boundaries of the nation-state – I contend that there is no reason why here, *prima face*, the dynamics of Europeanization should be different from other fields such as competition or environmental policy. Hence, in order to explain why some domestic issues, such as free movement of persons, have been impacted more strongly by European integration than others, such as asylum or citizenship, I employ a general typology that should be applicable to other fields as well.

Empirically, this paper assesses the extent and direction of change in domestic immigration policies under pressure from Europe, on the basis of findings from the Netherlands. In order to pin down the broader issue of immigration to some concrete aspects of domestic politics, I focus in particular on the issues of *free movement of persons* (the entry and residence of aliens), *asylum* (the protection of political and humanitarian refugees) and *citizenship* (the acquisition and loss of nationality). I look not only for technical adjustment to European requirements, but foremost for more substantive change in these core areas of national politics, and analyze some politically salient issues under scrutiny in Dutch parliament in the 1990s.

I start this paper by outlining a general typology of European integration based on two dimensions of negative vs. positive integration and strong vs. weak integration. Then I hypothesize how in different ways European integration might be expected to affect domestic immigration policies. Section 4 subsequently elaborates on some methodological issues. The second part of this paper then deals with free movement of persons, asylum and citizenship and presents some empirical evidence from the case of the Netherlands in the 1990s. I conclude by elaborating briefly on the more general implications of these (limited) manifestations of Europeanization for the study of European (immigration) politics.

2 A Typology of European Integration

Scholars of European integration increasingly employ the concept of Europeanization to assess the European sources of domestic politics. A new research agenda has evolved focusing on changes in national political systems that can be attributed to European integration (e.g. Ladrech 1994; Börzel 1999; Mair 2000; Green Cowles et al 2001; Vink 2001; De Rooij, 2002; for more reflective contributions, see Hix and Goetz 2000; Radaelli 2000; Börzel and Risse 2000; Risse et al 2001; Knill and Lehmkuhl 2002).

The concept of Europeanization has undoubtedly enriched the study of European integration by pointing out some previously under-researched questions, particularly related to the implementation of EU directives. However, approaching Europeanization exclusively from a 'top-down rather than bottom-up perspective' may in the end fail to recognize the more complex two-way causality of European integration (Börzel, 1999: 574; but see Börzel and Risse, 2000: 1; Börzel, 2002: 195). After all, even when EU policies can admittedly strongly affect domestic policies, these policies do not come out of the blue, but are the result – among others – of political action by domestic actors who shift domestic issues to the European level (cf. Putnam, 1988).

In order to analyze the range of (immigration) policies that may or may not get Europeanized, we need to understand when and how national politics change under pressure from Europe. Hence a closer look is required at the dynamics of the European integration process. In this paper, drawing on Scharpf (1996, 1999) and Knill and Lehmkuhl (2002), I develop a typology of European integration based on two basic dimensions of negative vs. positive integration and strong vs. weak integration.

One of the basic distinctions in European integration theory is that between 'negative integration' and 'positive integration', which points to the observation that European integration involves both market-making and market-correcting policies (Scharpf, 1996, 1999). Negative integration follows the rationale of the common market and has a deregulatory or 'market-making' nature (Scharpf, 1996: 16-18; 1999: 50-71). By intervening against national barriers to the free movement of goods, persons, capital and services, negative integration greatly reduces the range of national policy choices and represents a fundamental loss of political control over the capitalist economy (Scharpf, 1999: 70-71). This loss of national regulatory power is crucial in avoiding market-distorting state interventions, such as financial support for unprofitable national industry or discriminatory measures against foreign capital and labor. Negative integration demands that domestic regulations comply with Community law. It is generally quite effective in achieving liberalization in such fields as competition policy by removing tariffs and other barriers to trade, often in tandem with supranational agencies such as the European Commission and the European Court of Justice (ECJ). The Commission has important delegated powers, sends letters of warning to the member states for failure of compliance, and ultimately takes a case to the ECJ when obstruction of the internal market persists (Pollack, 1997). Individual or corporate litigants, possibly supported by public interest pressure groups, also play an important part in enforcing the common market. They are often at the basis of starting procedures by making a complaint to the Commission, or by starting legal procedures through national courts (Garett, 1992; Mattli and Slaughter, 1998: 186-206). The willingness of national courts to invoke Community law, or to refer cases to the ECJ for preliminary rulings under Article 234 (ex. 177) EC Treaty, is another factor contributing to Europeanization. The direct institutional impact of negative integration is however rather limited, in the sense that it does not so much specify how member state governments should run their country, but rather tells them what they cannot do.

Positive integration, on the contrary, is an attempt to regain some power for the political vis-à-vis society and the market through re-regulation at the European level. The unwanted side-effects from liberalization processes, in particular from the free movement of goods, persons, capital and services, demand a certain level of re-regulation at the European level. Positive integration is hence 'market-shaping' because it tries to intervene in the economy and involves a broader institutional adaptation at the domestic level to a specific European model (Scharpf, 1999: 45).(2) It takes place when European directives, regulations or soft instruments like the open method of coordination (OMC) prescribe or encourage a new institutional model at the domestic level to regulate in such areas as consumer protection, environmental policy, or safety at work. These different instruments may be expected, at least *de jure*, to have a wide-ranging impact on domestic politics. For example, the transposition of a directive in domestic legislation (Article 249 EC Treaty) requires different efforts from member states compared to ratification and implementation of a convention under the JHA pillar of the Treaty on European Union (Article 34 TEU). It is important to understand that positive integration is generally much less straightforward then negative integration, and the danger of inefficient policies due to unanimity decision-making ('joint-decision traps') is much more acute (Scharpf, 1988). Moreover, the domestic implementation of positive European policies requires a much more coordinated effort, depending of course on the extent to which there is a 'fit' or 'misfit' between European and domestic policies (Risse *et al*, 2001: 6-9).

Figure I: A Typology of European Integration

	Negative (Deregulatory)	**Positive** (Regulatory)
Strong (binding)	*e.g. Competition Policy*	*e.g. Environmental Policy*
Weak (non-binding)	*e.g. Railways Policy*	*e.g. Higher Education Policy*

Others have added a third, ideational or 'framing', type of European integration that tries to set norms in areas where 'the underlying conflicts of interest between the Member States only allows it to adopt policies which are vague and more or less symbolic' (Knill and Lehmkuhl, 2002: 259; cf. Lavenex, 2001). In my view, they rightfully point to the idea that Europeanization is not necessarily restricted to complying with EU regulations or transposing and implementing EU directives. Albeit surely less powerful, as Knill and Lehmkuhl (2002: 258) are keen to admit, Europeanization could proceed equally well through the framing of domestic beliefs and expectations. Europeanization then becomes manifest in transformed beliefs of domestic actors or in reconfigured domestic discourses. In contrast with Knill and Lehmkuhl, however, I would not denote this as a third distinct mechanism of Europeanization next to negative and positive integration, but rather view it as a second dimension of strong versus weak European policies. Their illustration of framing integration – European railways policies – is an excellent example of 'weak' negative integration that, it seems to me, can nonetheless have a significant impact (Knill and Lehmkuhl, 2002: 272-275; see also Risse, 1999). On the other hand, something like the non-binding Bologna Declaration on the European Space for Higher Education,(3) which seems to be an important inspiration for transformation of European higher education systems, could be a good example of 'weak' positive integration with a substantial domestic impact (cf. Trondal, 2002: 11-12).

These two dimensions of positive vs. negative integration and strong vs. weak integration analytically lead to four different types of European integration (see Figure 1).(4) Before making a link to European immigration policies, the reader should note that, obviously, this is an analytical distinction and empirically we might see that the line between strong and weak integration is not a clear-cut one as it is often unclear to what extent European provisions truly provide a binding constraint on domestic policies. Also, most European policy fields are probably characterized by a mixture of negative and positive integration (cf. Knill and Lehmkuhl, 2002: 257). The case of European immigration policies illustrates these mixed Europeanization dynamics. Focusing on the dominant patterns of both bottom-up and top-down processes of European integration should provide a better understanding of the range of Europeanization in that field.

3 European Immigration Policies

What are the dynamics of Europeanization in the field of immigration policy? Intuitively we would perhaps place immigration policy in the bottom- right corner of Figure 1, and indeed we will see that there are good reasons to treat immigration as a case of weak positive integration. Yet, as in most policy areas, the dynamics are more complex and in this section I introduce four policy areas related to immigration that can be linked to the four ideal types of

European integration (see Figure 2). I also formulate some propositions on how these developments might be expected to affect domestic politics. Looking not only for the technical adjustment to European requirements, but also for substantive change at the domestic level, I phrase these propositions in terms of the impact on inclusion/exclusion dilemmas. What I do is analyze whether domestic immigration, asylum, citizenship and integration policies are becoming more inclusive, more exclusive, or possibly experience a differential impact, due to European integration.

Negative integration in the field of immigration policy is essentially driven by the *free movement of persons*, one of the Community's four fundamental freedoms. To realize the internal market, member states are prohibited to discriminate between their own citizens and Community nationals 'as regards employment, remuneration and other conditions of work and employment' (Article 39(2) EC Treaty). The area without internal frontiers ultimately entails the abolition of internal border control as such. Yet negative integration in practice is more about equal treatment and the abolition of functional borders, and free movement of persons is enforced by fighting against discriminatory domestic regulations. Since the 1960s this notion of equal treatment has been shaped by secondary Community legislation, gradually extending its scope from workers to citizens. Third-country nationals have mostly remained outside the scope of inclusive EC law (with the notable exception of citizens from associated countries), and generally do not profit from these anti-discriminatory measures. Europeanization might therefore be expected to bring about a somewhat differential impact on domestic policy, to the extent that Union citizens are treated more equally to national citizens, while third-country nationals remain (or even become more) excluded.

Figure 2: Four Types of European Immigration Policies

	Negative	**Positive**
Strong	*Free Movement of Persons* (e.g. equal treatment)	*Asylum Policy* (e.g. minimum standards on reception and procedures)
Weak	*Union Citizenship* (e.g. acquisition and loss of nationality)	*Minority Integration* (e.g. dual nationality, anti-discrimination)

Asylum policy is a policy field where 'flanking measures' are necessary to correct unwanted side-effects of negative integration, and thus a typical case of positive integration. Governments fear that certain categories of peoples, such as criminals and asylumseekers, could well profit from new liberties brought about by the free movement of persons and undermine national security, escape prosecution or exploit social welfare. Member states are therefore not willing to surrender their regulatory powers regarding the circulation of individuals, without re-regulation at the European level. Hence there are great pressures for positive integration, as Geddes (2000: 43) also notes: 'Free movement of persons chimes with the EU's fundamental market-making purposes, but has brought with it immigration and asylum policy cooperation and limited integration.' The most important Community instruments with regard to asylum policy are the 1990 Schengen and Dublin Conventions. Other instruments of the asylum *acquis* include two Council resolutions from 1992; one denoting applications from asylumseekers from 'safe countries of origin' as 'manifestly unfounded'; the other limiting the access to asylum procedures for applicants who traveled

through 'safe third countries' (Lavenex, 2001: 858-860). For obvious reasons, these policies may be expected to have an exclusionary impact in that territorial admission, access to procedures, as well as the possibility to be recognized as refugee are restricted for asylumseekers.

Citizenship policy is a field par excellence where only weak European integration might be expected. Although states may feel the need to coordinate their policies in order to avoid some unwanted phenomena, such as multiple nationality and statelessness, the acquisition and loss of citizenship is something that goes to the heart of national self-determination (Brubaker, 1992). Hence there is no strong (negative or positive) EU citizenship policy because member states have always opposed any Community action in this respect and in the foreseeable future will remain doing so. Yet due to the spillover from the free movement of persons, a weak negative integration might be expected because – similar to the concept of 'worker' – the definition of who is a 'citizen' is crucial for the enjoyment of European rights. The Council of Europe (CE) in this regard exerts a more 'positive' pressure on domestic citizenship policies, albeit in a weak or indirect way (Checkel, 2001). The CE has dealt specifically with issues relating to citizenship since the 1960s, especially with a view to containing the (undesirable) phenomenon of dual nationality. More recently, however, the CE has taken a positive, or at least neutral, stance towards dual nationality. The norm has shifted towards trying to facilitate the societal integration of migrants through allowing them to naturalize without giving up their former nationality. Domestic citizenship policy may be expected to change in a more inclusive direction. Other examples, perhaps more generally of minority integration or migrant inclusion, are anti-discrimination policies such as the Commission's 1998 Action Plan Against Racism (CEC, 1998), or the 2000 anti-discrimination directive.(5)

4 The Case of the Netherlands

In this paper I test these propositions on the Europeanization of domestic immigration policies against empirical evidence from the Netherlands. I focus on Dutch legislation as well as parliamentary debates in the 1990s and analyze how relevant European requirements found their way into domestic legislation in a more or less technical manner. I focus on the parliamentary discourse, and in particular on the 'domestic' and 'European' arguments brought into debates between government and parliament on the issues under scrutiny. My research methods consist of analyzing legislative texts and judicial rulings, both European and national, studying parliamentary proceedings, and interviewing key domestic actors.

There are two reasons why parliamentary politics is at the center of my analysis. First, the actual output in terms of domestic public policy is explained most directly by looking at the parliamentary debate, in that it is, after all, the national parliament that has to approve new laws. Looking at the arguments used by national MPs in these debates allows me to measure the evidence for Europeanization against the evidence for alternative, domestic considerations. Second, I assume (perhaps naively) that the parliamentary debate is in a way a residual of societal debates, in that MPs have a clear electoral interest in voicing the concerns of their voters. Thus, by focusing on parliamentary politics I should be able to pin down domestic change and resilience in these specific issues, and also to infer conclusions for a wider national context.

A final aspect of my research strategy that needs clarification is my *case selection*. I argue that the Netherlands is a most likely case for European integration to have an impact on domestic immigration policies, which makes it worthwhile bringing to the attention of more generalized discussions having in mind that Europeanization is still in its infancy in this policy field. This means that if European integration should be expected to impact on domestic free

movement, asylum or citizenship policies, it should at least be visible in the Netherlands. And, conversely, should there be only limited Europeanization in the Netherlands, then it is not likely to be more substantial in many other countries. There are three reasons why the Netherlands can be considered a most likely case.

First of all, being a small country with specific commercial and security interests, the Netherlands has always been highly involved in international affairs. It has been one of the original six founding countries of the European Coal and Steel Community, and Dutch governments have always been strong proponents of European integration (Soetendorp and Hanf, 1998: 36). Secondly, monism has since long characterized the Dutch legal system. As international treaties ratified by national parliament do not need specific transformation to affect the rights of Dutch subjects, the constitutional setting in the Netherlands is optimal for Europeanization (Claes and De Witte, 1998: 171; cf. Kellerman, 1990: 117). Thirdly, besides being generally receptive to external (European) influences, the Netherlands has often taken a positive (or even pro-active) attitude towards Europeanization in the field of immigration policy. This is particularly the case for asylum policy, where Dutch governments have consistently tried to push for more European integration. The Netherlands have also supported the change towards a more permissive attitude on multiple nationality in the Council of Europe, and pushed forward the agenda of equal treatment as part of the completion of the internal market.

5 Negative Integration: Free Movement of Persons

5.1 The European Free Movement Acquis

The right for every citizen of the Union to move and reside freely within the territory of the Member States is a core element of Union citizenship (Article 18 (ex 8a) EC Treaty). This provision was inserted in the EC Treaty in November 1993 after the Treaty of Maastricht had been ratified by all Member States, but must primarily be seen as a catalogue of already existing rights. Intra-EU migration has been liberalized for a long time already. Community workers have enjoyed a right to free movement since the 1960's (see Guild, 1999; Staples, 1999). Free movement of persons can only be fully understood by looking at the relevant secondary Community legislation in force, which has been virtually unchanged since 1993.

The liberalized intra-EU migration regime goes back to the Treaty of Rome, but it was not before the adoption of Council Regulation 1612/68 that the freedom of movement for workers became firmly grounded in secondary Community law. According to this regulation:

1. Any national of a Member State, shall, irrespective of his place of residence, have the right to take up an activity as an employed person, and to pursue such activity, within the territory of another Member State in accordance with the provisions laid down by law, regulation or administrative action governing the employment of nationals of that State;

He shall, in particular, have the right to take up available employment in the territory of another Member State with the same priority as nationals of that State (Article 1).

One should note that, although this does not follow necessarily from the Treaty provisions, the workers' family was not forgotten. Workers have the right to be joined by their spouses and their descendants who are under the age of 21 or are dependants, as well as by dependent relatives in the ascending line, i.e. their parents (Article 10). With regard to domestic immigration control, Directive 68/360 is of great importance as it sets out rules expressing the right of residence. Community workers and their family members shall be

allowed to enter the territories of all Member States 'simply on production of a valid identity card or passport' (Article 3(1)). Member States are forbidden to demand entry visa or equivalent documents save from family members who are not nationals of a Member State (Article 3(2)). This right of residence remains open to Community workers and their family members after the worker concerned has ceased working, or died. Limitations to the right of residence are only justified on grounds of public policy, public security or public health (Directive 64/221).

The European free movement *acquis* gradually became more inclusive over the years by extending its scope *ratione personae* to service providers (Directive 73/148) and self-employed workers (Directive 75/34). After the battle against discriminatory national regulations was intensified with the adoption of the Single European Act in 1986 the scope of the free movement *acquis* expanded. In 1990 the Community broke with the tradition of protecting only economically actives, and granted a right of residence to *all* member state nationals and their dependants, provided that they are covered by a health insurance and have sufficient resources (Directive 90/364). In addition, pensioners and students were granted a similar right of residence (Directives 90/365 and 90/366). By virtue of the 1992 Agreement on the European Economic Area (EEA), which entered into force on 1 January 1994, the free movement rights were moreover acknowledged in a similar way to nationals from the European Free Trade Association (EFTA). This means that since 1994, the privileged category of 'Community nationals' besides Union citizens also includes non-Union citizens from Iceland, Norway and (since 1 May 1995) Liechtenstein.(6)

5.2 Dutch Compliance with Community Law

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

Due to the working of Community free movement provisions, the traditional subject of immigration law – the alien – was differentiated into Community nationals and third-country nationals. A down-to-earth but nevertheless striking consequence of such a differentiation came to the fore in 1994, when the Dutch Aliens Regulation was revised in order to implement the provision of Community law that the costs of issuing a residence permit for Community nationals may not be higher than the costs for an identity card for nationals.(7) With the introduction at 1 January 1995 of an identity card for Dutch nationals (which was at NLG 35 significantly cheaper than the traditional passport of around NLG 100), Community nationals could be asked to pay only NLG 35 for their residence permit, while third-country nationals would have to continue paying the much higher amount of NLG 125 for the same document.

The special status of EU/EEA-citizens would not be visible in the Aliens Act itself (the 1965 Act recognized only one category of aliens) before the so-called 'Linkage Act'

[Koppelingswet] of 26 March 1998. The Linkage Act was a clear manifestation of the evolving differential treatment of aliens due to European integration. This Act introduced the 'link-up principle' in Dutch immigration law in order to strengthen the link between the legal and, more importantly, illegal status of aliens on the one hand and social arrangements on the other. According to the motivation of the Act, the situation should be prevented where, by providing them with health insurance, education, etc., aliens who do not (yet) enjoy a legal status but nevertheless reside in the Netherlands are encouraged to continue their illegal residence, and may even appear to be lawfully present at Dutch territory.(8)

The Linkage Act introduced these restrictive measures to decrease the number of illegal residents in the Netherlands. At the same time, realizing the potential severity of these measures, the drafters of the Act acknowledged that the Aliens Act must be clear with regard to the category of people subject to the link-up principle. Most notably, those who enjoy the right of residence on the basis of Community law need to be exempted unambiguously from the restrictive regime because, contrary to third-country nationals, even when EU/EEA-citizens cannot present a valid residence permit they cannot be excluded from social arrangements. Moreover they can only be removed from Dutch territory on exceptional grounds of public policy, public health or public safety, but not because they lack a residence permit. As a consequence, the Linkage Act added the concept of Community national (*Gemeenschapsonderdaan*) to Article 1 of the Aliens Act, including both Union citizens and EEA-nationals, as well as their family members on grounds as defined in the EC Treaty. Community nationals do not need a residence permit in order to reside lawfully in the Netherlands (Article 1b).(9) This revision of the Aliens Act was implemented on 3 July 1998 by way of a modification of the Aliens Decision. Because it was now no longer appropriate to provide Community nationals with a traditional residence permit that explicitly *permits* aliens to reside in the Netherlands (a permission that Community nationals do not need), the right of residence for EU/EEA-citizens is evidenced since July 1998 either by a special residence document which is only declaratory by nature (the E-document), or by a special residence annotation in their passport (the so-called 'sticker') which is valid for three months only.(10)

The ECJ has often confirmed that a residence permit can only have a declaratory effect, also in cases against the Dutch government. 'The issue of such a permit does not create the rights guaranteed by Community law, and the lack of a permit cannot affect the exercise of those rights.'(11) A number of referrals for preliminary reference by the Dutch Study Finance Appeals Board underscore the accessibility of legal arenas in the Netherlands for Community nationals and, more importantly, a general willingness to invoke Community law in matters where the issue of equal treatment is at stake.

6 Positive Integration: Asylum

6.1 The European Asylum Acquis

Perhaps somewhat similar to the field of environmental policy, where frontrunners or 'pace-setters' equally attempt to upload their national policies to the European level (Börzel, 2002), European asylum cooperation is driven only by a minority of countries (in particular Germany, Sweden, the Netherlands). The establishment of a Common European Asylum System, a goal formulated by the European Council at its Tampere summit in 1999, has always been less attractive to so-called 'laggard countries' with traditionally less developed asylum systems. Also, because asylum policy is at the core of state sovereignty, delegating the authority to decide who is to be granted asylum, has been subject to serious reservations from 'EU-skeptic' countries such as Denmark and the U.K. throughout the 1990s (although the latter has become much more favorable towards a common European approach over the past few years). Precisely because of the underlying redistributive logic and national

sentiments, harmonization of European asylum policies is a highly contentious example of positive integration. In fact, asylum policy is not yet a fully-fledged example of 'strong' positive integration, in the sense that cooperation under the unanimity rule of the Maastricht Treaty has remained limited to lowest common denominator policies. The need for 'strong' outcomes is high, however, because European regulation in this field is a *sine qua non* for the completion of the common market, as the contemporary practices of policy competition and recurring border controls illustrate (see also *Wijsenbeek*, Case C-378/97).

The 1990 Dublin Convention is at the center of European asylum cooperation. The title of this 'Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities' is sufficiently revealing with respect to the content of the agreement: one state, and only one, should be responsible for the application for asylum by one asylumseeker. Asylumseekers are expected to lodge their application for asylum in the first member state they enter, e.g. when an asylumseeker enters the European continent through Italy, and then travels northwards to lodge his application for asylum in the Netherlands, the Dutch government is entitled to claim that Italy has the responsibility for this asylumseeker. When it cannot be proven, however, that a person has traveled through another member state before lodging his application in a second member state (because travel documents are not available), the first member state with which the application for asylum is lodged is responsible for examining it.(12)

European asylum cooperation was subsequently codified under the 1992 Treaty on European Union (TEU). Next to the EC framework, the TEU erected a so-called third pillar for all intergovernmental cooperation involving justice and home affairs (JHA). The most relevant instruments enacted under the third pillar on the issue of asylum are two 1992 Council resolutions, which were largely inspired by the German difficulties to cope with an ever growing stream of asylumseekers, and by now have seemingly found their way into most domestic asylum policies (Lavenex, 2001). These so-called 'London Resolutions' argued that domestic 'asylum policies should give no encouragement to the misuse of asylum procedures,' and substantially redefined the idea of refugee protection. When asylum-seekers travel through safe third countries – transit countries where they could have claimed asylum – they are excluded from the asylum procedure altogether (Bunyan, 1997, no. 26). And, when asylumseekers originate from countries in which there is generally no serious risk of persecution – safe countries of origin – their applications are considered 'manifestly unfounded' (Bunyan, 1997, nos. 27 and 28).

Anticipating the future, much depends on the question of how asylum policy develops under the 'Immigration Title' of the EC Treaty, as instituted by the Amsterdam Treaty and refined by the Nice Treaty. At the moment only those measures relating to the list of third countries for short-term visas and the technical aspects of a uniform visa format are to be decided by the Council on the basis of qualified majority voting (QMV), with only a consultative role for the EP. As it stands now, with the Treaty of Nice not yet entered into force, the co-decision procedure of Art. 251 EC Treaty will only be applied in 2004 to measures establishing the procedures and conditions for issuing visas and the rules on a European visa. All provisions on asylum – from the reception of asylumseekers to a common temporary protection status – are decided by way of the co-decision procedure 'provided that the Council has previously adopted [acting unanimously] Community legislation defining the common rules and basic principles governing this issue' (Article 67(5), second indent EC Treaty, as inserted by the Treaty of Nice). At the moment, a directive on minimum standards for giving temporary protection (2001/55/EC) is probably the most important recent development, and other directives (on procedures and reception) are being deliberated.(13)

6.2 Dutch Institutional Adaptation

The implementation of the Dublin Convention, the core instrument of European asylum policy, on the whole is a problematic issue (CEC, 2001). This is mostly due to the fact that only few asylumseekers carry valid identity cards (not more than 20 percent), which makes it very difficult to trace where they have entered the Dublin-area, or whether they have made previous applications in other countries. In an interview a Christian-Democratic MP (pro-Dublin) criticized the government because it would lay a Dublin-claim on only 4 percent of all applicants of which 'few would be granted.'(14) In another interview from the same period, however, a Green MP (anti-Dublin) criticized government policy for its harshness as there would be 'many Dublin-claims, of which more than 85 percent is granted.'(15) It may be clear that in this case the evaluation by the MPs of the effectiveness of the Dublin Convention depended strongly on their political backgrounds. In fact, both MPs were partly right. In the year 2000, the Netherlands made only 3408 Dublin-claims (on a total of more than 40 thousand applications) to other countries, but the great majority of these (2733) were granted. The Netherlands has been relatively successful in this respect, compared with other Dublin-countries. Yet, the fact that many successfully claimed applicants were still not handed over to other countries (mostly Germany) at the end of the year, underlines the generally accepted idea that the Dublin Convention is not very effective.(16)

The Netherlands also redefined its asylum policy in the mid-1990s by way of a 'Safe Countries of Origin Act' (1994) and a 'Safe Third Countries Act' (1995). Yet despite the fact that these policy changes clearly resonate the rationale from the two London Resolutions, the link between European and domestic policy is not straightforward here. In fact, after studying the explanatory notes and parliamentary proceedings from that period, it becomes clear that the Dutch (restrictive) policy shift was basically a reaction to similar changes in Germany, rather than the institutional adaptation to European policy. Both the Safe Countries of Origin Act and the Safe Third Countries Act explicitly, and almost exclusively, refer to the respective German terms of *sichere Herkunftsstaaten* and *sichere Drittstaaten*. This is surprising, first, given the fact that in general the Dutch attitude towards more European asylum cooperation has been very proactive. And, second, it is noteworthy to the extent that in the literature it is widely accepted that the London Resolutions, although not legally binding, have been very influential (cf. Lavenex, 2001; Joppke, 1998). For a better understanding of policy change in the Netherlands we need to look more closely at the domestic policy context.

The Dutch asylum policy context is generally very favorable towards Europeanization. The 1998 coalition agreement, for example, explicitly spelled out that 'the Netherlands will make a strong plea within the European Union for a good harmonization of European asylum and immigration policy' (Coalition Agreement, 1998). But also in 1994, and even as far back as in 1989, the coalition agreements – key political documents that formulate the general direction of government policy for the next four years – already mention the European dimension to Dutch asylum policy. And, more recently, the government again underlined that the new Aliens Act 'should be enacted in international context with a view to a harmonization in the near future (…) of European asylum and immigration policy.'(17)

The Netherlands have always sought after a strong Europeanization of asylum policy, basically in order to achieve a more proportional distribution of asylumseekers in Europe.(18) The Dutch government, for example, explicitly views the recently adopted Eurodac Regulation, which should increase the effectiveness of the Dublin Convention by using fingerprints, but also the European Refugee Fund (which has only recently been put out to tender), as 'first steps towards a more proportional distribution of responsibility for asylumseekers within the European Union'.(19) Besides the government, the legislature in the Netherlands is also well aware of the opportunities offered by the EU. There is widespread consensus in viewing asylum as a European problem asking for a European solution. The main factions in Parliament, with the notable exception of the smaller Green

Party, see a more equitable distribution of asylumseekers over EU member states (i.e. less asylumseekers in the Netherlands) as the important European opportunity.(20) Hence, the notion of 'burden-sharing' is the crucial element of the European opportunity structure of Dutch asylum policy (cf. Vink and Meijerink, 2002).

In the 1990s, the main receiving European states unilaterally implemented a number of deterrent measures in their asylum policies to reduce pressures on domestic asylum systems. With over four hundred thousand asylumseekers in 1992 alone, for example, Germany found itself faced with the necessity to water down the constitutionally safeguarded right (Joppke 1998, 129; see also Marshall 2000, 87-96). The fact that the 1992 London Resolutions could be used to legitimize the constitutional amendment, which was necessary to limit its generous postwar policy, was a crucial factor in the final success of the German 1992 asylum compromise (Joppke, 1998b: 128). In 1993 and 1994, in contrast with decreasing numbers in Germany, the number of asylumseekers in the Netherlands had increased significantly. Dutch MPs fearing 'asylum-tourism' explicitly demanded that Dutch policy would not deviate from German policy.(21) An explanatory note to the Safe Third Countries Act is rather unambiguous: 'The most important intention of the introduction of a regulation concerning safe third countries was to improve the connection with the German asylum policy, in order to end in this way the phenomenon of 'asylum-shopping' in the direction of the Netherlands.'(22)

7 Weak Integration: Citizenship (23)

7.1 Weak Negative Integration: Union Citizenship

'Every person holding the nationality of a Member State shall be a citizen of the Union,' stated the Maastricht Treaty in 1992 (Article 17(1) EC Treaty). The admission to Union citizenship, and hence the enjoyment of the rights associated with the status, depends crucially on domestic citizenship policies. After the Treaties of Maastricht and Amsterdam the *communis opinio* has been that member states are not willing to give up their autonomy in matters of citizenship acquisition (Closa, 1995; D'Oliveira, 1999). As explained earlier, however, the fact that every national being a Union citizen enjoys the freedom to travel, work and live throughout the Union, is reason to presume some constraining impact *a priori*. The European Court of Justice can be an important independent agent in the enforcement of such indirect or weak negative integration.

One of the rare test-cases for the Court's position towards the definition of member state nationality has been the case of *Mario Vicente Micheletti and Others v. Delegación del Gobierno en Cantabria* (C-369/90), in which the nationality question was not easy to side-step (cf. Hall, 1995: 57-60; O'Leary, 1996: 43-48).(24) The case involved a man, Micheletti, who possessed both Argentine and Italian nationalities. After arriving in Spain, he sought to rely in his capacity as an orthodontist on the freedom of establishment under the EC Treaty. He was refused a residence permit and the opportunity to exercise his profession by the Spanish authorities. They did not recognize his Italian nationality, and thus his legal status as a Union citizen, because in cases of dual nationality Spanish civil code takes account only of the last *de facto* residence, which in this case was Argentina. Following the Court's ruling, on the basis of Article 43 EC Treaty, Mr. Micheletti was entitled by virtue of his Italian nationality to be issued with a residence permit if he could show that he intended to establish himself in Spain. Hence the domestic (i.e. Italian) autonomy to decide who is a Member State national was confirmed by the Court, but not without adding that this 'competence must be exercised with due regard to Community law' (paragraph 10). Taking into account that, for example, the principle of supremacy of Community law was established in the *Costa*-case, but not applied to the case at hand,(25) it should be stressed that the consideration that domestic nationality

law *can* violate Community law, in itself was a revolutionary challenge to national autonomy (De Groot, 1998: 123-124; but see D'Oliveira, 1999: 403-412).

7.2 Weak Positive Integration: European Citizenship Norms

The 1963 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (Strasbourg, 1963), ratified by thirteen European countries (all EU member states except for Finland and Greece), reflected the broadly accepted idea that nationality should be the recognition of a fundamental link between the individual and the political community, endowing the state with the duty to protect the interests of its citizens/nationals and the individual with the duty of loyalty towards the state. In the 1990s, however, nationality increasingly became a medium to obtain access to the labor market and social security, whilst on the other hand military service was increasingly being abolished across Europe.

In 1993 therefore the Second Protocol amending the 1963 Strasbourg Convention was signed and led to a fundamental change in the European attitude towards multiple nationality (it has been ratified only by France, Italy and The Netherlands). It became widely accepted that whereas multiple nationality is undesirable from the perspective of the state, from the perspective of the individual it might be crucial for his integration in society. This line was continued in the European Convention on Nationality (ECN) that was signed in Strasbourg on 6 November 1997. To this date it is ratified only by Austria, Moldova Slovakia and the Netherlands. With respect to multiple nationality the ECN is neutral; it neither obliges nor forbids signatory states to demand applicants for voluntary naturalization to give up their former nationality. In the Preamble, the ECN only notes 'the varied approach of States to the question of multiple nationality.' In comparison with the 1963 Convention, this 'neutrality' in practice implies a tolerant attitude to multiple nationality (Hall, 1999: 600).

7.3 Dutch Citizenship Policy

A review of parliamentary proceedings and appendices in the Netherlands shows that the European Union is hardly ever spoken of in the context of citizenship policy. The acknowledgement by the Dutch government in January 1994 of the widespread sensitivity towards too much EU impact on national affairs exemplifies such a reserved attitude. The establishment of Union citizenship by the Maastricht Treaty had after all caused considerable political turmoil, and not only in Denmark. In a response to parliamentary questions, the government stipulated that 'clearly no initiatives [by the EU] are to be expected concerning nationality law' (LHDP-AP1993-1994, 23029 (9), p. 5).

The controversial statement of the ECJ in the *Micheletti*-case, however, that domestic citizenship policy falls within the scope of Community law, paves the way for increased EU interference by weak negative integration. For example, the traditional rule that people lose their state's citizenship when they live abroad permanently, might obstruct Community law when Union citizens live in another member state, i.e. use their right to free movement. The Netherlands, to my knowledge an exception in the EU, therefore changed its legislation to comply with Community law in this regard. The Dutch case shows how negative integration can impact on domestic citizenship policy, marginally for now, but possibly more centrally in the future. The adjustment of Dutch citizenship policy with respect to the loss of citizenship, in order to prevent a possible violation of Community law, must be seen as an interesting case of limited Europeanization by weak negative integration.

The constraints posed by the 1963 Strasbourg Convention and the 1993 Second Protocol are a central concern throughout the Dutch parliamentary debate in the 1990s. Since 1993 this European side of Dutch citizenship policy revolves around the question of whether the Second Protocol allows or even demands to abolish the rule of one nationality from the 1985

Dutch Nationality Act (Article 9(1), sub b). Dutch citizenship policy in fact anticipated the Second Protocol by taking a permissive turn in 1992 with the toleration of multiple nationality. Despite the fact that the Second Protocol was ratified by the Netherlands in 1996, Dutch governments could never get enough parliamentary support to formalize this permissive policy. In November 1996 it became clear that the bill could not count on the support of the Christian-democrats (CDA) in the Senate. The Christian-democratic senators felt free to oppose the government bill as they were, and had always been, against the principle of multiple nationality. They also saw fundamental difficulties with the 1963 Strasbourg Convention. 'The government bill simply went too far,' said one MP.(26) Moreover, the Christian-democrats had become much more skeptic about the process of integrating immigrants into Dutch society as a whole.(27)

Proponents in parliament, in particular the Labour Party (PvdA), but also the Democrats (D66) and the Greens (Groen Links), relied heavily on the Second Protocol and the ECN, which were both clearly seen as a strategic opportunity to influence citizenship policy in a more permissive direction. Opponents, besides the Christian-democrats also the Liberal Party (VVD), pointed out that the 1963 Strasbourg Convention was still in force and that the principle of one nationality should be respected. Due to this unresolved conflict between the 1963 Convention and the 1993 Second Protocol, there was a *de facto* autonomy for the national legislature. A 1993 government bill stranded in the Senate in 1997, which lead to the reintroduction of the principle of one nationality. The impact of the 1997 European Convention on Nationality remains an open question, although in a note of October 1999 the Dutch government explicates that ratifying the ECN would not oblige the Netherlands to change its citizenship policy substantively.(28)

European citizenship norms hence do not decisively direct Dutch citizenship policy one way or the other. Although in setting the terms of the parliamentary discourse the importance of norm-setting by the Council of Europe must not be underestimated (Checkel, 2001), the preferences of Dutch MPs regarding multiple nationality have remained stable throughout the 1990s. In 1998 a more modest reform bill was introduced by the government, which maintained the rule of one nationality but formalized a large part of the 1992-1997 permissive policy by allowing for some substantial exceptions. This new bill to reform the Nationality Act was adopted in March 2000 by the Lower House of Dutch parliament (without prior ratification of the ECN). The Senate adopted the Nationality Act (and ratified the ECN at the same day), with the support of coalition party VVD this time, but still without that of the CDA. With respect to the exceptions to the rule of one nationality, it can be argued that the Council of Europe helped mobilizing support for domestic reform. 'The big European gain is the multitude of exceptions to the rule of one nationality,' admitted even the liberal-conservatives who have always most consistently of all parties opposed the principle of multiple nationality.(29)

8 Conclusion

In this paper I have differentiated between four types of European integration and shown how these connect to domestic immigration policies. By presenting some empirical evidence from the case of the Netherlands, I have analyzed to what extent and in what way domestic free movement, asylum and citizenship policies are affected more substantively by European integration. Substantially, the logic of free movement of persons leads to a differential treatment of aliens, and we could see how Community nationals increasingly have become a privileged category of 'denizens'. In the cases of asylum and citizenship policy, we saw that, although European policies and norms were surely relevant, they could not decisively affect domestic politics. For the Netherlands, this can be explained by respectively the opportunity structure that is particularly focused on Germany for 'burden-sharing' reasons, and by the

fact that domestic support for dual nationality disappeared after the about-turn of the Christian-democrats.

It is of course difficult to draw general conclusions on the basis of only one case. Yet in itself a case study, besides the empirical interest of in-depth description, allows for broader conclusions beyond the limited scope of the specific case under scrutiny (King *et al*, 1994: 43-46). First, I have argued here that for positive integration in the field of citizenship one must look not so much to Brussels, but rather to Strasbourg (cf. Checkel, 2001). Perhaps ironically, it is because the EU is perceived to be more powerful than the Council of Europe, and Brussels more distrusted than Strasbourg, that it offers less opportunities for reform. Secondly, in the field of asylum policy, it is often heard that European integration leads to a convergence of domestic asylum policies. Indeed, Europe is blamed for bringing about lowest common denominator policies (Schuster, 2000: 120; Lavenex, 2001: 864). Yet, again, although a common trend towards toward more restrictive asylum policies can hardly be denied, at least from the mid-1980s to the early 1990s (Vink and Meijerink, 2002), the mechanism linking European with domestic policies is far from straightforward. At least in the Netherlands, evidence shows that many proactive efforts to bring about a common European policy, do not necessarily imply the subsequent Europeanization of domestic politics.

Finally, critics might ask whether there is really that much difference between Europeanization caused by negative or positive integration. They might, for example, point at my case of asylum policy which is clearly not an example of fully-fledged strong positive integration, and argue that the difference between free movement and asylum policy (or citizenship policy, for that matter) points to the importance rather of binding vs. non-binding European policies. Here I would respond, however, that binding European policies are instituted more forcefully under pressure from negative integration, and that the case of asylum policy clearly shows the limits of positive integration. Also, the need to comply is stronger due to a greater leeway for such European institutions as the Commission and – especially – the European Court of Justice. The *Micheletti*-case and its domestic impact on Dutch citizenship policy moreover show how the negative integration of free movement of persons can even spill over to 'weaker' issue areas where nation states anxiously guard their national autonomy. The distinction between negative and positive integration provides a useful starting point to analyze why and how domestic immigration issues increasingly become subject (or not) to Europeanization.

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Endnotes

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(1) An exception are Risse *et al* (2001: 1) who define Europeanization as 'the emergence and development *at the European level* of distinct structures of governance' (emphasis added). Such a definition not only diverges with regard to the literature on Europeanization, but moreover is not particularly clarifying because it does not relate necessarily to the domestic level, and therefore distinguishes hardly with the concept of European integration (cf. Radaelli, 2000: 2).

(2) Positive integration can also be 'market-making' to the extent that it tries to harmonize divergent national product standards in order to eliminate existing non-tariff barriers to trade (Scharpf, 1999: 45).

(3) Joint Declaration of the European Ministers of Education convened in Bologna on the 19th of June 1999, see http://europa.eu.int/comm/education/socrates/erasmus/bologna.pdf .

(4) I thank especially Rudy Andeweg for his suggestions regarding this typology.

(5) Council Directive 2000/43 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

(6) Three other EFTA member countries Austria, Finland and Sweden also joined the EEA until they became full EU member on 1 January 1995. In a December 1992 referendum the Swiss people rejected the proposal to join the EEA, and only after a positive referendum result in May 2000 on seven bilateral agreements between the EU and Switzerland has the latter EFTA state begun to take part in the European regime on the free movement of persons.

(7) See Directives 68/360 (Article 9) and 73/148 (Article 7).

(8)Lower House of Dutch Parliament (LHDP), Appendix to the Proceedings (AP), File 24233, No. 3, pp. 1-2.

(9) A new Article 10(1)(c) was also inserted in the Aliens Act which confirmed this right of residence for Community nationals, with the provision that exceptions are allowed only on grounds 'of an acute threat of public order, national security of public health'.

(10) The new Aliens Act 2000 includes a similar provision for Community nationals, although in marginally different words, and confirms in Article 8(e) that Community nationals can lawfully reside in the Netherlands on the basis of the EC Treaty or the EEA Agreement. A more detailed codification of the rights for Community nationals can be found in the Aliens Decision 2000, especially in Articles 8.7 to 8.14.

(11) Joint Cases 389/87 and 390/87, *Echternach and Moritz v. Minister van Onderwijs en Wetenschappen* [1989] ECR 723, paragraph 25. See also Case 357/89, *Raulin v. Minister van Onderwijs en Wetenschappen* [1992] ECR 1027, paragraph 36.

(12) The Dublin Convention was signed on 15 June 1990 by 11 Member States of the European Communities (Denmark signed only in 1991, Austria and Sweden in 1997, Finland in 1998) and came into force only in 1997 after all member states' parliaments had ratified it. A proposal for a Council regulation to replace the Dublin Convention (COM(2001) 247) is currently under discussion.

(13) See http://europa.eu.int/comm/justice_home/unit/immigration_en.htm for an update of all initiatives on the table.

(14) Interview in June 2000 with J. Wijn (CDA).

(15) Interview in June 2000 with F. Halsema (GroenLinks).

(16) LHDP-AP 2000-2001, 19637 (559), Appendix 1, p. 7.

(17) LHDP-AP, 1998-1999, File 26732 (3), p. 1.

(18) See for example Dutch Government Memorandum, 1999; Benelux Memorandum, 1999; Dutch/Swedish Memorandum, 2000.

(19) LHDP-AP, 2000-2001, File 19637 (559), Appendix 2, p. 25.

(20) Interviews in June 2000 with MP's G.J. van Oven, PVDA (Labour Party); J.M.L. Niederer, VVD (Liberal Party); J.G. Wijn, CDA (Christian-Democrats); B.O. Dittrich, D66 (Democrats); F. Halsema, *GroenLinks* (Greens). Note that these interviews precede the May 2002 electoral upset and the rise of the populist Pim Fortuyn party (LPF).

(21) For a government report comparing Dutch with German policy, see LHDP-AP 1995-1996, 19637 (139).

(22) Staatsblad 1995, No. 356, p. 3.

(23) This section draws substantially on Vink (2001).

(24) See also the more recent *Kaur*-case (C-192/99) where the Court had to deal again with the definition of nationality of a member state.

(25) The ECJ did not encounter political protests as it ruled that the privatization of the Italian electric company ENEL could, but did not violate Community law. This is a well-known legal practice to expand jurisdictional authority (cf. Alter, 1998: 131).

(26) Interview Verhagen (CDA).

(27) Interview in February 2002 with E. Hirsch Ballin, former Minister of Justice 1989-1994 (CDA).

(28) LHDP-AP, 25891, no. 7.

(29) Interview in June 2000 with J. Niederer (VVD).