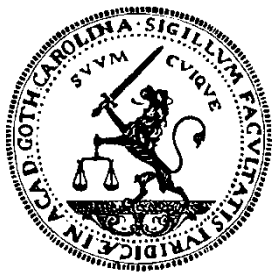

FACULTY OF LAW
Lund University

Jan Hagen Schlotzhauer

Integrating Integration?

Policy analysis of multi-level governance approaches to integration

E.MA Master Thesis

Human Rights and Democratisation
21 higher education credits

Supervisor: Göran Melander

Term: Spring

Contents

Summary

This research analyses the effect of the current competences of the EU regarding the integration of refugees on the effectiveness of European integration policies in a multi-level governance framework. Through a positivist analysis of article 79(4) TFEU the competences of the EU are established. A comparative historical public policy analysis, using the multi-level governance approach, enables the author to formulate three normative priorities a central authority should follow for an effective integration policy. In this research the integration policies of Germany and the Netherlands are compared. The main priorities that were identified are [1] localisation, [2] coordination and [3] mainstreaming. Finally, through the analysis of the application of these priorities in the EU integration policy the effectiveness of that policy could be established. The lack of coordination was the main lacuna found in the current approach to formulate an EU integration policy. The author formulates a number of recommendations to rectify this.

EU integration policy – multi-level governance – integration – Netherlands – Germany – article 79(4) TFEU

Preface

This thesis finalizes my studies within the E.MA programme in human rights and democratisation. The programme emphasises the importance of an interdisciplinary approach to human rights and related issues. Therefore, I have decided to widen my knowledge in the field of migration law and asylum and make use of theoretical frameworks and methodologies previously unknown to me. I want to thank the staff and students of EIUC for broadening my horizon and encouraging me to venture beyond legalistic approaches. A short and intense time at Lund University has further contributed to my research and I want to thank prof. Göran Melander for the deliberations leading to the formulation of my research.

Abbreviations

AFS&J	Area of Freedom, Security and Justice
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
EU	European Union
EU Charter	The Charter of Fundamental Rights of the European Union
TCN	Third-country national
TFEU	Treaty on the Functioning of the European Union

Introduction, Aims and Research Framework

1.1 Background

> "[In the political context] the debate has shifted from questions of immigration to questions of integration. Within the overall theme of the project, we distinguished between claims made pertaining to migration and claims pertaining to civic integration. The proportion of claims about migration decreased relative to the proportion of claims about migrant integration. This trend is fairly uniform across countries."[1]

This 2012 finding surrounding the European political discourse on migration was soon to change, as the "refugee crisis", as it was coined in the media, started in 2015. Political, public and academic debate soon turned back to the question of immigration, specifically around asylum. The public followed with great interest the arrival of large amounts of refugees, first in Greece and later through the so-called "Balkan route" in Hungary. The overburdening of several Member States in the border region of the European Union (EU) and the subsequent secondary movement to other Member States (primarily Sweden and Germany) called into question the validity and effectiveness of the Dublin-system. This critique soon extended to other parts of the Common European Asylum System (CEAS) and the concept of asylum *per se*. Political movements swept through Europe and gained massive support. Demonstrations by Pegida, the subsequent establishment of the AfD in Germany, increased support of the PVV in the Netherlands, the FN in France and SD in Sweden, all bear witness to the

[1] Support and Opposition to Migration (SOM), 'Final Report Summary' (2012) <http://cordis.europa.eu/result/rcn/54854_en.html> accessed 5 July 2017.

increased polarisation of immigration and asylum. Calls upon the EU to change the legal framework, as asylum is a largely harmonised EU competence, as well as critiques on the measures taken by the EU, such as the "EU-Turkey Deal" of 2016, made this discourse a European one.

As the pressure seems to drop and the realisation sets in that, regardless of future movements and policies regarding them, a large amount of refugees are now settled in European societies without actually being included in that society, collective attention returns to the integration of these newcomers.[2] In the summer of 2016, the Commission made a proposal to reform the structure of the CEAS. While some aspects of the CEAS have touched on integration, such as access to the labour market and education, integration itself has not been in the focus of the CEAS. The Treaty on the Functioning of the European Union (TFEU) expressively forbids harmonisation in that area in article 79(4) TFEU. Consequently, no attempts have been made to comprehensively harmonise the legal framework of integration.

Integration itself is a multifaceted topic. Member States vary to a large degree regarding the ministry that is responsible for integration. Often multi-institutional approaches to integration are taken (ministries involved are often the ministries of the interior, justice, education and labour). Since distribution, qualification and reception conditions of refugees, as well as the expedience of their asylum decisions are harmonised, the EU asylum acquis already touches on many fundamental aspects of refugee integration, such as housing, labour and education. This leads to the question what the role of the EU should be in the integration policy throughout the EU.

There are a myriad reasons the EU should be involved in the integration of refugees. The Commission called for "full convergence between the national

[2] Florian Diekmann and others, 'Flüchtlinge in Deutschland: Die Große Aufgabe Der Integration' (*SPIEGEL ONLINE*, 2015) <www.spiegel.de/politik/deutschland/fluechtlinge-in-deutschland-die-grosse-aufgabe-der-integration-a-1069830.html> accessed 5 July 2017; Remco Meijer, 'Hartekreet SER: Kabinet, Doe Meer Aan Integratie Vluchtelingen' (*De Volkskrant*, 2016) <www.volkskrant.nl/economie/hartekreet-ser-kabinet-doe-meer-aan-integratie-vluchtelingen~a4435084/> accessed 5 July 2017.

asylum systems, decreasing incentives for secondary movements, strengthening mutual trust between Member States and leading overall to a well functioning Dublin system."[3] The current lack of trust can partly be explained by wide divergences regarding integration policy and law. Other spill-over-effects could be seen in national security, as a lack of integration can lead to violent extremism.[4] Integration is further meant to guarantee the right to education (article 14 Charter of Fundamental Rights of the European Union (EU Charter)) and the right to engage in work (article 15 EU Charter) for those who enjoy the right to asylum (article 18 EU Charter) in the EU. The coherent enforcement of human rights in the EU and the rule of law are a common concern.

Integration is an ongoing and complex social process.[5] The principle of integration is an important theme in sociology and other social sciences. In order to understand integration, it is therefore of high importance to turn to these disciplines. Even though legal studies are not meant to understand or explain phenomena, they should be guided by an understanding of the social processes they regulate.[6] The need for an interdisciplinary approach to legislation in the area of integration is clear. Without a fundamental understanding of the workings of society, the rules that are meant to lead them will fail.

[3] European Commission, 'Proposal for a Directive of the European Parliament and of the Council: Laying down Standards for the Reception of Applicants for International Protection (Recast)' (2016) COM(2016) 465 final 2.
[4] European Commission, 'Communication from the Commission to the European Parliament, the Counil, the European Economic and Social Committee and the Committee of the Regions: Supporting the Prevention of Radicalisation Leading to Violent Extremism' (2016) COM(2016) 379 final 3.
[5] Winfried Kluth, 'Zum Transdisziplinären Verständnis von Integration' (2016) 36 Zeitschrift für Ausländerrecht und Ausländerpolitik 336, 337.
[6] ibid 339.

1.2 Research question and structure

For the purpose of illuminating the most effective role of the EU in a multi-level governance setting regarding integration, the following research question was developed during the initial stages of literature review:

[1] In what way does the formulation of article 79(4) TFEU, transferring competences regarding integration to the EU, influence the effectiveness of European integration efforts?

To approach this question in a more structured fashion, two more concise and specific sub-questions were formulated to aid the answering of the main research question. It is imperial to ascertain the precise extent of the competences transferred, as well as alternative competences, not based on article 79(4) TFEU. The Treaties of the EU have short, general provisions. In the words of an English legal practitioner:

> "How different is this Treaty! It lays down general principles. It expresses its aims and purposes. All in sentences of moderate length and commendable style. But it lacks precision. It uses words and phrases without defining what they mean. An English lawyer would look for an interpretation clause, but he would look in vain. There is none. All the way through the Treaty there are gaps and lacunae. These have to be filled in by the judges, or by Regulations or directives. It is the European way."[7]

After an analysis of European law and the determination of the extent of the powers of the EU to give shape to the European policy landscape regarding integration, it is capital to create a framework to analyse the effectiveness these competences can have. Using a multi-level governance approach, the situation of integration policy in two selected Member States is contrasted with the aim of determining what actions by which level of governance are

[7] *HP Bulmer Ltd & Anor v J Bollinger SA & Ors [1974] EWCA Civ 14* 425.

needed to enable an effective integration policy. The sub-questions are posed to that end are:

[2] What is the precise extent of the EU's competences regarding integration?

[3] What are the most effective competences for the central authority in a multi-level governance approach?

Naturally, these questions presuppose the clarification of a number of concepts. The first part of this thesis will therefore define the concepts of integration and multi-level governance. The second part of this thesis will answer sub-question [2], through a legal analysis of article 79(4), with due regard to alternative competences transferred to the EU. The third part of this thesis will answer sub-question [3], through a comparative policy analysis of the Netherlands and Germany. Synthesising these two sub-questions, the research-question [1] can be answered in the fourth part of this research. Finally, conclusions can be drawn and recommendations created based on the findings of this work.

1.3 Delimitation of the thesis

The scope of the thesis will be the relevant EU acquis pertaining to refugee integration. This is a cross-thematic area which will be further delimited in its material scope by the first defining step concerning integration. The second limitation will be the personal scope of this research. Integration, as will be discussed, is a societal process that concerns all members of that society. Integration policy can be directed at the unemployed, disabled, or any other group of people that is perceived as being disadvantaged by possible exclusion from large parts of the society. Therefore, the integration accorded to refugees specifically will be the scope of this thesis. As will be made clear in chapter 2, integration is multi-facetted and covers diverse areas, such as reception conditions, employment, inter-marriage, education,

political participation and more. To focus this research and limit the extent of this work, vocational training and language acquisition will play a central role. Language acquisition through, for example, language courses form an important prerequisite for the access of many other measures of integration, one of these is the access to vocational training. Often these two, the acquisition of language and of initial relevant qualifications for the access to the labour market, are combined in national integration policies. Independently, however, vocational training also forms an integral part of the initial inclusion of refugees in a stable context in the host societies: employment.

As for the establishment of a framework through which the role a governmental level should occupy is ascertained, this thesis will include a comparison between two Member States of the EU. The choice for comparing the Netherlands and Germany, next to the authors proficiency in the languages and the legal systems, is the diverging structure of the two states. The Netherlands is structured in a relatively centralised fashion, while in Germany, a federal state, pluralism is much more pronounced. This divergence of a traditionally uniform approach to integration (the Netherlands) and a traditionally diverging approach (Germany) is a strong justification for this selection, when trying to ascertain the role a central authority should play in an integration policy. The second justification for the selection of countries lies with the experience both countries have in the area of integration. The Netherlands is generally credited with being one of the first countries in Europe to engage in policy-making regarding the integration of foreigners.[8] Germany, on the other hand, only started policy-making on the federal level in 2005. Both countries have seen a large increase in asylum applications during 2015 and 2016, meaning that policy-making regarding integration is salient for both countries.

[8] Stijn Verbeek, Han Entzinger and Peter Scholten, 'Research-Policy Dialogues in the Netherlands' in Peter Scholten and others (eds), *Integrating Immigrants in Europe: Research-Policy Dialogues* (Springer 2015) 213; Peter Scholten, *Framing Immigrant Integration: Dutch Research-Policy Dialogues in Comparative Perspective* (Amsterdam University Press 2011) 13.

1.4 Empirical and social relevance

This study is of an interdisciplinary nature and as such relevant to scholars of legal and social studies in the area of integration policy. Integration deals with a particular social dimension of migrants and refugees and as such legal studies have to take the literature of social sciences into account. Similarly, policy-making in the area of integration is regularly concerned with the legal framework in which these policies are drafted and have to take the legal framing of integration and distribution of competences into consideration. This research contributes to the already rich literature of political science, European studies and administrative science, while drawing on the understanding of certain concept of sociology. The legal field is relatively isolated from the previously mentioned social sciences and will benefit greatly from a contribution to its body of literature that considers the findings of the social sciences.

Practitioners and policy-makers will also benefit from the following study, as it will illuminate the extent and the possible caveats of EU competences in the area of integration. The material content of this study is particularly salient in the face of the current challenges posed by the influx of refugees during the so-called "refugee crisis". Finding the governance level most appropriate for effective and efficient policy-making is of utmost importance for the integration of the EU's newcomers.

Finally, the newly arrived refugees, as well as the host societies in the EU are in need of an effective approach to integration. The increase of social cohesion and the avoidance of conflict is dependent on an effective strategy in all Member States and the Union as a whole. Illuminating the possibilities of the current legal framework enables policy-makers to fully utilise their competences to this effect. Possible limitations of the current legal framework need to be identified to enable politicians to change the competences of the EU, which in turn increases the effectiveness of European integration policies.

1.5 Methodology

This thesis constitutes an interdisciplinary research, as defined by Aboelela, Larson, Bakken, et al. in the synthesising literature review on interdisciplinary research:

> "Interdisciplinary research is any study or group of studies undertaken by scholars from two or more distinct scientific disciplines. The research is based upon a conceptual model that links or integrates theoretical frameworks from those disciplines, uses study design and methodology that is not limited to any one field, and requires the use of perspectives and skills of the involved disciplines throughout multiple phases of the research process."[9]

The author of this thesis integrates theoretical frameworks of sociology and political science with the framework of legal scholarship in an effort to conduct research enriching the legal scholarship with a normative legal science approach. To that end, different methodologies from legal and political science fields are used.

Normative claims in the legal field start with a positive analysis of the law as it is.[10] For this reason the legal analysis of chapter 3 is conducted in the traditional non-normative legal methodology. Legal scholarship has often paid little attention to the methodology of its field and "often relies on intuition and armchair persuasion."[11] The danger of this approach, or rather lack of an approach, is that authors advocate or use a certain methodology based on the results of that methodology to support a normative assertion.[12] This study is concerned with the EU legal acquis and has therefore chosen to adopt the comprehensive approach adopted by the Court of Justice of the

[9] Sally Aboelela and others, 'Defining Interdisciplinary Research: Conclusions from a Critical Review of the Literature' (2007) 42 Health Services Research 329, 341.
[10] William Baude, Adam Chilton and Anup Malani, 'A Call for Developing a Field of Positive Legal Methodology' (2017) 84 The University of Chicago Law Review 1, 2.
[11] ibid 1.
[12] ibid 2.

European Union (CJEU), as described by Lenaerts and Gutierrez-Fons.[13] This choice is partially based on the final authority of the CJEU concerning the interpretation of the Treaties.[14] This method of interpretation of the CJEU for the positive analysis relies on a literal, systematic and teleological interpretation of a legal provision to analyse the content. In the case of a high degree of clarity or legal certainty the literal interpretation is the preferred method of interpretation.[15] The systematic interpretation ensures the consistency of different legal provisions to avoid conflicts between different legal provisions in the Treaties.[16] The teleological approach, finally, is used for the interpretation of general legal concepts that do not provide for enough clarity on their own.[17] To avoid selection bias by the author, all interpretations are followed in the legal analysis of article 79(4) TFEU.

The legal studies are usually seen as autonomous and it suffices to refer to legal sources.[18] The primary sources, statutes and legal decisions, are seen as authoritative and final.[19] This is not enough for a normative analysis of EU primary law. This normative approach is necessary for the clarification of the research question in this thesis. It is, in its core, a legal question concerned with the balance of the legal transfer of competences. However, as it is further concerned with the effectiveness of that legal principle, it is necessary to answer a normative question for which the traditional legal approach is not sufficient. The normative legal approach in this thesis is built upon the methodology of Smits.[20] This methodology is based on two steps, the first establishes a comparison and the second tests the coherence

[13] Koen Lenaerts and Jose Gutierrez-Fons, 'To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice' (2013) 9.
[14] The treaty on European Union 2012 13, p art. 19(1).
[15] Lenaerts and Gutierrez-Fons 7.
[16] ibid 13–14.
[17] ibid 24–25.
[18] Jan Smits, 'Redefining Normative Legal Science: Towards an Argumentative Discipline' in Fons Coomans, Fred Grünfeld and Menno Kamminga (eds), *Methods of Human Rights Research* (Intersentia 2009) 47.
[19] ibid 46–47.
[20] Smits.

of a normative rule.[21] Smits further clarifies the supporting role of non-legal approaches towards the law.[22] The role is the substantiation for the right choice of a rule in the comparative analysis. In this thesis this role will be fulfilled by the policy analysis, due to the fact that the division of powers regarding integration in the national context are usually a policy-choice and only partly a constitutional rule (the federal system of Germany).

The methodology adopted for the normative substantiation is the policy analysis. The methodology used in this research is based on a combination of an interpretative approach to a historical policy analysis and a comparative method of public policy analysis. The analysis of integration policy is based upon the approach to studying integration policy as described by Penninx and Garcés-Mascareñas.[23] Thus it was analysed "*how different political and social actors perceive immigrant integration in terms of policy frames and policy shifts*", "*what should be done*" and "*for whom integration policies are meant*."[24] The analysis makes use of the multi-level governance approach to pierce the purely national level of policy-making and include all levels of government. Regarding the comparative method, the author has tried to counteract the small number of compared policies (Germany and the Netherlands) by a careful selection of the countries to be compared (see delimitation).

[21] ibid 54.
[22] ibid.
[23] Rinus Penninx and Blanca Garcés-Mascareñas, 'Integration Policies of European Cities in Comparative Perspective: Structural Convergence and Substantial Differentiation' (2016) 32 Migracijske i etničke teme 155.
[24] ibid 162–163.

Theoretical framework and concept specification

The theoretical framework and the concept specification are always of utmost importance to define the use of specific words, concepts and approaches, in order to facilitate a clear discourse. In the context of interdisciplinary research, this becomes even more vital to a clear and accessible study for scholars of all concerned fields of science.

The problem of defining integration is a longstanding problem in social science.[25] Integration is not a topic limited to migration, instead it is a much larger concept rooted in the work of Herbert Spencer and Emile Durkheim.[26] To understand the meaning of article 79(4) TFEU and analyse integration policy the specification of these concepts are detrimental. For the purpose of analysing the effect of article 79(4) TFEU and reaching a conclusion on what role the EU should take to be more effective, an interdisciplinary approach is necessitated. This chapter will give an overview of the sociological concept of integration within societies. It shall further establish the theoretical framework of that concept.

A second concept on which this study is based, which is foreign to the legal studies is the so-called “multi-level governance approach". The concept of multi-level governance has played an increasing role in the last twenty years in political science and European studies, to explain and assess the role and development of the EU.[27] This multi-level governance approach lends itself well to a deeper examination of policy-making at the national level in the

[25] Burkart Holzner, ‘The Concept “Integration” in Sociological Theory’ (1967) 8 The Sociological Quarterly 51, 51–62.
[26] Nils Mortensen and G Olofsson, ‘Introduction: Context and Perspectives for Contemporary Research on Differentiation and Integration’ in Nils Mortensen (ed), *Social Integration and Marginalisation* (Samfundslitteratur 1995) 9.
[27] Pier Domenico Tortola, ‘Clarifying Multilevel Governance’ (2017) 56 European Journal of Political Research 234.

selected countries for this comparative study. It further enables an understanding of the effectiveness of competences on various levels in relation to other government levels. This chapter will therefore give an overview of the concept of multi-level governance, as well as the theoretical framework of the multi-level governance approach.

2.1 Integration

2.1.1 Processes and states of integration

Before integration had been applied to the concept of migration or asylum by the Chicago School in the early 20th century, it had already been a concept of the emerging discipline of sociological research in the 19th century. As such, it is important to note that sociological studies have identified four main concepts of integration.[28] First, integration can relate to the state of a social system itself. This means that an integrated system is a stable social system, which is delineated vis-à-vis units that are not part of the system.[29] In this stable social system units relate to each other, as they act towards a collective interest and stability.[30] This concept of integration refers to a *state*. Second, integration can relate to the process of integrating different elements to form a system, in which they are a unit. Third, integration can relate to the process of including new elements in an existing social system, in which they form a new unit. Fourth, integration can relate to the process of strengthening the collective interest of existing units in a social system, increasing its stability.[31]

These last three concepts of integration describe a *process* relating to a social system, as opposed to the description of a *state*. When discussing integration it is important to realise which concept is being used. Realising

[28] Friedrich Heckmann, 'Integration and Integration Policies : IMISCOE Network Feasibility Study' (2006) 8.
[29] ibid.
[30] ibid.
[31] ibid.

that integration is not a simple concept is important for migration research specifically. The most relevant concept for migration research is the third concept, the integration of new elements into an existing social system. However, integration of migrants does not stop once they are a unit of a social system. Strengthening of the bond between the integrated units, as well as the state of the social system as such, is an ongoing concern. Specifically, regarding the integration of 2nd and 3rd generation of migrants, this realisation is of high importance. For the purpose of this research, the third concept of integration will be assumed when referencing integration.

2.1.2 Social integration

Introduced by David Lockwood, the process of integration has further been divided into *social integration* and *system integration*.[32] At the time, this distinction enabled overcoming the debate between normative functionalism and conflict theory.[33] Sociology faced the problem of social change in a functionalist model: how could sociological theory account for tensions and conflicts without structural change or the fact that these structures enabled individuals to initiate change? In the existing dichotomy of functionalism, arguing that integration or disintegration results in societal change, and conflict-theory, arguing that the struggle for power balances in society affect societal change, both left no room for the explanation of conflict resulting in the *status quo*. Lockwood integrated these two theories, identifying the focus on social integration in conflict theory and the focus on system integration in normative functionalism.[34] System integration refers to the integration of and integration within actor-independent systems. An example of this is the European integration, affected by the EU. On the other hand, social integration refers to the integration of individual actors in a system, as well as the actors within that system. The integration of

[32] David Lockwood, 'Social Integration and System Integration' in Zollschan George and Walter Hirsch (eds), *Explorations in Social Change* (Routledge and Kegan 1964).
[33] Margaret Archer, 'Social Integration and System Intergration: Developing the Distinction' (1996) 30 Sociology 679, 679.
[34] Lockwood 249.

migrants and refugees must be seen in the context of social integration, even though organisations and religions of which these actors are a part of can be approached through the lens of system integration.

However, having identified social integration as the point of focus for the integration of migrants and refugees, two aspects have to be clarified. What dimensions of interaction with the system and other aspects contribute to the integration of individual actors and what indicators can be used to measure the integration of individuals? These topics are debated among scholars in sociology. Esser subdivides social integration into four simplified dimensions.[35] The first dimension is *culturation*, which describes the acquiring of knowledge, competences, preferences and habits. The second dimension, called *interaction*, is the creating and sustaining of social relationships. The third dimension, *identification*, is the emotional affection towards a certain group. The fourth dimension, *placement* or *structural integration*, is the acquiring of rights and positions in employment, politics and social life. This abstract identification of dimensions of social integration is very valuable for the identification and categorisation of integration indicators, without excluding certain aspects of integration. This is very important, as all "forms of cultural or social behaviour ranging from completely giving up one's background to preserving unaltered patterns of behaviour are covered by the term integration."[36] The justification for considering not only the adjustment of the culture and social behaviour of the actor that is to be integrated, but also the preservation of culture and social behaviour, lies in the fact that integration can also alter the system in which an actor is integrated through the introduction of that actor. Others have focused on the division of integration into its cultural, economic, political and social dimensions.[37] This reflects the different dimensions of any given social system. It is clear that integration has a very broad meaning. It could be defined as joining all forms of cultural and social

[35] Hartmut Esser, 'Pluralisierung Oder Assimilation?' (2009) 38 Zeitschrift für Soziologie 358, 358.
[36] Council of Europe, 'Measurement and Indicators of Integration' (1997) 9.
[37] ibid.

behaviour of individuals belonging to a group into one entity. This broad meaning of integration makes it difficult to measure considerable efforts have been made to find common measurement indicators of integration. The Council of Europe (CoE) as well as the EU have started initiatives to identify indicators of integration. Several authors have questioned the possibility of "reliably identifying a set of indicators really pointing at a progress in integration [...] and covering all dimensions of integration at the same time".[38]

2.1.3 Integration and human rights

> "In human rights terms, the regulatory transfer of integration policies away from policies to ensure equal rights, accommodate cultural differences, and remove obstacles in order to ensure social inclusion and participation, entails an expansion of state sovereignty that defeats the lexical order embedded in the human rights system, and the notion of societal integration around which this order is inherently built."[39]

There is no international legal concept of integration, but the concept of integration as it has been described above clearly touches upon legal considerations. One of the main tenants of liberal democracy is the creation of equal chances for everyone that is legally settled.[40] It is therefore valuable to explore the connection of equality with integration. The human rights paradigm provides an excellent legal framework through which this equality can be achieved. Human rights are based in the recognition of every human being as equal. "All human beings are born free and equal in dignity and rights."[41] This universality of human rights is not absolute. There are certain

[38] ibid 13.
[39] Ruth Rubio-Marín, 'Integration in Immigrant Europe: Human Rights at a Crossroads' in Ruth Rubio-Marín (ed), *Human Rights and Immigration* (Oxford University Press 2014) 105.
[40] Council of Europe 15.
[41] Universal Declaration of Human Rights 1948 art. 1.

human rights, such as the entrance to national territories and particularly political participation, that are dependent on citizenship. In the EU Charter this is recognised under the chapter of Citizens' Rights.[42] However, the non-discrimination principle inherent in human rights law should be protected and not be detracted from. The Committee on the Elimination of Racial Discrimination has articulated that in their *General Recommendation No. 30*.[43] They affirm that the non-discrimination principle in international instruments like "the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights" should be the norm and deviations have to be legitimate and proportionate.[44] The active social exclusion of individuals, hindering them from integrating into a society is therefore covered by the principle of non-discrimination. Contemporary human rights law recognises the universal nature of positive obligations in all human rights and thus the importance of substantive equality; states are required to respect, protect and fulfil human rights.[45] The right to equality therefore also creates a positive obligation on the state to provide assistance in overcoming barriers of social exclusion and access to their rights. Furthermore, cultural and social rights play a particularly important role in this evaluation, as the previous analysis of integration has shown a close connection to all forms of cultural and social behaviour. It also sets limits to the extent in which states can require the abandonment of someone's culture and social behaviour. States are obliged to fulfil these human rights. Relevant human rights in this area are particularly: the right to work,[46] the right to social security,[47] an adequate standard of living, "including adequate food, clothing and housing, and to the continuous improvement of living

[42] European Commission, The Charter of Fundamental Rights of the European Union 2000 art. 39-46.
[43] Committee on the Elimination of Racial Discrimination, 'General Recommendation No. 30 on Discrimination against Non-Citizens' (2005) para 2.
[44] Rubio-Marín 93; *Ibrahima Gueye et al v France [1985] Communication No 196/1985* para. 9.5.
[45] United Nations Human Rights Office of the High Commissioner, 'International Human Rights Law' <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> accessed 10 July 2017.
[46] International Covenant on Economic, Social and Cultural Rights 1966 art. 6.
[47] ibid art. 9.

conditions",[48] the right to health,[49] the right to education,[50] and the right to take part in cultural life.[51] Civil and political rights play an important role in protecting the private sphere of individuals from state interference.

These three human rights obligations create principles that should guide the integration policies of states:[52]

1. States must not interfere with efforts of migrants to integrate.
2. States must protect efforts of migrants to integrate.
3. States must actively promote the integration of migrants by providing necessary services and goods.
4. Integration policies must respect the prohibition of discrimination.

Through the lens of human rights, assimilation is a valid policy for a state that strives towards social cohesion. There is no explicit prohibition of trying to assimilate individuals within the jurisdiction of a state. To a certain extent it might even be necessary for the protection of democratic state and the rule of law. Forced assimilation, however, disregards the rights of the individual, and as such only voluntary programs or the reliance on incentives can be allowed. Article 27 ICCPR enshrines this and "particularly prohibited are all forms of integration or assimilationist pressure".[53]

The conceptualisation of integration in the framework of immigration leads to less rights-based restrictions on states regarding their integration policies.[54] Later this conceptualisation, the change of this conceptualisation and the possibility of conceptualising integration differently will be discussed.

---

[48] ibid art. 11.
[49] ibid art. 12.
[50] ibid art. 13.
[51] ibid art. 15.
[52] Walter Kälin, 'Human Rights and the Integration of Migrants' in Thomas Alexander Aleinikoff and Vincent Chetail (eds), *Migration and International Legal Norms* (TMC Asser Press 2003) 280–282.
[53] Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd edn, NP Engel Verlag 2005) 662.
[54] Rubio-Marín 90.

2.1.4 Integration in refugee studies

Regarding the concept of integration in migration and refugee studies, local integration is one of the three main concepts considered durable solutions for refugees. Together with voluntary repatriation and resettlement, local integration is seen as a durable solution to live in dignity and peace.[55] Local integration as a durable solution combines three dimensions. Firstly, it is a legal process, whereby refugees attain a wider range of rights in the host state. Secondly, it is an economic process of establishing sustainable livelihoods and a standard of living comparable to the host community. Thirdly, it is a social and cultural process of adaptation and acceptance that enables the refugees to contribute to the social life of the host country and live without fear of discrimination. Since it is concerned with a long-term solution for refugees, it is mostly conceptualised with regards to residency and citizenship.[56] However, it is recognised that this is a very narrow conception of integration and contemporary reports by the United Nations High Commissioner for Refugees place local integration in a "broader, multi-dimensional definition", that does not require the attainment of nationality, instead the recognition that the refugee will stay in the host country for a long time and the application of the previously mentioned three dimensions is ultimately decisive.[57] The means through which local integration is to be achieved is a strategy of self-reliance, which is dependent on the empowerment of refugees.

> "A self-reliance strategy should address, variously and as appropriate the following areas:
> [...]
> - targeted assistance packages to enhance the economic self-reliance of refugees through: provision of agricultural land and related

[55] United Nations High Commissioner for Refugees, 'Solutions' <http://www.unhcr.org/solutions.html> accessed 19 June 2017.
[56] Rosa Da Costa, 'Rights of Refugees in the Context of Integration: Legal Standards and Recommendations' (2006) 9.
[57] Alexandra Fielden, 'Local Integration: An under-Reported Solution to Protracted Refugee Situations' (2008) Research Paper No. 158 1–2.

> support, income-generation and micro-finance activities, job-oriented skills development programmes, grants for education or scholarships;
>
> [...]
>
> - development of legal and institutional frameworks that foster productive activities and protect relevant civil, social and economic rights (related, for example, to land, employment, education, freedom of movement, identity documents, access to the judicial system)."[58]

This in turn is guided by the international legal framework and, most importantly, the 1951 Refugee Convention. It has been said that there is no general *right to integration*. While this is true, there is a more specific right created for refugees. Article 34 of the 1951 Refugee Convention obliges the contracting states to "facilitate [as far as possible] the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."[59] The use of the word *assimilation* should not be equated with the integration policy of assimilating a population to integrate them, but rather with the concept of integration as discussed in this section.

> "What it meant in Article 34 is in fact the laying of foundations, or stepping stones, so that the refugee may familiarize himself with the language, customs and way of life of the nation among whom he lives, so that he - without any feeling of coercion - may be more readily integrated in the economic, social and cultural life of his country of refuge. Language courses, vocational adaptation courses, lectures on national institutions and social pattern, and above all stimulation of social contacts between refugees and the indigenous

[58] United Nations High Commissioner for Refugees, 'Global Consultations On International Protection: Local Integration' (2002) EC/GC/02/6 11.
[59] Convention and Protocol relating to the Status of Refugees 1951 art. 34.

population, are but some of the means which may be employed for the purpose."[60]

It must be noted that the obligation is not very strong. The wording "shall facilitate", as well as the use of "as far as possible", make this obligation one of effort and not of result.[61] This can be largely explained by the reference to naturalisation, the main object of the article. Assimilation is thought to be the facilitation of that obligation. Thus the implementation of integration measures has a far stronger obligation attached then the process of naturalisation itself. Nonetheless, it should be noted that the use of "as far as possible" also refers to the integration measures, considerably weakening this provision.

Concurrent to this very general right of refugees to enjoy integration measures that facilitate their integration in the economic, social and cultural dimensions of their new society, through specific measures, including language courses and vocational training, the 1951 Refugee Convention creates several more specific rights in that regard. The complexity and broad meaning of the term integration lead to the application of a variety of rights that facilitate the integration of refugees at several stages of their stay. Hathaway has divided these into four categories. The first is activated as soon as the refugee is subject to a state's jurisdiction, the second requires physical presence in the territory, the third category is activated by being lawfully present, the fourth requires the refugee to be lawfully staying and, finally, by having durable residence in the host country the refugee activates the full range of rights inherent in the 1951 Refugee Convention.[62]

Considering the delimitation of this thesis the full extent of rights conferred upon the refugee will be considered. As previously discussed, important aspects and indicators of integration are the access to housing, education,

[60] Atle Grahl-Madsen, 'Commentary on the Refugee Convention 1951: Articles 2-11, 13-37' (1997).
[61] James Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press 2005) 987.
[62] ibid 154–155.

employment and healthcare facilities. The 1951 Refugee Convention specifically guarantees these rights contributing to the integration of refugees. Hathaway claimed that "the rights which are said to be the hallmarks of the solution of local integration are essentially the same rights which actually accrue by virtue of refugee status itself."[63]

It comes to no surprise that the transposition of the 1951 Refugee Convention into the EU asylum acquis, the Qualification Directive, includes these integration measures for refugees as well.[64] It is clear that the asylum acquis contains harmonised measures for the integration of refugees in the form of specific measures regarding access to employment, education, healthcare, accommodation and social welfare. However, the most important aspect regarding integration can be found in article 34:[65]

> *Access to integration facilities*
>
> *In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status, or create pre-conditions which guarantee access to such programmes.*

This can be seen as a transposition of article 34 of the 1951 Refugee Convention and strengthens the understanding of that provision, as the EU and its Member States clearly interpret the obligations in article 34 of the 1951 Refugee Convention similarly. Again, only an obligation to facilitate integration is incorporated in the Qualification Directive.

[63] ibid 978.
[64] European Parliament and Council of the European Union, 'Directive 2011/95/EU of the European Parliament and of the Council' (2011) L 337/9 art. 20-34.
[65] ibid art. 34.

2.2 Multi-level governance

The concept of multi-level governance is an emerging model for the description and analysis of making policy and binding decisions at varying levels of government and beyond. Since the inception of the multi-level governance approach by Marks and Hooghe,[66] there have been many attempts to define the concept. This research will use the definition by Schmitter, as it succinctly encapsulates the meaning of Marks' and Hooghe's concept. In Schmitter's definition, multi-level governance is:

> "an arrangement for making binding decisions that engages a multiplicity of politically independent but otherwise interdependent actors – private and public – at different levels of territorial aggregation in more-or-less continuous negotiation/deliberation/ implementation, and that does not assign exclusive policy competence or assert a stable hierarchy of political authority to any of these levels."[67]

This definition shows the two aspects of multi-level governance. The first aspect is the horizontal aspect between actors on the same level of government, as well as private and public actors. The second aspect is of a vertical nature, concerning different levels of territorial aggregation. This vertical nature specifically concerns interactions of local policies and governance with higher levels of government, namely national and European levels. To this aspect there are two dimensions, the dimension between the centre and the periphery and the dimension of the domestic with the international. These dimensions are complementary in nature and continuous negotiation, deliberation and implementation happens within these dimensions concurrently. Multi-level governance has evolved from a

[66] Gary Marks and others, *Governance in the European Union* (Gary Marks and others eds, Sage Press 1996); Liesbet Hooghe, *Cohesion Policy and European Integration. Building Multilevel Governance* (Liesbet Hooghe ed, Oxford University Press 1996).
[67] Philippe Schmitter, 'Neo-Neofuntionalism' in Antje Wiener and Thomas Diez (eds), *European Integration Theory* (Oxford University Press 2004) 49.

purely descriptive model to a normative model in the EU.[68] The following sections will describe both uses of the concept.

2.2.1 Descriptive nature in political science

Multi-level governance is a descriptive model that competes with national models as well as international and local models of governance. In the literature, multi-level governance is described as the outcome of two opposing developments: the shift of competences to supranational actors and the shift of competences to sub-national actors.[69]

Traditionally the multi-level governance model is applied as a heuristic device to federal or pseudo-federal structures like the EU.[70] However, it has also been frequently used as a model for the study of the policy and decision making process within nation states.[71] Some authors have identified the multi-level governance model as an evolved form of neofunctionalism.[72] Neofunctionalism recognises the role of several sub- and supranational actors as the reason for conferring competences and decision making power to the EU. Thus, multi-level governance enables the differentiation of political and administrative contributions of sub-national and supranational institutions on policy that a state-centric approach might fail to notice.[73]

Marks and Hooghe divide multi-level governance into two distinct types. Type I jurisdictions are mostly rooted a communal identity often formed based on a geographical reality and concerned with a general-purpose

[68] Carlo Panara, 'Multi-Level Governance as a Constitutional Principle in the Legal System of the European Union.' (2016) 16 Croatian & Comparative Public Administration 705, 710.
[69] Thomas Conzelmann, 'Towards a New Concept of Multi-Level Governance' (2008) 1.
[70] Ricard Zapata-Barrero, Tiziana Caponio and Peter Scholten, 'Theorizing the "local Turn" in a Multi-Level Governance Framework of Analysis: A Case Study in Immigrant Policies' (2017) 83 International Review of Administrative Sciences 241, 241.
[71] Ex. Ian Bache and Matthew Flinders, 'Multi-Level Governance and British Politics' in Ian Bache and Matthew Flinders (eds), *Multi-level Governance* (Oxford Scholarship Online 2004) 94.
[72] Stephen George, 'Multi-Level Governance and the European Union' in Ian Bache and Matthew Flinders (eds), *Multi-level Governance* (Oxford Scholarship Online 2004).
[73] Sarah Hackett, 'The 'Local Turn in Historical Perspective: Two City Case Studies in Britain and Germany' (2017) 83 International Review of Administrative Sciences 340, 341.

jurisdiction. Type II has a more fluid character, as it allows members to enter and exit at will. Due to the normative character of integration, as well as concerns with communal identity, there is little doubt that the increased flexibility of Type II multi-level government cannot weigh against the communal interest of integration. This specification fits in the European multi-level governance and its principle of subsidiarity.

Types of multi-level governance: hierarchical and intersecting[74]

Type I	**Type II**
General-purpose jurisdictions	*Task-specific* jurisdictions
Nonintersecting memberships	*Intersecting* memberships
Jurisdictions at a *limited number of levels*	*No limit* to the number of jurisdictional levels
Systemwide architecture	*Flexible design*

Multi-level governance Type I, is closely connected to the typically conception of international law as it is hierarchically layered. There is also a fragmentation within international law typical of multi-level governance Type II as it is concerned with topical jurisdictions. In the context of integration, this fragmentation can be seen in differentiations of participation in the European Migrant Workers Convention, the 1951 Refugee Convention and several others. These jurisdictions are specifically task-oriented. Moves by the Dutch government to privatise important aspects of integration also constitute of a conceptualisation of multi-level governance Type II.

2.2.2 Normative nature in EU law

Since the 2001 White Paper on multi-level governance, the concept has taken on a normative function in the EU.[75] The normative concept of multi-

[74] Liesbet Hooghe and Gary Marks, 'Unraveling the Central State , but How? Types of Multi-Level Governance' (2003) 97 The American Political Science Review 233, 236.
[75] Panara 710.

level governance is concerned primarily with Type I, as it requires the inclusion of all stages of government; local, regional and national governments should be involved in the communication and coordination in the policy-making and implementation of EU law and policy. The objectives of this normative use of multi-level governance are an increase of democratic legitimacy as well as the promotion of good governance.[76] There is some debate regarding the effect of this use of multi-level governance. While it is generally agreed that the output legitimacy is increased, it is unclear whether the input legitimacy (i.e. the democratic legitimacy) is positively or negatively affected.[77] Some authors argue that the lack of accountability and transparency regarding the decision makers of policies decreases democratic legitimacy.[78] Other authors regard the participation of directly elected regional and local representatives as an increase in democratic legitimacy through the establishment of a participatory democracy.[79] It should be reiterated that this normative function applies to the EU for the inclusion of regional and local authorities and the reaffirmation of the principle of subsidiarity. The normative function does not require the inclusion of the EU level in domestic decisions.

The normativity of the multi-level governance principle is without a doubt established by the soft-law instruments at an EU level. There has additionally been some effort to examine the question whether multi-level governance can be constructed as a legal principle in EU law. The idea of multi-level governance as a legal principle is based on art. 4(2) TEU.[80] In this article the "national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government" are ensured on an EU level. [81] These national identities include regional and local self-government in the style of multi-level governance.[82] Another

[76] ibid 711.
[77] ibid 712.
[78] ibid.
[79] ibid 712–713.
[80] The treaty on European Union art. 4(2).
[81] ibid art. 4(2).
[82] Panara 713–714.

judiciable concept related to multi-level governance is the principle of subsidiarity, enshrined in art. 5(3) TEU.[83] The principle poses that "the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."[84] This use of subsidiarity confirms the main argument behind centralisation and localisation within multi-level governance. As such, multi-level governance has been conceptualised as an instrument that "pushes towards multi-level cooperation or procedural mechanisms alternative to judicial enforcement in order to ensure compliance with subsidiarity."[85]

This thesis will use both concepts of multi-level governance. The original, descriptive model will be used to analyse policy-making and competence distribution in the context of refugee integration. Its implications regarding efficiency will constitute a valuable contribution regarding the effect a prohibition of harmonisation has on efficiency of the integration of refugees in the EU. The second, normative concept of multi-level governance forms an important aspect regarding the possible effects that harmonising integration policy has on the diversity of national identity in Europe.

2.2.3 Intersection with localisation

The previous sections have highlighted the double nature of multi-level governance, in which one dimension centralises competences on the national or supranational level and one dimension localises competences on sub-national levels. In this way multi-level governance is closely connected to localisation, a subject that has received considerable attention in human

[83] The treaty on European Union art. 5(3).
[84] ibid art. 5(3).
[85] Panara 728.

rights literature.[86] The theory of localising human rights can be summarised as follows:

> "Only when we contrast the theoretical principles of human rights with the harsh realities in local settings, do we realise the practical relevance of the indivisibility and interdependence of all human rights. The experience of local communities and community-based organisations should be the driving force behind our efforts to proclaim the need for a global and comprehensive approach to human rights."[87]

The rationale behind this localisation of human rights lies with the increased effectiveness and credibility of the human rights system.[88]

Political science has for some time understood the advantages of decentralisation. However, it should be stressed that decentralisation should not be a goal *per se*, but rather a tool for the increase of input and output legitimacy (respectively credibility and effectiveness). Efficiency and democratic legitimacy requires the allocation of responsibilities "with the proper levels of government."[89] Centralisation, with its efficiency of scale and a comprehensive coordination has advantages, and decentralisations, with better access to local information and more sensitive to local particularities, need to be understood to place competences in the sphere of those level of government best situated to realise these "different advantages".[90]

---

[86] Ex.: Koen De Feyter and others, *The Local Relevance of Human Rights* (Koen De Feyter and others eds, Cambridge University Press 2011).
[87] Felipe Gómez Isa, 'Freedom from Want Revisited from a Local Perspective: Evolution and Challenges Ahead' in Koen De Feyter and others (eds), *The local relevance of human rights* (Cambridge University Press 2011) 45–46.
[88] ibid 74.
[89] Wallace Oates, 'An Essay on Fiscal Federalism' (1999) 37 Journal of Economic Literature 1120, 1120.
[90] ibid.

The famous federalist theorist Oates has formulated the decentralisation theorem in the nineteen-seventies and it can be recognised in the contemporary model of multi-level governance:

> "In the absence of cost-savings from the centralized provision of a [local public] good and of interjurisdictional externalities, the level of welfare will always be at least as high (and typically higher) if Pareto-efficient levels of consumption are provided in each jurisdiction than if any single, uniform level of consumption is maintained across all jurisdictions"[91]

His theorem establishes on the grounds of efficiency the "favour of the doubt" biased to a decentralised provision of goods and services, while recognising that large scale activities and coordination might favour centralisation.[92] This can be translated to the principle of subsidiarity in the EU, which presupposes the same. The result of these considerations is the recognition that governance as well as human rights are more flexible and thus more effective when dispersed over multiple levels of government. While in principle a decentralised application of competences is most able to accommodate diversity, scaling up these competences is more favourable the higher the heterogeneity those affected.[93]

2.2.4 The coordination dilemma

A dilemma, salient to the research at hand, is posed by the practical use of multi-level governance in policy and requires some attention. By localising and devolving certain responsibilities, diversity can be better accommodated. This has been shown to result in a decoupling of national and local policies and logically European and local policies are in danger of a similar fate. This means that local policies can contradict or even conflict

[91] ibid 1122.
[92] ibid 1121.
[93] Hooghe and Marks 236.

with national or European approaches.[94] This consequence of the multi-level governance approach is a result of an uncoordinated manner of application, particularly with regard to the normative perspective.[95] The main drawback of multi-level governance is the so-called *coordination dilemma* and can be stated as: insofar as "policies of one jurisdiction have spillovers (i.e. positive or negative externalities) for other jurisdictions, [...]coordination is necessary to avoid socially perverse outcomes."[96]

Multi-level governance tries to explain the decision making process of policy and is thus concerned with power and authority. In cases of multi-level governance this power is distributed throughout a number of actors, which implies a multi-duty bearer regime for human rights. This is related to the perceived accountability deficit of some authors mentioned previously. With regards to this accountability deficit the next section will discuss the human rights based approach.

2.2.5 Multi-level responsibilities in a human rights based approach

As has been established in the previous sections, integration is closely connected with a large number of human rights. It is further clear that refugees have a right, based on the 1951 Refugee Convention as well as EU primary and secondary law, to have access to integration measures. This warrants a human rights based approach to integration. The following will shortly assess what this means for integration policy.

The application of a human rights based approach hinges on a two-pronged strategy. First it is concerned with substantive human rights standards and

[94] Zapata-Barrero, Caponio and Scholten 244.
[95] ibid.
[96] Hooghe and Marks 239.

second applies strict responsibility vis-à-vis rights holders.[97] This approach to policy-making enables a coherent coordination based on human rights. Multi-level governance tries to explain the decision making process of policy and is thus concerned with power and authority. In cases of multi-level governance this power is distributed throughout a number of actors, which implies a multi-duty bearer regime for human rights. Governance does not equal government, different stakeholders in the public and private sector can contribute to governance. Human rights law indicates the state as the principle duty bearer, however, different levels of government can be duty bearers depending on their authority to act. Type I can be to a certain extent described as "multi-level government", as it is concerned primarily with branches of government.[98] This makes the application of a human rights based approach easier to realise.

The emergence of the *multi-duty bearer human rights regime* is connected to the emergence of multi-level governance. The shift of decision making powers under multi-level governance can make accountability a major dilemma, as the decision-making is done on the sub-national level, while traditionally the responsibility for the protection and fulfilment of human rights is located on the national level. One of the responses for these shifting circumstances create concurrent responsibilities towards delegated or privatised realisations of substantial human rights. These responsibilities are concurrent, because nation-states are never absolved of their own legal responsibilities.[99] The multi-level governance model also provides a heuristic function regarding the multi-duty bearer human rights regime, as it is concerned with the notion of jurisdiction and decision making powers, possibly identifying the duty bearer of certain human rights applications.[100]

[97] Lottie Lane and Marlies Hesselman, 'Governing Disasters: Embracing Human Rights in a Multi-Level, Multi-Duty Bearer, Disaster Governance Landscape' (2017) 5 Politics and Governance 93, 99.
[98] ibid 97.
[99] ibid 101.
[100] ibid.

2.3 Definition of concepts for the use in this study

The previous sections have given an overview on the different aspects of integration and multi-level governance, as well as their interaction with related concepts. For the purpose of this study, the following definitions will be used to refer to previously discussed concepts:

Integration is the transformation of all "forms of cultural or social behaviour of an individual, ranging from completely giving up one's background to preserving unaltered patterns of behaviour" for the purpose of incorporating that individual in society.[101]

Multi-level governance is:

> "[the normative or descriptive] arrangement for making binding decisions that engages a multiplicity of politically independent but otherwise interdependent actors – private and public – at different levels of territorial aggregation in more-or-less continuous negotiation/deliberation/ implementation, and that does not assign exclusive policy competence or assert a stable hierarchy of political authority to any of these levels."[102]

[101] Council of Europe 9.
[102] Schmitter 49.

Legal analysis of EU competences

This chapter is concerned with answering the following sub-question:

[2] What is the precise extent of the EU's competences regarding integration?

The logical beginning of this analysis is article 79(4) TFEU, which confers competences regarding the promotion of the integration of third-country nationals (TCNs) to the EU. To assess the impact article 79(4) TFEU has on European refugee integration, it is of importance to analyse the exact material and personal scope of this provision. In the context of the different categories of competences, it is material to assess the extent of the competences transferred to the EU. Finally, based on the wide range of topics integration is related to, alternative legal bases for the establishment of certain competences need to be considered. For the clarification of sub-question [2] this chapter will discuss the ambit of article 79(4) TFEU, the competences that are transferred to the EU, as well as the alternative legal bases primary EU law offers.

3.1 Scope of article 79(4) TFEU

The ambit, scope and interpretation of certain treaty articles is not always clear, specifically if these articles are worded in very broad terms and unclear concepts. The interpretation of the CJEU has generally been disinclined to limit broad terms when conferring competences to the EU.[103] The question is whether this is the case regarding provisions that limit the competences of the EU.

[103] Ex.: *United Kingdom v Council* (1996) C-84/94; *Germany v European Parliament and Council* (1997) C-233/94.

In principle article 79(4) TFEU is worded in such a way that it confers supporting competences, as such it should be interpreted widely since it is formulated in broad terms. This, however, also limits this wide application of competences to exclude any kind of harmonisation. Since the article is based on the broad term "integration", the interpretation of these conferral of competences should be equally wide. The addition of "excluding any harmonisation of the laws and regulations of the Member States" reinforces the supportive nature of article 79(4) TFEU and should thus be equally wide interpreted.

> *Article 79 TFEU*
>
> *4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.*

A multitude of aspects are important to interpreting this provision. The most important is the literal interpretation of the provision, as it provides for the most legal certainty. The structural interpretation gives guidance in the case of uncertainty. Finally, the teleological interpretation is often implemented by the CJEU and has been characterised as one of its priorities when interpreting provisions.[104]

3.1.1 Literal interpretation

The literal interpretation regarding the scope of article 79(4) TFEU has to focus on the concept of "promoting [...] integration" as the material scope of

[104] Lenaerts and Gutierrez-Fons 24.

the provision and "third-country nationals residing legally in [the Member States] territory" as the personal scope of the provision. Immediately the material scope stands out as being a very broad term. As discussed in the concept specification regarding integration, there is no clear definition of what constitutes as integration and more importantly what measures promote that integration. The literal interpretation is that measures aimed at promoting the transformation of all "forms of cultural or social behaviour ranging from completely giving up one's background to preserving unaltered patterns of behaviour" fall under the material scope of this provision.[105] The material scope of article 79(4) is better defined as a plethora of secondary law of the EU defines "third-country national" as "any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty".[106] To assert whether refugees fall under the personal scope the Qualification Directive provides that "after international protection has been granted, Member States shall issue to beneficiaries of refugee status a residence permit", [107] which means that the refugee is legally residing on the territory of a Member State. This conclusion is strengthened by the *a contrario* reasoning that the personal scope of certain secondary legislation that applies to TCNs residing legally in the territory of a Member State is specifically excluding refugees:[108]

> *Article 5*
>
> *1. This Directive applies to third-country nationals residing legally in the territory of a Member State.*
> *2. This Directive does not apply to third-country nationals who:*
> *[...]*

[105] Council of Europe 9.
[106] Ex.: Council of the European Union, 'Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals Who Are Long-Term Residents' (2004) L 16/44 art. 2(a).
[107] European Parliament and Council of the European Union, 'Directive 2011/95/EU of the European Parliament and of the Council' art. 24(1).
[108] Council of the European Union, 'Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals Who Are Long-Term Residents' art. 3.

(d) are refugees or have applied for recognition as refugees and whose application has not yet given rise to a final decision;

The personal scope of article 79(4) TFEU therefore has to be interpreted broadly including *all* TCNs residing legally in the EU. The material scope through the literal interpretation is broad to such an extent as to provide no clear guidance. Following the principle of *interpretatio cessat in claris* the relatively obscure content of the material scope warrants the systematic and teleological interpretation of the provision in this case.

3.1.2 Systematic interpretation

For the systematic interpretation of the content of the competences transferred to the EU the placement of the provision is of great importance. Article 79(4) TFEU is placed within the context of Title V, the establishment of a European "Area of Freedom, Security and Justice" (AFS&J) and more specifically under Chapter 2, the "policies on border checks, asylum and immigration". The supplementing competences of the EU in the area of integration are thus limited to the AFS&J and specifically the integration of immigrants that are TCNs and are residing legally in their territories.

Primarily, being placed in Title V of the TFEU has consequences on the competences, namely that immigration policy is part of the shared competences of article 4 TFEU, the limitation of which will be discussed in a following section. The secondary consequence is the topical content of Title V, the AFS&J. The material scope of integration does not lie in the area of either citizenship or employment, social and consumer policy. The raison d'être of article 79(4) TFEU lies in "the absence of internal border controls for persons" and the framing of a common immigration policy, "which is fair towards third-country nationals."[109] The article itself further

[109] The treaty on the functioning of the European Union 2012 47 art. 67(2).

expands on what the aims of this common immigration policy are; it is "aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of [...] illegal immigration."[110]

This framing of integration policy, potentially recognising the aim of some Member States to use integration policy for the management of migration flows and the prevention of illegal immigration, can be problematic from a human rights perspective, which has been established as important regarding integration.

The previous concern makes it the more important that relevant human rights and refugee treaties are recognised, as is the case in article 78 TFEU regarding the establishment of a common asylum acquis. However, the placement of article 79 TFEU does not necessarily mean that it is a *lex specialis* to a previous provision. The wording of the title of Chapter 2 establishes the competences to enact policies in three equal areas: border checks, asylum and immigration. This is of importance, as the 1951 Refugee Convention is specifically referred to in article 78(1) TFEU.[111]

Since article 79 TFEU does not constitute a *lex specialis* it is necessary to establish a connection to the 1951 Refugee Convention independently of the previous provision. The fact that this connection should be established follows from the previous concept specification of integration that clarified how closely intertwined refugee integration is with the rights established in the 1951 Refugee Convention. However, according to article 6(1) TEU jo. articles 18 and 51(1) of the EU Charter the implementation of article 79(4) TFEU must respect the rights, observe the principles and promote the application of the right to asylum with due respect for the rules of the 1951 Refugee Convention.

[110] ibid art. 79(1).
[111] ibid art. 78(1).

To understand the ambit of article 79(4) TFEU it is enlightening to consider the emergence of that particular provision. That historic aspect is highly relevant for the structural interpretation of a provision. Article 79 TFEU is partly based on article 63(3) and (4) TEC and should thus be read in conjunction with that provision in case of ambiguity.

> *Article 63 TEC*
>
> *The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:*
> *[...]*
> *3. measures on immigration policy within the following areas:*
> *(a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion,*
> *(b) illegal immigration and illegal residence, including repatriation of illegal residents;*
> *4. 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.*
> *Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.*
> *Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five-year period referred to above.*

This sources the emergence of article 79 TFEU closer to that of migration control and prevention of illegal immigration. The communitarisation of the AFS&J aimed at the establishment of a common policy, yet authors immediately criticised that material competences to that end were missing, "for instance, occupational admissions, measures regarding the social

integration of asylum seekers and immigrants and interior enforcement measures (against clandestine entries and visa overstays)."[112] This resulted in a common policy on immigration with a main focus on illegal immigration.[113]

The further creation of the specific provision of article 79(4) TFEU emerged during the drafting of the Treaty establishing a Constitution for Europe. In the Penelope Draft the Commission established the supplementary competence as follows:

> *Article III - 89*
>
> *3. The Union shall complement and support the action of the Member States with a view to ensuring the integration of third-country nationals legally residing in their territory in their societies. The law may adopt measures to this end.*

This initial draft was later amended by the Working group X "Freedom, Security and Justice" and resulted in the Constitutional Draft:

> *Article III-168*
>
> *4. European law or framework law may establish measures to encourage and support action by Member States to promote the integration of third-country nationals legally residing in their territory, excluding any harmonisation of the laws and regulations of the Member States.*

[112] Jörg Monar, 'Justice and Home Affairs in the Treaty of Amsterdam: Reform at the Price of Fragmentation' (1998) 23 European Law Review 320, 323.
[113] Jörg Monar, 'Justice and Home Affairs in the EU Constitutional Treaty: What Added Value for the "Area of Freedom, Security and Justice"?' (2005) 1 European Constitutional Law Review 226, 235.

Especially regarding a common immigration policy, ambitious aims newly included were not complemented with new competences:[114]

> "Provision is also made, it is true, for measures promoting the integration of third-country nationals, but these have to exclude any harmonisation of the laws and regulations of the member states [...]."[115]

The conclusion was that the common policy on immigration would largely focus on illegal immigration.[116]

The literal amendments do not contribute to the understanding of the material scope, though the amendments regarding the competences are of great interest and will be discussed in the next section. The working documents of the responsible working group give more insight into the material scope of the provision. An analysis of these documents gives insight into the early documents of Working Group X "Freedom, Security and Justice" shows the intention to link "the principles of asylum and migration to other policy areas" and creates "a broader legal framework in line with the principles of the Tampere Conclusions".[117] The principles included in the Tampere Conclusions highlight that a common immigration policy "should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia."[118]

Thus it can be concluded that the framework should aim in its integration measures the economic, social and cultural life of migrants. In the same working document the "complex and global nature", and therefore the "need for broad policy-making and co-ordination" is recognised. Specifically mentioned is "foreign and security policy, development policy, integration

[114] ibid 234.
[115] ibid.
[116] ibid 235.
[117] The European Convention, 'Note from M. Sören Lekberg, Member of the Swedish Parliament : "A Common European Asylum and Migration Policy"' (2002) WD 4 3.
[118] European Council, 'Presidency Conclusions of 15 and 16 October 1999' para 18.

policy, labour and industry policy and social policy."[119] The previously mentioned strong link between immigration policy and illegal immigration and the weak consideration of integration policy was mentioned in the working documents, urging to explicitly link integration and combating discrimination.[120]

The drafting procedure further uncovers the reasoning for the weak provision of competences as is stated that concerning "the integration of legal residents of third country nationals, here too each member state has its own strategy in the different areas of integration."[121] The capital interest Member States place on integration stems from its intersection with citizenship and national identity. For this reason integration policy was separated from immigration policy, enabling the Europeanisation of immigration policy in a post-Schengen conceptualisation of the internal border regime while keeping the competence of integration a national prerogative.[122]

It should be noted that the previous indications are reflecting the considerations of individual institutions and Member States. To relativise this, it should be acknowledged that the arguments of the representative of the United Kingdom specifically wanted to exclude matters of social, employment and cultural policies from the competence of the EU:[123]

> "My "bottom line" is that I am against incorporating the Charter into European Union law because it deals with matters of social,

[119] The European Convention, 'Note from M. Sören Lekberg, Member of the Swedish Parliament : "A Common European Asylum and Migration Policy"' 3.
[120] The European Convention, 'Observations de M. Jacques FLOCH, Membre de La Convention, Sur Le Document de Travail 05 Du 6 Novembre 2002 "Pistes de Réflexion Pour Le Groupe de Travail"' (2002) WD 13 5.
[121] The European Convention, 'Comments to WD 05 by Mr Ben Fayot, Member of the Convention' (2002) WD 20 3.
[122] Sergio Carrera, *In Search of the Perfect Citizen? The Intersection between Integration, Immigration and Nationality in the EU* (Elspeth Guild and Jan Niessen eds, Martinus Nijhoff Publishers 2009) 50–51.
[123] The European Convention, '"Cooperation Not Centralisation": Paper by Mr. Timothy Kirkhope, Member of the Convention Members' (2002) WD 12 8.

> employment and cultural policy, which must always remain the responsibility of the member states."

Since this argumentation is not followed and the EU Charter is completely integrated, while matters of social, employment and cultural policy are partly under the competence of the EU, this limitation to the interpretation of integration should not be followed.

In a proposed final rapport, submitted by the working group, the reasons for the AFS&J are outlined. Most important is that freedom can be enjoyed in a safe environment and that justice is accessible to all.[124] It stresses also that freedom, security and justice are of equal importance and are closely linked to the principle of non-discrimination.[125] This emphasises that, while not explicitly linked in the provision, the drafters meant to link the whole area, including integration, to this principle. Regardless of the potential scope of the legal basis for the competence of integration, Member States would retain in practise the competence to integrate TCN in their country.[126] In this stage it was already clarified that uniform rights concerning education, employment and non-discrimination should be established. The final rapport of the working group highlighted the deep division as it claimed that some members considered a legal basis for measures concerning these rights and failing that a role for the EU for the provision of incentives and support.[127] This makes it clear that the adopted provision opted for the lowest considered competence, meaning that limiting the scope of the provision to be narrower than the literal interpretation would be against the considerations of the drafters.

In an answer to a later final rapport it was mentioned that the essence of the discussion clarified that the legal basis "in principle cover the full breadth of the immigration domain, and thus describe an adequate ambition of the

[124] The European Convention, 'Rapport Final Du Groupe de Travail X "Liberté, Sécurité et Justice"' (2002) WD 14 1.
[125] ibid 2.
[126] ibid 5.
[127] ibid.

scope of the Union's action." For the material scope this implies the broadest interpretation. The competence for volume of admissions and integration was to stay with the Member State.

3.1.3 Teleological interpretation

The open nature of the Treaties strongly facilitates a teleological interpretation. In fact, the CJEU prefers this method of interpretation "since the Treaties are imbued with a purpose-driven functionalism."[128] The teleological approach is very closely connected with the systematic interpretation of provisions, specifically the historical interpretation. This is due to the fact that from the structural placement and the historic emergence the aim of a provision becomes more explicit. Therefore the aim of Chapter 2 is the creation of a *common* policy on immigration, closely intertwined with the principle of equality. Integration was clearly considered a substantial part of a common immigration policy, as it was placed in the article creating that same policy. While being seen as a part of immigration, the approach to integration as such was separated from the establishment of a common immigration policy, for the purpose of preserving the competences of the Member States and at the same time providing an opportunity to further European integration regarding (illegal) immigration. Another aim next to the fair treatment of TCNs and equality in the area of immigration is the management of migration flows, which should not be discounted.

The broad approach to equality and non-discrimination refers to the economic, social and cultural life and also the development of measures against racism and xenophobia. That points to the conception of an immigration and integration policy that is not only aimed at the TCNs, but also at the Union citizens, highlighting the conceptualisation of integration as a two-way approach. While the competence of the Member State was

[128] Lenaerts and Gutierrez-Fons 24.

protected, the discussion regarding the establishment of this legal norm made it clear that uniform rights concerning education, employment and housing fell under the umbrella of the material scope of the provision on integration. The aims of article 79 TFEU, the access to rights, equality, as well as security and the management of migration flows, conceptualised under the term of freedom, security and justice are of equal importance to the drafters of the provision.

Having considered the emergence of this legal basis, the broad multi-dimensional ambit of the provision becomes clear. The conceptualisation of all Member States regarding integration falls under its scope. This implies that as all "forms of cultural or social behaviour ranging from completely giving up one's background to preserving unaltered patterns of behaviour" by TCNs in the host state are covered by the term integration, but also the reception of migrants by Union citizens are covered.[129] The next section considers the exact nature of the competences the EU has for the creation of policy.

3.2 Competence transferred by article 79(4) TFEU

To consider the effectiveness of the legally binding and non-binding measures the EU can adopt based on this provision it is necessary to establish the exact competences that are transferred to the EU. In principal the AFS&J is part of the shared competences of the Member States and the EU.

> *Article 4*
>
> *2. Shared competence between the Union and the Member States applies in the following principal areas:*

[129] Council of Europe 9.

[...]

(j) area of freedom, security and justice;

However, the wording of this specific provision enables the EU only to adopt legally binding measures and soft-law instruments aiming "to provide incentives and support the action of Member States". The provision further clarifies that their measures should exclude "any harmonisation of the laws and regulations of the Member States."

It is important to understand the scope of the third category of competences, namely that of *supporting, coordinating, or supplementary action*, based on article 2(5) TFEU. The measures taken under that competence do not supersede the competences of the Member States and legally binding acts will not lead to harmonisation.

3.2.1 Coordinating?

It is generally accepted that the extent of EU competences varies with the different roles connected with supporting, coordinating and supplementing action.[130] The wording of "to provide incentives and support the action of Member States" seems to imply a competence only based on the supporting dimension of the supplementary competences. The omission of coordinating seems to be conscious in the light of the previous section. Both the provision of incentives as well as the support of the actions of Member States make it clear that the competence should in no way lead to the approximation of national approaches to integration.

[130] Paul Craig and Gráinne De Búrca, *EU Law: Text, Cases, and Materials* (5th edn, Oxford University Press 2011) 85–86.

3.2.2 "... excluding any harmonisation of the laws and regulations of the Member States"

The question remains whether the express prohibition of any harmonisation of laws and regulations in this provision has any added value. This consideration is especially valuable considering the multi-facetted nature of integration and the previously established broad interpretation of its meaning. Is this broad interpretation a double edged sword? Did the EU receive wide competences regarding the support of integration measures, but at the cost of denying the EU any harmonisation in policies that involve integration measures of TCNs? To that end it is salient to establish the meaning of "excluding *any* harmonisation". The literal interpretation of this part of the provision would implicate the complete exclusion of harmonisation with regard to integration measures. However, the CJEU has answered this in its *Tobacco Advertising* case.[131] Similar to the contemporary provision on the competence of integration, public health competences were limited to exclude any form of harmonisation. The Court held "that provision does not mean that harmonising measures adopted on the basis of other provisions of the Treaty cannot have any impact on the protection of human health."[132] Similar, other competences found in the Treaties that are concerned with various aspects of integration are not limited by the exclusion of any harmonisation in article 79(4) TFEU. This does not mean that the use of other provisions as legal basis can be justified if they are only used "to circumvent the express exclusion of harmonisation laid down in [...] the Treaty."[133] On the other hand policies adopted on other legal bases have to be developed with due regard to article 79(4) TFEU and consistency has to be ensured.[134]

A second, "soft" harmonisation can still be achieved through the adoption of programmes aimed at facilitating integration. Similarities can be drawn

[131] *Tobacco Advertising I* (2000) C-376/98.
[132] ibid 78.
[133] ibid 79.
[134] The treaty on the functioning of the European Union art. 7.

between programmes aimed at the field of higher education and vocational training which equally include the phrase "… excluding any harmonisation of the laws and regulations of the Member States".[135] However, the EU has established a plethora of programmes aiming at different aspects of quality education and vocational training, such as the action programme to promote foreign language competence in the European Community (Lingua), the action programme for the vocational training of young people and their preparation for adult and working life (Petra), the Comett programmes in the field of technology and, most famous, the European Community Action Scheme for the Mobility of University Students (Erasmus). Authors have established that the voluntary, or "soft" harmonisation through incentive measures do not conflict with the prohibition of harmonisation.[136] Only harmonisation through a legally binding act that compels the Member States to undertake harmonisation is expressively forbidden. The "soft" harmonisation, in which Member States themselves feel the need to adapt their laws, leads to "a certain degree of harmonisation." [137] As it is not the EU who initiates such harmonisations but rather contributes to it, it is in line with the exclusion of harmonisation. It is the legal implication of the adopted measure and not the intention or the outcome that is affected by the exclusion of harmonisation. The expressive prohibition of harmonisation based on article 79(4) TFEU, therefore reiterates the limit of supplementary competences, but does not further limit the competences of the EU regarding integration. On one hand, the EU is able to harmonise aspects of integration that are related to other areas of competence. On the other hand, the EU is able to initiate "soft" harmonisation through the establishment of programmes and incentive measures. Authors have called the inclusion of prohibitions of harmonisation "of little practical legal value"[138] and have mused that the reason for its inclusion is "political/psychological, not

[135] ibid art. 165(4) & 166(4).
[136] Koen Lenaerts, 'Education in European Community Law after "Maastricht"' (1994) 31 Common Market Law Review 7, 35.
[137] Stefan Huber, ' '… Excluding Any Harmonisation of the Laws and Regulations of the Member States '? Reflections on the Meaning and Scope of "Any" in the Context of the European Higher Education and Research Area' (2011) 5 Vienna Journal on International Constitutional Law 22, 24.
[138] ibid 40.

legal."[139] A look at the provisions that do include that wording seems to justify that assertion.

Article	Topic
19(2) TFEU	action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
79(4) TFEU	integration of TCNs
84 TFEU	crime prevention
153(2)(a) TFEU	labour law
165(4) TFEU	education and sport
166(4) TFEU	vocational training
167(4) TFEU	culture
168(5) TFEU	public health
173(3) TFEU	industry
189(2) TFEU	space policy
195(2) TFEU	tourism
196(2) TFEU	civil protection
197(2) TFEU	administrative cooperation

3.3 Alternatives to article 79(4) TFEU

The previous has established that effective harmonisation in the area of integration can still be affected through the use of other, related provisions. Integration, being all "forms of cultural or social behaviour ranging from completely giving up one's background to preserving unaltered patterns of behaviour" by TCNs in the host state, as well as the reception of migrants by Union citizens, covers an area of interest.[140] Selected general and specific

[139] ibid 41.
[140] Council of Europe 9.

provisions especially relevant to language and vocational training will be considered.

In the general catalogue of competences, the EU has a shared competence in the areas of the internal market, certain aspects of social policy, the economic, social and territorial cohesion, as well as the AFS&J.[141] Specific competences regarding the coordination of the Member States policies are given in the area of economic, social and employment policies. This precludes outright harmonisation, but includes coordination and obliges Member States to that coordination.[142] The supplementary competence that has been discussed in the above section is specifically extended to the areas of culture, education and vocational training.[143] The specific legal basis for the EU to take appropriate action against discrimination in article 19 TFEU can contribute immensely to the integration of refugees.

All policies of the EU are to be guided by the principles set out in the EU Charter, equality and non-discrimination.[144] They should further be "linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health."[145]

Article 78 TFEU enables the EU to develop a common policy on asylum, including a uniform status of asylum. The EU interpreted this as a competence to establish harmonised rules regarding the treatment of refugees according to the 1951 Refugee Convention and thus plays an important role with regard to its connection to integration. As to the specific competences relevant to integration measures for refugees in the context of vocational training and language courses, article 153 TFEU can form an important basis. The EU has competences for the adoption of directives,

[141] The treaty on the functioning of the European Union art. 4(2)(a)(b)(c)(j).
[142] ibid art. 2(3) & 5(1)(2)(3).
[143] ibid art. 6(c)(e).
[144] The treaty on European Union art. 6(1); The treaty on the functioning of the European Union art. 8, 10 & 18.
[145] ibid art. 9.

including minimum requirements, regarding the integration of persons excluded from the labour market.[146] It further includes a coordinating competence with regards to the combating of social exclusion.[147] The encouragement and facilitation of the coordination between Member States in the areas of employment, vocational training and social security is affirmed in article 156 TFEU. Specifically regarding language education and vocational training, the EU enjoys a variety of competences regarding the coordination and development of programmes, as per article 165 and 166 TFEU. These provisions themselves also exclude any harmonisation, but add dimensions of coordination and cooperation to these aspects of integration. While article 352 TFEU can serve as a general legal basis for the realisation of Treaty objectives, it excludes all harmonisation.

Finally, some specific instruments, the EU's implementation of the above mentioned competences, reveal their close connection to the integration of refugees in the EU. The Directive concerning the status of third-country nationals who are long-term residents specifically mentions the integration of such TCNs as a fundamental objective of the EU, as it promotes economic and social cohesion.[148] Equal treatment "in a wide range of economic and social matters" with Union citizens forms a genuine instrument for that integration, according to the preambles.[149] Constituting harmonisation, the following provision is an expression of a legal basis that is closely connected to integration:[150]

> *Article 11: Equal treatment*
>
> *1. Long-term residents shall enjoy equal treatment with nationals as regards:*

[146] ibid art. 153(1)(h) & (2).
[147] ibid art. 153(1)(j) & (2).
[148] Council of the European Union, 'Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals Who Are Long-Term Residents' preamb. 4.
[149] ibid preamb. 12.
[150] ibid art. 11(1)(b).

[...]

(b) education and vocational training, including study grants in accordance with national law;

Refugee rights enshrined in the 1951 Refugee Convention form an integral part of the integration of refugees, as previous chapters have established. The CEAS transposes these international obligations in EU secondary law, harmonising in effect certain aspects of integration throughout the EU. The Qualification Directive recalls the importance for the enjoyment of refugee rights with special regard for "particular integration challenges" confronting refugees.[151] In the same consideration it is held that such "taking into account should *normally* not result in a more favourable treatment than that provided to their own nationals".[152] Considering the aim of substantial equality that assessment can be challenged, but it constitutes an acknowledgement that the regard for particular integration challenges might result in more favourable treatment than provided to nationals. It further stresses the efforts that have to be made to not only offer formal but rather effective access "to employment-related educational opportunities and vocational training, inter alia, relating to financial constraints."[153]

In this case active measures from the Member States are required, not limited to the financial aspect of access. Specific provisions in this directive related to integration measures aimed at vocational training and language courses for refugees are as follows:[154]

Article 26: Access to employment

2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace

[151] European Parliament and Council of the European Union, 'Directive 2011/95/EU of the European Parliament and of the Council' preamb. 40.
[152] ibid (emphasis added by author).
[153] ibid preamb. 41.
[154] ibid art. 26(2).

experience and counselling services afforded by employment offices, are offered to beneficiaries of international protection, under equivalent conditions as nationals.

Considering the previously mentioned obligation of Member States to facilitate the ”assimilation”, i.e. the integration, of refugees, the directive is even more clear than the 1951 Refugee Convention: [155]

Article 34: Access to integration facilities

In order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes which they consider to be appropriate so as to take into account the specific needs of beneficiaries of refugee status or of subsidiary protection status, or create pre-conditions which guarantee access to such programmes.

The integration programmes that Member States are obliged to offer include language training, according to the preamble of this directive.[156] The directive offers a wide margin for the Member States to offer access to integration facilities, which does not mean this obligation cannot be further specified in the future.

3.4 Partial conclusion

This chapter dealt with the question of the extent of the EU's competences regarding integration. An extensive analysis of article 79(4) TFEU has revealed that the influence on all forms of cultural or social behaviour of TCNs in the host state, as well as the reception of migrants by the host society is covered by the provision. It was further ascertained that while the placement of article 79(4) TFEU originally comes from a security and

[155] ibid art. 34.
[156] ibid preamb. 47.

immigration conception of integration, the fair treatment of migrants is equally influential in a contemporary conception of the concept. The use of very general terminology and vague concepts leads to a wide interpretation of the material and personal scope. To counter the wide interpretation of the provision, the actual competences are particularly weak and do not include the facilitation of coordination between Member States.

The extent of the competences that were transferred based on that provision is severely limited, being a supporting competence mainly. Specifically the absence of any mentioning of coordinating responsibilities of the EU is striking. The expressive prohibition of any harmonisation might underline the importance Member States put upon the sovereignty of integration policies, but it does not have any additional legal consequences as the competences based on article 79(4) TFEU did not allow for any harmonisation *per se*. The prohibition of harmonisation based on other competences, partially relevant to the integration of refugees cannot be established through this wording. Further ”soft” harmonisation is not only possible, but rather encouraged through the call upon the EU “to provide incentives and support the action of Member States”.

Multi-level governance analysis of integration policy

This chapter is concerned with answering the following sub-question:

[3] What are the most effective competences for the central authority in a multi-level governance approach?

Since the multi-level governance approach indicates that policy is made on a multitude of government levels, it is important to establish the most effective role for a central government in the policy-making of integration. To that end, this chapter will include a multi-level governance policy analysis of Germany and the Netherlands. Additionally, a comparison of these analyses will be made to identify commonalities and differences of the role of the national government and their struggles.

4.1 Germany

4.1.1 National integration policy

Germany's current policy is focused on the task of integrating immigrants and refugees in particular. This is done through a number of legislative measures, such as the adoption of the Integration Act (*Integrationsgesetz*).[157] That the political climate has been relatively positive towards integration is exemplified by the, now famous, speech given by Chancellor Merkel in which she claimed "*Wir schaffen das!*".[158] In this she was specifically referring to the ability of Germany to provide for housing,

[157] Integrationsgesetz 2016 1939.
[158] Bundesregierung, 'Sommerpressekonferenz von Bundeskanzlerin Merkel: Mitschrift Pressekonferenz' (2015) <https://www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2015/08/2015-08-31-pk-merkel.html> accessed 6 June 2017.

employment and the qualification assessment of refugees. Germany's integration policy has not always been so clear.

Germany did not see itself as an immigration country until the end of the twentieth century. Immigrants coming to Germany can roughly be divided into three categories, excluding union citizens. The first category consists of the ethnic Germans that came to Germany as refugees and expellees.[159] While initial fears regarding conflict and radicalisation due to socio-economic factors led to an increase in research, this category of immigrants integrated swiftly and without the need for comprehensive integration policies.[160] The second category of immigrants were the *Gastarbeiter*, labour immigrants that were recruited between 1955 and 1973, and their families. The conceptualisation of labour immigration as circular meant that no specific integration policies were in place, as these immigrants were expected to leave Germany unintegrated. However, Germany did conceptualise itself as a welfare state and labour immigrants were integrated into welfare institutions, as well as the rights framework of German employment.[161] This contrast of integrating immigrants in practice into the welfare institutions while denying the conceptualisation of Germany as a country of immigration resulted in the lack of a comprehensive national integration policy. While the discontinuity of labour immigration changed the immigration flow into Germany, it did not stop it. Family reunification continued and even increased migration into the country.[162] The last category of immigrants is that of foreign asylum seekers and refugees.[163]

[159] Friedrich Heckmann and Delia Wiest, 'Research-Policy Dialogues in Germany' in Peter Scholten and others (eds), *Integrating Immigrants in Europe: Research-Policy Dialogues* (Springer 2015) 189.
[160] ibid.
[161] ibid 186; Maren Borkert and Wolfgang Bosswick, 'Migration Policy-Making in Germany–between National Reluctance and Local Pragmatism' (2007) 20 4.
[162] Friedrich Heckmann, 'From Ethnic Nation to Universalistic Immigrant Integration: Germany.' in Friedrich Heckmann and Dominique Schnapper (eds), *The Integration of Immigrants in European Societies: National Differences and Trends of Convergence* (Lucius & Lucius 2003) 52.
[163] ibid 45; Borkert and Bosswick 4.

Only in 1998 did integration policy become subject to political debate, as the government recognised the changed status of Germany within international immigration.[164] This relatively long period of not recognising the need for integration policies meant that German policy makers had to catch up in the beginning of the twenty-first century. The first changes in policy and law that convey this change in self-identification was the project of changing the citizenship law that started in 1999.[165] This change meant that the logic of German nationhood changed from the ethnic nation, characterised by a strict adherence to *ius sanguinis*, to a more pluralistic one. The law introduced some limited *ius soli* principles and eased the process of naturalisation.[166] This change should mostly be understood as a symbolic one, but with great importance regarding the conceptualisation of integration, as membership of the German state is no longer solely dependent on descent. Naturalised citizens and those that receive citizenship based on *ius soli* are now members of the German state based on their adherence to the constitutional order; being a national pivoted to the republican model of nationhood. The Immigration Act of 2005 was finally the "first time in Germany's legislative history, [that] regulations for immigration, labour market access, the stay of foreigners and the integration of resident migrants are combined to an integrated legislative act".[167] This marked the starting point of a comprehensive national integration policy in Germany. This consistent integration policy resulted in the National Integration Plan of 2007, which was to be a coordination commitment on all institutional levels for the initiation of integration policies. This National Integration plan was then converted into a National Action Plan in 2011, introducing concrete targets aimed at previously established indicators of integration.

With the start of the refugee crisis in 2015, the influx of incoming migrants to Germany in the last category of immigrants increased substantially. This

[164] Heckmann and Wiest 186.
[165] Heckmann, 'From Ethnic Nation to Universalistic Immigrant Integration: Germany.' 53.
[166] ibid 58.
[167] Borkert and Bosswick 10.

provided the context for Chancellor Merkel's "*Wir schaffen das!*" speech addressing the task that Germany must face. Integration of refugees was an important aspect, but she also discussed the problem of multi-level governance. "Who does what? What do the municipalities do? What do the *Länder* do? What does the federal government do? "[168] This exemplifies the thought that has to be given to the municipalities, states and federation. It is exactly such difficulties in the separation of competences and responsibilities that have been identified as a long-term barrier to a central integration policy.[169] The EU was also included in Merkel's speech, although integration was not specified in that context. "Then there is the European dimension, here I think that we can say: Europe as a whole must move."[170] On a federal level the Integration Act of 2016 was the answer to the task posed to Germany.

4.1.2 Analysis of competences

The distribution of competences in Germany is very close to that of the EU. Being a federal state, German policy- and law-making competences are distributed between *Bundesebene*, the federal level, and *Länderebene*, the regional state level. Integration has been identified as an intersectional policy area that cuts across policy ministries as well as federal levels. In fact, for a long time, integration was thought to be primarily organised on the regional level, as federal organisation was missing. Some authors argue that while centralised national integration efforts were missing, the perception that Germany therefore had a deficient integration policy is not completely true as Germany had a "decentralized organization of integration

[168] Bundesregierung, 'Sommerpressekonferenz von Bundeskanzlerin Merkel: Mitschrift Pressekonferenz', translated by author.
[169] Scholten, *Framing Immigrant Integration: Dutch Research-Policy Dialogues in Comparative Perspective* 251.
[170] Bundesregierung, 'Sommerpressekonferenz von Bundeskanzlerin Merkel: Mitschrift Pressekonferenz', translated by author.

measures" on the regional level. [171] In the context of language acquisition for example, funding of courses happened on the federal, regional and local level even before the adoption of a comprehensive integration policy.[172] A national concept for integration presupposes the focus of the federal government on immigration, social security and asylum, while other governmental levels focus on educational and spatial dimensions of integration.[173]

4.1.2.1 Policy framework

In the following sections, the legal competences and their implementation through policy-making on three governmental levels will be discussed.[174]

4.1.2.1.1 National level

2005 is often credited as the start of a German integration policy, when the federal level of the German government started legislating in the policy area of integration with the Immigration Act of 2005.[175] The national legislation, introducing obligatory integration measures were based on the Dutch programme, which has lend itself as a model throughout Europe. This happened at a time, in which the Dutch government was discussing the abolishment of the government's involvement in what they saw the responsibility of the migrants themselves. The integration programme was to be implemented by the *Bundesamt für Migration und Flüchtlinge*, the federal office for migration and refugees.[176] While the integration programmes have been federalised after it was determined that German

[171] Ines Michalowski, 'Liberal States - Privatised Integration Policies?' in Elspeth Guild, Kees Groenendijk and Sergio Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* (Ashgate 2009) 263.
[172] ibid 264.
[173] Daniel Thym, 'Integration Kraft Gesetzes? Grenzen Und Inhalte des "Integrationsgesetzes" des Bundes' (2016) 36 Zeitschrift für Ausländerrecht und Ausländerpolitik 241, 251.
[174] As a very large body of policies exist only an examplary selection made by the author will be presented.
[175] Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG) 2005.
[176] ibid para. 43(3).

integration measures were largely fragmentised, [177] further integration efforts on the federal level had to respect the distribution of competences of the federal system. This explains that nation-wide integration policies are concentrated around immigration, asylum, social security and employment, while education and housing is done on regional and local levels.[178]

The 2016 Integration law, while giving the appearance of a comprehensive law on integration, which organises a coherent German integration policy in one legal instrument, actually amends a multitude of federal laws. [179] This gives an insight into the relevant federal legal instruments for integration: immigration law, several books of the social code and several asylum laws.[180] The focus on language acquisition in the integration measures of the immigration law and the focus on employment and access to vocational training in the social code are particularly relevant. The federal government offers language courses in the context of the integration courses, which refugees are obliged to attend.[181] Further emphasis is put on the acquisition of employment related language courses for the ease of integration into the labour market.[182] Additional integration programmes are to be established in cooperation with all levels of government, as well as civil society.[183]

With regards to vocational training and other employment and social security related measures, the situation of refugees is mostly meant to be mainstreamed into the general German framework, while trying to accommodate the specific needs of refugees into said framework.[184] Vocational competences and the recognition of qualifications are tackled by the federal government through projects such as "Prototyping Transfer",

[177] Michalowski, 'Liberal States - Privatised Integration Policies?' 264.
[178] Thym 251; Grundgesetz für die Bundesrepublik Deutschland 1949 art. 74(4)(6)(7)(12).
[179] Thym 241.
[180] Integrationsgesetz.
[181] Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG).
[182] ibid 45a.
[183] ibid 45.
[184] Iván Martín and others, 'From Refugees to Workers: Mapping Labour-Market Integration Support Measures for Asylum Seekers and Refugees in EU Member States: Literature Review and Country Case Studies', vol II (2016) 71.

specifically regarding competences acquired in previous informal employment.[185] Further projects regarding the mediation of employment and apprenticeships are done in federal employment agencies in cooperation with the federal office for migration and refugees, which were trained with new intercultural competences.[186] Some of these plot projects, such as the "Early Intervention" project, have been picked up at the regional level in cooperation with federal agencies. A number of these projects are coordinated and financed by the Ministry of Labour through the "*Integration durch Qualifizierung*", which tries to tackle integration through a multi-level, as well as multi-dimensional approach. With regards to the financial aspects of vocational training for young refugees, the national loan system for education is open for recognised refugees.[187]

The amendments to the social code by the integration law of 2016 are two-pronged. First, it includes the "*Flüchtlingsintegrationsmaßnahmen*", refugee integration measures, into the social code. This means that refugees are to be integrated through measures that introduce them to the German labour market. Second, refugees are to be included in the various general measures to aid access to vocational training for those that are unemployed.[188] Many of these measures are made obligatory, with due regard to the circumstances. To enforce the obligatory nature of the integration measures, the benefits for personal needs can be reduced by up to 100%, while the basic needs can be reduced by up to 15%.[189] This is similar to the reductions for Germans on social security, which have been deemed proportional as they involve a certain degree of own responsibility. [190]

The reason authors have identified for the active role the federal government takes in these integration policies is the perceived low qualifications of the

[185] ibid.
[186] ibid 72.
[187] Gesetz zur Förderung der beruflichen Aufstiegsfortbildung (Aufstiegsfortbildungsförderungsgesetz - AFBG) 1996 para 8(1)(7).
[188] Sozialgesetzbuch (SGB III) Drittes Buch: Arbeitsförderung 1998 para 132.
[189] Thym 245.
[190] ibid.

recent surge of refugees. [191] Since the German approach to integration is traditionally anchored in the combination of integration with employment, the federal government saw the lack of qualifications as a threshold to the labour market and thus impeding access to integration. The above description of the integration law of 2016 shows that it tries to balance an empowering with a regulatory approach, i.e. the support of integration and corresponding sanctions should the refugee fail to cooperate.[192]

4.1.2.1.2 Regional level

The situation in the different *Länder* is quite diverse. This is mostly due to the large amount of competences *Länder* have in a wide variety of policy areas. Specifically education and culture are reserved for this level of government. Several *Länder* had independent integration policies before 2005. This has led to highly diverging policy considerations of which *Nordrhein-Westfalen* and *Bayern* are a good example.[193] With the introduction of the national integration policy, the integration measures and conditions for immigration are harmonised. Still most states finance independent, additional language courses.[194] These are extended to asylum seekers that do not qualify for the access to the federal language courses. Mediations into apprenticeships have been started in some *Länder*, as well as programmes that grant access to special classes in vocational schools to facilitate access to apprenticeships after completion and other more comprehensive programmes aimed at labour-market integration.[195]

[191] ibid 242.
[192] ibid.
[193] Oliver Schmidtke and Andrej Zaslove, 'Politicizing Migration in Competitive Party Politics: Exploring the Regional and Federal Arenas in Germany and Italy' in Eve Hepburn and Ricard Zapata-Barrero (eds), *The Politics of Immigration in Multi-Level States: Governance and Political Parties* (Palgrave Macmillan 2014).
[194] Martín and others 72.
[195] ibid 73.

The root of this devolvement of competences to regions, as well as the need for coordination lies in "the nature of German federalism." [196] Since the need for a multi-dimensional approach to integration has been accepted and integration touches upon various policy domains that are shared between the *Bund* and the *Länder*, "the sub-national level has gained considerable flexibility in defining integration on the ground and in developing its own policy approaches."[197] Several national multi-level conventions have not only given shape to the national integration policy, but have defined the often voluntary commitments and obligations that regions and municipalities have adopted. The first of such conventions, the 2007 National Integration Plan, was initiated by the *Länder* in Germany and as such contains a large amount of competences and responsibilities for the regional and local actors.[198] The plan was established through deliberations by representatives of all governmental levels and sketched out the responsibilities and duties of each actor, as well as the main aim of the envisaged integration policy.[199]

It was found that often this level of government, the *Länder*, have been the drivers of policy innovation in the national context of integration policy. Policy-making in one region has influenced policy-making in another region through mutual learning.[200] An empirical study of the German state *Nordrhein-Westfalen* has bared the pragmatic nature of political deliberations regarding integration.[201] This was contrasted with the more divisive national deliberations.

[196] Oliver Schmidtke, 'Beyond National Models? Governing Migration and Integration at the Regional and Local Levels in Canada and Germany' (2014) 2 Comparative Migration Studies 77, 86.
[197] ibid.
[198] Schmidtke and Zaslove 185.
[199] Bundesregierung, 'Der Nationale Integrationsplan: Neue Wege - Neue Chancen' (2007).
[200] Schmidtke 87.
[201] ibid 85.

4.1.2.1.3 Local level

The municipal level is even more fragmented than the regional level. Coordinated by both national as well as regional policies, it still maintains its own initiatives for the integration of refugees. Different federal ministries and agencies extend coordinating measures to municipalities, such as the Ministry for Education and Science, which enables municipalities to finance coordinators, which coordinate the multi-dimensional access to integration measures.[202] Next to the federal employment agencies, the municipalities make labour-market policy through the local *Jobcenter*. Through these employment mediation, language acquisition and competence enhancing measures are available.[203] Local immigration control offices further play an important role in the identification of those in need of additional integration courses.[204] Studies regarding German municipalities have shown that the detachment of local and national integration policies have diverged in the past, similar to the Dutch situation.[205]

4.1.2.1.4 Own responsibility

The concept of own responsibility has not found its way into the German integration policy discourse. The national government of Germany has mentioned the own responsibility of migrants for their integration; it mentioned the importance of own initiative, application, as well as own responsibility. This is contrasted by the requirement of the host society to be accepting, tolerant and equally engaged.[206] Regional authorities have emphasised the need for mutual respect and the preparedness of both migrants and the German society as a requirement for the success of integration.[207] Municipalities, similarly, have emphasized that it is the

[202] Bundesministerium für Bildung und Forschung, 'Flüchtlinge Integrieren – Kommunen Stärken' (2016) <https://www.bmbf.de/de/hilfe-fuer-kommunen-und-kreisfreie-staedte-1829.html> accessed 4 July 2017.
[203] Martín and others 73.
[204] Michalowski, 'Liberal States - Privatised Integration Policies?' 267.
[205] Hackett 351.
[206] Bundesregierung, 'Der Nationale Integrationsplan: Neue Wege - Neue Chancen' 13.
[207] ibid 24.

preparedness of migrants to integrate that is required.[208] Own responsibility is certainly a factor, not only in integration policy, but all social policy. All subjects in Germany are presupposed own responsibility, which is the basis for punitive cuts in social benefits.[209] A retreat of the government in the responsibility for the integration of refugees cannot be detected in government policy or legislation.

4.1.2.1.5 Coordination

The establishment of a national integration policy, as well as subsequent understanding of integration policies have been guided by a multitude of multi-level conferences.[210] The resulting reports, the 2007 National Integration Plan, the 2010 Integration Programme and the 2012 National Action Plan Integration, involved representatives of all governmental levels as well as civil society. In these programmes the previous lack of coordination was recognised.[211] Since language acquisition was thought to be the most central requirement for equal opportunities, this was to be centralised on a federal level.[212] However, the introduction of a coherent national integration policy did not result in a purely centralised approach. The representatives of German municipalities perceived this need for coordination as well and recommended all municipalities to take on the role of migrant guides and coordinate the available language and vocational training measures on national and regional levels.[213] This coordinating role was enhanced by coordinators, which the federal Ministry of Education and Science has financed. These municipal workers are to coordinate different initiatives and projects, both offered by the government as well as local and

[208] ibid 31.
[209] Thym 245.
[210] Peter Scholten and Rinus Penninx, 'The Multilevel Governance of Migration and Integration' in Blanca Garcés-Mascareñas and Rinus Penninx (eds), *Integration Processes and Policies in Europe: Context, Level and Actors* (Springer 2016) 101.
[211] Bundesregierung, 'Bundesweites Integrationsprogramm: Angebote Der Integrationsförderung in Deutschland – Empfehlungen Zu Ihrer Weiterentwicklung' (2010) 11.
[212] ibid.
[213] Bundesregierung, 'Der Nationale Integrationsplan: Neue Wege - Neue Chancen' 32.

regional initiatives from civil society to increase access of refugees to educational measures.[214]

4.1.2.2 Framing of integration

The nexus between integration and immigration in a European context might have its origins in German legislation, as it was the first EU country to link language acquisition as a condition for a permanent residence permit.[215] There was numerical evidence that these requirements influenced immigration numbers.[216] This also shows that Germany's own experiences shaped their new law, not only Dutch experiences. This nexus between integration and immigration was an external control on migrants, as they had to pay for these tests in the country of origin. The internal control on migrants was smaller, as migrants had access to state run programmes.

The contemporary German approach to integration within immigration law has two dimensions; it tries to promote integration within the German society and is also used for migration flow management.[217] This balance in German law is clear in the approach of the federal government to allow and support access to vocational training for those asylum seekers that have a high chance of residence. The extension of such access to those who have a high chance of being recognised as refugees and thus receiving a residence permit should be considered an attempt to promote integration through early inclusion of refugees. However, the immigration consideration of avoiding any new pull-factors excludes those that do not have a high chance of being recognised and facilitates the deportation of this group.[218]

A further national link between immigration and integration is the role of local immigration offices in "the implementation of the German integration programme by identifying those immigrants who, because of insufficient

[214] Bundesministerium für Bildung und Forschung.
[215] Michalowski, 'Liberal States - Privatised Integration Policies?' 269.
[216] ibid 270.
[217] Thym 242.
[218] ibid 244.

language skills, are considered to be in need of an integration course", since their role is further concerned with the issue of residence permits.[219]

The relative flexibility of the conceptualisation of integration policy on a regional level means that the framing of integration as a vehicle for internal control is largely dependent on the regional authority. Some *Länder* frame integration much more in a socio-economic dimension, while others adopt the principle of *Leitkultur*, which is the principle that German culture should always be the dominant culture in Germany, and frame integration in a more restrictive fashion.

A particular approach to integration in Germany is the creation of the so-called *3+2 Regel*, the 3+2 rule, meaning that the start of a three year apprenticeship guarantees the acquisition of a residence permit for the duration of the vocational training, as well as an additional two years for the possibility of acquiring employment in Germany.[220] Due to this rule it is possible to switch the grounds for residing in Germany from a humanitarian to an economic ground, which after successful integration grants the migrant the right to stay in Germany.[221] The approach of the German government encourages the private sector to provide vocational training to refugees as early as possible, as it gives a sense of stability and security. This addresses the most problematic aspect of vocational training: securing "enough internship and apprenticeship places in the private sector", which is an essential element in the German dual-system of vocational training.[222] Authors have criticised this approach, as it blurs the already vague line between integration and immigration even further. [223]

[219] Michalowski, 'Liberal States - Privatised Integration Policies?' 267.
[220] Martín and others 70.
[221] Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG).
[222] Maurice Crul and others, 'No Lost Generation? Education for Refugee Children. A Comparison between Sweden, Germany, the Netherlands and Turkey' in Rainer Bauböck and Milena Tripkovic (eds), *The Integration of Migrants and Refugees: An EUI Forum on Migration, Citizenship and Demography* (European University Institute 2017) 73.
[223] Thym 250.

4.1.3 Multi-level governance on integration in Germany

The German approach to integration can be seen as in between a top-down and bottom-up approach. Due to its federal nature and the relative absence of the central national government on the area of integration, different independent approaches to integration crystallised on the regional levels in the German *Länder*. Two factors lead to the national integration policy: the re-conceptualisation of Germany as a country of immigration coupled with the realisation that the fragmentation of integration was ineffective, as summed up in the report of the German Commission on Migration in 2001.[224] The result was a coherent policy that had to take into account not only the existing regional approaches, but also the regional competences. The core area of language acquisition was identified as in need of a central, national approach and its implementation transferred to the Federal Office for Migration and Refugees. Confident actors on the regional and local level kept existing or created new measures to support this centralised dimension. Regarding other federal competences, integration considerations were mainstreamed into the existing federal policies. [225]

The extensive coordination on the regional and local level in the creation of the national policy on integration was based on the acceptance that integration is a multi-level policy area. The relative independence of regional approaches to integration is particularly visible when contrasting the states of *Nordrhein-Westfalen* and *Bayern*. Their political history very much determines the approach taken by the regional authority. *Bayern*, with a regionalist tradition, "engages in a highly exclusionary, nativist rhetoric".[226] This lead them to endorse the principle of *Leitkultur*. Economic interests in *Bayern* have influenced their approach to spearhead education and labour-market integration in their policies.[227] *Nordrhein-Westfalen* on

[224] Michalowski, 'Liberal States - Privatised Integration Policies?' 264.
[225] Martín and others 70–71.
[226] Schmidtke and Zaslove 190.
[227] ibid.

the other hand has a strong socialist tradition in their political history and is the host state of the largest population of migrants in Germany.[228] As such, it has long lead its own integration policy and created a horizontal exchange through the establishment of a conference of integration ministers.[229] In *Nordrhein-Westfalen* the political rhetoric was found to be "strongly shaped by pragmatic concerns resulting primarily from day-today issues emanating from community concerns and a long-term strategy to perceive newcomers as an asset for the region's economic future."[230] The policy approach to integration is largely framed in a socio-economic dimension. This shows the clear absence of hierarchical relationships on the regional and national level, where instead the federal government relies on coordination and horizontal exchange to develop a multi-level approach to integration.

Municipalities are in direct contact with migrants and refugees. The National Integration Plan of 2007 incorporates municipalities' input in the development of a national integration policy, which is designed to not only shift competences regarding integration to regions, but also local actors.[231] In combination with the federal agencies for employment, they are responsible for the implementation of employment policies and have argued for pragmatic and unconventional measures to enhance the chance of refugees to be integrated into the labour market. [232] Similar to the *Länder*, the municipalities have engaged in *Selbstverpflichtung*, the taking up of responsibilities, regarding integration.[233] Their input is not limited to the local dimensions of integration and working papers of the *Deutscher Städte- und Gemeindebund*, but they frequently contribute to national and international dimensions of refugee policy.[234] While recognising the great responsibility of local policy-making and implementation, German municipalities emphasise the need for a holistic approach, which is

[228] ibid 191.
[229] ibid 192.
[230] ibid 193.
[231] Schmidtke 85.
[232] Martín and others 70–71.
[233] Bundesregierung, 'Der Nationale Integrationsplan: Neue Wege - Neue Chancen' 31.
[234] Deutscher Städte- und Gemeindebund, 'Maßnahmenkatalog Zur Flüchtlingspolitik' (2017).

dependent on the coordination support of measures on different governance levels.[235]

Many of the projects are developed and partially financed by the European Social Fund, such as the previously mentioned "*Integration durch Qualifizierung*". As such, the EU plays a reoccurring role in the development of German integration policy.

A multi-level governance analysis of the integration policy-making in the Germany shows an increasing coordination of regional and local competences, as well as the centralisation of the perceived main pillars of integration, language acquisition and employment, at the national level. In general, a Type II form of multi-level governance is established, task-specific collaboration between different levels are very pronounced and exist in often intersecting legal spaces. A complete overview of the different measures, instruments and organisations for the integration of refugees is too extensive for this thesis. The coordination of this type of multi-level governance is the main concern of all levels of government. Exempt from this form of multi-level governance are the core aspects of integration. Through federal programmes, language acquisition and mainstream employment strategies are organised in a hierarchical fashion.

4.2 The Netherlands

4.2.1 National integration policy

Within days of Merkel's press conference, Prime Minister Rutte of the Netherlands spoke to the press about the refugee crisis.[236] Rutte was relatively quiet about refugee integration, instead focusing on the European

[235] ibid 3.
[236] Rijksoverheid, 'Persconferentie Na Ministerraad 4 September 2015' (2015) <https://www.rijksoverheid.nl/regering/inhoud/bewindspersonen/mark-rutte/documenten/mediateksten/2015/09/04/persconferentie-na-ministerraad-4-september-2015> accessed 8 June 2017.

aspect and limiting the proliferation of refugees in Europe and by extension the Netherlands. In this context he stated: "What should be done nationally and what should be done on the European level?"[237] This absence of discussing integration is striking in comparison to Merkel's call to action. It is particularly noteworthy as the Netherlands is typically seen as progressive regarding integration.

The Netherlands was an early adopter of a national integration policy, starting in the late seventies.[238] The Dutch model for integration has been based on the multicultural model and was one of the first of such in Europe.[239] However, in recent years Dutch policy is said to have made an "assimilationist turn".[240] The peculiar trait of the Dutch model is rooted in, or at least influenced by, its history of pillarisation, *verzuiling*.[241] This pillarisation meant an institutionalised separation of society based on religious and political grounds, combined with a certain amount of tolerance and consensus building. Initial integration policy was not conceptualised as integrating but rather emancipating migrants.

The Netherlands did not regard itself as a country of immigration until 1978.[242] The categories of immigrants to the Netherlands can be largely divided into three groups, excluding intra-Union immigration.[243] The first category is that of immigrants from the ex-colonies of the Netherlands: the Dutch Antilles, Indonesia and Surinam. The second category is that of labour migrants and later their families, similar to those in Germany and

---

[237] Rijksoverheid, 'Persconferentie Na Ministerraad 18 September 2015' (2015) <https://www.rijksoverheid.nl/regering/inhoud/bewindspersonen/mark-rutte/documenten/mediateksten/2015/09/18/persconferentie-na-ministerraad-18-september-2015> accessed 9 June 2017, translated by author.
[238] Verbeek, Entzinger and Scholten 213; Scholten, *Framing Immigrant Integration: Dutch Research-Policy Dialogues in Comparative Perspective* 13.
[239] Christophe Bertossi, Jan Willem Duyvendak and Peter Scholten, 'The Coproduction of National Models of Integration: A View from France and the Netherlands' in Peter Scholten and others (eds), *Integrating Immigrants in Europe: Research-Policy Dialogues* (Springer 2015) 63.
[240]
[241] ibid 64–65.
[242] Scholten, *Framing Immigrant Integration: Dutch Research-Policy Dialogues in Comparative Perspective* 69–71.
[243] ibid 17.

other West-European countries. The last category is that of refugees and asylum seekers.

Since the nineteen-eighties the Netherlands recognised that migrants would permanently stay in the country and developed their policies regarding minorities based on this assumption. Assimilation was specifically rejected in favour of a multi-ethnic and multi-cultural society.[244] The Dutch national government prioritised an active local integration policy on the municipality level.[245] In this phase of Dutch integration policy special attention was given to the different minorities and their emancipation. Only in the nineties did integration become a concept. This was closely connected to the realisation that immigration would continue and minority groups would change and grow.[246] Immigrants were now to be regarded as citizens first and foremost and the integration policy was meant to integrate that citizenry, and therefore the policy was universalist in nature. The focus was mostly on the socio-economic situation of these citizens. During this period, the Dutch were the first to introduce and establish civic integration courses.[247] The law envisaged an assessment with regards to the extent to which the migrant was in danger of having socio-economic disadvantages.[248] In 2003 the new integration policy, *Nieuwe Stijl*, new style, was introduced. This integration policy marked a pivot from the universalist thinking of integration to one of assimilation.[249] The focus in this period changed to that of culture, norms and values. The change to the Civic Integration Act (*wet inburgering*) is indicative of this, as it introduces a mandatory civic integration examination. A migrant is obliged to pass this exam, with a language and a

[244] ibid 72.
[245] Rinus Penninx, 'European Cities in Search of Knowledge for Their Integration Policies' in Peter Scholten and others (eds), *Integrating Immigrants in Europe: Research-Policy Dialogues* (Springer 2015) 101.
[246] Scholten, *Framing Immigrant Integration: Dutch Research-Policy Dialogues in Comparative Perspective* 74–75.
[247] Sara Wallace Goodman, 'Integration Requirements for Integration's Sake? Identifying, Categorising and Comparing Civic Integration Policies' (2010) 36 Journal of Ethnic and Migration Studies 753, 754.
[248] Wet inburgering nieuwkomers 1998 art. 4(2).
[249] Scholten, *Framing Immigrant Integration: Dutch Research-Policy Dialogues in Comparative Perspective* 77.

cultural component, as a condition for the residence permit. Municipalities are responsible for the conduct of integration and language courses.

Recent changes in policy have strengthened the responsibility of migrants themselves, who are to care for their own integration.[250] Furthermore, municipalities are not to offer courses but leave integration to the market. The Participation Act (*participatiewet*) regulates the general legal framework, which emphasises municipalities for socio-economic participation of all welfare recipients. A new change in the Civic Integration Act introduces a *participatieverklaring*, meaning a declaration of participation, which the migrant has to sign, indicating their willingness to integrate and conform to Dutch norms and values.

In the light of the evolution of Dutch integration policy, Rutte's lack of attention to integration is more understandable. The responsibility for integration lays solely with the refugee themselves. As part of the decentralisation of participation municipalities are to include refugees in the general schemes, but also have the freedom act independently. National and European attention is focused on the securitisation of borders as well distribution of refugees over the Member States. Return is often the pronounced context in which the government addresses the treatment of refugees.[251]

4.2.2 Analysis of competences

The previous section has outlined the national integration policy in the Netherlands. However, multi-level governance is strong in the integration policy field. In the following section, the national legal framework is analysed, specifically with regards to the competences on a national level and the responsibilities devolved to other levels of governance.

[250] Verbeek, Entzinger and Scholten 213.
[251] Ministerie van Veiligheid en Justitie, 'Kamerbrief van 8 September 2015: Europese Asielproblematiek' (2015) 682347.

4.2.2.1 Policy framework

In the following sub-sections, the legal competences and their implementation through policy-making on three governmental levels will be discussed.[252]

4.2.2.1.1 National level

The legal framework of the integration policies in the Netherlands is rather comprehensive. The most important legal instrument is the *Wet inburgering*, the civic integration law. The sole reason given to replace the previous legislation was its ineffectiveness due to a lack of obligations on the migrant. This reasoning was based on a study that gave a plethora of reasons for the ineffectiveness, but these other reasons were not discussed.[253] A reading of the *Wet inburgering* showcases the retreat of the national government from the integration policy area. Within three years refugees have to pass the civic integration exam, consisting of a language test, a cultural test, as well as a practical test and orientation on the labour market.[254] The law changing the the civic integration law, *Wijzigingswet Wet inburgering, enz. (versterking eigen verantwoordelijkheid inburgeringsplichtige)*, specifically establishes this as the own responsibility of the migrant. Thus the national government retreats from the provision of integration measures and courses and equally relieves the municipalities from these obligations in favour of making the refugee responsible for their own integration.

The so-called *participatieverklaringstraject*, the participation declaration route, is the re-involvement of municipalities in the initial reception of migrants to enable them to take charge of their own responsibilities regarding integration. Municipalities have communicated to the national

[252] As a very large body of policies exist only an examplary selection made by the author will be presented.
[253] Leonard Besselink, 'Integration and Immigration: The Vicissitudes of Dutch "Inburgering"' in Elspeth Guild, Kees Groenendijk and Sergio Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* (Ashgate 2009) 247.
[254] Martín and others 95.

government their need to establish this reception for migrants to actively enable this participation.[255] This formalisation of the initial reception of migrants gives the national government an opportunity to formulate coordinating policies. This coordination competence has not been used as of yet. The content of the participation route consists of the following:[256]

- Welcoming new arrivals
- Creating a bond between new arrivals and the municipality
- Introducing new arrivals in the Netherlands
- Increasing resistance of new arrivals against misuse and exploitation
- Introducing new arrivals to the relevant services for integration

Since 2013, it is no longer the municipality that has responsibility for the integration of migrants. This meant that as a consequence, the municipalities' social guidance would not be funded. To continue funding for measures the municipalities wanted to enact, the *Centraal Orgaan opvang Asielzoekers* is to provide that funding for refugees placed in the municipality. These social guidance measures are not obligatory for municipalities.[257] In the context of the higher pressure on municipalities as a result of the increase of asylum applications in 2015, this amount has been increased from € 1000 to € 2370 per refugee.[258] This does not mean the municipality has any responsibility for the integration of migrants, as only refugees are usually given some form of basic support.[259]

[255] Tweede Kamer Der Staten-Generaal, 'Integratie' (2013) Kamerstukken II 2013/14 32 824 Nr. 48 2.
[256] Tweede Kamer Der Staten-Generaal, 'Wijziging van de Wet Inburgering En Enkele Andere Wetten in Verband Met Het Toevoegen van Het Onderdeel Participatieverklaring Aan Het Inburgeringsexamen En de Wettelijke Vastlegging van de Maatschappelijke Begeleiding' (2016) Kamerstukken II 2016/17 34 584 Nr. 3 4.
[257] Tweede Kamer Der Staten-Generaal, 'Wijziging van de Wet Inburgering En Enkele Andere Wetten in Verband Met de Versterking van de Eigen Verantwoordelijkheid van de Inburgeringsplichtige' (2012) Kamerstukken II 2011/12 33 086 Nr. 46 2–3; Tweede Kamer Der Staten-Generaal, 'Wijziging van de Wet Inburgering En Enkele Andere Wetten in Verband Met Het Toevoegen van Het Onderdeel Participatieverklaring Aan Het Inburgeringsexamen En de Wettelijke Vastlegging van de Maatschappelijke Begeleiding' 3.
[258] Vereniging van Nederlandse Gemeenten and Rijksoverheid, 'Bestuursakkoord: Verhoogde Asielinstroom' (2015) 7.
[259] Martín and others 95.

The national and local policies tend to favour the implementation of general policies over specific integration policies.[260] This is recognisable in the national legal framework for integration. Adult refugees are allowed access to vocational training on the same footing as Dutch nationals.[261] The legal requirements to access vocational training are based largely on previous certifications and language requirements. Due to the lack of formal proof regarding their qualifications, the Dutch government has started credential evaluations based on information given by the refugee, to assess their qualification and enable access to the labour market access or vocational training.[262] Applying for these qualification procedures is an integral part of the orientation on the labour market aspect of the integration course.[263]
With regards to the financial dimension of vocational training, refugees have the same access to the Dutch loan system, *studiefinanciering*.[264] The refugee has to be between the age of 18 and 30 years and follow a fulltime vocational training accredited by the Dutch state. This financial loan for education is available for a maximum of four years. However, Adult education is marginalised, making access to vocational training for refugees over 30 years old very challenging.[265]

Specific national policy targeting migrants can be found in the availability of additional loans for the purpose of language courses with the aim of fulfilling integration obligations. Refugees are allowed to borrow a maximum of € 10.000 to provide for their own language acquisition.[266] This loan will be converted to a gift, provided that the exam is successfully completed in a timely fashion.[267] The loan will have to be repaid in full, should the refugee not be able to pass the exam.

---

[260] Jaco Dagevos and Malin Grundel, 'Biedt Het Concept Integratie Nog Perspectief?' (2013) 15.
[261] Wet educatie en beroepsonderwijs 2016 art. 8.1.1(1)(c); Vreemdelingenwet 2000 2015 art. 8(c)(d) jo. 28 jo. 33.
[262] Martín and others 96–97.
[263] ibid 97.
[264] Wet studiefinanciering 2000 2017 art. 2.2(1)(c); Besluit studiefinanciering 2000 2017 art. 3(1).
[265] Crul and others 73.
[266] Besluit inburgering 2016 art. 4.1a.
[267] ibid art. 4.13.

4.2.2.1.2 Regional level

The role of the regional governmental level in the Netherlands regarding the integration of refugees is limited. The 35 labour-market regions of the Netherlands organise so-called *leerwerkloketten*, education-work offices. These regional offices are a coordination effort by the municipalities, the national employment insurance agency *UWV*, educational institutes and employers. Some of these agencies have established refugee specific strategies.[268] Pilot projects have shown that regional coordination increases the efficiency of integration measures.[269] This coordination cannot be limited to referrals of refugees to the competent authority, but needs to incorporate the active involvement of all parties. Further findings show that the access to these regional coordination offices needs to be facilitated at a local level.

4.2.2.1.3 Local level

Guidance by the municipality regarding labour market integration follows the general scheme of unemployment.[270] In 2016, language requirements were introduced in the general legal scheme, particularly targeted at migrants, reducing assistance 20%, 40% and up to 100% in the case that language obligations are not met.[271] This national provision giving municipalities the opportunity to increase language acquisition follows a clear policy of negative sanctions. The detachment of language courses from municipalities limits the opportunities of said municipalities to stimulate language and vocational training.[272]

As discussed, refugees between the age of 18 and 30 years old are able to access vocational training following the general Dutch scheme. Older refugees that are in need of qualifications depend on the municipalities they are assigned to for this possibility. Some municipalities have started

[268] Sociaal-Economische Raad, 'Nieuwe Wegen Naar Een Meer Succesvolle Arbeidsmarktintegratie van Vluchtelingen' (2016) 54.
[269] SER 93
[270] Participatiewet 2017 art. 11(2).
[271] ibid art. 18b.
[272] Martín and others 99–100.

independent possibilities for education while upholding the right to social assistance.[273] The previously mentioned increase in reception funding by the *Centraal Orgaan opvang Asielzoekers* increases the opportunities for municipalities to enact policies aimed at refugees above 30 years. Several NGOs, such as *VluchtelingenWerk Nederland* and *Stichting voor Vluchteling-Studenten UAF* are working together with municipalities towards the realisation of such support policies aimed at language acquisition and vocational training. "However, actual support and services differ radically from municipality to municipality."[274] Municipalities have further worked together with employers to offer trainings and internships. The overall approach has been the targeting of highly-educated refugees, as this is in the interest of employers.[275] Since most refugees are low skilled and in need of language acquisition and initial qualifications, the overall effect of these initiatives on the refugee population as a whole can be called into question.

Since municipalities receive a wide discretion regarding their policies for integration of refugees, as well as the general labour market integration, it is not possible to discuss all policies and initiatives in the current research. An overall analysis of integration policies of Dutch municipalities has shown a wide divergence and even conflicting approaches to integration in the overall national policy.[276] Similarly, municipalities within the Netherlands have acted increasingly divergent.[277]

[273] ibid 96.
[274] ibid 100.
[275] ibid 104.
[276] Caelesta Poppelaars and Peter Scholten, 'Two Worlds Apart: The Divergence of National and Local Immigrant Integration Policies in the Netherlands' (2008) 40 Administration and Society 335, 18.
[277] Peter Scholten, 'The Multilevel Governance of Migrant Integration : A Multilevel Governance Perspective on Dutch Migrant Integration Policies' in Umut Korkut and others (eds), *The Discourses and Politics of Migration in Europe* (Palgrave Macmillan 2013) 166.

4.2.2.1.4 Own responsibility

As discussed, the integration of migrants has been firmly placed with the individual themselves. Instead of integration measures from the national government, the national integration policy now sets integration conditions. The fiscal responsibilities for the integration measures are equally those of the migrant. For migrants with little fiscal possibilities and all refugees a loan system is made available.

This transfer of responsibilities did not arise suddenly. Already in 1979 integration was seen as a two-sided process, considering the government's responsibilities together with the immigrant's duties.[278] This process of realising mutual acceptance and efforts is very much in line with the EU's understanding of integration. The view was that it is up to the migrant "to take responsibility for making use of the many facilities that our country offers to its new compatriots."[279] This transfer of responsibilities and duties has increased in the recent years. The entrance to the Dutch territory became dependent on integration conditions and, once within the border, additional conditions have to be met for access to welfare institutions. The acquisition of language and other skills were deemed the responsibility of the migrants.

In the present integration policy, this concept has completely shifted. Since it is the potential migrant's responsibility to conform to integration conditions, it was possible "to literally move integration policy to the borders of the Netherlands or beyond."[280] This means that the most extreme form of own-responsibility has been reached. Civic integration as legal requirements by the state is the only part of integration in the hands of the state. After that it is the migrants own responsibility to integrate into society.

[278] Ines Michalowski, 'Integration Programmes for Newcomers – a Dutch Model for Europe?' in Anita Böcker, Betty De Hart and Ines Michalowski (eds), *Migration and the Regulation of Social Integration* (Institut für Migrationsforschung und Interkulturelle Studien 2004) 180.
[279] ibid 182.
[280] ibid 186.

The above mentioned shift of responsibilities evolved hand-in-hand with the privatisation of integration opportunities, specifically in the field of language courses. The paradigm shift of responsibilities was accompanied with a second, concurrent shift: The negative evaluation of state-run integration measures.[281] This privatisation with the complete emphasis on the own responsibility of integration begs the question whether the withdrawal from accommodating language acquisition can be supported with regards to the equal treatment of migrants and non-migrants.[282] Language learning, a major prerequisite for access to all other integration measures, is of capital importance for migrants and their equal access.[283] As the Dutch have provided a model for other countries to emulate, authors have stated that "the slashing of the programmes and the maintenance and extension of integration requirements as a tool for immigration control raise questions about the future developments of such programmes within the EU."[284]

4.2.2.1.5 Coordination

The coordination, information exchange and transfer of responsibilities regarding refugee integration on the local and regional level have been deemed insufficient in the Netherlands.[285] Coordination and information exchange between central organisations (*Centraal Orgaan opvang Asielzoekers*), regional organisations (*UWV*) and local organisations (municipalities) is lacking and leads to an inefficient integration process.[286]

The pronunciation of the refugee's own responsibilities for the organisation of the different dimensions of integration stands in the way of parallel access to different integration measures, due to a lack of coordination.[287]

[281] Michalowski, 'Liberal States - Privatised Integration Policies?' 273.
[282] ibid 274–275.
[283] ibid 261.
[284] Michalowski, 'Integration Programmes for Newcomers – a Dutch Model for Europe?' 175.
[285] Sociaal-Economische Raad 15.
[286] ibid 67–68.
[287] ibid 16.

Refugees belatedly start their integration and will focus on language acquisition at the expense of other integration dimensions.[288] The lack of responsibility on a governmental level further leads to a lack of combined measures, incorporating integration, education and employment.[289] 75% of municipalities have therefore argued to reacquire the responsibility and connected financial resources to coordinate integration measures.

A recent study has found that access to education and vocational training is hindered by a lack of coordination between integration and education, leading to, for example, municipality policies that prevent refugees from accessing education while receiving social benefits.[290] The need for regional coordination offices has been established through pilot projects.[291] The transfer of responsibilities to Dutch municipalities to increase their ability to establish coordinated, holistic policies for integration has been advocated for by the Dutch *Sociaal-Economische Raad*, the Dutch economic and social advisory council to the government.[292]

In an effort to increase the coordination of integration measures in the Netherlands, the Dutch government established the *Taskforce Werk en Integratie Vluchtelingen*, the Taskforce Work and Integration Refugees. This taskforce consists of Dutch municipalities, employer organisations, unions, the *Centraal Orgaan opvang Asielzoekers*, refugee organisations and many more organisations concerned with the integration of refugees. This is a valuable platform for information exchange and dialogue, however, coordination of local integration measures seem to be absent in their achievements.[293] The Dutch government has further established a "common integration agenda," which authors have identified as inadequate mainly due to the lack of central funding.[294]

[288] ibid 64.
[289] ibid 65.
[290] ibid 73–75.
[291] ibid 93.
[292] ibid 98–99.
[293] Ministerie van Sociale Zaken en Werkgelegenheid, 'Kamerbrief van 27 Oktober 2016: Voortgang Integratie En Participatie Verhoogde Asielinstroom' (2016) 3–4.
[294] Scholten and Penninx 101.

4.2.2.2 Framing of integration

While integration was traditionally framed as a social policy in the Netherlands, this has changed over time. The first shift came when actual participation in the Dutch society was seen as a requirement for naturalisation.[295] This shifted the framing from a purely social policy into the area of nationality law, an area of law at the very heart of every state's priority. It was further held that integration was only possible in combination with restrictive admission policies.[296] This re-framing of integration in combination with restrictive immigration policies was later conflated when integration was used as a restrictive policy itself.[297] Integration conditions were set on migrants before coming to the Netherlands, such as language requirements.[298] Within the Netherlands stay was conditional on the fulfilment of further integration conditions.[299] Thus integration was transformed into an immigration policy and forms "mechanisms of control."[300] The effectiveness was seen in a sharp drop of applications.[301] The later decision to raise the fail threshold without changing the content of the integration test "reinforces the conclusion that *inburgering* is not a social measure but a migration law instrument with as a consequence and principal effect in practice the exclusion of aliens."[302]

The introduction of integration conditions had a considerable impact on migration flows. Similarly, the applications for naturalisation dropped considerably when integration and language tests were introduced to that process.[303] This approach to integration relied on the belief that the making of laws, obligations and integration conditions would resolve a social

[295] Michalowski, 'Integration Programmes for Newcomers – a Dutch Model for Europe?' 180.
[296] ibid 181.
[297] ibid 177.
[298] ibid 185.
[299] ibid.
[300] ibid 186.
[301] Michalowski, 'Liberal States - Privatised Integration Policies?' 268.
[302] Besselink 246–247.
[303] Ricky Van Oers, 'Justifying Citizenship Tests in the Netherlands and the UK' in Elspeth Guild, Kees Groenendijk and Sergio Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* (Ashgate 2009) 126.

problem, without actually making social policy. These laws were further made "in the field of migration law."[304]

4.2.2.2.1 Integratie and inburgering

An important linguistic differentiation in the Dutch approach to integration is the split of *integratie*, integration, and *inburgering*, civic integration. While there is no real English equivalent of *inburgeren*, as civic integration seems to insinuate a sub-set of integration, in Dutch the linguistic difference is quite remarkable. The word *inburgering* clearly refers to and connects in *inburgeren* with citizenship. While initially *integratie* and *inburgering* had been used as synonyms, their meaning diverged over time and *integratie* in Dutch discourse refers to social integration, while *inburgering* refers to "acquiring a citizen's qualities."[305] The concept of *inburgering* has been identified as not only being measures to integrate immigrants, but as part of a restrictive migration policy.[306] This places the national Dutch approach of *inburgering* in an exclusionary context, "an approach in which the solution is found in exclusion, in order to prevent social problems. Exclusion is precisely what the civic integration measures have so far strongly contributed to, but without making any contribution to solving existing problems."[307]

4.2.3 Multi-level governance on integration in the Netherlands

The Netherlands was one of the first European states to coordinate their integration policies on a national level. For a long time, national policies were strongly inspired by "a strongly centralist orientation, though for

[304] Besselink 245.
[305] Michalowski, 'Integration Programmes for Newcomers – a Dutch Model for Europe?' 187.
[306] Besselink 241.
[307] ibid 257.

different reasons in different periods."[308] Municipalities have always been more than just implementing actors, since 2007-2008 a "retreat from centralism takes place. However, this time without a clearer orientation at local governments, but rather a retrenchment from central government activities in the area of migrant integration."[309] As the national government has largely distanced itself from integration policy, current municipalities' integration policies are very fragmented. The retreat of the government from the field of integration has not corresponded with the action of especially local actors. Many existing instruments were simply kept in place.[310] The involvement of other actors, such as civil society, has increased as well. Previously not very active in welfare policies, civil society is increasingly involved in the making of integration policies.[311]

An analysis of Rotterdam and Amsterdam has not only shown divergence on specific implementation methods, but also that the focus on framing integration in either a socio-economic or socio-cultural paradigm drove the approach to integration between municipalities further apart.[312] As a result, the effectiveness of the Dutch multi-level governance approach in this area has been questioned.[313] In retrospect, it can be identified that in the 1990s an effective multi-level governance framework under national coordination enabled "a more horizontal relationship between different governments rather than a hierarchical relationship between government levels."[314]

A multi-level governance analysis of the integration policy-making in the Netherlands shows an increasing pronunciation of competences on the local

[308] Peter Scholten, 'Agenda Dynamics and the Multi-Level Governance of Intractable Policy Controversies: The Case of Migrant Integration Policies in the Netherlands' (2013) 46 Policy Sciences 217, 226.
[309] ibid.
[310] María Bruquetas-Callejo and others, 'The Case of the Netherlands' in Giovanna Zincone, Rinus Penninx and Maren Borkert (eds), *Migration Policymaking in Europe: The Dynamics of Actors in Contexts in Past and Present* (Amsterdam University Press 2011) 150.
[311] ibid.
[312] Scholten, 'Agenda Dynamics and the Multi-Level Governance of Intractable Policy Controversies: The Case of Migrant Integration Policies in the Netherlands' 232.
[313] ibid 233.
[314] ibid 235.

level, with only marginal coordination policies and targets on the national level. This is a clear form of Type I multi-level governance. The specific privatisation of language courses and the emphasis of the refugee's own responsibility incorporates NGOs and employers heavily in some municipalities. Since there is no clear vertical structure and it is based on voluntary cooperation this is a form of Type II multi-level governance. All in all, the national approach to multi-level governance seems to retreat from vertical structures of governance in favour of these Type II horizontal structures of governance, which are more pronounced. The coordination of this form of governance is further constrained, in favour of the refugee's own responsibility, to choose between the intersecting memberships of organisation. This is partially relativised by local efforts to coordinate the different projects and organisations with their own measures of integration.

4.3 Partial conclusion

4.3.1 Commonalities of the German and the Dutch approach

The previous analysis of the German and the Dutch approaches to integration has shown that this specific policy area is composed of multi-level policy-making. A large influencing factor is the framing of the concept of integration in either a social, citizenship or immigration dimensions. Both countries seem to try to balance these dimensions. In Germany this balance is additionally restrained by the transfer of competences to different governmental levels in the federal structure of the state. This leads to different conceptualisations of integration, such as the social and immigration conceptualisation on the federal level with pronounced emphasis on the employment of refugees. On the regional level the conceptualisations can diverge from a very socio-economic to a very nativist approach. The Netherlands have started to focus on the immigration dimension of integration exclusively through a retreat from the area of

integration and the introduction of integration obligations, which are the own responsibility of the refugee. This did not mean that integration ceased to be a social issue and local authorities have continued to conceptualise integration in the socio-economic dimension. The central authorities in both Germany and the Netherlands have favoured the mainstreaming of integration measures in general social provisions.

Rooted in different historical developments, Germany had a fragmented set of integration policies without any national coordination and the Netherlands traditionally had a centrally organised integration policy, which is now decentralised. As a result, both countries have faced a divergence of integration policies and consequently opportunities for refugees. In both countries, the need for coordination of a holistic approach that cuts through governmental levels and policy areas is recognised. While the privatisation of certain aspects of integration policies and the reliance on refugee organisations makes coordination with non-governmental parties especially salient in the Netherlands, this need also exists in Germany, where "privatisation in the field of immigrant integration has not become a real issue."[315]

Finally, the importance of local policy-making and implantation is stated as particularly important in both conceptualisations of integration. Officials from both countries have recognised the primary responsibility to adapt to the special need of refugees in their place of residence, as well as the need to adapt that policy to the local situation and society. This is not limited to municipalities, but also local civil-society organisations and local branches of national agencies.

[315] Michalowski, 'Liberal States - Privatised Integration Policies?' 273.

4.3.2 Localising integration

As previously discussed, human rights have increasingly been conceptualised from the "bottom-up."[316] This localisation of human rights increases effectiveness, as it addresses community specific problems and adapts to the local circumstances.[317] Furthermore, it holds increasing legitimacy, as it is "undertaken in a genuinely participatory manner – not clandestinely or through a top-down application of expert knowledge, as Koskenniemi contends has become prevalent in European political culture."[318]

This localisation has been also been recognised as salient in migration studies. It has been asserted "that migrant integration takes place at the local level has entered current political and scientific discourses on integration."[319] The local level is caught in a double bind of being responsible for the adaptive implementation of national integration policies, as well as the responsibility of representing the interest of the local community.[320] As such, their role has been increasingly the target of studies concerning integration in migration studies.

The conceptualisation of integration in migration studies as particularly salient comes from the sociological perspective, which indicates that "at the local level that migrants meet others, find a job, have children, et cetera. It is also at this level that negative as well as positive aspects of diversity are experienced most concretely."[321] Another argument for the localisation of

[316] De Feyter and others.
[317] George Ulrich, 'Epilogue: Widening the Perspective on the Local Relevance of Human Rights' in Koen De Feyter and others (eds), *The Local Relevance of Human Rights* (Cambridge University Press) 358.
[318] ibid.
[319] Maren Borkert and Tiziana Caponio, 'Introduction' in Tiziana Caponio and Maren Borkert (eds), *The Local Dimension of Migration Policymaking* (Amsterdam University Press 2010) 9.
[320] Giovanna Zincone and Tiziana Caponio, 'The Multilevel Governance of Migration' in Rinus Penninx, Maria Berger and Karen Kraal (eds), *The Dynamics of International Migration and Settlement in Europe: A State of the Art* (Amsterdam University Press 2006) 279–280.
[321] Scholten and Penninx 98.

integration policy is the fact that migrants tend to identify more with their local city or region than with the country they live in.[322] This connection of integration to the local dimension has given rise to two explanatory theses: the local pragmatism thesis and the localist thesis.[323] The local pragmatism thesis argues that the pragmatic nature of local policies is better equipped to deal with diversity, while the localist thesis argues that the differences of certain municipalities and other local spaces automatically give rise to a unique policy framework for which the local level is better equipped.[324]

National integration strategies and policies have affirmed this prioritarisation of the local policy-making for the integration of migrants and refugees.

In Germany, it was recognised that integration is decided on the local level:

> "*Die Integration der zugewanderten Bevölkerung entscheidet sich in den Städten und Gemeinden. Deshalb ist das Themenfeld „Integration vor Ort" von besonderer Bedeutung für die Integrationspolitik.* "[325]

In the Netherlands the expression of integration was recognised *per definition* on the local level:

> "*Aangezien de problematiek per definitie op het lokale niveau tot uiting komt, zijn samenwerking en goede communicatie tussen rijk, provincies en gemeenten cruciaal.*"[326]

[322] ibid 98–99.
[323] Henrik Emilsson, 'A National Turn of Local Integration Policy: Multi-Level Governance Dynamics in Denmark and Sweden' (2015) 3 Comparative Migration Studies 2.
[324] ibid.
[325] Bundesregierung, 'Nationaler Aktionsplan Integration: Zusammenhalt Stärken - Teilhabe Verwirklichen' (2012) 15.
[326] Vereniging van Nederlandse Gemeenten and Rijksoverheid 2.

4.3.3 Mainstreaming integration policy

Recent changes of the integration policy paradigm in Europe have meant that previously specific integration policy has been mainstreamed into general social policy.[327] The reason for this change has been identified as an increasingly heterogeneous immigrant population throughout Europe, which must be integrated in "increasingly diverse societies."[328] A sense of failure regarding previous integration approaches, the need for more flexibility and austerity, as well as, for this study less important, an increasing number of 2nd and 3rd generation immigrants have contributed to the mainstreaming of integration policy. [329]

Researchers have found that this mainstreaming presents the following opportunity "to address increasingly diverse needs".[330]

> "Mainstreaming implies a more sustainable approach to integration by embedding priorities within a range of policies, and allows policymakers to respond to concrete needs rather than birth characteristics. Through mainstreaming, the final goal is to create public services that are attuned to the needs of the whole population, regardless of background."[331]

Other advantages are the reduction of additional stigmatisation of refugees and other immigrant groups within public discourse and the corresponding reduction in community conflicts.[332] However, as can also be observed in the previous examples of Germany and the Netherlands, the risk is high that

[327] Peter Scholten, Elizabeth Collett and Milica Petrovic, 'Mainstreaming Migrant Integration? A Critical Analysis of a New Trend in Integration Governance' (2017) 83 International Review of Administrative Sciences 283.
[328] ibid 4.
[329] ibid 4–6.
[330] ibid 2.
[331] ibid.
[332] ibid 18.

"by dispersing responsibility to a multitude of actors, policies may become fragmented, poorly coordinated, and unevenly implemented."[333]

The researchers have defined the different types of mainstreaming, which a central (national or European) authority can adopt.[334] Deliberate mainstreaming in discourse is the formulation of nation-wide, or European-wide integration strategies, which should be incorporated in the policy-making in all dimensions of integration. The deliberate mainstreaming of governance is the establishment of coordination mechanisms, vertical as well as horizontal, to coordinate the different levels of policy-makers. Finally, a deliberate mainstreaming of policy is the actual reform or adoption of new policy instruments that align their priorities with those formulated in the integration strategies. These forms of mainstreaming do not need to be explicit, but have de facto been observed in several countries.[335]

Types of mainstreaming:[336]

Type of mainstreaming	**Deliberate**	**De facto**
Discourse	Explicit integration strategies	A broader strategy on inclusion that includes integration
Governance	Coordination mechanisms	Coordination through existing government structures
Policy	Reform or adapt policies on the basis of integration priorities	Reform or adapt policies in response to a need within a specific community

[333] ibid 2.
[334] ibid 12.
[335] ibid.
[336] This table is based on: ibid.

Finally, a number of *best practices* have been formulated to enable the mainstreaming of integration policy, while evading the negative possibilities.[337] The most important findings of these *best practices* include: the need for a pluralistic interpretation of mainstreaming, clear objectives, cooperation between policy-makers, collaboration and accountability.[338] Most salient is the recognition that "shared responsibility is at the heart of the mainstreaming process but requires exceptional cooperation. This may require institutionalised frameworks for collaboration, and closer partnerships with nongovernmental actors."[339]

4.3.4 Effective central integration policy

This chapter set out to answer the following sub-question through a multi-level governance comparison of integration policy:

[3] What are the most effective competences for the central authority in a multi-level governance approach?

The analysis of the integration policy of Germany and the Netherlands has crystallised three main aspects of an effective integration policy: the importance and opportunities of localisation, mainstreaming and coordination.

A central authority, on the national or European level, should give room for the local level of policy-making to not only implement, but formulate tailored integration policies. An effective competence for the central authority is therefore not the harmonisation and rigid dictation of integration policies. The conceptualisation of strategies and priorities should be done at

[337] ibid 2–3.
[338] ibid 2.
[339] ibid.

that central level. These priorities should be mainstreamed in the general policy-framework on the central level for an effective integration policy. This is particularly relevant since integration is multi-facetted and touches upon a plethora of social, economic and political policy areas which are legislated and decided centrally. To prevent fragmentation and ensure consistency and quality of regional and local integration policy, the coordination of these policies, as well as the facilitation of information exchange and best practices, should fall within the competences of the central authority. It is of utmost importance that this coordination between different policy areas, different levels of policy-makers and civil society is organised to prevent redundancies and implementation gaps between policy actors and areas.

Analysis of the EU integration policy

Synthesising the positive analysis of the law with the policy analysis in the previous chapter, this chapter seeks to find a normative answer to the following question:

[1] In what way does the formulation of article 79(4) TFEU, transferring competences regarding integration to the EU, influence the effectiveness of European integration efforts?

For this purpose, the following sections will in turn analyse the EU's integration policy framework, which competences it has to enact that framework and, finally, whether that fits the previously established effective competences for a central policy-making authority. Thus we return to the EU legal acquis to place our findings in the existing legal framework.

5.1 EU integration policy

5.1.1 The evolution of a common integration policy

The starting point of an EU policy is the transfer of competence to the EU. This transfer of competence with regards to immigration goes back to the Amsterdam Treaty of 1997, which incorporated the Schengen treaty in primary EU legislation. The treatment of TCNs was also included, marking the beginnings of early EU policy on integration.[340] The Tampere programme interpreted this need and stated: "A common approach must

[340] Penninx 106.

also be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union."[341]

While the initial focus was largely on partnership with countries of origin, the establishment of the first phase of the CEAS, as well as management of migration flows, the commission soon focused on a more comprehensive understanding of integration.[342] A level playing field between Member States regarding the topic of integration was to improve the effectiveness of such policies.[343] The Commission identified the request of the Council to be "a more vigorous integration policy" which "should aim at granting legally resident third country nationals rights and obligations comparable to those of EU citizens."[344] The contemporary legal framework on integration stems from that integration policy. It was focused on anti-discrimination, family reunification and freedom of movement. However, the Commission in 2003 identified the need for a "holistic approach".[345] To this end, the Commission defined integration as "a two way process" and highlighted the sociological reality of the integration process as identified in chapter 2.[346] The holistic interpretation widened the understanding of integration to encompass more than just equality and employment and extend integration to participation "in economic, social, cultural and civil life" as well as "the integration process, without having to relinquish their own identity."[347] The holistic approach further acknowledged the need for integration measures for a wide variety of TCNs. Especially refugees, those that crossed the border of the EU irregularly or were resettled, as well as persons enjoying subsidiary and temporary protection under EU law should be included in integration measures.[348] At the same time it was acknowledged that integration

[341] European Council, 'Presidency Conclusions of 15 and 16 October 1999' para 4.
[342] European Commission, 'Communication from the Commission: On Immigration, Integration and Employment' (2003) COM (2003) 336 final 3; European Council, 'Presidency Conclusions of 15 and 16 October 1999'.
[343] European Commission, 'Communication from the Commission: On Immigration, Integration and Employment' 4.
[344] ibid.
[345] ibid 17.
[346] ibid.
[347] ibid 17–18.
[348] ibid 18.

measures for asylum seekers are part of the CEAS.[349] This new, wide definition and scope of integration by the Commission meant that EU policy was to be multi-dimensional and thus marked the start of a coherent integration policy. It also opened a discussion regarding actors in the integration strategy, which were identified as "all relevant actors from local to regional, national, and EU authorities and including countries of origin."[350] This lead to the establishment of Common Basic Principles for integration by the Council.[351] Policy-making regarding integration was still done on an intergovernmental basis, while immigration had moved to the communitarian basis of policy-making.[352]

Integration of TCN took an important place in The Hague Programme in 2004. It was recognised that international migration to Europe would continue and thus a "comprehensive approach, involving all stages of migration, with respect to the root causes of migration, entry and admission policies and integration and return policies is needed."[353] It further stressed the importance of coordination and strong relations between the authorities responsible for migration and those responsible within other relevant policy fields.[354]

> "Stability and cohesion within our societies benefit from the successful integration of legally resident third-country nationals and their descendants. To achieve this objective, it is essential to develop effective policies, and to prevent the isolation of certain groups. A comprehensive approach involving stakeholders at the local, regional, national, and EU level is therefore essential."[355]

[349] ibid footnote 52.
[350] ibid 23.
[351] Council of the European Union, 'Press Release: Justice and Home Affairs' (2004) 14615/04 (Presse 321) 16–24.
[352] Penninx 106–107.
[353] European Council, 'Presidency Conclusions of 4 and 5 November 2004' (2004) OJ C53/1 16.
[354] ibid 17.
[355] ibid 19.

This underlines the importance that the European Council placed on a comprehensive multi-level approach in the area of integration, including a role for EU institutions. Authors have argued that integration was considered "a key strategic priority for the Area of Freedom, Security and Justice (AFSJ) by The Hague Programme."[356] However, integration was deemed too closely intertwined with national interests, as immigration and integration are closely intertwined subjects in national legal frameworks. This has not always been the case, as integration "has traditionally resided in the context of nationality law."[357] There has been a transformation in the way integration policies are utilised. Instead of regulating nationality law, it is being transformed to regulating immigration law.[358] The result is a schism of immigration and integration, one dominated on the EU level as European immigration law and the other the EU Framework on Integration.

Due to the categorisation of integration policy as a national interest, which should be left to the sovereignty of the national level of government, and the importance of European collaboration in this field the Commission proposed the introduction of the less intrusive Open Method of Coordination in the area of integration:[359]

> "The development of appropriate integration strategies is the responsibility of Member States with authorities and other actors at the local, and municipal level having a very important role to play. As the proportion of non-nationals in the population of Member States develops and with the prospect of further increases, coordinated and sustained efforts to ensure the social integration of migrants are more than ever necessary."[360]

[356] Carrera 7.
[357] ibid 424.
[358] ibid 425.
[359] Commission of the European Communities, 'Communication from the Commission to the Council and the European Parliament: On an Open Method of Coordination for the Community Immigration Policy' (2001) COM(2001)387 final.
[360] ibid 11.

However, this communication was ignored by the Council and has not found its way into EU policy.[361] Instead, the EU Framework on Integration was developed.

5.1.2 The EU Framework on Integration

The EU Framework on Integration consists of soft law instruments, such as the Common Basic Principles for Immigration integration policy, several Handbooks on Integration for policy-makers and practitioners, Annual Reports on Migration and Integration, the setting up of the National Contact Points on Integration, the European Integration Forum, an Integration Website and a European Integration Fund.[362]

The Common Basic Principles formed the foundations of the EU Framework on Integration. They are:[363]

1. 'Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States'
2. 'Integration implies respect for the basic values of the European Union'
3. 'Employment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible'
4. 'Basic knowledge of the host society's language, history, and institutions is indispensable to integration; enabling immigrants to acquire this basic knowledge is essential to successful integration'
5. 'Efforts in education are critical to preparing immigrants, and particularly their descendants, to be more successful and more active participants in society'

[361] Carrera 58.
[362] ibid 7.
[363] Justice and Home Affairs Council, 'Common Basic Principles EU Integration' (2004) <http://ec.europa.eu/ewsi/en/EU_actions_integration.cfm>.

6. ‘Access for immigrants to institutions, as well as to public and private goods and services, on a basis equal to national citizens and in a non-discriminatory way is a critical foundation for better integration’
7. ‘Frequent interaction between immigrants and Member State citizens is a fundamental mechanism for integration. Shared forums, intercultural dialogue, education about immigrants and immigrant cultures, and stimulating living conditions in urban environments enhance the interactions between immigrants and Member State citizens’
8. ‘The practice of diverse cultures and religions is guaranteed under the Charter of Fundamental Rights and must be safeguarded, unless practices conflict with other inviolable European rights or with national law’
9. ‘The participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration’
10. ‘Mainstreaming integration policies and measures in all relevant policy portfolios and levels of government and public services is an important consideration in public policy formation and implementation.’
11. ‘Developing clear goals, indicators and evaluation mechanisms are necessary to adjust policy, evaluate progress on integration and to make the exchange of information more effective.’

These principles have constituted a common thread throughout the consequent strategies and agendas, the 2005 Common Agenda for Integration,[364] the 2011 European Agenda for the Integration of Third-

[364] Commission of the European Communities, ‘A Common Agenda for Integration: Framework for the Integration of Third-Country Nationals in the European Union’ (2005) COM(2005) 389 final.

Country Nationals,[365] as well as the Action Plan on the integration of third country nationals.[366]

National Contact Points on Integration are "at the crossroads between 'the up' (European institutions) and 'the down' (Member States - national, regional and local realms)."[367] The coordinating method of these is neither bottom-up, nor top-down. In 2016, the coordination of the European integration policies has received renewed attention and the Council called upon the Commission to ensure "better coordination and exchanges between national and EU level and between existing EU expert groups and fora working on topics related to integration"[368] The result of this is the establishment of the European Integration Network, which replaces the National Contact Points on Integration. This increases the coordinating capacity of the EU Framework on Integration. According to the Commission, the reasoning behind this was:

> "Immigrant integration is a political priority that has to be pursued not only across different policy areas but also at different levels (EU, national, regional and local) and by involving non-governmental stakeholders (civil society organisations, including diasporas and migrant communities, as well as faith-based organisations)."[369]

The EU has understood its competence to support Member States' integration policy mostly as a competence to enact specific measures to support Member States to integrate migrants. However, policy coordination is thought to be a tool to support integration as well.[370]

---

[365] European Commission, 'European Agenda for the Integration of Third-Country Nationals' (2011) COM(2011) 455 final.
[366] European Commission, 'Action Plan on the Integration of Third Country Nationals' (2016) COM(2016) 377 final.
[367] Carrera 115.
[368] Council of the European Union, 'Conclusions of the Council and the Representatives of the Governments of the Member States on the Integration of Third-Country Nationals Legally Residing in the EU' (2016) 15312/16 ANNEX 7.
[369] European Commission, 'Action Plan on the Integration of Third Country Nationals'.
[370] ibid.

This brings into question what such a supportive tool of policy coordination would entail. The Commission has stated that it "will support exchanges between Member States within the Network through targeted learning activities such as study visits, peer reviews, mutual assistance and peer learning workshops on specific aspects of integration."[371] The aim of these support measures, in the words of the Commission, is to "promote cooperation with national authorities and local and regional authorities, civil society organisations and other EU level networks of Member States in connected policy areas (employment, education, equality, etc.)."[372] This relativises the meaning of policy coordination, as the support of Member States to coordinate between themselves.

The EU Framework on Integration has been characterised as a quasi-Open Method of Coordination.[373] It is complementing the ordinary EU legislative framework, "*through other means.*"[374] This soft-law framework, heavily based on knowledge sharing, has been supplemented by incentive measures based on the legal competences of the EU in the area of integration.

The single incentive measure adopted by the EU is the comprehensive Asylum, Migration and Integration Fund.[375] The measures that are supported by the EU are integration measures, as well as practical cooperation and capacity-building measures.[376] These are the only legal instruments adopted on the basis of article 79(4) TFEU and constitute the complete legal implementation of the EU's competences regarding the support of national integration policies. As discussed in chapter 3 of this thesis, these incentive measures might constitute a "soft" harmonisation of national integration policies in EU Member States, as national measures will have to comply with the Common Basic Principles in order to qualify for

[371] ibid 14.
[372] ibid.
[373] Carrera 141.
[374] ibid 112.
[375] European Parliament and Council of the European Union, 'Regulation 2014/514/EU of the European Parliament and of the Council' (2014) L 150/112.
[376] European Parliament and Council of the European Union, 'Regulation 2014/516/EU of the European Parliament and of the Council' (2014) L 150/168 art. 9-10.

financial assistance.[377] In other areas integration has been mainstreamed. Particularly relevant for the assessment in the area of language courses and vocational training are the range of measures for language acquisition, particularly through mainstreaming of integration in the ERASMUS+ programme,[378] and measures pertaining to vocational training through the Employment and Social Innovation, the European Social Fund and the Fund for European Aid to the Most Deprived.[379]

The EU recognises that article 79(4) TFEU gives the Union "an important role in supporting, stimulating and coordinating Member States' actions and policies in this area."[380] The coordination of integration policy through these financial incentives is very passive, as it is reliant on the existence or establishment of integration measures and does not actively encourage the creation of such measures. Specifically targeted integration measures, are needed in addition to the mainstreaming of integration policies. This is often already done in the Member States.[381] A coherent approach to this is inadequately facilitated through passive encouragement.

5.1.3 Framing of integration

Integration has traditionally been conceptualised through two nexus, either through the nexus of immigration, or the nexus of security. This explains its placement within the framework of AFSJ. The result of the immigration framework, in which countries oppose a common policy on integration, is a lack of integration, used as a mechanism of excluding possible migrants, which leads to stigmatisation.[382] The result of the security nexus can be found in the emphasis on the danger of radicalisation and might lead to an

[377] ibid preamb. 20.
[378] European Commission, 'Action Plan on the Integration of Third Country Nationals' 18.
[379] ibid 19.
[380] European Commission, 'Action Plan on the Integration of Third Country Nationals'.
[381] Iván Martín, '"From Refugees to Workers": What Challenges?' in Rainer Bauböck and Milena Tripkovic (eds), *The Integration of Migrants and Refugees: An EUI Forum on Migration, Citizenship and Demography* (European University Institute 2017) 107.
[382] Carrera 451.

endangerment of the human right of migrants.[383] This framing of integration lends itself as a tool for Member States to have additional "discretion over the inclusion, exclusion and expulsion of TCNs" while establishing a common immigration policy.[384] The shift of treating integration as a part of nationality law to immigration law also enables states to shift the content of integration from a rights-based topic to a duty-based topic.[385]

The result is a very "divers mosaic of European approaches and normative frameworks regarding the integration of TCNs which have been developed through parallel venues, legal/policy tools and alternative methods of cooperation."[386] The interests in successful national integration regimes are manifold; economic interests, human rights interests and social cohesion have been identified.[387] The content and extent of integration measures are best created at the national, regional and local level, however it is in the interest of all that they are coherent and effective.[388] This effectiveness is largely based on a level playing field.[389]

The current fragmentation, not dissimilar to the German fragmentation of integration policies before 2005, "highlights the need for powerful multilevel governance mechanisms to deal with current challenges in an integrated way (and this might also include the European level)."[390] Existing tensions between national integration policies call for an increased effort of "exchanges of information, coordination mechanisms, resource transfers and integration across actions." [391]

On the regional and local level, policy-makers have made good use of the incentives of the EU, enhancing the role of these levels of government and

[383] ibid.
[384] ibid 424.
[385] Rubio-Marín 105.
[386] Carrera 424.
[387] Council of the European Union, 'Press Release: Justice and Home Affairs' 16.
[388] ibid.
[389] European Commission, 'Communication from the Commission: On Immigration, Integration and Employment' 4.
[390] Martín 107.
[391] ibid.

facilitating knowledge exchange and policy learning.[392] The effect of the supporting and "coordinating" measures of the EU has thus largely been on the empowerment of sub-national actors, while failing to contribute to a convergence of national integration policies.

5.2 Conclusion

The different findings of this study will contribute to the answer of the following research question:

[1] In what way does the formulation of article 79(4) TFEU, transferring competences regarding integration to the EU, influence the effectiveness of European integration efforts?

The third chapter has resulted in the establishment of the main priorities for a European integration policy. The first priority is the localisation of integration measures as close to the refugee as possible. This is not limited to policy-making on a local level, but national and regional particularities call for diverging integration measures. These diverging measures should not lead to a fragmented, incoherent and counteracting policy framework. For this reason the second priority, that of coordination, is needed. The third priority is the mainstreaming of integration principles in the general policy of the EU.

The second chapter has detailed in-depth the competences transferred to the EU and has found that the broad conceptualisation of integration and the emphasis on national competences regarding integration do favour a more localised approach to integration. However, considering the principle of subsidiary and the priority the EU institutions have put on a local approach, the added value of that focus can be questioned. The absence of coordinating responsibilities, combined with the express prohibition of any

[392] Schmidtke 91–92.

harmonisation, might put a constraint on the second priority, coherent coordination, which an effective integration policy on the EU level should have. As a result, national integration policies are diverse and partially incoherent. The EU has understood its competence of supporting the Member States' integration policies as including the support of coordinating tools. As such, the lack of this competence has been relativised, though largely outside of the legislative approach. The third priority, the mainstreaming of integration efforts, can be seen throughout EU policy-making and a coordinating approach in these areas can be very effective for additional coordination of policies closely connected to integration. These areas are very diverse and numerous due to the multi-facetted nature of the concept of integration.

Finally, it is exemplary of the effective constraint on the EU regarding policy-making on integration that only one, albeit comprehensive, measure has been adopted on the basis of article 79(4) TFEU. The need for a common approach to integration on a European level is highlighted by the alternative soft-law framework, which the EU has established to circumvent such constraints on effectiveness.

Concluding remarks and recommendations

Integration is a complex, two-sided process, which needs the serious involvement of both the incoming refugees as well as the receiving societies. This effort can be partially alleviated by applying a successful multi-level governance approach, in which all levels of government are used to their fullest effectiveness. In this study I have established in what way the current competences of the EU positively or negatively influence the effectiveness of European integration policies. In an attempt to do so, I have left the field of pure legal studies and have approached the question from a socio-legal paradigm. I defined the concept of integration, which in the 1990s found its way from the social sciences into the EU legal acquis without corresponding legal clarifications. The EU has received certain competences in the field of integration, based on article 79(4) TFEU. Integration is the transformation of all "forms of cultural or social behaviour of an individual, ranging from completely giving up one's background to preserving unaltered patterns of behaviour" for the purpose of incorporating that individual in society.[393] As such, this concept has a broad meaning and a competence based on this concept is very comprehensive. Multi-level governance is:

> "[the normative or descriptive] arrangement for making binding decisions that engages a multiplicity of politically independent but otherwise interdependent actors – private and public – at different levels of territorial aggregation in more-or-less continuous negotiation/deliberation/ implementation, and that does not assign exclusive policy competence or assert a stable hierarchy of political authority to any of these levels."[394]

[393] Council of Europe 9.
[394] Schmitter 49.

The concept of multi-level governance has influenced the EU legal system as well and establishes an obligation on the EU to work with all levels of government in policy-making.

To answer in what way the current competences of the EU positively or negatively influence the effectiveness of European integration policies, I have first described the exact content of article 79(4) TFEU and the corresponding competences. The content of the provision was very broad, as can be seen in the literal, structural and teleological interpretation of the article. This was, however, counteracted by a very limited competence, excluding any kind of harmonisation. Then, I provided a multi-level governance policy analysis of the integration policy in Germany and the Netherlands, which enabled me to establish three main priorities for a central policy-making authority on integration. These are [1] localisation, [2] coordination and [3] mainstreaming.

In the third and last chapter, I looked at the effect of the established competences, by analysing actual policy implementation on the three priorities, influencing the effectiveness of a common European integration policy. It was clear that the lack of policy-making competences did not negatively influence the ability to localise integration policies, though the normative nature of the multi-level governance approach as well as the principle of subsidiarity put into question the necessity of this. The coordination was the most negatively affected priority in the current legal framework. A soft-law framework has been implemented by the EU to counteract this lack of competences as well as a liberal interpretation of the supporting competence, as including measures as tools to support coordination of Member States. Still, these measures are of a passive nature and active coordination by the EU is barely done. The negative constraint of the formulation of article 79(4) TFEU has found its expression in the fact that only one, though comprehensive, measure, the Asylum, Migration and Integration Fund, has been adopted on that legal basis. Finally,

mainstreaming could be a very valuable tool for the EU to construct a common European integration policy. The nature of the transfer of legal competences to the EU does not constrain competences cross-Treaty. This enables the EU to mainstream integration priorities in their general policies, regardless of the prohibition on the harmonisation of integration policies. The centre of gravity approach has to be considered and thus the formulation of article 79(4) TFEU, being very broad, can still constrain the mainstreaming of integration policy. The EU has started to mainstream integration priorities in their policies, though it can definitely be extended.

Considering the previous conclusions, I propose the following recommendations:

- A **continued focus on a localisation of integration** in the European context; integration policies should be tailored to the local, regional and national context in that order.

- A **continued and expanded effort of the EU to mainstream the integration priorities**, formulated in the Common Basic Principles, in all general policies of the EU.

- An increased effort of European coordination that goes beyond the European Integration Network and would preferably **include the express competence of the EU to coordinate**. For that purpose I propose the amendment of article 79(4) TFEU as follows:

  Article 79 TFEU

  4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, *should coordinate national integration policies and* may establish measures to provide incentives and support for the action of Member States with a view

to promoting the integration of third-country nationals residing legally in their territories.

Bibliography

7.1 Literature

Aboelela S and others, 'Defining Interdisciplinary Research: Conclusions from a Critical Review of the Literature' (2007) 42 Health Services Research 329

Archer M, 'Social Integration and System Intergration: Developing the Distinction' (1996) 30 Sociology 679

Bache I and Flinders M, 'Multi-Level Governance and British Politics' in Ian Bache and Matthew Flinders (eds), *Multi-level Governance* (Oxford Scholarship Online 2004)

Baude W, Chilton A and Malani A, 'A Call for Developing a Field of Positive Legal Methodology' (2017) 84 The University of Chicago Law Review 1

Bertossi C, Duyvendak JW and Scholten P, 'The Coproduction of National Models of Integration: A View from France and the Netherlands' in Peter Scholten and others (eds), *Integrating Immigrants in Europe: Research-Policy Dialogues* (Springer 2015)

Besselink L, 'Integration and Immigration: The Vicissitudes of Dutch "Inburgering"' in Elspeth Guild, Kees Groenendijk and Sergio Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* (Ashgate 2009)

Borkert M and Bosswick W, 'Migration Policy-Making in Germany–between National Reluctance and Local Pragmatism' (2007) 20

Borkert M and Caponio T, ‘Introduction’ in Tiziana Caponio and Maren Borkert (eds), *The Local Dimension of Migration Policymaking* (Amsterdam University Press 2010)

Bruquetas-Callejo M and others, ‘The Case of the Netherlands’ in Giovanna Zincone, Rinus Penninx and Maren Borkert (eds), *Migration Policymaking in Europe: The Dynamics of Actors in Contexts in Past and Present* (Amsterdam University Press 2011)

Bundesministerium für Bildung und Forschung, ‘Flüchtlinge Integrieren – Kommunen Stärken’ (2016) <https://www.bmbf.de/de/hilfe-fuer-kommunen-und-kreisfreie-staedte-1829.html> accessed 4 July 2017

Bundesregierung, ‘Der Nationale Integrationsplan: Neue Wege - Neue Chancen’ (2007)

——, ‘Bundesweites Integrationsprogramm: Angebote Der Integrationsförderung in Deutschland – Empfehlungen Zu Ihrer Weiterentwicklung’ (2010)

——, ‘Nationaler Aktionsplan Integration: Zusammenhalt Stärken - Teilhabe Verwirklichen’ (2012)

——, ‘Sommerpressekonferenz von Bundeskanzlerin Merkel: Mitschrift Pressekonferenz’ (2015) <https://www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2015/08/2015-08-31-pk-merkel.html> accessed 6 June 2017

Carrera S, *In Search of the Perfect Citizen? The Intersection between Integration, Immigration and Nationality in the EU* (Elspeth Guild and Jan Niessen eds, Martinus Nijhoff Publishers 2009)

Commission of the European Communities, ‘Communication from the

Commission to the Council and the European Parliament: On an Open Method of Coordination for the Community Immigration Policy' (2001) COM(2001)387 final

——, 'A Common Agenda for Integration: Framework for the Integration of Third-Country Nationals in the European Union' (2005) COM(2005) 389 final

Committee on the Elimination of Racial Discrimination, 'General Recommendation No. 30 on Discrimination against Non-Citizens' (2005)

Conzelmann T, 'Towards a New Concept of Multi-Level Governance' (2008)

Council of Europe, 'Measurement and Indicators of Integration' (1997)

Council of the European Union, 'Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals Who Are Long-Term Residents' (2004) L 16/44

——, 'Press Release: Justice and Home Affairs' (2004) 14615/04 (Presse 321)

——, 'Conclusions of the Council and the Representatives of the Governments of the Member States on the Integration of Third-Country Nationals Legally Residing in the EU' (2016) 15312/16 ANNEX

Craig P and De Búrca G, *EU Law: Text, Cases, and Materials* (5th edn, Oxford University Press 2011)

Crul M and others, 'No Lost Generation? Education for Refugee Children. A Comparison between Sweden, Germany, the Netherlands and Turkey' in Rainer Bauböck and Milena Tripkovic (eds), *The Integration of Migrants*

and Refugees: An EUI Forum on Migration, Citizenship and Demography (European University Institute 2017)

Da Costa R, 'Rights of Refugees in the Context of Integration: Legal Standards and Recommendations' (2006)

Dagevos J and Grundel M, 'Biedt Het Concept Integratie Nog Perspectief?' (2013)

De Feyter K and others, *The Local Relevance of Human Rights* (Koen De Feyter and others eds, Cambridge University Press 2011)

Deutscher Städte- und Gemeindebund, 'Maßnahmenkatalog Zur Flüchtlingspolitik' (2017)

Diekmann F and others, 'Flüchtlinge in Deutschland: Die Große Aufgabe Der Integration' (*SPIEGEL ONLINE*, 2015) <www.spiegel.de/politik/deutschland/fluechtlinge-in-deutschland-die-grosse-aufgabe-der-integration-a-1069830.html> accessed 5 July 2017

Emilsson H, 'A National Turn of Local Integration Policy: Multi-Level Governance Dynamics in Denmark and Sweden' (2015) 3 Comparative Migration Studies

Esser H, 'Pluralisierung Oder Assimilation?' (2009) 38 Zeitschrift für Soziologie 358

European Commission, 'Communication from the Commission: On Immigration, Integration and Employment' (2003) COM (2003) 336 final

——, 'European Agenda for the Integration of Third-Country Nationals' (2011) COM(2011) 455 final

——, ‘Action Plan on the Integration of Third Country Nationals’ (2016) COM(2016) 377 final

——, ‘Communication from the Commission to the European Parliament, the Counil, the European Economic and Social Committee and the Committee of the Regions: Supporting the Prevention of Radicalisation Leading to Violent Extremism’ (2016) COM(2016) 379 final

——, ‘Proposal for a Directive of the European Parliament and of the Council: Laying down Standards for the Reception of Applicants for International Protection (Recast)’ (2016) COM(2016) 465 final

European Council, ‘Presidency Conclusions of 15 and 16 October 1999’

——, ‘Presidency Conclusions of 4 and 5 November 2004’ (2004) OJ C53/1

European Parliament and Council of the European Union, ‘Directive 2011/95/EU of the European Parliament and of the Council’ (2011) L 337/9

——, ‘Regulation 2014/514/EU of the European Parliament and of the Council’ (2014) L 150/112

——, ‘Regulation 2014/516/EU of the European Parliament and of the Council’ (2014) L 150/168

Fielden A, ‘Local Integration: An under-Reported Solution to Protracted Refugee Situations’ (2008) Research Paper No. 158

George S, ‘Multi-Level Governance and the European Union’ in Ian Bache and Matthew Flinders (eds), *Multi-level Governance* (Oxford Scholarship Online 2004)

Gómez Isa F, ‘Freedom from Want Revisited from a Local Perspective: Evolution and Challenges Ahead’ in Koen De Feyter and others (eds), *The local relevance of human rights* (Cambridge University Press 2011)

Goodman SW, ‘Integration Requirements for Integration’s Sake? Identifying, Categorising and Comparing Civic Integration Policies’ (2010) 36 Journal of Ethnic and Migration Studies 753

Grahl-Madsen A, ‘Commentary on the Refugee Convention 1951: Articles 2-11, 13-37’ (1997)

Hackett S, ‘The ’Local Turn in Historical Perspective: Two City Case Studies in Britain and Germany’ (2017) 83 International Review of Administrative Sciences 340

Hathaway J, *The Rights of Refugees under International Law* (Cambridge University Press 2005)

Heckmann F, ‘From Ethnic Nation to Universalistic Immigrant Integration: Germany.’ in Friedrich Heckmann and Dominique Schnapper (eds), *The Integration of Immigrants in European Societies: National Differences and Trends of Convergence* (Lucius & Lucius 2003)

——, ‘Integration and Integration Policies : IMISCOE Network Feasibility Study’ (2006)

Heckmann F and Wiest D, ‘Research-Policy Dialogues in Germany’ in Peter Scholten and others (eds), *Integrating Immigrants in Europe: Research-Policy Dialogues* (Springer 2015)

Holzner B, ‘The Concept “Integration” in Sociological Theory’ (1967) 8 The Sociological Quarterly 51

Hooghe L, *Cohesion Policy and European Integration. Building Multilevel Governance* (Liesbet Hooghe ed, Oxford University Press 1996)

Hooghe L and Marks G, 'Unraveling the Central State , but How? Types of Multi-Level Governance' (2003) 97 The American Political Science Review 233

Huber S, ' '… Excluding Any Harmonisation of the Laws and Regulations of the Member States '? Reflections on the Meaning and Scope of "Any" in the Context of the European Higher Education and Research Area' (2011) 5 Vienna Journal on International Constitutional Law 22

Justice and Home Affairs Council, 'Common Basic Principles EU Integration' (2004) <http://ec.europa.eu/ewsi/en/EU_actions_integration.cfm>

Kälin W, 'Human Rights and the Integration of Migrants' in Thomas Alexander Aleinikoff and Vincent Chetail (eds), *Migration and International Legal Norms* (TMC Asser Press 2003)

Kluth W, 'Zum Transdisziplinären Verständnis von Integration' (2016) 36 Zeitschrift für Ausländerrecht und Ausländerpolitik 336

Lane L and Hesselman M, 'Governing Disasters: Embracing Human Rights in a Multi-Level, Multi-Duty Bearer, Disaster Governance Landscape' (2017) 5 Politics and Governance 93

Lenaerts K, 'Education in European Community Law after "Maastricht"' (1994) 31 Common Market Law Review 7

Lenaerts K and Gutierrez-Fons J, 'To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice' (2013) 9

Lockwood D, ‘Social Integration and System Integration’ in Zollschan George and Walter Hirsch (eds), *Explorations in Social Change* (Routledge and Kegan 1964)

Marks G and others, *Governance in the European Union* (Gary Marks and others eds, Sage Press 1996)

Martín I, ‘“From Refugees to Workers”: What Challenges?’ in Rainer Bauböck and Milena Tripkovic (eds), *The Integration of Migrants and Refugees: An EUI Forum on Migration, Citizenship and Demography* (European University Institute 2017)

——, ‘From Refugees to Workers: Mapping Labour-Market Integration Support Measures for Asylum Seekers and Refugees in EU Member States: Literature Review and Country Case Studies’, vol II (2016)

Meijer R, ‘Hartekreet SER: Kabinet, Doe Meer Aan Integratie Vluchtelingen’ (*De Volkskrant*, 2016) <www.volkskrant.nl/economie/hartekreet-ser-kabinet-doe-meer-aan-integratie-vluchtelingen~a4435084/> accessed 5 July 2017

Michalowski I, ‘Integration Programmes for Newcomers – a Dutch Model for Europe?’ in Anita Böcker, Betty De Hart and Ines Michalowski (eds), *Migration and the Regulation of Social Integration* (Institut für Migrationsforschung und Interkulturelle Studien 2004)

——, ‘Liberal States - Privatised Integration Policies?’ in Elspeth Guild, Kees Groenendijk and Sergio Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* (Ashgate 2009)

Ministerie van Sociale Zaken en Werkgelegenheid, ‘Kamerbrief van 27 Oktober 2016: Voortgang Integratie En Participatie Verhoogde Asielinstroom’ (2016)

Ministerie van Veiligheid en Justitie, ‘Kamerbrief van 8 September 2015: Europese Asielproblematiek’ (2015) 682347

Monar J, ‘Justice and Home Affairs in the Treaty of Amsterdam: Reform at the Price of Fragmentation’ (1998) 23 European Law Review 320

——, ‘Justice and Home Affairs in the EU Constitutional Treaty: What Added Value for the “Area of Freedom, Security and Justice”?’ (2005) 1 European Constitutional Law Review 226

Mortensen N and Olofsson G, ‘Introduction: Context and Perspectives for Contemporary Research on Differentiation and Integration’ in Nils Mortensen (ed), *Social Integration and Marginalisation* (Samfundslitteratur 1995)

Nowak M, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd edn, NP Engel Verlag 2005)

Oates W, ‘An Essay on Fiscal Federalism’ (1999) 37 Journal of Economic Literature 1120

Panara C, ‘Multi-Level Governance as a Constitutional Principle in the Legal System of the European Union.’ (2016) 16 Croatian & Comparative Public Administration 705

Penninx R, ‘European Cities in Search of Knowledge for Their Integration Policies’ in Peter Scholten and others (eds), *Integrating Immigrants in Europe: Research-Policy Dialogues* (Springer 2015)

Penninx R and Garcés-Mascareñas B, ‘Integration Policies of European Cities in Comparative Perspective: Structural Convergence and Substantial Differentiation’ (2016) 32 Migracijske i etničke teme 155

Poppelaars C and Scholten P, 'Two Worlds Apart: The Divergence of National and Local Immigrant Integration Policies in the Netherlands' (2008) 40 Administration and Society 335

Rijksoverheid, 'Persconferentie Na Ministerraad 18 September 2015' (2015) <https://www.rijksoverheid.nl/regering/inhoud/bewindspersonen/mark-rutte/documenten/mediateksten/2015/09/18/persconferentie-na-ministerraad-18-september-2015> accessed 9 June 2017

——, 'Persconferentie Na Ministerraad 4 September 2015' (2015) <https://www.rijksoverheid.nl/regering/inhoud/bewindspersonen/mark-rutte/documenten/mediateksten/2015/09/04/persconferentie-na-ministerraad-4-september-2015> accessed 8 June 2017

Rubio-Marín R, 'Integration in Immigrant Europe: Human Rights at a Crossroads' in Ruth Rubio-Marín (ed), *Human Rights and Immigration* (Oxford University Press 2014)

Schmidtke O, 'Beyond National Models? Governing Migration and Integration at the Regional and Local Levels in Canada and Germany' (2014) 2 Comparative Migration Studies 77

Schmidtke O and Zaslove A, 'Politicizing Migration in Competitive Party Politics: Exploring the Regional and Federal Arenas in Germany and Italy' in Eve Hepburn and Ricard Zapata-Barrero (eds), *The Politics of Immigration in Multi-Level States: Governance and Political Parties* (Palgrave Macmillan 2014)

Schmitter P, 'Neo-Neofuntionalism' in Antje Wiener and Thomas Diez (eds), *European Integration Theory* (Oxford University Press 2004)

Scholten P, *Framing Immigrant Integration: Dutch Research-Policy Dialogues in Comparative Perspective* (Amsterdam University Press 2011)

——, 'Agenda Dynamics and the Multi-Level Governance of Intractable Policy Controversies: The Case of Migrant Integration Policies in the Netherlands' (2013) 46 Policy Sciences 217

——, 'The Multilevel Governance of Migrant Integration : A Multilevel Governance Perspective on Dutch Migrant Integration Policies' in Umut Korkut and others (eds), *The Discourses and Politics of Migration in Europe* (Palgrave Macmillan 2013)

Scholten P, Collett E and Petrovic M, 'Mainstreaming Migrant Integration? A Critical Analysis of a New Trend in Integration Governance' (2017) 83 International Review of Administrative Sciences 283

Scholten P and Penninx R, 'The Multilevel Governance of Migration and Integration' in Blanca Garcés-Mascareñas and Rinus Penninx (eds), *Integration Processes and Policies in Europe: Context, Level and Actors* (Springer 2016)

Smits J, 'Redefining Normative Legal Science: Towards an Argumentative Discipline' in Fons Coomans, Fred Grünfeld and Menno Kamminga (eds), *Methods of Human Rights Research* (Intersentia 2009)

Sociaal-Economische Raad, 'Nieuwe Wegen Naar Een Meer Succesvolle Arbeidsmarktintegratie van Vluchtelingen' (2016)

Support and Opposition to Migration (SOM), 'Final Report Summary' (2012) <http://cordis.europa.eu/result/rcn/54854_en.html> accessed 5 July 2017

The European Convention, 'Comments to WD 05 by Mr Ben Fayot,

Member of the Convention' (2002) WD 20

——, '"Cooperation Not Centralisation": Paper by Mr. Timothy Kirkhope, Member of the Convention Members' (2002) WD 12

——, 'Note from M. Sören Lekberg, Member of the Swedish Parliament : "A Common European Asylum and Migration Policy"' (2002) WD 4

——, 'Observations de M. Jacques FLOCH, Membre de La Convention, Sur Le Document de Travail 05 Du 6 Novembre 2002 "Pistes de Réflexion Pour Le Groupe de Travail"' (2002) WD 13

——, 'Rapport Final Du Groupe de Travail X "Liberté, Sécurité et Justice"' (2002) WD 14

Thym D, 'Integration Kraft Gesetzes? Grenzen Und Inhalte des "Integrationsgesetzes" des Bundes' (2016) 36 Zeitschrift für Ausländerrecht und Ausländerpolitik 241

Tortola PD, 'Clarifying Multilevel Governance' (2017) 56 European Journal of Political Research 234

Tweede Kamer Der Staten-Generaal, 'Wijziging van de Wet Inburgering En Enkele Andere Wetten in Verband Met de Versterking van de Eigen Verantwoordelijkheid van de Inburgeringsplichtige' (2012) Kamerstukken II 2011/12 33 086 Nr. 46

——, 'Integratie' (2013) Kamerstukken II 2013/14 32 824 Nr. 48

——, 'Wijziging van de Wet Inburgering En Enkele Andere Wetten in Verband Met Het Toevoegen van Het Onderdeel Participatieverklaring Aan Het Inburgeringsexamen En de Wettelijke Vastlegging van de Maatschappelijke Begeleiding' (2016) Kamerstukken II 2016/17 34 584 Nr.

Ulrich G, ‘Epilogue: Widening the Perspective on the Local Relevance of Human Rights’ in Koen De Feyter and others (eds), *The Local Relevance of Human Rights* (Cambridge University Press)

United Nations High Commissioner for Refugees, ‘Solutions’ <http://www.unhcr.org/solutions.html> accessed 19 June 2017

——, ‘Global Consultations On International Protection: Local Integration’ (2002) EC/GC/02/6

United Nations Human Rights Office of the High Commissioner, ‘International Human Rights Law’ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> accessed 10 July 2017

Van Oers R, ‘Justifying Citizenship Tests in the Netherlands and the UK’ in Elspeth Guild, Kees Groenendijk and Sergio Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU* (Ashgate 2009)

Verbeek S, Entzinger H and Scholten P, ‘Research-Policy Dialogues in the Netherlands’ in Peter Scholten and others (eds), *Integrating Immigrants in Europe: Research-Policy Dialogues* (Springer 2015)

Vereniging van Nederlandse Gemeenten and Rijksoverheid, ‘Bestuursakkoord: Verhoogde Asielinstroom’ (2015)

Zapata-Barrero R, Caponio T and Scholten P, ‘Theorizing the “local Turn” in a Multi-Level Governance Framework of Analysis: A Case Study in Immigrant Policies’ (2017) 83 International Review of Administrative Sciences 241

Zincone G and Caponio T, 'The Multilevel Governance of Migration' in Rinus Penninx, Maria Berger and Karen Kraal (eds), *The Dynamics of International Migration and Settlement in Europe: A State of the Art* (Amsterdam University Press 2006)

7.2 Cases

Germany v European Parliament and Council (1997) C-233/94

HP Bulmer Ltd & Anor v J Bollinger SA & Ors [1974] EWCA Civ 14

Ibrahima Gueye et al v France [1985] Communication No 196/1985

Tobacco Advertising I (2000) C-376/98

United Kingdom v Council (1996) C-84/94

7.3 Statutes

European Commission, The Charter of Fundamental Rights of the European Union 2000

Besluit inburgering 2016

Besluit studiefinanciering 2000 2017

Convention and Protocol relating to the Status of Refugees 1951

Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG) 2005

Gesetz zur Förderung der beruflichen Aufstiegsfortbildung

(Aufstiegsfortbildungsförderungsgesetz - AFBG) 1996

Grundgesetz für die Bundesrepublik Deutschland 1949

Integrationsgesetz 2016 1939

International Covenant on Economic, Social and Cultural Rights 1966

Participatiewet 2017

Sozialgesetzbuch (SGB III) Drittes Buch: Arbeitsförderung 1998

The treaty on European Union 2012 13

The treaty on the functioning of the European Union 2012 47

Universal Declaration of Human Rights 1948

Vreemdelingenwet 2000 2015

Wet educatie en beroepsonderwijs 2016

Wet inburgering nieuwkomers 1998

Wet studiefinanciering 2000 2017