

**Cross-fertilisation at the intersection of EU migration  
and justice policy and the Union's external relations**

(work in progress – comments welcome)

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## **Abstract**

*The current asylum and migration debate in the European Union is distinguished by the growing importance of somehow integrating asylum and migration issues into the Union's relations with third countries. The external dimension of asylum and migration policy is more than ever salient and is gradually leaving the stage of declarations of intent. Now work is being made of the implementation and the financial implications of this new policy area. However, this seems to be quite problematic. The difficulty -as well as the challenge- lies in the fact that co-ordination of asylum and migration policy and the Union's external affairs is inherently cross-pillar.*

*To start with, this paper will briefly sketch the emergence and evolution of the external dimension of EU asylum and migration policy by means of an overview of the programmes of the consecutive EU Presidencies, the Communications and Reports from the Commission and the Conclusions of European Councils. Then, based on theories of governance and securitisation, we will outline a theoretical framework that aims at providing an explanation for the emergence of this new policy dimension. Finally, in an attempt to narrow down, four case studies of the external dimension will be introduced: the High-Level Working Group on Asylum and Migration, clauses and agreements on migration management and readmission, co-operation with the Balkans on asylum and migration, and temporary protection of displaced persons in case of a mass influx.*

## **1. Introduction**

The Treaty of Maastricht introduced the pillar structure and as such strictly separated Justice and Home Affairs issues from the Common Foreign and Security Policy and from other external policy competencies under the EC pillar. Title VI under the Third Pillar provided the legal basis for intergovernmental co-operation on asylum and migration policy. Not even one year after the signing of the Maastricht Treaty (7 February 1992), at the European Council of Edinburgh of 11-12 December 1992, the Heads of State and Government adopted a Declaration on principles governing external aspects of migration policy. The Declaration emphasised the importance of removing the root causes of migratory movement and called for a policy mix covering among other things conflict prevention and management, refugee protection, development aid, and trade. Also the Commission, in its 1994 Communication on immigration and asylum policies, pointed out the need for a *comprehensive approach* to the phenomenon of asylum and migration. Such an approach would require attuning of the Union's internal and external policies. For sure, the Maastricht Treaty and its conception of policy division through pillars had not foreseen this.

The Treaty of Amsterdam has moved asylum and migration from the third to the first pillar<sup>1</sup>, but this communitarisation has not really simplified things, since these policy matters are still subject to a 'five-year window'<sup>2</sup> before they *can* be supranationalised (Geddes 2000: 110). Nor has Amsterdam brought us any closer to a better framework for achieving a comprehensive approach to asylum and migration. The current situation can be described as follows: the aspiration being to unite migration/asylum policy and external relations as the elements of a comprehensive policy mix, we need to take into account that we are working *across* pillars. While different policy fields are being linked to each other, we stand at the intersection of the existing pillar structure, facing diverse levels of communitarisation, varied EC institutions involvement, and various decision-making procedures and instruments to shape policy outcomes. As such, *cross-pillar co-ordination* seems to be the challenge ahead.

At the outset, this paper will sketch the emergence and evolution of the comprehensive approach to asylum and migration. We prefer to use the wording *external dimension of asylum and migration*, since it better depicts how asylum and migration policy are linked to the Union's external relations. We will make a brief overview of the Conclusions of European Councils, the Communications and Reports from the Commission, and the programmes of the consecutive EU Presidencies that can be perceived as decisive moments in the formulation of the external dimension of EU asylum and migration policy.

Secondly, the surfacing of this new policy dimension and the progress it has made so far need to be accounted for. The premise of this paper is that the ambition to approach migratory movement in a comprehensive, all-encompassing way is not effortless or unproblematic. On the contrary, removing the root causes of migration demands cross-pillar co-ordination of different policy areas. In order to ultimately assess the needs of a successful and truly comprehensive asylum and migration policy, we first must be able to understand and discern the driving forces behind this *cross-pillarisation*. Based on theories of governance and securitisation, we will outline a theoretical framework that aims at providing such an explanation.

Finally, in an attempt to narrow down, four case studies of the external dimension will be introduced: the High-Level Working Group on Asylum and Migration, clauses and agreements on migration management and readmission, co-operation with the Balkans on asylum and

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<sup>1</sup> Article 63, Title IV, EC Treaty.

<sup>2</sup> Article 67, Title IV, EC Treaty. After a period of five years following the entry into force of the Amsterdam Treaty (1 May 1999), the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by Title IV to be governed by the so-called co-decision procedure referred to in article 251 and adapting the provisions relating to the powers of the Court of Justice.

migration, and temporary protection of displaced persons in case of a mass influx. These cases will be the object of future research.

## 2. The external dimension of asylum and migration: an overview

Below, we will outline a series of moments and EU documents that have been decisive for the emergence and development of the external aspects of asylum and migration policy.

### 2.1. European Councils

As early as December 1992, not even a year after the signing of Maastricht, the Heads of State and Government at the Edinburgh European Council put forward the idea to analyse the root causes of immigration pressure and the ways to remove them.<sup>3</sup> This Declaration emerged in the context of the 'asylum crisis'<sup>4</sup> at the beginning of the nineties and was flanked by the restrictive London Resolutions of 30 November-1 December 1992. The overarching idea seemed to be twofold: a stricter admission and asylum policy for immigrants and asylum-seekers who have already reached EC Member States, and a root causes policy towards countries and regions of origin to prevent people from fleeing or migrating to the European Community.

Despite of the above-mentioned intentions, the external dimension of migration and asylum policy did not get off the ground. During the Finnish Presidency, on 15-16 October 1999 in Tampere, a special meeting of the European Council was held on the creation of an area of freedom, security and justice, including the policy area of migration and asylum. The need for a comprehensive approach to migratory movement was reaffirmed and elaborated. One of the main challenges for the future was to approach the phenomenon of migration<sup>5</sup> in all its aspects: "The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and

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<sup>3</sup> BULLETIN EC 12-1992, *Declaration on principles governing external aspects of immigration policy*, annex 5 of the Conclusion of the Edinburgh European Council, 11-12 December 1992. The following EU activities were mentioned as possible elements of a root cause approach: conflict prevention and management, human rights protection, regional protection of refugees and displaced persons, economic and trade liberalisation, development aid, fight against illegal immigration (for example through the conclusion of readmission agreements), and Member State co-operation in case of a mass influx of displaced persons.

<sup>4</sup> The number of asylum-seekers peaked in 1992 with a total of 674 056 applications. See UNHCR, <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics>.

<sup>5</sup> In this paper I do not want to go into a conceptual discussion on what exactly constitutes 'migration', 'asylum', or 'refugee' policy. Using the term 'migration', I refer to movement of all kinds of third-country nationals, including economic immigrants, illegal immigrants, asylum-seekers, refugees, displaced persons, etc.

consolidating democratic States and ensuring respect for human rights, in particular the rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the Union. Partnership with the third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development.”<sup>6</sup>

Despite the impetus arising from the Tampere Summit, progress in the area of asylum and migration proved to be rather disappointing. Whereas the Belgian Presidency during the second half of 2001 initially prioritised the asylum issue, the events of the 11<sup>th</sup> of September re-scheduled the working group meetings of the Council and re-distributed the workload to the suddenly prevailing matter of concern: terrorism.<sup>7</sup> Consequently, the Presidency Conclusions of the Laeken European Council of 14 and 15 December 2001 did not conceal that “progress has been slower and less substantial than expected”.<sup>8</sup> In essence, the Tampere Conclusions were merely recalled and rephrased: policy on migratory flows needs to be integrated in the Union’s foreign policy. Noteworthy is that this should happen in particular through the conclusion of European readmission agreements with the countries concerned on the basis of a new list of priorities and a clear action plan.<sup>9</sup> No other EU activity was mentioned. Building on the external dimension of migration and asylum, the emphasis clearly seemed to be put on the more restrictive aspects of the comprehensive approach.

The latter trend became truly obvious in the run-up to the Seville EU Summit of 21-22 June 2002. UK Prime Minister Blair and Spanish Prime Minister Aznar proposed to link development aid to the efforts (i.e. the signing of readmission agreements) of third countries in the fight against illegal immigration. Non-co-operative countries would be sanctioned through the suspension of development aid. Although it did not come that far as the idea of sanctions was left behind, the fight against illegal immigration was still launched as the main concern at the European Council. Again, migration was inextricably linked to the Union’s foreign affairs, particularly to co-operation with countries of origin and transit. The 15 EU Foreign Ministers debated the issue at their last General Affairs Council meeting before the Seville Summit. The Council acknowledged that *an all-encompassing and balanced approach* on migration issues has to be

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<sup>6</sup> BULLETIN EU 10-1999, *Conclusions of the Presidency (3/16)*, par. I.4.11.

<sup>7</sup> Interview with Belgian Senior Official, Director at the Cabinet of the Prime Minister, 3 July 2002.

<sup>8</sup> EUROPEAN COUNCIL, Laeken, 14 and 15 December 2001, *Presidency Conclusions, SN 300/1/01 REV 1*, par. 38.

<sup>9</sup> *Ibid.*, par. 40.

integrated into the EU's co-operation with partner countries through existing or future agreements.<sup>10</sup> The Seville Conclusions dedicated a whole section to *integration of immigration policy into the Union's relations with third countries*.<sup>11</sup> In combating migratory flows, the aim is set forth to tackle the root causes of migration by using all appropriate instruments in the context of the European Union's external relations.

## 2.2. The Commission

In its 1994 Communication on immigration and asylum policies<sup>12</sup>, the Commission put a strong accent on the permanence of migration pressure and the urgency of combating its root causes. The approach forwarded consisted of three main elements: reducing migration pressure by tackling the root causes, monitoring and controlling of migration flows, and introducing measures favouring the integration of legal immigrants. This would require co-ordination of action in the fields of foreign policy, economic co-operation and immigration and asylum policy by the Community and its Member States.<sup>13</sup> The Communication was criticised for being rather naïve: the goals set and the measures proposed to meet these challenges were regarded as too general and unrealistic against the background of the Union's manifest inactivity in the above-mentioned fields.<sup>14</sup>

Maybe due to the difficulty of moving beyond declarations of intent, not much attention seemed to be given to the external dimension of asylum and migration in the aftermath of the 1994 Communication. Invigorated by the Tampere Conclusions and the mandate to establish at regular intervals a Scoreboard<sup>15</sup> to review progress on the creation of an area of freedom, security and justice, the Commission refocused its attention on a comprehensive approach to migratory

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<sup>10</sup> GENERAL AFFAIRS COUNCIL (2437th Council meeting, Luxembourg, 17 June 2002), *Provisional Version 9717/02 (Presse 178)*, <http://ue.eu.int/Newsroom>, p.12.

<sup>11</sup> EUROPEAN COUNCIL, Seville, 21 and 22 June 2002, *Presidency Conclusions, SN 200/02*, par. 33-36.

<sup>12</sup> COMMISSION, 23 February 1994, *Communication from the Commission to the Council and the European Parliament on asylum and immigration policies*, COM (94) 23 final.

<sup>13</sup> *Ibid.*, par.50. Measures proposed were among other things "the preservation of peace and the termination of armed conflicts; full respect for human rights; the creation of democratic societies and adequate social conditions; a liberal trade policy, which should improve economic conditions in countries of emigration; the effective use of the appropriate volume of development aid".

<sup>14</sup> E.g. FORTRESS EUROPE CIRCULAR LETTER (FECL), <http://www.fecl.org/circular/2302.htm>.

<sup>15</sup> For the last update of the Scoreboard, see: COMMISSION, 18 December 2002, *Biannual update of the scoreboard to review progress on the creation of an area of "freedom, security and justice" in the European Union*, 15774/02 JAI 311. The Scoreboard contains sections on "partnership with countries of origin" and on "management of migration flows". In the former, the main objective is the "assessment of countries and regions of origin and transit in order to formulate specific integrated approaches". The Commission is planning to propose a regulation establishing a legal base regarding cooperation with third countries in the area of migration. In the latter, one of the main objectives is "to establish a coherent European Union policy on readmission and return. In general, the aim is to successfully integrate justice and home affairs in the cooperation programmes with third countries, e.g. the national and regional strategy documents adopted by the Commission.

movement. In the July 2001 Communication<sup>16</sup> on an open method of co-ordination for the community immigration policy, the following guidelines deserve attention. Concerning the management of migration flows, one guideline aims at developing a comprehensive and co-ordinated approach to migration management at national level with due consideration to coherence with foreign and development policies. Another guideline, regarding partnership with third countries, points at the integration of migration issues into relations with countries of origin. These issues have been elaborated in the November 2001 Communication<sup>17</sup> on a common policy on illegal immigration. The Commission proposes an 'actors-in-the-chain approach': measures to manage migration flows should be implemented at the beginning of the migration chain, i.e. through partnerships with countries of origin.<sup>18</sup> As a next step, co-operation should be further developed with transit countries. As part of an action plan for the fight against illegal immigration, the concept of readmission agreements needs to be developed. Furthermore, a readmission clause should be inserted in all future Community association and co-operation agreements.<sup>19</sup>

The policy guidelines on readmission have further been elaborated in the April 2002 Green Paper on a Community return policy on illegal residents.<sup>20</sup> Different from previous statements and documents are the efforts made by the Commission to temper the 'Fortress Europe'-criticism arising from the readmission debate. Firstly, throughout the Green Paper the Commission highlights that a European return and readmission policy should be fully respectful of international rules on human rights and human dignity.<sup>21</sup> Secondly, although readmission and return policy is a vital component in the fight against illegal immigration, it still remains one dimension among others of a comprehensive EU migration policy towards third countries. As such, a balance between admission and readmission needs to be sought.<sup>22</sup>

The most important and relevant Commission document, however, is the most recent one. Responding to requests made at the June 2002 Seville European Council, the Commission

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<sup>16</sup> COMMISSION, 11 July 2001, *Communication from the Commission to the Council and the European Parliament on an open method of coordination for the community immigration policy*, COM (2001) 387 final.

<sup>17</sup> COMMISSION, 15 November 2001, *Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration*, COM (2001) 672 final.

<sup>18</sup> *Ibid.*, par. 3.3. "To that end, migration issues should be integrated in the existing partnerships, which are the general framework of our relations with third countries."

<sup>19</sup> *Ibid.*, par. 4.8.

<sup>20</sup> COMMISSION, 10 April 2002, *Green Paper on a Community return policy on illegal residents*, COM (2002) 175 final.

<sup>21</sup> *Ibid.*, par. 2.4.

<sup>22</sup> *Ibid.*, par. 2.5.

delivered in December 2002 a Communication<sup>23</sup> on Integrating migration issues in the European Union's relations with third countries. The objective is twofold: first, the evolution in the past years – and especially since Tampere – on the external dimension of asylum and migration called for a “more substantial and targeted contribution in the context of all Community external relations policies, programmes and instruments”.<sup>24</sup> Secondly, the European Council asked to present a report on the effectiveness of financial resources available at Community level for repatriation of immigrants and rejected asylum seekers, for management of external borders and for asylum and migration projects in third countries.

Without going into detail, two trends clearly stem from the Communication. To begin with, a need to be more concrete and practical about the comprehensive approach had definitely emerged. Time had come to move closer towards the implementation stage. The last thing needed was another set of declarations of intent. In the Communication, the Commission has translated this need by first pointing out policies in place and policy developments, and then focusing on the resources available for certain elements of a comprehensive approach.

Secondly, when it comes to being more explicit about the external aspects of asylum and migration, there seems to be a predominant focus on what can be classified under the denominator of ‘management of migration flows’, not to say that the emphasis is clearly being put on the restrictive elements of the comprehensive approach. To be more specific, of the financial resources programmed (2002-2006) for external aid linked to the migration issue, 47.34% will be spent on management of migration flows, while only 13.01% will directly be allocated to development in the sense of tackling the causes of emigration.<sup>25</sup> These figures obviously contradict the ‘carrot not the stick’ approach (with overall priority given to action on root causes) intended by the Commission.

### **2.3. The Presidency of the Union**

From 1996 onwards, the EU Presidencies have issued programmes regarding external relations in the field of Justice and Home Affairs. Most of these programmes have been established in co-operation with the previous and the following Presidency, i.e. the so-called troika-format, to ensure overall coherence and follow-up. The most recent one is the Greek Presidency's

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<sup>23</sup> COMMISSION, 3 December 2002, *Communication from the Commission to the Council and the European Parliament on Integrating migration issues in the European Union's relations with third countries*, COM (2002) 703 final.

<sup>24</sup> *Ibid.*, p.7. The aim is to make a more or less concrete contribution on this “relatively new trend” (*Ibid.*, p.4).

<sup>25</sup> *Ibid.*, Annex 2, Heading 4 of the financial perspective, p.51.



Programme on JHA external relations.<sup>26</sup> In general, the Programme lists on-going and scheduled activities between the European Union and its partners abroad (on the European continent, the American continent, in Africa and Asia) and international fora in the field of Justice and Home Affairs. Specifically related to asylum and migration, the Presidency visibly stresses the management of migration flows. Priority areas are the fight against illegal immigration and the conclusion of readmission agreements with countries of origin and transit.

A Presidency with a major influence on the asylum and migration agenda was the Austrian Presidency during the second half of 1998. The Presidency issued the notorious Strategy Paper<sup>27</sup> that called upon the European Union to show “political muscle” in preventing refugee and migrant influxes by means of foreign policy action towards countries of origin ranging from economic pressure to military intervention. Throughout the whole document, the Austrian Presidency quite bluntly took up the basic assumption that migration influxes dramatically affect vital security interests of the EU Member States, and as such proposed restrictive (sticks rather than carrots) co-operation with countries of origin and transit. Especially the idea to “supplement, amend or replace” the 1951 Refugee Convention invoked major criticism from human rights organisations.<sup>28</sup> And although much of the Strategy Paper had been dismissed in response to the criticism, it still remained influential in the years to come.

#### 2.4. General remark

For sure, the external approach to EU migration and asylum policy has evolved from a line of thought in the beginning of the nineties to a hot issue in the present context. Declarations of intent are making room for practical and financial evaluations. Implementation depends on the political willingness of the EU Member States and as for now there seems to be a broad consensus on linking migration and asylum policy to the Union’s external relations. Even the southern Member States, formerly not preoccupied with asylum and migration policy, are in line with the current trend. Spain is concerned with migration from Morocco, Italy with its long and porous borders, and for Greece migration from the Balkans is a priority. The phenomenon of migration is perceived as a security threat, and as such the policy measures foreseen appear in a

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<sup>26</sup> GREEK PRESIDENCY OF THE UNION, 20 January 2003, *Greek Presidency’s Programme on JHA external relations*, 5333/03 JAI 10 RELEX 7. Another Presidency document with reference JHA external relations is the following: GREEK PRESIDENCY OF THE UNION, 24 January 2003, *Programme of the Greek Presidency in the fields of immigration, border control and asylum*, 5672/03 JAI 18.

<sup>27</sup> AUSTRIAN PRESIDENCY, 1 July 1998, *Strategy Paper on immigration and asylum policy, from the Austrian Council Presidency to the K.4 Committee*, 9809/98 CK4 27 ASIM 170 limite. Second draft, 29 September 1998, 9809/1/98 REV 1 limite CK4 27 ASIM 170. Because of the criticism invoked, the second draft changed the wording of some controversial proposals, without altering the essence.

<sup>28</sup> *Ibid.*, point 103.

context of illegal immigration and migration management. Member States rally around restrictive measures, which in the post-September 11<sup>th</sup> security environment seem to be less controversial and find consensus more easily.

### **3. Theoretical framework**

After having presented an overview of the emergence and evolution of the external dimension of EU asylum and migration policy, now an account needs to be given for this new policy area or 'relatively new trend' as the Commission recently called it in its latest Communication. I will set out a theoretical framework providing an explanation for the policy innovation the cross-pillar approach entails. Here, I will refer to the ideas on institutional innovation Stone Sweet, Sandholtz and Fligstein (Stone Sweet 2001) have ventilated. In short, and among other, they argue that external shocks, endogenous institutional development and policy entrepreneurship, or a combination of them, lead to the creation of new policy areas in the European space. In my opinion, their theory is very well suited to clarify the policy innovation emerging at the junction of EU migration and asylum policy and the Union's external policies.

However, one factor needs to be added to this reasoning: the construction of the migration phenomenon into a security concept has facilitated the cross-pillar link. I will refer to this process as the so-called 'securitisation' of migration, a conception introduced and elaborated by Wæver and very much related to the notions of societal identity and societal security (Wæver 1993) (Buzan 1998). Regarding migration as a security threat, Member States have been very reluctant to admit migrants and asylum-seekers on their territories. Therefore it is not surprising that the focus has shifted from giving access to migrants and providing protection for asylum-seekers to trying to solve the root causes of migration and displacement in the countries of origin and transit. At this point, the realm of foreign policy has been entered.

#### **3.1. Policy innovation**

##### ***3.1.1. Overcoming the state-centric versus supranational dichotomy***

European integration theory has made a shift from grand theories that opposed state-centric and intergovernmental explanations to supranational accounts for the integration process, to meso- and micro-level theories that take a more governance oriented stance (Rosamond 2000: 109): integration is being regarded as polity formation (Chrysochoou 2001: 97), and the study of the European Union has changed its focus to public policy analysis (Bache 2001: 23). Specific policy

sectors and their institutional and organisational set-up have become the prominent objects of research.

Different theories have succeeded in overcoming the state-centric/supranational divide and position themselves somewhere along the continuum that lies in between these extremes. *New institutionalism*, and in particular its historical institutionalist variant, holds the premise that EC institutions, once created, lead a life of their own (Pollack 1996: 431). Gaps emerge in Member States' control over the integration process, and these appear difficult to undo (Pierson 1996: 131). The merit of institutionalism is the realisation that the power of national governments is increasingly being constrained by a dense institutional environment and that the grand intergovernmental bargains only account for part of the bigger picture (Pierson 1998: 58).

*Multi-level governance* as well points out the limits on individual as well as collective national government control (Hooghe 2001: 10). The European Union functions as a multi-level polity in which "authority and policy-making influence are shared across multiple levels of government – subnational, national, and supranational" (Marks 1996: 342).

Also the theory of *supranational governance* refers to the reduction of state capacity to control outcomes (Rosamond 2000: 126). In an expanding transnational society, supranational organisations and rules have the capacity to shape European integration (Sandholtz 1998: 6). Growing institutionalisation provides the capability for specific policy domains with increasing 'cross-border transactions' to become more supranational (Sandholtz 1998: 16).

I quote these integration theories here to illustrate to which tradition the theory on policy innovation, which I will discuss below, belongs. Institutional or policy innovation as I prefer it, leans heavily on institutionalist or governance-oriented accounts for integration and refers to these more than once. However, aiming at the comprehension of the emergence or deepening of specific policy areas, the theory of Stone Sweet, Sandholtz and Fligstein goes further into detail and offers a set of factors that act as stimuli for the innovation of policy.

### **3.1.2. Three factors**

Stone Sweet, Sandholtz and Fligstein have devised a theoretical framework accounting for the emergence and institutionalisation of the European political space, which has grown into a supranational policy arena. The authors list some reasons why there has been room for institutional change towards supranational governance at all (Stone Sweet 2001: 16). First of all, the European actors have been more than creative with the black-letter provisions of treaty law.

It is hard to imagine that such a variety of policy fields has somehow originated from the Rome Treaty. Moreover, supranational competencies have continuously been expanded, despite the restrictive decision-making procedures: instead of constantly facing a stalemate 'the European Union has become a powerful regulatory state'. Finally, in these supranational arenas formal and informal ways of co-operation have been established enabling the numerous actors to overcome their political differences.

Derived from institutionalist theory, the authors acknowledge the path-dependent<sup>29</sup> character of institutionalisation, and focus on two specific questions: first, on how institutional innovation comes about, i.e. the emergence and development of new institutional sites of governance, and secondly, on how the degree of institutionalisation of policy areas should be assessed.<sup>30</sup> It is the very first question that is of major importance to this paper, since the main focus here lies on institutional/policy innovation at the junction of migration policy and foreign relations.

Whereas the authors adopt a dynamic approach towards the institutionalisation of the European political arena and concentrate on institutional change as such, the *creation of new policy areas* is a specific kind of institutional innovation/change. It constitutes an application of it. **Three main factors**, acting as conditions to be fulfilled before institutional change takes place, have been singled out.<sup>31</sup> <sup>32</sup> **First of all**, external factors or exogenous shocks affect the functioning of organisations and their institutions. How organisations respond to these shocks or crises is vital to their performance and survival. As such, changes in the external environment may lead to policy innovation. Serving as fine examples in the field of migration, the removal of internal border controls as a consequence of the creation of the Single Market, as well as the perceived asylum crisis that peaked in the year 1992 have boosted the development of EU migration, asylum and frontier policy throughout the 1990s (Turnbull 2001). A more recent example can be found in the failure during the Kosovo conflict to establish a common temporary protection regime for displaced persons, after which EU Member States were more than determined to

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<sup>29</sup> Path-dependency does not make it possible to predict the outcomes of an institutional process, but merely states "that the outcomes that do emerge will be powerfully conditioned by the process through which they were generated" (Stone Sweet 2001: 17).

<sup>30</sup> In their assessment of the extent of institutionalisation, the authors try to find out what exactly the content of the institutionalisation is, how stable it is, and in which way, i.e. through which mechanisms or processes, it has taken place.

<sup>31</sup> The authors talk about different 'approaches' to institutional change, instead of 'factors'. In my opinion, these 'approaches' can be regarded as genuine conditions for innovation. As such, in the process of institutional/policy innovation, causal linkages actually exist between the 'factors' and the institutional/policy outcomes.

<sup>32</sup> A fourth 'approach' is being dealt with as well, i.e. the development of organisational relationships at the meso-level. "The argument is that institutional change is partly brought about by the diffusion of organisational repertoires of behaviour and models of action" (Stone Sweet 2001: 11). Since this research does not focus on the organisational field at the meso-level, I will not pursue this matter in greater depth.

make work of minimum standards for displaced persons enjoying temporary protection in case of a mass influx into the European Union.

A **second factor** points out that policy innovation also can be thought of as an endogenous process: within a given policy area interaction between actors increases and soon new ideas and rules need to be sought for since the old ones are no longer satisfactory. Increased interaction has the same effect on relations between different policy areas: as more legislation and jurisprudence may lead to tensions, co-ordination becomes indispensable. For example, in the realm of EU foreign policy, the quest for co-ordination and coherence has been a major preoccupation since the Maastricht Treaty. The various foreign policy domains, ranging from external trade to defence, are spread out across the first and second pillars and use different institutional mechanisms and policy instruments. To help achieve cross-pillar coherence, the Commission has pursued a policy of embedding different matters of external policy into EU partnerships, agreements or policies (Smith 2001: 185). This strategy has recently expanded to also include elements of Justice and Home Affairs. As such, these partnerships have already served as a common ground for integrating migration and foreign policy issues.

**Thirdly**, the effects of policy entrepreneurship on innovation should not be underestimated. The skilled social action of policy entrepreneurs is crucial to the construction of new policy areas or to the re-construction of existing policies liable to change. These specific actors generate fresh ideas and new frames for co-operation, but need to have sufficient authority to sell their aspirations to the other actors in the institutional setting. With the promulgation of their programmes, EU Presidencies emphasise certain policy fields in which they will try to make substantial progress, and as such can be very influential in the process of policy innovation. For example, the highlighting of migration and its root causes by the Finnish Presidency and consequently the adoption in Tampere of a comprehensive approach towards migration. Also, the weight attached to illegal immigration by the Spanish Presidency during the first half of 2002 has led to a new step in the process of integrating immigration policy into the Union's relations with third countries.

## **3.2. Security discourse**

### ***3.2.1. Securitisation of migration and asylum***

Ever since the abolition of internal frontier controls, the EU Member States have been discussing the topic of the so-called 'compensatory measures'. Since the very start of European policy on

migration and asylum, these matters have been dealt with within such a framework. The origin of migration and asylum policy lies in the spillover of the economic project of establishing an internal market into an internal security project (Huysmans 2000: 752). By underlining the criminal activities related to free movement, migration and asylum were baptised security issues within the European integration process (Guiraudon 2000: 260). Connecting migration and crime raises public fear. Immigrants, asylum-seekers and refugees are perceived as contributing to the security deficit within a borderless Europe (Turnbull 2001: 213).

Whereas migration into the European Union is regarded as a security threat and refugee flows as a threat to peace, these issues acquire the status of high politics. This politicisation is obviously negative and renders inclusion of third-country nationals extremely difficult. Migration becomes a meta-issue, cause of many problems. Complying with the public demand for greater security, the Amsterdam Treaty sets as objective to maintain and develop the Union as an Area of Freedom, *Security* and Justice (den Boer 2000: 513). Among other issues, appropriate measures with respect to migration and asylum are envisaged to guarantee the free movement of persons.<sup>33</sup> As such, the link between migratory movement and security has been codified. The European Union itself has formally taken over Member States' discourse on the 'securitisation' of migration and asylum policy (Kostakopoulou 2001: 130).

The events of September 11<sup>th</sup> have even intensified this link. Now and more than ever, there seems to be a broad consensus among Western States that immigrants and refugees constitute more of a threat than an asset and that they actually pose a security risk (Gibney 2002: 41). Here, the discourse on whether Europe currently is a 'fortress' or a 'sieve' comes to the fore. The least that can be said is that, at European Union level, the proponents of a 'sieve Europe' seem to be gaining ground, as the general trend of Union policy on migration and asylum is to increase legal obstacles to entering EU territory (Bigo 1998: 157).

### *3.2.2. The construction of security*

Clarifying the process of securitisation, reference has to be made to the work of Wæver. The author explains 'security' as "a practice, a specific way of framing an issue" (Wæver 1996: 106).<sup>34</sup> The securitisation of a certain issue entails depicting it as a matter of absolute priority, as an existential threat that needs to be dealt with. As such, the actor behind the securitisation demands the power to tackle the security issue by extraordinary means, e.g. by restricting human

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<sup>33</sup> Treaty on European Union (as amended by the Treaty of Amsterdam), article 2.

<sup>34</sup> This way of framing an issue is known as 'issue constructivism'.

rights of migrants and asylum-seekers, by blocking their access to the territory of the European Union. Thus, security functions as a 'self-referential practice'. Security is not a matter of objectively measuring the seriousness of a threat (Cederman 2001: 249). Instead, "it is self-referential because it is in the practice that the issue becomes a security issue" (Wæver 1996: 107). Labelling something a security issue is a choice.

Implicit in securitising an issue is that the success or failure of tackling the corresponding threat affects the survival of what is existentially threatened. Security discourse aims at elevating the issue at stake to the level of urgency so it becomes legitimate to overrule normal political procedures. To illustrate this, it is striking to see how many EU asylum law provisions referring to standards of treatment for asylum-seekers are supplied with derogation clauses in case national security or public order are at risk. To a state, security is all about sovereignty. Sovereignty is the criterion for a state to be a state at all, a subject of the international political structure. To a society or community, survival is a matter of identity. If a society has lost its identity, what it intrinsically is, it has not survived. Migration is being linked to 'societal security': it is perceived as a threat to the identity of the community.

It is not surprising that the European Union, in the process of evolving towards a genuine political and security community, is now focusing on the exclusion of third-country nationals (Monar 2000: 27) (Wæver 2000: 250). Inherent to constructing a community based on identity seems to be the exclusion of non-members (Neumann 1998: 399).<sup>35</sup> <sup>36</sup> Since migration is regarded as an existential threat to the survival of the political community, EU legislation is cutting back the rights of third-country nationals (Huysmans 2001: 203). A trade-off seems to exist between security and other values, e.g. rights of immigrants and asylum-seekers. At this point a paradox emerges. The fight for human rights constitutes a crucial element in the identity of the European Union towards the outside world. How then can the European Union reconcile its respect for human rights with a repressive migration and asylum policy? The European Union is in the process of undermining its human rights identity (Gowlland-Debbas 2001: 222). It goes

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<sup>35</sup> Identity is relational, explains Neumann. It is the "relation between two human collectives, that is, it always resides in the nexus between the collective self and its others, and not in the self seen in isolation".

<sup>36</sup> Adler clarifies that "international organisations can be a site of interest and identity formation. Particularly striking are those cases in which regional organisations have been established for instrumental reasons and later and unexpectedly gained an identity component (...)". In my opinion, identity formation in the European Union clearly constitutes an application of his hypothesis. Adler, E. (1997). "Seizing the middle ground: constructivism in world politics." *European Journal of International Relations* 3(3): 319-363.

without saying that desecuritising migration and asylum policy would be beneficial to the rights of migrants and asylum-seekers (Huysmans 2000: 162).

The construction of a European Union security identity manifests a specific implication for the overall integration process. Europe's identity gives evidence of a notable security dimension. The ability of the European Union to offer resistance to threats is critical to its survival. European integration as such can be seen as the political aspiration to establish and strengthen the EU identity. The alternative, fragmentation, would clearly signify a failure to do so. Bringing in the security argument gives urgency to the integration project, because its alternative is fragmentation. This way, integration acts as the referent point for a security rhetoric of 'Europe', since its success not only determines how Europe will be, but in first instance whether Europe will be at all (Wæver 1996: 128).

### *3.2.3. A facilitating factor*

The previous paragraphs serve as an introduction on the concept of 'securitisation' and the effects of security discourse. Specifically relevant to this paper is that the securitisation of migration seems to facilitate the integration of migration and foreign policy.

The concept of societal security, related to the question of identity, has enlarged the notion of security. Labelling migration as a new security risk, in other words the securitisation or even criminalisation of migration, has led to a rethinking of what exactly internal security means. Threats to internal security do not only seem to originate from the 'inside'. The realisation that the inside adversary, i.e. the immigrant or asylum-seeker, is coming from the outside provides that internal security goes beyond borders. It is 'transversal' (Bigo 2000: 173). As a consequence, internal security agencies (national police, military police, customs, border guards) are nowadays looking for their internal enemies beyond borders, for example in the fight against trafficking of illegal migrants. The other way around, external security agencies (army, secret service) are looking inside the borders for enemies coming from the outside. As such, it is becoming difficult to differentiate between internal and external security: they get blurred. Bigo gives a name to the recent phenomenon, i.e. the transnationalisation of security. In the case of internal security, it implies that it can no longer be reduced to the national territory. The sphere of internal security



has expanded to also include migratory flows.<sup>37</sup> A security continuum has emerged in which cross-border migration and crime become an increasing preoccupation.

The same realisation as the one mentioned above, also from a securitarian point of view, has started off a process of emphasising the external aspect of immigrant and refugee reception (Lavenex 2001: 855). The idea is to anticipate migratory flows, to counter migration at the source, to prevent flight in the region of origin, and is commonly known as the 'root causes approach'. This implies that immigration and refugee policy are no longer confined to the field of Justice and Home Affairs. Instead, it is becoming a foreign policy priority. Tackling the root causes of migration involves the elaboration of strategies towards countries of origin and transit. While the ultimate goal is the management of migratory flows, the instruments used fall under the Common Foreign and Security Policy and the Union's development policy. Today, this kind of foreign policy co-operation is developing into one of the most dynamic aspects of a common immigration and refugee policy. In the words of Lavenex, "the prevention-oriented approach is likely to become the focal point of an eventual common European refugee policy" (Lavenex 2001: 870). The underlying rationale is reactive: the intention is to keep foreigners out. The securitisation of migration has resulted in two trends: first, migration and asylum policy have become more restrictive, and second, it has facilitated the relation between migratory flows and the Union's external policy. In the overall theoretical framework of this paper, the securitisation of migration is a **fourth, facilitating factor** in the process of policy innovation at the junction of migration and foreign policy.

### 3.3. Two hypotheses

From the perspective of EU integration theories and the discourse around security four factors (independent variables) have been discerned. Together they account for the emergence of, or even better the search for, a comprehensive, cross-pillar policy (dependent variable). These factors result from two hypotheses. First, from the perspective of institutionalism and supranational governance, we assert that the combination of external factors or shocks, endogenous institutional development, and policy entrepreneurship leads to policy innovation, and here specifically in the field of a cross-pillar approach to migration, asylum and external relations. In a second hypothesis, from the point of view of constructivism, we assume that the construction of migration into a security concept (i.e. securitisation of migration) has

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<sup>37</sup> For example, new practices emerge such as the creation of liaison officers and police attachés in embassies. The idea is to proactively target certain categories of persons, who are believed to become engaged in criminal activity after migrating to the European Union.

watered down the boundaries between internal and external security and as such facilitated the link between asylum, migration and foreign policy.

While this link has recently been established, the implementation of a root causes approach will remain problematic for quite some time. In the EU structural set-up, the policies and instruments part of a possible preventive approach are spread across pillars. There is obviously need for cross-pillar co-ordination. In the next section we will introduce four case studies of the external dimension of EU asylum and migration policy. In future research we intend to put the hypotheses empirically to the test by means of an analysis of these four cases. We aim at being able to understand the cross-pillarisation in a better way in order to ultimately assess the needs of a successful and truly comprehensive asylum and migration policy.

#### **4. Four case studies**

The external dimension of Justice and Home Affairs is a large policy area. Although the external aspects of asylum and migration are just a part of this, they still embody a diversity of policy measures. For this reason, it is necessary to narrow down the scope of research and examine only a few measures in depth. We have selected four case studies that are to a large extent representative for the whole external dimension of asylum and migration. The cases display a different degree of comprehensiveness or cross-pillarisation, and inherently focus on diverse policy aspects: a case or policy measure can either have a geographical focus (i.e. directed towards a certain country or region of origin or transit), an intrinsic cross-pillar focus (i.e. the aim is explicitly to deal with a cross-pillar policy subject), or a structural-institutional focus (i.e. to call a structure into being that brings about cross-pillar co-ordination). The most comprehensive of the four case studies is the High-Level Working Group on Asylum and Migration. All three policy aspects are focused upon and its Action Plans are cross-pillar instruments, although the implementation of them remains problematic. The three remaining cases are: clauses and agreements on migration management and readmission, co-operation with the Balkans on asylum and migration, and temporary protection of displaced persons in case of a mass influx, the latter being a story of missed opportunities when it comes to establishing a cross-pillar approach.

##### **4.1. The High-Level Working Group on Asylum and Migration**

In December 1998, the General Affairs Council prior to the European Council in Vienna established the High-Level Working Group on Asylum and Migration (HLWG) and tasked it

with the drawing up of Action Plans for certain countries out of which significant numbers of immigrants and asylum-seekers arrive in the European Union, with the aim of addressing the root causes of migration and flight in a comprehensive, integrated cross-pillar approach. The HLWG drew up Action Plans for Afghanistan and the region<sup>38</sup>, Iraq<sup>39</sup>, Morocco<sup>40</sup>, Somalia<sup>41</sup> and Sri Lanka<sup>42</sup> that were adopted by the General Affairs Council on 11 October 1999 and endorsed by the European Council in Tampere on 15 and 16 October 1999. Due to the crisis in Kosovo, the draft Action Plan for Albania and the region<sup>43</sup> was not complete at that time. The General Affairs Council adopted it afterwards in June 2000. The Action Plans can be considered as a first attempt by the European Union to define a comprehensive and coherent approach with respect to the situation in a number of important countries of origin or transit.

A report on the implementation of the Action Plans had to be submitted to the Nice European Council in December 2000.<sup>44</sup> For this reason, with a view to implementing the Action Plans, the HLWG made a list of possible actions for the year 2000.<sup>45</sup> The measures for co-operation with the countries of origin or transit can be divided into three categories: foreign policy, development and economic assistance, migration and asylum policy.<sup>46</sup> The report to the Nice European Council gave evidence of essential insights with respect to implementation. In order for implementation to be effective:

- ✓ the approach needs to be comprehensive, maintained over the long-term and responsive to changes of situation;
- ✓ the Council, the Commission and the Member States need to work closely together in a co-ordinated manner;
- ✓ the necessary financial and human resources need to be agreed upon;
- ✓ expertise and insight from diverse policy fields have to be brought together;
- ✓ consultation and co-operation need to be established with the relevant international organisation;

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<sup>38</sup> HLWG, *Action Plan for Afghanistan and neighbouring region*, 11424/99 JAI 73 AG 28, 30 September 1999.

<sup>39</sup> HLWG, *Action Plan for Iraq*, 11425/99 JAI 74 AG 29, 30 September 1999.

<sup>40</sup> HLWG, *Action Plan for Morocco*, 11426/99 JAI 75 AG 30, 30 September 1999.

<sup>41</sup> HLWG, *Action Plan for Somalia*, 11427/99 JAI 76 AG 31, 30 September 1999.

<sup>42</sup> HLWG, *Action Plan for Sri Lanka*, 11428/99 JAI 77 AG 32, 30 September 1999.

<sup>43</sup> HLWG, *Draft Action Plan for Albania and neighbouring region*, 7886/1/00 JAI 40 AG 41, 6 June 2000.

<sup>44</sup> HLWG, *Report to the European Council in Nice*, 13993/00 JAI 152 AG 76, 29 November 2000.

<sup>45</sup> HLWG, 8939/00 JAI 60 AG 46, 30 May 2000.

<sup>46</sup> Important components of a comprehensive approach are protection of human rights, support for democratisation and the rule of law, social and economic development, alleviation of poverty, support for conflict prevention and reconciliation, co-operation with the UNHCR and human rights organisations, observance of refugees' and asylum-seekers' rights to protection, integration of migrants and the fight against illegal immigration (*inter alia* through Community readmission agreements).

- ✓ a genuine partnership must be established between the countries of origin or transit and the European Union, based on reciprocity, dialogue, co-operation and co-development.

One of the obstacles to effective implementation has meanwhile been solved. In 2001, a new budget line (B7-667) has been created to support 'Co-operation with third countries in the area of migration'. The overarching objective of the budget line will be to influence migratory movements through preparatory actions. Also, the mandate ('terms of reference') of the HLWG has been enlarged.<sup>47</sup> It has been officially assigned to investigate the link between migration and development and to extend its geographical scope.

The Action Plans as well as their implementation measures have been criticised by the European Parliament, NGO's and the media. Next to the critique that the implementation of a cross-pillar approach is a quasi-insurmountable task, most of the attention goes out to the manifest emphasis in the Plans and measures on the security component: the measures are said to be clearly imbalanced, with a strong weight given to measures devoted to prevent migration into the EU territory, especially the conclusion of readmission agreements. The security of the EU Member States and not development in the countries of origin or transit would be the major concern. This criticism matches the logic of the securitisation of migration: it has facilitated the link with foreign policy, but the impact on migration and asylum policy has been mainly restrictive.

#### 4.2. Clauses and agreements on migration management and readmission

The Amsterdam Treaty has empowered the European Community to regulate repatriation of illegal residents.<sup>48</sup> This new competency resulted in the adaptation of the existing rules<sup>49</sup> on readmission<sup>50</sup> clauses. In December 1999, the Justice and Home Affairs Council adopted the Decision<sup>51</sup> on readmission clauses in Community agreements or mixed agreements. These clauses are merely 'enabling' clauses: they are only intended to commit the contracting parties to readmit their own nationals, third-country nationals and stateless persons. How this will actually proceed is left to implementing agreements. A novelty is that these clauses need to be inserted in

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<sup>47</sup> COREPER, 30 May 2002, *Modification of the terms of reference of the HLWG*, 9433/02 limite JAI 109 AG 20 ASIM 18.

<sup>48</sup> Article 63 (3)(b), Title IV, EC Treaty.

<sup>49</sup> *Conclusions on readmission clauses in Community agreements* (between EC and third countries), 12509/95 RELEX 45, and *Conclusions on readmission clauses for mixed agreements* (between EC, Member States, and third countries), 4272/96 ASIM 6 COR 1.

<sup>50</sup> Readmission can be defined as the decision by a receiving state on the re-entry of an individual.

<sup>51</sup> COUNCIL OF THE EUROPEAN UNION, 2 December 1999, *Decision on readmission clauses in Community agreements or mixed agreements*, 13461/99.

all future Community or mixed agreements.<sup>52</sup> The Conclusions of the European Summit in Seville stressed this once again: any future co-operation, association or equivalent agreement should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration.<sup>53</sup> Following the Seville Conclusions, the Council defined a list of essential elements, which a clause should contain. One of these elements is the future conclusion of readmission agreements.<sup>54</sup>

Such agreements are definitely a step further than the introduction of readmission clauses. Recently, the first ever readmission agreement has been signed between the European Community and Hong Kong.<sup>55</sup> The Commission has already been authorised to negotiate other Community readmission agreements with Sri Lanka, Macao, Pakistan, Russia, and Ukraine. Negotiations with China, Albania, Turkey and Algeria will soon be started.<sup>56 57</sup> The main problem concerning the conclusion of readmission agreement is that they are seen as being in the sole interest of the Community. For this reason the Commission<sup>58</sup> has pointed out that the Community should provide incentives to obtain the co-operation of the third countries involved. 'Leverage' is needed: readmission negotiations and agreements can only succeed if they are part of a broader co-operation agenda. On a country-by-country basis, specific accompanying support and incentives should be granted, although the (financial) margin of manoeuvre is limited.

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<sup>52</sup> This has already happened for agreements with Algeria, Armenia, Azerbaijan, Croatia, Egypt, Georgia, Lebanon, Macedonia, Uzbekistan and the Cotonou Agreement between the EU and the ACP-countries.

<sup>53</sup> EUROPEAN COUNCIL, Seville, 21 and 22 June 2002, *Presidency Conclusions*, SN 200/02, par. 33.

<sup>54</sup> COUNCIL OF THE EUROPEAN UNION, 18 November 2002, *Intensified co-operation on the management of migration flows with third countries*, 14183/02, par. 8. The Council also agrees that "until negotiating directives have been given to the Commission to negotiate a readmission agreement, the country concerned should be ready to conclude a bilateral agreement with a Member State (...)".

<sup>55</sup> COUNCIL OF THE EUROPEAN UNION, 8 July 2002, *Council Decision concerning the signing of the Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation*, 9083/02 MIGR 42 ASIE 12.

<sup>56</sup> DANISH PRESIDENCY OF THE UNION, 2 July 2002, *Road map for the follow-up to the conclusions of the European Council in Seville – Asylum, Immigration and border control*, 10525/02 limite JAI 152 ASILE 35 MIGR 63 FRONT 64 VISA 107, point 3 and 4.

<sup>57</sup> These countries have been selected on the basis of *criteria for the identification of third countries with which new readmission agreements need to be negotiated*. GENERAL SECRETARIAT OF THE COUNCIL, 15 April 2002, 7990/02 limite MIGR 32.

<sup>58</sup> See *Green Paper on a Community return policy on illegal residents*, par. 4.1.1., and also *Communication on Integrating migration issues in the European Union's relations with third countries*, p. 25.

### 4.3. Co-operation with the Balkans on asylum and migration

Since 1999, the countries of the Western Balkans<sup>59</sup> have been part of the Stabilisation and Association Process. Aiming at regional co-operation between the participating countries and maybe even future accession to the Union (through the conclusion and implementation of Stabilisation and Association Agreements), the EU is showing its long-term commitment to the region both in terms of political effort and financial and human resources. One of the EU's policy objectives is to "respond effectively to the common threats to the region's and the EU's security which come from organised crime, illegal immigration and other forms of trafficking".<sup>60</sup>

The Final Declaration of the November 2000 Zagreb Summit recalled the intention to closely co-operate on Justice and Home Affairs issues such as illegal immigration and trafficking.<sup>61</sup> In response to the Zagreb Summit, the European Union and the five countries of the Western Balkans signed the Sarajevo Joint Declaration regarding regional co-operation in the area of asylum and immigration.<sup>62</sup>

The Former Yugoslav Republic of Macedonia (9 April 2001) and Croatia (29 October 2001) have already signed Stabilisation and Association Agreements. These Agreements contain a specific chapter on Justice and Home Affairs with provisions on asylum, legal and illegal immigration, and a readmission clause.<sup>63 64</sup>

In general, the European Union is making efforts to extend its role in the JHA sphere through co-operation with its strategic partners, like the Balkans, both through the instruments devised (here the regional programme of the Stabilisation and Accession Process) and the financial means

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<sup>59</sup> The five countries of the Western Balkans are: Albania, Former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, Croatia, and Serbia and Montenegro (formerly known as Federal Republic of Yugoslavia). The Stabilisation and Association Process is financially supported through the CARDS-programme (Community Assistance for Reconstruction, Development and Stabilisation).

<sup>60</sup> EUROPEAN COMMISSION, *The EU's actions in support to the Stabilisation and Association Process*, [http://www.europa.eu.int/comm/external\\_relations/see/actions/sap.htm](http://www.europa.eu.int/comm/external_relations/see/actions/sap.htm).

<sup>61</sup> Zagreb Summit, 24 November 2000, *Final Declaration*, [http://www.europa.eu.int/comm/external\\_relations/see/sum\\_11\\_00/statement.htm](http://www.europa.eu.int/comm/external_relations/see/sum_11_00/statement.htm). Illegal immigration and trafficking via the so-called 'Balkan route' is a major concern to the European Union.

<sup>62</sup> *Joint Declaration by the European Union, Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia on the follow-up to the Zagreb Summit regarding regional co-operation in the area of asylum and immigration*, Sarajevo 28 March 2001, 7366/01. The Declaration contains a commitment to readmit illegal residents who are nationals of the participating states.

<sup>63</sup> COUNCIL OF THE EUROPEAN UNION, *Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part*, 26 March 2001, 6726/01 limite YU 6 COWEB 20, Title VII Justice and Home Affairs.

<sup>64</sup> COMMISSION, *Proposal for a Council Decision concerning the signature of the Stabilisation and Association Agreement between the European Communities and its Member States and the Republic of Croatia on behalf of the European Community*, 9 July 2001, COM (2001) 371 final, 2001/0149, Title VII Justice and Home Affairs. COUNCIL OF THE EUROPEAN UNION, *Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part*, 11169/01.

available (CARDS).<sup>65</sup> Moreover, the European Union attaches great importance to the Balkan area. The Balkans are a key priority to the current Greek Presidency. For this reason, the Presidency has planned a summit (Thessaloniki, 21 June 2003) between the EU and the countries of the Stabilisation and Association Process. One of the objectives is to encourage JHA co-operation with the region as a whole.<sup>66</sup> The way in which this co-operation is organised will contribute to its success. At EU-level, the setting up of a cross-pillar working structure is deemed to be vital to the coherence of external EU action in JHA matters.<sup>67</sup>

#### **4.4. Temporary protection of displaced persons in case of a mass influx**

On 20 July 2001, the EU Ministers of Justice and Home Affairs signed the long-awaited<sup>68</sup> common instrument on temporary protection. The Council Directive<sup>69</sup> establishes a set of minimum standards for the beneficiaries of a temporary protection regime and some provisions for 'burden-sharing' between the Member States. The main idea behind this exceptional scheme is to offer immediate temporary protection, in case of a mass influx into the European Union, to displaced persons who cannot return to their country of origin, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation. However, what has not been emphasised, is that temporary protection can only be as much as an intermediate step part of a comprehensive approach.

The first objective of a comprehensive approach entails addressing the root causes (or 'push' factors) of involuntary population movements through concerted preventive measures varying from the promotion of human rights, good governance and sustainable development, to early warning, preventive diplomacy and humanitarian intervention. Possible root causes, amounting to increased migration and refugee flows, can be poverty, war, civil strife, demographic pressure, underdevelopment and environmental degradation. Also, the phenomenon of 'failed States',

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<sup>65</sup> BELGIAN PRESIDENCY OF THE UNION, 6 December 2001, *Evaluation of the conclusions of the Tampere European Council*, 14926/01 limite JAI 166, p.11.

<sup>66</sup> GREEK PRESIDENCY OF THE UNION, *Working document: Greek Presidency priorities for the Western Balkans*, <http://www.eu2003.gr/en/articles/2003/1/13/1487/>. An area of concern is the return of refugees and displaced persons that fled during the conflicts in Bosnia-Herzegovina and in Kosovo.

<sup>67</sup> SPANISH PRESIDENCY OF THE UNION, 3 January 2002, *Multipresidency programme for external relations in the field of Justice and Home Affairs (2001-2002)*, 5004/02 limite JAI 1. Mindful of this, the recently established ad hoc Working Party on trafficking in human beings and illegal immigration on the Balkan route is reporting on its findings and conclusions to SCIFA, HLWG, CATS and COWEB (see p.12).

<sup>68</sup> The establishment in the EU of a temporary protection regime was already under discussion during the conflict in ex-Yugoslavia. However, no agreement had been reached. As such, during the Kosovo crisis still no EU instrument was in place giving a harmonised statute to displaced persons.

<sup>69</sup> COUNCIL OF THE EUROPEAN UNION, *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*, Official Journal L 212, 07/08/2001, p. 12-23.

where authorities are unable to guarantee a minimum of security and where widespread violence such as ethnic cleansing takes place, constitutes a growing concern.

However, when despite the preventive efforts displacement does occur, temporary protection for the displaced persons needs to be offered by the host countries, accompanied by 'burden-sharing' between them. It has to be emphasised that temporary protection is merely an intermediate step in the whole chain of the comprehensive approach. The temporary protection offered is provisional on the duration of the conflict and gives the countries involved time to reflect on durable solutions. Temporary protection should never be deemed as a solution in itself, but as an intermediate step towards an eventual and permanent solution.

To host countries, the possibility of return as a durable solution is preferable. This is most likely to happen when the period of protection has been short and the causes of the displacement have been resolved. Other long-term solutions involve the integration of the displaced persons and refugees in their host country, through indefinite residence permits and perhaps naturalisation where desired, or the resettlement to more distant States.

A comprehensive approach to temporary protection is inherently cross-pillar. Only the fact that reliable information on the conditions in the country of origin is indispensable as to establish the existence of a mass influx and consequently a temporary protection regime, as well as to end such a regime when the situation in the country of origin is such as to permit safe and durable return. In a broader perspective, a common temporary protection regime can only be *temporary* if the European Union Member States jointly engage in the country of origin to solve the root causes of flight. So far, the comprehensive approach has been largely ignored. No references to such an approach have been mentioned in the Directive. Future research will point out why cross-pillarisation in the case of temporary protection – in contrast to the other cases – has not been accomplished, i.e. why the four above-mentioned factors have not (yet) been fulfilled.

## 5. Concluding remark

The case studies serve merely as an introduction to future research on cross-pillarisation at the intersection of EU migration and asylum policy and the Union's external relations. On the basis of EU document analysis and interviews with EU policy-makers we hope to collect sufficient and valuable information to test the theoretical assumptions and make conclusions on how to achieve a successful and cross-pillar approach to the phenomenon of migration.



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