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Nudging migrants' inclusion: a reflection on the mandatory nature of the integration process in Italy

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Abstract (italiano): il presente *paper* analizza e critica l'attuale approccio assimilazionista ed esclusivista all'integrazione degli stranieri, che caratterizza l'ordinamento giuridico italiano, così come quello di numerosi paesi europei. Nello specifico, usando come cartina tornasole di questo approccio l'accordo di integrazione previsto dall'art. 4-bis TUI, lo studio riflette sui limiti (pratici e giuridici) di un sistema che concepisce l'integrazione come un obbligo giuridico il cui soddisfacimento sia da garantire attraverso la minaccia di "sanzioni" espulsive e preclusive l'accesso a diritti e servizi pubblici. Si propone, in risposta, la rappresentazione di un differente modello, dove l'integrazione è sempre frutto di un indispensabile sforzo del migrante, ma uno sforzo volontario e adeguatamente supportato e stimolato dalle pubbliche autorità, tramite la previsione di servizi ed incentivi *ad hoc*. La ricerca si conclude, quindi, con una più ampia riflessione sulla fattibilità economica del modello suggerito, in un'ottica di cambiamento di prospettiva rispetto alle diffuse convinzioni che dipingono il fenomeno migratorio esclusivamente come problema aggiunto per le società di accoglienza e non come fonte di possibili soluzioni.

Abstract (English): This paper analyzes and criticizes the current assimilationist and exclusivist approach to migrants' integration, which characterizes the Italian legal system as well as that of many European countries. Specifically, using as a litmus test of this approach the Integration Agreement regulated by art. 4-bis TUI, the study reflects on the limits (practical and legal) of a system that conceives integration as an obligation whose fulfillment is to be guaranteed through the threat of negative consequences, such as repatriation or rights' denial. A different model is therefore proposed, in which integration is the result of the voluntary efforts of the migrants, adequately supported and stimulated by public authorities through the provision of *ad hoc* services and incentives. The research ends, then, with a broader reflection on the economic feasibility of the proposed model, aiming at supporting a change of perspective with respect to the widespread beliefs that portray the migration phenomenon only as an added problem for the host societies and not as a source of possible solutions.

1. Introduction

Sealing borders, closing ports and airports, preventing the entry of migrants: these expressions have become common answers to the several crises Western countries have experienced in the last years (or are experiencing these days), from economic downturns to world pandemics. Hence, according to the most common belief, migrants steal jobs from the citizens, deplete public resources, spread diseases, threaten national cultures and public order. Furthermore, the modern news and social media played a key role in amplifying awareness and perception of the migration phenomenon among the population of the destination countries, making this topic one of the main subjects in the contemporary political arena. Thus, nowadays predominant policies communicate an image of migrants as strangers that it is better to keep out, building walls along state frontiers or leaving them on overcrowded boats in the middle of the

sea. But if we look at our daily reality, we immediately realize how migrants are all around us, how (often) we are migrants, and so how the belonging to a community is becoming a concept further and further away from the classic idea of citizenship. Globalization and economic differences between nations, indeed, have made migrations an unstoppable phenomenon, which is mutating our society into a pluralistic and kaleidoscopic structure.

Thus, when reflecting on immigration, shifting our gaze from the outside into the inside of our society must be a first step for acknowledging this reality. A reality where law can provide us with fundamental instruments to manage the transformation, ensuring social cohesion as well as the respect of basic principles such as human dignity, equality and self-determination.

Integration is the concept often recalled as a solution for all the issues arisen in this mutated context. But what does integration mean in a country based on pluralistic and democratic principles? Are the current policies, norms and administrative actions in consonance with these principles? Are these policies effective in smoothing out social contrasts and preventing the dis-integration of national and local communities? If not, how can we reform them?

These are the broad questions, within which the niche of this research will be dug. A research aimed at reflecting whether a system that conceives integration as an obligation, whose violation must be punished by negative consequences, is actually following the only and most efficient way to ensure migrants' inclusion in the host society. Of course, the topic of integration is so vast and complex that – if it were to be discussed under all its many features – it would deserve much broader reflections than those that can be carried out in the limited space provided by a short scientific essay. Hence, the importance of circumscribing the area of investigation under two dimensions: geographically and in terms of legal instruments taken into account. Geographically, this research will be focused on the administrative management of migrants' integration in the Italian legal system, even if comparative hints will inform the entire analysis, allowing to extend some of the insights to other systems affected by similar issues. Looking at the legal instruments, instead, the attention will be concentrated on a particular administrative tool, the so-called "integration agreement", which has been widely spread among European countries in the last ten years, becoming the synthesis of a common approach toward integration. In this sense, as said few lines above, the reflections on the Italian *Accordo di integrazione* can lead to results useful also for other experiences, such as the French *Contrat d'intégration républicaine*, the Spanish *Compromiso de integración de la Comunidad Valenciana*, the Austrian *Integrationsvereinbarungen* or the Luxembourgish *Contrat d'intégration*, and *vice versa*.

Again, it is helpful to repeat that we are aware of the fact that the legal aspects of integration, in a country like Italy, are much broader than those immediately appearing through the integration agreement itself. Indeed, migrants' integration involves, for example, topic such as: the tradeoff between public economic interests and the satisfaction of personal rights; the access of individuals to public and social services; the allocation of powers between the various administrative levels; the role that civil society can play in the integration process; etc.. However, we are convinced that the integration agreement can be a valid and reasonably circumscribed field of investigation, as it can reveal the ideological and philosophical backbone that nowadays supports the legal approach to integration in Italy, as well as in many European nations.

Thus, the next pages will be characterized by a first description of the outcomes of the current Italian integration policies, followed by a brief analysis of the contents and the main features of the *Accordo di integrazione*. Among these, the effects of the agreement's fulfillment or violation will be analyzed in greater detail, in order to further manifest the exclusionary aim of a tool which, instead, should be direct to foster migrants' integration. Then, a different approach will be proposed, based on

positive incentives encouraging successful integration rather than negative consequences punishing its failure, whose feasibility and effectiveness will be tested considering some (best) practices existing in other European legal systems. Finally, the conclusive section of this research will further expand the reflections on the feasibility and the economic rationality of this different approach, suggesting a revised point of view under which immigration must be conceived as an occasion, for the countries of destination, not only to demonstrate the solidity of their foundations as democratic nations, but also to increase the wealth of their entire societies.

2. Integration in Italy: the flaws of an assimilationist approach

Why does the Italian legal system deserve particular attention?

Italy, nowadays, has reached a crucial crossroads in migration management. The last three decades, indeed, have marked the transformation of Italy from a country of emigration to a country of immigration. At the beginning of the 1980s, foreign residents amounted to 200,000 individuals, less than 1% of the population, but the situation remarkably changed after the year 2000. Between 2001 and 2011 foreigners raised to 4.5 million and kept on increasing to over 5 million in 2018 (8.5% of the entire population).[1] Furthermore, Italy is geographically located at the centre of the Mediterranean Sea, naturally making it a pivotal location in the current mass migration from the so-called developing countries to the developed ones. The vast majority of its immigration flows is in fact composed of asylum seekers (38.5%) and family reunification applicants (42.3%), also as a consequence of the restrictive policies adopted regarding the number of work permits that can be annually issued.[2] On the one hand, these factors limit the possibility to select the entry flows of immigration,[3] but on the other hand, they make the need for rational management of newcomers more and more evident, both to ensure the undeniable rights of these individuals and to allow the rational utilization, within the host society, of the valuable resources that these migrants represent.

Despite this premise, the Italian political and legal systems have not yet rationally and consistently faced the migratory phenomenon, which keeps on being managed as an emergency, fostering a culture of mistrust towards migrants and supporting the idea that immigration is a short-term problem, source only of negative consequences and solvable by sealing borders and repatriating foreigners. Integration, therefore, has never become a topic adequately addressed by politics and sufficiently deepened in doctrine, even if its importance is undeniably growing in the face of the indisputable transformation of Italian society. However, in the last few years, the convergence toward the assimilationist and exclusionary models, common to many European nations, has become increasingly evident.[4] As a consequence, migrants are generally perceived as temporary workers, whose naturalization

[1] See Italian National Institute of Statistic (ISTAT), *Indicatori demografici. Stime per l'anno 2018* [Demographic Indicators. Year 2018 estimates] (2019) online: https://www.istat.it/it/files//2019/02/Report-Stime-indicatori-demografici.pdf.

[2] See ISTAT, *Cittadini non comunitari: presenza, nuovi ingressi e acquisizioni di cittadinanza* [Non-eu nationals: presence, new arrivals and acquisition of citizenship] (14 November 2018) at 3 online: <https://www.istat.it/it/files/2018/11/Report_cittadini_non_comunitari.pdf>.

[3] For example, looking at the education level of newcomers, last data show that 14.2% of them do not have any qualifications or have only an elementary school leaving certificate, 29.8% have lower secondary education, 43.4% have upper secondary education and only 12.6% have a university degree; see Corrado Bonifazi, "Traiettorie di mobilità: arrivare e muoversi in Italia" [Mobility trajectories: arriving and moving in Italy] in Corrado Bonifazi, ed, *Migrazioni e integrazioni nell'Italia di oggi* [Migration and integration in today's Italy] (Roma: CNR-IRPPS, 2017) 35 at 35.

[4] The schematization of the different models of integration adopted in this introduction will follow the one provided by Stephen Castles, Hein de Haas & Mark J Miller, *The Age of Migration* (New York: Guilford Press, 2014) at 250. See also

is seen as an exception rather than the natural outcome of their permanence in the national territory, and whose effective inclusion in the national community is conceived as a risk for the (presumed) homogeneous social, ethnic and cultural framework of the host society. Consequently, few rights could be recognized to migrants, being these rights – especially the social ones – related to the citizenship status of the individuals or, at least, to their capacity to demonstrate that they have actively embraced the culture and language of the host population and renounced at their own ethnic and cultural identity.[5] Consequently, a failure to integrate generates a first negative outcome in the denial of several rights, as well as it could become the justification of the expulsion of an individual whose permanence in the national territory is constantly at stake.

This approach, however, cannot be considered satisfying under two points of view. First, it cannot be regarded as satisfactory in the eyes of any law scholar, who can recognize in it anything but a violation of fundamental principles well-established in the constitutions of Western democracies (Italy included) and recognized in numerous international treaties. Indeed, an exclusivist and assimilationist approach to integration, built around limited access to rights and imposition of culture and values of the host nation, appears hardly compatible with principles such as recognition of human rights, prohibition of discriminatory conducts, freedom of thought and religion and, in general, the principle of democracy itself, which would require the resolution of contrasts and differences to be as dialogic and balanced as possible.

Moreover, the current approach appears unsatisfactory under the point of view of its concrete results. On the one hand, the most recent analyses on immigration in Italy show the positive impact on the national economy of newcomers, highlighting how an effective integration (which could be expressed by a better knowledge of the national language, the participation in education and vocational training courses, the development of a relationship network with members of the local community, the increased sense of security regarding the possibility of staying in Italy, etc.) would enhance these positive outcomes.[6] On the other hand, the data on migrants' integration demonstrate the existence of numerous obstacles to their social inclusion, not adequately addressed by the current policies, which have a negative impact both on the living conditions of the individuals and on the margin of improvement of the host community.[7] Thus, for example, unsatisfactory results concern the knowledge of the national language, with 65% of foreigners who admit having difficulties in speaking Italian. This fact, combined with the difficulties in foreign qualifications' recognition, has a negative impact on the working conditions of foreigners, with most of them forced into low-payed jobs, even if they were high-waged workers in their countries of origin (less than 50% of the qualified workers, who are already a limited percentage among the individuals who migrate in Italy, manage to find a high-wage job after their arrival). It is easy to realize, at this point, how this job downgrading not only traps migrants in a circle of poverty and difficult living conditions, but also circumscribes their "economic value" for the host society, since their potential is not fully exploited and, to get straight to the point, low-wage jobs mean fewer taxes paid by the

Stephen Castles, "How nation-states respond to immigration and ethnic diversity" (1995) 21:3 Journal of Ethnic and Migration Studies 293.

[5] About this approach to integration, see, e.g., Rogers Brubaker, "The return of assimilation? Changing perspectives on immigration and its sequels in France, Germany, and the United States" (2001) 24:4 Ethnic and Racial Studies 531; Christian Joppke & Ewa Morawska, eds, *Toward Assimilation and Citizenship: Immigrants in Liberal Nation-States* (New York: Palgrave Macmillan, 2003); Christian Joppke, "Transformation of Immigrant Integration: Civic Integration and Antidiscrimination in the Netherlands, France, and Germany" (2007) 59:2 World Politics 243.

[6] These studies will be examined in the last section of this research.

[7] The following data are expressed by ISTAT, *Vita e percorsi di integrazione degli immigrati in Italia* [Life and integration paths of the immigrated in Italy] (Rome: ISTAT, 2018). See also Migrant Integration Policy Index, "Italy" (2015) online: *Mipex* <http://www.mipex.eu/italy>.

newcomers. However, looking at aspects other than job market integration, these data also show unsatisfactory housing conditions, with many immigrants forced to live in undersized, overcrowded and poorly maintained dwellings, as well as limited involvement in the social and political life of their community (e.g., only 18% of the foreigners has effective personal relationships with Italian citizens, whereas the substantial lack of electoral right disenfranchises around 3 million of adult foreigners living in Italy). All these elements find a place in a social context characterized by frequent hypotheses of discrimination, both in the workplace (15.5% of foreigners admit to having felt discriminated against on cultural or nationality grounds) and in daily life (in their search for a house, in their relations with public administrations, in their relations with their neighbours, etc.).

Looking at these results, it appears clear that there are two roads Italy can now follow: the first is to strengthen old policies and beliefs, ignoring how the situation has changed in the last years, neglecting the needs and the rights of part of the individuals residing on its soil, and missing the opportunity to transform immigration into a positive asset for the national community; the second – the one followed by this research – is to deal with reality, searching for new solutions, investing on migrants' integration and supporting a cultural change able to correctly depict immigration as a resource.

Abandoning the exclusionary and assimilationist approach toward integration would be the first step. Hence, the philosophy of integration that acts as a backbone to this study is represented by the so-called "interculturalism", conceived both by scholars and international organizations as an effective effort to improve the multicultural model of integration, stressing the importance of interaction, understanding and respect between cultures.[8]

Multiculturalism, in fact, has long been the natural answer to the flaws of exclusionary and assimilationist models, being characterized by a strong focus on equal access to rights and services for both nationals and foreigners, as well as by intense anti-discrimination policies, acceptance of cultural differences and supported presence of ethnic communities in the host society.[9] However, multiculturalism has been accused to ignite social conflicts and prevent community cohesion, because it would promote the crystallization and clash of different cultures, thought as rigid entities closed within their own borders, so that they can only live in parallel in the same community, without any real possibility of peaceful dialogue and interaction. Ghettoization, social tensions and even the terrorist attacks that have characterized the first two decades of the 2000s are among the negative effects that are often linked to the multiculturalist policies implemented in the 1990s.[10]

The intercultural idea, as an answer to these criticisms, aims to combine rights recognition and anti-discriminatory approach with effective support to contacts and dialogue between the ethnic communities composing the host society, encouraging the overcoming of cultural boundaries and the mixing of social identities, with a national culture, therefore, which is considered in constant

[8] On this approach, see Thomas Faist, "Diversity: A New Mode of Incorporation?" (2009) 32:1 Ethnic and Racial Studies 171; Pierluigi Consorti, "Nuovi razzismi e diritto interculturale. Dei principi generali e dei regolamenti condominiali nella società multiculturale" [New racism and intercultural law. General principles and condominium regulations in multicultural society] (2009) Stato, Chiese e pluralsimo confessionale 1; Andrea Pelliccia, "La prospettiva ibridista per una politica dell'integrazione in una società interculturale" [The hybridist perspective for a policy of integration into an intercultural society] in Corrado Bonifazi, ed, *Migrazioni e integrazioni nell'Italia di oggi* [Migration and integration in today's Italy] (Roma: CNR-IRPPS, 2017) 307. See also Council of Europe, *White Paper on Intercultural Dialogue: Living Together as Equals in Dignity* (Strasbourg: Council of Europe, 2008).

[9] See above all, Will Kymlicka, *Multicultural citizenship: a liberal theory of minority* (New York: Oxford University Press, 1995). For an answer to the criticism moved in the last decades to the multicultural approach see, from the same author, Will Kymlicka, *Multiculturalism: Success, Failure, and the Future* (Washington DC: Migration Policy Institute, 2012).

[10] For a synthetic view about these critics, see Cliodhna Murphy, *Immigration, Integration and the Law: The Intersection of Domestic, EU and International Legal Regimes* (Burlington: Ashgate Publishing Company, 2013) at 17.

transformation, to preclude the affirmation of ideologies based on race purity or superiority of one culture over another. This approach would concretely limit the role of nationality as a condition to accessing rights and services and, therefore, it would prevent the fragmentation (*rectius*, the dis-integration) of the host society into different classes of residents according to their migratory status, appearing at the same time in consonance – and not in contrast – with the above-mentioned fundamental principles affirmed by national constitutions and international charters (human-rights recognition, freedom of thought and religion, etc.).[11]

Thus, if the intercultural approach constitutes the ideological foundation of this research, the following pages will endorse this philosophy through the affirmation of ideas for which rights recognition must act as a driving force for integration (and not as a consequence of it) and, more generally, through the support of the concept of migrants' inclusion as a process and a result to be achieved with the full support of the public authorities and the community in which it takes place. Only in this sense, integration becomes a "two-way process of adaptation by migrants and the host society"[12] in which the necessary efforts of the newcomers are coped with the indispensable commitment of the host society.

3. The Italian integration agreement and its unilateral form and contents

"Integration" and "agreement" are two fascinating words, even if read separately. A simple look at the Oxford English Dictionary suggests that integrating means "to perfect (what is imperfect) by the addition of the necessary parts", "to bring together (parts or elements) so as to form one whole", while an agreement represents a "mutual understanding negotiated between two or more parties", based on "harmony of opinion, feeling, or purpose". Both of these two terms, so, communicate the encounter of different wills, perspectives, ideologies and interests, in order to realize a harmonic equilibrium that should be a "win-win" situation, with positive outcomes for all the involved parties.

[11] All these elements find confirmation in the analyses carried out about one of most known and successful attempts to create an intercultural society, which has taken place in the Canadian province of Quebec. According to the scholars, among the components of Quebec interculturalism we can indeed find: *i*) the promotion of interactions, rapprochement and intercultural exchanges as means of integration and of fighting stereotypes and discrimination; *ii*) the mutual recognition of the legitimate desire of each society components (majority and minorities) to ensure the future of Quebec community in terms of identity and sense of belonging; *iii*) the development of a new shared culture resulting from an harmonization of cultural differences; *iv*) the respect for rights, in a spirit of democracy and pluralism, coped with the struggle against inequalities and relationships of domination that impinge on the rights of minorities and immigrants; *v*) the rejection of all forms of discrimination and racism, and the need to ensure the participation of all "citizens" in civic and political life. See above all, Gérard Bouchard, *Interculturalism: a view from Quebec* (Toronto: University of Toronto Press, 2015) at 32. From the same author, see also Gérard Bouchard, "Qu'est ce que l'interculturalisme?" (2011) 56:2 McGill L.J. 395.

[12] Several European acts support this idea of integration. See, e.g., EC, *Commission Communication to the Council, the European Parliament, the European economic and social Committee and the Committee of the Regions on immigration, integration and employment* [3 June 2003], COM (2003) 336; EC, *Council of European Union, Common basic principles for immigrant integration policy in the European Union* [19 November 2004]; EC, *Communication from the Commission to the Council, the European Parliament, the European economic and social Committee and the Committee of the Regions - A Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union* [1 September 2005] COM(2005) 389; coming to the more recent EC, *Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the Regions – A European Agenda for Migration* [13 May 2015] COM(2015) 240. On a national level, see art. 4-bis, Legislative Decree 25 July 1998, n. 286 (also known as Italian Consolidated Act on Immigration, or TUI – *Testo Unico sull'Immigrazione*). The first section of this article illustrates a concept of integration similar to the one affirmed at the European level, as "a process aimed at promoting the coexistence of Italian and foreign citizens, in compliance with the values enshrined in the Italian Constitution, with the mutual commitment to participate in the economic, social and cultural life of society". For further details on the contents of this article, see the following note.

If put together and contextualized in the field of immigration, the communicative power of these two words become even stronger, since the substantial content of the integration process (which – under a legal perspective – is made of duties and rights bounding the newcomer and the host society) become contextualized in an interactive environment, where these duties and rights are the results of mutual acceptance and understanding.

This picture of hope and cooperation is far away from the symbolic and substantial significance actually attached to the integration agreement here analyzed. Indeed, only if read outside its historical background, art. 4-bis TUI could appear as a positive provision.[13] As already said, section 1 of this article introduces in the Italian legal system a concept of integration "based on mutual commitment". Section 2, instead, gave birth to a new administrative tool, an "Integration Agreement" signed by a public officer and a migrant, after her arrival in the Italian territory. This administrative act, according to the definition of integration endorsed in the first section of article 4-bis, should have been the result of an actual dialogue between the newcomer and the public authority, aimed at defining the legal contents (rights and obligations) of an integration path "walked together" by the foreigner and the host community.

However, if we look beyond the laconic contents of the article and we start with the analysis of the context in which art. 4-bis TUI was adopted, several elements seem to push toward a different interpretation, in which there is no room for negotiation and mutual comprehension. Art. 4-bis, indeed, is one of the measures set by Law 15 July 2009, n. 94, whose formal aim was to introduce new and more strict "Public security provisions" (this is the explicit denomination of the law). More than creating a dialogue, the goal of the law was to protect the national community from the alleged negative consequences of the growing immigration phenomenon – above all, the risk of increased criminality – defining a process with two possible outcomes. Or migrants univocally adhere to the culture and the values of the Italian society, losing their individuality and disappearing among the local population,[14] or they prove themselves incapable of doing so, validating their nature as a risk to the integrity and health of the community.[15] The mandatory expulsion of the migrant, in case of failure to fulfil the integration obligations specified in the agreement, is indeed one of the few features of the integration contract explicitly stated by art. 4-bis.

[13] Art. 4-bis TUI: "1. […], integration means the process aimed at promoting the cohabitation of Italian citizens with aliens, respecting the values sanctioned by the Italian Constitution, with the mutual commitment to participate in the economic, social and cultural life of the society. […] 2. Within one hundred and eighty days from the date of the entering into force of this article, […] criteria and modalities are established for the alien's signing, contextually with the submission of the application for the issuing of the residence permit pursuant to article 5, of an Integration Agreement, articulated by credits, with the commitment to comply with specific integration aims, to be achieved within the period of validity of the residence permit. The signing of the Integration Agreement represents the necessary condition for the issuing of the residence permit. The total loss of the credits determines the revocation of the residence permit and the alien's removal from the State's territory, […], with the exception of the alien holder of residence permit for asylum, subsidiary protection, special protection, family reasons, long-term EU residence permit, residence paper for foreign EU citizen family member, as well as the alien holder of other residence permit that has exercised the right to family joining. 3. This article is implemented owing to the human, instrumental and financial resources available under the legislation in force, without new or higher expenses for the public finance".

[14] During the parliamentary work for the approval of the Law, the idea of "integration" was qualified as involving the respect not only for "our" laws, but also the adaptation to "our way of life" by the foreigners; see, Acts of the Senate, XVI Legislature, 2 July 2009, stenographic report no. 232.

[15] See Enrico Gargiulo, "Integrazione o esclusione? I meccanismi di selezione dei non cittadini tra livello statale e livello locale" [Integration or exclusion? The mechanisms for selecting non-citizens between the state and local levels] (2014) 1 Dir. Imm. Cit. 42 at 59. A similar view is also express by Benedikt Speer in relation to the integration agreement adopted in Austria, which share several features with the Italian one; see Benedikt Speer, "External and Internal Effects of How Austria Has Handled the Refugee Crisis" (2018) 18:2 Croatian & Comparative Public Administration 247.

These hints of a unilateral and assimilationist interpretation became a solid reality with Presidential Decree 14 September 2011, n. 179, which – after two years from the introduction of art. 4-bis – finally provided the specific norms for the implementation of the integration agreement, moving far away from the model of integration recognized by art. 4-bis, section 1, of the TUI. Indeed, art. 2, section 1, Presidential Decree n. 179/2011 only apparently respects the supposed bilateral nature of this administrative tool. As said, requiring the signature both of the migrant and the local Prefect, in charge to represent the State, it seems to introduce a peculiar and participative administrative act, defined by the wills both of the public and the private party, and different from the traditional authoritative, top-down administrative behaviours. But, apart from this outer shell of mutual acceptance, no room is left to migrants' personal choices. First of all, art. 2 confirms the mandatory nature of the agreement that all migrants must subscribe, after their arrival on the national soil, to obtain a residence permit.[16] Thus, newcomers have no say in deciding if and when to sign the agreement, as well as they have no say on its contents. Indeed, art. 2, section 4, unilaterally establishes the integration obligations. At the same time, the annexes B and C to the Decree list a pre-fixed number of behaviours that must be taken into account by the public authority in evaluating the level of the newcomer's inclusion in the host community. These conducts, considered by the legislator expression of integration or non-integration, are identical for every migrant, with no regard for her individuality. Similarly, art. 6 unilaterally decides the consequences for the fulfillment or the violation of migrants' obligations, as well as determines the duration (two years) of the contract itself. Moreover, even the only service directed to the newcomers explicitly disciplined by the Presidential Decree – the art. 3 "civic information session" – does not recognize any importance in building this training activity around the characteristics, needs and wishes of the individual. Finally, the lack of any room for parties' negotiation in defining the contract's contents is confirmed by the scheme of agreement attached to the Presidential Decree: all the clauses are already written, with no white fields apart from the ones dedicated to the personal information of the Prefect and the migrant.

In synthesis, the Presidential Decree n. 179/2011 supports a model of integration without newcomers' participation or, rather, a model where the participation of migrants is allowed only in the satisfaction of the obligations to integrate, not in the definition of the integration path.[17]

Spending now some few more words on the contents of the agreement, Presidential Decree n. 179/2011 describes it as an act composed of two parts: the first, dealing with the general obligations characterizing the integration process; the second, resulting from the above-mentioned annexes to the contract and containing a list of possible newcomers' behaviours qualified as positive or detrimental for migrant's integration.

Looking at the general part, after confirming the mandatory nature of the agreement for all non-EU migrants over the age of 16 who enter the national territory for the first time, applying for a residence permit valid for not less than one year, art. 2 Presidential Decree n. 179/2011 introduces four binding obligations for newcomers, which represent a specification of their broader duty to integrate.[18] Thus,

[16] According to art. 2, section 9, Presidential Decree n. 179/2011, the only categories of foreigners for whom the signing of the agreement is not compulsory are unaccompanied minors and foreigners who are victims – in the Italian territory – of violence or serious exploitation, as they are beneficiary of specific assistance and integration programs.

[17] See Vincenzo Carbone, "Civic integration Italian style: worthy learning" (2018) 3 Mondi migranti 79 at 87 and Maria Russo Spena & Vincenzo Carbone, "A misura di integrazione" [Integration-friendly] in Maria Russo Spena & Vincenzo Carbone, eds, *Il dovere di integrarsi* [The duty to integrate] (Roma: Armando, 2014) 31 at 44-45.

[18] On these obligations, see Gargiulo, *supra* note 15 at 46; Nazzarena Zorzella, "L'accordo di integrazione: ultimo colpo di coda di un governo cattivo" [The integration agreement: the last backlash of a bad government" (2011) 4 Dir. Imm. Citt. 58 at 70; Maria Chiara Locchi, "L'accordo di integrazione tra lo stato e lo straniero (art. 4-bis T.U. sull'immigrazione n. 286/98) alla luce dell'analisi comparata e della critica al modello europeo di 'integrazione forzata'" [The integration agreement between the state and the foreigner (art. 4-bis Immigration Law n. 286/98) considering the comparative analysis and the

migrants – to be allowed to remain in Italy – must: a) acquire an adequate level of knowledge of the spoken Italian language; b) acquire sufficient knowledge of the fundamental principles of the Italian Constitution and the organization and functioning of public institutions; c) acquire sufficient knowledge of civil life in Italy, with particular reference to the sectors of health care, school, social services, work and fiscal obligations; d) ensure the fulfilment of the obligation to attend school by minor children. A fifth general obligation for the newcomer is defined by art. 2, section 5 of the Presidential Decree: "the foreigner also declares that she adheres to the Charter of Values of Citizenship and Integration […] and undertakes to respect its principles". This Charter can be considered a peculiar "post-constitutional" ethical code according to which the integration of the foreigners must pass through the adoption, by newcomers, of the fundamental values of the Italian society, which is described by the Charter itself as a monolith made of Christian and Judaic culture.[19]

What we can recognize, therefore, is a reversal of the inclusion process. Indeed, integration – which should be a long term process whose positive outcome depends mainly on rights recognition, access to social services and interaction with the local community – becomes a prerequisite for legally remaining on the national soil and accessing those rights and benefits whose enjoyment, instead, should be *a priori* ensured to support an adequate level of integration.[20] Moreover, these obligations turn into means of assimilation each time they do not require only the knowledge of the local values and ways of being, but impose a duty to conform to them, forcing migrants to abandon their own cultural values and lifestyle.[21]

Particular attention deserves, according to our research goal, the list of behaviours, included in the annexes to the contract, which produce the recognition or subtraction of credits for the migrants.[22] Indeed, the integration of the migrants is mathematically calculated: only the individuals who, during the two years of validity of the agreement, respect the general obligations and collect at least thirty integration credits are considered integrated and allowed to remain on the national territory; the others have their residence permit revoked and so they shall be repatriated.[23]

A glance at the "positive" behaviour clearly communicates that the scope of the agreement, in addition to supporting migrants' assimilation and limiting their access to rights, is also selecting the

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critique of the European model of 'forced integration'] (2012) 1 Rivista AIC 1 at 2; Francesca Biondi Dal Monte & Massimiliano Vrenna, "L'accordo di integrazione ovvero l'integrazione per legge. I riflessi sulle politiche regionali e locali" [The integration agreement, otherwise the integration by law. Reflections on regional and local policies] in Emanuele Rossi, Francesca Biondi Dal Monte & Massimiliano Vrenna, *La governance dell'immigrazione. Diritti, politiche e competenze* [Immigration governance. Rights, policies and jurisdictions] (Bologna: Società editrice il Mulino, 2013) 253 at 265.

[19] See Ministerial Decree 27 April 2007, "Carta dei valori della cittadinanza e dell'integrazione" [Charter of the values of citizenship and integration]. On this topic see Maria Russo Spena & Vincenzo Carbone, *supra* note 17 at 60-64. For further analysis of the Charter, see Nicola Colaianni, "Una 'carta' post-costituzionale?" [A post constitutional charter?] (2007) 3 Questione Giustizia 637; Andrea Condotta, "Manifesti e contratti per l'integrazione dei migranti" [Manifestos and contracts for mingrants' integration] (2009) 1 Autonomie locali e servizi sociali 99; Silvio Ferrari, "Tra manifesto e contratto. La Carta dei valori, della cittadinanza e dell'integrazione degli immigrati in Italia" [Between manifesto and contract. The Charter of values, citizenship and integration for immigrants in Italy] (2009) 25 Anuario de Derecho Eclesiástico del Estado 469; Carlo Cardia, "Carta dei valori e multiculturalità alla prova della Costituzione" [Charter of values and multiculturality tested by the Constitution] (2008) Stato, Chiese e pluralsimo confessionale 1.

[20] See Locchi, *supra* note 18 at 11.

[21] See Mario Peucker, "Similar Procedures, Divergent Function: Citizenship Tests in the United States, Canada, Netherlands and United Kingdom" (2008) 10:2 IJMS 240 at 243.

[22] On these aspects, see Nazarena Zorzella, "Il dovere di integrarsi secondo la legge" [The duty to integrate according to the law] in Maria Russo Spena & Vincenzo Carbone, eds, *Il dovere di integrarsi* [The duty to integrate] (Roma: Armando, 2014) 121 at 132 and Biondi dal Monte & Vrenna, *supra* note 18 at 267.

[23] See art. 4, 5 and 6 Presidential Decree n. 179/2011.

newcomers after their arrival, privileging the skilled ones, considered more useful for the national economy, and expulsing the others.[24] Indeed, apart from the progressive system of credits recognized for the different levels of knowledge of the Italian language (from 10 to 30) and civic culture (from 6 to 12), the majority of the positive conducts results in attending educational courses, from adult education programs to doctoral ones.[25] The few other positive behaviours include: the conduct of business activities; the choice of a primary care doctor; the conduct of volunteering activities; the stipulation of a lease, mortgage or home purchase contract; and the "peculiar" hypothesis of the conferral of public honours. All these aspects, which could express an effective involvement with the local community (e.g., the conduct of volunteering activities) or the choice to settle permanently on the Italian territory (e.g., the purchase of a dwelling), are considered worthy of only a few credits, from 4 to 6. Furthermore, the majority of them should presuppose effective support and rights recognition by the public authorities. No choice of primary care doctor or stipulation of a lease contract can happen if the migrant is not entitled to the rights to health or housing, and helped in the exercise of these rights (e.g., guiding her in the bureaucratic proceeding of the healthcare system), considering the obstacle she may experience for being introduced in a new reality. But, as we will see in the next few lines, no explicit recognition of these kinds of support is included in the agreement.

The negative conducts, instead, all correspond to convictions, even if not final, for criminal offences or the application of administrative and fiscal sanctions, with a reduction in credits proportional to the seriousness of the offence committed.[26]

The analysis of the current integration agreement's contents can now be concluded considering the rights recognized to migrants, and so the duties that the agreement imposes on the public authorities. On this topic, the integration contract is way more ambiguous. Art. 2, section 6, simply says that the State undertakes to support the integration process of the migrant through the execution of "any appropriate initiative", in collaboration with Regions, local authorities and third sector organizations. No further specification about these "appropriate initiatives" is provided – leaving public authorities with broad discretion in identifying them – and no sanctions or negative consequences are included, in case of failure for the public party to fulfil this obligation. It must be acknowledged that other norms (from the Constitution to the Consolidated Act on Immigration or the specific legislation of public services) recognize rights and benefits also for migrants, but nothing is added to this system by the agreement itself, with the specific task of supporting integration. Once again, the message conveyed is that integration is a process that rests entirely on the shoulders of the foreigner.

[24] This ex *post selction* is a direct consequence of the geographical location of Italy, which makes hardly possible the implementation of an *ex ante* selection system, that instead characterizes countries like Canada or the U.S.A.

[25] The selective aim is highlighted by the differences in credits recognition for these activities: a low-skilled migrant who decides to invest in a 250 to 500 hours adult education course receives only 10 credits, whereas the enrollment in a university, with the successful completion of two exams in one year, grants 30 credits. Apart from the paradox of recognizing this one year of university as corresponding to full integration (as said, 30 credits are enough for the fulfillment of the agreement), the differential treatment is clear, since the first hypotheses may involve the same (or greater) personal commitment than the second, but the latter is assessed three times worthier. Indeed, according to the Italian (and European) legislation, one academic credit corresponds to 25 hours of total workload; see art. 5, section 1, Ministerial Decree 22 October 2004, n. 270. Thus, the successful completion of two exams of six credits each means a workload of 300 hours.

[26] What puzzles is the incompatibility of this system with other provisions included in the Consolidated Act on Immigration (TUI). Indeed, art. 4, section 3, art. 5, section 5-bis, and art. 9, section 4, TUI already define a limited number of criminal offences which can cause the refusal of entry on the national territory or the withdrawal of the residence permit, whereas the list attached to the Presidential Decree n. 179/2011 is substantially open to any kind of criminal (but also administrative and fiscal) offence, which could equally result in the withdrawal of the residence permit for the depletion of credits.

The only specific obligation for the public party expressed by the integration agreement is included in the last sentence of art. 2, section 6: "the State provides the foreigner with a session of civic training and information about life in Italy". Nonetheless, as specified by the following art. 3, the participation in this session is at the same time a right and a duty for the migrant. If, on the one hand, the course is offered free of charge to the newcomer, on the other hand, she is obliged to take part in it within three months from the stipulation of the agreement, since the non-participation would result in the loss of fifteen integration credits.[27] In conclusion, the migrant's rights recognition is substituted with a course that illustrates which should be those rights, providing the individual with few hours of general information insufficient for the understanding of a complex legal, cultural and social system, to which she may be totally extraneous.

4. An "exclusion agreement": when the only purpose is to ostracize the unwanted individuals

After having outlined the features of the integration agreement, we can now focus on the effects of its violation or satisfaction.

First of all, a quick glance at the European context confirms that the approach toward migrants' fulfillment/breach of integration obligations is generally uniform across the entire continent.[28] A clear example is provided by the French legal system, whose *Contrat d'intégration républicaine* is similar under several aspects to the Italian integration agreement.[29] When it was initially introduced by the Law

[27] See art. 3, section 3, Presidential Decree n. 179/2011. Migrants are obliged to participate in five lessons of two hours, each structured around a one-hour video about complex topics (from Constitutional to Administrative and Immigration Law); see Ministry of Interior, Circular 5 March 2012. As highlighted by Giuseppe Faso & Alan Pona, "Come disconoscere il diritto di voce: le sessioni di 'educazione civica' e la valutazione della 'conoscenza della lingua italiana'" [How to disregard the right to speak: the sessions of 'civic education' and the evaluation of 'knowledge of the Italian language'] in Maria Russo Spena & Vincenzo Carbone, eds, *Il dovere di integrarsi* [The duty to integrate] (Roma: Armando, 2014) 224 at 227, these videos are generally offered in Italian and they are rich in technical and legal jargon, hindering their understanding by individuals whose proficiency in the local language is anything but guaranteed. The possibilities for interaction are limited and are left to the goodwill of the teachers present in the classroom who, in most cases, merely play a surveillance role. Indeed, the Ministry of Interior, Circular 6 November 2012 does not requires that the teachers are specialized in the topics of the lessons. See also Annalisa Govi, "Barchette di carta" [Paper boats] in Territorial School Office - Reggio Emilia, *L'accordo di integrazione* [The integration agreement] (2015) 5 online: <https://www.pollicinognus.it/pdf/2015/234-mar2015-monografico-L'Accordo%20di%20Integrazione.pdf>). Furthermore, as highlighted by the expert who attended these sessions, boredom is the predominant feeling among the participants (see Faso & Pona, already mentioned in this note, at 231 and Govi, already mentioned in this note). Similar problems seem to affect also the session of civic training related to the French integration agreement; see Myriam Hachimi Alaoui, "L'immigration familiale: une obligation d'intégration républicaine. Le cas du contrat d'accueil et d'intégration" (2016) 13:1 Recherches familiales 79 at 90.

[28] For a general overview, see Diego Acosta Arcarazo, "Misure e condizioni di integrazione per i cittadini di Paesi terzi nell'Unione europea. Un'analisi comparata e una valutazione della loro attuazione e dei limiti alla luce del diritto dell'Unione europea" [Integration measures and conditions for third-country nationals in the European Union. A comparative analysis and evaluation of their implementation and limitations in the light of EU law] (2012) 2 Dir. Imm. Cit. 15 at 20; Locchi, *supra* note 18 at 5; Enrico Cesarini, "Accordo di integrazione: esperienze europee a confronto" [Integration agreement: a comparison between the European experiences] in Maria Russo Spena & Vincenzo Carbone, eds, *Il dovere di integrarsi* [The duty to integrate] (Roma: Armando, 2014) 31 at 152. See also the essays concerning different nations in Elspeth Guild, Kees Groenendijk & Sergio Carrera, eds, *Illiberal liberal states. Immigration, Citizenship and Integration in the EU* (Bodmin: MPG Books Ltd., 2009).

[29] On the topic, see Sergio Carrera, *In search of the perfect citizen. The Intersection between Integration, Immigration and Nationality in the EU* (Leiden: M. Nijhoff, 2009) at 291. See also Danièle Lochak, "L'intégration comme injonction. Enjeux idéologiques et politiques liés à l'immigration" (2006) 64 Cultures & Conflits 1; Danièle Lochak, "Devoir d'intégration et immigration" (2009) Revue de droit sanitaire et social 18; Gourdeau Camille, "Le contrat d'accueil et d'intégration:

26 November 2003, n. 1119,[30] the French agreement (originally called *Contrat d'accueil et d'intégration*) was a voluntary integration tool whose lack of fulfilment by the migrant did not automatically generate negative effects on the legal status of the foreigner and her possibility to stay in the host country. Transformed into a mandatory prerequisite for the legal entry in the national territory by the Law 24 July 2006, n. 911 the *Contrat d'intégration républicaine*,[31] as disciplined in the last 2016 reform,[32] now contains obligations (civil life and language knowledge, as well as the respect of the fundamental values of the French society) whose observance is required for obtaining a multi-annual residence permit, which would ensure the legal permanence for 2 to 4 years and so a stabilization of the migrant's legal condition, thus simplifying the process of obtaining the permanent resident status.[33]

Looking at other countries, in Austria the obligations included in the integration agreement (*Integrationsvereinbarungen*) are divided into two groups.[34] The first one (concerning the acquisition of German basic language skills and knowledge of the fundamental values of the legal and social systems) is mandatory for the third-country nationals who want to settle on the Austrian territory.[35] Their fulfilment has to be evaluated after two years from the signature of the contract, and their violation results in a fine up to € 500 or, if this amount cannot be collected, in the imprisonment of the migrant for a period of up to two weeks.[36] The respect of the second group of obligations (concerning the acquisition of advanced German language skills and advanced knowledge of the fundamental values of the legal and social systems) is instead required for the grant of the EU long-term residence permit.[37] Their violation, as a consequence, precludes the achievement of this permit, but does not involve the expulsion of the migrant, who can remain in Austria on the basis of short-term (and therefore more "unstable") residence permits.

Finally, the breach of the inclusion obligations produce similar consequences (economic sanctions and denial of permanent resident status) also in relation to the Danish integration agreement,[38] as well as in other legal systems (Germany and Netherlands) in which there are no integration contracts, but where the level of inclusion of the migrants is evaluated through mandatory language and cultural tests.[39]

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un racisme institutionnel teinté de bienveillance?" (2016) 163:1 Migrations Société 109; Gourdeau Camille, "Un contrat au service de l'identité nationale" (2016) 110:3 Plein droit 32.

[30] *Loi n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité*, JO, 27 November 2003, no 274, 20136.

[31] *Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration*, JO, 25 July 2006, no 170, 11047.

[32] See *Loi n° 2016-274 du 7 mars 2016 relative au droit des étrangers en France*, JO, 8 March 2016, no 0057.

[33] Art. L313-17 *Code de l'entrée et du séjour des étrangers et du droit d'asile*.

[34] On this topic see the Federal Act for the Integration of Persons without Austrian Nationality Legally Resident in Austria (so-called Integration Act), BGBl I 68/2017. For a doctrinal analysis, see Speer, *supra* note 15 at 257.

[35] See art. 7 and 8 of the Austrian Integration Act.

[36] See art. 23 of the Austrian Integration Act.

[37] See art. 7 and 10 of the Austrian Integration Act.

[38] On this topic, see Anja Wiesbrock, "Discrimination Instead of Integration? Integration Requirements for Immigrants in Denmark and Germany" in Elspeth Guild, Kees Groenendijk & Sergio Carrera, eds, *Illiberal liberal states. Immigration, Citizenship and Integration in the EU* (Bodmin: MPG Books Ltd., 2009) 299 at 303.

[39] See Locchi, *supra* note 18 at 5. On Denmark, Germany and Netherlands, see also Anja Wiesbrock, *Legal migration to European Union* (Boston: Martinus Nijhoff Publishers, 2010) at 643.

4.1. Denial of the residence permit and repatriation: the negative effects of agreement violations

Synthesizing the message communicated by the European framework, the effects of integration agreements are primarily directed to generate migrants' selection and exclusion, substantially hindering the possibility to permanently settle in the host country for newcomers considered unable to conform to the ways of being of the local population.

This statement is even more indisputable in relation to the Italian integration agreement.[40] As said, one of the few features of the integration agreement explicitly stated in the art. 4-bis TUI is the mandatory revocation of the migrant's residence permit, followed by her repatriation, in case of breaches of the integration obligations or loss of all integration credits. Thus, even if the Italian legislator does not include hypotheses of economic sanctions or imprisonment, the effects of an unsuccessful integration appear more drastic than the ones characterizing the other European states. Indeed, the violation of the integration agreement does not generate a precarious condition for the migrant, as it happens in the countries where access to multi-annual residence permits (France) or EU long-term permit (Austria and Denmark) is denied, allowing only short-term permits, but it completely prevents the migrants from the legal stay on the national soil. Legal stay that is something different from the actual stay of migrants, since the vast majority of repatriation orders is not enforced, giving birth to an increasing population of undocumented immigrants excluded from almost all social rights and benefits (and so from any support to integration, even if they keep on living and working in the host society).[41]

The generic provisions of art. 4-bis TUI find a more detailed implementation in art. 5, 6 and 7 Presidential Decree n. 179/2011.[42] Therefore, at the end of the two years of validity of the agreement, the level of integration of the newcomer – and so her fulfillment of the agreement's obligations – is evaluated by the public authority. This evaluation can generate three results. First, the migrant has collected at least 30 integration credits, also reaching the required knowledge of the Italian language and civil life and having ensured compliance with the compulsory schooling of her underage children. In this case, the Prefect declares successfully concluded the integration agreement and the third-country national is allowed to remain on the Italian soil for the remaining duration of her residence permit (with the possibility to subsequently renew it, if she will satisfy the requirements).[43] Second, if the number of migrant's integration credit is equal to or less than zero, the Prefect declares the non-fulfilment of the agreement and, as anticipated, orders the denial of renewal/revocation of the migrant's residence permit and, consequently, her repatriation.[44] This condition can take place if the newcomer does not participate in the mandatory session of civic training, which generates the loss of fifteen credits out of the sixteen initially granted to the migrant after the subscription of the agreement, and if she engages in the negative behaviours (which result in convictions for criminal offences or applications of administrative and fiscal sanctions) listed in the annex to the agreement, which produce a reduction in credits proportional to the seriousness of the offence committed.[45] Moreover, the migrants' expulsion can be a direct consequence

[40] On the consequences for migrants in case of integration agreement breach, see Acosta Arcarazo, *supra* note 28 at 19; Vincenzo Carbone, *supra* note 17 at 80; Biondi Dal Monte & Vrenna, *supra* note 18 at 268; Zorzella, *supra* note 18 at 64; Zorzella, *supra* note 22 at 139.

[41] See Alessandra Ziniti, "Migranti, il Viminale frena sulle espulsioni. L'Ispi: Nel 2020 fino a 700mila immigrati irregolari, 101 anni per rimpatriarli tutti" [Migrants, the Viminale is holding back on expulsions. Ispi: In 2020 up to 700 thousand irregular immigrants, 101 years to repatriate them all] (18 December 2018) online: <https://www.repubblica.it/cronaca/2018/12/18/news/migranti-214530426/>..

[42] About the contents of these articles, see especially Zorzella, *supra* note 22 at 139.

[43] See art. 6, section 5, let. a), Presidential Decree n. 179/2011.

[44] See art. 6, section 5, let. c), Presidential Decree n. 179/2011.

[45] See Zorzella, *supra* note 22 at 141.

of their failure to fulfill the compulsory schooling of their underage children (except when they can prove that they have, in any event, made every effort to ensure compliance with it), regardless of the number of credits acquired during the two years.[46] Finally, the third possible ending takes place when the number of integration credits is above 0 but beneath 30, or when the level of Italian language or civil life knowledge is deemed as insufficient. In these hypotheses, the validity of the agreement is extended for one additional year.[47] At the end of this second term, if the migrant has not still acquired a sufficient number of credits or the required knowledge of the Italian language and civil life, the Prefect declares the partial non-fulfilment of the agreement which, in any case, cannot generate the revocation of the residence permit.[48]

It should be noticed that, according to the legislator, the preferred way to verify the civil life and language knowledge, as well as the other positive behaviours, is through the submission of certificates and documents (e.g., certificates of successful attendance in language or civic education courses, certificates of enrolment in school or university programs, rental contracts, etc.).[49] Consequently, the conduct of integration tests is limited to a subsidiary role, adopting a solution that, at least under this point of view, could be evaluated positively, given the wide criticisms directed at this kind of migrants' evaluation.[50] Moreover, no assessment of the conformity of the migrant's conduct with the values of Italian society is undertaken, notwithstanding the obligation to respect the Charter of Values of Citizenship and Integration.[51] This, first of all, could be a consequence of the complex nature of such a judgement, considering the difficulty to unilaterally identify these values. An indirect verification, therefore, would seem to take place through the reduction of the credit in case of negative behaviours that correspond to violations of specific legal provisions. This could be true in relation to criminal law violations, since they would represent breaches of rules ensuring social cohesion, but the broad spectrum of negative conducts listed in the annex to the agreement, which includes also administrative and tax law violations, suggests a punitive and exclusionary aim for this conducts' evaluation, more than and indirect judgement on conformity to values. In any case, the omitted verification of compliance with the Italian society's values confirms the lack of concrete usefulness of the obligation to adhere to the Charter of Values, apart from the symbolic message of cultural inferiority of the non-citizens that it communicates.[52]

The above-described effects are the ordinary consequences produced by the violation of the integration agreement by the migrant. However, the need for Italy to comply with international and supranational obligations has imposed substantial subjective limitations on the extent of these negative

[46] See art. 6, section 4, Presidential Decree n. 179/2011.

[47] See art. 6, section 5, let. b), Presidential Decree n. 179/2011.

[48] See art. 6, section 9, Presidential Decree n. 179/2011. About the consequences of this partial non-fulfilment, see the following note 28.

[49] See art. 5, section 1, Presidential Decree n. 179/2011. For a further specification of the certificates that can be submitted to demonstrate the level of Italian language and civil life knowledge, see Ministry of Interior, Circular 6 November 2012.

[50] See especially Elana Shohamy, "Language tests for immigrants. Why language? Why tests? Why citizenship?" in Gabrielle Hogan-Brun, Clare Mar-Molinero & Patrick Stevenson, eds, *Discourses on language and integration* (Amsterdam: John Benjamins Pub. Co., 2009) 45 at 49. See also Dora Kostakopoulou, "What liberalism is committed to and why current citizenship policies fail this test" in Rainer Bauböck & Christian Joppke, eds, *How liberal are citizenship tests?* (San Domenico di Fiesole: European University Institute, 2010) and Joseph H Carens, "The most liberal citizenship test is none at all" in Rainer Bauböck & Christian Joppke, eds, *How liberal are citizenship tests?* (San Domenico di Fiesole: European University Institute, 2010). These authors identify language and culture tests as sources of discrimination, fostering a sense of exclusion and othering foreigners without providing a concrete proof of newcomers' participation to social life.

[51] See art. 2, section 5, Presidential Decree n. 179/2011.

[52] The authors of the Charter considered the values there expressed as "universally accepted", and so able to give foreigners "the chance to improve as we [Italians] have improved over time" (see Cardia, *supra* note 19 at 5). This statement clearly communicates that, according to the point of view of the Charter's authors, no transformations and improvements seems conceivable for the host society as a result of the contact and the dialogue with the (less civilized) migrant.

effects. Indeed, according to art. 4-bis TUI, refugees, beneficiaries of other forms of international protection, EU long-term residents, beneficiaries of family reunification permit, and family members of a European citizen, even if still forced to subscribe to the agreement at their entry on the national territory, shall not be subjected to the abovementioned expulsive effects. According to art. 6, section 8, Presidential Decree n. 179/2011, their violation of integration obligations could only be taken into account by the public authorities for the adoption of unspecified "discretionary measures disciplined by the Consolidated Act on Immigration [TUI]".[53] None of these discretionary measures, which should negatively affect the legal status of the above-mentioned categories of migrants, seem to be currently included in the TUI, depriving art. 6, section 8, of its effectiveness, if not as a rule that can support the future introduction of these kinds of measures.[54]

Thus, negative effects are nowadays limited only to foreigners residing in the territory on the basis of a work or study permit, without family ties to other residents. Considering the composition of migrants entering Italy, mainly consisting of refugees and family reunification applicants,[55] the picture just described seems to severely limit the selective and exclusive effects of the integration agreement. However, two aspects cannot be ignored. On the one hand, the integration agreement keeps its symbolic assimilationist message to all the newcomers who are forced to subscribe to it, since they receive the message that they must adapt to the new reality, without being entitled to any concrete support by the host community. Second, excluding effects for the above-listed migrants, who often are the ones most in need for integration support not having any social structure of reference (as could be the university for the holders of student permit or the workplace for the holders of working permit), clearly communicate the indifference for the integration of these individuals, who cannot be expelled because of international obligations, but for whom it is not worth the integration effort. It is true that beneficiaries of international protection have access to the more sophisticated SPRAR integration system.[56] However, only a low percentage of them actually benefit from it, most of them being excluded for lack of resources.[57]

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[53] The same unspecified negative consequences should also affect the migrant who, after the year of extension granted by art. 6, section 5, let. b), has not still acquired a sufficient number of credits or an adequate knowledge of Italian language and civil life, resulting in the partial non-fulfilment of the agreement which, as said, does not allow the migrant's expulsion. See art. 6, section 9, Presidential Decree n. 179/2011.

[54] See Zorzella, *supra* note 22 at 131.

[55] According to the Italian National Institute of Statistic (ISTAT), in 2017, 43.2% of new resident permits ware granted for family reunification reasons and 38.5% for asylum or international protection reasons. See ISTAT, "Cittadini non comunitari: presenza, nuovi ingressi e acquisizioni di cittadinanza" [Non-eu nationals: presence, new arrivals and acquisition of citizenship] (14 November 2018) at 3 online: <https://www.istat.it/it/files/2018/11/Report_cittadini_non_comunitari.pdf>.

[56] This system is regulated by art. 1-sexies Law-Decree 30 December 1989, n. 416. Originally introduced by Law 30 July 2002, n. 189 – which added the above-mentioned art. 1-sexies to Law-Decree n. 416/1989 – the system has been denominated "Sistema di Protezione per Richiedenti Asilo e Rifugiati" (Protection System for Asylum Seekers and Refugees – SPRAR) from 2002 to 2018, when it was reformed by Law Decree 4 October 2018, n. 113 and renamed as SIPROIMI (Protection System for Beneficiaries of International Protection and Unaccompanied Foreign Minors). The main change, which is reflected by the new name itself, was the restriction of the possible beneficiaries, limited only to the holders of international protection permits, whereas the access was denied to asylum seekers until the definition of their asylum claim application. The recent Law-Decree 21 October 2020, n. 130, has again modified the features of the program, re-opening it to asylum-seekers and consequently suggesting the return to its original denomination. For a broader analysis of the SPRAR, see the several essays contained in Jens Woelk, Flavio Guella & Gracy Pelacany, *Modelli di disciplina dell'accoglienza nell'emergenza immigrazione* [Models of newcomers' reception during the migration crisis] (Napoli: Editoriale scientifica, 2016).

[57] Indeed, in 2019, only 20% of the refugees and asylum seekers had access to the SIPROIMI system, while the 80% remained in emergency reception facilities, which do not ensure any integration service. On these numbers, see Andrea Gagliardi, "Sprar, Cara e Cas: dove sono distribuiti i 135mila migranti accolti in Italia" [Sprar, Cara and Cas: where the 135,000 migrants received in Italy are distributed] (24 January 2019) online: *ilSole24ore* <https://www.ilsole24ore.com/art/sprar-cara-e-cas-dove-sono-distribuiti-135mila-migranti-accolti-italia--AEma7ELH>. For a synthetic overview about the dramatic conditions

Moreover, the beneficiaries of the family reunification permit are also considered not worthy of integration efforts, even if they represent the other main component of foreigners entering the country and they could benefit greatly from effective integration paths.[58] Indeed, the main beneficiaries of this kind of permit are generally women reuniting to their spouses, and adequately supporting their integration could be relevant at least under two perspectives.[59] First, because it would help them to overcome the harsher challenges and barriers that could characterize their lives in the host society, facing the discriminations coming from being both migrants and women. Second, in many migrant families, mothers are at the core of family life: thus, supporting their integration would enhance the possibility of social inclusion of all the members of the family itself.

This disregard for actual integration, which means that the effects of the agreement are mainly aimed at expelling unwanted migrants who can be removed without infringing international laws, finds further confirmations. First, the Ministry of Interior Circular 10 February 2014, n. 824, detailing the operating procedures for the agreement fulfillment verification, expressly excludes, for reasons of simplification and cost-effectiveness, the need to verify the agreement for the categories exempted from the repatriation effects. After two years of validity, therefore, their agreement is automatically declared "terminated due to exemption". This fact confirms the total lack of interest in the integration of these categories of migrants: since they cannot be expelled, it is only worth ignoring them. Second, if we look at the Presidential Decree n. 179/2011, we must admit that not only negative consequences in case of breach of the agreement are included, but also incentives are granted if the migrant is particularly successful in fulfilling the integration obligations.[60] But if we pay attention to the contents of this "award", once again we can only confirm the irrelevance attributed in the Italian legal system to a fruitful integration path. First of all, these benefits are vague and not necessarily appealing for an individual who is subjected to such a complex system of obligations and negative effects. Indeed, migrants who have collected at least 40 credits during the two years of agreement validity should have access only to "discounts for the fruition of specific cultural and educational activities".[61] Moreover, no provision has been subsequently adopted to specify the arrangements for access to these benefits, and art. 7, section 3, affirms that these benefits should be granted without any further disbursement to public resources, substantially limiting the possibility to transform the general legislative provision in something more concrete.[62]

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of the emergency reception facilities, see ASGI, "Conditions in reception facilities" (2019) online: *AIDA* <https://www.asylumineurope.org/reports/country/italy/reception-conditions/housing/conditions-reception-facilities>.

[58] A simple demonstration of the specific need for integration that characterizes the hypothesis of family reunification is provided by the legislations of many European countries (Netherlands, France and Germany) which, not without criticisms, impose even pre-departure integration courses and tests to the family members still living abroad and who want to reunite with the person already living in the European state. On this topic see e.g. Dora Kostakopoulou, "The Anatomy of Civic Integration" (2010) 73:6 Modern L Rev 933 at 940.

[59] On these aspects, see European Web Site on Integration, "Integration of migrant women. A key challenge with limited policy resources" (12 December 2018) online: *EWSI* <https://ec.europa.eu/migrant-integration/feature/integration-of-migrant-women>.

[60] See art. 7 Presidential Decree n. 179/2011.

[61] See art. 7, section 1, Presidential Decree n. 179/2011.

[62] See Zorzella, *supra* note 22 at 141.

5. Incentives and effective rights' protection as tools for fostering integration and sense of belonging

The depiction carried out in the previous pages give us an unsatisfactory image of the current situation. Nowadays, the integration agreement appears to be irrational, inefficient and discriminatory, in relation to its form, its contents but also its effects.

Focusing on the consequences for the migrants, the irrationality of the integration agreement is clearly expressed by the disharmony between the severe expulsive consequences threatened on paper and the limited subjective extent of the effects of the agreement, which cannot affect most of the third-country nationals entering Italy, abandoning them in a limbo of legal and material irrelevance. Expulsion, then, although it is an appealing solution for the supporters of the most rigorous policies towards immigration, it is practical and efficient only in theory. In concrete terms, it is expensive and difficult to implement, as demonstrated by the limited number of repatriations carried out each year, compared to the number of irregular immigrants present on the Italian territory. Expulsion implies the involvement of means and resources (think of the costs of police operations to search for irregular foreigners and the organization of means of transportation for repatriations) that could be used differently and more efficiently, also in the context of inclusion policies.[63] Finally, the expulsive effect does not seem to be free from doubts regarding its discriminatory impact on the (limited) categories of migrants to whom it is applicable: after losing all the integration credits, indeed, they should be automatically repatriated, without any consideration of the possible social and cultural ties developed during the two years of validity of the contract. Instead, according to an increasing number of courts' decision, these aspects cannot be ignored in any repatriation order, consequently to the need for balancing the public interests implied by the expulsion (above all, public order and security) with the rights to well-being and self-determination of the individual.[64]

Moreover, the current integration agreement cannot be considered satisfying also in light of the absence of consequences for the public authorities. The lack of specific commitments leaves them free to not actively support migrants in their integration process and so the agreement does not add further protection to migrants' rights and interests, creating nothing but unilateral obligations affecting only one side of the contract.

5.1. Thinking positive: rewarding the migrants for their voluntary integration efforts

Although it might seem utopian, given the restrictive integration policies currently characterizing the European countries, the opportunity to adopt approaches based on incentives and voluntary mechanisms has been constantly affirmed as a possible solution for social inclusion issues. Several authors, indeed, consider them as a possible answer to the inadequacies manifested by the existing integration systems, especially after the migration crisis of the last years that has unveiled numerous of these shortcomings. Furthermore, the feasibility of such a reform is supported by (few but successful) concrete examples, often recalled as best practices.

Thus, a recent research carried out on the behalf of the Council of Europe clearly criticizes the existing frameworks, strongly supporting the thesis according to whom "policies promoting voluntary integration are preferable to obligatory integration policies because the latter may restrict immigrants'

[63] On this topic, see Neeraj Kaushal, *Blaming immigrants. Nationalism and the Economics of Global Movements* (New York: Columbia University Press, 2018) at 56.
[64] See Corte Costituzionale [Constitutional Court], 18 July 2013, n. 202.

and refugees' human rights, increase the insecurity of residence for applicants and their families and present some discriminatory effect".[65] Indeed, the study highlights how sanctions related to the breach of mandatory integration obligations, especially if affecting the legal status of the migrants and their possibility to remain in the host country, generate a sense of insecurity among the newcomers which substantially hinder their sense of belonging to the local community, also deterring integration efforts and discouraging investments in the long-term (including economic ones; we could think about starting a commercial activity).[66] These sanctions, as a consequence, are seen not only as a menace to the rights to private and family life, recognized by art. 8 of the European Convention of Human Rights, but clearly represent an obstacle in any path of inclusion, being oriented towards opposite goals, such as excluding and selecting migrants. A reinforced rights recognition (from social rights to the right to family reunification) provided by integration programs, instead, can act as an incentive for the participation in these programs, which must be tailored around the specific needs of the individual and characterized by a central role played by the public authorities in the implementation of the above-mentioned rights.[67] Thus, a voluntary and incentives-based approach appears in consonance with a concept of integration as a long-term process whose success depends on the permanence in the host community and on the enjoyment of rights and services, whereas the mandatory and sanctions-based approach (irrationally) considers integration as an instantaneous result that migrants must obtain in advance to any discourse about rights recognition and stable permanence in the country.[68]

The opportunity of voluntary and incentives-based approaches is then recognized by other research,[69] which explicitly qualifies as best practices the benefits granted by some countries to the newcomers who participate in integration programs. Thus, as said above, the contents of the integration contracts play a fundamental role in encouraging migrants' engagement, since a reinforced recognition of social rights and the provision of *ad hoc* support measures – such as free language or vocational training courses, assistance in the search for an accommodation, bureaucratic and legal support, etc. – can certainly act as incentives to integration programs' participation. Even "smaller" but concrete solutions could substantially encourage newcomers' commitment toward integration: for example, a best practice is recognized in the possibility to obtain the reimbursement of transportation expenses and childcare costs sustained by migrants in order to attend civic integration courses. This simple benefit would remove practical impediments preventing newcomers from the concrete enjoyment of a right (access to civic training course) otherwise recognized only on paper. [70]

Apart from the mentioned researches, what appears even more important is that concrete experiences of voluntary and incentives-based integration projects have taken place, with generally positive outcomes: the voluntary integration agreements adopted by Spain (*Compromiso de integración*

[65] See Sergio Carrera & Zvezda Vankova, *Human rights aspects of immigrant and refugee integration policies. A comparative assessment in selected Council of Europe member states* (Strasburg: Concil of Europe, 2019).
[66] *Ibid* at 40.
[67] *Ibid* at 44.
[68] *Ibid* at 48.
[69] See OSCE, *Good practices in migrant integration: trainee's manual* (Warsaw: OSCE, 2018). See also Rosa da Costa, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations* (Geneva: UNHCR, 2006).
[70] See OSCE, *supra* note 69 at 95. For further examples of incentives and benefits adopted by some European countries, see European Commission, *Ad-Hoc Query on Integration measures regarding language courses and civic integration – Part 2* (12 April 2017) online: *European Commission* <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/2017.1168_fr_integration_measures_regarding_language_courses_and_civic_integration_-_part_2.pdf>.

de la Comunidad Valenciana)[71] and Luxemburg (*Contrat d'integration*).[72] In this last country, considering the non-mandatory nature of the contract, the failure to fulfill the integration obligations results only in the possibility to conclude a new agreement, concerning the obligations that were not satisfied during the first two years of validity of the contract. The only effects recognized by the legislator are positive consequences resulting from the subscription and the fulfilment of the agreement. Thus, third-country nationals who have signed the *Contrat d'integration* must be considered privileged recipients of the measures and actions disciplined by the national integration plan.[73] The fulfilment of the agreement, moreover, is considered a positive element (and not a mandatory requirement) in the administrative procedures concerning the permanence of the migrant on the national soil, facilitating the issuance of residence permit.[74] Similar considerations can be made about the *Compromiso de integración de la Comunidad Valenciana*, whose non-mandatory nature excludes negative consequences in case of breach of integration obligations. Moreover, a positive effect could instead derive from its satisfaction: according to some authors – although the legislative provision is not clear about it – the successful conclusion of the agreement could be rewarded with a specific residence permit (the so-called *arraigo social*),[75] allowable if the migrant does not satisfy the requirement for other permits, since this *arraigo* can be issued on the evidence of effective social integration into the municipality of residence.[76]

Apart from these cases, an example that cannot be ignored is given by the Swedish integration policies, which have for a long time been an exception to the uniform trend towards assimilationist and exclusive mechanisms adopted by the other European countries.[77] In this nation, participation in integration programs has been non-mandatory since the post-war phase. Considering that the inflow of migrants in Sweden is principally composed of asylum seekers, the integration mechanisms are directed, above all, to this category of newcomers, even if they have been gradually extended to a broader spectrum of third-country nationals during the years.[78] The Swedish integration system is based on two principles: equality and, as a consequence, the universal nature of the welfare state, which must ensure migrants' access to social rights and services under the same conditions as the rest of the population.[79] Moreover, the integration process should take place in a pluralistic context, in terms of active state's support and

[71] About the *compromiso de integración de la Comunidad Valenciana*, see Ángeles Solanes Corella, "¿Integrando por ley? de los contratos europeos de integración al compromiso de la Ley autonómica valenciana 15/2008" (2009) 20 Revista de derecho migratorio y extranjería 47; Enrique Conejero Paz, Alfonso Ortega Giménez & Mónica Ortega Roig, eds, *Inmigración, integración, mediación intercultural y participación ciudadana* (San Vincente: Editorial Club Universitario, 2017) at 49 and Lucía Martínez Martínez & Francesc Xavier Uceda-Maza, eds, *Los Servicios Sociales en la provincia de Valencia: Análisis territorial, estado de la cuestión* (València: Publicacions de la Universitat de València, 2017).

[72] See Acosta Arcarazo, *supra* note 12 at 20. For more information about the Luxembourgian *Contrat d'integration*, see Le Gouvernement du Grand-Duché de Luxembourg, "Concluding a Welcome and Integration Contract (CAI) with the State of Luxembourg" online: *Guichet.lu* <https://guichet.public.lu/en/citoyens/immigration/nouveau-resident-luxembourg/arrivee-luxembourg/contrat-accueil-integration.html>.

[73] See art. 13, section 1, Loi du 16 décembre 2008 concernant l'accueil et l'intégration des étrangers au Grand-Duché de Luxembourg.

[74] See art. 13, section 2, Loi du 16 décembre 2008 concernant l'accueil et l'intégration des étrangers au Grand-Duché de Luxembourg.

[75] See art. 45, section 2, let. b) *Real decreto* 30 December 2004, n. 2393.

[76] In this sense, see Biondi dal Monte & Vrenna, *supra* note 18 at 281. *Contra*, see Solanes Corella, *supra* note 71 at 66, who affirms that the matter of foreigner's residence permits belongs to the national legislator and so the regional law disciplining the *compromiso de integración de la Comunidad Valenciana* cannot introduce new hypotheses allowing the granting of a permit.

[77] See Karin Borevi, "Multiculturalism and welfare state integration: Swedish model path dependency" (2014) 21:6 Identities 708. Furthermore, for a synthetic overview of the Swedish integration policies, see Carrera & Vankova, *supra* note 65 at 36.

[78] See Anja Wiesbrock, "The Integration of Immigrants in Sweden: a Model for the European Union?" (2011) 49:4 International Migration 48 at 52.

[79] See Borevi, *supra* note 77 at 710.

recognition of immigrants' distinct culture, which finds a clear representation in the absence of language or cultural tests in the Swedish procedure of naturalization and citizenship acquisition.[80] This model certainly communicates an approach where rights recognition, permanence in the local community and citizenship acquisition are not consequences of integration but means to support it.[81]

Thus, if the starting point of the integration process is considered the equal access to rights and services, at the same conditions of the citizens, further support can come from the (voluntary, as said) adhesion to the integration programs.[82] Synthetically, the individuals who decide to conclude an "establishment plan" (*etableringsplan*) with the Swedish Employment Service have access to a customized integration project, mainly based on free language courses, civic orientation class and vocational training,[83] but also including further activities directed to support their effective entry into the host society and the labour market, such as a broad variety of mentoring programs.[84] If the failure to fulfil integration obligations has no consequence on the legal status of the migrant, the participation is supported by the provision of specific incentives, such as a monetary benefit, called "establishment allowance", and housing benefits.[85] Naturally, the breach of integration obligations (e.g., non-participation in the language courses) produces the loss of these benefits, but – as said previously – it does not affect the possibility of the non-citizen to remain in Sweden, as well as to access to the welfare services and social rights granted to all Swedish population.[86]

Looking at the outcomes of these policies, they have received a constant positive evaluation according to the Migrant Integration Policy Index (MIPEX)[87] and the Commitment to Development Index, putting Sweden in the first place for the quality of its integration mechanisms in comparison with the other analyzed countries.[88] The Swedish inclusion program is considered particularly effective in term of labour market integration, education, political participation, security of permanent residence, access to nationality and anti-discrimination, with Swedish "ambitious policies" explicitly considered "more effective [compared to other European countries] at reaching most immigrant residents in need".[89] This has led to newcomers that are more likely to invest in their integration here than elsewhere in Europe, consequently to the positive support provided by the public authorities and the greater stability ensured to their permanence in the country thanks to the above described non-punitive approach.[90]

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[80] *Ibid* at 712. See also Wiesbrock, *supra* note 78 at 56.
[81] See Wiesbrock, *supra* note 78 at 51 and Borevi, *supra* note 77 at 714.
[82] For a quick overview of these benefits, see Information Sverige, "Integration in Sweden" (29 August 2018) online: *Informationsverige* <https://www.informationsverige.se/en/jag-har-fatt-uppehallstillstand/samhallsorientering/boken-om-sverige/att-komma-till-sverige/integration-i-sverige/>. See also Ministry of Integration and Gender Equality, "Swedish integration policies" (December 2009) online: *Government of Sweden* <https://www.government.se/contentassets/b055a941e7a247348f1acf6ade2fd876/swedish-integration-policy-fact-sheet-in-english#:~:text=The%20goal%20of%20integration%20policy,of%20birth%20or%20ethnic%20background.>, which contains older but still useful information.
[83] See Wiesbrock, *supra* note 78 at 52.
[84] See Ministry of Integration and Gender Equality, *supra* note 70 at 2. For a concrete example of how these mentoring schemes are implemented, see Frank Radosevich, "Sweating for social integration" (2 January 2018) online: *Radio Sweden* <https://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=6847496>, which describes a program that matches newly arrived immigrants studying Swedish with native speakers looking for a friend they can work out with.
[85] See Wiesbrock, *supra* note 78 at 53.
[86] See Borevi, *supra* note 77 at 716.
[87] See Migrant Integration Policy Index, "Sweden" (2015) online: *Mipex* <http://www.mipex.eu/sweden>.
[88] See Center for Global Development, "Sweden – Commitment to Development Index" (2018) online: *Center for Global Development* <https://www.cgdev.org/cdi-2018/country/SWE>.
[89] See Migrant Integration Policy Index, *supra* note 87.
[90] *Ibid*.

It is true that these results have been contested, especially in relation to the field of labour market integration: an OECD 2008 research, indeed, showed a ten-points lower percentage of labour market participation for migrants in comparison to Swedish citizens, criticizing above all the excessive duration of the integration programs, preventing migrants from entering the work market for too long and accustoming them to living off social assistance.[91] However, numerous justifications can be given for this work market inclusion gap. First of all, as said, the large majority of migrants in Sweden are asylum seekers, whose personal conditions require more time and more investments to obtain an adequate inclusion, especially in the field of employment.[92] Second, a successful reform was carried out in 2010 to improve the efficiency of the job placement process,[93] but also the MIPEX results clearly recognize that positive outcomes are in any case achieved in the long-term, with "Non-EU immigrants' employment rates and quality [that] begins to converge over time, compared to Swedish-born people of the same education level and gender".[94] Finally, even if it is true that job market inclusion is a relevant factor for integration, other elements must be taken into account to evaluate migrants' inclusion in the national community, such as educational outcomes, political participation, social relationship with other members of the local community, etc. Indeed, it cannot be ignored that job market inclusion data are highly sensitive to other factors, which do not depend on newcomers' integration in the host society (e.g., a general situation of economic crisis makes it more difficult to find a job, justifying higher unemployment rates among newcomers – who, indeed, have to find a job – than nationals – who, instead, may have been employed since before the crisis).[95]

However, the description just concluded is subject to a significant *caveat*: in 2018, following the election of a center-right coalition, the above-illustrated integration program is no more voluntary for some categories of immigrants,[96] in line with the restrictive trend that has characterized other aspects of Swedish immigration policies in recent.[97] On the one hand, these new circumstances are a further confirmation of the spread in the Western societies of fears for the foreigner and demagogic policies which, at present, seems to be blocking any possibility of reforming integration mechanisms in order to make them instruments of effective inclusion, and not, *vice versa*, of selection and exclusion.[98] On the other hand, the positive results achieved by the previous voluntary and incentive-based approach can only confirm the importance, now more than ever, of promoting a paradigm shift in favour of voluntary and incentive-based policies that are not only more respectful of the rights of the individual, but also more effective in ensuring the integration of migrants, fruitful both for the host society and for the newcomer.

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[91] See OECD, *International Migration Outlook*, (Paris: OECD, 2008).

[92] See Wiesbrock, *supra* note 78 at 60. On the fact that refugees integrate slower than other migrants, see the data included in Regina Konle-Seidl, *Integration of Refugees in Austria, Germany and Sweden: Comparative Analysis* (Brussels: European Parliament, 2018).

[93] On this reform and its positive effects, see Haodong Qi et al, "Does Integration Policy Integrate? The Employment Effects of Sweden's 2010 Reform of the Introduction Program" (2019) 12594 IZA Discussion Papers and Pernilla Andersson Joona, Alma Wennemo Lanninger & Marianne Sundström, "Reforming the Integration of Refugees: The Swedish Experience" (2016) 10307 IZA Discussion Papers.

[94] See Migrant Integration Policy Index, *supra* note 87.

[95] See Wiesbrock, *supra* note 78 at 60.

[96] For up-to-date information, see European Commission, "Governance of Migrant Integration in Sweden" (25 November 2019) online: *European Commission* <https://ec.europa.eu/migrant-integration/governance/sweden>.

[97] See Admir Sokodo, "Sweden: By Turns Welcoming and Restrictive in its Immigration Policy" (6 December 2018) online: *Migration Policy Institute* <https://www.migrationpolicy.org/article/sweden-turns-welcoming-and-restrictive-its-immigration-policy>. See also Lee Robinson & Anita Käppeli, "Policies, Outcomes, and Populism: The Integration of Migrants in Sweden" (15 November 2018) online: *Centre for Global Development* <https://www.cgdev.org/blog/policies-outcomes-and-populism-integration-migrants-sweden>.

[98] This disenchanted vision belongs to Wiesbrock, *supra* note 78 at 62.

5.2. Behavioural insights as a means to foster migrants' integration

This point of view is clearly supported by recent studies concerning the possibility to apply behavioural insights to foster migrants' integration, as an alternative and cost-efficient solution to solve the shortcomings shown by the existing integration mechanisms, which resulted in several newcomers that, after their arrival at the beginning of the 2015-2016 immigration crisis, are still struggling to be included (economically, socially, emotively, etc.) in the host society.[99] The central idea, thus, is to nudge individuals (first of all, migrants, but also citizens) towards positive conducts supporting social cohesion, without actually forcing them and threatening them with sanctions. These new solutions would involve, for example, the reorganization of public services, in order to make them more newcomers-friendly (e.g., sending a cordial email to remind migrants the importance of participating in language courses, highlighting how it would strengthen their membership in the local community)[100] and capable to facilitate opportunities for constructive contacts between nationals and foreigners (e.g., encouraging students of different background to interact more during lunch-time, using nudges such as free food to incentivize them to sit at "culturally-mixed table").[101] Moreover, these researches contain clear statements in favour of a voluntary and incentives-based integration approach. Thus, for example, mandatory integration obligations concerning the inclusion in the work market, featuring sanctions in case of protracted unemployment, are clearly criticized as possible sources of additional stress for migrants – already in a delicate position considered their effort to adapt to a new reality – responsible for generating sub-optimal decisions. These policies could push migrants to accept unconditionally the first job offered to them, even if it is a low-income employment and inferior to their qualifications, just to avoid the threatened sanctions (especially if they affect the possibility for migrants to legally remain in the host country).[102] The risk, then, is to force newcomers into a condition of marginality and trapping them in a circle of poverty, generating an unsatisfactory solution both for the individual and for the host society, which sees in this way sacrificed the (economic) value of its new members.[103] Vocational training and further services directed to help the newcomers in planning their job-seeking activities, instead, could be substantial nudges towards more rational choices, releasing newcomers from unnecessary stress and promoting a more successful integration.[104]

Other incentives could come from granting adult migrants participating in integration programs with the reduction or elimination of their children's tuition fees, whose possible effectiveness is supported by the particularly strong educational aspiration shown by immigrants families for their new generations.[105] Finally, an incentive toward participation in integration programs could come from remunerating the fulfilment of integration obligations with the reduction of the requirements needed for obtaining citizenship (a simple example is given by the waiver of the cost related to the citizenship

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[99] See Meghan Benton & Alexandra Embiricos, *Doing more with less. A new toolkit for integration policies* (Brussels: Migration Policy Institute Europe, 2019); Nora Grote, Tim Klausmann & Mario Scharfbillig, "Preference for Identification in the Field - Nudging Refugees' Integration Effort" (11 March 2019) Gutenberg School of Management and Economics & Research Unit "Interdisciplinary Public Policy" Discussion Paper Series - Discussion Paper n. 1905; Meghan Benton, Antonio Silva & Will Sommerville, *Applying Behavioural Insights to Support Immigrant Integration and Social Cohesion* (Brussels: Migration Policy Institute Europe, 2018).

[100] See the experiment carried out by Grote, Klausmann & Scharfbillig, *supra* note 99.

[101] See Benton & Embiricos, *supra* note 99 at 9.

[102] See Benton, Silva & Sommerville, *supra* note 99 at 14.

[103] On the positive effects on the host country economy of high-income migrants, greater than those of low-income newcomers, see the conclusive section of this research.

[104] See Benton, Silva & Sommerville, *supra* note 99 at 14.

[105] *Ibid* at 19. See also Philip Kasinitz, John Mollenkopf & Mary Waters, *Inheriting the City: The Children of Immigrants Come of Age* (New York: Russel Sage Foundation, 2008).

application), strengthening the idea that citizenship is a step in the integration process, able to support it, and not necessarily its final goal.[106]

To conclude this subsection, it should be interesting to hypothesize some incentives that could have been granted for the subscription of the Italian integration agreement if it had been conceived as a voluntary but effective tool of inclusion and not just as a mandatory instrument of migrants' selection end exclusion. Even leaving aside the wide range of "materials" nudges (e.g., reimbursement of the transportation and childcare costs related to the participation in language courses; reduction of children's tuition fees, etc.), appealing considerations can be done about the simplification of the requirements needed for obtaining the citizenship or the permanent resident status. Thus, looking at the EU-long term residence permit, the subscription of the agreement, which can include integration obligations concerning job placement and housing, could be rewarded with the exemption from proving the availability of a minimum income and adequate accommodation, currently required by the Italian legislation for the issue of this type of permit.[107] Another incentive could be the waiver of the costs related to the application (nowadays corresponding to € 130,46). Both these solutions would be aligned with an idea of integration agreement as a means to guide the migrants along their path of integration and stabilization, of which the acquisition of permanent residence is a central stage. Similar incentives could be introduced also in relation to citizenship, with the possibility of a substantial addition, highly provocative considering the current status of the debate on citizenship recognition in Italy.[108] Since the duration of the legal residency required to obtain this status is not bindingly disciplined by the European legislator, as it happens for the EU-long term resident status,[109] in this case it would also be possible to grant a reduction of this term (currently corresponding to ten years)[110] as a reward for the efforts expressed by the participation in the integration agreement, also making naturalization less of a distant mirage and more of a concrete stage to be reached in the integration process.[111]

Other incentives could come from the simplification of the requirements for family reunification. Also regarding this matter, the Italian legislator has adopted a strict interpretation of the European law, making mandatory all the optional requirements contained in the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (adequate accommodation, sickness insurance and stable and regular income).[112] Thus, the subscription of the integration agreement

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[106] See Benton, Silva & Sommerville, *supra* note 99 at 23.

[107] See art. 9, section 1 TUI. About the feasibility of this proposal, similar exemptions are nowadays provided to holders of international protection; see art. 9, section 1-*ter*, TUI.

[108] About the obstacles encountered by the proposals to simplify the requirements for access to the Italian citizenship, see, most recently, Gianluca Bascherini, "Brevi considerazioni storico-comparative su cittadinanza, 'ius sanguinis' e 'ius soli' nella vicenda italiana" [Brief historical-comparative considerations on citizenship, 'ius sanguinis' and 'ius soli' in the Italian experience] (2019) 1 Dir. umani e dir. internaz. 53.

[109] See art. 4, section 1, EC, *Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country national who are long-term residents*, [2004] OJ, L 16/44: "Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application".

[110] See art. 9 Law 5 February 1992, n. 91.

[111] The opportunity to combine the introduction of integration obligations with a shortening of the years of residence required to obtain the citizenship had already been perceived by the Italian legislator. Indeed, according to the original proposal (which was not subsequently completed), the introduction of the Charter of Values of Citizenship and Integration should have been accompanied by a reduction of the period of residence required for the foreigners' naturalization. See Repubblica, "Cinque anni per la cittadinanza italiana. Sì del Governo al disegno di legge di Amato" [Five years to obtain the citizenship. The Government agrees with the bill of the Minister of Interior Giuliano Amato] online: *Repubblica* <https://www.repubblica.it/2006/07/sezioni/politica/cittadinanza-nuove-norme/approvato-ddl/approvato-ddl.html>.

[112] See art. 7, EC, *Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification*, [2003] OJ, L 251/12. See also art. 29 TUI.

could be rewarded with the exemption from some of these conditions,[113] facilitating the reunification and, implicitly, fully recognizing the role of the family in the integration process.[114]

6. Conclusions. The costs and the benefits of integration

Summarizing the contents of the previous pages, what we are here suggesting is an idea of an integration process where migrants' obligations are coped with (and preceded by) adequate rights, and instead of punishing the failure to integrate, migrants' inclusion is actively supported and incentivized by the host society.

We are naturally conscious of the ambitious (provocative and maybe utopian) nature of these suggestions, which entails not only the need to abandon established securitarian mentalities, but also the necessity to invest in migration management and the integration of foreigners. Granting equality in access to the welfare system, implementing positive interventions to foster integration and, first of all, organizing an administrative apparatus capable of turning this system into reality is not a cost-free operation. But the migration phenomenon cannot be managed without investment,[115] whether we decide to seal borders and repatriate all migrants or integrate them effectively into our societies. Therefore, the last words of this essay are aimed at disproving some false myths (unfortunately still widespread) about the anti-economic nature of proactive management of the migration phenomenon.

Immigration produces positive effects for the receiving countries, especially for their economies, which are increasingly dependent on foreign workers.[116] This is true for high-waged migrants, who generally arrive in the host country as a result of a job offer, receive higher wages and pay more taxes, and participate in the scientific and technological development of the nation.[117] But this is true also for low-waged migrants, who often get employed in the so-called "3D jobs"[118] – "dirty, dangerous and demeaning". On the one hand, these 3D jobs are less and less attractive for the native population which is incentivized to work in medium and high-waged occupations, taking advantage of their knowledge of the local language and of their qualifications recognized in the national territory. On the other hand, the employers of these 3D jobs are allowed to offer low salaries and poor labour conditions (in this way lowering the labour cost) on the idea that only migrants – often with precarious immigration status – will apply. In other words, these employers are allowed to exploit migrants' need for a job to legally remain in the host country and to collect money not only for their daily life but also

[113] As regards the feasibility of this proposal, similar exemptions are nowadays provided to holders of international protection; see art. 29-*bis* TUI.

[114] The positive effects of family reunification for newcomer's integration, supporting the sense of stability of their residence and their sense of belonging to the local community, are explicitly admitted by the National Plan for the Integration of humanitarian protection holders; see Ministero dell'Interno, *Piano nazionale d'integrazione dei titolari di protezione internazionale* [National Plan for the Integration of humanitarian protection holders] (2017) at 24 online: *Ministero dell'Interno* <https://www.interno.gov.it/sites/default/files/piano-nazionale-integrazione.pdf>.

[115] See Mario Savino, "Il diritto dell'immigrazione: quattro sfide" [Immigration law: four challenges] (2019) 2 Riv. Trim. Dir. Pubbl. 381.

[116] On this topic, see Neeraj Kaushal, *supra* note 63; World Bank Group, *Moving for Prosperity* (Washington DC: World Bank, 2018); Gordon H Hanson, "Immigration and Economic Growth" (2012) 32:1 Cato J 25; Philippe Legrain, *Immigrants: Your Country Needs Them* (Princeton: Princeton University Press, 2007). Particularly interesting is the contribution of Felix S Cohen, "The Social and Economic Consequences of Exclusionary Immigration Laws" (1939) 2:3 National Lyers Guild Q 171, which is relevant not only because it clearly describes the benefits of immigration, but also because it demonstrates the tenacity of the prejudices characterizing this phenomenon, which are still the same after 80 years from the publication of this essay.

[117] See World Bank Group, *supra* note 116 at 33 and Hanson, *supra* note 116 at 26.

[118] See Kaushal, *supra* note 63 at 47.

for their families in their nations of origins, as well as take advantage of their particular position of weakness, being them usually not unionized and refrained from addressing the public authorities for fear of being detected, detained and deported. In any case, although low-waged migrants earn on average less than national workers, and so they pay less tax, they support the host country's economy not only doing (for a cheap salary) essential 3D job (e.g., from caregiving to agricultural and construction work), but also in numerous indirect ways. For example, they are additional consumers, but they also relieve nationals – especially women – from activities (nursing, caregiving, housekeeping services, etc.) that would have prevented them from entering the job market (and, thus, producing additional wealth).[119]

On a broader scale, even without recalling the most drastic theories about a world without borders,[120] the beneficial effects of the migration phenomenon on the host country has been generally evaluated under three perspectives. First, introducing young individuals in the society, immigration has a positive demographic/labour supply effects on the receiving country's economy, limiting the ageing trend of the western societies and supporting the capital productivity by increasing the size of their working-age population.[121]

Second, the effects of immigration on economic opportunities of the national population can be considered positive, even if studies are not always consistent and the results vary in a long-term vs. short-term perspective, as well as in a national vs. local one. Indeed, the arrival of immigrants may lead to an increase in labour supply, which could cause a decrease in salaries for national workers with skills similar to those of the newcomers. However, studies showed that this effect could occur only in the areas of the nation with higher rates of immigration. The negative effect, indeed, is often balanced by the choice of national workers to move to other areas of the country, less affected by external immigration. Moreover, newcomers can create opportunities also for national workers in direct competition with them: although having similar skills, local workers have a better knowledge of the national language, facilitating them in the selection for management positions of the (immigrant) workforce. In addition, it cannot be ignored that newcomers generally migrate towards areas characterized by a high demand for labour, filling the lack of supply of local workers and, therefore, limiting the negative consequences of increased labour supply on wages' level. Then, if the arrival of foreign workers might have negative effects on salaries in the areas with higher rates of immigration, the increased availability of workers would, in any case, generate a reduction of labour costs, lowering product prices and increasing consumer purchasing power on a national level. Finally, migrants become consumers themselves, producing indirect positive effects for domestic companies. All these elements generate a positive result on a long-term and national scale.[122]

Third, researchers have in most cases agreed that immigration produces a limited but positive fiscal effect. On average, the impact of newcomers on welfare systems is lower than the amount of tax they pay. On the one hand, several migrants already possess the knowledge and the skills to become part of the working population, thanks to the education received in their nations of origin, which can be exploited for free by the host country, without additional educational costs. Moreover, young immigrants contribute with their tax to social security, which benefits the older local population, without drawing

[119] See Kaushal, *supra* note 63 at 47 and Hanson, *supra* note 116 at 27. See also Cemal Karakas, *Economic Challenges and Prospects of the Refugee Influx* (European Parliamentary Research Services, 2015) at 6 online: *EuropeanParliament*<https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572809/EPRS_BRI(2015)572809_EN.pdf>.

[120] See Michael Clemens "Economics and Emigration: Trillion-Dollar Bills on the Sidewalk?" (2011) 3:25 J Econ Perspect 83. For a pleasant representation of this theory, see also the graphic novel by Brian Caplan & Zach Weinersmith, *Open Borders: The Science and Ethics of Immigration* (New York: First Second, 2019).

[121] See Kaushal, *supra* note 63 at 116 and Karakas, *supra* note 119 at 4.

[122] On this aspect, see Kaushal, *supra* note 63 at 118; World Bank Group, *supra* note 116 at 15; Hanson, *supra* note 116 at 27.

any advantage until they retire, many years after their arrival (if they stay in the country that long).[123] On the other hand, the broader is the access to social services recognized to migrants (which means that they enjoy similar rights to citizens), the higher is their impact on the national welfare. However, the studies on fiscal effect traditionally consider only the direct positive consequences of migration (tax paid), and not the indirect ones (higher tax paid by nationals who benefit from immigration; e.g., individuals who can work since being relieved from housekeeping or care-giving activities). Furthermore, the impact of migrants on certain services (school and health care, for example) is often calculated as a marginal cost, whereas it should be evaluated as a fixed cost, which would result in a more limited negative effect on the national resources.[124]

Thus, if the economists generally agree to a positive effect of migration on the host country, they also agree to the fact that a more efficient integration would enhance its beneficial effects. Inclusion, sense of belonging and stability would increase migrants' proficiency and productivity in their occupation, would allow them to get better-paid jobs and would support them in their decision to settle on the national territory, ensuring the full reimbursement of public integration costs in the mid to long-term. Inclusion would also support them in the creation of new families which would perpetuate the positive effects of migration (e.g., further limiting the ageing of the population).[125]

Similar results have been produced by research on the Italian system, where 2.4 million migrant workers participate in the production of 8.9% of the GDP (130 billion EUR), contributing to curbing the strong ageing of the population.[126] Also in this context, integration costs have been evaluated as a fruitful investment in the long-term. According to an interesting research, if the expenditure related to inclusion are kept on the current level, they would not produce a positive economic effect in the long-term, which instead would happen in case of implementation of more intense inclusive policies. Not only the more we invest the more we will gain, but intensifying the investment is the only way to make integration

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[123] On this topic, see Kaushal, *supra* note 63 at 128 and Hanson, *supra* note 116 at 29. See also OECD, *International Migration Outlook* (OECD Publishing, 2013) online: <https://www.oecd-ilibrary.org/docserver/migr_outlook-2013-en.pdf?expires=1590267574&id=id&accname=ocid195496&checksum=C5DA7D1F054B21BA880F5B6415F3E75F>. A negative but small impact of migration, instead, results from Rainer Münz et al, *The Costs and Benefits of European Immigration* (Hamburg: Hamburg Institute of International Economics, 2006) online: <http://www.hwwi.org/fileadmin/hwwi/Publikationen/Research/Report/HWWI_Policy_Report_Nr__3.pdf>.

[124] For extreme simplification, dividing the annual cost of a service by the number of beneficiaries and multiplying the result by the number of migrants who have access to it does not always give an outcome that actually corresponds to the cost of immigration in that sector. This happens, for example, in relation to the costs of an immigrant pupil joining an already existing and already funded class, whose enrolment in the educational services, therefore, may not generate significant additional expenses. On this topic, see Andrea Stuppini, "La spesa pubblica per l'immigrazione" [The public cost of immigration] in Fondazione Leone Moressa, *Rapporto annuale sull'economia dell'immigrazione. Edizione 2016* [Annual report on the economy of immigration. 2016 Edition] (Bologna: il Mulino, 2016) 145 at 147.

[125] See World Bank Group, *supra* note 116 at 24 and Alexander M Danzer, "Economic Benefits of Facilitating the Integration of Immigrants," (2012) 4:9 ifo DICE Report, ifo Institute - Leibniz Institute for Economic Research at the University of Munich 14. See also Elsa Fornero & Flavia Coda Moscarola, "Immigrazione: quale contributo alla sostenibilità del sistema previdenziale?" [Immigration: what contribution to the sustainability of the social security system?] in Massimo Livi Bacci, *L'incidenza economica dell'immigrazione* [The economic impact of immigration] (Torino: Giappichelli, 2005).

[126] See Francesco Dandolo, "Una rassegna sui temi dell'immigrazione in Italia" [A review on immigration issues in Italy] (2018) 1-2 Rivista economica del Mezzogiorno 167; Centro Studi Confindustria, *Immigrati: da emergenza a opportunità* [Immigrants: from emergency to opportunity] (Roma: SIPI, 2016); Fondazione Leone Moressa, *Rapporto annuale sull'economia dell'immigrazione. Edizione 2016* [Annual report on the economy of immigration. 2016 Edition] (Bologna: il Mulino, 2016); Éupolis Lombardia, *Il bilancio fiscale dell'immigrazione* [The fiscal effect of immigration] (Milano: Éupolis, 2016); Massimo Livi Bacci, "L'Europa ha bisogno di un'immigrazione di massa? [Does Europe need a mass immigration?] (2016) 6 il Mulino 921; Stefania Gabriele, "Dare e avere: migrazioni, bilancio pubblico e sostenibilità" [Giving and taking: migration, public budget and sustainability] in Laura Ronchetti, eds, *I diritti di cittadinanza dei migranti. Il ruolo delle regioni* [The citizenship rights of migrants. The role of the regions] (Milano: Giuffrè Editore, 2012) 302.

efforts productive.[127] Thus, an appealing proposal has been formulated.[128] Considering the reduction of arrivals on the Italian coast in the last two years, after the peak of the 2014-2017 period, and the consequent savings in terms of integration costs for the system,[129] a rational choice would be not to divert these additional resources to other areas, but to invest them in the development of an effective newcomers' integration mechanism. This would be a concrete step toward abandoning the emergency approach that currently characterizes the management of the migration phenomenon, starting to consider it as a structural feature of the system, in relation to which investments are not only necessary to ensure the respect for newcomers' human rights, but also advisable to take full advantage of the essential resource represented by migrants.

To conclude this study, a few more words must be spent about the idea here adopted concerning the relationship between law, legal research and social change. As said many times, these last years have been a period of spread for securitarian and assimilationist approaches toward migration which derive their strength from a series of prejudices – such as the fact that immigration is exclusively a cause of waste of public resources and of diversion of job opportunities from the citizens – that are actually unfair, illogical and uneconomic. In this context, however, the choice of proposing a radically different model, as done in the previous pages, could be accused of being simply abstract and unfeasible. In the writer's opinion, these assessments are different from being a criticism on the utility of the current work. Indeed, legal research must play its role of denouncing and criticizing this biased *status quo*, giving birth to narratives that can create consciousness and support a process aimed at destructing unfounded *clichés*.[130] Using the words of Foucault, the duty of scientific research is to unravel the irrationality behind the existing prejudices, showing that "things are not so obvious as people believe, making it so that what is taken for granted is no longer taken for granted", since "as soon as people begin to have trouble to thinking things the way they have been thought, transformation [toward a more rational and fair *status quo*] becomes at the same time very urgent, very difficult and entirely possible".[131] In short, showing the feasibility of a radically different model of integration becomes a means for bringing to light the flawed nature of current policies. It becomes a way to take the first but fundamental step for abandoning these policies and for walking a path toward a pluralistic reality, where the "logics of fear and hate" are the only real strangers to be kept out of our society.

[127] D'Artis Kancs & Patrizio Lecca, "Long-term Social, Economic and Fiscal Effects of Immigration into the EU: The Role of the Integration Policy (2017) 4 JRC Working Papers in Economics and Finance.

[128] See Matteo Villa, Valeria Emmi & Elena Corradi, *Migranti: la sfida dell'integrazione* [Migrants: the challenge of integration] (Milano: ISPI, 2018).

[129] Quantified in 1 billion EUR for the period 2017-2018 and 1.9 billion EUR for the period 2018-2019. See *ibid*, at 24.

[130] About this way of thinking, see Steve Bachmann, "Lawyers, Law, and Social Change - Update Year 2010" (2010) 34:3 NYU Rev L & Soc Change 499.

[131] Michel Foucault, "So is it important to think?" in James D Faubion, ed, Power (New York: New Press, 2000) 160.