IMMIGRATION POLICY-MAKING IN THE EUROPEAN UNION:

A CASE STUDY ON THE ADOPTION OF DIRECTIVE 2003/109/EC AND ITS IMPLEMENTATION BY GERMANY AND THE NETHERLANDS

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ABSTRACT

IMMIGRATION POLICY-MAKING IN THE EUROPEAN UNION:
A CASE STUDY ON THE ADOPTION OF DIRECTIVE 2003/109/EC AND ITS IMPLEMENTATION BY GERMANY AND THE NETHERLANDS

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This thesis analyzes the ascent of immigrant-related policies in the European Union by identifying the most important actors influencing this process through an examination of key developments such as the Tampere European Council, the Maastricht and Amsterdam Treaties which paved the way for the adoption of Directive 2003/109/EC on the status and rights of third-country nationals. In doing so, the key question to be discovered is the role of the EU with regards to immigrant integration by investigating a key European-level instrument as the case study, namely the adoption of Directive 2003/109/EC which is the most recent and relevant legislation establishing the status of third-country nationals in Europe. By examining whether the adoption of this Directive has led to any progress in terms of the rights of third-country nationals in Germany and the Netherlands, I try to assess whether the adoption of the Directive may be explained with the supranationalist view that the Commission has a strong supranational role as a political entrepreneur that promotes common norms and values, or it is a reflection of the prevalence of liberal intergovernmentalism and the rationalist motivations of the Member States to promote their interests when reaching a final compromise. The conclusions of the thesis show that Member States choose to cooperate in these areas mainly because of their socio-economic concerns such as restricting the increasing numbers of asylum, low-skilled immigration, the goal of global competitiveness and attracting qualified labor force, rather than making progress in the area of immigrant integration which only constitutes a part of the European Union's immigration and asylum policy. The preservation of these interests and the subordination of immigrant rights to national concerns reveal that Member States negotiate European policies by almost exclusively focusing on the distribution of gains unlike suggested by the supranational perspective which argues that negotiations are concerned with achieving an efficient policy outcome.

Keywords: Immigration, Immigrant Integration, Third-Country National, Supranationalism, Liberal intergovernmentalism.

ÖZET

AVRUPA BİRLİĞİ'NDE GÖÇ POLİTİKALARI: DİREKTİF 2003/109/AT'NİN KABUL EDİLMESİ VE ALMANYA İLE HOLLANDA TARAFINDAN UYGULANMASI ÜZERİNE BİR VAKA ANALİZİ

Köklü, Pelin

Avrupa Çalışmaları Yüksek Lisans, Uluslararası İlişkiler ve Avrupa Birliği Bölümü

Tez Yoneticisi: Yrd. Doç. Dr. Alexander Bürgin

Mayıs 2010, 159 sayfa

Bu çalışma, üçüncü ülke yurttaşlarının yasal statü ve haklarıyla ilgili düzenlemeleri kapsayan Direktif 2003/109/AT'nin kabul edilmesine zemin hazırlayan Tampere Avrupa Konseyi, Maastricht ve Amsterdam Antlaşmaları gibi gelişmeleri inceleyerek, Avrupa Birliği'nde göçmenlerle ilgili politikaların oluşum sürecini etkileyen en önemli aktörleri belirlemeyi amaçlamaktadır. Bu bağlamda, üçüncü ülke yurttaşlarının statü ve haklarını belirlemede en yeni politika sayılabilecek Direktif 2003/109/AT'nin kabul edilme süreci incelenecek ve Avrupa Birliği'nin göçmenleri entegre etme politikaları oluşturmadaki rolü anlaşılmaya çalışılacaktır. Bu Direktif'in Almanya ve Hollanda'da yaşayan göçmenlerin statü ve haklarında bir gelişmeye yol açıp açmadığı incelenerek, Direktif'in müzakere ve kabul edilme sürecinin Avrupa Komisyonu'nu ortak norm ve değerleri yükselten siyasi bir girişimci olarak gören ulusüstü bakış açısı ile mi yoksa üye devletlerin rasyonel çıkarlarını ön planda tutan liberal hükümetlerarası teori ile mi açıklanabileceği değerlendirilecektir. Çalışmanın sonuçları, üye devletlerin bu alanlarda işbirliği yapmalarında, Avrupa Birliği göç ve iltica politikasının yalnızca bir parçasını oluşturan entegrasyon politikaları geliştirme amacının değil, sayıları hızla artmakta olan mülteci ve göçmenler, küresel ekonomik rekabet ve yetenekli iş gücüne olan ihtiyaç gibi sosyo-ekonomik nedenlerin etkili olduğunu göstermektedir. Bu çıkarların korunması ve ulusal çıkarların göçmen haklarının üzerinde tutulması, üye devletlerin Avrupa politikalarını müzakere ederken ulusüstü teorinin savunduğu gibi etkili bir sonuca ulaşma amacı güttüklerinin aksine, müzakerelerin esas olarak ulusal kazançların dağılımı ile ilgili olduğunun altını çizmekte ve göçmen politikalarının yapımında hükümetlerarası teorinin geçerlililiğini işaret etmektedir.

Anahtar Kelimeler: Göç, Göçmenlerin Entegrasyonu, Üçüncü Ülke Yurttaşları, Ulusüstü Teori, Liberal Hükümetlerarası Teori.

To My Parents, Friends and Myself

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Christian Democratic Union	CDU
Common Basic Principles	CBPs
Directorate General	DG
Equal Treatment Commission	ETC
European Coal and Steel Community	ECSC
European Court of Justice	ECJ
European Economic Area	EEA
European Economic Community	EEC
European Union	EU
Dutch Research and Documentation Centre	WODC
Immigration and Naturalization Service	IND
Justice Freedom and Security	JLS
Justice and Home Affairs	JHA
Liberal Party (the Netherlands)	VVD
National Integration Plan	NIP
Non-Governmental Organizations	NGOs
Qualified Majority Voting	QMV
Third-Country Nationals	TCNs
Scientific Council for Government Policy	WRR
Single European Act	SEA
Treaty on the European Union	TEU
United Nations Educational, Scientific and Cultural Organization	UNESCO

INTRODUCTION

Immigration has become a crucial facet across the enlarged European Union (EU), as ageing and declining population together with the problem of unemployment strengthen the prospect and necessity of increasing immigration into Europe. Although large-scale transfers of people, both internal and external, have always been a feature of life in Europe (European Commission, 1990), problems related to immigration became apparent during 1980s and 1990s as a result of xenophobic attitudes and the debates over the content of immigrant integration policies (Favell, 2001). Within national contexts, emphasis has often been placed on the control of immigration, and the issue of immigrant integration has usually been neglected. However, today, many Member States are confronted with integration challenges related to the political, legal, socio-economic and cultural integration of immigrants within their territories. As stated by the European Commission, the successful integration of immigrants is both a matter of social cohesion and a prerequisite for economic efficiency (European Commission, 2003a, p. 17). This has been emphasized in many European-level initiatives such as the 1999 Tampere European Council and the 2004 Hague Programme. Especially in the Tampere European Council, EU-level policymaking targeting third-country nationals (TCNs) has become a joint policy objective, often tied to the functioning of the single market, for the completion of which certain TCN rights equal to those of EU nationals argued to be a logical and necessary consequence of the "fourth freedom" (Uçarer, 2010). As currently constituted, the EU institutions possess very limited competence for issues impacting upon immigrant integration (Geddes, 2000a, p. 643). For this reason, the Commission, as the initiator of the policy-making process within the EU context, has faced serious constraints towards taking legislative steps in the field of immigrant integration. Even

in cases where the Commission takes legislative steps and measures are adopted at the EU level, most frequently, Member States are reluctant to comply with these measures, leading to a "gap between intent and implementation" (Geddes *et. al*., 2004, p. 21).

As mentioned before, EU Member States have long neglected immigrant integration as a challenge that needs to be addressed at the European level. Until the Maastricht Treaty (1992), issues related to immigration and immigrant integration completely remained under the sovereignty of the Member States, implying that the institutions of the EU did not possess the right to make binding legislation in these areas. Under the three-pillar structure envisaged by the Maastricht Treaty, immigrant-related matters were dealt with under the third pillar, where intergovernmental decision-making based on unanimity prevailed. However, with the Amsterdam Treaty, some immigration issues were moved to the first pillar allowing the European Commission to enjoy the right to prepare legislative proposals while decisions are to be made through qualified majority voting (QMV). This recent development constitutes an "actual major breakthrough" (Kirişçi, 2008, p. 3) in the sense that it demonstrates the willingness of the Member States to further cooperation with regards to immigration issues which touch upon important national interests at stake. However, it has to be mentioned that although many areas related to immigration, asylum and visa policies were moved to the first pillar, matters directly relating to the status and rights of TCNs remained strictly under the third pillar, preventing the Commission to actively engage in this issue. This suggests that as part of the third pillar, the status and rights of immigrants are subject to unanimous decision-making in which supranational institutions such as the Commission and the European Court of Justice (ECJ) have limited roles. While the European Commission has headed to ameliorate the precarious situation of TCNs, some EU Member States have complicated the development of a common integration framework by

favoring more repressive measures regarding the rights and status of TCNs. This paradox, the Commission heading forward while some Member States are reluctant to progress, demonstrates the tension within the European institutional context and poses a significant threat to the legal order of the Community as a whole.

This study probes the ascent of TCN policies at the EU-level by identifying the most important actors influencing this process through an examination of key developments such as the Tampere European Council, the Maastricht and Amsterdam Treaties which paved the way for the adoption of Directive 2003/109/EC. In doing so, the key question to be discovered is the role of the EU with regards to immigrant integration by investigating a key European-level instrument as the case study, namely the adoption of Directive 2003/109/EC which is the most recent and relevant legislation establishing the status of TCNs. I wish to state, however, that the aim of this research is not to announce a successful model of integration of TCNs in Europe. Nor is it my aim to normatively assess that one country is more successful in integration than another. Instead, the primary concern of this research is to understand the dynamics that have paved the way for the adoption of Directive 2003/109/EC by the Council of Ministers, which is granted the right to pass legislation dealing with the entry and conditions of residence of TCNs by virtue of the Amsterdam Treaty amending the Treaty Establishing the European Community.[1] In accordance with this aim, I also try to describe the integration policies of Germany and the Netherlands towards TCNs by especially focusing on the changes that these two Member States have made with regards to the particular domain of long-term residence, including civic integration policies which have increasingly become a significant part of these countries' integration agendas at the national level. As a result, I expect to reach a conclusion about the interplay and tension

[1] Hereinafter referred to as "the EC Treaty".

between national and EU levels with regards to the issue of immigrant integration and see whether it is the Member States who influence European policies or it is the EU affecting them and contributing to the convergence of integration policies in the Member States. It is because of this concern that Germany and the Netherlands are taken as the illustrative case studies which reveal the eagerness of Member States to ask for more discretion when EU level policies are being made. Furthermore, the high number of legally resident TCNs in these two countries is also a reason for the selection of the case study. In addition, these countries have been experiencing immigration for a long time, and thus issues related to immigrants have long constituted a crucial facet of their domestic politics. Unlike some European countries for which immigration has been a relatively recent phenomenon, Germany and the Netherlands have dealt with immigration for a long period of time within their specific historical contexts. In both countries, policies related to immigrant integration have posed a serious question regarding their scope and orientation, and these policies have often been changeable and unsteady. The changeable and unsteady character of these policies is the outcome of the diverse internal dynamics of the two Member States, in which the perception of immigrants by the public and the policy-makers is a context-dependent phenomenon.

The research falls in four main chapters. Chapter 1 lays out the theoretical and methodological framework which consists of liberal intergovernmentalist and supranationalist theories and their merits as well as deficits. In this Chapter, the question of how the two theories are applied to the case study, the adoption of Directive 2003/109/EC, is also clarified. Chapter 2 includes the description of concepts which will be used during the study; the concepts of integration, immigrant and TCN are clearly defined both within the contexts of the EU and within the analyzed Member States. While a comparison is made

among different perspectives, Germany and the Netherlands are also analyzed in terms of their integration policies within the historical context. This descriptive and comparative Chapter also mentions domestic factors together with EU level developments that have impacted upon the changes made with regards to the conditions of long-term residence. Chapter 3 examines the initiatives of the EU institutions on the issue of TCNs by specifically focusing on Directive 2003/109/EC and explains how the EU got involved in the area of immigrant integration. In Chapter 4, based on the evidence provided by Chapter 2, Chapter 3 and with additional explanations on the negotiation process of the Directive, I try to assess whether the adoption of the Directive may be explained with the supranationalist view that the Commission has a strong supranational role as a political entrepreneur that promotes common norms and values, or it is a reflection of the prevalence of liberal intergovernmentalism and the rationalist motivations of the Member States to promote their interests when reaching a final compromise. In this Chapter, special attention is paid to how the Directive was ultimately adopted as a result of a compromise among the Member States, as these processes reveal the preferences of national governments which may conform to or present a challenge toward the Commission's original proposal. In so doing, I try to comprehend to what extent the policies of the EU are merely "rhetoric", and if this is not the case, where exactly the EU has an impact, and where not, or not enough.

CHAPTER 1

THEORETICAL AND METHODOLOGICAL CONSIDERATIONS

Unlike other fields of social science such as anthropology and sociology, political science scholars of immigration studies are highly concerned with generating theoretical outcomes based on macro-level factors. Gary Freeman (1998) notes that the challenge in this respect is the construction of a theory of immigration politics that accounts for the similarities and differences in the politics of immigration of receiving countries and explains the persistent gaps between the goals and the effects of policies. Compared to American political science studies where the problematic of international migration has been more recently integrated into academic debates, the challenge toward the sovereign nation-state aroused a much livelier debate in Western Europe due to the presence of the EU with its supranational institutions envisaging common policies that bind the Member States especially with regards to economic matters. Despite the supposedly increasing impact of the EU and its supranational policies on its Member States, the state and its capacity of immigration policymaking remained as an important concern both in academic and public circles.

The tension and differing integration perspectives between the nation-state and supranational institutions taken for granted, in this thesis, I aim at tracing the process of how immigrant integration became a matter dealt with at the EU level, with specific attention to the adoption of Directive 2003/109/EC which, for the first time, creates a European framework for the status and rights of TCNs. By looking at whether the adoption of this Directive by Germany and the Netherlands have led to any positive changes regarding the status and rights of TCNs in these countries, I aim at shedding light on the tension between

the Commission and the Member States in the area of immigrant integration. Hence, the dependent variable in the research is the change regarding the status and rights of TCNs in Germany and the Netherlands, while the independent variable is European cooperation in the field of immigrant integration (specifically the adoption process of Directive 2003/109/EC) and the role of the Commission in this process which may be explained with the liberal intergovernmentalist and supranationalist theories that will be analyzed in this thesis.

Observers and scholars of European integration often have contrasting and conflicting views on why EU Member States choose to coordinate certain policies by surrendering their national prerogatives to EU decision-making bodies. By focusing on different academic discussions on what factors drive the process of European integration, this theoretical Chapter will serve to profoundly understand why and how Member States could finally reach a compromise in the adoption of Directive 2003/109/EC, as well as the key developments paving the way for this Directive such as the Tampere European Council, the Amsterdam Treaty and the Hague Programme. The two arguments that are selected as the framework theoretical definitions are liberal intergovernmentalism and supranationalism. Although the intergovernmentalist vs. supranationalist debate with regards to many European policy areas including immigration policy-making has been widely studied (Kurt, 2006), the same debate on the issue of immigrant integration is yet very limited. Hence, I aim at discovering whether policies on immigrant integration are being formed on an intergovernmental or supranational basis and how this affects the process of European integration. By analyzing the two theories, I seek to reintegrate the historical study of immigrants in the EU with theoretical inquiry into what factors prompted EU Member States to cooperate in the field of immigration and immigrant integration. It should be noted that my aim is not to decide on

whether one theory is totally correct or incorrect, but to assess the relative importance of different explanatory factors in my context. In so doing, I also expect to contribute to the existing literature on the theoretical debates used to explain the progress of the policy-making process in the EU.

At first, I see it necessary to begin with short definitions of the terms used in this theoretical Chapter, and then pay substantive attention to some key arguments among them. As the main arguments underlying my theoretical framework, I will basically compare liberal intergovernmentalist and supranationalist definitions of European integration and their implications for immigration policy-making within the European context. Intergovernmentalism and supranationalism constitute two of the most important theoretical debates used to explain European integration. The intergovernmentalist versus supranationalist debate began in the 1980s (Craig and de Burca, 2002, p. 6). Since then, competence sharing between supranational institutions and Member States has been a much debated issue, which also involves unanimity and QMV as the main mechanisms of decision-making.[2] The term "intergovernmentalism" was first coined by Stanley Hoffmann (1966), suggesting that Member States perform as the primary actors in controlling the level of European integration. In this respect, the utmost aim of Member States is the preservation of national sovereignty and interests. Several intergovernmentalist approaches have been put forward in the literature following the arguments by Hoffman (George and Bache, 2006; Moravcsik, 1999; Nugent, 2006). Emerged as a reaction toward intergovernmentalism, liberal intergovernmentalism was put forward by Andrew Moravcsik in 1990s. Moravcsik (1999) writes that the term "intergovernmental" within the institutional

[2] The mechanisms of voting in the Council of Ministers are laid down in the treaties establishing the EU. The unanimity procedure requires a consensus among the Member States while QMV grants each Member State certain number of votes weighted according to their size and population.

framework of the EU draws on general theories of bargaining and negotiation to argue that states' relative power is shaped mainly by asymmetrical interdependence and that governments which would gain more through a common agreement tend to offer more compromises in order to accomplish it. In his analyses, Moravcsik primarily looks at the treaties paving the way for European integration. In Moravcsik's theory, national governments choose to cooperate when induced or constrained to do so by economic self-interest, relative power and strategically imposed commitments (Moravcsik, 1999).

To underpin the theory, Moravcsik makes use of three major explanations. First, he emphasizes the significance of national preferences and argues that they are by and large formed by a series of rational economic interests which lead to a policy demand. National preferences are defined as an ordered and weighted set of values placed on future substantive outcomes (p. 24). Moravcsik argues that these preferences contain both positive- and zero-sum elements, which define the terms of the bargaining game among national governments. These preferences need not necessarily be uniform across different issue areas nor need they be grounded in material concerns (p. 23). Second, Moravcsik argues that interstate bargaining forms the policy supply and states that EU-level bargaining and negotiations reflect the relative power of the Member States, which in turn leads to various distributive outcomes. According to Moravcsik, states develop strategies and bargain with one another to achieve compromises that realize those national preferences more efficiently than in the case of unilateral action (p. 20). Third, Moravcsik explains the emergence and role of supranational institutions. He states three reasons for the transfer of sovereignty to supranational institutions by the Member States. These reasons are the commitment to European federalism, economizing on the analysis of information by centralizing technocratic institutions and the wish of national governments to control one

another and increase joint gains (Moravcsik, 1999, p. 3-9). In the light of these three elements, liberal intergovernmentalism underlines state preferences with an emphasis on rational cost and benefit calculations which by and large determine the conditions of interstate bargaining in the EU. As cost and benefit calculations are important, unanimity is the rule for decision-making as it allows Member States to preserve the power to veto any decision that runs contrary to national interests. In this sense, an intergovernmental organization involves intergovernmental bargains in which government representatives appear as the most salient actors for decision-making. Intergovernmental bargains, as the key for European integration, are dominated by national preferences shaped by domestic developments and interests (Kurt, 2006). Hence, bargaining outcomes determine who “won” and “lost” the negotiations and how gains are distributed (Moravcsik, 1999, p. 51).

Neill Nugent (2006), a supporter of liberal intergovernmentalism, assumes that rational state behavior determines the most appropriate means of achieving domestic policy objectives. Nugent defines intergovernmentalism as the arrangements whereby nation states, in situations and conditions they can control, cooperate with one another on matters of common interest. The existence of control, which allows states to decide on the extent and nature of this cooperation means that national sovereignty is not directly undermined (p. 558). Similar to Moravcsik, Nugent argues that the outcome of bargaining among the states is determined by their relative power. Simon Hix (1999) explains European integration in two stages. First, domestic actors and their interests compete within the national context in order to be supported by their governments at the EU level. Second, European integration is promoted by intergovernmental bargains where supranational institutions have a limited role. Vink (2001) argues that the domestic interests of Member States in European cooperation vary greatly. National governments (especially from frontrunner countries such

as Austria, Germany, Sweden and the Netherlands) find themselves in tricky situations especially with regards to sensitive issues such as immigration and asylum. To overcome this dilemma, implementing restrictive policies by "locking in" European cooperation may be the only solution for these frontrunner countries. Once "locked in" European coordination, however, national governments seek opportunities to circumvent binding policies which are based on the harmonization of national regulatory practices. Vink (2001, p. 21) suggests that defection is often not an option for a small but active country, and there may be no other option than making a compromise with other Member States based on the lowest common denominator. Harmonization of standards to the lowest common denominator allows Member States to maximize the benefits of interstate bargaining while lowering the costs of joint policies which could lead to significant changes in national law (Moravcsik, 1993). Furthermore, if a government is biased toward outcomes going beyond the lowest common denominator, it is least likely to support the "core" agreement and give concessions to reach an efficient outcome (Moravcsik, 1999, p. 55).

Moravcsik's theory clearly deviates from what Jean Monnet and his federalist counterparts had long supported. Contrary to the neofunctionalist explanations emphasizing the spill-over effects of European integration as suggested by Ernst Haas, Moravcsik draws on general theories of bargaining dominated by asymmetrical interdependence reflective of the relative power of the Member States. The role of supranational organizations is also undermined in liberal intergovernmentalism. While intergovernmentalists argue that supranational institutions may be created and empowered by Member States to assist them, supranationalists argue that these institutions do not remain strictly under the control of national governments (George and Bache, 2006, p. 26). For intergovernmentalists, national

governments often choose to constrain the power of supranational institutions especially when important national interests are at stake.

Nugent (2006, p. 558) writes that supranationalism involves states working with one another in a manner that does not allow them to retain complete control over developments. That is, states may be obliged to do things against their preferences and their will because they do not have the power to stop decisions. The supranational theory, derived from a strand of neofunctionalism, underlines the role of supranational officials, such as Jean Monnet and Jacques Delors, in providing the political entrepreneurship needed to overcome inefficient bargaining (Moravcsik, 1999). The supranational bargaining theory argues that supranational institutions influence the bargaining process through persuasive information and ideas. According to this definition, supranationalism involves some loss of national sovereignty since national governments may place their interests below those of supranational actors and thus the power of decision-making is not centralized in the governmental procedures of the Member States. Furthermore, a spillover from economic to political integration occurs as an outcome of progressed European integration. According to supranationalism, supranational institutions and their policy-making devices (such as QMV) are above the nation-state. Furthermore, compliance of the Member States to supranational organizations and their decisions is subject to judicial review by an independent court (Kurt, 2006). The existence of autonomous supranational institutions and officials is said to distinguish the EU from other international institutions and to explain its success in European integration; without the influence of supranational officials, European negotiations would have remained at a lowest common denominator of specific national interests (Moravcsik, 1999). According to supranationalism, interstate bargaining results not from the deliberate choice of national governments but from the unforeseen consequences

of complex negotiations among related issues, prompting integration forward through spillovers (p. 53). In this respect, the Commission has a key role in assuring a compromise.

Pollack (1997, p. 121) argues that the decisive importance of supranational officials in European integration is and remains “the most common and far-reaching claim” found in the literature on the EC. From Jean Monnet in 1950s to Jacques Delors in 1980s, supranational officials have continuously looked for advancing proposals, achieving compromises and mobilizing domestic interest groups. They have a key role in initiating negotiations by advancing proposals that direct the attention of national governments to common problems. With its direct and privileged access to the European Parliament, press and other means of the media, the Commission breaks down the monopoly of technical, legal and political information held previously by national governments (Moravcsik, 1999). As supranational officials lack financial means or the threat of military action, their influence only comes from the manipulation of information and ideas which generate the bargaining power in negotiations. The manipulation of information and ideas allow supranational officials to act as policy initiators, mediators and mobilizers who influence the preferences, strategies of national governments (p. 57). Thus, technically, legally and politically, the entrepreneurial activity, expertise and knowledge of supranational officials play a central role in the EU policy process according to the supranational theory of European integration (p. 58).

What are the main diverging aspects of the two theories? In line with the supranationalist approach, Member States pool and delegate sovereignty to international institutions as a result of their commitment to European federalism. However, in liberal intergovernmentalism, governments pool and delegate sovereignty to international institutions in order to control one another, especially in cases where potential joint gains

are large (Moravcsik, 1999, p. 9). Furthermore, pooling and delegation are likely to occur more not where ideological conceptions of Europe converge but where governments seek to compel compliance by other governments with a strong temptation to defect (p. 10). Unlike liberal intergovernmentalists, supranationalists argue that the entrepreneurship provided by supranational institutions decisively changes the outcomes of interstate bargaining (p. 13). Challenging this view, liberal intergovernmentalism argues that European integration can be best explained as a series of rational choices made by national leaders who act as their own political entrepreneurs (p. 18). These leaders are concerned with the distribution of benefits, which are substantially shaped by the relative power of governments, understood in terms of asymmetrical interdependence (p. 52). Thus state preferences and the asymmetries in the intensity of these preferences substantially define governments' relative power in the negotiations (Moravcsik, 1999, p. 9). In addition, preferences are primarily shaped by economic interests. Another difference between the two theories is the nature of government positions during negotiations. The supranational bargaining theory suggests that national positions should be unstable due to changes in available information during the negotiation process as positions may change if supranational officials provide new information in achieving an efficient outcome. On the other hand, the intergovernmental bargaining theory argues that national positions are stable as information is evenly distributed among governments, leaving supranational officials without any advantages (p. 55). While the supranational theory underlines the advantage of supranational officials in providing political entrepreneurship through knowledge and expertise, intergovernmentalists argue that supranational officials have no advantage as only national governments and societal groups may act as effective policy entrepreneurs (p. 56). Hence, in intergovernmental theory, negotiations almost exclusively focus on the distribution of gains

unlike suggested by the supranational perspective which argues that negotiations are concerned with achieving an efficient policy outcome. According to intergovernmental bargaining theory, policy outcomes can be efficient without supranational action. On the other hand, supranationalist views of bargaining suggest that pareto-efficient outcomes need supranational intervention, specifically if "package deals" or innovative proposals are involved (p. 55). Thus, the supranational bargaining theory argues that "package deals" or innovative proposals can hardly be achieved without supranational assistance.

It has to be mentioned that the supranationalist versus intergovernmentalist debate is only a part of the theoretical puzzle explaining the process of European integration. There have been important attempts to get away from the supranationalist versus intergovernmentalist debate involving scholars from many disciplines such as comparative politics and policy analysis (George and Bache, 2006). George and Bache (p. 28) argue that beginning from the supranationalism versus intergovernmentalism debate, a group of scholars led by Wayne Sandholtz and Alec Stone Sweet (1998) offered an alternative cutting through this dichotomy by locating their approach in neofunctionalism. The authors tried to explain the different levels of supranationalism that existed in different policy sectors by arguing that European integration would continue more by rational interests responding to the changed circumstances emerged by the existence of the EC than by any idealistic commitment such as supported by federalists (George and Bache, 2006, p. 28). Neofunctionalism is one of the most influential "classical" integration theories of regional integration, developed in the 1950s and 1960s by Ernst Haas. Neofunctionalist explanations of European integration underline the unintended consequences of integration supported by supranational officials whose political entrepreneurship prompts further cooperation (Moravcsik, 1999, p. 13). Governments choose to cooperate mainly due to the need for

centralized and expert planners (p. 14). Multilevel governance has also strong antecedents in neofunctionalism although it is a theory about the nature of the EU rather than a theory trying to explain European integration (George and Bache, 2006, p. 30). According to multilevel governance, actors at supranational and sub-national level play important roles suggesting that national governments are not totally in control of European policy-making (p. 31).

It may be said that although there are various explanations for the process of European cooperation, the supranationalist versus intergovernmentalist debate has remained as an important theoretical explanation. As I support that the comparison of these two theories provides an important framework for assessing the progress of European integration in the field of immigrant integration, the supranationalist versus intergovernmentalist are placed at the center of the theoretical Chapter of this thesis. When immigration issues were included in the third pillar with the Maastricht Treaty, Member States clearly demonstrated their concerns over national sovereignty as decision-making in the third pillar did not have a supranational character.[3] This situation is also reflective of the tension between supranational institutions and the Council of Ministers representing the Member States. Although the tension between the Commission and the Council has been salient in many areas of European cooperation since the establishment of the European Coal and Steel Community (ECSC), creating supranational immigration and immigrant integration policies have proved to be one of the most sensitive issues for the nation-state. It is for this reason that immigrant integration is selected as the issue area from which a supranational or

[3] With the Maastricht Treaty which entered into force in 1993, Member States decided to establish a three-pillar structure composed of the Community pillar, Common Foreign and Security pillar and the Justice and Home Affairs pillar. With regards to decision-making, the Community procedure is used for the first pillar and the intergovernmental procedure is used for the other two pillars. With the entry into force of the Lisbon Treaty in 2009, the three-pillar structure was abandoned.

intergovernmental point of view on European integration is to be detected. If Member State governments feel it necessary to transfer competences to EU institutions in the field of immigrant integration, there must be important national motivations that have led to European-level initiatives paving the way for Directive 2003/109/EC. The matter becomes more complicated if the Directive in question has not led to any desired level of progress in terms of the status and rights of TCNs which is adherently supported by the supranational Commission. Hence, the question of where national preferences come from becomes very important.

Based on the supranationalist versus intergovernmentalist debate, which factors have played an important role in EU reform regarding immigrant-related matters? In this respect, two hypotheses related to the analytical approaches on negotiation outcomes are to be analyzed. The first hypothesis suggests that the Commission is not very influential and the Member States determine the extent and content of cooperation leading to the adoption of Directive 2003/109/EC. Policies have tended toward the lowest common denominator (Moravcsik, 1999) as Vink (2001) suggests in his analysis of cooperation in the field of asylum cooperation. The second hypothesis, on the other hand, suggests that the supranational Commission is influential as a political entrepreneur and EU level decision-making in immigrant matters is incipient supranationalism limiting national choices (Sassen, 1999). In accordance with this perspective, Member States prioritize the successful integration of immigrants above national interests. Thus, in each Chapter, the following question is kept in mind. Does the pledge for the formation of common policies at the EU level demonstrate national concerns as a liberal intergovernmentalist would suggest, or do Member States move in this direction because they believe in the supranational project in progressing common EU norms supported by the supranational Commission? In order to discover the

answers to these questions, I will first demonstrate the diverging perspectives of the Commission and the Member States in the area of immigrant integration. Then, I will devote specific attention to the successive rounds of negotiations in the Council and examine whether Directive 2003/109/EC has led to any progress in terms of the status and rights of TCNs as targeted by the Commission, since this analysis is expected to enlighten the question of what prompts Member States to cooperate in the field of immigrant integration. By examining whether the adopted Directive (2003/109/EC) has led to any real progress in terms of the status and rights of TCNs or has been adopted through an agreement on the harmonization of national standards to the lowest common denominator, I will try to reach a conclusion with regards to which theoretical perspective better explains European cooperation in the field of immigrant integration. The lack of any progress in the status and rights of TCNs in Germany and the Netherlands will be indicative of a liberal governmental approach to European integration in the field of immigrant integration while any concrete progress (in the status and rights of TCNs) will add value to the supranational theory anticipating European negotiations to be conducted with the aim of reaching an efficient outcome.

For the purpose of this process-tracing, primary sources adopted by the EU institutions, namely the European Commission, Council of Ministers, the European Parliament, the European Court of Justice and the European Council, together with official documents, speeches and press declarations by the national governments and politicians of the Member States in question will be used as the yardsticks. Secondary sources related to immigration and immigrant integration will also be made use of. Furthermore, empirical projects which contribute to a more recent classification of countries' integration policies, namely the European Civic Citizenship and Inclusion Index (Geddes *et. al*., 2004) and Migrant Integration

Policy Index[4] (MIPEX) will also be referred to in order to better observe the changes in the analyzed countries' integration policies.

[4] MIPEX measures the integration policies of 25 Member States and three non-EU countries (Canada, Norway, Switzerland) in six policy areas; labor market access, family reunion, long-term residence, political participation, access to nationality and anti-discrimination. The policies of the Member States are compared to a common normative framework, which is composed of European standards of best practices derived from EU Directives, from Council of Europe Conventions or EU Presidency Conclusions. The policy indicators measure Member States' current integration policies against these highest standards (Niessen *et. al*., 2007, p. 19). Thus, MIPEX will be a helpful tool to have an idea related to Member States' integration policies.

CHAPTER 2

CONCEPTUAL FRAMEWORK: A COMPARATIVE APPROACH TO THE PERSPECTIVES OF THE EUROPEAN COMMISSION, GERMANY AND THE NETHERLANDS

EU institutions have long been silent on the issue of TCNs; however, with the Amsterdam Treaty, the Commission in particular has had the possibility to develop a comprehensive and legally binding framework for the integration and rights of TCNs and has performed as a fervent actor in this process even though its role has been restricted and in some cases hindered by opposition from the EU Member States. This is not surprising as the Commission and different Member States may have different perspectives toward the integration of immigrants. When the literature on immigrant integration is reviewed, it is possible to observe a significant level of disparity of policies depending on the specific circumstances and historical realities of every country (Doomernik, 2005; Favell, 2001; Jacobs and Rea, 2007). The Dutch Research and Documentation Centre (WODC) states that disparity also exists with regards to what the terms immigrant and integration refer to in each society (2007). Therefore, it is possible to find several situations regarding the definition of immigrants involved in the process of integration. Before starting to deal with the integration measures and policies of the EU, Germany and the Netherlands, it is necessary to elaborate on the concepts that will be used during the research. The two key concepts are immigrant and integration, on which a final definition is hard to be agreed upon given the various realities of different Member States. Hence, in this Chapter, in order to circumvent any conceptual inconsistency, these key concepts will be described with regards to the contexts they have been implemented. First, the integration approach of the EU and in

particular the Commission, which is the institution coming up with an integration definition, will be explained. Following the Commission's perspective, I will look at how Germany and the Netherlands perceive immigrant integration in the face of the Commission's approach and discuss the possible interactions among these differing perspectives.

2.1. Definitions of Third-Country National and Immigrant

TCNs contribute positively, both economically and culturally, to the host countries, and they make up an integral population within European society (Borjas, 1995; Portes, 1997; Apap, 2004). Although it is hard to accurately state the number of TCNs residing in the EU, based on the reports of a wide range of organizations, it could be said that out of the EU total population, TCNs account for almost 5%, which refers to 14 million.5 Most TCNs arrive in Europe from African (Algeria, Egypt, Libya, Morocco, Sudan, Tunisia, Western Sahara) and Asian (India, Pakistan, Afghanistan) countries for reasons of war and regional conflicts, overpopulation, poverty and climate change. As currently constituted, TCNs in the EU – especially the ones who have been granted permanent long-term resident status – enjoy some rights to a certain degree. Until now, the rights granted to long-term resident TCNs include; access to employment, access to education, access to health services, access to appropriate accommodation, freedom of movement within the Member State, family reunification rights, and the possibility to move to another Member State for the purpose of study or employment after the granting of a long-term status. A point worthy of note is that TCNs and their rights across the EU are not homogenous. As specific TCNs from certain countries enjoy greater rights than the nationals of other countries due to the association

[5] This figure was provided by Jennifer Jun (2007) in the article "Towards Full Inclusion: Long-Term Resident Third-Country Nationals as Model Union Citizens". Rijksuniversiteit Groningen*,* Universidad de Deusto-San Sebastian.

agreements that the EU has concluded with third countries, there are gradations of the rights of TCNs. This situation renders the concept of TCN a fluid character in EU law (Uçarer, 2010, p. 5). Within the EU context, the definition of TCN is "any person who is not a national of an EU Member State who is granted legal residence in the territory of a Member State" (Snel et. al., 2003). It shall be noted that throughout the study, the terms "immigrant" and "third-country national" may be used interchangeably. This implies that the term "immigrant" will refer to non-naturalized immigrants coming from outside the EU, excluding EU nationals with immigrant background. Therefore, for practical reasons, second- and third-generation immigrants and immigrants from the former colonies of the Member States who have already acquired the citizenship of one of the EU Member States will not be included in the immigrant population examined in this study. The reason why I solely focus on TCNs is the very fact that today, their number in Europe is far from negligible and their economic and social cohesion with the European society is significant. Furthermore, as TCNs do not possess the nationality of an EU Member State, the issue of providing them with direct rights poses a serious question on the institutional competences of the EU, demonstrating the tension between supranational actors and sovereign nation-states.

The most common description for immigrants in a country is that they are permanent residents with a different citizenship. In both academic and political circles, the debate on citizenship often neglects the position of non-citizens (Klaver and Odé, 2008). By virtue of the studies of immigration experts, the concept of citizenship has enabled us to comprehend the position of non-citizens as well (Kymlicka, 1995). Modern notions of citizenship tend to emphasize that the meaning of citizenship is no longer limited to legal and political aspects only (Castles and Davidson, 2000). In accordance with this perspective, the positions of immigrants in a society, and hence the status of TCNs in Europe, is primarily about equal

rights and participation. Since and even before the beginning of the nation-state in Europe, the population of the city or the state was divided into citizens, *i.e.* full members of the political community, citizens without full citizenship rights and others, who had come from another city or state, *i.e.* foreigners or aliens. Since cities and states have had their territorial and population borders, whether visible or imagined, the question of how to deal with people who crossed these borders has always been of crucial importance. In some states, immigrants were granted full citizen status, either immediately upon admission or after long residence. However, in some states, immigrants were granted a second class membership (Groenendijk, 2006). It is possible to say that within the EU context, the status of immigrants has remained unclear until the 1990s. The status of immigrants received a concrete legal foundation in European law as a result of two important judgments by the European courts in 1990s. In 1990, the right of residence of Turkish workers was recognized by the ECJ since it was held that the status of Turkish workers in many respects was similar to that of immigrant workers from the Member States. In 1991, the European Court of Human Rights stated that the expulsion of a TCN with long-term residence could be a violation of art. These two judgments demonstrated that matters regarding TCNs were no longer solely related to national law, but subject to limits set by European law and institutions.

For the EU and most of the national policies, the main target group of integration policies has been immigrants who are legally long-term residents. The Council Directive regarding the status of these long-term residents (2003/109/EC) aims at providing a common EC residence status for TCNs. The scope and content of this Directive will be elaborated in the following chapters. Broadly put, Directive 2003/109/EC stipulates that, "Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the

submission of the relevant application" (Council of Ministers, 2003a). Therefore, the Directive, and this study exclude the following categories of non-nationals due to their precarious situation or because they are resident on a short-term basis; students and those following vocational training, the beneficiaries of temporary or subsidiary forms of protection, refugees and those who have applied for the recognition of this status, temporary residents, and those holding diplomatic or consular protection (Carrera, 2005). Therefore, when reference is made to immigrants or TCNs in the selected Member States, for practical reasons, this excludes the abovementioned groups of people. Across the world, data on immigration movements are derived mainly from primary resources, including census, survey and governmental statistics. A noteworthy difficulty here is that the number of immigrants is not possible to ascertain with any accuracy, both as a result of a lack of census data and the problem of definition which stems from the differing understandings and expressions of the term "immigrant" in each EU Member State. Diverse types of national statistical information also lead to the incompatibility of the data on immigrants in each country, which also obstruct counting and classifying inhabitants of foreign origin or ethnic background. The two countries differ in their categorization of immigrants and this leads to the fact that integration policies tend to target different groups of people in each country. To overcome this problem, I see it crucial to make clear what the term "immigrant" refers to in each of the Member States.

Table 1. Total population and TCN population in the Netherlands and Germany

Country	Total population	TCN population	TCNs as part of the population	Largest TCNs of origin
The Netherlands	16,334,210	457,490	2,89%	Turkey, Morocco, United States
Germany	82,437,995	4,612,420	5,6%	Turkey, Serbia and Montenegro, Croatia

Source: MIPEX (2006)

Table 1 shows the total population and TCN population within the selected EU Member States. According to the table, the highest percentage of TCN population among the two countries is in Germany, which is 5, 6 per cent and is mainly composed of people from Turkey, Serbia and Montenegro, and Croatia. On the other hand, TCNs in the Netherlands are mainly from Turkey, Morocco and the United States. It is due to this high percentage of TCN population that the Netherlands and Germany are selected as the two EU Member States that will be examined in this study. How do these two Member States differentiate between their immigrant and non-immigrant population within their domestic contexts? In the Netherlands, the distinction between nationals and non-nationals becomes effective at the official level through the National Statistics Office. The WODC states that,

> In the populations or minorities considered to be immigrants other distinctions are established related to the place of birth of the person: in another country (first generation and immigrants, strictly speaking) or in the host country (second generation or descendants). Both situations may also be contemplated as foreign nationals (when they keep their nationality of origin) or nationals if they have acquired the nationality. Thus, the categories of "immigrant" and "descendant" are compatible with that of "national" or "foreigner". The classification between EU and non-EU is not used (WODC, 2007, p. 22).

On the other hand, in Germany, the term “immigrant” (*Einwanderer* or *Zuwanderer*) does not exist at the official level. Thus, in the statistics, there is the traditional distinction between “German” and “foreigner”. This distinction blurs the fact whether a person

immigrated or not, as classification is based on citizenship. There are also other factors that complicate the classification of immigrants. First, second generation of immigrants (*i.e.* born and socialized in Germany) are dominantly included in the category of foreigners as long as they are not naturalized (or born after 2000 when the Citizenship Law changed and hence this group receives German citizenship automatically by way of birth) (WODC, 2007, p. 22). On the other hand, since 1990, Germany has admitted ethnic German immigrants (*Aussiedler*) from Eastern European countries and the former Soviet Union, more than 2.4 million. Since they acquire German citizenship immediately upon arrival, they do not show as foreigners or immigrants in the German statistics, but as German nationals, despite the fact that they are recent immigrants. Hence, German statistics are skewed in a double way with regards to the immigrant population (p. 23). Although new approaches to modify the statistical system have been put forward by the relevant authorities, a clear approach at the national level has not yet been operationalized. However, on the local and municipal level, new approaches of modifying the statistical system have been operationalized (namely in the cities of Wiesbaden and Stuttgart). On the national level, the microcensus, a one percent sample of the German population applied the category "immigration background" for the first time in 2005 (p. 24).

2.2. Definition of Integration and Debating the Three Perspectives of Groenendijk

As a result of immigration from one country to another, an interplay between immigrants and the receiving society takes place, leading to pressures for the newcomers to adjust themselves to the circumstances of the host country. In social sciences, this process has been described by different terms; absorption, adaptation, race relations cycle, assimilation,

acculturation, inclusion, incorporation and, of course, integration (Heckmann and Schnapper, 2003). Integration is an area of public policy characterized by the paradoxical dilemmas it sets for the conventional principles of Western liberal democracy, and the securing of social order in pluralist societies (Favell, 2001). During 1980s and 1990s, the emergence of "ethnic dilemmas" across Western society posed a real threat to the main principles of liberal democracies, as the fragile question of how social order will be secured in pluralist societies proved to be difficult given its social, economic and political implications. Before elaborating on the perspective of integration that is enshrined in this study, I find it useful to provide some important definitions of the concept. In the broadest sense, integration is primarily a means of removing gross inequalities between various population groups (Hoogenboom, 1992). Integration may also be defined as the process of inclusion of immigrants in the institutions and relationships of the host society (Bosswick and Heckmann, 2006). In parallel with this view, integration may also be defined as a "compendium of processes of inclusion tackling social exclusion and full access to a set of economic, political, social and cultural rights and duties" (Carrera, 2005). When speaking of integration, one should bear in mind that the concept has different dimensions which include social, political, legal and economic elements.

For the purposes of this study, I wish to consider and focus on the legal dimension of integration, as Directive 2003/109/EC deals with the legal status and rights of long-term resident TCNs within the Member States. To this end, I will use Kees Groenendijk's three main competing legal perspectives of integration. The first perspective is concerned with providing the immigrant with a secure legal status which will enhance the immigrant's integration in the society (Groenendijk, 2004, p. 120). The second perspective argues that "naturalization (or a permanent residence status) should be the remuneration for a

completed integration, and thus naturalization is the crown on a successfully completed integration" (p. 114). Last but not least, according to the third perspective, the immigrant's assumed unfitness to integrate is the ground for refusal or admission to the country (p. 115). With regards to the second and third perspectives, integration is predominantly a one-way process in which the immigrant is responsible for integrating into the host society. In contrast, the first perspective suggests that the institutions and legislative arrangements of the host country assume an important responsibility in providing the immigrant with a secure legal status which will facilitate the integration process. Formulated in a less abstract way, this perspective is concerned with a strong legal status and equal treatment of TCNs as the important instruments for societal cohesion and integration. In this study, the conceptualization of legal integration as elaborated by Groenendijk is taken for granted as the framework definition of integration; therefore, the integration policies of Germany, the Netherlands and the Commission will be described in accordance with this conceptualization.

2.2.1. The Integration Approach of the European Commission

Although Community law has long supported the rights of workers from the Member States, an EU approach to the integration of workers from third countries is not a deep-rooted one. Rather, the EU has attempted towards creating a framework for integration only after the 1999 Tampere Summit. The Tampere Summit is a crucial step in equalizing the rights of immigrants with those of Member State citizens, as Member States pledged a new approach by proposing that TCNs that are long-term residents in the EU should enjoy rights comparable to those of EU citizens. This attempt constituted a novelty within the EU context

given both the EU institutions' and the Member States' tendency to prioritize preventing immigration instead of focusing on the integration of already established immigrants. In accordance with the approach agreed upon in the Tampere Summit, the Justice and Home Affairs (JHA) Council of 2004 states that,

> Integration is a dynamic, long-term, and continuous two-way process of mutual accommodation, not a static outcome. It demands the participation not only of immigrants and their descendants but of every resident. The integration process involves adaptation by immigrants, both men and women, who all have rights and responsibilities in relation to their new country of residence. It also involves the receiving society, which should create the opportunities for the immigrants' full economic, social, cultural, and political participation (Council of Ministers, 2004a, p. 19).

According to this definition, integration is a two-way process based on the mutual rights and corresponding responsibilities of TCNs meaning that immigrants should respect the fundamental norms and values of the host society without having to give up their own identity. This definition clearly states that the integration process involves both the immigrant and the host society as it is not solely the responsibility of the immigrant to adapt to the conditions of the new country of residence and the host country is also responsible for providing the immigrant with a secure legal status and rights equitable to those of Member State nationals. It should be noted that in its 2003 Communication, the European Commission stressed that although naturalization is a means of facilitating integration, it need not be the ultimate aim of the integration process (European Commission, 2003a). This suggests that unlike the second view which sees naturalization as an end point that comes after the completion of successful integration by the immigrant, the Commission's view intertwines the two concepts – naturalization and integration – and points to the role of naturalization in facilitating integration which may also continue after an immigrant acquires the citizenship of the country he/she is living in. This view is also salient in the launch of the concept of "civic citizenship" by the Commission. In the EU Member States, legally resident

TCNs are excluded from any political process because they do not hold the nationality of their countries of residence (Leonard and Griffith, 2005). This becomes a factor that negatively influences their integration with the society. This is mainly because immigrants inside a national territory are in some way a member of that particular community since they take part in many aspects of societal life through activities such as participating in the labor market, sending children to school, and paying taxes (Apap, 2002). Hence, with the aim of promoting a sense of belonging and creating a specific set of rights and responsibilities distinct from nationality, the Commission introduced the concept of "civic citizenship" in 2000. The word "civic" is related to the relationship of citizens with the State, that is, "the exercise of their rights and responsibilities towards the State" (European Parliament, 2005). According to Geddes *et. al*.,

> Civic citizenship includes the following rights; right of residence, protection against expulsion, access to employment and self-employment, access to family reunification, access to education, vocational training and recognition of qualifications, access to social security and social assistance, right of association and membership including trade unions, right of participation in political life at (at least local level), right to vote in European Parliament elections, right of movement for work and study purposes to any state in the EU (2004, p. 18).

The Commission aims at providing a common baseline for all TCNs in the EU through the concept of "civic citizenship". The immigrants who are the targets of this initiative are TCNs legally resident on the territory of an EU Member State for at least five years and who have, until now, enjoyed no privileged status under Community law (Apap, 2002). As Geddes *et. al.* (2004, p. 18) states, such integration policies "contribute to social cohesion and economic competitiveness, whilst remaining faithful to the Union's basic principles of legal and political equality and social inclusion."

Due to the abovementioned elements – seeing integration as a two-way process and naturalization as a means of integration rather than the final outcome, and the launch of

"civic citizenship" to grant TCNs specific rights even when they do not hold the nationality of the EU Member States – demonstrate that the EU approach to integration conforms to the first perspective of integration which stresses equal treatment and guaranteeing the legal status of the immigrant, as elaborated by Groenendijk. However, it should also be mentioned that the absence of second perspective, naturalization or a permanent residence status as remuneration for a completed integration, is not surprising given the EU's lack of competence in the domain of citizenship, which is controlled by the Member States. Therefore, the EU approach and the Commission's view in particular is by and large dominated by the first perspective on integration, which enshrines a secure legal status for and equal treatment of TCNs with Member State citizens. By the same token, Directive 2003/109/EC is framed and drafted by the Commission in accordance with this perspective which underlines a strong residence status and equal treatment as the main factors stimulating integration.

2.2.2. The Evolving Integration Policies and Approach of the Netherlands

After concluding that the dominant approach within the EU context is the first perspective which stresses the importance of providing the immigrant with a secure residence status and equal treatment with Member State citizens, I will now try to give some information about how integration is perceived and implemented by the two Member States which will be analyzed in this study. Like the term immigrant, integration can hardly be defined with an all-encompassing conceptualization that fits every national context. As Favell (2001) states, Member States demonstrate differing patterns of philosophies on what immigrant integration should or should not be. Approaches towards integration may differ not only

from one country to another but also within the same country. Illustrative in this respect is the Netherlands, where two separate departments within the Ministry of Justice possessed differing views on how the integration of non-Dutch immigrants should take place. While the Directorate Private Law, which dealt with naturalization applications, has favored the view that the integration of immigrants was in the interest of the Dutch society, the Directorate Aliens Affairs has perceived itself as the country's gatekeeper (Groenendijk, 2004, p. 111). In 1993, these two departments were merged into a new agency called the Immigration and Naturalization Service (IND). As a result of the fusion between the Directorate Private Law that consisted of 35 civil servants and the Directorate Aliens Affairs which consisted of almost 900 people, after 1993, a series of restrictions have been adopted, culminating in a change in the Act on the Dutch nationality in 2003. Due to this change, immigrants who apply for Dutch citizenship are now required to pass both a test on the Dutch society and a language test assessing the applicant's ability to speak and understand the language of the host country.

This example shows that it might be misleading to associate one country with a specific model of integration, as national preferences may change over time depending on many different factors such as the political party in power or political, social and economic developments that impact upon the domestic context. As mentioned above, the Naturalization Section (Directorate Private Law) primarily regarded naturalization or long-term residence as a phenomenon that is in the interest of the Dutch society as a whole. In accordance with this view, integration is primarily a two-way process in which the host society has to create room for the immigrants to facilitate their integration (Groenendijk, 2004, p. 113). As a result of the merger between the two Directorates, the impact of the Naturalization Section and thus the first perspective on integration, which regards

integration as a favorable process benefiting the society as a whole, diminished since the influence of Directorate Aliens Affairs became significantly higher. In addition to these two departments, one should also mention the role of the Integration Policy Department within the Ministry of Interior. Groenendijk writes that during the last decade, this department, which was responsible for the implementation of the 1998 Act on the obligatory Dutch language and integration courses for immigrants, gradually got more assimilationist overtones (p. 114). After the victory of Pim Fortuyn's party in the 2002 elections, a new Ministry for Aliens Affairs and Integration, whose first Minister became the former head of the aforementioned IND, was created. Furthermore, the Integration Policy Department was transferred to the Ministry of Justice, which did not have structured contacts with the municipalities where language and integration courses take place. Therefore, the Ministry of Interior retained its position as the link between the municipalities and national authorities. Groenendijk writes that from that time on, civic integration policies, consisting of integration and language tests and courses made it harder for immigrants to acquire a secure resident status (p. 111). Furthermore, the government explicitly stated that if immigrants are not able to integrate with the Dutch society, this may be a ground for refusal of admission or a barrier to a secure resident status and the equal treatment linked to that status (Government of the Netherlands, 2003; 2008). This statement is a clear demonstration of the third perspective on integration according to which immigrants assume the utmost responsibility with regards to their own integration.

Within international migration literature, the Netherlands has been one of the most studied cases (Entzinger, 1985; 2003; Lucassen and Penninx, 1997; Doomernik, 1998; 2005; Penninx, 2005; Vasta, 2006; Vink, 2007). The country provides an interesting example in its evolving approach toward immigrant integration in the sense that it has clearly shifted from

an ethnic minorities policy toward an integration policy putting emphasis on immigrants as individuals with specific responsibilities to integrate with the Dutch society. Historically, the Netherlands has been a country of immigration until about the late 18th century. Since 1800 until the 1960s, the Netherlands developed into a country of emigration (Penninx, 2005, p. 1). At the end of the Second World War, repatriates from former colonies, and from the 1960s onwards, guest workers (*gastarbeiders*) from Mediterranean countries – Italy, Spain, Portugal, Turkey, Greece and Morocco and Tunisia – arrived at the Netherlands. Although the Dutch government ended labor migration as a result of the oil crisis of 1973, the immigration of the family members of guest workers and asylum seekers continued. Since the late 1970s, immigration into the Netherlands has been mostly through asylum and family reunification. During most of the post-war period, the word "immigrant" with its connotations of permanent settlement was not used (Geddes, 2003, p. 104) and it was not until the 1980s that Dutch policy-makers realized that the Netherlands became an immigration country. Since it was assumed that the guest workers would return to their home countries after working in the Netherlands for a few years, the Dutch government did not have an official integration policy until 1980s, when a policy shift began to take place upon the recognition that the Netherlands is an immigration country (Vink, 2007).

The turning point came in 1979 with the advice of the Scientific Council for Government Policy (WRR) (1979), which warned against the dangers of not having an explicit integration policy stating that this may lead to the cultural isolation of the immigrant population. After the Council's advice to the government, policies related to integration began to be formulated on the basis of Ethnic Minorities' Policy, which aimed at promoting the socio-economic situation of specific ethnic groups who faced the danger of being isolated from the society. The Netherlands was hereby one of the first Western European

countries to develop such an integration policy (Penninx, 2005, p. 2). However, it has to be mentioned that the Dutch policy toward integration was initially envisaged as a minority policy, placing emphasis on the ethnic differences by immigrants as an important part of their social identity as an important pillar in a multicultural society (Geddes, 2003, p. 114). Four important aspects need to be mentioned with regards to the Dutch government's evolving integration approach. First, anti-discrimination policies were incorporated in the 1983 Dutch constitution and the 1994 Equal Treatment Act which created a specialized national body to prevent discrimination – the Equal Treatment Commission (ETC). Second, by focusing on the political participation and citizenship status of immigrants, in 1985, local voting rights for immigrants after five years of residence were introduced. Third, the naturalization policy was facilitated after the 1986 Nationality Act, which replaced the Act from 1892 and included more elements of *jus soli*. Dual citizenship was completely allowed between 1992 and 1997, leading to a peak in the number of naturalizations to more than 80,000 in the year of 1996 (Vink, 2007, p. 340). Fourth, the Dutch government aimed at instituting consultative bodies in which representatives from the government and immigrant population discuss issues related to integration. For the government, subsidizing these consultative bodies both at the national and local level, and engaging them in the formulation of integration measures became an important aspect of policy implementation (Penninx, 2005, p. 3). These policies revealed that the Dutch government was keen to provide equal opportunities for immigrants without non-nationals necessarily being required to acquire Dutch nationality (Geddes, 2003, p. 114).

Although it is hard to give a precise description for the Dutch integration model, as Vink (2007, p. 345) writes, "the Dutch approach, in many ways, seems to provide a classic illustration of liberal multiculturalism in action – a relatively liberal immigration and

naturalization policy combined with a strong anti-discrimination policy and a group-based identity policy", as the abovementioned developments show. Since 1980s, the Netherlands had pursued Europe's most prominent multiculturalism policy, which envisaged "emancipation for immigrants within their own ethnic infrastructure, including schools, hospitals and media supported by the Dutch state" (Joppke, 2007). However, Joppke (2004) talks about the "retreat of multiculturalism" in the Netherlands due to a declining willingness to tolerate diverse cultural practices within the framework of diversity. In a more recent study, Joppke (2007, p. 2) argues that "the supposedly difference-friendly, multicultural Netherlands is currently urging migrants to accept Dutch norms and values in the context of a policy of civic integration." Similarly, Han Entzinger (2003) argues that Dutch integration policies have demanded a greater extent of adaptation to Dutch norms and values, with a renewed emphasis on citizenship and shared values in response to earlier tendencies towards postnationalism and multiculturalism. Recent developments in the Netherlands seem to underpin these arguments. Multicultural policies began to come under fire in the 1980s and 1990s since the maintenance of social distance between immigrants and Dutch citizens prevented Dutch institutions to successfully accommodate newcomers (Geddes, 2003, p. 113).

How did this change take place in the Netherlands? Geddes (p. 115) writes that many of the same people establishing a multicultural ethnic minority policy had been influential in the cessation of the very same policies. Arguing for greater emphasis on values and culture, the liberal party (the VVD) and its leader Frits Bolkestein gained support within the domestic context. Furthermore, the rapid growth in the size of immigrant population most of whom did not have sufficient knowledge about Dutch society and language together with increasing unemployment and the rise of neo-conservative ideologies paved the way for the

growing emphasis on immigrants as individuals (Geddes, 2003, p. 116). In 1989, a WRR report suggested that immigrant integration should be considered as an important issue rather than putting too much emphasis on multicultural policies. When Christian Democrats were defeated in 1994, the shift toward socio-economic integration became more visible during mid-1990s, officially replacing the minority policy with integration policy. This new approach implied that multicultural trends and ethnic diversity would be replaced by an emphasis on Dutch norms and values as well as the Dutch language (Government of the Netherlands, 2003). This policy change signaled the shift toward civic integration policies, which were formally put forward with The Law on Civic Integration for Newcomers in 1998. In this year, the Dutch government introduced rules on language courses in their laws on the integration of TCNs; however, at that time the country did not intend to use language tests as a tool in regulating the admission and status of immigrants in the Netherlands (Groenendijk, 2006, p. 397). It was in 2002 when the idea of using civic integration tests for the regulating the status of TCNs received support in the Dutch Parliament. Hence, as currently constituted, integration tests are used as a tool in regulating the admission and status of immigrants within the Dutch society. Changes were also made with regards to the 1985 Nationality Law, which was amended by a 1992 circular permitting dual nationality. Nevertheless, this policy was abandoned in 1997 as a result of the opposition from Christian Democrats and the VVD (p. 117).

The 2003 New Style Integration Policy (*Integratiebeleid Nieuwe Stijl*) can be characterized as a farewell to multiculturalism as the cornerstone of Dutch integration policy (Snel *et. al*., 2003, p. 8). The New Style Integration Policy seems far from embracing cultural differences among different ethnic groups since it introduces the concept of "shared citizenship", which urges immigrants to accept and conform to "basic Dutch values and way

of life”. Joppke argues that the developments diminishing the space for multicultural policies have been a response by the political elites to the perceived failure of integrating immigrants within the Dutch society (2007, p. 6). After many years of political debate, this response was concretely embodied in the 1998 Integration of Newcomers Act (*Wet Inburgering Nieuwkomers*, henceforth referred to as WIN), which introduced a 12-month mandatory integration course[6] for most newly arrived immigrants and an obligation to pass an integration test at the very end. However, general participation to the courses was not sufficient and the evaluations of this practice showed that the level of language improvement was poor (Klaver and Odé, 2008). The rightist turn of the political climate after the murder of Pim Fortuyn in 2002 also pushed to the fore that the civic integration policies initiated by WIN failed to achieve the desired results. This paved the way for an agreement by the center-right government of Jan Peter Balkenende that the civic integration law should be revised in a way that immigrants should be aware of Dutch norms and values, replacing the rhetoric of “respect for diversity” (Joppke, 2007, p. 7). In an attempt to reinforce this stance, responsibility for integration shifted toward the Ministry of Justice, which perceived the matter as primarily a law-and-order affair (Entzinger, 2004). Furthermore, the financial costs of civic integration courses are now to be paid by the immigrants, although they were paid for by the state when the policy was first launched in 1998. Thus, it literally became true that everyone is responsible for his/her own integration, as an official in the Ministry of Justice described the philosophy of civic integration policies (Musso-van der Velde, 2005). The civic integration scheme first launched by WIN in 1998 was later broadened to include not only newcomers but also already established immigrants in the Netherlands. This stance

[6] Civic integration courses consist of 500 hours of Dutch language instruction and 100 hours of civic education and preparation for the labor market. For a detailed understanding in this issue, please see Christian Joppke (2007) 'Beyond national models: Civic integration policies for immigrants in Western Europe',West European Politics,30:1,1-22.

was especially endorsed by the hard-line Minister of Justice and Integration Rita Verdonk, who later had to abandon the bill due to its unconstitutional nature (Jacobs and Rea, 2007).

As a result, the Dutch approach shifted toward a restrictive stance, which became salient in the new 2003 Naturalization Law and the 2006 Civic Integration Abroad Act (*Wet Inburgering Buitenland*) introducing an obligatory civic integration exam for people who apply for residence permit from abroad. The new Integration Abroad Act replacing the WIN of 1998 suggests that family members from outside the EU need to pass a language test abroad as a new requirement for a long-term visa for family reunification (The Dutch Ministry of Housing, Spatial Planning and the Environment, 2006). Unless the applicant passes the test successfully, a visa for family reunion with a spouse in the Netherlands is not granted (Groenendijk, 2006). The aim of the new Act is to begin the integration process of immigrants before they come to the Netherlands, by testing their knowledge of Dutch society and Dutch language. With the new Act, different from the old one, not only newcomers but also the "oldcomers", who have already lived in the Netherlands before 1 January 2007, are also obliged to participate in a "civic integration course" and take a "civic integration exam". This obligation gives "civic integration duty" (*inburgeringsplicht*) to every non-national resident, except people who have sufficiently participated in the Dutch education system or successfully passed the naturalization exam (Vink, 2007, p. 347).

The debate on the presence of immigrants in the Netherlands and the policies to integrate them has also created a political space where anti-immigration rhetoric was used as a tool for gaining national support. In the 2002 elections, *Leefbaar Nederland* (LN), a political party founded in 1998, gained an important percentage of the votes (34.7) in Rotterdam. Then, Pim Fortuyn, who began his political career in LN, formed his own party, the List Pim Fortuyn (LPF) which became considerably salient in the run-up to the 2002

general election (Geddes, 2002, p. 118). Fortuyn and his extreme-right party have been especially salient with his strong criticism on immigration and Muslim immigrants. When Fortuyn was murdered due to his anti-Muslim expressions, this gave a major boost to the success of LPF in the elections and LPF became the second largest party in the Dutch parliament (Geddes, 2003, p. 118). Nevertheless, in the absence of Fortuyn, his disciples appeared on the verge of disintegration and experienced problems in negotiating a coalition with the Christian Democrats (p. 119). In the broader sense, the wave brought by Fortuyn did not only put into question the very issues of immigrant integration in liberal states, but also received international attention on the Netherlands.

The overall picture that these developments exhibit is that beginning from the late 1990s and influenced by domestic developments such as the murders of Pim Fortuyn and Theo van Gogh, the Dutch integration approach has unambiguously shifted from a praised multicultural approach to a rather restrictive one, *i.e.* a policy of obligatory integration, as supported by the new Integration Abroad Act which imposed strict requirements on the newcomers such as applying sanctions to immigrants who do not fulfill their responsibility to integrate (Carrera, 2005, p. 9). Over time, the dynamics of integration policy-making seem to have changed and evolved significantly, as illustrated by the succession of different policies; from the 1980s' Minorities Policy to the Integration Policy of the 1990s and eventually, effective since 2003, the Integration Policy New Style (Bruquetas, 2007, p. 22). The new policy places "a renewed emphasis on citizenship and shared values in response to earlier tendencies towards postnationalism and multiculturalism" (Entzinger, 2003). By shifting toward socio-economic integration and a form of civic education with 500 hours of training on Dutch norms, values and language (Geddes, 2003, p. 113), the Dutch government has put a growing emphasis on the responsibility of the immigrants in adapting to the Dutch society

rather than perceiving immigrant integration as a matter to de dealt with by the welfare state. State authorities are only responsible for the holding of standardized test at the end of the integration courses. This implies that the state is neither responsible for paying the costs of the courses nor for facilitating the integration process. The direction that the Dutch integration policy has moved to over time reveals that the Netherlands, previously a country embracing ethnic minority politics, have now embraced a relatively more restrictive policy as a result of developments the most important which are the rise of neo-conservative state ideologies, the internalization of the economy and the growing discontent with the presence of immigrants in the Dutch society (Geddes, 2003, p. 117). Undoubtedly, there are other factors that lie beneath. Concerns about immigrant loyalty have shifted the emphasis toward assimilation to Dutch culture and history (p. 118). Hence, through concrete policy changes over time, the multiculturalist model has been under strain especially during the post-Fortuyn and post-Van Gogh periods.

Due to this shift in mid-1990s, integration was redefined as “a process leading to the full inclusion and equal participation of individuals and groups in society” (cited in Entzinger, 2003). More recently, the Dutch New Style Integration Policy Letter describes integration as “a process that leads to obtaining shared citizenship and the participation in the society in which immigrants establish their residence” (The Dutch Ministry of Justice, 2004). As Carrera states, in this general description, integration is seen as a process and a desired final situation or some minimum legal targets that the immigrant should reach are not considered (Carrera, 2006). In this definition, the use of the concept of “shared citizenship” in the official policy language underlines that the immigrant shall conform to the prevailing social norms and value systems. The use of this concept implies that it is no longer sufficient that immigrants participate in the general social and economic areas of life, but they shall also

conform to the Dutch way of life, since unconformity may lead to the refusal of their admission into the host country, or a less privileged status, at least in terms of rights and participation (Klaver and Odé, 2008). Furthermore, in this perspective, immigrants themselves are taken individually and as a group, as well as the host society with its public service institutions (WODC, 2007). As part of the immigrant group, immigrants are expected to demonstrate their identification and loyalty with the Dutch society. As a result, the policy of ensuring immigrants' legal status by the Dutch state is placed at the bottom of the demand for immigrants' demonstration of commitment to the Dutch society, implying that immigrants should successfully pass an integration and language test in order to be granted a secure legal resident status and the rights associated with it.

Hence, it is likely that the Netherlands demonstrates a shift toward Groenendijk's third perspective of integration which implies that admission or refusal mainly depends on the ability of the immigrant to integrate into the Dutch society. The matter of conformity to and identification with the Dutch society serves as an essential element in the governmental definitions of citizenship or long-term residence (Government of the Netherlands, 2003; 2008). In addition, it should be noted that the second perspective can also be seen within the Dutch context given the meaning attached to the concept of naturalization by different political actors in the domestic arena. In December 2003, the Dutch Parliament stated that everything is lost after naturalization as the person can no longer be sent back (cited in Groenendijk, 2004, p. 112), implying a loss of control by the national authorities over the immigrant. In this view, instead of seeing it as a step within the integration process as a whole, naturalization is regarded as a tool of controlling immigrants and their rights regardless of whether successful integration is achieved or not.

2.2.3. The Integration Policies and Approach of Germany

During the 19th and first half of the 20th century, Germany was a country of emigration; however, in the post World War II period, Germany has become one of the most important destinations for immigration toward Europe. The arrival of guest workers, family members of guest workers, ethnic Germans from Eastern Europe and the former Soviet states, as well as asylum seekers have led to a growth of the immigrant population in Germany. Notwithstanding the striking increase in immigrant population, in the official discourse, Germany for a long time remained *kein Einwanderungsland*[7] (not an immigration country) (Geddes, 2003, p. 79). This led to the situation that Germany did not have immigration and immigrant integration policy until it was officially recognized that immigration has become an indispensable facet of societal life in Germany.

Until recently, German policymakers "official denied" that Germany is not an immigration country (p. 99). An important change came with the election of Social Democrat (SPD) and Green coalition in 1998, moving the question of immigration policy to the national agenda (p. 88). In summer 2001, a Commission formed by this coalition reviewed German immigration policy. The report of the Commission clearly stated the need for immigrants and their successful integration with the German society. The Commission proposed that immigrants should learn German and thus German lessons should be offered to them with penalties for immigrants who do not participate (Ibid.). In August 2001, Interior Minister Otto Schily proposed a bill that would lead to Germany's first regulated immigration policy; however, the adoption of the bill was postponed due to the events of 9/11 calling for greater emphasis on security-related aspects of the immigration policy. Although the bill was not

[7] This term was formally adopted in the 1977 naturalization regulations. According to Rogers Brubaker (1992), this statement should be seen as a political-cultural norm and as an element of cultural self-understanding.

adopted, Schily announced that “Germany is an immigration country”, stating the necessity for directing Germany’s immigration policy toward economic interests in the face of the global competition for high-skilled immigrants (Migration News, September 2001). After it was officially recognized that Germany is an immigration country and that it needs immigrant workers to fill labor shortages, the issue of immigrant integration was moved to national policy discussions. Hence in the 1990s, immigration and immigrant integration have become an important and topical issue within the German context. Events such as the terrorist attacks of 9/11, the cartoon dispute in Denmark, the failed suitcase bomb attempts in Germany, and the reactions to the Pope’s talk at the University of Regensburg also paved the way for heated discussions (Hansen, 2007, p. 1).

Although Germany did not have specific immigration and immigrant integration policies until 1990s, this does not mean that the integration of immigrants and their offspring has not been a concern for German policymakers. As “denizens”[8], Germany’s guest workers possessed legal and social rights but not political rights. Since 1990s, strict naturalization laws implied that this status was likely to persist into later generations so that children born in Germany of foreign parents would also be “foreign” (Geddes, 2003, p. 90). The Social Security Code essentially makes no distinction between Germans and foreigners, but is geared to the residence of the beneficiaries in Germany (Guiraudon, 1998). In 1964, the federal government introduced some measures for the social rights of guest workers but these measures were directed toward temporary residence rather than permanent settlement. The first attempt dealing with the permanent long-term settlement of immigrants came with the 1973 Federal Government Programme for the Employment of Immigrant Labor. Then, in 1978, an Ombudsman for the advancement of the integration of

[8] The term “denizen” was first coined by Tomas Hammar, who used the term to describe a status halfway between a citizen and non-citizen.

foreign workers was appointed. The first report by Ombudsman Heinz Kühn identified Germany as an immigration country and supported for *jus soli* and the political participation of foreigners through local voting rights. The government's response to the report was cautious, and the 1979 guidelines supported the integration of second generation into socio-economic life but did not pay attention to naturalization issues and political participation. Heinz Kühn resigned and was replaced by Lisolette Fünke, who also emphasized the integration of the already settled immigrants (Geddes, 2003, p. 91).

Germany is home to some 16 million people with immigrant background, according to 2005 statistics (*Statistisches Bundesamt*, 2005). However, besides the fact that no specific integration policies have been put forward for these people until the recent past, their poor integration in the labor market is a noteworthy situation within the German context. Germany, together with other Western European countries, has witnessed a rapid fall in birth rates and working force. Furthermore, the challenge of competition in a globalized economy further complicates the problem of lack of skilled workers. For these reasons, the poor integration of immigrants into the labor market becomes crucial. Having recognized the absence of a systematic integration policy until the recent past, the National Integration Plan (henceforth referred to as NIP) focuses on integration as a priority area and emphasizes more effective labor market integration of immigrants (Bürgin, 2010). Nevertheless, Germany has suffered from the absence of a coherent approach to integration although the country has announced that it *is* an immigration country embracing ethnic diversity as a potential for the economy. It can be said that the Christian Democratic Union (CDU) is a responsible actor for the incoherent elements in German integration policy. The CDU was in power between 1982 and 1998 in a coalition with the liberals. The integration policy of the government at that time can de defined as exclusionist as immigrants were only perceived as

guest workers whose integration was not a goal as they were expected to leave the country one day. Leading CDU politicians perceived immigrants not as an opportunity but as a threat (Bürgin, 2010). Social Democrats (SPD) also lacked an active approach to integration due to some electoral concerns (Bade, 2007, p. 34). In 1998, when the government changed, the coalition of Social Democrats and Greens tried to introduce some reforms with regards to immigration and immigrant integration, with a rights-based approach. As debates continued, the CDU in the Parliament argued that immigrants should adopt the German "*Leitkultur*" (the leading culture), a clear definition of which could not be provided by the Conservatives (Bürgin, 2010). Some Conservatives used the term to refer to the core values of modernity, human rights and democracy while others favored a monocultural vision of Germany (p. 9). Hence, disagreement existed not only among political parties but within them. After the victory of the new coalition of CDU and SPD led by Angela Merkel, the issue of integration became a priority and it was admitted that the integration debate had long been neglected (Ibid.). When the issue of immigration became a recognized reality of the German context, the discourse of the CDU began to change as well. Due to the abovementioned reasons the most significant of which are the demographic challenge and the challenges of a globalised economy, this changing discourse especially included the role of immigrants and ethnic diversity as an economic benefit. A number of integration measures were agreed upon in the NIP unveiled by Merkel in 2007. The development of the NIP is conducted by the Federal Office for Migration and Refugees in cooperation with various actors in the field of immigrant integration (representatives of federal states (*Länder*), cities, commissioners of integration and migration on the various administrative levels, Federal Commissioner of Integration of Ethnic German Immigrants, religious denominations, trade unions, employer associations, welfare organizations and other interest groups) (Ibid., p. 10).

With regards to coherent integration policies, the situation in Germany is fairly recent, since the new Immigration Act entered into force in January 2005. With the new Act, the Federal Government created the foundations for the successful integration of immigrants legally living in Germany. It paves the way for a comprehensive, equal participation in social, political and economic life for immigrants (*Bundesministerium für Arbeit und Soziales*, 2006, p. 25). On the federal level, the Immigration Act paved the way for the establishment of a national institution dealing with immigration and integration issues, the Federal Office on Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) (Ohliger, 2006, p. 3). This Office has responsibilities such as "giving advice to new immigrants in cooperation with social and welfare organizations, advising the Federal Government in questions of integration, development of a federal integration program, and conceptualizing and organizing language and orientation courses for new immigrants" (p. 8). As suggested earlier, in Germany, most of the federal states develop their own conceptualization of immigrant integration. To illustrate, Schleswig-Holstein is developing its integration policy towards a municipal integration policy in which dialogue with immigrants has a key role (p. 18). An important development within the German context is the 2006 decision that federal states can determine the content of their own naturalization tests. This gives federal states a significant level of discretion in deciding how to assess an applicant's knowledge of German language and basic values. In some federal states, immigrants may have to pass an expensive written exam that demands high-level knowledge of German language, culture and society. This policy is considered as unfavorable for immigrants' access to citizenship by MIPEX (Niessen *et. al*., 2007, p. 92).

Besides discussions on the socio-economic integration of immigrants, debates over the German nationality law has also been considerably salient with regards to Germany's

immigration and immigrant integration policies. The Nationality Law of 1913 conceptualized German nationality based on *jus sanguinis.* Until 1990s, naturalization was subject to strict guidelines as enshrined in 1977 Naturalization Guidelines including the statement that Germany is not a country of immigration (Geddes, 2003). During 1990s, naturalization law was revised with less emphasis on belonging to the imagined community of descent and more emphasis on belonging to the imagined community of GNP contributors (Bommes, 2000). When immigrant integration became a priority area, citizenship policies were also reformed. The Nationality Law of 1999 introduced citizenship based on place of birth. Furthermore, this new Law reduced the length of residence required for naturalization (Bürgin, 2010). However, as the CDU opposed it, dual citizenship was banned. The new Nationality Law included more elements of *jus soli* but this was later accompanied by strict measures in filtering new immigration (Geddes, 2003). The restrictive turn came after developments such as the so-called "honor-killings" in the Turkish immigrant community and ethnic violence in a public school in Berlin, leading to an agreement by German interior ministers that attending language and integration courses and passing a standardized test became a prerequisite for naturalization. Among the new proposals regarding civic integration is the Dutch-style "integration from abroad" for family immigrants, as endorsed by the conservative interior minister Wolfgang Schäuble.

Since 1990s, Germany had offered language courses for ethnic immigrants (*Aussiedler*) in Eastern Europe and Russia, which prepared them for a test that had to be successfully passed before they were entitled to enter Germany (Joppke, 2007, p. 12). Upon their arrival, these immigrants were offered additional language and civic integration courses funded by the state. Recently, these language and integration courses have been extended to non-EU, non-ethnic immigrants, similar to and inspired by the Dutch model. The novelty of the new

courses required by the 2005 Immigration Act (*Zuwanderungsgesetz*) is that both ethnic and non-ethnic immigrants are offered the same obligatory program consisting of up to 600 hours of German language courses and 30 hours of civic orientation on German society (p. 12). Entitlement to a temporary residence permit depends on participating to the integration courses and permanent residence requires passing an exam (Jacobs and Rea, 2007). Failure to attend these courses may lead to a fine or a cut in social benefits of immigrants. In addition, non-compliance may lead to a non-renewal of a temporary residence permit or refusal of a permanent residence permit. Although passing a language test is not yet a prerequisite for naturalization, there are policy initiatives by the German government to do so. In addition, there are also plans to make a minimal knowledge of German a condition for family reunification (p. 270).

Distinguishing between immigration and immigrant integration, it can be argued that Germany has moved toward a restrictive immigration policy while it has moved toward an inclusionary dimension in immigrant integration especially with regards to the encouragement of diversity and the potential of immigrants for the labor market. The competition for high-skilled labor force has led Germany to focus on ethnic diversity as an economic benefit. Nevertheless, it is hard to argue that a coherent national policy framework has been put into motion. Illustrative in this respect is the attitude of the German government toward dual citizenship; although the government has announced that it praises diversity within German society, dual citizenship is not allowed. The role of the CDU has to be noted in this regard; the attitude of the CDU toward immigrants has not been a coherent one as elaborated above. Even though the party altered its stance especially since Merkel, it is hard to argue that the appraisal of ethnic diversity has become common language (Bürgin, 2010). These developments add value to the argument of Holger Kolb (2008) that Germany

has had an ambivalent relationship with its immigrants. For this reason, the recent positive relationship of the German government with the EU and the government's support for common EU principles is likely to support the argument that the EU is likely to act as an actor providing legal and symbolic resources as Germany is looking for concepts to inform its immigrant integration policies (Geddes, 2003).

As mentioned above, it is difficult to associate a single country with a specific concept of integration and this situation is especially salient in the case of Germany in the sense that different federal states (*Länder*) have developed their own concepts of integration to suit their region's specific requirements. Hence, for a long time, a coherent integration concept on the national level was not passed since the federal system of 16 *Länder* with political and administrative autonomy complicated the terminology of the integration concept. This has led to the formation of different integration policies with regards to issues that fall into the competence of federal states (Ohliger, 2006). Furthermore, Germany's approach towards integration has long consisted of programs and policies that aim at a temporary character of immigrants' settlement in their societies (the guest worker system) (Carrera, 2005). As the residence of immigrant workers was regarded as a temporary phenomenon, neither local nor national authorities made special and permanent attempts regarding the issue of immigrant integration. However, as it was realized in 1970s that immigrant workers and their family members intended to settle in the country, the matter of integration began to occupy the political agenda in Germany. Especially since 1990s, immigration and integration have served as key social issues for the federal states which faced the need to respond to the problems stemming from immigrants' shortcomings which were long neglected. Especially after a new Immigration Law (*Zuwanderungsgesetz*) which superseded the Aliens Act was enacted in 2005, integration began to be seen as a recurrent and important issue

within the domestic context, and the Ministry of Interior charged the Federal Office for Migration and Refugees for the tasks related to integration. Following the new Act, since 2007, there have been important initiatives both by the regional and national authorities and the NIP which paved the way for the development of an overall national concept of integration, was adopted. The NIP states that integration policy shall be on as small scale as possible due to the regional economic and demographic disparities within Germany (*Die Bündesregierung*, 2007). Hence, the NIP stresses region-specific approaches to integration and this contributes to the trend in the development of different integration concepts by different federal states, and in some cases, by different cities. Illustrative in this respect is Stuttgart, which is a city that has developed its own comprehensive concept of integration since 2001 and which has played a pioneering role in this regard (Damelang and Steinhardt, 2008, p. 5). The main elements of the regional integration policy of the federal state Baden-Württemberg, of which Stuttgart is a part of, was also enshrined in the so-called "Pact for Integration" which was awarded the "Cities for Peace Prize" by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 2003 and whose key points were adopted by the European Council's official integration policy in 2004.[9] According to the Pact, integration has to be understood as the active creation of a common basis for mutual understanding and hence as a two-way process, in which both the host society and the immigrants themselves shall be willing to follow this course (Lüken-Klaßen, 2008). The main objectives of the Pact which has been continually developed over the years are promoting equal opportunities for every immigrant in all aspects of societal life, social cohesion and the

[9] "Pact for Integration" is a project conducted by the Municipality of Stuttgart in Germany, in cooperation with the public and the private sectors, as well as civil society organizations – such as sport clubs, community groups and other NGOs. For more information on the Pact, please see: http://www.oss.inti.acidi.gov.pt/index.php?option=com_content&view=article&id=114%3Astuttgart-integration-pact&catid=42%3Anews&Itemid=74&lang=en

capitalization of cultural diversity to extend competences within the international municipal society (Ibid.). Practically, these aims have paved the way for initiatives such as language courses for newly arrived and established immigrants, equal opportunities in education and integration in the labor market. In this context, Stuttgart's integration policy exemplifies the first perspective of integration as the relevant authorities try to create equal opportunities for the immigrant population and see integration as a two-way process which is similar to the EU approach.

As the Stuttgart example demonstrates, German local authorities regard integration as a strategic task which is tailored to the specific needs and shortcomings of immigrant groups from different regions. Hence, as a whole, Germany's integration policy gives importance to region-specific requirements as mentioned above. For this reason, the NIP underpins specific regional approaches whereby different groups of immigrants may be targeted by different policies towards them. This situation has led municipalities and other local institutions to serve as important actors within the integration process. Although during 1970s up until 1990s immigrants appeared to serve as societal actors whose shortcomings needed to be eliminated, in the late 1990s, discovering immigrants' potential became a goal of integration policy both at local and national levels. Hence, Germany moved towards a resources-oriented approach from a deficit-oriented one, implying that integration is not completely related to immigrants' ability to meet specific requirements but is also concerned with responsibilities that shall be realized by the key institutions of the host society (Baraulina and Friedrich, 2009). Accordingly, in the light of region-specific approaches, integration policy in Germany is designed and implemented depending on the prioritization of the content and measures to be executed and in terms of their focus on particular target groups (Lüken-Klaßen, 2008).

Although the abovementioned elaboration leads me to conclude that different federal states of Germany pursue different policies of integration and thus it is hard to provide an overall picture for Germany, this should not obscure the fact that the most important policies are made at the national level. Furthermore, the approaches of different federal states have important elements in common. The foremost commonality is the aim of promoting the equal participation of immigrants in every aspect of social life and discovering the qualifications of immigrants. As the NIP states, "successful integration means equal participation in social life and accepting responsibility, and this requires efforts from government and society, as well as from the immigrants themselves" (*Die Bündesregierung*, 2007). This is also stressed by the Berlin Senate which defines integration as "the achievement of equal opportunity for immigrants and as a process involving not only the immigrants but also the native population and politics as well as society" (Commissioner for Integration and Migration of the Senate of Berlin, 2006). At the national level, the introduction of language and integration courses for all newly-arrived immigrants is also a recent policy endorsed by the German government, who in 2007 decided to increase the integration course budget by 14 million euros to 154 million euros beginning from 2008 (Leise, 2007). In addition, a significant reform came with the new Naturalization Law which entered into force on 1 January 2000. It may be said that compared to the old law, the new law facilitates the process for acquiring long-term residence permit. Also in 2007, the German government passed a reform package to improve the 2005 Law on Migration and Integration. Based on these developments, it may be argued that the German approach has been moving toward the first perspective on integration which stresses equal opportunities for immigrants in every aspect of life, as stipulated by the EU. Furthermore, similar to the Commission's approach, the German government appears to be eager in benefiting from not

only the economic but also the cultural potential of immigrants. Although this has not been realized until 1990s due to the incoherent actions of several domestic actors such as the CDU, in 1998, when the government changed, the coalition of Social Democrats and Greens tried to introduce some reforms altering the country's perspective of integration. Especially the NIP unveiled by Merkel in 2007 is very important in this respect.

It is possible to observe that both Germany and the Netherlands have had evolving perspectives of integration over time. These changes can be attributed to different factors such as government constellations together with other domestic and also global developments leading nation-states to question their particular national models. While the German government has assumed a more proactive role compared to 1970s or 1980 when immigrants were expected to return to their home countries and thus no efficient integration policy was launched, the Dutch government has moved toward a less inclusive immigrant integration policy. The commonality in both contexts is the introduction of language and integration courses and tests, whose results determine the status and rights of TCNs in these countries. These courses and tests appear to be in line with the EU approach of "civic citizenship"; however, the introduction of language and integration conditions, unless they serve the aim of the successful integration of immigrants rather than functioning as a barrier to the admission immigrants, may become a factor that negatively influences the integration of immigrants. Although my aim is not assess this, one point needs to be mentioned here. The difference between Germany and the Netherlands is that the pronounced definition and aims of integration in Germany are by and large dominated by positive claims about immigrants and their presence within the German society, unlike the Dutch context where immigrants often serve as the subjects of a controversial issue within political debates. As mentioned above, due to important domestic developments especially

since 1990s such as the emergence of Pim Fortuyn who was assassinated in 2002 by an activist claiming he had murdered Fortuyn to stop him from exploiting Muslims to gain political power, the presence of immigrants in the Dutch society became almost an unwanted phenomenon and the Dutch integration policy began to evolve toward a more restrictive stance from a multicultural one. This suggests that unlike its German counterpart, the Dutch integration policy almost explicitly stated the aim of toughening its stance toward immigrants through stricter citizenship trajectories by the introduction of language and integration tests (Government of the Netherlands, 2003). Nevertheless, it is hard to argue that these developments are affected by the EU's institutional dynamics; the most important changes in Germany and the Netherlands have taken place without any guidance from the EU level. It is more likely that the EU has only served as a symbolic venue providing non-binding guidelines for the EU Member States, who decide on the implementation or rejection of these guidelines within their domestic contexts.

2.3. The Convergences and Divergences of Dutch and German Approaches with the Commission's Perspective

Before looking at the situation in detail and leaving the differences between countries aside, it could be said that the positions of the Netherlands and Germany explicitly or implicitly correspond with the general perspective of the EU with regards to the issue of immigrant integration. However, when we look in more detail, it is possible to see wide differences between countries' implementation of EU guidelines. The Netherlands, as the location of where the Maastricht and Amsterdam Treaties were negotiated, has been an active actor in the recent history of EU integration (Geddes, 2003, p. 123). The Netherlands is also near Belgium where the most important EU institutions function. Although the Netherlands

appears to agree with EU principles, the implementation process does not always move towards this direction. The Dutch Ministry of Social Affairs and Employment states that the Netherlands is in favor of the holistic approach to integration proposed by the Commission; however, it has also been noted by the same Ministry that every country has its own integration issues that must be geared to the needs of each society and thus Member States should retain the authority to formulate their own integration policies in accordance with their domestic situations (The Dutch Ministry of Social Affairs and Employment, 2005). The Netherlands tends to follow its own conceptualization of integration, as shown by the centralized formulation of Dutch integration policy with its growing emphasis on immigrants' adaptation to Dutch values with a duty to integrate. Besides, the Dutch integration policy is moving towards a direction that reflects the anti-immigrant sentiment in the Netherlands, which is getting far away from the inclusionary approach promoted by the EU. Concerns on security challenged by Islamic fundamentalists have led the Netherlands to attempt towards influencing the EU, instead of being influenced by it. An important factor that leads to this situation is that the Netherlands, though relatively smaller than other Member States, is an "EU powerhouse that has exerted significant influence as an active participant in community institutions" (Tom, 2006, p. 468).

Integration with Europe has been a part of the natural evolution of the German state, although national concerns have also been involved in this preference (Geddes, 2003). As mentioned before, with regards to coherent integration policies, the situation in Germany is fairly recent, as the new Immigration Law was enacted in 2005. Based on the integration concept indicated by the Berlin senate, it is possible to infer that Germany's approach to integration is in line with the EU approach in general terms. The approved integration concept of the Berlin Senate came in 2005 with the name of "Encouraging Plurality –

Fostering Social Cohesion" (*Vielfalt fördern – Zusammenhalt stärken*). According to this document,

> Integration includes the social and economic integration by way of providing equal opportunities and social inclusion in neighbourhoods - legal integration, including security of residential status, political participation and inclusion into the social and welfare state mechanisms - cultural and societal integration, including language acquisition and space for identity formation within the receiving society as well as the immigrant groups - fostering intercultural competence of the receiving society, including the realm of education and city administration (Ohliger, 2006, p. 12).

Besides this definition, the speeches of German Chancellor Angela Merkel also confirm that the German approach conceptualizes integration as a two-way process as stressed by the EU. This approach is also reflected in the NIP unveiled by Merkel in 2007. The NIP and the latest reforms are important in the sense that Germany has come ever closer to instituting Europe's CBPs into its national framework for integration, since the German government has continually looked to the CBPs on immigrant integration for guidance (Leise, 2007). The NIP working groups are composed of federal government, *Länder*, local authorities, immigrants, institutions and organizations from science, media, culture, sports, trade and industry, trade unions and religious groups working "hand in hand" (*Die Bündesregierung*, 2007). This is also in accordance with the EU principle that immigrants' representatives should be involved in the framing of Germany's integration policy. Germany has also been a supporter of the CBPs and has pushed for the development of an EU-level framework for immigrant integration (Leise, 2007).

The content of the NIP is also in accordance with the EU's CBPs, which represent a holistic approach to integration by focusing on the civic aspect of integration. As stated by the German Federal Government,

> The most important issues of the National Integration Plan are; improving integration courses, ensuring good education and vocational training, improving labor market opportunities, improving the life situation of women and girls; achieving gender equality, supporting integration in the communities, living cultural diversity, integration through sports, using the

> diversity of the media and strengthening integration through civic commitment and equal participation (*Die Bündesregierung*, 2007, p. 1).

Hence, compared to the Netherlands, Germany appears to be relatively more willing to implement the EU approach to integration within its national context. The relatively new attempt of the German government in forming an "integration policy" can be stated as a reason for this situation, as the country has tried to generate an integration concept for which EU principles have served as a guideline. In both countries, the introduction programs for newly-arrived immigrants are also a priority area, in which the Commission underlines the civic component of introduction programs. The so-called "dual-path" programs in the Netherlands is indicated as a good practice by the Commission, since it consists of courses on Dutch language and another element such as work, vocational training, or support in raising children (European Commission, 2004a, p. 18). Pioneered by the Netherlands in late 1990s, the growing trend of introducing civic integration courses and tests for newcomers has become salient in other European countries as well. As Geddes *et. al.* (2004, p. 17) writes, civic integration policies are gradually being incorporated into the national laws of the Member States. Civic integration programs entail that immediately upon their arrival, and in the Netherlands even before their arrival, immigrants are obliged to take civic integration courses and pass an integration exam, and non-compliance with this obligation may result in the refusal of long-term residence permit.

A noteworthy observation within the domestic contexts of the Member States is the emphasis on the "*Leitkultur*" in Germany and "Dutch norms and values" in the Netherlands. Both the German CDU's attempt to emphasize the *Leitkultur* and the increasing demand for "shared citizenship" within the Dutch context become more salient when we look at the following developments. In emphasizing Dutch norms and way of life, the Dutch

government disseminated the idea that the Netherlands is a liberal society in the form of an instructional video for the "integration abroad scheme", including pictures of kissing men, rock concerts and naked woman which were promptly censored for Muslim immigrants (Joppke, 2007, p. 15). Similarly, in the "Manual for Germany" distributed to newly-arrived immigrants, under the title "Art and Culture", it is possible to see the expression that "cafes serve espresso, cappuccino and *café au lait*", and that "German popular music is heavily influenced by American music" (*Beauftragte der Bundesregierung für Migrantion, Flüchtlinge und Integration*, 2005). Joppke (2007) argues that these statements include no expectation that newly-arrived immigrants may share such preferences, and every attempt is apparently made to "dilute distinct German traits in such 'art and culture'" (p. 15). Another important illustration is the "Interview Guideline" initiated for examining naturalization applications conducted by the German federal state of Baden-Württemberg in 2006. The Guideline consists of questions formulated in opposition to the perceived values of Muslim immigrants, such as asking whether the applicant sees the events of 9/11 and Madrid bombings as a terrorist or freedom-fighting activity (p. 16).

Based on these arguments, two main conclusions can be stated about the extent to which the Dutch and German approaches conform to the Commission's perspective. As I tried to elaborate in the beginning of this Chapter where the concept of integration was described both within Dutch and German contexts, the Netherlands appears to significantly diverge from the EU approach on immigrant integration and has moved toward Groenendijk's third perspective on integration which perceives the immigrant's assumed unfitness to integrate as the ground for refusal or admission to the country. Besides, as the burden of the integration process both in material terms and moral obligations has shifted toward the side of the immigrant, this has resulted in a growing contradiction with the

Commission's perspective describing integration as a two-way process of mutual accommodation. Second, compared to the Dutch context, German policy rhetoric is less likely to announce its rigid stance toward already settled immigrants due to the growing awareness in the presence of immigrants as a reality of German society, despite the fact that filtering new immigration has been important concerns for the German government. Although the aim that lies beneath the German integration policy may not be very different from the Dutch one, given the pronounced definitions and objectives of the NIP and the federal integration policies in particular, the German approach appears to move toward Groenendijk's first perspective on integration, which is concerned with providing the immigrant with a secure legal status and equal opportunities in every aspect of life as envisaged by the Commission. Illustrative at this point is the deletion of the wording "Germany is not a country of immigration" from the Dresden Manifesto, as it was realized that immigrant population did not appear to decline as many policymakers in Germany had expected. This implies a significant shift not only from a temporary perspective of integration to a permanent one, but also a shift from a negative rhetoric toward immigrants to a positive and inclusive one. Whether this perspective is practically implemented in a successful way or not is out of the scope of this study, but an important area of research by itself. This reveals that Germany, where the potential of immigrants has come to be perceived as a positive element, has moved from a restrictive approach to a more open-minded one, while the Netherlands, where immigrants are recently perceived as being responsible for the country's socio-economic problems, has moved toward a restrictive stance from a multicultural one. Although the two countries have moved in different directions, the commonality is that both Germany and the Netherlands tend to formulate their integration policies mainly on the national level, and this is not surprising given the

positions and preferences of these countries during the negotiations of Directive 2003/109/EC, which will be examined in Chapter 4.

CHAPTER 3

EUROPEAN UNION POLICIES IN THE AREA OF IMMIGRANT INTEGRATION

In the previous Chapter, borrowing Groenendijk's three perspectives of integration, I tried to accommodate the integration approaches of the EU, Germany and the Netherlands within the same framework definition. Having shown that the Commission favors a completely inclusive approach while the stances of national governments to conform to this approach vary greatly, I have argued that there has been a tension between the approaches of the Commission and the Member States in the area of immigrant integration. The previous Chapter has also performed to put into broader perspective the national policies, interests and preferences of Germany and the Netherlands regarding immigrant integration, which were undoubtedly salient during the adoption process of Directive 2003/109/EC in the Council of Ministers. Beginning in the mid-twentieth century, countries of Western Europe have become attractive destinations for immigration which was central to the economic reconstruction of these countries. Since Western European governments expected that immigrants would leave when economic conditions changed, no specific immigrant integration policies were put in place until the permanent settlement of immigrants became a reality. It has to be noted that immigration challenges, namely the problems related to the successful integration of immigrants with the European society, has only recently been recognized in many of the EU Member States, most of which perceived the presence of immigrants as a temporary phenomenon. Having been refused immigrant integration as a problem to be addressed prevented the issue to be dealt with at the European level where

coordination among the Member States was required. In this descriptive Chapter, two major questions are to be answered. The first question is related to the legal status and rights of TCNs as currently constituted and the competences the institutions of the EU have had in the area of immigrant integration. The second question is what important policies have been made by the EU based on the EU institutions' evolving competences.

3.1. The Status and Rights of Third-Country Nationals in the European Union and Evolving Competences in the Area of Immigrant Integration

As emphasized before, Europe is home to a significant number of TCNs, who have only recently come to enjoy a group of rights comparable to those of EU nationals. Since a majority of TCNs are low-skilled or unskilled and cannot speak the language of the host country at a sufficient level, this situates them at the bottom of the social ladder. Even when they possess comparable skills to those of nationals, they face great difficulties to improve their socio-economic status. Despite the efforts to improve the status and rights of TCNs, they remain marginalized as non-nationals rather than being recognized as legitimate political and social stakeholders in the development of European society (Jun, 2007). Before their increasing importance as social and political actors in European society, TCNs have long denoted economic actors as immigrant workers. From 1950s to 1960s, Western European countries, concerned with post-war reconstruction of Europe, encouraged migratory movements towards Europe. Over time, as economic conditions began to change, many Western European governments froze the attribution or renewal of labor permits in order to control growing foreign population within their territories. However, once they were settled, the majority of TCNs who planned to stay temporarily decided to stay permanently and bring their families, choosing Europe as their home (Melis, 2001, p. 10). As it was expected that

foreign workers would return to their home countries, the regulation of migratory flows by the national governments mainly responded to economic logic, and the legal status of specific TCNs, such as family members of immigrants, was “only incidentally” covered by EC law (p. 14). Nevertheless, as a result of association agreements that the EU has signed with some third countries such as Turkey, Tunisia and Morocco, TCNs from these countries have come to enjoy greater rights than immigrants from other countries.

Up until 1990s, immigration issues remained strictly under the realm of national sovereignty and Community law paid slight attention to the status and rights of TCNs. In 1987, the Single European Act (SEA) elaborated on the status and rights of TCNs, granting them the freedom of movement and rights of family reunification for all resident workers regardless of their country of origin (Kostakopoulou, 2002). Later, in 1996, the Council of Ministers presented a Resolution on the status of TCNs who reside on a long-term basis in the territory of the Member States. In this Resolution, the Council expressed that TCNs could be defined as residents who have lawfully and continuously lived in an EU Member State for at least 10 years (Council of Ministers, 1996). Besides, the Resolution noted a set of rights to be enjoyed, such as free movement, trade union membership, housing, social security, emergency health care and schooling (Ibid.). It was in 1999 Tampere European Council where the status and rights of TCNs were pledged to be approximated to those of EU citizens. Following the Tampere Council, cognizant of the fact that TCNs positively contribute to the host society provided that they have a secure legal status, the Commission initiated a legislative proposal that aims at improving the status and rights of TCNs. This legislative proposal culminated in the adoption of Directive 2003/109/EC, which is the most current Community legislation with regards to the legal status of TCNs. According to this legislative act, the definitive status for a TCN to acquire long-term residence is five years of legal and

continuous residence in one of the EU Member States. The Directive also proposes equal treatment of TCNs with EU nationals in specific areas such as employment rights and self-employed activity, education and vocational training, social protection and assistance, and access to goods and services.

Although Directive 2003/109/EC targets at creating a uniform set of rights for long-term resident TCNs in the EU, there is currently a complex legal context in which there are gradations of the rights of TCNs. As TCNs and their rights across the EU is not homogenous, a TCN who is a spouse of an EU national has different rights than a long-term resident TCN or a TCN who is not a resident at all (Uçarer, 2010, p. 5). Illustrative at this point is Turkish workers in the EU, who have more protection of their rights by virtue of EC-Turkey Association Agreement. Nevertheless, none of the TCNs included in association agreements enjoy the right of free movement, although they are granted a set of other rights such as access to education, social benefits and unemployment insurance. Furthermore, in these association agreements, Member States have avoided any expression that would be interpreted by the courts to provide direct rights for TCNs (Larsen, 2004). Hence, in this way, Member States have acted cautiously in order to retain maximum authority within their territories.

In what kind of an institutional context have TCN-related matters been discussed and agreed upon? The European Commission, as the institution that represents the supranational character of the EU, can be described as the engine of European decision-making process since it holds the power to initiate legislative proposals. Hence, the Commission is an influential, and is likely to be the most active European institution dealing with matters related to the status and rights of TCNs. In 1989, the Commission presented its report called *The Social Integration of Third Country Migrants residing on a Permanent and*

Lawful Basis in the Member States (European Commission, 1989). In 1990, another report dealing with similar issues was presented (European Commission, 1990). However, as the Commission was not authorized to initiate legislative acts directly relating to the legal status and rights of TCNs, neither of the two reports included a specific focus on this matter; they rather dealt with the relevance of free movement for the single market project. Having been granted the right to initiate legislative proposals on immigration-related matters by virtue of the Amsterdam Treaty, it was the Commission which argued that the Member States shall harmonize the status of TCNs across the EU and allow TCNs with long-term residence to enjoy the right of free movement in order to increase the efficiency of the single market. In 1996, the first effort to harmonize the national laws of the Member States concerning immigrants came with the previously mentioned Resolution on the Status of Third-Country Nationals Who Reside on a Long-term Basis in the Territory of the Member States. According to this Resolution, Member States were required to determine a specific period of lawful residence, which should not be longer than ten years, for immigrants to acquire the long-term resident status and the rights associated with it. However, the Resolution could not produce the desired effect on the national laws of the Member States. Between the years of 1996 and 2000, European and national non-governmental organizations (NGOs) published several proposals for the formation of binding common rules on the status of TCNs. However, due to the lack of a Treaty base to introduce legislative proposals on immigrant integration within Member States, the Commission has tended to be cautious in order to avoid offending national sensibilities in this area which is closely related to national sovereignty. The procedures under which decision-making takes place in this domain also influence the fate of Commission initiatives. As currently constituted, procedures for policy-making in immigration-related matters is unanimity in the Council and a very limited power

for the European Parliament and the ECJ in interpreting final legislative outcomes (Larsen, 2004).

How did the EU get involved in this sensitive area which was traditionally controlled by the sovereign Member States? At this point, I find it useful to review how the competences of the EU regarding TCNs have evolved since the inception of the ECSC in 1952. When the ECSC Treaty was signed by Belgium, France, Italy, Luxembourg, the Netherlands and West Germany in 1952, workers from coal and steel industry and their families enjoyed the right to move, live and work in any of the six signatory countries. In 1956, when the same six countries signed the EC Treaty, the right of free movement was expanded to all workers, not only workers in the coal and steel industry. The definition of worker was left open in the Treaty and thus it was to be discussed later if workers had to be the nationals of the six signatory states or if the term also included legally resident foreign workers (Geddes, 2000b). Through a Regulation in 1968, the Council of Ministers interpreted "worker" to refer to only workers who were nationals of the Member States and their dependent family members (Council of Ministers, 1968). However, it was suggested that as most immigrant workers at that time were from Italy and other EC countries, this definition was not specifically against the nationals of third countries (Larsen, 2004). This position was later supported in a Resolution in 1976, which recognized the need to include TCN workers in anti-discriminatory legislation (Council of Ministers, 1976). Nevertheless, this legislation did not lead to a legally-binding outcome in the form of "hard" legislation, and long-term resident TCNs continued to be denied from the right of free movement within the Community.

During 1970s and early 1980s, European integration entered into a stagnation phase, which ended in mid-1980s as a result of the EU institutions' growing awareness of the need

for economic competition. In 1985, the revitalization of European integration was propelled by some state leaders and Commission officials who decided to launch a European summit to discuss the matter. Meanwhile, the Commission issued a White Paper which included a proposal to expand the right of free movement to legally resident TCNs. However, the intergovernmental European Summit did not agree with the Commission's opinions. The Summit culminated in the SEA revising the EC Treaty, and free movement rights were not granted to TCNs. This demonstrated that although Member States were eager to deepen the single market, they did not see free movement of TCNs as a necessary element for economic growth. Instead, some Member States were willing to make it easier for EU citizens to move freely within the Union, and this led to the Schengen Agreement signed by France, West Germany, Belgium, Luxembourg and the Netherlands, acting outside the institutional framework of the EU (Larsen, 2004). In 1999, the Schengen Agreement was incorporated into the EC Treaty with the ratification of the Amsterdam Treaty. These developments show that during the period from 1952 to 1986, Member States prioritized the deepening of the single market and increasing economic growth, underestimating the role of TCNs and their potential. It is for this reason that up until 1990s, immigration issues remained strictly under the realm of national sovereignty. However, it has to be noted that in 1980s, the European Commission detected the problems related to the integration of TCNs especially in the labor market, stating that the major structural transformations in the economies of leading European countries since 1970s formed the essence of the problem (European Commission, 1989). The Commission also emphasized that labor market integration was closely related to socio-economic integration. Having stated the problem, the Commission than underlined that it was necessary to cooperate at the European level to overcome the challenges related to the successful integration of TCNs living in Europe.

With the fall of the Berlin Wall in 1989, there was again a call for the revision of the EC Treaty which needed to be adapted to the changing conditions. Within such a context, the Maastricht Treaty emerged out of a compromise and Member States agreed upon reviewing the outcomes after its adoption. As a result of the Maastricht Treaty, which is also referred to as the Treaty on the European Union (TEU), immigration, asylum and policing matters were included in Title VI (provisions on cooperation in the field of justice and home affairs) constituting the third pillar of the EU. However, legislation adopted under Title VI was decided by unanimity and did not have a legal affect on Community or national law (Larsen, 2004). Besides, decisions taken by the EU institutions based on these new competences under the third pillar were solely recommendations which were not sufficient to provide effective outcomes and actual policy outputs. By the end of 1997, when it became visible that the dynamics of decision-making after the ratification of the Maastricht Treaty failed to provide effective policies, the need for the revision of the third pillar emerged. With the Amsterdam Treaty, some of the immigration-related articles were moved to the first pillar, where the Commission, the Parliament and the ECJ would enjoy jurisdiction to a certain degree. This jurisdiction of initiative and consultation was, however, limited by the Council which restricted the role of the Parliament only to the consultation procedure[10], rather than the ordinary legislative procedure where it has the right to veto the Council.[11]

The Amsterdam Treaty is especially important in the sense that it establishes progressively "an area of freedom, security and justice" (included in Title IV[12]). According to the Treaty,

[10] The consultation procedure allows the European Parliament to present its opinion for European Commission proposals before they are adopted by the Council of Ministers.

[11] Ordinary legislative procedure is the new name for the co-decision procedure which disappeared after the ratification of the Lisbon Treaty.

[12] Title IV of the EC Treaty is related to visa, asylum and immigration policies.

> In order to establish progressively an area of freedom, security and justice, the Council shall adopt (a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with Article 14, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration, in accordance with the provisions of Article 62(2) and (3) and Article 63(1)(a) and (2)(a), and measures to prevent and combat crime in accordance with the provisions of Article 31(e) of the Treaty on European Union; (b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 73k (Council of Ministers, 1997).

It is by virtue of this clause that the Commission could initiate a series of legislative proposals targeting at the status and rights of TCNs. These proposals include "a Council Directive relating to the conditions in which TCNs shall have the freedom to travel in the territory of the Member States for periods not exceeding three months ", "a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities", and "a Council Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service" (Larsen, 2004). The Commission also proposed a legislative act on family reunification (2003/86/EC), which was adopted in the Council of Ministers in 2003. The EU has also calibrated its role in the area of anti-discrimination laws and policies, which are the result of direct EU mandate in this area since the ratification of the Amsterdam Treaty.[13] The Directive on long-term residence, which is the focal point of this study, was also a piece of legislation proposed by the Commission in 2001 in accordance with the Amsterdam Treaty. Another important breakthrough is the Lisbon Treaty (2007), which extended QMV to areas related to asylum, immigration and external border control.[14]

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[13] The legal framework for EU anti-discrimination policies is provided for in Article 13 of the EC Treaty. Based on this Article, Council Directive 2000/43/EC stresses the principle of equal treatment between persons irrespective of racial or ethnic origin, and Directive 2000/78/EC creates a general framework for equal treatment in employment and occupation. On July, 2, 2008, the Commission drafted another proposal on anti-discrimination. If the draft Directive is adopted, discrimination on grounds of religion, belief, disability, age or sexual orientation in areas outside employment will be outlawed within the Member States. For more information, please see http://ec.europa.eu/social/main.jsp?catId=612

[14] It has to be noted that Ireland and the United Kingdom enjoy opt-out clauses in these policy areas.

The adoption of this Treaty also granted the Commission the exclusive right of initiative which is shared with the Member States.

In this Section, I tried to show that the status of TCNs in the EU is not homogenous and this leads to a complex institutional framework which becomes more complicated as Member States seek to retain control over matters related to TCNs living in national territory. EU institutions and in particular the Commission have thus faced serious constraints in improving a rights-based approach for TCNs living in the EU. A number of events and dramatic changes in the international and European arenas have influenced the EU's evolving competences in the area of immigrant integration. The events of 9/11 in the United States, the London and Madrid bombings and the murder of Theo van Gogh in the Netherlands have strengthened the tendency towards negative (restrictive) national measures rather than positive ones such as promoting the liberties and rights of immigrants in Europe. Due to these events and other European and national dynamics, the issue of immigrant integration has been increasingly associated to a "security dimension" (Kirişçi, 2008), which led many EU Member States to face the dilemma of granting more rights or restricting the existing liberties of immigrants within their territories (Carrera, 2005, p. 7). Jörg Monar (2002, p. 121) also argues that the post-9/11 period has put enormous pressure on matters related to immigration, leaving EU decision-making bodies with cumbersome processes to generate substantial legislative acts within a short period of time.

3.2. Policy Formation in the European Union

The integration of immigrants with the European society and the prevention of deep-seated factors of exclusion that tend to be transmitted across generations are crucial for social cohesion and economic development in the EU (European Commission, 2005b, p. 5). A

majority of EU Member States have been going through serious problems and impediments with regards to the integration of immigrants within their national territories. Facing similar challenges, Member States often commit themselves to common objectives at the European level through various declarations, European Council summits and similar attempts. However, the reality is that commitments in the area of immigrant integration are rarely translated into EU legislation. As Geddes (2000a) argues, there is a discursive context at EU level where ideas about inclusion and protection of rights acquires some meaning, but this is not backed by "hard" and fast legal and political resources that bind the Member States. Even in cases where the Commission takes legislative steps and measures are adopted at the EU level, most frequently, Member States are reluctant to comply with these measures, leading to a "gap between intent and implementation" (Geddes *et. al.*, 2004, p. 21).

At a time when the development of a common EU immigration policy remains far from a reality, the integration of immigrants has been placed at the top of the EU agenda (Carrera, 2005). Therefore, the EU and particularly the Commission as the representative of supranational governance has been in an attempt to generate EU-level policies that guide the Member States a majority of which tend to retain their sovereignty with regards to their immigrant integration policies. In the previous Section, I tried to elaborate on both the current status and rights of TCNs in the EU and the changing institutional context in which decisions have been made. In this Section, EU policies in the area of immigrant integration will be explained in detail, beginning from how the EU has found itself in making decisions in this domain to the adoption process of Directive 2003/109/EC, which is selected as the focal point among various EU measures and policies in the area of immigrant integration.

3.2.1. Policies of the European Union in the Area of Immigrant Integration

As Penninx (2005) states, EU level immigrant integration policies are quite new. As mentioned before, the active involvement of the EU in matters related to immigrants could be seen in the judgments of the ECJ and the European Court of Human Rights which revealed that decisions regarding TCNs are no longer under the sole authority of the Member States. The first concrete attempt in incorporating issues related to immigration into the EU agenda is the 1992 Maastricht Treaty, which relegated these matters to a so-called third pillar. In 1992, the Maastricht Treaty integrated the intergovernmental cooperation of the Member States on immigration issues into the third pillar, which is related to JHA[15] (Groenendijk, 2006). When the intergovernmental conference leading to the Maastricht Treaty began in December 1990, the Luxembourg Presidency took the helm one year later and submitted a working paper on how EC competences may be extended to JHA issues. The first alternative in the working paper was to continue cooperation outside the Community framework, while other alternatives were related to options such as drafting treaty provisions and decision-making procedures on these issues and bring the matter to the agenda of the Community and engage the EC policy-making apparatus. While the Netherlands, Belgium and Italy supported the alternative to engage the EC policy-making apparatus, France and Germany favored the alternative to draft treaty provisions and decision-making procedures on these issues with a possibility to gradually move toward the alternative supported by the Netherlands (Uçarer, 2010, p. 7). As it was clear that the majority of the Member States wanted to keep these issues within the Community framework, the Luxembourg presidency prepared a draft treaty suggesting a “three pillar”

[15] The JHA pillar, which was renamed as Police and Judicial Co-operation in Criminal Matters in 2003, is based on intergovernmental cooperation in asylum, external borders, immigration, customs policies and the fight against illicit drugs.

approach in order to find a common ground between the abovementioned groups of Member States. When the pro-federalist Netherlands assumed presidency after Luxembourg, it envisaged a different draft with a unitary structure. However, this draft was defeated by other countries and the Luxembourg proposal became the basis of the Maastricht Treaty establishing the EU with its three pillars.

As the Maastricht Treaty left JHA cooperation outside the Community framework, decisions under this domain were to be made by unanimity, with insignificant roles for the Commission, Parliament and the ECJ. Thus, the Maastricht Treaty enhanced European cooperation with regards to the integration of immigrants but with important restrictions to the role of supranational organizations. Although Member States allowed these matters to be included in the Maastricht Treaty, they were strictly against relinquishing sovereignty to EU institutions to adopt legislative measures related to immigrant integration. Notwithstanding the saliency of the issue on the EU agenda, the third pillar contained weak rules for EU decision-making, including the power of veto in the Council of Ministers and removing the role of the ECJ in judicial review as agreements would not be legally binding on the Member States (Luedtke, 2009). In addition, Member State governments in the Council could not easily reach an agreement in these sensitive areas and even in cases where agreement was achieved, the decisions taken could not produce any legally binding effect. Nevertheless, the Maastricht Treaty is an important turning point in the sense that immigration and asylum issues were brought under the competences of the EU. Before the Maastricht Treaty, the EU did not have a general competence in area of the integration of TCNs, the exception being EC-Turkey Association Agreement on the status of Turkish workers. Due to this lack of competence, the admission, status and rights of TCNs have mainly been determined by the national rules of the Member States. Hence, EU institutions

have been long silent on the issue of TCNs as the EC Treaty did not include a legal basis in this domain until the Amsterdam Treaty. Negotiating the Amsterdam Treaty became another opportunity to discuss immigration matters under the EU umbrella. Although the entry into force of the Amsterdam Treaty did not alter the rule for decision-making regarding TCNs, the Commission gained the important agenda-setting power which also allowed it to propose legislative acts related to immigration and asylum. It is by virtue of the Amsterdam Treaty that the Commission could initiate legislative proposals, including Directive 2003/109/EC which is the focal point of this thesis.

Modest but important developments took place with regards to JHA cooperation in the area of immigrant integration in the post-Amsterdam period. After the ratification of the Amsterdam Treaty in 1999, Member States came together at a special JHA Council in Tampere, Finland. In this Council, Member States recognized the growing need for the integration of TCNs and providing them with a secure legal resident status, and pledged to equalize the rights of TCNs with Member State nationals. For the first time, with the Tampere European Council, Member States demonstrated that the integration of immigrants has become important as much as the control of immigration. It was stated that,

> The European Union must ensure fair treatment of third-country nationals who reside legally on the territory of its member states. A more vigorous integration policy should aim at granting these individuals rights and obligations *comparable* to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia (European Council, 1999, emphasis added).

Therefore, the Tampere Council is important since it is a crucial development in setting the European agenda for equalizing the rights of TCNs and Member State citizens, as Member States took an important step by proposing that TCNs that are long-term residents in the EU should enjoy rights comparable to those of EU citizens. The Tampere Council also endorses the objective that long-term resident TCNs be offered the opportunity to obtain

the nationality of the Member State in which they are resident. Since the Tampere Council, the European Commission has underlined several important principles to promote the integration of immigrants in Europe. The most important of these principles were laid down in the Commission's 2000 *Communication on a Community Immigration Policy*, which states the need for a "holistic approach to integration" that underlines not only the economic and social aspects of integration but also the cultural and religious issues. In 2001, after the Tampere European Council, the European Commission drafted a proposal for a Directive concerning the status of TCNs, which is the key legislative act that will be analyzed in this study in the following Chapter. After two years of negotiations following the Commission proposal, the Directive was formally adopted by the Council of Ministers in 2003.

Following the Tampere Council, the TCN dossier made little visible progress until 2003 also due to security-related events such as 9/11, London and Madrid bombings. When Greece assumed Council presidency in 2003, issues related to TCNs were brought into the agenda again; the Thessaloniki Presidency Conclusions reemphasized Tampere goals in equalizing the rights of TCNs with Member State nationals (European Commission, 2003b). The Hague Programme, adopted by the European Council of November 2004, emphasized the need for greater coordination of national integration policies and EU initiatives in the field of immigrant integration in accordance with the Commission's holistic approach. In the Hague Programme, it was also stated that a framework based on common principles should be created as the foundation for future EU initiatives in the field, relying on clear goals and means of evaluation. In accordance with this aim, the JHA Council of November 2004 adopted eleven Common Basic Principles (CBPs) to underpin a coherent European framework on the integration of TCNs. These principles aim at assisting Member States in determining their integration policies by offering them a non-binding set of guiding

principles against which they can judge and assess their efforts. The Commission's 2005 *Communication on a Common Agenda for Integration* envisaging a framework for the integration of TCNs in the EU suggests some concrete actions and evaluating mechanisms for national integration policies in order to develop and put into practice the CBPs both at national and European levels. The first point that this document emphasizes is the full participation of TCNs in every facet of societal life within the host country. To ensure this, it is important that the integration process is seen as a "two-way process of mutual accommodation" which involves not only immigrants themselves but also the host society (European Commission, 2005a, p. 16). The second aspect with regards to the implementation of CPBs is the emphasis on the values of human rights, equality, anti-discrimination, solidarity, openness, participation and tolerance. In order to help immigrants to benefit from these common values and understand the nature of the host society, the Commission stresses the importance of civic orientation in introduction programs and other activities for newly arrived immigrants (p. 5).

The issue of immigrant integration has also been mentioned in the Lisbon Agenda (2000), which has given Member States the opportunity to engage in a constructive process of policy exchange through the Open Method of Coordination (OMC). In this regard, the Commission proposed an *Open Method of Cooperation for the Community Immigration Policy* (European Commission, 2001b) in order to encourage Member States to act in a coordinated manner by exchanging information and sharing best practices in the area of immigrant integration. In 2003, the Commission published another *Communication on Immigration, Integration and Employment*, which once more emphasized the need for greater coordination at the community level (European Commission, 2003a). The establishment of National Contact Points for integration is also a measure achieved in

accordance with this aim in the Thessaloniki Council. Furthermore, the preparation of *Handbook on Integration for Policymakers* by the Commission (2007a) and *Annual Reports on Migration and Integration* published by the Member States are also the outcomes of the 2003 Commission Communication in line with the Lisbon Agenda.

Preparatory Actions for the integration of third-country nationals (INTI) is also an important initiative for strengthening the implementation of CBPs. Under the INTI Program, since 2003, the Commission has financed transnational projects encouraging cooperation among Member States in the integration of immigrants. The INTI Program also aims at developing the practical implementation of the abovementioned CBPs by the Member States. In 2006, the last year of the INTI Programme, 4 million euros were allocated to proposals focusing on the exchange of good practices among the Member States, and a European Fund for the Integration of TCNs was set up as part of the framework of integration agreed in the Hague Programme of 2004.[16] Third, the participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level is significant since this can improve the role of immigrants as residents and participants in the society (p. 20). The Commission states that this can be achieved through consultation mechanisms by which immigrants could be consulted in matters them affect them most. In addition, their political participation is also important because granting them political rights such as voting in local elections can give them a means of expression for the exercise of active citizenship.

Cognizant of the fact that Europe may lag behind in the competition of being a global leader in innovation, the Blue Card initiative was presented by the Commission President José Manuel Barroso and Commissioner for Justice, Freedom and Security Franco Frattini in

[16] For more information on the INTI Programme and the European Fund, please visit the Europa website: http://ec.europa.eu/justice_home/funding/integration/funding_integration_en.htm

2007. The proposal came from the Commission, which aimed at approximating Member State policies in granting highly-skilled workers the right of free movement within the EU and providing them with a uniform long-term residence application procedure across Europe. According to the proposal, Member States have discretion in deciding on the number of high-skilled workers they are to allow within their territory. Nevertheless, the Commission's proposal received objections, most prominently from restrictive Member States such as Austria, Germany and the Netherlands. The then Employment Minister of Germany, Franz Müntefering, opposed the proposal arguing that employment matters should be dealt completely by national parliaments, not by the EU institutions. In 2008, the issue was debated in the European Parliament, where the Blue Card proposal was ultimately adopted in plenary with 388 votes in favor, 56 against and 124 abstentions.

3.2.2. Directive 2003/109/EC of 25 November 2003 concerning the Status of Third-Country Nationals who are Long-Term Residents

Although the improvement of the rights of EU nationals has been a significant concern of the EU since its establishment, the legal status and rights of TCNs have only been recently recognized as a joint policy objective on the EU's JHA agenda. Nevertheless, joint policies regarding TCNs have not been as developed as some other issues under the JHA pillar. The issue has gained momentum thanks to the Commission, Brussels-based NGOs and certain presidencies of the EU. Now, I will look in particular at the Directive on the long-term resident status of TCNs (2003/109/EC), which provides, for the first time, as requested by the European Council in Tampere, a common status for long-term resident TCNs across the EU. Among various EU measures and policies, this Directive is selected because of three primary reasons. First, it is few of the most recent and relevant EU legislative act which

directly targets at the legal status and rights, and thus touches upon the integration of TCNs in Europe. Second, the negotiation process of the Directive unravels important national interests at stake, which may obscure the adoption of legislative acts if a compromise becomes hard to reach. Third, in the history of the legal status and rights of TCNs, this Directive appears as the first concrete step after the Amsterdam Treaty in the ever lasting tension between the supranational Commission and the intergovernmental Council. Last but not least, it is irrefutable that Directive 2003/109/EC marks an important development at the EU level; it reveals the transition from declarations in the form of "soft law" to instruments of "hard law", namely, legally binding directives. Hence, Directive 2003/109/EC clearly demonstrates the tension between supranational EU institutions and the Member States who by and large behave rationally and avoid relinquishing sovereignty in order to preserve their national interests.

The Directive has its legal base from Title IV of Amsterdam Treaty, which allows the Council of Ministers to adopt measures related to external border controls, asylum and immigration. Although these areas have traditionally been controlled by the sovereign state, by virtue of Article 63(3)(a) and Article 63(4) of the EC Treaty, the EU has found itself passing legislative acts in this domain. The reason why the Directive is based on these two articles can be explained with its twofold purpose: to approximate the national legislations and practices of the Member States regarding the grant of long-term resident status to TCNs and to lay out the conditions that determine long-term residents' right to free movement within the Union territory (Halleskov, 2005). The original proposal for the long-term residents Directive was developed by Directorate General (DG) Justice, Freedom and Security (JLS) in the Commission in the spring of 2001. In its proposal, the Commission primarily aimed at

harmonizing the long-term resident status across the EU, and equalizing the rights of TCNs with those of Member State nationals. The Commission stated in its proposal that,

> The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need to ensure fair treatment of third-country nationals who reside legally on the territory of its Member States. It declared that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia. With this proposal, the Commission is giving practical expression to its intention and to its commitment to a matter that is crucial in terms of securing the genuine integration of third-country nationals settled on a long-term basis in the territory of the Member States. The proposal is part of a broader effort on immigration which the Commission has been making for several years now and which is worth recalling here (European Commission, 2001a).

In its proposal, the Commission also stressed that it is aware of the difficulty of making legislation with regards to TCNs, since there was no existing provisions in Community law (European Commission, 2001a). At the same time, the Commission also reminded Member States that they had committed to a program of EU policy harmonization (Luedtke, 2009). After two years of fervent negotiations on the Commission's proposal, the Directive was adopted in November 2003 based on the consultation procedure used for decision-making under Title IV of the EC Treaty amended by the Amsterdam Treaty. The Directive is mainly composed of four Chapters. Chapter I lays out the purpose, definition and scope of the Directive, while Chapter II indicates the conditions by which long-term resident status can be granted to TCNs and the subsequent rights related to this status. Chapter III deals with the right of free movement and Chapter IV states the final provisions. Except Denmark, Ireland and the United Kingdom, all Member States had to implement the Directive in their national legislation by 23 January 2006. The Directive has three main elements. First of all, it creates the long-term resident status, which is entitled to most TCNs with five years of lawful and continuous residence in any of the EU Member States. The long-term resident status provided by the Directive is attractive for immigrants who, either because of the requirements for naturalization or because of the effects naturalization involves under the

law of their country of origin, are unable or reluctant to acquire the citizenship of the relevant Member State (Groenendijk, 2004, p. 122). The Directive also states that this status serves as an instrument for the integration of TCNs within the EU (Council of Ministers, 2003a). Second, the Directive defines the rights attached to the long-term resident status, primarily secure residence and equal treatment as nationals in a whole range of fields. The rights[17] associated to the long-term resident status are; access to employment and self-employed activity, education and vocational training, social security, social assistance and social protection as defined by national law, tax benefits, access to goods and services, freedom of association and affiliation and free access to the entire territory of the Member State concerned, within the limits provided for by the national legislation for reasons of security (Council of Ministers, 2003a). Third, the Directive grants TCNs a conditional right to work, study or live in another Member State. In order to stay in another EU country, the immigrant must first acquire permanent residence status in the own country of residence, and after this the immigrant can apply for a residence permit in another EU country (Carrera, 2005). Moreover, according to the Directive, immigrants holding this status will enjoy comparable treatment (but not equal) with the nationals of the host country in various policy areas (p. 17). Hence, by virtue of this Directive, every TCN who legally and continuously resides in the territory of a Member State for at least 5 years, contributes to the economy as a worker and as a consumer, has sufficient financial means to support him/herself without any assistance from the state, abides by law and does not pose a threat to public security, and often takes initiatives to integrate into the European society may be granted long-term resident status (Jun, 2007).

[17] It has to be pointed out that the rights provided by the Directive are subject certain limitations, which will be explained in detail in the next Chapter.

Within the EU's institutional context, it is possible to see that the Commission has been the actor initiating the most important policies. The adoption of Directive 2003/109/EC shows that the Commission has been successful in its agenda-setting role in the sense that it reminded Member States of their commitments in the Tampere Conclusions (Luedtke, 2009, p. 141), as the Directive is adopted as a result of the Commission proposal. Furthermore, the Commission and some countries in the pro-immigrant camp succeeded in keeping the duration of residence condition to five years in the face of the Member States trying to extend this period. Thus, countries with less generous measures had to rearrange their national laws in transposing the conditions including the five-year rule (p. 142). Nevertheless, although Directive 2003/109/EC would not have been adopted if the Commission did not come up with such a proposal, the crucial aspect to be looked at is how the Directive was agreed upon, and whether it conforms to the standards envisaged by the Commission. In other words, the important question is whether the adoption of the Directive has led to a positive impact on the status and the rights of TCNs in Germany and the Netherlands. The answer to this question provides us with an understanding of whether it is the EU institutions (in particular the Commission) affecting the Member States or it is the Member States affecting the content and direction of EU level policies.

CHAPTER 4

THEORETICAL CONSIDERATIONS: THE NEXUS OF EUROPEAN COOPERATION, NATIONAL GOVERNMENTS AND INTERSTATE NEGOTIATIONS

Against the background in which Member States agree on common principles envisaged in several important developments such as the Tampere European Council and the Hague Programme while they practically fail to fulfill the goals stated in these developments, why did national governments reach a compromise in the formation of Maastricht and Amsterdam Treaties and clearly stated the necessity for immigrant integration in the Tampere Presidency Conclusions? Furthermore, why did they agree on the adoption of a legislative act (Directive 2003/109/EC), which would bring about specific obligations that needed to be transposed into national law? Based on the theoretical argumentation laid down in Chapter 1, in this analytical Chapter, I will try to provide the answers to these questions by analyzing two important phenomenons. First, I will try to lay down the reasons paving the way for the progress of European integration in the field of immigrant integration in the light of the descriptive data provided in Chapter 3. Second, I will look at the negotiation process of the Directive which shows important national interests at stake and then try to understand whether the adopted Directive has led to any increase in the status and rights of TCNs in Germany and the Netherlands. In so doing, I expect to fulfill two primary aims. First and foremost, I aim at understanding whether it is the supranational institutions controlling the process of European integration or it is the intergovernmental Council composed of national governments impacting upon the fate of EU policies. Second, I aim at finding out whether Member States negotiate for realizing the Tampere goal of

equality of treatment or have fervently tried to influence the negotiation process with an attempt to dominate the EU forum through their domestic concerns rather than realizing the Tampere goal of progressing the status and rights of TCNs.

4.1. Explaining the Progress of European Cooperation in the Field of Immigrant Integration

Beginning with the year of 1999 when the Tampere European Council was realized, the EU has played a relatively active role in the area of immigrant integration. In the history of the EU, Commission proposals have usually encountered with reluctance from the Member States, who have been in an attempt to legitimize their own concerns by controlling the content and direction of legislative acts adopted by the Council. Most generous measures, proposed or adopted, come from the Commission or the Parliament; however, they usually encounter with Member State reluctance. Keeping in mind that the area of immigrant integration is a sensitive one, the opposing approaches of the Commission and the Council are more visible in that area. It is due to this continuing tension that I treat the EU as a forum where different institutions, namely the Commission, Parliament, Council and the ECJ, possess diverging roles and perspectives reflective of their roles within the institutional structure of the EU. In this section, I aim to demonstrate the tension between the Commission and the Council of Ministers, and then see how this tension was dealt with during the progress of European integration in the area of immigrant integration with specific attention to the negation process of Directive 2003/109/EC.

4.1.1. The Tension between the Commission and the Council of Ministers

As economic integration has deepened, the EU's competences have been expanding as well. Nevertheless, one must ask whether any expansion in EU competences has led to a weakening in state control with regards to issues regarding immigrant integration. With the Maastricht Treaty, the EU gained the competence to cooperate in matters related to immigration, which would be the first step to develop legislative instruments regarding TCNs (Uçarer, 2010, p. 7). Negotiating the Amsterdam Treaty became another opportunity to discuss immigration matters under the EU umbrella. In the post-Amsterdam period, Member States decided in Tampere to achieve common policies with regards to the fair treatment of TCNs. The provisions for the fair treatment of TCNs as formulated in Tampere were foreseen as early as 1976 by the Council of Ministers, an aim that remained elusive at the time of the Amsterdam Treaty (Groenendijk, 2001, p. 226). Especially since the Tampere Council, Member States chose to work together under the EU umbrella but maintained their rationalist assumptions and national security concerns with regards to immigrant rights as a primarily domestic policy issue. Article 63 of the Amsterdam Treaty clearly lays down that if EU measures related to the status and rights of TCNs are to be adopted, they shall not prevent Member States from maintaining or introducing national provisions compatible with the Treaty and international agreements (Council of Ministers, 1997). Article 63 thus makes it clear that EU competences granted by the Amsterdam Treaty are not to be interpreted as the exclusive competence of the Commission (Hailbronner, 2000).

Although the precise features of integration measures should be determined by individual Member States in accordance with the needs of the society, there is a growing awareness that EU level action on immigrant integration is essential, given the shared

interest that Member States have in agreeing upon shared goals on integration to deal with common problems (Council of Ministers, 2004a, p. 16). As stated in the previous Chapter, the Commission has a holistic approach to integration which stresses not solely socio-economic aspects but also areas such as cultural diversity and political participation. The idea of integration as a "two-way process" is also an important success on the part of the Commission given the situation that less than a decade ago Member States refused seeing the issue of immigrant integration as a challenge that needs to be addressed at the community level (Kirişçi, 2008). On the other hand, the Council of Ministers, as the intergovernmental institution composed of Member State governments, perform as the embodiment of national interests that dominate negotiations and bargaining when a joint decision is to be made. In the history of the legal status and rights of TCNs, Directive 2003/109/EC appears as the first concrete step after the Amsterdam Treaty in the ever lasting tension between the supranational Commission and the intergovernmental Council. As the Directive relates to an important area where national sovereignty is a concern for Member States, this tension becomes more salient. Now, I will delve into the historical elements of the tension between the supranational Commission and the intergovernmental Council with respect to the issue of TCNs.

Following the recognition of the integration of TCNs as a challenge to be addressed at the European level by the European Commission in 1980s, a proposal for a decision by the Council of Ministers led to a crisis between the Commission and some European countries (Kirişçi, 2008, p. 4). Considering Commission's attempt as unacceptable, these countries argued to the ECJ that this intervention violated the Commission's competences as defined by the Rome Treaty (Geddes, 2003). Although the ruling of the ECJ prevented the efforts of the Commission from gaining power in immigration matters, the Commission did not give up

its interest in this area and adopted a Communication on asylum in 1991 (European Commission, 1991). In this document, the Commission emphasized the growing need for joint action to overcome problems related to the integration of TCNs and presented some ideas related to this matter. Similar to the Commission's initial attempts, this attempt was also neglected by many Member States in the Council. Notwithstanding the Maastricht Treaty which made immigration an issue area where common policies are to be made by the EU institutions, this development did not change the course of events since Member States remained focused on the control aspects of immigration rather than dealing with problems associated with integration (Kirişçi, 2008, p. 4). In 1994, the Commission adopted a White Paper mapping out a list of measures calling on the Council to take action in improving the legal status and rights of TCNs (European Commission, 1994). In this White Paper, the Commission clearly restated the need for the free movement of legally resident TCNs within the Union territory. Nevertheless, the Council of Ministers once more disagreed with the Commission's view and maintained its right to retain authority and national discretion over the rights of TCNs (Larsen, 2004). The reluctance of the Member States in addressing the issue of immigrant integration was reflected in the "conspicuous absence of the matter in European Council summits" (Kirişçi 2008, p. 5). European Council summits including the intergovernmental conference leading to the Amsterdam Treaty by and large focused on the restriction of immigration rather than paying attention to the status and rights of TCNs. However, the exception in this respect is the document adopted by the European Parliament in 1996 (European Parliament, 1996). In this document, the Committee on Civil Liberties and Internal Affairs states the necessity to lay down measures related to the encouraging the integration of TCNs resident in the Union.

The continuing controversy and tension between the Commission and the Council reveals that matters related to immigrants is a highly politicized area of policy-making (Kurt, 2006, p. 79), and this long delayed TCN matters to be discussed on the European agenda. As the necessity for common policies to common problems in the area of immigration and asylum increased, Member States decided in the Amsterdam Treaty to move towards a union of freedom, security and justice and a new Title on “free movement of persons, asylum and immigration” was inserted into the EC Treaty (Council of Ministers, 1997). The Amsterdam Treaty moved some of the immigration-related articles to the first pillar, where the Commission, the Parliament and the ECJ would enjoy jurisdiction to a certain degree. Nevertheless, the Treaty stipulated that until 2004, decisions with regards to immigrants are to be taken by unanimity, and it is up to the Member States in 2004 to unanimously change this procedure to QMV (Council of Ministers, 2007a). Although the Treaty moved some of the immigration-related articles to the first pillar, it was decided in the same Treaty that matters directly relating to the status and rights of TCNs remained strictly under the third pillar where unanimity is the rule for decision-making. Hence, decision-making in the third pillar clearly exemplifies Member States’ hesitancy in allowing the EU to gain competence in immigration affairs (Larsen, 2004).

The establishment of the DG for JHA granted the Commission an important agenda-setting task, extending the Commission’s power in directing attention toward the issue of immigrant integration at the Community level. Through this agenda-setting power, the Commission proposed an *Open Method of Cooperation for the Community of Immigration Policy* (European Commission, 2001b) which was rejected by the Council. However, since the Danish and Greek presidencies took interest in the area of integrating immigrants especially in the labor market, the Commission could prepare a more detailed document about a

common approach to the integration of immigrants, almost a decade after it had first tried to direct Member States' attention to this matter (Kirişçi, 2008, p. 6). In its Communication on *Immigration, Integration and Employment*, the Commission tried to demonstrate that the problem of immigrant integration is common across many EU Member States, and especially pointed to the need to act collectively in order to address challenges such as low language competences, unemployment and poor educational performance among immigrants (European Commission, 2003a).

It is possible to see that the Commission has tried to be active in improving the integration of immigrants although the Council has not acted in the same direction. It was only in the post-Amsterdam period when the Commission proposed several key legislative acts to be negotiated in the Council of Ministers. Directives on family reunification and the status and rights of TCNs are two of these proposals both of which encountered resistance by the Member States. In the case of the family reunification Directive, the Commission had to put forward three sets of proposals in December 1999, October 2000 and May 2002 in order to accommodate the demands of the Member States (Kirişçi, 2008, p. 6). Although the Directive was adopted in November 2003, the adopted text fell short of the Commission's original proposal. Similar to the course of events leading to the adoption of the family reunification Directive, Directive 2003/109/EC encountered significant difficulties during its negotiation process. As mentioned before, the Commission could base its proposal on Title IV of Treaty of Amsterdam, empowering the Council to adopt measures regarding the rights of TCNs. One should also ask the role of the ECJ in the implementation of this Directive by the Member States. The Amsterdam Treaty strengthened the role of the ECJ by empowering it with more legal instruments. However, its role is still limited since EU measures related to the maintenance of law and order are excluded from the competences of the ECJ (Kurt,

2006, p. 75). With regards to Title IV of the EC Treaty, the ECJ's competence to give preliminary rulings is limited since only national courts of first instance can reference a Community matter to the ECJ. This entails that until the references of national courts reach the ECJ, it will take a long time before the ECJ will be able to exercise its influence in ensuring uniformity among the Member States (Halleskov, 2005, p. 189). Another limitation before the ECJ is that Title IV does not have a clear objective that the ECJ can apply as a basis for limiting Member States' discretion (Guild, 1991, p. 62). Although the ECJ has an explicit "rights-based approach" toward the status and rights of TCNs as mentioned in Articles 39, 43 and 49 of the EC Treaty, in contrast, Title IV does not include any definite goals in this respect (p. 61). These two limitations suggest that the ECJ has little competence for developing its "rights-based approach" in favor of TCNs.

It is also useful to look at the role of the European Parliament. With the Amsterdam Treaty, acting unanimously, the Council shall consult the Parliament before a decision is to be made with regards to the third pillar issue areas. Although it seems that the role of the Parliament is enhanced compared to its previous role in the third pillar, it is still less powerful than in matters related to other Community policies (Kurt, 2006, p. 74). In November 2001 following the draft Directive issued by the Commission, the European Parliament presented its opinion as its duty based on the consultation procedure (Larsen, 2004, p. 27). The Parliament agreed with the overall objective of the draft Directive; however, it made significant amendments to the Commission's proposal. First, the Parliament suggested that the criteria of knowledge of the Member State's language should be added as a condition for the grant of long-term residence. Second, the Parliament suggested that a TCN should not be granted the same rights as Member State national as this may prevent incentives for seeking citizenship. Third, the Parliament argued against the

Commission's strict guidelines for the expulsion of a TCN from national territory and stated that Member States should have flexible methods for preserving national security especially given the increasing threat of terrorism (p. 26). In the case of this Directive, the Parliament appears to be concerned with the preservation of Member State interests, rather than agreeing with the Commission in providing TCNs with the same rights as EU nationals. Although the opinion of the Parliament is not powerfully decisive on the final outcome since the consultation procedure is used in the adoption of the Directive, its opinion is suggestive of the disagreements among the Member States and Commission officials (p. 28).

4.1.2. Debating the Progress of European Integration in the Area of Immigrant Integration

Although worries about national sovereignty have always been salient, both Maastricht and Amsterdam Treaties represent a breakthrough in extending the powers of the EU with regards to immigration and asylum. Directive 2003/109/EC is also the legislative instrument whose adoption stems from these important developments. However, as I will elaborate in detail in the next Section, the Directive provides Member States considerable discretion regarding the status and rights of TCNs. In this Section, based on the descriptive analysis provided in Chapter 3 on how EU competences and policies with regards to immigrants have evolved, I will try to understand if Member States ultimately come with a Directive providing them with considerable discretion, what compelled Germany and the Netherlands to adopt this legislative instrument? In other words, why these two Member States together with their Member State counterparts have come to accept surrendering national prerogatives in this domain and reached a compromise in Tampere European Council and in the adoption of Directive 2003/109/EC? I argue in favor of a liberal intergovernmentalist approach

underlining rational socio-economic concerns dominating the EU negotiation process, as emphasized by Moravcsik (1999), whose arguments are laid down in Chapter 1.

It would not be inaccurate to argue that immigration into Western Europe has been underpinned by economic interests and labor market dynamics. Immigration into Western Europe since the 1950s was central to the economic reconstruction of these countries, whose assumption was that immigrants would return their home countries when economic conditions changed (Geddes, 2003). However, immigrants decided to stay permanently and Western European governments faced with the need to respond to this permanent settlement by envisaging policies targeting their immigrant population. Initial policies toward this aim mainly responded to economic logic. The European Economic Community (EEC) has also developed TCNs rights in a perspective that emphasized the position of TCNs only in the labor market, and this implied that the status of TCNs in the case of long-term unemployment was unclear (Groenendijk, 2006, p. 387). Since then, there has been an institutional context that orients the immigrant integration policy framework towards forms of economic citizenship that are relatively stronger on economic and social rights, but weaker on political rights emerged (Apap, 2004). From a liberal intergovernmental approach, as the institutional context and functioning of the EU is reflective of Member State interests, an integration policy framework based on economic aspects is a polity shaped by its Member States, whose national concerns assume a key role within the process of European integration. In other words, if the matter follows an economic course of events on the European agenda, it is because of the Member States have wished to do so as a result of their national concerns dominating interstate bargaining on the European level.

The argument that the regulation of migratory flows by the national governments mainly responded to economic logic has long been salient within the historical context of

European integration. The European Convention on Establishment (1965) which is the first European instrument regulating the status of TCNs mainly dealt with the right of access to the labor market, and political rights were not included. The right of free movement was developed by the EEC between 1961 and 1968; however, this right was closely linked to the positions of TCNs in the labor market, implying that the status of TCNs in the case of long-term unemployment was unclear (Groenendijk, 2006, p. 387). Furthermore, although economic concerns were salient within Member States' labor market policies and the free movement of TCNs is a necessary element of the realization of the single market, this right was not extended to TCNs as the majority of the Member States were reluctant to do so in a sensitive issue area directly interfering with national sovereignty. In mid-1970s, the ECJ began to uphold the legal status of TCNs through a strict interpretation of the public order exceptions in the EEC Treaty and the secondary legislation (p. 388). In 1976, the Council adopted an action program that aimed at strengthening the integration of TCNs in the European society (Council of Ministers, 1976). Nevertheless, this legislation did not lead to a legally-binding outcome in the form of "hard" legislation, and long-term resident TCNs continued to be denied from the right of free movement within the Community. In early 1980s, European integration entered into stagnation phase but starting in the mid-1980s, as a result of an increased awareness of economic competition and Europe's perceived inability to "keep up internationally," along with additional factors, the revitalization of the Community experienced began with a renewed commitment by government leaders to underpin the single market (Larsen, 2004, p. 10). Through this commitment, some state leaders and the Commission officials stated the necessity for economic unity as a common interest for all Member States (Moravcsik, 1993).

As the free movement of TCNs is left outside the Community framework proposed by the SEA, Member States clearly demonstrated their reluctance in allowing the Commission to deal with granting direct rights to TCNs. Hence even in matters directly related to economic integration of which the free movement rights of TCNs is a part, Member States reserve sovereign prerogatives despite the importance of free movement rights of TCNs for the completion of the single market. Within such a context, why did they decide to equalize the rights of TCNs with those of EU nationals although a rights-based approach has often been an underestimated one as I tried to elaborate above? EU institutions had already been involved in the socio-economic sphere before the Tampere European Council. Interweaved economies of the EU brings about the necessity to deal with labor market issues at the European level. Related to the labor market issue is the situation of illegal immigrants, who can be "regularized" in one Member State and try to take advantage of the socio-economic conditions in another (Parkes, 2008). Such challenges make it necessary for the EU Member States to deal with immigration and asylum as a common policy objective, as the majority of them have been experiencing the similar and interrelated problems of illegal and low-skilled immigration, rising numbers of asylum applications as well as the challenge of global economic competition in which Europe has lagged behind. Together with the fair treatment of TCNs, the Tampere agenda contains the goal of establishing a common European asylum system, a common system for the management of migration and cooperation with countries of origin and transit (Niessen, 2004, p. 3). Just before the Tampere Summit, the French and German governments submitted a paper generating the debate on the issue of immigration and its relationship with development. This paper mainly proposed a comprehensive approach to immigration and asylum, addressing political, human rights and development issues in countries of origin. Thus, Member States seek to address the root causes of

immigration (European Parliament, 1992). To this end, the intergovernmental High Level Working Group on Asylum and Migration (HLWG) was created in 1998 on the initiative of the Dutch Ministry of Foreign Affairs. According to the Dutch government, the HLWG should realize "a common interest for all member states", *i.e*. controlling the entry into the EU of persons who wrongly call upon asylum procedures (Dutch Government Memorandum, 1995). As one of the countries receiving a significant number of asylum seekers, the Netherlands, together with other Member States experiencing the same issue, has thus moved the immigration and asylum issue to the European level. Similarly, in 1990s, the German government reasserted its capacity to regulate entry into national territory through restrictions on ethnic migration and asylum.

As the agreed upon issues in Tampere are closely interrelated, the fair treatment of TCNs is indissolubly part of the immigration and asylum debate. The EU's fast developing immigration and asylum policy is also impacting upon the integration of immigrants (Parkes, 2008). During the Tampere Summit, the German government, together with British and French governments, declared their commitment to equalizing the rights of TCNs with Member State nationals, but with a strict statement that nationality of an EU Member State would be the only route to access EU rights. It should be noted that the events of 9/11 had an impact on such an approach since Member States were in a dilemma between a rights-based approach and a restrictive approach as a measure in fighting terrorism. Thus it is not a surprise that an official from the Permanent Representation of Germany to the EU stated that the Commission proposal for Directive 2003/109/EC is related to the very fundamental question of whether the legal status of Member State citizens may include non-EU citizens (cited in Larsen, 2004, p. 21). Article 63 of the Amsterdam Treaty merely allowed the Council to adopt measures with regards to the conditions of entry and residence of TCNs, and

standards on procedures on long-term visas and residence permits (Council of Ministers, 1997). The Thessaloniki Council clearly stated that,

> Integration policies should be understood as a continuous, two-way process based on mutual rights and corresponding obligations of legally residing third-country nationals and the host societies. While primary responsibility for their elaboration and implementation remains with the Member States, such policies should be developed within a coherent European Union framework, taking into account the legal, political, economic, social and cultural diversity of Member States. In order to intensify the development of such a framework, the definition of common basic principles should be envisaged (Council of Ministers, 2003c, p. 40).

The Thessaloniki Council Presidency Conclusions point out need for a coherent European framework but at the same time states the necessity for taking into account the legal, political, economic, social and cultural diversity of Member States. Creating common European immigrant integration policies in the face of the differences among 27 Member States is a difficulty stated by the Commission (European Commission, 2001a). Thus, “the fair treatment” principles as stated in the Tampere Council remain as unrealized policy targets given the recognized difficulty of harmonizing Member State policies and the fact that the Amsterdam Treaty did not empower the Commission to initiative legislative proposals in areas directly relating to immigrant integration. Even in cases where the Commission has tried to touch upon the issue of immigrant integration, the Council has chosen to focus on the “admission” implications of the proposed texts, rather than looking at Commission initiatives as a set of measures for immigrant integration (Niessen, 2004, p. 55). This tendency which moves away from a rights-based approach demonstrates that immigrant integration has constituted only a limited but indissoluble part of the whole debate surrounding the EU’s fast developing immigration and asylum policy. As Member States are concerned with increasing numbers of asylum seekers and immigrants through family reunification, I agree with Vink (2001) that these concerns have led Member State to further European cooperation in these areas.

Having concluded that EU policies have by and large addressed Member State concerns in many interrelated areas such as asylum, family reunification and the need for highly qualified labor force, it can be said that the very issue of immigrant integration has been subordinated to the growing need for "keeping up internationally" and reducing the number low-skilled immigrants. The aim of "keeping up internationally" began to be discussed in European negotiations especially in 1990s. This situation also demonstrates itself the increasing saliency of the employment issue in the Member States' immigrant integration policies, also given the existence of Social Democrat parties in power. The Amsterdam Treaty can also be assessed as a reflection of this situation given the Treaty's emphasis on employment matters (Council of Ministers, 1997). As the Commission's first Annual Report on Migration and Integration states, employment has become the most important priority for national integration policies (European Commission, 2004b). Also in the Lisbon Strategy of making Europe the most competitive and dynamic economy in the world by 2010, the goal of "social inclusion" is subordinated to the exigencies of globalization (Joppke, 2007, p. 17). This suggests that the battle against social exclusion becomes closely tied to the goal of global competition, the policies for social inclusion being a tool for upgrading the labor market situation as mentioned in the abovementioned historical context of European integration. In addition, Joppke (2007) notes that social inclusion targets at creating social cohesion, subordinated to the legal aspect of integration which deals with equal opportunities and individual rights for immigrants. The "labor market focus of social inclusion" aims to create self-sufficient and autonomous immigrants who contribute to the competitive power of states in the global context (p. 18). In line with this perspective, anti-discrimination laws and policies at the EU level also tend to direct toward making use of the labor market potential of the society, rather than emphasizing social equality and preventing

discrimination based on race and ethnicity which is a concern for the supranational Commission (p. 17). Nevertheless, the hurdle to the internal market comes with Article 15 of Directive 2003/109/EC, allowing Member States to impose cumulative integration requirements, which go against the free movement and secure legal status rights of immigrants. Hence, Member States' quest for global economic competitiveness becomes constrained by the failures of the legal integration of immigrants, whose labor market situation is linked to their rights of a secure legal resident status and free movement.

It may be said that the Hague Programme also reflected the EU's immediate and recent problems such as the growing demand for high-skilled labor force. In this respect, the EU faces the challenge that only 5% of high-skilled global labor force chooses the EU while the United States absorbs 55%.[18] Cognizant of the fact that Europe may lag behind in the competition of being a global leader in innovation, the Blue Card initiative was launched by the EU in order to attract high-skilled workforce from outside Europe. The proposal came from the Commission, which aimed at approximating Member State policies in granting high-skilled workers the right of free movement within the EU and providing them with a uniform long-term residence application procedure across Europe. According to the proposal, Member States have discretion in deciding on the number of high-skilled workers they are to allow within their territory. Nevertheless, the Commission's proposal received objections, most prominently from restrictive Member States such as Austria, Germany and the Netherlands. The then Employment Minister of Germany, Franz Müntefering, opposed the proposal arguing that employment matters should be dealt completely by national parliaments, not by the EU institutions. In 2008, the issue was debated in the European

[18] These figures were provided by Asst. Prof. Dr. Alexander Bürgin in his presentation during the Migration Workshop organized by the Economics Department of Izmir University of Economics on January 8, 2010.

Parliament, where the Blue Card proposal was ultimately adopted in plenary with 388 votes in favor, 56 against and 124 abstentions.

Specifically, rational economic concerns are also extremely visible within the domestic contexts of the Member States. When Schily announced that "Germany is an immigration country" the necessity for directing Germany's immigration policy toward economic interests in the face of the global competition for high-skilled immigrants was also stated (Migration News, September 2001). After it was officially recognized that Germany is an immigration country and that it needs immigrant workers to fill labor shortages, the issue of immigrant integration was moved to national policy discussions as elaborated in detail in Chapter 2. Together with concerns related to the labor market, the issue of asylum as elaborated above has also served as a reason why Germany has performed as a fervent actor with regards to the creation of EU-level policies in the areas of immigration and asylum (Vink, 2001, p. 5). Illustrative in this respect is the 1993 asylum debate which showed that Germany tried to use European level decision-making to slip national policy constraints in order to reduce the number of asylum seekers entering national territory. As Geddes (2003, p. 90) also puts it, intended measures with regards to asylum were achieved within an EU context that has also allowed Germany to use EU policymaking as a way to attain domestic policy objectives. During the negotiations of the Maastricht Treaty, Germany and some other Member States provided support for supranational decision-making on immigration and asylum measures; however, intergovernmental processes favored by the remaining Member States prevailed as a result. Similarly, during the negotiations of the Amsterdam Treaty, the German government restated its will for supranational decision-making on immigration and asylum policies.

Holger Kolb (2008) argues that Germany has had an ambivalent relationship with its immigrants. For this reason, the EU is likely to act as an actor providing legal and symbolic resources as Germany is looking for concepts to inform its immigrant integration policies (Geddes, 2003). In the German context, the added value of non-binding EU policies becomes more important given the absence of a national integration policy until 1990s. However, European cooperation is resisted when national sovereignty is challenged, *e.g.* with regards to the grant of direct EU rights to TCNs. The attempt of German government in avoiding the uncomfortable effects of European integration have been salient especially with regards to the national concern that the grant of EU rights to TCNs is only possible through the acquisition of German nationality, as explicitly stated in the Tampere Council. This contradicts with an ideological commitment to European integration that has constituted one of the pillars of German policy, meaning that preferences towards European integration is dominated with the belief that the EU is perceived as a venue that can help states in solving important practical policy issues within the Member States (p. 98). Hence, it may be said that Germany is keen to reassert its control on immigrant-related matters while the EU may remain as a venue providing non-binding immigrant integration guidelines or measures in regulating the admission of asylum seekers. When we look at the Netherlands, similar national motives are relevant for the Dutch context as well. Similar to Germany, concerns for high-skilled labor force and the need to manage global competition are important reasons why multicultural policies are giving way to a focus shift toward the immigrant's "self-sufficiency" and "autonomy", endowing the notion of "integration" with a heavy dose of economic instrumentalism (Joppke, 2007, p. 16). Shifting the costs of language training to the immigrant by a centre-right government (Groenendijk, 2006) is also related to the matter of "self-sufficiency".

In this Section, I have tried to show that socio-economic concerns act as the primary motives of Member States in agreeing upon European cooperation in the field of immigrant integration. Socio-economic concerns such as filtering new immigration through asylum and family reunification, illegal immigration and the need for qualified labor force as a result of the aging and declining population appear as the main reasons for European cooperation in the areas of immigration and immigrant integration. Thus, cognizant of the necessity in the expansion of EU competences in the socio-economic field and having been motivated by their rational and common domestic concerns, Member States have used EU cooperation to progress and secure their economic and social interests for which a common approach is perceived to be necessary. As Larsen (2004, p. 31) puts it, the EU legislation is a tool to further Member States' economic and social interests and in the case of Directive 2003/109/EC they have used the EU to legitimize their own concerns with regards to immigrant integration, the growing need for high-skilled TCNs and the right of states to limit entry into the domestic economy. With an attempt to circumvent these concerns and distinguish between high-skilled and low-skilled migratory flows, Member States chose to cooperate at the EU level but they simultaneously prevented the supranational Commission to have a say in who enters in national territory, what rights are to be granted to them and how they should be integrated. As Member States cautiously choose to leave certain aspects of immigrant integration outside the Community framework, the expansion of EU competences to the area of immigration does not necessarily weaken state sovereignty in favor of supranational institutions. Instead, expanding competencies of the EU have allowed Member States to transnationally define the issue of TCNs not as a human rights concern but as a matter of securing socio-economic interests. In their report on the family reunification Directive (2003/86/EC), Labayle and Pascouau (2006) suggest that the problematic of the

integration is used by some Member States in order to set a filter within the migratory flows they intend to regulate. I suggest that this concern was also visible during the negotiation of Directive 2003/109/EC which ultimately came to contain the term "integration conditions" in its Article 5(2). In the next Section, I will try to demonstrate that the negotiation process of the Directive and subsequent amendments to the Commission's proposal also support a liberal intergovernmental approach. Restricting the role of the Commission as a political entrepreneur is seriously constrained as national preferences by and large surpass the commitment to supranational institutions (Larsen, 2004).

4.2. The Negotiations of Directive 2003/109/EC and National Interests at Stake: From the Commission Proposal to Rounds of Changes Leading to the Adopted Directive

For the purpose of this research which is to demonstrate how and why Member States pursue European integration in the field of immigrant integration, it is crucial to examine the period prior to the adoption of the Directive, beginning from the Commission's original proposal to the transposition of the adopted Directive by the Council of Ministers. Among several EU policies, Directive 2003/109/EC is selected as the focal point since it is an important "hard" legislative act demonstrating the ever-lasting tension between the supranational Commission and the intergovernmental Council composed of Member State representatives. The Commission could initiate its proposal for Directive 2003/109/EC through the Amsterdam Treaty. The decision was to be made by unanimity and the EP was only to be consulted. The Commission's proposal for Directive 2003/109/EC is to a large extent modeled on EC rules on the free movement of workers and it tries to develop an inclusive approach toward TCNs living within the territory of the Member States.

Notwithstanding the relatively conservative stance of DG JLS in the preparation of legislative proposals, the draft included a liberal and inclusive approach toward the integration of TCNs (Uçarer, 2010, p. 13). During the negotiation process, however, the determination of several Member States to maintain their national prerogatives created a milieu that favored the restriction of the rights of TCNs. Germany was one of the key supporters of this restrictive approach, as the country fervently tried to amend the Commission's proposal by introducing controversial clauses and additional conditions to be taken into account when granting long-term residence permit to TCNs. On the other hand, the Netherlands relatively pursued a more supportive position toward the Commission's proposal. The reasons for these two countries' differing positions will be elaborated in detail at the end of this Section. Now, in order to demonstrate the approaches that reflected the national interests of the Member States, I will look at some specific articles of the Directive that were amended or inserted as additional clauses during the negotiations, which, according to Moravcsik (1999), is dominated by the specific distribution of bargaining power among national governments.

Directive 2003/109/EC aims at providing the equality of treatment of TCNs who are granted the long-tern resident status in a Member State on the basis of the fulfillment of specific conditions. The Commission proposal for the Directive has a broad scope including all TCNs residing legally in a Member State, irrespective of the ground on which they were originally admitted (European Commission, 2001a). Article 3 of the Directive indicates that all TCNs legally residing in the territory of the EU Member States are granted the long-term resident status provided that they fulfill the necessary conditions; however, the same Article precludes students, people benefiting from subsidiary or temporary protection, refugees and

people who reside on temporary grounds and diplomats from its scope.[19] Although economic immigrants are not excluded via this provision, it is noteworthy to mention that they risk being influenced by an amendment to Article 3(2), which precludes TCNs who reside in the Member States solely on temporal grounds, such as seasonal workers. Furthermore, during the negotiations, a clause stating that a TCN whose residence permit was formally limited by the relevant Member State issuing the permit is also excluded from the scope of the Directive (Halleskov, 2005, p. 184). Hence, unless a Member State does not grant an unlimited residence permit, a TCN cannot be considered as a long-term resident as stipulated by the Directive.

The conditions under which the long-term resident status can be granted to a TCN, which are listed in Articles 4 and 5, constitute one of the most controversial and vague elements of the Directive. Hence it needs a detailed elaboration to demonstrate the reservations of the Member States in empowering the EU to determine the terms of long-term residence within national territory. First and foremost, according to Article 4(1) of the Directive, a TCN must have legally and continuously resided within the territory of a Member State for five years to achieve a long-term resident status (Council of Ministers, 2003a, p. 4). Although this five-year period is in accordance with international human rights instruments such as the International Labor Organization (ILO) Convention, it has to be noted that the Directive fails to provide a uniform long-term resident status as some Member States may have their unique and more favorable arrangements with regards to the entry and status of specific TCNs. Illustrative in this respect is Germany, where the legal status of Turkish workers and their family members is determined by Resolution 1/80 of the Association Council between Turkey and the EEC. Given the continued relevance of this decision in

[19] In 2007, the Commission proposed a Directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection.

determining the status of Turkish workers in Germany, the Directive clearly fails to harmonize Member State policies with regards to the time period required for granting TCNs the long-term resident status.

When compared to the original Commission proposal, the adopted Directive includes an additional distinctive clause that directly influences the implementation of it by the Member States. While the Commission only mentions the necessity of complying with integration measures rather than integration conditions, a subjective clause requiring TCNs "to comply with integration conditions in accordance with national law" (Council of Ministers, 2003a, p. 4) was inserted into the Directive as a result of strong claims made by the governments of Germany and the Netherlands in the Council. During the negotiations, through a note to the Strategic Committee on Immigration, Frontiers, and Asylum in the Council, the Austrian, Dutch and German delegations stated that,

> According to the German, Dutch and Austrian delegations, full participation of third country nationals can be encouraged by the implementation of integration policies. The primary aim of integration is the promotion of the self-sufficiency of so-called 'newcomers' and one of the main parts of integration policy is an integration programme. The aim of this suggestion is to include these programmes in the Council Directive for these programmes, especially as they are linked to the granting of the resident status. Integration programmes are meant to give an impetus to the independent functioning of newcomers (Council of Ministers, 2002, p. 1).

The note also includes the statement that the introduction of this integration criterion is essential for Austria, Germany, and the Netherlands given these countries' already existing or intended arrangements on integration programs for newcomers, provided that they are not able to communicate in the language of the country of residence (p. 2). Due to this demand by the three delegations, the Council agreed on amending Articles 5 and 15 of the Directive regarding the conditions for acquiring long-term resident status and conditions for residence in a second Member State. What is the relevance of this clause for the implementation of the Directive within the national contexts of the Member States?

With regards to Article 5, the clause "integration conditions" provides Member States with the discretion of introducing various integration prerequisites in accordance with their national legislation, and since the clause does not explicitly define the scope of these integration conditions, Member States retain the possibility to determine the content of these conditions in accordance with national law. A similar situation can also be observed in Article 7, where the wording "appropriate accommodation" (Council of Ministers, 2003a, p. 5) is used to define one of the conditions for the long-term resident status although this condition was not mentioned in the Commission's proposal. As the term "appropriate accommodation" is not clearly defined in the Directive, this clause implies that it is the relevant Member State which is the ultimate authority to decide whether a TCN has "appropriate accommodation" to be granted the long-term resident status. Halleskov (2005, p. 187) also notes that this controversial wording is also misleading in the sense that the accommodation issue is mentioned in Article 7 concerning administrative orders, instead of Article 5 which includes the conditions demanded for the long-term resident status.

Besides the five-year rule, the original Commission proposal solely entails "stable and adequate resources and sickness insurance covering all risks" as the necessary conditions for long-term residence. Moreover, in order to avoid the risk of obscuring eligibility for long-term resident status, the Commission defines "stable and regular resources" with strict objective criteria and states that the minimum resources required may not be higher than the minimum income guaranteed by the State (European Commission, 2001a, p. 15). In the adopted Directive, the grant of long-term resident status depends on whether the TCN has stable and regular resources or not in order to ensure that he or she will not constitute a burden to the Member State's social assistance system; nevertheless, unlike proposed by

the Commission, the Directive clearly states that “Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status” (Council of Ministers, 2003a, p. 4). Thus, during the Council negotiations, Article 5 and its wording was formulated in a way that gives Member States greater leeway in assessing the applicant’s “stable and regular resources”.

Looking at the articles explained heretofore, it is possible to argue that the Directive offers wide discretion to the Member States in determining the conditions for the long-term resident status and in assessing whether a TCN applying for long-term residence permit fulfills these conditions or not. The Commission’s proposal does not mention specific conditions for the long-term resident status besides the five-year residence requirement, but only states that Member States may limit equality of treatment for public security concerns. Besides, the Commission also adds that these limitations are subject to criteria similar to some of those in Directive 64/221/EEC of February 1964 (European Commission, 2001a, p. 5). However, Article 6(1) of the Directive does not mention this limitation and gives Member States the almost unlimited room for maneuver in rejecting a long-term residence application on “grounds of public policy or public security” (Council of Ministers, 2003a, p. 4). Hence, Member States retain their authoritative position as the ultimate decision-making actors. Guild (1991) calls this a “discretion-based” approach instead of a “rights-based” one as a Member State may reject a long-term residence application if the applicant’s accommodation is not found as “appropriate” or if the applicant is perceived as a threat to public order by the competent national authorities. Although the Commission clearly stated in the proposal that a national government would have only limited reasons based on national security and public order for turning down the request if the TCN has

documentation to show five years of legal residence, sickness insurance and adequate resources (European Commission, 2001a), with the adopted Directive, the equal treatment of TCNs to a significant extent depends on the subjective choice of the Member States who remain the primary actors in deciding on the exact conditions for the long-term resident status.

Halleskov (2005) writes that the majority of the provisions of the Directive are phrased in a negative manner, as one of the provisions indicate that the rights mentioned in the Directive are to be enjoyed by TCNs "under the relevant conditions defined by this Directive" (Council of Ministers, 2003a, p. 2). In addition, the Directive by and large contains vague and ambiguous clauses in the sense they are open to various possible interpretations by different Member States. Accordingly, whether the Directive is successful in harmonizing Member States' policies largely depends on how national legislative authorities choose to interpret these vague provisions when transposing the Directive into domestic legislation. Furthermore, the Council did not include a stand-still clause which would have prevented the Member States from "harmonizing downwards", *i.e.* reducing higher national standards to conform to the standards of the Directive (Halleskov, 2005, p. 188). Although according to Article 13 of the Directive Member States also have the possibility to adopt more favorable conditions for TCNs than stipulated by the Directive, in the light of the rigid stances of many Member States during the negotiations, it is more likely that Member States will choose to retain their authority as much as possible, leading to a narrow interpretation of the Directive's provisions on the status and rights of TCNs.

By virtue of Article 11 of the Directive, in accordance with Tampere principles, long-term resident TCNs shall enjoy equal treatment with Member State nationals within a wide variety of areas as elaborated by the Commission. This matter, equalizing the rights of TCNs

with those of Member State nationals, is a highly controversial one given the sensitivities of the Member States in this area. Although Article 11 in principle enshrines the rights to be enjoyed by TCNs in an equal manner with Member State nationals, it is of paramount importance to indicate that these rights are subject to various limitations inserted into the Directive during the deliberations in the Council. Illustrative in this respect is the German attempt. During the negotiations, Germany fervently supported the restriction of the scope of Article 11 with an attempt to extend the margin of maneuver for the Member States. Indeed, it has to be noted that at an early stage of the negotiations, the German government *explicitly* stated its will to depart from the idea of equality of treatment (Halleskov, 2005, p. 190, emphasis added) although the country has fervently supported supranational immigration and asylum policies.

Article 11 requires some elaboration since it lies at the core of the Tampere goals and forms the essence of the Directive in the sense that it includes the rights to be enjoyed by TCNs after the grant of long-term resident status. Before elaborating on these rights and what controversies they posed during the negotiations, it should be reiterated that this Article represents important national interests at stake, given the sensitivities of these rights for the specific political and socio-economic regulatory practices of the Member States. Access to employment of TCNs is one of these sensitive areas that the Directive targets at. The Commission's original proposal for Directive 2003/109/EC entails that TCNs with long-term status should have access to the labor market on an equal basis with Member State nationals, the only difference being that TCNs are not granted access to jobs "entailing even occasional involvement in the exercise of public authority" (European Commission, 2001a, p. 18). The adopted Directive includes this clause as well; however, additional limitations related to TCNs' access to the labor market were inserted into the Directive during the

negotiations. The foremost limitation in this respect is enshrined in Article 11(3)(a), which includes an optional derogation clause stating that Member States may restrict TCNs' right to access to the labor market "in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals, EU or European Economic Area (EEA) citizens" (Council of Ministers, 2003a, p. 6). During the first and second reading of the Directive, it was the German government that suggested the insertion of this clause (Council of Ministers, 2003b). This derogation clause is not without its problems; the Directive does not state whether the word "existing" implies that the relevant national legislation has to be in force at the time of the adoption of the Directive or only at the date of its implementation. In the light of other Title IV measures adopted by the Council of Ministers, it can be said that the deadline for introducing derogation legislation is often mentioned in such measures. However, as Directive 2003/109/EC does not explicitly indicate a deadline, as Halleskov (2005, p. 192) suggests, it is more probable that the Council deliberately chose to leave its application open. This provision, for it does not clearly define its scope of application, creates a legal uncertainty and leaves room for the Member States to discriminate against TCNs with regards to employment opportunities. Halleskov (p. 191) writes that it also appears to provide Member States with an unlimited possibility to restrict the free access to the labor market of TCNs.

The implementation of Article 11(3)(a) is averted by the fact that five EU Member States – Cyprus, Italy, Portugal, Slovenia and Sweden – are state parties to the ILO Convention on Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, which includes a duty to disregard Article 11(3)(a) in respect of TCN migrant workers who have resided and worked legally in their territory for more than two years (Halleskov, 2005, p. 193). This matter also relates to the

provision of residence requirement of five years for the grant of long-term resident status, as the very same Convention requires the grant of unlimited access to the labor market after two years instead of five. In addition, in accordance with the agreements concluded between the EU and third countries, specific groups of TCNs have the right to enjoy more favorable conditions than those stated in Article 11 of the Directive. To illustrate, the EEA Agreement and the EC-Swiss Agreement extends the right of freedom of movement to the citizens of Norway, Iceland, Liechtenstein and Switzerland. Hence, it can be said that the issue of access to the labor market as phrased in the Directive reveals two important reservations of the Member States. First, TCNs are excluded from employment in public service, and second, Member States may derogate from equality of treatment and discriminate against a TCN if specific jobs are reserved for Member State or EEA nationals.

Now, I will look at the "territorial limitation" and "education" clauses which are also listed in Article 11 of the Directive. The examination of these clauses is crucial as their insertion into the Directive was supported by some restrictive Member States, among them Germany and the Netherlands. The territorial limitation as a whole constitutes a blow toward TCNs' right of freedom of movement, which is an integral part of the realization of the Community's internal market goal and which is the principle providing inspiration for the Commission's proposal. The territorial limitation clause allows Member States to limit equality of treatment "to cases where the registered or usual place of residence of the long-term resident lies within the territory of the Member State concerned" (Council of Ministers, 2003a, p. 16). The insertion of this clause by a proposal from the Greek Presidency may be viewed as a complementary attempt to the bargaining power of restrictive Member States, such as Austria, Germany and the Netherlands (Halleskov, 2005, p. 193). This provision brings about a limitation to TCNs' right of free movement, which can be denied by a second

Member State in a situation where a TCN concerned has only stayed there for a short period of time. As a long-term resident TCN in a Member State must reapply for a residence permit if he or she is willing to work or reside in another Member State, this implies that TCNs are not entitled to benefit from freedom of movement within the EU territory. This suggests that even when a TCN has EU long-term resident status as offered by the Directive as the residence right provided by a specific Member State is no guarantee for residence permit in another Member State. Thus the ability of these permanent residents to reside and work in another Member State depends on the whims of the national authorities in the second Member State, not on the permanent resident's status as an EU long-term resident (Larsen, 2004, p. 31). The elements of this issue are determined by Articles 14 and 15 of the Directive; however it has to be noted that these elements are defined in strict terms. Article 14(1) recognizes a TCN's "right to reside in the territory of Member States other than the one which granted him/her the long-term residence status, for a period exceeding three months, provided that the conditions set out in this Article are met", and Article 14(2) states that "a long-term resident may reside in a second Member State on the following grounds: exercise of an economic activity in an employed or self-employed capacity, pursuit of studies or vocational training, and for other purposes" (Council of Ministers, 2003a, p. 7). Nevertheless, this right is constrained by various limitations although the Commission proposal only mentions limitations with regards to jobs entailing involvement in the exercise of public authority (European Commission, 2001a, p. 18). First, Article 14(3) states that with regards to the economic activities of TCNs, Member States may consider their labor market conditions and apply national procedures for the exercise of such activities thereafter. Second, Member States are empowered to derogate from granting the right of residence and "limit the total number of persons entitled to be granted right of residence, provided

that such limitations are already set out for the admission of TCNs in the existing legislation at the time of the adoption of this Directive" (p. 8). Last but not least, by virtue of Article 15, Member States may require TCNs to comply with integration measures, in accordance with national law. These integration measures may also include language courses, which are inserted into the Directive as a result of Austrian, Dutch and German demands as mentioned before. Hence, in terms of free movement, the Directive offers very few automatic rights attached to the long-term resident status as the second Member State may deny a TCN the right to reside if the country has quotas for entry and if the quota is filled, and if relevant national authorities decide that the labor market situation in the country is "not available".

With regards to the education clause in Article 11(1)(b) and (c), it is possible to observe similar limitations. The Commission's original proposal grants TCNs the absolute right to education and vocational training on an equal basis with Member State nationals; however, similar to the aforementioned provisions, the provision on education was also adopted with important limitations departing from the Commission's goal of equal treatment and narrowing down TCNs' right to education in the Member States. Although the final Directive indicates that TCNs shall have access to education on an equal basis with Member State citizens, the right to education is subject to the aforementioned territorial limitation clause. Furthermore, the Directive empowers the Member States with the competence of imposing additional limitations on the right of education of TCNs, such as demanding "appropriate language proficiency for access to education and training" (Council of Ministers, 2003a, p. 6). This limitation reminds us of Article 5(2), which allows Member States to impose additional integration measures for the grant of long-term resident status. Hence, language requirement may serve as a prerequisite not only for the grant of long-term residence status but also for access to education if the relevant Member State finds it appropriate to do so.

It has to be stated that during the final deliberations in the Council, the German government persistently insisted on adopting stricter measures in the area of education (Council of Ministers, 2003b). German government successfully lobbied for the insertion of "specific educational prerequisites" clause in Article 11(3)(b) which renders Member States with the ability to demand numerous additional national requirements. Although in principle Article 11(1)(b) lays out TCNs' right of access to education as an area of equality of treatment as stipulated by the Commission proposal, the vague clause of "specific educational prerequisites" provides a possibility for extensive derogation by the Member States. A parallel situation exists with regards to TCNs' right to achieve study grants on equal terms with Member State nationals. Article 11 defines this right by using the phrase "in accordance with national law", although the Commission's proposal simply assigns this right to TCNs on equal terms with Member State citizens. Accordingly, this may imply a complete derogation from equality of treatment since Member States are left with the discretion of arranging this matter with respect to their national legislation within the domestic context. Nevertheless, it has to be mentioned that the term "in accordance with national law" may not necessarily imply a possibility for derogation but may simply be a means of stating that TCNs shall have access to education on an equal footing with Member State nationals (Halleskov, 2005, p. 196). However, given the dominant discretion-based approach within the Council where the majority of the Member States are willing to derogate from the Directive's provisions as the abovementioned explanations have tried to demonstrate, it is more likely that the Member States deliberately agreed on the wording of Article 11(1)(b).

The principle of equality of treatment is also dismantled with regards to Article 11(1)(d), which is related to the social benefits of TCNs with long-term resident status. According to this provision, TCNs shall enjoy equal treatment with Member State nationals

with regards to “social security, social assistance and social protection as defined by national law” (Council of Ministers, 2003a, p. 16). By failing to list in detail the social advantages that Member States are obliged to grant, the Council signals that economic considerations are more important than the social benefits that TCNs are to enjoy (Halleskov, 2005, p. 198). Furthermore, with Article 11(4) which includes an optional derogation clause, Member States are empowered with imposing restrictions on equal treatment in respect of social assistance and social protection to core benefits, although in the Commission proposal social assistance and social protection are mentioned as areas requiring equality of treatment. Although the Directive states that Member States may also implement additional benefits for TCNs, the general positions of the Member States appear to favor the restrictive option as the insertion of these limitative clauses in the Directive was a deliberate attempt during the Council negotiations. Hence, TCNs’ right to social advantages are by and large conditioned by how the terms “social security”, “social assistance” and “social protection” are defined within the domestic legislation of the relevant Member State. It also has to be noted that TCN workers from Turkey, Morocco, Tunisia and Algeria all benefit from more favorable social security conditions than offered by the Directive as a result of the agreements concluded between the Community and these countries (Halleskov, 2005, p. 198). This is another issue area where the rights of TCNs cannot be harmonized across the Member States.

Table 2. Differences between the Commission's Proposal and the Adopted Council Directive

Amended/Inserted Articles	Commission Proposal	Adopted Directive in the Council
Article 3(2) **Chapter I: General Provisions**	Broad scope including all TCNs residing legally in a Member State, irrespective of the ground on which they were originally admitted	Precludes students, people benefiting from subsidiary or temporary protection, refugees, people who reside on temporary grounds and diplomats
Article 5(1) **Chapter II: Long-term Resident Status in a Member State**	"Stable and adequate resources and sickness insurance" is included as a condition for long-term resident status but is defined with strict criteria	Change in wording providing Member States with greater leeway in evaluating these resources by reference to their nature and regularity
Article 5(2) **Chapter II: Long-term Resident Status in a Member State**	Complying with integration measures	Complying with integration conditions in accordance with national law
Article 6(1) **Chapter II: Long-term Resident Status in a Member State**	"Public policy or public security" limitations are subject to certain criteria similar to some of those in Directive 64/221/EEC of February 1964	No limitation to Member States' right to reject a long-term residence application on "grounds of public policy or public security"
Article 7(1) **Chapter II: Long-term Resident Status in a Member State**	Does not mention "appropriate accommodation" as a condition for long-term resident status	The clause "appropriate accommodation" as a condition for long-term resident status is inserted
Article 11(1) **Chapter II: Long-term Resident Status in a Member State**	Absolute right to education and vocational training on an equal basis with Member State nationals	The clause "specific educational prerequisites in accordance with national law" is inserted
Article 11(2) **Chapter II: Long-term Resident Status in a Member State**	Participation of TCNs in the labor market on an equal basis with Member State citizens	This right may be restricted "in cases where, in accordance with existing or Community law, these acticities are not reserved to nationals, EU or EEA citizens"
Article 11(3) **Chapter II: Long-term**	Proposal inspired by existing Community law on free	Equality of treatment may be limited "to cases where the

Resident Status in a Member State	movement for the citizens of the Union	registered or usual place of residence of the long-term resident, or that of family members for whom he/she claims benefits, lies within the territory of the Member State concerned”
Article 11(4) **Chapter II: Long-term Resident Status in a Member State**	Does not mention any limitation to the equality of treatment in social assistance and social protection	Restrictions on equal treatment in respect of social assistance and social protection
Article 14(3) **Chapter III: Residence in the Other Member States**	Does not mention any limitation to the equality of treatment in employment the exception being jobs entailing involvement in the exercise of public authority	Member States may consider their labor market conditions and apply national procedures for the exercise of economic activities
Article 15(3) **Chapter III: Residence in the Other Member States**	Does not mention specific integration measures to be implemented by the Member States	Member States may require integration measures in accordance with national law (*i.e.* attending language courses)

In this Section, I tried to show that the Commission’s initial legislative proposal for Directive 2003/109/EC was by and large watered down by the Council, including the provisions on free movement on which the Commission had based its proposal. Table 2 demonstrates a summary of the main differences between the Commission proposal and the adopted Council Directive. Now, I will review the immediate effects of Directive 2003/109/EC on Germany and the Netherlands by looking at whether the status and rights of TCNs were reduced or extended after the Directive’s adoption. When we look at the Netherlands, we see that the country did not transpose the Directive on the prescribed deadline, but it transposed it later. Since the Dutch government prioritized the implementation of other legislative projects, the necessary amendments to the Aliens Act (2000), the Aliens Decree (2000) and the Aliens Act Implementation Guidelines (2000) in

order to transpose this Directive into national law were delayed and the Directive was finally implemented in Dutch law on 1st December 2006 (European Migration Network, 2007, p. 38). Since 2006, the transposition of the EU Directive for long-term residents has changed conditions and security of status for the better and worse (Niessen *et. al.*, 2007). According to MIPEX indicators, with regards to the security of status, more aspects of a long-term residents' personal life are now considered in withdrawal decisions, but long-term residents now cannot spend more than one year outside the EU territory (p. 145). On the other hand, a reduction in the rights of TCNs occurred mainly due to new restrictions on the right to family reunification. Although immigrants have been eligible for long-term residence after five years of continuous residence even before the adoption of the Directive and long-term resident immigrants receive equal rights in important areas such as employment and housing, as of 1 January 2007, after the entry into force of the new Naturalization Act, immigrants have faced less favorable conditions to become long-term residents. Through a derogation clause in the transposition of the Directive, the Netherlands was able to make simple sickness insurance a condition for long-term residence. Conditions also include proof of sufficient income and a written language and integration test abroad as elaborated in detail in Chapter 2. Hence, it is possible to say that the transposition of the Directive did not have a concrete impact on the Netherlands, both because the country already had more favorable conditions than stipulated by the Directive's provisions and because of the new restrictive laws put into place after the adoption the Directive. Due to new laws and restrictions put into place as the Directive allows Member States to do so, the acquisition of long-term resident status has become harder with the introduction of new conditions and fees to be paid for an application for the residence permit.

In Germany, the obligations for the transposition of the Directive were still not fulfilled by the end of 2007. An important reason for this delay is that it was in 2007 when the German Parliament adopted an Act related to the transposition of EU Directives, the Act to Transpose European Union Directives on Immigration and Asylum. Directive 2003/109/EC is among these legislative instruments that the Parliament's Act addresses. Germany had far less generous conditions for TCNs than stipulated in Directive 2003/109/EC. Hence, an extension of rights of TCNs occurred as the status of TCNs grants free access to employment for certain categories. Furthermore, while transposing the Directive into its national law, Germany reduced the residence requirement for long-term residence from eight to five years (Groenendijk, 2006, p. 396). For a very long time, German immigration law had two separate statuses for long-term resident TCNs: the unrestricted residence permit and the establishment permit. The establishment permit, which could be obtained after eight years, granted free access to the labor market without a work permit and free access to self-employment. On the other hand, the unrestricted residence permit, which was to be obtained after five years, only granted free access to employment after six years of lawful residence.[20] On 1 January 2005, the Immigration Act, *Zuwanderungsgesetz*, entered into force after a long political debate in Germany. Under this new Act, these two statuses were merged into one single status; the new establishment permit (*Niederlassungserlaubnis*), which could be obtained after five years of lawful residence. Although this new status does not offer a major increase in the rights of immigrants, it does allow free access to employment and self-employment for certain categories (Groenendijk, 2006, p. 405).

[20] In 1999, Germany was the only EU country applying a language requirement as a condition for obtaining one of the two permanent residence statuses (Groenendijk, 2006). Nevertheless, it has to be stated that this provision was not applied with respect to lawfully resident Turkish citizens as their status is arranged by the EEC-Turkey Association Agreement which also forbids the insertion of new restrictions for long-term resident Turkish citizens living in an EU Member State (Jacobs and Rea, 2007).

In Chapter 2, I tried to explain that both Germany and the Netherlands have gone through recent revisions of their existing immigration policies. With regards to TCNs, which are the focal point of this thesis, the most important changes have been realized in terms of the acquisition and loss of permanent residence status. Rights attached to this status have not changed considerably as elaborated above. In both countries, access to long-term resident status became more difficult as a result of the introduction of new conditions and barriers, while the withdrawal of this status became easier as new grounds for losing the status were introduced. Measures in the fight against terrorism following 9/11 have also influenced this trend (Groenendijk, 2006, p. 401). Groenendijk (p. 407) writes that Directive 2003/109/EC have had the more perverse effect on Germany and the Netherlands of scaling down (making access more difficult) rather than increasing the level of protection by facilitating access to long-term resident status. Having stated this brief review, I will now look at the situation in detail and try to understand why the two Member States have agreed upon the adoption of the Directive although there is not a concrete positive step in progressing the status and rights of TCNs in both countries.

Although the Directive envisaged harsher conditions vis-à-vis the existing arrangements in some Member States (such as Belgium and France where one could obtain long-term resident status after three years while the Directive stipulates five), it was more generous than the laws in Member States that provided weaker rights for TCNs (such as Austria, Denmark and Germany). For the Council did not include a stand-still clause which would have prevented the Member States from "harmonizing downwards", *i.e.* reducing higher national standards to conform to the standards of the Directive (Halleskov, 2005, p. 188), countries such as Belgium, France and the Netherlands could use EU legislation to gain the freedom to crack down on immigrant rights (Luedtke, 2009, p. 144). The Netherlands,

together with France and Belgium, relatively supported the Commission's proposal, primarily because the proposed Directive already included less generous measures than the national laws of these countries (European Council, 2002). This suggests that the Netherlands, as the small but pro-active country supporting European cooperation (Directive 2003/109/EC), could indeed lay the ground for domestic change toward worsening the conditions for TCNs through the Directive. Thus, for the Netherlands, the EU served as a forum to lower the status and rights of immigrants within national territory. As the Directive allows Member States to do so, TCNs with more rights before the Directive have now come to experience harsher conditions in the Netherlands. In doing so, the Dutch government was "integrative maximalist" in pursuit of policies that could permit EU level cooperation commensurate with Dutch preferences (Geddes, 2003, p. 123).

There are also cases when EU policies transcend the standards within the domestic contexts of the Member States. In Germany, the rights for TCNs were far less generous than the Directive. A coalition of countries led by Germany engaged in a battle trying to restrict the Commission's proposal in a direction that would not produce any binding "hard" standards (Luedtke, 2009). Illustrative in this respect is the residence requirement; Germany had to reduce the residence requirement for long-term residence from eight to five years when the Directive was adopted. It is for this reason that the country fervently argued against the Directive as its adoption would lead to an increase in the rights for TCNs. These Member States thus tried to amend the proposal in order to insert clauses to make the Directive compatible with their existing national legislation and to minimize the need for future changes or create room for announced or intended changes in their national law (Hailbronner, 2000; Groenendijk, 2006). This was also reflected in the negotiation process of the Directive as the Dutch and German governments supported the insertion of the clause

"integration conditions" into the text of the Directive in order to be able to make the Directive compatible with their existing or intended integration policies obliging the immigrant to take integration and language courses to reach the long-term resident status.

In 1998, the Dutch government introduced rules on language courses in their laws on the integration of TCNs; however, at that time the country did not intend to use language tests as a tool in regulating the admission and status of immigrants in the Netherlands (Groenendijk, 2006, p. 397). It was in 2002 when the idea of using integration tests for the regulating the status of TCNs received support in the Dutch Parliament. Hence, integration tests began to be used as an instrument of selection as well as a barrier to the acquisition of a permanent secure residence status by TCNs (p. 398). The reason why I mention this policy change is to show that during the negotiations of the Directive, the Dutch government had the intention to introduce into its national law rules on language and integration tests. This by and large explains the successful attempt of the Dutch government (together with Austrian and German delegations) in inserting into the Directive a subjective clause requiring TCNs "to comply with integration conditions in accordance with national law" (Council of Ministers, 2003a, p. 4) with an intention to lay the ground for domestic policy change. In 2004, the Dutch government officially announced the introduction of language and integration tests as a new requirement for long-term residence status, and this was justified with reference to Directive 2003/109/EC (Groenendijk, 2006, p. 404). On the other hand, the same attempt by the German government can be explained by the situation that Germany already had a language requirement for long-term residence permit and for this reason the German delegation supported the insertion of this clause to make the Directive compatible with existing legislation. In Germany, the debate on the Immigration Act (*Zuwanderungsgesetz*) especially during 2002-2004 influenced the both the negotiations and

content of the Directive. The German government tried to create room for announced or intended changes in its laws (p. 403) as with the Residence Act of 2004, the language requirement for permanent residence was made stricter by the German government. In addition to the requirement of sufficient knowledge of German language, the German government introduced basic knowledge of the legal and social system and the German way of life as a new condition for permanent residence permit (p. 399). National debates on the proposal for a new law that would introduce extended German language and social knowledge conditions and the obligatory integration courses for immigrants considerably affected the position of the German government during the negotiations (p. 403).

These national developments show that Germany and the Netherlands had already existing or intended arrangements with regards to their goal of restricting new immigration especially through family reunification. I argue that the intended changes in this respect are the so-called civic[21] integration measures launched as a new trend in Western European governments' immigrant integration policies. Joppke (2007, p. 4) writes that an inevitable outcome of the new focus on socio-economic integration is shifting the burden of adjustment toward the immigrant, especially during the first stages of entering the new society. To this end, basic knowledge of the host society's language, history and institutions is significant for immigrant integration (p. 5). Currently, both Germany and the Netherlands offer integration and language courses for immigrants as part of their civic integration policies which have become widespread across Western Europe. The aim of this policy is to stimulate socio-economic inclusion and facilitate the independence of immigrants (p. 8). Furthermore, civic integration policies aim at enhancing the position and chances of immigrants in the labor market and decrease their dependence on social benefits provided

[21] The civic dimension of integration consists of various programs and tests requiring TCNs to demonstrate that they know and respect the receiving society's history, institutions and values (Carrera and Wiesbrock, 2009).

by the state. However, the ways these civic integration policies are practically implemented significantly diverge from what Member States have agreed upon in the Tampere European Council and the CBPs. Both within the Dutch and German contexts, civic integration policies are obligatory, creating pressures for the immigrants to integrate themselves into the host society. The obligatory character of civic integration underlines major Member State concerns toward the arrival and presence of immigrants in host societies. Joppke (2007) argues that the policy is related to restricting the immigration of family members. The majority of immigrants arrive in Europe through family reunification and asylum, creating an immigration wave consisting of a low-skilled and language-incompetent immigrant population (p. 12). With an attempt to prevent problems associated with increasing demand for family reunification, obligatory civic integration policies aim at admitting immigrants on a selective basis favoring high-skilled labor force while filtering low-skilled immigrants. In the Dutch case, most family members are either Turkish or Moroccan, and second and third generation immigrants from these countries look for a marriage partner in their parent's country of origin. The offspring of such marriages lead to ethnically close families, increasing the propensity for the ethnic seclusion that characterizes most of Turkish and Moroccan families in the Netherlands. Hence, the Dutch-born offspring in these families encounter the problem of adapting to the host society since they usually continue their lives within their own intra-ethnic communities. Joppke (p. 10) writes that this is the exact problem that civic integration policies have aimed at resolving.

Civic integration policies, especially language courses, invoke a financial burden for the immigrant for the cost of the courses is not covered by the state. Both the renewal of short-term residence and the granting of long-term residence depend on participation. Furthermore, non-compliance with the requirement of participating in these courses may be

fined and lead to a decline in the social benefits of immigrants in both countries. It should be noted that the Netherlands has adopted a very radical position in this respect; integration courses have been used by the Dutch government as an additional means of immigration policy, implying that attached integration tests function as a filter for the entrance of especially low-skilled immigrants. Within this process, the role that the Dutch state has is rather limited as the provision of integration courses has been farmed out to private organizations and the state is significantly withdrawn from the integration process (Joppke, 2007, p. 8). The position of Germany is less radical, but a link may be established between participation to integration and language courses and entitlement to long-term residence permit (Joppke, 2007). In addition, immigrants are subject to pass a test in order to be granted a long-term residence permit in both countries (Jacobs and Rea, 2007, p. 267). It should also be mentioned that with the 2007 Integration Abroad Act, the Dutch government made the integration test a precondition for immigration. This policy shift also implies a significant burden for the immigrants in the sense that they are expected to deal with their own integration without relying on the Dutch state, which subordinates the secure legal status of immigrants to the fulfillment of the prerequisite of civic integration courses and attached integration tests. Another point which is worthy of note is the increase from 70 per cent to 100 per cent in the income requirement for TCNs with a permanent residence permit (Groenendijk, 2006, p. 394). Geddes (2003, p. 117) writes that Germany has also been very much taken by the Dutch approach with its emphasis on individual self-reliance in the integration of immigrants. In Germany, the new Immigration Act brings about restrictive measures for naturalization and long-term residence similar to the Netherlands. There are also financial penalties of cutting the social benefits of immigrants in case of non-compliance. In addition, as stated in the new 2005 Immigration Law that made conditions for

family reunification harder, non-compliance may lead to the non-renewal of a temporary or the refusal of a permanent residence permit, if these permits are discretionary. However, Joppke states that this provision does not produce a significant influence in the sense that the majority of newcomers consist of family members and the residence permits of many family immigrants are not discretionary, but grounded in constitutional law (2007, p. 13). However, it has to be noted that there are also plans by the German government to make a minimal knowledge of German a condition for family reunification (Jacobs and Rea, 2007).

Together with the aim of restricting low-skilled immigration through asylum and family reunification, I argue that the goal of global competitiveness is also important with regards to the changing policies of Germany and the Netherlands, as elaborated in the first Section of this Chapter. In the context of these changing policies, high-skilled immigrants are welcome while low-skilled family members face strict conditions such as toughened age thresholds together with pre-entry requirements (Joppke, 2007. As European countries are concerned with economic competitiveness not only at the global level but also among themselves, civic integration is selectively targeting at the reduction of the number of low-skilled family members while the number high-skilled immigrants is trying to be increased. Member States' tendency to distinguish between high-skilled and low-skilled TCNs is also exhibited in countries' specific laws and regulations that have been put into place in order to attract high-skilled workers.[22] By restricting the arrival of low-skilled family members, Member States aim at attracting high-skilled migratory flows toward indirectly preventing immigration through family reunification via civic integration policies with a sanctioning regime as elaborated above. Although the introduction of civic integration policies is clearly

[22] For additional information on this topic, please see the report by European Migration Network, Conditions of Entry and Residence of Third Country Highly-Skilled Workers in the EU, published in May 2007.

a European-wide trend, it has to be noted that civic integration policies by the Member States are formed without guided coordination from the EU level (Jacobs and Rea, 2007).

Going beyond the debate on what civic integration policies have really aimed at, it can be said that tying the grant of a long-term residence permit to the successful completion of an integration and language exam relates Groenendijk's third perspective on integration, in which the immigrant's assumed unfitness to integrate is the ground for refusal or admission to the country. This practice undoubtedly contradicts with the EU approach which supports a facilitated process for TCNs. Furthermore, tying the grant of residence permit to the results of the integration tests create a linkage between the previously separate domains of immigration control and immigrant integration (Joppke, 2007, p. 7). The blurred boundary between these two domains reveals the diminishing importance attached to the view that a secure legal status enhances integration. Recently, the lack of integration is taken as the ground for the refusal of admission, and the entire integration process is subordinated to the exigencies of immigration control (Ibid.). The Dutch policy of "integration from abroad" is both a recent and important expression of this approach.[23] Although Directive 2003/109/EC leaves room for the introduction of national integration measures by the Member States, it is stated by various European-level documents that the integration process should be facilitated in order to improve the integration of immigrants with the host society.[24] In contrast with this approach, this study has found out that the two Member States examined here, Germany and the Netherlands, tend to formulate their integration policies mainly on

[23] Integration abroad programs were first introduced in German *Aussiedler* policy, which is a preferential immigration scheme for ethnic Germans. However, the difference is that the German government has supported German language acquisition abroad by funding of schools and language courses, while no Dutch education abroad programs exist.

[24] For more information on the dominant view of the European Commission on this issue, please see, European Commission. 2004a. *Handbook on integration for policy-makers and practitioners.* Brussels: European Commission.

the national level, and this is not surprising given the positions and preferences of these countries during the negotiations of Directive 2003/109/EC as examined in the second Section of this Chapter. While the Netherlands has demonstrated a policy shift toward making use of civic integration policies as a filter for unwanted immigration mainly through family reunification, Germany tends to restrict its naturalization and long-term residence policy although the German government has tried to position itself on a liberal and inclusionary axis with regards to its immigrant integration policy rhetoric. More importantly, all of these developments have taken place without EU guidance, meaning that countries steer, amend or significantly revise their integration policies without specifically following the course of the EU on immigrant integration (Jacobs and Rea, 2007).

4.3. Theoretical Implications

Directive 2003/109/EC was already affecting national contexts even before it was adopted (Gronendijk, 2006) and it led to fervent negotiations with regards to the changes that Member States had to realize while transposing the debated legislative act. During fervent negotiations in the Council, the Commission was accused of inaccurately interpreting the Tampere Council's conclusions (Larsen, 2004). The oppositional attitude of the Member States and their will to amend the Commission's proposal derived primarily from the attempt to make the Directive compatible with their existing and/or intended national regulations so that the transposition of the Directive would only lead to slight changes within the domestic context. During the negotiations, the Council and some Member States pushed forward national interests in a way that led to the significant revision of the original Commission proposal. This suggests that following the Commission's proposal, the negotiation process of the Directive unleashed the oppositional positions of some particular

Member States, among which Germany assumes a key role, toward policy-making related to TCNs. Furthermore, each limiting amendment to the Commission's proposal received criticism from Brussels-based organizations such as the European Council on Refugees (ECRE) and Exiles and Caritas (Uçarer, 2010, p. 13). As Halleskov (2005) states, the Council took its inspiration from existing national legislation, and this resulted in several restrictive amendments to the Commission's liberal and inclusive proposal which had a broad scope of beneficiaries unlike the final Directive.

Both in the light of the negotiation process of the Directive and as documented in the historical description of how the EU has been granted the competence of making legislation in the areas of immigration and immigrant integration, it appears that Member States are reluctant to weaken their sovereignty over TCNs living in their national territory. Hence, it can be said that harmonizing Member States' integration practices with European legislation in the form of hard law through Directives or Regulations is difficult as these Directives only set the minimum standards that Member States have to comply with, as the case of Directive 2003/109/EC has shown. In line with the requirements of the Directive, Member States will have overly wide discretion to ask immigrants to comply with mandatory integration requirements. In this respect, a key matter leading to the situation that the adopted Directive falls short of equalizing the rights of TCNs with those of Member State nationals is the use of the word "may" instead of "shall" in the language of the Directive (Luedtke, 2009, p. 141). As a result, as the European Parliament (2005, p. 161) states, Member States transpose Directives freely, "à la carte" and the Commission provides an insufficient mechanism of monitoring while the ECJ is not empowered to impose sanctions in cases where legislative acts include vague and flexible wording, which is deliberately arranged by Member States with relatively more bargaining power (such as Germany) with

an attempt to circumvent harmonization. As Schibel (2004) puts it, such an approach represents a significant departure from the goal, as formulated in Tampere, of giving TCNs a comparable legal status to those of EU nationals. The unrealized Tampere goal of equalizing TCN rights with those of EU nationals implies that the perspectives of Member States are not determined by the EU but rather shaped by their own national interests. The vague and broad wording of the Directive renders Member States with the possibility of interfering with TCN rights associated with the long-term resident status. This possibility primarily stems from optional derogation clauses, which provide the opportunity to derogate from specific articles of the Directive if a Member State wishes to do so. Hence, the fate of the Directive by and large depends on how each Member State chooses to interpret these derogation clauses, the most important of which are related to the right to employment, education and social benefits. It is also worthy of note that the minimum standard of the Directive is so low that no uniform long-term resident status can be secured across the EU Member States given the fact that specific groups of TCNs enjoy more favorable rights based on association agreements (Halleskov, 2005, p. 200).

In this last Chapter, I have tried to analyze the two hypotheses (liberal intergovernmentalism versus supranationalism) in the light of the descriptive data provided in Chapter 2, Chapter 3 and the negotiation process of the Directive. The first Section of this analytical Chapter shows that European cooperation in the field of immigrant integration has followed a rational socio-economic course of events supporting a liberal intergovernmental approach. Similarly, the second Section demonstrates that due to subsequent restrictive amendments to the Commission proposal during the Council negotiations dominated by Member States with relatively more bargaining power, the adopted Directive significantly calls into question the Tampere goal of providing TCNs with individual rights and a secure

legal residence status, which has gradually become dependent on strict integration requirements aiming at restricting low-skilled immigration especially due to asylum and family reunification. Contrary to the Commission's intention, the Council amended the draft in a way that significantly runs contrary to the principle of equality of treatment, which is threatened by a demonstration that the Member States, not the EU institutions, control who can reside on national territory. In the second Section, I also tried to demonstrate that the adopted Directive is not likely to create any concrete changes with regards to the status and rights of TCNs in Germany and the Netherlands, the exception being the reduction of the residence requirement for long-term residence in Germany.

In the first Chapter of this thesis, I emphasized that any concrete progress or the lack of any improvement in the status and rights of TCNs in Germany and the Netherlands will shed light on why Member States choose to cooperate in the area of immigrant integration and adopt Directive 2003/109/EC. Then, what are the theoretical implications of my finding that the adopted Directive has not produced an amelioration of the status and rights of TCNs in Germany and the Netherlands? Calling for intensive cooperation in this area, the Commission has been empowered to propose legislation in the area of immigration and asylum with the Amsterdam Treaty as Member States have opted for developing strategies to achieve compromises that realize those national preferences more efficiently than in the case of unilateral action (Moravcsik, 1999). Furthermore, Member States have tried to control one another and increase joint gains (p. 3) with regards to the very important issue of providing immigrants with EU rights including the right of free movement from one Member State to another. Although the Commission was not empowered to initiate legislative proposals in areas directly relating to immigrant integration, and it has tried to use this opportunity to the full as certain proposals contained elements of integration policy

(Niessen, 2004, p. 54). The Directive on long-term residents analyzed in this study is an example of this situation. Nonetheless, the Council chose to focus on the “admission” implications of TCNs’ mobility as proposed in the long-term residents Directive, rather than looking at the Commission’s proposal as a set of measures for immigrant integration (p. 55). Although some level of progress since the Amsterdam Treaty may be detected, the amelioration of the status of TCNs is very limited. As the area of immigration and immigrant integration has been subject to unanimous decision-making since 1990s, decision-making in the third pillar exemplifies Member States’ hesitancy in allowing the EU to gain competence in immigration affairs (Larsen, 2004). It may seem that the Amsterdam Treaty strengthened the supranational character of the EU in favor of supranational institutions such as the Commission and the ECJ. However, despite the Commission’s increasing role, a supranational decision-making process is difficult to function. As demonstrated in the previous chapters as well, the Commission shares the rights of proposal with the Member States meaning that immigrant-related matters are not in the exclusive competence of the Commission although it acts as the initiator of the policy-making process. The role of the ECJ is also limited with regards to the preservation of law, order and internal security (Kurt, 2006, p. 79). When it comes to the Parliament, it is only to be consulted when a decision is to be made by the Council. Furthermore, it is up to the Council to unanimously change this procedure in favor of supranational institutions. In the light of these findings, the limitations to judicial review and parliamentary scrutiny of Council decisions, it is reasonable to argue that matters related to TCNs are likely to be dominated by intergovernmental processes excluding any harmonization the absence of which seriously undermines a supranational policy-making process. Although Directive 2003/109/EC may be counted as a positive step toward creating a common status for TCNs who may apply for long-term residence after five

years of legal and continuous residence in a Member State, the Directive fails to direct Member States towards a particular direction in immigrant integration.

Based on the abovementioned explanations, responses to the formation of immigration and immigrant integration *acquis* remain "national". Both Germany and the Netherlands have moved toward immigrant policies that ask for greater demands from newcomers (Geddes, 2003, p. 125). Furthermore, provided by the discretion of the Directive, Member States may adopt more restrictive or additional integration policies which constrain the rights of TCNs within EU territory. With regards to the case of Directive 2003/109/EC, Germany and the Netherlands have pursued restrictive policies not that much different from those that they would have pursued in the absence of European cooperation; however, they could get away with it more easily by rationally benefiting from the EU as a playing field (Vink, 2001, p. 23). As Carrera and Wiesbrock (2009) argue, European policy-making in the field of immigrant integration allows the transfer and legitimizing of certain national policies that use civic integration to restrict immigration. By agreeing upon making the debate a "European" matter, Member States seem to undermine their decision-making capacities but they were in fact reserving certain prerogatives which were zealously defended in the negotiations of Directive 2003/109/EC. Especially Member States with relatively more bargaining power made sure that the final outcome did by no ways allow for an increase in the number and rights of TCNs within national territory. Within such a context, European integration does not necessarily lead to an abrogation of national sovereignty or a loss of authority by the Member States. Rather, the EU only remains as a frame for policy-making in immigration and asylum *acquis.* Hence, unlike suggested by a supranational bargaining theory underlining the role of the Commission in disseminating knowledge and the generation of potential solutions to common problems (Pollack, 1997), the adopted

Directive reflects the primary interests of national governments whose bargaining power in negotiations tend to constrain the emergence of an efficient outcome.

Vink (2001, p. 6) argues that cooperation is more rewarding for some countries than for others as domestic needs to act through the EU level vary greatly. In the light of this argument, European cooperation appears as a "need" rather than an ideological commitment to supranational institutions and their liberal axis toward granting more rights to TCNs. Once Member States agree upon European cooperation, they engage in a battle to continue this cooperation based on lowest common denominator standards (Moravcsik, 1999; Groenendijk, 2001; Lavenex 2005). As Vink (2001, p. 21) also puts it, defection is often not an option for a small but active country, and there may be no other option than making a compromise with other Member States based on the lowest common denominator. As I tried to demonstrate, the adopted Council Directive fails to safeguard the status and rights of TCNs in the EU mainly because the Commission's proposal was subject to several amendments paving the way for a lowest common denominator. Groenendijk (2001) explains the difference between the Commission's proposal and the final outcome as a norm of the third pillar after the Maastricht and Amsterdam Treaties. This is mainly due to the unanimity rule that creates a cumbersome decision-making process by predisposing to produce lowest common denominator outcomes. Directive 2003/109/EC was also adopted by unanimity, which influenced the climate of the negotiation process in favor of the Member States as one country's objection would block the whole process. This led to a much contested policy process which resulted in a minimal progress that only favored TCNs who were already the long-term residents of the EU Member States (Uçarer, 2010). The ECRE also states that Member States have tried to "shift responsibility" through the harmonization of standards to lowest common denominator (Lahteenmaki, 2004, p. 5). As a

result, the policy outcome is long on restrictions and modest on rights and protections for TCNs (Uçarer, 2010). Within such a context, the supranational Commission favoring an inclusive approach and NGOs as the supporters of a rights-based approach were seriously constrained.

In this sense, I agree with Moravcsik that the integration process did not supersede or circumvent the political will of national leaders; it *reflected* their will (Moravcsik, 1999, emphasis added). Hence, as Moravcsik (p. 18) argues, European integration can be best explained as a series of rational choices made by national leaders who share common demographic and socio-economic problems. These leaders are concerned with the distribution of benefits, which are substantially shaped by the relative power of governments, understood in terms of asymmetrical interdependence (p. 52). This argument by and large challenges the supranationalist views of European integration outlined in Chapter 1. This rationalist framework as suggested by Moravcsik (p. 19) substantially focuses on the priority of state preferences and the relative importance of states' bargaining power as I tried to explain in the second Section of this Chapter. The negotiation process of the Directive is by and large dominated by the preferences of national governments with relatively more bargaining power such as Germany and the Netherlands, whose restrictive attempts toward the grant of direct rights to TCNs constrained the emergence of "package deals" that lead to cross-issue linkages. Furthermore, Member States agree upon progressing European cooperation in order to become "less-regulated EU Member States" (Moravcsik, 1999). Although decided at the EU level, Directive 2003/109/EC is a modest and minimalist output as there are divergent national policies which Member States are reluctant to harmonize (Uçarer, 2010).

As mentioned in Chapter 1, if a government is biased toward outcomes going beyond the lowest common denominator, it is least likely to support the "core" agreement and give concessions (Moravcsik, 1999, p. 55). In the case of Directive 2003/109/EC, the German government has continually rejected the possibility of reaching a compromise through concessions and has put forward significant revisions of the Commission proposal together with the Dutch government instead. Skeptical countries led by Germany opted for a weak legal language so that the Directive would render them with more discretion that would hardly be restricted by the ECJ. Thus, Member States are not faced with hard legal obligations, preventing the ECJ to take legal action in case of non-compliance. Even in the association agreements concluded by the EU with third countries, Member States have avoided any expression that would be interpreted by the courts to provide direct rights for TCNs (Larsen, 2004). This is also salient when many immigrant matters were transferred to first pillar with the Amsterdam Treaty excluding the grant of direct rights of TCNs. This reveals the hesitation of Member States in providing direct rights for TCNs even when related to free movement which is a necessity for the completion of the single market that could potentially help the EU overcome its economic problems. Hence, Member States retain their authoritative position as the ultimate decision-making actors. Guild (1991) calls this a "discretion-based" approach instead of a "rights-based" one, allowing Member States to nationally define the rights of TCNs rather than making the issue a Community matter. The Amsterdam Treaty is also an outcome of intergovernmental bargaining reflective of the liberal intergovernmentalist approach (Moravcsik and Nicolaïdis, 1999). As decisions are made based on the rule of unanimity in the Council and the role of the Parliament is only restricted to consultation in the EU's legislative mechanism regarding immigrants, the final legislative outcome predominantly reflects the preferences of the Member States. In the

case of Directive 2003/109/EC, the adopted legislative text mainly reflected the interests of Germany, but did not damage the interests of other Member States since they were willing to follow Germany's position so that national discretion on the legal status and rights of TCNs was maintained using the EU policy-making process (Joppke, 2007). Through the German government's relative power in interstate bargaining, the Directive appears as a German victory and a step back for the supporters of supranational decision-making with regards to immigration and immigrant integration (Luedtke, 2009). Thus, it may be argued that unlike Sassen (1999) suggests, immigrant matters is not incipient supranationalism limiting national choices, as the successful integration of immigrants is placed below national interests preserved in European negotiations.

This is not to completely overthrow that supranational actors such as the Commission and the ECJ are not important within the process of European integration. However, what I argue in line with Moravcsik's argument is that although many proposals by supranational officials have been accepted or adopted, supranational actors are not the essential actors in these processes (1999, p. 53). In the history of the legal status and rights of TCNs living in the EU, the Commission's role is especially salient given its persistent attempts even when these attempts are not easily approved by the Council. As mentioned in Chapter 1, supranational officials have a key role in initiating negotiations by advancing proposals that direct the attention of national governments to common problems (Moravcsik, 1999). Calling the attention of national governments to the problem of immigrant integration, it was the Commission that initiated negotiations on this debate through a proposal on Directive 2003/109/EC. Nevertheless, the supranational initiative supported by the Commission was adopted with significant amendments leading to a substantial gap between the intentions of the Commission and Member State preferences circumventing any supranational decision

that would bind national governments. Even though the proposal comes from the supranational Commission, state preferences dominating the bargaining process function in such a way that leaves no room for any supranational decision harmonizing Member State policies. In its proposal, the Commission primarily aimed at harmonizing the long-term resident status across the EU, and equalizing the rights of TCNs with those of Member State nationals. However, as elaborated in detail before, the concept of TCN within the EU's institutional context has a fluid nature (Uçarer, 2010) as TCNs and their rights across the EU are not homogenous. The heterogeneity in TCN rights creates a complex legal context in which the harmonization of Member State policies becomes a difficult policy objective to achieve on a supranational basis. This difficulty was also stated in the proposal of the Commission for Directive 2003/109/EC (European Commission, 2001a). With the Directive, a legal framework that would be binding on the Member States who were obliged to uphold specific minimum requirements with regards to the legal status and rights of TCNs was created. Thus, the Directive was only a "baseline" harmonization, which was criticized by many NGOs on the grounds that it allowed for a "lowest common denominator" policy that would empower Member States to lower the rights of TCNs (Luedtke, 2009).

CONCLUSIONS

European countries have gone through different historical experiences with regards to immigration and immigrant integration. For this reason, Member States show considerable differences in terms of their philosophies, policies and political priorities towards immigrant integration (Carrera, 2005, p. 3). This makes it difficult for the Member States and the EU institutions to agree upon a common approach in the formation of immigrant integration policies. Nevertheless, within a context of increasing interdependence and as the proportion of TCNs in the population of Member States increases, EU states would benefit from coordinating their policies vis-à-vis the immigrants within their borders. A number of commitments have been made at the EU level especially since the Tampere European Council; however, the desired level of convergence among Member States policies has not been achieved yet.

Drawing on the different integration perspectives of the Commission, Germany, and the Netherlands, this thesis has found out three main conclusions. The first conclusion states that the Maastricht Treaty, the Amsterdam Treaty and the Tampere Council clearly show Member States' growing need for common immigration and asylum policies as the majority of them have faced the problem of increasing numbers of immigrants and asylum seekers while they are also concerned with attracting qualified labor force as a remedy for the problem of lack of skilled workers. The most important factors contributing to the formation of this agenda is related to the Member States' socio-economic concerns; restricting the increasing numbers of asylum, low-skilled immigration, the goal of global competitiveness and attracting qualified labor force. It is because of these concerns that Member States find themselves discussing matters like immigration although this area was not originally the part

of the European Union's mandate, as Larsen (2004) also states. The growing need for controlling unwanted immigration has led to the expansion of the use of external measures the most important which is cooperation at the EU forum (Geddes, 2003, p. 125). At the EU forum, Member States have often concentrated more on restrictive and repressive measures to keep TCNs out of the Union (immigration policies) than to define the status of those already settled within their boundaries (immigrant integration policies) (Geddes, 2003). Although the Tampere Council states the necessity for the fair treatment of TCNs, it is hard to argue that Member States have specifically pledged for common immigrant integration policies, which only constitute a part of the whole package of the EU's immigration and asylum policy which has been rapidly developing as a result of the abovementioned socio-economic concerns. Hence, at the EU level, no direct relationship has been established between the two separate domains of immigration and immigrant integration. Immigrant integration policies have emerged out of the attempts of the Commission who has tried to make use of the vacuum created by the relevant articles of the Amsterdam Treaty whose main issue areas compose of immigration and asylum. As the EU institutions have gradually been empowered to make policies in the area of immigration and asylum, the Commission has tried to use this opportunity to the full by initiating certain proposals containing elements of integration policy (Niessen, 2004). Hence, notwithstanding the Commission's attempts, it has been Member States' socio-economic concerns deciding on the extent and content of immigration policy-making especially since the Tampere Council.

Member State concerns for socio-economic interests bring us to the second conclusion of this thesis. Although the Commission has succeeded in its agenda-setting task by initiating the proposal for Directive 2003/109/EC, it has been the Member State governments determining the terms and content of the Directive in line with their national concerns

dominating the negotiation process. Although the Commission and various Brussels-based NGOs have been active in keeping the matter on the political agenda of the EU (Groenendijk 2006), the final outcome left these actors discontent due to the several rounds of changes resulting in a restrictive legislative instrument. In the essence of the Commission's proposal for Directive 2003/109/EC lies the principle of equality of treatment of TCNs with Member State nationals as decided in Tampere. Furthermore, the Commission proposal sets out very few limitations to this principle. However, in the adopted Directive, as an outcome of Council negotiations where Germany and the Netherlands appear as the most salient actors, the principle of equality of treatment is stated in various areas of employment, social security, tax benefits, access to public goods including housing and education, but these rights are subject to significant limitations which provide Member States with considerable discretion and derogation in determining the conditions for the long-term resident status. Unless a Member State is willing to apply more favorable procedures than stipulated in the Directive, it is likely that the long-term residence rights of TCNs is left up to the Member State concerned since the Directive renders Member States the right to block the entry and residence of TCNs. Therefore, the Commission's goal of allowing TCNs to reside and work in any Member State of the EU is significantly watered down. The final Directive is primarily based on the already existing national immigration rules of the Member States (Halleskov, 2005). The stark difference between the Commission's proposal and the adopted Directive becomes salient with the statement of a British official that the adopted Directive offers so much national discretion that the United Kingdom has seriously considering opting in (cited in Luedtke, 2009, p. 141). Hence, matters related to the legal status and rights of TCNs continue to be dealt with at the national level, leaving EU institutions with serious limitations for supranational decision-making.

The third conclusion is that this thesis exhibits no concrete improvement in the status and rights of TCNs after the adoption of the Directive by Germany and the Netherlands. Hence, unlike agreed upon in Tampere and contrary to the Commission's intentions enshrined in its proposal for Directive 2003/109/EC, Germany and the Netherlands fail to fulfill the goal of facilitating the integration of TCNs with the European society and equalizing their rights with Member State nationals as in both countries the acquisition of long-term resident status has become harder due to new restrictions that could be put into place through the level of national discretion provided by Article 5 of the Directive including the vague concept of "integration conditions". While Germany appears to be more motivated to implement the Commission's approach to integration due to the country's growing need for the formulation of an integration definition, in the Netherlands, integration policies tend to be formulated within a highly centralized structure involving limited actors. Although the Commission and several Brussels-based NGOs push for progress in terms of the status and rights of TCNs, principles adopted toward this aim are often applied to employment in the context of the common market, eschewing measures for the social and legal integration of immigrants (Uçarer, 2010). Hence, the lack of any progress after the adoption of the Directive shows that the negotiators of the Directive opted for finding *ad hoc* compromises rather than devising a general principle as envisaged by the Commission, and Member States could reserve their competence to make several exceptions to equality of treatment in many areas.

Based on the abovementioned conclusions, I argue in favor of a theoretical explanation based on the liberal intergovernmental theory. The lack of any improvement in the status and rights of TCNs in Germany and the Netherlands shows that although we witness Member States' converging commitments with regards to preventing unwanted immigration

and asylum, countries have become more European in controlling immigration but have reserved their sovereign prerogatives with regards to TCN rights promoted by the supranational Commission. Intergovernmental bargains during the negotiations of the Directive are shaped by domestic preferences which prioritize a negotiation stance favouring the harmonization of standards to the lowest common denominator. State preferences thus remain primary as national governments retain their power and sovereignty through the Council which significantly interferes with Commission initiatives in a way that the adopted Act hardly resembles the original Commission proposal. The interference with or support for Commission proposals are directly related to domestic constellations of government and interests. Negotiations almost exclusively focus on the distribution of gains unlike suggested by the supranational perspective which argues that negotiations are concerned with achieving an efficient policy outcome. This has been a matter of tension which is exhibited during the negotiations of Directive 2003/109/EC. Through this Directive, the Member States have harmonized a regime that allows them to maintain national differences when it comes to the permanent residence right of TCNs. By agreeing upon surrendering some level of sovereign prerogatives in the area of immigration especially since the Maastricht Treaty establishing JHA cooperation, Member States have used the EU policy-making space to expand the competences of the EU primarily with the aims of filtering new immigration in the face of the global competition for high-skilled immigrants but used those competences to place the status and rights of TCNs below the rights of national interests as so defined by national authorities (Larsen, 2004, p. 31). “Escaping to Europe” to find common solutions to common problems (Guiraudon, 1998), Member States primarily perceive the EU forum as a tool for assisting Member States in solving practical policy issues such as the shrinking labor force. For the Member States, the EU has only served as a symbolic venue of guidance by

which national integration policies can be compared, improved or redesigned. The role of the EU in providing measures to prevent asylum and low-skilled immigration has been praised but has been rejected when it comes to the harmonization of national rules regarding the status and rights of TCNs which directly relate to the sovereignty rights of the Member States. The most important national changes with regards to immigrant integration have taken place independent of EU level decisions.

Although the conclusions of this thesis show that the EU's institutional capacity to coordinate immigrant integration policies is constrained by the fact that the primary responsibility lies with the national governments who need to create the necessary political and legal frameworks to ensure immigrant participation in every aspect of life on an equal basis with Member State citizens, immigration policy of the EU has come a long way, as Kirişçi (2008) also puts it. Especially in the wake of the Amsterdam Treaty with its emphasis on common immigration and asylum policies, prospects for deeper integration in the area of immigrant integration are much more salient than ever. Adam Luedtke (2009, p. 142) writes that in ten years, the institutional balance may favor the EU decision-making bodies as the ECJ, Parliament and the Commission in promoting the harmonization of TCN rights. An important breakthrough in this respect is the Lisbon Treaty (2007), which recognizes the fair treatment of TCNs as a common policy objective by extending QMV to the areas of immigration, asylum and external border control that are currently enshrined under Title IV the EC Treaty. However, the text of the Lisbon Treaty clearly states that,

> The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonization of the laws and regulations of the Member States (Council of Ministers, 2007a).

This suggests that even the Lisbon Treaty as the most recent amendment to the EC Treaty excludes harmonization in the area of the status and rights of TCNs, leaving supranational actors with limited competences to preserve TCN rights. The Treaty also states that determining volumes of admission of TCNs coming from third countries to their territory in order to seek work, whether employed or self-employed is under the discretion of the Member States (Ibid.). Hence, the key area of deciding who can enter and reside in national territory is and remains controlled by the national governments. Hence, involved in a competition in attracting high-skilled workers in the face of EU-wide problems such as rapidly aging population, Member States are likely to remain as the primary actors in matters related to immigrants, such as determining quotas and conditions for labor immigration. It also has to be noted that this situation may change as the functioning of the single market may increasingly necessitate the free movement of TCNs for the completion of the single market project. If Europe aims at meeting the targets of the Lisbon Strategy and maintain its commitment to the values of equality and democracy, the gap between the rights of TCNs and Member State citizens should be removed as this may seriously restrain the integration of immigrants into the social, economic and political context of the EU.

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