PART I: The Institutional Framework
Chapter 1: The Institutional Framework

Ante-Amsterdam

Introduction

Locating the exact moment in time in which a European migration policy began to emerge is a difficult exercise given that, until recently, there had been a lack of any clear legal bases regulating migration policy within the framework of the EC and/or EU Treaties. Indeed, the term “immigration” did not make its first appearance in the EU and EC Treaties until 1991 and 1997 respectively.\(^1\) That said, one of the fundamental objectives of European integration has been the free movement of persons which clearly constitutes an aspect of migration policy. However its personal scope remained unclear and has been heavily debated for several decades.

EU policy on the migration related issues has been traditionally characterised by an intense competence debate. Member States have constantly questioned Community competence on the matter and showed a clear preference for cooperation at the intergovernmental level. As a result, the attempts to regulate migration policy were usually found in a ‘limbo’ situation between intergovernmentalism and the Community method thus inevitably reinforcing the existing competence skirmishes.

Through an analysis of the relevant EC and EU legal bases up to Amsterdam, this Chapter seeks to trace and present the origins of a Community competence on migration. The Treaty of Rome, the Single European Act and the Treaty of Maastricht will be examined in turn. Particular attention will be given to the Schengen Agreements and the importance of their impact on the formation of a Community migration policy. The reasons for the birth of this parallel track will be explored and an account of the institutional characteristics of this project will be provided.

\(^1\) Within the framework of the so-called “third pillar” of the Maastricht Treaty and Title IV TEC of the Amsterdam Treaty respectively. More specifically see former Article K.1 (3) TEU and Article 63 (3) TEC.