

UACES 38th Annual Conference

Edinburgh, 1-3 September 2008

Conference papers are works-in-progress - they should not be cited without the author's permission. The views and opinions expressed in this paper are those of the author(s).

www.uaces.org

Exchanging Ideas on Europe, Edinburgh, 1-3 September 2008

The Europeanization of Integration Policy and its Implications for Third Country Nationals Residing in the EU

Dr. Panagiotis N. Sfaelos¹

Abstract

The Europeanization of immigration policies, including integration policies, has been developing gradually since the Treaty of Amsterdam [ToA] (1997), which communitarized immigration policies under Title IV EC. Prior to the ToA, the status of third country nationals residing in the Member States was a matter regulated by national immigration laws. EU law had only marginal role to play in that regard. EU immigration legislation, adopted since the ToA, has undoubtedly created a new legal framework for the facilitation of the integration of immigrants and their families.

The EU legislative measures on integration and family reunion of third country nationals, especially of those with long-term residence status are discussed in this paper. In this context, we provide an analysis of the levels of integration of immigrants in different sectors of the European economy and society (labour market, agricultural sector, education, social insurance and political participation). Essential statistics are taken into account in our analysis, in order to give a complete picture of the status of third country nationals in the EU today. The implications of the Europeanization of integration policies will be critically assessed. The crucial question is whether EU legislation on integration has achieved adequate levels of harmonization in this area. The fact that there are still important differences in the rights afforded to third country nationals across the Member States demonstrates the low levels of harmonization.

The conclusions of the paper show that essential progress has been made in relation to the development of a common policy on integration but the EU has still long way to go, in order to develop a comprehensive immigration policy respecting the human rights of third country nationals to integration and family life for the benefit of both the migrant and local populations.

¹ Lecturer in Law, American University of Athens.

I. Introduction

"The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community" (Directive 2003/109 EC).

The process of Europeanization of migrant integration policies was launched by the *Treaty of Amsterdam (1997)* which gave power to the Community to adopt measures on third country nationals under Title IV EC. Article 63 provides competence for adopting measures on the conditions of entry and residence and the standards on procedures for the issuing of long-term visas and residence permits. There is also specific reference to family reunion. Provision is also made for access of third country nationals legally residing in a Member State to free movement and residence in other Member States.

The *Tampere European Council (1999)* further enhanced the prospects for legislative action on integration policy by calling for a more vigorous integration policy which should aim at granting third country nationals rights and obligation comparable to those of EU citizens. Such policy should also enhance non-discrimination in economic, social and cultural life. Indeed, the post-Tampere period (1999-2004) witnessed important legislative developments on integration, family reunion and on the status of third country nationals with long-term residence status. The Tampere agenda was taken further by the *Hague European Council (2004)* which set out the immigration agenda for the period 2005-2010. In this period, the Directives for the facilitation of admission of third country national students and researchers were adopted and other measures were proposed.

Nevertheless, there are still important differences in the rights afforded to third country nationals compared to the rights enjoyed by EU citizens. By denying from third country nationals rights granted to EU citizens, Community law

reinforces the idea that unequal treatment is justified.² At the same time, in the Member States, there is an ongoing trend against integration. In the Netherlands, Britain and Germany, national immigration tests try to prevent integration and family reunion of third country nationals. The Dutch immigration test examines not only the language but even the compatibility of immigrants with Dutch liberal values.

In this framework, this paper tries not only to identify the EU's approach towards integration but also to explain the current restrictive trends against immigrants as they are developing in individual Member States. The legislative developments on integration are covered by this paper in order to assess their impact on the position of third country nationals. Further, we will assess the process of migrant integration in different sectors of the European economy and society: employment, education, social protection and political participation. The crucial question here is whether EU immigration integration law and policy have achieved adequate levels of harmonization and approximation between the rights of non-EU nationals and those of EU citizens.

II. Legislative Framework

Adopted Legislation

In the period following Tampere, the Directives on family reunion and on the status of long-term immigrants were adopted. Also, the Directives on migrant students and researchers were adopted in accordance with the Hague Programme.

² K. Groenendijk, 'Security of Residence and Access to Free Movement for Settled Third Country Nationals under Community Law', in E. Guild & C. Harlow (Eds) *Implementing Amsterdam* (Hart Publishing, 2001).

Directive on Family Reunion³

In the context of the EU, family reunion could be described as a situation in which the authorities of a Member State allow an EU national or a third country national already residing legally on its territory to be reunited with third country family members residing either in a third country or in another Member State. Family reunion is of great significance for the successful integration of third country nationals in the Member States.

Reflecting on these considerations, the Council adopted in September 2003 a Directive on family reunion. The purpose of this Directive is to harmonise the rules regarding the exercise of the right to family reunion by third country nationals residing in the territory of the Member States. The Directive gives family reunion rights to all those third country nationals (*sponsors*) who hold a residence permit valid for at least one year and who have reasonable prospects of obtaining the right of permanent residence. The family members of the persons covered must be third country nationals of whatever status.⁴

The Directive does not apply where the sponsor is: applying for recognition of refugee status; or authorized to stay in a Member State on the basis of temporary or subsidiary protection.⁵ Further, family members of EU citizens are not covered by the Directive.⁶

The categories of family members entitled to be reunited are:

I. The spouse of the sponsor.

³ Council Directive 2003/86/EC, OJ 2003 L251/12.

⁴ Article 3(1).

⁵ Article 3(2).

⁶ Article 3(3). This Directive has been dramatically limited in its scope compared with the initial Proposal which covered EU citizens not exercising their free movement rights.

II. The minor children of the sponsor and of his/her spouse, including adopted children.

III. The minor children, including adopted children of the sponsor, where the sponsor has custody and the children are dependent on him/her.

IV. The minor children, including adopted children of the spouse, where the spouse has custody and the children are dependent on him/her.⁷

All children must be under the age of majority and unmarried, and Member States may apply existing national legislation requiring from children over 12 to meet national conditions of integration.⁸

The Directive provides for family reunion of relatives in the ascending line of the sponsor or his/her spouse where they have no family support in the country of origin and are dependent on the applicant. Also, family reunion rights are granted to the adult unmarried children of the sponsor or his/her spouse, where they are objectively unable to provide for their own needs on account of their own state of health.⁹

Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence must be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family members. The application must be accompanied by documentary evidence of the family relationship and of compliance with the conditions laid down in Articles 4 and 6. The competent authorities shall give the applicant written notification of the decision no later than nine months from the date it was lodged. Reasons for rejecting an application should be given. The best interests of minor children must be taken into account in the process of examining a family reunion application.¹⁰

⁷ Article 4(1).

⁸ Ibid.

⁹ Article 4(2)

¹⁰ Article 5.

There are public policy and public security exceptions in the family reunion rights, under which applications may be rejected or family residence permits can be withdrawn. Renewal of residence permit may be withheld on the sole ground of illness or disability suffered after the issuance of residence permit.¹¹

The conditions that must be met before family reunion is permitted are: adequate accommodation; stable, regular and sufficient resources; and sickness insurance covering all risks. Member States may require the sponsor to have lived lawfully in the territory of a member state for a period not exceeding two years.¹²

Once a Member State has approved the application for family reunion, it shall authorize the entry of the family members. The Member State concerned shall grant every facility for obtaining the necessary visas. Also, the family members must be granted a family residence permit of at least one year which can be renewable.¹³ The sponsor's family members shall have: access to education; access to employment and self-employment; and access to vocational training.¹⁴

Not later than after five years of residence, an autonomous residence permit shall be given to the spouse or unmarried partner and a child who has reached majority. If family members are widowed, divorced or separated, or lose their first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued. The duration of such residence permit is regulated by national law.¹⁵

Member States may reject an application for entry and residence for family reunion purposes on the following grounds:

¹¹ Article 6.

¹² Article 7.

¹³ Article 13.

¹⁴ Article 14.

¹⁵ Article 15.

- I. The conditions of the Directive are no longer satisfied.
- II. The sponsor and his family members do not or no longer live in the in a real family relationship.
- III. False documentation.
- IV. Marriages of convenience.
- V. Where the sponsor's residence comes to an end and his family members does not yet enjoy autonomous right of residence.¹⁶

Member States shall ensure that the sponsor and his family members have the right to a legal challenge of the decision rejecting issuance or renewal of a residence permit.¹⁷

In general, this Directive has created some minimum standards in the regulation of family reunion. However, wide discretion is maintained by the Member States to apply their national integration conditions in the exercise of the right to family reunion. Restrictive age limitations with regard to family reunion and extended waiting periods before family reunion can take place are examples of this discretion.¹⁸

Directive on Long-term Residents¹⁹

In November 2003, the Council adopted a Directive concerning the status of third country nationals who are long-term residents. The Directive states that Member States are obliged to grant long-term residence status to third country nationals who have resided legally and continuously within its territory

¹⁶ Article 16.

¹⁷ Article 18.

¹⁸ EP's Civil Liberties, Justice and Home Affairs Committee, *Comparative Study of the Laws in the 27 EU Member States for Legal Migration, Including an Assessment of the Conditions and Formalities Imposed by Each Member State for Newcomers*, February 2008, PE 393.281 [www.europarl.europa.eu], p 66.

¹⁹ Council Directive 2003/109/EC, OJ 2003, L16.

for at least five years immediately prior to the submission of the relevant application.²⁰

The conditions for acquiring long-term residence status are set out in Article 5 of the Directive. According to this provision, a Member State shall ask third country nationals to provide evidence that they have stable and regular resources which are sufficient to maintain themselves and their family members, without recourse to the national social assistance system, and sickness insurance covering all risks in the Member State concerned. Member States may also require third country nationals to comply with integration conditions in accordance with national law. Also, Member States are allowed to refuse to grant long-term residence status on grounds of public policy or public security.²¹

The procedure for acquisition of long-term residence status is described in Article 7. In order to acquire the status of long-term resident, the third country national concerned shall lodge an application with the competent authorities of the Member State in which he/she resides. The application shall be accompanied by documentary evidence to be determined by national law that he/she meets the conditions set out in Articles 4 and 5. The competent national authorities shall examine the application within six months after it is lodged. If all the conditions provided for in Articles 4 and 5 are met and the person does not represent a threat within the meaning of Article 6, the applicant can be granted the status of long-term resident. Article 8 provides for the issuance of a long-term residence permit to long-term residents. This permit will be valid at least for five years and will be renewable upon expiry.

Member States can withdraw long-term resident status in the following cases:

I. Detection of fraudulent acquisition of long-term residence status.

²⁰ Article 4. A Proposal for amendment of this Directive suggests the inclusion of beneficiaries of international protection [COM (2007) 298].

²¹ Article 6.

II. Adoption of an expulsion measure.

III. Absence from the territory of the Member States for a period of twelve consecutive months.²²

The reasons for rejecting an application or for withdrawing long-term resident status shall be given to the third country national concerned in the form of a written notice. Such notification must also specify the redress procedures available and the time within which the person concerned may act.²³

The Directive provides for equal treatment of long-term resident third country nationals with EU nationals, as regards access to employed and self-employed activities, provided such activities do not entail involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration. Long-term residents shall enjoy access to: education and vocational training, social security, social assistance, social and tax benefits. They shall also be able to have: access to goods and services made available to the public and to procedures for obtaining housing; freedom of association and membership of organizations representing workers or employers; and free access to the entire territory of the Member State concerned.²⁴

The Directive also provides for protection against expulsion. Accordingly, Member States may expel a long-term resident solely where his/her personal conduct constitutes a sufficiently serious threat to public order or national security. In case of an expulsion decision, a judicial redress should be available to the long-term residents in the Member State concerned. Lastly, emergency expulsion procedures shall be prohibited against long-term residents.²⁵

²² Article 9.

²³ Article 10.

²⁴ Article 11.

²⁵ Article 12.

Member States are free under the Directive to adopt or maintain more favourable national provisions as regards the issuing of residence permits and the validity and duration of such permits. However, such more favourable national rules will not confer the right of residence in other Member States.²⁶

Article 14(1) provides that third country nationals holding a long-term resident status may reside in the territory of a Member State other than the one which granted them the status, for a period of more than three months. According to 14(2), the exercise of the right of residence in another Member State by a long-term resident shall be subject to certain conditions: exercise of an economic activity in and employed or self-employed capacity; pursuit of studies or vocational training and possession of adequate training.

Article 15 is concerned with the conditions for residence in another Member State. Within three months after entering the second Member State, the long-term residents shall apply to the competent authorities of that Member State for a residence permit.²⁷ In case of long-term residents falling within the category described in Article 14(2), the second Member State may require evidence of possession of adequate resources available to avoid becoming a burden on the second Member State during the period of residence and sickness insurance covering all risks in the second Member State.²⁸

Article 15(3) allows the second Member State to apply their integration conditions to long-term resident third country nationals, yet only with respect to "*attending language courses*". This is a restrictive immigration provision allowing non-EU nationals to be subjected to strict integration conditions which do not apply to EU citizens.

Article 15(4) provides that in the case of employed persons, the second Member State may require evidence of an employment contract. For self-

²⁶ Article 13.

²⁷ Article 15(1).

²⁸ Article 15(2).

employment, the second Member State may require evidence of available funds. For vocational training, the second Member State may require evidence of enrolment in an accredited establishment to pursue studies or vocational training.

Provision is also made under the Directive for family reunion of long-term resident third country nationals. According to Article 16, family members of a long-term resident who has exercised his/her rights of residence in a second Member State shall have the right to accompany or join him/her in that Member State. Within three months after entering the second Member State, family members should apply for a residence permit. The second Member State may ask the family members to provide the following documents:

- I. Their long-term residence permit or residence permit and a valid travel document.
- II. Evidence that they have resided as members of the family of the long-term resident in the first Member State.
- III. Evidence that they have adequate resources and sickness insurance covering all risks in the second Member State or that the long-term resident has resources and insurance for them.

Where the family had not already been constituted in the first Member State, long-term residents exercising their right of residence may be joined by members of their family as provided by Directive 2003/886 on family reunion.

The competent authorities of the second Member State shall process applications for residence permit within four months after they are lodged. Family members of the long-term resident shall be issued by the second Member State with renewable residence permits valid for the same period as the permit issued to the long-term resident. In the second Member State, long-term residents shall enjoy equal treatment access to the labour market of that Member State. In case of a rejection of residence permit by the second Member State, reasons should be given in writing, accompanied by a specification of the redress procedures available and the time within which the

persons concerned may act. The Directive provides the possibility that the second Member State might refuse applications for residence permit on grounds of public policy, public health and national security.²⁹

Article 23 makes provision for the acquisition of long-term resident status in the second Member State. Accordingly, after five years of legal residence in the territory of the second Member State, long-term residents may apply to that state's competent authorities for long-term residence status. The second Member State shall grant long-term residents the status provided for in Article 7. The second Member State shall notify its decision to the first Member State. The procedure set out in Article 7 shall apply for the issuance of residence permits which shall be subject to the provisions of Article 8. In case of rejected applications, the procedural guarantees provided for in Article 7 shall apply.

Overall, although the Directive is a positive measure, it is regrettable that the standards of the Directive have been reduced considerably compared with the original Proposal.³⁰ The Member States have considerable discretion to set such stringent limits that only a small number of third country nationals will be able to enter and move in the EU. For instance, Article 5, which allows Member States to reject applications on the ground of failing to comply with national "*integration conditions*", does not provide any limitations to the integration conditions that Member States may require. Further, the requirement to attend language courses when moving to another Member State is another example of the potentially restrictive nature of the Directive. The success of this Directive depends on the way the Member States will interpret its provisions and transpose it in their national law.

²⁹ Articles 19-22.

³⁰ For a comparison of the provisions of the Proposal and the adopted Directive, see S. Peers, Key Legislative Developments on Migration in the EU, 5 *European Journal of Migration and Law* (2003) 387, pp. 401-406.

Directive on Migrant Students³¹

The Directive on migrant students was adopted in December 2004. It aims at facilitating the admission of third country nationals to the territory of the Member States for a period exceeding three months for the purposes of studies, pupil exchange, unremunerated training or voluntary service.³²

The admission of third country national students is subject to:

- I. A valid travel document covering at least the duration of the planned stay.
- II. For minors, parental authorization for the planned stay.
- III. Sickness insurance covering all risks.
- IV. Not posing a public policy or public security threat.
- V. Evidence of payment of the fee for processing the application.³³

There are specific conditions for migrant students:

- I. Acceptance in an establishment of higher education.
- II. Evidence of sufficient resources.
- III. Evidence of sufficient knowledge of the language of the course to be followed.
- IV. Evidence of payment of fees of the educational establishment.³⁴

The Directive also provides for the free movement of students. So, a third country national student already admitted by a Member State shall have the right to move to another Member State for the continuation of his/her studies.

³¹ Council Directive 2004/114/EC, OJ 2004, L375/12.

³² Article 3.

³³ Article 6.

³⁴ Article 7.

This provision seeks to facilitate the mobility of students who pursue studies in a number of Member States.³⁵

The conditions for the admission of migrant school pupils are:

- I. Not being below the minimum age nor above the age set by the Member State concerned.
- II. Evidence of acceptance by a secondary school.
- III. Evidence of participation in a recognized pupil exchange programme.
- IV. Evidence that the pupil exchange organization accepts responsibility for him/her throughout his/her period of presence in the territory of the Member State.
- V. Being accommodated by a family meeting the conditions set by the Member State concerned and selected in accordance with the rules of the pupil exchange in which he/she participates.³⁶

The conditions for the admission of unremunerated trainees are:

- I. Signing a training agreement.
- II. Evidence of sufficient resources.
- III. Attendance of basic language classes.³⁷

The conditions for the admission of volunteers are:

- I. Not being below the minimum age.
- II. Evidence of an agreement with the organisation responsible in the Member State concerned.
- III. Evidence that the organization responsible in the Member State concerned for the voluntary service scheme in which he/she is participating.

³⁵ Article 8.

³⁶ Article 9.

³⁷ Article 10.

IV. Evidence that the organisation responsible for the voluntary service scheme has subscribed to an insurance policy.

V. Basic introduction to the language, history and political and social structure (if the Member State concerned so requires).³⁸

Students shall be issued with a residence permit valid for at least one year and renewable if the holder continues to meet the conditions for admission. A residence permit for school pupils shall be issued for a period of no more than one year. Unremunerated trainees shall be issued with a residence permit for the duration of their placement or for the one year maximum. Volunteers shall be issued with a residence permit of no more than one year.³⁹

The Directive restricts students' access to employment by providing that the Member States will determine the maximum number of hours per week or days or months per year allowed for such an activity, which shall not be less than 10 hours per week. Access to economic activities for the first year may be restricted by the host Member State.⁴⁰

The decision of the Member States on admission of students shall be adopted by the competent authorities "*within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application*".⁴¹ This provision is indeed very broad allowing discretion to the Member States. According to the Study conducted by the Civil Liberties, Justice and Home Affairs Committee of the European Parliament (EP), due to this provision, there is a significant variation in the length of the procedure of admitting third country national students. A decision on admission can take up to six months which is a comparatively long time compared to the overall duration of studies.⁴²

³⁸ Article 11.

³⁹ Articles 12-16.

⁴⁰ Article 17.

⁴¹ Article 18(1).

⁴² See EP's Study, n. 18 above, p. 100.

Directive on Migrant Researchers⁴³

The Directive on the admission of third country nationals for the purpose of carrying out a research project was adopted by the Council in 2005. Any research organization wishing to host a researcher under the admission procedure set out in this Directive shall first be approved for that purpose by the Member State concerned.⁴⁴ The approval of the research organizations shall be in accordance with procedures set out in national law.⁴⁵ This later provision is restrictive, because it allows Member States to reject applications due to failing to comply with national integration conditions.

According to Article 6(1), a research organization wishing to host a researcher shall sign a "*hosting agreement*" with the latter whereby the researcher undertakes to complete the research project and the organization to host the researcher for that purpose.

The conditions for signing a hosting agreement are:

- I. The research project has been accepted by the relevant authorities in the organization.
- II. During his/her stay, the researcher has sufficient monthly resources to meet his/her expenses and return travel costs in accordance with the minimum amount published for the purpose by the Member State.
- III. During his/her stay the researcher has sickness insurance for all risks.
- IV. The hosting agreement specifies the legal relationship and working conditions of the researchers.⁴⁶

⁴³ Council Directive 2005/71/EC, OJ 2005, L289/15.

⁴⁴ Article 5(1).

⁴⁵ Article 5(2).

⁴⁶ Article 6(2).

After the signature of the hosting agreement, the research organization may be required to provide the researcher with a research statement of financial responsibility.⁴⁷

The conditions for admission of migrant researchers are the following:

- I. A valid travel document, as determined by national law.
- II. A valid hosting agreement signed with a research organization.
- III. Where appropriate, a statement of financial responsibility.
- IV. Not posing a threat for public policy and public health.⁴⁸

Researchers shall be issued with a residence permit for a period of at least one year and it shall be renewed if the conditions set out in this Directive are still met.⁴⁹ When a Member State decides to grant a residence permit to the family of a researcher, the duration of the residence permit shall be the same as that of the residence permit issued to the researcher insofar as the period of validity of their travel documents allows it.⁵⁰

Researchers admitted under the Directive may teach in accordance with national legislation. Researchers holding a residence permit shall be entitled to equal treatment with EU nationals in the following areas:

- I. Recognition of degrees.
- II. Working conditions, including pay and dismissal.
- III. Branches of social security as defined in Regulation 1408/71.
- IV. Tax benefits.
- V. Access to goods and services and the supply of goods and de available to the public.⁵¹

⁴⁷ Article 6(3).

⁴⁸ Article 7.

⁴⁹ Article 8.

⁵⁰ Article 9.

⁵¹ Article 12.

The Directive also provides that third country national researchers have the right to carry out part of their research in another Member State under the conditions set out in this Article. If the researcher stays in another Member State for a period of up to three months the research may be carried out on the basis of the hosting agreement in the first Member State, provided he/she has adequate resources in the second Member State and does not present a threat of public security or public health. In order to stay for more than three months, the second Member State may require a new hosting agreement.⁵²

Overall, this Directive is a positive step in the process of attracting migrant researchers in the EU, although it is questionable as to what extent the long-term integration of these people is secured. Velluti regards this Directive as a measure promoting the growth and competitiveness of the EU's economy rather than pursuing a true immigration integration policy.⁵³

Proposed Legislation

The period following the Hague European Council, a number of legislative initiatives were taken resulting in the following Proposals.

*Proposal for a Highly Qualified Migrants Directive*⁵⁴

Having in mind the demands for increase of the competitiveness of the EU economy, the Commission proposed in 2007 a Directive on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment. The criteria for admission set out by the proposed Directive are the following:

⁵² Article 13.

⁵³ S. Velluti, 'What European Union Strategy for Integrating Migrants? The Role of OMC Soft Mechanisms in the Development of an EU Immigration Policy', 9 *European Journal of Migration and Law* (2007) 53, p. 64.

⁵⁴ COM (2007) 637.

- I. A valid work contract.
- II. A binding job offer.
- III. Professional qualifications.
- IV. A valid travel document.
- V. Evidence of sickness insurance.
- VI. Not being a public policy or public health threat.
- V. A minimum salary level that has to be at least three times the level of the existing national minimum income under which social assistance is granted in the Member State in question.⁵⁵

Under Article 8, a person fulfilling the above conditions will be issued with an EU Blue Card valid for two years renewable for at least the same duration. This card indicates the conditions for access to the labour market. The Blue Card gives the holder the right to enter re-enter the Member State issuing the card and move to other Member States in order to exercise the above rights.

By holding the Blue Card, the migrant worker shall have full access to the Member State's labour market, after two year of legal residence.⁵⁶ Also, an unemployment period of three months is allowed.⁵⁷ Blue Card holders shall enjoy equal treatment with EU nationals regarding: working conditions, freedom of association, education and vocational training, recognition of degrees, social security, social assistance, payment of acquired pensions when moving to a third country, tax benefits, access to goods and services, free access to the entire territory of the Member State concerned.⁵⁸

The proposed Directive also provides for family reunion of Blue Card holders. Family reunification shall not be subject to the requirement of the holder of the

⁵⁵ Article 5.

⁵⁶ Article 13. For the first two years of residence the highly qualified migrant worker shall have access to the labour market restricted to the exercise of paid employment activities meeting the condition for admission set by the Directive.

⁵⁷ Article 14.

⁵⁸ Article 15.

EU Blue Card having reasonable prospects of obtaining the right of permanent residence. Residence permits shall be granted to family members within six months from the date on which their application was lodged.⁵⁹

After two years of legal residence in the first Member State as holders of Blue Card, the third country national concerned is allowed to move to a second Member State for the purpose of qualified employment. Workers with Blue Card can accumulate periods of residence in different Member States in order to fulfil the requirement concerning the duration of residence.

Blue Card holders who fulfil the conditions for long term residence status shall be issued a residence permit called: "*Long-term Resident EC/EU Blue Card Holder*". Such nationals will be subject to the provisions relating to them and their family members as set out in this Directive and the on family reunion Directive.⁶⁰

The Civil Liberties, Justice and Home Affairs Committee of the EP welcomed this Proposal as "*the first step towards a common policy in the field of labour migration and will facilitate the movement of highly qualified migrants*".⁶¹ So, if adopted, this Directive will provide a fast-track procedure and immediate family reunion which will attract highly skilled migrants. The mobility of such workers will also be facilitated. However, the proposed Directive does not really harmonize labour integration policies but rather offers an additional channel of entry via a new common process. Potential Blue Card candidates would have to secure at least one-year work contract and meet any national quotas (a fixed numerical limit for admission of migrants) before reaching the fast-track procedure.⁶² Overall, as Sanchez pointed out, the Blue Card system "*is only an initial step, focused on qualified workers and it will be necessary to*

⁵⁹ Article 16.

⁶⁰ Article 18.

⁶¹ See EP's Study, n. 18 above, p. 19.

⁶² E. Collet, 'The proposed European Blue Card system: Arming of the Global War for Talent?', *Migration Information Source* (2008) [www.migrationinformation.org].

*continue to work on the establishment of a common status for the rest of migrant workers, whom we need as much from the demographic point of view as from the economic one".*⁶³

*Proposal for a Single Permit and Common Rights Directive*⁶⁴

The Commission submitted a Proposal for a Directive on 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.

The proposed Directive provides that an application to reside and request for work authorization shall be submitted in a single application procedure. Member States shall appoint a single competent authority for receiving the application and issuing the single permit. The competent authority shall process the application and adopt a decision not later than three months from the date the application was lodged. Member States shall issue a single permit for work and residence and shall not be allowed to issue additional permits, such as work permits. When issuing residence permits Member States shall indicate the information relating to the permission to work irrespective of the type of the permit.⁶⁵

The single permit entitles its holder to: enter, re-enter and move in the entire territory of the Member State issuing the permit, and move to another Member State in order to exercise the activities authorized by the single permit.⁶⁶ The migrant workers issued with a single permit shall also have the right to equal

⁶³ European Parliament Report: 'European Blue Card to Solve the Problem of Aging Population', 26 September 2007 [www.europarl.europa.eu]. For further discussion on this Proposal, see E. Guild, 'EU Policy on Labour Migration: A First Look at the Commission's Blue Card Initiative', *Centre for European Policy Studies* (2007) [www.ceps.eu].

⁶⁴ COM (2007) 638.

⁶⁵ Articles 4-7.

⁶⁶ Article 11.

treatment regarding: working conditions, freedom of association, education and vocational training, recognition of degrees, social security rights, payment of pensions; tax benefits, access to goods and services.⁶⁷

This Proposal is a significant legislative initiative which can enhance the protection of migrant workers. If adopted, it would simplify the procedures for issuing residence permits and facilitate access of migrant workers to the labour market.

III. Integration Levels

Increasing the levels of migrant integration is indeed an important issue of economic, political, social and even demographic nature, considering the EU's ageing population. Furthermore, a democratic and tolerant EU polity can only exist where there is a high level of inclusion and integration of the non-EU residents. The Tampere discourse on "*a more vigorous integration policy*" and "*fair treatment of third country nationals*" identified exactly this need. However, the Tampere discourse seems to come into direct conflict with what happens in the Member States at the moment, where strict national integration conditions complicate and, often, restrict the integration process.

Indeed, a restrictive trend is developing in most Member States towards inclusion of national integration conditions and tests in the process of admitting and integrating third country nationals into their society. National exams on language and civic knowledge present an important obstacle in the integration process. The Dutch government has introduced a "*civic integration examination*", under which applicants have to pass a Dutch language test administered by the Dutch Embassy in their country of origin. The exam includes a movie featuring the extremely liberal Dutch life-style (mainly showing homosexual kissing and nude beaches). Compliance with Dutch liberal values is a national condition of integration which third country

⁶⁷ Article 12(1). Equal treatment is subject to restrictions provided for in Article 12(2).

nationals must accept.⁶⁸ Having in mind the religious conservatism of Muslims, it is obvious that such measures are aimed at deterring increasing Muslim migration flows⁶⁹ from entering the Netherlands. Britain also announced that it will rate potential immigrants according to a point system that will favour well-educated or highly-skilled workers⁷⁰. France introduced a three years residence permit granted to highly-skilled and talented third country nationals capable of participating to the development of French economy.⁷¹ Also, in Germany, new citizenship tests were introduced which would question applicant's views on forced marriage, homosexuality, women's rights, and terrorism.⁷² Austria and France also impose an obligation requiring nearly all immigrants to follow an integration programme.⁷³

A restrictive trend can also be observed in relation to family reunion. Denmark constitutes an example of this trend. Danish legislation has a whole set of conditions that must be met for family reunion: high minimum age requirement for spouses as well as an integration condition ("*the attachment requirement*").⁷⁴ Also, Austria's "*quota requirement*" for family reunion indicates the development of a restrictive integration policy.⁷⁵

This restrictive anti-immigrant trend in the Member States could jeopardise the development of a common immigration integration policy. Anyway, the

⁶⁸ J. Bransten, 'EU: Netherlands Leading Trend To More Stringent Immigration Rules', *EU Observer*, 5 April 2006.

⁶⁹ Note that most unemployed immigrants in the Netherlands are Muslims, mostly of Turkish and Moroccan origin (Source: Dutch Immigration Minister, *EU Observer*, 5 April 2006).

⁷⁰ UK Government Newsroom [www.direct.gov.uk].

⁷¹ N. Sarkozy, *Le Monde*, February 2006.

⁷² See n. 68 above.

⁷³ See EP's Study, n. 18 above, p. 38.

⁷⁴ The "*attachment requirement*" means the degree of attachment to Denmark, which is assessed by various factors, such as the duration of residence in Denmark, the language knowledge, any ties with friends or family members.

⁷⁵ See EP's Study, n. 18 above.

levels of integration need to be increased in the EU. As we shall see in this section, there is variation in the integration levels across the EU in various sectors of the economy and society.

Most Member States impose certain requirements for migrant integration which are also reflected in EU legislation. The most common requirements are: sufficient resources, accommodation and a valid health insurance.

The first requirement relates to financial resources. Most Member States have enacted legislation on the financial means that the third country nationals must have in order to be admitted in that Member State. However, the method by which "*sufficient resources*" is determined varies between the Member States. Germany requires that the third country national does not have access to public funds. Poland requires a monthly income which must be the minimum of the current national social assistance. The Czech Republic requires monthly income of the national subsistence level while Slovakia requires the national minimum monthly income.⁷⁶

The second requirement is adequate accommodation. For approximately one third of the EU Member States, the condition of proof of accommodation has been incorporated in their immigration legislation. It is usually required that the accommodation must be adequate in terms of size or even in relation to hygiene standards.⁷⁷

The third requirement is the possession of a valid health insurance. This requirement is the most common one amongst Member States. The inclusion of this requirement in most EU integration legislation reflects the Member States' need to avoid charges to the public health budget. Member States also impose conditions such as the absence of diseases endangering public health or the completion of an obligatory health assessment.⁷⁸

⁷⁶ Ibid, pp. 35-36.

⁷⁷ Ibid, p. 36.

⁷⁸ Ibid, pp. 36-37.

We should now turn and see the integration process in different sectors of EU society: employment, education, social protection and political participation.

Employment

Before taking up employment on the territory of an EU Member States, third country nationals must have obtained some kind of permit. Having a work permit is a pre-condition to being granted a residence permit for employment. The majority of EU Member States apply a labour market test which is designed to assess whether there are persons from the domestic labour market available for the work in question. Other Member States (Austria, Estonia, Greece, Italy, Portugal, Romania, Slovenia and Spain) use the quota system. Some Member States also require proof that the migrant worker possesses the qualifications, education, experience and other skills necessary for the position concerned. Latvia, Poland and Romania require knowledge of the national language for taking up employment there.⁷⁹

As regards self-employment, migrants are only admitted for self-employment if their business will represent an added-value to the national economy. Migrants must fulfil the general conditions required for entry and residence and also specific conditions for migration for self-employment. The first condition relates to the viability of the intended businesses. Most Member States have a requirement concerning the availability of financial resources to live and start business. Evidence of relevant qualifications is often required. The second condition relates to the potential beneficial impact of the economic activity to the national economy of the Member State concerned. This means that the self-employed activity in question must create new jobs. In the UK, for instance, self-employed activities must create between two and fifteen jobs.⁸⁰

⁷⁹ Ibid, pp. 67-83.

⁸⁰ Ibid.

Further integration of migrant workers in the EU labour market is beneficial not only for migrants themselves, but also for European economy. Provision should be made not only for the highly-skilled labour but also for the low-skilled workers. EU labour market is relatively rigid as its workforce is not very mobile. Labour migration can compensate for some of the rigidity of EU labour market, as non-EU migrant workers are over ten times more mobile than EU citizens.⁸¹ Therefore, labour shortages in different Member States can be remedied by the admission of migrant workers. EU legislation must loosen the conditions imposed by Member States on admission and residence of migrant workers thus attracting more labour force from third countries. The current EU legislation, including the proposed measures, addresses these issues but more efforts should be made towards further harmonization of admission and residence conditions.

Education

The education of migrant children is another important aspect of the integration process. As the President of the Migration Policy Institute highlights, the education of migrant children should now rank among our top public policy priorities. In his view, migrant children should enter formal pre-school education before the age of three and language programmes should also be introduced to facilitate migrant children's integration into mainstream school life.⁸²

As regards the admission of migrant students, most Member States require students to have funds sufficient to cover their cost of living. Also, there is a requirement for a monthly amount being at the disposal of the migrant students. According to the EP's Study, this amount varies from 115 to 773

⁸¹ W. Nonneman, 'European Immigration and the Labour Market', *Migration Policy Institute*, July 2007.

⁸² D. G. Papademetriou & W. Weidenfeld, 'Editorial: The Children that Europe Forgot', *European Voice*, 20 September 2007.

EUR. Students must also possess health insurance, while some countries require a medical certificate.

Another condition is acceptance of the student to an educational establishment prior to entering its territory. Some Member States require migrant students to have specific qualifications before they begin their studies on their territory. For instance, Ireland requires migrant students to have the academic ability to follow the particular course. Other Member States have national legislation requiring knowledge of the national language before entering their territory. Germany and Latvia require evidence of knowledge of the language of instruction.⁸³

Some Member States require the return of the migrant student after completing his/her studies. Malta even requires the student to have a return ticket. Also, some Member States (e.g. Spain) require adequate accommodation for the students, while other countries (e.g. Belgium) require the absence of criminal record for the student.⁸⁴

In general, admission to migrant students is temporary and closely connected to the duration of their studies. The possibilities for extending their residence permit beyond the end of their studies are limited. However, Member States start to offer migrant students the possibility of remaining in the country for a limited period of time after successful graduation in order to search for a job. In most Member States, students are allowed to undertake limited work during their studies.

Social Protection

Most immigrants wait no more than five years to apply for a permit that lasts for at least five years. Then, migrants have equal access to most jobs, social security and assistance, healthcare, and housing and can also take pension in

⁸³ See EP's Study, n. 18 above, pp. 95-99.

⁸⁴ Ibid.

that Member State. The countries with the most favourable policies in this area are the Nordic countries, the Western Mediterranean and the UK.⁸⁵ The extension of the provisions of the Social Security Regulation 1408/71⁸⁶ to third country nationals by Regulation 859/2003⁸⁷ has also been an important development for the social protection of those people. This legislative development can secure third country nationals equal social security rights with EU citizens. Of course, the impact of this extension of social security rights to non-EU nationals depends greatly on the way Member States implement the provisions of the Regulation. Additional conditions, such as the UK's habitual residence test,⁸⁸ could decrease the Regulation's impact and maintain a lower status for non-EU citizens.

Political Participation

The migrants' political rights are very limited. The nearly 20 million of third country nationals residing in the Member States are still devoid of voting rights.⁸⁹ Further, there is a wide variation in the rights of political participation afforded to third country nationals. Policies on political participation are on average slightly favourable, while in Greece and Central Eastern Europe are unfavourable. Although full political liberties are granted to migrants in Western Europe, some are denied in Czech Republic, Estonia, Latvia, Slovakia and Slovenia.⁹⁰

⁸⁵ Source: Migration Integration Policy Index – MIPEX [www.integrationindex.eu].

⁸⁶ Council Regulation 1408/71 EC, OJ 1983, L230/6.

⁸⁷ Council Regulation 859/2003 EC, OJ 2003, L124/1.

⁸⁸ See, for instance, case ***Collins v Secretary for Work and Pensions*** [2006] *EWCA Civ 376*, where the Court of Appeal decided that the habitual residence test was not incompatible with Community law and that it was legitimate for a Member State to impose a condition of habitual residence. For a comparative analysis of the social security rights in the EU, see D. Sinbjerg Martinsen, 'EU Cross-Border Welfare, Union Citizenship and National Residence Clauses'. Paper presented in the *EUSA Tenth Biennial International Conference*, Canada, May 17-19, 2007.

⁸⁹ Source: VPRC.

⁹⁰ Source: MIPEX.

IV. Conclusion

As this paper has shown, only a minimum set of rights has been afforded to third country nationals while there are still huge differences in the treatment between EU nationals and non-EU nationals. Civic integration tests used by the Member States for integrating non-EU migrants have a restrictive impact upon the pending Europeanization of immigration integration policy. The long process of integration of third country nationals into the European society is now threatened by national integration measures which require even long-term resident third country nationals to pass language tests or attend language courses, requirements which are not applicable to EU nationals. France's latest suggestion that migrants should be forced to accept an integration contract obliging them to learn the national language and accept European values like tolerance, gender equality and the need for compulsory education is another example of restrictive immigration integration policy. Such measures actually show the Member States' ignorance for tolerance, equality and human rights, inherent values upon which the very foundation of the European Union has been based. The restrictive integration conditions imposed by the Member States prevent third country nationals from moving freely within the EU and thus labour mobility cannot be increased. In an inflexible labour market like the European, increase of labour mobility would compensate for the labour shortages in the Member States. Attracting high-skilled workers, as the relevant Directive provides, would contribute to the economic growth of the EU. Further integration of migrants could also remedy for the demographic problem of the EU. As Frattini said, the EU's working age would be in decline by 2011 and by 2050 a third of the bloc's population would be over 65.⁹¹

There is a restrictive anti-migration trend developing in the Member States which indicates that as long as national interests are above the Union's interest as a whole, there can be no common immigration integration policy. At the moment, what we have is a common policy on immigration control and

⁹¹ BBC News, 13 September 2007 [www.news.bbc.co.uk].

restriction directed by the Member States' anxiety for incoming migration flows. There must be further harmonization of the rules regarding admission, residence and integration into the host society of third country nationals who fulfil certain criteria. There is no reason to impose those migrants to unfavourable language tests and other socio-cultural conditions. The purpose should not be to force immigrants to accept your lifestyle or values. It is rather to include these people in the host society respecting their differences and making them part of the national legal order giving them equal rights and duties with nationals. At least, the long-term resident third country nationals should be granted an equal status with EU nationals as regards their entry, residence, family reunion, employment, social and political participation. At the moment, the equal status has not been achieved in practice while new legal migrants will be subjected to even more stringent conditions for their integration. The process of Europeanization of integration policy can have a positive impact for third country nationals only if there is a change of attitude towards migration. Such change of attitude could be attained by reducing the Member State's discretion on immigration integration in favour of supranational management of migration at EU level. In this way, the line dividing EU citizens from third country nationals would start to fade away gradually.

Bibliography

Bransten, J., 'EU: Netherlands Leading Trend To More Stringent Immigration Rules', *EU Observer*, 5 April 2006.

Collet, E., 'The proposed European Blue Card system: Arming of the Global War for Talent?', *Migration Information Source* (2008) [www.migrationinformation.org].

European Parliament's Civil Liberties, Justice and Home Affairs Committee, *Comparative Study of the Laws in the 27 EU Member States for Legal Migration. Including an Assessment of the Conditions and Formalities Imposed by Each Member State for Newcomers*, February 2008, PE 393.281 [www.europarl.europa.eu],

European Parliament's Report: 'European Blue Card to Solve the Problem of Aging Population', 26 September 2007 [www.europarl.europa.eu].

Groenendijk, K., 'Security of Residence and Access to Free Movement for Settled Third Country Nationals under Community Law', in Guild, E. & Harlow, C. (Eds) *Implementing Amsterdam* (Hart Publishing, 2001).

Guild, E., 'EU Policy on Labour Migration: A First Look at the Commission's Blue Card Initiative', *Centre for European Policy Studies* (2007) [www.ceps.eu].

Kostakopoulou, T., 'Integrating Non-EU Migrants in the European Union: Ambivalent Legacies and Mutating Paradigms' (2002) 8/2 *The Columbia Journal of European Law* 181.

Nonneman, W., 'European Immigration and the Labour Market', *Migration Policy Institute*, July 2007.

Papademetriou, D. G. and Weidenfeld, W., 'Editorial: The Children that Europe Forgot', *European Voice*, 20 September 2007

Peers, S., Key Legislative Developments on Migration in the EU, 5 *European Journal of Migration and Law* (2003) 387

Sinbjerg Martinsen, D., 'EU Cross-Border Welfare, Union Citizenship and National Residence Clauses'. Paper presented in the *EUSA Tenth Biennial International Conference*, Canada, May 17-19, 2007.

Velutti, S., 'What European Union Strategy for Integrating Migrants? The Role of OMC Soft Mechanisms in the Development of an EU Immigration Policy', 9 *European Journal of Migration and Law* (2007) 53.