Chapter 9

Mapping the redefinition of belonging in Europe

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Language and civic orientation tests are key features of the policy agendas of many European Union Member States and the European Union. Although the modalities of integration tests and courses vary among the Member States, their introduction and the accompanying official discourses confirm the changing relationship between legal status, integration and political belonging. Political belonging has been redefined and made conditional upon newcomers' commitment to the host country and acceptance of its values. Between 2002 and 2008, Austria, Denmark, France, Germany, the Netherlands and the UK introduced a 'knowledge of society' test as a condition for naturalisation. Additionally, in certain Member States, the informal language test that accompanied naturalisation has recently been replaced by a formalised test, devised and organised by language institutions.

The contributors to this volume have examined the introduction and implications of civic integration programmes in nine Western and Eastern European countries. The discussion has shown that while in the past the integration of newcomers was the main goal of multifarious processes of socio-political incorporation, in the new millennium it has been closely aligned with migration policy imperatives. Accordingly, integration tests are not simply citizenship tests, that is, requirements attached to gaining formal political inclusion into the citizenry, but are also migration tests. The latter are administered both internally, in the countries of destination, as well as externally, in the countries of origin.

Integration requirements as a condition for immigration have been introduced in France, Germany and the Netherlands since 2006 (see Table 1 below). In Denmark, an immigration test will come into effect in 2010 and will be taken in Denmark. Austria is also expected to introduce a pre-entry requirement for spouses. The UK has considered the introduction of such a requirement, too. In all countries, the requirements only apply to applicants for family reunification, who are generally assumed to be poorly skilled or

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even unskilled and therefore not adapted to the needs of national labour markets.[1] Family migration from certain countries therefore appears to be regarded as largely unwanted.

Table 1: Integration requirements before immigration

	Integration requirement?	Language Requirement Content[2]	Leading to test?	Possibilities for preparation	Consequences of not complying with requirements
Austria	No, but introduction has been announced.	X	X	X	X
Belgium	No.	X	X	X	X
Denmark	Yes, test expected to be introduced in 2010.	Knowledge of Danish language level A1 minus of the CEF and knowledge of society (higher level).	Yes, oral test that will cost €400. Test to be taken in Denmark.	Free preparatory package prepared by Government. Questions on knowledge of society accessible via question bank of 100 questions. Preparation for language test is immigrant's own responsibility.	Residence permit for family reunification will not be granted.
France	Yes, since 2007.	An evaluation of knowledge of French language (level below level A1 CEF) and republican values (oral evaluation in language	In cases where applicant had to follow language training in country of origin on the basis of the first evaluation, a second evaluation will follow. If successful, the spouse will not have to attend linguistic training in France. If the level is not met, the spouse will have to attend linguistic training in France.	French Government provides French language courses in countries of origin.	In cases of insufficient knowledge of language after the second evaluation, the authorities will determine the characteristics of the French language training the foreigner will have to take in France within the framework of the integration contract.

[1] In Denmark the requirement also has to be fulfilled by religious preachers.

[2] For an overview of the levels of language proficiency in the Council of Europe's Common Framework of Reference, please see annex 1.

Table 1 (*cont.*)

	Integration requirement?	Language Requirement Content	Leading to test?	Possibilities for preparation	Consequences of not complying with requirements
		of applicant) for all applicants for family reunification. If the level of knowledge is considered insufficient, the applicant has to attend language courses in the country of origin. If the evaluation demonstrates sufficient knowledge of French language, no language formation to be followed in the country of origin or in France.			
Germany	Yes, since 2007.	Yes; level A1 of the CEF.	Yes; language skills need to be proven by test certificate from Goethe Institute or other certified institution. According to case law of German administrative courts, proof of knowledge is, however, not limited to submitting a certificate from the Goethe Institute. The requirement of such specific proof cannot be derived from the Act.[3]	Goethe Institutes present in most countries of the world.	Visa for family reunification not granted.
Hungary	No.	X	X	X	X
Latvia	No.	X	X	X	X

[3] Oberverwaltungsgericht Berlin-Brandenburg, judgment of 28 April 2009 (OVG 2 B 6.08).

Table 1 (*cont.*)

	Integration requirement?	Language Requirement Content[4]	Leading to test?	Possibilities for preparation	Consequences of not complying with requirements
Netherlands	Yes; since 15 March 2006.	Yes; knowledge of language at level A1 minus; knowledge of Dutch society and life in the Netherlands.	Yes; test costs €350. Government offers no possibilities for preparation.	Self-study with learning kit.	Visa for family reunification not granted.
UK	No, introduction has been considered but postponed.	X	X	X	X

The Netherlands was the first country to introduce a pre-entry integration requirement in 2006. Together with Austria and Germany, this country lobbied for the introduction of a clause in the Family Reunification Directive, opening up the possibility for Member States to "require third-country nationals to comply with integration measures, in accordance with national law" (Article 7(2) Directive 2003/86/EC). The Dutch policy on pre-departure integration served to a certain extent as a model in Denmark, Germany and France.[5] In this respect, one can find similarities among national policies, which are not confined to the target group, as well as important differences. Even though in the French parliamentary debates reference was made to the Dutch policy, Table 1 shows that the French integration abroad requirements differ significantly from the Dutch (and German) requirements. Whereas the French Government provides language courses in the countries of origin, the Netherlands and Germany place the emphasis on the individuals' own initiative, rather than the provision of state-financed courses. As Michalowski rightly observes in Chapter 5 of this volume, this shows that immigration tests in the Netherlands and Germany, "clearly are an instrument for the selection of (more highly) skilled migrants and only indirectly linked to the integration of immigrants in the receiving country." This observation may not apply to the Danish case, since applicants for family reunification will

[4] See above p. 308, n. 2.

[5] One could, however, also argue that Germany extended its language tests in the country of origin which were addressed to ethnic Germans (1997) to the family members of these ethnic Germans (2005) and then to all family migrants (2007).

be granted a temporary visa to take the test in Denmark, since it is explicitly presumed not to limit the number of family reunifications.

In Denmark and Germany, as is the case in the Netherlands, migrants have to pass a test in order to fulfil the integration requirement. Again, this situation differs from the French case, where applicants for family reunification are only subjected to a language *evaluation*. If the evaluation shows that their knowledge of the French language is inadequate (below level A1 minus), migrants will have to follow extra language courses, the duration of which may not exceed two months. If their knowledge of republican values is deemed to be insufficient, three hours of extra training must be undertaken. Once the courses have been completed, the visa for family reunification will be granted. Conversely, in Germany and the Netherlands a visa will only be granted if the candidates have passed the required tests. As already stated above, applicants for family reunification in Denmark will be granted a visa in order to take the test there. After passing the test, a residence permit will be granted.

The costs of compliance with language and civic orientation tests are not uniform across the Member States examined in this book. In France, the language evaluation is free of charge. In Denmark, Germany and the Netherlands candidates have to pay for the test. While the price of the German test varies from country to country and does not exceed €80,[6] the fees for the Dutch and Danish tests are fixed: the Dutch test costs €350 and the Danish test will cost about €400.

There are two important explanations for the relatively liberal integration abroad policy implemented in France. Firstly, the right to family reunification in France is codified in the French Constitution and thus cannot be made conditional upon passing a test or paying fees. Secondly, the reason why the French Government, according to Pascouau's interpretation in Chapter 4 of this volume, chose to introduce a language evaluation instead of a test lies in the wording of Article 7(2) of the Family Reunification Directive, which provides Member States with the possibility of requiring third-country nationals to comply with 'integration measures'. This wording clearly differs from the wording of the Long-Term Residents Directive (2003/109/EC), which opens up the possibility for Member States to require third-country nationals to comply with 'integration conditions'. It is therefore questionable whether Member States are allowed to make the right to family reunification, enshrined in Directive 2003/86, conditional upon success in a test. Furthermore, in a report to the European Parliament and the Council on the application of the Directive, the Commission stated that the measures

[6] Deutscher Bundestag, Drucksache 16/7259, p. 6.

should aim only at facilitating integration and not be adopted in order to pursue different aims.[7] From this point of view, it is questionable whether the Dutch and German integration requirements are compatible with the Family Reunification Directive.[8]

9.1 *The rationale for the introduction of language and integration tests*

Apart from the introduction of language and integration requirements as a condition for immigration in some of the EU Member States under consideration, Tables 2 and 3 below show that all the countries under consideration have introduced language and integration requirements in the host country (Table 2) and all countries, except Belgium, have introduced such requirements for naturalisation (Table 3). The introduction of language and integration tests, be they as a condition for immigration, after arrival in the host country, or for citizenship, has been officially justified on the basis of a civic republican concern about the promotion of active participation in the polity and civic society. In some countries, however, controlling immigration was also explicitly mentioned as a reason for introducing the requirements. In Austria, Denmark, France and the Netherlands, the link between integration requirements and migration control was publicly mentioned in official discourses. In France, this became apparent from statements made by the rapporteur of the Parliament that the goal of the integration evaluation abroad, which was introduced in 2007, was to manage migration flows. Since Article 8 ECHR often stood in the way of the non-renewal of a residence permit based on failure to attend mandatory language training courses within the framework of the integration contract, the introduction of mandatory language courses as a condition for obtaining a visa would be a more efficient mechanism for controlling immigration. In the explanatory memorandum accompanying the Dutch Integration Abroad Act, which introduced the integration abroad examination, it was stated that reduced immigration would be an effect of the integration examination, which is a mechanism for selection. But reducing immigration was not mentioned as a goal of the Act.[9]

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[7] Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification, COM(2008) 610 final, 8 October 2008, pp. 7–8.

[8] Denmark is not bound by the Directive.

[9] Second Chamber, 2003–2004, 29700, no. 3, p. 15.

Table 2: Integration requirements in the host country

	Integration requirement?	Content[10]	Leading to test?	Who pays?	Consequences of not complying with requirements
Austria	Since 2002.	Knowledge of German at level A2. No duty to attend a course.	Knowledge of German proven by a diploma from a certified language training institute or the successful attendance of an integration course of 300 hours.[11]	The immigrant pays. The course costs around €1000.[12]	Refusal of permanent residence permit.
Belgium: Flanders	Since 2003: integration courses; compulsory for certain categories of newcomers after signing a personal contract of civic integration.	Language course consisting of 120 to 240 hours of language tuition. 20 hours of vocational counselling. Civic course in immigrant's native language.	No; participation in 80% of the courses is required. Possibility of introducing tests is discussed.		Fine between 50 and 5000 euros. Possibility that non-compliance will be taken into account when applying for social benefits.
Belgium: Wallonia	Since 2006: Wallonia introduced reception programmes consisting of French language courses and civic information.		Reception programme not mandatory.		

[10] For an overview of the levels of language proficiency in the Council of Europe's Common Framework of Reference, please see annex 1.

[11] "Successful attendance" means attendance of the lessons and successful exam at the end of the course.

[12] There is a voucher system operated at federal level, and some provinces (e.g. Vienna) also operate a supplementary voucher system. If the exam is taken (or the course ends) within 24 months after immigration, the immigrant only pays 50% of the costs of the course, the rest is covered by the voucher. Otherwise the voucher loses its validity and the immigrant pays 100%. The city of Vienna pays an extra voucher of €300 upon completion of the course.

Table 2 (*cont.*)

	Integration requirement?	Content	Leading to test?	Who pays?	Consequences of not complying with requirements
Denmark	Since 1999: 3 years' introduction programme offered to foreigners legally residing in Denmark 2002: individual contracts 2006: integration contracts.	1999: 'Action Plan', including Danish course, based on abilities of individual 2002: duty to participate actively in introduction programme. 2006: activities laid down in integration contract: foreigners should make an effort, take responsibility and demonstrate their will to integrate, find employment and become self-sufficient. 2007: having held a full-time job for a period of 2.5 years and Danish language skills at level B1 or A2 if supplemented by knowledge of English language at level B1.	1999: only active participation in programme was required 2002: introduction of language test requirement 2007: examination at fixed level (B1/A2 combined with English language examination at level B1). See previous column.	Government, if participants are comprised by introduction programme; for participants who have not followed the language courses an exam fee of 1000 DKR (about 650 euros) may be charged.	1999: active participation in language course is condition for permanent residence Since 2002: failure to fulfil obligations of contract: reduction or suspension of 'introduction aid'[13] and no access to permanent residence. 2007: passing of integration exam a condition for permanent residence permit and cash benefit.
France	Since 2003, condition of 'republican integration' for persons applying for residence card. Since July 2003: possibility of integration contract for all foreigners applying for a residence permit	Integration contract implies voluntary commitment to follow language courses of a maximum of 400 hours (if necessary), training regarding French institutions and values of the	Language course leads to oral and written tests. Level of tests is lower than level A1 of CEF.		Failure to fulfil obligations of the integration contract taken into account when renewing integration contract for first time.

[13] Introduction aid is an unemployment benefit for foreigners, which is below the level of unemployment benefits for Danish nationals.

Table 2 (*cont.*)

	Integration requirement?	Content	Leading to test?	Who pays?	Consequences of not complying with requirements
	Since January 2007: conclusion of integration contract compulsory for all persons admitted to France for the first time and wishing to reside there on a long-term basis Since 2007 integration contract for the family.	French Republic and attending an information session on daily life in France. 2007: integration contract for the family: the obligation to attend a training course on the rights and duties of parents and compliance with compulsory school attendance by children.			Failure to fulfil integration obligations for the family may result in suspension of payment of social security benefits for the children or other economic sanctions against the family. Failure to respect the contract may also be taken into consideration when renewing the residence permit.
Germany	Since 1978, language skills Since 2005, Attending an integration course is a condition for permanent residence permit.	600 hours of language tuition + 30 hours of civics education. Since 2008: 900 hours of language course hours for persons requiring more extensive training + hours of civic education raised to 45.	Yes; until January 2008 the language test was optional. Since 2008, language test is compulsory + introduction of civics test.	2005: Government, immigrant pays €1 per hour taught in integration programme. Costs of tests covered by government.	Since 1978, refusal of permanent residence Since 2005, participation in course taken into consideration when renewing temporary residence permit (sanction not applied in practice) + reduction of welfare benefits. Successful participation in course (reaching level B1 and passing civics test) condition for issue of a permanent residence permit.
Hungary	Yes, since 2008; only for applicants for international protection, recognised refugees and temporary or subsidiary protected migrants.	Participation in language training and integration courses.	Regular examinations during language course.	Partly by state budget (refugee authority) and partly by other contracting partners (NGO, church,	Refugees and persons with temp. or sub. protection: obtaining subsistence allowance in first 24 months depends on participation in 520-hour.

Table 2 (*cont.*)

	Integration requirement?	Content	Leading to test?	Who pays?	Consequences of not complying with requirements
				municipality) if service contract requires own contribution. Refugee authority may use support from the European Refugee Fund.	language course. Subsistence allowance after recognition after 25–48 months depends on cooperation with employment service and participation in re-training or vocational training courses for at least one year or community service of at least 3 months.
Latvia	Since 2006.	Basic knowledge of the Latvian language tested by examination.	Yes.	Immigrant pays for the language test.	Passing the examination is a condition for obtaining a permanent residence permit.[14]
Netherlands	Since 1998.	1998: following an integration programme 2007: formalisation of requirements. Knowledge of language at level A2. Knowledge of Dutch society.	1998: programme led to test, but test meant to measure language skills 2007: passing of integration examination, consisting of 'central part' (computer-based language and knowledge of society tests) and 'practical part' (role-plays and portfolio).	Since end of 2007: government, pre-2007: immigrant.	1998: no legal consequences 2007: refusal of application for permanent residence; Financial sanctions (fines and reduction of social benefits).

[14] Furthermore, in Latvia, next to the tests for a permanent residence permit which have only been introduced in 2006, language tests, the level of which might have been much higher, for practising certain professions have been applied long before.

Table 2 (*cont.*)

	Integration requirement?	Content	Leading to test?	Who pays?	Consequences of not complying with requirements
UK	Yes, since 2007.	Knowledge of language and life in the UK.	Knowledge can be proven in 'Life in the UK' test or by advancing one level in a language with citizenship course.	Immigrant.	Application for indefinite leave denied.

As Perchinig has argued in Chapter 1, in Austria integration requirements were introduced under the influence of the right-wing FPÖ, which later divided into two parties, FPÖ and BZÖ. These parties promised to control immigration. Since 1998, applicants for naturalisation must prove they have sufficient knowledge of German. The latter requirement was reinforced in 2005 and, in 2006, knowledge of Austria's democratic order and history was added as a requirement for naturalisation (see Table 3). The explicit argument of reducing the number of naturalisations was used, especially after it became apparent that becoming an Austrian citizen had become an 'escape route' for bypassing the quota system for family reunification of third-country nationals, which did not apply to Austrian nationals.

In Denmark, the Danish People's Party (*Dansk Folkeparti*, DF) also championed the introduction of mandatory integration requirements. Since the Danish minority government, which has been composed of conservatives and liberals since 2002, depends on the support of the DF, migration and naturalisation policies have increasingly taken a more restrictive turn. The Aliens policy adopted by the new government in 2002 aimed at limiting the number of migrants. To that end, a Danish test was made a condition for permanent residence in 2002. In 2007 a genuine integration test at a fixed level was introduced. Furthermore, whereas a language requirement has been applied for naturalisation in Denmark since 1849, proof of knowledge of Danish by providing an examination certificate became a necessary condition in 2002. In addition, the level of language proficiency was raised to level B1. Since, in the opinion of the DF, this level would not be sufficient, the level of language proficiency for naturalisation was raised to level B2 in December 2005. At the same time it was decided that applicants for Danish nationality also have to prove their knowledge of Danish culture, history and society by passing a citizenship test.

Additionally, the Danish Aliens policy of 2002 aimed at controlling immigration, nevertheless the preparatory report of the Bill introducing the immigration test in 2006 stated that the purpose of the test was to enhance

a foreigner's successful and rapid integration into Danish society. Furthermore, the Minister for Integration, when asked whether she expected a decline in the numbers of applications for family reunification, stressed that the purpose of the test was not to limit the number of applications for family reunification, nor did she expect a distinct decrease, see Chapter 3, page 129, with footnote 45. It remains to be seen whether this expectation will be met, particularly in the light of noticeable decreases in the Netherlands and Germany (see below).

In spite of official justifications for the integration requirements in terms of promoting integration, the aim of controlling migration is often confirmed by the fact that failure to comply with the integration obligations results in the refusal of a (permanent) residence permit or citizenship, or in the imposition of financial sanctions. These sanctions are currently applied in all countries under consideration. Integration contracts are presently required in Germany, France, Austria and Denmark (Table 2 above). Germany was the first Member State to require language skills for the issue of a permanent residence permit (Groenendijk, Guild & Barzilay 2001). Since 1978 having a command of the German language is a condition for obtaining a permanent residence permit. The Residence Act of 2005 required applicants for a permanent residence permit to have "sufficient knowledge of the German language" and "basic knowledge of the juridical and social order and living conditions in Germany". Only migrants who have participated successfully in an integration course, in other words those who have passed a language test at level B1 of the CEF and a civics test, can obtain a permanent residence permit.

In France the *Loi Sarkozy* from 2003, required an active commitment on the part of newcomers to attend language courses and a training course regarding French institutions. As Pascouau has noted in Chapter 4, integration contracts evolved in 2005 and 2006 and, in 2007, were extended to migrants' families. The official justification for the introduction of the integration contract for the family, which obliges parents to attend a one-day training session on parents' rights and duties, was to help parents address the specific difficulties they face when confronted with a new society, the rules of which are not easy to understand and are historically conditioned. But such an argument not only does exaggerate the differences between non-nationals and nationals and the distinctiveness of French norms and ways of life, but it also tends to conceal the extent to which the disciplinary powers of the state extend into the private domain.

By contrast, an integration contract is not provided for in the UK; migrants wishing to obtain a long-term residence permit have to take examinations covering linguistic skills and knowledge of life in the UK. The same applies with respect to naturalisation. In the following table (Table 3), we summarise the language and integration requirements for naturalisation in the countries under consideration.

Table 3: Integration requirements as a condition for naturalisation

	Integration requirement?	Language requirement[15]	Knowledge of society requirement	Leading to test?
Austria	Yes.	1998: 'Sufficient knowledge' of German 2006: Fulfilling requirement for permanent residence or diploma at level A2.	2006: basic knowledge of Austria's democratic order and the history of Austria and the respective province.	Yes; knowledge of Austria tested in multiple-choice test.
Belgium	No, proof of 'willingness to integrate' abolished in 2000.	No.	No.	No.
Denmark	Yes.	Since 1849. 2002: level B1 2005: level B2 2008: level B2 with mark 4 (replacing mark 2).	2007: introduction of knowledge of Danish culture, history and society 2008: Multiple-choice questions and answers no longer accessible beforehand.	Yes, both requirements are concluded with test.
France	Yes.	1945: applicant for naturalisation has to prove assimilation into French society. 2003 + 2006 reinforcement of this condition by requiring proof of knowledge of French language.	No.	No.
Germany	Yes.	2000: 'sufficient knowledge' of German 2007: oral and written knowledge of German at level B1.	2008: knowledge of social and juridical order and of living conditions in Germany.[16]	Yes, since 2007 language skills demonstrated by diploma; 2008: *Einbürgerungstest*.
Hungary	Yes.	Strong command of Hungarian language to pass examination and for naturalisation procedure.	1993: examination of constitutional issues.	Yes; oral and written test.

[15] For an overview of the levels of language proficiency in the Council of Europe's Common Framework of Reference, please see annex 1.

[16] In the test, however, the questions do not regard the German social order. Instead, the test focuses to a very large extend on questions about politics, rights, history, and geography.

Table 3 (*cont.*)

	Integration requirement?	Language requirement	Knowledge of society requirement	Leading to test?
Latvia	Yes.	Yes.	Basic provisions of the Constitution, text of the national anthem and history.	Both requirements tested in naturalisation tests since 1994.
Netherlands	Yes.	1985: adequate spoken Dutch and social contacts with Dutch nationals 2003: oral and written knowledge of Dutch (A2).	2003: knowledge of Dutch society.	2003: naturalisation test costing €260 2007: replacement of naturalisation test with integration examination (see Table 2), costs starting at €230.
UK	Yes.	1981: knowledge of English, Welsh or Scottish Gaelic 2005: formalisation of the requirement.	2005: introduction of requirement of knowledge of 'Life in the UK'.	2005: proving knowledge of language and life in the UK through 'Life in the UK' test or by progressing one level in a language and citizenship course.

With the exception of Belgium, all other countries under consideration in this volume demand that immigrants meet civic orientation and language requirements in order to gain full and formal admission into the political community. Citizenship has become more communitarian and civic republican in character (see van Oers in this volume; Introduction). In Austria and Denmark, political parties with a right-wing aliens policy campaigned for the introduction of these tests. By contrast, in the other countries under consideration, the influence of right-wing parties appears to have been absent. Again, the introduction of the integration requirements for naturalisation was officially justified in terms of promoting integration. Immigration control concerns, however, once more appear to have played a prominent role. In Germany, for example, the upgrading of the language requirement for naturalisation to a B1 level in 2007 and the introduction of a naturalisation test in 2008 was justified on the basis of the need to facilitate the integration of migrants. In addition, however, despite official justifications, concerns about the need to prevent 'naturalisation tourism' have led to the formalisation of the language requirement and the ensuing pressure on the more liberal *Länder* to adapt to the practice of the *Länder* that operated a stricter

naturalisation policy. Similarly, although the introduction of a stricter language and integration test in the Netherlands in 2003 was justified in terms of facilitating applicants' insertion into Dutch society and increasing their awareness of their rights and duties, the fact that certain MPs had argued that the acquisition of Dutch nationality had been made "too easy" indicates that limiting access to Dutch nationality was also an aim of the introduction of the new naturalisation test. In the UK, the language of improving social cohesion and strengthening the sense of community belonging featured prominently when the New Labour government introduced the Nationality, Immigration and Asylum Act 2002.

In Hungary the introduction of an examination on constitutional issues as a condition for naturalisation in 1993 was justified on the grounds that it would be legitimate to expect applicants for naturalisation to show their attachment to Hungary by passing an examination. In reality, however, concerns relating to growing immigration led to the desire being expressed by all political parties to restrict the possibilities for acquiring Hungarian citizenship. Ethnic Hungarians are generally exempt from taking the examination, thereby lending credence to the argument that the examination was introduced in order to make it more difficult for non-ethnic Hungarians to naturalise.

Notwithstanding the discursive link between integration requirements and social cohesion, Michalowski correctly points out that the actual effectiveness of the integration requirements for migrant integration and social cohesion is difficult to establish. Quite often, in the name of integration, migrants are either left with an inferior legal status or are simply excluded from entry to the country altogether. Hence, "the focus of integration policy is no longer on the equalisation of opportunity, but rather on the discouragement and penalisation of migrants who do not possess certain attributes" (Ryan 2008: 312). The question whether integration tests function as a mechanism for selection and exclusion and for 'thickening' political belonging, thereby demonstrating a shift towards a more communitarian understanding of citizenship, can be more fruitfully addressed by examining the effects of the new integration requirements on the acquisition of a permanent residence permit and citizenship.

9.2 *The effects of the language and civic integration requirements*

Given the recent introduction of integration tests, it is impossible to predict with certainty the effects of formalised testing schemes on the behaviour of potential applicants and the level of their integration into the host society.

However, throughout the discussions in this volume the contributors have pointed out that the new civic requirements have resulted in reductions in the number of applications, be they for residence or citizenship. This is hardly surprising since the formalisation of the tests has coincided with a rise in the level of required knowledge of the language and of the host society (e.g. Denmark and the Netherlands) or with the introduction of other obstacles, such as high fees or a six-month waiting period after a candidate fails the test (e.g. the Netherlands until 1 April 2007).

In Austria, naturalisation tests were formalised in 2006. The 2006 Act has had a dramatic effect on the number of naturalisations. Compared to 2006, there were 46.5% fewer naturalisations in 2007. This indicates that the main objective of the Act, reducing the number of naturalisations, has been achieved, although the decline may also be due to a certain extent to a combination of the waiting period of ten years and the immigration peak in the first half of the 1990s. To what extent the decrease in the number of naturalisations can be ascribed to the introduction of the naturalisation tests, however, is unclear, since neither the number of candidates nor the success rates of the tests are published. Furthermore, the 2006 Act also tightened the requirements regarding income and residence, which makes that the formalised naturalisation test is not the only reason for the lower number of naturalisations.

In Denmark, however, a causal link between the introduction of a stricter language requirement and a decline in the number of naturalisations can more clearly be established. The introduction of a stricter language requirement for naturalisation in 2002 led to a decrease in the number of naturalisations. Compared to 2002, the year in which most applicants had their application processed under the old rules, the number of naturalisation dropped by 65% in 2003 when the language requirement at level B1 became effective, but this decrease was only temporary in nature. The subsequent tightening of the requirement in 2005 to level B2, the highest in Europe, is expected to have a more permanent effect. In the years 2007 and 2008, the numbers of naturalisations were 66% lower than in 2002.[17] The new restrictions in 2008 may accelerate the decline in numbers.

Germany was the first country to require language skills for the issue of a permanent residence permit and it introduced a language requirement as

[17] Statistics concerning the two other Danish integration tests, namely the immigration test as a condition for family reunification and the integration test as a condition for permanent residence and cash benefits are not available, since, at the time of writing of this book, the former test had not yet been introduced and the latter had only been effective for a short period of time.

a precondition for immigration for ethnic Germans in 1997, extending this condition to their family members in 2005. In 2000, it appeared that less than half of the candidates passed the language test and numbers published in 2005 showed that only 25% of the family members of ethnic Germans passed this test. In the meantime, the introduction of the immigration test for family members of foreign residents and German citizens has started to produce similar effects. In the first eight months of 2008, 41% of the tests taken were unsuccessful and the number of visas issued dropped by 24%.

In the years 2005 and 2007, Germany introduced the requirement of knowledge of the German language at level B1 for permanent residence and naturalisation respectively. The comparatively high German language requirements have been justified by the objective of making migrants independent actors in daily social interactions as well as in the professional sphere. In the first nine months of 2008, 50% of the test candidates failed to reach level B1. Hence, when the first persons subject to the law of 2005 start applying for permanent residence in 2010, half of the course participants might experience difficulties in obtaining a permanent residence permit if the German administration does not come up with a flexible solution. In the first nine months of 2008, 50% of the test candidates failed to reach level B1.

The reform of German nationality law in 1999 aimed at increasing the number of naturalisations. The number of naturalisations, however, only increased temporarily and shortly after the reform they decreased again. It is expected that the increase in the required level of language skills in 2007 and the introduction of the *Einbürgerungstest* in September 2008 will lead to a further decrease.

In Hungary, there are no official statistics regarding the number of candidates for the examination on constitutional issues or their pass rates. It is estimated that 60–70% of all candidates pass the examination. This means that between 30% and 40% of all test candidates will have to put their naturalisation application on hold.

In Latvia, the naturalisation tests introduced in 1994, which cover language and history and which have been simplified over the years, initially did not seem to form a barrier to naturalisation. In 2004 and 2005, less than 5% of all knowledge test candidates failed the test, but this number rose to 17.8% in 2008. Similarly, whereas 10% and 16% of all test candidates failed the language test in 2004 and 2005 respectively, this number rose to 21% in 2007 and almost 28% in 2008.

In the Netherlands, newcomers have been required to follow an integration programme since 1998, which ended with a test that was meant to measure the level of language skills of the course participants, but did not have any legal consequences. Level A2, the intended achievement level, was not

attained in many cases in practice. This knowledge did not prevent the Dutch government from introducing a naturalisation test as a condition for naturalisation in 2003, which required language skills at level A2 and knowledge of Dutch society. The introduction of this test led to a dramatic decrease in the number of naturalisations. The numbers of naturalisations fell by more than 50% in 2004 and 2005 compared to 2002. Furthermore, in the period from April 2003 and September 2006, less than half of all those who registered to take the naturalisation test actually passed the test. Mention should be made of the fact that one-third of the immigrants who presented themselves as potential candidates eventually did not participate in the first part of the test. Research conducted in 2006 (see Chapter 2 Van Oers) demonstrated that immigrants were put off by the high price of the test (€260) and the absence of any possibility for preparation, which made reluctance to pay the high price even greater. The replacement of the naturalisation test by the integration examination in April 2007 has not led to a rise in the number of naturalisations. This effect was in any case unintended, since price, level and the possibilities for preparing for the integration examination are more or less identical to those of the naturalisation test.

In the UK, on the other hand, the introduction of the 'Life in the UK' test in 2005 does not seem to have had a negative effect on the number of naturalisations, which have constantly been rising. One possible explanation might be that the UK does not require a uniform standard of language skills or knowledge that has to be acquired by all future British citizens. Those interested in obtaining British citizenship and, since 2007, permanent residence, can choose either to sit the 'Life in the UK' test or follow a 'language with citizenship' course, during which they have to proceed from one level to the next. Looking at the pass rates for the 'Life in the UK' test per nationality, however, the test seems to have a negative effect on the naturalisation of certain migrant groups, family migrants and refugees in particular.

Finally, in Belgium and France the introduction of integration requirements have not led to a decline in the number of applications. In Belgium, fulfilling integration requirements is not a condition for obtaining any type of legal residence. Whereas in Flanders the policy of *inburgering* is mandatory for certain groups of migrants, successful participation in the integration trajectory is not assessed on the basis of test performance, but on mere participation in the three different programmes of the trajectory, namely, language courses, civic orientation and vocational counselling. This does not mean that a migrant's failure to participate is not penalised in some way; it might lead to the imposition of a fine or impact on social rights. In Wallonia, on the other hand, participating in the reception programme is not compulsory for newcomers.

In France, failure to fulfil the obligations does not stand in the way of the issue of a (permanent) residence permit, but it might affect migrant residence rights in other ways. Deliberate failure to respect the obligations set forth in the integration contract or the integration contract for the family may lead to non-renewal of the residence permit.[18] Even though it is still too early to draw conclusions on the effects of the integration contracts, it should be noted that the system of integration contracts remains quite flexible either in terms of content or in terms of effects.

While the actual effect of the integration requirements on migrant integration is difficult to establish at this juncture, the contributors to this volume have pointed out that, notwithstanding the official aim of facilitating migrants' integration into the host society, language and integration requirements prevent migrants from accessing a more secure residence status or naturalisation, and hence serve as a means of prolonging their exclusion.

We may therefore wonder whether the introduction of the integration requirements was not intended to serve the often-concealed aim of controlling the level and type of immigration. Especially when examining the Dutch and German cases, this tends to be the case. In Germany, past experiences with the language test for ethic Germans and their families did not stop the government from introducing a language and integration test for the family members of foreigners and German citizens. Furthermore, despite the decline in the numbers of naturalisations after the introduction of a language requirement in 2000, the government decided to tighten this requirement and to introduce a civics test for permanent residence and naturalisation in 2008. Similarly, in the Netherlands, the fact that many participants in the integration programme of the 1998 Newcomers Integration Act did not manage to reach level A2 did not prevent the Dutch government from requiring this level for naturalisation in 2003. Since the Dutch government did not use the opportunity to reverse the negative effects produced by the test when it was replaced in 2007, the conclusion can be drawn that controlling immigration and reducing access to citizenship might also have been a goal of the naturalisation test As research conducted in the Netherlands in 2006 (see Chapter 2) pointed out, the naturalisation test constituted a particularly high barrier for certain groups of immigrants, such as those with a low education level or income. Even though the other countries applying a citizenship test have not followed the extreme Dutch example, in that they do provide for preparation possibilities and offer the test at a reasonable cost, tests are likely to produce discriminatory effects for categories of immigrants in weak socio-economic positions.

[18] The possibility of non-renewal only exists in case the permit is renewed for the first time.

9.3 *Broadening the debate: human rights and pluralism*

According to human rights law, states must strike a fair balance between the competing interests of the individual and the community as a whole. Although, as a principle of customary international law, states can freely control the entry and residence of aliens into their territory, their power must be exercised in line with the rule of law and in accordance with their human rights obligations. In introducing integration tests and the civic integration programmes, the nine EU Member States mentioned in this volume do not seem to have paid attention to human rights or nationality law perspectives. Republican and, more recently, increasingly communitarian perspectives have prevailed. Without doubt, states' interests in controlling public expenditure and securing social harmony are legitimate interests, but it is questionable whether the interests of resident immigrants who, perhaps as a result of illness, age, poor educational background, etc., do not live up to the ideal of 'immigrants with good integration potential', have been sufficiently taken into consideration.

Once admitted to a state's territory, aliens in principle enjoy the same human rights as citizens. Differential treatment is permitted, but only in so far as it has an objective and reasonable justification. If not, it gives rise to discrimination. "No objective and reasonable justification" means that the distinction in use does not pursue a "legitimate aim" or that there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, for instance, the case of Abdulaziz, Cabales and Balkandali v. the United Kingdom: Judgment of 28 May 1985, Series A, no. 94, paragraph 72). It is doubtful whether there is "a reasonable relationship of proportionality" between integration tests as a condition for family reunification, a permanent residence permit and/or citizenship and the aim of improving immigrants' integration if groups of immigrants with a poor education, low income, etc., remain unable to meet the conditions and are thus excluded from access to family reunification, a permanent residence permit and/or citizenship. Although there is no 'human right' to family reunification as such nor to the acquisition of a secure status, arbitrary denial thereof may, according to the case law of the European Court of Human Rights, raise questions regarding Article 8 of the European Convention on Human Rights (ECHR) on the right to private and family life, in which case the non-discrimination provision in Article 14 of the ECHR applies.

It is true that certain rights may be reserved for citizens, but it must be borne in mind that, in return, the international community has aimed to ensure that every individual has a citizenship and thus, citizenship rights

in his or her 'own country'. This aim was emphasised after World War II when the international community decided that it would never again experience the disregard and contempt for human rights that it had witnessed in the preceding years, when denaturalisation and denationalisation had been powerful weapons in the hands of totalitarian regimes (Arendt 1951). It was recognised that citizenship/nationality has a human rights perspective and, in 1948, the Universal Declaration of Human Rights (UDHR) proclaimed that "Everyone has the right to a nationality" and that "No one shall be arbitrarily deprived of his nationality or denied the right to change his nationality". In the subsequent years the UN's International Law Commission engaged in work on avoiding and reducing statelessness. The Conventions relating to the status of refugees (1951) and of stateless persons (1954) prescribe that the contracting states shall, as far as possible, facilitate the assimilation and naturalisation of refugees and stateless persons (Article 34 and Article 32) and the Convention on the Reduction of Statelessness (1961) imposes obligations on states to ensure certain stateless persons' acquisition of a citizenship/nationality. To this end, the Final Act recommends that persons who are stateless de facto (refugees) as far as possible be treated as persons who are stateless de jure.

States that make the acquisition of nationality/citizenship conditional upon passing language and societal knowledge tests at a level that certain groups of resident immigrants – and in some countries even immigrants' descendants – will never be able to pass, seem to have disregarded the aforementioned human rights principles and obligations. It should not be forgotten that the non-discrimination principle does not prohibit states from treating groups differently in order to correct 'factual inequalities' among them; indeed, under certain circumstances a failure to correct inequalities through different types of treatment may, without objective and reasonable justification, give rise to a breach of Article 14 of the ECHR (see *Case of Andrejeva v. Latvia*, 18 February 2009, § 82).

Therefore, language-learning facilities should be made available for immigrants, fees should not pose insurmountable barriers and language and societal knowledge testing, if any, should only test immigrants' relative competence. If testing at a fixed level is maintained, provision should be made for exemption for groups of people who, through no fault of their own, will not pass the tests.

This approach seems to be supported by the most comprehensive convention on citizenship, the 1997 European Convention on Nationality (ECN). The convention imposes legal obligations on the state parties to base their nationality law on a number of principles, including the UDHR principles

that "Everyone has the right to a nationality" and that "Statelessness shall be avoided" (Article 4).[19] These principles have provided the inspiration for the substantive provisions of the Convention, including Article 6(3), which states that state parties shall provide in their internal law for the possibility of the naturalisation of persons lawfully and habitually resident on their territory. A former member of the Expert Committee that drafted the Convention, the Committee of Experts on Nationality (CJ-NA), has argued that lawful and habitual residence is no longer a condition for the acquisition of a host state's nationality, but rather "a ground for becoming entitled to the right to acquire that nationality" (Autem 1999).

The only fixed requirement for naturalisation is the ten-year maximum period of residence. However, as stated in the explanatory report to the ECN, paragraph 51, state parties may, in addition, fix other "justifiable conditions for naturalisation, in particular as regards integration". Most countries require applicants for naturalisation to have some knowledge of their official language. The question is what degree of knowledge of the language is it reasonable to require? It is fairly certain, as stated in a report on Conditions for the Acquisition and Loss of Nationality, drafted by Andrew Walmsley and adopted in 2002 by the CJ-NA, that requirements for knowledge regarding the language, culture and history of the country of which the applicant is seeking citizenship should exclusively be used and regarded as an element for integrating non-nationals and should not be used as a discriminatory means for a state to select its nationals. Elements of a state's law regarding integration should not be contrary to an individual's human rights nor be discriminatory, nor should 'integration' be interpreted as being the same as 'assimilation'. 'Integration' does not mean taking up living habits or religion or similar aspects, but means the ability to live together and requires tolerance from individuals towards others, despite the fact that they are different.

This perception is in line with the famous advisory opinion from the Inter-American Court of Human Rights, in Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84, January 19, 1984. The Court felt compelled to emphasise that in practice, and given the broad discretion with which tests may be administered, the risk is present that such requirements will become the vehicle for subjective and arbitrary judgments as well as instruments for the implementation of

[19] Among the countries dealt with in this book only two, the UK and Belgium, have neither signed nor ratified the ECN that entered into force 1 March 2000. The convention is ratified by 19 European states and among them Austria, the Netherlands, Hungary, Denmark and Germany (in the period 1 March 2000 – 1 September 2005). Nine states have signed but not (yet) ratified the Convention, among them France and Latvia.

discriminatory policies that, although not directly apparent on the face of the law, could well be the consequence of its application. Hence, there is a need to reflect on and debate contemporary discourses and conceptualisations of integration (Carrera 2006: 19–20). After all, contemporary uses of integration may not correspond to 'social inclusion', equal treatment and non-discrimination.

The pluralist perspective

While civic integration programmes are based on the assumption that societies are homogenous, distinctive and unified, one may start from a different premise; namely, the premise that political communities are neither static nor undifferentiated entities. Rather than being a reflection of pre-political commonalities, such as blood ties, ethnic origin, culture and shared historical experiences or distinctive communities of shared values, political communities are essentially the product of political processes, power relations, institutional design and strategic adaptation to exogenous and endogenous pressures. Pluralist perspectives have emphasised the constructed and process-related nature of political communities by putting emphasis on social interactions, complex processes of institutional design and the maintenance and evolution of schemes of human cooperation (Honneth 1998; Habermas 1998; Young 1990). Pluralism thus eschews notions of organic national communities and essential identities. Since political communities are not conceived as communities of fate or communities of character, that is, as historically ongoing associations having a common purpose or life, and collective identities are not seen as reflecting essential attributes and timeless qualities, the social and political inclusion of newcomers is not seen as threatening the alleged unity and cultural homogeneity of the community, nor does it threaten its national identity. Demoi are heterogeneous and differentiated in many respects, but neither heterogeneity nor differentiation undermines the stability of the polity or the political understanding of membership (Kostakopoulou 2001, 2008). Accordingly, polities ought to design flexible policies that welcome all those who become enmeshed in networks of cooperative interaction, work for the well-being of the commonwealth and share its burdens, and to rethink their concept of membership in ways that accommodate human mobility.

Human mobility has been, and continues to be, an inescapable fact and needs to be channelled responsibly and constructively in order to ensure the maximisation of its productive and creative energies. It is debatable whether the traditional liberal, civic republican and communitarian understandings of citizenship can adequately capture the dynamics and potential of mobility. Ideological narratives about the alleged destiny of the nation, discourses about the need to maintain the 'social cohesion' of the host country and, above

all, the securitisation of migration, that is, turning migration into a security issue threatening the survival of societies (Weaver 1995, Huysmans 2006) preclude credible policy options. But policies based on respect for human beings and for diversity can make a difference. Such policies would need those in power to recognise that host countries have the positive duties to provide a favourable context for reception, to facilitate migrants' settlement, assist with their adjustment, understand their vulnerability and to ensure their socio-economic and political inclusion. But they also have the negative duties to refrain from imposing arbitrary distinctions and disseminating negative views, such as the view that migrants are uninvited, unwanted, a threat and a problem, and to refrain from reinforcing stereotypes and interfering illegitimately with their personal autonomy. Similarly, newcomers have a duty to contribute to the commonwealth, to share its burdens and to be law-abiding. But they do not have to abandon their identities or reject their value systems in order to conform to the attitudes and cultures of the host community. Pluralism thus leaves little room for 'authentic' cultures and 'true' members. Instead, it is characterised by dialogic exchanges and an "ethic of openness to unassimilated otherness" (Heller and Feher 1988; Parekh 2000), with a view to fostering inclusive and pluralistic communities in which people are treated as respectful participants and as equals.

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