

## INTEGRATION OF IMMIGRANTS IN AN INTEGRATING EUROPE

*Aslı Selin OKYAY\**

### **ABSTRACT**

*This paper will firstly focus on the question of why the issue of immigrant integration, which has been ignored as a distinct policy area that needs consideration at the European Union level until very recently, gained EU-level attention. Afterwards, the balance of power between the basic actors involved in the policy making of the EU, namely, the European Council, Council of Ministers, the European Commission, and the European Parliament, and how this balance affects the progress of developing common policies in the domain of immigrant integration will be analyzed. In the third part, the effect of the failure of the European Constitution's full ratification on the development of EU level integration policies and on the respective weights of the institutions will be covered. Lastly, recommendations for the development of more effective EU policies in terms of immigrant integration and for the greater involvement of the supranational bodies will be made.*

**Key Words:** *European Union, Immigration, Immigrant Integration, Policy-making*

### **ÖZET**

*Bu araştırma ilk olarak, çok yakın bir zamana kadar Avrupa Birliği seviyesinde ayrıca ele alınması gereken bir konu olarak görülmeyen göçmenlerin entegrasyonu sorununun neden AB nezdinde önem kazandığı sorusuna odaklanacaktır. Ardından, Avrupa Konseyi, Bakanlar Konseyi, Avrupa Komisyonu ve Avrupa Parlamentosu gibi, AB politikalarının oluşturulmasıyla yükümlü ana kurumlar arasındaki güç dengesi ve bu dengenin göçmen entegrasyonu alanında ortak politikalar geliştirilmesi üzerindeki*

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\* Phd Student in Bosphorus University.

*etkisi incelenecektir. Üçüncü bölümde, Avrupa Anayasası'nın tüm üye devletlerce onaylanmamış olmasının AB bünyesinde göçmen entegrasyonu politikalarının geliştirilmesini ve AB kurumlarının bu konuda politika oluşturulması sürecindeki güçlerini nasıl etkilediği sorusu üzerinde durulacaktır. Son olarak da, göçmenlerin entegrasyonu konusunda daha etkin AB politikalarının geliştirilmesi ve uluslararası kurumların sürece daha çok katılımının sağlanması için öneriler sunulacaktır.*

**Anahtar Kelimeler:** *Avrupa Birliği, Göç, Göçmenlerin Entegrasyonu, Politika Oluşturma*

## Introduction

Policy making processes in the European Union have always been complicated by debates between supporters of more influence of supranationalism, namely the European Commission and the European Parliament (EP), and protectors of intergovernmentalist principles, led by the European Council as the representative of Member States, which are not always very enthusiastic for sharing their sovereignty and decision making power. Some policy areas are perceived as more vital for the nation state to protect from supranational intervention, which can be called as the core issues of sovereignty or national interest.

Immigration lies within those vital policy areas as also stated by Geddes about European integration, "There was some willingness to cede sovereignty in the pursuit of economic integration and market making because it was seen as beneficial, but this does not mean that states will be so willing to cede responsibility for areas as sensitive as immigration and asylum"<sup>1</sup>. However, at the same time, immigration policy and its interrelated parts ranging from border controls to the integration of immigrants require cooperation among countries that share not only borders but also problems, in order to be more effective.

The issue of immigrant integration, which will be at the center of this paper, was ignored as a distinct policy area that needs consideration at the EU level until the turn of the millennium. This paper will firstly focus on the question of why the issue of immigrant integration gained EU-level attention. Afterwards, the focus will shift to the balance of power between the basic actors involved in the EU policy making, which are the European Council, the Council of Ministers (of the related issue), the European Commission, and the European Parliament (EP), and how this balance affects the progress of common policy making in the sphere of immigrant integration. The next point of emphasis will be the failure of the European Constitution's full ratification and its effect on the development of a common integration policy and on the respective weights of those three institutions within this process. Lastly, recommendations for the

<sup>1</sup> Andrew Geddes, "International Migration and State Sovereignty in an Integrating Europe", *International Migration*, Volume 39, No 6, 2001, p. 24.

development of more effective EU policies in terms of immigrant integration and for the greater involvement of the supranational bodies will be made.

### **The Need for an Integration Policy at EU Level**

All the immigrant-receiving states in the EU have been developing various integration policies especially since they recognized the permanent character of immigrants within their borders. Some member states can be regarded as more successful than others because their integration policies gave better results in terms of the incorporation of immigrants to the labor market, education system and political realm, in short, to the host society in general. However, regardless of the type of the implemented policy, almost all member states have been facing difficulties in integrating their immigrants. These difficulties have become a shared concern for the EU as a whole, since member states began to encounter serious problems in their economies (increasing unemployment or high amounts of social spending), in their social lives (polarizing societies, negative attitude on immigrants, marginalizing segments of societies), and in their domestic politics (the rise of the extreme right, increasingly restrictive policies in the admission of immigrants and asylum seekers) to varying degrees.

Therefore, the visibility of the failure to integrate existing immigrants can be considered as the first reason behind initiatives to develop at least a common EU approach for immigrant integration. That is not to say all states failed completely in their integration policies, but all of them have encountered several problems in immigrant integration that this issue became very visible both at national and EU levels as it was seen in the immigrant riots in France<sup>2</sup>. In addition to their acceptance the fact that those migrant populations are not composed of temporary workers or refugees that will eventually turn to their countries of origin, member states that have been countries of immigration also understood the fact that one segment of their societies become marginalized due to conditions such as unemployment, increasing dependence to welfare benefits, poor performance in education, poor housing conditions, less contacts with the remaining society or social exclusion to name a few.

As a result of their disadvantaged position, a considerable amount of European citizens have begun to perceive them as beneficiaries of the welfare systems or simply as 'different' people, who cannot keep up with the European lifestyles. Recent studies show that 60% of Europeans think that the limits of multicultural society have been reached and 39% of them oppose the granting of civil rights to immigrants<sup>3</sup>. Increasing

<sup>2</sup> "French Riots Spread Beyond Paris," **BBC News**, November 4, 2005, <<http://news.bbc.co.uk/2/hi/europe/4405620.stm>> (January 4 2006), p. 1.

<sup>3</sup> Marcel Coenders, Marcel Lubbers and Peer Scheepers, "Report for the European Monitoring Centre on Racism and Xenophobia: Majorities' attitudes towards minorities in European Union Member States: Results from the Standard Eurobarometers 1997-2000-2003" 2003, <<http://eumc.europa.eu/eumc/material/pub/eurobarometer/EB2005/Report-2.pdfsearch=%22.%20Report%202%20for%20the%20European%20Monitoring%20Centre%20on%20Racism%20and%20Xenophobia%3A%20Majorities%E2%80%99%20attitudes%20towards%20minorities%200%22>> (February 172006), p. 9.

discrimination on ethnic or religious grounds, xenophobia and racism, which have generally been expressed as support for extreme right groups or political parties all over Europe<sup>4</sup>, led to the reconsideration of the severity of the issue of immigrant integration by the EU. Those parties use anti-immigrant discourses as a means for propaganda, in the words of Mentjox, “Immigration is the root of current problems according to the subtle and sometimes overtly xenophobic and racist discourse of the extreme right. In this application, non-European or white immigrants cannot and will not be integrated, let alone assimilated, into European civilization.”<sup>5</sup>

The 1999 elections in Austria, in which The Freedom Party led by Jörg Haider won the second best percentage of votes and gained right to enter the coalition government can be given as an instance for the increasing concern of the EU for the rise of the extreme right and its emphasis on a new nationalism, mainly expressed as being anti-immigrant. The European Union showed a fierce reaction to this development by claiming that such a party’s legitimization by taking part in a member state’s government is unacceptable and the Union will take the necessary sanctions. As the President of the European Council for the period, Guterres, the prime minister of Portugal stated on the day, in which Haider supposed to swear for being a part of the government, “The new government was a threat to liberal values, and a whole range of values that underpin our society was at stake”<sup>6</sup>. The sensitivity of the EU in this issue can also be seen in the Treaty of Nice, which opened up the way to suspend crucial rights of a member state, including voting rights of the representative of this member state in the Council in cases of serious breaches of Article 6 of the Treaty of European Union (TEU), which states that the EU must respect fundamental rights, as guaranteed by the European Convention on Human Rights (ECHR) signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to all Member States<sup>7</sup>. Therefore, it can be claimed that anti-immigrant feelings and the use of such feelings by far right parties, led to the increasing importance of immigrant integration issue at EU level, whose failure may result in the undermining of universal, liberal and egalitarian values of Europe.

Thirdly, the close link between immigration and economic success of the EU was drawn in the Lisbon objectives of March 2000, where EU declared its aim “to become the most competitive and dynamic knowledge-based economy in the world; capable of

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<sup>4</sup> Parties such as National Front in France, The Freedom Party in Austria and The People’s Party in Denmark can be regarded as the most popularly supported, far-right, anti-immigrant parties.

<sup>5</sup> Lauren Mentjox, “The Reorganization of Europe: Transformations in political, cultural and social systems: European Integration and the Revival of the Right Wing”, 2003, <http://www.zens.unigoettingen.de/euroculture/engliscWip/Groningen/mentjoxpaper.pdf> (February 4, 2006), p. 13.

<sup>6</sup> Amentahru Wahrab, “The Case of Austria: Policing Democratic Values in the Global North.” (paper presented at the 30th joint sessions of workshops, European Consortium for Political Research (ECPR), Edinburgh, UK, March 28-April 2, 2003), p.28.

<sup>7</sup> Consolidated Version of Treaty on European Union,” C 325, 24.12.2002.

sustainable economic growth with more and better jobs and greater social cohesion”<sup>8</sup>. Already residing third country nationals (TCNs) have higher rates of unemployment than the Eli citizens; they receive a bigger share from the welfare benefits or work in jobs at the lowest strata despite the young population structure they have. This inefficient use of resources was seen as an obstacle before being a competitive economy in world markets. Shortly, it is obvious that the Eli needs and continues to need a young, active, working population if it wants to achieve its economic goals in the global market. This means there is a need to improve the residing immigrant population especially in terms of labor force participation and education in addition to the future need for more economically active immigrant flows. Policy initiatives aiming to improve immigrants’ economic standing may also have positive effects on the negative image of immigrants in the eyes of the “native” populations and the resulting increase in far right leanings mentioned above, and finally on highly restrictive policies in immigrants’ or asylum seekers’ admission.

To sum up, the increasing visibility of failed integration policies, the threat posed by far right, anti-immigrant groups and their supporters to liberal, tolerant and egalitarian values of the EU based on universal human rights, and economic goals of the EU, which require low unemployment rates and an active, young population in the context of ageing demographic structures of member states, led to the consideration of the common handling of the issue at the EU level.

### **Roles and Competences of EU Institutions in the Process**

What is meant by the European Union is not a monolithic entity that investigates monitors, decides or legislates as a one unified body in a harmonious way. On the realm of immigration and integration, EU Council of Ministers of Justice and Home Affairs, Commission’s Directorate General (DG) for Justice and Home Affairs and to some extent, DG for Employment and Social Affairs are the main bodies in charge. The Parliament has also ‘some’ role in immigrant integration issues. The complexity of the relationship among the main actors is clear in the words of Niessen, “Commission, Council, and the European Parliament, individual Member States and groups of Member States often appear to work in contrary ways with little coordination. At the same time, all actors are aware of each other’s positions and adjust their own actions accordingly.”<sup>9</sup> The relative authorities, capabilities and competences of these institutions within the framework of EU decision making process in the sphere of Justice and Home Affairs determine their positions, roles and weights in the process. Therefore, their relative capabilities to contribute to or impede the development of an

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<sup>8</sup> “Communication from the Commission to the Council and the European Parliament: Immigration, Integration and Employment”, COM (2003) 336 final, p. 3.

<sup>9</sup> Jan Niessen, “Five Years of EU Migration and Asylum Policy-Making Under Amsterdam and Tampere Mandates” (paper prepared for the German Council of Experts for Immigration and Integration (Immigration Council), Migration Policy Group. May 2004, p. 48.



EU approach to policies in immigrant integration are significant for a better understanding of the process.

### European Commission

After the ratification and implementation of the Amsterdam Treaty in 1999, the Commission gained the right to be involved in the policy areas of immigration and asylum with the establishment of the DG for Justice and Home Affairs as a separate entity. The Treaty stated that the Commission should share the right to initiate legislation with Member States for a period of five years<sup>10</sup>. The Commission has been very active in and enthusiastic for creating a common framework, establishing links among member states for sharing good practices, relationships with NGOs or local governments and prepared proposals for new legislation in terms of immigration. Its power to initiate legislation increased its role in terms of agenda setting drastically. However, in terms of immigrant integration, the Amsterdam Treaty did not grant any specific competence to the Commission. Therefore, the Commission presented no legal instruments on integration as such. In spite of the legal constraints put in front of the Commission and the supranational bodies in general, it has been the most active institution in the field of immigrant integration through its Communications, reports, informal relationships with NGOs, and its activities in terms of funding, monitoring and agenda setting.

The first and crucial step that started serious discussions about the integration of TCNs in the EU was taken in the Tampere European Council in 1999. Although it was dealing more with security, asylum and migration policies, the decisions under the heading of 'fair treatment of third country nationals' were encouraging the development of common principles of the integration and improvement of the legal status of TCNs. It was stated within the 'Tampere Milestones' that:

*The legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens<sup>11</sup>.*

<sup>10</sup> According to the Article 73o of the Treaty of Amsterdam;

1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

2. After this period of five years: the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council.

<sup>11</sup> **Tampere European Council Presidency Conclusions**, 15-16 October 1999,

<[http://www.council.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/00200-rI.en9.htm](http://www.council.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00200-rI.en9.htm)>, p. 6.

The need for a more vigorous integration policy was also mentioned in the conclusions. This impetus by the Council gave the Commission a chance to work on the creation of a common framework on immigrant integration and it used this chance by presenting proposals for Directives to the Council, which are legally under admission of TCNs or asylum issues but also have important reflections on integration.

Two most important proposals were about the issue of family reunification and about the status of TCNs, who are long-term residents. Since the rights to marry or to live together with one's family are indispensable parts of the integration process, the Commission took the issue of family reunification seriously. Beginning with its first proposal in 1999, continuing with the amended one in 2000, and the last one in 2002, the Commission presented proposals for Council Directives on the right to family reunification<sup>12</sup>. On the final proposal, after long negotiations with member states, the Commission had to make amendments that allow more flexibility for member states, which was explained as 'leaving some room for maneuver in national legislation' and opened the way for different applications. Amendments in issues such as the maximum age of children that can reunify, the duration of stay by family members to be long-term residents and the duration for the reunification process to be completed were made and room for unilateral national legislation was left. According to the final Directive, TCNs, holding a residence permit of at least two years with reasonable prospects of obtaining permanent residence can have the right to family reunification, although other details can vary according to national laws<sup>13</sup>. All this process shows the inability of the Commission to increase the level of harmonization due to its limited competence compared to the Council, which is the highest authority in legislation about immigration and integration.

The second Commission proposal after Tampere mandate was about the status of TCNs who are long-term residents in 2001<sup>14</sup>, which was adopted in 2003 by the Council again after some changes. The tradition in member states that the length of stay of a person influence the degree of rights entitled to this person is the basis of this Directive<sup>15</sup>. According to the Directive, a TCN, who has been legally residing in a

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<sup>12</sup> "Communication from the Commission, to the Council and the European Parliament: Proposal for the Council Directive on the Right to Family Reunification". COM (1999) 638 final, "Communication from the Commission, to the Council and the European Parliament: Amended Proposal for the Council Directive on the Right to Family Reunification" COM (2000) 624 final, "Communication from the Commission, to the Council and the European Parliament: Amended EU Commission Proposal for a Council Directive on the Right to Family Reunification" COM (2002) 225 final.

<sup>13</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. L 251 Official Journal of the European Union.

<sup>14</sup> "Communication from the Commission to the Council and the European Parliament: Proposal for the Council Directive concerning the status of third-country nationals who are long-term residents" COM (2001) 127 final.

<sup>15</sup> Helene Urth, "Building a Momentum for the Integration of Third-country Nationals in the European Union", *European Journal of Migration and Law*, Volume 7, 2005: p. 166.

member state at least for five years (the same duration for EU citizens to get permanent residence rights), can acquire the long-term resident status, which means equal treatment with nationals of the EU with respect to employment, social security and education<sup>16</sup>. Although this may seem as a success of the supranational camp for granting equal rights, the insistence of member states to exclude refugees and persons with temporary protection from this opportunity led to the persistence of a degree of discrimination contrary to Commission's initial proposal. In addition, it is also claimed by Halleskov "Article 11 of the Directive is more than any other provision of the Directive at the core of the Tampere objectives but it unfortunately accords long term residents an absolute right of equal treatment with nationals in very few areas of life"<sup>17</sup>. There are limitations in efforts for equalizing immigrants' rights especially in employment and social benefit spheres.

In short, it can be argued that legal and binding measures taken at EU level have been inadequate and all more pro-migrant proposals of the Commission could not resist pressures by member states and have to be amended to increase nation states' competences. For instance, under the Article 4-1 of the Family Reunification Directive, member states reserved the right to check whether or not a newcomer above the age of 12 meets conditions for integration predetermined according to national Law before accepting this newcomer. Article 4-4 of the Directive gives the right to "limit reunification of minor children of a further spouse and sponsor" to member states. In addition, Article 4-6 states that it is the right of a member state to subject children older than the age of 15 and applied for reunification, to conditions other than family reunification for entry and residence. Lastly, Article 8 of the Directive gives the right to provide for a waiting period of no more than three years between the application date and issuance of a residence permit according to the national family reunification Laws.

Other than proposes for Directives, the Commission initiated series of other processes, which can be considered as important steps in the way to have a common approach to integration policy. After the emphasis on integration in Tampere, the Commission sought ways to be more involved in this sphere and also to keep the issue on the EU agenda. In November 2000, the Commission presented its Communication on a Community Immigration Policy, in which the employment and labor market side of immigrant integration was emphasized and ways to translate guidelines into concrete action were proposed within the context of reaching Lisbon objectives about economic growth and competitiveness<sup>18</sup>.

In 2001, the Commission proposed an "Open Method of Cooperation for the Community Immigration Policy", which suggested that member states collaborate in six

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<sup>16</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long term residents.

<sup>17</sup> Louise Halleskov, "The Long-Term Residents Directive: A Fulfillment of Tampere Objective of Near Equality?" *European Journal of Migration and Law*, Volume 7, 2005: p, 200.

<sup>18</sup> Communication from the Commission, to the Council and the European Parliament: On a Community Immigration Policy". COM (2000) 757 final.



basic issues including integration as it was also accepted in Tampere. It proposed basic frameworks for an open, transparent coordination method through guidelines, national action plans, information exchange and reports that can help member states to develop their own policies in a coordinated way<sup>19</sup>. However, this proposal was rejected by the Council mainly to prevent supranational surge into those sensitive' areas of policy. Although the Open Method of Cooperation is used in employment and social inclusion fields and gives good results in terms of Lisbon objectives, sovereignty concerns showed themselves when immigration policies are at stake.

On the other hand, when the Commission is supported by the intergovernmental camp in terms of speeding up the efforts in the sphere of integration, more elaborate and fruitful results were achieved. For instance, with the active role of Danish Presidency in 2002 and Greek Presidency in 2003, not only the admission processes or economic effects of immigration, but also the problem of general integration of residing immigrants began to be addressed through conferences discussing issues such as labor market integration of immigrants (Copenhagen Conference in July 2002) and the role of civil society (ECOSOC and Commission's September 2002 Conference). As a result, the most important document about a common approach to integration of immigrants at the EU level, the Communication of Commission for Immigration, Integration and Employment was adopted in 2003<sup>20</sup>. This document is crucial in terms of its detailed explanations about the nature of the concept of integration and its broad extent. It reviewed current practices and experiences in the EU, emphasized the vitality of integration for Lisbon objectives, and suggested policy orientations and priorities to promote integration.

First of all, the Communication stated openly the fact that all member states suffer from similar difficulties in integrating their immigrants. It attracted attention to issues such as low language competence, unemployment and poor educational and formal skills and to the resulting need to act collectively at EU level in this issue. This document also laid down the approach of the EU (at least on paper) towards the concept of integration and its proper handling. Integration was defined as "a two-way process based on mutual rights and corresponding obligations of legality resident third country nationals and the host society which provides for full participation of the immigrant" in this document<sup>21</sup>. However, this "two-way" approach to integration was also criticized because of its negligence of the possible contributions of a third actor, namely, the countries of origin in the integration process<sup>22</sup>. The importance of the duration of stay and the need to employ integration measures to all kinds of TCNs as early as possible were emphasized in the section about the 'incremental approach' to integration process. Another important point laying down the position of the Commission here is the

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<sup>19</sup> Communication from the Commission, to the Council and the European Parliament: An Open Method of Coordination for the Community Immigration Policy". COM (2001) 387 final.

<sup>20</sup> COM (2003) 336 final.

<sup>21</sup> *Ibid.*,17.

<sup>22</sup> Refik Erzan and Kemal Krişci, "Conclusion", *Turkish Studies*, Volume 7, No 1, p.170.

inclusion of refugees and persons with temporary protection among the TCN category, who should benefit from integration measures as legal residents of member states.

In addition, the Commission emphasized the need to a ‘holistic approach’ to integration, which requires attention not only to social and economic areas of integration, but also to areas about cultural and religious diversity, citizenship, participation and political rights<sup>23</sup>. Within that context, important areas of life, crucial for successful integration, were laid down such as integration into the labor market, education and language skills, housing and urban issues, health and social services, the social and cultural environment and nationality, civic citizenship and respect for diversity.

In order to monitor member states’ applications, to share good practices, to exchange information and data and hence to coordinate integration policies, National Contact Points (NCPs) were established with the contribution of all member states following the Thessaloniki Council right after the Communication on Immigration, Integration and Employment. Representatives and experts both from governmental and nongovernmental organizations working in these NCPs gather in seminars in order to share information, policies or projects about immigrant integration, which were coded in the ‘Handbook on Integration’ as a guide for policy makers and database for the member states. The first Handbook on Integration was published in November 2004, the second, which was expected to be published in 2006, did not come out yet. NCPs cooperate also with the Commission in monitoring national practices and implementation processes. The importance given by the Commission to NGOs (especially of immigrant groups at local levies’) was reflected to the establishment of NCPs, which are designed to benefit from NGOs’ specific knowledge and contacts with immigrants. NGOs are used as a bridge between the immigrants and the governments, which constitute the ‘two sides’ of integration.

Another important point in the 2003 Communication was the decision to publish “Annual Reports on Migration and Integration” in order to monitor national implementations about immigrants and to highlight good practices for developing a more coordinated EU policy by the Commission<sup>24</sup>. Although it is a good idea to monitor national practices, some doubts about the sincerity of member states in reporting their immigrants’ integration were voiced<sup>25</sup>.

As a result of the initiatives taken by the Dutch Presidency in 2004, The Hague Programme, whose aim was to set priorities in the area of freedom, security and justice. Including integration of immigrants in the EU was adopted. Under the sixth priority, the

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<sup>23</sup> COM (2003) 336 final, p. 18.

<sup>24</sup> Commission announced its intent to publish Annual Reports in its 2003 Communication on Immigration, Integration and Employment and the Council invited the Commission to present its first Annual Report on Integration in the Thessaloniki European Council in 2003.

<sup>25</sup> Urth, “Building a Momentum for the Integration of Third-country Nationals in the European Union”, p.174.

Programme emphasized the importance of maximizing the positive impact of migration to society and economy. The Establishment of an Integration Fund in 2007, a proposal on long term resident status for refugees in 2005, and the establishment of a Coherent European Framework for Integration in 2005 and the development of a website were stated as integration related priorities for the Union<sup>26</sup>. In addition, it is obvious that people, who prepared the Hague Programme (dominantly Dutch) assumed that The Treaty for the Constitution of Europe will not have any difficulties during the ratification process, since most of the proposed policies or set priorities were said to be improved with the Constitution's entry into force. For instance, under the title of "implementation, evaluation and flexibility", it was said that: "The Commission will present a Communication in early 2006 outlining the main objectives of the future mechanism and it intends to present proposals just after the entry into force of the Constitution"<sup>27</sup>. In addition, the expected changes in the decision making procedures in immigration and asylum issues to qualified majority voting and co-decision, were seen as taken for granted because of the confidence in the ratification of the Constitution. It can be said that especially the Dutch policy makers, who are the main actors behind the Hague Programme could not foresee the future rejection of the EU Constitution by their public and expected improvements to take place with the entry into force of the Constitution.

All in all, despite the constraints and limitations put by the decision making structure and relative competences of the Commission and the Council, the Commission played a very active role since the Tampere Conclusions of 1999. By using its powers to initiate legislation in integration related policy areas, by keeping the issue of integration always as a hot topic in EU's agenda, by preparing reports and communications. by collaborating with local-municipal authorities and also immigrant NGOs and lobbying groups, and in general by drawing the main lines of a common framework for integration, the Commission has been the most active and enthusiastic actor in carrying the issue of immigrant integration to the EU level.

### **Council of Ministers**

The Council's solid contributions to the process were the Directives about family reunification and about the long-term resident TCNs in 2003. Existing policy making structure in the specific area of immigration gives clues about the weight and influence of the Council. First of all, unanimity still rules in integration issues and in order a Directive to be realized, it has to be agreed by all member states in the Council. Qualified Majority Voting (QMV) is only valid in terms of visa policy<sup>28</sup>. Therefore,

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<sup>26</sup> Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten Priorities for the Next Five Years-A Partnership for European Renewal". COM (2005)184 final.

<sup>27</sup> *Ibid.*, p.11

<sup>28</sup> According to the Article 73o of the Treaty of Amsterdam rules on visas for intended stays of no more than three months, including the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt

since integration is considered to be under the sensitive issues of immigration and hence state sovereignty, it is generally difficult to reach an agreement about a proposal by the Commission, which is generally pro-migrant and supranational in character. As a result, scopes of types of immigrants as focus groups of proposals about integration and immigration are tried to be narrowed down, contents covering EU level harmonized policies are tried to be diminished, and attempts to share authority in terms of integration policies with supranational bodies are tried to be disposed by the Council. Consequently, most attempts to harmonize policies remain only as basic frameworks, with lots of flexibilities and rooms for national maneuver. In addition, there is no application of co-decision, in which Council shares its rights to make decisions with the Parliament. Therefore, the Council and intergovernmental approaches have greater influence in the process.

It is important to note that the Council's ability to and effort for cooperation are much higher in terms of initial migration processes, admission policies or strict border controls. Among the legislation adopted by the Council, the weight is on the management of both legal and illegal migration flows, removal of persons from borders of the BU, and admissions of persons with some specific professions<sup>29</sup>. Concerns for control of the external borders and the security dimension of migration in an internally borderless Europe dominated discussions and legislation of the Council. Already residing migrants and their integration were not among the primary interests of the Council.

As it was the case with border controls and migration management, if member states work with a certain level of determination, common decisions and actions could be taken. Therefore, if states can be more enthusiastic about and aware of the importance of integration in terms of the extent to which it affects their broader migration policies, there will be less obstacles before vigorous policies with the assistance of the Commission.

Another critique to the Council is its exclusion of asylum seekers, refugees, persons under a certain kind of protection and immigrants without long-term resident status from the rights given to long-term resident TCNs, granting of which is also left to the member state competence in its Directives.

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from that requirement and a uniform format for visas shall, from the entry into force of the Treaty of Amsterdam, be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

<sup>29</sup> Council Decision 2005/267/EC of 16 March 2005 establishing a secure web-based Information and Coordination Network for Member States' **Migration Management Services Official Journal L 83, 01/04/2005, p. 0048.** Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research **Official Journal L 289, 03/11/2005, p. 0015.** Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders **Official Journal L 261, 06/08/2004 p. 0028 - 0035.**

However, when the Council took an active role voluntarily during some Presidencies, important decisions have been reached at the EU level. Danish Presidency of 2002 and Greek Presidency of 2003, which resulted in the 2003 Communication and the Thessaloniki Council Conclusions that support most of its decisions and statements, and Dutch Presidency of 2004, which resulted in the Hague Programme in November 2004, where among all the other issues such as migration control, common asylum policy, combating terrorism and organized crime, integration was added within the 'ten priorities for the period 2005-2009' can be given as examples of such a positive synergy with encouraging attitude of the Council.

### **European Parliament**

The Parliament's role remained more marginal in this process due to its secondary or consultative role within the policy making structure. It supports a greater role for the EU in immigrant integration and its main distinctive role is its emphasis on human rights and the violations posed by the restrictive policies of the EU. EP suggests more involvement of itself in the decision making process in immigration and integration, like in other Community policy areas and generally cooperates with the Commission and NGOs to balance the power of the Council, which conflicts with most of its supranational demands.

The biggest conflict between the Council of Justice and Home Affairs and the Parliament emerged when agreement about the final amended Directive on the right of family reunification was reached in spite of the fact that the Parliament had not yet issued its Opinion in 2003. The European Parliament subsequently lodged a complaint with the European Court of Justice, calling for the annulment of several provisions in the text in 2004<sup>30</sup>. According to Niessen, "The European Parliament showed its teeth when it challenged the text of the final and adopted version of the Directive on family reunion and took the Council of Ministers to the European Court of Justice. It felt that fundamental rights of citizens and immigrants were on the line"<sup>31</sup>. The EU's role as the defender of liberal values and human rights, which could be observed in the context of fighting the extreme right and its anti-immigrant discourse, seems complicated by the actions of the member states in the admission process of both legal and illegal immigrants. This restrictive and exclusionary attitude and the abuse of the decision making procedures attracted the reaction of the EP.

One point of objection to the Directive by the Parliament was about the total ignorance of itself in the decision making process because the Directive concerning family reunification was adopted with absolutely no regard for the role of the European Parliament despite the statement of Amsterdam Treaty that the Council has to consult the Parliament before legislation. Even without its non-binding character, the

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<sup>30</sup> Niessen, "Five Years of EU Migration and Asylum Policy-Making Under Amsterdam and Tampere Mandates".

<sup>31</sup> *Ibid.*, p.46.



consultation of the EP is important in terms of the democratic control over opaque Council decisions<sup>32</sup>.

In addition, it objected to the narrow and vague definition of ‘family and family members’, who can enjoy the right to reunification by the Council. The EP objected to the Article 4-1, Article 4-6 and Article 8 of Family Reunification Directive because they are in conflict with the Article 8 of the right to family life (4-1) of the European Convention on Human Rights and Fundamental Freedoms and with the nondiscrimination principles (4-6). Furthermore, the EP called for the annulment of the Directive because of the incompatibility of the 2-3 years waiting period provision of Article 8 with Article 8 of ECHR<sup>33</sup>. It was also claimed that the provision that family reunification may be cancelled if adequate housing or salary will be lost during the first year of an immigrant means concretely that a person who loses a job will also lose the right to family life<sup>34</sup>. However, the ECJ did not annul the Directive and found EP’s complaints unfounded in its above mentioned judgment. It ruled that those three articles are not in conflict with the ECHR’s provisions on the right to family life and non-discrimination on age. The Court ruled against the EP on human rights-related complaints but the problem with the malfunctioning of the decision making procedure was not addressed by the ECJ. It was argued that “although technically a defeat for the EP in some respects the judgment constitutes a victory due to the important principles established (many of them relevant to other EC immigration and asylum legislation)”<sup>35</sup>.

In short, it can be argued that the Parliament remained a little voiceless in terms of immigration and integration policies as an institution with more competence in other Community areas within the existing structure. However, it is very important in terms of the defense and protection of human rights and in terms of its abilities to contact and cooperate with NGOs and other lobby groups.

### **Constitution for Europe**

In the current decision making structure, the requirement of unanimity is the main reason behind deadlocks and rejections of Commission proposals on immigration and integration issues. In addition, there is a very limited role given to the Parliament as a consultant, which can be totally ignored as it was the case with the family reunification

<sup>32</sup> Joanna Apap, Sergio Carrera, “Family Reunification: A case for annulment before the ECJ?”, 17 November 2004, <[http://www.euractiv.com/en/justice/family-reunification-ndash-case-annulmentecj/articie-1\\_10014](http://www.euractiv.com/en/justice/family-reunification-ndash-case-annulmentecj/articie-1_10014)> (27 March 2006), p.1.

<sup>33</sup> Judgment of the Court (Grand Chamber) 27 June 2006, (Immigration policy — Right to family reunification of minor children of third country nationals — Directive 2003/86/EC — Protection of fundamental rights — Right to respect for family life — Obligation to have regard to the interests of minor children), Case C-540103, <<http://www.statewatch.org/news/2006/jul/ecj-family-reunification-judgment.pdf>> (18 October 2006).

<sup>34</sup> SOLIDAR Web Page, Family Reunification Directive, <[http://www.solidar.org/Document.asp?DocID=47928ttod\\_181026](http://www.solidar.org/Document.asp?DocID=47928ttod_181026), (February 2, 2006)>, pp. 1.

<sup>35</sup> Statewatch News Online, 6 July 2006 (15/06), <[http://www.williambowles.info/spysrus/statewatch\\_060706.html](http://www.williambowles.info/spysrus/statewatch_060706.html)> (18 October 2006).

Directive. However, if the Constitution for the EU would have been ratified, it would have changed the rule of unanimity and the balance of power among the institutions also in terms of immigration issues. According to the Treaty, the Commission would be the sole initiator of legislation, co-decision would be the rule for decision making, which means greater role for the Parliament and immigration would come under qualified majority voting<sup>36</sup>.

In short, following the European Commission's submission of a proposal for a legislative measure, the Council of Ministers can adopt the proposal by a qualified majority after obtaining the Opinion of the Parliament<sup>37</sup>. Under the title of 'ordinary legislative procedure' the co-decision mechanism was extended to all laws and framework laws of the Union<sup>38</sup>. According to this procedure, if the Parliament demands an amendment, the Council can accept or reject it. If it is accepted, it turns into a law, if not, the Council should come with a Common Position, which can be accepted by both and turn into law, or be rejected by the Parliament, and taken in front of a Conciliation Committee composed of an equal number of members from both institutions. If this Committee fails to come up with a solution that is accepted by both sides, the proposed act cannot be adopted. Therefore, it can be argued that the Draft Constitution aimed to increase the weight and competence of the EP, and hence of democratic control and though not directly, of supranationalism drastically. In addition, the Constitution mentioned the development of a common immigration policy aimed at ensuring efficient management of migration flows and fair treatment of TCNs residing legally in Member States<sup>39</sup>.

Considering the fact that the Draft Constitution was rejected by France and the Netherlands and is taken out of the agenda for the near future, how will the immigration and integration process be affected? The dominance of the Council and intergovernmentalism will probably continue. The Parliament is the most affected actor, which would have had increased powers and weight if the Constitution would have been adopted. This will also affect the position of the Commission and supranationalist / promigrant approach in general, which would have been affected positively if the EP's powers in the decision making process were increased. It would have been easier to develop a common policy about integration of TCNs at the EU level and possibly of

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<sup>36</sup> Article 111-267: The Constitution states that European Laws or framework laws shall establish measures to develop a common immigration policy. This implies qualified majority voting, with one exception:

Member States will keep their right of veto for setting the number of third country nationals entering their territory to search for employment.

<sup>37</sup> Niessen, *Five Years of EU Migration and Asylum Policy-Making Under Amsterdam and Tampere Mandates*, p. 59.

<sup>38</sup> Article 111-396: Existing Treaty imposes the codecision mechanism: the references to the Commission's proposal and the codecision procedure are directly incorporated in the term "law" or "framework law". Therefore, where an article refers to a law or framework law, this automatically means that the ordinary legislative procedure applies.

<sup>39</sup> Article 111-267/1, Treaty establishing a Constitution for Europe, 2004/C 310/01.

refugees and temporary residents, which would have been backed by the Commission and the Parliament. However, since the Parliament and the Council have very different views and positions in many issues, new deadlocks and inabilities to legislate could have been also emerged out of the complex decision making process, which requires reconciliation between the two.

### **Conclusion**

To conclude, three main reasons, recognition of failed integration policies by all immigration states of the EU, the threat posed by far right, anti-immigrant groups and their supporters to liberal, tolerant and egalitarian values of the EU, and economic goals of the EU set in Lisbon led to the initiatives taken mainly by the Commission, which was authorized by the Amsterdam Treaty and Tampere Presidency Conclusions to initiate legislation for a common immigration policy and a common basic framework at the EU level. However, its lack of competence in immigrant integration issues and the relatively high competence of the Council and the importance of member state interests in this policy area, resulted in the weakness of the Commission and slowness of the process to create an EU integration policy. However, the Commission used almost all opportunities to create ways of tying other areas of immigration to integration process, and with the support of the Parliament and its cooperation with NGOs and local authorities it transformed itself a very active actor than it was designed initially.

Nevertheless, member state competence remained also high due to the link automatically made by states between integration and the sensitive issue of immigration for national sovereignty. The unanimity rule and the lack of real involvement by other institutions such as the EP in decision making structure slowed down the process of creating a common integration policy. The rejection of the Draft Constitution for Europe also affected the process in favor of intergovernmentalism because of the inability to change the decision making structure in a way that would increase the powers of the Parliament and to abolish unanimity rule in immigration issues.

In the light of the awareness that incomplete integration of immigrants and the ignorance of the issue harm societies and economies of almost all member states, the European Union should take a more active role with all of its institutions. The Commission should continue to be the center of agenda setting, information holding and exchanging best practices by also taking the assistance of NGOs, researchers and local governments to speed up integration of immigrants in member states and also to change the negative image of immigrants and the resulting dislike among native populations. However, since any concrete result is impossible without the support and awareness of the European Council; the Commission, the Parliament and the immigrant groups and NGOs should work in cooperation and put pressure on the Council in order the issue not to be ignored. The Commission should support and encourage studies about integration of immigrants and the societal problems that can be caused by the failure to integrate immigrants. As a result, both the publics and the governments of member states should be informed and made conscious about the issue in general and the situation of

immigrants specifically. in the long run, the policy making structure can be changed so that the Commission and the Parliament will be more involved in the process and if breaches to human rights and to the liberal, egalitarian values of EU emerge, the European Court of Justice should be involved as well.

All in all, integration is a multifaceted process that includes immigrants, host societies, host governments, sending governments, NGOs in both sides and also international organizations composed of those governments, which is the EU in the European case. The importance of integration of immigrants and the centrality of the problem for the entire Union and the sending countries should be understood and more attempts for collective action should be taken in order to achieve integration of immigrants in social, economic, cultural and political aspects of life as the holistic approach suggests correctly.