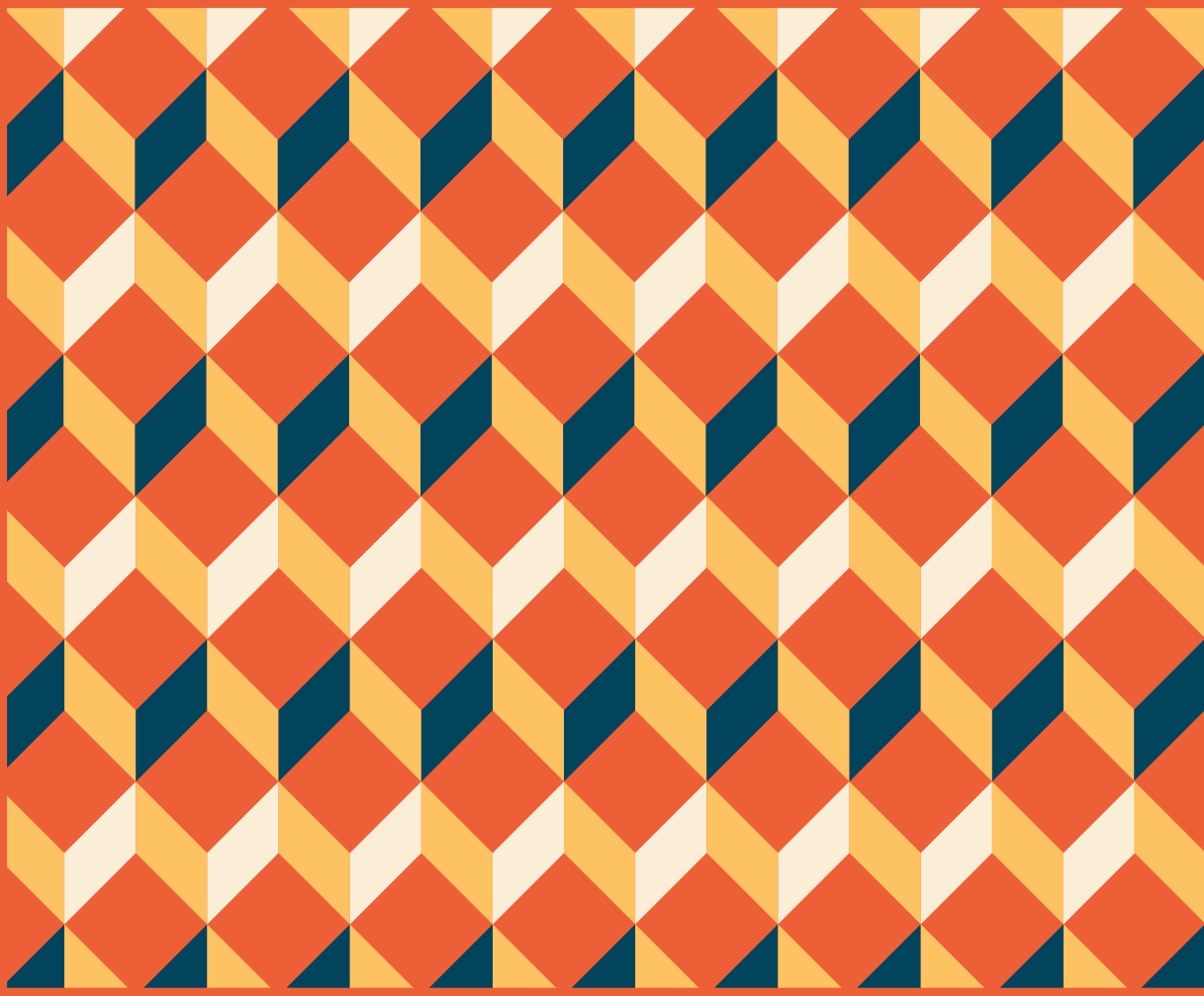
Edited by
Pasquale De Muro, Saverio M. Fratini and Alessia Naccarato

ECONOMICS, POLICY AND LAW

Proceedings of the Research Days Department of Economics



1 Collana
Dipartimento di Economia

Roma TrE-Press
2020

Università degli Studi Roma Tre
Dipartimento di Economia

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COLLANA
n. 1, ottobre 2020
Economics, Policy and Law
Proceedings of the Research Days

Coordinamento editoriale
Gruppo di lavoro *Roma TrE-Press*

Cura editoriale e impaginazione
teseo editore Roma teseoeditore.it

Elaborazione grafica della copertina
MOSQUITO. mosquitoroma.it

Caratteri grafici utilizzati:
Arboria, Regular, Light, Bold; Meta Plus Black (copertina e frontespizio).
Garamond (testo).

Edizioni *Roma TrE-Press* ©
Roma, ottobre 2020
ISBN 979-12-80060-53-2
http://romatrepress.uniroma3.it

L'attività della *Roma TrE-Press* è svolta nell'ambito della
Fondazione Roma Tre-Education, piazza della Repubblica 10, 00185 Roma.

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Chapter 6

Integration of third country nationals and the European Union: an opportunity not to be missed*

Valeria Piergigli

6.1 Introduction: integrate or select immigrants?

There is nothing new about migrations. Individuals and peoples have always been on the move, in pursuit of better living conditions or mere survival, attempting to escape from wars, persecution, famine and various other adversities.

Over the last few decades the European continent has, for a number of reasons, been progressively an area of immigration, and it seems highly likely that the trend will be borne out in the years to come. According to surveys updated as to 1 January 2019, 21.8 million citizens from third countries are living in the European Union, accounting for 4.9% of the total population of the 27 States in the Union[1]. The increasingly intense migratory inflows from third countries, especially as from the beginning of the 21st century, has made a burningly relevant issue of the need to forge adequate tools at the various levels of government – local, national and supranational – to regulate realities

* The present contribution is an abridged and updated version of the essay *L'integrazione degli immigrati da paesi terzi nel diritto sovranazionale: limiti e potenzialità dell'Unione europea,* published in *Rivista AIC,* 3/2018, 1-26 and in G. Cerrina Feroni, V. Federico (eds.), *Strumenti, percorsi e strategie dell'integrazione nelle società multiculturali*, Naples, 2018, 209-241.

[1] The data are reported by Eurostat: <https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics>.

that appear to have gone through quantitative and qualitative change. In fact, not only has a considerable increase in the number of persons choosing to migrate to the European continent been registered, but also the typology of migrants has changed in comparison with those of the last century. Apart from the particular – and often tragic – conditions of refugees, asylum-seekers and, in general, persons venturing into our territories in search of humanitarian protection[2], there is an increasingly generalised tendency of nationals from outside the EU arriving in Europe for economic reasons and for work not to return to their countries of origin, but to settle down in the places of immigration, and possibly send for the members of their families to join them. The powerful impact – demographic, social, cultural, religious, economic and political – resulting from these developments has driven the States of the European Union to rethink, or at any rate question, the models long tried in the approach to migration from third countries[3].

Another factor, subsequent to the tragic events of September 2001, prompting the national legislators to reform the regulations at present in force lies in the threat of international terrorism in the name of Islam and the associated need to safeguard the borders and maintain social cohesion. This has led to the adoption of revised and stricter migration policies, for which the EU simply outlines the common principles and approaches, leaving to the discretionary powers and sovereignty of the Member States regulation of the flows and concrete definition of the requisites for entry, residence, integration and – should it prove the case – naturalisation of the foreigners legally settled in the respective territories. The action taken in Italy to limit immigration and integration in the last decade in the name of public safety and protection of the national borders has been widely publicised[4].

[2] On these aspects, in Italian discussion, cf., for example, Woelk *et al.* (2016).

[3] Among the best-known, tried and tested models are to be found the assimilationist and multicultural approaches, on which see the various essays published in the volume edited by Cerrina Feroni and Federico (2018) and in Cerrina Feroni and Federico (2017).

[4] Consider, for example, the modifications introduced a decade ago in the Consolidated Law on immigration (legislative decree 286/1998) with the so-called 'security package'

In particular, the issue of integration of immigrants from outside the EU – linguistic and civic, to begin with – has for a good many years featured recurrently in the European political agenda, and has taken on central importance in the area of national policies. It is no longer being approached, as in the past, solely for the purposes of granting the status of citizenship, but also as requisite (or prerequisite) for entry, residence and access to certain social benefits in the host country.

But what exactly does 'integration' mean? In legal language there is no universally accepted definition of the term, which thus remains an indeterminate concept. In 2009, however, for the purposes of application of the Consolidated Law on immigration, Italian legislators established that integration is the process serving «to promote the coexistence of Italian and foreign citizens in respect of the values incorporated in the Italian Constitution, with reciprocal commitment to participating in the economic, social and cultural life of society» (art. 4-*bis* legislative decree 286/1998, introduced by art. 1, clause 25, Law 94/2009).

Effectively, the concept of integration – which, apart from matters of law, more broadly has to do with the human and social sciences – should, as long called for by the European organisations, lead to a two-way process involving both immigrants and host countries in a

(in particular: decree law 92/2008, converted into l. 125/2008, e l. 94/2009), to which, in the 18th legislature, the changes brought in with the so-called 'security decree' (decree law 113/2018, converted with modifications into l. 132/2018, Disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata), and the 'security decree *bis*' (d.l. 53/2019, converted with modifications into l. 77/2019, Disposizioni urgenti in materia di ordine e sicurezza pubblica. On the occasion of promulgation of the conversion law, the President of the Italian Republic pointed out to the President of Parliament certain unconstitutional aspects). Also worth mentioning is decree law 4/2019, converted with modifications into l. 26/2019 (*Disposizioni urgenti in materia di reddito di cittadinanza e pensioni*) which made supply of the basic income, designed to promote labour market entry and social inclusion conditional upon the requisite of at least 10 years residence in Italy, thus clearly favouring certain categories of beneficiaries.

combined effort[5]. True integration means rejecting the idea of assimilation, acculturation or artificial standardisation of the other, the foreigner. Rather, it requires the authorities of the countries of immigration to take measures to ease his/her inclusion. Naturally, the immigrant is expected to play an active and responsible part in the process of integration in the host country. At the same time, it is essential to favour respect and valorisation of the cultural identity of the immigrant populations which, as we well know, are ascribed to the category of 'new minorities', to distinguish them from the auto-chthonnous linguistic minorities with a long history in the territory of a great many European countries.

Nevertheless, it seems to be an undeniable fact that

«to some extent the process of assimilation by the majority component of the population is inevitable in that the legal order does however require the immigrant and the community to which he or she belongs to adapt to what constitutes the *values* characterising the host system – values customarily taken to be positive: liberty, equality, non-discrimination…»[6].

The fact is that for some time we have been witnessing something that probably goes beyond the requirement for the third country nationals (TCNs) to adapt to the basic principles of the host State. Suffice it to consider the progressive tightening of national regulations regarding demonstration of a certain level of knowledge of the language (and, often, also of the values and institutions) of countries which TCNs seek to enter for the purposes of family reunification or finding work and living. These are certainly legitimate requisites, and apparently serve for social inclusion, but they are structured and implemented in such a way in some cases as, in practice, to select the immigrants or would-be immigrants, excluding or repelling those unable to conform with the prescriptions or at any rate making the integration

[5] In this respect see 'The Common Basic Principles for Immigrant Integration Policy in the EU, unanimously adopted by the Justice and Home Affairs Council of the European Union (The Hague 2004).

[6] Translation from: de Vergottini (1995, p. 23), author's italics.

process excessively difficult for them.

In such cases integration does not seem to be so much a goal to achieve through a series of activities towards which the host country should contribute as, rather, an obligation (in terms of means or result) to be observed, or at any rate a burden in some cases placed entirely on the shoulders of the immigrant. Entry or residence in the territory of a State are made conditional upon having achieved a certain degree of integration, almost as if recognition of the legal condition of immigrant and a series of rights were a reward that had to be deserved, reserved for those who can demonstrate they have (already) become 'perfect citizens'[7]. This generates some tension, yet to be resolved, between the aspiration universally (and officially) proclaimed to respect of the pluralism of cultures and the principles of the liberal, democratic tradition, on the one hand, and the implementation of practices directed towards control of the diversity and assimilation in the majority culture on the other, in a climate that all too often appears contradictory and likely to exacerbate social conflict. Thus the situations of irregularity, illegality and marginalisation that efforts are ostensibly being made to eliminate or at least reduce are in fact aggravated.

Actually, in an increasingly cosmopolitan and globalised society characterised by the supersedence of economic and cultural barriers, decision-making on the management of national borders and the status of the resident population – through choices in the realm of immigration, integration and citizenship – remains strictly within the sphere of national sovereignty. The European institutions, for their part, endeavour – as far as possible, with both hard-law and, above all, soft-law instruments – to circumscribe the discretionary powers of the States and establish certain common, albeit minimum, standards for the integration of TCNs who apply for European long-residence permits or seek to reunite their families. Integration represents a sphere within which the EU inevitably comes up against certain limits, as explicitly emerges from the provision that the European Parliament and Council can bring in measures to support and incentivise Member States in

[7] Paraphrasing Carrera (2009).

promoting the integration of regularly resident extra-EU immigrants, but excludes «any harmonisation of the laws and regulations of the Member States» (TFEU art. 79.4).

Given all these circumstances, our aim in this paper is to focus attention above all on the potential available at the supranational level. In this respect, the contribution made by the Court of Justice – specially petitioned in the course of preliminary referral by the national judges – is showing great potential in settling some of the major issues involved in interpretation of the notion of integration, apodictically encapsulated in the texts of directives 109 and 86 of 2003. It is also proving valuable in dispelling the doubts that some national regulations raise with reference to the effectiveness, reasonableness, proportionality and non-discrimination of the measures adopted (and formally justified) in the name of socio-cultural inclusion of foreigners in the national host community.

The movement of people from one country to another is an irreversible tendency which needs to be faced up to with mature awareness, no longer to be addressed as a problem to be approached solely in terms of security. The need is, rather, to take it as an opportunity to improve not only the management of migratory flows, but also the policies for the integration of legally resident TCNs. It is a challenge that, if taken up in a spirit of solidarity and forward-looking, could open the way to a strong reaction against the tarnishing of the principles of legality and democracy, as well as bringing some restraint to bear on the xenophobic impulses and nationalistic backsliding variously emerging in diverse parts of Europe (and not only there) in recent times. Furthermore, it is a challenge that could mark a turning point in the direction of effective integration amongst the States and populations prepared to place their hopes on a newfound sense of unity, today more essential than ever in the old continent. In this perspective, more effective integration of extra-EU citizens could prove to be a factor in achieving greater European integration, as well as reinforcing the inalienable values upon which the Union rests and which have inspired the liberal-democratic tradition of the Member States.

6.2 Directives 2003/86/EC and 2003/109/EC: between *measures* and *conditions* of integration

When the Treaty of Lisbon came into force the aim to integrate TCNs legally resident in the States of the Union found an official place in the European political agenda, albeit with the limitations mentioned above. And yet before this, on the basis of article 63 of the Treaty of Amsterdam, the supranational institutions had already taken steps in the direction of common regulations which also brought in reference to the issue of integration. Directives 2003/86/EC and 2003/109/EC, respectively dealing with regulation of family reunification and the status of TCNs who are long-term residents were designed to regulate and circumscribe the decisional autonomy of the States, which however retained the right to self-determination in the choice and graduation of integration procedures[8].

It is worth taking a look at the protracted and troubled progression towards adoption of the directives in question. The decision-making process involved was the one enshrined in the Treaty of Amsterdam, hinging on the logic of intergovernmental cooperation and the rule of the unanimous vote in the Council. Arriving at the final conclusion took several years of negotiations, during which certain – less than transparent – procedures carried out within the Council and the resistance set up by certain States considerably watered down the initial proposals with which the Commission had intended to implement the Tampere programme objectives of the European Council dating back to 1999. Essentially, these objectives consisted in bringing national regulations to correspond more closely, so as to allow for equal treatment of regularly resident extra-EU citizens and promote more effective integration, acknowledging for them a series of rights and duties comparable with those of the EU citizens.

[8] The directives analysed in the text are, of course, not the only ones that refer to the integration of foreign nationals: such reference is also to be found, for example, in directive 2004/114/EC on the admission of citizens from third countries in EU States for reasons of study, or directive 2009/50/EC on the conditions of entry and residence of TCNs for the purpose of highly qualified employment.

In the final version of the two directives, the approach to integration turned out to be radically different from the original projects, mainly due to clauses for derogation from or at any rate limitation of recognition of the immigrants' enjoyment of rights, called for by Germany, Austria and the Netherlands. The undeclared but clearly understood intention behind the counterproposals was to control and reduce immigration from third countries. The formulation of restrictive provisions found justification in the need to conform the European regulations about to be adopted to the – already fairly selective – provisions in force or pending approval in those countries. In other words, what the German, Austrian and Dutch representatives really wanted was to maintain the status quo and, if possible, receive some sort of legitimation from above, leaving uncompromised the faculty of the national legislators to adjust their integration policies in the future. A consequence of this approach was the need, beginning at the stage of incorporation of the European regulations into the various countries' systems, to tighten up the regulations, so minimal and equivocal was the standard set at the supranational level. This eventually had, among the various results, that of triggering a downward domino effect, as it were, the Member States following one another in a spirit of reciprocal emulation, taking a distance from the Tampere programme and bringing in increasingly demanding requisites integration, beginning at the linguistic level, precisely for the sake of harmonising regulations and developing common practices[9].

A glance at the contents of the two directives can help to make these dynamics clearer.

Directive 2003/86/EC mentions the word 'integration' eight times and calls on the Member States to encourage family reunification since «It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State» (4th whereas). However, the directive also recognises the *faculty* of the Member State to require of

[9] On the troubled road to adoption of the two directives and subsequent (restrictive) national regulations through incorporation, see among others Carrera (2014, especially pp. 171-173), Block and Bonjour (2013).

TCNs seeking family reunification, among the other requisites[10], «to comply with integration *measures*, in accordance with national law» (art. 7. clause 2) (emphasis added). Moreover, when deciding whether to authorise reunification of minor children over the age of twelve years who arrive independently of the rest of the family, «*may* verify […] whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive» (art. 4, clause 1) (emphasis added).

For its part, directive 2003/109/EC, modified in 2011 to extend the status to refugees and other beneficiaries of international protection (dir. 2011/51), mentions the term 'integration' five times and opens by stating that the integration of TCNs 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 stated in the Treaty» (4th whereas). Having stated so much, the text makes provision that, for the purpose of acquiring the status of long-term resident, the States *may*, in addition to other requisites[11], determine whether TCNs «comply with integration *conditions*, in accordance with national law» (art. 5, clause 2) (emphasis added). Should the TCN who has obtained from the authorities of a Member State recognition of the status of long-term resident intend to reside in the territory of another Member State the latter *may* require compliance with «the integration *measures* in accordance with national law», unless the integration *conditions* as indicated in the above-mentioned art. 5, clause 2 (art. 15, clause 3) have already been satisfied in the first Member State (emphasis added). In this

[10] According to art. 7, clause 1, the Member State may require reunification applicants to demonstrate use of appropriate accommodation, health insurance and resources sufficient to support self and family members. In the case of refugees and their family members, the above integration measures can be applied only after reunification has taken place (art. 7, clause 2), thereby implying that these measures may be imposed on other categories of migrants *before* they enter the host country.

[11] According to art. 5, clause 1, to acquire the status of long-term residents, the Member States require TCNs to prove that they have sufficient resources to support themselves and their dependent family members and insurance against illness. A further requisite is uninterrupted legal residence in the territory of the country for five years (art. 4, clause 1).

case it is assumed that the TCN already integrated in the society and lifestyle of a Member State is a person automatically integrated or readily integrable in the societies of the other States, with no need for further formalities[12]. However, given also a variety of languages in Europe, it is possible that the persons concerned may be required to attend language courses in the second Member State (art. 15, clause 3). Recognition of the status of long-term resident is permanent, with the exception of loss or revocation in the cases expressly indicated (art. 9), and entitles persons to equal treatment with the national citizens as regards access to employment, education, goods and services, social security and social assistance, tax benefits and freedom of association (art. 11)[13].

Thus, with a certain ambiguity, the European regulations alternate references to measures and conditions of integration without providing definitions and in any case leaving to the laws and practices of each country concrete specification of the measures and conditions. Suffice it to observe that in the Dutch version of directive 2003/86/EC, the word 'measures' is represented with the term 'conditions' of integration[14].

It is generally held that while the former make the immigrant responsible for compliance with obligations regarding means (e.g. attending a course to learn the language of the host country) and may also consist in requisites to be complied with before entry into the Member State (so-called integration from abroad), the latter entail obligations at the level of results (e.g. passing a language test)[15].

[12] See Carrera (2014, p. 157).

[13] Also to be noted is the 12th whereas of the same directive, which states that: «In order to constitute a genuine instrument for the integration of long-term residents into society in which they live, long-term residents *should enjoy* equality of treatment with citizens of the Member State in a *wide range* of economic and social matters, under the relevant conditions defined by this Directive» (emphasis added). So it appears that the equality of treatment invoked should apply to many but not all the economic and social sectors, as is then specified in art. 11.

[14] As indicated in the Conclusions by the advocate general J. Kokott, presented on 19 March 2015, in Case C-153/14 (§21).

[15] Groenendijk (2006, p. 224). The provision in art. 5, clause 2, is the 'Achilles heel' of directive 2003/109/EC according to the findings of Boelaert-Suominen (2005).

According to another point of view, the distinction lies in the respectively optional or mandatory nature of the measures and conditions for integration. In the case of the latter, obligation also extends, in the case of non-compliance, to the application of penalties, ranging from fines to non-renewal of temporary residence permits and expulsion from the territory of the State[16].

Noting the multifarious and incorrect application of directive 2003/86/EC by the Member States, the European Commission pointed out in a note issued in 2014 that, although the competence of the Union for integration takes second place to that of the States, the powers enjoyed by the latter are not unlimited. In particular, the *measures* mentioned in art. 5 must be proportionate and applied with the flexibility necessary to avoid undermining the useful effect of the directive, which consists in promoting, and not obstructing, family reunification. To this end, the Member States should take into account any particular individual circumstances (cognitive capacity, vulnerability, lack of access to facilities for language learning or other disadvantageous situations) and, should it be the case, provide for derogation or postponement for compliance with the measures[17].

[16] On the distinction between integration measures and conditions as used in the directives referred to in the text, see also Conclusions by the advocate general M. Szpunar, presented on 28 January 2015, Case C-579/13 (especially §§55, 85, 86 e 97), according to which the integration measures are to be considered less demanding than the integration conditions and cannot, therefore, include the obligation to pass an integration test, nor serve as a means to select the immigrants or control immigration. Along the same lines, see also Conclusions by the advocate general P. Mengozzi, presented on 30 April 2014, Case C-138/13. On the meaning of the concept of integration in the two directives, see furthermore at the level of interpretation: Hailbronner and Klarmann (2016) and Thym (2016a).

[17] See the *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, Brussels 3 April 2014, where we read: «In other words, the integration measures that a Member State may require cannot result in a performance obligation that is in fact a measure that limits the possibility of family reunification. The measures must, on the contrary, contribute to the success of family reunification» (p. 17), adding that automatic refusal of reunification subsequent to failure in an integration test could constitute a violation of arts. 5.5, 8 and 17 ECHR (p. 17, note 55).

The fact is that the regulations adopted and progressively revised in various European countries, in some cases precisely on the occasion of incorporating the above-mentioned directives[18], have more generally adopted integration 'pre-requisites' or 'pre-conditions' – in the first place in terms of language – so devised as to translate into barriers to entry or obstacles to residence in the territory of the Member State of the TCNs submitting, respectively, application for family reunification or recognition of the status of long-term residents. An interesting corpus of case law by the Court of Justice on the legitimacy of these interventions is taking shape, as we will see below.

6.3 The contribution of the Court of Justice to interpretation of the national regulations

As we have seen, the Treaty of Amsterdam and, even more, the Treaty of Lisbon have led to the Europeanisation of immigration law and, to a lesser extent, of integration policies. This has entailed an extension of the tasks assigned to the Commission, and above all of the role of the Court of Justice which, with the Treaty of Lisbon, has acquired full jurisdiction over the measures adopted in accordance with TFEU art. 79, including the possibility of pronouncing on a preliminary referral without the limits set by the Treaty of Amsterdam[19]. Thus, if expectations are to see a process unfolding towards the implementation of a common model for integration of immigrants shared by the Member States, a certain degree

[18] Denmark, Ireland and the United Kingdom are not bound by directives 2003/86/EC and 2003/109/EC having made use of the opt-out clause. For further considerations on the regulations adopted in implementation of the above-mentioned directives on the part of some Member States, let me refer readers to Piergigli (2013).

[19] On the basis of art. 68, clause 1. Treaty of Amsterdam (TCE), preliminary referral to the Court of Justice in the immigration sector was admitted only for national courts of last instance, i.e. the courts against whose decisions no further appeal can be made according to the national law. For the extension of the competencies of the European Commission and the Court of Justice with the Treaty of Lisbon, see, at: Wiesbrock (2010), Block and Bonjour (2013) and Carrera (2014).

of optimism now seems to be justified.

However, if TFEU art. 79, clause 4 rules out EU competence to adopt binding integration policies and the directives of 2003 leave the matter to the discretionary powers of single Member States, what are the parameters that the Court of Justice can invoke?

The question began to call for concrete answers on the introduction and rapid propagation amongst the Member States of obligatory integration mechanisms for entitlement to the status of long-term resident and for family reunification. Here the tests to verify a certain knowledge of the language and institutions of the host country raised delicate issues of the compatibility of national regulations both with the objectives of the 2003 directives and with the general unwritten principles of EU law[20], as well as, more broadly speaking, the provisions included for various reasons in international documents regarding the protection of fundamental rights in conditions of equality. Moreover, even the countries that are not required to apply the directives on immigration have to respect the EU *acquis* and the international obligations deriving from ratification of the treaties, observing at least the principle of non-discrimination in the regulation of language tests for entry and residence in their territories.

In its reports on the implementation of directives 2003/86/EC and 2003/109/EC, the European Commission invites Member States to implement the objectives respectively extended to them and to bear in mind the general principles of EU law, including those regarding the effectiveness and proportionality. In the case of the integration measures and conditions concerning language, the Commission advises that a series of indicators can be used to assess conformity with the supranational regulations. Significant, therefore, will be, for example, the nature and level of language knowledge prescribed, ease of access to integration programmes, didactic material and tests, the costs of courses and tests, whether or not there are procedural guarantees in cases of decisions against entry or issue a long-period residence permits, and

[20] For a summary of the contents of these general principles, see Acosta Arcarazo (2011).

comparison with the integration requisites set for European citizens, for whom more rigorous standards would be expected[21].

These caveats have been corroborated by the Court of Justice on the occasion of judgements regarding interpretation of the 2003 directives[22]. Making reference to the various bodies and institutions including the ECHR, the European Social Charter, the Convention on the Rights of the Child, the EU Charter of Fundamental Rights and the ongoing jurisprudence of the Strasbourg judges on the right to private and family life, the Court of Justice has made it quite clear that the discretionary powers granted to national authorities in formulating requisites to be satisfied by the applicant family members for reunification must not lead to denial of such a fundamental right as family life, nor failure to take into account the overriding interests of the children of minor age (Case C-504/03)[23]. Basically, the fact that the concept of integration (and promotion of it) lacks definition both in the text of directive 2003/86/EC and in that of directive 2003/109/EC[24] cannot – according to the Luxembourg judges – be interpreted as giving Member States carte blanche to use the concept in such a way as to clash with the purposes of the regulations laid down at the supranational level which consist, respectively, in guaranteeing family unity and integration of TCNs settled as long-term residents in the territory of the Member

[21] See the reports of the European Commission on implementation of directives 2003/86/EC and 2003/109/EC, respectively of 8 October 2008 and 28 September 2011. See also the European Commission Green Paper on the right to family reunification for third country nationals living in the European Union issued on 15 November 2011.

[22] Besides the citations which will be made later on commenting on the individual decisions, on the jurisprudence of the Court of Justice of relevance here, see: Carrera (2014), Block and Bonjour (2013), and Groenendijk (2014).

[23] Court of Justice, 27 June 2006 Case C-504/03 (*European Parliament and EU Council*).

[24] As pointed out in Murphy (2010), the Court of Strasbourg is beginning to develop case-law on integration (also at the level of language and culture) as a criterion to be taken into consideration in cases of expulsion of immigrants; this approach could have fallen out on the interpretation of ECHR art. 8 and on national policies in the area of immigration and integration.

States. Therefore, making the granting of a long-term residence permit conditional on payment of an excessive charge (Cases C-508/10 and C-309/14)[25] or admission of the family members conditional on demonstration of a higher level of income than ordinarily prescribed on the basis of the reunification directive (Case C-578/08)[26] means – according to the Court – contravening the objectives pursued with the directives as well as the principles of proportionality, effectiveness and respect of fundamental rights.

Again, the Court has made it clear that the faculty of the Member States to decide on the granting of subsidies for accommodation for the lower – national and extra-EU – income brackets is to be interpreted restrictively, in such a way as not to compromise the useful effect of directive 2003/109/EC on application of the principle of equal treatment between long-term residents and national citizens laid down in art. 11 of the same directive (Case C-571/10)[27].

An interesting case, albeit concluded with a decision of no need to adjudicate by the Court of Justice, concerned, for the first time in 2011, the legitimacy of an integration requisite to be satisfied by an Afghan national in the country of origin prior to entry in the Member State for the purpose of family reunification. In a preliminary ruling, the Hague court asked the Court of Justice whether the obligation imposed by the Dutch regulations did not constitute an excessively severe interpretation of art. 7, clause 2. dir. 2003/86/EC, and whether «it is

[25] Court of Justice, 26 April 2012 Case C-508/10 (*European Commission v. Kingdom of the Netherlands*) and Court of Justice, 2 September 2015 Case C-309/14 (*Confederazione generale italiana del lavoro (Italian General Labour Confederation – CGIL), Istituto nazionale confederale assistenza (National Confederal Assistance Institute – INCA) and Prime Minister's Office, Ministry of the Interior, Ministry of Economy and Finance*).

[26] Court of Justice, 4 March 2010, Case C-578/08 (*R. Chakroun c. Minister van Buitenlandse Zaken*).

[27] Court of Justice, 24 April 2012, and case C-571/10 (*Servet Kamberaj and. Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES), Giunta della Provincia autonoma di Bolzano, Provincia autonoma di Bolzano*).

relevant that citizens of some other third countries are exempted from the obligation to pass the civic integration test abroad solely by dint of their citizenship» (Case C-155/11)[28]. Effectively, the nationality factor can contribute to implementing actual selection of the quality (and not only of the quantity) of immigration, with consequent violation of the non-discrimination principle which is provided for in international conventions for the protection of human rights, in TFEU (arts. 18 and 19) and in directives 2003/86/EC and 2003/109/EC. Various European jurisdictions, including that of the Netherlands, expressly exonerate entire categories of extra-EU nationals from language and/or civic integration tests solely on the consideration that the provenance from Western countries, or at any rate countries with well-established democracy, suffices in itself to guarantee their integration.

In recent years the Court of Justice has continued to be consulted with increasing frequency for preliminary ruling on the conformity of the civic integration obligations laid down by Dutch law with directives 109 and 86 of 2003. With somewhat perfunctory arguments, the supranational judge confirmed his jurisprudence and arrived at a compromise solution between EU law and the faculty of the Member States to decide on the requisites for integration.

In two judgements on different occasions but one soon after the other, the Court reaffirmed the principle that Member States do not have total control over matters of immigration, for exercise of their powers, filtered with the proportionality test, must not violate the principle of non-discrimination, nor compromise the objectives of useful effect of the European regulations[29]. The Luxembourg judge, favouring a pragmatic approach glossing over the distinction between integration

[28] Subsequent to acceptance of the complaint by the Dutch government, which granted provisional residence permit to an Afghan woman, the Court of Justice declared that there was no longer the need to adjudicate on the application for preliminary ruling: Court of Justice, 10 June 2011, Case C-155/11 (*Bibi Mohammad Imran c. Minister van Buitenlandse Zaken*).

[29] For comment on the decisions cited below in the text, see Jesse (2016), Thym (2016b), Strazzari (2015) and Strazzari (2016, p. 447).

measures and conditions[30], ruled that the obligation to pass the civic integration test does not clash with art. 5, clause 2. dir. 2003/1009/EC, even if submitted to immigrants who have already achieved long-term resident status provided that the application procedures do not hinder achievement of the objectives pursued with the directive itself. The procedures are to be appraised by the referring court and can legitimately also include a fine for failure in the test, but any penalty system must be so structured as not to deprive the directive of its useful effect (Case C-579/2013)[31].

Similarly, according to the Court of Justice the faculty of Member States to bring some obligation in terms of integration to bear on the applicant for family reunification from abroad, in accordance with art. 7, clause 2. dir. 2003/86/EC, does not in theory imply that the Member States cannot require TCNs to pass an elementary test on knowledge of the language and society of the Member State concerned before authorising entry or residence in its territory. In practice, however, the obligation must not be such as to make exercise of the right to family reunification impossible or excessively difficult through high costs or failure to take into consideration the individual circumstances of the applicant, such as age, level of education, economic and health conditions (Case C-153/14)[32]. In fact, «The integration measures referred to in the first subparagraph of Article 7(2) of Directive 2003/86 must be aimed not at filtering those persons who will be able to exercise their right to family reunification, but at facilitating the integration of such persons within the Member States» (§ 57).

Reference to a principle of 'personalised proportionality'[33] and

[30] On the other hand, the Conclusions of the advocate general M. Szpunar concentrated on this decision (see above, note 15).

[31] Court of Justice, 4 June 2015, Case C-579/13 (*P e S c. Commissie Sociale Zekerheid Breda, College van Burgemeester en Wethouders van de gemeente Amstelveen*).

[32] Court of Justice, 9 July 2015, Case C-153/14 (*Minister van Buitenlandse Zaken c. K e A*).

[33] '*Personalized proportionality assessment*', in the recent case-law of the Court of Justice is discussed by Acosta Arcarazo in *The Security of the Status of Long-Term Non-EU Residents in the EU: Some Thoughts on Case C-636/16 López Pastuzano,* in <http://eulawanalysis.blogspot.it/2017/12/the-security-of-status-of-long-term-non.html>.

the desirability of making assessments case-by-case recently found confirmation in the decision with which the Luxembourg judge, consulted for preliminary ruling by a Spanish administrative court, stated that the expulsion of a long-term resident from the territory of a Member State is legitimate «solely where he or she constitutes an actual and sufficiently serious threat to public policy or public security» (Case C-636/16, § 25)[34]. The expulsion injunction, whether an administrative penalty or the consequence of a criminal conviction, can be adopted by the Member State only after due consideration of a series of elements including – the Court of Justice points out, referring to art. 12, clause 3. dir. 2003/109/EC – links with the country of residence or absence of links with the country of origin (§ 26). In other words, verification of the accomplished integration of the immigrant in the host country constitutes a form of enhanced protection against expulsion (§§ 23-24), much like the EU provision that has for some time been in force in favour of worker citizens of the Union[35].

This is the point arrived at in the interpretation offered by the Court of Justice to the directives of 2003 and certain national regulations relating particularly to matters of integration. The fact that the interventions of the Court – above all since the Treaty of Lisbon came into force – were prompted by preliminary referrals is a (positive) sign of increased cooperation between the national and European judges, and between Member States and the European Union. The greater readiness shown by the judges in the individual Member States to involve the Luxembourg Court is a highly significant advance in consideration of the fact that the matter involved belongs to the domain of State competence[36]. Considering, moreover, that the rulings of the Court, although directly addressing the referral courts and the States parties in

[34] Court of Justice, 7 December 2017, Case C-636/16 (*Wilber López Pasuzano c. Delegación del Gobierno de Navarra*).

[35] Cf. *supra* § 2 and regulation (EEC) n. 1612/68.

[36] Since the Treaty of Lisbon came into force, the traditional attitude of 'reluctance' or 'timidity' on the part of the national judges (as well as the European Commission) when it comes to involving the Court of Justice seems to be on the wane in a sector that is, moreover, politically sensitive and directly associated with state sovereignty.

the judgement, also have repercussions on the legislators and judges of the other EU countries, it would not be unrealistic to envisage sometime in the future the construction of a common standard for integration of TCNs that would ensure for them legal status – as the Tampere conclusions put it – 'comparable' with and 'as close as possible' to that of the EU citizens.

6.4 Conclusions and challenges for the near future: support for more operative integration of immigrants in order to achieve effective European integration

Leaving aside definitions inspired by wishful thinking, when we approach the subject of integration certain points must be kept very much in mind. To begin with, integration is not a requisite that is verifiable *uno actu* or measurable simply with a test, but is rather an interactive and dynamic process – a work in progress that should find implementation in everyday practice, above all within the host country, and receive concrete support from the reception facilities. Moreover, it needs to be recognised that, at least in the western world, a uniform and monolithic configuration of the society, to which immigrants should conform, is no longer corresponding to the realities. In fact, not only have the migratory flows from the third countries contributed little by little to demolishing this myth, but pluralism – linguistic, cultural, ethnic and religious – is a well-established value in the immigration territories themselves, to the extent that different solutions are imaginable for management of the integration of immigrants in States that recognise the presence of historical linguistic minorities, which could feel threatened by uncontrolled entry from third countries in the respective places of residence.

Faced with the economic and demographic challenges that Europe has to address in the present situation, the EU continues to point out that immigration is a resource for the individual Member States and for the Union as a whole. The integration of regular immigrants is seen

as «a driver for economic development and social cohesion»[37] and it is «in the common interest of all the Member States»[38] as being potentially able to promote sustainable and competitive economic growth. At the same time, integration constitutes a cultural wealth provided that the policies promoting it rest on respect of differences, protection of fundamental rights and guarantee of equal treatment. European secondary legislation has for some time been focusing on these principles, and more recently the expediency of simplifying migration procedures has emerged, ensuring, for example, that TCNs with settled residence in a Member State should enjoy a common range of rights equal to that of the national citizens[39]. These objectives should be achieved with the support of more effective integration measures through greater involvement of all the levels of governance – local, national and European. In particular, acquiring a command of the language is a fundamental prerequisite for effective inclusion in the host society, and stress is therefore placed on the need to organise courses in language and civic education as well as introductory programmes both in the host country and in the place of origin to provide migrants with adequate grounding before their departure and ensure that they are informed of their rights and obligations, including the duty to observe the rules and values of the society they wish to settle in. As regards coordination and dialogue between interested parties, the EU – which has no direct powers for intervention on matters of integration – has committed to offering its support to the development of a trilateral process between migrants, host society and country of origin.

Alongside these ambitious projects, which are awaiting full validation at the practical level, it is also to be borne in mind that respect

[37] See the *European agenda for integration of third country nationals,* Brussels, 20 July 2011, 2.

[38] See the *Action plan for the integration of third country nationals,* Strasbourg, 7 June 2016, 2.

[39] See directive 2011/98/EU which introduces a single application procedure for issue of qualification combining residence permit and work permit. The single permit should help simplify and harmonise the regulations at present in force in the various Member States, as well as facilitating verification of the regularity of residence and employment.

of human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of persons belonging to minorities, are «values […] common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail» (art. 2 TEU). It is on the basis of these fundamental values of the European Union that practices for integration of regular extra-EU immigrants should be modulated and revised by the individual Member States. It is, in fact, hard to deny the abyss that lies between the proclamation of the (liberal) values of democracy and pluralism allegedly inspiring the European systems and the (illiberal) suffocation of diversity[40] occurring whenever the relevant national policies disregard the basic rules of equality and respect of human rights, adopting disproportionate provisions that obstruct effective inclusion in the host society or discriminatory forms of treatment, as in the cases that have so far been brought to the attention of the Court of Justice.

Definition of the action to be taken by states on the entry, residence and naturalisation of TCNs now offers the Member States an extraordinary and possibly unique opportunity to reflect on themselves and on categories that had seemed to be eternal, beginning with those of sovereignty-people-nation. They could thus go on to determine what key changes they might embark upon and thereby determine how to cope with the inexorable reality of mass migration. Unless, of course – this, too, would be a choice – they mean to isolate themselves behind their respective borders, sheltering behind (visible or invisible, but certainly unrealistic and anachronistic) barriers. Migration, and the policy decisions they raise for the public powers and society in general, bring pressure to bear on identities – collective, national, constitutional and cultural – that had seemed to be thoroughly consolidated if not immutable. They also force governments to measure up to the changes that have taken place so far, and to take on the responsibilities for the generations to come; they are the mirror of our conscience, revealing the

[40] In this connection, Orgad (2015, spec. pp. 142 ff.), discusses 'Europe's Paradox of Liberalism'.

image of what we autochthonous Europeans really are[41].

However, the massive flows of migrants and the need to rewrite, and above all implement, the policy agenda on integration represent not only a testing ground for each of the individual Member States, but also for the States as participants in that vaster assembly which is the European Union. They hold a challenge for the supranational institutions and, ultimately, for the endurance of the Union. The Treaty of Lisbon provides the rules for a common immigration policy, but leaves the states' self-determination intact on matters of integration. The principle is reaffirmed in the directives we have examined, and yet action for promotion support and monitoring by the EU organisations is recognised as admissible and desirable. For its part, the Court of Justice has opportunely contributed to the identification of certain minimum standards by which it can at least be determined '*what integration is not*'.

Given this broad picture of the realities, it is primarily the task of the Member States to decide whether to invest in the itinerary embarked upon and provide contents for the formulas in the key documents which the EU continues to draw up, or leave them at the level of empty rhetoric. Proposals have even recently been advanced for greater integration amongst the Member States, or integration at diversified rates[42], or exit from the Union, to the extent of its conjectured and avertible disintegration: this is the formidable challenge the Member States are facing at this point in their history[43]. Coherent, realistic and

[41] As observed Orgad (2015, p. 234), «Immigration policy is a mirror of constitutional identity. Naturalization requirements – the criteria that "they" must fulfill in order to join "us" – define "our" way of living, form of thinking, and mode of behaviour. Much can be learned about collective identities by analyzing immigration and naturalization requirements. By investigating the legal ways to become a citizen, we can learn a great deal about who we are as a people».

[42] Cf. in this respect the Communication by the European Commission, *White Paper on the future of Europe. Reflections and scenarios for the EU 27 by 2025,* Brussels, 1 March 2017, illustrating five possible scenarios for the evolution of the European Union.

[43] Some years ago it was observed by Gross (2005, p. 161), that «European integration will not be complete as long as third-country nationals resident in the territory of the Union are not regarded as an integral part of the area of freedom, security and justice».

supportive response to the complex phenomenon of migration can contribute not only to the economic revival and cultural enrichment of the countries of the European Union, but also to truly promoting 'unity in diversity', reinforcing the bonds with the common European home, and reaffirming the sharing in those values discussed above, observance of which is also required of TCNs by the Member States.

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