



ARTICLES

SPECIAL SECTION – SOCIAL INTEGRATION IN EU LAW: CONTENT, LIMITS AND FUNCTIONS OF AN ELUSIVE NOTION

INTRODUCTION

This Special Section aims at fuelling the scholarly debate about the implications of the elusive notion of social integration in the framework of the EU legal order. The concept at issue mirrors a society's degree of openness, governing the sliding doors of inclusion and otherness within a given community, whereby the expected level of assimilation of (and compliance with) societal values and rules¹ can reveal significant “managerial effects”² on incoming migration flows.³ Once confined in the realm of sovereign States,⁴ social integration is gradually becoming a key cross-cutting category of EU law. Its vocabulary has penetrated the internal market and the various branches of the area of freedom security and justice,⁵ with a significant impact on the legal status of individuals, whether EU citizens or third country nationals.

In principle, the concept under consideration reveals a remarkable “integrative” potential, as it identifies the general objective of establishing “an ever-closer union among the peoples of Europe”.⁶ In the light of it, rights are conferred as a means for enhancing individual emancipation and fostering inclusiveness in national societies.⁷ Within the framework of the internal market, the teleology of integration is coupled with the prin-

¹ See J. SCHNEIDER, M. CRUL (eds), *Theorising Integration and Assimilation*, Abingdon: Routledge, 2012.

² D. KOSTAKOPOULOU, S. CARRERA, M. JESSE, *Doing and Deserving: Competing Frames of Integration in the EU*, in E. GUILD, K. GROENENDIJK, S. CARRERA (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Abingdon: Routledge, 2009, p. 167.

³ The identitarian and defensive use of citizenship status and integration policies has been widely discussed. From a legal perspective, see S. RODOTÀ, *Il diritto di avere diritti*, Roma-Bari: Laterza, 2012, p. 4.

⁴ H.J. TRENZ, *Narrating European Society. Toward a Sociology of European integration*, London: Lexington, 2016.

⁵ The importance that EU law attaches to the individual does not lead to “pure individualism”. “EU law strives to convert European individuals into members of social spheres external to the political system of the country of origin”: L. AZOULAI, *The European Individual and Collective Entities*, in L. AZOULAI, S. BARBOU DE PLACES, E. PATAUT (eds), *Constructing the Person in EU Law*, Oxford: Hart, 2016, p. 203 *et seq.*

⁶ See the Preambles of the TEU and the TFEU.

⁷ The notion of integration has also been developed from an institutional perspective, as a complex framework of policies and tools to foster equality and inclusion: D. SCHIECK, *Economic and Social Integration. The Challenge for EU constitutional Law*, Cheltenham: Edward Elgar, 2012.

ciple of equality and requires the removal of material and immaterial barriers to access to the labour market, essential public services and welfare benefits in the host State.⁸ In relation to third country nationals, research demonstrates that investing in early integration in both the education system and labour market has a prominent social and economic impact, which ranges from easier access to essential services to a positive fiscal net contribution.⁹ Therefore, in the words of the Commission, integration policies can contribute to making Europe “a more prosperous, cohesive and inclusive society”.¹⁰

Over the years, the goal of social integration has led to a profound reconsideration of some of the traditional legal categories in the EU legal order. In particular, social integration has contributed to the advancement of the European integration process by boosting the extension of rights to new groups of individuals. Across the decades, the original market preference has been replaced by a more complex and mature legal scenario where students, job seekers, retirees, economically inactive citizens, offenders and minors can, at least in principle, enjoy the rights that were once reserved for workers or highly-skilled migrants.¹¹ The assessment of an individual's degree of connection to the host Member State and the Union's aim to facilitate this gradual ascending process has represented one of the leading factors of this development.

For both EU citizens and third country nationals, a positive attitude toward integration policies is a necessary pre-condition for the full enjoyment of fundamental individual rights and for a gradual increase of – personal and collective – quality of life: integration and rights mutually reinforce each other.

From this point of view, the increasing impact of this notion on EU law might appear paradoxical. In fact, the vocabulary of social integration marks a paradigm shift from mobility to stability and settlement. While promoting free movement, the European legal order attaches key-importance to the degree of sedentary life, the connections with the host State and the eventual stabilisation of movers and migrants. This circular dynamic underpinning the concept of integration stresses the need to seek a balance between diversity and coexistence, rights and duties, solidarity and national interests in a community of law. It highlights the level of complexity that the European Union has

⁸ P. CARO DE SOUSA, *Catch Me if You Can? The Market Freedoms' Ever-expanding Outer Limits*, in *European Journal of Legal Studies*, 2011, p. 162 *et seq.*

⁹ Organization for Economic Cooperation and Development, *The Fiscal Impact of Immigration in OECD Countries*, in *International Migration Outlook 2013*, p. 125, available at: www.globalmigrationgroup.org. See also R. KING, D. LULLE, *Research on Migration. Facing Realities and Maximizing Opportunities. A Policy Review*, European Commission Research and Innovation Paper of June 2016, available at: ec.europa.eu.

¹⁰ Communication COM(2016) 377 final of 7 June 2016 from the Commission, *Action Plan on the Integration of Third Country Nationals*.

¹¹ See S. BARBOU DES PLACES, *The Integrated Person in EU Law*, in L. AZOULAI, S. BARBOU DES PLACES, E. PATAUT (eds), *Constructing the Person in EU Law*, cit., p. 186 *et seq.* For a more critical perspective see H. VERSCHUEREN, *EU Migrants and Destitution: The Ambiguous EU Objectives*, in F. PENNING, G. VONK (eds), *Research Handbook on European Social Security Law*, Cheltenham: Edward Elgar, 2015, p. 321 *et seq.*

reached over the years and reveals a great deal about the remarkable progress of the European legal order, but also exposes its inherent contradictions.

In fact, social integration is a politically sensitive and elusive concept, which may well foster a defensive and identitarian approach. The ever closer relationship between access to rights and degree of connection to the host society can mirror the dark side of the integration discourse, since it ends up being a condition to have access to rights, rather than an objective to be pursued through the conferral of rights. The positive and the negative dimensions of the concept under consideration lock swords and the clash between these two opposing trends is the *file rouge* of the contributions collected in this Special Section.

In the opening *Article*, Alessandra Lang specifically deals with the normative layer. She unveils how the Union has amplified the outlined divide between the integrative and the defensive potentials underpinning social integration, by introducing a varied set of integration conditions and measures through EU secondary law. Her *Article* provides an in-depth analysis of the current fragmented normative framework on integration conditionality and questions its actual coherence, despite the interpretative efforts undertaken by the CJEU.

The daily contest between national interests and fundamental rights leads EU law to swing between the “empowerment and disempowerment” of the individual.¹²

As a matter of fact, increasing reliance on the factors demonstrating the degree of inclusion in a given community exacerbates the normative exclusionary effect to the detriment of those who fail to demonstrate sufficient attachment to the host society. Such a trend is amplified by a profound change in the political and legal landscape, whereby social integration has been converted from a Union’s objective into an individual duty of economic activity, thereby undermining the EU contemporary social aims.¹³ Stephanie Reynolds, critically engages with this evolution, by focusing on the scope of the notion of social integration of Union citizens within the internal market in light of the restrictive turn of the Court of Justice in its recent case law. She contends that reliance on social integration duties further marginalises those already at risk of social exclusion, and can eventually undermine the Union’s own, wider social goals under the Treaties.

This reversed perspective reveals a certain degree of incoherence within the EU legal order, whereby the achievement of a satisfactory degree of social integration (integration as an objective of the Union) is affected accordingly by the Member States’ recurring use of various forms of integration conditionality, with a view to select the individuals deserving access to their territories. The conceptual vagueness of the notion inflates further flexibility – if not uncertainty – into the system and enables national authorities to use (lack of)

¹² M. DOUGAN, N. NIC SHUIBHNE, E. SPAVENTA (eds), *Empowerment and Disempowerment of the European Citizen*, Oxford: Hart, 2012.

¹³ N. NIC SHUIBHNE, *Limits Rising, Duties Ascending. The Changing Legal Shape of Union Citizenship*, in *Common Market Law Review*, 2015, pp. 889 *et seq.*

social integration as a shield warding off undesired “others”.¹⁴ Building on these premises, Stephen Coutts's *Article* takes a positive stance and contends that the emergence of the concept of integration also underscores a moral turn in EU law and policies. In his view, the impact on rights stemming from Union citizenship of a failure to comply with accepted societal values shows that EU law is not immune from some sort of policing role. Rather than focusing on the “managerial” expectations of the Member States, he argues that the development of the integration vocabulary adds substance to EU citizenship. This status can be now framed as a “responsibilised” citizenship, since it overcomes the traditional passive idea of incorporation in the host society and embraces a more dynamic and proactive dimension. Individuals seeking protection from EU law are therefore required to recognize the common space of values they are given to live in and to behave accordingly, as an elective way of having access to the protection afforded by EU law.

At the same time, in times of “existential crisis”¹⁵ of the European integration process, the socio-economic crisis represents the perfect landscape for regressive national policy choices, where integration conditionality measures constitute just one brick in the solid wall of a general trend towards a weakened Union citizenship. In this regard, building on the last decade of case law on Union citizenship rights, Francesca Strumia addresses the major constitutional crisis that the Union is facing, namely Brexit and the challenges that it poses to EU citizenship. In her view, the notion of social integration can contribute to adapt this supranational status to its next challenge. Under the semblances of a range of genuine links, the degree of social integration can act as a trigger of belonging alternative to nationality and is capable of fending off any Member State's ransom.

The outlined tension between the negative and the positive dimensions of the notion of social integration also challenges the regime of vulnerable categories of third country nationals. In this regard, Emanuela Pistoia completes the Special Section by shedding light on the implications of the notion of social integration for beneficiaries of international protection. The Author reviews the Union's commitment to social integration of this category of people. While acknowledging that both EU law and the case law of the Court of Justice leave room for differential treatment of beneficiaries of international protection as compared with nationals, the paper calls for an increased EU's role in promoting affirmative actions and integration programmes addressed to the former category.

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¹⁴ S. MONTALDO, *Us and Them: Restricting EU Citizenship Rights Through the Notion of Social Integration*, in *Freedom, Security and Justice: European Legal Studies*, 2017, p. 34 *et seq.*

¹⁵ See J.-C. JUNCKER, *State of the Union Address 2016: Towards a better Europe – A Europe that protects, empowers and defends*, available at europa.eu.

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