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Twenty years of impasse

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DEMOGRAPHICS AND MIGRATIONS   SHARE

The sea, one of the most followed migration routes for the asylum seekers. Author: Gerd Altmann

"Lack of consensus, fragmentation, a security-based perspective, externalisation and conditionality have left their mark on the construction of European immigration and asylum policy, noticeably affecting the goals established at Tampere"

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The debate on mobility today revolves around goals, instruments and results that countries of origin, destination and transit coordinate in relation to the phenomenon. Thus, it is a public policy debate that is essential to every state, as it affects key constitutive elements such as territory and population. Furthermore, in the case of European immigration and asylum policy, it also affects the concept of sovereignty, as such policy can only by constructed through the converging wills of European Union Member States. The aim of this article is to examine some of the most pressing issues in European immigration and asylum policy, 20 years after its introduction.

The European immigration policy construction process

In the context of the European Union, the consolidation of the Schengen area, which permits free movement of persons between the countries within it, is one of the advances most highly valued by European citizens[1] and a paradigmatic example of the construction of an interrelated supranational area with its own regulatory framework. Coordination of a common internal area, with no internal borders, that favours the movement of citizens living in the territory explains the need to formulate a common approach regarding external borders, as well as determine who, how and why they may be crossed. European immigration policy thus arose as a requirement for guaranteeing the area of free movement, with the aim of constructing common, shared instruments in this field. Hence it differs from other fields of work: immigration policies affect two key conditions of the nation-state on which the current international system is based: population and territory. Indeed, joining a country's society and the way this process is coordinated are common issues for European states, thereby explaining the degree of reluctance in giving up competencies in this field among Member States over the last 20 years. From the very beginning of the European Union, immigration policy was drawn up as a complicated balance between national sovereignty and European integration, with a clear tension between state logic and supranational dynamics (Goig Martínez 2017).

A year after the signing of the Schengen Agreement (1985), the Single European Act stressed the need for Member States to cooperate with regard to the entry, movement and residence of the non-community population, while accepting that none of the stipulations in the agreement could affect the right of states to adopt whatever measures they considered necessary in controlling immigration from other countries. In 1997, the Treaty of Amsterdam incorporated the Schengen *acquis* into community regulations and two years later, in 1999, the process of coordinating a common immigration and asylum policy began. With the aim of building an area of freedom, security and justice, the issues of immigration and asylum were linked to free movement and visas, as well as external border control and the prevention of and fight against crime. This link between immigration and security (Pinyol-Jiménez 2018) would vary in intensity and emphasis in subsequent years, but would remain a permanent consideration in the narrative on immigration and asylum in the European Union.

The Tampere European Council in 1999 established four basic points on which to build European Union immigration and asylum policy: (1) the need for a global approach to cooperation with countries of origin and transit; (2) effective management of migration flows; (3) development of a common European asylum system; and (4) fair treatment of nationals from third countries residing in the EU. To develop these four lines of work, different work agendas were planned, the last of which has been known since 2015 as the European Agenda on Migration, and a number or regulatory instruments were implemented in an attempt to cover the different dimensions of this policy. Especially during the first 10 years of the immigration and asylum policy, a number of directives were passed on issues such as family reunification, long-term residency, the return of nationals from third countries in irregular situations, the single permit[2], the mechanism for determining the state responsible for examining an asylum application, and access and residency requirements for people with highly qualified professions, temporary inter-corporate work or for study and research. All this legislation aimed to regulate and harmonise the main instruments of entry into European Union territory, with special emphasis on the different routes and conditions by which extra-community persons could access and reside in EU territory (family, studies or work).

While acknowledging the significant progress made in recent years, whereby Europe has established a unique example of supranational co-management for migration policy, attention should also be drawn to a number of dysfunctions that have accompanied this process and limited its impact. The main obstacle to consolidating a common European immigration and asylum policy is maintaining the intergovernmental principal in adopting agreements in this area, leading to fragmentation (sectorisation) in decision-making, whereby progress has been partial and piecemeal. The only area where there has been room to build consensus is protection of external borders. Here progress has been better coordinated, with shared goals and more instruments and resources than in other areas. This has led to a security-based approach to managing migration that has contaminated the discourse on immigration and inclusion of foreigners into the European Union. Finally, relations with third countries have also been mediated by this security-based approach, leading to externalisation of migration control, generating conditionality and dependence in the European countries' relations with their neighbours, while also affecting other policies, such as cooperation with countries of origin and transit.

Lack of consensus, fragmentation, a security-based perspective, externalisation and conditionality have left their mark on the construction of European immigration and asylum policy, noticeably affecting the goals established at Tampere. In relations with countries of origin and transit, no real decision-making spaces based on co-responsibility or shared management have been built; instead, relations are essentially based on externalisation of border controls and the dubious (and unproven) correlation between increasing development in the country of origin and reducing migratory flows (Landau et al. 2018). In the debate on managing migration flows, fragmentation has prevented progress towards an integrated perspective, focussing all community action on the fight against irregular immigration. Nor has there been substantial progress in the common European asylum system, and lack of solidarity among Member States has confirmed the death of instruments such as the Dublin Regulation, designed to strengthen the system. Finally, although the European area has strong anti-discrimination laws, all the above narrative has been accompanied by an increasingly negative discourse on immigration in the European Union, driving the rise of new, highly xenophobic discourses of hate and putting social co-existence and cohesion at risk (De Lucas 2017).

Future scenarios for a European immigration and asylum policy

Given this situation, Tampere established the foundations for an integrated immigration policy that has since proved to be too ambitious. The only area in which Member States have reached a consensus is in protecting external borders, at the cost of reducing trust and solidarity between the states. All the other proposed instruments in which there has at least been slow progress in the last 20 years have reached an *impasse*, especially in the last decade. Now, in 2019, with a new European Parliament and European Commission, we await a new community proposal on immigration and asylum management.

Maintaining the dynamic of recent years means deciding, definitively, to stop progress towards a common immigration and asylum policy, so that the only area of convergence where there is a desire to work together is external border control. This feasible scenario would have a significant impact on the future of the European Union project: so far, lack of consensus and coordination has already threatened free movement in the Schengen area and the return of internal borders is now a foreseeable risk (Carrera et alt. 2018). This is the most likely scenario, but one whose results are far from ideal (Jakobson & Lauren 2018). Indeed, this partial advance, closely linked to the intergovernmental principle, offers little prospect of overcoming the excessive focus on border control, and suggests that advances in other areas will continue to be piecemeal, tending increasingly towards a minimal consensus, given the belligerence of countries in the Visegrád Group on issues of immigration and asylum.

A different scenario would require a return to the consensus (and spirit) of Tampere and progress not just in constructing a common immigration and asylum policy, but also in developing harmonised instruments for the partial management of migration and asylum in Europe. Adapting and increasing the flexibility of regular access routes is essential, not just for developing a well-regulated and balanced public policy, but also to avoid dysfunctions such as irregular migration. A scenario in which there is dialogue on inclusion and diversity in society based on the principles of democracy and welfare, which are the foundations of European societies, prioritising the fight against discrimination and hate speech. An example of this scenario, which considers partial harmonisation in certain areas, would be to explore options for designing a true common European asylum system, where determining asylum seekers' need for protection could be separated from the procedure. Initially, the European Asylum Support Office (EASO) could play a key role, leading and coordinating the review of applications, to then guarantee the distribution of asylum seekers in an EU reception country, based on previously approved distribution criteria, possibly following the German model. This logic, while applying the subsidiarity criterion, would facilitate participation of sub-state government (regional and/or local) in the refugee reception and integration process and ensure better results in the process. Opening the debate up to variable geometry in the case of managing immigration and asylum in the European Union makes little sense as it would affect the survival for the Schengen area and the free movement of persons.

Finally, a third scenario would involve definitive progress in defining a common European immigration and asylum policy. Today, this scenario seems completely impractical. It does not seem feasible for Member States to give up competencies in immigration and asylum above and beyond border control. A number of directives, affecting the most frequent access routes, such as studies and temporary or highly

qualified work, could be revised. But, in the short term, there seems little likelihood of exploring options and instruments that overcome the fragmentation of the system and which promote an integrated perspective linking these policies to other community policies, also coordinated through intergovernmental cooperation rather than supranational logic, such as employment policy or a common foreign policy. Without substantial changes, this *impasse* in recent years will spread and the lack of a European immigration and asylum policy, or a common, shared voice to meet today's challenges, will have even greater impact on the credibility of the European project. This is particularly so in relation to an issue used by parties on the far right, who mix their traditionally Europhobic discourse with a profoundly xenophobic one.

Conclusion

Almost 20 years after is conception, the full potential of European immigration policy has not been explored. We should not underestimate its contributions since 1999, because they have built the most innovative multilateral experiment in migration policy to date. But it is an unfinished, complex process with a number of major weaknesses (Pinyol-Jiménez, 2018). Lack of shared debate on how to manage immigration to the European Union, its instruments and its objectives has basically led to a migration policy focussed on border control.

This skewed debate allows Member States to continue avoiding the necessary discussion in Europe and thus develop their own national narratives, which often clash with the principles of solidarity and respect for diversity on which the Union is based. The traditional intergovernmental-supranational tension is even stronger and more difficult to solve in the area of migration.

Opening a space for calm debate and reflection on the issue of migration appears to be impossible in the European Union of today, with split between East and West, shown by the refusal of Eastern countries in the Union to sign the Global Compact for Migration, and the undeniable rise of xenophobic discourse. Yet it is essential. Because the phenomenon of migration is a constant factor in modern times and the capacity for response by European Union countries will provide better results if can progress, even if just partially, towards joint management above and beyond border control. And because, in a context of rising discourse that promotes hatred of the other, there must be a clear and coordinated response to this threat that endangers the social cohesion and model of coexistence contained in the motto of the European Union (united in diversity). Overcoming the *impasse* in European immigration policy is essential, because failing to do so could prove very costly to the survival of the European project.

References

Carrera, S., Stefan, M., Chun Lu, N. & Vosyliūtė, L. (2018). *The Future of the Schengen Area: latest developments and challenges in the Schengen governance framework since 2016*. Policy Department for Citizen's Rights and Constitutional Affairs. Brussels: European Parliament.

De Lucas, J. (2017). "Negar la política, negar sus sujetos y derechos (Las políticas migratorias y de asilo como emblemas de la necropolítica)". *Cuadernos electrónicos de filosofía del derecho*, (36), 64-87.

Goig Martínez, J. M. (2018). "La política común de inmigración en la Unión Europea en el sesenta aniversario de los Tratados de Roma (o la historia de un fracaso)". *Revista de Derecho de la Unión Europea*, (32), 71-111.

Jakobson, M.L. & Lauren, A. (2018). "European Migration Policy or Migration Policy in Europe?" *Paper Issue 18 July 2018*. Tallinn: International Centre for Defence and Security. https://icds.ee/european-migration-policy-or-migration-policy-in-europe/

Landau, L.B., Wanjiku Kihato, C. & Postel, H. (2018). Europe Is Making Its Migration Problem Worse. The Dangers of Aiding Autocrats. Snapshot September 5. *Foreign Affairs*.

Pinyol-Jiménez, Gemma. (2018). "Hacia una política europea de inmigración integral: ¿reto o mito? In Closa, C. & Molina, N. (coord.): El futuro de la Unión Europea. *Informe Elcano* 23: 75-90.

[1] See Eurobarometer 474 of 2018 'Europeans' perceptions of the Schengen Area' http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2218

[2] The directive establishes the common set of rights for workers from third countries residing in the European Union. See Pascouau, Y., & McLoughlin, S. (2012). EU Single Permit Directive: a small step forward in EU migration policy. European Policy Centre. Policy brief.

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