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## **Curtailing the comprehensive approach: governance export in EU asylum and migration policy**

(work in progress - please do not quote without author's permission - comments are welcome)

### **Abstract**

The point of departure of this paper is that during the nineties the comprehensive approach to migration was introduced arguing that the success of a harmonised asylum and migration policy within the European Union would not just depend upon the internal governance of the EU, but also upon the Union's capacity to address political, economic, development and human rights issues in countries of origin and transit. The establishment of the European Union as an area of freedom, security and justice required the input of competences and instruments in the field of external relations, while at the same time remaining the key parameter justifying the need for external action. Instead, what we witness today – under the guise of comprehensiveness and partnership – is that the EU strategy towards third countries has largely concentrated on externalisation. Tracing policy evolution in the area of asylum and migration policy shows how the comprehensive approach has been narrowed down to its external dimension, which is increasingly characterised by governance export, moving control away from the EU territory, and shifting responsibilities.

The research design goes as follows. First, a detailed account will be given of the origin and evolution of the comprehensive approach, in order to refine the notion of it. Then, borrowing from the discourse theory of Ernesto Laclau and Chantal Mouffe, I will clarify the relationship between discourse and policy, and bring in the 'empty signifier approach' to policy analysis. Thirdly, this approach or conceptual framework will be applied to the 'comprehensive approach to migration'. Here, I will try to elucidate how this signifier has been constructed. More specifically, I will argue that the content of this notion is subject to dislocations and hegemonic politics. At the same time, language also constructs reality: the content given to the comprehensive approach to migration affects the policy options or measures that emerge from it. Finally, a case study or policy measure of the so-called comprehensive approach will be discussed: the EU readmission policy. This 'best case' will illustrate which direction the comprehensive approach is currently taking.

# 1. Introduction

The entry into force of the Treaty of Amsterdam (1<sup>st</sup> of May 1999) marked the transfer of competencies in the field of asylum and migration to the Community pillar. Subject to a five-year window during which the decision-making procedures would remain intergovernmental, the European Union institutions were assigned to set up the main components of a future asylum and immigration policy.<sup>1</sup> The bigger picture proclaimed by the Amsterdam Treaty involves the establishment and development of the Union as “an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”.<sup>2</sup>

Due to the increased priority given to Justice and Home Affairs (JHA) issues in general, the same year – in Tampere during the Finnish Presidency – a special European Council was completely dedicated to the JHA policy area.<sup>3</sup> Specifically regarding asylum and immigration, the Heads of State and Government officially introduced the so-called ‘comprehensive approach to migration’.<sup>4</sup> The realisation that internal policy on third-country nationals needs to be complemented with a strategy to tackle the root causes of migration, paved the way for a greater emphasis on the external aspects of asylum and migration. In concreto, the Tampere Summit called for greater coherence of the Union’s internal and external policies, and as such cooperation with countries of origin and transit would be an indispensable element in the Union’s efforts to address the phenomenon of migration in a comprehensive manner. These efforts would need to be effected in the political, economic, development as well as the human rights sphere.

Although the Commission’s Communications of 1991 and 1994 on asylum and migration policy and the Edinburgh European Council of 1992 already drew attention to the need to tackle migratory pressures and movements into the Member States by means of action in the field of foreign, economic and development policy, the Tampere Summit for the first time expressed the political will and ambition of European leaders to actually achieve such a comprehensive approach.<sup>5</sup> Therefore the Tampere guidelines can indeed be regarded as milestones in the development of a common European asylum and migration policy.

Today, the external dimension is one of the most dynamic aspects of EU asylum and migration policy (Lavenex 2001: 867).<sup>6</sup> At the same time, it is a very challenging policy area, because of the difficulties coordinating internal and external policies and implementing a balanced and truly

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<sup>1</sup> Articles 61-69, EC Treaty (as amended by the Treaty of Amsterdam), Title IV, ‘Visas, asylum, immigration and other policies related to free movement of persons’.

<sup>2</sup> Article 2, Treaty on European Union (as amended by the Treaty of Amsterdam), Title I, ‘Common provisions’.

<sup>3</sup> A year earlier, the informal European Council in Pörschach, in October 1998 during the Austrian Presidency of the Union, had called for a special summit on JHA to be held in Tampere during the Finnish Presidency.

<sup>4</sup> EUROPEAN COUNCIL, Tampere, 15 and 16 October 1999, *Conclusions of the Presidency, Towards a Union of freedom, security and justice: the Tampere milestones*, par. 11. ‘Migration’ needs to be interpreted here as the umbrella term for all sorts of third-country national movement towards the European Union, including asylum-seekers, refugees, legal and illegal immigrants.

<sup>5</sup> EUROPEAN COMMISSION, 23 October 1991, *Communication from the Commission to the Council and the European Parliament on immigration*, SEC(1991) 1855 final. EUROPEAN COMMISSION, 23 February 1994, *Communication from the Commission to the Council and the European Parliament on immigration and asylum policies*, COM(1994) 23 final. EUROPEAN COUNCIL, Edinburgh, 12 December 1992, *Declaration on principles of governing external aspects of migration policy*, SN 456/92 ANNEX 5 PART A.

<sup>6</sup> Vice versa, JHA cooperation is the fastest growing area of the Union’s relations with third countries. See EUROPEAN COMMISSION, *External relations and enlargement*, [http://www.europa.eu.int/comm/dgs/justice\\_home/external/dg\\_external\\_en.htm](http://www.europa.eu.int/comm/dgs/justice_home/external/dg_external_en.htm). Website last checked 22 March 2004.

comprehensive approach. Hence, this paper wants to take a closer look at the dynamics inherent to the comprehensive approach to migration. The research design followed is both discourse-theoretical and empirical. Discourse theory is used to capture the notion of ‘comprehensive approach’: how it has evolved since its introduction and what content is given to it. This paper starts from the underlying premise that policy and discourse are interrelated. Analogous to Maarten Hajer’s and Jacob Torfing’s discourse-analytical research on respectively ecological modernisation and the Danish welfare system (Hajer 1995; Torfing 1999b) this paper claims that policy options need to be seen in the light of the underlying discourse, and that policy changes are accompanied by discursive changes. In concrete terms, the paper argues that it is necessary to grasp the meaning and content of the comprehensive approach in order to explain the policy measures that emerge from it.<sup>7</sup> The importance of discourse and its signifiers for policy analysis will be highlighted throughout this paper. According to Ferdinand de Saussure’s language theory and semiotics, a sign consists of both a ‘signifier’ and a ‘signified’. The signifier points to the physical expression of the sign in our language. The signified can be regarded as the mental reflection of the sign. Since language is all we can hold on to when researching a problem, discourse analysis essentially is the study of signifiers.

The paper will proceed as follows. First, a detailed account will be given of the origin and evolution of the comprehensive approach, in order to refine the notion of it. This account draws upon on a broad study of documents related to the external dimension of EU asylum and migration policy starting from the 1991 Commission Communication as well as a series of interviews with key EU policy-makers (officials of Member States, Council, Commission, Members of European Parliament and NGO’s lobbying the EU) working at the junction of asylum/migration and external relations. Then, borrowing from the discourse theory of Ernesto Laclau and Chantal Mouffe (Howarth 2000; Žižek 1989; Laclau 1982; Laclau and Mouffe 1985; Mouffe 1993; Torfing 1999), I will introduce some crucial concepts that clarify the relationship between discourse and policy, and bring in the ‘empty signifier approach’ to policy analysis. The empty signifier approach should not be seen as a full-scale or even developed discourse-analytical method, but rather as an empirically-oriented way to put some theoretical concepts into operation. Thirdly, this approach or conceptual framework will be applied to the ‘comprehensive approach to migration’. Here, I will try to elucidate how this signifier has been constructed. More specifically, I will argue that the content of this notion is subject to dislocations and hegemonic politics. At the same time, language also constructs reality: the content given to the comprehensive approach to migration affects the policy options or measures that emerge from it. Subsequently, a case study or policy measure of the current comprehensive approach will be discussed: the EU readmission policy. This ‘best case’ will illustrate which direction the comprehensive approach is currently taking. I will conclude by arguing that the European Union is pursuing an externalisation strategy under the heading – or even under the guise – of a comprehensive approach.

## **2. Evolution of EU asylum and migration policy: a ‘comprehensive approach to migration’**

### **2.1. The Tampere Summit: a comprehensive approach to migration**

The Amsterdam Treaty established Community competence in the field of asylum and migration. These areas are now the subject of specific Community policies and no longer simply

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<sup>7</sup> Whereas the title of this joint sessions workshop is ‘*Who makes immigration policy?*’, the aim of this paper is more likely to answer the question ‘*What makes immigration policy?*’, i.e. discourse, discursive relations, and discursive strategies.

complementary to those related to the free movement of persons within the Union. The October 1999 Tampere Summit recognised the growing importance of asylum and migration matters as well as the need for a common and new approach to them.<sup>8</sup> In particular, the Heads of State and Government established a four-track approach to migration and asylum issues. A future common EU asylum and migration policy would be based on partnerships with countries of origin, a common asylum system, fair treatment of third-country nationals and management of migration flows.<sup>9</sup> The innovative nature of these four tracks lies in the attention given to external aspects of asylum and migration issues, like cooperation with countries or regions of origin and transit in order to halt or better manage migration already at the source.

Although the Tampere Presidency Conclusions introduced the ‘comprehensive approach to migration’ under the heading of partnerships with countries of origin, essentially the combination of internal asylum and migration policy and its external dimension is what the comprehensive approach is all about. The awareness that internal rules and procedures to deal with the intake of third-country nationals would not suffice so as to establish a successful European asylum and migration policy, resulted in growing attention and clear objectives for the external aspects of asylum and migration issues. In general, the European Council called for stronger external action and emphasised that “all competences and instruments at the disposal of the Union, and in particular, in external relations must be used in an integrated and consistent way to build the area of freedom, security and justice”.<sup>10</sup>

It is important to highlight the functional character of the external dimension as part of the comprehensive approach to migration. The existence and success of an internal asylum and migration policy – and also of internal JHA policy at large – are the parameters that justify the need for external action.<sup>11</sup> In addition, the consistency of internal policy and the Union’s external relations is a key challenge for the successful implementation of a comprehensive approach. In other – later and earlier – documents, this comprehensive approach is also referred to as a ‘holistic’, ‘integrated’ or ‘balanced’ approach. However, when the emphasis specifically lies on the structural and procedural problems inherent to such an approach, the wording ‘cross-pillar’ or ‘inter-pillar’ often comes to the fore. Furthermore, when the combination of different policies required for a comprehensive approach is stressed, the adjectives ‘horizontal’ and ‘cross-policy’ are sometimes used. However, all terms refer to the same idea, i.e. to link internal asylum and migration policy with cooperation with countries of origin and transit and broader questions regarding the political, economic, development and human rights situation in those countries. The next subsection will show that this idea was not something new. At the Tampere Summit and in its aftermath, however, for the first time the conditions were sufficiently favourable to actually work it out.

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<sup>8</sup> EUROPEAN COMMISSION, 22 November 2000, *Communication from the Commission to the Council and the European Parliament on a Community immigration policy*, COM(2000) 757 final, p.5.

<sup>9</sup> Cf. footnote 4, par. 11-27.

<sup>10</sup> *Ibid.*, par. 59.

<sup>11</sup> PRESIDENCY OF THE EUROPEAN UNION, 24 May 2000, *European Union priorities and policy objectives for external relations in the field of justice and home affairs*, 7512/00 LIMITE JAI 33, par. II A (2). This report had been drawn up by the Council in cooperation with the Commission and was submitted by COREPER to the June 2000 Feira European Council as an ‘A-item’ note with document number 7653/00 LIMITE JAI 35. In the report, the Council states that “developing the JHA external dimension is not an objective in itself. Its primary purpose is to contribute to the establishment of an area of freedom, security and justice.” Furthermore, the Tampere milestones need to be seen in the light of the so-called ‘Vienna Action Plan’. This plan was endorsed by the Vienna European Council of 11-12 December 1998 and proposed guidelines on how best to implement the provisions of the Treaty of Amsterdam establishing an area of freedom, security and justice. See document 13844/98.

## 2.2. The run-up to Tampere

### 2.2.1. First initiatives towards a comprehensive approach

The Tampere European Council set the political framework – often referred to as the Tampere milestones – for a future common and comprehensive asylum and migration policy. There is however a history to the guidelines and the comprehensive approach proclaimed at the summit. Already in 1991, the European Commission produced a Communication on immigration, in which it called for a realistic and comprehensive approach to the whole immigration issue and action on three fronts: relieving migration pressure at the source, controlling migration flows at the Community's external frontiers, and strengthening integration policies for the benefit of legal immigrants.<sup>12</sup> The point of the former action was to make migration an integral element of Community external policy by means of addressing migration issues in future cooperation agreements with countries of origin.

One year later, at the Edinburgh European Council, a declaration 'on principles of governing external aspects of migration policy' was attached to the Presidency Conclusions. The European leaders had discussed the question of migratory pressures and isolated a number of factors that could foster the reduction of migratory movements into the Member States, among which the full respect for human rights, the end of armed conflicts, the introduction of democracy, and the improvement of social and economic conditions in the countries of origin. Coordination of foreign policy, economic cooperation and asylum and migration policy by the Community and its Member States could contribute to this goal. Mistakenly, since coordination and consistency of a comprehensive approach are still a key challenge today, the Heads of State and Government assumed that the Treaty on European Union would provide an adequate framework for coordinated action.<sup>13</sup>

In its 1994 Communication on immigration and asylum policies, the Commission once again emphasised the need for a comprehensive approach to migration and referred to the same three elements that appeared in its 1991 Communication. The Commission put a stronger accent on the permanence of migratory pressure and the urgency of combating its root causes. In line with the Edinburgh European Council, the Commission stated that thanks to the Treaty on European Union and the introduction of the third pillar, the EU has the institutional means to make a comprehensive approach and the coordination of foreign, economic and asylum/migration policy operational.<sup>14</sup> Although the 1991 and 1994 Commission Communications as well as the declaration of the Edinburgh European Council were not much debated, today they are still referred to as the starting points – at EU level – of comprehensive thinking about asylum and migration questions.

From 1996 onwards, the consecutive EU Presidencies have been drafting multi-Presidency work programmes – in order to assure coherence and continuity – for external relations in the JHA field.<sup>15</sup> The external dimension of JHA is the bigger framework in which the external aspects of asylum and migration policy need to be seen. In that respect, the comprehensive approach to migration and specifically its external elements are important components of JHA external

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<sup>12</sup> EUROPEAN COMMISSION, 23 October 1991, *Communication from the Commission to the Council and the European Parliament on immigration*, SEC(1991) 1855 final, p. 2-3 and IV. The need for a joint response which is both realistic and comprehensive, par. 44-49.

<sup>13</sup> EUROPEAN COUNCIL, Edinburgh, 12 December 1992, *Declaration on principles of governing external aspects of migration policy*, SN 456/92 ANNEX 5 PART A.

<sup>14</sup> EUROPEAN COMMISSION, 23 February 1994, *Communication from the Commission to the Council and the European Parliament on immigration and asylum policies*, COM(1994) 23 final.

<sup>15</sup> These multi-Presidency programmes usually build on the work of the previous Presidency and have been prepared in consultation with the forthcoming Presidency. When the work programme is drafted with both previous and forthcoming Presidency, it is referred to as a Troika-programme.

relations at large and the goal of creating an area of freedom, security and justice (AFSJ). In general, the Presidency work programmes provide an overview of external action and relations with third countries and international organisations in the area of Justice and Home Affairs. Furthermore, they set priorities and policy objectives, suggest a range of instruments and institutional formats to implement and coordinate these, and list the activities scheduled. The most up-to-date work programme – of the current Irish Presidency – once again stresses that consistency of the overall EU external policy and internal decisions is required in order to establish the AFSJ, an objective that the Union wishes to share with its strategic and traditional partners.<sup>16</sup>

### ***2.2.2. The Austrian Strategy Paper and the High-Level Working Group***

In the more immediate run-up to the Tampere Summit, two significant events need to be addressed. First of all, on 1 July 1998 – the first day in office – the Austrian Presidency drafted the notorious ‘strategy paper’ on asylum and migration policy which leaked in early September of the same year.<sup>17</sup> The strategy paper refers to the 1991 and 1994 Communications and the 1992 Edinburgh Council declaration. It states that the debate on immigration needs to be picked up again, because of the discrepancy between what was claimed at the time and what has actually been implemented. The Austrian Presidency argues that this is due to “the fact that the strategy debate initiated by the Commission was not conducted on a broad basis, no comprehensive political approach was laid down, no operational work programme was derived there from and no action plans following a uniform concept were developed and implemented”.<sup>18</sup> The Austrian strategy proposes to link up all migration related decisions in a cross-pillar approach. Such an approach would not only cover the asylum and migration policy under the – at that time – third pillar, but also “essential areas of the Union’s foreign policy, bilateral relations with third countries particularly in the economic field, association agreements, structural dialogues, etc.”<sup>19</sup> However, the focus of this integrated approach is clearly put on the reduction of migration pressure, the fight against illegal immigration, restricting access to the Union, and the detection and removal of unwanted immigrants through better control. Controversial measures, among others, include: making economic aid dependent on the third country’s efforts to reduce push factors; supplementing, amending or replacing the 1951 Geneva Convention; the enforcement of repatriation of illegal immigrants to their countries of origin; and military interventions to prevent migratory flows since they can dramatically affect the security interests of the Member States.<sup>20</sup> While the paper had been heavily criticised on these issues and much of it had been dismissed, it clearly remained influential in the years to come: its tone and emphasis on foreign policy aspects very well reflected the direction the EU asylum and migration policy was taking at the end of the nineties.

Secondly, following other initiatives and in particular the Austrian Presidency’s strategy paper, the Dutch delegation to the Council put forward a proposal to create a horizontal task force on asylum and migration in order to establish a common, integrated, cross-pillar approach targeted at the situation in the most important countries of origin of asylum-seekers and migrants.<sup>21</sup> The

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<sup>16</sup> IRISH PRESIDENCY OF THE UNION, 7 January 2004, *JHA external relations multi Presidency programme*, 5097/04 JAI 1 RELEX 4, p.2-3.

<sup>17</sup> AUSTRIAN PRESIDENCY OF THE UNION, 1 July 1998, *Strategy paper on immigration and asylum policy*, 9809/98 LIMITE CK 4 27 ASIM 170. After the Austrian paper had leaked, the Presidency made a second draft in which the wording of some controversial statements was watered down. The reading here is based on the first draft.

<sup>18</sup> *Ibid.*, par. 6.

<sup>19</sup> *Ibid.*, par.113.

<sup>20</sup> *Ibid.*, see respectively paragraphs 59, 103, 133 and 54.

<sup>21</sup> DUTCH DELEGATION TO THE COUNCIL, 23 November 1998, *Note from the Dutch delegation: Task Force on Asylum and Migration*, 13344/98 JAI 37 AG 15.

JHA Council of 3-4 December 1998 endorsed the idea and the General Affairs Council of 6-7 December 1998 officially established this cross-pillar task force giving it the name 'High-Level Working Group on Asylum and Migration' (HLWG). In accordance with the tasks proposed by the Dutch delegation in its note, the HLWG drew up a list of the most important countries of origin and transit for which cross-pillar action plans would be drafted, and prepared its terms of reference during its first two meetings of 17 December 1998 and 11 January 1999. The following countries and regions were selected: Afghanistan/Pakistan, Albania and its neighbouring region, Morocco, Somalia and Sri Lanka. In addition, the HLWG would also take up and assess the already existing action plan on the influx of migrants from Iraq.<sup>22</sup> According to the terms of reference that were endorsed by the General Affairs Council of 25 January 1999, the action plans should comprise notably elements such as a joint analysis of the causes of influx, suggestions aimed at strengthening the common strategy for development with the country concerned, identification of humanitarian needs and proposals to this end, proposals for intensification of political and diplomatic dialogue with the selected countries, indications on readmission clauses and agreements, on possibilities of reception and protection in the region, safe return, repatriation, as well as on the cooperation with intergovernmental, governmental, non-governmental organisations and the United Nations Office of the High-Commissioner for Refugees (UNHCR).<sup>23</sup> Furthermore, in advance of the Tampere Special European Council in October 1999, the HLWG would submit a final report containing action plans on the selected countries.

## **2.3. Tampere and beyond**

### ***2.3.1. The implementation of a comprehensive approach***

The action plans of the HLWG were presented to the Tampere summit.<sup>24</sup> The validity of the HLWG was endorsed and its mandate extended. It was also decided that the next task for the Group would be to present an implementation report to the Nice December 2000 European Council. Although the action plans should be seen as the Union's first real attempt to establish a cross-pillar approach with respect to the situation in a number of important countries of origin or transit, they received severe criticism from non-governmental organisations, the European Parliament and one of the target countries, Morocco.<sup>25</sup> The two main points of critique were the following: first, the complete lack of dialogue with the target countries and as such a spirit of partnership, and secondly, the manifest emphasis on security-related measures. This second critical assessment points to the imbalanced nature of the plans: a strong weight is given to measures aimed at controlling and preventing migration into the EU territory, especially the conclusion of readmission agreements. Drafting the action plans, the security of the EU Member

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<sup>22</sup> *Influx of Migrants from Iraq and the Neighbouring Region: EU Action Plan*, 5573/98 ASIM 13 EUROPOL 12 PESC 27 COMEM 4 COSEE 4, adopted by the General Affairs Council on 26 January 1998. The United Kingdom had taken the initiative for this plan.

<sup>23</sup> COREPER, 22 January 1999, *Terms of reference of the High Level Working Group on Asylum and Migration; preparation of action plans for the most important countries of origin and transit of asylum-seekers and migrants*, 5264/2/99 REV 2 LIMITE JAI 1 AG 1.

<sup>24</sup> HLWG, 30 September 1999, *Action Plan for Afghanistan and neighbouring region*, 11424/99 JAI 73 AG 28, *Action Plan for Iraq*, 11425/99 JAI 74 AG 29, *Action Plan for Morocco*, 11426/99 JAI 75 AG 30, *Action Plan for Somalia*, 11427/99 JAI 76 AG 31, *Action Plan for Sri Lanka*, 11428/99 JAI 77 AG 32. Due to the crisis in Kosovo, the action plan for Albania and neighbouring region was submitted with delay. HLWG, 6 June 2000, *Draft Action Plan for Albania and neighbouring region*, 7886/1/00 JAI 40 AG 41.

<sup>25</sup> AMNESTY INTERNATIONAL, EUROPEAN UNION ASSOCIATION, 23 December 1999, *Comments by Amnesty International on the implementation of the action plans adopted by the High Level Working Group on Asylum and Migration*. EUROPEAN PARLIAMENT, 29 February 2000, *Report on asylum-seekers and migrants – action plans for countries of origin and transit*, Rapporteur: Jorge Salvador Hernandez Mollar, FINAL A5-0057/2000. EUROPEAN PARLIAMENT, 12 October 2000, *Report on the Draft Action Plan for Albania and neighbouring regions*, Rapporteur: Anna Karamanou, FINAL A5-0287/2000.

States and not the development of the target countries would have been the HLWG's major concern. In other words, the focus was on containment instead of tackling root causes.

The report to the Nice European Council responded to this criticism stressing the need for a long-term comprehensive approach and for genuine partnership based on reciprocity, dialogue, cooperation and co-development.<sup>26</sup> It also indicated one of the main obstacles to the implementation of the action plans: the lack of resources to finance the measures proposed. This problem was partly solved by the creation of a new budget line (B7-667) to support 'Cooperation with third countries in the area of migration'.<sup>27</sup> The B7-667 covered only 10 million EURO for preparatory actions in 2001, 12.5 million in 2002, and approximately 20 million in 2003. Recently, a multiannual financial framework has been put into operation for the years 2004-2008: a Regulation establishing a programme for financial and technical aid to third countries in the area of migration and asylum has been approved by the Council and the European Parliament. A total amount of 250 million EURO is made available for the support of third countries' efforts to improve the management of migratory flows in all their dimensions, and in particular to stimulate third countries' readiness to conclude readmission agreements, and to assist them in coping with the consequences of such agreements.<sup>28</sup> In general, this financial instrument – which provides the legal basis for a multiannual cooperation programme with third countries in the area of migration – acknowledges the priority attached to the external dimension of asylum and migration and will probably make future cooperation with third countries and the implementation of measures less problematic.

### ***2.3.2. Illegal immigration and readmission prioritised***

In the next paragraphs, I will chronologically list some essential documents and meetings that have prioritised specific elements within the framework of the comprehensive approach proclaimed at Tampere, and that have either indirectly or explicitly led to the creation of the financial multiannual programme mentioned above.

As agreed in Tampere<sup>29</sup>, a report on policy objectives and measures for the Union's external action in Justice and Home Affairs, including questions of working structure, was submitted to the June 2000 Feira European Council.<sup>30 31</sup> The report pointed out some constraints – among which the need for sufficient financial resources – to the implementation of a cross-pillar approach and cross-pillar measures. It drew attention to the fact that, with the exception of the HLWG, no JHA working group has responsibility for external relations and as such for ensuring a cross-pillar approach and consistency of the Union's external policy. Furthermore, it stated that in order to pursue the idea of partnership more use should be made of existing agreements with third countries. Specifically regarding the external dimension of migration policy, the report underlined the importance of border control at the Union's future external borders and the conclusion of Community readmission agreements.

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<sup>26</sup> HLWG, 29 November 2000, *Report to the European Council in Nice*, 13993/00 JAI 152 AG 76. In the meantime, the mandate of the HLWG has been changed: it has been officially assigned to investigate the link between migration and development and its geographical scope has been broadened. See COREPER, 30 May 2002, *Modification of the terms of reference of the HLWG*, 9433/02 limite JAI 109 AG 20 ASIM 18.

<sup>27</sup> EUROPEAN COMMISSION, 28 September 2001, *Communication from Commissioner Vitorino to the Commission on Framework for preparatory actions, Budget line 'Cooperation with third countries in the area of migration (B7-667)'*.

<sup>28</sup> OFFICIAL JOURNAL OF THE EUROPEAN UNION, *Regulation (EC) No 491/2004 of the European Parliament and of the Council of 10 March 2004 establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS)*, published 18 March 2004, L 80/1.

<sup>29</sup> Cf. footnote 4, par. 61.

<sup>30</sup> Cf. footnote 11.

<sup>31</sup> EUROPEAN COUNCIL, Feira, 19 and 20 June 2000, *Conclusions of the Presidency*, par. 51

At the December 2001 Laeken European Council, an evaluation report on the implementation of the Tampere conclusions was discussed.<sup>32</sup> With regard to JHA external relations, the report acknowledged the complexity of this policy area impeding effective institutional coordination, overall consistency and practical implementation. The report also emphasised that controlling migration should be given greater priority in the Union's foreign policy. The European Council added that in particular Community readmission agreements should be concluded with the third countries concerned, and called for an action plan to be developed.<sup>33</sup> In this context, the Heads of State and Government explicitly referred to the November 2001 Commission Communication on illegal immigration, which is considered to be "the missing link of a comprehensive immigration and asylum policy".<sup>34</sup> To ensure the effectiveness of migration management, the Commission proposed an 'actors-in-the-chain' approach. Management of migration flows needs to take place at all stages to keep track of irregular movements: in countries of origin, in transit countries and at the external borders of the Union. Therefore, external policy aspects need to be mobilised in the fight against illegal immigration, and migration issues in general should be integrated in the existing partnerships and relations with third countries. The Commission added that a Community readmission and return policy should be an integral and crucial part of this.<sup>35</sup> In its April 2002 Green Paper on a Community return policy, the Commission further specified the framework for return of illegal residents and the measures to be taken.<sup>36</sup> Throughout the Paper, the sensitive issue of return is treated with quite some caution. The Commission repeatedly states that a common return policy should be fully respectful of European and international human rights and fundamental freedoms, and that the success of it depends on the fruitful cooperation with the third countries in question. It stresses that return is just one dimension of a comprehensive approach to migration and that a balance between admission and readmission needs to be found.

This kind of caution was completely missing in the run-up to the June 2002 Seville European Council. The Spanish and UK Prime Ministers proposed to make development aid dependent on the third countries' efforts – among others the signing of a readmission agreement – to combat illegal immigration. Non-cooperative countries would be sanctioned through the suspension of development aid. It did not go as far – the idea of sanctions encountered resistance of France, Sweden and Luxembourg – but the fight against illegal immigration was still launched as the main concern at the European Council.<sup>37</sup> The European leaders stressed the importance of cooperation of third countries in joint management of migration flows, in border controls as well as on readmission. The Union's relations with countries of origin and transit which do not cooperate would be systematically assessed.<sup>38</sup> In its conclusions of 18 November 2002, the Council further specified the required cooperation with third countries in order to manage migration flows into the Union and called for the full integration of the external dimension of JHA in the existing and future relations of the EU with third countries. These conclusions

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<sup>32</sup> BELGIAN PRESIDENCY OF THE UNION, 6 December 2001, *Evaluation of the conclusions of the Tampere European Council*, 14926/01 LIMITE JAI 166, section VI. External Relations, p. 11-13.

<sup>33</sup> EUROPEAN COUNCIL, Laeken, 14 and 15 December 2001, *Conclusions of the Presidency*, par. 40

<sup>34</sup> EUROPEAN COMMISSION, 15 November 2001, *Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration*, COM(2001) 672 final, p. 3.

<sup>35</sup> *Ibid.*, p. 25.

<sup>36</sup> EUROPEAN COMMISSION, 10 April 2002, *Green Paper on a Community return policy on illegal residents*, COM(2002) 175 final. This Paper builds upon the Council's *Comprehensive Plan to combat illegal immigration and trafficking in human beings in the European Union*, adopted at the JHA Council of 28 February 2002, 6553/02.

<sup>37</sup> EUROPEAN COUNCIL, Seville, 21 and 22 June 2002, *Presidency Conclusions*, III. Asylum and migration.

<sup>38</sup> *Ibid.*, par. 34-36. A negative assessment would not affect the Union's commitments in the field of development cooperation, but it could hamper the establishment of closer cooperation between the Union and the third country in question.

suggested that the readmission of illegal residents would be the key element of successful relations.<sup>39</sup>

At the end of 2002, as requested by the Seville European Council, the Commission issued a Communication on integrating migration issues in the European Union's relations with third countries, together with a report on the effectiveness of financial resources available for repatriation, management of external borders, and asylum and migration projects in third countries.<sup>40</sup> In order to prioritise asylum and migration issues in the cooperation with third countries, the Commission proposed a three-pronged strategy: firstly, addressing root causes of migration, secondly, partnerships on migration based on the definition of common interests with the third countries involved, and thirdly, specific and concrete measures to assist these third countries in increasing their capacity in the area of migration management. To make progress on the capacity-building within this last prong, the Commission called for a significant increase of the budget, in particular to assist in the implementation of readmission agreements.

### ***2.3.3. Regional protection and external processing***

The latest evolution under the heading of a comprehensive approach entails the ideas on external processing of asylum applications (Loescher and Milner 2003; Noll 2003). In line with earlier developments on migration management partnerships, capacity-building in countries of origin and transit, and return and readmission of illegal residents, the UK government drafted a plan to establish a global network of safe havens which was leaked to the public. The 'new vision of refugees' plan defines these safe havens as "particular camps whose prime purpose is to provide a place of safety and process claims."<sup>41</sup> Asylum-seekers would be able to go directly to one of the safe havens. In addition, and most importantly, any asylum-seeker that arrives in the UK or elsewhere would be immediately turned around to the safe haven. A later and final version of this draft in early March 2003 dropped the notion of safe havens and introduced the concept of 'regional protection areas'. A paper attached to a letter by Tony Blair to his Greek colleague Costas Simitis – Greece held the EU Presidency during the first half of 2003 – elaborated on improved regional management of migration flows and launched the notion of 'transit processing centres'.<sup>42</sup> These processing centres would be on transit routes to Europe, just outside the EU territory. Asylum-seekers arriving in the UK and other EU Member States would be transferred to the transit processing centres, where their asylum claims would be assessed. The centres could be managed by the International Organisation for Migration (IOM), with the screening of asylum requests approved by UNHCR. Tony Blair asked in his letter to discuss the proposal at the upcoming European Summits in Brussels and Thessalonica.

In response to the UK proposals, the UNHCR came up with a 'three-pronged approach', which was presented at the informal meeting of the JHA Council in Veria, Greece.<sup>43</sup> The UNHCR strategy would consist of a regional prong aiming at enhanced protection in the region of origin; an EU prong with – surprisingly enough – the possibility for closed reception centres and processing by EU teams to address caseloads composed primarily of economic migrants; and a

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<sup>39</sup> COUNCIL OF THE EUROPEAN UNION, 18 November 2002, *Intensified cooperation on the management of migration flows with third countries*, 14183/02, par. 7-8.

<sup>40</sup> EUROPEAN COMMISSION, 3 December 2002, *Communication from the Commission to the Council and the European Parliament on integrating migration issues in the European Union's relations with third countries*, COM(2002) 703 final, p. 46-47.

<sup>41</sup> UK HOME OFFICE, 5 February 2003, *A new vision for refugees. Final report. Draft*, p. 10. It was leaked to The Guardian and The British Daily.

<sup>42</sup> TONY BLAIR, 10 March 2003, *Letter to His Excellency Mr Costas Simitis: New international approaches to asylum processing and protection*, <http://www.statewatch.org/news/2003/apr/blair-simitis-asile.pdf>.

<sup>43</sup> UNHCR, 28 March 2003, *Statement by Mr. Ruud Lubbers, United Nations High Commissioner for Refugees, at an informal meeting of the European Union Justice and Home Affairs Council*, <http://www.unhcr.ch>.

national prong being the effective functioning of individual Member State asylum systems. The UK proposals were supported by Denmark, Spain, the Netherlands and Italy and it was agreed that the UK could present an elaborated proposal at the June Thessalonica European Council. Before the Thessalonica Summit, the European Commission – responding to the request made by the Spring European Council to explore the UK ideas further<sup>44</sup> – presented its communication on more accessible, equitable and managed asylum systems.<sup>45</sup> The Commission clearly states that new approaches should not undermine the process of establishing a common asylum system, nor shift the burden away from the European Union territory, thereby strongly opposing some of the core content of the UK proposals.<sup>46</sup>

The final discussions at the Thessalonica Summit revealed that there was not sufficient support for the controversial UK plans. Germany, Sweden and the Commission reacted fiercely against the idea of transit processing centres, which was dropped in the end. The European Council Conclusions only mention the need for enhanced protection capacity in the region of origin.<sup>47</sup> Nevertheless, British officials have already said that they will continue to work on their idea with other like-minded EU countries: pilot protection zones for refugees could be set up outside Europe by ‘a coalition of the willing’.<sup>48</sup>

## 2.4. A conceptual dustbin

Tracing the emergence and evolution of the comprehensive approach to migration, one can immediately establish that a fixed notion or definition of it does not exist. Depending on the context and the agent, the content given to the comprehensive approach ranges *from* addressing root causes, partnerships based on dialogue, declarations of intent on fostering stability, peace and development in the region of origin, voluntary return, respect for human rights and international obligations, *to* fighting illegal immigration, reception and capacity-building in the region, forced return, and sanctioning of non-cooperative countries, where the focus is unmistakably containment-oriented.

Apparently, the comprehensive approach acts as some kind of conceptual dustbin: numerous contents and meanings are assigned to it. In the next sections, I will employ an empty signifier approach as to determine the construction of the comprehensive approach to migration. I will argue that focusing on signifier construction, i.e. the forces that impact on the signifier, is the very essence of discourse analysis. For that purpose, I will first elaborate on discourse theory’s core concepts and the interaction between discourse and policy.

## 3. Discourse theory and discursive operations

### 3.1. Discourse and its signifiers: core concepts

This paragraph will go into some of discourse theory’s key concepts. Here, I will borrow from Ernesto Laclau and Chantal Mouffe and their theory on discourse and hegemony (Laclau 1982;

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<sup>44</sup> EUROPEAN COUNCIL, Brussels, 20 and 21 March 2003, *Presidency Conclusions*, 8410/03 POLGEN 29, par. 63.

<sup>45</sup> EUROPEAN COMMISSION, 3 June 2003, *Communication from the Commission to the Council and the European Parliament. Towards more accessible, equitable and managed asylum systems*, COM(2003) 315 final.

<sup>46</sup> *Ibid.*, p. 22. Instead, the EU Member States should consider the introduction of Protected Entry Procedures, i.e. asylum applications at EU embassies in third countries, and of resettlement schemes.

<sup>47</sup> EUROPEAN COUNCIL, Thessalonica, 19 and 20 June 2003, *Presidency Conclusions*, 11638/03, par. 26.

<sup>48</sup> EURACTIV, 20 June 2003, *Thessalonica on immigration: more money but no external protection zones*, <http://www.euractiv.com>. Media have already reported on a pilot scheme for transit camps in Croatia; see EUOBSERVER, 16 June 2003, *Asylum seekers to wait in Croatia*, <http://www.euobserver.com>.

Laclau and Mouffe 1985; Mouffe 1993). Doing so, I will mainly refer to Howarth and Torfing's reading of their theory, since it very well captures the essence of it (Howarth 2000; Torfing 1999). In order to clarify the construction of empty signifiers as core elements of a discourse – without going into detail on the origin and political philosophy of Laclau & Mouffe's discourse theory – , it is necessary to take a brief look at the following concepts: discourse, articulation, politics, empty signifiers and nodal points, hegemony, and dislocation.

### ***3.1.1. Discourse, articulation and politics***

Laclau and Mouffe label a *discourse* as the structured totality resulting from articulatory practice. The scope of their discourse theory is not limited to purely linguistic phenomena, but embraces all social practices and relations. *Articulation* or articulatory practice can be defined as any practice establishing a relation among elements such that their identity is modified as a result of it (Laclau and Mouffe 1985: 105). In other words, articulation is the practice that constructs social meanings as moments within a specific discourse. As such, articulation partially fixes a discourse. Partially, because a discourse is never fully structured or determined: there is constantly room for contingency and re-articulation. Meaning is continuously being re-negotiated and as such a discourse is inherently unstable (Torfing 1999: 85). In Howarth's words, every discursive structure is a “social and political construction, which establishes a system of relations between different objects and practices, while providing ‘subject positions’ with which social agents can identify” (Howarth 2000: 102).<sup>49</sup>

In the paragraph above, the word ‘political’ has already been used. In the broad sense, discursive construction is a political process. Laclau and Mouffe bring in politics as the process that fixes meaning and discourse: with every political decision, a situation of undecidability is converted into a moment of decidability. In line with Derrida's notion of an ethico-political decision, Torfing defines *politics* as the act of taking a decision in an undecidable terrain (Torfing 1999: 102). Laclau and Mouffe distinguish between discourse and the field of discursivity. While discourse is a partially fixed relational system, the field of discursivity is the reservoir that contains the surplus of unfixed meaning: it is both the condition of possibility – referring to fixed meaning – and impossibility of discourse – referring to the fact that meaning is only partially fixed and to the instability inherent to a discourse (Torfing 1999: 92). This instability indicates that politics is in place. And since the construction of social meaning implies decisions to be taken to come to that meaning, politics can be regarded as the ontology of the social. This does not mean that at a given moment everything is political: politically constructed social meanings can always be ‘sedimented’ or ‘de-politicised’ and at a later stage ‘reactivated’ or ‘politicised’ again.

### ***3.1.2. Empty signifiers, hegemony and dislocation***

In order to analyse concrete discourses, we must focus on the level of the signifier. A signifier is the most basic component of a discourse. There are, however, different types of signifiers, largely depending on the degree of fixed meaning a signifier contains. A floating signifier is a signifier of which the meaning is yet to be (partially) fixed. According to Laclau and Mouffe, “any discourse is constituted as an attempt to dominate the field of discursivity” and as such to fix meaning (Laclau and Mouffe 1985: 112). The privileged discursive points of this partial fixation are what they call *nodal points*.<sup>50</sup> The nodal point is a knot of definite meaning which creates and sustains the identity of a certain discourse (Torfing 1999: 98). In his later writings, Laclau further elaborates on the notion of nodal points. He introduces the concept of an *empty signifier* pointing out that nodal points are characterised by a certain emptying of their contents (Howarth 2000:

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<sup>49</sup> A discourse can be thought of as ‘structure’, but an open and only partially fixed one with enough room for ‘agency’. As such, discourse theory takes the middle ground in the structure-agency debate.

<sup>50</sup> In Lacanian terms, nodal points are *points de capiton*. Literally translated this would mean ‘quilting points’ or ‘points that fill up’.

119). Žižek refers to these nodal points as pure signifiers without the signified (Žižek 1989: 97). Nodal points are empty signifiers because they mean everything and nothing at the same time. Because of its intrinsic emptiness, the nodal point's structuring role of unifying a certain discourse is facilitated.

Linguistically and symbolically speaking, the notion of 'metaphor' should be mentioned here. A metaphor is equivalent to the notion of condensation. Condensation – as a form of overdetermination – involves the fusion of a variety of significations and meanings into a single signifier. Torfing further specifies that “condensation occurs when a particular moment receives and concentrates other meanings” (Torfing 1999: 98).<sup>51</sup>

The filling up of an empty signifier constitutes a basic discursive operation. I argue here that what happens at the level of signifier construction is characteristic of what goes on at the level of a discourse at large – or the other way around. The empty signifier can be thought of as a micro-discourse: it involves the articulation of meaning and relations, a certain degree of stability and fixed meaning, and the positioning of subjects. More specifically, and as in the case of discourse, the construction of the meaning of a signifier is subject to both *hegemony* and *dislocation*.

Firstly, according to Laclau and Mouffe, *hegemony* is the general form that politics takes (Torfing 1999: 109). Hegemonic struggle is characteristic of politics. Hegemony is inherent to articulatory practices that lead to social antagonism. This social antagonism is the conflict that emerges from taking political decisions. As already stated above, a political decision converts a situation of undecidability into a moment of decidability. As such, political decisions fix the meaning of floating signifiers, which causes conflict, because the establishment of a predominant discursive order is at stake. Taking all these elements together, hegemony can be defined as the articulation of a dominant discourse around nodal points: the hegemonic struggle in order to establish a dominant discourse essentially takes place at the signifier level, and more specifically involves the control by hegemonic agents over nodal points.

Furthermore, Torfing specifies that the hegemonic force can pursue two kinds of hegemonic strategies: transformism and expansive hegemony. Transformism is a defensive type of politics that aims at the neutralisation of antagonistic political forces by doing minor concessions or even co-opting opposition leaders in order to establish a passive consensus. Expansive hegemony is the offensive articulation of a hegemonic project. The goal is to create a collective will and active consensus around the hegemonic project by means of expanding it so as to cover all particular demands (Torfing 1999: 111). In the next section, when discussing the comprehensive approach to migration, the notion of hegemony and the above-mentioned strategies are important when it comes to issues of ownership and institutional relations at EU level.

Secondly, signifier construction is subject to *dislocation*. Dislocations are “events that cannot be symbolised by an existent discursive order, and thus function to disrupt that order” (Howarth 2000: 111). These events open up the discourse and prevent the discourse from becoming fully structured or fixed. Dislocations trigger the instability of the discourse. At the same time, they create room for political agents to manoeuvre and take decisions, because of the undecidability that emerges again. Hence, dislocation is the sine qua non for hegemonic articulation (Torfing 1999: 109), and social antagonism is the discursive response to it (Torfing 1999: 131). When the crisis inflicted by the dislocation is very deep, then the mere availability of a new discourse is sufficient. However, when the dislocation is rather superficial, then the content of the new discourse becomes important.

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<sup>51</sup> A metaphor is not to be confused with a metonym. A metonym builds upon a different kind of overdetermination, i.e. displacement. According to Torfing, displacement takes place when the signification or meaning of one particular moment is transferred to another moment.

### 3.2. Discourse and policy: a constitutive relationship

So as to link the discourse-theoretical concepts to the empirical field of EU asylum and migration policy, a clarification of the relationship between discourse and policy is in order. In this paper, the premise is that discourse and policy display a constitutive relationship.<sup>52</sup> On the one hand, policy measures as well as the budgets available to implement them reflect priorities and constitute the content of signifiers. On the other hand, discourses have certain policy implications: the idea is that policy and policy changes follow from the underlying discourse and discursive changes. This idea builds upon Wæver's layered conception of discursive structure. Wæver contends that discourse matters to policy and that it can therefore be utilised analytically (Wæver 2002: 20). The different layers refer to degrees of sedimentation: "the deeper structures are more solidly sedimented and more difficult to politicise and change, but change is always in principle possible since all these structures are socially constituted" (Wæver 2002: 32). The advantage of a layered discursive structure, Wæver argues, is that it can specify change within continuity. At the surface, there is the practice of policy, i.e. policy measures and instruments. At a deeper level, the policy *an sich* – concepts, declarations of intent and general objectives – is to be found. The deepest layer is reserved for the most basic and fundamental conceptual discursive constellations from which policy is derived. This layer is the hardest to change. Analogous to this, Schön and Rein talk about 'meta-frames'. When different levels are touched upon at the same time, these authors use the notion of a 'complex design'. Schön and Rein argue that shifting patterns of policy design can be traced back to shifting patterns of policy discourse: "it is in large part through policy discourse among institutional actors that the tasks of policy design are carried out" (Schön and Rein 1994: 88). Also in terms of policy analysis, Hall introduces the notion of 'policy paradigms' as an interpretive framework of ideas and standards, and points out that third order change is "marked by the radical changes in the overarching terms of policy discourse associated with a paradigm shift" (Hall 1993: 279).

## 4. Constructing the comprehensive approach: an empty signifier approach

In his discourse-analytical work on 'ecological modernisation', Hajer argues that developments in environmental politics depend on the specific social construction of environmental problems. He accounts for the emergence of ecological modernisation as the new dominant way of conceptualising environmental problems. Referring to Davis and Harré, he introduces the concept of 'story-lines', which he interprets as "a generative sort of narrative that allows actors to draw upon various discursive categories to give meaning to specific physical or social phenomena" (Hajer 1995: 56). Analogous to Hajer's account for the discourse of ecological modernisation, this paper focuses on the discourse of the comprehensive approach to migration as the European Union's new dominant way of responding to the challenge of migratory flows into the Member States. The paper argues that it is necessary to grasp the meaning and content of the comprehensive approach in order to explain the policy measures that emerge from it. It builds upon Torfing's work on Danish welfare state changes, in which is argued that discourse involves implications for the strategic choice between different policy options (Torfing 1999b: 377-378). In the empirical section below, the discourse-theoretical concepts of Laclau and Mouffe will be 'unleashed' upon the notion of the comprehensive approach to migration: a discourse analysis which only explores this one signifier. In line with Philips and Hardy, this analysis will search for politics in text and context, since "texts are not meaningful individually",

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<sup>52</sup> In general, this comes down to the 'linguistic turn' in sociology and political science. Socio-political changes are accompanied by linguistic changes, but at the same time language is also a constitutive factor of societal change. Hence, discourse theory can be thought of as a fusion of linguistics and social and political theory. Discourse analysis is based on an epistemology that treats language as constitutive and constructive, and not as reflective and representative.

and “if we are to understand discourses and their effects, we must also understand the context in which they arise” (Philips and Hardy 2002: 4).

#### **4.1. Curtailing the comprehensive approach: the actual content of the empty signifier**

The comprehensive approach of migration is treated here as an empty signifier. Focusing on the discursive operations of dislocation and hegemony, this section aims at showing how the empty signifier’s meaning is constructed and partially fixed. According to Torfing, the constitution of meaning can also happen retroactively: “the signification of the floating elements within a paradigmatic chain of equivalence is a consequence of their reference to a certain symbolic code” (Torfing 1999: 99). This reveals the metaphorical power of the empty signifier: the capacity to unify a certain discourse by partially fixing the identity of its moments. This is exactly what happened since the introduction of the comprehensive approach to migration. The comprehensive approach is the bigger picture under which every asylum and migration policy goal tends to be ‘accommodated’ or ‘find shelter’. Moreover, as the policy evolution in the beginning of this paper shows, the ‘filling’ of the comprehensive approach is rather restrictive or repressive: the emphasis is clearly being put on the fight against illegal immigration, control and migration management, and certainly not on admission and reception. One can ask where the balance – which was obviously highlighted in Tampere – is in the end. As an MEP of the Group of the Greens put it: “[The comprehensive approach] are a lot of words to make sure no-one enters. In theory you can make a very nice story, but in practice I do not think there is a comprehensive approach at all.”<sup>53</sup> Van der Klaauw, senior European affairs officer at UNHCR Brussels, describes that the tone for a restrictive interpretation of the comprehensive approach was already set by the 1998 Austrian Strategy Paper and the Action Plan on Iraq, and concludes that migration management will remain “an imperfect approach as long as states continue to link the issue to questions of national sovereignty and identity and address it primarily from a control perspective” (van der Klaauw 2001: 44).

Arguing that empty signifier construction is subject to dislocation and hegemonic struggle, an account for this restrictiveness and moving away from the Tampere agenda will follow in the next paragraphs.

#### **4.2. Subject to dislocations**

In this paragraph, I claim that certain dislocations lead to the inclusion of repressive solutions under the heading of a comprehensive approach. Restricting the Tampere agenda is due to certain events, evolutions and tendencies which occur at the same time and which mutually reinforce each other. It is important to stress that dislocations open up space for agency: they present an opportunity for agents to reactivate and politicise discourse and bring in their own hegemonic project.

First of all, the electoral salience of migration and asylum issues has increased proportionally to the success of extreme right parties in various Member States (Vlaams Blok in Belgium, Lijst Pim Fortuyn in the Netherlands, Front National in France, the Freedom Party (FPÖ) in Austria, ...). These parties have traditionally claimed issue ownership over the subject of migration. In response to the extreme right’s issue ownership over migration, and in an attempt to regain the votes they have lost to the extreme right, other parties – all over the political spectrum – have toughened their stance on migration and as such have made an electoral issue out of it. An indicator of this might be that – in times of harmonisation (!) – in lots of Member States the legislation on admission and reception of asylum-seekers and immigrants has become more restrictive.

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<sup>53</sup> Interview with MEP of Group of the Greens, at European Parliament, 17 June 2003, digitally recorded and transcribed, author’s own translation.

Secondly, electoral salience is very closely linked to public concerns and opinion. The most recent standard Eurobarometer shows that the priority given to migration issues has never been higher. The fight against illegal immigration is a priority for 83% of the EU-citizens polled. In a list with most important issues to be tackled, immigration is ranked in 6<sup>th</sup> place.<sup>54</sup> Specifically regarding the forthcoming European election campaign, 44% of those polled consider that migration is an issue that should be tackled, which counts for an overall 3<sup>rd</sup> place. In general, public opinion polls show there is little support for an easy stance on the subject of migration.<sup>55</sup> For example, a recent flash Eurobarometer on JHA issues shows that eight in ten respondents believe that entry controls into the EU for persons coming from non-Member States should be strengthened.<sup>56</sup>

Thirdly, the events of September 11<sup>th</sup> have impacted on the tension between security and human rights, and increased the link between migration and security.<sup>57</sup> This link has been widely discussed in EU migration and asylum literature in the context of securitisation and security frames (Bigo 2000; Bigo 2001; Buzan et al. 1998; Guiraudon 2003; Huysmans 1998; Huysmans 2000; Kostakopoulou 2001; Lavenex 2001; Lavenex 2001b; Mitsilegas et al. 2003). An MEP of the Group of the Greens contends that Member States have even used the focus on terrorism resulting from the WTC attacks as a way to limit the rights of third-country nationals.<sup>58</sup> Asylum-seekers and refugees are considered to be more of a threat than an asset (Anderson and Apap 2002: 3; Gibney 2002: 41). Furthermore, this focus on terrorism after 9/11 has significantly delayed the development of EU asylum legislation. Whereas the Belgian Presidency during the second half of 2001 had initially prioritised the asylum issue, the events of the 11<sup>th</sup> of September re-scheduled the working group meetings of the Council and re-distributed the workload to the suddenly prevailing matter of concern: terrorism.<sup>59</sup> As such, progress on the internal part of a comprehensive approach was quite disappointing, as the Laeken Conclusions admitted. The emphasis on terrorism and security has considerably influenced the balance within a comprehensive approach, both regarding restrictiveness and the development of an internal agenda.

Last but not least, the enlargement of the European Union with ten new Member States has led to fears of mass immigration. Recently, a Commission report aimed to dispel those fears stating that only one per cent of the new Member States' working population can be expected to migrate to the current EU Member States.<sup>60</sup> In the meantime, some Member States are restricting the access to their labour markets for citizens of the new Member States.

#### 4.3. Subject to hegemony

Dislocations open room for agency, which takes on the form of hegemonic struggle. It is important to add that this hegemony does not occur in an institutional vacuum (Torfing 1999b: 391). The cross-pillar framework advanced by the comprehensive approach is a new institutional development leading to what van Selm describes as an 'institutional tug of war' and a 'turf battle' between representatives for Justice and Home Affairs ('JAI' in EU jargon) and representatives for foreign policy matters (van Selm 2003: 9). In consequence, van Selm contends that the holistic nature of the comprehensive approach may well be the very element lost in the short-term (van

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<sup>54</sup> EUROPEAN COMMISSION, *Standard Eurobarometer EB 60 (autumn 2003)*,

[http://europa.eu.int/comm/public\\_opinion/archives/eb/eb60/eb60\\_en.htm](http://europa.eu.int/comm/public_opinion/archives/eb/eb60/eb60_en.htm), p. 9, 11 and 101.

<sup>55</sup> Interview with MEP of Group of the Party of European Socialists, at European Parliament, 24 June 2003.

<sup>56</sup> EUROPEAN COMMISSION, *Flash EB Number 155 on Justice and Home Affairs (March 2004)*,

[http://europa.eu.int/comm/public\\_opinion/flash/fl155\\_report\\_en.pdf](http://europa.eu.int/comm/public_opinion/flash/fl155_report_en.pdf), p. 31.

<sup>57</sup> Interview with Belgian delegate in HLWG, 9 July 2002.

<sup>58</sup> Interview with MEP of Group of the Greens, at European Parliament, 10 July 2002.

<sup>59</sup> Interview with Belgian Senior Official, Director at the Cabinet of the Prime Minister, 3 July 2002.

<sup>60</sup> EURACTIV, 27 February 2004, *Commission report plays down EU migration fears*,  
<http://www.euractiv.com/cgi-bin/cgint.exe/547694-595?204&OIDN=1507272>.

Selm 2003: 1). The issue at stake is the ownership of this new policy area at the intersection of justice and home affairs and external relations. The institutional problems concerning cross-pillarisation are very well reflected in the HLWG and its Action Plans. First of all, the HLWG is a cross-pillar working group of the Council that is predominantly composed of officials from national justice and home affairs ministries. Looking at the content of the Action Plans, van Selm pertinently remarks that these officials are “third pillar people talking about second pillar subjects, with the aim of doing work that is scheduled to fall under the first pillar” (van Selm 2003: 9). For example, the HLWG decides on humanitarian assistance, while this is a first pillar competence that should be dealt with by the Commission. As such, the HLWG takes powers away from the Commission. Secondly, as regards the implementation of the Action Plans, the HLWG is looking for budgets elsewhere. The B7-667 budget line designed for implementation of the Plans is managed by JAI, while in general the B7 budget is for ‘cooperation with third countries’. So the money is not coming from the JAI part of the budget, much to the dislike of the Commission’s External Relations Directorate-General (DG RELEX).<sup>61</sup> The same goes for development funds. Whereas the new terms of reference for the HLWG stipulate that it should also focus on the link between migration and development, officials of development ministries and the Commission’s DG Development are not very keen on using the development budgets – limited as they are – for the prevention or management of migration.

In general, this ownership battle comes down to two different perspectives on the link between migration/asylum and external relations: JHA officials want to add an external dimension to their JHA policy area, while foreign relations officials wish to integrate migration issues into external policy and to use existing cooperation programmes as a framework for this. For the benefit of a true comprehensive approach, coherence and coordination, this latter perspective is likely to be much better suited. To avoid the risk of exporting classical repressive measures of justice and home affairs via the broader external relations and development agenda, Van der Klaauw contends that “integrated, cross-pillar approaches to migration and refugee challenges are (best) to be coordinated by Ministers of Foreign Affairs” (van der Klaauw 2001: 45).

Leaving these institutional problems aside, the locus of power in EU asylum and migration policy is situated at the level of the Council. The Member States are still – and maybe after 1 May 2004 this will change (?) – the dominant agents. For the time being, these are mainly conservative governments, whereas at the Tampere table there was still a majority of centre-left government representatives. Because of the tough stance of conservative governments on asylum and migration issues, deliberations in the Council on Commission proposals usually display a great amount of ‘lowest common denominator’ politics.<sup>62</sup> In the end, the Tampere agenda turned out to be too ambitious, too much of a ‘wishful thinking exercise’ (Pastore 2002: 5). In general, the hegemony of the Council in EU asylum and migration policy means there is strong Member State influence and little room for manoeuvre for the Commission. This also goes for the other agents: non-governmental organisations and to a lesser degree the European Parliament are very critical of the Member States’ repressive stance on migration and asylum issue, but it is difficult to judge their impact.<sup>63</sup> Here, the Council employs the hegemonic strategy of transformism. By referring

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<sup>61</sup> Interview at Commission, DG RELEX, 9 April 2003, digitally recorded and transcribed. The interviewed official claims that DG JAI has a much more secretive culture, and that – because it has not yet been communitarised – the JHA policy area is an “open field for the Member States to push their own ideas”.

<sup>62</sup> Interview with JHA policy-making official of the European Parliament, 20 June 2003. Interview at European Commission, DG JAI, 21 May 2003.

<sup>63</sup> Another key player is the UNHCR, but it is careful enough not to be too critical of EU policy. In my opinion, the UNHCR rather wants to cooperate with EU Member States as to assure its leading role as refugee agency. The latest evolution on external processing illustrates this very well. The UNHCR has only recently been in search of a new agenda, is constantly lobbying for support to the 1951 Convention, and is as always dependent on the EU Member States’ financial contribution.

in practically all its documents and legislation to international human rights obligations, the Council aims at accommodating and countering the human rights claims of the European Parliament and NGO's. Looking at the restrictive and containment-oriented of the comprehensive approach, one can only conclude that lip service is paid to their demands. In addition to transformism, the Council also takes up the strategy of expansive hegemony, by using the comprehensive approach as an umbrella for every idea and policy measure. The comprehensive approach and the emphasis on linking internal migration and asylum policy to cooperation with third countries are being forwarded as the key strategies for effective migration management.

#### **4.4. Reflection in policy: towards externalisation?**

How is the meaning of a comprehensive approach reflected in the policy measures that emerge from it? First of all, there is quite a difference between the idealised picture of a comprehensive approach and the actual development of it. This difference comes down to the range of policy measures that would fall under a true comprehensive approach – going from a root causes approach to voluntary return – and the observance of what is actually suggested, emphasised, implemented and financed. Based on the previous sections, one can conclude that the empty signifier has a partial and restrictive content, and that this content leads to certain policy options and measures. In the section below, I will discuss one of these policy measures in detail, i.e. EU readmission policy. I consider the instrument of readmission to be a 'best case', since no other policy measure has been mentioned, emphasised and prioritised more. I will also contend that readmission policy is part of an externalisation strategy. The asylum and migration policy the EU is pursuing is creating external effects on third countries. This is a deliberate process: the EU is making efforts to export its own asylum and migration policy and problems through the mobilisation of third countries. Guiraudon labels this mobilisation strategy as 'finding new allies' or 'co-opting sending and transit countries' (Guiraudon 2000: 266). The case study illustrates the external effects of Europeanisation by providing insights on how EU Member States are trying to shift their own responsibilities to countries of origin and transit. This is largely happening under the umbrella of the comprehensive approach.

### **5. Policy implications: case study on EU readmission policy**

Community readmission agreements with third countries are considered a primary tool in the fight against illegal immigration.<sup>64</sup> Their aim is to regulate the mutual taking back of certain categories of persons without any formalities other than those specified in the agreement.<sup>65</sup> The Amsterdam Treaty conferred powers on the Community in the field of readmission and established the competency to negotiate and conclude readmission agreements with third countries.<sup>66</sup> As part of the comprehensive approach and under the heading of management of migration flows, the Tampere European Council called for the conclusion of readmission agreements between the European Community and relevant third countries. This request has meanwhile been strengthened during other European Summits, at various JHA Council meetings and by several Commission documents dealing with the EU policy on illegal immigration and return of illegal residents. In particular at the Seville European Council, the Heads of State and Government called upon the Council and the Commission to speed up the conclusion of

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<sup>64</sup> Readmission can be defined as the decision by a receiving state on the re-entry of an individual.

<sup>65</sup> Basically, it concerns two categories: first, the party's own nationals, and secondly nationals of a third country or stateless persons who have unlawfully entered the territory of one of the contracting parties coming (directly) from the territory of the other party.

<sup>66</sup> Article 63 (3), EC Treaty (as amended by the Treaty of Amsterdam). Before Amsterdam there was no EU competence on illegal immigration and as such no external competencies to conclude readmission agreements.

readmission agreement under negotiation and to endorse new guidelines for the readmission negotiation with countries already identified by the Council.<sup>67</sup> A second element of EU readmission policy is the insertion of readmission clauses into agreements with third countries.<sup>68</sup> These clauses intend to commit the contracting parties to readmit their own nationals, third-country nationals and stateless persons. How this will actually proceed is left to implementing agreements. A novelty is that these clauses need to be inserted in all future Community or mixed agreements.<sup>69</sup> Following the Seville Conclusions, the Council defined a list of essential elements, which a clause should contain. One of these elements is the future conclusion of readmission agreements.<sup>70</sup>

The first ever EU readmission agreement, between the European Community and Hong Kong, was signed on 27 November 2002.<sup>71</sup> In the meantime, an agreement with Macao has also been signed, a readmission agreement has been initialled with Sri Lanka, negotiations with Albania have been completed, negotiations are taking place with Russia, Morocco and Ukraine, whereas negotiation mandates for Algeria, China, Pakistan and Turkey have been given to the Commission.<sup>72</sup> The core of these agreements is that they only benefit the European Union. Although the scope of application is to mutually take back own and third-country nationals, in practice we can hardly conceive of a situation in which the European Union would have to readmit. For this reason the Commission has pointed out that the Community should provide incentives to obtain the cooperation of the third countries involved.<sup>73</sup> ‘Leverage’ is needed: readmission negotiations and agreements can only succeed if these are part of a broader cooperation agenda. On a country-by-country basis, specific accompanying support and incentives should be granted, although the (financial) margin of manoeuvre is limited. The Union needs to offer a “package with carrots.”<sup>74</sup> For instance, in the case of negotiations with Albania, the leverage needed is the parallel negotiation of a Stabilisation and Association Agreement. As such, political pressure of the European Union and Albania’s aspiration for future membership provide the necessary incentives.<sup>75</sup> In other cases, the amount of leverage required can be far more substantial. Negotiations with Russia will – as the Kaliningrad issue has shown – centre on compromises in the field of visa policy, while negotiations with Morocco might entail economic

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<sup>67</sup> EUROPEAN COUNCIL, Seville, 21 and 22 June 2002, *Conclusions of the Presidency*, SN 200/1/02 REV 1, par. 30.

<sup>68</sup> COUNCIL OF THE EUROPEAN UNION, 2 December 1999, *Decision on readmission clauses in Community agreements or mixed agreements*, 13461/99. These clauses are based on art. 13 of the Cotonou Agreement with ACP-countries.

<sup>69</sup> Readmission clauses have already been inserted in agreements with Algeria, Armenia, Azerbaijan, Croatia, Egypt, Georgia, Lebanon, Macedonia, Uzbekistan and the Cotonou Agreement between the EU and the ACP-countries. Cf. footnote 36, *Green Paper on a Community Return Policy on Illegal Residents*, p. 24.

<sup>70</sup> COUNCIL OF THE EUROPEAN UNION, 18 November 2002, *Intensified cooperation on the management of migration flows with third countries*, 14183/02, par. 8. The Council also agreed that “until negotiating directives have been given to the Commission to negotiate a readmission agreement, the country concerned should be ready to conclude a bilateral agreement with a Member State (...)”.

<sup>71</sup> COUNCIL OF THE EUROPEAN UNION, 8 July 2002, *Council Decision concerning the signing of the Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China on the readmission of persons residing without authorisation*, 9083/02 MIGR 42 ASIE 12.

<sup>72</sup> EUROPEAN COMMISSION, 30 December 2003, *Biannual update of the scoreboard to review progress on the creation of an area of “Freedom, Security and Justice” in the European Union (second half of 2003)*, COM(2003) 812 final, p. 36.

<sup>73</sup> Cf. footnote 36, *Green Paper on a Community Return Policy on Illegal Residents*, par. 4.1.1. Cf. footnote 40, *Communication on Integrating migration issues in the European Union’s relations with third countries*, p. 25.

<sup>74</sup> Interview at European Commission, DG JAI, 21 May 2003.

<sup>75</sup> Interview at European Commission, DG RELEX, Country Teams, 5 May 2003.

or financial concessions. Ultimately, “it is a kind of trade, you exchange money against people”,<sup>76</sup> and the European Union is thus likely to end up in a position where it either puts a lot of pressure itself, or where it becomes caught up in a game of blackmail. Furthermore, the EU policy on readmission agreements lacks consistency. Although criteria have been adopted for the selection of countries with which to start readmission negotiations, each Member State seems to retain its own shopping list.<sup>77</sup> In the words of a Commission official of DG RELEX: “[The criteria] have never been applied. Those criteria are never taken into account. Actually, the negotiation priorities are defined in the context of political discussion between Member States. It is the case that each Member State has its own priority and wants the Community to negotiate with the third country.”<sup>78</sup>

However, since the Community has no exclusive competency in the field of readmission, Member States continue their own bilateral negotiations regardless of whether the Community has already started negotiations with the third country involved.<sup>79</sup> In due course, it seems like an end in itself to cover the world with readmission agreements, in spite of criteria and Community mandates. While Justice and Home Affairs officials discard the latter statement, they emphasise that the contracting parties do get something in return, i.e. help to implement the agreement.<sup>80</sup> This is exactly what an externalisation strategy is about: shifting responsibility.

Finally, what safeguards are there to guarantee the safe return of the readmitted persons? The standard readmission agreement contains a non-affection clause, stating that the agreement shall be without prejudice to the rights, obligations and responsibilities arising from international law. In this respect, treaties such as the 1951 Geneva Convention would remain unaffected. In addition, the Commission has explicitly asserted that before the negotiation of any readmission agreement, the political and human rights situation in the country of origin and transit should be taken into account,<sup>81</sup> and that the obligation of non-refoulement needs to be respected.<sup>82</sup> However, if we look at certain countries with which readmission negotiations are under way, or that appear on the wish lists of some Member States, these safeguards do not seem to be among Member States’ main concern.<sup>83</sup> For example, Italy enjoins the EU to enter into readmission negotiations with Libya. This is a country with which the Union has no economic or political relations, because it has a very poor record on democratisation and human rights. Italy would like to derogate from the embargo against Libya in order to provide non-military equipment to help it stop illegal immigrants from reaching Europe.<sup>84</sup> Also, the Council considers it essential to intensify cooperation with Libya in the field of migration management.<sup>85</sup> Here, the European Union is really sending a ‘schizophrenic’ message to third countries in general: human rights and democratisation are a precondition for cooperation, except in the field of migration where the

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<sup>76</sup> Interview at Amnesty International, EU Office, 11 June 2003, digitally recorded and transcribed. Interview with Belgian delegate in High-Level Working Group on Asylum and Migration, 9 July 2002.

<sup>77</sup> GENERAL SECRETARIAT OF THE COUNCIL, 15 April 2002, *Criteria for the identification of third countries with which new readmission agreements need to be negotiated – Draft conclusions*, 7990/02 Limite MIGR 32. Migratory pressure, geographical balance and proximity are amongst the criteria.

<sup>78</sup> Interview at European Commission, DG RELEX, 9 April 2003, digitally recorded and transcribed.

<sup>79</sup> Often, the modalities of the bilateral agreements differ from those in Community agreements. Once the Community agreement enters into force, it takes precedence over the bilateral agreements with the third country in question.

<sup>80</sup> Interview at Council, DG JAI, 14 April 2003, digitally recorded and transcribed. Interview at European Commission, DG JAI, 21 May 2003.

<sup>81</sup> Cf. footnote 34, *Communication on a common policy on illegal immigration*, p. 25.

<sup>82</sup> Cf. footnote 36, *Green Paper on a Community return policy on illegal residents*, p. 8.

<sup>83</sup> SPANISH DELEGATION, 20 November 2002, *Readmission agreements – New negotiating mandates*, 14528/02 Limite MIGR 123, p. 4-5.

<sup>84</sup> EUOBSERVER, 25 June 2003, *Rome – Libya crucial in immigration fight*, <http://www.euobserver.com>.

<sup>85</sup> Cf. footnote 32, *Intensified cooperation on the management of migration flows with third countries*, par. 5.

Union seems willing to make an exception. These remarks above serve to illustrate the costs the European Union is willing to bear in order to increase the amount of readmission agreements with countries of immigration. The normative issue at stake is no less than the impact of readmission politics on the EU's human rights identity and credibility at large.

## **6. Conclusion: externalisation strategy**

The latest evolution in EU asylum and migration policy is the externalisation of it as a way to manage migration under the notion – or better: under the guise – of a comprehensive approach and partnerships with third countries. What we witness today is a narrowing down of the comprehensive approach to its external dimension and further to externalisation. The case study on EU readmission policy – but also the recent debate and controversy about regional protection and external processing – illustrates this. Externalisation builds upon the following trends: shifting problems and responsibility towards countries of origin and transit; moving control away from the EU borders; and governance export by means of transferring know-how, technologies and equipment, and legislation to third countries. The recent Regulation on a programme for financial and technical assistance to third countries acknowledges the Union's externalisation strategy and will provide the necessary 'leverage' to actually implement it. Finally, the externalisation strategy should be seen as supplementing Europeanisation research on asylum and migration policy: the interaction between the EU and third countries is an addition to the bottom-up and top-down effects between the EU and its Member States.

The words of a Commission official at DG RELEX in charge of coordinating migration and asylum issues might very well capture the message of this paper: "(...) There is no progress at EU level and Member States do not want to progress on migration policy. They just shift responsibility to lots of countries. The main building block is lack of will to progress at the internal level, and because of that they shift to other countries. They have to do everything, take care of borders, have to accept refugees from neighbouring countries. Third countries have to do the job we are not able to do (...). I think we can observe there is a parallelism between internal policy and the growing interest for doing something in the external field (...). We find that there is something really hypocritical. It is not what the comprehensive balance or integrative approach exactly means."<sup>86</sup>

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<sup>86</sup> Interview at European Commission, DG RELEX, 9 April 2003, digitally recorded and transcribed.

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The European Union's approach to migration has created a crisis of solidarity. While migrant arrivals in Europe have declined, so has cooperation and responsibility sharing within the EU. Member states' reluctance to take sustained responsibility for search and rescue operations has exacerbated voters' sense that the EU has lost control of the situation. The EU defends its approach to processing migrants and refugees in north African countries on the basis that it will resettle those most in need of protection. In this way, the provision of asylum becomes more about goodwill than formal obligations.