THE REPUBLIC OF TURKEY
BAHÇEŞEHİR UNIVERSITY

THE GRADUATE SCHOOL OF SOCIAL SCIENCE

TOWARDS AN EU POLICY ON ASYLUM AND IMMIGRATION

EU RELATIONS PROGRAM

GRADUATION PROJECT

Meriç YEĞENAĞA

İSTANBUL, SEPTEMBER 2010

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ABSTRACT

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Yeğenağa, Meriç

European Union Relations Program

Thesis Supervisor: Assist. Prof. Dr. Cengiz Aktar

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International migration continues to be one of the most critical issues on the global agenda. The increasing impact of globalisation throughout the 21st century has not only facilitated the exchange of goods, services and ideas, but also created a substantial impact on the scale and scope of international mobility. Whilst there are a number of economic, social and cultural advantages of international migration, it imposes critical challenges on states, such as the problem of illegal crossing of borders that require global and regional cooperation. Europe, for instance, is one of the regions with the highest percentage of immigrants, reaching over 7 per cent. The major immigration boom experienced since the early 1970s, in particular, has impelled the European countries and institutions to address the imminent problems related to immigration more collectively. Accordingly, this thesis focuses on European Union (EU) and puts particular emphasis on the efforts to create a common 'immigration and asylum policy' at the EU level. Whilst the EU's current migration policy could be better described as 'hybrid', this thesis argues that the ratification of the Lisbon Treaty would strengthen its supranational features. On the other hand, it intends to critically assess the EU's institutional capacity to converge national interests in the area of immigration and addresses some of the most crucial internal and external challenges facing the EU in its attempt to formulate a common immigration and asylum policy.

ÖZET

Avrupa Birliği Ortak Göç ve Sığınma Politikasına Doğru

Yeğenağa, Meriç

Program Adı: Avrupa Birliği İlişkileri

Tez Danışmanı: Yard. Doç. Dr. Cengiz Aktar

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Uluslararası göç küresel gündemdeki en önemli sorunlardan biri olmaya devam etmektedir. 21. yüzyıl boyunca küreselleşmenin artan etkisi, sadece mal, hizmet ve fikir alışverişini kolaylaştırmamış, aynı zamanda ölçek ve kapsam bakımından uluslararası hareketlilik üzerinde de önemli bir etki yaratmıştır. Uluslararası göçün birçok ekonomik, sosyal ve kültürel avantajlar vardır, ancak aynı zamanda devletlere küresel ve bölgesel işbirliği gerektiren kritik sorunlar -sınırlardan yasadışı geçiş gibi- kritik sorunlar yüklemektedir. Örneğin Avrupa, yüzde 7 üzerinde oranla göçmenlerin en yüksek olduğu bölgelerden biridir. Özellikle 1970'lerin ilk yıllarından itibaren büyük bir göç patlaması tecrübe eden Avrupa Ülkeleri ve kurumları, göçle ilgili sorunları topluca çözme gereksinimi duymuştur. Buna göre, bu tez Avrupa Birliği (AB)'ne ve AB düzeyinde ortak bir göç ve iltica politikası oluşturma çabalarına odaklanmaktadır. AB'nin mevcut göç politikası 'hibrid' terimiyle daha iyi tarif edilmesine rağmen, bu tez Lizbon Antlaşması'nın onaylanmasıyla bu politikanın uluslar-üstü özelliklerinin artacağını savunmaktadır. Öte yandan, AB'nin göç konusunda üye ülkelerin göç konusunda ulusal çıkarların yakınsamasını başarabilecek kurumsal kapasitesiyle ilgili eleştirel bir değerlendirme yapacak ve AB'nin ortak bir göç ve sığınma politikası formüle etme girişiminde karşılaştığı bazı en önemli iç ve dış sorunlara değinecektir.

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ABBREVIATIONS

Atomic Energy Community	:EURATOM
European Coal and Steel Community	:ECSE
European Community	:EC
European Court of Justice	:ECJ
European Economic Community	:EEC
European Union	: EU
Justice and Home Affairs	:JHA
Schengen Intormation System	:SIS
Treaty on European Union	:TEU
United Kingdom	:UK
United Nations	: UN
United Nations High Commissioner for Refugees	: UNHCR

1. INTRODUCTION

International Migration is considered as one of the crucial global issues of the early twenty-first century, as increasingly people are on the move today than at any other time in human history. There are now about 192 million people living outside their place of birth, which is about three percent of the world's population. This roughly states one of every thirty-five people in the world is a migrant (International Organization for Migration http://www.iom.int/jahia/Jahia/lang/en/pid/3 2008). During the last 30 years, international migration has continuously increased which is undoubtedly also due to the unlimited means of information. This raise of incentives, push people to go to those countries where the standard of life is seen as attractive and gives hope for better living conditions (Frahm 2003).

The essential factor affecting the increase on international migration is 'globalization', which is the main transformer of the world in every aspect of life. The integration and interdependence is the product of this globalization, for the states, societies, economies and cultures in different regions of the world. New technologies facilitate the rapid transfer of capital, goods, services, information and ideas from one country and continent to another. The global economy is expanding, providing millions of women, men and their children with better opportunities in life, however, the impact of globalization is not treating everyone evenly, and it is growing disparities in different parts of the world in the standard of living and level of human security. An important result of these rising differentials is an increase in the scale and scope of international migration (The Global Commission on International Migration http://www.gcim.org/attachements/gcim-complete-report-2005.pdf 2005). The global development having positive impacts on the world, also has negative effects on the world such as increases the disparities between regions and causing people to look for better living conditions where they can enjoy improved life standards. Since migration is an impulse inherent in human nature, it existed throughout the history which is basically the instinct to wonder and search for new opportunities to live for a prosperous future.

Global policy agenda has the international migration at the top. There are challenges and opportunities of the international migration as the complexity of the issue has grown, and the treatment to the issue depends on the positive and negative consequences. There are economic, social and cultural benefits of international migration, however there are negative consequences like illegal crossing of borders which should be better addressed. The solution is to convert all positive and negative features into advantages. Of course, this depends on the policy making of the States. I have to point to inconsistencies between States because although there is a union most of the states behave unilaterally acting according to their interests, if they need labor force, they apply more tolerant policies, if they don't need labor force, they use strict rules for the migrants.

The late 20th century is characterized as the *age of migration*, although it is exceptional within a world organized into mutually exclusive and legally sovereign states that impose barriers to international mobility in general and to international migration in particular. Within the process of globalization, there has been a tendency to free the flows of goods and capitals at the global level; however, there has been no parallel trend to free the flows of people. At the beginning of the 1960s, several countries liberalized their immigration admission policies, thus allowing immigration of persons from a greater variety of countries (Zlotnik 1999). Furthermore in 1992, freedom of movement within the European Union became a reality, which was a key aspiration from the moment the European Community has been created. In this paper I am going to go into detail of the historical evolution of integrating the migration policies to European level, and efforts on creating a "common immigration and asylum policy" and recent developments in this perspective.

In Europe, migration has been a problematic reality since the end of the World War II. National borders that once again clearly defined different cultures, languages and ways of life have yielded into a new multiculturalism that is posing many challenges for migrant and resident. Besides being a problematic reality, immigration altered the development of Europe, as it did in mostly all of the receiving countries like United States of America, Canada and Australia. Additionally, today, in the European Union,

migration issue has become more and more important emerging as a controversial issue. The main reason is the 15 million migrants, approximately 25 percent of the world's total migrants resides on its territory (Lahav 2004).

This complex but dynamic topic attracted me when I was searching for my thesis subject at the beginning. I knew that it would be really complicated to write a master thesis, I read a lot to learn more and more on every detail for my decision, and finally, I decided to write on the immigration and asylum policy in Europe. Since this is a master thesis, I will not have enough time and place to search, write and be able to cover every single detail and every aspect of this huge topic. I tried to deal with the major matters. Whilst writing this thesis, I used secondary resources as books, articles, journals, official internet sites and newspapers, both online and from the libraries in Turkey mostly Bilgi University Library, IEHEI Library in Nice, Staats Bibliothek and Freie Universitat Libraries in Berlin.

The essential question that I am searching for is; if the European Union is going towards an immigration and asylum policy at the supranational level with a special concern on Union's interests, instead of 27different interests; Is the Union competent to deal with this issue at the Community level which requires qualified majority voting in the Council in order to speed up the decision making procedure and have more coherent results. Besides the particular policies on the issue, can EU has its own policy, maybe by also abolishing the national ones? In other words; is the EU competent enough to deal with the immigration and asylum issues at the 'supranational' level? This is the main answer that this paper is searching for.

European Union is constantly evolving since its establishment, it has started as an economic entity but now it became a political entity and it is going forward to a federation. Since the borders are abolished by Schengen Convention, this cooperation became tighter and the issues such as immigration and asylum being a major competence of the nation state, now is an hybrid policy area which combine intergovernmental and supranational features. This proves that it is going further, and with its adoption, The Lisbon Treaty will be the greatest step on the issue as trying to

speed up the decision making and taking it at the top of the supranational agenda. However, besides all these, there is undoubted obstacle which is the diverse interests of the member states. This is the barrier on the progress. The Lisbon Treaty would decrease the impact of this barrier if it is adopted by each and every member state of the Union.

I would like to explain every step I will take while I am writing my thesis on the immigration and asylum in EU concerning the situation of third country nationals. Migration concerns economic migrants, family reunification, students, asylum seekers coming for humanitarian reasons and etc. These issues are all concerned under the umbrella of the term migration, in order to avoid misunderstandings before starting to go into details on the issue; I would like to clarify some terms that are going to be used throughout this paper, in a prolonged part in my introduction. Starting with the definitions of migration, immigration, emigration, asylum and refugee and etc, then explaining what is immigration and asylum policy in general and what does it deal with, via including theoretical approaches as liberal and realist frames. I will continue with the issue in Europe, what supranationalism is and if there is a possibility to transfer all the concerning issues to the supranational authority where the interest of the Union is defended instead of different national interests. Why would the Union need measures at the supranational level? All these matters under discussion will be analyzed in this individual part because I know there are confusions about these terms and notions, as I had at the beginning of my research. Hence, In order to explain these more openly, I will prolong my introduction.

After examining these general notions, I will start from the first cooperation in the Europe, the founding treaties and continue with the historical evolution for the last 50 years, followed by the recent developments. This chapter will go step by step with the treaties, first allowing coal and steel workers, then the other workers for economic stance of the Union, then the free movement and at last abolishing the internal borders. The last move “abolishment of internal borders” opens the box of Pandora. This is the essential part of the developments happening since then, which will presumably carry on…

These steps are; the founding treaties and some intergovernmental cooperations in Europe, free movement of persons principle, abolishing the internal borders and the multilateral approach to the asylum claims were introduced in which I call the Pre-Maastricht Period. After that, the Maastricht Period; introduced the pillar structure and the matters of common interests, which determine the competences divided among the institutions and the Member States. Then the evolution goes on with the Amsterdam Period which is the turning point that transfers the issues of immigration and asylum into the community matter which is a great sign for supranationalisation of the policy. Finally the Post- Amsterdam Period organizing these supranational steps and taking them forward with some intergovernmental programs like Tampere and Hague. These programs constitute the present shape of the policy in the EU, which is the reason that there is going to be a special and more detailed focus on these programs. These are the recent development on the issue which gives us the hints for the future projects and the tendencies.

While making my research on the immigration and asylum policy in Europe, the asylum matters attracted my attention, because this seems to be the most integrated area in the migration policy field. I wondered why and I decided to concentrate more on this specific policy field in order to find the answer. For this reason, in the second chapter there is going to be special focus on the asylum issue, particularly the recent developments on the Common European Asylum System. In this second chapter, I will start with the fundamental tool for the asylum in the world which is the Geneva Convention- 1951, determining the status of refugees in the world. It is an international obligation which European countries follow and take it as a base for the following intergovernmental cooperations. I will start by examining the Geneva Convention then Europe's response and accordance with it. Thus I divide this chapter in two parts as global and European measure. There is one major Global measure as The Geneva Convention and there are some European measures as; the Dublin Convention, The Dublin II Regulation and Common European Asylum System. After analyzing these measures the answer of the question 'Why it is the most integrated field?' should be given.

The European Union with the recent development tries to take Union wide measures instead of diverse national measures. The Commission insists on supranationalisation of the issue; however the national interests coincide with the Union's interest. There are plenty of challenges that the Union faces on the way of this supranational level arrangement. I will not have enough time and space to cover all these challenges one by one but I will take some of them which I think they are the most important ones. I will divide these challenges into two parts as internal and external challenges. The decision making procedure, the pillar structure, the institutional tension between the European institutions, variety of interest among member states and finally the public and media pressure are going to be analyzed in the internal challenges part. In the external challenges; there is an increasing number of people seeking for better life conditions and trying every way that they can reach the targeted destination. These people flee from their countries for whatever reason and searching every single method for achieving to enter. This also orient them for forgery, to seek asylum if they are rejected as an economic migrant of try illegal immigration if they are rejected as an asylum seeker. These constitute a big challenge for the European countries to cooperate on supranational level, because they are afraid of this increasing pressure. I will try to concentrate on these challenges for the policy to see the probable future if they will continue cooperation at this level or do something else.

These three chapters include the historical part and the present situation in Europe and the world. The last chapter will deal with the future of this policy. The next step is the Lisbon Treaty which is signed in 2007 and waiting to be ratified by all the member states. In this chapter I will look at the changes coming by this treaty and try to asses the attitude of the Union. What the Lisbon Treaty will bring with its adoption, are there going to be measures taken to face the challenges which are going to be discussed in the previous chapter? This chapter will give us some hints on the future of the probable policy on immigration and asylum policy of the EU. As I mentioned above I will start the prolonged part of the introduction which includes some definitions and analysis.

First and foremost, I would like to clarify the meanings of some terms which are used frequently in this paper. The terms migration, immigration and emigration are abstruse, as well the terms refugee and asylum are confusing, in addition policy, I have to clarify what the immigration and asylum and what does it deals with, and my goal is to give clear cut definitions for these notions.

All these terms, migration, immigration and emigration usually refer to moving considerable distances, especially from one country to another. To migrate-migration is to move from one place to another, it is the general name of this move. To emigrate-emigration and to immigrate- immigration are also to move from one place or country to another, but emigrate stresses leaving the old place, and *immigrate* stresses going to the new place (Wilson 1993). Accordingly, Immigration typically refers to the process of people leaving one nation for permanent residence in another. Emigration typically refers to the process of people leaving a nation.

Above and beyond, confusion exists in the terms refugee and asylum, I am also going to examine the differences between them. A *refugee* who seeks permission to stay in another country is known as an asylum-seeker. Most asylum-seekers seek this permission by applying to be recognized as refugees as defined in Article 1A (2) of the 1951 Refugee Convention adopted by The United Nations (Human Rights Education Associates http://www.hrea.org/learn/tutorials/refugees/glossary.html 2008). This article will be analyzed in the second chapter concerning the most integrated policy field which is asylum.

On the other hand, migrants and refugees are fundamentally different, and for that reason are treated very differently under modern international law – even if they often travel in the same way. Migrants, especially *economic migrants*, choose to move in order to improve the future prospects of themselves and their families. Refugees ***have to move*** if they are to save their lives or preserve their freedom (UNHCR 2007). Not to confuse these two terms; Asylum seekers are people who migrate to another country looking to be protected from war or persecution. In other terms, an asylum seeker is someone who says he or she is a refugee, but whose claim has *not yet been* definitively

evaluated. National asylum systems are there to decide which asylum seekers actually qualify for international protection. Those judged through proper procedures not to be refugees, nor to be in need of any other form of international protection, can be sent back to their home countries (UNHCR www.unhcr.org 2007). When people flee their own country and seek sanctuary in another state, they often have to officially apply for asylum. While their case is still being decided, they are known as asylum seekers. If asylum is granted, it means they have been recognized as refugees in need of international protection (UNHCR www.unhcr.org 2007).
The reason I wanted to define these notions in detail is to avoid confusion, and clarify that asylum is included in immigration issues, thus, immigration policy covers also asylum policy. Although these two are separate issues, they are interrelated to each other. That is the motivation of this thesis that these two policies are treated together. Asylum is treated as a special dimension of migration policy in the framework of the Geneva Convention.

Until now the admission of foreigners has been regarded in the context of legal immigration. However, in order to appreciate immigration, illegal immigration also has to be taken into account for it is rather relevant in the context of comparative law to examine how illegal immigration is treated in different countries. Illegal migration is when this moving toward a country violates some laws of the destination country. There are many forms of illegal migration. Migrants enter a country by land, air or sea; either by using some false documents or organized criminal networks, or migrants enters legally then overstay without any notification. They may be seeking asylum, but they may just be coming to find work or stay with family members. It can be either arrived legally and by expiry of his visa becomes an illegal immigrant, or who arrived by illegal ways. Another reason for illegal migration can be the long process of receiving refugee status. These people suffering from plenty of reasons, economic, social or war time situation apply for refugee status, but it is not easy and a quick solution, instead it is not even certain. They might wait for months, maybe for years. That is why; these hopeless people prefer escaping by their own means. Sometimes, people smugglers, exploit these desperate people, give them hope and let them reach the territories they want. This illegal trafficking of people, often ends up with a misery.

Briefly, illegal migration can be crossing external borders without documents, or crossing borders legally but staying longer even visa is annulled of expired. These are called people smuggling, by their own will and means, trying to escape to live in better conditions. Other way of illegal migration is trafficking in human beings; can be labor or sexual exploitation or illicit trade of human organs or tissue. These issues are out of the topic of this thesis, but just for clarification because illegal migration is a big problem for Europe, which proves why Member States cooperated mostly on the issue of preventing illegal migration.

The countries need detailed regulations for the immigration and asylum issues, however since the European Union start to deal with some parts of this issue, I would analyze what this policy is and before that what is the theoretical approach to this policy field.

In the field of immigration and asylum policy, one can distinguish between two ideal typical frames: the “realist” frame and the “liberal” frame. The Realist Frame concerns internal security issues. It is rooted in a state-centered, realist philosophy, concentrating on the question of border controls and underlines the norm of states sovereignty. In this frame, no distinction is made between different cross-border movements: illegal immigrants, asylum seekers and refugees are equal in the sense that they are third country nationals whose entry into the state’s territory must be controlled. The Liberal Frame in contrast, follows a humanitarian perspective and focuses on the individual person and underlines the norms of human rights. Accordingly, not the cross border movement as such but the individual and his or her rights are the central concern. With regard to refugees, this means that this frame underlines their right to receive protection and to have access to equitable asylum procedures (Lavenex 2000).

In this framing process, there is a dilemma in liberal democracies’ immigration and asylum policies, which usually pursue in between these two frames. These two aspects are interdependent which ensures efficient control and the respect of human rights and liberal values. Too much liberalism might lead to control deficits and thus undermine state sovereignty and ultimately internal security. On the contrary, too much emphasis

on control might undermine international human rights norms and the liberal principles of freedom of movement and refugee protection (Lavenex 2000).

As Lavenex analyzed the theoretical framework in these two directions, I would like to find out which one of these two, the EU uses. But before that, what is an immigration and asylum policy? What does it deals with?

What does immigration and asylum policy deals with?
Immigration policies determine who is eligible for admission to a state's territory and on what ground. According to Douglass Massey, immigration policy is "the outcome of a political process through which competing interests interact within bureaucratic, legislative, judicial, and public arenas to construct and implement policies that encourage, discourage, or otherwise regulate the flow of immigrants (Massey www.allacademics.com 2004).

The topic migration and asylum law and policy embraces a wide range of different subjects, such as: illegal entry; border control; relations with sending countries; integration issues; admission for labor and other purposes; reception of asylum seekers; asylum procedure; exclusive competences to process asylum claims; burden- sharing; re-admission agreements; return policies; etc. the major subjects are: entry, visa regime and border control, admission and residence of third country nationals, asylum and refugee law and termination of illegal residence, return and repartition (Higgins 2004).

This is what this policy deals with in general, but what about in Europe?
Since the end of the World War II, Europe has become a country of immigration. This pattern began with the reluctant importation of immigrant labor during the great economic expansion in 1950's and continued even after the official suspension of immigration of the 1970's. Although official policies indicated an objective of "zero immigration", immigrants continued to enter the countries of the European Union, both for family reunification and to work. Through the past few years, as countries of the EU have begun to recognize a need for immigrant labor once again, policies- and more

extensive discussions of policy- have become more flexible with regard to labor. Still, policies remain generally restrictive, even the immigration level has unexpectedly risen.

On the other hand, between 1 and 1.5 million immigrants enter the countries of the EU each year, although there is considerable variation by country, in terms of the numbers of immigrants, the proportion of the population that these represent, and the growth and stability of immigrants (Schain 2006).

What is supranationalism?

Supranational briefly, means the community method used in some specific policy areas in the EU, which is opposite of intergovernmental where decisions are mostly taken in unanimity method. Supranational is when the decisions are taken in majority voting method which helps to cooperate and help rapid decisions to be taken, and this improve the Union to go forward in most policy areas. The immigration and asylum policy is a hybrid policy field right now, where the methods vary according to the subject. There is no entirety in this field, for some matter intergovernmental method is used for some others supranational is used. This is the reason of the gradual improvement on the field and on the way to go forward to an EU policy which means an supranational policy.

How would be a comprehensive EU policy?

A comprehensive EU migration policy, as defined by the European Council, provides a coherent and efficient manner to respond to the challenges and opportunities related to migration (European council http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/92202.pdf 2007). This comprehensive approach involves all stages of migration, aims to harness the benefits of legal migration and covers policies to fight illegal migration and trafficking in human beings. It is based on the general principles of subsidarity, proportionality, solidarity and respect for the different legal systems and traditions of the Member States. It is also based on respect for human rights and fundamental freedoms of migrants, the Geneva Convention and due access to asylum procedures. It requires a genuine partnership with third countries and must be fully integrated into the Union's external policies. In this manner the EU and its Member States address the

challenges and opportunities of migration for the benefit of all, an area that constitutes one of the major priorities for the EU at the start of the 21st century.

2. HISTORICAL EVOLUTION OF THE TREATIES CONCERNING IMMIGRATION AND ASYLUM POLICY IN EUROPE

The border controls and the managing of migration flows are traditionally seen as more or less the exclusive preserve of the nation state. The funding treaties of the European Communities did not provide any rule aiming to promote supranational cooperation in the area of immigration and asylum. However, as soon as the European Economic Community evolved into the more cohesive European Union, European level involvement in establishing a common legal framework on the status of third country nationals which are not originally covered by the treaties emerged in this ongoing process.

In this chapter, the evolution of the immigration and asylum policies by the treaties will be presented, starting from history since 50 years and go on with the recent history. The special focus concerns the free movement of persons, which was established by the creation of the common market. The free movement is a right for goods, capital, services and persons to move freely in the European market, however the raison d'être of the "free movement" originated within the context of economic integration, exclusively including economically active in the market. Analyzing the history of the policy on immigration and asylum should start by this fundamental right established in the European Economic Community.

The brief history of the steps taken on the issue is; firstly the Pre-Maastricht Period which consist of the Founding treaties, then the TREVI Group out of the Community framework realized. Later on, The Single European Act and Schengen Convention gave the impetus to realize the free movement of persons, and abolished the internal borders.

Then, The Maastricht Period which introduced the pillar structure, moreover, The Amsterdam Treaty; moved all the matters related to immigration and asylum in the Community pillar. Afterwards, recently in the last 9 years, the Tampere European Council in 1999 and The Hague European Council meeting in 2004 constitute the biggest steps towards the EU policy on immigration and asylum.

2.1 PRE- MAASTRICHT PERIOD

2.1.1 The Founding Treaties

The founding treaties – Treaty Establishing the Coal and Steel Community 1951, Treaty Establishing European Atomic Energy Community 1957 and Treaty Establishing the European Economic Community 1957- set out the goal of establishing the free movement for Europe's citizens, principally for workers. The internal free movement in return, implied a common approach by member states on whom they will admit at the external borders of their territory. The roots of the formal cooperation among EU member states in relation to non-EU migration lie in the process of cooperation on the free movement of EU citizens. To have a closer look to the historical evolution of immigration and asylum policy in the EU, I will focus on each step taken by the treaties. Starting from the early 50s, as mostly economic cooperation was established, in the 80s political cooperation which was a complex but steady process took place; I will then set out the recent developments.

The first European agreement was the treaty established the European Coal and Steel Community (ECSE) in 1951. Signatory states, France, Germany, Italy, Belgium, Luxemburg and Netherlands, agreed that "steel and coal workers and their families had the right to move, reside and take up employment in any of the six signatory states (Larsen http://www.allacademic.com/meta/p72426_index.html 2004). Consequently, in the beginning only steel and coal workers were granted free movement rights.
Evidently this right was very limited; the Community expanded that free movement right to include all workers, not just those employed in the steel and coal industry.

The legal basis for the movement of third country nationals into the European Union is firstly procured by the Treaty of Rome which established the European Economic Community (EEC) signed in 1957 by six Western European countries. EEC came into force as a supranational economic organization and gave birth to the Common Market and the Atomic Energy Community (EURATOM).

The establishment of the EEC and the creation of the Common Market were together a big step towards a closer unification of Europe. There were two main objectives: first to transform the conditions of trade processes and manufacture on the territory of the Community, and second to contribute towards the functional construction of a political Europe (Europa http://europa.eu/scadplus/treaties/eec_en.htm 2008). This treaty developing a common trade policy also developed some common policies, like agricultural policy and transportation policy that have been also a sign for the future political actions.

The Treaty of Rome did not provide any competences for the EEC in the field of migration policy; however, it provided the firm basis for Community action on migration for employment between Member States (Niessen 1996). The abolition of obstacles to the free movement of goods, persons, services and capital between the Member States 'article 3c of the Treaty' was provided as one of the means for the well functioning common market. The principles of freedom of movement for workers and the freedom of establishment in the territory of any Member State for the EEC nationals were the implications of "free movement of persons" principle (Kicinger http://www.cefmr.pan.pl/docs/cefmr_wp_2004-01.pdf 2004). However, these rights originated from economical stance and aimed to enable the flow of workers necessary for building the common market. Remarkably, the right for free movement of families of the workers was not secured at all.

Consequently, the Treaty of Rome, besides the free movement of goods, under the Articles 48-51 underlined the free movement of persons, exclusively the workers within the Community (Niessen 1996). Under the conditions of high demand for labor and limited surplus in other states of the European Union, encouraging the movement of workers to fill this demand, was important for the effective functioning of the integrated market (Chatzopoulos 2007). That movement was exclusively given to economically active people. To sum up; the priority of the Member States was to create a legal basis for their protection and ensure that those workers would not become victims of discrimination.

Immigration from third countries has always been considered to be primarily a matter within the entity of member states. Therefore, there has been no development of a common policy on immigration and asylum, and the need was never felt for a long time. The EC treaty does not give clear mandate to the European Institutions to pass legislation on related issues; nevertheless, a limited mandate is given to promote equality of treatment to the third country nationals, through 'Association and Cooperation Agreements' between the Community and third countries (Chatzopoulos 2007).

2.1.2 Cooperation Outside The Community Framework

As the Member States had different stances vis-à-vis the free movement of people if it must include third country nationals or not, in this frenetic moment, the intergovernmental cooperation begun to take place outside the European Union's formal framework. From 1975 onwards, the issues, immigration, the right of asylum and police cooperation also dealt in this informal framework. At a Council of Ministers meeting in Rome in December 1975 a United Kingdom initiative to set up a special working group was agreed and TREVI (Terrorism, Radicalism, Extremism, and International Violence) was set up in 1976 (Bunyan 1997). Informal arrangements were established for sharing experiences, exchanging information and expertise and setting up networks to facilitate contacts between Member States. Although the original remit of the TREVI Group covered terrorism and internal security, its scope was extended in 1985 to cover illegal immigration and organized crime (Europa http://europa.eu/scadplus/leg/en/lvb/l33022.htm 2008).

The aim was to provide a forum for European agencies concerned with terrorism to exchange information. The main idea was to operate these ad hoc groups secretly, without or with a little control and scrutiny of national parliaments, to establish "informal" contacts among the officials; police, immigration, customs, and internal security and ministry representatives, so that they get to know each other (Bunyan 1997).

Despite its ambiguous legal status, TREVI was considered as a useful tool and it remains an important reference for understanding the continuity of a specifically European approach to anti-terrorism. Many of the informal frameworks developed through the TREVI group were then integrated into the legal instruments of the Maastricht Treaty (Burgess http://www.libertysecurity.org/IMG/doc_Critical_assessment_5-3.doc 2005).

2.1.3 Free Movement Of Persons

Since 1957, The Treaty of Rome dedicated its signatories to the creation of an internal market with free movement of goods, services, persons and capital, however, the Single European Act sought to make the internal market a reality. Moreover, the Single European Act, signed on 17 February 1986 intended to amend the founding treaties of the European Economic Community. This was a turning point in the process of cooperation in immigration and asylum matters (Europa http://europa.eu/scadplus/treaties/singleact_en.htm 2008).

This Act provided the transformation of common market into a "Single market" defined in the Article 8A: an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty (Europa http://europa.eu/scadplus/treaties/singleact_en.htm 2008). So the internal borders were abolished in order to regulate the single market.

Single European Act as well changed the perception of immigration policy in all member states. Although it does not mention common immigration policy, Article 8A creating this area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. This article caused many disputes among those who referred this also to non-member-state nationals, the Commission, and those who interpreted it exclusively to Community nationals. Hence, these discussions prolonged among pros and cons, whether including third country nationals in the "free movement of persons" principle or not.

2.1.4 Multilateral Approach For Asylum Claims

Furthermore, the EU has also sought to operate a multilateral approach to deal with asylum claims. On the matter of asylum protection, another convention was issued, that countries could not decline according to the Geneva Convention which regulates the asylum system in the international outlook. In accordance with the international obligatory status of the Geneva Convention, Dublin Convention was a form of binding agreements which coordinate multilateral responsibilities of the Member States.

The fall of the Berlin Wall and the dramatic events in 1989 were initially met with celebration, which quickly turned to great concern about a migration flood from the east (Lahav 2004). The use of the asylum system for immigration purposes made nation states very protectionist and the asylum issues placed in a "securitarian frame", thus asylum issues became an instrument in pushing member states to cooperate to control abuse of asylum status.

The Dublin Convention lodged in June 1990 aimed to codify harmonized rules and procedures for processing asylum. Moreover, determined the Member State responsible for examining an application for asylum, which is a matter that is not settled by the Geneva Convention on the status of refugees (Irish Refugee Council Fact Sheet
http://www.irishrefugeecouncil.ie/factsheets/dublinconvention4.doc
2002). The Convention entered into force on 1 September 1997. The well application of the convention could guarantee the creation of common European asylum system which would be a great step towards harmonization of policies and integration. Since the entry into force in 1997, this convention is proved to be unworkable and inefficient. Dublin Convention was replaced by the Dublin II Regulation in 2003. This convention is still "the basis" for the future common asylum arrangements. Further attention will be given in the following chapter while dealing with the asylum issue in particular.

2.1.5 Abolishing The Internal Borders

A new page on the issue opened in 1985 with the Schengen Agreement, which was signed by France, Germany, Belgium, Netherlands and Luxemburg, particularly referred to the free movement of people. The signing of this part was delayed due to the developments in Eastern and Central Europe (Chatzopoulos 2007). This corresponds with the situation mentioned above.

The Schengen Agreement was a trans-border agreement which tried to eliminate the duties and visa controls in order to liberate the free movement of persons. A further convention was drafted and signed in 1990- Schengen Convention- came into force in 1995: abolished checks at the internal borders of the signatory states and created a single external border where immigration checks for the Schengen area are carried out in accordance with identical procedures (Europa http://europa.eu/scadplus/leg/en/lvb/l33020.htm 2008). Consequently, all these commitments were implemented in the Schengen Convention in 1990- but it was not until 1999 that internal border controls were finally abolished between these five signatory states including Spain and Portugal.

Schengen Convention, besides serving the objective of completing the single market, focuses more on security rather than cohesion. To reduce the risks associated with the free movement of people, the EU has strengthened controls at the external borders, harmonized visa, asylum and migration policies, created the Schengen Information System (SIS), and enhanced cooperation between police, immigration and judicial authorities (Berg and Ehin http://cac.sagepub.com/cgi/content/abstract/41/1/53 2006). Nevertheless, only in 1997, under the Amsterdam treaty, the arrangements were finally incorporated into the EU's framework (Moraes 2003).

The main measures adopted regarding third country nationals under the Schengen Agreement are:

i. separation in air terminals and ports of people traveling within the Schengen area from those arriving from countries outside the area

ii. harmonization of the conditions of entry and visas for short stays
iii. the definition of the role of carriers in measures to combat illegal immigration
iv. requirement for all non-EU nationals moving from one country to another to lodge a declaration;
v. the drawing up of rules governing responsibility for examining applications from asylum seekers
vi. The creation of the Schengen Information System (Europa http://europa.eu/scadplus/leg/en/lvb/l33020.htm 2008).

The abolishment of internal borders created a big concern on the security of external borders. Accordingly, in order to reconcile freedom and security, this freedom of movement was accompanied by so-called "compensatory" measures (Europa http://europa.eu/scadplus/leg/en/lvb/l33020.htm 2008). This involved improving cooperation and coordination between the police and the judicial authorities in order to safeguard internal security and in particular to tackle organized crime effectively.

A sophisticated database, Schengen Information System (SIS), developed by the authorities of the Schengen member countries to exchange data on certain categories of people and goods (Europa http://europa.eu/scadplus/leg/en/lvb/l33020.htm 2008). This database system was used to link the national government, who had signed the agreement, through a central unit computerized in Brussels. It had originally been planed to have the SIS in place for the beginning of 1993, but the date of its operation was in March 1995.

Schengen Agreement was not signed by all member states, Denmark, United Kingdom and Ireland are still out of the Schengenland through receiving opt-out clauses, and however Iceland and Norway are members of the Schengenland without being a member of the European Union (Cerarani 1996). Although it is not originally signed by all EU member states, the Schengen Agreement and its provisions were later included in the Amsterdam Treaty in 1997, that provided much of the political architecture employed in the EU process of regional integration. Moreover, Amsterdam Treaty

arranged Schengen provisions into the Schengen acquis, which constitute the legal framework of European Union.

The seeds of restrictive cooperation were sown by 1990. Notably, the Dublin Convention and Schengen Agreements bore the hallmarks of lowest denominator bargaining (Lahav 2004). The Pre- Maastricht arrangements were intergovernmental in structure, which all the dialogue and debates were between the individual member states and these agreements did not involve the European Community, all were out of the Community framework and were subject to national dynamics, which explained why their implementation would be delayed by almost ten years (Bunyan 1997).

2.2 MAASTRICHT TREATY: 1992- 1993

At the start, The European Union was based in economic policy with the driving forces as three initial treaties aiming to bind Europe together through the integration of national economies. The Maastricht Treaty signed in 1992 entered into force in 1993, amended the existing treaties and established the new one: the Treaty on European Union. The Community clearly went beyond its original economic objectives, and moved towards political ambitions. The Treaty of Maastricht as well changed the official name of the EEC, from this time forth, it will be known as European Union.

2.2.1 The Pillar Structure

The Maastricht Treaty created the European Union which consists of three pillars:
Treaty of Maastricht on European Union states that;

> *The European Communities: the first pillar, based on the supranational competences established by the founding treaties EEC, European Coal and Steel Community and EURATOM in which decisions are taken by a proposal of the European Commission, its adoption by the Council and the European Parliament and the monitoring of compliance with Community law by the Court of Justice.*
>
> *Common foreign and security policy: the second pillar, allows Member States to take joint action in the field of foreign policy. This pillar involves an intergovernmental decision-making process which largely relies on unanimity. The Commission and Parliament play a modest role and the Court of Justice has no say in this area.*

Justice and Home Affairs: (Since the Treaty of Nice this pillar is called "Police and judicial cooperation in criminal matters"): concerns cooperation in the field of Justice and Home Affairs which changed to an "Area of Freedom Security and Justice" with the treaty of Amsterdam. The Union is expected to undertake joint action so as to offer European citizens a high level of protection in the area of freedom, security and justice. The decision-making process is also intergovernmental. (Europahttp://europa.eu/scadplus/treaties/maastricht_en.htm 2008)

After the entry into force of the Maastricht Treaty, the law and policy on third country nationals in general was divided between the First Pillar and the Third Pillar. The difficulties of the division between the two pillars of an area as sensitive as immigration and asylum created new challenges for the Community and for the Member States (Guild 2001).

2.2.2 Matters of Common Interest

The three-pillar structure of the EU made integrated immigration policies under the EU and recognized issues like immigration, asylum and external borders as being of common interest, to be dealt with on an intergovernmental basis, leaving goals and implementation strategies to national and administrative interpretation (Lahav 2004). The decision-making structures in the third pillar ensured that cooperation remained strictly intergovernmental (Faist and Ette 2007). And the treaty also stated that unanimity is needed to transfer certain areas of policies from intergovernmental level to the Community level:

For the purposes of achieving the objectives of the Union, in particular the free movement of persons and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest;

- *i. asylum policy;*
- *ii. rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;*
- *iii. immigration policy and policy regarding nationals of third countries;*

(a) conditions of entry and movement by nationals of third countries on the territory of Member States;
(b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment;
(c) combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States. (Maastricht Treaty http://www.hri.org/docs/Maastricht92/mt_title6.html 2008)

The Council, acting unanimously on the initiative of the Commission or a Member State, may decide to apply Article 100c of the Treaty establishing the European Community to action in areas referred to in Article K.1(1) to (6), and at the same time determine the relevant voting conditions relating to it (Treaty Establishing the European Community http://www.hri.org/docs/Rome57/Part3Title05.html 2008). It shall recommend the Member States to adopt that decision in accordance with their respective constitutional requirements (Maastricht Treaty http://www.hri.org/docs/Maastricht92/mt_title6.html 2008).

In this manner, the Maastricht Treaty extends the competences of the Community in the area of immigration policy to a limited degree, but also offers the possibility of bringing more elements into its competence (Niessen 1996).

On the basis of a Commission proposal, the Council of Ministers, after consultation with the European Parliament, determines the third country nationals must be in possession of a visa when crossing the external borders of the Member States. The Council will act on the basis of unanimity, except in the cases of a sudden, threatened inflow of nationals from third countries whereby decisions can be taken by qualified majority (Niessen 1996).

The Maastricht Treaty formally recognized the need for serious common immigration policy. Migration matters were not necessarily the domain of the Commission, nor were decisions automatically subject to judicial review by the Court of Justice. Although several measures were undertaken at the European level towards the construction of European-wide immigration policies, many provisions were seen to pave the way for more restrictive policies than had already been in place. Moreover, as Guiraudon and Lahav commented, The Maastricht Treaty gave immigration issues more attention, but it did not provide a coherent strategy to overcome the anomalies that has plagued the previous phases. Even though this shifting upward migration control to international actors in its infant stage, it is making progress (Guiraudon and Lahav http://cps.sagepub.com/cgi/content/abstract/33/2/163 2000). We will see further progress in the next step, which is the Amsterdam Treaty ratified in 1999.

2.3 AMSTERDAM TREATY, THE TURNING POINT FOR THE COMMON IMMIGRATION AND ASYLUM POLICY 1997-1999

An intergovernmental pillar has been grafted onto the Community pillar and legal instruments of a new kind have been created. Cooperation on these lines was set up following the entry into force of the Treaty on European Union in 1993 but has not been seen as very satisfactory in terms either of how it works or of the results it has produced (Europa http://europa.eu/scadplus/leg/en/lvb/a11000.htm 2008). Subsequently the revision of the EU Treaty has brought in some major changes in the decision-making process and the pillar structure.

To manage this ambiguity, Title IV (Articles 61 to 69) of the EC Treaty entitled 'Visas, asylum, immigration and other policies related to free movement of persons': these provisions, created by the Treaty of Maastricht in the context of the third pillar, were incorporated in the Community context- EC Treaty by the Treaty of Amsterdam and to some extent come under the Community decision-making system (European Parliament http://www.europarl.europa.eu/facts/4_11_1_en.htm 2008).

First and foremost, I must say that, the most important supranational document towards the unification of immigration policies in the last years seems to be the Amsterdam Treaty. With the Amsterdam Treaty, asylum and immigration policies towards third nationals become a major priority of the EU policy-making. To sum up, immigration policy became a full Community responsibility with the entry into force of the Treaty of Amsterdam on 1 May 1999. Article 63 of the Treaty establishing the European Community (ex Article 73k) makes immigration a competence of the EU (Europa http://ec.europa.eu/justice_home/doc_centre/civil/legal/doc_civil_legalaid_en.htm 2008) .

Controls on the external borders, asylum, immigration and judicial cooperation on civil matters all now come under the first pillar and are governed by the Community method. Only police oriented role which focuses on trafficking in persons and drug, and judicial cooperation in criminal matters remains under the third pillar, to which the new treaty adds preventing and combating of racism and xenophobia (Europa http://europa.eu/scadplus/leg/en/lvb/a11000.htm 2008). The object is to make it easier

for European citizens and nationals of non-member countries to move freely, while at the same time building up effective cooperation between the different government departments concerned in order to combat international crime.

Until 1995, we have to consider that there had been massive criticism towards the third pillar by the Commission, the European Parliament and the Council. But the Amsterdam Treaty was to be a comprehensive reform in this field which showed that the immigration policy of EU states is due to be progressively harmonized within the Community framework. The most important were the institutional changes of asylum and immigration policy which changed and moved to the first pillar, and the incorporation of the Schengen acquis into the EU framework. These institutional developments bring in new types of decision taking, which should make it possible to adopt more - and more effective - measures, leading to closer cooperation between Member States (Europa http://europa.eu/scadplus/leg/en/lvb/a11000.htm 2008).

The first phase of supranational cooperation on immigration and asylum policies in the European Union brought under Community procedure during a five year transitional period that commences in May 2004. The Amsterdam Treaty set a deadline for approving a number of common policies later which are prioritized during the Tampere European Council meeting established the Tampere Programme which is a five year action program set out on the central measures of a common European immigration policy in October 1999 (Fouse 2004).
In June 2004, five years later, the Commission published its final assessment of the original Tampere Programme, stating that substantial progress has been made in most areas of justice and home affairs (European Commission http://ec.europa.eu/justice_home/news/intro/news_0604_en.htm 2004) . Because of the intergovernmental decision-making procedures based on unanimity in the Council of Ministers, however, it was not always possible to reach agreement at the European level for the adoption of certain sensitive measures relating to policies which remain at the core of national sovereignty (Faist 2007). Subsequently, the major obstacles relating to the decision making structure and the scope of integration were decided to overcome, beginning on 1 January 2005, decision-making on EU immigration policies -with the exception of legal immigration- would become subject to qualified majority voting

(QMV) and the co-decision procedure with the European Parliament, thus providing for serious supranationalisation of this policy area (Faist 2007). This was the main purpose of the 2005-2010 Hague Programme established immediately after the Tampere Programme. These programs are the recent evolutions on the path through the EU policy on immigration and asylum issues; therefore there will be a specific focus on these programs in the following part.

2.4 POST- AMSTERDAM PERIOD 1999-…

Shortly after the Amsterdam treaty entered into force, EU leaders agreed on a detailed list of goals for EU asylum and immigration policies called the Tampere Programme. Afterwards in 2004 the governments took stock and added some new goals, renaming it The Hague Programme.

2.4.1. Tampere Programme, October 1999

This part of the historical evolution chapter is extended for the reason that these programs are the most recent developments and they reflect the level of cooperation at the moment. In October 1999, shortly after the ratification of the Amsterdam Treaty, the Tampere European Council adopted the Tampere Programme establishing the political agenda for JHA co-operation policy. The program attempted to respond to Amsterdam's inability to provide for the right of third country nationals by making a strong claim for reform. Besides, the program identified four basic cornerstones on the path of developing the Union as an Area of Freedom, Security and Justice: define a common immigration and asylum policy; establish a true European justice area; fight organized and transnational crime; and include the JHA issues in the EU external relations (European Council http://www.eu2007.pt/UE/vEN/Politicas/JAI/TheEuropeanareaofFreedom.htm 2007).

It has been discussed for a long time, if the third country nationals in the EU should be included to these regulations in the Area of Freedom Security and Justice. Tampere insisted that freedom and security should not be reserved exclusively for the European

Union's own citizens. They must also apply to people from third countries who are legally in the EU, whether on holiday, following academic or professional studies, or on a permanent basis. If people can travel around unhindered throughout the EU, it makes sense that the EU as a whole must be both open and secure. This is one reason why the European Commission and the member states are also developing a common approach to immigration and asylum (European Commission Fact Sheet http://ec.europa.eu/councils/bx20040617/tampere_09_2002_en.pdf 2002).

This meeting resulted by the creation of a timeline of five years for implementing numerous initiatives on immigration and asylum that has been taken in Amsterdam (Larsen www.allacademic.com 1999). This was the major step forward in the development of a common approach of the issue. Since then EU was given its marching order to intensify efforts to establish a Common European Asylum System and embed migration issues within a broader context through the development of a comprehensive approach to migration addressing political, human rights, and development issues in countries of origin and transit (Lavenix and Uçarer 2004). The heads of the European Union governments adopted the Tampere Conclusion which incorporated the program for an Area of Freedom, Security and Justice. According to these conclusions, the challenges of the Amsterdam Treaty would be to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all (Brouwer http://www.libertysecurity.org/article1624.html?var_recherche=effective%20remedies%2CBrouwer 2005). It is also underlined that, this freedom should not be regarded as the exclusive preserve of the Union's own citizens.

The Tampere sets major milestones towards an Area of Freedom, Security and Justice; firmly sharing common values and the commitment to freedom based on the human rights, democratic institutions and rule of law; ensuring the justice accessible to all, including third country nationals, aiming an open and secure European Union fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights conventions. Creation of a genuine area of justice requires approaching judicial systems in the Member States in order to eliminate criminals to exploit the

differences in judicial systems. To maintain confidence in authorities the principles of transparency and democratic control should be based. The Union should also develop a capacity to act and be regarded as a significant partner on the international scene, in close cooperation with partner countries and international organizations. Eventually, to promote full and immediate implementation of the Treaty of Amsterdam on the basis of the political guidelines and concrete objectives agreed in Tampere, the European Council invites the Council and the Commission, in close co-operation with the European Parliament (European Parliament http://www.europarl.europa.eu/summits/tam_en.htm 1999).

The four main objectives as mentioned above are developed in related elements:

- A Common EU Asylum and Migration Policy, which concerns these separate but interrelated issues of asylum and migration, and call for the development of common EU policy including; Partnership with countries of Origin: a comprehensive approach requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children in the countries and regions of origin or transit.

This is primarily the issue essential for the following chapter, however I did not want to skip it here, but it will be examined in detail later on. A Common European Asylum System: based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement. This System should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. To that end, the Council is urged to adopt, on the basis of Commission proposals, the necessary decisions according to the timetable set in the Treaty of

Amsterdam. The European Council stresses the importance of consulting UNHCR and other international organizations (European Parliament http://www.europarl.europa.eu/summits/tam_en.htm 1999). Moreover in the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union.

Fair treatment of third country nationals: "The European Union must ensure fair treatment of third country nationals for those who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia (Larsen www.allacademic.com 1999).

Management of migration flows: The European Council calls for the development, in close co-operation with countries of origin and transit, of information campaigns on the actual possibilities for legal immigration, and for the prevention of all forms of trafficking in human beings (Larsen www.allacademic.com 1999).

> *A Genuine European Area of Justice: In the Member States of the Union, there should not be prevention for individuals and businesses from exercising their rights by the incompatibility or complexity of legal and administrative systems. The Area of Justice should include better access to justice in Europe, Mutual recognition of judicial decisions and greater convergence in civil law.* (Larsen www.allacademic.com 1999).
>
> *A Union wide fight Against Crime: The European Council is severely dedicated to reinforcing the fight against serious organized and transnational crime. An efficient and comprehensive approach in the fight against all forms of crime is presupposed for the high level safety in the Area of Freedom, Security and Justice. Crime prevention aspect should be integrated into actions against crime, and common priorities should be developed. Co-operation between Member States' authorities when investigating cross-border crime in any Member State should be derived for maximum benefit, along with the special action against the money laundering which is at the heart of organized crime.* (Larsen www.allacademic.com 1999).
>
> *Stronger External Action: to build an Area of Freedom, Security and Justice, all competences and instruments at the disposal of the Union particularly in external relations must be used in an integrated and consistent way.*

According to the EU Commission Reports written in 2004, the results of the Tampere Programme was evaluated and assessed in positive terms. EU Commissioner responsible for Justice and Home Affairs, Antonio Vitorino stated that “Much has been done, but much also remains to be done.” As mentioned above, Tampere Programme called for a lot of developments in the Union in the area however not all could be achieved. The results of the program are listed below;

> i. *The rights of citizens and their families to move and reside anywhere in the Union have been strengthened.*
> ii. *The bases have been laid for a common policy on asylum and immigration. The level of ambition of the Commission's proposals was not always respected but the policy of advancing step by step brought considerable progress within reach and this has had and will continue to have a positive impact in guaranteeing equal treatment for third-country nationals residing legally in the Union and ensuring a common minimum level of protection and procedural guarantees in all Member States for all those who genuinely need international protection as regards asylum.*
> iii. *The integrated management of external borders is a concept that is being realized gradually through a series of individual measures. An Agency to coordinate and support operations between Member States should be operational by 2005.*
> iv. *Better access to justice for individuals and firms has been secured by the principle of mutual recognition of judgments in civil and commercial matters.*
> v. *In criminal matters, the entry into force of the European arrest warrant and the establishment of Eurojust are two striking examples of the progress made, and the Commission has proposed instruments on procedural guarantees.*
> vi. *The approximation of legislation relating to cross-border crime and terrorism has helped to strengthen the fight against crime. It will be essential that the instruments adopted by the European Union be applied in practice by the Member States. Major police cooperation facilities have also been set up, such as Europol. They must be put to practical use.* (Eurunion http://www.eurunion.org/news/press/2004/20040091.htm 2004)

Accordingly, these results prove that the Union is working hard on accelerating the harmonization process; however it is a gradual process.

2.4.2. The Hague Programme 2004

The continuation of the initiative in the Tampere summit, was decided upon at the European Council of November 2004, and is known as the "Hague Programme". It is a five year plan, from 2005 to 2010, to establish a closer cooperation in Justice and Home Affairs issues and to assure and strengthen an area of freedom, security and justice in the EU.

The goal of establishing an area of "Freedom, Security and Justice" was first offered by the Treaty of Amsterdam and just after that agreed at the EU Summit in 1999 establishing the Tampere Programme. This program ended in 2004, and another program issued for the implementation of Tampere agenda, and to set the future guidelines for the program in Justice and Home Affairs field. The Commission presented its roadmap to implement the Hague Programme on 10 May 2005.

Immigration and asylum topped the Hague agenda alongside the prevention of terrorism. EU leaders agreed to use qualified majority decision-making and co-decision in the fields of asylum, immigration and border control issues. Legal immigration remains subject to unanimity (Euractiv http://www.euractiv.com/en/security/hague-programme-jha-programme-2005-10/article-130657 2005).

The Hague Programme brought some new key measures on the field of "Asylum, Immigration and Border Control". The main issues concerned are:

i. *A Common European Asylum System with a common procedure and a uniform status for those who are granted asylum or protection by 2009;*
ii. *Measures for foreigners to legally work in the EU in accordance with labor market requirements;*
iii. *A European framework to guarantee the successful integration of migrants into host societies;*
iv. *Partnerships with third countries to improve their asylum systems, better tackle illegal immigration and implement resettlement programs;*
v. *A policy to expel and return illegal immigrants to their countries of origin;*
vi. *A fund for the management of external borders;*
vii. *Schengen information system (SIS II) - a database of people who have been issued with arrest warrants and of stolen objects to be operational in 2007*
viii. *Common visa rules (common application centers, introduction of biometrics in the visa information system) (Euractiv http://www.euractiv.com/en/security/hague-programme-jha-programme-2005-10/article-130657 2005).*

In the fields of justice and security, the Hague Programme highlights the some key measures such as; police information to be available between all EU countries, address the factors that contribute to fundamentalism and to the involvement of individuals in terrorist activities; make greater use of Europol, the EU's police office, and Eurojust, EU's judicial co-operation body; ensure greater civil and criminal justice co-operation across borders and finally the full application of the principle of mutual recognition (Euractiv http://www.euractiv.com/en/security/hague-programme-jha-programme-2005-10/article-130657 2005).

The 'roadmap' for 2005-2010 lists ten key areas for priority action:

i. *"Fundamental rights and citizenship: development of policies enhancing citizenship, monitoring and promoting respect for fundamental rights.*
ii. *The fight against terrorism: prevention, preparedness and response.*
iii. *Migration management: developing a common EU immigration policy and countering illegal migration.*
iv. *Internal & external borders, visas: further develop an integrated management of external borders and a common visa policy, while ensuring the free movement of persons.*
v. *A common asylum area*
vi. *Integration: maximizing the positive impact of migration on society and economy.*
vii. *Privacy & security in sharing information: balancing the need to share information among law enforcement and judicial authorities with privacy and data protection rights.*
viii. *Fight against organized crime*
ix. *Civil and criminal justice: effective access to justice for all and the enforcement of judgments.*
x. *Freedom, security and justice: reviewing the effectiveness of policies and financial instrument in meeting the objectives of freedom, security and justice (Euractiv http://www.euractiv.com/en/security/hague-programme-jha-programme-2005-10/article-130657 2005).*

While implementing the Hague Programme, there are four basic issues; the external dimension of migration and asylum: partnership with third countries and regions of origin and transit, Legal Migration and integration, Border control and the fight against illegal migration and A Common European Asylum System.

The external dimension; partnership with third countries and regions of origin and transit; Close cooperation and dialogue with third countries are important to manage migration. Particular regions are chosen in order to cooperate and implement some policies (Europa http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/188 2008). Africa is the basic focus of the EU to cooperate, and Mediterranean countries are another focus area. EU is cooperating with these regions to help them in their internal problems, create opportunities for the population and regulate the migration flows in order to prevent illegal migration from these countries. One of the communications presented by the Commission is the circular migration and mobility partnership with third countries (Europa 2008).

Legal Migration and integration is another priority of the Hague Programme in order to support and foster EU economic growth and competitiveness, in line with Lisbon

Strategy. The Commission is working on the need of the Union in the labor market, aiming to respond common needs and interests by setting out EU rules for highly skilled and seasonal workers (Europa 2008).

The Hague Programme stresses the further cooperation on border control and the fight against illegal migration, moreover, underlines the need for solidarity and fair sharing of responsibility between member states, including its financial implications. Moreover, in terms of specific actions, focus on the maximization of the capacity of FRONTEX which is the European Agency for the management of operational cooperation at the external borders of the Member States of the EU (Europa 2008).

Lastly "A Common European Asylum System", as firstly mentioned in the Tampere European Council, emerged from the idea of making the European Union a single protection area for refugees, based on the full and inclusive application of the Geneva Convention and on the common humanitarian values shared by all Member States. The first stage of CEAS is complete; the Hague Programme aims to enhance the second phase; to take up the challenge for taking it forward. This specific part will be analyzed in the next chapter.

3. ASYLUM POLICY OF THE EU; THE MOST INTEGRATED POLICY, WHY?

Each year millions of people flee war, disaster or persecution at home and search for protection in another country, elsewhere. Under The Geneva Convention on the Status of Refugees 1951, International Law sets down the rules for treating refugees and assessing their claims.

Asylum is a form of protection given by a State on its territory based on the principle of non-refoulement and internationally or nationally recognized refugee rights. It is granted to a person who is unable to seek protection in his/her country of citizenship and/or residence in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion (Geneva Convention http://ec.europa.eu/justice_home/fsj/asylum/fsj_asylum_intro_en.htm 2008). Being poor or destitute is not included in the definition of status of refugee and can not be entitled to seek refugee status also asylum. However, migrants often try to claim asylum after being denied a work visa, or because there is no way of migrating legally to their intended destination. This practice undermines faith in the asylum process, and makes life difficult for legitimate refugees. Hence, governments face a conflict between being as open as possible to those fleeing persecution, and the fear of having the asylum system misused as a channel for economic migration. They also worry about 'asylum shopping' – the practice of lodging applications in several European countries at once, in the hope of being accepted somewhere. Consequently, only around half of European asylum applications are approved (Brady http://www.cer.org.uk/pdf/briefing_813.pdf 2008).

Since the beginning of 1990s, the flow of persons seeking international protection in the EU has been such that the Member States have decided to find common solutions to this challenge. A set of commonly agreed principles at European Community level in the field of asylum can provide a clear added value while continuing to safeguard Europe's humanist tradition (Brady http://www.cer.org.uk/pdf/briefing_813.pdf 2008). The ongoing increase of the asylum seekers in the world oblige the countries to take some

measures and make some regulations, the major basis of these measures are firstly laid in the international conventions. The cornerstone of the refugee protection in the world is the Geneva Convention and the 1967 Protocol. Afterwards by the intergovernmental co-operations and then integrated in the framework of the European Union.

3.1 GLOBAL MEASURES

3.1.1 Geneva Convention on Status of Refugees

Geneva Convention, is an international convention on the "Status of Refugees and Stateless Persons", convened under General Assembly resolution 429 (V) of 14 December 1950, adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries and entered into force on 22 April 1954 (Office of High Commissioner for Human Rights http://www.unhchr.ch/html/menu3/b/o_c_ref.htm 2008). It defines who is a refugee and sets the rights of individuals who are granted asylum and the responsibilities of the states that grant asylum.

The Convention lays down basic minimum standards for the treatment of refugees, without prejudice to the granting by States of more favorable treatment. The Convention is to be applied without discrimination as to race, religion or country of origin, and contains various safeguards against the expulsion of refugees.

Certain provisions of the Convention are considered so fundamental that no reservations may be made to them. These include the definition of the term "refugee," and the so-called principle of non-refoulement, i.e. that no Contracting State shall expel or return ("refouler") a refugee, against his or her will, in any manner whatsoever, to a territory where he or she fears persecution (UNHCR http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf 2008).

A refugee who seeks permission to stay in another country is known as an asylum-seeker. Most asylum-seekers seek this permission by applying to be recognized as refugees as defined in Article 1A (2) of the 1951 Refugee Convention adopted by The United Nations (Human Rights Education Associates, http://www.hrea.org/learn/tutorials/refugees/glossary.html 2008), The Article A paragraph 2 defines a refugee as the following;

> *As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.* (Human Rights Education Associates, http://www.hrea.org/learn/tutorials/refugees/glossary.html 2008).

By accession to the Protocol, States undertake to apply the substantive provisions of the 1951 Convention to all refugees covered by the definition of the latter, but without limitation of date. Although related to the Convention in this way, the Protocol is an independent instrument, accession to which is not limited to States parties to the Convention.

The Convention and the Protocol are the principal international instruments established for the protection of refugees and their basic character has been widely recognized internationally. The General Assembly has frequently called upon States to become parties to these instruments. As of 1 August 2007, there were 147 States Parties to one or both of these instruments.

Having a far wider social impact than merely defining a refugee the Geneva Convention also covers the social and economic circumstances of refugees in countries of exile. The convention states that refugees should receive benefit of equal measure to other foreigners residing in the country and should adhere to the laws and regulations of their host country. These benefits extend to personal status, artistic rights and industrial property, right of association and access to courts. Additionally, non-discrimination and a minimum standard of religious freedom are also to be allowed. With reference to employment status- the convention stipulates that refugees should be given the same rights as other foreigners in the country. In terms of welfare rights- the convention states that refugees should be allowed equal access to rationing, elementary education, public relief and assistance and social security (North of England Refugee Service http://www.refugee.org.uk/insight.htm 2008).

The Geneva Refugee convention as mentioned above, constitute the basis of the refugee status applied in the world. Europe since the 80s, established several intergovernmental co-operations, mostly out of the Community framework however, lately there have been more integrated co-operations at the Community level. Sandra Lavenex divides EU intergovernmental cooperation in asylum matters into two "generations." The first phase of cooperation in asylum matters evolved in the context of the re-affirmation of the Single Market Project in the mid-1980s and was directly linked to the issue of abolishing internal border controls (Lavenex 2001). The most significant output of this first generation of cooperation in asylum matters was the Dublin Convention of 1990.

3.2 EUROPEAN MEASURES

3.2.1 Dublin Convention

To streamline the application process for refugees seeking political asylum under the Geneva Convention, Dublin Convention was the first European intergovernmental regulation on the issue. The purpose was to clarify which member state is responsible for any particular asylum seeker, to guarantee at least one member states deals with it and to avoid the application to more than one member state. To ensure that single member state examines the application in accordance with its national laws and its international obligations (Dublin Convention http://untreaty.un.org/unts/144078_158780/8/5/1984.pdf 2008). The Dublin Convention was signed on 15 June 1990 and came into force on 1 September 1997, and replaced by Dublin II Regulation in 2003.

The application of Dublin Convention would ensure that every asylum-seeker's application will be examined by a Member State, unless a "safe" non-Member country can be considered as responsible. This would avoid situations of refugees being shuttled from one Member States to anotherwith none accepting responsibility, as well as multiple serial or simultaneous applications (Devpolawar http://www.europaworld.org/DEVPOLAWAR/Eng/Refugees/Refugees_DocC_eng.htm

2008).

The well application of the convention could guarantee the creation of common European asylum system which would be a great step towards harmonization of policies and integration. The convention aimed to avoid “asylum shopping”, which prearranged that an asylum seeker can claim asylum in one Member State only.
The main purpose was to clarify that Member States are responsible for any particular asylum seeker, and ensure at least one member state deals with the application. This was essential to ensure the efficiency and application of the Geneva Convention amended by New York Protocol. It should be noted that the Dublin Convention is a feature of European Union law, not a duty arising from international law and it is not part of the Geneva Convention (Irish Refugee Council Fact Sheet http://www.irishrefugeecouncil.ie/factsheets/dublinconvention4.doc 2002). The Dublin Convention was an attempt to balance the responsibilities for processing asylum claims, but failed, as determining an asylum seeker’s point of entry into the EU was difficult and moving asylum seekers under the agreement was unworkable. The Dublin Convention was not efficient enough to survive and have an impact on the European policies; thus the Amsterdam Treaty provided for the rewriting of the Dublin Convention as a community regulation, and in 2003, the Community law proposal for “determining the member state responsible for examining an asylum application” was adopted and dubbed Dublin II Regulation (Schlapkohl 2006).

3.2.2 Dublin II Regulation

Due to the unwillingness for a change in approach expressed by most Member States regarding the Dublin Convention, it is replaced by Dublin II Regulation which is binding in its entirely and directly applicable structure.

The Council of the European Union adopted on 18 February 2003: “Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the member states by third country nationals” referred to as Dublin II Regulation hereafter

(UNHCR www.unhcr.org 2006). The main purpose is to determine rapidly the state responsible of examining an asylum application to guarantee effective access to the asylum procedure and prevent abuse in the form of multiple asylum applications with respect to the transfer procedures and the implementation of the 'human rights clause'.

The main objectives which have been built in the context of Dublin Convention are;

- To ensure that asylum seekers have effective access to procedures for determining refugee status,
- To prevent abuse of asylum procedures in the form of multiple applications for asylum submitted simultaneously or successively by the same person in several member states.
- To determine as quickly as possible to member state responsible for the examination of an asylum claim.

The "second generation" of intergovernmental cooperation in asylum matters, according to Lavenex, is the institutionalization of issues of asylum naming "communitarisation of asylum and immigration policies." According to the revisions of the Amsterdam Treaty, The EU is now responsible for asylum and immigration matters.

The entry into force of the Treaty of Amsterdam on 1 May 1999 marked the transformation of the legal framework where the process of European integration in the field of asylum was to take place. Following years of Member States' cooperation on asylum matters within intergovernmental frameworks, Title IV of the Treaty Establishing the European Community on 'Visas, asylum, immigration and other policies related to free movement of persons' provided the necessary legal basis to bring such action within the legal framework of European Community Law by adopting legally binding minimum standards in several asylum related areas (Gil-Bazo 2007).

The communitarization of the European Union's asylum policy is more than a simple step in the process. It implies a change in the legal nature of the measures adopted and their interpretation as part of the unique legal order of EC Law that has important

consequences for the rights of individuals, including their enforceability (Gil-Bazo 2007).

Following the Treaty of Amsterdam, at the European Council meeting in Tampere in 1999, the common European Asylum System was born, structuring from these institutional and legal roots. The Common European Asylum System built based 'on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution (Gil-Bazo 2007). The system processed in two phases: a first set of standards and measures were to be adopted by May 2004. The second phase is currently under the auspices of the Hague Programme, a program adopted by EU Heads of State in November 2004 (Schlapkohl 2006).

3.2.3 Common European Asylum System

The Hague Programme takes up the challenge for taking forward the Common European Asylum System and looks to the establishment of the common asylum procedure and uniform status for those granted asylum or subsidiary protection, based on a thorough and complete evaluation of the legal instruments adopted in the first phase. The Commission is invited to adopt second phase instruments of the Common European Asylum System with a view to adoption by 2010 (Europa http://ec.europa.eu/justice_home/fsj/asylum/wai/fsj_asylum_intro_en.htm 2008).

Despite the discussion for the need for the common system, EU has set the goal of establishing it by 2010 and the system is in a process of development and running. And for several important reasons, the common European asylum system offers opportunities for exploring options available to victims of human trafficking within the EU(Schlapkohl 2006).

To sum up, The Common European Asylum System, as mentioned above, had two phases, the first between 1999-2004, the primary objective has been to establish a set of common "minimum standards" in a number of areas; for example, minimum standards on "temporary protection", "reception of asylum seekers", "the qualification and status of third-country nationals or stateless persons as refugees" and "minimum standards on

procedures for granting of withdrawing refugee status". In addition to these, a row of other EU directives and policy measures has been enacted, including the European Refugee Fund; further consolidation of the EU's visa policy; EU directive on Carrier Sanctions; and the launch of the EURODAC information system (Hansen 2007).

What has been achieved so far, at the end of the Tampere European Council measures are: the four major instruments on asylum, the Reception Conditions Directive, the Asylum Procedures Directive, the Qualification Directive and the Dublin Regulation. These aimed the general objectives to level the asylum playing field and lay the foundations for a Common European Asylum System, on which could be built further structures to safeguard the EU as a single asylum space and ensure that our citizens could have confidence in a system that gave protection to those who required it and dealt fairly and efficiently with those without protection requirements (European Commission Fact Sheet 2002).

The Dublin Regulation aiming to prevent multiple demands, contain clear rules about the Member State responsible for assessing an application for asylum. The Reception Conditions Directive guarantees minimum standards for the reception of asylum-seekers, including housing, education and health. The Qualification Directive contains a clear set of criteria for qualifying either for refugee or subsidiary protection status and sets out what rights are attached to each status. Significantly, the Directive also introduces a harmonized regime for subsidiary protection in the EU for those persons who fall outside the scope of the Geneva Convention but who nevertheless still need international protection, such as victim of generalized violence or civil war. This is of increasing importance as the number of persons in need of this type of protection is growing both in Member States and on a worldwide scale. The adoption of the Asylum Procedures Directive will ensure that throughout the EU, all procedures at first instance are subject to the same minimum standards (European Commission Fact Sheet 2002).
Despite all these provisions and steps taken forward, the Commission is far from satisfied with the trends of events in the area of asylum policy, considering the limitation by institutional constraints and sometimes by lack of sufficient political consensus (Hansen 2002).

The asylum policy in the EU since the 1990s has not been overcame the asylum crisis, and The Amsterdam Treaty has done very little, on the contrary in the 21st century, the crisis is even worsening. Thus there is a growing "malaise" in public opinion towards present state of asylum and there is a serious abuse of procedures. The Commission therefore views the asylum crisis as "a real threat to the institution of asylum and more generally for Europe's humanitarian tradition" and as such it "demands a structural response. Moreover, the internal operation of the EU's developing asylum system does not stop short of measures; therefore the core of this structural response has been transposed to the external dimension (Hansen 2002).

External dimension as externalized asylum policy was already introduced earlier with the Association, Cooperation and Partnership Agreements in order to export migration control into the third countries. The external dimension includes several other programs like refugee protection in the region of origin". Protection in the region of origin also sits at the hearth of the UNHCR's agenda, and it is being promoted by several member states as a more expedient way of managing the world's refugee crisis. Finally, the financial aspects of cooperating with third countries have not been forgotten: A new financial instrument, the Aeneas program, has been set in order to finance migration- and asylum-related actions in third countries (Hansen 2002).

The Commission, under the Hague Programme, recognizes the practical cooperation between member states, is working on defining the appropriate structures to assist Member States achieve a Single Procedure, to standardize Country of Origin Information and to help address particular pressures arising from factors such as geographical location. These structures should lead to a European Support Office to oversee all forms of cooperation between Member States on the Common European Asylum System. The main goal is to improve the quality of individual decisions by Members Sates within the framework of the rules set by the Community asylum legislation (Hansen 2002). Another proposal is presented to exchange information in order to improve statistical knowledge on the issue.

In the Common European Asylum Policy, all the legislations called by the Treaty has been drafted, some of it has been adopted but most is still under discussion in the Council (Hunter http://www.anu.edu.au/NEC/Archive/hunter_paper.pdf 2003).

The Common European Asylum System is a means to harmonize the systems that protect and assist forced migrants across Europe. It offers to balance the foundation for the assistance and protection of forced migrants and give the opportunity to establish an even, clear and fair asylum system across the EU. However, there are extremely important concerns to take into consideration; human rights experts have warned that harmonizing asylum in Europe will merely establish a lowest common denominator and will endanger forced migrants by replacing the systems that formerly protected them. Others argue that the common European asylum system will impede refugees from acquiring assistance and protection. The debate surrounding the development of this system is heated and extensive (Schlapkohl 2006). Consequently, this Common European Asylum System besides helping the victims, on the other hand restrict the possibility to do more.

In order to ensure fair treatment of refugees and cut out the abuses caused by the different perceptions and regulations among member states, the EU member states, in line with the Geneva Convention are basing their asylum policies on a single set of rules. As examined above, the main EU law supporting this policy is the so-called Dublin regulation which requires potential refugees to be looked after by the EU country in which they first arrive. Accordingly an economic migrant cannot use permissive asylum laws in one country to enter the EU with the aim of getting to another country which may offer better working conditions or social security. To enforce this rule, immigration officials have access to an EU-wide database of applicants' fingerprints, called Eurodac. This allows them to return asylum shoppers, and failed applicants who re-apply, to the EU country in which they first arrived. However, some countries at the geographic periphery of the EU like Cyprus, Greece and Malta that the Dublin regulation forces them to deal with a disproportionate number of refugees and want the law reviewed in 2008. Some countries also want Eurodac to be

adapted to detect illegal immigrants who, having been returned to their home country, may attempt to re-enter the EU via other member-states (Brady 2008).

The system and the implementation on treatments of refugees vary in some member states. A common asylum system should mean that all EU member-states provide refugees with the same essential services on arrival; assess their claims the same way; and use the same rules to grant and withdraw refugee status. Part of the problem is poor implementation of existing EU asylum legislation. In December 2007, the EU Commissioner Franco Frattini, who is responsible for justice policies including asylum and migration lamented that 20 out of 27 EU countries had failed to properly implement agreed EU standards for processing refugee applications. Only six EU member-states – Austria, Britain, Bulgaria, Germany, Luxembourg and Romania – got it right (Brady 2008). The asylum rules are reviewed by member states in order to improve but harmonization of laws is not enough for the well application.

After treating these developments in the field, I would like to sum up and concentrate on the reasons why there is an essential need for a common action in the asylum issue. First of all, the European Union started as an economical entity, which had the first purpose to regulate trade and common market. To achieve this economic target, the cooperation deepened to some political areas. Immigration and asylum is one of the most important areas which the union perceives as essential. The specific concern was on the establishment of the internal market and in order to guarantee the well running market, the free movement principles are ensured. Starting with the free movement of goods, capitals and services, the free movement of persons is established. Later on, the internal borders are abolished therefore the external borders needed more attention, once someone enters a member state, because of the absence of internal borders in the Union, one can travel to any of the other member states. The border controls determines the policy towards the non-citizen third country nationals, where the protection needs of individuals give way to the inherent difficulties of maintaining open borders to receive those in need of protection while attempting to seal the same borders against others (Gil-Bazo 2007).

The European Union's concern with asylum is therefore primarily a practical and functional one. It is not driven by the wish to improve protection standards for refugees across Member States by adjusting the refugee protection regime to the reality of forced migration into Europe, but rather from the wish to control who enters the European economic space. This is the realist approach for the asylum issues in the EU. Besides, European Union has a traditional approach for the respect to the human rights issues, which seeks to become a global player in the world arena. Consequently, the functional approach is criticized by most of the NGOs and especially UNHCR, however also criticized by the EU's own institutional framework. The European Parliament has expressed itself against an EU policy solely seeking to control its borders and safeguard its economic interests: 'border checks and action to combat illegal immigration can be only one aspect of the EU's policies towards non-EU countries [and] considers that the EU cannot analyze its immigration policy solely from the point of view of its economic interest but must also take into account the reasons which force migrants to emigrate (European Parliament Resolution http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2005-0136&language=EN&mode=XML 2004).

In a nutshell, why the asylum system is the most integrated issue and why there is an increasing need for CEAS in Europe? Economic interests mentioned above as functional approach seems to be the reason, however, other reasons can be listed; to prevent the misuse and abuse of the refugee status, which means that, the economic migration seeking might be rejected, then these people seek asylum in these countries. However, their status is usually not adequate for refugee status, and they are rejected again, thus these motivate them to use the illegal ways to enter the country. This is the abuse of this sacred status. Another abuse is, when they are rejected in one country they seek asylum in another member state of the Union, once they enter from one member of the Union, they have legal access to all the other member states. This is what I mentioned as asylum shopping before. This CEAS harmonize the rules in all the member states, aiming to prevent this abuse and misuse of the varying systems of the different member states. On the other hand, the increasing pressure of people seeking international protection in European territories push the member states to make common

decisions to find solution for this challenge. These common procedures and uniform status constitute the minimum standards on the policy among all the member states of the Union. These standards, besides safeguarding the humanist tradition of the EU, provide clear added value. The main goal is to improve the quality of individual decisions of member states within the framework of these rules by the community.

Consequently, other then global role of the Union on human rights protection, for me, the foremost reason to accelerate the cooperation of the asylum issue and transferring it entirely to the European Institutions, taking common measures in order to create the Common system and policy on the issue is; to create the strict controls on the asylum system and limit the number of abuses and illegal activities which harm the Union deeply. The human rights part of the common action is not really essential in my view. This may be sign of the institutional tension, while commission has a humanitarian approach, having discourses on human rights issues; the Council advocates the member states interest on decreasing the number of asylum seeking in Europe and has stricter control on the asylum policy. This is also the tension and difference between the realist and liberal approaches mentioned at the beginning of the dissertation.

4. CHALLENGES ON THE PATH OF A COMPREHENSIVE EU POLICY ON IMMIGRATION AND ASYLUM

The political progress towards achieving a common asylum and immigration policy has often been disturbed. There are plenty of obstacles and tensions that slow down the progress of the agenda on the policy. These obstacles continue to create barriers to the realization of a more comprehensive policy.

We can distinguish these challenges in two main titles: external and internal challenges:

The internal challenges can be highlighted as problems; with the way in which the EU forms Justice and Home Affairs policy; the political tensions between the Council, Commission and Parliament, distinction among member states' views on cooperation; governments' fears of public resistance to EU involvement in migration issues, and the way in which public and media pressure at national level has been played out at EU level.

The external challenges can be determined as; the regional crises which caused large number of influx of asylum seekers, the Human Rights crisis which increase the number of victims each and every day and the border security problem with the external borders of the EU.

4.1 INTERNAL CHALLENGES

Internal Challenges are the challenges occurring in the structure of the European Union; the decision making procedure and the pillar structure, the institutional tension between the European Commission, European Council and the European Parliament, and variety of interests among member states and the Union, and lastly the public and media pressure at national level.

4.1.1 The Pillar Structure, Voting And Decision-Making Procedure

Immigration and asylum policy is an element of the European Union's most active policy area as a part of the Justice and Home Affairs policy field, which accounts for 40 percent of the European Union's new legislation (Moraes 2003). A constant barrier to the progress is the way in which the European Union has historically made decisions on the issues concerning the field of immigration and asylum. It is politically sensitive and for the EU citizens it is ambivalent to understand the potential benefits and disadvantages. The political sensitivity of the issues concerned in the Justice and Home Affairs has contributed to cumbersome decision-making processes, often as the result of member states reluctance to hand over greater powers to the European Commission or the European Parliament. The decision making process as mentioned above, began entirely as an intergovernmental process, widely criticized for its secrecy and for its exclusion of the Commission, the Parliament and the European Court of Justice (Moraes 2003).

Cooperation on Justice and Home Affairs was necessary at some level, the Maastricht Treaty in which the pillar structure of the EU is created: JHA was given its own pillar as the third; the common foreign and security policy made up the second and the traditional Community business laid at the first pillar. At Amsterdam Treaty in 1997, member states agreed to move most of the JHA, including asylum, migration and external border controls into the first pillar, however, judicial cooperation in criminal matters and policing remained in the third pillar. Placing JHA matters at the center of EU decision making and regulation alongside employment relations, the environment and internal market policy was a hugely significant move. However, member states resisted EU control of JHA policy and have maintained a strong intergovernmental element to the process; by limiting the Parliaments role and taking the decisions by unanimous vote, rather than qualified majority.

The key to faster decision making in JHA is to extend Qualified Majority Voting to migration policy, however there is some member state resistance to this because it is seen as a loss of control on an issue which is too close to national sovereignty. The main

objective is coming from Germany, despite being integrationist, wants to protect the control that it can exercise on this issue through veto (Moraes 2003).

On the first pillar issues, other than migration matters, the Commission has the sole right of initiative, nevertheless, on the migration matters, Commission and member states- through the Council- share the right to initiate legislation. This is another obstacle to faster and better quality decision making. The tension is that member states initiatives have sometimes overlapped with, or prevented discussion of, Commission proposals. The tension would remove if the Council was to continue to set the overall direction of EU migration policy and the Commission left to work out the detail, as happens in other areas. There is also a lack of transparency because, for example it does not use the same legal instruments as apply in the rest of the pillar: rather that directives and regulations, uses other means with different confusing terminology like 'framework decisions'(Moraes 2003).

The decision making procedure determines the role of the institutions; there are three types of procedures, the use depends on the pillar. The first pillar uses Community decision making procedure which is Co-decision; however the third pillar uses intergovernmental cooperation with consultation to the Parliament. This is how the Parliament is involved in the matters concerned in the first and the third pillar; this is the reason of the desire to abolishing the pillar structure by the upcoming treaties and applying the same kinds of procedures for the matters of immigration and asylum.

4.1.2 Tension Between The Institutions –The Council, Commission And The Parliament-

Prior to the tension among the European Institutions, each body should be examined by their role differing according to the pillar structure, to which pillar the matter belongs shape the decision making procedure on the issue. As mentioned above, all the matters related to asylum and immigration has been moved to the Community pillar, except the "Police and Judicial Cooperation in Criminal Matters".

As examined above, the bodies have different powers in differing decision making procedures. The Parliament's role is increased in the cooperation, moreover in the co-decision procedure, the Parliament has great opportunity to represent the European citizens in the decision making platform. This means that besides the member states' interests, the people living in the Union are represented and have a right to say in the decision making procedure on important issues which are closely related to their concerns.

Above and beyond, the Commission and the European Council represent different interests, the Commission represents the European Union, and however the European Council represents the member states, which means that 27 different interests are presented in the Council. This is the major tension between the European Institutions. In the existing decision making procedures, both bodies takes their guards in order to serve for different interest. The problem is that, since the member states are the part of the Union, their interest should coincide as the interest of the Union; however, their bad habits in preserving self interests don't help the Union to act with one accord.

On the matters of Justice and Home Affairs, especially on immigration and asylum issues, there is an obvious tension between the institutions of the European Union, and also among the Member States and the institutions. The Commission and Member states have tensions on JHA policy in general and on migration policy in particular. "The Commission advocates a comprehensive approach that embraces integration, insists on retaining human rights standards in asylum policy, and been proactive on the question of managed migration. Senior Commission officer privately believe that, because migration policy is politically charger, member states will say little about potential long-term EU coordination issues like managed migration even if they are persuaded by the economic case for such collective planning or coordination (Moraes 2003). According to the Council, The Commission is too far removed from the day-to-day reality of political pressures over asylum and illegal immigration (Moraes 2003). This is the root base of the tension among these two principal institutions.

Consequently the Commission presenting EU's interest in general, the Parliament as the voice of the European Union citizens and the European Council consist 27 different perceptions presenting member states interests. This is a challenge for a union which tries to accomplish a common policy on matters fragile like immigration. However, this issue must be dealt in the supranational level because the member states by themselves can not overcome this serious issue. After abolishing the internal borders, the concern is now the concern of the Union, not the specific states'. Hence, an EU policy should be facilitated and supported by every single member state to accomplish the goal of being the global actor as a union. The pillar structure, differentiation in the decision making procedure and maintaining it as intergovernmental procedure don't help to deal with this issue. Taking it up to the supranational level, by giving the opportunity to the parliament and the European Court of Justice to get involved and induce qualified majority voting as the process would overcome most of these challenges. However, it is a reality that the member states' interests is never overcome, thus it is a challenge which is hard to overcome.

4.1.3 Distinction Among Member States' Views On Cooperation

Until recently, the western European countries have tended to be countries of emigration rather than immigration, since the 1960s, there is a significant increase in immigration towards the European Union. This shift occurred for several reasons, political, historical and economic, such as the increase in labor shortage. The labor shortage in the Western Europe at the wake of post-war reconstruction induced these countries to open up their borders to foreign workers, on the other hand, the political changes in Eastern and Central Europe also created unprecedented migrant influx from the former communist countries geographically close to the EU countries. Facing with this shift, the national policies and strategies also had to change in order to manage this influx of migrants for various reasons. However, depending on the specific kind of immigration each country attracts and the way in which the political constitutional values underpinning the social consensus conceive of the idea of integration of foreigners, these policies differ greatly from country to country (Bia www.eurac.edu/edap 2004).

According to the historical and economic factors and the geographical collocation of every state, these values are affected. However, the recent history of the European Union signals the inception of a path towards a common immigration and asylum policy, sustained by steady evolution of the European Economic Community into the more cohesive EU, which is beginning to be perceived as a 'host country' in its own right by non EU nationals (Bia www.eurac.edu/edap 2004). Notwithstanding, this evolution is gradual because of different perceptions and interests of member states in the EU. Nevertheless, the effective adoption of a supranational immigration and asylum policy would be the achievement of a balance at the EU level, between the motivations driving the European action in these areas and the interests of the member states (Bia www.eurac.edu/edap 2004).

The difficulty for the Community in the field is the tension between the member states over dealing with these policies, in adopting the measures necessary for common action. The major problem is that, although the discussions are being undertaken at the supranational level to sustain the emerging European Union authority in immigration and asylum, as long as the EU lacks biding legal instruments in this area, member states will keep on constructing their own policies with mainly national considerations in mind and without reference to the European context (Bia www.eurac.edu/edap 2004).

In order to give some specific examples about these distinctions of member states perception and interests, I will take the cases of Germany as the principle magnet of third country nationals in the EU and Italy as controversial amendments in the immigration system. For instance, Germany does not have strict measures for the labor migration, because they need this for economic reasons. However Italy has a general commitment to restrict the legal preconditions for admission of non EU workers. While Germany promotes the idea of opening the borders, Italy is clearly orientated towards closing the doors to foreign workers (Bia www.eurac.edu/edap 2004).

Besides, on the issue of Family Reunification which is based on the internationally accepted norms and which the Union privilege protecting the unity of the family, the

German and Italian regulations are different. While German regulation put the age limit of 14 for the children who are allowed to follow their parents as immigrants, in Italy the right to family reunification is limited to the spouse and depending minor children. Whereas according to the supranational guidelines -the entry and residence of the minor children of the applicant and of his spouse or unmarried partner, and even adult children, who are objectively unable to care for themselves- are considered as immigrants. In this sense, while the Community proposal privilege protecting the unity of the family, the German and Italian regulations are instead oriented to privilege national interests by restricting immigration (Bia www.eurac.edu/edap 2004).

Consequently, the supranational approach to immigration is only followed if they are in line with national concerns and only when pragmatic pressures have called for action, common rules have been adopted at the EU level. It is obvious that EU needs a comprehensive supranational approach to immigration and asylum; however the decisions and common measures are blocked at the Council of Ministers level which means the national concerns are still at the top.

Excluding these various differences in member states' regulations, there is another major obstacle among member states position. The position of Ireland, UK and Denmark who have the rights to opt-in/out to the treaties, causes some challenges for union wide policies, in my view, this is a big obstruct on the path of a supranational policy which proves that it is not really union wide, exceptions for me in this field, means unaccomplished. This differentiation of integration is a challenge for this policy field.

The UK, Ireland and Denmark each had particular reservations regarding the transfer of competences from the third to the first pillar and the integration of the Schengen acquis into the EU framework. Their concerns were expressed in a number of Protocols annexed to the EC and EU Treaties which qualified among others the new immigration and asylum provisions and resulted in a complex situation, where at any given moment a multitude of legal regimes could apply to these issues (Staples 1999).

UK and Ireland maintains the “Common Travel Area” in force between them and to maintain border controls on persons seeking entry from other member states. These two countries are exempted from any EC legislation requiring the abolishing of border controls, however the opt-out is not absolute, and they both have the possibility to opt in to measures adopted under this title. Accordingly there are matters they participate and the ones they don’t. The asylum matter is the issue mostly opted in by UK and Ireland. On the other hand the position of Denmark is somehow different. Similarly, in the same relation to Title IV EC, to that of Ireland and UK, to the extent that it does not take part in Community progress pursuant to that Title. Denmark’s position is further restricted in that it may not opt-in to specific measures either when they are initially adopted or at later date; it can only choose to denounce all or part of the Protocol. There is derogation from this general opt-out to enable Denmark to continue to take part in the Schengen area without internal frontiers. If it decides to transpose a measure into national law, the decision will create an obligation of international law between Denmark and other Schengen member states. Subsequently, such measures have legal base in Title IV EC, and will have the effect of public international law in Denmark and new measures building on this acquis can only bind Denmark if it decides to implement it in national law, not EC law (Fletcher 2003).

In conclusion, the different interests and perceptions of the member states, besides partial opt-in/out clauses increase the differentiation of measures taken in the field. Furthermore, the decision taking procedure let the national governments act in favor of their own interest and have the right to veto and block the decision making. In the field of immigration and asylum, in order to have supranational measures, the EU should restrict the member states’ arbitrary actions and call them to unite to manage these issues. This distinction is a real challenge for a comprehensive policy in the field.

4.1.4 Public And Media Pressure At National Level

The last Eurobarometer survey issued in June 2006 finds that migration is high among the second group of main concerns expressed by European citizens, coming before terrorism and just after health care. The first group of concerns is related to

unemployment, crime and the economic situation, which happen to be often connected in public perception to immigration (Eurobarometer http://ec.europa.eu/public_opinion/madrid/pdf/eb65/eb65_first_en.pdf 2006).

In most of the member states, immigration ranks as the most important concern in the public opinion, interestingly, citizens are expecting European leadership, besides the national leadership on the issue. The public concern on the issue must not be so surprising because the development since the end of the World War II changed the scale and speed of migration. For centuries European countries were the emigration countries, after the 60s, for the first time, they emerged as immigration countries. Migration at first perceived as a contributing factor to European economy, because of the labor shortage. In 1970s the perception changed, because the workers in Europe coming from third countries were not integrated in the society, this occurred as a problem. After the oil crisis in 1973, the migration policies had remarkable changes, such as restrictive policies, however the migration rate has not decreased.

The changing nature of migration has increased public distrust and even hostility towards migrants and lack of confidence in the political leaders' ability to address the issue effectively. Illegal migration in particular has become a more prominent phenomenon, which has gained major public attention since the early 1990s (European Commission http://ec.europa.eu/dgs/policy_advisers/publications/docs/bepa_migration_final_09_10_006_en.pdf 2006).

The growing number of illegal migrants reinforces the perceived connection between migration and criminality. Moreover, raises doubts about the States' ability to control those who enter and stay on their national territory. Migration then tends to be perceived as a process out of political control (European Commission http://ec.europa.eu/dgs/policy_advisers/publications/docs/bepa_migration_final_09_10_006_en.pdf 2006). On the other hand, the fast-growing number of asylum seekers was another trend in the 80's and 90's, which increased public scepticism about the legitimacy of many migrants. Furthermore, migration has also become a societal issue.

Besides the changes in the shape and perception of migration, the European states faced some other changes. European Union member states, while opening internal borders, cooperated for the securitization of the external borders. European citizens have to cope with those changes and be reassured that they can trust Member States and European institutions to protect them adequately in this new environment (European Commission ibid. p.12).

In the European outlook, the threat perception for immigrants is playing a large role. There is a fear of unemployment and feeling of insecurity. Besides, there is a growing distrust in public authorities and the political establishment. This general threat perception influences the anti-immigration sentiments, reactions of distance or even hostility towards immigrants (European Commission ibid. 2006). The populist groups exploit these circumstances; moreover this context prompts immediate and visible restrictive policies. These restrictive policies reassure electoral worries by a phenomenon that they perceive to be out of control, instead of policies aiming at curtailing the desire to migrate by addressing the root causes - which take time before producing results, and may not be so tangible (European Commission ibid. 2006).

This is how public perception can be influenced directly in a variety of ways. To prevent this hostility and negative thoughts, policy makers can give a good example by not blurring categories (asylum seekers, illegal migrants, ethnic minorities), by sketching balanced and nuanced pictures of migrants and by clearing up misunderstandings on employment or criminality. At the same time, such a balanced Picture also includes actions to cope with genuine problems associated with migrants (European Commission ibid.p.40).

The mass media plays an important role which entails considerable responsibility for balanced and correct coverage. Though as a mirror of society, the media is often not the main source of public perceptions they are often instrumentalized and sometimes used, even by politicians, to portray problems in an amplifying fashion (European Commission ibid. 2006).

As mentioned above the public perception is an essential challenge for the immigration policies, especially when used by politician for electoral reasons. The major site of tension in EU cooperation is the way in which public opinion and media coverage influence national government attitudes, which are then played out at EU level. The influence can be obviously seen in the way some member states behave in the European Council meetings. The Seville Summit is an example to see this influence (Euractiv http://www.euractiv.com/en/future-eu/immigration-tops-agenda-eu-seville-summit/article-115268 2008) . There was a perception that the Council at Seville took political initiative away from the Commission, which has seemed to have the upper hand in Tampere. Key member states, notably the UK and Spain, took the opportunity to put "illegal immigration" at the very top of the agenda. The change in gear was typified by proposals which, until that time, had not been seriously discussed at the highest level- like the proposal to make development aid and integral part of the negotiation of future asylum and immigration accords, promising 'unspecified political reactions' for failure to cooperate (Moraes 2003). The illegal immigration was not a new issue in the context of EU; the question is why there is a shift against Tampere's more balanced political tone?

The probable answer is that particular member states were reacting to public concerns over illegal immigration and their supposed link to crime in specific countries like Spain. Another reason of the reaction was the failure to act of the EU on illegal immigration, and this caused anti-immigration parties to born (Moraes 2003).

Another example, meanwhile, Italy's proposed compulsory fingerprint of all entrants and Austria's proposed compulsory learning German were seen as representing the hardening of national policies that would be inevitable across member states if EU-wide policies on illegal immigration were not made more transparent (Moraes 2003). The public and media pressure, as seen above, is a serious challenge for a comprehensive EU policy on immigration and asylum.

4.2 EXTERNAL CHALLENGES

4.2.1 Human Rights Crisis And Increasing Number Of Victims Around The World

There is an obvious crisis in the international system to protect refugees and there is increasing number of people who are victim of human rights crisis in various countries all over the world. The number of people who flee from persecution, violent conflicts or seek a better life and escape the life in poverty is surprisingly increasing, especially since the Cold War. And since this time, the number of persons traveling to Europe and seeking asylum have greatly increased. Subsequently, this is neither a temporary problem nor the random product of chance events (Amnesty International
http://archive.amnesty.org/library/Index/ENGIOR610022001?open&of=ENG-SEN
2001).

After the Cold War, wars in the Balkans caused serious influx of immigrants to the European Countries, however, this instability is overcame and some of those countries are already members of the Union. Nowadays, there are plenty of places in conflict; in Darfur, Burma, Iraq, Afghanistan, and Palestine…However, these crises are not the subject of this thesis, the only concern is that there are a lot of regions in conflict and an increasing number of people suffering and seeking protection. Europe is an address frequently sheltered by those victims, because of the high standards of living and various opportunities which do not exist in most other directions. Europe is attractive and a great hope for those seeking better conditions however EU is not effective in managing those flows.

4.2.1.1 Ineffective Measures Taken By The EU;

European Union has the priority of creating an Area of Freedom Security and Justice, and integrates the European Common Asylum System in the center. The Union has had the desire to build ‘Fortress Europe’, where there is ground for real concern that the new asylum system may in a number of respects be in breach of international human rights and refugee law:

· Refugees are prevented from reaching EU territory through immigration control measures which may not take into account international obligations towards refugees;
· If they reach the EU, refugees may be unlawfully detained, and access to fair and satisfactory asylum procedures denied;
· If they gain access to procedures, these may be accelerated in ways that do not fulfill the minimum requirements of fair and satisfactory asylum procedures;
· Even if they are afforded access to a fair and satisfactory asylum procedure, effective and durable protection may not be ensured . (Amnesty International http://archive.amnesty.org/library/Index/ENGIOR610022001?open&of=ENG-SEN 2001).

The European Union, establishing a strong human rights mandate, playing a leading role in the international platform, has this black spot of refugee protection. EU's human rights ambition lacks the attention on the refugee protection. As this is not just a policy instrument; it is a legal right, a vital tool of human rights protection that poses legal obligations upon governments. Of course, states are entitled to control entry onto their territory, but they are also and at all times bound to respect the right to asylum (Amnesty International http://archive.amnesty.org/library/Index/ENGIOR610022001?open&of=ENG-SEN 2001).

By ensuring that the "minimum standards" that the EU is currently proposing do equal "maximum protection" for refugees, The Common European Asylum System may help resolving some of the problems that are inherent in the present divergent practices of EU Member States.

4.2.2 External Border Security As A Challenge

The essential task of the states is safeguarding its citizens' security; therefore the border control with its real and perceived security function has a great symbolic importance. The developments since 1980s, notably the Schengen interpretation of the internal market as an area without internal frontiers, introduces a logic that renders some form of European Union external border policy indispensable. This border control as a traditional belonging to the state now is shared among the member states and the Union. Thus, being a domain réservé, now is a domain partagé; which is a domain with shared competences. This is a fundamental shift of traditional state sovereignty (Tekofsky http://www.libertysecurity.org/article846.html 2006).

The Schengen accord seeks to remove border checks on people moving between member states within the EU. An important part of this plan was the reinforcement of external border controls, now incorporated into EU law, provided for cross-border police cooperation, information exchange, surveillance and cross-border pursuit. In addition, the Schengen Information System was set up to record refusals of entry for asylum-seekers, arrest warrants, missing persons and stolen objects.

A European Agency for the Management of Operational Co-operation at the External Borders (European border control agency), with dedicated funding was established in May 2005. It is a coordinating body, monitoring land, air and sea borders between member states which supports national authorities with training and risk-assessment.

Since the 2004 and lastly 2007 enlargements, the EU has further extended its land borders with non-Member States, in eastern and southern Europe in particular. These new borders need to be properly policed to protect all Member States from illegal immigration, people smuggling and other forms of cross-border crime. The previous challenged areas of illegal immigration like Italy and Spain, now since the recent enlargements EU faces more challenges by having enlarged external borders.

To cooperate over the control of external borders, the member states set up the FRONTEX, "European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the European Union". The expansion of the Schengen area – those EU countries, including Norway and Switzerland, excluding Britain and Ireland that do not operate border controls between them for EU citizens – makes it particularly important that EU's external borders are effectively policed (Euromove http://www.euromove.org.uk/index.php?id=6515 2007). FRONTEX is an organization which brings expertise in the field of border management and policing that will help Member States to carry out their operational role. It does not abolish the national border guards, besides, provides training for the member states' border guards, with a view to improving their performance and achieving common standards.

This is a great step forward on cooperation in the external border control, since the abolishment of the internal border controls. There has to be a well functioning system for external border controls. Furthermore, the member states' borders are EU's borders;

there should be common measures to deal with the problems. Since they can not prevent the increasing number of people seeking to enter illegally to the EU, they can challenge them by strict controls on the external borders. Until now, there are considerable measures taken, of course well- implementation is necessary to face the challenges, which is not really the case in the Union. Thus, external border security is a challenge for EU wide policy on immigration and asylum because the number of people is increasing day-by-day and the control is not being sufficient.

5. THE FUTURE OF THE EU POLICY ON IMMIGRATION AND ASYLUM

Throughout the three previous chapters, firstly I examined the evolution of the European Union migration and asylum issues and policies, secondly the challenges for realization of a comprehensive European Union policy. In this chapter, I will focus on the probable future evolutions on the issue. And I will try to analyze if the obstacles concerning a comprehensive policy will be overcame by the new steps. The basic step taken is the Lisbon Treaty which is signed but waiting to be ratified by all the member states to enter into force.

5.1 THE BASIC CHANGES WITH THE RATIFICATION OF THE LISBON TREATY

The European Constitutional Treaty was rejected in the referendums done by France and Netherlands in 2005, and the treaty failed. Following this failure a 'period of reflection' on the future of Europe was launched to reconnect the citizens with the European project and to decide the fate of the Constitution (Lisbon Treaty http://www.euractiv.com/en/future-eu/treaty-lisbon/article-163412 2008).

The European Union needs to change and modernize, in order to face the challenges of 21st century like globalization, demographic shifts, climate change, security threats and the latest enlargements. The member states can not face these challenges alone, if they act as one, Europe can deliver results and respond to the concerns of the public. The European Union needs effective and coherent tools so it can function properly and respond the rapid changes in the world.

On 13 December 2007, Heads of States or Governments of the 27 member states, signed the Lisbon Treaty. The purpose of the treaty known as the 'Reform Treaty' is to amend the previous treaties, Treaty Establishing the European Community and The Treaty on European Union. The two consolidated treaties would form the legal basis of the European Union, together with the most of the content of the rejected Constitutional

Treaty. The target date for ratification set by member governments is 1 January 2009 – some months before the elections to the European Parliament (Europa http://europa.eu/lisbon_treaty/take/index_en.htm 2008). This treaty is signed as the result of intergovernmental conference with consultation procedure with the Commission and the Parliament. It will not be applied until it is ratified by 27 member states and the procedure of ratification depends on the states.

The Lisbon Treaty will define what the EU can and cannot do, and what means it can use. It will alter the structure of the EU's institutions and how they work. As a result, the EU will be more democratic and its core values will be better served (Europa http://europa.eu/lisbon_treaty/take/index_en.htm 2008).

Before concentrating on the immigration and asylum issues, I will firstly focus on the basic developments expected by the ratification of the Lisbon Treaty. A massive change is about the decision making procedure, which will also have a great influence in the asylum and immigration issues.

A double majority rule for Council decisions (55% of member states and 65% of the EU's population need to support a proposed EU legislation to pass by qualified majority). However, due to fierce Polish opposition, the new voting system will only apply from 2014, with an extra transition period until 2017 when additional provisions making it easier to block a decision will apply (the Ioannina clause);

> *Instead of the unanimity procedure, which requires the full positive vote for taking a decision, qualified majority voting is going to be applied which will require a double majority to take decisions. However, the applicability of this rule seems to be delayed for so long, at least for another 10 years from now on. There are plenty of exceptions for the applicability of this new ruling (Euractive 2008).*

Poland also managed to include the so-called "Ioannina clause" in a Protocol (Europa http://europa.eu/scadplus/glossary/ioannina_compromise_en.htm2008). This allows for a minority of member states to delay key decisions taken by qualified majority in the Council "within a reasonable time", even if they do not dispose of a blocking minority. However, the clause is not included in the actual Treaty text, which means that member

states can alter this provision without having to go through the cumbersome procedure of Treaty change (Euractive 2008).

As mentioned in the other institutional innovation of the Lisbon Treaty, this allows some other exceptions to be realized not to apply this qualified majority voting rule; nevertheless, it is possible to change this provision for member states because it is not included in the concrete treaty text.

These are the key institutional innovations for the European Union, besides, there are important policy changes. The most important is the extending the qualified majority voting to 40 policy areas, especially those relating to the asylum, immigration, police cooperation and judicial cooperation in criminal matters. Another is the applying of new opt-in/out provisions, for the UK to some new policy provisions, such as policies on border checks, asylum and immigration, judicial co-operation in civil matters, judicial cooperation in criminal matters and police co-operation (Euractive 2008).

5.2. THE MAJOR MILESTONES CONCERNING THE IMMIGRATION AND ASYLUM ISSUES

There are some enormous changes on the issues of immigration and asylum, particularly in criminal matters, police and judicial cooperation. Co-decision, qualified majority voting and the ECJ's jurisdiction will be extended to this area.

Title IV "Area of Freedom, security and Justice" replaced the present Title IV of the TEC "Visas, Asylum, Immigration and Other Policies related to Free Movement of Persons" and the present Title VI of TEU "Police and Judicial Cooperation in Criminal Matters." "Visas, asylum, immigration" issues were already transferred to the EC pillar from the intergovernmental pillar with the Treaty of Amsterdam and became subject to EU decision making procedure and the scrutiny of the ECJ. While most of the Justice and Home Affairs matters were transferred to the community level, "Police and Judicial Cooperation in Criminal Matters" remained in the third pillar, subjecting to unanimity. With the adoption of the Lisbon Treaty, the pillar structure introduced by the Maastricht

Treaty will be abolished and these issues will move to the Treaty on the functioning of the European Union (the existing EC Treaty). The JHA policies, presently dispersed will come together under the title of Area of Freedom, Security and Justice. Instead of diversified implementation of rules in the JHA, co-decision, qualified majority voting and ECJ's jurisdiction will be extended to this area. As a result, The 'Community method' is extended to police and judicial cooperation in criminal matters (Treaty of Lisbon
http://www.europeanfoundation.org/docs/Tuesday%2029%20January/ARTICLE%2061.mht 2007).

Union action and policies concerning security and justice with ECJ ensuring the common area of "Freedom, Security and Justice" is facilitated by the treaty. In the area of security and justice the power is transferred to the EU institutions. Qualified Majority Voting and co-decision will be ruled at the Council of Ministers, hence, there will be a stronger and more influential role for the European Parliament.

The Treaty of Amsterdam, in 1997, incorporated a huge part of the third pillar to the Community pillar, consequently the power of ECJ, concerning the Title IV on visas, asylum, immigration, judicial cooperation and civil matters, were established as equal to its power for upholding and interpreting other Community pillar areas. Nevertheless, according to Article 68 EC, its preliminary rulings on jurisdiction, concerning these matters is restricted to national courts from which there is no judicial remedy (Treaty of Lisbon, ibid).

Article 68 TEC will be repealed and the Lisbon Treaty obviously guarantees that the ECJ will make sure that the common area of "Freedom, Security and Justice" is not undermined (Lisbon Treaty Amendment 2007)

The rigid EU institutions, under the Treaty provisions, will not take into account the unique nature of British common law. The new article 61 (1) of the Lisbon Treaty has a stronger wording than the present Article 61, it is written "The Union shall constitute an area of freedom, security and justice …" rather than "In order to establish progressively

an area of freedom, security and justice, the Council shall adopt …". Furthermore, the Lisbon Treaty adds the need to respect "fundamental rights and the different legal systems and traditions of the Member States." The European Union institutions will not take into account the special nature of British common law (Lisbon Treaty Amendment 2007).

Although a common policy on asylum and immigration are already on the way, the new Article 61 (2) expressly calls for "a common policy on asylum, immigration and external border control" and introduces a new requirement for "solidarity between Member States." It becomes clear that those Member States exposed to an influx of asylum seekers and illegal immigrants will be unable to be assisted by the European Union. It is stated in the Treaty that there will be a sharing of burdens and costs between the Member States. This comes at time when the European Parliament and the Commission have been calling for greater solidarity between Member States (Lisbon Treaty Amendment 2007).

The UK has been surrendering the sovereign power to control its own borders to the EU through the signing of the existing Treaties. Lisbon also states that the Union "shall ensure the absence of internal border controls for persons." The UK under the protocols attached to the Amsterdam Treaty is already unable to maintain its border controls. Despite its position out of the Schengenland, UK is allowed to opt-in to some measures if it wants to be included even if it is not bound by the Schengen acquis. Besides, according to the Protocol on the position of the United Kingdom and Ireland to the Amsterdam Treaty, the UK does not take part in the adoption of measures under Title IV (visas, asylum, and immigration) nor bound in any way by them. However, by notifying the Council of its wish to take part, it can also opt-in even if the measure is adopted. Nevertheless the British Government has opted into several immigration and asylum measures rather than staying out. Therefore, throughout the existing Treaties, the UK has been losing its sovereign power to control its own borders to the EU (Lisbon Treaty Amendment 2007).

The presently intergovernmental matters under the third pillar, in Article 61 (3) which states that "The Union shall endeavor to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws" is similar to present Article 29 TEU, will be subject to the Community matters by the Lisbon Treaty.

The Lisbon Treaty introduces a new requirement in Article 61 (4) for the Union to "facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters." There could be potential risks to have fewer rights for the British citizens who are accused of crimes, because this Article demands that the UK mutually recognize judicial and extrajudicial decisions in civil matters. The principle of mutual recognition is the keystone of judicial cooperation in both civil and criminal matters within the Union. The Lisbon Treaty enhances mutual recognition of judicial decisions and judgments which will be respected and enforced throughout the Union. However in some Member States the accused do not have access to proper advice and can be prevented from conducting an effective defense. Therefore, there are risks to British citizens accused of crimes of having fewer rights.

There is a discussion if it is a "free choice" of UK's, on the issue of the right to take part in the JHA legislation if it wants to, however, once it opts in, it is subject to the Commission powers of enforcement and the ECJ jurisdiction. The Treaty of Lisbon amends the Schengen Protocol on the position of the UK in respect to the Area of Freedom Security and Justice. Before the enter into force of the Lisbon Treaty, a Protocol on Transitional Provisions has already been adopted with special provisions for the UK, with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters (Lisbon Treaty Amendment 2007).

The new Article 63a confirms the EU commitment to the development of a common immigration policy;

The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings (European Foundation 2007).

The Lisbon Treaty provides a definitive legal basis for the development of a comprehensive immigration policy by this article. This provision introduces the term "efficient management of migration flows" which has now been used in Commission's communications and European Council conclusions. The Lisbon Treaty provides a clear legal base for the measures like Commission Communications, Council conclusions and action plans on the EU fight against illegal immigration and trafficking in human beings, also Council Framework Decision on combating trafficking in human beings. It refers "enhanced measures to combat, illegal immigration and trafficking in human beings." Although it is not clear what is meant by "enhanced measures", the underlying federalist ambitions will mean that it will lead to stricter control measures than the current Article 63 (3) (b) on the repatriation of illegal residents (European Foundation 2007).

Illegal migration issues are decided by qualified majority voting at the Council through the co-decision procedure; however legal migration has been decided by unanimity in the Council through the consultation procedure with the limited role of the Parliament. The Lisbon Treaty abolishes the particularity of legal migration and all common policy immigration measures will be decided through the co-decision procedure, together with the European Parliament and the Council, by qualified majority voting. The veto over legal migration is abolished by the reform treaty; therefore the UK will have to accept a reduced influence in the adoption procedure concerning this issue, and will not be able to block the decisions (European Foundation 2007).

Another major measure important for the immigration and asylum issues; taken by the Treaty of Lisbon is that it gives binding legal force to The Charter of Fundamental Rights which sets out and guarantees a catalogue of rights and greater freedom for European citizens, including civil, political and social rights. The charter upholds basic Western values such as the right to freedom of speech and thought, and equality before the law (The European Reform Treaty

http://www.greenparty.ie/en/policies/eu_reform_treaty 2007). There are also other articles which; recognize the right to strike, fair working conditions, right to life, full equality in all areas including work, employment and pay; the right of access to preventive health care; and the integration of a high level of environmental protection into the policies of the Union.

This Charter is not a part of the current treaties, by the Reform Treaty, the Court of Justice will ensure that the Charter is adhered and recognized the rights, freedoms and principles set out in the charter, furthermore, gives its provisions a binding legal force. However, there are some countries who want to adopt a protocol in order to restrict the application of the Charter in their countries. This problem existed with the UK, Ireland and Poland; nevertheless this option was not exercised (The European Reform Treaty http://www.greenparty.ie/en/policies/eu_reform_treaty 2007).

Apart from this, according to the Lisbon Treaty, the immigration control of the member states, mostly given to the European Union. Particularly on asylum issues, for example, failed asylum applicants can go before the European Court of Justice, which means the final say will be said by Brussels unelected bureaucrats. This also means that, decisions given by the member states on the deported asylum seekers can be overturned by Brussels. According to the anti-supranationalists of migration issues, in UK it will cost too much. Almost 170,000 deportation cases are already brought before the Immigration Tribunal every year, with each case usually lasting around two years. Giving failed asylum seekers powers to take their cases to Europe will cost the taxpayer millions of extra pounds as each case now already costs an average of £18,000 (Mail online , http://www.dailymail.co.uk/news/article-501637/Brown-signs-EU-Treaty-experts-warn-UK-surrender-control-immigration.html 2007).

To sum up, the basic changes coming with the adoption of the Lisbon Treaty are;
Abolition of the Pillar structure and putting all the issues related to immigration and asylum in the Justice and Home Affairs together, changing decision making procedure on the issues from unanimity to qualified majority voting, co-decision procedure instead

of consultation with the Parliament and the increased role of the European Court of Justice and integration of the Charter of Fundamental Rights as a binding instrument. These changes would face the existing challenges for the European Union Policy on immigration and asylum matters.

5.3 ASSESSING ATTITUDES OF THE UNION: IS IT GOING FURTHER OR KEEPING THE STATUS QUO?

After summarizing the basic changes coming by the Lisbon Treaty above, now the attitude of the Union by these changes will be examined. Will these changes take the European Union one big step forward on the way to a European Union policy?

Abolition of the pillar structure; since the police cooperation, judicial cooperation in criminal matters, fight against organized crime and fight against trafficking in human beings exist in the third pillar, the procedures applied for these related issues differ according to their pillar. This is a severe problem between the member states in my opinion, which might occur because of lack of trust among countries. They want to keep their sovereignty in these issues and keep them in the intergovernmental level. However, once the Lisbon Treaty is adopted, the pillar structure will be abolished, and all these issues of Justice and Home Affairs, related to migration and asylum issues, will come together under the same procedures of decision making. This shows the increasing trust among the member states which will also help more cooperation among them.

Co-decision procedure; increase the role of the Parliament. The present procedure of consultation with the parliament will be abolished and co-decision procedure will be essential. This will increase the role of the European Parliament which means that the European citizens will have more right to say and influence the decision making in this sense. Besides, apart from the member states’ interests, the citizens’ interest which is equal to the Unions interest will be necessary.

Decision making, from unanimity rule to full qualified majority procedure. The Amsterdam Treaty in 1997 transferred some of the Justice and Home affairs matters to the Community pillar; however the migration and asylum related issues are divided into two different procedures. The matters in the Community pillar had different procedures through the decision making, the others left in the third pillar had different. In order to avoid this complicated structure, the Lisbon Treaty besides abolishing the pillar structure, combined all the related matters under the same procedures, qualified majority voting. This procedure is of course more advantageous because it helps to speed up the decision making process and give more chance to pass the legislations. Moreover, it prevent the national interests to overcome the Union's interest, thus abolish the veto right which blocks the decision making capability of the Council.

The increasing role of the European Court of Justice; Up to now, for the reason that the matters of Justice and Home Affairs matters been through different procedures of decision making, ECJ also has had limited powers to rule on the cases, particularly the issues which are out of the Community pillar. The Lisbon Treaty would remove most of the earlier restrictions, and get enhanced powers, also would say the final say in the cases of European Citizens' rights, in addition to the Court of Human Rights and the National Supreme Courts (The European Reform Treaty http://www.greenparty.ie/en/policies/eu_reform_treaty 2007).

The European Court of Justice, will in time have jurisdiction to enforce all JHA decisions: those provisions adopted under the previous, intergovernmental framework of the third pillar, will be subject to a limited jurisdiction of the ECJ for a transitional period of five years, after which the ECJ's normal jurisdiction will be extended to cover all prior legislation in policing and criminal matters.

Consequently, the ECJ's powers concerning Title IV -Visas, Asylum, Immigration, judicial cooperation in civil matters- were established as equivalent to its powers for upholding and interpreting other Community law areas. Nevertheless, its preliminary rulings on jurisdiction concerning these matters, according to Article 68 EC, is restricted to national courts from which there is no judicial remedy. The Lisbon Treaty

repeals Article 68 TEC. It is clear that the ECJ will make sure that the common area of "Freedom, Security and Justice" is not undermined (Lisbon Treaty 2007). The ECJ will ensure that member states implement JHA legislations effectively. For the first time one of the treaties give the ECJ full jurisdiction over Justice and Home Affairs aspects.

Consequently, most of the changes would overcome the challenges to the EU policy on immigration and asylum, however does not face every single challenge and the main problem in the application of these treaties. Since the creation of the European Union, there are a lot of measures taken in these issues, however the applicability is low and takes long time. Nevertheless, these moves and steps should not be underestimated, even though it takes time, it might come to reality.

The Lisbon Treaty tries to eliminate the obstacles on the path of a comprehensive EU policy on immigration and asylum. On this path, abolishes of the pillar structure and brings together all the matters of the Justice and Home affairs, changes in the decision making procedure and increasing the role of the European Parliament and the European Court of Justice are big steps forward. This proves the desires of the member states to cooperate on the issues; however, the member states great concern of loss of sovereignty never disappears. The right of opt-in and outs for particular countries is the biggest challenge for these matters, nonetheless, it is at least certain that if they choose to opt-in they are immediately becoming subject to ECJ.

While this paper was about to be concluded, a final development is realized on 13th of June, the Lisbon Treaty is rejected by the Irish referendum. This means that the treaty is not adopted, because it needs 27 adoptions to enter in force. But there is still some hope as the Nice Treaty was also rejected first then accepted by another referendum.

6. CONCLUSION

This paper covers the immigration and asylum policy in Europe; focuses on the evolution of the subject by asking if Europe, with different national policies and regulations through several intergovernmental cooperations, is going forward to a supranational level policy? I started to treat this subject from the very beginning in order to analyze and understand the development of the subject.

First and foremost, I clarified the terms such as; migration, immigration, emigration, illegal immigration, asylum, refugee and immigration & asylum policy, furthermore, the immigration and asylum policy in general, with two theoretical approaches; "liberal and realist". I continued with what immigration and asylum policy deals with in Europe, what supranationalism is and how a comprehensive policy would be. In this prolonged introduction part the theoretical approaches according to Lavenex's analysis are examined and a question was asked: If the EU has realist or liberalist approach on the immigration and asylum policy? This approach depends firstly on the member states' interests; moreover it seems to be liberal who opens the doors for all the immigrants for work and humanitarian reasons, however, the reality is not the same, as the measures they are taking illustrate a different picture. It really depends on their interest, for instance, when the EU has labor deficiency, the borders are more open for the economic migrants, on the other hand the doors seems to be wide open for the asylum seekers. But the measures taken demonstrate that the rules are strict and only a little percentage of the asylum seekers get the refugee status in the EU. In contrast we can see well concentration on the rights of the third country nationals, which is the humanist approach that EU applies, but of course there are plenty of deficiencies in the application.

The Union sees itself as a global protector of human rights and for this reason tries to take measure in order to help the human rights victims all over the world. The measures it takes seems to be for this reason, however, when we look closer, the reality is to control this movement pushing through the Union, and to prevent illegal migration. This is a realist approach that the Union has; controlling the borders by taking strict measures

for the internal security, however, we may see the liberalist approach in the discourse of the commissioners as the EU being human rights protector which supports humanitarian perspective and human rights norms where these norms and the rights of third country nationals comes before the cross-border movements.

In my opinion, the EU has a hybrid approach according to its interests. However we can not deny the efforts it has been done and still doing in third countries with various agreements and projects. The reason is discussable, if to help the unfortunate countries to develop as a global human rights protector or to keep them away from their territory. What ever the reason is, it has been and still is doing intensive work.

After this long introduction part, I dealt with the subject in more detail starting from the very beginning with the European Coal and Steel Community, through the present Hague Programme. The first chapter analyzed the evolution since 50s, and went on with some detailed information on the recent situation. The immigration and asylum policy being a complete national competence, now mostly transferred to the supranational level however; still some are shared between the member states and the EU? This is a gradual evolution of the EU on this matter.

In the historical evolution, the essential point, together with the free movement of persons principle, is the abolishment of the internal borders and having one single external border for the Union. This was the point when Pandora's Box is opened and all these discussions had started. These two developments required common measures and cooperation on the field, and maybe made it mandatory to take it to the community level. Once you enter from one state, you can enter to other states of the Union freely without any other application, so the states do not have pure control on who can/can't enter to their territory. So it is for the Union and the member states interest to take common action and measures for the control of the borders and these policies. However, this is not always the case, sometimes the interests of 27 different member states coincide, but we can not deny the great steps taken forward for an EU policy on the field inside the common frontiers.

In the second chapter I analyzed why the asylum issue is in advance in cooperation at the supranational level, comparing to the others in the field. This is a fragile issue as the EU has the mission of human rights protection in the world. The main reason for the integration on this issue is to avoid asylum shopping which happens when an asylum seeker seeks asylum in more than one country. Moreover, to make it obligatory for one state to deal with the issue using the same standards so that these people will not be victims on the borders, on the other hand to prevent the illegal entrance of those who are rejected before. Besides, cooperation on having the minimum standards at least helps for constructing the base of the well functioning asylum systems. This area is really so fragile that a common action should be done at the European level.

In the third and fourth chapters the challenges for an EU policy on immigration and asylum has been discussed first and then the probable solutions to overcome some of these challenges which lay in the upcoming Lisbon Treaty are analyzed. There are internal and external challenges that this policy faces in the EU; there are solutions mostly for the internal ones, on the other hand, the external challenges can be generalized as increasing pressure of immigration and asylum to the EU. Although for the internal obstacles, if the EU’s interests gets ahead of the national interests these might be overcame in the future, and in the short term by adoption of the Lisbon Treaty. About the external challenges, EU tries to help the third countries to develop, lastly creating job centers mostly in African countries and providing them work and earn their life, furthermore increase the standards of living. This might be the only thing that EU can do in order to decrease this serious pressure. This is what they call focusing on the root causes, which would help those countries to develop and prevent excess of asylum seeking and illegal migration to the European Union.

In this thesis paper, I discussed the evolution, the present situation and the future of the immigration and asylum policy in Europe. Since there are various different policies of the member states of the Union, there is not a real EU policy which abolishes the national ones and deals with the issue by itself. When I mean EU policy, it is not only the supranational level at the first pillar; it is all together with the decision making and the involvement of all the institution, without the monopoly of the member states’

interests. Which is the case right now that the European Council has most of the initiative; the decisions are usually blocked due to the different interests of the member states. On the other hand, there is no entirety in the issue; differentiations by the pillar structure and the decision making procedures block the improvement on the comprehensive EU policy on immigration and asylum. However the Lisbon Treaty has been a big hope for the Union, especially on the field of immigration and asylum. Since it is rejected by Irish government on 13th of June, there is a risk of failing of this treaty and this drew another direction for the future of this policy. The treaty needs 27 yes votes for the adoption, now we have one no! Though, there is still hope for adoption of the Lisbon Treaty, as The Nice Treaty had the same situation before, and has been accepted with the second referendum, and adopted. Therefore, there is still hope for steps forward in the immediate future.

It is undeniable that there is a great need for an EU policy on this issue, since the EU countries have low fertility rates and increasing number of aged population, there is going to be a significant need in the future where migration is the answer.
However, the national interests where different economic- demographic needs and standards of living will always be a barrier for the supranationalism of the immigration and asylum policy. Unilateral decisions of some countries in the Union, such as United Kingdom, Ireland and Denmark block the applications of the policies in this field, and it seems it will continue to blocking in the future.

Consequently, all these that I have been examining throughout this paper, proves that the EU is aware of this deficiency moreover it results as a great improvement on the path of a comprehensive EU policy on immigration and asylum. However it is a gradual process with big barriers mostly because of the national interests. The upcoming developments will show what will happen in the future, but so far the recent developments prove that the EU is going towards a supranational policy on this field of immigration and asylum. Nonetheless, we can never know what will happen; we will see all together in the short and the long term.

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