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Migration in the light of the EU Presidency Trio priorities

Foreword

Only one year to go until Hungary takes up its second rotating presidency in June 2023, which will affect the entire public sector and will be of major political importance. We can say that this period will have an impact on the whole country. A presidency is always an opportunity and also a responsibility to judge the level of a country's commitment to the EU's development, its ability to represent the interests of the whole community and its capacity to respond to crises such as the last Covid-19 or the war between Russia and Ukraine recently. A smaller Member State can 'show itself' to the world during its presidency, whether in intra- or extra-European relations¹. The seriousness with which our country is taking this period is demonstrated by the creation of the Ministry for European Union Affairs on 1 August. In his first statements, the new Minister responsible for the portfolio said that the Hungarian EU Presidency will take office in a special political situation, as it will be held immediately after the European Parliament elections so the period of the Hungarian Presidency will be defined by the institutional transition. This offers plenty of occasions for Hungary to shape the priorities of the coming institutional and political cycle in a way that reflects Hungarian interests and priorities.

The presidencies work in a trio framework, so in order to work together, these countries prepare a joint programme for the 18 months ahead, but beyond that, each country also prepares individually its own Presidency programme for its six months. Hungary, together with Spain and Belgium,

¹ Czigler, Dezső Tamás (2011): 2. Dutch Presidency (1 July 2004 - 31 December 2004.) In: Vörös, Imre: The EU Presidency. Complex Kiadó. Budapest.

will hold the trio presidency, which will have predominantly common elements, but it is worth noting that we are not on the same political platform with the two other partners, especially on migration. This can be a recognizable difficulty in the cooperation, but recent developments suggest that the issue will be closed, at least for the time being, during the first two presidencies. Migration, including borders, as well as cross-border organized crime, terrorism and violent extremism are the most pressing issues in the context of freedom and security of EU citizens.

The programme for the next trio was presented to the General Affairs Council on 27 June 2023². It is built on four pillars: economy and competitiveness, freedom and security for EU citizens, a greener and fairer Europe, and interests and values in the EU's external policies.

Priorities in Home Affairs

Migration

Migration, which requires a European response will be highlighted in the part of the Trio's programme "freedom and security of EU citizens". The Trio Presidency reaffirms its commitment to continue its work on the reform of the Common European Asylum System and the Pact on Migration and Asylum and to make all effort to ensure their adoption. It will also support efforts to strike the right balance between responsibility and solidarity and to step up action on the external dimension of migration, including by promoting comprehensive and mutually beneficial migration partnerships with key countries of origin and transit. The Trio Presidency will contribute to improve the proper functioning and resilience of the Schengen area, focusing on strengthening the external borders. It has to step up efforts to effectively combat serious cross-border organized crime, terrorism and violent extremism, including the fight against smuggling of human beings,

² Promoting the Strategic Agenda. 18 months program of the Council. (1 July 2023 – 31 December 2024) 10597/23

trafficking in human beings, arms trafficking, financing of extremist activities, the prevention of terrorism and assistance to victims of terrorism. It is believed that particular attention should be paid to combatting sexual abuse of children, violence against women and gender-based violence, as well as hate speech and hate crimes, racism, anti-Semitism, xenophobia and other forms of intolerance³.

Almost all Member States agree that the current asylum system is not able to cope with the migratory pressure on Europe and that there is therefore an urgent need for reform. The migratory flows that recorded highs in 2015, with nearly 2 million people arriving in the EU, caught everyone by surprise. Although the numbers have fallen in recent years, they showed again a significant increase last year. How to deal with these large numbers of illegal arrivals varies considerably from one country to another. Among other things, there is a need for stricter border protection, screening criminals, separating those seeking protection legally from those looking for protection illegally, increased cooperation with countries of origin and transit, the conclusion of readmission agreements and the implementation of obligations, more effective and more frequent return of those illegally present in the EU, and, overall, a reduction in pull factors.

There is no unanimity on how to respond to this phenomenon, but most countries agree that a reform of the Pact on Migration and Asylum is needed and that a decision should be taken before the next European Parliament elections. The European Commission has set this objective as its flagship, and the process has been accelerated recently to meet the deadline.

Pact on Migration and Asylum

The statistics clearly show that the pressure has not eased since 2015, even when there are better periods, yet in 2022 we witnessed another radical

³ 18 months programme of the Trio.

increase, from a peak of 1,322,850 asylum applications in the EU in 2015 to 965,665 in 2022⁴.

This is another indication that the Common European Asylum System, as previously established and currently in force, is not able to manage this situation effectively. The European Commission has therefore already presented proposals in several stages to find a solution by modernizing the existing legislation⁵. Given the fact that we are talking about a single system, the original idea was to think in terms of a package solution, as the individual dossiers are interlinked and interdependent, so there is no point in making separate, individual amendments to the various documents. In recent years, however, this more expedient idea has been forgotten, and successive Presidencies have concentrated on implementing their ideas by adopting each of the elements separately, whatever the cost.

Currently, the following dossiers are in the negotiation process: the Resettlement Framework Regulation, the Qualification Regulation, the recast Reception Conditions Directive, the Eurodac Regulation, the Pre-Screening Regulation, the Asylum and Migration Management Regulation, the Asylum Procedure Regulation, the Regulation on Crisis and Force Majeure Management and the Instrumentalisation Regulation. Decisions on the first three dossiers were already taken last year and the co-legislators have already agreed in advance that the earlier ones will be activated once the package is adopted. The draft of Eurodac and the Screening Regulations are currently in the trilogue phase. The Council is expected to negotiate the draft of Crisis and Force Majeure Regulation and of the Instrumentalisation Regulation in the second half of 2023.

The draft of Asylum and Migration Management Regulation and the draft of Asylum Procedure Regulation are the most important elements of

⁴ Source: https://www.europarl.europa.eu/infographic/asylum-migration/index_hu.html#filter=2022

Accessed: 30.07.2023

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the New Pact on Migration and Asylum COM (2020) 609 final. 2020.9.23.

the Pact. For these, the mandate was first adopted by the European Parliament on 20 April 2023, and subsequently the Justice and Home Affairs Council (JHA Council) meeting, by qualified majority on 8 June 2023, authorized the opening of the trilogue negotiations. Hungary and Poland voted against, while Lithuania, Slovakia, Malta and Bulgaria abstained⁶.

Although the European Council has previously stated three times that migration and asylum issues should be decided by consensus, the Presidency-in-Office has used the legal possibility of qualified majority voting⁷.

Leaving aside the technicalities, the most controversial aspect of the draft is the issue of relocation. The proposal still leaves open the possibility of a solidarity mechanism in the event of large inflows, whereby Member States would be obliged to make a significant financial contribution in the event of relocation or refusal. The idea of relocation has been rejected from the outset by both countries voting against, as it has been ineffective so far and is also a pull factor for migration. The solidarity contribution would include a minimum annual relocation of 30 000 persons and a triggering annual financial contribution at EU level of €600 million, so that a relocation of one person could be triggered by €20 000. In the event that our country continues to refuse to relocate even one person, this would mean a payment of €9,270,000 per year for the 485 persons we would be responsible for. These figures are only an initial idea, but it is not yet possible to predict how many people will arrive in the EU in the future, so the number of arrivals or the amount to be paid could be higher, as the Council could set an annual limit higher than the minimum in an implementing decision. It is another question on what basis this huge amount per capita has been determined, as no calculation has been made so far on the expected costs. Presumably, the aim was to force countries that do not wish to participate

⁶ Source: <https://notesfrompoland.com/2023/06/09/poland-condemns-eu-migration-and-asylum-pact-agreed-by-european-council/>
Accessed: 30.06.2023

⁷ In line with the European Council Conclusions of December 2016, June 2018 and June 2019, the European Council stated that decisions on migration should be based on consensus agreement by all Member States.

in the relocation to comply with the relocation obligation. In the case of Hungary, this is a particularly sensitive issue, as the large number of illegal migrants intercepted in 2022 is likely to lead to a high number of captures.

The ultimate goal is the adoption of all elements of the package of proposals during the current European Parliament's term, which is the aim of the European Commission and the Home Affairs Commissioner and currently enjoys the support of a majority of Member States.

The Hungarian position

Hungary opposed the decision taken by the Justice and Home Affairs Council on 8 June because the general approaches adopted for the two draft regulations do not take into account the specific situation of individual Member States, such as Hungary, which is on the Western Balkan migration route, thus placing an additional burden on us. The solidarity mechanism can only be accepted if the costs of border control in the Member States and the efforts made in the external dimension of migration are also considered to be solidarity instruments of equal standing and, in addition, any form of relocation, as described earlier, remains a voluntary solidarity instrument. Our aim would be to adopt a system that is able to prevent irregular migrants from entering the EU along the entire external border and to filter out those who are not eligible for protection before they enter. We believe that a qualified majority voting system does not bring Member States closer together on such an important issue, and it is therefore particularly important to seek consensus. The incoming Presidencies could play a major role in promoting unanimity if they could identify with this position.

Expected outcome of the negotiations

Even though it is difficult to predict the future, an assessment of the process leads to the conclusion that at the moment there are four scenarios worth

considering in terms of the likely outcome. The first and least likely scenario is that Member States will take the decision to accept by consensus, as Hungary and Poland have been opposed to mandatory relocation from the outset and have not changed their position since then. However, the majority either explicitly wants it or tacitly accepts it. The second option, which is the most likely outcome, is that the proposals will be adopted by qualified majority, as this has always been the scenario and is the current attitude of the countries and the institutions. The third possibility is that a blocking minority is formed in the process, so that there is no qualified majority. The fourth option is that, for whatever reason, in the course of the institutional negotiations, the Council and the Parliament are unable to agree on the points that are still contentious or a serious obstacle arises that will be unacceptable to one of the parties.

Schengen enlargement

The formation of the Schengen area is one of the EU's achievements that was meant to make life easier for both individual travellers and economic operators by allowing the free movement of people across internal borders without border controls. Several countries suffered to this process with the surge in migration that began in 2015, when several countries reintroduced internal border controls in response to migratory pressure, which continues to this day.

This situation has also not helped the Schengen enlargement process, which has become a major brake on the EU's institutional development. However, the background to this goes back further, as Romania and Bulgaria were technically ready for Schengen membership even during the first Hungarian Presidency, as the evaluation monitoring committee Scheval⁸ had already concluded at the time.

⁸ Source: <https://www.consilium.europa.eu/hu/council-eu/preparatory-bodies/working-party-schengen-matters>
Accessed: 30.07.2023

At the last meeting of our previous presidency, on 9 June 2011, an attempt was made to have the accession of the two countries accepted by the Community, but it failed because two member countries (France and Germany) blocked it at the crucial moment.⁹ It was then decided to return to the issue of enlargement at the next meeting of the IGC in September¹⁰. Now we see that no progress has been made in the last decade.

A spookily similar scenario played out in December 2022, when the JHA Council accepted Croatia's Schengen membership, but Romania and Bulgaria were again denied. This time, Austria and the Netherlands blocked the enlargement.

At its plenary session in Strasbourg on 12 July 2023, the European Parliament voted by 526 votes to 57 with 42 abstentions that Romania and Bulgaria should become members of the Schengen area by the end of this year, but this political declaration does not bind the Council¹¹.

Given the Austrian position that as long as the Schengen area is not functioning and internal border controls need to be maintained¹², they will continue to reject Schengen enlargement, and realistically there is no prospect of a shift in this direction before the Austrian elections next autumn, there is even a possibility that the two candidate countries could be admitted as the members of Schengen during the Hungarian presidency in the second half of next year.

⁹ Source: <https://www.bbc.com/news/world-europe-12055299>
Accessed: 30.07.2023

¹⁰ Source: https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/viq1rcrbiry?ctx=-vgaxlcr1jzlj&start_tab0=540
Accessed: 30.07.2023

¹¹ Source: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0278_HU.html
Accessed: 30.06.2023

¹² Source: <https://www.romania-insider.com/austria-maintains-veto-against-schengen-expansion-nehammer>
Accessed: 30.06.2023

Conclusion

The EU Presidency is expected to have to deal with a number of issues that we do not even see today, but here we have looked specifically at aspects related to migration. As can be inferred from the above, the question will not be whether the Pact will be adopted by the time of our Presidency, but rather whether this seemingly new system will have any impact on illegal migration. Will there be fewer people seeking to enter? Will there be fewer abuses of the currently very humanitarian European asylum system? Will the European society of the future be able to cope with the shift in the mixing of different cultures? Will our economic system be able to cope with the fact that we will continue to live our lives at the standard of living to which we have become accustomed over the past decades? As there are no really new ideas or new mechanisms in the dossiers under discussion, only a certain shift in the institutions we have used in the past, we do not see any realistic chance that the current processes can show a positive change in migration.