General Conclusions: EU Migration Law and Policy in a Nutshell

This book has attempted to coherently and comprehensively present the historical evolution, the institutional characteristics and major legislative steps that have been taken with regard to the formation of migration law and policy at EU level. Some insights as to the EU decision-making process and the role of, and interactions among, the different actors have been teased out as a means to provide a sounder evaluation of both the policy-making choices and the content of the new policy. The concluding chapter has presented and analysed the challenges faced and difficulties encountered during this process while also raising a series of concerns with regard to the content and quality of the emerging EU migration law. With this in mind, and in addition to the conclusions already drawn at the end of each chapter as well as those discussed in detail in the concluding chapter, these general conclusions will seek to capture in a concise manner certain focal points of this on-going process towards the formation of a migration law and policy at EU level.

1. Forging an EU Migration Policy: A Long and Evolving Process

The overview of the intergovernmental and EU acquis up to Amsterdam showed clearly that despite the fact that the migration debate obviously lacked coherence and structure there were definitely segments of migration policy since the very early days of European integration. On various occasions both Member States and the Community institutions have underscored the need and have taken a series of actions at the European level with regard to certain migration issues. In fact, the evident similarities between the ante and post Amsterdam era inasmuch as the general policy themes are concerned and between the vast majority of the specific legislative developments that have taken place under the respective policy eras prove to a large extent that the Union had already started exploring the main themes of the migration policy agenda well before Amsterdam and Tampere brought the issues to the forefront of the EU agenda. It has been argued that the legislative developments in the post-Amsterdam era to a
Certain degree constituted a mere crystallisation of the Schengen and Maastricht *acquis*.

Nonetheless, forging an EU agenda on migration related issues has encountered, and to some extent is still facing, certain vital structural obstacles that render EU integration in this field a difficult process. Firstly, it is a policy that touches upon sensitive chords of national sovereignty and is deeply politicised. In principle Member States are reluctant to transfer competence and/or act at the European level unless there is a clear need to do so and added value can be provided. This is indeed the case with regard to certain facets of migration, in particular the security dimension. However, not all Member States appear convinced that the communitarisation of certain other issues, in particular those regarding admission for labour purposes, is either needed or desired. Secondly, for several decades the vast majority of Member States have been applying a ‘zero immigration policy’. The rest of the Member States were not affected, and in the case of the new Member States might still not be affected, by the immigration challenge. Moreover, there have been, and still are, major divergences among Member States inasmuch as their actual situation, needs and policy options are concerned. Therefore, the forming of a common agenda at the EU level is neither a self-evident proposition nor an easy process. Thirdly, migration policy has a strong horizontal character in the sense that it is being affected and affects a series of other policy areas. This strong spill over effect has a both positive and negative impact. On the positive side, the EU has decided to examine a series of migration related issues in order to accomplish other policy objectives –i.e. the free movement of EU citizens, the internal market- or to face common challenges, i.e. public concerns linked in particular with security. Whilst on the negative side, the development of a comprehensive migration policy is obstructed by the fact that there is no Community competence or concerted action in interlinked areas, such as external relations, employment and social policy. The impact of all the above factors have inevitably affected, and to a certain degree explain, the way that the EU has dealt with the migration challenge as well as the way that the institutional and legislative framework have been shaped until now.

Inasmuch as the institutional framework is concerned, EU migration policy has been characterised by an intense competence debate due primarily to the existence of a strong preference by the Member States for migration issues to be addressed via intergovernmental co-operation. The institutional choices have traditionally hovered between intergovernmentalism and the Community method. The *sui generis* institutional models chosen in both the Maastricht and Amsterdam Treaty are examples of these policy options. And consequently the decision-making process was burdened by a series of legal problems with the fragmented legal framework precluding the adoption and enforcement of a comprehensive approach.