

Migration and Integration at the EU Level: A Rights-based Perspective

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European Union policy on the integration of migrants was first formulated in 2002 when the European Economic and Social Committee (EESC) released an own initiative opinion on Immigration, Integration and the Role of Civil Society (European Economic and Social Committee 2002). This kick-started a process that is still going on today, but which, from a human rights perspective, is rather uneven. An effective and coherent labour migration policy also depends on the successful integration of migrant workers and members of their families into the host society. However, the European Union does not have specific competence in this field. It is up to the Member States and the relevant regional and local entities to implement EU 'guidelines' in this area. This, together with the lack of a comprehensive universal legal framework, like the UN Migrant Workers Convention, leaves the EU patchy terrain for migrant integration, characterised by good intentions, but lacking a consistent approach. It is also important to note that the situation faced by migrants in the EU Member States is barely scrutinised by civil society actors and government agencies in the migrants' countries of origin.

Recent developments

In 2005, the European Commission set the stage for the development of new initiatives in the field of integration. It published a Communication on a Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union (European Commission 2005), which provided the basis for the priority areas identified in the November 2008 Council Conclusions: promoting European values, working on the public perception of migrants and legal immigration, and identifying indicators to evaluate the results of integration policies. Part of this Framework is the European Commission's policy plan on Legal Migration, which is intended to create a "coherent approach to legal migration". It initially looked like the European Commission was going to present a "horizontal framework for admission and a minimum set of rights", but in the end the European Commission, backed by the European Parliament and the Council, preferred a fragmented approach favouring highly skilled migrants, short-term

stays and curtailing rights. This approach has been seen as promoting 'circular migration' and raises questions about the will of the European Union to integrate migrants within its society as it encourages short-term stays of a particular group of migrants. This approach is in blatant contrast to the EU's otherwise 'soft' approach towards integration. A series of interventions and initiatives followed this Framework, such as the European Integration Forum, the European website on Integration and the Handbook on Integration, of which the third edition was published by the European Commission in April 2010.

In 2010, the Council also adopted the Framework Decision on Racism and Xenophobia (Council of the European Union 2010), and discussions continued on the proposed Framework Directive, which prohibits discrimination outside employment (Council of the European Union 2007b). In March 2010, the European Council agreed that the better integration of migrants would help it to achieve the Europe 2020 target of 75% employment for 20 to 64 year olds (Council of the European Union 2010).

Little else has been done since then at the European level that can be considered meaningful. It has mostly been left to local and national authorities to deal with the problem. From 2007 to 2010, the European Commission put in place the skeleton of its migration policy with the Return Directive, Blue Card, Common Procedure and other legislative pieces with the idea of creating a framework for legal labour migration. This policy applies soft law to integration matters and hard law to matters relating to borders (e.g., border security). Considering the growing volume of European legislation in the field of security (e.g., the establishment of FRONTEX¹), the EU is not sending an integration-friendly message to its citizens, nor is it creating a positive environment for the integration of migrants into host communities. Civil society actors will have to monitor the implementation of the Stockholm Programme² in light of

1 FRONTEX is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. FRONTEX was established by Council Regulation (EC) 2007/2004 and commenced operations in 2005. The EU is currently debating a new and more powerful mandate for this agency.

2 The Stockholm Programme is a five-year plan with guidelines for justice and home affairs of the Member States of the European Union for the years 2010 through 2015.

the developments in the field of integration and compare both approaches in terms of this contrast between soft and hard law.

In terms of "fostering a more coherent approach to integration", the implementation of integration policies is left to the national level, with the Commission doing the assessment (European Commission 2005, final point 3). Key EU institutions that play an important role in this field are the Vienna-based Fundamental Rights Agency (FRA)³ and the European Foundation for the Improvement of Living and Working Conditions (Eurofound), which is based in Dublin (European Commission, Directorate General Justice, Freedom and Security 2010).

At the 2010 Ministerial Conference on Integration of the Spanish Presidency in 2010, the European Commission admitted that despite its efforts migrants continue to face all sorts of problems: worse results in education and lack of training and skills, among other things (Spanish Presidency 2010). Despite this, the European Council has continued to focus on the 2020 Strategy and the "development of core indicators in a limited number of relevant policy areas (e.g., employment, education and social inclusion) for monitoring the results of integration policies in order to increase the comparability of national experiences and reinforce the European learning process" (Council of the European Union 2010). The approach taken by the EU can be summed up as encouraging the application of best practices of EU Member States and 'soft' law. A more engaging approach needs to be adopted by the EU to close the gap between good intentions and reality.

With the economic crisis, local authorities in most Member States have been forced to cut social services, including services that are linked to integration programmes. The European social model has been put under stress. Although poverty and social exclusion existed before the crisis, there has clearly been an increase over the past couple of years, and this has impacted on migrant communities. Out of the 79 to 84 million Europeans living below the poverty line, many are migrants or from a migrant background (sometimes with an EU national identity card); to these figures we should add the several million undocumented migrants.

3 The FRA is built on the former European Monitoring Centre on Racism and Xenophobia (EUMC).

These developments are starting to have an effect on how migrants are perceived by 'host' societies. Migrants are increasingly becoming scapegoats for various problems: they are portrayed as stealing jobs and profiting from social services without contributing to them. The lack of a strong EU-wide structural policy on integration, as well as the growing number of what is referred to as 'securitarian' measures are contribute to this anti-immigrant climate. It remains to be seen if national, regional and local authorities will continue to provide the necessary funds and set up or encourage initiatives that will contribute to an effective integration policy, or if integration will be limited to the lofty principles promoted by the European Commission.

Defining integration and exclusion

It is useful here to look at social exclusion and how it can block the integration of migrants. Social exclusion is a multidimensional process of gradual social rupture, and the detachment of groups and individuals from social relations and institutions, preventing them from fully participating in the normal, normatively prescribed activities of the society in which they live (Sen 2000). In this sense, migrants are particularly vulnerable as they are not an integral part of the host society and their access to rights is usually limited, especially in relation to the democratic political process. This can result in a situation where the multiple deprivation of rights prevents individual migrants or groups from participating fully in the economic, social and political life of the society in which they live.

It is in relation to the multidimensional process of social isolation (when social integration is not achieved) that the migration angle becomes very important in the definition of migrant communities as vulnerable, as they live to a large extent outside the social and political processes of the host society. Migrants are, by definition, aliens in their host society and do not have all the opportunities to access and enjoy the rights granted to citizens. If we add to that the persistent lack of several basic rights for migrants in some European societies (political participation, equal treatment of migrants with irregular status), we find a group that is on the frontline of the isolation process.

European projects on integration can and have been questioned. Let's take, for example, those training projects that involve employers' and employees' organisations. A plethora of such projects are available in many European Member States. However, all too often, migrant workers are excluded from company in-house training and skills' development schemes

(Collett and Sitek 2008). Integration projects need to be built on the reality facing migrants, and not just on the objectives set forth in the calls for proposals from the EU. More importantly, such projects need a European framework, and not just encouragement from EU institutions.

The wages of migrants are typically lower than those of native workers. For example, despite its longstanding history of immigration flows, econometric models of assimilation suggest that in the United Kingdom it takes a typical male migrant some 20 years to eradicate the wage penalty compared to their native counterparts. Interestingly, for women, assimilation is faster with wage differences disappearing after some 4 to 6 years. There are also important differences in assimilation between different nationalities and also different entry cohorts.⁴ More recent cohorts of migrants appear to be faring better in terms of their wages (Dickens and McKnight 2008).

To eradicate this differential it is important that 'Decent Work', as a productive and meaningful way of providing adequate income to migrants, is accepted as a principle for migrants and native workers alike. EU institutions need to ensure that workers' rights are recognised and effectively protected by law, as described by the ILO in its Decent Work campaign.⁵

Integration as a social process

Integration is a two-way process that involves both hosting societies and migrant communities. This is an approach shared by the EU, but its current policies leave the responsibility solely to local level actors at the ground level, which shows a lack of understanding, or will, on the part of EU authorities to successfully integrate migrants into the societies they live in. A society is by definition an ensemble of institutions, authorities and powers, but the EU seems to rely solely on effectiveness at the ground level. If those that implement policies have other priorities, then integration disappears from the local political agenda.

Equal rights are the starting point for all debates on integration, in particular the right to free education, proper housing and a decent job. The European Union does not have a universal piece of legislation to ensure that basic rights are provided in an equal manner to migrants regardless of their legal status.

An EU whose Member States had ratified the UN Migrant Workers Convention would be held

⁴ Groups of subjects who share a particular experience during a particular time span.

⁵ For the ILO definition of Decent Work, see: <www.ilo.org/global/About_the_ILO/Mainpillars/WhatIsDecentWork/lang--en/index.htm>.

accountable by the international community. The EU must stop paying lip service to human rights principles and ensure that internationally recognised rights are respected in practice.

Let us take the example of the European Integration Fund, established by the European Commission and in operation since 2008. This Fund, although a good initiative, promotes policies for migrants in a range of sectors (access to public services, education, professional training and so on); but the beneficiaries are migrants who have been living in the EU for a specific length of time, creating inequality among migrants based on the time they have been in the host country. This is in line with the current focus on circular migration programmes, which in the minds of the policymakers probably means that there is no need for integration programmes as these migrants are only staying for a limited time.

The latest report on the situation of fundamental rights in the European Union (2004–2008) states that the Member States continue to refuse EU scrutiny of their own human rights policies and practices, and endeavour to keep protection of those rights on a purely national basis, thereby undermining the active role played by the European Union in the world as a defender of human rights and damaging the credibility of the EU's external policy in the area of the protection of fundamental rights (European Parliament 2008). This clear lack of willingness by the Member States to be held accountable for their integration policies demonstrates the weakness of the initiatives at the EU level.

Migrants' organisations and other civil society actors play an important role in the integration processes. However, for this to be truly a two-way process that is respectful of the fundamental human rights of all, migrants need to be active participants in the democratic and political processes of the societies they live in and contribute to. Furthermore, the host society needs to take up an active role in the integration processes. The will of the European Commission seems to clash with the reality at the local level, where migrants have little access to the democratic process and the creation of their own media, and to social networks that exist outside their migrant communities.

A good example of this is voting rights for foreigners. The first European country to recognise the right of migrants to stand as candidates in local elections was Sweden in 1975, followed by Denmark in 1981 and the Netherlands in 1985. In Sweden, non-EU residents have the right to vote in regional and municipal elections after three years of

residency. Whilst the Nordic countries were the ones that spearheaded this process, today 13 EU Member States acknowledge the right to vote and to stand for elections⁶ and 4 Member States recognise the right to vote.⁷ However, 10 countries still do not provide any voting rights to third-country nationals or the right to stand for election.⁸

Because this is a barrier to the integration of migrants in the democratic policy-making process, the EU did make mild attempts to create a residence citizenship. Unfortunately, this proposal did not reach port (GUE/NGL 2008, p 15). Asking migrants to adopt 'European values', while denying them access to local elections is not an effective way to avoid the political exclusion of migrants legally residing in European societies, let alone those with an irregular status.

To be socially excluded is to be deprived of social recognition. In political life, social recognition is obtained by full citizenship; in the economic sphere, it means earning enough to be able to participate fully in the life of the community. In both spheres, the current policies leave much scope for improvement and there is a long way to go before the Common Basic Principles on Integration are really put into practice (Niessen and Kate 2007).

The European Commission has often expressed the view that there is a close connection between a common migration policy and a common integration strategy. However, the current focus on a utilitarian approach – Blue Card Directive and circular migration initiatives – combined with the securitization of external borders clearly indicates that respect for human rights, decent work and social integration are not always taken into consideration.

Integration and exclusion: Lack of a framework

The lack of a human rights-based framework within which the integration of migrants can take place is contributing to the growing loss of trust of migrant communities in the willingness of host societies to truly build a society based on equality, human rights and respect for the rule of law. The recent Italian law that criminalises undocumented migrants by making being undocumented an aggravating factor in a criminal sentence is a good example of how double standards are being applied to migrant

communities. This is clearly in contradiction to international human rights standards, such as Article 18 of the UN Migrant Workers Convention.⁹

The relationship between civic integration and proportionality is of special concern, given the intrinsically subjective nature of civic integration examinations, their mandatory nature and the sanctions applied in the event of an applicant's non-compliance (Carrera and Wiesbrock 2009, p 41).

Is short-term integration possible?

Short-term integration as an option has a dangerous pitfall: if migrants are an asset to European societies and have a 'value of use', what happens if the host society does not win economically?

The Council Directive 109/2003, dealing with the integration of third-country nationals who are long-term residents, establishes certain rules on the status of this category of migrants. The latest EU legislation on entry access makes a clear distinction between those entering with a Blue Card and who are highly skilled, and those entering through other mechanisms.

The problem applies to those who enter the EU without a Blue Card. How can the European Union talk about fighting discrimination, while its own entry procedures make a distinction between migrants with a clear added value and those without? This paves the way for a totally utilitarian approach, based on EU self-interest, where human rights are an annex added only to prove that the legislators have these old-fashion ideal in mind. Accordingly, it is crucial that civil society organisations continue to monitor the development and implementation of legislative packages in the field of labour migration¹⁰ to promote a rights-based approach.

The abovementioned Council Directive must be applied in accordance with the principle of non-discrimination pursuant to Article 13 of the EC Treaty and Article 21 of the Charter of Fundamental Rights of the European Union. However, in the field of social assistance and social protection, Member States may limit equal treatment to core benefits. In that sense, there should be no different treatment

⁹ This UN Convention clearly states that: "Migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

¹⁰ These legislative measures will be finished in the coming months with the latest two Directives (on seasonal workers and inter-corporate transferees).

between third-country nationals residing legally or irregularly in the EU Member States.

An EU Directive transposing the main lines of the UN Migrant Workers Convention could be a solution, as well as ratification of the Convention. Ratification would not only be a big symbolic step forward, it would also send a signal that the European Union truly supports the integration of all migrants, regardless of their status.

Conclusion and recommendations

When it comes to the integration of migrants, the EU's policy is still in its early days. However, what is becoming clear is that the European Commission and the European Parliament should give these legislative initiatives more teeth and ensure that the rights-based integration of migrants is a priority.

1. The EU should develop and implement a Framework Directive linking EU policy with the policies and practices of local actors.
2. There should be an EU Directive transposing the UN Convention on Migrant Workers Rights.
3. The European integration fund should be linked to an evaluation process monitored by civil society. ■

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⁶ Czech Republic, Denmark, Spain, Finland, Ireland, Lithuania, Malta, the Netherlands, Portugal, Sweden, Slovenia, Slovakia and the UK

⁷ Belgium, Estonia, Hungary and Luxembourg

⁸ Austria, Bulgaria, Cyprus, Germany, France, Greece, Italy, Latvia, Poland and Romania

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