OPENING REMARKS FOR PANEL ON 'EUROPEAN MIGRATION POLICY – NEW AREA OF FLEXIBLE COOPERATION IN EUROPE?'

EUROPE ON THE MOVE: OPEN OR CLOSED BORDERS? CONFERENCE
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Before I reply to the question of whether a multi-speed Europe is the only way forward on migration, let me explain why I think that Europe has – unfortunately – been moving in unison and at great speed in this policy area. I would argue that the much-decried lack of consensus between EU member states on migration is a fallacy – a consensus *has* emerged and has been driving EU efforts in this area over the last 4-5 years, centred around:

a. sealing the external borders of the bloc and
b. pushing those borders further afield, into neighbouring countries in the Western Balkans, Middle East, North Africa and beyond;
c. increasing returns;
d. limiting access to protection and, increasingly,
e. restricting civil society's ability to assist migrants or report on abuses against them.

These developments have been linked to internal border closures or partial shut-downs within the Schengen Area, a *modus operandi* largely based on ethnic profiling which has crystallised despite rather muted calls from the European Commission to revert to a 'functioning Schengen' (and despite the fact that European members of organised criminal groups mostly enjoy free movement, as Slovakians know, following the murder of Jan Kuciak two years ago) – and which may well mute into actual breakdowns in free movement as the coronavirus spreads across Europe.

The consensus – which unites Western and Eastern Europe, countries in the North and in the South – generally holds until a series of now extremely loaded words enter the debate: 'solidarity', 'responsibility', 'Dublin' and the formerly technocratic 'relocation'. What this apparently innocuous jargon conceals is a disagreement over the need to overhaul Europe's largely dysfunctional asylum system and on whether the EU should do more to increase legal channels for migrant workers as well as refugees.

Dig a little deeper, though, and the rift appears to be less severe than it is – member states across the EU, including those which pride themselves on their commitment to human rights, are generally enthusiastic supporters of policies to outsource responsibility for asylum seekers to the periphery of the bloc or further afield, regardless of the human rights records of the governments or non-state actors they are engaging with to do so, as in Turkey, Libya or Egypt. Most EU countries also strive to return greater numbers of migrants, including to war-torn countries such as Afghanistan, despite the lack of any evidence of the deterrent effect of these deportations on prospective migrants. Legislation in most member states has reduced services for beneficiaries of protection and restricted access to family reunification, leaving children and spouses in dangerous situations for years. And recent research by the Migration Policy Group counted over 115 cases of civil society groups or individuals who have been criminalised across Europe for trying to help refugees and migrants - a worrying trend in terms of the rule of law, which cuts across the bloc and is not limited to the usual rule of law-defying suspects.

Going forward, the consensus around the lowest common denominator will probably not shift. The European Commission's new asylum and migration 'Pact', due to be unveiled in the spring, will probably contain guidelines and other forms of soft law to encourage member states to roll out more legal migration routes, to foster integration and to protect humanitarian NGOs from harassment. The substance, however, will come in the form of legislative proposals which will, in all likelihood, leave the flaws of the Dublin system intact and possibly worsen them by rolling out asylum border procedures or forms of screening at the border, which could well end up looking like the Greek or Hungarian models – mass detention, abysmal reception conditions, a protracted legal limbo and so on.

Where the acrimony does run deep – based on the overall consensus of limiting the numbers of arrivals of asylum seekers and migrants, however – is over the issue of distributing asylum seekers across the EU after they arrive in so-called frontline countries. This is where 'flexible cooperation' or 'coalitions of the willing' have been emerging, although even when dealing with the limited numbers crossing the Central Mediterranean, procedures are unwieldy and protracted, leaving people stranded in Italian hotspots or Maltese *de facto* detention facilities for weeks or months. In a similar fashion, some member states are signing up to the legal migration pilot projects coordinated by the Commission and based on skills-matching partnerships with migrant-sending countries. In both cases, however, the volumes are so small as to have very little impact on the absolute numbers reaching Europe – and on what should be done to ensure Europe has a truly sustainable migration and asylum system.

And the obsession with external sea and land borders has so far failed to deal with the group now boosting the number of asylum applications in the EU – South and Central Americans arriving on flights and mostly benefiting from alternative forms of protection, without access to the full range of rights granted to refugees.

What has caused the acrimony to emerge is a lack of trust between member states. The trust has broken down over both Dublin and Schengen, and is mainly due to a perception that other member states are not meeting obligations – some are refusing to 'take charge' of asylum seekers even when Dublin transfers are doomed to fail, whilst others are keeping reception standards low to encourage people to engage in so-called secondary movements. One way out of the impasse would involve changing tack from flexible cooperation and allowing the EU to play a role – a peer review mechanism on Schengen compliance, for instance, or finally transforming EASO into a fully-fledged asylum agency, with the power to harmonise reception standards across the EU.

With trust restored, there may be scope for more buy-in to the 'coalitions' or cooperation mechanisms - but this will still not be enough to heal the divisions between the pragmatists (who realise that Europe needs migrants) and the ideologues (who believe that they can ignore demographics and economics until the next election cycle).