



European Network Against Racism
Réseau européen contre le racisme
Europäisches Netz gegen Rassismus

For a real European Citizenship

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Table of contents

	page
Preface	i
Introduction	ii
Chapter I: The European level	1
1. The Treaty of Maastricht	1
1.1 Citizenship in the Union	1
1.2 Free movement of persons	1
2. Towards the Treaty of Amsterdam	2
3. The Treaty of Amsterdam and the new Title IV	3
3.1 The area of freedom, security and justice	3
3.2 Effective implementation of Title IV	4
3.2.1 Family reunification	4
3.2.2 Proposal for a Council directive on the status of long-term resident third-country nationals	5
3.2.3 Communication from the Commission on a Community immigration policy	6
Chapter II: The National level	9
Rights for long-term resident third-country nationals in the EU member states	
1. Residence permits	9
2. Family reunification	11
3. Nationality	13
4. Right to vote	15
Conclusions	17
Chapter III: For a citizenship of residence	18
Conclusions	20
Call for a European campaign for the right to vote and the right of eligibility for non-EU residents in local and European elections	22



Since its creation in October 1998 the European Network Against Racism has succeeded in implementing a number of projects and objectives. ENAR's lobbying work, in cooperation with other organisations, was influential in the adoption of the so-called Race-Directive (Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) and a Framework Directive to combat the forms of discrimination, which are listed in Article 13 in the field of employment (Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation) by the Council of the European Union.

Refugees and migrants in the EU (even in the third generation) suffer acutely from discrimination and ENAR closely monitors specifically discriminatory practises in the asylum and immigration policy developed by the European Union. The Council conclusions adopted at Tampere in 1999 authorised the European Commission to draft a set of directives with the intention to harmonise the asylum and immigration policy in the European Union. This could result either in a considerable improvement of the migration policies of the member states or just in the reinforcement of "Fortress Europe".

In this context, ENAR has edited this publication to launch a campaign for a "Real European Citizenship". A poster for the campaign will also be produced. We do not want to see first, second or even third class status for residents. Therefore, we will be influencing the European Commission, the European Parliament, the Council of the EU and other relevant institutions and bodies to shape a migration policy free of discrimination as well as demanding the same conditions and fundamental rights for third country nationals in the EU as those for EU-nationals.

To help us succeed, we invite all NGOs concerned to share their opinions and concerns with us and to support the work the network is carrying out so that migration becomes a normal process respecting human dignity and fundamental rights.

Vera Egenberger
Director of ENAR



Introduction

The year 2000 was extremely important for the organisations which campaign against racial discrimination and for the promotion of equal rights in the European Union. Following the introduction of Article 13 of the Treaty of Amsterdam, the Commission had presented a series of measures. These include two proposals for Directives, one implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, the other establishing a general framework for equal treatment in employment and occupation, as well as a community action programme to combat discrimination – all measures which have been adopted.

While these measures represent an important step, a great deal still remains to be done regarding the equal treatment of EU nationals and nationals of third countries. Until the introduction of Title IV in the Treaty, EU nationals, with the exception of certain categories, were not direct subjects of Community law. Their rights were determined by the host country and when they did benefit from Community law, it was only within the framework of policies and measures where nationality was not an issue.

Title IV enables the European institutions to implement a series of measures in the area of equal treatment for third-country nationals. The European Council in Tampere established the broad outlines for the implementation of the area of freedom, security and justice and established a method of work to achieve this. Some initiatives form already the basis of discussions.

This publication is part of ENAR's work programme for 2001, one of the main thrusts of which is the issue of equal treatment and citizenship. Above all the aim is to provide a useful tool for ENAR members. European issues are sometimes difficult to understand and this is why we have tried to tackle the different subjects dealt with here in a simple and concise way.

This document looks first at the concept of European citizenship and the rights associated with it. This is followed by an overview of the evolution of migration policy in the European communities, which, since the treaty of Maastricht, have become the European Union. It reviews some of the initiatives taken by the Commission within the framework of Title IV. Then there is a chapter devoted to the examination of some of the national provisions, which relate to the rights of third-country nationals. Finally, we are calling for action among our members on the issue of a citizenship based on residence.

This publication is not at all exhaustive – some crucial issues, notably in the area of asylum, would benefit from being dealt with separately. We are aware of these gaps and hope that ENAR, which is a fairly new network, will be able to extend and consolidate its reflections in the future.



Chapter I – The European level

1. Maastricht Treaty

1.1 Citizenship in the Union

The concept of European citizenship was introduced in 1991 by the Treaty of Maastricht which stipulates in Article 8, Paragraph 1 (Art. 17 of the consolidated version) that: “Every person holding the nationality of a Member State shall be a citizen of the Union”.

This Article goes on to specify which rights are conferred by this citizenship:

- the right to move and reside freely within the territory of the Member States (Art. 18 of the consolidated version);
- the right to vote and to stand as a candidate at municipal and European elections in the Member State in which the individual resides, under the same conditions as nationals of that State (Art. 19 of the consolidated version);
- entitlement to protection by the diplomatic or consular authorities of any Member State, in the territory of a third country in which the Member State of which the individual is a national is not represented (Art. 20 of the consolidated version);
- the right to petition the European Parliament and to apply to the Ombudsman (Art. 21 of the consolidated version).

Except in the case of the right to petition and to refer a complaint to the Ombudsman, nationals of third countries do not benefit from the rights proceeding from European citizenship.

We feel it is important at this point to consider briefly the idea of free movement, as this is one of the principle attributes of European citizenship. This idea implies the recognition of economic and social rights for the nationals of the Member States who reside in countries of the Union other than their own and establishes equal treatment for all European Union nationals by guaranteeing them the same treatment in the country in which they reside as is reserved for nation-

als. Furthermore political rights are recognised at local and European level for European Union nationals in the Member State where they reside.

By excluding the majority of third-country nationals from the benefits of free movement, the European Union reinforces the differences in treatment between European Union nationals and nationals of third countries.

European citizenship, which is seen as one of the core elements of the identity of the Union, is the symbol of a Europe that is constructed by excluding millions of people on the grounds that they do not hold the nationality of a Member State.

1.2 Free movement of persons

The free movement of persons is based on the principle of non-discrimination, which is enshrined in Articles 12 and 39 of the consolidated version of the Treaty, and implies the abolition of all discrimination based on nationality among citizens of the European Union.

In concrete terms, the right of free movement assumes the right to move freely within the territory of the Member States and to reside there in order to engage in an activity, whether salaried or self-employed, or even not to engage in any activity, provided that the individual has sufficient resources and is registered with a sickness benefit system.

It also assumes free access to economic activities on the same conditions as the nationals of the State concerned. It implies the right to benefit from the same welfare and taxation benefits as those accorded to citizens of the State concerned.

The only exceptions to the principle of non-discrimination are the restrictions imposed for reasons of public health, law and order or public safety or in order to reserve for nationals of that State certain public sector jobs.

So far, third-country nationals have been excluded from enjoying the benefits of free movement.

Nevertheless it is important to emphasise that some categories of non-EU nationals enjoy a certain degree of freedom of movement.

The family members of European Union nationals can, on certain conditions, move within the Union. This right is accorded to the spouse, to minor or dependent children, as well as to relatives in the ascending line. The family members have the right to accompany or to rejoin the citizen who moves within the European Union, even if they are not nationals of a Member State.

Since 1994 this freedom has also been accorded to workers who are nationals of the EFTA countries (Liechtenstein, Norway and Iceland) in pursuance of the agreement creating the Single European Area (which was signed on 2 May 1992 and came into force on 1 January 1994).

Foreign individuals who do not fit into any of these categories do not benefit from favourable provisions of Community law. Their freedom of movement within the Union is still governed by the provisions of national law. This means that the barriers to movement which have been abolished with regard to EU nationals continue to create obstacles to movement for nationals of third countries. They do not have the right to the economic and social benefits which, in pursuance of Community law, are accorded by Member States to their citizens and they do not have the freedom to engage in economic activities on the territory of the European Union. Community law does not guarantee them the same conditions for engaging in their activities nor the same living conditions as the nationals of the host Member State.

2. Towards the Treaty of Amsterdam

The years between the creation of the European Economic Community in 1957 and the halt to immigration enacted by several countries in 1974 was characterised by a policy on immigration and the crossing of borders which was fairly liberal, as the countries were in need of labour. At that time immigration was considered to be a national issue.

Thus there was no common policy in this area. Moreover, the Treaty of Rome does not give any clear

mandate to the institutions for the establishment of measures relating to migration policy.

1975 was the year of the creation in Rome of the first intergovernmental forum, the Trevi Group. It was to be followed by the creation of a large number of other forums whose activities concentrated on issues linked to the crossing of external borders, the issuing of visas and asylum etc¹. These groups were composed of senior civil servants and representatives of the police forces of the Member States. The secrecy surrounding their operation and the division and overlapping of powers did not allow for an overall vision of the issues addressed and the results, which were eventually delivered were fairly insubstantial.

In the intergovernmental context, the Schengen Agreement (1985) interprets very well the spirit and the method of what some have called “européanisation” of the debate on immigration. Even though the primary objective of the collaboration between the Schengen countries was the establishment of the principle of the free movement of people within a common space, it was not long before there was a change of focus: the co-operation of the police which should have been an instrument accompanying the abolition of the internal borders became an instrument in its own right.

As a consequence of this, there was a change of method in negotiations between Member States. The framework of the communal process which had originally been intended gave way to a more secretive process under the sole authority of the States.

The security requirements became predominant and the different partners frequently modified their national legislation on the entry and residence of foreigners, tending to move towards greater severity.

Signed in Maastricht on 10 December 1991, the Treaty on European Union established a three-pillar system for the work of the Union. This comprises the European Communities (first pillar), which form a federal pillar, the Common Foreign and Security Policy (second pillar, intergovernmental), and internal affairs and justice (third pillar, intergovernmental). Immigration and asylum form part of the third pillar.

¹ Most often from a security point of view.

The Maastricht Treaty establishes a complex structure that vaguely links the 3rd pillar to the community pillar.

Article K1 identifies the areas that are considered to be issues of common interest by the Member States (asylum, regulations on the crossing of borders, immigration and policy regarding third-country nationals, the fight against fraud, the fight against drug trafficking, judicial co-operation and co-operation between police forces and customs authorities).

The Member States are supposed to inform and consult with one another within the Council in order to co-ordinate their actions. Decisions are made by unanimity. The instruments retained for the implementation of decisions such as the common positions or the common actions are not legally binding.

Article K9 envisages the possibility of dealing with certain issues of common interest at community level. The transfer to the first pillar would have to be proposed by the Commission or a Member State, accepted unanimously by the Council and ratified by all the national parliaments. Basically, a colossal task!

This structure has proved to be inoperable and the Council itself has issued a number of criticisms with respect to this.

3. The Treaty of Amsterdam and the new Title IV

3.1 The area of freedom, security and justice

In view of the failure of the intergovernmental co-operation within the third pillar, the idea of the some degree of “communitarisation” of the third pillar made headway. Within the framework of “establishing progressively an area of freedom, security and justice”, a new title (Title IV) made its appearance. It groups the issues concerning asylum and immigration with those relating to free movement.

The Treaty of Amsterdam represents an extremely important advance regarding third-country nationals, since it defines a legal framework for issues relating to immigration, asylum and free movement. Consequently, third-country nationals become directly subject to EU law.

The “communitarisation” of these issues is relative insofar as the Treaty stipulates that, for a transitional period of five years, the decisions will be taken by unanimity on the proposal of the Commission or on the initiative of a Member State after consultation with the European Parliament. The role of the Court of Justice is very limited.

At the end of this period of five years, the Member States can decide by unanimity to transfer to the co-decision process and to qualified majority for all the areas covered by the Title or to some of them. They also have to decide upon the role of the Court of Justice.

On the issue of free movement, Article 62 (consolidated version of the Treaty) stipulates that within five years the Council will look at measures aimed at ensuring the absence of any controls on persons when crossing internal borders, be they citizens of the Union or nationals of third countries. This article also stipulates the adoption of measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months. There are also provisions regarding the controls at external borders and provisions relating to visas for short stays.

Article 63 deals with the issues of asylum and immigration. Within five years the Council must adopt measures such as the criteria for determining which Member State is responsible for considering an application for asylum, minimum standards on the reception of asylum seekers, and on procedures for granting or withdrawing refugee status. The article also stipulates the granting of temporary protection to displaced persons, as well as measures on receiving and bearing the consequences of receiving refugees and displaced persons.

Regarding immigration, Article 63 calls for measures relating to the “conditions of entry and residence and (...) the issue (...) of long-term visa and residence permits, including those for the purpose of family reunion”.. In addition, it makes provision for measures concerning illegal immigration and illegal residence, including repatriation of illegal residents. Finally, Article 63 also sets out “measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may

reside in other Member States”.

We should point out here that within the Treaty of Amsterdam there is an additional protocol which makes provision for the incorporation of the Schengen acquis into the framework of the European Union. Further protocols give the United Kingdom, Ireland and Denmark the option not to conform to decisions taken in Title IV.

3.2 Effective implementation of Title IV

The Tampere Summit (15-16 October 1999) was held under the Finnish Presidency, shortly after the Treaty of Amsterdam came into force (1 May 1999). The aim of this summit was to define in concrete terms the implementation of an area of freedom, security and justice. Priorities were established regarding the European policy on asylum and migration, justice and the fight against crime.

It was also at Tampere that a method of work was devised to be used to advance the provisions of Title IV. The principle instrument of this is the scoreboard. This document is presented in the form of a table comprising different columns. One contains the objectives, one outlines the form of the actions to be undertaken and the nature of the required instrument, another column indicates the institution which is empowered to take the initiatives, another one indicates the timetable and the last column charts the progress.

Since the Treaty of Amsterdam came into force, a number of initiatives are already in progress. We do not intend to examine all of these here but we will look instead at those which directly concern ENAR and which form part of the network’s work programme for 2001.

3.2.1 Family reunion¹

On 1 December 1999 the European Commission adopted a proposal for a Directive by the Council on family reunion [COM (1999) 638 final]. This proposal is based on Article 63 of the TEC and aims to establish a right of family reunion for third-country nationals who are legally resident on the territory of a

Member State.

Prior to the publication of this proposal for a Directive, the Commission consulted with a number of non-governmental organisations, including ENAR, and invited them to submit their points of view.

The proposal was passed to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions. Following the opinion and the amendments of the European Parliament, the Commission modified the proposal for a Directive by including some of the modifications suggested by the Parliament. The new proposal [COM (2000) 624 final] is now in the hands of the Council.

We would like to draw your attention to the fact that this new proposal is a retreat in comparison with the first text.

An outline of the main points of the proposal recalls that the measures concerning family reunion must be adopted in conformity with a number of international legal instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (Preamble 3). It is also noted that at the Tampere Summit the Council stated that the “European Union should ensure fair treatment of third-country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the European Union.” (Preamble 6).

Preamble 8 emphasises that, “Family reunification is a necessary way of making family life possible. It helps to create socio-cultural stability facilitating the integration of third-country nationals in the Member State, which also serves to promote economic and social cohesion”.

In these 20 articles the proposal for a Directive defines the personal area of application, the family members, conditions for the submission and examination of the application, practical conditions for the exercise of the right to family reunification, and the conditions for the entry and residence of family members, as well as the potential penalties and redress.

¹ See also the alternative proposal presented by MPG and ILPA in “The Amsterdam Proposals”.

The broad outline of the proposal for a Directive was relatively well received by the NGOs ¹.

At the level of the Member States, the reaction to the proposal for a Directive was more modified. Some governments, together with one section of the European Parliament, see the text more from the point of view of managing migration flows rather than from the point of view of respecting the fundamental rights of the individual. These same governments, who are preoccupied with some aspects of the text which they consider to be too liberal, are delaying the adoption of the proposal.

In order that the proposal for a Directive on the right to family reunion be adopted as soon as possible, it is essential that the NGOs get to work at national level and call on their governments to support this proposal.

We should point out here that the adoption of this text requires unanimity and consequently lobbying work must be carried out at the level of the 15 Member States.

3.2.2 Proposal for a Council directive concerning the status of third-country nationals who are long-term residents ²

This proposal for a Directive comes in the wake of the Tampere conclusions which put forward the principle of equal treatment of EU nationals and nationals of third countries who are settled in the EU on a long-term basis.

This Directive has two aims (Article 1):

- To establish a long-term resident status for third-country nationals who are legal, long-term residents of an EU country. This status will be a common status for all Member States.
- To determine the conditions in which long-term resident third-country nationals may remain in another Member State.

¹ See call from the European Co-ordination for support for the modified proposal for a Directive on the right to family reunion. <http://members.aol.com/coordeurop/indexce.html>

² COM (2001) 127 final published in the Official Journal on 13.03.2001

A. Long-term resident status

Beneficiaries (Article 3):

- Third-country nationals who have been legally resident continuously for five years in an EU Member State.

The Directive does not cover asylum seekers, those enjoying temporary protection or a subsidiary form of protection, students, except for doctoral students, and diplomatic personnel.

Conditions for awarding of this status (Articles 6, 7 and 8):

- Sufficient and stable resources and sickness insurance. The following are exempt from these conditions: refugees and third-country nationals born in the territory of a Member State.
- The individual must not represent an actual threat to public order and domestic security.
- An application for long-term resident status must be lodged by the party concerned with the competent authorities of the Member State in which s/he resides.

Withdrawal of status (Article 10):

- Absence from the territory for at least two years, fraudulent acquisition of status, acquisition of status in another Member State, adoption of an expulsion measure.

If the application is refused, the status is withdrawn or the residence permit is not renewed, redress procedures are available.

Equal treatment with respect to (Article 12):

- Access to employed or self-employed activity, employment and working conditions, including conditions regarding dismissal and remuneration.
- Education and vocational training, including study grants.
- Recognition of diplomas and other qualifications.
- Social protection, including social security and health care; social assistance.
- Social and tax benefits.
- Access to goods and services, including housing.
- Freedom of association and affiliation.

- Free access to the entire territory of the Member State concerned.

B. Right to reside in another Member State:

A long-term resident may exercise the right of residence in a Member State other than the one which granted him/her the status, for a period exceeding three months, (Article 15).

This other Member State is referred to in the Directive as the second Member State.

Conditions (Article 16):

- Exercise of an employed or self-employed activity
- Pursuit of studies or vocational training and possession of adequate resources and sickness insurance.

If all the conditions provided for in the Directive are met, the Member State shall issue the long-term resident with a residence permit corresponding to the foreseeable duration of residence. This permit is renewable (Article 21).

Long-term residents who exercise their right of residence in the second Member State retain their status in the first Member State until they obtain it in the second. They shall enjoy the same rights in the second Member State as listed in Article 12 with the exception of social assistance and study grants (Articles 23 and 24).

After five years' legal residence in the second Member State, long-term residents may acquire long-term resident status in the second Member State. However, they will then lose their long-term resident status in the first Member State (Article 27).

We would like to point out that this text has to be adopted by unanimity.

3.2.3 Communication from the Commission on a Community immigration policy ¹

This communication responds to the need expressed by the European Council to take rapid decisions on an "approximation of national legislations on the conditions for admission and residence of third-country nationals, based on a shared assessment of the eco-

nomie and demographic developments within the Union, as well as the situation in the countries of origin." (Point 20 of the Conclusions of the Presidency).

The Commission is of the opinion that in view of the economic and demographic context of the Union and that of the countries of origin, the "zero immigration" policies are no longer appropriate. The communication intends to launch the debate about the way in which the EU could establish a "correctly regulated" immigration policy.

Framework for an EU policy on asylum and immigration ²

The communication recalls the framework defined at Tampere on asylum and immigration. The principles are:

- Partnership with the countries of origin

The Commission envisages reinforcing or establishing partnerships with the countries of origin in order "not only to reduce (immigration) push factors, primarily through economic development in countries of origin and transit, but also support such activities as legislative reform, law enforcement capabilities and modern border management systems".

The communication also looks at the issues of money sent by immigrants back to their countries of origin and of brain drain. The suggestion is made that it would be useful "to develop policies which use migration to the mutual benefit of the country of origin and the receiving country".

- A common European asylum system

Reiterating the right to apply for asylum, the communication emphasises that, "The objective of a common European asylum system must be to ensure the full application of the Geneva Convention on refugees and that nobody is sent back to persecution".

It is useful to remember that there is another communication entitled "Towards a common asylum proce-

¹ COM (2000) 757 final published in the Official Journal on 22.11.2000

² This and the following headings have been quoted from the Communication in order to give a clear reference.

ture and a uniform status, valid throughout the Union, for persons granted asylum” [COM (2000) 755 final] which dates from 22 November 2000.

- Fair treatment of third-country nationals

This section mentions the proposals made for the setting up of a legislative framework for the integration of those already resident on the territory of the Member States. It also recalls the package of measures taken with the aim of implementing Article 13 of the Treaty.

The Commission will propose a framework decision aimed at enhancing judicial co-operation in the fight against racism. This initiative should tackle, among other things, racist sites on the internet. There is also the issue of the proposal for a Directive on family reunion and mention is made of the fact that the Charter of Fundamental Rights grants third-country nationals “the possibility of free movement and residence in the Union, on the conditions set out in the Amsterdam Treaty”.

- Management of migration flows

The principle measures proposed here are:

- Information campaigns by which potential migrants can be informed about legal possibilities for migration and what they may expect in the destination country and of the dangers of illegal migration and trafficking.
- Intensification of steps to develop a common visa policy for the EU.
- Measures to combat forgery and the fraudulent use of travel documents.
- Action in countries of origin and transit, co-operation between police forces regarding trafficking in human beings.
- Action at the point of entry including border controls.
- Legislation against traffickers.
- Help for victims and their humane repatriation.
- Greater priority for voluntary return.
- Maintaining forced return as a last resort.
- Establishment of readmission agreements.
- Development of common standards for expulsion decisions, detention and deportation, “which should be both efficient and humane”.

The demographic and economic context

As far as the demographic context is concerned, the main conclusions of the communication are to do with the demographic slow-down and the rise in the average age of the population of the EU. This is a phenomenon which will soon affect the countries of Central and Eastern Europe as well. A policy of controlled immigration could help to alleviate some of these demographic changes.

As regards the economic context, the macroeconomic prospects of the Union have never been better and the Union intends to “become the most competitive and dynamic knowledge-based economy” in the world.

On the negative side: some sectors of the economy are experiencing shortages of highly skilled labour – this is the case in the technology and information sectors. Other sectors, such as agriculture and tourism, also lack low-skilled workers.

“Immigration (...) will have a contribution to make in offsetting these problems in some countries as an element in the overall strategy to promote growth and reduce unemployment.”

On the other hand, the communication notes that, according to a number of studies on the economic impact of legal immigration in different Member States, “migrants generally have a positive effect on economic growth, and do not place a burden on the welfare state.”

As regards illegal migrants, the text states that, “Although they, and in many areas also low-skilled legal migrants, undoubtedly make a contribution to the economy in the short-term, their presence may also hinder the implementation of structural changes which are necessary for long-term growth.”

Following these statements about the need for labour, the Commission defines the framework for a European migration policy which is based on two main principles: the admission of migrants and the integration of third-country nationals.

Admission of migrants

The communication states that it is difficult to assess

economic needs and that the responsibility for deciding on the needs for different categories of migrant labour must remain with the Member States.

The communication proposes that the Member States should prepare periodic two-part reports. The first part would look at the results of their migration policy over the previous period, including the numbers and categories of third-country nationals admitted and the situation in the labour market. The second part of these reports would set out the Member States' future intentions and projections about the quantity and type of migrant workers they would require.

These reports would enable the Commission to assess what progress had been achieved and to redefine the aims and objectives relating to the admission of migrant workers.

Within the next months, the Commission will adopt the proposals for Directives relating to the conditions of admission and residence in the EU for third-country nationals who wish to exercise a professional activity, whether salaried or self-employed, to exercise an unpaid activity or to study or to receive vocational training.

As regards the rights which migrants would enjoy, the Commission is proposing that these be adjusted according to the length of their stay.

Integration of third-country nationals

The communication proposes to reinforce measures aimed at better integration of third-country nationals, including the fight against discrimination and xenophobia. The Member States are called on to take account of the individual needs of new migrants and to develop partnerships with different actors (local authorities, providers of education and healthcare, the police, the media, the social partners, NGOs, the migrants themselves and their associations) in order to bring these integration programmes to a satisfactory conclusion.

Finally, the document suggests that "The Charter of Fundamental Rights could provide a reference for the development of the concept of civic citizenship in a particular Member State (comprising a common set of core rights and obligations) for third-country nationals". Acquiring this citizenship "might be a sufficient guarantee for many migrants to settle successfully into society or be a first step in the process of acquiring the nationality of the Member State concerned."

Chapter II – The National level

Rights for long-term resident third country nationals in the EU Member States

In this chapter citizenship and the rights of long-term resident third country nationals in the member states will be examined. In particular, the following core issues will be covered:

1. Residence permits
2. Family reunion
3. Nationality
4. Right to vote

It has been decided to focus on these issues because they reflect some of the current priorities of the EU, but are also the focus of the political activity of third country nationals. Until recently, most of these issues were in the domain of the individual member states. However, this changed with the Treaty of Amsterdam and the inclusion of Title IV to create an area of “freedom, security and justice” which provides the legal basis for the European institutions to act on immigration and asylum matters.

Until the eighties, the European Community could be clearly divided into countries of emigration and immigration. The situation now has changed radically, nearly all the member states, to varying degrees, are touched by immigration, refugees and asylum-seekers. Moreover, in the member states with long-established third country nationals, there is an acceptance that these communities are here to stay indefinitely and therefore, it is imperative to grant them certain rights, which will enhance their integration.

Each issue will be presented in two parts: the first part will give a brief overview of the legal provisions in the member states; the second part will outline the issues, trends, and developments at the member state level, and cover the following:

- Analyse the legal provisions to assess if there is a convergence in practice between the member states, and whether this practice is towards equal treatment for third country nationals.¹
- To find out if there is a difference in provisions between the countries of immigration and emigra-

tion, that is, the North and South of Europe.

- To highlight the evolution of policy-making from limiting immigration policies to integration.

1. Residence permits

The conditions under which residence permits are issued in the member states is a subject of prime importance in the context of the rights of long-term resident third country nationals. This is because so many other fundamental rights are often dependent on the type and duration of permit issued, for example, the right to work, access to social security, access to education, the right to family reunion, the right to vote, and access to nationality.

The situation in the member states

Austria: The issuing of residence permits for third country nationals are subject to a quota system, an unlimited residence permit can be applied for after a period of five years.

Belgium: Third country nationals with five years legal residence can apply for an establishment permit, which gives an unlimited right to live in Belgium. A criminal conviction is a ground for refusing this permit.

Denmark: A permanent residence permit can be issued to third country nationals who have held a valid residence permit for three years. Denmark is the only country in the EU which makes the issuing of this permit dependent on the applicant undertaking an introduction programme, under the 1998 Act on integration of aliens. The other conditions are applicants must have no criminal convictions and no debts.

Finland: A permanent residence permit, which is

¹ The data used in this chapter is from the following publication, Groenendijk, K., Guild, E., Barzilay, R., *The Legal Status of Third Country Nationals who are Long-Term Residents in a Member State of the European Union*, University of Nijmegen, 2000. This study has been carried out by the Centre for Migration Law, University of Nijmegen, on behalf of the European Commission (DG Justice and Home Affairs).

valid indefinitely, can be issued to third country nationals who have been legally resident for two years. An application for such a permit can be refused if the applicant has a criminal conviction.

France: A permanent residence permit can be issued after three years, and is automatically granted after ten years legal residence. If the applicant has a spouse or children with French nationality, or was admitted under family reunion, this entitles them to a ten-year residence permit. Such a permit is renewed automatically. Application for a permanent residence permit can be refused if the applicant is deemed to be a threat to public order.

Germany: There are two types of permits, which give a permanent residence status to third country nationals, establishment permits, and an unrestricted residence permit. The establishment permit can be applied for after eight years of legal residence; the applicant must also prove that they have sufficient income and no criminal convictions to qualify. For the unrestricted residence permit, the applicant must have held a temporary residence permit for five years, hold a valid work permit, and have reasonable knowledge of the German language.

Greece: Third country nationals can apply for a two-year permit after five years legal residence. A permanent residence permit can only be issued to those who have been legally resident for 15 years and have a valid work permit.

Ireland: Third country nationals can apply for a residence stamp which gives the right to stay for an indefinite period, and which can be applied for after five or ten years legal residence.

Italy: Third country nationals can apply for a residence card, which is equal to a permanent residence permit after five years legal residence. The granting of this card is dependent on the applicant proving they can support themselves and have no criminal convictions.

Luxembourg: The granting of a residence card, which is valid for five years is dependent on the applicant completing five years legal employment, having sufficient income to support themselves and their family,

and must not be a threat to public order.

Netherlands: Third country nationals can apply for a permanent residence permit, on the condition that they have been legally resident for five years, have sufficient income, and are not a threat to public order.

Portugal: Third country nationals can apply for a permanent residence permit after ten years if they have no criminal convictions; this is reduced to six years for individuals from Portuguese speaking countries.

Spain: Third country nationals can obtain a permanent residence permit after five years legal residence, there are not other conditions.

Sweden: Third country nationals can obtain a residence permit after four years legal residence.

UK: An Indefinite Leave to Remain can be granted to third country nationals after four years legal residence if they can prove they have sufficient income and housing.

Issues

The period before a permanent residence permit is granted is between two (Finland) to 15 (Greece) years, with five years the average in eight of the member states. The member states with the longest qualifying period are France, Germany, Greece, and Portugal. Although, Portugal has a reduced waiting period for obtaining a permanent residence permit for individuals from former colonies. In Spain also there are more favourable conditions for people from Latin America.

In many of the member states a permanent residence permit is dependent on the applicant having sufficient income, suitable housing, and proving that they are not a threat to public order. Some member states add further restrictions to these conditions, for example:

- The use of the quota system (Austria)
- Undergoing the compulsory introduction programme on integration (Denmark)
- Being able to speak the language of the country concerned (Germany)
- To have completed a five-year period of legal employment (Luxembourg)

In many countries, residence permits do not allow third country nationals to visit their countries of origin for either short or long periods without any loss of rights.

With the exception of Portugal granting more favourable conditions to former colonies, there does not appear to be a difference between countries of emigration and immigration. In general, Finland and Sweden seem to have the most liberal approach to the granting of residence permits.

The **European Commission** has published a proposal for a Directive on residence permits and free movement for third country nationals on 13 March 2001.¹

2. Family reunion

The right of migrant workers to live as a family has been recognised as a fundamental right by the UN in the 1950 Declaration of Human Rights, and in several ILO Conventions.

The issue has also been included in bi-lateral agreements between receiving and sending countries. Since receiving countries needed labour to rebuild their economies after the Second World War, rules on family reunion tended to be more favourable.

For some migrant workers, family reunion was not an issue, because these workers were not expected to stay in the host countries; these migrants were only seen as workers to fill the gaps in the labour market. However, this situation began to change from the seventies onwards when due to the widespread economic recession, there was a move in many of the member states to stop all forms of immigration. Tightening up rules on family reunion was part of this policy.

On 1 December 1999, the European Commission adopted a proposal for a Council Directive on the right to family reunification (COM(1999) 638 final) which was not approved by the Council. On 27 February 2001, the Commission published its amended proposal for a Council Directive on the right to family reunification (COM(2000) 624 final) which is still being discussed within the Council.

¹ Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents (COM(2001)127 final)

The situation in the member states

Austria: There is a quota system for family reunion, comprising spouse and children, for third country nationals, which means they have to wait until there is an opening in the quota before applying.

Belgium: Third country nationals with an establishment permit or an unrestricted residence permit can apply for family reunion.

Denmark: Third country nationals with a permanent residence permit of three years can be granted a right to family reunion on certain conditions. This qualifying period before family reunion is justified on the grounds that the applicant should be more familiar with Danish society and can therefore, help the newly-arrived family members to integrate.

Finland: Third country nationals with a residence permit can apply for family reunion on the condition that they can prove they have sufficient income to support their family (except for refugees), and that they are not a threat to public order. In Finnish law, the definition of family includes not only spouses and children, but also dependent relatives such as parents and grandparents.

France: Third country nationals with a permanent residence status have a right to family reunion on certain conditions; they must have sufficient income to support their families and suitable housing. Those with a temporary residence permit can apply after one year's residence. All family members are granted an independent status after one year.

Germany: There are different rules governing the right to family reunion depending on the legal status of the person demanding it. However, they all have to prove that they have sufficient income to support their families, suitable housing, and a residence status. A spouse is eligible for a permanent residence permit after five years, but this is dependent on the above conditions, as well as basic knowledge of the German language.

Greece: Third country nationals qualify for family reunion after five years on the condition that they have a valid residence and work permits. They must also prove they have sufficient income and suitable housing.

Ireland: Third country nationals who have been legally resident for more than five years can apply for family reunion, which includes any dependent family members and parents.

Italy: Third country nationals with a limited or a permanent residence permit, obtainable after five years, have the same rights regarding family reunion as EU-nationals.

Luxembourg: Third country national must prove that they have sufficient income, housing, and a valid work permit before they can apply for family reunion.

The Netherlands: Third country nationals with a permanent residence permit have almost the same rights to family reunion as Dutch nationals, on the condition that they can prove that they have sufficient income. All family members are entitled to a residence permit, which must be renewed each year.

Portugal: A third country national needs a permanent residence permit before applying for family reunion.

Spain: All third country nationals with a valid residence permit are entitled to family reunion, this includes spouses, children, which include any handicapped children over 18, and any economic dependants.

Sweden: A third country national needs a permanent residence permit before applying for family reunion.

The UK: Family reunion is allowed for economically dependent people, and for people who are cohabiting, if the relationship has lasted for more than two years. The qualifying period before a spouse is granted Indefinite Leave to Remain is one year. However, during this time, the spouse has no access to the legal employment market or to welfare benefits.

Issues

There is a difference as to what constitutes a “family” in the legislation governing family reunion in the member states. In some cases, this includes spouses and children, and in other cases, economically dependent parents and grandparents. In Spanish law, children over 18 who have a disability can also benefit from family reunion rights, because such children

tend to require more care than physically able-bodied children do.

The definition of what constitutes “family” is fundamental to the discussion on family reunion rules. In many of the countries of origin of third country nationals, responsibility for family members extends beyond children and spouses to parents and grandparents. In many cases, individuals who migrate are expected to provide for close relatives, but also for poorer members of the extended family.

In general, the right for family reunion is dependent on being established in the host country; the period of this establishment varies considerably from one member state to another:

- In many cases, it is necessary to have a permanent residence permit, and in one member state, Denmark, there is additional delay, which is meant to deepen the integration of the applicant in the host country before family reunion is allowed. This has resulted in third country nationals seeking to become naturalised so that they can cut short the qualifying period before applying for family reunion.
- Sometimes it is necessary to prove that the applicant has sufficient income and proper housing for the whole family.
- The use of the quota system in Austria is the most restrictive legislation in the EU; applicants have to wait until there is an opening in the quota before they can apply for family reunion.
- **The waiting period** before family reunion is granted means that member states can benefit from migrant labour without investing in the education of their children, health care, cost of the care of dependent relatives, etc. Furthermore, some research needs to be carried out on the psychological impact of the waiting period on family members before family reunion is granted.
- **The situation of migrant women** entering the member states under family reunion law often means that they do not have their own permanent residence permit until a qualifying period of between one to five years. This means that women could be wholly dependent on their husbands during this period. Moreover, they are also not able to

apply for a work permit until a qualifying period, which means that they are entirely dependent economically on their husbands, or forced to work in the underground economy which is exploitative, insecure, and provides no social protection. The main problem with the lack of an independent legal status for women is that it leaves them vulnerable in cases of domestic violence, divorce or separation. Due to the campaigning work by women's rights groups in two member states, the Netherlands and the UK have changed their policies to take this situation into account. In the Netherlands, women can appeal against expulsion on the grounds of divorce or separation on humanitarian grounds, which should take into consideration any incidents of violence.

3. Nationality

Access to nationality is determined by rules which have evolved over a period of time and which reflect the history and political traditions of the country in question. In general, access to nationality in the member states is usually determined by the following:

- jus soli – born in the land
- jus sanguinis – linked by blood or family ties

Nationality usually defines the rights and responsibilities of citizens (electoral rights, military service, payment of taxes, social rights, jury service, and issuing of passports). In return for the allegiance of citizens, the state has the responsibility to protect them and ensure that citizens can access their rights. These citizens are indigenous to that country, or they could be individuals who are naturalised through a legal process, which invests them with the same rights and privileges as indigenous citizens.

Many rights are dependent on nationality; for example, social rights such as access to the labour market, including the right to work in the public sector (social security, provisions for retirement) and the right to free movement within the EU. However, there are some rights, which can be exercised and enjoyed without nationality, for example, the right to vote and to stand in elections, equality between women and men, and health and safety.

The information on conditions to access nationality is not exhaustive, since legislation in this area is undergoing changes in some of the member states.

The situation in the member states

Third country nationals can apply for naturalisation in the member states after varying periods of legal residence:

Austria:	5 years.
Belgium:	3 years.
Denmark:	7 years.
Finland:	18 years.
France:	5 years.
Germany:	at the latest after 8 years.
Greece:	10 years.
Ireland:	5 years.
Italy:	10 years.
Luxembourg:	10 years.
The Netherlands:	5 years.
Portugal:	10 years.
Spain:	10 years.
Sweden:	5 years.
UK:	5 years.

In Portugal, third country nationals originating from Portuguese speaking countries can apply for Portuguese nationality after six years of legal residence. In Spain, there is only a two-year waiting period for individuals from South American countries, Portugal, and the Philippines.

There are exceptions to these rules in most of the member states for minors, refugees, people born on the territory, EU nationals, and for stateless people. In most member states, before third country nationals can apply for naturalisation they are required to: be of good character; have a knowledge of the language of the host country; prove that they are not a threat to public order; have no criminal convictions; have met their fiscal obligations; and have sufficient income to support themselves.

In most of the member states, different legislative measures exist to access **nationality for first, second, and third generation children** of third country nationals.

Belgium: Refugees obtain the Belgian nationality

after two years of residence. Third generation children acquire it at birth.

Denmark: Proposals are being drafted to modify legislation to give access to nationality for the second generation.

Finland: There is a simpler procedure for the children of third country nationals to acquire Finnish nationality.

France: Children of third country nationals born in France are automatically granted French nationality at 18, if on this date they have lived in France for at least five years. Applications for French nationality can also be made at the age of 13 or 16 if the children have lived in France for at least five years.

Germany: The German Nationality Act 2000 gives German nationality to the children of third country nationals born in Germany if one of their parents has his or her legal residence for more than eight years in Germany and has since at least three years an unlimited residence permit.

Greece: Children of third country nationals who have been brought up in Greece can apply for Greek nationality at the age of 18.

Ireland: Children who are born in Ireland automatically become Irish citizens at birth.

Luxembourg: Children of third country nationals born in Luxembourg can apply for nationality under a much simpler procedure than adults.

The Netherlands: Second generation third country nationals can acquire Dutch nationality by making a declaration, with the third generation acquiring nationality at birth.

Sweden: second generation third country nationals can apply for nationality by making a written declaration.

UK: Children born in the UK are automatically granted British nationality.

Issues

The rules governing access to nationality in the EU member states differ considerably. This difference is

related to various factors, including if the member state in question has been primarily a country of emigration or of immigration, the nature of the relationship with former colonies, and the strength of the sense of national identity and who can be included in this.

In some member states, notably in Belgium, Denmark, France, Germany, and Italy, the expulsion or the threat of **expulsion** of third country nationals, even if they are born and brought up in the country in question, who have a criminal conviction have been very controversial proposals, which have caused widespread debate about the rights of long-term resident migrants. In Denmark, the case of a young migrant, who was convicted of a criminal offence, but had the Danish nationality and thus could not be expelled, has led to calls for changes to the nationality law.

With regard to the issue of **multiple/dual nationality**, it seems that more flexibility in the granting of this provision is required to improve and maintain race relations. That is, fostering the notion that third country nationals are an integral part of the societies in the member states, but yet able to retain their own distinct cultural practices and traditions as well as their connections to their country of origin.

In some countries, multiple nationality is not allowed, for example, in Finland and Belgium. In Germany, in case of dual nationality, the individual is required to choose before the age of 23.

Mostly, it is easier for the **children of third country nationals to acquire nationality** than for their parents. This indicates that member states recognise the permanent presence of migrant in the EU, but also that in the interest of future integration it is necessary to accord basic rights to children who are born in the territory. Interestingly, the countries with no special measures for young third country nationals tend to be the southern member states, which can be explained by the fact that they have only recently become countries of immigration.

The legislative changes in Germany, which came into force in January 2000, with regard to access to citizenship indicate that there is an acceptance that concepts of citizenship are not fixed, but subject to changes. Now, third country nationals with a period of eight

years legal residence have the right to apply for citizenship. However, it is expected that the fee to submit an application (up to 250 Euro), and providing proof of good knowledge of the German language, may deter some people from applying for naturalisation.

The **European Commission** has no legal basis to develop policies in this area.

4. Right to vote

The right to vote and to stand for election at all levels for third country nationals is an issue, which has been under discussion in the member states for many years, in many cases since the early sixties. However, in recent years, a broad range of groups across the EU have called for third country nationals to be granted the right to vote and to stand for election at the local and European level. Up to now, call for voting rights at the national level has not been part of these demands.

The situation in the member states

Austria: Third country nationals do not have the right to vote.

Belgium: Third country nationals do not have the right to vote, although they may be able to vote in local elections after 2001 with the implementation of new legislation, and once the constitution is amended.

Denmark: Third country nationals are able to vote in local elections since 1981 when the Municipal Election Act was adopted.

France: Third country nationals do not have the right to vote at any level.

Finland: Third country nationals have the right to vote in local elections and local referenda after two years legal residence.

Germany: Third country nationals do not have the right to vote. A change of the constitution is needed to introduce it.

Greece: Third country nationals do not have the right to vote.

Ireland: Legally resident third country nationals have

the right to vote and stand for election at local level.

Italy: Third country nationals do not have the right to vote.

The Netherlands: A law was passed in 1985 granting the right to vote and to stand for election at the municipal level to all third country nationals with five years residence.

Portugal: Some categories of third country nationals, for example, Brazilian nationals, are allowed to vote at local level on the basis of reciprocity, after five years legal residence; others are not allowed to vote at any level.

Spain: Some categories of third country nationals are allowed to vote at the local level on the basis of reciprocity, others are not allowed to vote at any level.

Sweden: Third country nationals with three years residence can vote and stand for election in local and county elections, and local referenda.

The UK: Only Commonwealth citizens are granted the right to vote at all levels. Other third country nationals have no voting rights.

Issues

In less than just half of the member states, third country nationals have no right to vote or the right to stand for election at *any* level.

From the information available on voting rights in the member states it would seem that the countries in the north tend to be more liberal in the granting of the right to vote, especially at the local level. This picture might be a reflection of the fact that until recently the countries in the South, except for France, were mostly countries of emigration rather than immigration.

Member states with no right to vote

The following member states exclude third country nationals from voting at all levels; Austria, Belgium, France, Germany, Greece, Italy, Luxembourg.

The arguments against giving the right to vote and the right to stand in elections to third country nationals are often similar to the argument used previously to pre-

vent giving these rights to women. For example:

- It is impossible to make the required changes to the constitution;
- Political immaturity – give the right to vote only at the local level where issues are easily understandable;
- Political parties fear that they would not attract the vote of women.

In some member states, for example Belgium and France, there have been active campaigns to demand the right to vote at the local level for third country nationals for decades. The main arguments that campaigners faced were the following:

- Constitutional changes are required.
- The overt level of racism in the member states in the 70s and 80s made the debate and discussion of such demands virtually impossible.
- In Belgium, the existence of the Flemish and French-speaking communities meant that there was resistance from the Flemish community because it feared that there would be a shift of power towards the French-speaking community.
- The reference that who wants the voting right has to and should obtain the nationality.

In some member states the debate about the right to vote for third country nationals is often blocked because mainstream political parties who are of the centre-right fear they will lose power to the centre-left parties. This was the case in the Netherlands. This fear is justified because third country nationals do tend to perceive centre-left parties as more sympathetic to their rights and demands. For example in the UK, where people from the Commonwealth have the right to vote at all levels, they have traditionally supported the Labour party. In Belgium after the local elections in 2000, when the far right, despite predictions to the contrary, made substantial gains in Antwerp and its environs, there was an acknowledgement that the only way to defeat the far right in these areas was by granting the right to vote to immigrants.

In France in the year 2000, a campaign led by migrant organisations was launched to lobby for the granting of the right to vote to third country nationals in local and European elections. However, the gran-

ting of such a right would require an amendment to the constitution by a two-thirds majority. Given the composition of the coalition of the present government, it is unlikely that such a majority could be achieved.

Member states with the right to vote

In seven member states, voting is allowed for third country nationals at the local level, in some of these there is a qualifying period based on residence, varying between two and five years. In one member state, the UK, only third country nationals from the Commonwealth have the right to vote at all levels.

An analysis of the countries, such as the Netherlands and the UK, where third country nationals have had the right to vote for decades shows that while the right to vote is an important fundamental right, as a tool to advance equal treatment it has some limitations. In both these countries, the structural nature of discrimination is confirmed by the fact that migrants are still the most disadvantaged sections of society, for example, in access to higher education, housing, employment, etc.

In the Netherlands, third country nationals were granted the right to vote in local elections in 1985, a right which they were able to exercise in 1986. This was a government lead initiative rather than the result of campaigning by migrant groups. The granting of this right was a recognition by the government that migrant people were in the country to stay indefinitely, and what was needed were some measures to facilitate their integration.

The voting patterns of migrants in the Netherlands confirm that they are more likely to vote for centre-left parties for the reason cited above. Furthermore, centre-left parties are more likely to have candidates from the migrant communities on their lists, and are more likely to actively seek and support the selection of such candidates. In the 1998 local elections in the Netherlands, 1% of the local councillors elected were from ethnic minority groups, of these 18% were ethnic minority women. This shows that mainstream parties could do more to support candidates from ethnic minority groups, especially women.

The rate of participation by migrants in the local elec-

tion in 1998 was low compared to Dutch nationals, 37% compared to 61%.

Although third country nationals have organised themselves into groups to demand their rights, up to now there has been no attempt to create a special political party to represent their rights. In Denmark in February 2000, representatives of 15 organisations of immigrants and refugees set up the “Immigrant Party”. The aim of this party is to represent directly the interest of migrants, which are marginalised by the mainstream political parties, and to put forward their own candidates for election.

The **European Commission** has no legal basis to develop policies in this area.

Conclusions

The overall conclusions to the examination of the rights of third country nationals at the member state level is that all rights are inter-linked and that there is no hierarchy of rights. Advancement of rights in one area do not necessarily bring about an increase in equal treatment or changes to structural problems such as poverty, violence related to racial or ethnic origin, access to the labour market, etc.

Conditions for accessing certain rights are different between the North and the South of Europe, between countries of immigration and countries of emigration, between countries with large migrant communities and countries with smaller communities.

However, there is a pattern of progression towards a policy of integration as it is recognised that migrants are here to stay. But, policies on integration can also hide a rather restrictive attitude; for example, the failure to speak German is a reason for rejection in Germany, as is the failure to follow the training programme on integration in Denmark.

Easier access to nationality could be said to be the most advanced form of policy on integration, giving access to full citizen’s rights (and duties). This raises another issue, that of multiple nationality; some of the member states require people to choose between two nationalities, but migrant people should not have to give up their original nationality.

The changes in demographic patterns, the lack of skilled labour in certain sectors are forcing governments to reconsider their policy on migration to admit labour from abroad. But, what will be offered to these workers in terms of rights? In Germany, effort to recruit specialist from India in the new information technology sector failed because family reunion rights were too limited.

There is evidence of good practices in each of the issues raised. For example, in the Netherlands, third country nationals have had the right to vote for many years, and there are some interesting conclusions on the advantages of this right, such as better integration, and on the limitations of the policy, which does not alleviate structural discrimination.

There needs to be an understanding of what is meant by “integration” by different sections of society and if this understanding is substantially different from a third country national point of view. It is equally important to pursue policies on equality of rights and anti-discrimination as well as integration.

The scoreboard on the adoption of measures on Title IV outlines a clear timetable, however, it will be interesting to monitor how much progress can be made, and if the member states are really willing to concede policy-making to the Commission on sensitive issues such as the conditions for residence permits and free movement.



Chapter III – For a citizenship of residence

Defining citizenship is a difficult task because the forms and meanings attached to it depend on the historical, geographical, political and social contexts in which it is placed.

A wealth of literature has been published on the issue of citizenship. While writing this chapter, my inspiration was largely derived from the work of Marco Martiniello on citizenship of the European Union.¹

This work emphasises from the start the obstacle which is presented by language in any attempt to provide a definition of citizenship. For instance, the English word “citizenship” can be translated into French either as “citoyenneté” or as “nationalité”. “Nationalité” refers to the formal bond which exists between an individual and a state, to the individual’s membership of a nation state which is legally sanctioned by the possession of an identity card or a passport of that state.

As emphasised by Danièle Lochak², the two ideas, although distinct from one another, are inextricably linked in practice. Citizenship is nationality insofar as it confers prerogatives attached to the notion of being a citizen. Conversely, the foreigner, or non-national, is no longer a citizen. With this approach, obtaining nationality is the process which is necessary to gain access to citizenship.

As we have seen in the previous chapter, the member countries of the EU have different rules regarding access to nationality, rules which have evolved over the course of time and which have been adapted more or less successfully to immigrants settling on their territory. All the countries accord some civil, economic and social rights to foreigners who reside legally on their territory. These rights are often aligned to the rights enjoyed by nationals. Only some Member States accord

the right to vote at local level. Even if the status of these foreigners improves with time, they are still not recognised as citizens in the traditional sense of the word.

This traditional understanding of citizenship/nationality is historically linked to the nation state as a form of political organisation, but the emergence of new forms of supranational political organisation, such as the European Union, means that international migration and the issues of national and cultural minorities are as much the elements which must be taken into consideration in a new definition of the concept of citizenship.

The Maastricht Treaty which established the European Union demonstrates the will of the governments to introduce a new Union, which is no longer solely founded on economic logic, but is the bearer of a real political project. “Citizenship of the Union”, by establishing a direct relationship between the Union and the citizens, is attempting to legitimise this European political project and to accord a greater role to the citizen in the development of the project.

The constituent elements of a citizenship of the Union have already been touched on in Chapter I. The main innovation of this idea of a citizenship of the Union is the establishment of political rights whereby European citizens have the right to vote and to be elected on local and European level in the country of the Union in which they reside. Some writers have perceived the fact that residence in a Member State other than their state of origin gives people the possibility of exercising these political rights as a step forward, in the form of a post-national citizenship where nationality and citizenship cease to be linked.

This citizenship of the Union, qualified by some embryonic, could be developed in the future in accordance with Article 8E of the Maastricht Treaty, which states that the Council can unanimously strengthen and develop the existing rights.

As we have already said, only nationals of a Member State of the Union can benefit from citizenship of the Union, but it is important to recall that for several

¹ Main source of information: the article entitled ‘Citizenship of the European Union’ which appeared in *“From migrants to citizens: membership in a changing world”*, ed. T. Alexander Aleinikoff and Douglas Klusmeyer, 2000.

² “La citoyenneté européenne : enjeux et ambiguïtés”, *Nouvelle tribune*, No. 7, June 1995.

years now numerous voices have been calling for citizenship to be extended to third country nationals.

This was notably the case during the Intergovernmental Conference which began in 1996 and which led to the adoption of the Treaty of Amsterdam. At that time the Economic and Social Committee had proposed the extension of European citizenship to non-nationals of a Member State, based on a criterion of residence. In his report on citizenship, Renzo Imbeni (Italian member of the Socialist Group of the European Parliament), proposed that Article 8 of the Maastricht Treaty be modified in order to include third-country nationals. Djida Tazdait (French member of the Green Group of the EP) proposed in a report on the status of third-country nationals that the right to vote at local level should be accorded to third-country nationals after five years of legal residence in a country of the Union. In addition, many NGOs such as the Migrants' Forum and the Migration Policy Group also proposed the extension of European citizenship to non-nationals of a Member State.

None of these proposals has been followed up. On the contrary, the addition to Article 8.1 of the sentence, "Citizenship of the Union shall complement and not replace national citizenship." establishes in a manner which could not be clearer that only nationals of a Member State may benefit from citizenship of the Union. By doing this, the Treaty of Amsterdam excludes several million people from the construction of Europe and reinforces what was started at Maastricht – inequality of treatment between EU nationals and third country nationals.

Even if citizenship of the Union does not actually indicate major progress in terms of rights, it is essential not to underestimate the symbolic significance which it represents.

As we are reminded by Marco Martiniello, citizenship of the Union is not the result of the interested parties having become mobilised, rather it has been imposed from above. It is the product of the will of the States which want, among other things, to make good the democratic deficit of European integration, to create a feeling of belonging to this construction and to promote a European identity and culture.

By excluding established immigrants, asylum seekers

and other foreigners, the EU is contributing to the idea of a Europe which is ethnically and culturally homogeneous. This goes completely against the reality, that is that Europe is multi-ethnic, multicultural and multi-faith.

The issue of citizenship returns to the question of the type of society which is being constructed. In order to be viable, the EU must be built on the basis of its diversity and by allowing all those who live within its borders to take part fully in this project of developing society. If the EU wants something other than an economic project, if it really wants a social and political Europe, then the citizenship of the Union must be accorded to all the people who live there.

All the people who live in the European Union must have the right to free movement, to settle in a country of the Union, to vote and to stand in local and European elections.

The right to vote, even if it is not in itself sufficient to solve all the problems of collective life, is sensible not only because it can be demonstrated in relation to a political project but above all because it symbolises the equality of the citizens.

The EU is an unfinished project and the citizenship of the Union is unsatisfactory. If we want it to correspond to the aspirations and needs of all its inhabitants, we must mobilise to promote a multicultural, social and egalitarian Europe which respects the rights and dignity of the individual.

As demonstrated by history, citizenship is the result of social struggles, it has never been acquired for everyone all at once. It has been constructed by men and women and changes with the evolution of society.

ENAR, which defends this idea of a multicultural Europe, respecting its diversity, which promotes equal rights and opportunities for all, must mobilise in order that citizenship is recognised for all the residents of the EU and so that the obstacles which stand in the way of a full and effective exercising of these rights are removed.

Some countries, like France, are running intensive campaigns with the aim of obtaining citizenship of residence and equal political rights for third-country nationals. All the members of ENAR are invited to join these campaigns and to develop them in the 15 countries of the EU.



Conclusions

European integration has reached a turning point with regard to the status of non-nationals. Title IV of the Treaty has opened the way for a new construction, which has gradually been developing since Tampere. The Commission has launched several initiatives towards greater equality between the nationals of Member States and those of third countries. However, it is difficult to judge at the moment what will happen to these initiatives, once they have been scrutinised by the Member States.

Nevertheless, on considering the intergovernmental discussions regarding the proposal for a Directive on family reunion, there is a concern that the Commission's proposals will be compromised or used as bargaining chips by the Member States to such an extent that the final text risks falling well short of the texts which were initially proposed.

While the Commission is to be praised for bringing a number of subjects to the discussion table fairly quickly, it is highly regrettable that the issue of persons present in the territory of the Union without legal documents has not been raised for frank discussion.

In its communication on immigration policy, the Commission does not make a single proposal relating to the inclusion of illegal residents in its new approach to immigration. Although the communication presents the economic and demographic context and the need for qualified and non-qualified workers to justify reopening the immigration channels, it is quite incomprehensible that there is no mention of persons residing illegally who are already working in the various Member States.

Although the document draws attention to the benefits of immigration in terms of economic growth and the contribution to the social security systems, it would have been equally relevant to emphasise that the social and human costs of illegal residency are very high.

Persons residing illegally, whose situation results from years of restrictive policies, for the most part perform jobs which would otherwise be impossible to fill, due

to the lack of labour available. In addition, they are living in exploitative conditions and in a state of precariousness in supposedly democratic countries.

The Commission should have included concrete proposals in its communication regarding the establishment in all the countries of the EU of regularisation procedures which are as flexible as possible. The legalisation of all persons present in the territory of the EU should form an element of immigration policy in its own right.

While it is highly desirable for immigration to be open for the purpose of employment, it is important not to lose sight of the fact that there are other reasons why people come to the EU: for example, family reunion, study, exchanges, visits and tourism. It is essential to remove the obstacles which prevent thousands of people from enjoying such fundamental rights as the right to family life and the right to travel.

The communication insists that the admission of migrants must be accompanied by a stronger integration policy and that migrants should enjoy living and working conditions which are comparable with those of nationals. As already stated above, comparable rights are not sufficient, we want to see full equality of rights. Equal rights, including the right to vote, represent the most powerful integration measure possible. To recognise that third-country nationals are equal to nationals sends out the strongest possible message. To recognise and to grant third-country nationals the means to exercise the same rights as those enjoyed by EU nationals is the best way of opposing those who encourage hatred and discrimination towards foreigners.

Once equal treatment is put forward, it is clear that integration and anti-discrimination programmes are essential. The communication emphasises the role of civil society in the implementation of these programmes. It is essential that civil society be involved in the identification of the needs, the formulation, the implementation, the follow-up and the evaluation of integration

projects and programmes. It is also essential that sufficient resources be allocated for the development of these integration and anti-discrimination projects.

The package of measures resulting from Article 13 represents significant progress in combating discrimination. Since the compliance process for the Directives is currently underway, it is essential that the ENAR national structures mobilise as soon as possible, so that the implementation of the Directives at national level is not only carried out correctly but that it goes beyond the minimum standards recommended in the EU texts.

The two campaigns which ENAR initiated this year, for a citizenship of residence and for the implementation of the Directive, aim to implement the principle of equal treatment without distinction based on race or ethnic origin and should be pursued and strengthened. If we want to have an impact on the European and national decision-making processes, it is crucial that work is carried out at the grassroots. Thus all the ENAR member organisations will be informed of the current political developments, will be aware of the stakes and have a real chance to contribute to a joint debate on the strategies to be implemented at local,

national and European level.

Within the different Member States, the ENAR member organisations are active on issues such as racist attacks on asylum seekers and migrants, detention centres and the granting of fundamental rights to “sans-papiers”. These issues should form the subject of joint discussions and would be worth developing.

In the introduction we said that the aim of this publication is to provide information and ideas, which could contribute to the mobilisation of ENAR on the issue of citizenship and equal rights. The 15 Member States of the European Union are going to be put in the position to take decisions relating to issues such as the integration of third-country nationals and immigration and asylum policy. If we want these decisions to correspond to our vision of society, if we want the European project to be an undertaking of all its inhabitants, both current and future, then we must all contribute at our level and according to our means. We must ensure that our voice is heard at the local, national and European levels of government, create alliances with other sectors of civil society, put pressure on governments, raise public and media awareness and reinforce the European dimension in all the activities we undertake.

Call for a European Campaign for the right to vote and the right of eligibility for non-EU residents in local and European elections

The French organisation “Un(e) Resident(e), Une Voix” (“One Resident, One Vote”) and the European Network Against Racism (ENAR) have joined forces to condemn political discrimination against non-EU residents. We are convinced that the participation of non-EU residents in the political life of our countries can only serve to profoundly improve our “living together”, reinforcing the foundations of democracy and working towards a new European citizenship based on residence rather than on nationality.

On 4 May 2000, the French National Assembly voted to pass a law according the right to vote and the right of eligibility to non-EU residents in municipal elections. But the Senate is refusing to discuss and adopt this law. The government has done nothing to ensure that it is put on the Senate agenda, even though it has the power to do so. For this reason, non-EU residents living in France, unlike EU residents, will not take part in the next municipal elections. They will have to wait until 2007, if the law is eventually adopted, in order to be able to vote. So important decisions are going to be made, which will affect the future of our towns and all their inhabitants, without asking the opinion of people who have lived there in some cases for several decades – for the simple reason that they are foreigners. And yet, non-EU residents participate as actively as anyone else, across all the countries of Europe, in enriching many aspects of life, including trade unions, culture, politics, society and economics.

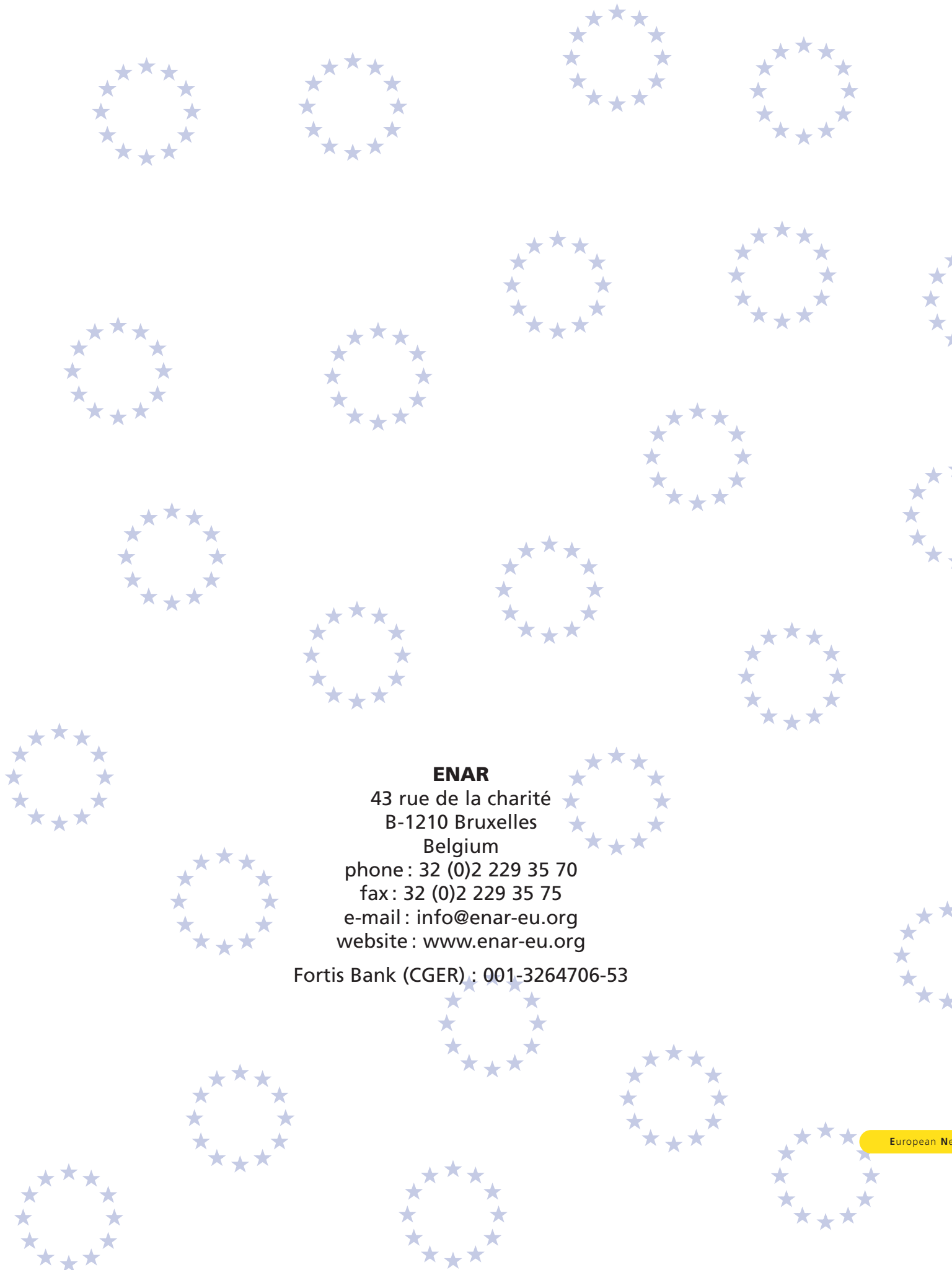
In a number of countries in Europe, such as Ireland, Sweden, Denmark and the Netherlands, the right of non-EU residents to vote in local elections has become a trivial issue which no-one questions any-

more. Other countries, such as Finland, Spain, Portugal and the United Kingdom, practise reciprocity or only accord the right to vote to residents who originate from former colonies. Only France, Germany, Belgium, Greece and Luxembourg are lagging behind and still do not accord any political rights to foreign, non-EU residents.

The **European Parliament** has on several occasions declared itself to be in favour of non-EU residents having the right to vote and the right of eligibility in local and European elections. In its last report, which was adopted on 1 January 2001, one of its resolutions stipulated that all the European states should “*grant equality of treatment to migrants resident in the EU regarding economic and social rights and the recognition of civil, cultural and political rights, especially the right to vote in local and European elections*”.

The “Collectif: un(e) résident(e), une voix” and the European Network Against Racism (ENAR) call on all Europeans who believe in democracy and all organisations to join forces and mount a European campaign, in order to demand with a united voice:

- **That all the European states rapidly apply this resolution passed by the European Parliament,**
- **That all the European states harmonise their laws regarding the political rights of non-EU residents living in Europe,**
- **That the principle of residence takes precedence over European preference,**
- **That non-EU residents should vote in all the countries of Europe as of the next local and European elections.**



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