

Migrants Among EU Citizens: Key Elements and Legal Sources on the Integration of Immigrants in Europe

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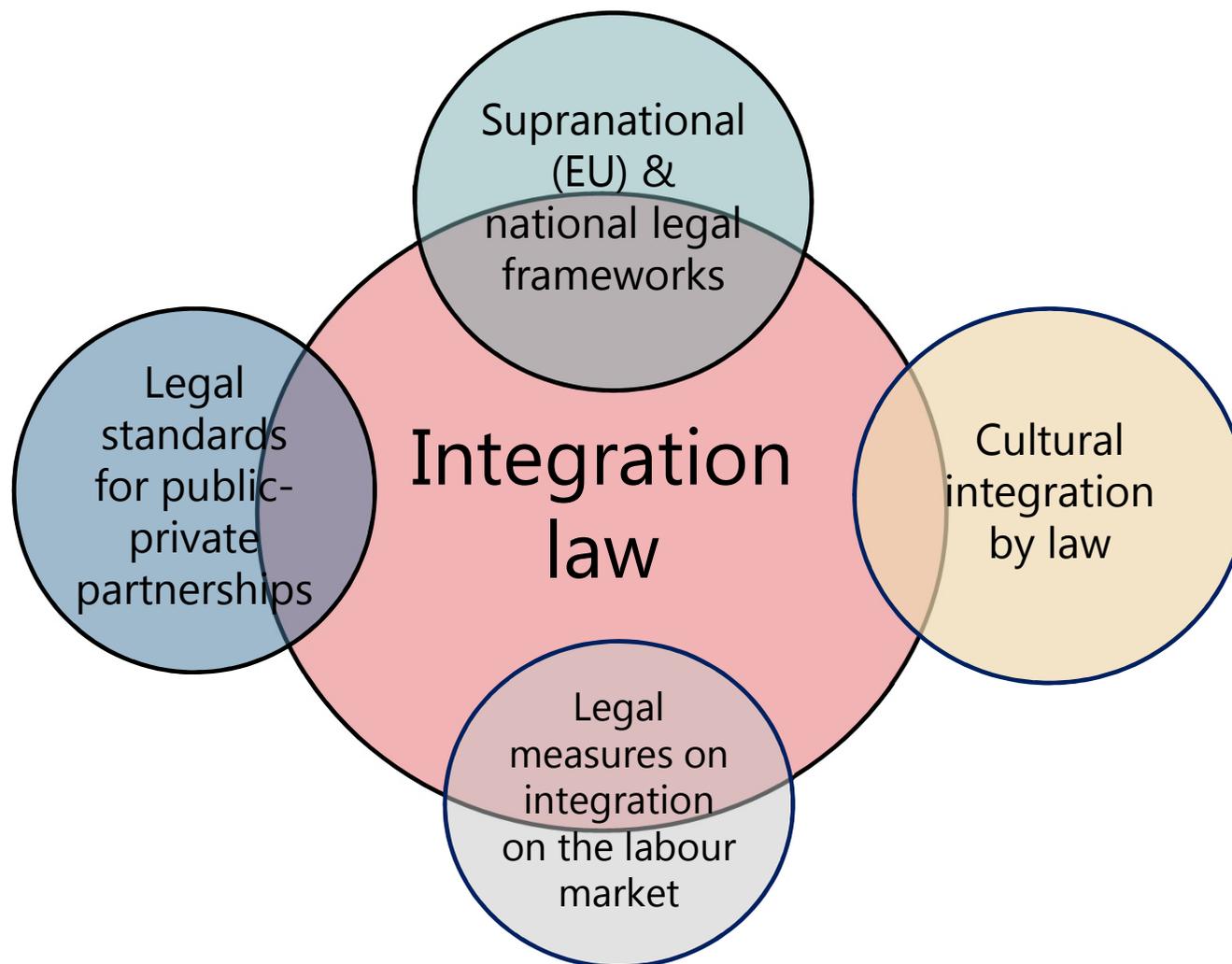


Overview

What dimensions are encompassed by integration law?

Which EU-legal standards on immigrant integration so far?

What outlooks on public-private partnerships in integration law?



Supranational legal framework

”EU integration law”

- Carrera
- Legal provisions: FR directive & LTR directive
- EU Court of Justice cases

The Soft-law approach

- Holistic approach, two-way process of mutual accommodation, series of principles
- Member States enjoy a margin of appreciation as regards integration measures
- Common Basic Principles for Immigrant Integration Policy in the European Union, Council of the European Union, 2618th Council Meeting, Justice and Home Affairs of 19 November 2004, 14615/04

EU Integration Principles

- Respect of the values of the EU
- Employment
- Knowledge of the host society's language, history and institutions
- Education
- Access to institutions, public and private goods and services
- Interactions with Member State citizens
- Political participation
- Safeguard of different cultures and religions

Ex: The national objectives and indicators of integration in Denmark

1. Employment 
2. Education 
3. Danish language proficiency 
4. Inclusion – citizenship (not as a legal status) 
5. Equal treatment/non discrimination 
6. Self-determination 

<https://integrationsbarometer.dk/barometer>

Other statistics: <https://uim.dk/tal-og-statistik/tal-og-statistik-om-integration>

Article 79 TFEU(ex Article 63, points 3 and 4, TEC)

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:
 - (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;
 - b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;
 - (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

(d) combating trafficking in persons, in particular women and children.
3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.
- 4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.**
5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

Article 4 (1) final subparagraph; Article 7 (2)

'By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.'

Article 7 (2):

'Member States may require third country nationals to comply with integration measures, in accordance with national law.

With regard to the refugees and/or family members of refugees referred to in Article 12 the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.'

Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

Article 5 (2) concerning the conditions for acquiring long-term resident status:

'Member States may require third country nationals to comply with integration conditions, in accordance with national law.'

Article 15 (3) concerning the conditions for residence in a second Member State:

'Member States may require third country nationals to comply with integration measures, in accordance with national law.'

This condition shall not apply where the third country nationals concerned have been required to comply with integration conditions in order to be granted long-term resident status, in accordance with the provisions of Article 5 (2).

Without prejudice to the second subparagraph, the persons concerned may be required to attend language courses.'

EUCJ Case Law

C-540/03 – *Parliament vs Council*

Family Reunification Directive Art. 4(1), final subparagraph not contrary to fundamental rights

C-138/13 – *Naime Dogan v Bundesrepublik Deutschland*,

Pre-entry language test for family reunification: the Court did not enter the merit of the Family Reunion Directive, but “in effect established a new set of rules for family reunion for most Turkish citizens living in the EU” (Peers)

C-579/13 – *P & S v Commissie Sociale Zekerheid Breda, College van Burgemeester en Wethouders van de gemeente Amstelveen*

Member States can impose integration conditions on LTR, but fines should not be contrary to the integration goal set out in the directive

EUCJ Case Law

C-153/14 – *Minister van Buitenlandse Zaken v K & A*

Admissible to impose pre-arrival integration requirements for family reunification in the Netherlands, though they must be proportional

C 561/14 – *Caner Genc v Integrationsministeriet*

A Member State cannot require Turkish children to fulfil a successful integration evaluation, before granting them family reunification with their economically active parent

C-89/18 – *A v Udlændinge- og Integrationsministeriet*

Integration requirement framed as “attachment”: inadmissible new restriction for family members – spouses – to active Turkish nationals

National legal framework in Denmark

- **Integration of newly arrived immigrants**

Integration act and ministerial/executive orders on housing placement, integration contract and integration program, health assessment of refugees and their family

- **Danish language education:** Danish language act and executive orders

- **Basic integration education Integrationsgrunduddannelse, IGU**

Act on Integration education and executive order

- **Repatriation**

Act, executive orders, and guidelines to municipalities

Elements for legal interpretation

Integration Act objective (Article 1)

The goal of the Integration Act is to ensure that newcomers get a possibility to build on their skills and resources in order to become participating, self-supporting, and contributing citizens on equal footing with the other citizens of the society in accordance with the fundamental values and norms of the Danish society

Administrative law principles: rule of law, objectivity and legality, impartial administration, rules on access to complaints

Danish integration law: historical developments

- 1998 – Integration Act (before: social policy law for foreigners as well)
- 2002-2011 – '*Start help*': lower cash benefit allowance for refugees and other immigrants
- 2003/2006-2011 – 'Apron rule', 300 hours rule (Act on Social Policy)
- 2003 (2008) – 'Anti Ghetto law' for refugee placement
- 2015 – Integration benefit (similar to the start-help) and IGU – *Integrationsgrunduddannelse* (basic integration education)

Legal changes post-2015 (among about 100 legal amendments adopted)

- Reduction of social rights and cash-benefits – lower cash assistance (integration benefit) to incite people to work
- Integration requirements for permanent residence (2016): longer residence periods, increased linguistic proficiency requirements, requirement of active employment; four supplementary requirements:
- New objective to find regular employment within the first year of the integration program, and to offer a traineeship within the first month of residence in the municipalities
- Introduction of participation fee in Danish language education (1 July 2018) to incite foreigners to learn Danish

Restricting access & basic rights

- Separation of under-age couples in the asylum centres to prevent child brides – discontinued practice after critique of the Ombudsman
- Integration potential requirement for choosing quota refugees
- Reduction of health screenings in the municipalities – no longer duty, but up to the caseworker to decide (46% do not carry out any health screenings)
- National sanction list – list of foreign religious preachers banned from entry, compiled by the Ministry of Immigration and Integration

Examples of concrete legal integration measures (coercive and non-coercive)

- Housing placement of refugees – obligatory
- Integration programme (refugees & family reunited foreigners) – 3 years, obligatory
- Integration contract (refugees & family reunited foreigners) – rights/duties, entitlements/sanctions, obligatory
- Residence and self-sufficiency declaration - obligatory
- Introduction course for all other foreigners (Union citizens included) – voluntary, 5 modules of 50 hrs. of Danish language classes focused towards the labour market/employment

Integration Contract and Declaration

Integration contract:

A compulsory legal instrument written in Danish that refugees and family reunited migrants (non-EU) have to sign with the municipalities in order to receive social benefits, and which establishes the duty to attend Danish language and culture courses, to start a traineeship, or to upgrade their work skills by entering into a partnership agreement with a company

Residence and self-sufficiency declaration:

A non-legally binding statement and declaration of willingness to adapt to certain democratic standards and values of the Danish society, provided in 23 linguistic versions with the objective of drawing attention to the Danish society's values and to render the foreigners aware of the fact that the Danish society expects that they do an effort to become integrated as participating and contributing citizens, on an equal footing with other citizens.

Coercive Integration

Non compliance with the conditions stated in the contract can result in the withdrawal of social benefits and/or other legal consequences:

Ex 1. permanent residence – not attending Danish language classes in accordance with the conditions stipulated in the contract may affect the possibility to obtain a permanent residence permit

Ex. 2. naturalisation – permanent residence in the precondition for applying for Danish citizenship – a legal status of particular interest for the legal subjects affected by the Integration Act

Sanctions: reduction or loss of social benefits

The IGU – Basic integration education

- Result of a trilateral agreement between government, unions, and employers (spring 2016)
- 2 year-program of education and traineeship in a private company or public employer
- Refugees and family members to refugees between 18-40 yrs. with a permission to stay that does not exceed five years
- Comprises traineeship in a company at a very low wage below (60-150 DKK, 8-18 €)
- At least 20 weeks of education (labour market education or skills upgrading course)
- Danish language education separately, offered by the Municipality
- Burdensome administrative paperwork between municipality, refugee, and employer

Financial bonus to private companies

IGU
/ ORDINÆRT ANSAT
UDLÆNDING

BONUS

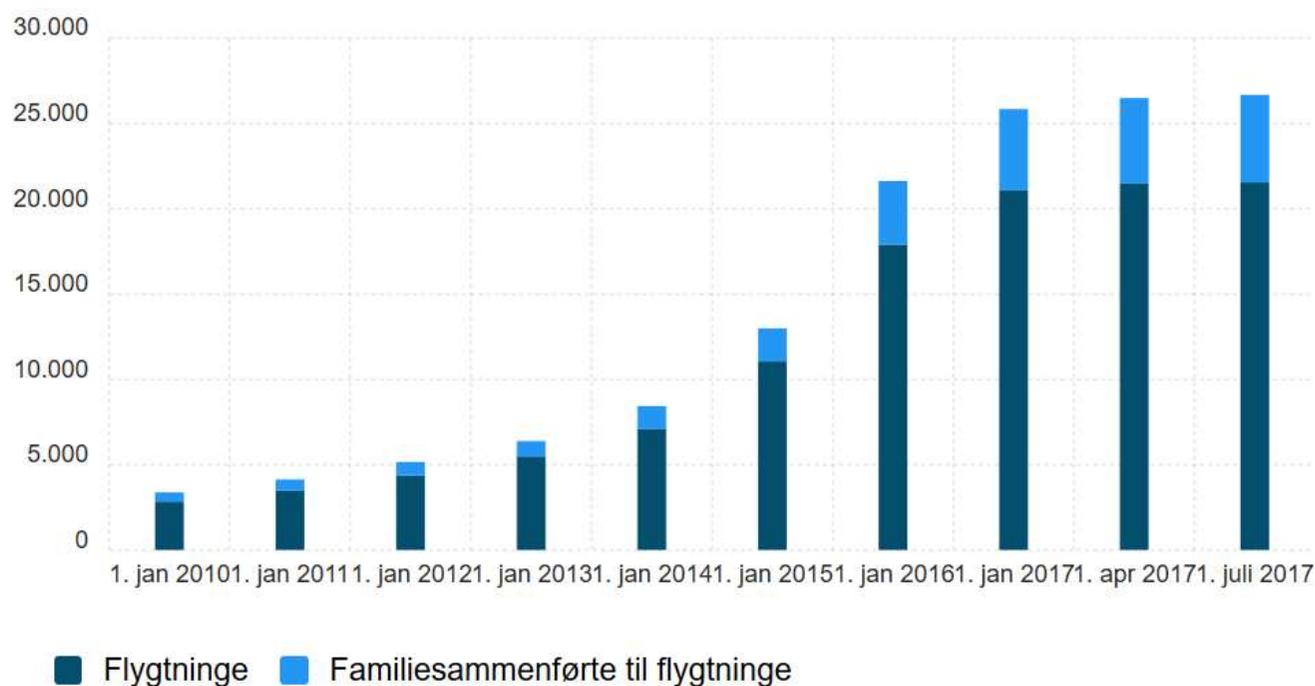
	6 mdr	12 mdr	24 mdr
IGU:	20.000 Kr		20.000 Kr
Ordinær ansættelse:	20.000 Kr / 15.000 Kr	20.000 Kr / 15.000 Kr	

Illustration includes a window with a lamp, a plant, a woman, and a chef. A sign says 'VIRKS' and a green bag says 'KR'.

Number of Contracts – Danish Immigration Data

Siden 2010 er der sket en stigning i antallet af 18-64-årige flygtninge og familiesammenførte til flygtninge omfattet af integrationsprogrammet. Antallet er steget fra 3.379 personer pr. 1. januar 2010 til 26.687 personer pr 1. juli 2017.

18-64-årige flygtninge og familiesammenførte til flygtninge omfattet af integrationsprogrammet, fordelt på opholdsgrundlag, 1. januar 2010 - 1. juli 2017, antal



Source: www.integrationsbarometer.dk

Repatriation

- A new area – is it integration?
- Ministry of Immigration and Integration: repatriation must be seen in the context of the municipal integration effort, because a successful integration process, in which the person has retained his ability to act, responsibility and commitment in education, work and leisure, has a good starting point for a return to his home country.
- Repatriation can also be a good alternative for foreigners living in Denmark and Danish citizens with dual citizenship, who are poorly integrated into Danish society, and for whom repatriation can therefore be an opportunity to establish a better life.
- In addition, resident foreigners or elderly Danish nationals with dual citizenship who have lived in Denmark for a number of years may wish to spend their old age in their home country.

Perspectives and outlooks

- A functional analysis of integration law
- Danish integration law aims at promoting *specific modes* of integration of immigrants *in the society*, that often do not include reflections on the labour market and the type of integration that is there required
- Emphasis on the individual effort and increasing importance of private actors role in integration (employers, language schools, service providers to municipalities etc.)