alongside 'hard' legal measures there are a whole host of 'softer' co-ordination and co-operation measures on integration. These include the creation of a network of National Contacts Points on Integration; the development of Common Basic Principles on

integration; the European Migration Network ; a European Immigration Fund; and European website on integration[5]. There have also been attempts to influence the agenda – for example the European Programme for Integration and Migration (EPIM). In analytical terms these present a difficult challenge – how can we understand the impact of soft measures on the development of national policies?

The Common Basic Principles are shown in Table 1. They emerged as a result of discussion and reflect the changing focus of European integration policies. They were formally agreed during the Dutch Council Presidency in the second half of 2004. It is not the case that holding a 6-month Council Presidency allows a country to determine the EU agenda, but there is scope to shape aspects of the agenda. The Dutch government with their Austrian and German colleagues were particularly active proponents of the projection to EU level of their national measures linking admissions and integration. In contrast, the Spanish centre-left government sought to promote a more explicitly multi-cultural focus on the promotion of the culture and languages of immigrants, but other member states preferred to emphasise 'respect' rather than active support for their development (Joppke, 2007).

Table: 1 The 'Common Basic Principles', adopted by the Justice and Home Affairs Council of 19 November 2004
1 - Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States 2 - Integration implies respect for the basic values of the EU 3 - Employment is a key part of the integration process 4 - Basic knowledge of the host society's language, history and institutions is indispensable for integration 5 - Efforts in education are critical for preparing immigrants to be more successful and active 6 - Access for immigrants to institutions, as well as to public goods and services, on a basis equal to national citizens and in a non-discriminatory way is an essential foundation 7 - Frequent interaction between immigrants and member state citizens is a fundamental mechanism 8 - The practices of diverse cultures and religion as recognised under the Charter of Fundamental Rights must be guaranteed 9 - The participation of immigrants in the democratic process and in the formulation of integration policies, especially at the local level, supports their integration 10 - Integration policies and measures must be part of all relevant policy portfolios and levels of government 11 - Developing clear goals, indicators and evaluation mechanisms to adjust policy, evaluate progress and make the exchange of information more effective is also part of the process

Source: Council of the European Union, 2618th Council Meeting Justice and Home Affairs, Brussels, November 19 2004

The most important legal instruments adopted thus far regarding the admission and residence of third-country nationals are the directive on the status of long-term residents who are TCNs (2003/109) and the directive on the right to family reunification (2003/86). The Commission is currently reviewing this latter directive with a Green paper due in 2011 and plans for modification by 2012, according to the Stockholm action plan (CEC, 2010). Both of these pieces of legislation were the subject

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[5] http://ec.europa.eu/ewsi/en/

of intense negotiations in the Council, resulting in significant differences between the end result and the original Commission proposals. We analyse the 2003 directives on family reunion and the rights of long-term residents because they most explicitly relate to the connection between migration and integration. Both introduce 'integration measures', which, it seems, have also been interpreted as a margin in law for assessment of the integration capacity of TCN migrants. This chimes with the focus in integration policies in a range of member states on socio-economic integration and linguistic adaptation.

II.1 Family Reunification (Council Directive 2003/86/EC of 22 September 2003)

There is an obvious importance to family migration because of its centrality to migration flows. Family migration continues to comprise a major part of immigration flows to Europe. More than half of migration to countries such as France and Portugal is family migration. The proportion is lower in Germany (about 30 per cent) and the UK (about 20 per cent) but even in these countries movement by family members is very important. In 2007 the then French interior minister, Nicolas Sarkozy, addressed the French *Comité interministeriel de contrôle de l'immigration* (Interministerial Committee on Immigration Control) and expressed his preference for what he called '*migration choisie et non subie*' (migration that is chosen and not endured). In light of the fact that 59 per cent of new migrants entering France in 2006 did so as family migrants, this marked a preference for what Sarkozy saw as 'productive' labour migration rather than 'unproductive' family migration. In 2006 the French immigration and integration law (Law No. 2006-911) tightened rules on family migration by imposing an 18-month waiting period for sponsors and requiring non-EU migrants to wait for a probationary or conditional between 2 and 3 years to be joined by their spouse. The 2007 law (no. 2007-1631) was even more controversial because it introduced for an 18-month trial period voluntary DNA tests for children of migrants with parents also obliged to sign a good behaviour contract for their offspring (Kofman and Meetoo, 2008: 160). The issue here is that admissions policy is geared to selection of the perceived contribution that can be made by 'productive' migrants. The migration-integration nexus thus acquires a particular focus on notions of economic utility. It may be the case that family migration enhances rather than detracts from integration by helping to avoid problems of isolation (Honohan, 2008: 5), but this has not been the underlying policy narrative.

In general terms the EU family reunion directive determines the conditions under which legally resident TCNs can exercise the right to family reunification. It also 'aims to highlight' the need for integration policy to grant TCNs rights and obligations comparable to EU Citizens. The EU directive on family reunification was agreed in June 2003 after a negotiating period of three years and after three different Commission proposals. Denmark, Ireland the UK are not covered by its provisions. The long negotiating period indicates that the Commission encountered resistance from member states and was forced to temper some of the more progressive aspects of the original proposals that would have impinged more directly on member states' admissions policies. Throughout the negotiation it became clear that a core group of states – with Austria, Germany and the Netherlands to the fore – would insist on EU measures that did not place additional constraints on their capacity to regulate admission of family members.

During the 3-year negotiation process of the family reunion directive there was a movement away from the Commission's more liberal initial proposals to a stronger emphasis on integration by migrants and their families. The Commission's original proposals had conceptualised 'integration' in relation to the promotion of social stability through, for example, access to training and education for family members. During the negotiation, the Austrian and German governments were insistent on the inclusion of integration provisions in accordance with national laws. As noted earlier, these were integration *measures* and not integration *conditions*, but they are sometimes represented as the latter and as a means of stemming family migration flows. Moreover, given that the integration measures tend to emphasise attendance at classes and educational attainment then they may be more likely to favour migrants form more developed countries that have had previous access to educational provision.

The EU directive determines:

- The right to family reunification of TCNs who reside lawfully in the territory of an EU Member State;
- The conditions under which family members can enter into and reside in a Member State;
- The rights of the family members once the application for family reunification has been accepted regarding, for example, education and training.

The Directive also recognises the rights of member states to impose conditions on family migration and gives them margin to do so in relation to factors such as the definition of the family, waiting periods and integration measures.

The EP has often intervened in debates about immigration to advocate a more progressive EU stance. Under the powers given to the EP by the Treaty of Nice it sought annulment of the directive. The EP argued that certain articles were not in line with fundamental rights, such as those specified by the ECHR (specifically Article 8 on the right to family life and Article 14 on non-discrimination on grounds of age) and a number of other international agreements. The Council responded by pointing out that the EU is not actually a party to these agreements. Specific problems were that:

- Article 4.1 of the Directive specifies that member states are to authorise entry and residence for dependent, unmarried children below the age of majority in the member state they move to. There is a derogation that allows member states to require that children aged over 12 who arrive independently of the rest of his/her family may be required to satisfy the integration conditions set down in national law in the country they move to.
- Article 4.6 specifies a derogation that member states may require that applications for family reunification for minor children be submitted before the age of 15
- Article 8 states that member states may require the sponsor to have been legally resident for 2 years prior to family members joining him or her. There is then a derogation that allows a member state to take into account its 'reception capacity' and extend the waiting period to 3 years.

In its ruling, the ECJ rejected EP calls for annulment of the directive on the grounds that, while member states must have regard to a child's interests, the EU's framework of

fundamental rights does not create an individual right for family members to enter the territory of a member state. This goes back to a point that has already been made, i.e. that the right to enjoy family life does create scope for courts to intervene to protect the family rights of migrants, but does not create a right to family migration. It was established that EU member states have a 'certain margin of appreciation' when examining applications for family reunification. Similarly, the Court held that the possibility for Member States would still be obliged to examine requests made by children of more than 15 years old in light of the interests of the child and with a view to promoting family life. The ECJ also ruled that integration was a legitimate factor to be taken into account, but not as the base for a quota system or a three-year waiting period imposed without regard to the particular circumstances of specific cases submitting the application so this does not appear to breach the directive. It is an indication of the concessions to made to member states during the negotiation process that harsh Austrian standards still fell within the margin of appreciation allowed by the family directive (Adam and Devillard 2008).

A Commission Communication on the application of the directive underlined that the eventual directive was more restrictive than originally envisaged: *'The adopted text underwent some substantial -often more restrictive- changes compared to the Commission's original proposal...' (p2).* Despite this, the Commission reported that infringement proceedings over transposition of the directive had been made against 19 member states (CEC, 2008).

The objectives of the optional integration procedures were also an issue of concern in the Commission's evaluation. The report warned that the objective of Article 7 (2) (integration 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' (p7).

In its evaluation of the family reunion directive, the Commission reported that the Directive's impact on harmonisation has been limited (CEC, 2008). This is linked to the legislation's 'low-level character' that leaves Member States with significant discretion and was found, in some cases, led to the lowering of standards. A reason for this is the existence within the legislation of '*may*' provisions that are seen as 'too broad or excessive'. Integration measures are highlighted as a particular area of concern.

II.2   Long-term residence (Council Directive 2003/109/EC of 25 November 2003)

The legitimation for EU action extending mobility rights to legally resident TCNs after five years of residence was represented as a way for the EU to attain its 'market-making' objectives linked, for example, to the Lisbon Process that proclaimed the aim of making the EU the world's leading knowledge-based economy by 2010. The economic impulse to economic and political integration in Europe dating back to the Treaty of Rome provided by the four freedoms (freedom of movement for people, services, goods and capital) is a basic, founding principle. The rights of long-term residents were developed in this context, but here too we see a focus on 'integration measures' as member states seek to ensure that if legally-resident TCNs were to move from one state to another,

then there would be some scope for member states to insist on application of any relevant integration measures in their national laws.

The directive concerned the status of third-country nationals who are long-term residents and was generally considered less controversial than the directive on family reunion (Groenendijk, 2004b). It establishes rights and freedoms for long-term TCNs to be granted after five years of continual residence. These rights include access to employment and self-employed activity; education and vocational training; social protection and assistance; access to goods and services, etc. The directive also gives the right to move and reside in another member state. As with the directive on Family Reunion, during the Council negotiations a clause was inserted in Article 5 (conditions for acquisition of secure status) to include 'compliance with integration conditions provided for by national law. This has been criticised because it allows member states wide discretion to use mandatory integration requirements (for example passing an integration test and covering its financial costs) before getting access to the benefits and rights conferred by the status of long-term resident (Carrera 2005). Again it was the Netherlands, Austria and Germany who were the driving forces behind insertion of the extra clause (Groenendijk, 2004b).

We now analyse the anti-discrimination directives agreed in 2000 that were a conscious attempt by the EU to deal with issues of racism and xenophobia that had blighted the EU in the 1990s. Here too there was also an economic motive, as it was argued that the directives would enable the better function of the European single market by protecting people's rights in the workplace irrespective of their ethnic origin. The directives drew from the Equal Treatment directive of 1976, as well as EU measures designed to combat other forms of discrimination, such as on the basis of nationality or gender.

II.3 The Racial Equality (2000/43/EC) and Employment Equality Directives (2000/78/EC)

Article 13 of the Treaty of Amsterdam granted new powers to combat discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Racial Equality Directive and the Employment Equality Directive implemented these powers by enshrining in Community law the principle of equal treatment and non-discrimination. More specifically, they introduce notions of 'indirect discrimination' into EU law which were inspired by the legal framework in the Netherlands and the UK. This could also imply the monitoring of the application of the law by collection of data on ethnic origin. This was a bridge too far for countries such as France that do not collect data on ethnic origin (Guiraudon, 2009). There is a specific derogation for the French government that exempts them from collecting data on ethnic origin and allows them other ways to monitor application of the legislation, although it is not entirely clear what these might be.

The Racial Equality Directive defines and proscribes direct and indirect discrimination and harassment, and provides for positive action to be taken to ensure full equality in practice. It also requires each Member State to set up an organisation to promote equal treatment and assist victims of racial discrimination. Similar in many ways to the Racial Equality Directive, the Employment Equality Directive requires equal treatment in employment and training irrespective of religion or belief, disability, age or sexual orientation.

Discrimination on the basis of nationality is only prohibited for nationals of EU Member States. An independent review of this issue commissioned by the Directorate-General for Employment, Social Affairs and Equal Opportunities concluded that this situation could be challenged by international human rights law:

> *"the mere fact that EU Member States have decided to establish among themselves a new legal system and to create a 'citizenship of the Union' should not be considered as sufficient justification for the maintenance of such differences beyond the narrow list of political rights currently attached to citizenship of the Union. Indeed, as regards at least the enjoyment of fundamental rights, even differences of treatment based on the administrative situation of individuals – particularly differences of treatment between legally residing migrants and migrants who are in an irregular situation – may be challenged."* (de Schutter, 2009)

The Commission reported on the implementation of the directives in 2006 and 2008 (COM (2006) 643 final and COM (2008) 225 final), launched infringement proceedings against around half of all Member States for non-compliance; and made a 'renewed commitment' to complete the task with the proposal of a new directive (CEC, 2008).

III Europeanisation and the EU migration framework

The emergence of the EU migration regime has occurred in parallel with an evolution of research into policy change in Europe. Immigration policy has now come within the scope of 'Europeanisation' – described by some as the 'what happens next' issue that arises as a result of earlier research into the developing EU polity; instead the focus shifts to impacts on member states (Geddes, Scott et al. 2007: 50-52). In other words, the focus on European integration has developed into a concern with integration's effects (Schmidt 2006: 183). This focus allows us to ask about the relationship between 'bottom-up' processes (Member States uploading preferences into the developing EU) and 'top-down' processes (downloading, or the impact of EU integration on the Member States) (Borzel 2005: 47)

III.1 Definitional issues

The term 'Europeanisation' is necessarily ambiguous because it can refer to the transfer of sovereignty to the EU (e.g. Lawton 1999: 92), or the influence of European policymaking in the domestic arena (e.g. Börzel and Risse 2000). This means that it is difficult to narrow down precise definitions but most work tends to refer to Europeanisation as something in the national political system that is affected by something at the European level (Vink 2003: 63). Mair describes it as "the penetration of European rules, directives and norms into the otherwise differentiated domestic spheres" (Mair 2007: 341). Radaelli widens this to

> *"The construction, diffusion and institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and sub-national) discourse, political structures and public policies" (Radaelli 2000: 4)*

Within this particular aspect of Europeanisation (i.e. that relating to domestic change), there are two main schools of thought with respect to explaining the variation in impact across Member States. The first could be described as 'goodness of fit' (Green-Cowles, Caporaso et al. 2001) where adaptational pressures differ according to the congruity of domestic structures with respect to EU developments. Here the most important variable explaining the variation in impact of EU integration on Member States is institutional compatibility (e.g. Duina 1997). The focus is squarely on the 'misfit' between the EU and its Member States, and which kinds of mediating variables can explain the variation of effects across different systems (Borzel 2005: 50-51).

This work has been criticised by some who suggest it ignores the ways in which European policies play out within the complex struggle over national policy development over time (Héritier, Kerwer et al. 2001). This second school of thought points to the ways in which Europe can directly and indirectly affect political opportunity structures and offer the possibility for policy reframing with or without institutional compliance (Knill and Lehmkuhl 2002). This 'differential effects' approach points out that there are different types of EU action and these lead to different types of Europeanisation. However, in most areas, multiple types of integration are likely to co-exist - directives that are legally binding might also be accompanied by an Action Plan which specify rather than oblige Member State action.

It is plausible that these two areas of interest in research into 'Europeanisation' could be combined to analyse:

1. The domestic institutional structures that mediate the relationship between the EU and member states? The kinds of question that arise would include: who are the dominant actors? How is the policy field organised? How are resources distributed? What role for NGOs and civil society?

2. The kinds of measures that the EU adopts. This could include 'harder' legal effects with a requirement to implement agreed measures, to a range of softer measures that do not require implementation in the same way, but may provide new 'resources' for domestic action. These resources could be funding for projects, but could also be new ideas and understandings of what happens in other member states.

III.2 'Top-down' and 'bottom-up' Europeanisation

A further criticism of earlier studies on Europeanisation is that they tended to imply a rather 'top-down' process (see Radaelli, above). While bi-directionality is increasingly recognised in studies of Europeanisation, reviews have noted that the dominant empirical model has become the top-down, three-step approach developed by Risse, Cowles and Caporaso (2001) (Bache 2008). Of those that have shown more interest in the reverse process, Börzel (2002) for example, noted that countries often successfully 'uploaded' their policy preferences to the EU, rendering less problematic subsequent issues of adaptation. These countries she described as 'pace-setters', in contrast to countries that preferred to delay EU action ('foot-draggers') or act more pragmatically ('fence-sitters'). Börzel differentiates between different parts of the policy process in the EU with 'ascending' (decision-making) and 'descending' (implementation) stages. Bulmer and Burch (2000) make a distinction between two different responses that member states have in terms of Europeanisation: reception and projection. The first of these is rather like the adaptational/goodness of fit models, and the latter is rather like the 'uploading' metaphor, except Bulmer and Burch expand this notion beyond the vertical relationship between the member state and the EU and to include the projection of one state's preferences onto other states (i.e. horizontal Europeanisation).

We can now return to the questions – what kind of linkages exist between admission policies and integration policies at the EU level (the migration-integration policy nexus), and what does integration in this area tell us about the dynamics of the relationship between EU and national-level policymaking? We have seen limited EU action relating to the migration-integration nexus as it applies to legally-resident TCNs. Where there has been action we see a focus on integration measures that is a consequence of the 'projection' of the interests of an 'older' immigration countries and their domestic integration policies. We do, however, also see developing scope for analysis of the 'reception' of these measures in EU member states and would argue that 'time' and 'timing' make a difference with the relative experience of immigration and of EU membership being key variables.

IV The developing EU migration regime

We now analyse some specific developments at EU-level. Our aim is not to provide detailed accounts of initiative, but to outline the general direction of the EU approach. Our analysis begins with the Tampere programme (1999-2004), moving through the Hague programme (2005-2009), and finally to the Stockholm Programme (2010-2014). Overall, the mixed results of these show that on the issue of immigration it has been easier to find collective agreement on restrictive measures (for example regarding asylum or irregular migration) than it has to harmonize legislation on areas such as labour migration or the integration of third-country nationals (TCNs).

The nature of EU developments since the late 1990s have led some to continue claims that the EU is creating a 'fortress' or 'gated community' (Henk van Houtum, 2007) or complain of a liberal deficit (Carrera & Wiesbrock, 2009). Others are more hopeful, seeing 'soft' forms of integration as a first step moving away from the 'securitisation' of immigration (Velluti, 2007).

The evidence from the latest Action Plan for the Stockholm Programme (CEU, 2009) is that in the 10-year period after Tampere there has been a shift away from the notion of policy harmonization and a corresponding shift towards more practical or pragmatic attempts to find alternative methods to achieve common goals. This could be seen as reduced ambition, but may also mark a preference for attainable softer governance measures (in favour of, for example, improved exchange of information on skills demand/supply with third countries. There are also on-going proposals related to seasonal workers, intra-corporate transferees and to the status and rights of legally resident TCNs.

Tampere	Hague	Stockholm
(1) Partnership with countries of origin	(1) A common European asylum system	(1) Consolidating, developing and implementing the EU Global Approach to Migration
(2) A common European asylum system	(2) Legal migration and the fight against illegal employment	(2) Migration and development
(3) Fair treatment of third country nationals	(3) Integration of third-country nationals;	(3) A concerted policy in keeping with labour-market requirements
(4) Management of migration flows	4) The external dimension of asylum and migration policy	(4) A proactive policy based on a European status for migrants
	(5) the management of migration flows	(5) Effective policies to combat illegal immigration

IV.1 Tampere 1999

As a more broadly-focused JHA summit, immigration and asylum was one of three issues addressed at the Tampere summit meeting of heads of government in October

1999, the others being cross-border crime, and the establishment of a European judicial area. The overarching aim was to realise the ambition of the Amsterdam Treaty to create a "European area of freedom, security and justice". The agreement was subject to both the opt-outs of some countries, a 5-year transition period where unanimity would remain, and the likelihood in the case of legal migration that this would be maintained beyond the 5-year period. The presidency conclusions provided four elements to the Tampere definition of a common policy on asylum and immigration (1) Partnership with countries of origin; (2) A common European asylum system; (3) Fair treatment of third country nationals; and (4) Management of migration flows. There was a definite emphasis on fighting illegal migration, and using bordering countries and applicant countries as a means of remote controlling immigration. Overall, security, restriction and control would be the best description (Bendel 2005: 23).

A Commission communication in 2000 fleshed out the ideas behind a new approach to managing migration: 'It is clear from an analysis of the economic and demographic context of the Union and of the countries of origin, that there is a growing recognition that the 'zero' immigration policies of the past 30 years are no longer appropriate.' (CEC 2000: 3). These ideas were further developed with another Commission Communication addressed to all EU institutions (CEC 2003a). This is where the issues of immigration, integration and employment were much more fully explored, particularly the linkages between the Tampere programme and the Lisbon Strategy. The report shows a growing confidence within the Commission on the need for a common approach, based on economic and demographic arguments for non-zero inward immigration flows.

There is reference to the fact that in the area of integration "many Member States consider that the policies they have conducted so far have not been sufficiently effective." (CEC 2003a: 8). There is also recognition of the 'pull' factors for immigration, and anticipation of the implications of the upcoming enlargement. The main argument is for a holistic and 'vigorous' approach to integration, which means a kind of 'mainstreaming' of immigration policies within other areas of social and economic policy.

Concrete proposals emanating from Tampere were fairly detailed, but in retrospect almost naively ambitious. There were two main areas – first the calculation of immigration needs, which was to be organised by 6-monthly submissions to the Commission by each Member State. Then there was to be a common legal framework for admission based on the differentiation of rights according to length of stay – moving towards the idea of 'civic citizenship'. While the idea of a common legal framework for admission survived into the subsequent proposal for a council directive (CEC 2001a), the rest was abandoned in favour of the open method of co-ordination (OMC). The proposal made it very clear that Member States would have the discretion to limit economic migration. However, German opposition meant that the proposal was not even discussed in the Council of Ministers after 2002 (Bendel 2005: 28)

IV.2 The Hague Programme (Tampere II)

The Hague Programme[6] was designed to build on the Tampere programme by specifying plans for the next five years. Even more than at Tampere the EU's 'global approach' to migration was framed explicitly in terms of the terrorist threat, for example, referring in the opening paragraphs of the presidency conclusions to the terrorist attacks of 11 September 2001 and 11 March 2004. There was also for immigration and asylum, a marked 'externalisation' of policy meaning co-operation with non-EU states.

The four-way division of the Tampere Programme became five: (1) A common European asylum system; (2) Legal migration and the fight against illegal employment; (3) Integration of third-country nationals; (4) The external dimension of asylum and migration policy; and (5) the management of migration flows. Legal migration was now mentioned explicitly in the context of the fight against illegal working, and the 'management of migration flows' becomes a part of the 'external' dimension, with a host of proposals on border checks, biometrics and visa policies.

As part of the preparations for legal migration in The Hague programme, the Commission produced a (delayed) Green Paper on economic migration and an 'early warning system' (CEC 2004c). This was then opened out for public consultation, where the Member States and 'stakeholders' who could submit their opinions, and examples of best practice could be drawn. The results were broad support among civil society groups and NGOs for measures covering all TCNs, but the Commission noted "the Member States themselves did not show sufficient support for such an approach". In the Green Paper the argument was that although the volume of legal migration should remain the preserve of member states, issues should be addressed at the EU level because of the common demographic and labour market issues, and the need for "solidarity and mutual confidence" in each other's policies – a reference to the 'early warning system'.[7]

After consideration at the Hague Council, the Commission was then invited to take the project forward and produce a policy plan on legal migration. One interesting development is that the linkages between immigration policy and employment strategy have been further cemented, so this effort is now seen as fitting decidedly within the Lisbon strategy. Evidence of this was that the Policy Plan was presented by both the JHA and Employment Commissioners.

The Policy Plan makes four proposals for directives on legal migration on conditions for entry and residence for: highly skilled workers, seasonal workers, Intra-Corporate Transferees (ICT), and remunerated trainees (CEC 2005)[8]. The proposed measures are

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[6] Approved in November 2004
[7] CEC MEMO/05/56 (23/02/2005) JAI COUNCIL – Brussels 24 February 2005
[8] Council of the European Union, Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, Interinstitutional File: 2010/0209 (COD), July 13 2010. Council of the European Union, Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment, Interinstitutional File: 2010/0210 (COD), July 13 2010. Council of the European Union, Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, Interinstitutional File: 2007/0229 (CNS), October 30 2007.

'horizontal' rather than 'sectoral' in that they do not apply to specific industries as such, but they are not horizontal to the extent that they apply to all labour migrants. The impacts for integration policy of intra-corporate movement are likely to be minimal. An issue for the Commission is to demonstrate clear added value to an EU approach there is already an international framework with so-called Mode 4 liberalisation within the GATs agreement. The result could also be a hierarchy, or 'civic stratification' of rights similar to that seen in member states (Morris 2004), where low-skilled workers enjoy fewer rights than their higher-skilled counterparts.

In its assessment of the achievements of Tampere the Commission conceded there had been difficulties and highlighted the legal and institutional constraints of the Treaties, the right of initiative shared with Member States (meant that national priorities dominated), and restrictions on the Parliament's role (less transparency).[9] In terms of successes in the area of legal migration, there were directives on: the right to family reunification[10]; EU long-term residence status for third country nationals[11]; conditions of entry for third country nationals who are students[12]; and for the admission of researchers.[13]

Overall, there has been criticism by the Commission over the lack of political will and consensus over the issues, even targeting activists for not getting involved through the European Migration Network (EMN), set up in 2002, noting: "It is up to the experts in the Member States to use the opportunities for cooperation that European Integration offers" (CEC 2004a: 4-5). Difficulties in terms of implementation persist with the limited role of the ECJ and the Commission in policy and judicial cooperation. Independent work that examined how European legislation actually operates in the Member States in the area of immigration found that many countries are slow at transposing legislation on integration measures, and that there was a wide diversity in the ways in which countries implement their commitments (Geddes and Niessen 2005a).

IV.3 The Blue Card

The Blue Card was formally adopted by Council in May 2009, and must be implemented by Member States by 19 June 2011. It was originally proposed by the Commission in October 2007 (COM (2007) 637) and agreed in principle during French Presidency (2008). The Commission made many concessions to the original plans (admission procedures left to MS, removed EU-wide job-seeking component) but there were still objections from Germany, France and UK. New member states were quick to complain about easing extra-EU migration when there are still restrictions on movement of their citizens through the transitional arrangements (Monar 2001).

At this stage it is difficult to determine or measure what impact the Blue Card will have – it is possible that it will be more important for its 'symbolic' effect rather than in terms

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[9] Scoreboard on progress on Tampere programme:
http://ec.europa.eu/justice_home/doc_centre/scoreboard_en.htm
[10] Directive 2003/86/EC (entered into force on 3 October 2003)
[11] Directive 2003/109/EC (entered into force on 23 January 2004)
[12] Directive 2004/114 entered into force 12 January 2007)
[13] Directive 2005/71 (to be implemented by 12 October 2007)

of the numbers (of Member States, or immigrants themselves) that make use of it (Peers 2009).

It is notable that the Blue Card incorporates exceptions from the family reunion directive – the need to wait 3 years or demonstrate prospect of permanent residence is diluted, and integration measures can only be applied after the family members have been granted family reunion (indirectly illustrating the likely restrictive nature of those integration measures). Effectively this puts Blue Card holders' family members in the same position as refugees' family members (see Art. 7(2), family reunion Directive). Other changes include the one-year waiting period of family members for access to employment which is waived (from 19 November 2011); and the five-year time period for family members to obtain an autonomous residence permit can be added from periods spent in different Member States.

The Blue Card also includes derogations from the long-term residence (LTR) directive. There is no shortening of the qualifying time, but it is two years continuous in country instead of five (i.e. still five in the EU in total), and the individual can leave the EU for 2 years instead of 1. Finally, it should be noted that mobility rights for Blue Card holders are still subject to national decision-making, so in some ways it might end up being more complex and less attractive to immigrants than the simple LTR status

The developing EU discourse since Tampere and onto the EPIA sees immigration as an engine of economic growth, as part of the solution to Europe's ageing population, and as an important component of the European Employment Strategy (CEC 2003a). The tone of Commission documents is increasingly confident with this logic, arguing that "In a Europe with no internal borders, the changing demands of an ageing society and a labour market in constant evolution have challenged established assumptions about migration from outside the EU."(CEC 2007f: 4) Despite a lack of unambiguous EU competence in this area there is a push for further integration on a wide range of issues around legal migration. However, integration has proven to be easier over illegal migration and there is growing criticism over some of the human rights dimensions to the emerging EU regime.

IV.4 The Stockholm Programme (2010-2014)

The predictably slow implementation of the Hague objectives led to an increase in the pace of EU action in 2007 and 2008, although this has been represented as a case of quantity over quality (Monar 2001). It could be argued that this was a lost opportunity given that the time period was characterized by increasing migration across the EU and growing economies, but also Europe-wide concerns over increases in the numbers of people attempting to migrate from Middle East and African countries to Europe. The European Pact on Immigration and Asylum (CEU 2008), heavily pushed during the French presidency of 2008 builds upon Tampere and Hague but is very much a continuation of pre-existing policy with legal migration largely left to the member states. The Pact also contains aggressive measures on illegal migration, return and asylum. The UK parliament's response was that "it appears to us that the draft Pact contains little that is new."[14] The proposed directives on conditions for different types of

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[14] Select Committee on European Scrutiny Thirty-Second Report
http://www.publications.parliament.uk/pa/cm200708/cmselect/cmeuleg/16xxix/16xxix19.htm

workers remain from Hague programme and will likely be absorbed by the new schedule. The main novelties in 2007/2008 as the EU moved out of the second phase of development was on the Returns Directive, and the so-called 'Blue Card'.

As mentioned previously, the Stockholm programme takes a more pragmatic approach to increased integration in the area of immigration. At the time of writing (September 2011) negotiations were on-going between the European Parliament and Council about legislation covering intra-company transferees and seasonal workers. Discussions were also continuing about common procedures for issuing work and residence permits and a common set of rights for TCNs legally residing in a member state.

V   Conclusions

During the time period of our analysis we have shown the development of EU action. We have seen too that there is only a limited EU role in the migration-integration nexus because the EU is specifically excluded from measures relating to the admissions of TCNs. There are, however provisions within the family reunion and long term residents directives of 2003 that give important signals of the direction of policy. They show an increased concern for integration and, we have argued, represent the projection of concerns from a group of longer-standing immigration countries onto the EU. We have also discussed how factors such as the time and timing of the immigration experience and of EU membership can affect the 'reception' of EU measures. Hence analysing the 'reception' of EU measures, we have argued that it is important to think about the kinds of measures and to think about the ways in which the policy areas are organised across the EU as there can be no escape from the very basic question of who drives policy and in which direction are they driving it. We have argued that the EU is now involved in the migration-integration nexus, but its capacity thus far to drive policy has been limited. What we do show is that the EU's role must change the way that we think about migration and integration in the EU and that we must try to factor the EU's role into our analysis, but in a realistic way attuned to the scope and to the limits of European integration.

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