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# (The absence of) ‘Integration’ in the new pact on migration and asylum

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## Abstract

‘Integration’, despite being mentioned as one of the key features of the New Pact on Immigration and Asylum, is relatively absent in the Pact itself. This article reflects on how the New Pact will influence immigrant integration in the EU. It first sets out a theoretical framework which will then be used to assess the impact of the New Pact on the integration of immigrants. Integration is foremost dependent on the creation of opportunities for development, for example in migration legislation, and then protection of such opportunities. Against this background, the New Pact will have little effect on immigrant integration.

**Keywords** Immigrant integration · EU law · EU policy · Immigration law · Non-discrimination law

## 1 Introduction – situating integration in the new pact

There has hardly been a day in the recent past that the ‘integration’ of immigrants into the receiving societies was not the subject of heated discussions on national, European, and international levels. It is therefore not surprising that “integration” also got some attention in the EU’s 2020 *New Pact on Migration and Migration and Asylum* [hereinafter New Pact]<sup>1</sup> as well as the 2024 Communication on *Striking a balance on*

<sup>1</sup> COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on a New Pact on Migration and Asylum, Brussels, 23.9.2020, COM(2020) 609 final.

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*migration: an approach that is both fair and firm* [hereinafter *Striking a Balance*].<sup>2</sup> The ambition of this article is to throw some light on the status of ‘integration’, in the sense of policies that are geared to foster the ‘inclusion’ of immigrants, in the New Pact and its follow-up policies. To be able to investigate the potential impact of policies, rules and regulations adopted pursuant to the New Pact, it is necessary to reflect on the very notion of immigrant integration and the implications of attempts to influence the social process of inclusion (and othering) of immigrants with rules, regulations, and policies. On the foundation of these preliminary thoughts the article will then critically assess the vision of integration that is underpinning (or not) the New Pact and reflect upon the potential impact on the inclusion of immigrants which the New Pact might have. If necessary, links to other policy programmes of the EU, such as non-discrimination and equal treatment, will be provided.

It is somewhat surprising, but the New Pact does not provide much guidance or actual policies focusing on integration. What is more, no references to earlier communications and policies taken by the EU in the area of immigrant integration as well as the underlying principles introduced in the past can be found.<sup>3</sup> ‘Supporting effective integration policies’ is, as a matter of fact, mentioned as the last of nine items on the list of actions the New Pact will develop.<sup>4</sup> Overwhelmingly, the New Pact is circling around policies that seek to limit and manage migration, including asylum, the enforcement of return decisions, as well as protection of the outer border. The actual section on integration only occupies one page in the whole Communication, which in total is 29 pages long.<sup>5</sup> Indirectly, the New Pact sees integration connected to policies about *developing sustainable legal pathways* to the EU for asylum seekers and foreign talent.<sup>6</sup> In *Striking the Balance*, integration as such is not getting a separate section anymore but is only mentioned *en passant* in other sections. More information on ‘integration’ is, however, given in a separate *Action Plan on integration and inclusion* [hereinafter *Action Plan*].<sup>7</sup>

In what follows, this paper will develop a vision on the inclusion of immigrants and the way policies and regulation can seek to influence integration. It will then reflect how the New Pact and its follow-up policies relate to this vision of ‘Integration’.

<sup>2</sup>COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL AND THE COUNCIL, *Striking a balance on migration: an approach that is both fair and firm*, Brussels, 12.3.2024, COM(2024) 126 final.

<sup>3</sup>See for example the Common Basic Principles for Immigrant Integration Policy in the EU, PRESS RELEASE2618th Council Meeting, Justice and Home Affairs, Brussels, 19.11.2004, 14615/04 (Presse 321).

<sup>4</sup>New Pact, COM(2020) 609 final, p. 3.

<sup>5</sup>New Pact, COM(2020) 609 final, p. 26-27.

<sup>6</sup>New Pact, COM(2020) 609 final, p. 3.

<sup>7</sup>COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, *Action plan on Integration and Inclusion 2021-2027*, Brussels, 24.11.2020 COM(2020) 758 final.

## 2 The inclusion of immigrants – two principal tasks for policies and legislation

In a simplistic model, the integration of immigrants from outside of the state in question can be translated to including newcomers in receiving societies.<sup>8</sup> The process could be described as overcoming the 'otherness' of immigrants, leaving aside for the moment how one might define this 'otherness', and transitioning immigrants from 'them' to 'us', from non-members to members of society.<sup>9</sup> Much has been written about how this transition can take place and how it can be disrupted,<sup>10</sup> and how policies seek to influence the process of integration.<sup>11</sup> Fundamentally, however, inclusion is a social process wherein two formally separate groups in society, i.e. receiving society and newcomer, end up as one 'integrated' group.<sup>12</sup> As such, integration will depend on both sides and is therefore aptly described as a 'two way process' in many policy documents.<sup>13</sup>

The latest Commission Action Plan looks at educational achievements, share of population in employment, risk of poverty, and the housing situation of immigrants to sketch the challenges posed to the inclusion of immigrants in the EU.<sup>14</sup> Main actions proposed are, apart from mainstreaming non-discrimination policies,<sup>15</sup> accordingly focusing on 'Education and training'<sup>16</sup> and Employment and skills' of immigrants in the EU.<sup>17</sup> Insufficient access to healthcare and housing is also mentioned as an obstacle to inclusion. The main thrust of policies should be in '[b]uilding strong partnerships for a more effective integration process'. As such, the Commission proposes to support the stakeholders in the 'societal process', such as migrants, host communities, but also, social and economic partners, churches, and public authorities, to create 'strong and long-term multi-stakeholder partnerships at various levels of governance' to 'achieve sustainable and successful integration'.<sup>18</sup> While the inflationary use of policy-marketing buzzwords in these paragraphs is almost comical, the focus on cooperation between important players, called 'multi-stakeholder partnerships' in

<sup>8</sup>Jesse M. (2017), *The Civic Citizens of Europe: The Legal Potential for Immigrant Integration in the EU, Belgium, Germany, and the United Kingdom*. Nijhoff Studies in European Union Law no. 11. Leiden: Brill / Nijhoff.

<sup>9</sup>Jesse M. (Ed.) (2020), *European Societies, Migration, and the Law - The 'Others' amongst 'Us'*. Cambridge: Cambridge University Press.

<sup>10</sup>See, for example, Kostakopoulou, D. (2010) *The Anatomy of Civic Integration*. *Modern law review*. [Online] 73 (6), 933–958.

<sup>11</sup>See, for example, Groenendijk, K. (2004) *Legal Concepts of Integration in EU Migration Law*. *European journal of migration and law*. [Online] 6 (2), 111–126.

<sup>12</sup>Jesse M. (2017), *The Civic Citizens of Europe: The Legal Potential for Immigrant Integration in the EU, Belgium, Germany, and the United Kingdom*. Nijhoff Studies in European Union Law no. 11. Leiden: Brill / Nijhoff, p. 24.

<sup>13</sup>Last in Action Plan, COM(2020) 758 final, p. 3.

<sup>14</sup>Action Plan, COM(2020) 758 final, pp. 5–6.

<sup>15</sup>Action Plan, COM(2020) 758 final, p. 7.

<sup>16</sup>Action Plan, COM(2020) 758 final, pp. 9–12.

<sup>17</sup>Action Plan, COM(2020) 758 final, p. 12–14.

<sup>18</sup>Action Plan, COM(2020) 758 final, p. 14–16.

the Action Plan, especially on the ‘regional and local level’ is the right thing especially when the focus will be, as promised, on empowering and enabling the partners to foster inclusion.<sup>19</sup>

The focus on regional and local levels and how immigrants are received, embedded, and empowered *there* is so important because integration, largely independent from rules and regulations set on higher levels of governance, depends on opportunities for development and growth on the local level. As Friedrich Heckmann wrote in 2004 already, integration in the sense of inclusion often occurs as ‘the often unintended, cumulative byproduct of choices (...) seeking to take advantage of opportunities to improve their local situations’. What is more, integration would often be ‘the result of decisions, which are based on motives that have nothing to do with integration at all. Integration can even materialize against the deliberate will of the individual as an unintended consequence of actions not geared towards integration’.<sup>20</sup> As such, immigrants are not different from the receiving population. A higher level of education, for example, leads to upward mobility and the inclusion into another segment of society. When focusing on immigrants, such a development is often described as an increase of ‘integration’ while it is actually not different from the general mechanics of social and economic growth of members in any given society, with the caveat that migrant communities often suffer from additional obstacles in the form of discrimination or recognition of (foreign) qualifications.<sup>21</sup>

Be that as it may, it should be apparent at this point that creating room for the development of immigrants within the receiving society and protecting and guarding said opportunity structure on the local, regional, and national levels ought to be the prime objective of policies, rules and regulations that seek to foster the integration of immigrants. As a matter of fact, policies that are empowering and benefitting integration will have to have two principal tasks: (1) creating opportunities for immigrants to develop, e.g. through enabling and stable residence statuses; and (2) protecting existing opportunities from becoming ineffective, e.g. through discrimination or non-recognition of foreign qualifications. At the very least, policies and regulations in place should not undermine or even actively destroy opportunities for development.

### 3 ‘Regulating’ immigrant integration – the ‘legal potential for integration’

In what follows, this article will look at the practical consequences for policy and rulemaking based on the principal finding just above. If one wants to foster inclusion and integration, what should policies and rules that (1) create and (2) protect opportunities for development for immigrants look like? The answer to this question will hereafter be used to assess how far the New Pact will contribute to immigrant inclusion.

<sup>19</sup> Action Plan, COM(2020) 758 final, p. 17.

<sup>20</sup> Heckmann F. (2004), Integrationsweisen europäischer Gesellschaften: Erfolge, nationale Besonderheiten, Konvergenzen, in Bade K.J., *Migrationsrapport 2004*, Frankfurt a.M.: Campus Verlag, p. 205.

<sup>21</sup> See Jesse M. (2022), Non-discrimination and the challenge of integration. In: Tsourdi E. & De Bruycker P. (Eds.), *Research Handbook on EU Migration and Asylum Law*. Research Handbooks in European Law. Cheltenham: Edward Elgar. 342-364.

### 3.1 Exclusion through integration conditions

From the outset, attempts to 'enforce' integration through (formal) integration conditions, which will at best have a negligible influence on inclusion, while giving rise to ample problems and actual obstacles to integration.<sup>22</sup> Many Member States of the EU have over the last few decades introduced integration measures which force immigrants to fulfil certain integration conditions, such as language proficiency targets or knowledge of history and culture, and consider them cornerstones of their integration policies. EU migration laws allow Member States to introduce such integration measures.<sup>23</sup> The temptation to use such conditions to restrict migration, i.e. as tools for migration management, however, has been severely restricted by the Court.<sup>24</sup> The Court has been clear that immigration measures, as allowed in EU migration legislation, must actually benefit integration and must not undermine the *effet utile* of EU legislation in question,<sup>25</sup> which is, for example, allowing and not undermining a right to family reunification. Such an approach that focuses on the benefits of policies for the actual inclusion of immigrants is also reflected in the most recent judgment of the Court, prohibiting the Netherlands to force asylum seekers and refugees to participate in integration courses for which they have to bear the costs.<sup>26</sup>

Even worse is the potential influence of integration conditions on the social process of inclusion. Integration conditions are never operating in a vacuum but are often part of policies adopted in times when restricting immigration is seen as a winning political strategy. Integration conditions are then often portrayed as the answer to risks to social cohesion, and public safety by immigrants, who despite living in the midst of the receiving societies, would not assimilate to the mainstream. In other words, integration conditions are introduced as a defence of the receiving society to a threat posed by immigration. No big stretch of the imagination is required to imagine the stigmatising and excluding effect of integration requirements introduced on *all* immigrants in such a situation. As such, integration conditions often achieve the *one* thing identified above what regulation should not do, i.e. not undermine or even actively destroy opportunities for development. Integration measures, if employed at all, must be designed in such a way that they are actually empowering immigrants and do not pose an additional obstacle to inclusion, for example by burdening migrants with additional costs or (residence) insecurity.

<sup>22</sup>See on the issue of integration policies, Triadafilopoulos, T. (2011) Illiberal Means to Liberal Ends? Understanding Recent Immigrant Integration Policies in Europe. *Journal of ethnic and migration studies*. [Online] 37 (6), 861–880.

<sup>23</sup>See for example art. 7(2) Directive 2003/86/EC, or Article 5(2) Directive 2003/109/EC.

<sup>24</sup>Case C-579/13, P and S v. Commissie Sociale Zekerheid Breda and College van Burgemeester en Wethouders van de gemeente Amstelveen, judgment of the Court (Second Chamber) of 4.6.2015, EU:C:2015:369, and Case C-153/14, Minister van Buitenlandse Zaken v. K and A, judgment of the Court (Second Chamber) of 9 July 2015, EU:C:2015:453.

<sup>25</sup>Jesse M. (2016), Integration measures, integration exams, and immigration control: P and S and K and A, *Common Market Law Review* 53(4): 1065–1087. Thym, D. (2016, 'Towards a Contextual Conception of Social Integration in EU Immigration Law. Comments on P & S and K & A', *European Journal of Migration and Law* 18 (2016), 89–111.

<sup>26</sup>Case C-158/23 Keren, ECLI:EU:C:2025:52.

### 3.2 Opportunities and protection – the example of free movement of EU citizens

Instead, the principal tasks of regulation seeking to foster integration identified above were (1) creating opportunities and (2) protecting existing opportunities, while empowering immigrants. The main practical deviation to these would then be (1') adopting immigration legislation that allows immigrants to develop through enabling legal statuses and (2') installing non-discrimination policies that effectively protect opportunity structures against informal denial. It should be apparent by now that thinking about immigrant integration in this way implies a strong focus on rights that allow immigrants to participate in society.

As a matter of fact, such a way of thinking about integration foremost in terms of opportunities, removal of obstacles, and non-discrimination, is not at all new in the European Union. Citizens of the Union, especially when they move from one Member State to another to be economically active, benefit from almost open-ended rights to equal treatment and participation in the receiving society.<sup>27</sup> Rights are seen as the cornerstone of their inclusion and, since the invention of the internal market in the 1960s, the system seems to be working.<sup>28</sup> Over the last two decades, the legal status of third-country nationals has been codified in EU law and many pieces of secondary legislation have been adopted. These introduce conditional rights for immigrants, refugees and asylum seekers from third countries. Despite discussion on the (constitutional, legal) value of the rights awarded to third country nationals in EU secondary legislation,<sup>29</sup> it cannot be denied that the EU migration and asylum acquis has significantly impacted the legal situation of immigrants from third countries in the EU and, as such, also influences their 'legal potential for integration' significantly.<sup>30</sup>

### 3.3 The legal potential for integration

How now should regulation be construed to maximise its 'legal potential for integration', i.e. the likelihood of integration to occur given the legal framework providing (or not providing) opportunities for development. The example of EU citizens introduced directly above is illustrative. When immigrants have *equal* rights to members of the receiving society the legal potential for their integration is maximised.<sup>31</sup> Such a situation is in place, more or less, for EU citizens who move to another Member

<sup>27</sup>On the scope of these free Movement rights, see for example, P. Craig, G. de Burca, EU Law, Text, Cases, and Materials, OUP, 2024, Chaps. 22,23,24.

<sup>28</sup>See M. Jesse 'The 'Integration' of Economic Immigrants: Lessons to be learnt from Free Movement of Persons on the EU's Internal Market', *Journal of Immigration, Asylum and Nationality Law* (2023) Vol 37, No 1.

<sup>29</sup>D. Thym, 'EU Migration Policy and its Constitutional Rationale. A Cosmopolitan Outlook', *Common Market Law Review* 50 (2013), 709–36.

<sup>30</sup>Term first used in Jesse M. (2017), *The Civic Citizens of Europe: The Legal Potential for Immigrant Integration in the EU, Belgium, Germany, and the United Kingdom*. Nijhoff Studies in European Union Law no. 11. Leiden: Brill / Nijhoff.

<sup>31</sup>Jesse M. (2017), *The Civic Citizens of Europe: The Legal Potential for Immigrant Integration in the EU, Belgium, Germany, and the United Kingdom*. Nijhoff Studies in European Union Law no. 11. Leiden: Brill / Nijhoff, p. 346.

State for purposes of economic activity.<sup>32</sup> The EU legislator and the EU Commission were also inspired by this mechanism when stating that the purpose of establishing a legal status as close as possible in nature to that of EU citizens for long-term resident third-country nationals with Directive 2003/109/EC. In the absence of naturalisation, i.e. the acquisition of nationality, equalisation of rights is the most efficient way of increasing the legal potential for integration, especially when coupled with effective non-discrimination policies and residence security.

The remainder of this article will look at how far the New Pact and follow-up policy plans live up to their own ambition of increasing integration through empowering immigrants and protecting their opportunities on local, regional and national levels. The two principal tasks regulation and policies have to fulfill to create a good legal potential for integration, i.e. (1 and 1') creating legal status allowing for opportunities to develop and (2 and 2') protecting these formal opportunities will be used as a yardstick for the assessment.

## 4 Immigrant integration in the new pact on migration and asylum

This article does not have room to assess the entirety of the existing migration, asylum, and non-discrimination acquis in force in the EU and its Member States. It will therefore focus on the plans and actions introduced with the New Pact.

### 4.1 'Re-integration' before 'integration'

The first interesting observation, which resonates well with the above-mentioned position of 'integration' and 'legal pathways' on the list of items to be dealt with in the New Pact, is that integration of immigrants into the *receiving* societies is looked at in detail *only after* a long and elaborate introduction of *reintegration* in countries of origin *after removal* from the EU. In Sects. 2.5 'An effective and common EU system for returns' and 2.6 'A new common asylum and migration database', reintegration is set out as a vital component of return and the objective of a functioning asylum database over the span of 3 pages.<sup>33</sup>

The *EU strategy on voluntary return and reintegration* [hereinafter EU Strategy], which was published by the Commission as a follow-up to the New Agenda, describes re-integration as a potential aid to 'overcome the socio-economic and psychosocial difficulties migrants face when returning to their community and make their return more sustainable'.<sup>34</sup> Further, the text makes clear that re-integration apparently is a social process, just as 'integration', because it 'needs to be designed with the involvement of national and local authorities, host local communities and civil society to help

<sup>32</sup>See M. Jesse 'The 'Integration' of Economic Immigrants: Lessons to be learnt from Free Movement of Persons on the EU's Internal Market', *Journal of Immigration, Asylum and Nationality Law* (2023) Vol 37, No 1.

<sup>33</sup>New Pact, COM(2020) 609 final, 8-11.

<sup>34</sup>COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, The EU strategy on voluntary return and reintegration, Brussels, 27.4.2021, COM(2021) 120 final, p. 3.



give tangible future prospects for the returnee and their local community'. Reintegration is set in the context of general development of the home states and as such tackling the root-causes of migration.<sup>35</sup> FRONTEX is tasked with developing 'joint reintegration services', a 'Return Coordinator' will work alongside the 'High Level Network for Return'.<sup>36</sup> Of course, the 'effective coordination between all stakeholders' in the EU and return countries will 'contribute to reducing the negative perception of return through engagement with communities of origin'.<sup>37</sup> Funding will be available *inter alia* through the 'Asylum, Migration and Integration Fund (AMIF) for 2021-2027',<sup>38</sup> the instrument that was originally developed to *nota bene* fund initiatives fostering integration and inclusion *within* the EU and its Member States. In 2024 the Commission repeated and intensified its approach to return and re-integration. Even more elaborate, reintegration is portrayed as a vital part of 'being more assertive on returns' and an essential tool to managing return migration.<sup>39</sup> It is also re-introduced as diminishing the 'root-causes of migration'. Dialogues with third countries should lead to the development or enhancement of migration and asylum control policies and systems there, which would improve the capacity of border management, providing protection to persons in need, *and* reintegration after return.<sup>40</sup>

It is beyond the scope of this article to investigate whether the link between development and (forced or voluntary) return and re-integration is useful, legitimate, and based on scientific insights, or whether it is a euphemistic attempt to attach a positive side to an ever-growing focus on enforced or voluntary returns. It could be added here that the New Strategy does not mention any re-integration conditions that should be drawn-up as cornerstones of successful reintegration policies. Instead, reintegration effort seems to centre around financial support handed out through local agencies.<sup>41</sup>

## 4.2 Integration of immigrants within the EU (1) – legislative and policy projects

Integration of immigrants in the EU itself plays a relatively marginal role in the documents. Against the background that 'supporting effective integration policies' was mentioned as a core, albeit last, item on the list of things to be achieved in the New Pact, it is somewhat surprising to see how little attention integration as such gets within the communication of the Commission itself. The Striking a Balance Communication from 2024 does not have a self-standing section on integration anymore.

After the paragraphs on return and reintegration, integration of immigrants within the EU first makes an appearance in the New Pact in Sect. 6.6 about 'Developing legal pathways to Europe'. The first mention of it can actually be found in the section on 'resettlement' in the context of community or private sponsorships of refugees,

<sup>35</sup>Please note that 'root causes of migration', not irregular or clandestine migration is used, EU strategy, COM(2021) 120 final, p. 3.

<sup>36</sup>EU strategy, COM(2021) 120 final, pp. 9-10.

<sup>37</sup>EU strategy, COM(2021) 120 final, p. 11.

<sup>38</sup>EU strategy, COM(2021) 120 final, p. 18.

<sup>39</sup>Striking a balance, COM(2024) 126 final, pp. 10-12.

<sup>40</sup>Striking a balance, COM(2024) 126 final, pp. 14-15.

<sup>41</sup>EU strategy, COM(2021) 120 final, pp. 4-5.

which would increase the chance of their integration.<sup>42</sup> What is interesting, however, is that in the context of 'Talent Partnerships', thus cooperations with third countries to 'boost mutually-beneficial international mobility', thus the migration of students and (highly qualified) workers, integration is not mentioned at all. Instead, such partnerships and mobility schemes are again put in the context of building capacity for returning migrants and their reintegration.<sup>43</sup>

Integration is then mentioned again in the context of the negotiations on the revamp of the Blue Card Directive, which the Commission is urging the Member States to push forward, as the inclusive set of rights would benefit the integration of highly skilled blue card holders in the EU.<sup>44</sup> The pleas of the Commission were heard, the Blue Card Directive was amended in 2021.<sup>45</sup> In 2024, this was acknowledged by the Commission as a benefit in attracting talent into the EU.<sup>46</sup> The Commission then went on to refer to the updated Directive on Students and Researchers,<sup>47</sup> as well as the ongoing legislative projects to update the Directive on long term residents, and the single permit Directive.<sup>48</sup> These projects to update legislation, of which only the first was successful, would be necessary to make the EU attractive and open for foreign talent.<sup>49</sup> What occurs at this point is that integration is not mentioned again. It appears only the integration of Blue Card Holders is positively influenced by legislative updates.

There is thus no mainstreaming of integration objectives in legislative projects, which is a pity, because in order to achieve a good potential for integration, legislation has to create and guard opportunities for the development of migrants. Truth be told, as has been argued elsewhere, the legal potential for integration created by the legislative instruments mentioned directly above and in the New Pact is good.<sup>50</sup> However, creating opportunities for integration should not be forgotten in any legislative update.

The 2024 Striking a Balance is even more limited on integration as the objective of legislative projects. Apart from the above-mentioned reintegration of immigrants in their countries of origin, integration is only mentioned when describing the EU Talent Pool, that is proposed to be established. To be precise, the Commission writes that facilitation of recruitment procedures for talent from third countries must be worked on 'alongside integration *measures* to ensure migrants can bring their full potential

<sup>42</sup>New Pact, COM(2020) 609 final, pp. 23-24.

<sup>43</sup>New Pact, COM(2020) 609 final, p. 24.

<sup>44</sup>New Pact, COM(2020) 609 final, p. 26.

<sup>45</sup>Directive (EU) 2021/1883 of the European Parliament and of the Council of 20.10.2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC.

<sup>46</sup>Striking a Balance, COM(2024) 126 final, p. 18.

<sup>47</sup>Directive 2016/801/EU.

<sup>48</sup>Directive 2003/109/EC, and Directive 2011/98/EU.

<sup>49</sup>New Pact, COM(2020) 609 final, pp. 26-27.

<sup>50</sup>See Jesse M. (2017), *The Civic Citizens of Europe: The Legal Potential for Immigrant Integration in the EU, Belgium, Germany, and the United Kingdom*. Nijhoff Studies in European Union Law no. 11. Leiden: Brill / Nijhoff, p. 346ff.

to the labour market’ (emphasis added).<sup>51</sup> Given the above-mentioned inefficiencies of integration measures to actually benefit inclusion as well as the stigmatisation effect that they have, the focus on them in policy documents, alongside the complete lack of (deliberate) acknowledgement of the other perspectives to integration, such as creating legislation that provides opportunities for development, is regrettable.

### 4.3 Integration of immigrants within the EU (2) – policies supporting integration

Eventually, the New Pact turns to ‘Supporting Integration for More Inclusive Societies’ for one section lasting roughly one page out of 29 pages of the whole communication.<sup>52</sup> The focus is on ‘social cohesion and economic dynamism’ benefitting the ‘local communities’ in the EU.<sup>53</sup> There is recognition that integration is a social process occurring on the local level, and the New Pact clearly zooms in on participation in the employment market as a main objective and puts integration as part of the wider agenda on ‘how Europe can manage the impacts of migration and diversity by building open and resilient societies’.<sup>54</sup> This approach is mirrored in the 2020 Action Plan, with additional emphasis on the contribution of immigrants to the economy and to societies in the EU. Integration, so it is said, should help to help immigrants, benefitting from their contributions to the fullest.<sup>55</sup>

The starting point of the analysis is, that ‘despite numerous success stories’, ‘too many migrants and households with migrant backgrounds still face challenges in terms of unemployment, lack of educational or training opportunities and limited social interaction’.<sup>56</sup> What is meant by this is developed directly after: ‘in 2019, there was still a significant shortfall in the employment prospects of non-EU nationals – at around 60% of 20-64 year olds, compared to around 74% for host-country nationals’.<sup>57</sup> These numbers are fleshed out in length in the 2020 Action Plan. Graphics actually show the under average participation in employment market and educational achievements of immigrants.<sup>58</sup> Numbers would also provide that even though a quarter of migrants in the EU are highly educated, they ‘often are not able to put their skills to use’. More than 40% of all migrants in employment in the EU are overqualified in their employment positions. This finding is then immediately balanced out by mentioning that almost 20% of migrants in the EU have no more than primary school education.<sup>59</sup>

This is not an article to analyse the situation of immigrants on the employment market. But the question does arise as to whether the numbers presented really are that bad? *Prima facie*, a 60% employment rate of all immigrants in the rather big age

<sup>51</sup> Striking a Balance, COM(2024) 126 final, p. 18.

<sup>52</sup> New Pact, COM(2020) 609 final, p. 27.

<sup>53</sup> New Pact, COM(2020) 609 final, pp. 27-28.

<sup>54</sup> New Pact, COM(2020) 609 final, p. 28.

<sup>55</sup> Policy Plan 2020, 3-4.

<sup>56</sup> New Pact, COM(2020) 609 final, p. 28.

<sup>57</sup> New Pact, COM(2020) 609 final, p. 28.

<sup>58</sup> Action Plan, COM(2020) 758 final, p. 3.

<sup>59</sup> Action Plan, COM(2020) 758 final, p. 3.

group of 20–64 year olds does not seem so bad, especially not as bad as portrayed by some political forces. It is regrettable, however, that the New Pact at this point does not make the link between employment market participation and non-discrimination policies, but also between recognition of foreign degrees and the significant overqualification of many immigrants for their positions on the employment market. As mentioned above, integration policies have to create and guard opportunities for immigrants to develop.

Instead, reference is made to integration networks,<sup>60</sup> which should look at the problems, including those fleshed-out plans in the Action Plan, through partnerships that support integration at all stages of the immigration trajectory, foremost on the local level.<sup>61</sup> The support should encompass 'Education and training', focusing on schools as 'hubs for integration', but also the 'recognition of foreign qualifications' or language learning,<sup>62</sup> for example, via 'Health', addressing the fact that migrants benefit less from national healthcare systems and services,<sup>63</sup> to 'Housing'.<sup>64</sup>

While the focus on the local initiatives and integration networks is certainly not a bad thing, the question remains as to how far local initiatives can tackle the recognition of foreign degrees, accessing the healthcare system, and disadvantages on the housing market. It seems that for a large part these issues depend on legislation and policies on national and EU level. The above-mentioned sections of the New Pact do lack consistent references to integration as regards legislative projects, the section on integration as such does not refer to legislative projects. There is a gap here in the New Pact and follow-up communications. The latest 2024 communication *Striking a Balance*, *nota bene*, no longer contains a separate section focusing on integration as such at al.<sup>65</sup>

#### 4.4 Non-discrimination and equal treatment

As mentioned in the first part of this article, the maximum potential for integration is employed when immigrants have equal rights to the receiving population. For migrants with any form of residence status the potential for integration in the EU and the Member States is actually good, when analysing the law.<sup>66</sup> Equal treatment and access to the employment market on an equal footing is the norm once a legal status is obtained. What is more, every regular immigrant in the EU has a path open to permanent residence status,<sup>67</sup> even naturalisation is available to most after some years of legal residency.

<sup>60</sup>New Pact, COM(2020) 609 final, p. 28.

<sup>61</sup>Action Plan, COM(2020) 758 final, pp. 8–9.

<sup>62</sup>Action Plan, COM(2020) 758 final, pp. 9–10.

<sup>63</sup>Action Plan, COM(2020) 758 final, p. 14.

<sup>64</sup>Action Plan, COM(2020) 758 final, pp. 15–16.

<sup>65</sup>*Striking a Balance*, COM(2024) 126 final.

<sup>66</sup>See Jesse M. (2017), *The Civic Citizens of Europe: The Legal Potential for Immigrant Integration in the EU, Belgium, Germany, and the United Kingdom*. Nijhoff Studies in European Union Law no. 11. Leiden: Brill / Nijhoff, p. 346ff.

<sup>67</sup>See Directive 2003/109/EC.

The initiatives mentioned above seeking to update the EU legislation in question will not make this situation worse. However, equal rights and residence security are not mentioned as objectives in the New Pact or Action Plan. That was different in the past.

Anti-discrimination policies, which in the logic of integration are a vital component of protecting opportunities for development against informal denial, are mentioned indirectly in the New Pact. It is spelled out that ensuring that migrants 'fully benefit from the European Pillar of Social Rights will be a key objective.'<sup>68</sup> The Action Plan is more explicit and calls for the '*Mainstreaming gender and anti-discrimination priorities*',<sup>69</sup> and even acknowledges the particular difficulties of immigrants who suffer from intersectional discrimination: 'In particular, migrant women and girls face additional obstacles to integration compared to migrant men and boys, often having to overcome structural barriers linked to their being both a migrant and female, including facing stereotypes.' And also, 'when employed, migrant women are more likely to be over-qualified for their jobs than native women'.<sup>70</sup> Yet, directly afterwards, a rather prejudicial way of looking at migrant women is introduced: 'They are more likely to come to the EU to join a family member, bringing with them domestic responsibilities that can prevent them from fully participating in the labour market and in integration programmes, (...) when these do not cater for such caring responsibilities'.<sup>71</sup>

What is disappointing is that neither the New Pact nor the Action Plan make a link to the so-far stalled attempts to update the EU Equality Directives.<sup>72</sup> Also, the need to enlarge the scope of application of the Framework Employment Directive, which provides protection against discrimination on a plethora of grounds, beyond employment and occupation,<sup>73</sup> and the so-far failing legislative process in this regard, especially in light of intersectional discrimination of immigrants, which was brought into the discussion by the Commission itself in the context of immigrant (women) has to be regretted. Mentioning this legislative agenda, and the need to update EU Equality Law, also in the New Pact and the Action Plan would have in all clarity re-enforced the link between integration and non-discrimination.

## 5 Conclusion

Looking at the New Pact and all follow-up policy plans from the perspective of immigrant integration reveals some interesting insights. First of all, the presence in the New Pact and all follow-up documents of restricting and managing migration as well as return of irregular immigrants to their countries of origin is overwhelming. Also, the update of the EU Asylum System is another dominant objective. The position of

<sup>68</sup>New Pact, COM(2020) 609 final, p. 28.

<sup>69</sup>Action Plan, COM(2020) 758 final, pp. 7-8.

<sup>70</sup>Action Plan, COM(2020) 758 final, p. 8.

<sup>71</sup>Action Plan, COM(2020) 758 final, p. 8.

<sup>72</sup>For example Directive 2000/43/EC and Directive 2000/78/EC.

<sup>73</sup>See Proposal for an update to Directive 2000/78, stalled since 2008, COM (2008) 426 final.

'integration' in the list of items dealt with in the New Pact already signalled that integration was not at the centre of attention of those drafting the Pact. Contentwise, this existence at the margins is foremost visible in the lack of links between integration and non-discrimination initiatives of the EU. Non-discrimination, the prevention of abuse and exploitation, and equal treatment of migrants would have been formidable additions to the legal pathways sections of the New Pact.

It is also remarkable that the New Pact is letting the chance pass to, perhaps with reference to a better management of migration, set steps to amend existing legislation into a comprehensive EU immigration code, which would certainly increase its practical relevance compared to the fragmented piecemeal approach that is EU Migration and Asylum law currently.

All in all, the New Pact is not directing a lot of attention to the issue and state of affairs around immigrant integration. As such, it does no harm to the current situation. Maybe that is the best thing.

## Declarations

**Competing interests** The author declares no competing interests.

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