# Integration

**Ilke Adam[1] and Daniel Thym[2]**

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# TAMPERE CONCLUSIONS

## III. FAIR TREATMENT OF THIRD COUNTRY NATIONALS

*18. The European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.*

*19. Building on the Commission Communication on an Action Plan against Racism, the European Council calls for the fight against racism and xenophobia to be stepped up. The Member States will draw on best practices and experiences. Co-operation with the European Monitoring Centre on Racism and Xenophobia and the Council of Europe will be further strengthened. Moreover, the Commission is invited to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty on the fight against racism and xenophobia. To fight against discrimination more generally the Member States are encouraged to draw up national programmes.*

*21. The legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens; e.g. the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence. The European Council endorses the objective 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.*

# PART 1: **ASSESSMENT OF THE CURRENT SITUATION**

Member states have long rejected extensive European intervention in immigrant integration policies. Instead, the Treaty of Lisbon established a power "to provide incentives and support for the action of Member States",[3] thereby excluding any direct harmonisation of national legislation. Yet, this does not exclude the adoption of measures on different legal bases, such as social policy or directives on immigration and asylum. As a result, there are segments of a supranational legislative framework for integration complemented by soft policy instruments, which all build on the initial ambition set out at the 1999 European Council in Tampere for a "more vigorous integration policy".[4] The EU approach essentially embraces four domains, which are outlined below.

## A. Rules in immigration directives

The Family Reunification Directive 2003/86/EC and the long-term residents (LTR) directive 2003/109/EC were controversially discussed during the legislative process, especially with regards to the underlying integration concept. While the European Commission had initially seen the strengthening of the rights of migrants as an instrument to advance integration, member states defended an approach wherein rights are seen as a reward for integration.

Both directives comprise what may be called 'implicit' and 'explicit' integration requirements for the attribution of a visa or residence permit. While the former do not use the term 'integration', they nevertheless rely on proxies for integration, such as economic self-sufficiency, the length of stay or the absence of extensive criminal convictions. Moreover, all of the directives guarantee equal treatment in diverse domains for those covered by their scope. These 'implicit' provisions on integration are less controversial. By contrast, 'explicit' rules that employ the term 'integration' were highly contentious during the legislative process and continue dominating many domestic and supranational debates. Corresponding 'may clauses' were used in particular for language requirements, thereby triggering a process of policy diffusion, with more and more member states introducing explicit integration conditions over the past 15 years.

This policy shift has been criticised by many academics from different disciplines. The criticism mainly points to the fact that introducing integration requirements, when too strict, might foster exclusion rather than inclusion.[5] The European Court of Justice (ECJ) confirmed language requirements to be compatible with the Family Reunion and LTR directives in 2015, since they "greatly facilitate[e] communication [...] and [...] encourage[e] interaction and the development of social relations" among nationals and third-country nationals (TCNs).[6] States are required, however, to lay down hardship clauses for those with special needs or whenever pre-departure language tests are disproportionate.

# B. Funding

Besides legislation, the EU adopted specialised funding instruments on the basis of Articles 77-80 TFEU, which cover projects on immigrant integration. The original European Fund for the Integration of third-country nationals (EIF) was replaced by the Asylum, Migration and Integration Fund (AMIF) during the 2014-20 cycle. To our knowledge, we still lack an evaluation of AMIF-funded activities to national integration policies. An evaluation study of the EIF showed that member states emphasise linguistic training and civic orientation courses disproportionately and that EU funding contributed to spreading civic integration courses.[7]

It should be noted that the AMIF decreased the budget for integration measures, although additional money for integration projects is available under other funds on different legal bases, like the European Social Fund (ESF). Ongoing debates about the next Multiannual Financial Framework (MFF) plan to deal with integration-related projects under the future 'Europe Social Fund Plus' (ESF+) and the enhanced asylum and migration fund.

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# C. Soft policy instruments

To compensate for the limitation of the EU's competence, the Commission had recourse to soft policy instruments that are meant to stimulate member states to evaluate and rethink their integration policies. The four initiatives mentioned below are complemented by a website on European integration,[8] statistics, handbooks, agendas and the Commission's 2016 Action Plan on the integration of TCNs.[9]

In a joint effort of the Council of the European Union and member state representatives, the EU established the Common Basic Principles for Immigrant Integration Policy in the EU (CBPs), which may be considered the "eleven commandments of the EU integration policy".[10] The underlying idea of integration as "a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States"[11] has been taken up widely across Europe. It is complemented by an inspection of different policy areas, including employment, education, naturalisation and political participation. It should be noted, thus, that it is not limited to language courses and civic integration.

National Contact Points (NCPs) on Integration were established in member states from 2003 onwards, to facilitate regular meetings of national representatives to identify and exchange best practices and foster mutual learning. While evaluating the impact of such a policy learning tool is difficult, research suggests that there is little evidence of norm diffusion through NCPs, which often concern lower-ranked civil servants.[12] However, that does not unmake the diffusion processes established through other platforms and activities mentioned above.

The EU contributed to the professionalisation and finetuning of the indicators of immigrant integration.[13] Eurostat's migrant integration report[14] was complemented by the EU's joint publication with the Organisation for Economic Co-operation and Development, S*ettling in 2018*,[15] thereby allowing for increasingly professional measurements of ethnic and racial inequalities in Europe. Research shows that there is no straightforward link between states' investments in integration policies and integration on the ground. This is so because integration is fostered by a wide range of variables that go beyond explicit integration policies.

More recently, the European Commission is focusing more on the need to mainstream integration across all policy sectors and levels. In 2015, the Commission created an Inter-Service Group on the integration of third-country nationals, which unites the relevant directorates. The need for policy coordination was also strongly highlighted in the 2016 EU Action Plan on the integration of TCNs.

# D. Measures beyond the area of freedom, security and justice: anti-discrimination policy

Other policy measures contribute to immigrant integration beyond the legal scope of the original Tampere conclusions and the area of freedom, security and justice.

As the EU defines integration as a "two-way process of mutual accommodation by all immigrants and residents of Member States",[16] anti-discrimination policies are key to integration. The Race Equality Directive 2000/43/EC set up or extended anti-discrimination laws across Europe. Research shows that the legislation is poorly implemented in many countries and that support for national equality bodies varies significantly. The ECJ adopted a narrow approach to the definition of race when it excluded unequal treatment on grounds of the place of birth from the scope of the Directive,[17] thereby indirectly vindicating narrow domestic practices, even though the Directive can be used to challenge state practices in other policy fields than migration law (e.g. discrimination against the Roma community[18]).

More relevant than the Race Equality Directive in the legal practice of member states and the ECJ is the Equal Treatment Directive 2000/78/EC, which concerns different grounds of discrimination and is limited to employment and occupation. On its basis, important judgments on religion were delivered, which will be considered below.

In line with the CBPs, many other policies should be considered as contributing to immigrant integration. Among the areas of (limited) EU competence, activities in the field of social policy should be mentioned alongside measures supporting economic growth, thereby facilitating labour market integration. By contrast, the EU lacks competence in many other domains, such as education or political participation, which are crucial for the success of integration and the overall assessment of state policies.

# PART 2: IDEAS AND SUGGESTIONS FOR THE FUTURE

A holistic approach that accepts the complementary nature of the different instruments mentioned above is warranted. EU institutions could make a renewed effort to emphasise the linkage between diverse policy areas instead of only speaking about explicit integration policies. The Commission should support and supervise the application of existing rules by the member states in line with ECJ case law and consider how to reinvigorate debates about naturalisation. It is important to keep in mind that integration combines diverse generic policies (e.g. education, housing, employment) with a broader debate about the underlying vision of what constitutes an 'integrated' society. This chapter accepts that there are different views and presents two of them: one concentrating on factual equality by fighting institutional racism; the other highlighting multiple meanings of integration, including the search for a new sense of togetherness which connects operational policies and structural reforms.

## A. Thematic scope of integration policies

In line with the CBPs, integration can be understood as a two-way process of mutual accommodation, with the aim of the full participation of immigrants in economic, social, cultural and political life. On that basis, any evaluation of the EU's approach essentially depends on the thematic scope of the measures analysed. If explicit integration conditions in secondary legislation are focused upon exclusively, a one-sided focus on language courses and civic knowledge becomes apparent, emphasising the obligations of immigrants. If, by contrast, other policy areas mentioned in the CBPs are included, the conclusion will be more nuanced, since the stance of both the EU and member states on schooling, social policy and employment often embraces equality-based elements, which accentuate obligations of and support by the host society.

Against this background, the limited EU competence under Article 79.4 TFEU can appear in a different light, since it may reflect an approach which considers immigrant integration as an integral part of wider policies on diverse issues such as employment, social policy, education or political participation. Specific measures for immigrants are often appropriate at the early stages after entry (e.g. language

courses to support the integration of refugees). In the medium and long run, it is neither desirable nor possible to disentangle the integration of immigrants from the general policy approach. Immigrant integration should, in other words, be discussed as part of other policies instead, thereby mainstreaming integration. In doing so, member states and the EU should ask whether the immigrant experience requires a reconfiguration of existing policies, to take account of the specific requirements of immigrants (e.g. education).[19] There are different views, however, about the direction of that institutional change (see Part 2, D).

Many policy areas mentioned above (e.g. education, employment, social policy) will remain prerogatives of member states in the foreseeable future – and may, at best, be coordinated through soft policy instruments at the EU level. As a result, the current patchwork of different instruments is here to stay and the EU institutions are invited to better emphasise the linkage between policy areas in the future, thereby countering the widespread stereotype that EU integration policies are limited to explicit integration conditions in secondary legislation, with their focus on language requirements and civic knowledge. Unfortunately, the EU institutions have not always grasped all the opportunities laid out before them over the past years.

**INITIAL SUGGESTIONS AND IDEAS:**

1. Accentuating integration as a two-way process, in line with the CBPs.

2. Focusing less on language requirements and civic knowledge by highlighting that other policy areas such as social policy are based on active support from host states.

3. Reassessing whether sectoral policies should be reconfigured to take account of new challenges and difficulties in increasingly diverse societies.

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# B. Developing existing rules and policies

Research has shown that in the Family Reunion and LTR directives, the optional clauses that allow member states to introduce integration requirements have legitimised national policy change in that direction. The use of integration requirements has led to heated debates in political and academic circles; with extreme calls for either their fortification or abolition over the past years. The Commission has not proposed a revision of the directives, possibly out of pragmatism to prevent difficult political debates about immigrant integration, that might end up with a deadlock of the legislative process mirroring difficulties with the recent asylum package. Not to propose an amendment of the directives also prevents member states from lowering existing standards. The Commission should, however, support and supervise the correct application of existing rules by member states in line with their interpretation by the ECJ. The fitness-check on legal migration and the recent implementation reports[20] contribute to this objective, although they remain rather abstract in their restatement of the law.

Debates about MFF 2021-27 show that migration will generally receive more funds (see Part 1, B), even though border controls and asylum policies will see a comparatively larger increase than integration. For that reason, policy actors should preserve a substantial amount of EU funding for integration within the upcoming MFF. In doing so, it will become convincing to limit the integration component of the future asylum and migration fund to the early stages after entry for immigration-specific measures (e.g. to support beneficiaries of international protection to find employment). Mid- and long-term integration will be financed as an integral part of the ESF+ in the future, in line with the objective of mainstreaming immigrant integration policies (see Part 2, A). Within that overall context, EU institutions should ensure that member states use ESF+ funds effectively, and for immigration-related projects and not initiatives that predominantly benefit nationals.

**INITIAL SUGGESTIONS AND IDEAS:**

4. The Commission continuing to support and supervise member states' correct application of existing rules, as interpreted by the ECJ.

5. Ensuring that ESF+ money is earmarked for projects that effectively benefit immigrants within the broader context of mainstreaming integration policies.

# C. Reintegrating nationality law into the policy concept

In a recent case, the ECJ found that naturalisation means "to become more deeply integrated in the society of that State."[21] This statement reminds us of the significance of the acquisition of nationality for the legal dimension of integration, of which the CBPs recognised that it "can be an important incentive for integration."[22]

Against this background, it is conceptually incoherent for the EU to deal with immigration status while being unable to regulate nationality laws. While it seems unrealistic to call for an EU competence for harmonisation in the foreseeable future since that would require Treaty change,[23] this should not prevent the EU institutions from recognising the conceptual argument that naturalisation should be considered an integral part (or rather the endpoint) of immigration laws. It should be noted that doing so would be a return to the roots of EU immigration policy, reinvigorating the original impetus of the Tampere conclusions that "third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident."[24]

A new beginning in the EU's involvement in naturalisation could be achieved by simply reintegrating the prospect of naturalisation into policy papers; from which it seems to have mostly disappeared in recent years with regard to long-term residents. It might even be appropriate to move beyond informal policy papers and to reconsider the formation of an informal coordination framework for nationality laws, possibly on an intergovernmental basis, to take account of the absence of a corresponding EU competence.

Nationality law is not only about the acquisition of nationality by those who have lived legally in a country for several years. In the past years, the EU institutions have dealt with tendencies in some member states to set up 'citizenship for sale' or 'gold passport' programmes. These measures are problematic from a normative perspective if membership rights are monetarised and can have political repercussions across Europe, and if they grant cross-border mobility within the EU without previous residence in the member state selling residence permits. It is significant, therefore, that the Commission, in particular, tries to activate indirect means to oversee these programmes.[25]

**INITIAL SUGGESTIONS AND IDEAS:**

6. Reintegrating the option of naturalisation into immigration policy and considering attempts to move towards an informal policy exchange between the member states.

7. Continuing the indirect supervision of 'citizenship for sale' programmes.

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# D. Integration between equality and social cohesion

The coexistence of different conceptions about the theoretical foundations and the practical realisation of basic policy concepts is a regular feature of the relevant academic literature and political debates. The notion of 'integration' is no exception. There are different strands to the academic and political debate, which become particularly relevant when moving beyond more operational policy areas (e.g. employment, education) towards general debates about individual and collective identities and the normative underpinnings of societal togetherness that any holistic approach to integration requires.

There are two different strands to the debate which will be expanded upon below: the first focuses on integration as equality, which emphasises the structural disadvantages migrants are confronted with; the second highlights the need for a

shared feeling of togetherness in addition to equal treatment. It should be noted that they are not mutually exclusive since they can overlap in practice. In any case, we should recognise the legitimacy of different positions, with options of manifold intermediate positions and room for compromise.

## 1: INTEGRATION AS FULL EQUALITY

The position concentrating on equality takes the CBPs as a starting point to state that integration is about equal participation in the central societal fields (e.g. employment, housing). In that respect, the increasingly complex sets of indicators at the EU level mentioned above show that integration policies do not necessarily lead to more equality on the ground, on the labour market, in schools, in access to healthcare, in accessing housing, and more. Against this background, the claims of the second wave of anti-racist organisations and activists go beyond demands for equal rights and focus on effective outcomes. Instead of 'more' of the same policies, they want to do it 'differently'. The activists of the second wave have lost hope in anti-discrimination legislation and its individualistic approach.

Instead, they want to redirect the debate to tackle 'institutional' or 'systemic' racism, which they conceive to be part of the European political culture and embedded in mainstream institutions. Similarly to the strive for gender equality, it is not just the explicitly sexist and/or racist rules and practices which maintain inequalities, but the pervasion of major institutions by often subtle racial stereotypes, ideas, images, emotions and practices. Two options for tackling institutional racism can be considered. One option is a revision or further reinforcement of the EU's anti-discrimination policies to support member states' adoption of strong and comprehensive policies to combat institutional racism, including establishing a sophisticated definition of racism that moves beyond that of the aforementioned ECJ case law. It should be recognised that changing legislation would require unanimity under Article 19.1 TFEU.

Another option is to invest in the implementation of current anti-discrimination legislation through the support of National Action Plans Against Racism (NAPARs). As recommended by the European Network Against Racism,[26] these NAPARs could include sophisticated definitions of racism and discrimination beyond racist crime, thus acknowledging structural discrimination and intersectionality; they could recognise specific forms of racism and targeted measures to address these; pair up

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with comprehensive and quality-ensured equality data collection; and include specific policy objectives in each societal field, accompanied by positive action plans and clear and measurable indicators of progress. The quality of these NAPARs is not only guaranteed by their content but also by the process through which they are developed, with communities affected by racism – and that, from day one.

Moreover, several academics and certain policymakers argue that the term 'integration' should be replaced by 'equality', since the concept of integration refers to an unscathed whole and the need to keep the whole together, while integration becomes individualised, being turned into an individual responsibility of the migrant. Replacing 'integration' by 'equality' would entail that less emphasis is placed on the individual responsibility of migrants and integrate the obligations of society as a whole in the description of the policy objective. It is also argued that as they currently stand, integration policies structurally dispense the integration of 'white citizens', thereby promoting 'white privilege'. Unlike migrants, their integration is not monitored, thus fostering social hierarchies rather than equality.[27]

Changes along these lines would not mean having to throw out the baby with the bathwater. Even if language courses sometimes seem inefficient, that does not mean they are not a good starting point. As long as they are not too conditioned, many programmes for new migrants are also considered helpful by immigrants themselves. However, if institutional racism is not tackled first, these policies will not lead us to equal participation for all.

## INITIAL SUGGESTIONS AND IDEAS:

8. Focusing on effective outcomes and not only equal treatment on paper.

9. Recognising that full equality on the ground cannot be reached without addressing institutional discrimination and racism in the member states and at the Union level.

10. Taking the claims of ethnic minority citizens within the EU seriously and making policies not only 'for' those concerned but also 'with' them.

11. Replacing 'integration' by 'equality' to undo the impression that integration is primarily about obligations of migrants and counter underlying hierarchies of 'white privilege.'

12. Implementing NAPARs, including quality-ensured equality data collection, the establishment of specific policy objectives for each societal field and positive action plans.

13. Fostering equality and non-discrimination in the European institutions' own backyard and ensuring a diverse and representative workforce. Diversity of the EU staff should not only be evaluated and promoted by gender and nationality but also along ethnic and racial lines (e.g. *#BrusselsSoWhite* campaign).

## 2: INTEGRATION BUILDING TOGETHERNESS

Another strand in the academic literature on 'integration' highlights the theoretical and practical open-endedness of the concept. Practically, it combines explicit and implicit rules on integration in supranational legislation, as well as policy areas that go beyond the area of freedom, security and justice (e.g. employment, education, housing). Theoretically, 'integration' would be presented as an incomplete agreement whereby different actors agree on the need for 'more/better' integration without sharing underlying ideas and concepts what it means and how it should be put into effect.[28]

Against this background, attention to integration as equality can be combined

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with an additional focus on society 'as a whole', in line with the CBPs. There is a rich, ongoing academic debate on how to construe social togetherness in response to immigration, which can be popularised in line with the classic American distinction between the 'melting pot', in which different traditions and background feed into a new whole; and the 'salad bowl', which emphasises the continued diversity of migrant communities as sociocultural minorities. Corresponding academic debates revolve around notions of 'liberalism versus communitarianism' or around different versions of multiculturalism and moderate form of republicanism in the theoretical sense. While some focus on individual freedom, equal treatment and state obligations, others concentrate on a sense of commitment towards states and societies as a communal venture, which is more than the sum of the individualistic parts.

It is evident that authors subscribing to the second view would be less concerned that integration policies generally embrace elements of commitment – provided that these measures are proportionate and are complemented by other policy instruments with a more promotional character (e.g. education, employment, social policy). As a result, they would be less critical of EU policies, even though they might invite the EU institutions to adopt a more holistic outlook (see Part 2, section A).

It should be noted that such an outlook should not be confused with older visions of the nation-state as a closed and culturally homogeneous club. Instead, it would underscore that European societies change in response to migration and that such change involves host societies – both in terms of adapting their self-image and by changing existing laws and institutions to take account of increasing diversity. Such reconfiguration would be directed towards a new sense of togetherness, which states can promote without guaranteeing the success of the venture. The framing of the policy debate on integration would be relevant in this context. Those concerned with a new feeling of togetherness would combine individual liberty and a rhetoric emphasis on diversity and equal treatment with the search for a new narrative for the society as a whole. These abstract debates would complement structural efforts to integrate the specific experience of migrants into existing institutions.

## INITIAL SUGGESTIONS AND IDEAS:

14. Recognising that 'integration' can have multiple meanings and that it can be legitimate to focus on structural and discursive elements which promote a feeling of togetherness.

15. Emphasising that integration policies should be holistic instead of highlighting specific elements, such as expectations towards migrants, which could be a legitimate component if other promotional instruments complemented them.

16. Acknowledging that a new sense of togetherness cannot be prescribed by legislation since it should develop from within societies with the support of state policies.

## EXAMPLE: RELIGIOUS SYMBOLS AT THE WORKPLACE

A classic example in which the different strands of the theoretical and political debate identified above can lead to different outcomes are religious symbols at the workplace. In two controversial recent judgments, the ECJ decided that the prohibition of indirect discrimination on grounds of religion in the Equal Treatment Directive can justify a commercial policy that bans religious symbols at the workplace, especially when workers interact with customers.[29]

Judges did not vindicate such commercial practices unconditionally but insisted on their neutral implementation. Companies must cover all religious symbols on paper and in practice, mirroring the compromise formula enshrined in the equally controversial judgments on pre-departure language requirements as a precondition for family reunification (see Part 1, A). National courts were asked to check these conditions in practice. This caveat does not, however, unmake the principled consent of the Court to ban religious symbols at the workplace, which judges construed as a balancing exercise between the human right to equal treatment and the freedom to conduct a business (Articles 17, 20 of the Charter).

It is obvious that the first strand of the academic literature and the political debate on 'integration' would criticise these judicial findings as a continuation of structurally embedded inequality which disproportionately affects Muslim women and can, therefore, be described as an explicition of institutional racism and white supremacy. By contrast, some authors of the second strand would highlight that societies should develop distinct patterns of the role of religion in public life, also reflecting the diversity of corresponding models within the EU (Article 17 TFEU).

Moreover, this example reminds us of the general features of integration policies: not confined to measures adopted within the area of freedom, security and justice, they include areas such as non-discrimination, employment, education, housing and social policies (see Part 1, D). It is important to enhance cross-sectoral coherence among diverse domains through a holistic outlook, which is not limited to explicit integration conditions in immigration legislation (see Part 2, A). Given that many of these policy fields are beyond the scope of the EU competences, there will continue to be differences between member states, which can be coordinated informally at the supranational level (see Part 1, C).

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[1] Professor, Institute for European Studies and co-director, Brussels Interdisciplinary Research centre on Migration and Minorities, Vrije Universiteit Brussel

[2] Chairholder, Public, European and International Law and Director, Research Centre Immigration and Asylum Law, University of Konstanz; Deputy Chairperson, The Expert Council of German Foundations on Integration and Migration.

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21. *Toufik Lounes v Secretary of State for the Home Department* (2017), Judgment of the Court of Justice of the European Union, C-165/16, para.58.

22. Council of the European Union (2004), *op.cit.*, para.6, p.22.

23. See European Union (2012), *op.cit.*, Art.20, pp.56-57.

24. European Council (1999), *op.cit.*, para.21.

25. See European Commission (2019c), Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Investor Citizenship and Residence Schemes in the European Union, COM(2019) 12 final, Brussels.

26. See demand 9 of European Network Against Racism (2019), "10 Equality Demands: Ending Racism in the European Union", Brussels.

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