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## **Implementing the UN Global Compact on Refugees: which role for the EU?**

ASYLUM



**Synthetic Reports** are the final outcome of ReSOMA's activities related to one of the most pressing topics in the EU migration, asylum and integration debate. Bringing together findings and results of previous ReSOMA Discussion Briefs and Policy Options Briefs, they provide an overview of **key controversies, available evidence** and **proposed policy alternatives**. Drawing on ReSOMA's dialogue with policymakers, stakeholders and research, the Synthetic Reports point to **viable reform paths** in order to fill crucial policy gaps in line with realities on the ground, the rule of law and human rights. They have been written under the supervision of Sergio Carrera (CEPS/EUI) and Thomas Huddleston (MPG).

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## ReSOMA Final Synthetic Report

# Implementing the UN Global Compact on Refugees: Which role for the EU?\*

## 1. INTRODUCTION

This Final Synthetic Report aims to outline and discuss EU (and member states) policy priorities for the implementation of the Global Compact on Refugees (GCR), as identified through consultation with key EU and national stakeholders conducted in the framework of ReSOMA.

The adoption of the GCR and the agenda it lays down to advance responsibility sharing for refugees at the global level have fostered a debate among EU policy makers and relevant stakeholders concerning the role and contribution of the EU and its Member states in the achievement of the Compact's objectives. In this context, a number of proposals have been advanced concerning the contribution that civil society and academia could provide in supporting actions in key priority areas and ensuring independent monitoring and accountability of the GCR implementation.

The consultation process conducted in the framework of ReSOMA included the following main activities:

- The **Task Force Consultation “Identifying Priorities and Discussing Policy Options in EU Migration, Asylum and Integration Policy”**, which took place on 21 November 2018 at CEPS venue in Brussels.<sup>1</sup> The TF consultation allowed for a process of structured dialogue among a selected group of EU policy actors, representing relevant EU institutions and agencies, International organisations and NGOs that are members of the ReSOMA consortium. Specifically, the thematic Session “The external dimension of EU asylum policy” explored the following main questions: a) what have been the impacts of the 2015 ‘European refugee humanitarian crisis’ on EU policy priorities in the field of asylum and refugee protection? b) what has been the role of scientific evidence and data in supporting key policy decisions? c) on which long-term priorities should EU action be based to address identified gaps in EU asylum governance?

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<sup>1</sup> See ReSOMA Task Force Report Identifying Priorities and Discussing Policy Options in EU Migration, Asylum and Integration Policy,

<http://www.resoma.eu/publications/resoma-task-force-report>

- The **Social Research Panel Survey on “EU external action in the field of asylum”** launched on the ReSOMA website in February 2019 to collect feedback from stakeholders at the national level (NGOs, policy makers and experts) on major policy initiatives in this area adopted or currently discussed at the EU level. The Survey addressed two main questions: 1) are policy priorities currently on the EU agenda present with the same relevance also at the national level? 2) What policy priorities are identified as relevant at the national level which are currently not adequately taken into consideration at the EU level?
- The **Transnational feedback meeting “Evidence and the Global Compacts”**, organized on the 29<sup>th</sup> of April 2019 at CEPS venue in Brussels. Participants, including representatives of civil society, international organisations and academia discussed the role of evidence and data in implementing the GCR. The meeting focused on the following main questions: a) how can data and evidence be used for implementing the GCR? b) what forms of collaboration among states, international organizations and other relevant stakeholders are envisaged to foster evidence-based policy responses? c) how to respect in this process the independence of both scholars and civil society

and their larger role in upholding the democratic rule of law?

- Extensive **Desk research** on stakeholders' positions, policy recommendations and supporting evidence base concerning EU priorities in implementing the GCR, as well as the role of civil society actors and researchers in this process.<sup>2</sup>

Research and consultation with key stakeholders (including representatives from civil society actors, research and relevant international organisations) at the EU and national level allowed to identify the following four priority areas on which EU actors and stakeholders should focus when implementing the GCR.

The first identified priority concerns the need to expand **resettlement and other complementary pathways for admission of people in need of international protection to Europe**. These may include humanitarian admission programmes, private or community sponsorship programmes and humanitarian visas, as well as non-refugee specific complementary pathways based on existing migration avenues, which include family reunification, education and labour opportunities. In line with the GCR objectives, a number of stakeholders have called upon EU and national policy-makers to expand the scope of safe avenues to protection in Europe, in line with a fundamental rights and protection-sensitive approach, and as an expression of solidarity towards those countries mostly

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<sup>2</sup> The role of the EU in implementing the GCR (including a review of key recommendations and supporting evidence-base provided by relevant stakeholders) was analysed by two ReSOMA Policy Options Briefs: *Contributing to global responsibility sharing for refugees: the role of EU external funding*, ReSOMA Policy Options brief, January 2019, <http://www.resoma.eu/publications/policy-option->

brief-conditionality-external-funding ; The EU's Role in Implementing the UN Global Compact on Refugees. Contained Mobility vs. International Protection, ReSOMA Policy Options brief, January 2019, [http://www.resoma.eu/sites/resoma/resoma/files/policy\\_brief/pdf/POB%20GCR%20Responsibility%20Sharing%200.pdf](http://www.resoma.eu/sites/resoma/resoma/files/policy_brief/pdf/POB%20GCR%20Responsibility%20Sharing%200.pdf).

affected by the refugee situation as well as towards asylum seekers and refugees themselves.

The second identified priority focuses on the role of **EU external funding in providing support to refugee hosting countries** in a way that can benefit both the refugees themselves and their host communities and provide long-term solutions to forced displacement situations. The mobilization of EU funding has been a key policy component of the EU response to the so-called 'refugee crisis' in 2015. A number of emergency funding mechanisms, notably the EU Trust Fund (EUTF) for Africa, the "Madad" EUTF for Syria, and the Refugee facility for Turkey, have been established to address a range of issues related to both refugee protection and migration management in key third countries in Africa and the Middle East. However, analyses carried out so far have underlined how the priority of increasing the "speed" and flexibility to intervene in emergency contexts that underpinned the adoption of those emergency instruments may have a negative impact on third countries' ownership, involvement of civil society actors in implementation, as well as democratic accountability by the European Parliament (EP). In view of the adoption of the next Multiannual Financial Framework (MFF) 2021-2027, a number of institutional and non-institutional actors, including the EP and several civil society actors, have recommended that the objective of speeding up project implementation and increasing responsiveness to unforeseen events should not be to the detriment of established standards of democratic accountability.

The third identified policy priority focus on the **role of data and evidence in implementing the GCR**. While UNHCR and states parties, in consultation with relevant stakeholders, are in the process of drafting a set of indicators for monitoring progress towards achieving the GCR objectives, it is crucial that civil society and academia preserve their space for independent monitoring and accountability of the GCR. Civil society monitoring is crucial to cover issues that may be not encompassed by the official GCR monitoring framework, including in key areas such as access to protection, reception conditions, and refugees' access to social and economic rights in their hosting countries.

This Report concludes by underlining, as a fourth cross-cutting priority, the need to ensure **consistency of EU policies with the international protection-based framework on which the GCR is based**. A number of recent policy developments at the EU level, both internally and in relations with third countries, point to a worrying trend towards restrictive migration and asylum policies driven by a migration management rationale rather than an international protection rationale. This trend risk reducing refugees' mobility opportunities and negatively impacting on refugee access to protection and durable solutions, undermining the implementation of the GCR both in Europe and abroad.

This Final Synthetic Report proceeds as follows. Section 2 provides an overview of the key objectives of the GCR as well as the structures and arrangements it foresees to foster cooperation among all the actors involved. Section 3 outlines the key policy priorities on which the EU and the

member states should focus when implementing the GCR as identified during consultation with key stakeholders. For each of the identified policy priorities, key findings and relevant policy recommendations put forward by consulted stakeholders are outlined.

## 2. THE EU AND THE GLOBAL COMPACT ON REFUGEES

The Global Compact on Refugees (GCR), endorsed by the UN General Assembly in December 2018, represents the international reference framework for planning and monitoring policy responses to address refugee situations in the future.<sup>3</sup> The main goal of the GCR is to provide a basis for predictable and equitable responsibility-sharing among all UN Member States and other relevant stakeholders. The GCR is international refugee protection and international human rights-driven. It confirms as its point of departure the existing international protection framework, centred on the cardinal principle of non-refoulement, which lies at the core of the 1951 Geneva Convention and its 1967 Protocol, as well as other international human rights instruments.

Art. 7 of the GCR includes four objectives of the Compact as a whole: 1) ease pressures on host countries; 2) enhance refugee self-reliance; 3) expand access to third country solutions; 4) support conditions in countries of origin for return in safety and dignity.

Though non-legally binding, the GCR includes a Programme of Action that advances a set of new structures and arrangements to strengthen responsibility sharing and expand the scope of durable solutions. A key component of the GCR is the Comprehensive Refugee Response Framework (CRRF), which was already set

out in an annex to the 2016 New York Declaration for Refugees and Migrants (part II).

The CRRF specifies key elements for a comprehensive response to any large movement of refugees, which should be applied in particular situations, in close coordination with relevant states, relevant UN agencies and stakeholders. These include rapid and well-supported reception and admissions; support for immediate and on-going needs (e.g. protection, health, education); assistance for local and national institutions and communities receiving refugees; and expanded opportunities for durable solutions (in the form of sustainable return, resettlement and integration in the hosting state). During the last three years, the CRRF has been applied in 15 countries in Africa and Western America (UNHCR, 2018).

The GCR foresees new arrangements to foster solidarity and responsibility sharing among participating states. Specifically, the GCR envisions a Global Refugee Forum to be held periodically at the ministerial level starting in December 2019, whereby states and other actors can make pledges of support to meet the goals of the Compact, including in the form of financial, material and technical assistance, resettlement and other complementary pathways for admission, as well as actions taken by states at the national level to further the Compact objectives (p. 17). In addition, the GCR foresees

<sup>3</sup> See "The Global Compact on Refugees", <https://www.un.org/pga/72/wp-content/uploads/sites/51/2018/07/Global-Compact-on-Refugees.pdf>

the activation of so-called Support Platforms, composed of a group of states committed to mobilize contributions in favour of host countries facing large scale and complex refugee situations (par. 22).

The GCR also calls for the establishment of a multi-stakeholders and partnership approach, which foresees the involvement of a broad set of actors – including independent civil society organizations, local communities and refugees themselves – in the design, monitoring and implementation of the actions envisaged by the Compact (par. 33). It also foresees increased collaboration among states, international organizations and other relevant stakeholders to foster evidence-based policy responses through improved collection, analysis and sharing of data and statistics on refugee issues (par. 45). Finally, it also foresees the establishment of a Global academic network (GAN) on refugee, forced displacement, and statelessness issues involving universities, academic alliances, and research institutions, in cooperation with UNHCR. The GAN will aim at facilitating research, training and scholarship opportunities to produce deliverables in support of the GCR objectives (par. 43).

The EU and its member states have taken an active role in the consultation process that led to the adoption of the GCR. The EU Delegation in Geneva repeatedly expressed its commitment to the Refugee Compact and its objectives, while EU member states usually aligned with the common statements delivered by the EU Delegation during subsequent negotiating rounds (Gatti, 2018). As recognized by observers, the GCR raised less controversies and revealed to be less problematic at the political level compared to the Global Compact on Migration (Karas,

2018). The less controversial character of the GCR compared to the Global Compact on Migration is confirmed by the fact that, among EU member States, only Hungary decided not to be part of it. On the contrary, nine EU Member States decided to withdraw from the Global Compact on Migration (Hungary, the Czech Republic, Poland, Austria, Bulgaria, Italy, Latvia and Romania. Slovakia) (UN News, 2018; Euractiv, 2018).

### 3. KEY POLICY PRIORITIES FOR IMPLEMENTING THE GCR

#### **Policy priority 1: Resettlement and complementary pathways to protection**

The GCR underlines the need to enlarge the scope, size and quality of resettlement and to make available additional pathways to protection in a more systematic, organized and sustainable way. In support of efforts undertaken by states, UNHCR commits to devise a three years' strategy (2019-2021) to increase the number of resettlement places, involving additional countries in global resettlement efforts and improving the quality of resettlement programmes by fostering good practices and regional arrangements (par. 91).

Besides the expansion of resettlement programmes, the GCR calls for complementary pathways of admission for persons in need of international protection to be offered on a more systematic, organized, sustainable and gender-responsive basis and to ensure they contain appropriate international protection safeguards (par. 94). Complementary pathways aim at creating safe and regulated avenues for refugees that complement resettlement by providing lawful stay in a third country where their international protection needs are met. UNHCR distinguishes between refugee specific complementary pathways – which include humanitarian admission programmes, private or community sponsorship programmes and humanitarian visas – and non-refugee specific complementary pathways based on existing legal migration avenues, which may include family reunification, education and labour opportunities (UNHCR, 2019)

In line with the objectives included in the GCR, calls have been made to EU and national policy makers to increase the scope of legal avenues for protection in Europe, through resettlement and complementary pathways. Human rights activists and other stakeholders have reiterated the need for the EU to expand its resettlement efforts before the 50,000 already pledged by member states over the period 2018-2019 (ECRE, 2019).

In order to move towards a more structured and harmonised approach to resettlement, in July 2016 the Commission tabled a proposal for a Regulation on an EU Resettlement Framework, which aims at reducing current divergences among national resettlement practices by fostering a "collective EU approach to resettlement" (European Commission, 2016a). The EU Resettlement Framework is considered by the Commission as an important step in increasing the level of coordination of resettlement efforts and, potentially, of increasing the number of refugees resettled in Europe. The Commission's proposal provides a common definition of the notion of resettlement, lays down the factors to be considered for including third countries from where resettlement would occur and a set of common eligibility criteria and grounds for exclusion of applicants. It would also establish annual Union resettlement plans and targeted Union resettlement schemes to be established through Commission 'implementing acts'.

The proposal on a Union Resettlement Framework has raised several points of

controversy of direct relevance when assessing it in light of the GCR (ECRE, 2018a). Article 4 of the proposal on “Regions or third countries from which resettlement is to occur” includes as a relevant factor for determining third countries to be prioritized for resettlement their ‘effective co-operation with the Union in the area of migration and asylum’. Such cooperation would be determined by the EU in light of the efforts undertaken by third countries in reducing the number of irregular migrants to the EU and increasing readmission rates of third country nationals found in an irregular situation in EU Member States, including their willingness to conclude readmission agreements. Third countries to be prioritised for resettlement purposes are also requested to create the conditions for the use of the first country of asylum and safe third country concepts as grounds for accepting expedited and accelerated expulsions of asylum seekers from the EU, an approach that follows the one laid down by the Commission in its accompanying proposal to recast the EU Asylum procedures Directive into a Regulation (European Commission, 2016b; Cortinovis, 2018).

Against attempts to link the provision of resettlement places to third countries’ cooperation in the field of migration control, civil society actors have stressed the need to preserve the humanitarian character of resettlement as a protection tool and as an expression of solidarity towards those

countries mostly affected by refugee situations (Amnesty International 2016; International Rescue Committee 2018; ECRE 2018a). Several civil society actors that play an active role in the implementation of current resettlement programmes in Europe issued a Joint Comments Paper on 14 November 2016 that raised important concerns about the proposed Union Resettlement Framework. They underlined that “the proposed Framework is overly reactive and focuses unduly on migration control objectives, to the potential detriment of resettlement’s function as a life-saving tool and a durable solution”, which lays at the heart of the UN GCR guiding principles.<sup>4</sup>

The inclusion of a logic of migration control in the EU Resettlement Framework has been one of the key stumbling blocks during trilogue talks between the EU co-legislators during inter-institutional negotiations. While Member states consistently underlined the importance of resettlement as a “strategic instrument to manage migration”, the European Parliament, recalling the position of several stakeholders, underlined that “Determining geographical priorities based on third countries cooperation in the area of migration and leveraging resettlement to reach foreign policy objectives would therefore de facto jeopardise a humanitarian, needs-based and international protection approach” (Council of the European Union, 2018; European Parliament, 2017).

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<sup>4</sup> See the Joint Comments Paper by: Caritas Europa, Churches’ Commission for Migrants in Europe (CCME), European Council for Refugees and Exiles (ECRE), International Catholic Migration Commission (ICMC Europe), International Rescue Committee (IRC), Red Cross EU office (2016), on European Commission proposal for a Regulation establishing

a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council COM(2016) 468, 13 July 2016, Brussels, 14 November 2016 (<https://www.ecre.org/wp-content/uploads/2016/11/NGO-joint-comments-resettlement-141116.pdf> ).

Besides an increase in resettlement pledges, human rights organizations and academics have consistently called for the issuing of humanitarian visas to those in need of protection as a way to remedy the structural lack of safe pathways for asylum seekers to enter the EU territory. Currently, an estimated 90 % of those granted international protection in the EU have reached the territory of a member states through irregular means (Van Ballegooij and Navarra 2018). The European Parliament adopted a Resolution in December 2018, recommending the introduction of a new legislative instrument, an EU visa with limited territorial validity, which could be requested at any consulate or embassy of an EU Member State and that would allow asylum seekers to enter the territory of the Member State issuing the visa for the sole purpose of making an application for international protection (European Parliament, 2018).

The Commission, however, dismissed the EP request to present a legislative proposal on an EU humanitarian visa, arguing that it would not be 'politically feasible' to create a subjective right for an individual to request admission and to be admitted or an obligation on the Member States to admit a person in need of international protection (European Commission, 2019). According to the Commission, this stems from the fact that the Common European Asylum System (CEAS) is 'territorially bound', which means it only covers applications for international protection made in the territory of the Member States and not requests for diplomatic asylum lodged at Member State representations in third countries. This conclusion, however, disregards extraterritorial protection-related

obligations under the Charter of Fundamental Rights of the European Union (EUCFR). As argued by legal scholars, the EUCFR (including obligations of non-re-foulement) applies whenever member states act within the scope of EU law (Art. 51 CFR), with territoriality non being a decisive criterion (Moreno Lax, 2018).

The stance taken by the Commission in reply to the EP request runs counter to the position expressed on this subject by a wide number of stakeholders, including civil society representatives and academics, that took part in the consultation process accompanying the EP initiative on humanitarian visas. As stated in an open letter addressed to the EP by 160 academics ahead of the Plenary vote on the Resolution on Humanitarian visas, which took place on 11 December 2018, the adoption of a set of EU rules on humanitarian visas would be instrumental in introducing a mechanism of safe and legal access to international protection in the Member States, in line with a fundamental rights-based and protection-driven understanding of the CEAS (Moreno-Lax et al., 2018). Related to the previous, a clear and effective procedure for granting access to the territory of EU Member States for people in clear need of protection would also represent a concrete and relevant delivery on the commitment to expand legal pathways to protection included in the Global Compact on Refugees (Carrera and Cortinovis, 2019).

Finally, in line with the commitment laid down in the GCR, attention is increasingly paid by a number of stakeholders on how to create additional non-humanitarian pathways to protection in the EU (European Resettlement Network, 2018a,

2018b). Progress in this area rests largely on member states' efforts, considered the limited competences assigned to the EU in the area of legal migration. Enabling entry for family members is a straightforward way of offering greater protection to refugee groups in moments of crisis, without designing new channels of entry. In particular, current family reunification criteria could be expanded, by facilitating reunification of extended family members (such as siblings and grown children) (Collett et al. 2016).

Additional pathways to protection could also be created through enhanced opportunities for refugees to arrive safely in the framework of study or education programmes. This objective could be pursued first by ensuring that existing academic scholarship and apprenticeship programmes take into consideration the specific challenges faced by refugees in accessing those programmes, including lack of documentation and academic certificates. Partnership between public institutions, industry and educational institutions at the EU, national and local levels could also be established to design study programmes specifically targeted to refugees (UNHCR, 2015). As stated by the UNHCR, the involvement of a broad range of stakeholders, including "States, regional and intergovernmental bodies, civil society, academia and other stakeholders play a critical role to support the establishment and development of protection-sensitive, accessible and scalable systems that incorporate the necessary protection safeguards as well as reduce and remove legal, administrative and practical obstacles preventing refugees from accessing complementary pathways" (UNHCR, 2019).

Stakeholders have underlined a set of considerations and protection safeguards to be considered when designing pathways for refugees based on migration avenues. First, in order to provide added value compared to current responses, pathways in the above-mentioned areas should always be additional – not a substitute – to established humanitarian entry channels and procedures. They should in no way be used as a way of curtailing already established rights and protection. In the case of family reunification, the creation of ad hoc programmes to facilitate reunion with extended family members should by no means be considered as an option for restricting the right to reunite with core family members and facilitate family unity as established by EU Family Reunification Directive (Conte, 2018). A protection-sensitive approach should be adopted when exploring possible access by refugees to existing legal entry channels for study and work. As those often provide for the right to stay in the destination country only for a limited period of time, special arrangements may be required to ensure that the rights of refugees and their protection needs are safeguarded. Beneficiaries must in all cases be protected against non-refoulement and be able to apply, without prejudice, for asylum at any time (Carrera and Cortinovis, 2019; Norwegian Refugee Council et al., 2018).

## Policy priority 2: the role of EU external funding

The GCR puts great attention on the need to strengthen resilience of refugees and their host communities, underlying the need to mainstream displacement issues into the development programmes and policies of host countries. In this context, predictable and adequate funding is identified as a key priority for furthering the objectives of the Compact. While needs-driven humanitarian assistance remains a priority, the Refugee Compact underlines the importance to deploy additional development resources, over and above regular development assistance, provided in ways that can be of direct benefit to refugees and host countries and communities (paragraph 32).

As the world's leading donor of humanitarian aid and development assistance, the EU and its Member States have a key role to play in addressing forced displacement situations and providing support and assistance to refugees worldwide. In line with the approach laid down in the GCR, the mobilization of predictable and additional funding is crucial to provide emergency assistance to displaced populations and promote the socio-economic support to refugees and their host communities.

Negotiations of the next Multiannual Financial Framework (MFF) 2021-2027 represent a key step for the EU to consolidate and scale up its engagement in global responsibility sharing for refugees and forced migrants. Civil society organizations have underlined the importance for the EU to prepare a collective commitment in view of the first Global Refugee Forum in December 2019, including in the forms of additional financial assistance

(ECRE 2019). In line with the multi-stakeholder and partnership approach advanced by the GCR, EU funding should be used to mobilize a plurality of actors, including independent civil society organizations, local communities and refugees organisations in the design and implementation of actions in support of refugees (Cortinovis, 2019).

When assessing relevant policy options for the next phase of EU external funding, EU policy makers should take stock of the experience of policy responses developed during the past four years, notably the EUTF for Africa, the "Madad" EUTF for Syria and the Refugee Facility for Turkey (Cortinovis, 2019). The creation of these instruments has been motivated by the search for flexibility and the capacity to rapidly intervene in emergency contexts (den Hertog 2016; Cortinovis and Conte, 2018).

However, assessments of EU emergency financial instruments have critically underlined the trade-offs those instruments entail between 'flexibility' and 'speed' on one side and democratic, legal and financial accountability and the EU's budgetary integrity on the other (Carrera et al., 2018). In its 2018 audit of the EUTF for Africa, the European Court of Auditors, found that increased flexibility in programming allowed by that instrument has come at the expense of having a strategy that is focused enough to steer action across the three geographical windows around which the EUTF for Africa is structured (the Sahel and Lake Chad, the Horn of Africa and North of Africa) and supports the measuring and reporting on results. Furthermore, the specific "crises" in the

three regions that the EUTF seeks to address have not been clearly defined in the EUTF programmatic documents. The ECA also found that the comparative advantage of funding projects through the EUTF for Africa compared to already existing EU instruments was not always clearly motivated. According to the ECA, this circumstance resulted in the selection of projects to be founded through the EUTF for Africa that address similar needs to those of other EU-financed activities and risk duplicating other forms of EU support (European Court of Auditors, 2018).

In light of current negotiations on the next MFF 2021-2027, EU institutions should work together to preserve the integrity of the EU budget, envisaging mechanisms within the EU budget to respond to future emergencies, instead of setting up "extra-budget" instruments such as is the case of EUTFs, which pose challenges in terms of democratic oversight and compliance with the principle of inter-institutional balance (Carrera et al. 2018).

Civil society organizations have also firmly stressed how the mobilization of EU resources in the framework of political "agreements" with third countries driven by an overarching containment approach (such as the 2016 EU-Turkey Statement), do not align with a comprehensive right based framework of cooperation and are not conducive to sustainable solutions to complex refugee situations (Cortinovis and Conte, 2018; Concord, 2018; Carrera and Cortinovis, 2019).

The Commission's structure for the new MFF 2021-2027 foresees a major restructuring of the external dimension of the EU

budget by bringing together 12 existing financial instruments into a broad Neighborhood, Development and International Cooperation Instrument (NDICI) with a volume of EUR 89.2 billion (European Commission, 2018a). One of the major changes foreseen by the Commission's proposal to simplify the EU's external spending architecture is the integration of the European Development Fund – currently one of the key financial instruments to provide assistance to African, Caribbean and Pacific Countries – into the EU budget.

Another key aspect of the proposed Regulation is the attempt to ensure flexibility in the provision of EU external funding. The Commission recalls how, as a consequence of the migration and refugee crisis during 2015-2016, problems were encountered to reallocate funds within the instruments under the EU budget as large amounts of funds had been bonded to long-term programs. To address this situation in a structural way, the proposal foresees the introduction of a EUR 4 billion Rapid Response Component with worldwide coverage dedicated to quick response capacity in a number of areas, including strengthening resilience and linking humanitarian and development actions. The Rapid response component would be managed and implemented through simplified procedures, thus allowing for more flexibility and responsiveness. In addition, to further increase the ability of the EU to respond flexibly to unforeseen events, including unexpected migratory pressure, the Commission proposes to create an "emerging challenges and priorities cushion" worth EUR 10 billion.

Preliminary analyses of the Commission proposal stress how the potential gain in

predictability and accountability stemming from the integration of the European Development Fund into the EU budget could be offset by the large amount of unallocated money foreseen by the “flexibility cushion”. ECRE, in particular, stresses the need to clearly specify the criteria and procedures that would trigger the use of the unallocated reserve, taking into consideration factors such as the level of need among refugees and host communities and the potential of EU funding to improve the rights of displaced persons (ECRE, 2018b).

References to the need to address the “root causes of irregular migration” included in the new EU external funding instrument, seems to reflect a narrowly understood and conceptually flawed approach to the complex links between development processes and migration phenomena (Cortinovis and Conte, 2018; Castillejo, 2015; ECRE 2018b). Against the subordination of EU external action to the imperative of containing migration movements towards Europe, research points to the role that migration and mobility channels hold for enabling access to protection and, more broadly, to provide sustainable solutions for refugees and forced migrants (Long 2015). Negotiations among EU actors on the next MFF, should center on increasing the transparency, accountability, efficiency of the EU funding landscape, while ensuring coherence of EU external migration and refugee policy with humanitarian and development principles enshrined in EU Treaties. Furthermore, as reflected in the GCR guiding principles,

the use of funding to support refugees and host communities and provide durable solutions, should go hand in hand with the commitment to open legal pathways for refugees and to ensure access to protection in Europe.

### **Policy priority 3: the role of evidence and data in monitoring the GCR<sup>5</sup>**

The GCR underlines the need to collect and utilize reliable, comparable and timely data as a basis for evidence-based policies. It also envisages the involvement of a broad set of actors – including independent civil society organisations, local communities and refugee organisations – in ensuring monitoring and accountability towards the achievement of the Compacts’ objectives. In line with the commitment included in the Compact (par. 102), UNHCR, in consultation with relevant stakeholders, took a leading role in the process of developing a set of indicators ahead of the first Global Refugee Forum in December 2019.

Stakeholders consulted in the framework of ReSOMA welcomed UNHCR’s efforts as an important step in designing a robust monitoring framework and ensuring accountability towards achieving the Compact’s objectives. They stressed that developing an evidence-based framework for monitoring progress based on a set of common indicators is of paramount importance for ensuring successful implementation in light of the non-binding nature of the Compact. As an example, experience in East Africa over the past years

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<sup>5</sup> This section is based on the outcome of the ReSOMA transnational feedback meeting “Evidence and the global compacts”, Brussels, 29th of April 2019.

underlines the potential of data and evidence in implementing the Comprehensive Refugee Response Framework (CRRF) – as underlined by the experience of the Regional Durable Solutions Secretariat.<sup>6</sup>

Some key lessons from the Sustainable Development Goals (SDG) should be taken into account for the development of GCR indicators. In line with the SDG agenda, the GCR monitoring framework should propose concrete, time-bound and refugee-specific targets to achieve both the SDGs and GCR objectives. The GCR provides a great opportunity to build on some of the progress made under the SDG agenda and fill some of the existing gaps in data collection. To ensure that outcomes for refugees are fully captured by data collected, the GCR monitoring framework should provide guidance on how each country could develop national targets for refugees in the medium term in line with SDG targets set for their own populations. Data collected towards national targets could then be aggregated across all countries to show global progress.

While recognizing the importance to monitor progress of the GCR by means of a set of commonly agreed indicators, consulted stakeholders also reiterated the role of civil society in ensuring independent monitoring and accountability of policies. Civil society and academia (including in the framework of the Global Academic Network on refugees, forced displacement, and statelessness issues envisaged by the GCR) should ensure that relevant issues not covered by the official indica-

tors are addressed by independent monitoring and evaluation, particularly in areas such as access to protection, reception conditions, and refugees' access to social and economic rights in their hosting countries. These are sensitive issues on which member states are reluctant to allow for a thorough monitoring of their policies and legal frameworks.

Monitoring of the GCR should focus on the respect of international and EU human rights standards. It should be taken into consideration in this regard that a number of international and regional monitoring mechanisms are already in place both at the international and regional level to ensure member states' compliance with human rights and international refugee law standards, such as the United Nations Universal Periodic Review (UPR) process, which involves a review of the human rights records of all UN Member States, other Treaty-specific UN human rights bodies and Special Procedures, as well as other monitoring bodies within the context of the Council of Europe. Those monitoring bodies and processes continue to represent indispensable instruments providing robust evidence on states' compliance with human rights and refugee protection, which should be taken into account when assessing the faithful implementation of the GCR.

Consulted stakeholders underlined the need to shift from outputs monitoring towards better assessments of impacts. The current focus on quantitative data should be complemented with at least an equal focus on qualitative and context-specific data to shed light on the impacts of policy

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<sup>6</sup> See <https://regionaldss.org/index.php/who-we-are/about-redss/>

initiatives and implementing measures undertaken in the framework of the Compact or falling within its scope of application. While quantitative data often focus only on a limited number of issues and aspects, which does not allow to link these interventions with actual changes on the ground, increased use of qualitative evidence would allow to expand available understanding of broader societal phenomena related to migration and refugee mobility.

Expanding the network of stakeholders feeding evidence and data on implemented policies would also allow to shed the light on aspects that are not accounted for in currently available evidence. Refugee and migrant community organisations, refugee-led organisations, women migrant and refugee organizations, as well as individual experts with refugee and migrant background should be better involved in relevant policy debates and reform processes on key issues of concern for them and their communities.

#### **Policy priority 4: ensuring consistency between EU policies and the GCR human rights and international protection-based framework**

A cross-cutting issue emerged during the consultation process is the need to ensure compliance with relevant international protection and fundamental rights standards when implementing the GCR. Stakeholders have underlined how some recent policy developments at the EU level stand at odds with the international protection-based framework that underlies the GCR. The process of implementation of the GCR should serve as an opportunity to shed light on gaps and contested issues in exist-

ing migration and asylum policies implemented by the EU and its Member States (Carrera and Cortinovis, 2019).

European states concerned about preventing asylum seekers from arriving and obtaining asylum in their territory have sought to engage third countries to conduct migration management on behalf of the EU and its member states. Recent examples of EU cooperation with third countries inspired by a logic of containment are the 2016 EU-Turkey Statement, the 2017 Memorandum of understanding between Italy-Libya as well a number of informal arrangements covering migration control and readmission concluded with a number of countries in Africa and the Middle East (Carrera and Cortinovis, 2019). Policy initiatives which aim to prevent or restrict mobility of migrants and refugees in the regions of origin, including through the provision of financial incentives to hosting countries in exchange for their efforts in the field of migration management, negatively impact on refugee's access to protection and durable solutions.

In the framework of the reform of the CEAS launched in 2016, the European Commission called for an expanded use of border procedures and for the mandatory use of inadmissibility procedures based on "safe country" concepts (European Commission, 2016b). In September 2018, the Commission also released a proposal for a Recast Return Procedures directive, which includes a mandatory border procedure exclusively applicable to third-country country nationals whose application for international protection has been rejected. The border procedure foresees extended period of detention, reduced time limits for appeal (European Commission, 2018b).

These policy proposals have been met with concern by researchers and civil society organisations, which have underlined how border procedures and other accelerated procedures prevent a thorough assessment of individual asylum claims and thus entail higher risks of breaches of the *non-refoulement* principle. In addition, the proposed border procedure would entail systematic long-term detention of individuals involved (ECRE, 2018c). This approach, however, runs against EU and international law standards, which require that administrative detention or custody for migrants should be used as an exceptional measure of last resort, for the shortest period of time, and only if justified by a legitimate purpose (FRA, 2019).

While instrumental to the containment of applicants for international protection and migrants at the EU external borders, the experience with the hotspots approach implemented in Italy and Greece during the last four years, underlines a number of relevant fundamental rights issues associated with the use of accelerated border procedures. These include

gaps in information provided to applicants, lack of legal assistance, under-identification of vulnerable persons, restricted freedom of movement, quasi detention practices, and degrading reception conditions (ECRE, 2016; Danish Refugee Council, 2019).

More broadly, measures that aim at restricting access to asylum in Europe and deflecting protection obligations to third countries, stands in contradiction with the responsibility-sharing rationale of the GCR and also with the protection-based principles on which the CEAS is based (Cortinovis and Carrera, 2019). Civil society actors and the research community have a crucial role to play in monitoring and assessing the role and contribution of the EU and its member states in ways that are loyal not only to the GCR principles and objectives, but also to their international human rights and refugee law obligations, as well as the fundamental rights principles laid down in the EU founding Treaties and Member State constitutional traditions.

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