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Europe on the Move: Open or Closed Borders?

European Migration Policy – New Area of Flexible Cooperation in Europe?

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- Introduction

The EU's migration and asylum policies have always been ancillary to the completion of the internal market. The free movement of persons (EU citizens and third country nationals) had to be assured in an area with no internal borders and coordinated external controls. However, the division of powers between the EU and the Member States was always disputable (mostly the UK; IE, DK opt outs). For twenty years[1], the EU has been building an asylum and migratory system (as it has been able to) in a relatively technocratic/academic bubble. Common rules on short-stay visas and flanking rules on the responsibility for asylum applications, small experiments on legal migration were set up.

Five years ago, the trend was reversed. The refugee and migration crisis moved those policies from ancillary to the top of the EU's agenda in rather emergency, reactive, highly politized "crisis policy mode" (never good policy adviser).

- Not to lose sights: EU's priorities in perspective.

1. The wider context. the crisis and fragmentation of the liberal order in a vulnerable globalization process (with uncertain leadership) strives new peripheric dynamics between strong/weak; north/south, west/east; instability in the enlarged EU 's neighborhood and risks of uncontrolled inflows of people to the UE's shores; terrorism challenges.
2. The EU's Political context. No consensus between member States on the direction of the EU's migration policy, despite the enormous political and technical capital invested over the last five year; more fragmentation in the EP and the Council, the Commission is going from "political" (president Juncker) to "(geo) political" (president von der Leyen). New challenges to the interinstitutional cooperation (essential to reforms) and tensions over agenda's control can be expected (e-evidence dossier EP/COM quarrel).
3. Notwithstanding, the Union did not break up (Grexit, Brexit). The Schengen system was threatened and has jumped to the political arena, but its benefits (like the EURO) remain highly valued by Europeans as one of the main EU's achievements.
4. The EU leaders still commonly belief in the added value of EU's cooperation and accept to debate its future (Bratislava, Rome, Sibiu, Conference 2020-2022). They also uphold horizontal common views to the above-mentioned context: to keep the unity of the EU

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[1] It was only with the entry into force of the Treaty of Amsterdam in 1999 that it was possible for the EU to adopt measures related to EU migration and asylum as such. The principles ruling the Area of Freedom Security and Justice (AFSJ) including migration and asylum have been erected in the conclusions of the EU Council of Tampere held in the same year. A relatively liberal and balanced Eu's immigration and asylum system was established, despite the flaws.

(migration, climate change, Brexit); reconnect with citizens (address citizens' concerns); deliver tangible results and built upon the EU values and principles.

5. Migration and home affairs was entrusted to one of the eighth vice-presidencies (including the HR/VP Borrell) of the von der Leyen Commission. "Protecting our European way of life" (scope latter clarified as the EU's fundamental values of article 2 TFEU) is referred in fourth out of the six political priorities of the guidelines. Three of those vice-presidents have additionally "executive powers" to deal with: the green deal; digitalization and social market economy.

6. The Strategic Agenda 2019-2024, adopted by the European Council in June 2019, places the protection of "citizens and freedoms "at the first out of five political objectives. In the former strategic agenda 2014-2019 the issue appeared at fourth out of five defined priorities.

7. If order is not arbitrary, from June to July 2019, migration was downgraded from the EU's priorities. Can we consider we are overcoming the "crisis mode" and regaining "back to business as usual"?

8. Either way, the European "crisis mode" left important legacy in which, feasibility and pragmatism are important elements to consider:
   a. "regain border control" marks the defensive tone of the future of the EU's migration policy. The integrity of the EU's territory, the functioning of the Schengen system will prevail over other priorities. Border controls; restriction of entries, focus on returns and reintegration (readmission and cooperation agreements with third countries) and fight irregular migration will be the leading policies (common agreement).
   b. Despite the disruptive dynamics Schengen did not return to the "ancillary" system from the nineties. Interestingly, the reforms lay somewhere between intergovernmentalism and integration by reinforced cooperation trough the Agencies (EBCG, EASO considerable reinforced powers).

Best hopes to back-to-business scenario

1. The New Pact on asylum and Migration (expected to be released by the Commission by the end of May)[2] will not be the magical wand. Big revolutionary reforms towards more intergovernmental or supranational solutions need reinforced political consensus, which is not envisaged for the next five years.

2. Is such context, regain mutual trust and built upon "normality" would probably be the most feasible solution. Some implications:
   a. The informal, pressing ad hoc intergovernmental arrangements from the "crisis mode" shall henceforth return to the more transparent, predictable and formal legal procedures. They are always better equipped to reflect (and protect) different interests.
   b. The president Juncker's pre crisis agenda (2014) can be a go departing point: focus on better implementing the Common European Asylum System (CEAS); small steps to enhance legal migration (revision of the EU Blue Card scheme for

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[2] To note also the strategic guidelines for the legislative and operational planning for the AFSJ (Article 68 TFEU) for the next five years that are expected to be approved in the next EU's spring Council).

highly qualified third country workers), enhance horizontal and vertical coordination[3], in particular for the internal and external migration dimensions.

 c. Assure the resources and means to the MS and to the COM to overcome the flaws (carrying out critical examination of the legal framework; extensive impact assessments to new legislation). Joint evaluation schemes (Article 70 TFEU) (PNR example); peer review evaluations based on other experiences (Schengen Acquis System evaluation, Judicial Cooperation in criminal matters –EAW) can also be envisaged.

3. Since its inception, migration and asylum have been nothing, but flexible and multispeed cooperation (eg: opt outs). The dichotomy integration /intergovernmentalism has never lost sight. In the beginning of the Millennium, optimistic and prosper perspective of the "Global village" favored the Tampere's and the AFSJ "golden years ". Global Crisis, pessimism, fear and worldwide fragmentation (UN Global Compacts for refugee and migration) lead to the opposite direction. Nevertheless, the EU's outcome over the past 20 years (2015 crisis included) always delivered more integration (even if informally trough cooperation). For the time being, to think otherwise would be a huge "out of the box" exercise.

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[3] The Juncker Commission prior to 2015 envisaged to improve coordination in the AFSJ placing the three concerned Commissioners Jourová (Justice), Avramopouluos (interior)and King (Security) under the umbrella of his VP Timmermans. The logic was not reproduced in the von der Leyen Comission. Justice and Migration were placed under different Vice-presidencies.