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Integration duties in the European Union: Four models

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Abstract

Integration is becoming increasingly important in law, due to the growing involvement of the legislative, executive and judicial powers at European, national, regional and local levels. This phenomenon concerns third-country nationals and EU citizens, despite the fundamentally different legal regimes applicable to these groups. In this article, I discuss the expansion of integration duties and the different legal mechanisms which they are based on. I propose four conditions- and obligations-based integration models likely to be found in EU law and national laws: the symbolic model, the meritocratic model, the activation model and the selective model. From a legal perspective, identifying these integration mechanisms is essential for assessing compliance with fundamental rights and EU law. Moreover, such a typology is likely to help researchers, policy-makers and the public obtain a better sense of how the conception of integration evolves in our societies and in the legal field in particular. I conclude by briefly sketching a common trend which I observed throughout the four models: they are imbued with a strong socioeconomic dimension hindering the socioeconomically underprivileged categories.

Keywords

integration, immigration, free movement, discrimination, social rights, merit, EU citizens

1. Introduction

How integration is considered by the European Union (the 'EU') and its Member States has evolved significantly over the past 20 years, including in European, national and regional

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laws.[1] The EU and its Member States have been replacing their previously *laisser-faire* approaches to integration with much more 'interventionist' ones at an exponential rate.[2] Specifically, European states have recently considerably imposed integration conditions and obligations prior to the granting of residence permits and rights, in particular social rights, as well as citizenship. Integration duties are likely to apply to all non-nationals, third-country nationals and mobile European citizens alike, but these integration conditions and obligations are developed differently, depending on the categories involved, due in particular to the fundamental differences between the two regimes applied: that of freedom of movement on the one hand, and of immigration and asylum law on the other. In some instances, even non-mobile EU citizens are obliged to comply with integration duties. In other words, the concept of integration has increasingly pollinated the legal field to such an extent that today, we can speak of 'integration law',[3] although the concept of integration has never been defined as such in the legal field, especially in EU law (section 2).

When speaking about integration conditions and obligations, authors tend to lump them in the same basket, while they are likely to apply at different levels (immigration, social rights, citizenship), target different categories, encompass different integration narratives and take very different shapes – not only with regard to the so-called 'civic integration' policies,[4] but also more generally as a way to make sure that targeted people bring added-value and conform to the host state, including from an economical perspective, as I will explain. In this context, I argue that given the numerous variations within the obligations or conditions justified in the name of integration, it is important to distinguish between the different legal mechanisms at work better to understand the complexity and the differences emerging within the common trend for imposing integration obligations and conditions. I distinguish four models, namely the 'selective', 'symbolic', 'activation' and 'meritocratic' integration models (section 3).

1. K. Groenendijk, 'Pre-departure Integration Strategies in the European Union: Integration or Immigration Policy?', 13 *EJML* (2011), p. 1; K. de Vries, *Integration at the Border: The Dutch Act on Integration Abroad and International Immigration Law* (Hart Publishing, 2009); S. Carrera, *In Search of the Perfect Citizen? The Intersection between Integration, Immigration and Nationality in the EU* (Martinus Nijhoff Publishers, 2009); E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal Liberal States: Immigration, Citizenship, and Integration in the EU* (Ashgate Publishing, 2009); R. Van Oers, E. Ersbøll and D. Kostakopoulou (eds.), *A Redefinition of Belonging? Language and Integration Tests in Europe* (Martinus Nijhof Publishers, 2010); M. Jesse, *The Civic Citizenship of Europe: The Legal Potential for Immigrant Integration in the EU, Belgium, Germany and the United Kingdom* (Brill, 2017).
2. I. Adam, *Les entités fédérées belges et l'intégration des immigrés* (Université Libre de Bruxelles, 2013). Also see C. Joppke, 'Civic Integration in Western Europe: Three Debates', 40 *West Eur. Politics* (2017), p. 1153 and S. Carrera, *In Search of the Perfect Citizen*. Their past *laisser-faire* stance was often voluntary, at national level, and involuntary, at EU level, since the EU did not itself have the necessary competences to adopt certain initiatives in this area: see case C-281, 283 to 285, and 287/85 *Federal Republic of Germany and others v. Commission of the European Communities*, EU:C:1987:351.
3. S. Ganty, *L'intégration des citoyens européens et des ressortissants de pays tiers en droit de l'Union européenne. Critique d'une intégration choisie* (Larcier, Collect. Droit de l'Union européenne, 2021).
4. See for instance: D. Kostakopoulou, 'The Anatomy of Civic Integration', in F. Anthias and M. Pajnik (eds.) *Contesting Integration, Engendering Migration* (Palgrave Macmillan, 2014).

2. The growing importance of integration conditions or obligations in law for all

Integration obligations and conditions have become increasingly common recently in many European countries. Today, they form an integral part of the migratory pathway[5] without their legitimacy and foundations being questioned. For example, 10 years ago in Belgium, compulsory integration courses were perceived as a policy of the Flemish right wing, but they have now spread throughout the country and are proposed or approved of by left-wing parties. Their adoption did not encounter any principled opposition.[6] Several authors have denounced the discriminatory, humiliating and paternalistic nature of integration programmes, particularly the so-called 'civic' integration policies which are spreading today in many European countries,[7] anchored in the 'nationhood' of 'imagined communities'.[8] Discussing civic integration tests for third-country nationals (TCN's), Kostakopoulou describes them as 'a one way process aimed at procuring conformity, discipline and migration control'.[9] In this vein, Favell powerfully argued that the concept of integration is in itself problematic and that integration is not even always desirable, especially when this concept is presented in terms of a 'problem' within a hypothesis about the people regarded as unintegrated.[10]

Integration conditions and obligations are likely to be imposed on TCN's and EU citizens, but in very different ways. As a consequence, when studying these integration conditions and obligations in law, we should identify to whom they are imposed because the competences and thus the applicable law and guarantees likely to apply vary.

On the one hand, as for TCN's, despite the fact that the EU does not have any competence to harmonize law and regulation in the field of integration, the concept of integration was developed in EU secondary law in the field of asylum and immigration in the 2000s, an area which falls within the competence of the EU under Articles 78 and 79(1) and (2) TFEU. A number of immigration directives authorize Member States to require integration 'conditions', 'measures' or 'criteria' as prerequisites for the granting of a family reunification or long-term residence permit.[11] Secondary immigration and refugee law has therefore endorsed the integration condition or obligation mechanism, but leaves a large margin of appreciation to Member States in defining it.[12] Since immigration is a competence of the EU, Members States are linked and

5. C. Joppke, 40 *West Eur. Politics* (2017), p. 1153 et seq.
6. C. Xhardez, 'From Different Paths to a Similar Road? Understanding the Convergence of Subnational Immigrant Integration Policies in Belgium', *Reg. Stud.* (2019), p. 1.
7. D. Kochenov, *Mevrouw de Jong Gaat Eten: EU Citizenship and the Culture of Prejudice*, 2011/06 EUI Working Paper RSCAS (2011); K. Groenendijk, 13 *EJML* (2011), p. 1; E. Guild, K. Groenendijk and S. Carrera, 'Understanding the Contest of Community: Illiberal Practices in the EU?', in E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal Liberal States*, p. 1; R. Van Oers, E. Ersbøll and D. Kostakopoulou, *A Redefinition of Belonging?*; D. Kostakopoulou, 'Why Naturalisation?', 4 *Perspect. Eur. Polit. Soc.* (2003), p. 85; P. Mouritsen et al., 'Introduction: Theorizing the Civic Turn in European Integration Policies', 19 *Ethnicities* (2019), p. 595.
8. B. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso, 1983).
9. D. Kostakopoulou, in F. Anthias and M. Pajnik (eds.) *Contesting Integration, Engendering Migration*.
10. A. Favell, 'Integration: Twelve Propositions After Schinkel', 7 *Comp. Migr. Stud.* (2019), p. 1.
11. Articles 4(1), last paragraph, 5 and 7(2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, [2003] OJ L 251; Articles 5(2) and 15(3) of Directive 2003/109/EC of the Council of 25 November 2003 concerning the status of third-country nationals who are long-term resident, [2004] OJ L 16.
12. K. Groenendijk, 13 *EJML* (2011), p. 1; E. Guild, K. Groenendijk and S. Carrera (eds.) in E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal Liberal States*, p. 1; R. Van Oers, E. Ersbøll and D. Kostakopoulou (eds.), *A Redefinition of Belonging?*.

limited by it. If the family reunification directive allows Members States to impose integration measures as a condition for a family reunification visa, such conditions cannot be imposed as pre-entry requirements for certain categories of migrants – mainly socioeconomically privileged migrants – such as workers under the blue card directive regime, workers on intra-corporate transfers, researchers and the family members of these categories.[13] Along the same lines, the Court of justice of the EU ('CJEU') has set aside several integration conditions imposed for family reunification with Turkish workers, without ruling out the actual idea of imposing integration conditions, which would not be disproportionate in light of the standstill clauses.[14] Member States remain *a priori* competent to impose integration obligations and conditions on migrants after they enter a country and without having conditioned their access to a visa or residence permit. As for integration requirements conditioning social rights, it is worth nothing that a few immigration directives – such as the long-term residence directive – impose equality of treatment regarding social benefits, which implies *a priori* that such integration conditions cannot be imposed on some categories of migrants as a requirement to benefit from social assistance.[15]

On the other hand, as with EU citizens, the freedom of movement principle forbids the imposition of integration conditions or obligations to move to another EU country.[16] *A fortiori*, such conditions or obligations should not be imposed on EU citizens in order to benefit from equality of treatment with the nationals of a host Member State. However, the Court seems to have weakened the equality of treatment principle, especially in the field of social benefits and study grants, where it has validated a condition of a real link with the host country.[17] These conditions are taking root in a context where EU citizenship rights have been increasingly conditioned and limited.[18] Usually, this real link can be proved through sufficient economic participation to the market, either actively – through work – [19] or passively – by

13. Article 5 and 15(3) Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, [2009] OJ L 155; Article 5 and 19(3) Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, [2014] OJ L 157; Articles 7, 8 and 26(3) Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, [2016] OJ L 132.
14. S. Ganty, 'Silence is not (Always) Golden. A Criticism of the ECJ's Approach towards Integration Conditions for Family Reunification', 23 *EJML* (2021), p. 176. See for instance the decision in the following cases: Case C-123/07 *Nefiye Yön v. Landeshauptstadt Stuttgart*, EU:C:2018:632; Case C-89/18 *A v. Udlændinge-og Integrationsministeriet*, EU:C:2019:580; Case C-561/14 *Caner Genc v. Integrationsministeriet*, EU:C:2016:247; Case C-138/13 *Naime Dogan v. Bundesrepublik Deutschland*, EU:C:2014:2066.
15. See for example: Case C-94/20 *Land Oberösterreich v. KV*, EU:C:2021:477. However, in some instances, the CJEU approach in the past years regarding this equal treatment principle has been quite puzzling as for third-country nationals in light of the integration condition: K. de Vries, 'The Integration Exception: A New Limit to Social Rights of Third-Country Nationals in European Union Law?', D. Thym (dir.), *Questioning EU Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU* (Bloomsbury, 2017) p. 267.
16. S. Ganty, *Critique d'une intégration choisie*, p. 263 et seq.
17. See for example the case of frontier workers: Case C-213/05 *Wendy Geven v. Land Nordrhein-Westfalen*, EU:C:2007:438; Case C-20/12 *Elodie Giersch* v. *État du Grand-Duché de Luxembourg*, EU:C:2013:411; C-238/15 *Maria do Céu Bragança Linares Verruga e.a. v. Ministre de l'Enseignement supérieur and de la Recherche*, EU:C:2016:949; Case C-542/09 *Commission* v. *Kingdom of the Netherlands*, EU:C:2012:346.
18. N. Nic Shuibhne, 'Limits Rising, Duties Ascending', 52 *CML Rev.* (2015), p. 889.
19. Ibid.

residing enough years with enough resources.[20] As a consequence, although the question of EU citizen integration has barely been addressed in current EU policy documents and regulation since Maastricht,[21] it has taken on increasing importance in the case law of the CJEU, when considering restrictions to the rights of mobile EU citizens justified on the grounds of a requirement for a real link with a Member State. This integration requirement has been addressed by the CJEU through different concepts: sufficient link of integration,[22] actual degree of attachment,[23] certain degree of integration,[24] real and effective degree of connection between an applicant for tideover allowance and the geographic employment market.[25] This requirement is likely to harm the most vulnerable: those who possess scarce resources.[26]

Moreover, as for TCN's, the integration of mobile EU citizens is also considered by the Court in relation to a specific Member State, without taking into account of their integration into the EU more broadly as EU citizens. In other words, the real link condition is assessed without considering the multiplicity of roots that an EU citizen may be able to offer as a proof of her membership of the EU, rather than of just one particular Member State, as explained below with respect to frontier workers.[27] This is problematic in light of the EU law project because the mobility aspect, a foundational element of EU citizenship, seems in some cases to act against mobile EU citizens who did not decide to move their entire life to their host Member State, and thus demonstrate allegiance to it. In other words, the Court does not take into account the circular character of migration within the EU's territory when it comes to assessing the integration or the 'membership' of EU citizens.[28] In this regard, it is necessary to explore not only the adoption of a more coherent vision of mobility and free movement but also a conception of integration which would take mobility into account, resulting in the recognition of multiple links in different Member States.[29] It is time for the Court to adopt a vision of integration *at European Union level* which would be a lesser evil. Along the same lines, Advocate General Maduro considered that 'citizenship of the Union must encourage Member States to no longer conceive of the legitimate link of integration only within the narrow bounds of the

20. Case C-209/03 *Dany Bidar v. London Borough of Ealing, Secretary of State for Education and Skills*, EU:C:2005:169. See also: Case C-424/10 and C-425/10, *Tomasz Ziolkowski, Barbara Szeja, Maria-Magdalena Szeja, Marlon Szeja v. Land Berlin*, EU:C:2011:866; Case C-529/11, *Olaitan Ajoke Alarape, Olukayode Azeez Tijani v. Secretary of State for the Home Department*, EU:C:2013:290; C-325/09 *Secretary of State for Work and Pensions* v. *Maria Dias*, EU:C:2011:498; C-158/07 *Jacqueline Förster* v. *Hoofddirectie van de Informatie Beheer Groep*, EU:C:2008:630.
21. S. Ganty, *Critique d'une intégration choisie*, p. 169 et seq.
22. Case C-20/12 Elodie Giersch v. État du Grand-Duché de Luxembourg, para. 63.
23. C.J., 14 June 2012, *Commission européenne versus Royaume des Pays-Bas*, EU:C:2012:346, para. 86.
24. Ibid., para. 63; Case C-209/03 Dany Bidar v. London Borough of Ealing, Secretary of State for Education and Skills, para. 57.
25. Case C-224/98 *Marie-Nathalie D'Hoop v. Office national de l'emploi*, EU:C:2002:432, para. 39 ; Case C-258/04 *Office national de l'emploi v. Ioannis Ioannidis*, EU:C:2005:559, para. 31 ; Case C-367/11 *Déborah Prete v. Office national de l'emploi,* EU:C:2012:668, para. 34.
26. C. O'Brien, 'Real Links, Abstract Rights and False Alarms: The Relationship Between the RCJ's "Real Link" Case Law and National Solidarity', 5 *E.L. Rev.* (2008), p. 643; C. O'Brien, 'Civis Capitalist Sum: Class as the New Guiding Principle of EU Free Movement Rights', 53 *CML Rev.* (2016), p. 964; S. Ganty, *Critique d'une intégration choisie*, p. 959 et seq.
27. Case C-213/05 Wendy Geven v. Land Nordrhein-Westfalen; C-20/12 Elodie Giersch v. État du Grand-Duché de Luxembourg; Case C-238/15 Maria do Céu Bragança Linares Verruga e.a. v. Ministre de l'Enseignement supérieur and de la Recherche; Case C-542/09 Commission v. Kingdom of the Netherlands; S. O'Leary, 'The Curious case of Frontier Workers and Study Finance: *Giersch'*, 51 *CML Review* (2014), p. 607.
28. A. Iliopoulou-Penot, 'Le rattachement à l'État comme critère de l'intégration sociale', 4 *R.A.E.* (2013), p. 664.
29. S. Robin-Olivier, 'Le citoyen de l'Union : entre intégration et mobilité', 4 *R.A.E.–L.E.A* (2013), p. 668.

national community, but also within the wider context of the society of peoples of the Union'.[30] Advocate General Trstenjak was even firmer on the question, failing to see 'why integration into the society of the Federal Republic of Germany should not at the same time always entail integration into the society of peoples within the European Union, particularly as the declared aim of the EC Treaty is, according to the first recital in the preamble, to lay the foundations of an ever closer union among the peoples of Europe'.[31]

As a consequence, the growing importance of integration conditions and obligations concerns not only TCN's but also mobile EU citizens. Of course, there is certainly a legal divide between these two categories of people, who are governed by fundamentally different legal regimes which are disconnected in terms of their constitutional structure, content and legal implementation, as Iglesias Sánchez explains.[32] As a result, these two categories of people are treated separately in the literature, from the perspective both of migration and their integration. Few legal contributions study these two categories in an 'integrated' way when it comes to their integration.[33] However, despite the fact that the law clearly separates them, common trends emerge between the two regimes, as I will argue on the basis on the proposed typology. In any case, how certain non-nationals in the two categories are treated is also likely to reveal a lot about Member States and EU visions of who should be considered members of society – or 'good citizens' – and who should not. The fact that destitute European citizens are described as 'immigrants' by the Member States,[34] or that the term 'integration' is still applied by the EU Commission to certain EU citizens, such as Roma or EU citizens with a migrant background,[35] while 'citizenship' is used for other 'good' EU citizens, are all indicative of a differentiated vision which depends on the citizens in question. In addition, regardless whether non-nationals are European citizens, they are likely to be confronted with similar challenges and difficulties within their host society. In this respect, the fact that arrival integration measures are reserved for a certain audience seems somewhat superficial. For example, the difficulties of learning the language of the host State are similar for all, European citizens and TCN's alike.[36]

Finally, it is worth noting that in certain circumstances, even being a citizen of a country does not exempt certain categories of non-mobile citizens from integration duties to gain access to residence status or social rights. The obligation on Dutch citizens of Caribbean origin to comply with the *inburgering* in the Netherlands is a particularly egregious example of this. Despite the Dutch Council of State expressing four times that an integration obligation on

30. Opinion of Advocate General Poiares Maduro in Case C-499/06 *Halina Nerkowska*, EU:C:2008:132, para. 23.
31. Opinion of Advocate General Verica Trstenjak in cases C-396/05, C-419/05 and C-450/05 *Doris Habelt, Martha Möser, Peter Wachter v. Deutsche Rentenversicherung Bund*, EU:C:2007:392, para. 83.
32. S. Iglesias Sánchez, 'Constitutional Identity and Integration: EU Citizenship and the Emergence of a Supranational Alienage Law', 18 *Ger. Law J.* (2017), p. 1798.
33. D. Kostakopoulou, S. Carrera and M. Jesse, 'Doing and Deserving: Competing Frames of Integration in the EU', in E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal Liberal States*, p. 167.
34. Letter to Mr Alan Shatter, Minister for Justice and Equality President of the European Council for Justice and Home Affairs on behalf of Johanna Mikl-Leitner, Federal Minister of the Interior, Austria, Dr. Hans Peter Friedrich Federal Minister of the Interior, Germany, Fred Teeven, Minister for Immigration, The Netherlands, The Rt Hon Theresa May, MP Secretary of State for the Home Department.
35. See for instance: European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action plan on Integration and Inclusion 2021, Brussels, 24 November 2020 COM(2020) 758 final, p. 1.
36. E. Collett, 'The Integration Needs of Mobile EU Citizens. Impediments and Opportunities', *Migration Policy Institute Europe* (2013).

categories of Dutch citizen would not be compatible with the relevant provisions of the national constitution and human rights treaties,[37] the legislator still decided to oblige newcomer Netherlanders – mainly the 'blacks of the Kingdom', as coined by Besselink, and typically socially disadvantaged[38] – to comply with such conditions or face administrative fines.[39] The obligation was repealed 18 months later.[40] There are other examples of integration requirements imposed on non-mobile poor citizens as a condition to benefit from certain social benefits, as explained below.

3. Diversification and spread of integration duties: Four models

A peculiar feature of these integration duties is that they are based on no definition of what integration means or is. Although integration has been defined in the literature,[41] it is striking that this notion is not defined in EU and national laws as such. The CJEU systematically finds the aim of integration or the requirement of a real link legitimate when reviewing Member States practices, without defining and engaging with what these concepts cover. This approach is not different with EU secondary immigration and asylum law, where the concept of integration appeared in the early 2000s. Aware of this, the Court stated that 'the fact that the concept of integration is not defined cannot be interpreted as authorizing the Member States to employ that concept in a manner contrary to general principles of Community law, in particular to fundamental rights.'[42] As a consequence, under the blurred limits of fundamental rights, the empty concept of integration as developed by EU Member States is thus validated by the Court and serves as an umbrella for a national vision of integration.

Because integration is an empty shell and a polysemous concept, I do not depart in this paper from one definition of what integration is, but I aim to shed light on the various contours of integration duties in EU and national law, i.e. conditions and obligations which are justified by the very concept of integration or any related one. Indeed, although there is a common trend within the Member States regarding the multiplication of integration conditions and obligations regarding EU citizens and TCN's they diverge in many ways, especially regarding the legal mechanisms operating behind them. From a legal perspective, identifying these different integration mechanisms is essential for assessing their compliance with fundamental rights and EU law, and in particular with the proportionality principle: though the objective pursued – integration – while undefined, is likely to be considered legitimate, the means put in place can be considered as disproportionate or not necessary for its achievement, as judged by the CJEU in a few

37. L.M.F. Besselink, 'Inburgeringsplichten voor Nederlanders – de administratieve verwerking van een ongrondwettige maatregel', in G.H. Addink et al. (eds.), *Grensverleggend Bestuursrecht [Liber Amicorum Ten Berge]* (Kluwer 2008), p. 137.
38. Ibid., p. 138.
39. Ibid., p. 147; See Article 1(c)(2) *Wet inburgering* (as it was originally adopted).
40. *Wet van 12 juni 2008 tot wijziging van de Wet inburgering en enkele andere wetten in verband met het vervallen van de mogelijkheid om Nederlandse onderdanen tot inburgering te verplichten en het aanbrengen van enkele technische verbeteringen*, (Staatsblad 2008, 229) (Civic integration act and some other laws cancelling the option to oblige Dutch nationals to integrate). See also the preparatory work: Tweede Kamer, vergaderjaar 2006–2007, 30 877, nr. 2.
41. For instance, see C. Murphy, *Immigration, Integration and the Law, The Intersection of Domestic, EU and International Legal Regimes* (Routledge, 2013); M. Jesse, *The Civic Citizenship of Europe.*
42. Case C-540/03 *European Parliament v. Council of the European Union*, EU:C:2006:429, para. 70.

cases.[43] Identifying the legal mechanisms at work in terms of integration is therefore essential for the defence of the categories most obstructed by such requirements. Moreover, such a typology is likely to assist researchers, policy-makers and the public obtain a better sense of how the conception of integration evolves in our societies and in the legal field in particular. Like any typology, it provides a useful starting point for identifying the dimensions of change or the differences for comparative or historical studies.[44]

I distinguish between four models: the symbolic model (section 3.A.), the meritocratic model (section 3.B.), the activation model (section 3.C.) and the selective model (section 3.D.). Most of these models can be identified for both TCN's and EU citizens, at different levels. It is worth noting, however, that the meritocratic model is the one which predominates the vision of the integration of EU citizens, while integration of TCN's is mainly guided by a vision of activation and selection, although not exclusively, as I will explain. My analysis is limited to the Dutch and Belgian legal systems because the former constitutes the paradigmatic and most advanced example of how integration conditions and obligations are being developed today at European level, and the latter seems to follow this trend but with important distinctions according to regions. Nevertheless, on the basis of a few questions illustrated in Figure 1, the typology proposed in this contribution could be applicable to other European interventionist legal systems in the field of integration, such as France, Denmark or Germany which I also touch upon in this paper. It must be noted that it is common to find EU Member States combining different integration models. Finally, given the growing importance of the case law of the CJEU regarding the concept of integration as well as the primacy of EU law, considering the EU legal system is also essential when studying the question of integration through a legal lens.

One last remark should be made on the difference between 'obligation' and 'condition'. Integration conditions are defined 'positively' in that they condition a right or a status. Integration obligations are defined 'negatively' in that they imply the preservation of a right, a status or a sum of money, which the bearer will lose if she does not fulfil the obligation. Whether integration is achieved through 'conditions' or 'obligations', the logic is similar: those seen as non belonging must 'earn' or 'deserve' their rights or status.

A. The symbolic model

Some integration obligations and conditions are merely symbolic. As the name suggests, the symbolic model involves 'symbolic' obligations or conditions. It can be identified if the question 'Is the integration condition or obligation mainly symbolic and practically easy to comply with?' can be answer positively (Figure 1). The practical burden of the obligation or condition is limited. In other words, it is almost impossible to fail the integration requirement, unless it is based on a refusal of principle or an event of *force majeure*

43. For example, the Court of Justice has sanctioned several abuses of integration conditions in Dutch and German law with regard to Directive 2003/86/EC on the right of family reunification for third-country nationals as well as under the association agreement with Turkey: with regard to Directive 2003/86/EC, see Case C-153/14 Minister van Buitenlandse Zaken v. K. and A., EU:C:2015:453 (see also below); and in relation to the Association Agreement: see Case C-89/18 A v. Udlændinge- og Integrationsministeriet; Case C-123/07 Nefiye Yön v. Landeshauptstadt Stuttgart; C-138/13 Naime Dogan v. Bundesrepublik Deutschland, para. 38. See S. Ganty, 23 EJML (2021), p. 176.

44. R. Van Berkel and V. Borghi, 'Review Article: the Governance of Activation', 7 *Soc. Policy Soc.* (2008), p. 393.

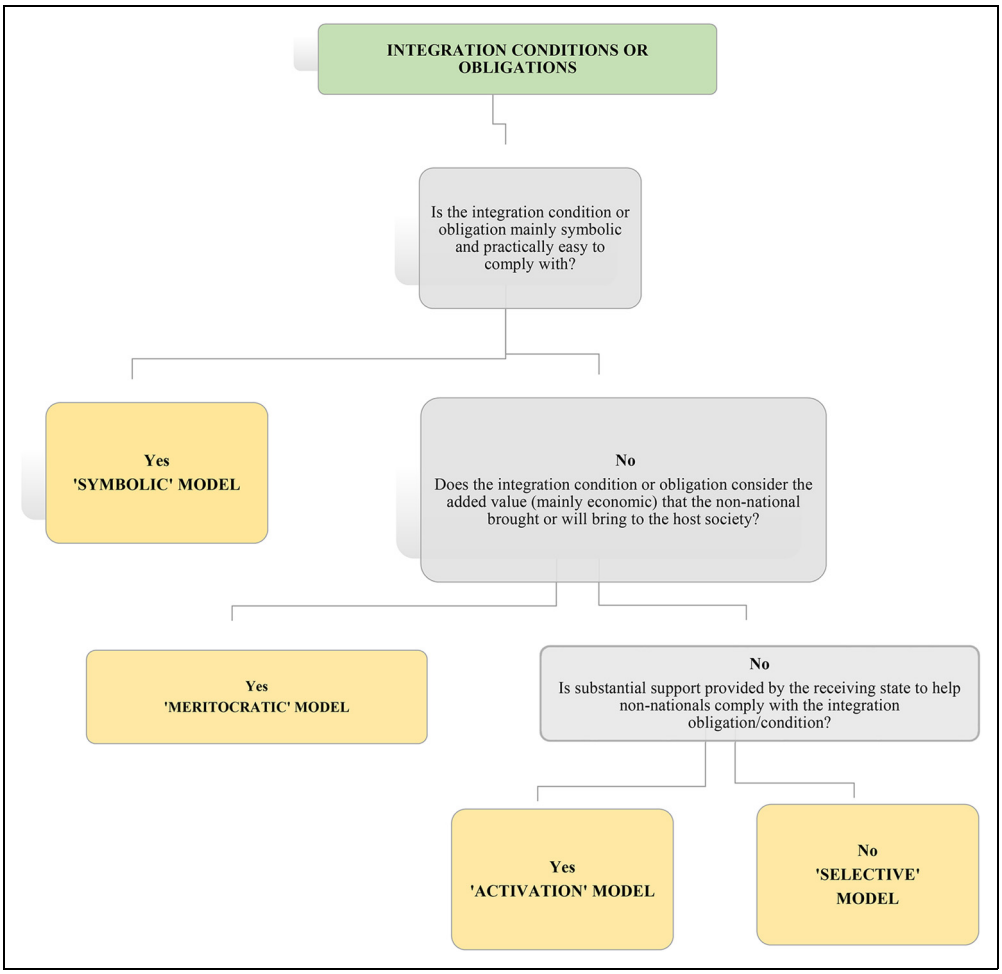

Figure 1. Conditions- and obligations-based integration models.

occurs. This model was illustrated until recently by French civic integration policies which required obligations such as taking a few hours of integration courses, which were so 'light' as to be mainly symbolic.[45] Another paradigmatic example is that of the Netherlands,[46]

45. Ministère de l'intérieur (France), Inspection Générale de l'administration, Rapport sur l'évaluation de la Politique d'accueil des étrangers primo-arrivants, No 2013-066, 2013.
46. Article 7a of the *Wet van 30 november 2006, houdende regels inzake inburgering in de Nederlandse samenleving (Wet inburgering)* (Act concerning rules on integration into Dutch society: Dutch Integration Act), *Stb*. 2006, 625. This law was substantially modified by the *Wet van 13 september 2012*, *tot wijziging van de Wet inburgering en enkele andere wetten in verband met de versterking van de eigen verantwoordelijkheid van de inburgeringsplichtige* (Act amending the Dutch Integration Act and certain other laws regarding the strengthening of personal responsibility in the obligation to

Denmark[47] and Belgium,[48] which condition the granting of 'family reunification' residence permits for certain categories of migrants on the signature of a declaration of integration, by virtue of which they undertake to respect the values and culture of the host country. This declaration is not yet applicable in Belgium, since it requires the adoption of a cooperation agreement between the different federated entities on the content of the declaration, which has not yet been reached.[49] This signature requirement is highly symbolic in its content, yet is nonetheless controversial and likely to be perceived as stigmatizing non-nationals. The main objective is to send a message about the host country's culture and values and about how it functions. For example, the draft integration declaration proposed by the State Secretary for Asylum and Migration in Belgium in March 2016 relied on many stereotypes about gender-related issues, such as: 'I understand and accept that in this country men and women have the same rights.[50] Men and women cannot therefore be forced to get married'. The integration declaration also mirrors the naturalization oaths in some countries which require expression of allegiance to the state's monarch and/or constitution, as well as willingness to obey the state's laws, and whose roots, as explained by Kostakopoulou, 'lie in medieval Europe, in the "fealty" owed by the vassals to the feudal lord and by the lords to the king'.[51]

The obligation of an integration declaration mainly targets TCN's, since it is usually applied in the context of long-term visa or residence permits, provided that they are not imposed on certain categories of migrants protected under EU law as a precondition for a residence status, especially highly skilled workers, as explained above, or refugees.

As for EU citizens, no additional integration requirement – even the most symbolic one – may apply as a precondition to the exercise of their freedom of movement or to obtaining permanent residence besides the condition of 5 years of legal residence.[52] However, this works differently when it comes to obtaining social benefits. Indeed, it is striking that this symbolic model appears in the case

integrate), *Stb. 2012*, 430. See *Wet van 23 juni 2017 tot 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* (Act amending the Dutch Integration Act and certain other laws regarding the inclusion of a declaration on participation in the integration exams and statutory underpinning for social education), *Stb*. 2017, 285. Letter of 18 January 2016 of Minister Asscher (Minister of Sociale Affairs and Employment) to the municipalities *Uitvoering maatschappelijke begeleiding en participatieverklaring voor vluchtelingen in 2016* (administration of social education and participation declarations for refugees in 2016).

47. The declaration is available at: https://uim.dk/filer/integration/opholds-og-selvforsorgelseserklaering/opholds-og-selvforsoergelseserklaering-engelsk.pdf.
48. *Loi du 18 décembre 2016 insérant une condition générale de séjour dans la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, M.B*., 16 January 2017 (Law inserting a general residence condition in the law of 15 December 1980 on access to the territory, stay, establishment and expulsion of migrants).
49. See the opinion of the Council of State of Belgium on this question: S.L.C.E., avis 59.855/2/V du 14 septembre 2018 sur un projet de loi 'insérant une condition générale de séjour dans la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers', *Doc. parl*., Ch. Repr., sess. ord. 2015-2016, n° 54-1901/4.
50. See the draft declaration of integration published by the State Secretary for Asylum and Migration Théo Francken, on his Twitter account: B. Hupin, 'Egalité hommes/femmes, terrorisme… Voici la charte que devront signer les candidats à l'immigration', *Rtbf.be*, 31 March 2016.
51. D. Kostakopoulou, 4 *Perspect. Eur. Polit. Soc.* (2003), p. 98.
52. Article 16, Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), [2004] OJ L 158.

law of the CJEU when considering mobile EU citizens who claim social benefits from their country of origin, and which have to prove that they have a real link with it. However, the CJEU interprets this link so leniently that it becomes mainly symbolic, with citizenship usually being sufficient to prove it. For instance, in the field of study grants for national students who have exercised their freedom of movement and claim such a grant from their country of origin, the Court adopts an assessment of their link with their State of origin on the basis of the *faiceau d'indices* technique, taking into account so many elements likely to prove this link with their state of origin that it becomes extremely easy for them to prove it.[53] In other words, the way the Court interprets mobile citizens' link with their state of origin is so lenient that it becomes merely symbolic. This echoes Lenaerts and Hereman's assumption that 'this integration can obviously be deduced from the possession of nationality'.[54] However, the way the Court interprets this requirement for a link between mobile EU citizens and their host country is strikingly different to their link with their state of origin: when mobile EU citizens require the same kinds of social benefits in their host Member State (and of which they are not nationals), the Court has been much stricter in examining the link of attachment by virtue of the principle of equal treatment, imbued with considerations of merit and corresponding to another integration model: the meritocratic model.[55]

B. The meritocratic model

'Merit' is the second way an integration obligation or condition can appear in the law.[56] This second model responds positively to the question of whether an integration condition or obligation takes into account the added value (mainly economic) that the non-national brought or will bring to the host society, which is linked to an idea of merit (Figure 1). Indeed, the condition of bringing added value through work, skills or wealth is anchored in a meritorious paradigm which mainly derives from ability and effort. According to the meritocratic model, the link with the host Member State has to be proven through a contribution to society or sufficient economic participation in it and, where appropriate, by the absence of any deviant behaviour, lending a moral aspect to integration in the latter case which is based on virtues.[57] In other words, this second model is based on conditions or obligations related to what migrants have already accomplished for their host society (or will accomplish), in particular with respect to their skills and/or economic contribution by working consuming or investing.

53. Case C-523/11 et C-585/11 *Laurence Prinz v. Region Hannover and Philipp Seeberger c. Studentenwerk Heidelberg*, EU:C:2013:524; Case C-220/12 *Andreas Ingemar Thiele Meneses v. Region Hannover*, EU:C:2013:683; Case C-11/06 et C-12/06 *Rhiannon Morgan v. Bezirksregierung Köln et Iris Bucher v. Landrat des Kreises Düren*, EU:C:2007:626.
54. K. Lenaerts and T. Heremans, 'Contours of a European Social Union in the Case-law of the European Court of Justice', 2 *E.C.L. Review (*2006), p. 114.
55. Case C-209/03 Dany Bidar v. London Borough of Ealing, Secretary of State for Education and Skills.
56. It has been rightly argued that 'the distinction between capital *tout court* and human capital (or talent) is not watertight in practice, and capital can very well be the fruit of a person's merit': O. Ammann, 'Passports for Sale: How (Un) Meritocratic Are Citizenship by Investment Programmes?', 22 *EJML* (2020), p. 323. See also: M. Sandel, *The Tyranny of Merit, What's Become of the Common Good* (Penguin 2021), p. 113-137. Merit also echoes the concept of meritoriousness which designates the fact of being praiseworthy or 'commendable', deserving praise and approval and comes from the latin word *meritorius*, which literally means 'brings money'.
57. N. Nic Shuibhne, 52 *CML Rev.* (2015), p. 920. See for instance Case C-378/12 *Nnamdi Onuekwere v. Secretary of State for the Home Department*, EU:C:2014:13; Case C-316/16 and C-424/16, *B v. Land Baden-Württemberg and Secretary of State for the Home Department v. Franco Vomero*, EU:C:2018:256, para. 65 and para. 86.

As regards EU citizens, the Court has validated on numerous occasions the practice of host Member States to grant social benefits on the basis of the principle of non-discrimination on grounds of nationality, only if the applicant mobile EU citizens can prove that they are integrated in that state – the 'integration-protection nexus' as coined by Rennuy –[58], a condition which takes on meritocratic contours.

The example of frontier workers is illustrative. The Court accepted that Member States may require proof of a sufficient link of attachment in order for these workers or their family members to benefit from equal treatment, especially for social benefits. While in principle any worker in a Member State must be able to benefit from equal treatment alongside all other national workers[59] – and is therefore presumed to have the necessary links with the host Member State – the absence of residence in the host Member State[60] reverses the presumption of integration according to the Court. The Court justifies this on the basis that frontier workers are *a priori* not as integrated as other workers residing in that state,[61] which attracted criticism from Advocate General Wathelet, since it amounts to emptying the equality principle of its very essence.[62] How could a frontier worker prove this link of attachment, or her family members? By proof of a significant contribution to the national labour market, which is the only criterion which permits the assessment of the integration link with the host state, in addition to the residence criterion, by definition impossible to fulfill for frontier workers. On this basis, the Court accepted in *Geven* that measures which exclude frontier workers from education benefits because their professional activities do not exceed the 'minimum' employment threshold i.e. 15 hours a week, is appropriate and proportionate to the objective pursued.

Even the condition of five years' legal residence required to obtain permanent residence status for mobile EU citizens – presented as an integration condition – follows from this meritocratic rationale. Indeed, the Court has clarified that mobile EU citizens need to prove five years of residence which has been legal in the sense that the Directive 2004/38/EC defines it, meaning that mobile EU citizens must have sufficient resources for herself and for her family members over this period, which can be more difficult to prove for poorer workers.[63]

Moreover, the Court's restrictive reasoning regarding the exclusion of mobile EU citizens from social benefits – including in the *Dano* and *Alimanovic* cases – pushed Davies to assert that this change in the CJEU's case law on the granting of social benefits would not be so much the expression of a change in the normative position of the Court, but a reflection of a change in the profile of the applicants for social benefits.[64] Davies observes that in recent cases, the litigants (notably Dano[65] and Alimanovic)[66] presented a much less meritorious profile than that of the applicants in older

58. N. Rennuy, "The Trilemma of EU Social Benefits Law: Seeing the Wood and the Trees", 56 *CML Review* (2019), p. 1552.
59. Article 45 TFEU and Article 24(1) Directive 2004/38/EC.
60. S. O'Leary, 51 *CML Review* (2014), p. 610.
61. C-20/12 Elodie Giersch v. État du Grand-Duché de Luxembourg, para. 65; Case C-337/97 *C. P. M. Meeusen v. Hoofddirectie van de Informatie Beheer Groep*, EU:C:1999:284, para. 21.
62. Opinion of Advocate General Melchior Wathelet in Case C-238/15 Maria do Céu Bragança Linares Verruga.
63. Case C-424/10 and C-425/10, Tomasz Ziolkowski, Barbara Szeja, Maria-Magdalena Szeja, Marlon Szeja v. Land Berlin; Case C-529/11 Olaitan Ajoke Alarape, Olukayode Azeez Tijani v. Secretary of State for the Home Department.
64. G. Davies, 'Has the Court Changed, or Have the Cases? The Deservingness of Litigants as an Element in Court of Justice Citizenship Adjudication', 25 *J. Eur. Public Policy* (2018), p. 1142.
65. Case C-333/13, *Elisabeta Dano and Florin Dano v. Jobcenter Leipzig*, EU:C:2014:2358.
66. Case C-67/14 *Jobcenter Berlin Neukölln v. Nazifa Alimanovic e.a.*, EU:C:2015:597.

cases (for example Trojani,[67] Grzelczyk[68] and Martinez Sala).[69] The thesis developed by Davies seems to go 'a bridge too far', as some have rightly written.[70] However, Davies is right in raising the likelihood that establishing a meritorious profile for applicants has played a role in the outcome of cases. Whether this is linked to an ideological trend – an explanation we support – or to the profile of the applicants, the fact remains that the meritocratic integration model seems to operate implicitly here and in a completely circular manner: certain profiles considered as not having participated economically to a sufficient extent in the host society are considered *de facto* as not having the necessary link to permit them to benefit from social assistance in that state. Furthermore, being a worker is no longer enough to prove this link. As O'Brien demonstrates, the working poor are now excluded from the benefit of equal treatment because they miss 'a real link', they do not participate enough in their host society from an economic perspective. The author thus speaks of an elitist model of free movement, granting rights on the basis of socioeconomic class:[71] there are now valid and invalid jobs in terms of establishing a link with the host society.[72]

If this meritocratic model of integration is mainly developed with regard to European citizens claiming certain rights or social benefits, it also echoes the situation of TCN's who are highly skilled workers or researchers and their family members, who are exempted from any integration test to obtain a visa and in most cases for the renewal of their residence permit.[73] They are clearly viewed as meritorious and the skills and the money they bring are implicitly regarded as a sufficient link or a dispensation[74] to prove this link with their host society.

At the national level, an emblematic example of this 'meritocratic' integration model is that applied to the acquisition of Belgian nationality. Since 2013,[75] significant importance is now attached to the socioeconomic status of candidates for nationality and in particular to their economic participation, which is becoming a veritable 'measurement of integration'. A candidate for nationality who has reached the age of 18 and has been lawfully residing in Belgium for more than five years may acquire Belgian nationality if she proves her knowledge of one of the three national languages,[76] proves her social integration[77] and proves her economic integration.[78] Having worked continuously for five years constitutes the 'royal road' to the acquisition of nationality. Indeed, economic participation for five years *without interruption* constitutes the proof not only of the economic participation condition (minimum 468 days) but also of knowledge of the language and social integration. In the absence of proof of this economic participation condition, proof of social integration must be provided either through a diploma or a certificate issued by a Belgian

67. Case C-456/02, *Michel Trojani v. Centre public d'aide sociale de Bruxelles (CPAS)*, EU:C:2004:488.
68. Case C-184/99 *Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, EU:C:2001:458.
69. Case C-85/96 *María Martínez Sala v. Freistaat Bayern*, EU:C:1998:217.
70. A. Hoogenboom, 'CJEU Case Law on EU Citizenship: Normatively Consistent? Unlikely! – A Response to Davies' "Has the Court Changed, or Have the Cases?"', *EU Law Analysis* (2018), https://eulawanalysis.blogspot.com/2018/11/cjeu-case-law-on-eu-citizenship.html.
71. C. O'Brien, 53 *CML Rev.* (2016), p. 939 and 941.
72. Ibid., p. 937.
73. Directive 2009/50/EC; Directive 2014/66/EU.
74. W. Schinkel, 'Against "Immigrant Integration": for an End to Neocolonial Knowledge Production', 6 *Comparative Migration Studies* (2018), p. 4.
75. D. De Jonghe and M. Doutrepont, 'Le Code de la nationalité belge, version 2013, de "sois Belge et intègre-toi" à "intègre-toi et sois Belge (1ère partie)"', *Journal des Tribunaux* (2013), p. 317.
76. Article 12*bis*(1), 2°, c) Belgian Nationality Code (*Code de la nationalité belge* (CNB)).
77. Article 12*bis*(1), 2°, d) CNB.
78. Article 12*bis*(1), 2°, e) CNB.

educational establishment, either by having followed professional training or by having completed an integration course. The same goes for proof of knowledge of a language, which can be reported in the same way as for the social integration condition.[79] The substantial economic contribution (five years without interruption) somehow dispenses with all the social integration conditions, including language proficiency. In other words, the acquisition of Belgian citizenship is made much easier for people who are seen as meritorious. In this vein, the controversial citizenship by investment programmes constitute an even more telling example of the integration model based on merit: the fact that certain non-EU citizens invest in certain Member States grants them the opportunity to acquire a better citizenship and benefit from all the rights attached to it (included those granted in other EU Member States to the national of Member States as EU citizens).[80]

In this regard, based on this meritocratic idea of integration, I argue that a new *de facto* citizenship – which I coin *merizenship*[81] – is emerging alongside the status of national citizen and denizen.[82] As a result, rights are increasingly being granted on the basis of whether someone contributes economically to a society – a factual situation based on actions or achievements. This *merizen* status is superimposed onto the legal statuses – the legal situation – and sweeps away the need for the social, civic and cultural ties woven with a state. In other words, 'merit' or 'meritoriousness' introduces a new hierarchy which demarks the entitlement to state support benefits or statuses, and is superimposed onto the citizenship hierarchy.[83] The state chooses whom it should welcome, protect and provide support to, and this selection is based on merit or meritoriousness. This status of *merizenship* distinguishes itself from the mere distinction between economically active and non-active described for EU citizens according to which only economic activity can trigger the obligation on the host Member State to provide social welfare.[84] Indeed, *merizenship* goes beyond the question of who is entitled to social benefits or not, but concerns more broadly the access to rights, residence status and citizenship based on the added value that a person can bring to society, which can be through work, but also through skills, money etc. as developed elsewhere.[85] Moreover, it not only concerns EU citizens, but also TCN's and goes beyond the mere divide between the economically active and non-active, which does not entirely hold anymore in the context of EU law as developed above, since poorer workers are being increasingly excluded from any social benefits. Finally, although not developed in this paper, the vision of merit is likely to extent to social and cultural features going beyond mere economic added-value.[86]

Mouritsen et al. echo this concept of *merizenship* for EU citizens by speaking of 'European "citizenship lite"', with the full-flavour variety available only to deserving European citizens, explaining that 'the closure of membership is increasingly tied, not to national identity but to employment skills and economic

79. S. Ganty and P. Delgrange, 'Heurs et malheurs des parcours d'accueil et d'intégration des étrangers en Belgique', 185 *RDE* (2015), p. 511.
80. K. Surak 'Millionaire Mobility and the Sale of Citizenship', 47 *J. Ethn. Migr. Stud* (2021), p. 166; O. Ammann, 22 *EJML* (2020), p. 309.
81. S. Ganty, *Critique d'une intégration choisie*, p. 465 et seq.
82. In 1990, Tomas Hammar coined the term *denizens* to designate residents who have a 'secure' legal stay. According to Hammar, denizens are 'persons who are foreign citizens with a legal and permanent resident status […] they have been given the right to stay there permanently […]. The decisive criteria used here are first domicile and then full residential rights' (T. Hammar, *Democracy and the Nation State* (Avebury, 1990), p. 15).
83. D. Kochenov, *Citizenship* (MIT Press, 2019); D. Kochenov and J. Lindeboom (eds.), *Kälin and Kochenov's Quality of Nationality Index* (Bloomsbury, 2020).
84. K. Hailbronner, 'Union Citizenship and Access to Social Benefits', 42 *CML Rev* (2005).
85. S. Ganty, *Critique d'une intégration choisie*, p. 465 et seq.
86. Ibid.

selection within a harder outer (European Union) shell and, at the level of identity and defining values, to a simple preference for "liberal people"'.[87] Civic integration policies also drive in this direction by exempting non-nationals who are 'wanted' – highly-skilled workers and their families – and by imposing particularly difficult conditions and obligations on low-skilled migrants. Joppke sums up the situation by explaining that today, social inclusion is intrinsically more closely linked to the labour market than to the nation state as a whole, motivated by an image of society as a 'machinery of performance'.[88]

C. The activation model

The third way integration obligations or conditions manifest in law is based on an activation rationale. It refers to the concept of 'active social state' and the European style of activation policies and answers positively the question of whether the State provides substantial support to help non-nationals to comply with the integration obligation or condition (see Figure 1). These policies relate to the actions of welfare states to 'activate' the unemployed by emphasizing their responsibility. It is the responsibility of individuals to avoid being dependent on the state and becoming a burden on the community. This responsibility is no longer collective but individual,[89] placing an increasing burden on individuals, especially those who do not fit the pattern of 'good citizen': the poor, the disabled,[90] minorities etc.

Over the past 15 years, a great deal of research[91] has shown that several European countries have shifted to a market-oriented social model. Neil Gilbert sums up this new direction as public support for private responsibility.[92] Among these policies, states have introduced activation programmes which require people on employment and social benefits to make the effort to enter the job market. If they fail, they are likely to be penalized.[93] Authors have discussed the ambiguities of these policies, which Daniel Dumont sums up as follows:

> measures to activate and empower unemployed people do not lead to a 'conditionalization' of unemployment benefits and minimum residual income, but rather to their contractualization. Depending on how this contractualization is concretely implemented, two perspectives can be clearly distinguished on an ideal-type level. In their welfare to work version, activation measures tend to take on a particularly coercive character with regard to people deprived of employment, raising fears of their unjust and counterproductive stigmatization. But in their so-called negotiated variant, these measures seem conversely likely to respond to the difficulties experienced by the beneficiaries better than the traditional welfare state has ever been able to do.[94]

87. P. Mouritsen et al., 19 *Ethnicities* (2019), p. 596.
88. C. Joppke, 'Beyond National Models: Civic Integration Policies for Immigrants in Western Europe', 30 *West Eur. Politics* (2007), p. 8.
89. P. Feltesse, 'L'État social actif au service de l'économie marchande', 10 *Pensée Plurielle* (2005), p. 11.
90. C. O'Brien, 'Union Citizenship and Disability: Restricted Access to Equality Rights and the Attitudinal Model of Disability', in D. Kochenov (ed.), *EU Citizenship and Federalism: The Role of Rights* (Cambridge University Press, 2017), p. 509.
91. See for instance R. Van Berkel, 'The Provision of Income Protection and Activation Services for the Unemployed in "Active" Welfare States. An International Comparison', 39 *Jnl. Soc. Pol.* (2009), p. 17.
92. N. Gilbert, *Transformation of the Welfare State: The Silent Surrender of Public Responsibility* (Oxford University Press, 2012).
93. D. Dumont, 'Activation rime-t-elle nécessairement avec stigmatisation? Une mise en perspective critique du procès de l'État social actif', 78 *Droit et société* (2011), p. 448.
94. Ibid., p. 447. See also P. Feltesse, 10 *Pensée Plurielle* (2005).

This tension with activation programmes can in some cases be transposed into integration policies in certain European states, when they require newcomers to integrate into society, especially TCN's.[95] In many cases, the newcomer signs a contract with the organizations or administrations responsible for following her integration. If the migrant fails to comply with the conditions or obligations expected of her, she is likely to be refused certain rights or residence status or she may be fined. This contradiction, linked to the coercive versus empowering nature of these integration policies is similar to the tension which exists within activation policies in the field of employment. Civic integration policies such as the *parcours d'accueil*, or the *parcours d'intégration* or *inburgering* organized in the various regions of Belgium are paradigmatic examples of this activation model.[96] Rea and Jacobs also explain that with these integration policies '[i]n most cases it is an extension of workfare and activation logics which are more universally present in welfare state arrangements (and equally have an impact on national citizens)'.[97] Newcomers are obliged to follow such integration processes and in some cases, to pass tests, as in Flanders. These programmes are fully funded by the state and are generally adapted to the migrant's profile.[98] However, full responsibility rests with the newcomer. The burden of these programmes is more or less heavy depending on the region. The level of difficulty also varies enormously, with the consequence that in some cases, they could become counterproductive.

Socioeconomically underprivileged people more generally (whether citizens or not) are also likely to be obliged to comply with a number of integration conditions to benefit from social assistance benefits in the Netherlands or social housing in Flanders respectively. The Flemish *Wooncode* requires people – including Belgian citizens – who would like to benefit from social housing to prove their willingness to speak Flemish.[99] At the federal level, the new Belgian legislation on individualized social integration projects ('*Projet individualisé d'intégration sociale*') permits obliging the beneficiaries of social assistance benefits to follow an integration process regardless of citizenship.[100] In the Netherlands too, a lack of a minimum command of Dutch – or progress in mastering Dutch – can be punished by a reduction in social benefits,[101] with the consequence that it is migrants or those of foreign origin who are mainly obstructed by such a requirement.

95. A. Mechelynck, 'Mettre l'État Social Actif au Service des capacités: Propositions à partir de l'analyse de l'activation du comportement de recherche d'emploi des chômeurs et de l'inburgering', 4 *TSR RDS* (2014), p. 411.
96. Ibid.
97. D. Jacobs and A. Rea, 'The End of National Models? Integration Courses and Citizenship Trajectories in Europe', 9 *IJMS* (2007), p. 264.
98. S. Ganty and P. Delgrange, 185 *RDE* (2015), p. 511.
99. Article 92, paras. 3, 6° and 7° of the *Wooncode*, *M.B.,* 19 August 1997. See also Article 30*bis* of the *Besluit van 12 oktober 2007 van de Vlaamse Regering tot reglementering van het sociale huurstelsel ter uitvoering van titel VII van de Vlaamse Wooncode*, *M.B.*, 7 December 2007. See also A. Mechelynck, 'Activer l'individu sans l'écraser: une utopie? Réflexions à partir des expériences flamandes de l'inburgering et du wooncode', 1 *Rev. interdiscip. étud. jurid.* (2013), p. 224. See also: Case C-343/17, *Fremoluc NV* v *Agentschap voor Grond- en Woonbeleid voor Vlaams-Brabant (Vlabinvest ABP) e.a.*, EU:C:2018:754. This case concerned a public agency's pre-emptive right to create social housing on land located within its jurisdiction which would be allocated by priority to private persons who present 'a substantial social, economic or socio-cultural link' with the part of the territory corresponding to its jurisdiction. The Court considered the case inadmissible in that it had no connection with Articles 21, 45, 49 and 63 TFEU, as well as with Articles 22 and 24 of Directive 2004/38/EC (para. 32).
100. *Loi du 26 mai 2002 concernant le droit à l'intégration sociale*, *M.B.*, 21 July 2002 (Law on social benefits).
101. *Wet van 20 maart 2015 tot wijziging van de Wet werk en bijstand teneinde de eis tot taalbeheersing van de Nederlandse taal toe te voegen aan die wet (Wet taaleis WWB)* (*Stb*. 2015, 136) (it entered in force on 1 January 2016). A law enforcement report was published in January 2018. It emerges from this report and from the general conclusions, as summarized by the Secretary of State for Social Affairs and Employment (*Staatssecretaris van Sociale Zaken en Werkgelegenheid*), T. van Ark, that many municipalities apply this law fragmentedly. The Secretary of State planned to provide better explanations for the

This activation model is different from the meritocratic one in that it does not require that the people in the target group bring added value to the society they wish to become a part of, but to show that they are making the rights steps – supported by public authorities – in order to become '*merizens*' and to conform to the model of the 'good citizen'.

D. The selective model

Finally, the selective model differs from the activation model in that the integration conditions or obligations are so onerous that they can be viewed as a way of 'selecting' migrants – likely to become *merizens* – rather than 'activating' them. It answers negatively the question whether substantial state support is provided to help non-nationals comply with the integration obligation/condition (see Figure 1). A key feature of this model is that the state provides little or no support to migrants, unlike the activation model. Indeed, in the latter model, even if the obligations or conditions can be difficult to fulfil and, in this respect, become counterproductive, the state systematically supports the migrant and provides her with the essential resources for her to comply with her obligations.

Consequently, in the selective model, only migrants who are 'wanted' are able to fulfil the obligations or conditions required of them. The Dutch civic integration policy which requires migrants to pass a test to obtain a family reunification visa or a permanent residence permit is associated with this model. The requirements are so high and the support provided by the Dutch state so limited that only a certain category of migrants (wealthy, educated etc.) will be able to comply with the obligations or conditions required without facing undue hardship.[102] In *K. & A.* – which concerned the integration tests, language and cultural knowledge tests, imposed in the Netherlands on the families of TCN's – the CJEU, while accepting the very principle of these tests, insisted that they cannot in any circumstances have the effect of selecting ('filtering') migrants. Any integration obligation or condition within the framework of family reunification must facilitate the integration of family members.[103] The jurisdiction also insisted on the proportionality of the fine imposed on TCN's who fail to pass an integration test after acquiring their long-term resident status in the Netherlands on the basis of the long-term residence directive.[104] Some authors have argued that the Court interpreted the family reunification and the long-term residence directives in interesting ways, to restrict national integration policies drastically.[105] It is difficult to agree with this view. Although the Court has indeed set some limits, they remain rather vague and focus only on some 'selective' elements of these tests, i.e. the fees but not the difficulty of the test or the cost of the preparation. Indeed, only certain slight

application of the law. *Brief aan de Tweede Kamer van de minister van SZW, Uitvoering en evaluatie Participatiewet, vergaderjaar 2017–2018*, 34 352, n. 84, p. 1. See also: K. Groenendijk and P. Minderhoud, 'Taaleis in de bijstand. Discriminerend, disproportioneel en onnodig', 138 *Focus* (2016), p. 183.

102. S. Ganty, *Critique d'une intégration choisie,* p. 765 et seq.

103. Case C-153/14 Minister van Buitenlandse Zaken v. K.et A. According to the Court, integration measures 'must be aimed not at filtering those persons who will be able to exercise their right to family reunification, but at facilitating the integration of such persons within the Member States' (para. 57). See also two other similar cases where the Court did not make any similar statements as regard the 'filtering' of migrants: Case C-257/17, *C and A v. Staatssecretaris van Veiligheid en Justitie*, EU:C:2018:876; Case C-484/17, *K v. Staatssecretaris van Veiligheid en Justitie*, EU:C:2018:878.

104. Case C-579/13 *P. and S.* v. *Commissie Sociale Zekerheid Breda, College van Burgemeester en Wethouders van de gemeente Amstelveen*, EU:C:2015:369.

105. D. Thym, 'Towards a Contextual Conception of Social Integration in EU Immigration Law. Comments on P&S and K&A', 18 *EJML* (2016), p. 89; M. Jesse, 'Integration Measures, Integration Exams, and Immigration Control: P and S and K and A', 53 *CML Rev.*, p. 1065.

minor corrections regarding the fees were introduced by the Netherlands following these judgments, limiting their scope. These pre-entry tests imposed by the Dutch state still appear to be attached to the selective model, particularly because of the costs these tests impose – albeit having been symbolically reduced following the judgment – as regards the preparation for the tests and also the high bar they set for low-skilled migrants. This idea of selection must also be set against the evolution of Dutch legislation relating to these civic integration tests. Before 2009, the pre-entry civic integration test imposed for a family reunification visa only included listening comprehension and oral expression parts. The level of language proficiency required was equivalent to level A1 minus of the Common European Framework of Reference for Languages. The test as it was implemented had been recommended by a committee of experts (the Franssen Commission) which explained that a higher level entailed the risk of excluding certain migrants, especially the illiterate.[106] However, in late 2009[107] the proficiency level was increased A1 and a reading comprehension part was introduced, despite the contrary opinions of the *Adviescommissie voor Vreemdelingenzaken*[108] and the Dutch Council of State. These institutions had clearly underlined the risk of exclusion of certain migrants if such modifications were adopted.[109] In this context, we can observe with de Vries regarding the civic integration tests as they were applied in the Netherlands before 2010 in the context of family reunification, that low-skilled migrants tend simply not to take the test and give up on family reunification.[110] This is also what the Dutch national ombudsman pointed out in a 2011 report.[111] Selection can therefore also deter potential candidates from taking the test because of the constraints of the test including – above all – the obligation to pass. Moreover, the legislation's preparatory works show that the Dutch legislator imposed these tests in order to prevent the arrival of poorly educated or less-privileged families.[112] The 'selective' nature of Dutch law is also confirmed by the fact that OECD nationals are exempted from taking this test. This difference in treatment is based on nationality. But this derogation also indirectly discriminates on the basis of ethnic origin, because certain ethnic minorities such as migrants from the Maghreb are over-represented among visa applicants obliged to pass those tests.[113] This distinction based on ethnic origin also mirrors the aforementioned integration requirements imposed on Dutch citizens of Caribbean origin, which was repealed 18 months after its adoption. The socioeconomic situation also plays an important role since migrants from OECD countries are likely to be in a more comfortable socioeconomic position than migrants from

106. K. de Vries, *Integration at the Border.*
107. Ibid., p. 61. *Besluit van 31 augustus 2010 tot wijziging van het Vreemdelingenbesluit 2000 in verband met de wijziging van het basisexamen inburgering in het buitenland*, *Stb.* 2010, 679.
108. Ibid., p. 62. Adviescommissie voor Vreemdelingenzaken (ACVZ), 'Briefadvies huwelijks- en gezinsmigratie', The Hague, 19 February 2010, ACVZ/ADV/2010/004; Adviescommissie voor Vreemdelingenzaken, 'Advies inzake de conceptwijziging van het Vreemdelingenbesluit 2000 in verband met de wijziging van het basisexamen inburgering', The Hague, 19 February 2010ACVZ/ADV/2010/005.
109. Ibid., p. 62.
110. Ibid., p. 191.
111. De Nationale ombudsman, *Rapport – Inburgering in het buitenland (n°135)*, 2011, p. 19.
112. K. Hailbronner and T. Klarmann, 'Family Reunification Directive 2003/86/EC (Articles 6–22)', in K. Hailbronner and D. Thym (eds.), *EU Immigration and Asylum Law. A Commentary* (C.H. Beck – Hart –Nomos, 2016), p. 374.
113. K. de Vries, *Integration at the Border*, p. 53.

non-OECD countries.[114] It is therefore clear that in addition to the costs of such tests in Dutch law, on which the Court has ruled, many other elements are 'selective' and could be challenged as to their compatibility with Directive 2003/86/EC regarding the right to family reunification which excludes any form of selection.

Certainly, the fact remains that that the green light to adopt such integration conditions also prompted other EU countries to impose new integration tests and related costs, which had previously not been imposed, such as in Belgium and in particular in the Flemish Region. Indeed, the Flemish Community's *inburgering* programme seems to be converging increasingly on this selection model and its Dutch cousin: it now imposes an obligation that knowledge of Flemish must be demonstrated through a test and more recently, it adopted a regulation permitting migrants to be required to pay for their own *inburgering* process.[115]

Furthermore, these tests are likely to affect particularly vulnerable people such as refugees in the Netherlands[116] or women – over-represented among reunited spouses[117] and those with little education or illiterate. Finally and more importantly, the very existence of these integration measures and conditions is highly questionable as such, as several authors have pointed out, describing them as 'illiberal' practices,[118] especially when they are imbued with discriminatory components on the basis of ethnic origin, as argued somewhere else in order to indirectly select on that basis.[119]

114. The Dutch government explains this exemption on the basis that OECD nationals come from cultural, economic and social backgrounds from which would be reasonable to expect that they would have a good understanding of the social relations, values and standards of Dutch life. K. de Vries, *Integration at the Border*, p. 53 and p. 309. See also *Travaux préparatoires II* 2004–2005, 29 700, No 6, p. 31 and *Travaux préparatoires II* 2003–2004, 29700, No 3, p. 19.

115. See in particular *Decreet van 22 December 2017 houdende bepalingen tot begeleiding van de begroting 2018, M.B.,* 29 December 2017 (its Article 3 amending Article 46(2) of *het decreet van 7 juni 2013 betreffende het Vlaamse integratie-* and *inburgeringsbeleid and providing* '[d]eelname aan de testen is afhankelijk van de betaling van een retributie'; *Besluit van 20 april 2018 van de Vlaamse Regering tot vaststelling van de modaliteiten voor het testen en het uitreiken van de bewijzen van het taalniveau Nederlands, vermeld in artikel 46/2 van het decreet van 7 juni 2013 betreffende het Vlaamse integratie-* and *inburgeringsbeleid* and *houdende wijziging van artikel 7 van het besluit van de Vlaamse Regering van 3 mei 2013 houdende uitvoering van het decreet van 18 november 2011 tot regeling van het bewijs van taalkennis, vereist door de wetten op het gebruik van de talen in bestuurszaken, gecoördineerd op 18 juli 1966*, *M.B*., 16 May 2018.

116. F. Antenbrink et al., *Inburgering. Eerste resultaten van de Wet inburgering 2013* (2017). The Minister reacted to criticism of the low success rate, which is said to be half as high as in 2007: Brief aan de Tweede Kamer van de minister van SZW, 26 januari 2017, Tweede Kamer, vergaderjaar 2016–2017, 32 824, nr. 182, 3. See also the Opinion of Advocate General Paolo Mengozzi, Case C-257/17 *C and A v. Staatssecretaris van Veiligheid en Justitie*, EU:C:2018:503 in which he observes that 'according to applicants C and A, the success rate of the said examination is low' (para. 70); S. Kamerman, Rapport Rekenkamer: het gaat niet goed met het inburgeren, *NRC* (2017).

117. More recently, such a pre-departure condition was proposed in a draft bill before the Belgian Chamber of representatives. In an opinion sent to the parliamentary commission in charge of draft bill, I showed that more than 80% of the applicants required to pass such a pre-departure test were likely to be women: S. Ganty, Avis juridique Commission de l'intérieure – Chambre des représentants, Proposition de loi DOC 55 0877/001 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, instaurant un parcours préparatoire en matière d'intégration et de connaissances linguistiques, June 2020, www.philodroit.be/IMG/pdf/note_relative_a_la_-proposition_de_loi_doc_55_0877001_sarah_ganty_site_internet_centre_perelman_ente_te_copy.pdf?lang=en.

118. C. Joppke, 'Immigrants and Civic Integration in Western Europe Belonging' in K. Banting *et al.* (eds.), *Diversity, Recognition and Shared Citizenship in Canada* (Institute for Research on Public Policy, 2006), p. 21 and seq.; E. Guild, K. Groenendijk and S. Carrera (eds.), *Illiberal Liberal States*; C. Joppke, 30 *West Eur. Politics* (2007), p. 1. See also R. Van Oers, E. Ersbøll and D. Kostakopoulou (eds.), *A Redefinition of Belonging?*.

119. S. Ganty, 23 *EJML* (2021), p. 176.

It is worth noting that this selective model is mainly attached to immigration or citizenship policies, since this idea of selection is not found with social benefits mainly based on an idea of merit or activation or with freedom of movement, mainly attached to a meritocratic idea of integration. As a consequence, the selective model is mainly likely to affect TCN's and not EU citizens, although the Court has clearly stated that filtering migrants on grounds of integration conditions or measures is not admissible under EU law as mentioned above.

4. Conclusion

In this paper I dealt with integration duties increasingly imposed on EU citizens and TCN's at different levels. Although these two categories are under very different legal regimes, some similar legal mechanisms regarding these conditions and obligations can be observed. On this basis, I have proposed a new typology of integration conditions and obligations in the legal field – in EU law and national law – distinguishing between four models: symbolic, meritocratic, related to activation and selective. TCN's are likely to be concerned by all four models, while EU citizens are predominately concerned by the meritocratic model, with some application of the symbolic and activation models depending on the right or the status at stake.

One important trend emerges from the four different models mentioned above: the mobilization of the concept of integration tends to target and obstruct socioeconomically disadvantaged groups, in particular whether directly through the *ratione personae* scopes of these policies or indirectly, through the *ratione materiae* scope or the requirements which are particularly difficult to comply with for people in a socioeconomically underprivileged situations. In other words, whether in EU or national law, or whether these integration duties are symbolic, meritocratic, related to activation or selective, these duties have important socioeconomic contours – direct or indirect – for EU citizens and TCN's. Firstly, a person will generally be considered as being integrated without any other conditions, if she makes a substantial economic or intellectual contribution to the host society. This is the case for European citizens who wish to use their freedom of movement and/or to benefit from equal treatment in terms of social benefits – the 'Market citizen'.[120] Highly qualified TCN's, researchers, workers on intra-corporate transfer and their families who are exempted from taking integration courses or passing tests are another example. Secondly, the fact integration exams are expensive and impose a hurdle sometimes impossible to clear is also likely to have an impact on people who are in a precarious socioeconomic situation, especially when they do not receive support from the state as in the selective model. Thirdly, integration requirements increasingly condition the granting of social benefits, affecting by definition socioeconomically underprivileged people.

As Joppke explains when discussing integration tests which mainly target non-qualified third-country nationals:

> European states are everywhere crafting sharply dualistic immigration policies, in which for highly skilled immigrants a red carpet of relaxed entry and residence requirements is laid out […], while low-skilled family migrants are meant to be fended off by toughened age thresholds together with cohabitation and

120. D. Kochenov, 'The Oxymoron of "Market Citizenship" and the Future of the Union', in F. Amtenbrink, G. Davies, D. Kochenov and J. Lindeboom (eds.), *The Internal Market and the Future of European Integration: Essays in Honour of Laurence W. Gormley* (Cambridge University Press, 2019), p. 217. See also N. Nic Shuibhne, 'The Resilience of EU Market Citizenship', 47 *CML Rev*. (2010), p. 1597.

> pre-entry integration requirements. 'Civic integration' is really targeting these low-skilled family migrants whose numbers are to be reduced while those of high-skilled immigrants are to be increased.[121]

I have shown in this paper that the red-carpet pattern goes beyond the mere civic integration policies. Indeed, there are many examples in European and national law which demonstrate the economic nature of integration – direct or indirect – as it is used in the legal field and its insidious consequences for non-nationals in precarious socioeconomic circumstances, superposing very often a gender and/or racial or ethnic dimension.[122]

In any case, it is important to recall that any threat of coercion or sanction in the event of non-integration will have a negative impact on the people the EU or its Member State intends to integrate, whether this consists of a fine, refusal of a residence permit or citizenship or social benefits. As Kochenov rightly points out for integration tests in the context of acquisition of nationality, they are built on incorrect assumptions and serve no identifiable objective beyond the perpetuation of prejudice, especially in the European context: 'any culture test is inherently a hypocritical bureaucratic exercise based on an unjust presumption that in being "foreign" some residents are not quite good enough to be recognized as full members of their community'.[123] Consequently, these integration duties, whatever their nature, send a clear message to non-nationals: you are not yet good enough to be recognized as full members of society, which is going against the very idea of inclusion.

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121. C. Joppke, 30 *West Eur. Politics* 2007, p. 8.
122. C. O'Brien, 53 *CML Rev.* (2016); S. Ganty, *Critique d'une intégration choisie*, p. 959 et seq.
123. D. Kochenov, *Mevrouw de Jong Gaat Eten, EU Citizenship and the Culture of Prejudice*, p. 7.