LOBBYING FOR MIGRANT INCLUSION IN THE EUROPEAN UNION.

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INTRODUCTION

Immigration and European integration are connected because the supranationalisation of free movement has drawn immigration and asylum into the Union's remit. Attention has so far been largely been directed towards immigration control and internal security (Baldwin-Edwards and Schain, 1994; Miles and Thränhardt, 1995; Joppke, 1998; Geddes, 2000) rather than the scope for inclusion of migrants and their descendants. Can the EU offer protection against racist, ethnic or religious based discrimination? Can it offer access to EU rights to legally resident migrants as a result of legal residence rather than as a result of prior possession of the nationality of a member state? Can it ensure respect for the rights of asylum-seekers and refugees? These questions apply to the 11.5 million legally resident third country nationals in the EU, to citizens of member states of immigrant and ethnic minority origin, and to the increased numbers of asylum-seekers who receive an increasingly frosty reception in EU member states.

To address these migrant inclusion issues, the article focuses on the institutional context for management of migration policy and the institutional channelling of pro-migrant lobbying at EU level. Pro-migrant political activity is conceptualised as an independent variable structured by the conceptual and organisational frame configuring EU migration policy. The conceptual and organisational frame for policy management provides pro-migrant lobby groups with an 'institutional repertoire' in relation to prevailing sources of Europeanised legal, political and social power

(Ireland, 1994; Soysal, 1994). Of key importance are the ideas, motivations, calculations, actions and alliance-building strategies of EU level institutional actors and the inducement, inculcation and co-option of pro-migrant lobby groups into consultation and policy development processes by EU institutions (particularly the Commission). These processes have implications for the forms of political action enabled within this participatory context. The focus of this article is not on migrants as political actors at European level - on direct representation. This sends us down the unproductive path of analysing migrant or ethnic mobilisation wherein the EU is identified as an arena of new forms of transnational contentious politics (Rex and Drury, 1994; Tarrow, 1998; Marks and McAdam, 1996; Favell and Geddes, 2000). This would be unproductive because the forms of political action identified in this article accord more with *interest co-option* than with contentious politics. Pro-migrant groups at EU level tend not to seek to mount a collective challenge to EU elites, but to build alliances with them. Pro-migrant political activity is channelled through an institutional context with a strong technocratic and legalistic ethos that privileges epistemic, transnational advocacy networks co-ordinated though Brussels-based pro-migrant 'umbrella' organisations. These pro-migrant organisations seek to meld some form of common European level response from diverse migrant and migrant origin communities in EU member states (Haas, 1992; Keck and Sikkink, 1998; ERCOMER, 1996).

The article's main focus is 'vertical' in that it addresses policy institutionalisation and its participatory consequences in a particular policy sector - migrant inclusion. The article also has 'horizontal' relevance because of its relation to perspectives on interest representation that construe the EU as offering new institutional venues and

access points for representatives of electorally *popular* diffuse interests such as women's groups, environmentalists and consumers (Judge, 1993; Pollack, 1997; Mazey, 1998). Can the EU also offer scope for protection of migrants' rights, a seemingly electorally *unpopular* cause? Despite the constraints of the EU's migration policy context, it is argued that technocratic and legalistic processes do offer scope for protection of electorally unpopular diffuse interests of migrants and their descendants arising. Opportunities are limited, but where they do arise, they stem from the relative 'insulation' of technocrats and judges from the harsher glare of electoral politics. Pro-migrant lobby groups tend to see *more* Europe with entrenched legal and political competencies in the form of extended powers for the Commission, European Court of Justice (ECJ) and European Parliament (EP) as a potentially, progressive counter balance to lowest common denominator Council-based decision-making. The new institutional venues and access points for pro-migrant groups are, however, configured by an institutional context that orients the Europeanised migrant inclusion policy frame towards forms of economic citizenship that are strong on market-related civil rights, but weaker on political and social rights.

TRANSNATIONAL ADVOCACY AND MIGRANT INCLUSION

If it is possible to identify the development of new forms of political activity that address EU migration policy competencies - and I show that it is - does such activity constitute the formation of pro-migrant 'transnational advocacy networks'? These networks are composed of activists bound by 'shared values, a common discourse, and dense exchanges of information and services' able to draw from 'resource rich' international organisations and feed back into domestic contexts (Keck and Sikkink, 1998). Has European integration established a migrant inclusion policy frame with attendant resources that structures the activities of 'advocacy coalitions' and provide them with new venues and access points for political action (Baumgartner and Jones, 1991; Sabatier, 1998)? Moreover, does this activity possess the potential to sustain itself, or is it best characterised as relatively ephemeral transnational political exchange with national contexts remaining dominant? The essence of the claims for inclusion made by pro-migrant groups is calls for entrenchment of legal and political competencies that would offer extended scope for supranational legal redress and political oversight of migration policy combined with feedback effects into domestic structures arising from Europeanisation.

These considerations of transnational advocacy also prompts questions associated with the meaning that 'migrant inclusion' acquires in relation to the EU's migration policy context. Clearly, ideas about a people's Europe and social inclusion have acquired EU level resonance and legitimised EU action in these areas (Blyth, 1997). Moreover, in relation to migrant inclusion it has been argued that 'post-national' membership draws from universalistic notions of personhood grounded in international human rights standards with the potential to render national citizenship

'inventively irrelevant' (Soysal, 1998). Ideas about rights, participation, inclusion and membership are, however, channelled through an EU level migration policy context that delimits policy possibilities in relation to the institutional context created by Treaty and associated legislation. The conceptual and organisational configuration of the policy context directs migrant inclusion options towards 'economic citizenship' and market making (Everson, 1996) in an EU that appears to be establishing a relatively hard shell in the form of tight immigration controls between itself and neighbouring states (Wallace, 1996). Bounded liberalisation and the accompanying securitisation of the European space frame the migration inclusion agenda.

The development of an EU level migrant inclusion agenda also raises questions about the possibility for feedback effects into domestic contexts where the emphasis on immigration control has been strong during the 1990s and where migrant inclusion policies are diverse and patchy. The hinterlands associated with national 'policy styles' (Richardson, 1982) create potential for 'national, political and cultural traditions, hegemonic values and the characteristics of the politico-administrative system' to undermine or reinforce EU policies (Mazey, 1998: 145). Policy responses in EU member states to immigration have been refracted through differing national lens arising from patterns of immigration/emigration and understandings of nationhood and the place of migrants within imagined national communities (Brubaker, 1992; Geddes and Favell, 1999). Anti-discrimination policy frameworks are patchy (Wrench, 1996). There have been concerns in member states with more developed policy frameworks – such as the Netherlands and UK where direct and indirect discrimination have been incorporated into national laws – that European integration may erode national provision. Pollack (1997: 578) does, however, note the

potential for 'baptist and bootlegger' coalitions 'to "export" their own stricter national standards to other member states of the Community'. Yet, in an institutional environment where unanimity has been the norm there are significant intergovernmental impediments to the institutionalisation of EU migrant inclusion policy encompassing extended anti-discrimination provisions.

THE INSTITUTIONAL CHANNELLING OF TRANSNATIONAL POLITICAL OPPORTUNITIES

If supranational political opportunities have emerged for pro-migrant lobbying then they arise in relation to the conceptual and organisational configuration of EU migration policy and the subsequent institutional channelling of pro-migrant political action. Political opportunities can then be defined as a political and legal combination of 'material' (formalised resources of power or funding) and 'symbolic' resources (sources of normative and discursive power) (McAdam. McCarthy and Zald, 1996).

Three criteria underpin supranational political opportunities. First, the *receptiveness* of the EU to claims for inclusion. Can the EU provide a more favourable venue with new access points for pro-migrant lobby groups? Receptiveness can connect with the desire of EU institutions to enhance their legitimacy by strengthening consultation processes and building pro-European integration alliances with interest groups. Immigration and migrants' rights do not appear to be electorally popular issues, in fact the opposite appears to be the case. This need not mean unreceptiveness because the 'insulation' of supranational technocratic and legal processes from anti-immigration/immigrant pressures of electoral politics can offer scope for protection of migrant's rights. Guiraudon (1997) shows that decisions made behind 'gilded doors'

rather than in the glare of public attention can be more accommodating of migrant interests. National courts have secured the opening of 'social and political spaces' for migrants (Hollifield, 1992). It is not necessarily so important that migrants' rights are electorally popular to ensure receptiveness than that migrant inclusion connects with the legal and technocratic rationale of EU level actors. Arguments for inclusion can be made that accommodate the rights of electorally unpopular diffuse interests.

The second criteria underpinning supranational political opportunities is the *availability* of access points (Mazey, 1998; Wendon, 1998). Geddes (1998) identifies overlapping technocratic, democratic and judicial avenues to representation and influence for pro-migrant lobby groups. This suggest alternative venues at EU level through the European Parliament, Commission and European Court of Justice, as well as the ways in which the strategies and alliance-building of pro-migrant lobby groups are channelled along these avenues of influence.

The third factor is the *institutional motivations* of EU level actors. The Commission's 'task expansiveness' (Majone, 1996) creates scope for 'purposeful opportunism' (Cram, 1994). It would be mistaken to view the EU as a lurking Leviathan with large and expanding capacity to either intensify migrant inclusion/exclusion (to build' fortress Europe') or to serve as a progressive arena capable of challenging national processes of inclusion/exclusion (to develop some kind of multicultural EU). The ceding of competencies for migration-related policies to EU level establishes capacity in specific and limited areas with regards to migrant inclusion. More generally, EU capacities in the social dimension have been likened to those of a 'pre New Deal liberal state' with a high level of civil rights and a low level of social rights (Streeck,

1996). Anti-discrimination legislation has been oriented towards 'social policy as a productive dimension' (Wendon, 1998). Claims for migrant inclusion appear more likely to succeed if market-related functionality can be stressed rather than state intervention that supposedly disrupts markets.

THE EU MIGRATION POLICY CONTEXT

New political opportunities and the issues of receptiveness, availability and institutional motivations need to be specified in relation to the conceptual and organisational basis of the EU's migration policy context. EU migration policy is hybrid in that it contains intergovernmental and supranational elements. Intra-EU migration (free movement for EU citizens) has been largely supranationalised while extra-EU migration (immigration and asylum) remains subject to intergovernmental co-operation in the main (Handoll, 1995; O'Leary, 1996, Geddes, 2000). Free movement has, thus, been *constitutionalised* in the sense that Treaties between states have been turned into laws that bind those states with the effect that an international order characterised by anarchy becomes more ordered and hierarchical (Mancini, 1991; Caporaso, 1996). Supranational *institutionalisation* can then arise with the possibility of unexpected outcomes to occur as a result of the empowerment of supranational institutions (Stone Sweet and Sandholtz, 1998).

Connections between free movement, immigration and asylum have become increasingly evident during the 1990s. This was confirmed by the Amsterdam Treaty that resolved to create an 'area of freedom, justice and security' covering free movement, immigration and asylum. The development of Amsterdam's 'area of freedom, justice and security' depends upon unanimous decision-making among

member states for at least five years after Treaty ratification (until 2004). The core component of arguments for migrant inclusion is that free movement, immigration and asylum should become more closely connected because European integration offers a potentially progressive counterbalance to lowest common denominator decision-making (Kostakopolou, 1998). Lowest common denominator decision-making prompts a focus on immigration control and internal security and the 'securitisation' of migration (Bigo and Leveau, 1992; Huysmans, 1995; Bigo, 1996; Wæver, 1996). Migrant inclusion has been cast in the shadow of securitisation. The Commission, ECJ and European Parliament have been largely powerless in relation to immigration and asylum policies. The Commission has tended to tread very cautiously at the risk of offending national sensibilities in an area of 'high politics' closely associated with national sovereignty (Monar, 1994). EU immigration and asylum co-operation have strengthened executive authority by allowing policy competencies to become blurred and for decision-makers to slip political or judicial control at either national or EU level (Geddes, 1995; Risse-Kappen, 1996; Freeman, 1998; Lavenex, 1998a). That said, Koslowski (1998) has argued that co-operation on restrictive policy is still a form of integration because routinisation and elaboration of cross-national ties between politicians and officials as they 'wine and dine' (den Boer, 1996) their way around Europe can lead slowly to actors in the supranational institutions of the Commission, Parliament and Courts being drawn in to these modes of European co-operation. Everyday interaction can contribute to institutionalisation as a result of iterative collaboration and policy-oriented learning (Greenwood, Strangward and Stancich, 1998: 132).

Amsterdam also extended the anti-discrimination provisions of the Treaty from nationality or gender to also apply to race, ethnic origin, religion, age, disability and sexual orientation. These anti-discrimination provisions are not as strong as those covering nationality and gender are. Amsterdam gives the Commission the power to introduce proposals but Commission proposals require Council unanimity. The new Treaty article was, though, seen as a vindication and an indication of success by the pro-migrant interest groups that began to emerge at EU level through the 1990s, to which our attention now turns.

THE EU MIGRANT INCLUSION AGENDA

Recent work on protest politics has identified the ways that the formation of transnational advocacy networks allows 'resource poor' actors at national level (such as women's movements, human rights campaigners and environmental campaigners) to seek new opportunities with 'resource rich' international organisations that offer transnational venues for protection of diffuse interests. The result of transnational action can be a 'boomerang effect' that strengthens national level actors by allowing them to draw from internationalised practices and discourses of entitlement. In this way, international standards and organisations constitute new arenas for claims making and stimulate development of new transnational norms (Keck and Sikkink, 1998; on migrants claims-making see Soysal, 1994 challenged by Koopmans and Statham, 1998). Yet the EU does not appear to be a 'resource rich' haven for 'resource poor' pro-migrant organisations. As currently constituted, the EU possesses very limited competence for issues impacting upon migrant inclusion. The EU may perhaps only provides 'weak weapons for the weak' (Guiraudon, 1999). There is a discursive context at EU level where ideas about inclusion, democratisation and

protection of rights acquires some meaning, but this is not backed by hard and fast legal and political resources.

Arguments for inclusion centre on institutionalising a migration policy context with enhanced powers for supranational institutions in the belief that this offers scope for more progressive policy outcomes. Institutionalist insights tell us that once European policy commitments are established, then the likelihood of rollback is low and the potential for unexpected outcomes increases (Pierson, 1996). Pro-migrant lobby groups have emerged within a participatory context privileging the co-ordination through Brussels-based umbrella groups of transnational, epistemic communities and the development of pro-integration alliances between supranational institutions and lobby groups. The Commission has an interest in co-opting relevant interest groups and building pro-European integration alliances with relevant NGOs. These alliances centre on the definition, construction and institutional response to 'problems of Europe', to which the solution can be 'more Europe'. Prominent EU level pro-migrant lobby groups (the Starting Line Group, the European Union Migrants Forum and the European Council on Refugees and Exiles) call for more powers for the Commission, Court and Parliament. They want to see more European integration because they view it as potentially progressive counterbalance to lowest common denominator decision making in the Council. This chimes with Commission task expansiveness and purposeful opportunism, which mean that units within the Commission have been keen to see greater EU involvement in areas such as immigration, asylum and migrant's rights that relate to the EU's free movement objective. The Commission funds pro-migrant organisations and seeks co-option where possible to create mutually reinforcing relationships that render the EU 'resource rich' by

constitutionalising and institutionalising migration policy competencies with potential feedback effects into domestic structures.

Commission receptiveness to 'migrant inclusion' arises from a confluence between progressivism and instrumentalism. Whether or not the EU has a progressive view about the rights of migrants is contestable. There is some evidence of a certain left-leaning progressiveness at Commission level, albeit more clearly evident in units dealing with social inclusion (Hooghe, 1997). The Commission has, however, been just as keen to secure a seat at the table of securitised immigration and asylum policies (Monar, 1994). If progressiveness is contestable then instrumental motivations associated with task expansiveness enter the calculations. In areas where there is a specific margin of autonomy resulting from the endowment of legal and political capacities, then the Commission can act as a purposeful opportunist and exploit the scope for European integration (Cram, 1994). In the aftermath of the Amsterdam Treaty, EU institutions have sought to define a new role for themselves. Commission proposals on temporary protection for refugees, the rights of third country nationals, the action plan on free movement, immigration and asylum, and discussion of extended anti-discrimination competencies all indicate this (CEC, 1997a, 1997b, 1997c, 1998a).

The claim for an enhanced policy role centres on three core components of the EU level migrant inclusion agenda. First, *rights of free movement* that extend to legally resident TCN's the same rights of free movement as those enjoyed by EU citizens. This 'denizenship' would mean the acquisition of rights as a result of legal residence rather than acquisition of nationality (Hammar, 1990). The link between prior

possession of the nationality of a member state and EU citizenship – which enforces the derivative character of EU citizenship - would be broken. This is a sensitive issue because member states have tended to see access to national or dual citizenship as repairing the partial membership of denizenship (Hansen, 1998). Second, *anti-discrimination provisions* that prohibit racist, ethnic-based and religious discrimination. The new Article 13 on anti-discrimination created potential for Commission anti-discrimination proposals requiring unanimity in the Council before they could be enacted. Given patchy national frameworks on these issues, policy proposals are likely to be contentious. Third, *asylum provisions* judged 'fair' and 'humane' to the extent that they accord with international legal standards. It is more difficult to discuss asylum in terms of 'strategies for inclusion' because asylum policies are predicated upon protection of the rights of asylum-seekers and refugees. The trend in EU member states is for tighter restriction on opportunities for asylum seeking via external frontier controls and internal exclusion via the denial of access to cash-paid welfare state benefits (as opposed to payment in kind via vouchers or in reception centres, see Bank, 2000). Asylum as a Europeanised policy issue has tended to mean inclusion within the EU's constitutional/institutional remit.

PRO-MIGRANT LOBBY GROUPS

Pro-migrant lobby groups have been particularly active since the early 1990s and consolidated their activities when the Maastricht Treaty formalised EU level cooperation on immigration and asylum. The groups sought co-ordination in the pre-Amsterdam IGC by establishing an NGO network on European Refugee, Asylum and Immigration Policy. This was composed of Amnesty International, Caritas Europe, the Churches Commission for Migrants in Europe (CCME), the European Council on

Refugees and Exiles (ECRE), the European Union Migrants Forum (EUMF) and the Starting Line Group (SLG). The UNHCR attended meetings as an observer. The network also received support from other members of the EU's NGO network: the European Citizen Action Service (ECAS), Fédération Internationale des Droits de l'Homme, Jesuit Refugee Service Europe, Quaker Council for European Affairs and the Red Cross-EU Liaison Office. It was also a Commission strategy to consult societal interests widely during Treaty negotiations to try and offset some of the difficulties experienced during the Maastricht ratification (Hix and Niessen, 1996).

Three more general observations on 'Eurogroups' also have relevance for pro-migrant organisations (Pijnenberg, 1998: 304). First is the question of resources. Many EU level pro-migrant lobby groups receive financial support from the EU. This accords with a fairly standard model of interest co-option evident across Europeanised policy sectors (Mazey and Richardson, 1993; Greenwood, 1997). Pro-migrant groups are, however, small organisations when compared to groups representing other diffuse interests such as consumers, women's groups and environmentalists. This is illustrated by the 'one door, four doorbells' problem. Behind one Brussels door on Rue Joseph II there are four pro-migrant organisations. The staff are able and highly committed but forced to recycle their activities across organisations. An organisational head count alone could over-state the size of the pro-migrant lobby by ignoring personnel overlaps. Second, are points associated with hierarchy and discipline. EU level pro-migrant groups tend to be 'umbrella' organisations representing the interests of sub-national and national organisations and face the common problem identified by Streeck (1996: 85) that a reliance on horizontal co-ordination can be a 'weak substitute for consolidated formal organisation at national

level. This is particularly the case when the hinterland of diverse national policy styles means that various national frames and the perspectives of not necessarily compatible migrant and migrant-origin groups need to be included. Third, is the ambiguous attitude of Community institutions. The Commission has incorporated notions of migrant integration within the remit of the Employment and Social Affairs DG. The post-1999 organisational reform of the Commission has, though, seen the creation of a new Justice and Home Affairs DG that imports a strong security rationale into the Commission. The effect is to reaffirm the point that the Commission is a multi-organisation and that 'orders of comprehension' can be segmented with separate 'universes of discourse' (Dunsire, 1978: 161).

Many of the most influential and active pro-migrant groups are human rights (Amnesty International, European Council on Refugees and Exiles) or church-based organisations (Caritas, Churches Commission for Migrants in Europe). They carry with them moral authority with associated symbolic capital that can be used to back their claims. Moreover, by operating at European level and identifying European sources of legal, political and social power as the addressee of their claims, these groups reproduce their own relevance and underline the importance of a rights-based dimension associated with European integration.

The EU Migrants Forum is a pro-migrant organisation that accords with the interest co-option strategy seen in other Europeanised sectors. Established by the Commission in response to the 1991 European Parliament Committee of Inquiry into Racism and Xenophobia (EP, 1991), the EUMF has experienced internal divisions and management and financial problems (Danese, 1998). It was originally intended as a

broad inter-community forum encompassing migrant and non-migrant groups, such as trade unions, opposed to racism (European Parliament, 1985). When established in 1991 it had a narrower remit and was more concerned with providing a forum for expression of migrants' opinions than pursuing broader cross-community strategies against racism. Internal divisions were evident at the Forum's General Assembly held on December 16-17 1993 when the representatives of fourteen Turkish associations walked out because they felt under-represented on the Forum's Executive Board. Turks constituted a third of 'migrants' (depending on the definition employed) but a move to limit the voting weight of any ethnic group to a maximum of 10 percent was seen as 'anti-Turkish' (Migration Newsheet 133/94). In 1996 the EUMF was thrown into further turmoil following allegations of financial mismanagement. The EUMF has also been used by migrant groups to exert influence on governments in their countries of origin as a way of indirectly exerting pressure on the EU member state in which they resided (Kastoryano, 1994). The EUMF can be contrasted with groups such as the SLG that seek to develop expert networks of academics and lawyers with proposals to feed into consultation and development processes. The SLG was founded in 1992 by a group of independent experts from six member states with the support of the Churches Commission for Migrants in Europe (CCME), the British Commission for Racial Equality (CRE) and the Dutch National Office against Racism (LBR).

On the asylum issue, the European Council on Refugees and Exiles (ECRE) serves as the umbrella organisation for national refugee councils and similar organisations. ECRE has sought to add a European dimension to national level lobbying strategies and co-ordinate its activities with Amnesty, the UNHCR, Caritas, the Migration Policy Group and the EUMF. ECRE faces difficulties influencing decisions made in a

secretive environment emphasising tighter restriction on asylum and was disappointed with the Amsterdam Treaty (ECRE, 1997a, 1997b). ECRE described Amsterdam as a technical transfer from the third to the first pillar without supranational checks such as Commission involvement, powers for the ECJ and greater EP involvement. ECRE, like other prominent pro-migrant organisations, views the supranationalisation of immigration and asylum as a favourable development, as more progressive, and as a positive restraining force on member state actions that have tenuous regard for international legal standards. Amnesty International has also paid special attention to EU asylum provisions and argued that the 1996-97 IGC was 'a unique opportunity for the European Union to pay concrete attention to human rights protection' (Amnesty International, 1996: 2). Existing protection of asylum-seekers' rights was seen as inadequate, particularly in the light of the 'safe third country' and other provisions put in place by EU member states. Amnesty's pre-IGC memorandum (1996: 9-10) argued that: 'The downward spiral of the member states policies towards the minimum common denominator does not afford sufficient protection for those in need. More and more restrictive national measures on asylum have been adopted over the past six years in many member states. Amnesty International opposes this downward spiral which appears to have no bottom'. Amnesty detected a continued gap in the Amsterdam Treaty between EU provisions and international standards.

The activities of these groups demonstrates that the EU has to some extent provided new institutional venues and access points for pro-migrant lobby groups seeking to open new 'windows of opportunity' (Kingdon, 1984). This has, however, occurred in an unpromising institutional environment with a strong security emphasis and limited Community competence for migrant inclusion. This unpromising institutional terrain

becomes more apparent when opportunities associated with supranational institutional venues are specified.

The Commission had a migrant integration unit within the Employment and Social Affairs Directorate but without clear ascription of legal competence to support its activities. A senior Commission official with a strong and long-standing commitment and who was keen to build alliances with representatives of migrant communities headed the unit. The 1999 reorganisation of the Commission has seen creation of a unit within the Employment and Social Affairs Directorate dealing with Fundamental Rights and Anti-Discrimination incorporating migration policy, free movement, racism and xenophobia. The absence of a Treaty base has clearly hindered Commission activity in areas such as anti-discrimination, racism and xenophobia, although there have been some initiatives funded through existing budget lines without encountering resistance from the member states. For instance, 1997 was declared the European Year Against Racism with Ecu 4.7 million towards projects in member states designed to raise awareness of racism and xenophobia. Commission funding has also been made available for projects that aim to stimulate NGO activity at national level that seeks the social integration of non-national immigrants in member states, to combat racism and xenophobia, and to assist refugees. Collaboration with local authorities has included the 'Cities Against Racism' (CAR) and 'Local Integration/Partnership Action' (LIA) projects. CAR ran between 1995 and 1997 and brought together local authorities and NGOs from 30 European towns and cities (CEC, 1998b: 8). The LIA involved 23 cities developing local action plans to combat racism. All these initiatives are, however, small scale and largely peripheral

because the Community has been hindered by insufficient attribution of capacity to act in these areas and member state resistance to expanded competencies.

The problems of limited legal competence are compounded for the European Parliament, which nevertheless has long displayed concern about racism and xenophobia (European Parliament, 1985, 1991). Its Citizens Freedoms and Rights, Justice and Home Affairs has been charged with continuing the work of the Civil Liberties and Internal Affairs Committee. The basic problem for the EP has been that it has lacked the legislative teeth to hold immigration and asylum decision-makers to account. The EP has shown itself a willing ally for pro-migrant groups and a consistent voice calling for Europeanised immigration and asylum policies with legislative action against racist and xenophobic discrimination (European Parliament, 1998).

The most significant EU level action against racism and xenophobia actually arose from an intergovernmental Franco-German initiative launched at the December 1994 Corfu European Council, which saw the creation of a Consultative Commission on Racism and Xenophobia, chaired by the Frenchman Jean Kahn. The Kahn Committee's April 1995 report proposed the creation of a European Observatory on Racism and Xenophobia which, after some opposition from the UK, was established in 1997 and based in Vienna (ECCCRX, 1995).

ARGUMENTS FOR INCLUSION

In this section the activities of pro-migrant lobby groups and the receptiveness and availability of EU level institutional venues and access points are meshed to explore specific arguments for migrant inclusion.

Resident's Charter

A Resident's Charter would extend to legally resident TCNs the same EU rights as EU citizens. Pro-migrant lobby groups have used the existence of agreements between the EU and third countries, such as Turkey and the Maghreb countries, to argue that, because these association agreements gives established rights to some TCNs and that these rights should be extended to all legally resident TCNs (Guild, 1998). This is a sensitive issue because it undermines the derivative character of EU citizenship by creating enforceable European level rights derived from residence rather than nationality.

Before the ink had dried on the Amsterdam Treaty, the Commission proposed in July 1997 a Convention on the Rules for Admission of TCNs to the Member States of the European Union (CEC, 1997c). The Convention used Maastricht's third pillar provisions and stood no chance of adoption as proposed because the legal justification was rendered obsolete by the Amsterdam Treaty, but the Commission announced the intention to re-submit a proposal for a directive following ratification of the Amsterdam Treaty. The UK-based Immigration Law Practitioners Association called the Commission's proposed convention 'revolutionary stuff indeed' (ILPA, 1997:1). This was certainly the case when compared with Commission inactivity in these areas. The Convention proposed enforceable rules on employment, self-employment, study and training and the creation of a right to enjoy family life. The right to enjoy

family life would not be the same as for EU citizens. Member states would still retain discretion over treatment of TCNs, although they would be obliged to justify any use of national discretion on the admission of family members of TCNs. The draft convention also contained free movement provisions creating a right for long-term resident TCNs to move to any member state to take up employment. It also listed a series of basic rights that they would take with them. These included equal treatment with EU citizens regarding employment, self-employment, training, trade union rights, the right of association, access to housing whether in the private or public sector, and schooling.

There is clear convergence in approach between the Commission's proposals and the arguments of pro-migrant lobby groups. The Starting Line Group exploited opportunities created by the Amsterdam Treaty to propose rights of free movement and social entitlements for TCNs (SLG, 1998). The SLG proposal derived the force of its argument from association agreements between the EU and third countries. Turkish citizens in EU member states are covered by the 1964 association agreement, which gave Turkish nationals established rights in employment, residence and social entitlements exceeding those given to other TCNs. The SLG argued that the rights given to Turkish nationals should constitute minimum rights to be accorded to all TCNs. It also was proposed that social rights acquired as a result of denizenship become transferable within the EU. The proposal was therefore for a 'Resident's Charter' where rights acquired as a result of legal residence rather than acquisition of nationality would become portable. This has important implications for citizenship, nationality and migrant inclusion that often draws from an integrating frame inspired by T.H.Marshall's famous analysis of national citizenship. Yet, the EU seems to

present us with is 'a very anti-Marshallian kind of idea … that certain rights might be given to resident workers of the EU single market, unconditional on nationality, belonging, moral investment in the nation, or even national welfare contributions. Were these opportunities to develop, they may well open up a form of symbolic legitimation of action not grounded in the old equality and justice based logic of inclusion and incorporation that has been at the heart of most classic social movements style campaigning' (Favell and Geddes, 2000: 25).

The SLG's proposals on rights of residence for TCNs stipulated that after three years legal employment in one member state a TCN would enjoy free access to paid employment or self employment in any member state. The SLG's proposed directive mirrored the free movement provisions of the core 1968 free movement regulation (1612/68) by allowing qualified TCNs exercising the right of free movement to be issued with a residence permit for five years, with automatic renewal. TCNs would be granted equal treatment with EU citizens covering employment, self-employment, vocational guidance and training, trade union rights, the right of association, access to public and private sector housing, social welfare, education, health care and the provision of goods, facilities and services.

Are the member states prepared to accept Europeanised 'denizenship' that would extend EU rights to legally resident non-nationals backed by the EU's legal and political system? The rights of TCNs were addressed at the Tampere special summit meeting of EU heads of government convened in October 1999 that focused on Amsterdam's Title IV provisions. The heads of government supported 'approximation' of the legal status of third country nationals with 'uniform rights that

are as near as possible to those enjoyed by EU citizens' with the long-term objective that they acquire the nationality of their state of residence. The French, German and UK governments issued a note stating that TCNs 'residing legally and long term were entitled to be fully integrated' and 'as soon as good integration has been achieved and confirmed, it is natural and desirable that the foreigners defined … should acquire the nationality of their state of residence'. This emphasis on acquisition of national citizenship and EU rights and entitlements indicates reluctance to cede competencies impinging on nationality laws (Statewatch, September-October 1999).

Anti-discrimination

Anti-discrimination is an area where pressure across a range of inequality issues has called for expanded EU competencies. Article 13 of the Amsterdam Treaty was partial recognition in that it provided scope for action against discrimination on the grounds of race, ethnicity, religion, disability, age and sexual orientation, albeit with a requirement for unanimity. The SLG prepared a draft directive outlawing racial discrimination modelled on the 1976 Equal Treatment Directive. The broad provisions of Article 235 of the Treaty of Rome were the basis for proposed legislation with direct effect. The 'Starting Line' was endorsed by national lobby groups and by the EP, but never implemented because of the lack of clear Treaty competence and member state resistance.

After the Amsterdam Treaty was signed in October 1997, the SLG brought forward a proposal for a directive that would put into effect the principle of equal treatment, and legislate for EU action against direct and indirect discrimination. The SLG's proposed directive stated that:

There shall be no discrimination whatsoever, direct or indirect, based on racial or ethnic origin, or religion or belief in particular in the following areas: the exercise of a professional activity, whether salaried or self-employed, access to any job or post, dismissals and other working conditions; social security; health and welfare benefits; education; vocational guidance and vocational training; housing; provision of goods, facilities and services; the exercise of its functions by any public body; participation in political, economical, social, cultural, religious life or any other public field. (SLG, 1998).

The difficulty for a proposal of this kind is that it requires unanimity in the Council and impinges on patchy national policies. In summary, existing EU level transnational advocacy centred on anti-discrimination deploys arguments for inclusion that derive much of their force from the principle of equal treatment in the single market, for which the EU is endowed with competencies. Well-entrenched national policies, as well as reliance on unanimity in the Council inhibit the scope for cross-border diffusion of policy ideas.

The Commission has launched a debate on the use of Article 13 in its 1998-2000 social action programme (CEC 1998a). The Commission has announced the intention to propose a 'horizontal' directive covering all the forms of discrimination mentioned in Article 13 to combat direct and indirect discrimination in employment and occupation relating to employment and self-employment, vocational training, working conditions, and membership of professional organisation or trade union. The Commission also announced the intention to propose a 'vertical' directive to counter

direct and indirect discrimination on the grounds of race or ethnic origin. This would lay down minimum standards enabling member states to introduce provisions more favourable to the protection of the principle of equal treatment. The directive would cover the forms of discrimination mentioned in the horizontal directive, plus social protection and social security, social advantages, education, access to the supply of goods and services, and cultural activities and sports. As in the case of equal treatment, positive action to overcome existing inequalities would be permitted. Finally, an action programme to support and complement these proposals would supplement legislative action.

Asylum

Arguments for inclusion centred on asylum have tended to concentrate on inclusion within the Treaty framework with potential for constitutionalisation and institutionalisation to prompt Union standards that accord more closely with international legal standards, or so it is hoped. The prognosis is not too bright. There has been strong criticism of 'lowest common denominator' Council decision-making that exacerbates restriction and renders more tenuous the relation between the Europeanisation of asylum and international standards and norms. Concern has been expressed about two aspects of development. First, the Amsterdam Treaty excludes the possibility for asylum to be sought in one EU member states by citizens of another EU member state. The proposal came from the Spanish government concerned about the activities of Basque separatists. However, it has been argued that the protocol could place the EU in contravention of the Geneva Convention. Dennis McNamara, the Director of the Division of International Protections at the UNHCR, stated that: the Protocol 'in our considered view (supported by the Office of the Legal Counsel in

New York) violates the object and purposes and some of the basic provisions of the Refugee Convention' (ECRE, 1997b). In this case a federalising logic of European integration has overridden the asylum standards contained in international law.

A second area of concern has been the movement towards implementation of the Dublin Convention with associated procedures relating to 'manifestly unfounded applications' and 'safe third countries' to which asylum-seekers can be returned. The EU has also moved towards systems of 'temporary protection'. This has implied a critique of existing international standards. The Commission's 1997 proposals for a Joint Action on temporary protection was broadly welcomed by ECRE, but there was some criticism because it did not specify a maximum duration for temporary protection schemes after which persons would be allowed to regularise their status. The suspicions of those who saw temporary protection as a way of reneging on international obligations and seeking to circumvent constraints on immigration control were heightened in July 1998 when the Austrian government presented a paper on temporary protection. The Austrian paper suggested a re-evaluation of EU asylum policy and a critique of the Geneva Convention, which was viewed as outmoded and encouraging permanent settlement. The principle challenge to Europeanised asylum with constitutional and institutional checks is the latitude given to member states to establish policy co-operation that strengthens their restrictive capacities and incorporates neighbouring states within the regime of control and restriction. The recognition of 'safe third countries' coupled with accession agreements and other bilateral and multilateral accord has incorporated central and eastern European countries into EU co-operation and integration (Guild, 1998; Lavenex, 1998b).

CONCLUSIONS

Three Europeanised migrant inclusion issues have been addressed: Europeanised denizenship, extended anti-discrimination, and reformed asylum procedures. Pro-migrant lobbying has been channelled through a migration policy context that structures pro-migrant political action and provides supranational venues and access points for pro-migrant lobby albeit in an institutional environment where national policy hinterlands are extensive and securitisation has tended to hold sway. Where political opportunities for transnational pro-migrant advocacy have been created then they have been channelled through an institutional context that favours the deployment of expertise with scope for co-option into consultation processes. Pro-migrant lobbying at EU level has tended to centre on the building of alliances between lobby groups and sympathetic EU institutions, particularly the Commission and European Parliament. Pro-migrant lobbying is not an example of new forms of contentious politics or of EU level ethnic minority or immigrant mobilisation. It exemplifies indirect representation and interest co-option via 'avenues for influence' with a strong technocratic and judicial bias. The potential for formation of pro-integration alliances between supranational institutions and pro-migrant organisations also suggests a strategic orientation on the part of pro-migrant groups towards participation and compliance as a means of securing access to EU resources, as opposed to opposition that runs the risk of exclusion from EU resources. Rather than mobilising against 'fortress Europe', pro-migrant groups have cultivated alliances with EU institutions in an attempt to institutionalise 'problems of Europe' to which the solution can be *more* Europe. The constitutionalisation and institutionalisation of

migration policy offer potential for a progressive counterbalance to intergovernmental policy co-operation, or so it is hoped.

Progress has been slow in relation to each aspect of the migrant inclusion agenda. There is likely to be member states resistance to Europeanised denizenship. Member states seem determined to retain the derivative character of EU citizenship with the effect that national citizenship (or extended provision for dual nationality) will allow access to EU rights and entitlements. There are also obstacles to the institutionalisation of an extended anti-discrimination policy framework. The Amsterdam Treaty does create competence for extended anti-discrimination provisions, albeit with dependence on unanimity in the Council. A basic problem is that EU level provision against direct and indirect discrimination would be a significant increase in levels of protection than those pertaining in many member states indicating national limits to cross-border diffusion of ideas. Member state co-operation on asylum has shown tenuous regard for international legal standards. Amsterdam does create the potential for ECJ jurisdiction, but by the time the ECJ has its say the member states may have taken considerable steps to establish temporary protection systems that off-load asylum to neighbouring states. There are clear impediments to protection of the diffuse and seemingly electorally unpopular rights of migrants. Yet, there are supranational opportunities for pro-migrant lobbying in relation to Europeanised competencies that have established supranational venues and access points for transnational pro-migrant advocacy groups and scope for alliance-building with EU institutions. Arguments for inclusion centre on *more* Europe in the belief that technocrats, judges and European parliamentarians can offer a progressive counter balance to lowest common denominator Council based decision-making.

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