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# Limits of European Citizenship: European Integration and Domestic Immigration Policies

Maarten P. Vink, Leiden University\*

## Abstract

This paper studies the distribution and legitimisation of civil, political and social entitlements to non-citizens resident within the territory of EU member states. Is national citizenship indeed no longer imperative to membership in the national political community? Apart from trying to assess the meaning of European citizenship, it is also a test-case for the effect of 'Europe' on the domestic incorporation of migrants. By analysing parliamentary debates from the 1990s on the status of Union citizens and third country nationals in the Netherlands, the paper demonstrates the accidental and arbitrary nature of European citizenship.

## Keywords

European citizenship, European elections, European identity, Europeanisation, free movement, immigration policy, implementation, minorities, Netherlands, reverse discrimination.

### *1. Limits of Citizenship?*

Is national citizenship still a crucial organisational factor in European politics, as a status that assigns individuals to a particular political community and endows those who qualify as 'citizens' with exclusive rights and obligations, or is it being undercut by an ever-more important European citizenship? This paper is about change and resilience in the institution of national citizenship under pressure from European integration. It seeks to investigate how, why and to what extent the co-operation of sovereign states in the European Union (EU) affects the domestic organisation of extending rights to non-citizens.

The classic theory to take issue with in a debate on the relevance, or the changing character, of national citizenship is undoubtedly the one put forward by Yasemin Soysal in her book *Limits of Citizenship* (1994; see also 1993, 1996). Particularly looking at the guestworker experience in Western Europe, Soysal (1994: 3) argues that 'national

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citizenship is losing ground to a more universal model of membership, anchored in deterritorialized notions of persons' rights.' Guestworkers, such as Turks in Germany, although originally invited on a temporary basis, are there to stay and state institutions react to this reality by incorporating these 'permanent foreigners' in the educational system, welfare schemes and sometimes even in the political system by granting voting rights in local elections. Host states lose control over migrant populations as a result of, first, increasing interdependence at the world level and, second, the proliferation of universalistic conceptions regarding the rights of individuals as codified in international law. Accordingly, a *postnational* model of citizenship emerges as migrants derive rights on the basis of universal personhood, rendering national citizenship increasingly irrelevant.

The EC Treaty (TEC), the European Convention of Human Rights (ECHR), the European Economic Area (EEA) Agreement, the Association Agreements and perhaps in the future also the Charter of Fundamental Rights of the European Union are all important sources of rights for non-citizens in European societies. One could even go so far as to say that for Union citizens residing in one of the fifteen EU member states it becomes increasingly irrelevant that they are non-citizens or aliens. The status of Union citizenship, as introduced by the 1992 Treaty on European Union, confers in many relevant instances the right to be treated equally to national citizens. In the words of O'Leary (1996: 23):

By assuming a role in relation to admissions policy, freedom of movement generally, allocation of state welfare benefits and the determination of who can participate in the national 'political community', the Community may weaken many of the ways in which states have traditionally set their members apart. (...) the choice made in the Treaty to establish supranational citizenship may lead the Community to increasingly supersede traditional conceptions of the nature and concept of state and state functions and to alter the role and content of the rights and duties of their members.

Notwithstanding the undermining consequences for national citizenship that cannot be denied, in the sense that citizenship is at least conceptually de-coupled from the national foundation on which it has been based for the past two centuries, it would be a misconception to say that this incipient form of European citizenship 'clearly embodies postnational membership in its most elaborate form' (Soysal 1994: 148). When speaking of Union citizenship one should recall first of all that it is conferred on 'every person holding the nationality of a member state' (Article 17(1) TEC), giving the 'European' status a distinctively 'national' foundation. European citizenship as such does not (yet) have an autonomous definition. The admission to European citizenship crucially depends on the exclusive powers of the fifteen member states. So what is 'postnational' about European citizenship? Moreover, again referring to Soysal (1996: 21), to say that 'national citizenship or a formal nationality is no longer a significant construction in terms of how it translates into certain rights and privileges,' seriously underestimates the problems faced by third country migrant workers and refugees who seek access to European labour markets and social welfare. Citizenship is still a vital instrument for incorporation in European societies.

Secondly, going to the national level, European arguments are perhaps increasingly often used in national immigration debates, but they need not always be as conclusively as is sometimes assumed. The acquisition of dual nationality, by Soysal

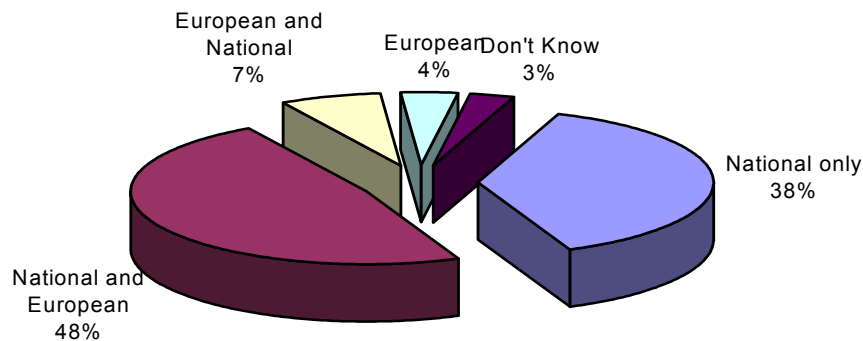
(1996: 22) referred to as 'another indicator of the fluidity of postnational membership', may well be exemplary here. To facilitate the integration of migrants in Dutch society, in 1991 the Netherlands decided to allow dual citizenship. Yet a closer look attests that the European argument could not be the decisive explanation for change, as only afterwards the Dutch government successfully exported its model to the Council of Europe. Meanwhile, on the longstanding issue of whether to grant foreigners the right to vote at national elections, a compromise struck between the two parties in government, the Christian-Democrats (against) and Social-Democrats (in favour), resulted in the acceptance of dual nationality (see Jacobs 1998: 132-137). Dual nationality would make it easier to acquire Dutch citizenship and, as Dutch citizens, migrants would be able to participate fully in the Dutch political system. The government bill that was subsequently introduced to formalise this 'liberal' practice was vetoed, however, in the Senate in 1996 by the same Christian-democrats, who at that time were no longer part of the government coalition. In this way the opponents to dual nationality disregarded the 'European' argument brought into the debate by the Social-Democrats. Dual nationality was again prohibited from 1997 on, albeit with a substantial number of exceptions. This example shows how domestic change and resilience, with regard to the status of non-citizens, should (still) be explained by referring to the national rather than to the European level (see further Vink 2001).

What's new? That there are strong limits to the Europeanisation of national citizenship seems perhaps fairly straightforward and, indeed, may not be so controversial. Citizenship is generally seen as 'a last bastion of sovereignty' (Brubaker 1992: 180) and as such not a conventional institution subject to the demands of Europeanisation. This limited impact of European integration on national citizenship, arguably the result of reluctance by member states to do away with a crucial aspect of the nation-state, however also uncovers in more general terms the limits of European citizenship itself. For European level developments such as the proclamation of a 'citizenship of the Union' to become more than a concept with a 'constructive potential' (Wiener 1997, 1998), they would need to be followed by a consequential change in national political systems. In other words, there can be no meaningful European citizenship without Europeanisation, or even dissolution, of national citizenship.

One might object that to argue that national and European citizenship are ultimately mutually exclusive, that they cannot peacefully coexist without being parasitic upon each other, in itself does not preclude Soysal's postnational theory. This is certainly true and, in fact, the question mark raised in this paper does not so much regard the boldly-stated but not less feasible idea that European integration, or a global process of deterritorialisation for that matter, might imply the end of national citizenship. Rather, and admittedly not quite original, it questions first of all the empirical validity of claiming that national citizenship is already giving way to a postnational substitute *at the moment* (c.f. Checkel 2001). Secondly, and insofar as there are changes in national immigration policies, this paper is sceptical about the claim that these changes are due to international as opposed to domestic developments (cf. Joppke 2001; Koslowski 2000: 37).

Are European and national citizenship really mutually exclusive? The general argument advanced here clearly goes against the widespread idea that multiple citizenship 'is rapidly becoming a reality' (Heater 1999: 149; cf. Heater 1990; Meehan 1993). European citizenship from such perspective in a way resembles the euro coins, with one European and one national side, or the European passports, with a European exterior and national interior. A third initial objection to this paper's apparent scepticism could therefore be that the development of a European model of citizenship and the sustenance of the traditional national model is not at all a zero-sum game. One could point at, for example, Eurobarometer statistics of spring 2002 which show that on average already 59% of the EU population identifies itself to some extent as European (see Figure 1.1). And admittedly, although national identification is still overwhelmingly predominant with 86% of all 'Europeans' seeing themselves as either exclusively national, or first national and then European, it would surely be unwise to deny the claim –underlying the idea of multiple citizenship– that people are able (and do) identify themselves with more than just one political community.

**Figure 1.1 European and National Identity**



'Do you consider yourself (NATIONALITY), (NATIONALITY) and European, European and (NATIONALITY), or European?'  
Source CEC (2002: 60)

Just how significant is this process of increasing affiliation with a European community for the organisation of political life? Although it has been emphasised that historically national identities developed only *after* a process of administrative centralisation, as in the case of French national identity (Weber 1976), often some kind of shared identity, in terms of culture and history, is seen as a *sine qua non* for a viable political union. Others, however, have stressed the importance of a shared commitment to constitutional principles as precondition for liberal democracy, rather than starting from a deterministic 'no demos' thesis (Weiler 1999; Habermas 1998).

Whatever way one might speculate on the future of Europe, clearly the development of European citizenship, postnational or not, is not something that needs be

determined of necessity by past experiences. 'The postnational idea on the contrary is about separating out a number of our most elided concepts cherished within the nation-state' (Curtin 1997: 52; cf. Kostakopoulou 2001). More important, however, coming back to the principal question of this paper that concerns the present and not the future: European citizenship may well be a perhaps ever-more likely outcome of the process of European integration, but where do we stand at the moment? In order to answer this question, which ultimately relates to questions of sovereignty and the boundaries of the polity, this paper looks at contestation around the inclusion of aliens in the national political community, and analyses the European relevance in matters such as electoral participation and benefit entitlements (cf. Shaw 2002). The paper first continues with an overview of the status of Union citizens and third country nationals resident in the European Union. Subsequently, after a brief historical introduction, the case of the Netherlands is presented, with a view to analysing the equal and differential treatment of Union citizens and third country nationals.

## 2. *Union Citizens*

The core element of Union citizenship is undoubtedly the right for every citizen of the Union to move and reside freely within the territory of the Member States (Article 18(1) TEC). This right to free movement, as codified in Part Two of the EC Treaty (on 'Citizenship of the Union'), was established by the Maastricht Treaty and must primarily be seen as a catalogue of already existing rights (Hall 1995: 8). Notwithstanding the *Martínez Sala*-case where the ECJ ruled that a prohibition of discrimination on grounds of nationality derives directly from Union citizenship (cf. Castro Oliveira 2002),<sup>1</sup> intra-EU migration has been liberalised already since the 1960's (see Guild 1999; Staples 1999). Free movement of persons can only be fully understood by looking at the relevant secondary Community legislation in force, which has been virtually unchanged since 1993.

The liberalised intra-EU migration regime goes back to the 1957 Treaty of Rome, but it was not before the adoption of Council Regulation 1612/68 that the freedom of movement for workers became firmly grounded in secondary Community law. The Regulation states that 1) any national of a Member State, shall, irrespective of his place of residence, have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State; 2) he shall, in particular, have the right to take up available employment in the territory of another Member State with the same priority as nationals of that State (Regulation 1612/68, Article 1). One should note that, although arguably this does not follow of necessity from the Treaty provisions, workers have the right to be joined by their spouses and their descendants who are under the age of 21 or are dependants, as well as by dependent relatives in the ascending line, i.e. their parents (Council Regulation 1612/68, Article 10). Without such right, one could argue, the goal of free movement would be obstructed since workers will not be willing to work in other member states without the company of their family.

With regard to domestic immigration control, Directive 68/360 is of great

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<sup>1</sup> Case C-85/96, *Martínez Sala* [1998] ECR I-2691.

importance as it sets out rules expressing the right of residence. Community workers and their family members shall be allowed to enter the territories of all Member States 'simply on production of a valid identity card or passport' (Article 3(1)). Member States are forbidden to demand entry visa or equivalent documents save from family members who are not nationals of a Member State (Article 3(2)). This right of residence remains open to Community workers and their family members after the worker concerned has ceased working, or died. Limitations to the right of residence are justified only on grounds of public policy, public security or public health (Directive 64/221). Commission Regulation 1251/70 provides the basis for a right of residence after the worker's occupation has ceased. Council Regulation 1408/71 arranges the application of social security schemes to Community workers.

The European free movement *acquis* gradually became more inclusive over the years by extending its scope *ratione personae* to service providers (Directive 73/148) and self-employed workers (Directive 75/34). With the adoption of the Single European Act in 1986 the fight against discriminatory national regulations was intensified and the scope of the free movement *acquis* expanded. In 1990 the Community broke with the tradition of protecting only economically actives, and granted a right of residence to *all* member state nationals and their dependants, provided that they are covered by health insurance and have sufficient resources (Directive 90/364). In addition, pensioners and students were granted a similar right of residence (Directives 90/365 and 90/366). This categorical right to move and reside freely within the territory of the member states for every citizen of the Union was codified in the Maastricht Treaty (Article 8A), and more recently, in the Charter of Fundamental Rights of the European Union (Article 45 CFR).

With regard to the implementation of these rights, and notwithstanding the real achievements in terms of facilitating the free movement of persons within an integrated European area, it should be emphasised that free movement is far from complete and unconditional (see e.g. ECAS 1998 for a report of some key difficulties faced by citizens in exercising their right of free movement). As the Veil-report (1997: 89) concludes, 'in the minds of European citizens, free movement conjures up an idea which goes well beyond the rights actually conferred by the Treaty. For many people, it suggests a right to move to and live in the countries of the Union without having to comply with any particular formalities, which is not in fact the case.' Free movement neither amounts to, as is often thought, a situation where all Union citizens have the right to enjoy the same rights and entitlements in each and every country of the Union. Because, for one, there is no tax harmonisation within the Union there can be no equality in social security for Union citizens. Hence Union citizens working in another member state may be eligible to entitlements such as disability fund or state pension under the same conditions as nationals (e.g. with regard to the number of years being employed), but residence in another member state does not guarantee social security benefits. In May 2001 the Commission adopted a proposal for a new directive with the principal aim 'to replace the various pieces of legislation existing in this area by a single legislative instrument, to relax and simplify the conditions and formalities associated with the exercise of this rights and to clarify the restrictions that may be placed on these rights for reasons of public policy, public security and public health' (CEC 2001c: 1). This directive would give individuals after four years of uninterrupted residence a permanent right of residence in the host member state, no longer subject to any conditions.

With regard to political participation under the status of Union citizenship, every Union citizen enjoys the right to vote and to stand as a candidate in municipal elections, as well as in elections to the European Parliament, in the member state in which he or she resides (Article 19 TEC; Articles 39 and 40 CFR). This extension of political rights to non-national Union citizens resident in a member state other than their country of origin, some 5,8 million in total (Eurostat 2002: 115), clearly undermines the traditional prerogative of national citizens to elect representatives in legislative bodies. Although the same can be said for the extension of free movement rights to non-citizens, at least symbolically the inclusion of political rights in the concept of Union citizenship represents the most visible departure from the paradigm of national citizenship. In some countries, such as Sweden or The Netherlands, this form of 'postnational membership' led to little political contestation because the right to participate in municipal elections had already been granted to long-term resident aliens before 1991. In other countries, however, the Maastricht citizenship provisions were perceived as an outright attack on the very idea of national citizenship and, as in France, 'raised sensitive constitutional questions' (Koslowski 2000: 129).

**Table 1. Participation in EP Elections 1994 - 1999**

	<b>EP 94</b>	<b>REG 94</b>	<b>EP 99</b>	<b>REG 99</b>	<b>C 99</b>
<b>A</b>	67.7	7.9	49.4	15.1	1
<b>B*</b>	90.7	5.1	90.8	7.7	14 (2)
<b>D</b>	60	6.7	45.2	2.1	16
<b>DK</b>	52.9	24.9	50.5	26.6	0
<b>E</b>	59.1	12.6	63.1	22.4	10
<b>EL*</b>	71.2	1.6	75.3	1.8	5
<b>F</b>	52.7	3.4	46.8	4.9	8 (1)
<b>FI</b>	60.3	22	30.1	28.1	0
<b>I</b>	73.7	1.8	70.8	9.2	6 (1)
<b>IRL</b>	44	44.1	50.2	43.9	0
<b>L*</b>	88.5	6.6	88.5	8.8	n.a.
<b>NL</b>	36	n.a.	29.9	16.9	2
<b>P</b>	35.5	2.3	40	13.6	0
<b>S</b>	41.6	24	38.8	27.2	0
<b>UK</b>	36.4	2	24	23.1	n.a.
<b>EU</b>	56.5	5.9	49.7	9	62 (4)

EP = overall turnout at EP elections

REG = % Union citizens registered to vote in MS of residence

C = non-national Union candidates (+ no. elected MEPs).

Numbers not available for 1994.

\* Voting is compulsory in Belgium, Greece and Luxembourg

Source CEC (2000c)

The right to vote and to stand as a candidate in municipal elections and elections to the EP were put into effect in 1994 and 1993, by Council Directives 94/80/EC and 93/109/EC, respectively. Particularly for the EP elections it is important that member states ensure that Union citizens do not exercise their right to vote in more than one country. These directives, primarily related to the detailed arrangements for registration



on the electoral rolls, are now implemented by all member states, 'on the whole satisfactory' in the words of a Commission evaluation report (CEC 2001: 14). The Commission is still, however, critical about the 'serious lack of information in this area', which it sees as the major contribution to the rather small use, on the whole, of these rights of Union citizenship. Under the two directives, member states are obliged to specifically inform Union citizens of their rights to participate in municipal and EP elections.

Apart from the question of whether it is caused by a lack of information, or rather by a lack of interest from Union citizens for this European right, the aim 'to bring the Union closer to its citizens' (CEC 2000c: 3) by granting them political rights has not yet been overwhelmingly successful, in as far as this can be judged by means of participation in EP elections (see Table 1). First of all, overall turnout at EP elections has been low and in decline from around 57% in 1994 to 50% in 1999.<sup>2</sup> Secondly, on the whole the rate of voter registration is very low, although slightly increasing from 6% in 1994 to 9% in 1999, on average in the EU. Particularly Germany and France, host to 63% of the Union citizens residing in a member state of which they are not nationals, bring down the Union average with registration rates of only 2% and 5% in 1999, respectively. Thirdly, both in 1994 and 1999, very few candidates stood for election, or were elected, in member states of which they were not nationals. In 1994, 53 non-national candidates stood for election and only one person, Wilmya Zimmermann, a Dutch national residing in Germany, was elected to the European Parliament under the Maastricht citizenship provisions. Mrs. Zimmermann, after overcoming some practical obstacles such as arranging the necessary documentation in translation from her last place of residence Heerlen in The Netherlands to the 'Bundeswahlleiter' in Wiesbaden, in the short period between the entry into force of the Maastricht Treaty (November 1993) and the registration deadline (March 1994), was elected as MEP for the SPD (author's correspondence with W. Zimmermann). In 1999, 62 non-national Union citizens stood for election and 4 were actually elected in their country of residence.

Non-national citizens of the Union have to apply to be entered on the electoral roll for municipal elections in most member states. On average, not more than 26.7% goes to the trouble to do so. In Germany, the Netherlands, Finland and Sweden all residents are entered on the electoral roll automatically. There is only some partial information available for the standing as a candidate at municipal elections in member states, which seems to suggest, nevertheless, that the use of passive political rights is higher at local level in comparison with the EP elections. In Germany, 319 non-national Union citizens were elected to local councils (in nine *Länder*), and in Sweden even 408 persons were elected out of 1829 non-national Union candidates (CEC 2002c: 11-13).

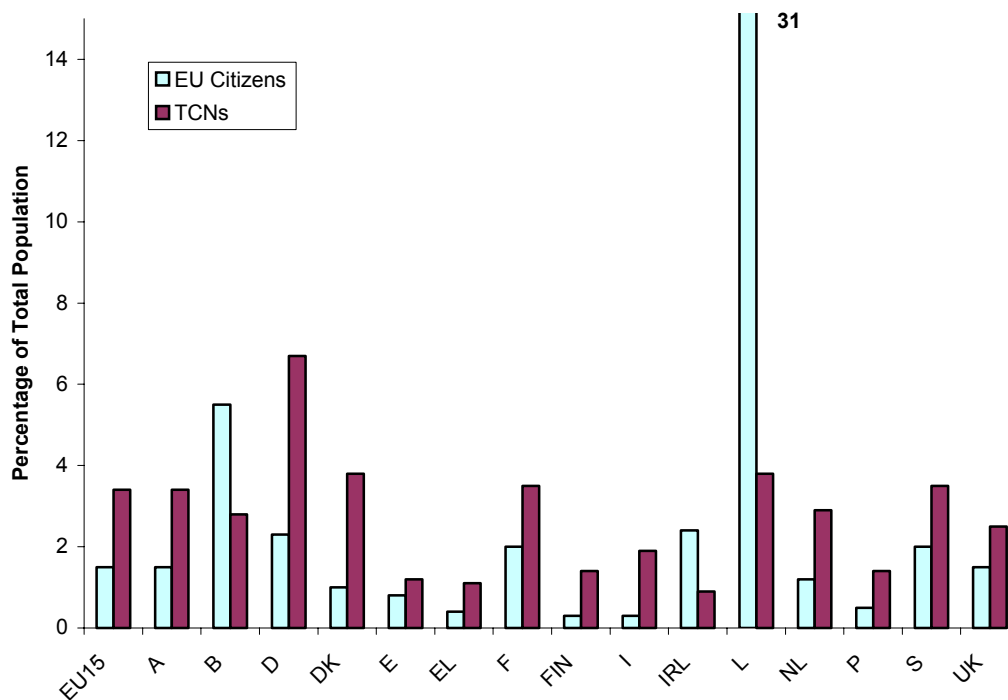
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<sup>2</sup> There are no comprehensive figures available on how many non-national Union citizens actually turned out to vote in municipal and EP elections. Only Finland reported an average turnout of 30,2% in the municipal elections in October 2000, with 9000 non-national Union citizens resident in that country (CEC 2002c: 11). The only available figures for EP elections regard the number of Union citizens included on the electoral roll in their member state of residence. The Commission (2000: 6-7) assumes 'that the great majority of Union citizens who go to the trouble of asking to be included on the electoral roll actually exercise their right to vote and that, consequently, the abstention rate for such persons is insignificant.'

### 3. Third Country Nationals

Despite the considerable number of Union citizens resident in a member state other than their country of origin (6 million), this is still not more than 1,5% of the total EU population (375 million). One could also put the issue of immigration as a whole in perspective by noting that as much as 95% of the total population in EU member states is, on average, of national origin (see Figure 2). This notwithstanding, a rather significant category of resident aliens is formed by 13 million citizens from non-EU countries, so-called third country nationals, which amounts to 3,4% of the total EU population. In all member states, with the exception of Belgium, Ireland and Luxembourg, the latter with almost a third of its resident population being a non-national Union citizen, third country nationals outnumber the Union citizens under the resident aliens by a considerable margin (more than 2:1 on average). In Germany, there are almost three times more third country nationals (6,7%) than Union citizens (2,3%). Hence an important question that needs to be answered is what are the European sources for incorporation in European societies of these thirteen million third country nationals?

**Figure 2. Non-National Residents in EU Member States**



Data for 2000, or latest available (A 1998; DK 1999; EL 1997; L 1998; UK 1999).  
Source Eurostat (2002: 116).

The European Union has largely failed to expand the scope of negative integration beyond the free movement of Union citizens (Geddes 2000; Vink 2002).<sup>3</sup> Still the legal

<sup>3</sup> A Commission proposal (CEC 1997a) to extend the scope of Council Regulation 1408/71 (on social security schemes for workers moving within the Community) to third country nationals was not adopted by the Council.

status of different categories of third country nationals, some say of even half of all third country nationals, is affected by Community law (Groenendijk 2001: 71). First of all, third country nationals who are family members of Union citizens enjoy a full right to equal treatment in their member state of residence. With the important exceptions of having to file a request for a visa before the first entry to the member state territory (we come back to this in the Dutch case), as well as the lack of a right to free movement within the Union separated from their Union family member, these TCN family members have the same rights of residence, access to the labour market and social security benefits (O'Leary 1996: 154-160).

The main other grounds for the equal treatment of third country nationals are the association agreements between the EU and third countries. The second privileged category of third country nationals are those citizens from third countries member to the Agreement on the European Economic Area (EEA). This agreement was concluded in 1992 between the European Union and three countries from the European Free Trade Association (EFTA), Iceland, Norway and Liechtenstein, and entered into force on 1 January 1994. Since then the privileged category of 'Community nationals' also includes, besides Union citizens, non-Union citizens from Iceland and Norway, from Liechtenstein (since 1 May 1995), and from Switzerland (since 2002).<sup>4</sup> Because the regime established under the EEA Agreement basically copies the provisions effective under the EC Treaty, discrimination on grounds of nationality is prohibited in those areas covered by the free movement *acquis* with equal regard for Union citizens and EEA nationals (Staples 1999: 48).

A third category of privileged third country nationals is formed by citizens from Turkey, from the Maghreb countries (Morocco, Tunisia and Algeria), and from Central and Eastern European countries (Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia). The free movement rights for third country nationals from one of these categories form a myriad of provisions based on the wording in different Agreements, on specific implementation measures, and especially on the rulings by the ECJ in individual cases. It would go too far here to discuss these different regimes in all detail (but see Staples 1999: 239-270). Yet it is clear that none of the Association Agreements gives individuals a right to equal treatment equivalent to the categorical prohibition of discrimination on grounds of nationality for Union citizens under Article 12 TEC. What is also certain, is that the most far-reaching regime applies to Turkish workers under Article 12 of the Turkey Association Agreement, which binds the contracting parties to 'the purpose of progressively securing freedom of movement for workers between them.' The equal treatment of Turkish workers and their family members is, however, only secured in as far as they are already integrated into the labour force of their host member state. Association does not affect domestic competence to regulate the entry to the territory by Turkish nationals, nor the conditions under which they may take up their first employment (Staples 1999: 245). In particular, as brought to the fore by a conservative ruling of the ECJ in the case of *Demirel*, where a Turkish

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<sup>4</sup> Three other EFTA member countries Austria, Finland and Sweden also joined the EEA until they became full EU member on 1 January 1995. In a December 1992 referendum the Swiss people rejected the proposal to join the EEA. Only after a positive referendum result in May 2001 on seven bilateral agreements between the EU and Switzerland is the latter EFTA state participant in the European free movement regime (see Fischer *et al* 2002).

national who had worked in Germany since 1979 wanted to be joined in 1984 by his wife from Turkey, the Agreement sets out a program for the completion of free movement between the contracting parties, but does not give Turkish nationals an unconditional right to family reunion (cf. Lawson 2001: 119-121).<sup>5</sup> Workers from the three Maghreb countries only enjoy a conditional right of residence, and free movement provisions were largely excluded from the Europe Agreements with CEE countries, although workers from these countries who are already admitted to the labour market should be secured from discrimination on grounds of nationality (Groenendijk 2001: 71).

Apart from the (partial and conditional) rights based on the promotion of free movement of persons, as family member or under an Association Agreement, the equal treatment of third country nationals has not been confined to negative integration and the goal of ensuring the completion of the internal market. The status of third country nationals has been on the agenda of European policy-makers within a more 'positive' track which aimed specifically at the inclusion of migrants in European societies (Geddes 2000: 131-151). Yet where, by contrast, negative integration is pushed forward to a considerable extent by the Commission and, largely, domestic and European courts, positive integration on the status of third country nationals (as in the case of asylum policy) is hampered by the limits of unanimous intergovernmental decision-making. The only pieces of legislation adopted in the 1990s were two 1995 Council regulations on a uniform visa format (1683/95) and a common visa list (2317/95). Under the JHA Title of the Maastricht Treaty, not much more was adopted than a Council Resolution on the status of long-term resident third country nationals (1996) and, for example, some recommendations on combating illegal immigration and carrying out expulsion measures (1995). A Commission proposal for a Convention on Rules for Admission of Third-Country Nationals to the EU Member States (1997) was not adopted.

The Immigration Title of the Amsterdam Treaty aimed at increasing the effectiveness of JHA policy, and an energetic Commission has launched a great numbers of proposals for regulations and directives. The Tampere European Council even put the equal treatment of third country nationals on top of the agenda (next to asylum and illegal immigration). Although far from a legally binding document, the Presidency Conclusions of the Tampere European Council of October 1999 on the creation of an area of freedom, security and justice in the European Union may be seen as an important indication of a shifting political consensus between the member states towards a more integrated approach regarding the status of third country nationals. This shift is most notable in the endorsement of the objective, somewhat surprising given the Union's long-time disinclination to interfere in nationality politics, 'that long-term legally resident third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident' (Presidency Conclusions VI.4).

Less far-reaching, but still largely in contrast with the status quo, was the call to approximate the legal status of third country nationals to that of Union citizens by granting them a 'set of uniform rights which are as near as possible to those enjoyed by EU citizens' (ibid.). The Commission, in its Communication on a Community Immigration Policy (CEC 2000b: 19-20), even developed the concept of 'civic citizenship' to underline the fundamental importance of the set of core rights for third

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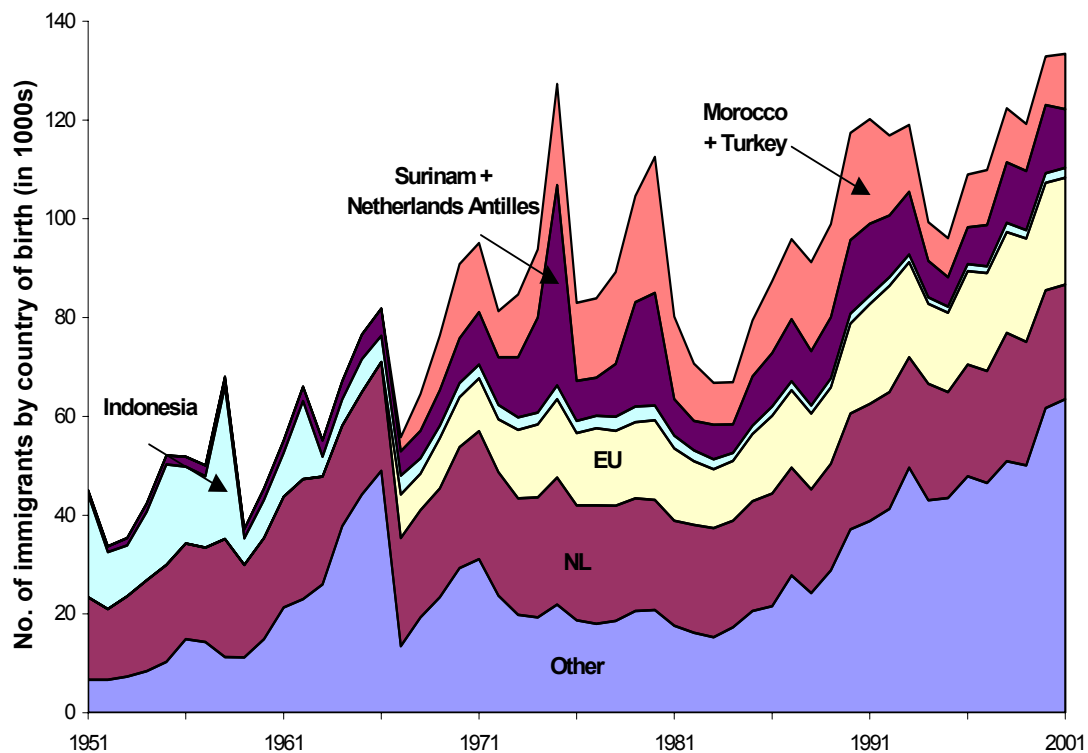
<sup>5</sup> Case 12/86, *Demirel* [1987] ECR 3719, para 23-24.

country nationals in the member states of the Union. The crucial question, obviously, is whether and how this paradigmatic shift at the European level also relates to an actual improvement in the status of third country nationals. The recently adopted family reunion directive (political agreement in the JHA Council of 27-28 February 2003), basically the first piece of secondary Community legislation on the status of third country nationals (apart from the visa measures),<sup>6</sup> sheds a rather sceptical light on the evolving civic citizenship. Although it is yet too early to see what this measure brings about in domestic immigration policies, commentators have criticised that member state amendments of the original proposal by the Commission will result in a level of protection below the minimum standards of the ECHR (Commissie Meijers 2003). For a closer look at the status of Union citizens and third country nationals in EU member states, the rest of the paper presents a case study of the Netherlands.

#### 4. Dutch Minorities Policy

Decolonisation and labour migration have contributed to what has only since the late 1970s been recognised in the Netherlands as a 'multicultural or multiracial society' (WRR 1979: VIII). In the immediate period after the Second World War, almost 300,000 people of Dutch nationality returned to the 'motherland' after the independence of the former

**Figure 3. Immigration to the Netherlands 1951-2001**



<sup>6</sup> The anti-discrimination directive (2000/43/EC), which was adopted in June 2000 on the basis of Article 13 TEC, is not part of the Immigration Title, and also specifically excludes nationality as prohibited ground of discrimination (see Rodrigues 2001).

Netherlands East Indies (1949) and New Guinea (1958), despite a rather reluctant Dutch government which attempted to minimise 'repatriation' (Entzinger 1984: 74). From the 1960s onwards a comparable number of supposedly temporary 'guestworkers' (*gastarbeiders*) arrived from Mediterranean countries, most of them from Turkey and Morocco. Following the 1973 oil crisis, one commentator observes, 'the recruitment of foreign workers virtually came to a halt, but the immigration of non-workers continued on a fairly large scale because the existing restrictions in this field were not easy to enforce' (Entzinger 1985: 64). One reason for this continuing immigration during the 1970s was a second wave of around 180,000 colonial immigrants that arrived shortly before the independence of the former colony Surinam (1975). Also within the five-year transition period until 1980 large groups from Surinam were allowed to migrate to the Netherlands under conditions comparable to those of Community workers (Swart 1978: 409-414; Penninx 1979: 71; see also Figure 3). Given the remaining need for unskilled labour, and notwithstanding the often disputed function of labour migration as a remedy for an ageing population, it is generally expected that the Netherlands will also in the near future be a 'country of immigration' (WRR 2001: 9).

For a long time, no government policy existed to deal comprehensively with the legal status and societal integration of these 'newcomers'. The main reasons were that 'repatriates', apart from an emergent need for housing upon their arrival, were assumed to have no difficulties with integration in Dutch society, and that guestworkers were supposed to return to their countries of origin after a few years of labour in the Netherlands. The turning point came in 1979 when the Scientific Council for Government Policy completed a report on 'Ethnic Minorities' (which it broadly defined as including minorities from former colonies as well as non-national guestworkers and their families). The Council criticised the notion of temporality underlying government policy vis-à-vis these minorities because this would lead to a socially disadvantaged position and cultural isolation (WRR 1979: XVII). An academic commission of high level experts from that same year came to a similar conclusion (ACOM 1979: 19-20).

On a more fundamental level, the Council rejected the philosophy of 'preservation of own identity' which had guided the Dutch attitude towards immigrants over the past decades. This ruling doctrine fitted well in the Dutch tradition of religious pillarisation, where each cultural group has a right to its own social and cultural institutions, but was too much an excuse for inaction on the government's part. In the Council's view it had to be replaced by a more active encouragement of minorities to participate in Dutch society (WRR 1979: XXI). With regard to the legal status, which concerns us most in this respect, the areas in which national citizens have a right to preferential treatment would need to be minimised and a permanent residence status should be granted within a relatively short time (in any case sooner than the then current five years). According to the Council, this process of more equal treatment would imply, for example, the granting of electoral rights to non-citizens and even a relaxation of the rules for the acquisition of Dutch nationality.

Multicultural society was increasingly perceived as a 'reality' in the 1980s and, although there is a lot to be said for preserving the term multiculturalism for a political ideal rather than for a demographic fact (Kymlicka 1995), this awareness of the importance of immigration resulted in a comprehensive 'minorities policy'. The government admitted in a 1983 Minorities Note that 'in many ways our country has been

given a different face after the Second World War (...). Therefore conditions must be created by the minorities policy to realise the equivalence and equal opportunities of all residents' (LHDP-AP 1982-1983, 16102, 20-21: 3).<sup>7</sup> Apart from many forms of subsidised activities for minorities and the application of 'positive discrimination' in housing policy and employment in public service, which cannot be dealt with here, an important goal was to approximate the legal status of non-citizens and citizens. Much was expected of the participation of non-national immigrants in local elections, after five years of residence, which was first possible in the municipal elections of 1986. The importance of a generous naturalisation policy was underlined as well and facilitated after the 1986 Nationality Act replaced the outdated Act from 1892 (ibid.: 92). The Dutch Scientific Council for Government Policy applauded these improvements in the legal status of aliens, but emphasised that all was not perfect for the moment. In particular, it argued that 'the Netherlands should promote in Europe the enjoyment of free movement rights for third country nationals, after five years of residence in the Community, similar to member state nationals' (WRR 1989: 10).

The so-called 'return of the citizen' in the 1990s, also signalled in political philosophy (Kymlicka and Norman 1994; Van Gunsteren 1998), clearly did not miss its impact in the Netherlands. The question of which loyalties and capacities are required of citizens in order to fully participate in Dutch society became prominent in public debates (WRR 1992). Although the real demise of multiculturalism occurred only at the dawn of the new millennium, with a famous article published in 2000 on the 'multicultural tragedy' (Scheffer 2000) and the successful campaign against 'political correctness' by the populist Pim Fortuyn in the run-up to the elections of 2002, the entire decade of the 1990s can be characterised by an increasingly more demanding attitude towards immigrants. These paradigmatic changes were also reflected in the parliamentary debates on the legal status of non-citizens, with the allowance of dual nationality in the period from 1991 to 1996 perhaps an exception (or a final reminiscence of the 1980s), but the return to the doctrine of one nationality in 1997 a clear manifestation of these altered circumstances. The Integration of Newcomers Act (*Wet Inburgering Nieuwkomers*), aimed at self-sufficiency of newcomers in Dutch society, as well as the Benefit Entitlement Act (*Koppelingswet*), aimed at 'linking' the enjoyment of public goods more closely to the legal status of persons, both adopted in 1998, can be seen as other illustrations of this perhaps more 'republican' approach to citizenship.

Going to the question of the European impact on these domestic developments, it would be an absurdity not to account for a considerable historical contingency. Much of the debates from the 1980s and 1990s on the status of non-citizens and citizens from immigrant origin must be seen within its proper domestic context, not in the last place because there is no comprehensive minorities policy at the European level (Vink 2002). The absent European involvement in the societal integration of citizens from migrant origin, e.g. persons from the former colonies, clearly relates very much to the issue of subsidiarity, as already noted by the Dutch government in its 1983 report on minorities (LHDP-AP 1982-1983, 16102, 20-21: 171). At the same time, as analysed in the first part of this paper, it is not the case that Europe is irrelevant for the position of non-citizens in

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<sup>7</sup> Lower House Dutch Parliament - Appendix to the Proceedings, Parliamentary Year 1982-1983, File 16102, Numbers 20 and 21, Page 3.

EU member states. Far from that, Union citizens may even increasingly be seen as equivalent to national citizens. The question then arises how relevant Europe actually is for the incorporation of non-citizens in the Netherlands. The following two sections provide a detailed analysis of the status and rights of Union citizens and third country nationals in the Netherlands, and in particular of parliamentary debates in the 1990s on the approximation and differentiation of citizens and aliens.

### 5. Equal Treatment

The European free movement *acquis* was implemented by the Netherlands without much political ado (see Swart 1978: 415-463 for a general overview). These revisions generally took place by an amendment of the so-called 'Aliens Order' (*Vreemdelingenbesluit*). On 15 July 1969, both Directive 68/360 on the abolition of restrictions on movement and residence and Directive 64/221 on the co-ordination of special measures relating to this, were transposed by way of the Aliens Order. On the same day, by ministerial decree the so-called 'Aliens Regulation' (*Voorschrift Vreemdelingen*) was revised in order to lay down the specific details of these measures, such as the format of the temporary residence permit for Community workers. In this way, the right to free movement for Community workers and their families became a matter of practical relevance in the Netherlands. These rights were extended in a similar way to providers of services in 1974 and to self-employed workers in 1976. In 1992 a single Aliens Order included economically inactive Member State nationals, pensioners, and students in these equal treatment provisions. Hence, already before the formal coming into force of the Maastricht Treaty on 1 November 1993, all Union citizens who were covered by health insurance and had sufficient resources enjoyed the right to reside in the Netherlands.

On a more practical level, European free movement provisions collided with the Dutch system of residence permits since it is no longer appropriate to provide Community nationals with a traditional residence permit that explicitly *permits* aliens to reside in the Netherlands. After all, Community nationals do not need such permission when they enjoy a right of residence on the basis of the EC Treaty (Swart 1978: 427). As confirmed by the ECJ, a residence permit can only have a declaratory effect, and the expiration of such a permit may certainly not be seen as a reason for expulsion. A number of referrals for preliminary reference by the Dutch Study Finance Appeals Board, exemplifying a general willingness to invoke Community law in matters where the issue of equal treatment is at stake, also underscore that the enjoyment of rights by non-nationals may no longer be linked to a (valid) residence permit. 'The issue of such a permit does not create the rights guaranteed by Community law, and the lack of a permit cannot affect the exercise of those rights.'<sup>8</sup> The right of residence for EU/EEA-citizens is evidenced since July 1998 either by a special residence document which is only declaratory by nature (*verblijfsdocument EU/EER*), or by a special residence annotation in their passport (the so-called 'sticker') which is valid for three months only.<sup>9</sup>

There have been some infringement procedures against the Netherlands, by the

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<sup>8</sup> Joint Cases 389/87 and 390/87, *Echternach and Moritz v. Minister van Onderwijs en Wetenschappen* [1989] ECR 723, para 25. See also Case 357/89, *Raulin v. Minister van Onderwijs en Wetenschappen* [1992] ECR 1027, para 36.

<sup>9</sup> For the most recent formats of both the EU/EEA residence document and the 'sticker', see Appendix 7e and 7h to the Aliens Instruction 2000.



European Commission, for violating Community law. Dutch immigration officers were, for example, previously allowed to ask Community nationals entering the Netherlands, as a rule, questions on the destination or purpose of their stay, or the financial means at their disposal. Yet the only valid precondition which member state may impose on Community nationals is the production of a valid identity document or passport. Hence the ECJ argued that the Netherlands failed to fulfil its obligations imposed on it by Directives 68/360 and 73/148.<sup>10</sup> On the whole, however, the transposition of free movement provisions in the Netherlands is correct, according to the Commission (1999: 9). 'Apart from Denmark, Spain and the Netherlands, which fulfilled their obligations within the prescribed periods, all the other Member States lagged behind to varying degrees (...), despite the small number of provisions involved and the lack of specific difficulties in transposing them into national law.'

The special status of EU/EEA-citizens for a long time was not visible in the Aliens Act itself as the 1965 Act recognised only one undifferentiated category of aliens. Only after the 1998 'Benefit Entitlement (Resident Status) Act' was the concept of Community national introduced in the Dutch Aliens Act. The Benefit Entitlement Act was a clear manifestation of the evolving differential treatment of aliens due to European integration. It introduced the so-called 'link-up principle' (*koppelingsbeginsel*) in order to link the lawful residence of aliens in the Netherlands to the claim of aliens vis-à-vis administrative bodies to facilities, arrangements, payments, exemptions and licenses, on the other. According to the motivation of the Act, the situation should be prevented where, by providing them with health care and social security, secondary or higher education, etc., aliens who do not (yet) enjoy a legal status but nevertheless reside in the Netherlands are encouraged to continue their illegal residence, and may even appear to be lawfully present at Dutch territory (LHDP-AP, 242333, 3: 1-2). The Benefit Entitlement Act introduced these restrictive measures in order to decrease the number of illegal residents in the Netherlands (Dutch Government Memorandum 2002; cf. Pluymen and Minderhout 2002: 209). At the same time, realising the potential severity of these measures, the drafters of the Act acknowledged that the Aliens Act must be clear with regard to the category of people subject to the link-up principle.

Most notably, those who enjoy the right of residence on the basis of Community law need to be exempted unambiguously from the restrictive regime because, contrary to third country nationals, because even when EU/EEA-citizens cannot present a valid residence permit they cannot be excluded from social arrangements. Moreover they can only be removed from Dutch territory on exceptional grounds of public policy, public health or public safety, but not because they lack a (valid) residence permit. As a consequence, the Benefit Entitlement Act added the concept of 'Community national' (*Gemeenschapsonderdaan*) to Article 1 of the Aliens Act, including both Union citizens and EEA-nationals, as well as their family members on grounds as defined in the EC Treaty. Since then Community nationals do not need a residence permit in order to reside lawfully in the Netherlands (Article 1b). This revision of the Aliens Act was implemented on 3 July 1998 by way of a modification of the Aliens Order. The new Aliens Act 2000 includes a provision for Community nationals similar to the one introduced in the old Aliens Act in 1998, although in marginally different words, and confirms that

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<sup>10</sup> Case 68/89, *Commission v. Netherlands* [1991] ECR I-2637, para 16.

Community nationals can lawfully reside in the Netherlands on the basis of the EC Treaty or the EEA Agreement (Article 8e). The Association Decision 1/80 of the EEC/Turkey Association Council is also specifically mentioned as a ground for lawful residence in the Netherlands (Article 8m).

### *6. Differential Treatment*

The privileged status of Community nationals becomes visible most clearly in contrast with the status of third country nationals. A down-to-earth, but nonetheless striking consequence of such a differentiation came to the fore in 1994, when the Dutch Aliens Regulation was revised in order to implement the provision of Community law that the costs of issuing a residence permit for Community nationals may not be higher than the costs for an identity card for nationals (Directives 68/360, Article 9 and 73/148, Article 7). After the introduction on 1 January 1995 of an identity card for Dutch nationals, which is significantly cheaper than the traditional passport, Community nationals can be asked to pay for their residence permit only a maximum amount of €28 similar to the costs for an identity card for Dutch nationals. Third country nationals, on the other hand, have to pay an amount much higher than the passport for Dutch nationals, particularly after significant increases in 2002 and 2003 (€430 for a temporary residence permit, €890 for a permanent one).

A second illustration of this increased differential treatment of Union citizens and third country nationals regards the exercise of suffrage. For EP elections, in line with Articles 19(2) TEC and 39 CFR, only Dutch nationals and other member state nationals are allowed to vote and stand as a candidate in EP elections (Electoral Law, Article Y 3).<sup>11</sup> The implementation of Directive 94/80/EC on active and passive electoral rights in municipal elections, however, opened up a more fundamental debate on non-citizens and the meaning of Union citizenship. In the mid-1980s debate on the extension of suffrage in local elections to non-nationals, the Dutch legislature explicitly chose not to differentiate between categories of aliens, and to grant suffrage to all non-nationals after a minimum period of residence of five years (Jacobs 1998: 124-129). After the 1992 Maastricht Treaty this period of five years needed to be abolished as regards Union citizens, since no additional conditions may be demanded from Union citizens in comparison with national citizens (Directive 94/80/EC, Article 4).

The Electoral Law was now amended in such a way that the required five year period of residence only applies to third country nationals (Article B 3.2). The explanatory note to the transposition act explains that this newly introduced differentiation 'allies with the accomplishment of a citizenship of the Union which results in a decreasing differentiation between Dutch nationals and other member state nationals' (LHDP-AP 1995-1996, 24664, 3: 5). In response to parliamentary questions, the Junior Minister of Interior further explained that although Union citizenship implied a privileged position for member state nationals, the rights of third country nationals were not limited.

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<sup>11</sup> Directive 93/109/EC was implemented in the Netherlands on 26 January 1994, just in time for the 1994 EP elections. With regard to Dutch nationals residing abroad, almost as many persons voted in the 1999 EP elections in the Netherlands (17010) as in their member state of residence (16592). In order to increase participation in the Netherlands, a registration form and information letters are sent to all non-national Union citizens. Political parties are also informed by the Ministry of Interior of the rights of Union citizens (CEC 2000c: 16, 33).

'It is only made "more easy" for Union citizens to participate in elections' (LHDP-AP 1995-1996, 24664, 5: 4).

It would surely be exaggerating, after these examples, to speak of an extensive philosophical debate by the legislature on the nature of European citizenship. There was, for example, no real discussion on why 'Community nationals' enjoy a privileged position in immigration law on the basis of the EC/EEA Treaties, almost similar to national citizens, but only 'member state nationals' have privileged suffrage in municipal elections. Apparently there is something, EU membership, which differentiates member state nationals from nationals from EEA countries, but what this specifically means remains undefined. The 'easy' way out of such discussions is often the use of legal arguments. In the case of municipal elections, for example, directive 94/80/EC only applies to member state nationals and requires no changes in the residence period for Community nationals or even for third country nationals. Also the increasingly explicit special status of Union citizens in Dutch legislation may sometimes appear as slightly arbitrary, by explicitly mentioning Community nationals as a special category of non-nationals at one time (Aliens Act 2000, Article 8e), EU member state nationals at another (Electoral Law, Article B 3.2), and not at all clarifying a rather general category of 'aliens who are resident on the basis of treaties or decisions by international public law organisations' (Integration of Newcomers Act, Article 1a.1).

Notwithstanding the arbitrary or, perhaps, largely uncontested nature of the privileged status of Union citizens (or Community nationals) in the Netherlands, there is the occasional uncertainty in parliament about the question why this category of persons actually deserves such preferential treatment. In the Integration of Newcomers Act, for example, Community nationals are exempted from the obligation to participate in a so-called 'integration program' (*inburgeringsprogramma*). According to the Motivation of the Act, social self-sufficiency is of the utmost importance for Dutch society as well as for the newcomers in question (LHDP-AP 1996-1997, 25114, 3: 1). Although a minimum level of skills seems at first sight equally important for all persons immigrating to the Netherlands, according to the government in response to parliamentary questions, it would be prohibited by Brussels to impose these obligations on Community nationals. 'The reasons for this are of a legal nature (...). We are not competent, given the free movement of workers in the EU and EEA, as laid down amongst others in Article 39 (ex. 48) TEC, to impose such an obligation on EU/EEA nationals' (LHDP-AP 1996-1997, 25114, 6: 8). Given that the obligation of integration *can* be imposed on Dutch nationals immigrating to the Netherlands, particularly on those nationals from the Netherlands Antilles, this exemption leads to the seemingly paradoxical situation where Community nationals actually enjoy a more privileged status than Dutch nationals. 'It is extremely odd,' criticised one orthodox Calvinist MP, 'that Dutch nationals immigrating to the Netherlands need to fulfil the obligations as laid down in the proposed bill, whereas this is not the case for EU nationals immigrating to the Netherlands' (LHDP-AP 1996-1997, 25114, 5: 12). The government, somewhat reluctantly, answered that based on supranational legislation the legal status of an EU national is indeed 'different' from a Dutch national who is not born in the Netherlands (LHDP-AP 1996-1997, 25114, 6: 9).<sup>12</sup>

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<sup>12</sup> Article 39 TEC does, however, apply to so-called 'privileged EU nationals of Dutch nationality' (*begunstigde EU-onderdanen met de Nederlandse nationaliteit*) which are, for example, children whose

A final topic that needs to be discussed is the impact of the Tampere Presidency Conclusions on Dutch policy vis-à-vis third country nationals. As described above, the European Council explicitly called for the entitlement of third country nationals to a set of uniform rights which are as near as possible to those enjoyed by Union citizens. Whereas this may be seen as a breakthrough at the European level in the direction of a more universally accessible free movement regime, it is at least often applauded as such, the Netherlands seemed to head in precisely the opposite direction at the end of the 1990s. One commentator complained, in a parliamentary hearing of experts, that because the Aliens Act 2000 was primarily directed at a more restrictive asylum policy, it simultaneously negatively affected the legal status of 'regular aliens' (LHDP-AP 1999-2000, 26732, 4: 16). MPs from both the Democratic (D66) government party and Socialist (SP) opposition criticised the government's proposal to increase the grounds for withdrawing residence permits for resident third country nationals and observed 'that this bill is diametrically opposed to the European agreements from the Tampere summit' (LHDP 1999-2000, 26732, 5: 12-13). The largest coalition party of the Social-Democrats (PvdA) also came to 'the conclusion that there is a great discrepancy between [Dutch] minorities policy and European intentions on the one hand, and the new aliens act, on the other' (ibid.: 17; LHDP 1999-2000, 26732, 9: 4).

The government in its initial response to these parliamentary questions denied that there would be a restriction of the current practice. Moreover, it did not see the need to invoke the Tampere conclusions since the agreement to converge national practices still needed to be implemented by the JHA Council on the basis of new Commission proposals (LHDP 1999-2000, 26732, 7: 24; LHDP 1999-2000, 26732, 9: 61). In the words of the Junior Minister of Justice: 'It is unclear at this moment how the conclusions from the Tampere European Council will be implemented. Much consultation is needed with other governments to lay this down in EU legislation. In reaction to such legislation our policy will be altered, if necessary' (LHDP 1999-2000, 26732, 12: 41). Yet these words could hardly undo the general dissatisfaction with the proposed income requirement for the granting of a residence permit in case of family reunion (Article 16c Vw 2000), as well as with the public order criterion for withdrawing such a status which granted a large amount of discretion to the government (Article 30b Vw 2000). 'The status of second generation immigrants has worsened dramatically as a consequence of this bill', reacted a Green (GL) MP (LHDP-P, 83: 5350). Amendments from parliament, filed by the parties from the government coalition, improved this situation with a (crucial or not) reference to the 'concrete agreements' from Tampere (LHDP-P, 84: 5385; see also Groenendijk 2001: 81).

Some questions of compatibility between domestic and European policies were still left unanswered, in particular where it concerned family reunion. The situation of so-called 'reverse discrimination', for example, which was previously discussed in light of the integration of newcomers, again pointed towards the preferential treatment of Community nationals versus Dutch nationals. Due to the provision that Community law prohibits any unnecessary requirements in as far as it concerns family reunion (Directives

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parents have been resident worker in another member state. These persons are hence also exempt from the obligation to integrate (SDP-AP 1997-1998, 25114, 122b: 2). See also Case 246/80, *Broekmeulen v. Huisarts Registratie Commissie* [1981] ECR 2311.

90/364 and 90/365), Community nationals in the Netherlands basically obtained a most privileged status after Dutch nationals (as well as third country nationals) were required under the new Aliens Act to earn an income at least at the level of minimum social security assistance (*bijstandsnormen*) in order to succeed in obtaining a residence permit for their spouse or other family members from abroad (Articles 3.22 and 3.74 Vb 2000). The somewhat paradoxical conclusion comes to the fore that Dutch nationals are in a more privileged position for family reunification if they use their free movement rights by moving from the Netherlands to another member state, and that they are in a way punished for staying in their own country (Boeles 2001: 95-97). For third country nationals, family reunification remains as problematic as before, unless they fall under a special regime such as the Association Agreement with Turkey, or unless they obtain Dutch nationality and thus a more secure resident status.

### 7. Conclusion

Is national citizenship imperative to a meaningful resident status for aliens in EU member states? In answering this question, the case study of the Netherlands highlights a number of opportunities and limits of European citizenship. On the positive side, there is ample evidence to argue that Union citizens (or 'Community nationals' more widely conceived) form a privileged category of resident aliens. With virtually unlimited access to member state territories, the entitlement to social security arrangements, and even limited rights for political participation the legal status of these persons approximates that of national citizens. In as far as third country nationals derive rights from being family member of a Union citizen, from being an EEA national or (more limited) from being a privileged third country national through association agreements, one might also say that there are indeed Europe-induced 'limits of national citizenship.' On a more fundamental level, the evidence from Dutch parliamentary debates shows the largely uncontested nature of such preferential treatment of a specific category of aliens. The use of legal arguments, by pointing at the anti-discrimination requirements of Community law, normally suffices to create these special entitlements. In particular in the 1990s, with the restriction of immigration provisions and a more demanding attitude towards immigrants, such an exemption for privileged aliens became increasingly significant.

On the sceptical side, it can be argued that 'nationality' remains a crucial factor in the incorporation of immigrants in Dutch society. True, it need no longer be solely Dutch nationality that is required for the entitlement to traditional prerogatives for national citizens, such as unlimited access to Dutch territory and participation in elections, but the requirement of EU/EEA member state nationality, of 'European' citizenship, has now largely replaced the importance of national citizenship. The fact that on average there are twice as many third country nationals resident in EU member states compared with Union citizens, and that the latter category of aliens make up not more than 1.5% of the population, clearly puts these European entitlements in perspective. The evidence available on participation in local and EP elections, moreover, suggests a categorical indifference of Union citizens for their core 'European' rights.

More importantly, the largely uncontested nature of the special status of European citizens that came out of the study of Dutch parliamentary debates becomes rather arbitrary, if not problematic, if one considers the dominance of legal arguments and the almost complete absence of political debates. The reverse discrimination of Dutch

nationals in the cases of obligatory integration programs and family reunion, an unsatisfactory situation for the Dutch legislature, was legitimated purely by pointing at the requirements of Community law. The newly introduced discrimination of third country nationals vis-à-vis Union citizens, by abolishing the residence requirements for the latter in case of participation in municipal elections, was legitimated by the same legal argument. This is not to say that the legal protection of Union citizens resident in member states other than their own is not important. Far from that, its practical meaning for the free movement of persons is probably an invaluable contribution towards the legitimacy of the whole European project. Yet if we look at the evidence from the Netherlands presented here, we see how the status of European citizens is actually constituted on an almost purely 'negative' basis. One could even go as far as saying that a special category of 'European citizens' only became visible in the Netherlands after the departure from the 'multicultural' model of integration that had characterised Dutch minorities policy in the 1980s, for example by introducing in 1998 both the Benefit Entitlement Act and the Integration of Newcomers Act. The limits of European citizenship, then, are formed not just by its foundation upon nationality and its relatively limited personal scope, but also by the somewhat accidental and arbitrary intrusion of the European citizen in domestic immigration debates.

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