

# Towards a new European consensus on migration and asylum

Philippe De Bruycker<sup>1</sup>

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In July 2019, the then President-elect of the European Commission Ursula von der Leyen announced her willingness to propose the conclusion of a “New Pact on Migration and Asylum”.<sup>2</sup> This Pact could be a new solemn agreement – or consensus – between the member states and the EU institutions to continue to build, if not rebuild migration and asylum policies. After a brief assessment of the implementation of the conclusions of Tampere and the impact of the 2015-16 crisis (Part 1), this concluding chapter presents the two building blocks upon which this new

consensus could be established (Part 2, A). It also lists the most significant, interesting and promising ideas and suggestions (Part 2, B) that have been made and discussed throughout the ten thematic sessions and workshops organised in the framework of the “From Tampere 20 to Tampere 2.0” conference, held in Helsinki on 24 and 25 October as a side event of Finland’s Presidency of the Council of the European Union. Finally, a method for transforming the new consensus on migration and asylum into reality in the current political context is proposed (Part 3).

## PART 1: ASSESSMENT OF THE TAMPERE CONCLUSIONS

When they were agreed in 1999, the Tampere conclusions placed human rights, democratic institutions and the rule of law at the centre of the area of freedom, security and justice (AFSJ), while stressing that these common values and the freedom they entail should not be regarded as the exclusive preserve of European citizens. The leaders of the EU insisted that completing such an AFSJ is indispensable to the consolidation of the shared area of prosperity and peace the Union aims to achieve. **On the occasion of their 20<sup>th</sup> anniversary, the criticality of these**

**fundamental principles must be strongly advocated,** given that formal procedures are launched against member states in breach of the rule of law, free movement is put into question and a genuine rights-based migration and asylum policy seems to be problematic for the EU and its member states.

The Tampere conclusions launched policies on visas, borders, migration and asylum based on the Amsterdam Treaty. A lot has been achieved since their adoption in 1999 in the framework of the four main pillars.

### A. Partnership with third countries

Relations with third countries of origin or of transit are crucial for the management of migration flows. Migration and asylum-related priorities are now fully integrated into the Union’s external relations priorities as evidenced by the EU Global Strategy,<sup>3</sup> in line with the Tampere message. A Global

Approach to Migration and Mobility (GAMM) has been progressively elaborated with the aim of developing an agenda that takes the interests of all stakeholders into consideration.<sup>4</sup> **Even if the GAMM is in itself an achievement, its implementation is still a work in progress.** Instead of

creating genuine partnerships, relations with third countries are more about managing tensions fueled by how the EU systematically puts return and readmission at the top of the agenda. The nexus between migration and development is also still in the making.

The 2016 EU-Turkey statement left its mark on the Union's policy towards third countries. To some, this agreement appeared to be a potential new management scheme based on transit countries blocking migration flows in return for financial support from the EU. **However, this policy is detrimental to the right to seek asylum**, which the European Council has considered so important in December 1999 that it had reaffirmed the attachment of the EU and its member states to its absolute respect in the Tampere conclusions.

Simultaneously, several new Trust Funds have been created to channel more money to better address the root causes of migration in countries of origin. New initiatives promoting job-creating investments are promising, and careful attention should be given to the programming of the external relations instruments included in the upcoming Multiannual Financial Framework (MFF) for 2021-27. These instruments offer the opportunity to set up more transparent and predictable funding vehicles. Promotion of good governance, the defence of human rights and preventive diplomacy in countries of origin should be part of the EU toolbox now more than ever in an attempt to limit the impact of the so-called push factors. Finally, the EU and its member states must now engage in the implementation of the UN global compacts on asylum and migration, regardless of how controversial this may be.

Important and symbolic failures are illustrated by the dysfunctional hotspots and potential 'external platforms'.

## B. A Common European Asylum System

**The establishment of a Common European Asylum System (CEAS) was no doubt one of the Tampere conclusions' more ambitious milestones.** Even if the CEAS has not yet been fully accomplished, the EU now boasts the world's most advanced regional framework of asylum. Its establishment has been a long, difficult and technical process. The persisting blockade on the reform of the Dublin system should not obliterate the progress achieved in terms of legislative harmonisation, administrative cooperation with the creation of the European Asylum Support Office (EASO), financial solidarity throughout

the EU, and the inclusion of asylum into the GAMM.

**Moreover, some EU member states have begun to pool their resettlement efforts since 2008, to the point where the Union is now one of the major global players in this area when previously it was lagging behind traditional resettling countries.**

Despite being more modest than envisaged, the relocation process of asylum seekers from Greece and Italy to other member states launched in reaction to the crisis is not the failure it is too often pegged as, but rather an initial experience implemented under extremely difficult circumstances.

**A solution must be found to the Dublin conundrum by exploring other forms of solidarity besides relocation.**

The time has come to conclude the negotiations on the last set of the Commission's 2016 proposals<sup>6</sup> and to move a gear up to achieve the objectives set in Article 78(2a) TFEU by giving the asylum status a validity throughout the Union based on the principle of mutual recognition. Moreover, as crises are always on the horizon, the reason why the temporary protection scheme requested by the Treaties has never been activated since its adoption should be seriously considered.

## C. Fair treatment of third-country nationals

**Clearly, legal migration is the least advanced policy, with the adoption of only minimum and partial rules, particularly regarding labour migration.** The parameters set by the Tampere conclusions (economic, demographic, historical, and cultural) remain valid. Existing instruments and the need to harmonise rules for new categories of labour migrants should continue to be evaluated, given that the EU should offer a framework for legal migration, which is required for Europe's future economic development.

This is particularly true for highly-skilled migration, which consequently requires a rapid adoption of the reform of the Blue Card Directive 2009/50/EC.<sup>7</sup> However, it is also necessary for less skilled migration in liaison with the illegal employment of migrants on the labour market. New approaches that are more in line with the interconnected world of the 21<sup>st</sup> century and new patterns of work should be tested and encouraged. The free movement of all legally residing third-country nationals (TCNs) as requested by the Treaties should

be implemented comprehensively, in relation to the internal market, and replace the adoption of variable provisions scattered among several directives.

In terms of methodology, the Commission's initial approach of combining common legal standards for the conditions of entry and residence with a coordination mechanism that applies to flows and profiles, all while respecting member states prerogatives, should be revisited. In particular, close coordination must be secured between immigration and employment policies. There is no need to invent a new platform to that end, as putting the migration-related items on the agenda of the existing Social Dialogue structures would suffice.

Regarding integration, **the EU has developed a real philosophy of migration that respects the human being behind every migrant.** Even if there is room for improvement, the long-term resident directive 2003/109/EC does not allow for migrants to be treated as adjustment variables without limits. Due

to this directive, migrants should in principle not remain in a temporary status in the EU and acquire a permanent right of residence after five years of legal stay.

Some like to state that integration policies have failed – but such a statement is just another springboard for xenophobia-tainted populism. The success of some integration policies should be highlighted, and the Common Basic Principles promulgated in 2004 by the Council of Ministers<sup>8</sup> still reflect a common understanding, even if no ‘one size fits all’ approach exists for integration challenges. Despite being limited in scope, the introduction of a specific legal basis in the Lisbon Treaty is a signal in itself that should not remain symbolic. The consolidation of significant funding included in the EU budget, coupled with improved coordination with other budgetary instruments, offer an opportunity to anchor this policy into a broader anti-discrimination and anti-racism agenda.

The issue of undocumented migrants should not be ignored, as is seemingly illustrated in the UN Development Programme report “Scaling Fences: Voices of irregular African Migrants to Europe”,<sup>9</sup> presented during the Helsinki conference. **The ban of collective regularisations decreed by the European Council’s pact on immigration and asylum<sup>10</sup> should not prevent member states from using individual regularisations innovatively as a new tool which can contribute to the management of migration flows.**

## D. The management of migration flows

The fight against irregular migration, as emphasised by the Tampere conclusions, has become the EU’s top priority. Border policy is nowadays the most advanced of its policies, with the impressive development of the European Border and Coast Guard Agency (Frontex) paving the way towards a truly common European Border Guard.

**Conversely, the framework for orderly migration has degenerated into a control-oriented approach that is inspired too often by the assimilation of migration to a security challenge.** Coming after many others, the 2015-16 crisis merely accelerated this policy shift. The existing databases (i.e. Schengen Information System, Visa Information System, Eurodac) allowing better control of migration flows will

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**The logic behind the distribution of funding must evolve from a system based on burdens (e.g. number of asylum seekers, length of the external border) to one built upon the capacities of member states, measured on the basis of their wealth (e.g. GDP).**

be completed by three new ones (i.e. Entry/Exit System, European Travel Information and Authorisation System, European Criminal Records System) which will become operational in the next years, including the interoperability between those databases. Finally, the increase of financial support for the EU's action in third countries has been spectacular and exceeds the funds devoted to internal policies.

However, the return policy of irregular migrants has not progressed sufficiently, with a persistently low rate of effective implementation of decisions (below 40%) contradicting one of the main objectives of the EU and its member states.

### **Important and symbolic failures are illustrated by the dysfunctional hotspots and potential 'external platforms'.**

The migrants who are forced to continue living on the Greek islands, despite the EU-Turkey statement, are obliged to survive in appalling conditions that might violate Article 4 of the Charter of Fundamental Rights (the Charter). Redlines were crossed when certain member states prevented NGO boats from conducting maritime search and rescue operations on the basis of false reasons, while the EU pretends that its priority is to save lives at sea.

## **PART 2: THE WAY FORWARD**

The crisis of 2015-16 challenged the entire migration and asylum policies of the EU and its member states. The rules patiently built over 15 years tumbled down like a house of cards. Despite the European Commission's 2015 Agenda on Migration<sup>11</sup> launched in reaction, **the EU plunged into a multi-dimensional – political, moral, legal, institutional, financial – crisis:**

- ▶ Some member states openly refused to apply some of the solidarity measures, like the relocation of asylum seekers, despite it being adopted as a legally binding decision, thereby violating the rule of law upon which the EU is built.
- ▶ Member states re-established internal border controls, without consideration of the limitations imposed by the Schengen Borders Code 2016/399, within the Schengen Area, one of the foundations of the EU.
- ▶ The EU and member states' support to third countries of transit for migrants led to violations of their basic human rights much

too often, involving inhuman or degrading treatments and arbitrary detention.

Nonetheless, the 2015-16 crisis is now over, and the issue of the disembarkation of some hundreds of persons rescued at sea should not be instrumentalised to convince the public that it is still ongoing. Despite its negative effect on the political climate surrounding the issue of migration and asylum, this crisis acted as a catalyst and can be transformed into an opportunity as it has often been the case for the EU with many crises in the past. Due to the existential character of this crisis, rather than a new impetus, a new European consensus is needed and should be concluded between the member states and the EU institutions. The two overarching building blocks upon which this consensus could be established are presented below: it is firstly about solidarity (A) and secondly common policies (B), with a particular focus on common implementation and common funding. It is on the basis of these foundations that specific ideas and suggestions (C) could be implemented.

# A. Overarching building blocks

## BUILDING BLOCK 1: SOLIDARITY

Visas, borders, migration and asylum are policies that generated asymmetric burdens between the member states in the AFSJ, particularly in the Schengen Area. The problematic configuration of such a common area requires a very high level of solidarity to compensate these imbalances. This has not been the case, and largely explains the 2015-16 crisis. The Dublin Convention allocated responsibility for asylum claims between member states primarily on the basis of the criteria of the country of first entry, placing the burden mainly on member states located at the EU's external borders.

The Tampere conclusions did not consider solidarity a major challenge. **The AFSJ is therefore affected by a fundamental 'birth defect', rendering it dysfunctional.** Tailormade to solve this problem, Article 80 TFEU has not been paid sufficient attention in the last decade, with scattered and insufficient measures that never addressed the issue of solidarity coherently. On the contrary, the unfair Dublin system has been considered as the 'cornerstone' of asylum policy, even though it creates a divorce between the legal rules and the reality on the ground. The result is an EU so profoundly divided on the matter that its reform has, up to date, been impossible.

The wording of Article 80 TFEU requires a very high level of EU solidarity leading to a fair sharing of responsibilities between member states. All of the dimensions of this solidarity – and not only the physical regarding the relocation of refugees – must be taken into consideration.

- **normative solidarity**, through the adoption of common rules to prevent a race to the bottom;

- **financial solidarity**, through the allocation of sufficient resources to compensate overburdened member states;

- **operational solidarity**, through the EU agencies' support to member states in need.

**To provide an objective basis for a sound political debate that never took place, an in-depth study is therefore necessary:**

- **to measure the fair share of responsibility that each member state should bear** in the area of visas, borders, migration and asylum, based on a calculation which reflects the capacity (and not only the burden) of each member state;

- **to make proposals for the different types of solidarity** (particularly financial and operational) **that should be implemented** in view of fair sharing of responsibility between member states, including a complete reform of Dublin which would put in place a realistic and fair system.

## BUILDING BLOCK 2: COMMON POLICIES

The notion of 'common policy' regarding visas, borders, migration and asylum policies is not used by accident in Articles 77-79 TFEU. It has been elaborated and given precise content by the legal doctrine.<sup>12</sup> The traditional answer to 'what is a common policy?' is 'common legislation'. This explains why the CEAS was considered as accomplished when the second generation of rules on asylum was adopted in 2013. **Common legislation** is indeed the first necessary but insufficient element of true common policies – much more is required.

**Secondly, common objectives.** The legislative process tends to focus too quickly on the details of the proposed provisions rather than the overarching objectives of the proposal. Compromises inside and between the Council and Parliament are evidently a necessity, but they should not be concluded at the detriment of the primary objectives of policy instruments. More political rather than technical debates must take place in the Council and Parliament, in order to provide the technical groups or committees that will negotiate the details of the legislation with precise indications.

**Thirdly,** the crisis showed that common policies require a certain level of **common implementation** through EU agencies, contrary to the classical principle of indirect administration under EU law. Some progress has already been made in this direction and is best observed in the progressive transformation of Frontex from a European Agency for the Management of Operational Cooperation into a European Border and Coast Guard Agency, particularly the 2019 reform allowing the Agency to recruit its own border guards. The EASO's conversion into an EU Agency for Asylum will take place once the pending asylum package is unblocked. Finally, the EU Agency for the Operational Management of Large-Scale IT Systems in the AFSJ (eu-LISA) is in charge of the migration and asylum databases. As such, the implementation of borders and asylum policies at the EU level emerged and progresses bit by bit, but the speed of this evolution is questionable since the reform of the EASO could go further than what is currently envisaged in the text agreed by the Council and Parliament on the basis of the Commission proposal of 2016.<sup>15</sup>

**Fourthly,** the unequal distribution of burdens between member states calls for **common funding**. One cannot expect some member states to produce regional public goods like border control or asylum alone, for the benefit of the others. Further progress must be made. The goals of EU funding are

unclear for the time being, as made evident by the rise of emergency EU funds to cover some member states' basic needs. Financial solidarity that is currently circumstantial must become structural. A fundamental evolution towards funding much more those policies at the EU level instead of the national must be engaged. The new MFF will remain substantially insufficient, despite the increase of the budget allocated to visas, borders, migration and asylum policies. Moreover, the logic behind the distribution of funding must evolve from a system based on burdens (e.g. number of asylum seekers, length of the external border) to one built upon the capacities of member states, measured on the basis of their wealth (e.g. GDP). It is hard to understand why the future Asylum and Migration Fund (AMF) will allocate more money than before to Germany during the 2021-27 period because of the very high number of asylum seekers it received during the crisis than to Greece and Italy<sup>14</sup> despite their current insufficient means to implement the EU policy and their geographical position at the frontline of the EU.

**Fifthly,** a common policy requires a **common positioning towards third countries**. The EU has integrated this necessity and successfully implemented this element towards Turkey and Libya – if success is measured by only considering the decrease of the migrant arrivals to the EU. However, this policy has fundamental flaws that have already been described, including the effect of delaying internal reforms due to the respite offered by the external solution.

These five constituent elements must all be taken into consideration simultaneously to build truly common policies.



## B. Specific ideas and Suggestions

This part outlines important and interesting ideas and suggestions raised by the contributors to the Helsinki conference, as well as by external contributors before the conference. They have been selected with ongoing debates within EU institutions and member states, as well as their political or operational relevance, born in mind. The preceding chapters of this publication provide more details on these ideas and suggestions.

### 1. INSTITUTIONAL FRAMEWORK

1. One of the dimensions of the crisis that has rarely been underlined is institutional. Border and asylum are policies that member states cannot implement anymore, but that the EU cannot yet implement. The result is an implementation gap leaving space for the disorder that we have observed. The time has come to think about the **common implementation** of borders and asylum policies. With the increased role of agencies, the EU has already created the tools which allow their implementation at the EU level. There is still a long way to go, but the revamped Frontex and EASO should be seen as the **new vehicles of implementation** of the borders and asylum policies. All future reforms of those agencies should be conceived of in a way that enables them to progress in this direction as much as possible.

2. This new model of ‘European implementation through agencies’ must remain **flexible and be capable of differentiating** between the member states able and willing to keep the primary responsibility for borders and/or asylum policies, and those willing to rely upon EU agencies to implement parts or the entirety of borders and/or asylum policies on their territory on the other hand.

### 2. FINANCIAL FRAMEWORK

1. New forms of financial solidarity between member states are needed, as EU borders and asylum policies should progressively be **funded more at the EU rather than the national level**.

2. Current EU financial contributions to member states should be calculated to better implement solidarity and fair sharing of responsibility. They should **reflect the capacities of member states** rather than their burdens. Relative figures based on the wealth of member states (e.g. GDP) rather than absolute figures should, therefore, be used.

3. The **involvement of civil society actors** and local authorities in all phases of the funded projects – from planning to implementation – should be enhanced. The partnership principle should be included in the new AMF to ensure the inclusive participation of NGOs, including migrant- and refugee-led organisations.

4. The Commission should **monitor member states’ use of EU funds more effectively** to ensure that they are in fact serving the purpose of implementing common policies.

### 3. GLOBAL APPROACH AND PARTNERSHIP FRAMEWORK

1. Future funding in this area should take account of the following considerations highlighted in the 2018 Commission report on the Charter:

*“Funding instruments in the areas of migration, border management and security for the next Multiannual Financial Framework (MFF) highlight the need to use funds in full compliance with Charter*

*rights and principles. Actions implemented with the support of EU funds should take particular account of the fundamental rights of children, migrants, refugees and asylum seekers and ensure the full respect of the right to human dignity, the right to asylum, and the rights of those in need of international protection and protection in the event of removal.*"<sup>15</sup>

**Border and asylum are policies that member states cannot implement anymore, but that the EU cannot yet implement.**

**The intra-EU free residence of all legally residing TCNs as requested by the Treaties should be implemented comprehensively, particularly to allow the EU and its member states to participate in the global race for talents.**

**Data on the duration of return procedures, the time spent in pre-removal detention, the number of non-removable returnees, and backlogs should be systematically collected to facilitate performance evaluation and policymaking.**

2. Article 2 TEU regarding EU values justifies a call for a **stop of judicial actions against NGOs and their personnel involved in maritime search and rescue activities** that are in line with international and maritime law.

3. **Ensuring that EU external policies are not detrimental to free movement regimes** of persons in other regions of the world, particularly Africa.

4. **Calibrating EU and member states projects** to ensure that they will be effectively delivered, to preserve the EU's international reputation.

5. **Weighing migration-related priorities carefully alongside other priorities** (e.g. economic, geopolitical), as part of international affairs in the framework of a comprehensive approach.

6. **Maintaining the promotion of democracy, good governance and defence of human rights** in countries of origin as well as preventive diplomacy as part of the EU toolbox now more than ever, to try to limit the impact of the so-called push factors of migration, if at all possible.

7. **Establishing and carrying out a compatibility test** with Article 208 TFEU systematically in the field of migration and development before adopting any new instrument, and during the implementation phase.

8. Linking EU resettlement to third countries with the **highest concentration of persons in need of protection**.

9. Launching a **study on the consequences and options** of protection in the EU for **environmental and climate-induced displacement**.

#### **4. LEGAL MIGRATION**

1. Clarifying whether the notion of a common policy in Article 79 TFEU implies that an **EU policy on legal migration should only be complementary to member states policies**. Also clarifying whether future labour market and demographic

needs are better addressed at the national rather than EU level.

2. **Revisiting the Commission's initial approach**,<sup>16</sup> which combines common legal standards for the conditions of entry and residence with a coordination mechanism that applies to flows and profiles, while respecting member states' prerogatives.

3. Adopting the reform of the **Blue Card Directive for highly-skilled employment** quickly. Compensating the prohibition of national schemes parallel to the Blue Card with the possibility for member states to adopt more favourable provisions than EU law at the national level.

4. Implementing the **intra-EU free residence of all legally residing TCNs** as requested by the Treaties comprehensively, particularly to allow the EU and its member states to participate in the global race for talents.

## 5. INTEGRATION AND VALUES

1. Ensuring **better coordination between the different EU funds** concerned.

2. Emphasising that **integration policies should be holistic**, instead of highlighting specific elements (e.g. expectations towards migrants) that can be a legitimate component if other promotional instruments complement them.

3. **Focusing on effective outcomes and not only equal treatment 'on paper'**. Recognising that equality on the ground cannot be reached without addressing the institutional discrimination and racism at the EU and national levels.

4. Including the issue of **naturalisation** into the integration policy and moving towards **policy exchange** between the member states and the EU institutions in that area.

## 6. COMMON EUROPEAN ASYLUM SYSTEM

1. Not only is the increased harmonisation of national legislations coupled with more solidarity between member states necessary, but also a **better implementation of EU rules by member states**, including Dublin III Regulation 604/2013, whatever the progress or lack thereof of the Dublin reform.

2. Assigning the EASO/EUAA with the **power to issue member states mandatory guidelines on the existence of persecutions or serious harm in third countries**, in order to harmonise recognition rates among the member states, unless they provide a specific motivation in their decision to justify a derogation.

3. Should the mandatory application of the **concept of safe countries be introduced**, then the EASO/EUAA should have the power to introduce mandatory guidelines for determining such countries.

4. In view of integration objectives, providing for the **same duration of residence permits** under the statuses of refugee and subsidiary protection.

5. **Giving refugee status and subsidiary protection a European validity** as requested by the Treaties, including the freedom of residence before access to the long-term residence status, to facilitate self-reliance (e.g. through job opportunities).

6. Addressing better the issue of **stateless persons** who deserve protection but whose status under EU law remains unclear, while policies on migration and asylum ignore them too often. Introducing statelessness procedures in member states that lack them. Creating a specific legal pathway out of irregularity for stateless people who are not eligible for refugee or subsidiary protection, but are unable to return to a previous country of origin/residence, and providing to those persons access to

a status guaranteeing the rights of the 1954 Convention relating to the status of stateless persons, including a right to reside.

## 7. DUBLIN AND SOLIDARITY

1. Exiting the pattern of path-dependency that has characterised the successive Dublin reforms so far and **discussing the virtues and potential shortcomings of all the available models openly**, including those that have traditionally been regarded as taboo (e.g. ‘free choice of the asylum seeker’).

2. Selecting **responsibility criteria that correspond to the real links and legitimate aspirations** of applicants, while avoiding responsibility criteria that may incite applicants to circumvent identification or controls (e.g. ‘irregular entry’).

3. Exploring to what extent an **element of ‘choice’ might be embedded into responsibility allocation**, or at later stages (e.g. a credible promise of free movement, once an asylum seeker is recognised as a beneficiary of protection). Keeping in mind that extracting responsibility determination from state-to-state request and reply procedures has the potential of improving its efficiency significantly.

4. Holding a **principled discussion on the necessary amount of solidarity** for the good functioning of the CEAS and, more broadly, migration policies. What costs should be entirely mutualised? What costs should instead be left to individual member states?

5. **Making physical dispersal measures** like relocation **consensual on the part of protection applicants**, while considering decisive advances in operational support/centralisation of services and the increase

of EU funds.

6. Placing the **reinforcement of solidarity and the long-overdue introduction of a ‘status valid throughout the Union’ firmly on the agenda** as it could contribute decisively to resolving some of the problems and rigidities observed in the system’s operation.

## 8. BORDER CONTROL AND RETURN

1. Examining if and **to what extent police checks can constitute an alternative to internal border controls**.

2. **Preventing further linkages between the functioning of the Dublin system of responsibility determination and the Schengen Area of free movement**.

3. Moving towards an **assessment of the EU return policy’s effectiveness** not only through return rates but also **in terms of the impact of returns on individuals**, communities and countries of return in view of the sustainability of return policies. The latter requires building real ownership of countries of origin in reintegration.

4. **Sufficient funds** should be allocated **under the new AMF to return-related actions** essential to ensure the practical implementation of fundamental rights safeguards as required by the Return Directive 2008/115/EC (e.g. effective alternatives to detention, measures targeting vulnerable persons with special needs, effective forced return monitoring, provision of legal aid and interpretation/translation).

5. Systematically **collecting data on the duration of return procedures**, the time spent in pre-removal detention, the number of non-removable returnees, and backlogs (including different stages of appeals) to facilitate performance evaluation and policymaking. The latter can be achieved by

amending the Commission's proposal revising the regulation on Community statistics on migration and international protection.<sup>17</sup>

6. **Strengthening the fundamental rights component of the Schengen evaluation mechanism** in the field of return and readmission by adjusting the Schengen Evaluation Working Party's questionnaire and checklist accordingly and including the EU Agency for Fundamental Rights as an observer in the process.

7. Putting in place **post-return monitoring mechanisms** that can contribute to sustainable return and reintegration significantly. To be effective, such mechanisms should cover both the

conditions and circumstances of the return process as well as the situation and individual circumstances after arrival in the country of destination.

8. Regarding the proliferation of migration databases, **strengthening privacy and data protection** (e.g. enhancing the right to information and access to personal data, a stronger role for the European Data Protection Supervisor, the better monitoring of data protection authorities at the national level, the creation of a Fundamental Rights Officer in the eu-LISA), and evaluating whether member states entrust the verification of access conditions to a judicial or independent administrative authority, or not.

## PART 3: WHAT NEXT?

The main purpose of the Tampere 2.0 conference was to formulate ideas and suggestions for the future on the basis of an assessment of the Tampere conclusions adopted twenty years ago. There was a risk that such an ambitious agenda would be completely hijacked by controversies of how EU institutions and member states reacted to tentatively bring under control the crisis which unfolded on the eastern flank of the Union between 2015 and 2016. Although this crisis served no doubt as a powerful accelerator, triggering numerous diversely appreciated initiatives, the debates in Helsinki remained largely in line with the purpose of the event. This was essentially thanks to the accuracy of the background notes, the quality of the panels and the relevance of the questions and remarks courtesy of the audience.

Yet, some might ask how pertinent the reference to Tampere still is today. In his opening statement, former Prime Minister of Finland Paavo Lipponen reminded us

that the drafters of the conclusions “did not expect the surge of terrorism 9/11, nor the mass inflow of asylum seekers in 2015”. They did not foresee “the multiple conflicts and the disruption of international relations we have witnessed in the past few years”.

So, what is the point? Perhaps to consider the Tampere European Council Presidency conclusions for what they are: a set of milestones. They remain incredibly valid and solid – as firmly confirmed throughout in-depth discussions – and should keep guiding the EU's progress towards common goals, with a view of migration as a common feature of humanity in the new millennium. And yet, just like a horizon, the more one walks into its direction, the further away it seems.

Where are we now? At a turning point in terms of EU institutional scenery, most certainly. But what does this mean for our purpose?

**Some cherish the hope that political energy will be applied to other priorities** – a green deal, digitalisation, equitable transition – so that migration issues could be dealt with somewhat less emotionally and priorities not be dictated by emergency. Absolute priority should, therefore, be given to the implementation, the thorough assessment of the impact and probably the amendment of a series of hastily decided measures meant to confront migration challenges. The mantra would be ‘no new initiatives’.

**Others are of the view that the EU has absolutely no breathing space.** That all of the ingredients of ‘the’ crisis persist and that, whatever it takes, the Schengen Area is still as fragile as the eurozone, both having gone through testing moments which were quite similar on many counts. Moreover, emotions have led to a breeding ground for anger and, within the Council, positions seem to be more entrenched than ever. However, one thing is for sure: **people in Europe expect the EU to show leadership and to deliver. Any failure to do so could dramatically expose the ‘acquis’ of an unprecedented historical endeavour.**

Expectations are also high abroad. Let us call a spade a spade: the manner in which the EU and its member states have been handling migration issues has exposed Europe to a major reputational risk regarding our relations with third countries. What was supposed to be a partnership has become a way to manage (more or less effectively) mistrust. **There is only one way to convince third countries that we are serious interlocutors in the migration business: to put our own house in order and to treat migrants – who happen to be citizens of these third countries – decently and non-violently.**

Where does this lead us to now? To state the obvious, the EU of 2019 is somewhat different from what it was two decades ago. Nonetheless, realising what the extraordinary Tampere meeting actually was can lead to inspiration: a day and a half of EU heads of states and governments diving deep into a set of issues which were, at that time, completely new to the EU institutions.

Perhaps what is needed more than the pact on immigration and asylum proposed by the then European Commission President-elect von der Leyen is a **consensus uniting the Commission, Parliament and Council and representing the member states under the auspices of the European Council.** Its building blocks have been spelt out above: solidarity and common policies implemented genuinely and coherently.

Such an *aggiornamento* should, of course, be duly prepared, and this might take time. The vehicle for this purpose could be a **‘task team’ composed of the Finnish, Croatian and German presidencies, the President of the European Council, the Commission and delegates of the European Parliament.** The team would visit all of the member state capitals to measure and balance expectations. In-depth conversations would indeed be needed to restore mutual understanding, build confidence and hopefully facilitate innovative thinking. Patience and determination will be key in securing the successful completion of such a process that cannot be indefinite. Nevertheless, this would be a small price to pay in order to agree on a pact and/or consensus that would still appear as solid and relevant twenty years from now.

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- <sup>1</sup> Professor, Université Libre de Bruxelles; Coordinator, Odysseus Academic Network. The author warmly thanks Jean-Louis De Brouwer for his precious advice and for drafting part 3, as well as Marie De Somer for her review of this chapter.
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- <sup>12</sup> The author is hugely indebted to the work of Henri Labayle of the Faculty of Bayonne, regarding the section devoted to 'common policies in EU law'. This prominent Odysseus Academic Network colleague was the first to conceptualise this notion, applying it to the areas of migration and asylum in a seminal article. See Labayle, Henri (2005), "Vers une politique commune de l'asile et de l'immigration dans l'Union européenne" in François Julien-Laferrrière, Henri Labayle and Örjan Edström (eds.), *The European Immigration and Asylum Policy: Critical assessment five years after Amsterdam*, Brussels: Bruylant.
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