Chapter 4: The Treaty of Amsterdam: Forging a European Migration Law

Introduction
As already analysed in detail within the framework of the second chapter, the Amsterdam Treaty endeavoured to provide a coherent and comprehensive solution within the EC framework. Detailed legal bases for the adoption of the necessary flanking measures with regard to the abolition of internal border controls and measures that aspire to the formation of a comprehensive approach towards the entry, residence and movement of third country nationals were established.1 The whole migration agenda was placed in the more general policy framework of an “area of freedom, security and justice”.

More specifically, inasmuch as migration policy is concerned, the Treaty of Amsterdam established special legal bases for the adoption of measures regarding the abolition of internal border controls, the crossing of external borders – including rules on short-stay visas – and the fight against illegal migration. It also aimed to regulate not simply the mere movement of third country nationals, but also to establish rules on their entry and residence as well as the rights and conditions concerning their stay in another Member State. Additionally, the relevant Schengen acquis, having also been incorporated within the EU framework, offered a well-established and tested “area without internal borders” and a solid basis for the further development and accomplishment of certain aspects –primarily linked with security – of the emerging European migration law.

Preparations for the implementation of the new Treaty legal bases commenced shortly after its adoption. In the first three years after the signature of the Treaty efforts were mainly focused on preparations for the incorporation of Schengen and on the drafting and presentation of more general documents setting the broader lines of Europe’s new area of freedom, security and justice.

First of all, JHA Ministers, in cooperation with the Commission, had prepared a timetable for the adoption of the measures mentioned in the Treaty. This was adopted by the Council during its meeting in Vienna in December 1998,

1 Articles 61-69 TEC.
the so-called “Vienna Action Plan”.\footnote{OJ C 19/1, 23.1.1999.} Secondly, the Commission presented two Communications. The first focused on more general, and mainly procedural, issues -such as practicalities concerning the transition from the former Treaty to the Treaty of Amsterdam, especially with respect to the proposals that were already on the negotiating table- and provided a definition of the concepts of freedom, security and justice.\footnote{Communication from the Commission Towards an Area of Freedom, Security and Justice, COM (1998) 459 final, 14.7.1998.} And, the second, focused exclusively on migration policy.\footnote{Communication from the Commission to the Council and the European Parliament on a Community Immigration policy, COM (2000) 757 final, 22.11.2000. An analysis of the relevant Commission Communication is not provided in this book because both the approach of the Commission and the EU post-Amsterdam action are based on the political guidelines established within the framework of the Tampere European Council Conclusions.}

The central migration policy document, however, was signed by the Heads of State and Government during the special meeting of the European Council in Tampere, on 15 and 16 October 1999, and is known as the “Tampere milestones”.\footnote{This title was chosen by the European Council itself. See Tampere European Council, 15 and 16 October 1999, Presidency Conclusions.} The basic elements that immigration policy should include are presented under three major headings. Firstly, “management of migration flows”: under this heading the Heads of State and Government included measures regarding border controls and the fight against illegal migration. Secondly, “fair treatment of third country nationals”: here the European Council presents its views on the admission of third country nationals and places special emphasis on their integration and the granting of rights comparable to those of EU citizens. Finally, in a third part, entitled “partnership with countries of origin” Heads of State emphasised their intention to form a comprehensive approach addressing more general political and development issues. The need for a stronger link and coherence between internal and external EU action is also further discussed in a separate section of the Tampere Conclusions.

The European Council has recently reaffirmed its commitment to establish an area of freedom, security and justice and to enhance EU action in these areas during its November 2004 Summit, when it adopted the new EU multi-annual programme on freedom, security and justice, the so-called Hague Programme.\footnote{See OJ C 53/1, 3.3.2005 op. cit.} On the basis of this Programme the Commission presented a Communication