

Migrations in the Mediterranean

# Is It Possible to Develop a Common European Policy on Immigration and Asylum?

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## Twenty Years of a European Immigration and Asylum Policy “under Construction”

Next year, it will be twenty years since work began in Tampere on a common immigration and asylum policy for the European Union. From a diachronic perspective, incorporating immigration and asylum issues into the community space seems to have been a decision taken more out of circumstantial necessity: the 1957 Treaty of Rome provided for the free movement of people as one of its goals, but above all aimed at Member State citizens' work mobility. The definition of an area of free movement as per the Schengen Agreement reached in 1985 obliged Member States to go beyond the simple exchange of information: the disappearance of internal borders made the external borders of this common space a priority, and, therefore, a more detailed consensus was required regarding who could access it, how and on what grounds.

It is in this context that the Tampere European Council set the process in motion of developing a common European immigration and asylum policy, based on four main areas which would be maintained, with greater or lesser success, throughout these twenty years. The constituent elements of the common immigration and asylum policy include (1) partnerships with countries of origin; (2) the establishment of a common European asylum system; (3) the manage-

ment of migration flows and (4) the fair treatment of third country nationals residing in the territory of Member States.<sup>1</sup> It is worth mentioning that through both the lines of work presented in Tampere and the tone that characterizes the conclusions, a proportionate balance was sought in creating a space of freedom, security and justice, in which immigration and asylum policies would play a key role.

From 1999 until today, considerable advances have been made in immigration and asylum in the European Union. They should not be downplayed, as they are contributions that have led to the creation of a remarkable regulatory framework for managing the entry and residence of immigrants and refugees in the territory of the European Union, and because they are the constituent instruments of one of the only supranational migration policies. Nevertheless, it is an unfinished and complex process with some major weaknesses, upon which it is worth reflecting.

## Four Anomalies of the European Immigration and Asylum Policy

The conclusions of Tampere (1999), the Work Programme of The Hague (2004) and Stockholm (2009), and the European Agenda on Migration (2015) are the roadmaps which have marked the progress in the development of a European immigration and asylum policy in the last 20 years, and which have upheld the aforementioned four main working areas (Pinyol-Jiménez, 2018).

Although there is evident coherence in the themes followed by the work programmes, the development process has actually served to make major modifica-

<sup>1</sup> Conclusions of the Tampere European Council (1999). They can be found at [www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm).

tions in the specific aims of this policy, thereby highlighting four anomalies that have accompanied (and affected) the whole process.

Firstly, the upholding of the intergovernmental decision-making principle on matters of immigration and asylum. The supranational logic in these areas has generated deep mistrust among Member States, for whom most competences in immigration and asylum have been reserved. This tension between the intergovernmental and supranational dynamics has had a crucial impact on the development of this European policy. Partly, this is because it has limited the areas for consensus and led to a sectorialized fragmentation of the immigration and asylum policy in order to be able to advance. In a bid to achieve, albeit minimal, consensus, right from the start the Commission has accepted fragmentation and regulatory disunion in the European immigration and asylum policy, always allowing for a broad margin of discretion when it comes to its application by the individual states (Carrera et al., 2018). Thus, instead of progressing on general entry and residence mechanisms for non-EU nationals, for example, advances have been made in the procedures which regulate entry on the grounds of family reunification, study or for highly-skilled workers, to cite a few examples. On the other hand, and more importantly, this difficulty in reaching consensus and thereby developing supranational instruments has enabled the parallel development of a European policy dedicated to “legal” immigration and the fight against irregular immigration, with differentiated decision-making procedures (Jakobson & Lauren, 2018). This anomalous situation was not corrected until the entry into force of the Lisbon Treaty, which scrapped the requirement of unanimity and introduced qualified majority voting for all matters on immigration and asylum policy. During the first decade, therefore, issues on immigration and asylum were slow to move forwards as regards conditions for entry and residence for third country nationals in the European area. However, policymaking was much more streamlined when tackling irregular immigration, which developed as a separate policy in its own right and is thereby closely linked with a second key anomaly in European immigration and asylum policy.

The ability to achieve consensus, basically on issues related with border control and the fight against irregular immigration, implied a de facto understanding of immigration as a threat to national security. The fact that migration issues, in the European context, are discussed in the justice and home affairs councils, reinforces this view of immigration as a security issue. The securitized view of migration has distorted not only the public debate, but also the instruments of the common immigration and asylum policy, as this, essentially, has served more to develop a framework of actions and instruments to prevent irregularities on the maritime border. Reaching agreements to maintain maritime border control operations has been easier than reforming the common asylum system or revising the entry guidelines for highly qualified workers, for example. It has basically meant understanding immigration policy as one of border control, when the former implies so much more than this instrument-turned-goal. This securitization of the migration phenomenon, and the EU's weak response in recent years to change the situation, has placed the Schengen system of allowing the free movement of persons under tension,<sup>2</sup> clearly affected the right to asylum in European countries (restricting access for asylum seekers) and weakened the principle of solidarity that sustains the European project, as demonstrated by the failure to relocate asylum seekers from the *hotspots* of Italy and Greece.

**Instead of progressing on general entry and residence mechanisms for non-EU nationals, advances have been made in the procedures which regulate entry**

A third anomaly is connected with the kind of relations developed with migrants' countries of origin and transit. The logic of co-responsibility sought in Tampere and which can also be found in different proposals of

<sup>2</sup> See *The Cost of Non-Schengen: Civil Liberties, Justice and Home Affairs aspects* of the European Parliamentary Research Service in [www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_STU\(2016\)581387](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2016)581387).

the Global Approach to Migration and Mobility since 2005, have been subject to a logic of dependence on dialogue with third countries on the issue of migration. Third country collaboration has required linking the EU's migration policy with its external action. However, these relations have been mainly focused on fighting irregular immigration, essentially leading to resources being allocated to strengthen border controls in neighbouring countries, signing readmission agreements with these and working to put an end to the "root causes" of migration. A double dynamic has been established, which, on the one hand, has led to the externalization of border control (Lavenex & Uçarer, 2002), delegating the responsibility of their "protection" to neighbouring countries, and, on the other, a revision of development cooperation to focus it on the origin and transit countries of the migrant flows. The first dynamic, however, has simply served to place European Union member countries in a weak position in relation to their partners, who have understood migration management as an instrument with which they can negotiate with the European Union to benefit their own interests (in other areas) (Landau et al., 2018), or through which they can guarantee a certain permissiveness in areas such as their own human rights issues at home, to mention one.

### The securitized view of migration has distorted the instruments of the common immigration and asylum policy

Finally, a fourth important anomaly has been the lack of communication regarding the objectives, competences and action areas of the European immigration and asylum policy, particularly with regard to its limitations and shortcomings. This lack of a community narrative, accompanied by the development of instruments mainly focused on fighting irregular immigration, perceived as a threat, has also generated adverse effects. Firstly, a lack of knowledge regarding the material limits and regulatory capacities of the European Commission in terms of immigration, integration and asylum, has been intelligently used by certain member countries who have preferred to blame a European Un-

ion detached from its decisions (or lack of) on the subject of migration. Some political leaders have stated that the European Union did not serve to protect the shared borders; others that it reduced national sovereignty in matters of migration to intolerable levels; and others that it did not adequately respond to the urgent humanitarian crisis in the Mediterranean. In this debate on the responsibility of the "European Union," the key decision-making actors in the area of immigration and asylum in the European Union have not been identified and there have not been sufficient explanations on the limits of community actions in immigration and asylum or the Commission's limits regarding procedures and areas of action. And, more importantly, there has been no contemplation of the changes needed to look for alternatives and propose solutions. This "unmanagement" has fueled the eurosceptic discourse throughout Europe, but also a growing discourse towards criminalizing immigration and normalizing xenophobic rhetoric in many European countries.

Twenty years after the journey began, now seems a good time to reflect and question whether or not there is room to continue moving forwards, and, if so, in which direction, to develop a genuine European immigration and asylum policy.

### Three Requirements to Move forwards in Managing Immigration and Asylum in the EU

There have been undeniable advances in immigration and asylum in the European Union in the last two decades, and these have enabled the creation of a body of related rules and regulations in the European Union. However, the instruments, actions and mechanisms that have been developed can not exactly be considered as public policy. This is firstly because the aims established in this area are sufficiently ambiguous not to resolve many of the challenges posed by migration management in the community space; and, secondly, since the competence in this area is still in the hands of the Member States, some of the objectives of the common European policy could not be developed in their entirety or have apparently been paralysed by the individual action of these countries. And there are no coercive mechanisms that could put things on the right track.

The common European policy on immigration and asylum, therefore, does not achieve any of these three

things. It is not a comprehensive policy, but rather the sum of actions and instruments aimed at achieving limited goals (and which are less ambitious than those initially defined), especially focused on border control. More steps have been taken to build a common framework for managing the external borders than for managing immigration and asylum; two areas of action that, although interrelated, are clearly distinguishable. It is not common because the decisions that are agreed upon demonstrate how the ultimate competence lies in the individual will of each Member State. The failure to comply with decisions that are taken and community regulations reveals the Commission's weakness vis-à-vis the Member States when it comes to ensuring they comply with current legislation.<sup>3</sup> And finally, it does not consider immigration and asylum in European terms, but rather in relation to the realities of each Member State, thus preventing a comprehensive view of this phenomenon in the European area and, therefore, in the responses that are required for this space.

### More steps have been taken to build a common framework for managing the external borders than for managing immigration and asylum

Advancing in the harmonization of national policies on immigration and asylum today seems more feasible than talking about a common European policy on immigration and asylum in its strictest sense. Because that is what the Member States have decided, independently. But also because the development of a common policy in these matters requires advances to be made in the convergence of other areas, such as labour markets, the standardization of qualifications or the access to (and quality of) public services, to mention but a few areas that have an impact on people's mobility, especially in a space without internal borders. The constitution of a comprehensive and common European policy on immigration and asylum seems

like a tough goal to achieve at the present time, and it needs to be understood as something to work towards, rather than a realistic objective, which, in any case, can only be understood in the long term. Nevertheless, the room for improvement in the short and medium term is substantial, assuming there is a will to do so.

In this regard, it is essential to recover the principle of solidarity on which a large part of the European project is founded. If the trust between Member States breaks down and these countries view the immigration and asylum issue as a stage for a downsized confrontation, then not only will advances be unlikely, but there will also be a regression in the protection of universal rights, such as asylum, which are laid out in the Charter of Fundamental Rights of the European Union. The failure of the refugee relocation process from the *hotspots* of Greece and Italy does not bode well for the future. Solidarity requires overcoming state dynamics and contemplating spaces for consensus on issues that go beyond border protection. The revision of the Dublin Regulation, which incorporates a deeper revision of the European Asylum System, seems crucial in this regard. At the same time, the European Commission will ideally recover its initiative in matters of immigration and asylum, offering innovative proposals for the Member States which break with the passive dynamics that seem to have marked community action since 2010.

At the same time, the principle of responsibility must surely be raised, which obliges Member States to improve their compliance with existing community regulations, without constantly questioning the progress made thus far. Responsibility should also mean opening informed debates on the channels for accessing European territory, moving beyond a focus on maritime border control. Along these lines, relations with third countries, neighbouring countries or migrants' origin and/or transit countries are a priority, but so too is giving these substance, beyond demanding they play the role of border police. The risks of externalization do not only have an impact on safeguarding the rights of people in transit, but also on the principle of security, about which this network on relations revolves. Exploring contracts given at coun-

<sup>3</sup> It is enough to follow Hungary's slow infringement procedure initiated by the Commission and now in the hands of the European Court of Justice for its failure to comply with European asylum and return legislation. See: [http://europa.eu/rapid/press-release\\_IP-19-469\\_en.htm](http://europa.eu/rapid/press-release_IP-19-469_en.htm).

try of origin, the possibility of study visas or the improvement of family reunification procedures could be some considerations for the European agenda.

## It is essential to recover the principle of solidarity on which a large part of the European project is founded

Finally, no progress can be made if the principle of coherence is not revived, which implies coordinating actions related with migration and asylum management within the logic of the principles and freedoms that form the foundations of the European project. Building spaces that infringe on people's rights or normalizing the violation of people's rights simply because they are foreign (De Lucas, 2017) is a danger that the European Union should aim to avoid. In the area of asylum, and assuming there is a binding international and European regulation, the first clear steps towards building a shared European asylum model could be taken with greater immediacy. This should contemplate people's reasons for entry, establish a fair distribution among receiving countries and safeguard the rights of people fleeing conflict in a way which is harmonized right across the European territory.

### By Way of a Conclusion: Recovering the Spirit of Tampere to Move Forwards

Developing a European immigration and asylum policy or moving forwards in the definition of common instruments in these matters is an essential requirement for guaranteeing the proper functioning of the European area of free movement, one of the milestones most positively valued by Europeans.<sup>4</sup> Even when migratory movements are seen as a solution to Europe's demographic imbalances, not enough attention is given to the economic and social inequalities that exist between the countries of the EU and

the countries in its vicinity, or to the inequalities that exist between and within member countries. The EU's immigration and asylum policies have to be developed with these realities, among others, in mind. Advancing in this common policy cannot only be done through the prism of border control. More comprehensive channels of action must be explored and ones clearly more linked with other European policies, such as social protection or foreign relations, and in connection with other areas, such as labour markets or public services, which also require greater convergence.

A shared framework needs to be developed which allows the EU and its Member States to define and discuss which goals to follow in the area of migration, which instruments need to be developed to achieve these, which legislative pieces are missing and which specific actions need to be implemented for these to be introduced. And to do so, it seems crucial that we recover the spirit of Tampere, which understood immigration and asylum policies as an essential instrument for guaranteeing a shared space of security, freedom and justice, and not as a shield to protect against mobility (or diversity), as it is so often understood in this period of history. And, at the same time, greater attention needs to be given to the incorporation of migrants into their host societies and co-existence in countries that are increasingly diverse, putting an end to any related discrimination, and fighting against the hate speech which attacks diversity.

In coordinating this comprehensive policy, national policies have proved insufficient. The Global Compact for Migration,<sup>5</sup> approved last December in the context of the United Nations, is undoubtedly the clearest example of the need for multi-level and multilateral dialogue on migration and asylum to ensure that people's mobility has a positive effect on origin, transit and destination societies, as well as on migrants themselves. On the European stage, this collaboration has been progressing for two decades now, with mixed results. It seems like the right time for a full revision, coinciding with the new work programme to be approved by the next Commission, which will take over in October 2019. A Tampere 2.0

<sup>4</sup> See Eurobarometer 90 (<http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2215>) and Special Eurobarometer 474 on the perceptions of the European population on the Schengen Area (<http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2218>).

<sup>5</sup> See [www.iom.int/global-compact-migration](http://www.iom.int/global-compact-migration).

(Lisa, 2018) will need renewed regulations and instruments, but it can benefit from the efforts and advances achieved thus far. Under the principles of solidarity, responsibility and coherence, recovering the spirit of Tampere can be understood as a way of reclaiming the essence of the European project, as it is laid out in the Charter of Fundamental Rights of the European Union.

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