



DISCUSSION
BRIEF

September **2019**

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What is the EU's role in implementation of the Global Compact for Migration?

MIGRATION





This project has received funding from the European Union's Horizon 2020 research and innovation program under the grant agreement **770730**



The **ReSOMA Discussion Policy Briefs** aim to address key topics of the European migration and integration debate in a timely manner. They bring together the expertise of stakeholder organisations and academic research institutes to identify policy trends, along with unmet needs that merit higher priority. Representing the second phase of the annual ReSOMA dialogue cycle, nine Discussion Briefs were produced covering the following topics:

- Secondary movements within the EU
- Implementation of the Global Compacts on Refugees (GCR)
- SAR and Dublin: Ad hoc responses to refusals to disembarkation
- Funding a long-term comprehensive approach to integration at the local level
- Public opinion on migrants: the effect of information and disinformation about EU policies
- Integration outcomes of recent sponsorship and humanitarian visa arrivals
- Strategic litigation of criminalisation cases
- Implementation of the Global Compacts on Migration (GCM)
- The increasing use of detention

Under these nine topics, ReSOMA Discussion Briefs capture the main issues and controversies in the debate as well as the potential impacts of the policies adopted. They have been written under the supervision of Sergio Carrera (CEPS/EUI) and Thomas Huddleston (MPG). Based on the Discussion Briefs, other ReSOMA briefs will highlight the most effective policy responses (phase 2), challenge perceived policy dilemmas and offer alternatives (phase 3).

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LINGUISTIC VERSION

Original: EN

Manuscript completed in September 2019

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Discussion Policy Brief

What is the EU's role in implementation of the Global Compact for Migration?

By Lina Vosyliūtė, [Centre for European Policy Studies](#)

INTRODUCTION

In December 2018 in Morocco, representatives of 152 countries around the world, including 19 EU Member States, have signed The Global Compact for Safe, Orderly and Regular Migration (known as the Global Compact for Migration - GCM) (UN General Assembly 2018). A number of controversies led three EU Member States to vote against the GCM (Czech Republic, Hungary and Poland), five more (Austria, Bulgaria, Italy, Latvia and Romania) to abstain and Slovakia - not to attend at all the conference.

This discussion brief elaborates how the controversies surrounding the GCM have emerged and what impacts it had. The paper asserts that the decision of some EU Member States to leave the GCM, has weakened EU's institutional position in the international arena and, in particular, the principle of 'sincere cooperation' in EU's external action (Melin 2019; McAdam 2018). However, the fact that 19 EU Member States have signed the GCM, shows that despite controversies, there is a political commitment to approve policies at EU

level that aim at better facilitating rather than preventing migration, in line with Qualitative Majority Vote at the Council (Carrera 2019; Crepeau 2018).

At the moment EU has no of formal role within the implementation and the follow-up of the GCM, in practice EU and its agencies are already contributing to achievement of many of the GCM objectives in the areas of development cooperation, non-discrimination, irregular migration and border controls, legal and labour migration, etc. (European Economic and Social Committee 2019; European Commission 2018). This brief takes an opportunity to give a quick overview into EU's role in creating "availability and flexibility of pathways for regular migration" and ways in which EU's legal migration acquis is in line with and in which ways falling short of this GCM objective. Instead of conclusions, it leaves some questions open for further elaboration in the subsequent ReSOMA policy options brief on GCM.



1. THE GCM AS AN UNPRECEDENTED VICTORY FOR MULTILATERALISM

The origins of the Global Compact for Migration can be traced back to the UN Sustainable Development Agenda agreed already in 2015 and the New York Declaration for Refugees and Migrants agreed in 2016. The New York Declaration has foreseen to agree on two separate Global Compacts to respond to “the growing global phenomenon of large movements of refugees and migrants” (UN General Assembly 2016: para. 2). The New York conference was convoked to search for international solutions in the context the large numbers of refugees and other migrants reaching the borders of Europe that is often referred as the ‘European humanitarian refugee crisis’ (Carrera 2019; Carrera et al. 2019). With the New York declaration, the UN has started negotiations towards concluding two separate compacts – one for refugees and another one – for migrants.

In December 2018 in Morocco, representatives of 152 countries around the world, including 19 EU Member States, have signed The Global Compact for Safe, Orderly and Regular Migration (known as the Global Compact for Migration - GCM) (UN General Assembly 2018). The signing of the GCM has been celebrated by many academics and civil society as ‘unprecedented victory of multilateralism’ since it meant that, for the first time, a truly Global framework for cooperation has been agreed in the area of migration (Donato and Ferris 2019) or ‘beginning for the global regulation of migration’ (McAdam 2018: 573). Although the GCM has not created new rights, nor it is a legally binding document, it has been considered as a political re-commitment to internationally

agreed human rights and labour rights standards (Crepeau 2018; Gatti 2018; McAdam 2018; Peters 2018; Allison et al. 2019; Carrera 2019).

In comparison with the Global Compact on Refugees where there is an internationally agreed and binding legal framework, the Global Governance on Migration has been “patchwork and weak” (Ferris and Donato 2019). While there have been earlier efforts to cooperate internationally on the issue of migration such as via Global Migration and Development Forums (GMDFs), via Global Migration Group among the relevant agencies at the UN level, international community still had to agree on what the phenomenon of migration entails and how it should be managed, in line with their earlier commitments under international human rights and international labour law, and even – who should lead the process?

The International Labour Organisation (ILO) has put the first stepping stones in preventing the labour rights abuses and severe exploitation of migrant workers, namely with the Migration for Employment Convention (Revised) No. 97 of 1949 and the Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975. The ILO has also been leading the process of drafting the International Convention for the Protection of the Rights of All Migrant Workers and their Family Members (ICRMW) (UN General Assembly 1990). It constituted a first attempt to create a legally binding instrument in the area of international migration that has “extended well beyond prior conventions” and for the first time articulated a set of human



rights applicable to all migrants (Donato and Ferris 2019: 55). In addition, the ICRMW was coupled with the oversight mechanism – Committee on Migrant Workers. Such a robust international framework has failed in creating international consensus, while countries of origin have welcomed and ratified the ICRMW the countries of destination saw it as too ambitious, and refrained from signing and/or ratifying it.

One of the most ambitious elements of the ICRMW has been the commitment to ensure rights of migrant workers equivalent to those of national workers, “without discrimination on the migration status”, meaning that also rights of undocumented migrant workers would need to be respected. Although, similar principles can be traced back in the EU Charter of Fundamental Rights and the EU Treaties, that status of worker prevails to the status of non-national and therefore all workers should be granted equivalent protection of their labour rights) (Carrera et al. 2019a), the ICRMW remains ignored by all the current EU MS and the major countries of destination. To date, the ICRMW is the least ratified among the nine main UN International Covenants and thus it was not even quoted within the GCM.

In contrast, the drafting of the GCR has been rooted in the within the well-developed international framework where the all current EU MS had readily accepted obligations under international humanitarian law, including Geneva Convention 1951 and its protocols. It was also guided by the readily established role of the UNHCR that is also supposed to be the key ‘catalyst’ for the implementation (Carrera

and Cortinovis 2019a; Ferris and Donato 2019).

In the area of migration, some forms of international cooperation were ongoing through various consultative forums, like the Global Migration and Development Forum (GMDF) or cooperation facilitated through the network of the 21 UN bodies working on migration – Global Migration Group (GMG) (Ferris and Donato 2019). However, there was still no globally agreed approach on migration, and therefore GCM is an important victory of the multilateralism in this sensitive policy area. GCM establishes an unprecedented global “cooperative framework” on migration that “upholds the sovereignty of States and their obligations under international law” (GCM, Preamble 7).

This context can partly explain why the GCM has started as a state-led process, where the Switzerland and Mexico have been in the driving seat during negotiations. Although, it has been foreseen that the IOM will be the ‘catalyst’ for implementation of the GCM and in particular in its International Migration Review Forum. The artificial the divisions between the GCR and GCM has been noted among some authors, as also opportunity to resolve the division of work between the UNHCR on the one hand and the IOM on the other (Ferris and Donato 2019; Allison et al 2019).

The GCM text has been seen as ‘ambitious’, however at the same time it was not intended to be legally binding document (Allison et al. 2019; Carrera et al. 2018a; Gatti 2018; Peters 2018). Nevertheless, the GCM has been an important step in the area of Global Migration Governance



'the GCM for the first time set out a comprehensive framework for migration' (Ferris and Donato 2019:119). The GCM proposes that such international cooperation on migration needs to be based on a "common understanding, shared responsibilities and unity of purpose regarding migration, making it work for all" (GCM, Preamble 9). Thus, GCM proposes a new normative approach and narrative on 'migration'. GCM stresses that national borders should be managed in line with international and human rights law. Thus, once again stressing that human rights are "the precondition for the deliberative politics and for legitimization of the rule-of-law-based power" (Carrera et al. 2018a: 8). The GCM also highlights interdependencies between countries of origin, transit and destination and is highlighting that common approach is needed, as "no State can address the phenomenon alone".

The GCM comprehensive framework is: "comprised of 23 objectives, implementation as well as follow-up and review. Each of objectives contains a commitment, followed by a range of actions, considered to be relevant policy instruments and best practices" (GCM para. 16). Indeed, the text of the GCM does not prescribe or oblige countries to take certain actions, but rather invites "to draw" from these commitments. These objectives vary from collection of accurate and desegregated data (objective 1), promoting evidence-based discourse on migration (17), to saving lives (objective 8) or recognizing migrants' skills, qualifications and competences (objective 18), to managing borders (objective 11) or facilitating return operations and reintegration (21) in line of readily existing human rights standards.

The GCM does not constitute a legally binding agreement and has been criticized on this point by a number of civil society organisations (Ferris and Donato 2019; Allison et al. 2019). However, in light of the lessons of the ICRMW, and subsequent reactions among some governments even to a non-binding instruments, it seems that there would have been very little buy-in among the UN State Parties if the GCM would have been the binding document. ReSOMA Ask the Expert interviews revealed that "the non-binding nature of the Compact seems to be one the most important obstacles to its further implementation in practice" (Lesinska 2019b).

Although, the GCM was designed as a rather as a politically but not legally binding instrument (Malin 2019), the disinformation campaign across the EU has raised a controversy on whether the document creates new legal obligations for the governments signing it and, in particular, the 'right to migration' (Carrera et al. 2018). The document has been drawn on pre-existing international human rights standards that are applicable in the area of migration, so it was seen as rather re-commitment to those standards (Allison et al. 2019; Crepeau 2018; Ferris and Donato 2019; Carrera et al. 2018a; Carrera and Cortinovis 2019a; Gatti 2018; Lesinska 2019a; Peters 2018).

While it does not create the new rights, the former UN Special Rapporteur on Migrants' Rights, Francois Crepeau, saw a potential of GCM to develop "from a normative framework to a binding document" like it happened with the Universal Declaration of Human Rights at the UN level, or Fundamental Rights Charter



within the EU (Lesinska 2019b). It could potentially take decades for this to happen.

Among some of the key innovations, the GCM has reinstated the principle of 'fire-wall' in its objective 15 to provide access to basic services to all migrants. In addition, although watered down, there is a provision calling for regularisation of 'non-removable' migrants. The objective 7 on

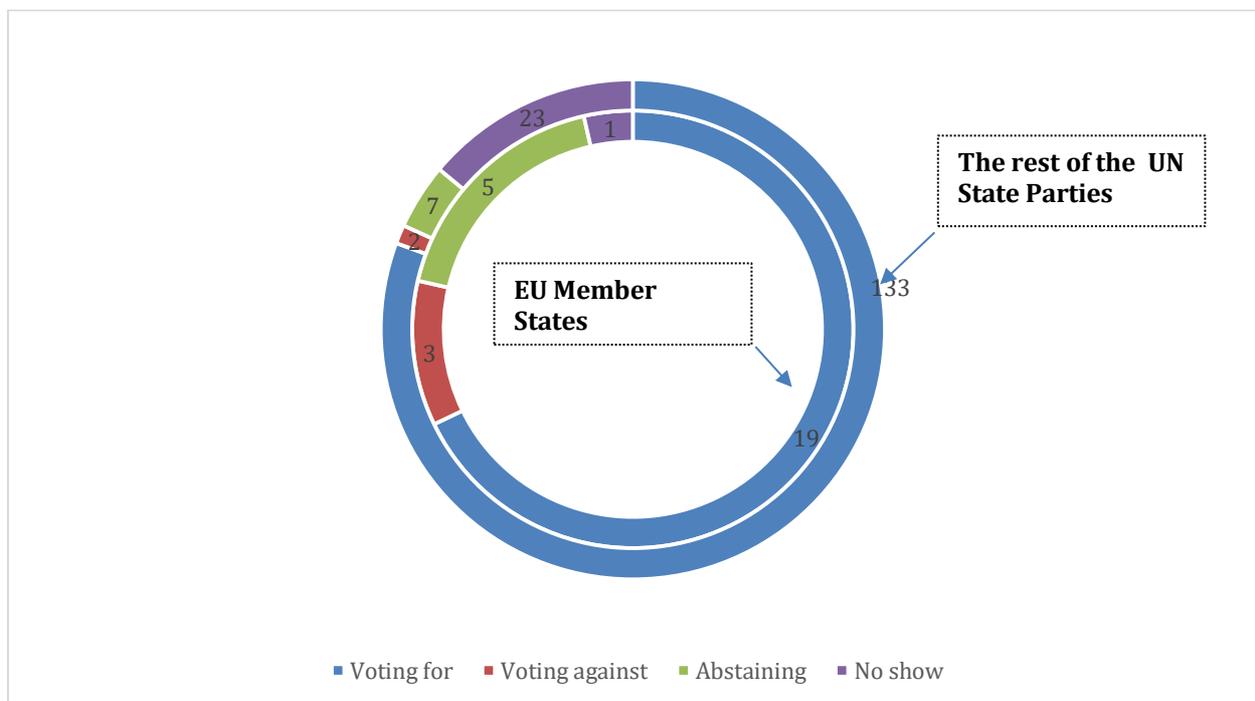
'addressing and reducing vulnerabilities in migration' calls governments (GCM, para. 23 (i)) "to build on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status." Also a number of principles has been reiterated, such as 'best interest of the child' or 'detention as a last resort'.

2. THE VOTE IN MARRAKECH: DIVISIONS AMONG AND WITHIN EU MEMBER STATES

In Marrakech on 10-11 December, 152 countries have approved the GCM, including 19 EU Member States. While majority have signed without any remarks, Denmark, Lithuania, the Netherlands, Malta,

and the UK signed the Compact, however highlighting in their explanatory memorandums the non-binding legal nature of the GCM (Melin 2019; Carrera et al 2018).

Figure 1. Comparison of the vote of the EU Member States and EEA/ Schengen zone countries (inner circle) and the rest of the UN State Parties (outside circle)



Source: Author, 2019 on the basis of the UN official data.



Only five countries around the Globe have voted against the final text of the GCM, namely Czech Republic, Hungary, Poland and two countries whose state-building was based on migration, such the United States and Israel.

Only 12 countries around the Globe have abstained, including five EU Member States: Austria, Bulgaria, Italy, Latvia, Romania Remaining seven where coming from: 2 European Economic Area countries – Switzerland and Lichtenstein; 2 - North Africa (Algeria and Libya); 1 in Asia – Singapore; 1 in Latin America – Chile and also a traditional migration country - Australia.

Further 24 countries have not attended the conference, including one EU Member State – Slovakia. While Marrakech conference showed the old divisions between the global North and global South, differently from ICRMW, eight of in total 24 that have not voted/ have not showed up in the conference were in the UN list of the least developed countries in the world, namely Afghanistan, Benin, Guinea, Kiribati, Sao Tome/Principe, Somalia, Timor-Leste, Vanuatu. The rest were either small island nations with high income or low/middle income countries.

If abstentions in Figure 1 are ignored, the EU seems as a quite divided region in comparison with the rest of the UN State Parties (see Figure 1 above). This can be explained also multiple divides among and within the EU Member States – normative, partisan/ inter-ministerial and inter-generational (Crepeau 2018; Carrera et al 2018; Melin 2019; Allison et al. 2019; Huddleston and Sharif 2019).

The vote in Marrakech also showcased the normative clash between EU Member States seeing migration as a 'threat' or 'danger' and those seeing migration and mobility as an "opportunity" for innovations, economic growth, for demographic change, for development (Crepeau 2018; McAdam 2018; Carrera et al. 2018; Huddleston and Sharif 2019). The withdrawals from the GCM negotiations made oppositions within the Member States more visible, between ministries/or functions falling under leadership different parties and also between the Ministries of Foreign Affairs and Ministries of Interior, as it happened in Austria, Belgium, Slovakia, Italy and Germany (Carrera et al. 2018; Melin 2019; Gatti 2018).

In addition, there is also a generational issue. For example, Crepeau (2018:650) argues that:

"ageing baby boomers [in the global North] perceive migration as a threat to their accumulated nest egg and fail to understand that diversity and mobility are already part of the future of their societies".

The further paragraph shows how the abovementioned divisions within society have been exploited and artificially manipulated in the last months before the Marrakech conference.

The final text of GCM was agreed already in July, 2018 after two years long process where Ministries of Foreign Affairs and also the EU delegation to the UN have been carefully ensuring that text is in line with the national and EU priorities. However, in the last months before the adoption of the GCM became a subject to various controversies, including to the disinformation



campaign “led by right-wing populists and right-wing extremists” (Institute for Strategic Dialogue 2019 in Cerulus and Schaart 2019):

“While the agreement was barely talked about on social media until mid-September, far-right and right-wing populist influencers discovered the issue in mid-September and began spreading large-scale distorted interpretations and misinformation about the U.N. migration pact [GCM].”

The controversy has been created by producing tweets, posts on YouTube and Facebook, that were distorting the content of the GCM (Cerulus and Schaart 2019). For example, the key messages aimed to convince audience that the GCM creates ‘a right to migrate’ thus countries will lose control over their borders and their sovereignty will be challenged. Many of these messages were coupled with racial and xenophobic slurs and conspiracy theories promoting anti-migration attitudes. The researchers found that “right-wing populists and conspiracy theorists” were responsible for about half of the most popular Youtube videos about the GCM (Institute for Strategic Dialogue 2019 in Cerulus and Schaart 2019). The research confirmed that the Austrian far-right has been in the driving seat of this campaign of ‘trolling the GCM” (Institute for Strategic Dialogue 2019 in Cerulus and Schaart 2019).

The Marrakech summit indeed has culminated in some of the EU governments to leaving the GCM, where most of the myths and “contradictions in terms” could have been dispelled by simply reading the text of GCM (Carrera et al. 2018). The Institute

for Strategic Dialogue (ISD) thus concluded that “right-wing extremist and right-wing populist actors played a disproportionate role” in the EU Member States leaving the GCM. These developments should be assessed in an actual context where majority of people are positive about migration. Earlier ReSOMA brief has concluded that despite various disinformation campaigns “public opinion remains relatively positive, stable and hard-to-change in most parts of Europe, even among people who lived near EU hotspots, refugee routes and reception centres” (Huddleston and Sharif 2019: 20).

The controversies created around GCM is yet one of the examples of the manipulation of public opinion so that it impacts outcomes of the democratic processes (Bayer et al. 2019). For example, similar disinformation campaigns using distorted images of ‘surge’ ‘invasion’ and other xenophobic messages were also employed in the run-up to the European Parliament elections in Spain, Germany, Austria, Italy, France that aimed to create or to exploit existing divisions within the society (Institute for Strategic Dialogue 2019). This further calls into question the role of disinformation and propaganda on the very functioning Rule of Law, democracy and fundamental rights, that is outside the scope of this paper (Bayer et al. 2019).

In this case, ‘unity of EU’s’ voice in its external action has been challenged and in particular ‘the principle of sincere cooperation’ (Melin 2019). The first one to contradict EU’s position was Orban-led right wing government in Hungary in March, 2018 came as no surprise, given their anti-migration rhetoric, non-compliance with the EU principles of equal solidarity and falling



out of the EU's founding values (Carrera et al. 2018; Carrera 2019; Melin 2019).

The domino effect started with Austria declaring to leave the compact in October, 2018, at that time also holding Presidency of the EU, and previously leading EU's agenda on signing the GCM. As it was mentioned above, the Austrian far-right activists and 'political influencers' have been very effective in manipulating the public opinion on the GCM. It enabled the openly anti-migration Austrian chancellor Sebastian Kruz to withdraw from the GCM (Institute for Strategic Dialogue 2019 in Cerulus and Schaaart 2019). By November, 2018 Bulgaria, Czech Republic, Slovakia, Poland followed, also Italy, Germany and even Switzerland started to openly hesitate whether to sign the GCM (Melin 2019).

The case of Switzerland remains particularly illustrative as Switzerland together with Mexico has been leading the process of negotiations (Carrera et al. 2018; Gatti 2018; Melin 2019). The Swiss President Alain Berset "gave the pact his personal blessing" and so did the Swiss Federal Council agreeing that GCM "guiding principles and objectives correspond fully with Switzerland's policy on migration" (Bradley 2018). However, from October onwards opposition has been built "against mounting resistance from politicians from centre and rightwing parties in Switzerland, the executive body has been reluctant to throw its full support behind the deal" (Bradley 2018). Swiss Ministry of Foreign affairs decided to consult parliament on the document, this led to the abstention of Switzerland in Marrakech. Eventually, Swiss Parliament has approved the GCM. In Italy, Minister of Interior, Matteo Salvini also

has called for the consultation with the National Parliament, as a strategy to block the ratification of the GCM in (Cerulus and Schaaart 2019).

Similar controversy arose in Slovakia, where the Minister of Foreign Affairs, Miroslav Lajcak, who was at that time also acting as President of the UN General Assembly, was strongly supporting the GCM (Melin 2019). However, the opposition in the government subjected the GCM, non-binding document, for parliamentary support, where it was not granted and thus Slovak Representation decided not to attend the conference.

This disinformation campaign has managed, in some EU Member States, to re-label the GCM from the solution to the situation of 'crisis' to yet another issue of contentions. Even the internal legal note from the European Commission's legal service, explaining the duties arising from the EU Treaties, namely for the EU's 'principle of loyal and sincere cooperation' in development cooperation in international foras (European Commission 2019), itself became a subject for the subsequent disinformation campaign. European Commission in this instance was shown as going against the sovereign right of the states to decide how they frame and deal with the issue of migration (FactCheckEU 2019).

The academics note, that precisely, globally agreed normative understanding of migration not solely as a challenge, but also as an opportunity has led some governments, and, in particular, the Ministries of Interior to rebel (Crepeau 2018; Carrera et al. 2018; Gatti 2018). The objective 17 of the GCM that called for fighting xenopho-



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bia and promoting evidence-based discourse on migration. It aimed to counter the strategies where politicians have built their political capital on anti-migrant sentiments, thus precisely such politicians and movements aimed to sabotage the GCM process. The far-right parties and populist

politicians have been basing their arguments against the GCM as it will open the doors for irregular migration. Academia has asserted, that by refusing to cooperate internationally, quite conversely such politicians were 'calling for more irregular, unsafe and unregulated migration' (Carrera et al. 2018a).

3. GCM VOTE AS A LOST OPPORTUNITY FOR 'UNIFIED EU'S APPROACH' IN THE INTERNATIONAL ARENA

The EU Delegation in the New York has been active negotiator since 2016, with and on behalf of the EU Member States as it coordinated "statements through the EU delegations in the consultative and stock-taking phase" (European Commission 2018:1). The European Commission, initially planned to sign the GCM on behalf of the Union and thus requested the Council to give such authorizations in the area of legal migration (under Article 79 of TEU) and in the area of development cooperation (under Article 209 of the TEU (European Commission 2018 a and b; Melin 2019). The Commission has reiterated, that the GCM is furthering the EU's commitments to achieve the internationally agreed Sustainable Development Goals (SDGs) that have been endorsed by the Council of the EU in the New Consensus of the Development Cooperation (European Commission 2018 and 2019).

The Commission argued that the later consensus constituted also a unified EU's approach to sign the GCM. The legal analysis (Melin 2019) showed that the preceding documents while indicating the support for the GCM, lacked the precision

as to what the Union position was, to constitute the basis on which commission could negotiate. This analysis revealed that for non-binding documents EU actually has no precise procedure that needs to be followed, namely, whether Commission needs authorization from the Council and at which stage of the procedure?

In its explanatory memorandum Commission has argued that implementation of GCM is closely linked with Sustainable Development Goals (SDGs) that EU is promoting externally and thus falls within the competence of development cooperation policy under Article 208 TFEU. Explanatory memorandum has quoted three legal bases for the Council to approve Commission's proposed decisions are based on Article 16 TEU (on Foreign Affairs Council that "shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent"), in conjunction with Articles 79 and 209 TFEU. The abovementioned controversies led to the Council of the EU to ignore the Commission's request for authorization approve the GCM outcome on behalf of the EU. Later in 2019 Commission



has withdrawn this proposal (European Commission 2019c).

An internal legal note has highlighted, that principle of 'sincere cooperation' in external action entails "duties of action and abstention". The Article 210 TFEU further elaborates a meaning of sincere cooperation "for the specific purpose of development cooperation" calling for a common position at the international forums, when matters are related to the international development cooperation. This principle becomes important for several reasons. Firstly, the EU as a legal entity could not negotiate its positions on the GCM, since it is not UN State Party, and was invited with observer status. Secondly, under the EU legal framework, various aspects of the GCM fall within 'parallel competences' where EU and Member States could have different opinions, i.e. on employment, social coordination and others to 'exclusive competences' of the EU, such as for example EU Return Policies, Legal Migration directives, where the Member States could not depart from their commitments under the EU's law. Commission has argued, that because GCM was encompassing such a wide array of issues falling within the exclusive EU competence, EU-level coordination was needed (European Commission 2019, paras. 48-9).

The outcome of three EU Member States contradicting official position, and five more – abstaining not only violated 'principle of unity in the international representation of the Union', but also weakened the EU's negotiating power and credibility in the international arena in the field of migration and, possibly, beyond (European Commission 2019). The European Commission (2019) has highlighted in its proposal for a Council decision to authorize the Commission to approve the final draft of the GCM on behalf of the Union, as it:

"largely reflects EU acquis and policy, and reflects the Union's objective to promote multilateral solutions to common problems, in particular in the framework of the United Nations."

If this is the case, the meaning of nine Member States contradicting the EU position, is deeper than "unity of EU representation". This conversely, means that EU Member States voting against and abstaining from the GCM are signaling their departure from internationally agreed human rights and international labour standards but also from their commitments to the EU legal principles, such as non-discrimination, equal solidarity, loyal and sincere cooperation, respect to fundamental rights.



4. GCM VOTE AS A POSSIBILITY FOR EU TO BUILD A COMPREHENSIVE AND LONG-TERM STRATEGY ON MIGRATION

Despite the lack of unanimity discussed above, the GCM vote gives a new impetus to the people-centred and human rights based EU policy making in the area of migration. If the GCM votes reflect genuine positions of the 19 EU Member states, then there is a one more reason to celebrate the GCM as a victory – if Quality Majority Vote, and not unanimous consensus keeps being applied at EU level decision making. The Figure 2 converts EU Member States votes in the Marrakech conference into a calculation of the Quality Majority Vote in the Council in the EU.

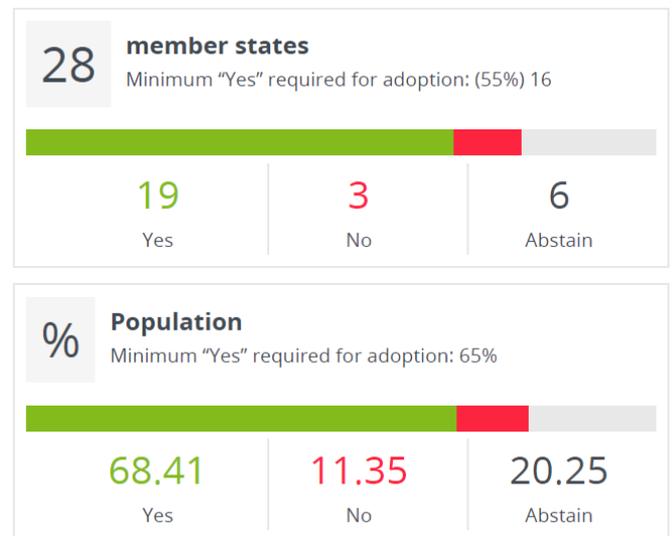
In this way, GCM has presents EU and its Member States a venue to create a long term and comprehensive EU migration strategy that is in line with international human rights law, humanitarian law and labour law obligations and responsive to the global realities, because 'no country' and most likely, no region alone can deal with the migration challenges and opportunities.

The European Commission in it's draft proposal for Council of the EU authorising to approve GCM "in the field of development cooperation" made an overstatement, at best, that EU already has created such strategy:

“Over the past years, the Union has built a comprehensive long-term strategy on migration covering all aspects of this phenomenon, from **saving lives**, offering **protection** to those in need, **addressing the root causes** of irregular migration and forced displacement as well as providing support to forcibly displaced populations

around the world. This strategy is built on partnership and close cooperation with partner countries and organisations such as the African Union, the United Nations and its Agencies. This comprehensive approach should be promoted globally.”

Figure 2. The outcome of the GCM in light of Qualitative Majority Vote rule at the Council*



Source: QMV calculator on the basis of the UN official data 2019.

*Slovakia that has not attended the conference counted as 'abstaining'.

Indeed, in the area of migration there have been major developments taking place since 1999 Tampere Conclusions. EU has gained competences in various migration related areas – from developing legal migration acquis, Schengen Borders Code, Visa Code, Common European Asylum System. Despite this, academia argues that EU is still far away from having a 'long term strategy', when we speak about migration (Crepeau 2018; Carrera



2019; Carrera et al 2019a; Allison et al. 2019). For example, Crepeau (2018: 651) is highlighting that unlike in the other areas, the strategic planning in the area of migration management is lacking: "The timeline of these policies always seems to be now – 'stopping migration now', 'sending back migrants now', 'bringing IT technicians now'."

One of the key goals of the GCM is to facilitate 'safe, orderly and regular migration'. In particular, the GCM its Objective 5 has called countries around the globe 'To enhance availability and flexibility of pathways for regular migration'. The progress in the EU policy-making in the area of legal migration since, the so called European Humanitarian Refugee Crisis, has been very limited (Carrera 2019; Carrera et al. 2019a). For example, the Member States at the Council of the EU have blocked much needed revision of the EU Blue Card, that aimed at improving EU's attractiveness for the highly skilled third country nationals, also simplifying some of administrative procedures, making entry and intra-EU mobility easier for such category of workers (Carrera et al 2019 a). The previous research found that as of 2016 out of all Blue Card applications, only 2.2% were issued to the nationals of sub-Saharan Africa. Once again showing that cumulative effects of EU Visa policies, bilateral agreements, qualification recognition procedures still make regular migration into the EU very challenging, even among the category of highly qualified and/or highly skilled.

Even more shortcomings have been identified for the EU legal migration acquis aimed at middle and low-skilled migration. For example, Seasonal Workers Directive

prescribe that the working and living conditions of seasonal workers may fall short of international human rights and labour rights standards. Seasonal workers, depending on the transposition, by the Member State currently have only one opportunity for changing employer or sector. However, the barriers in practice, and the risk of falling into irregularity makes it virtually not possible for the many of seasonal workers to use that possibility provided in law. Also seasonal workers have no right to bring their family members into the EU, what now stands in contrast with GCM para. 21 (i) where state parties agreed to 'facilitate access to procedures for family reunification for migrants at all skills levels.'

In addition, a number of third country nationals are not covered by any of the 'first entry directives' and in particular in those sectors, where predominantly undocumented or undeclared migrant workers are being exploited. For example, there are no scheme at the EU level to admit migrant domestic or other care workers, that due created precarity sometimes found themselves into situations of labour exploitation, forced labour and servitude. The previous study has called for a binding immigration code that is horizontally applicable to the all categories of third country nationals (Carrera et al. 2019 a). However, while the GCM calls for new pathways. Some academics considered as a shortcoming not explicitly mentioning the responsibilities of these sectors. For example, Francois Crepeau (2018) saw this as a 'blindspots left in the GCM' (Crepeau 2018):

"[the GCM] does not mention that destination countries must reduce their underground labour markets, which acts as a



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major pull factor for undocumented migration" and that it has led to "delocalization of labour conditions from the global South to the global North" in the sectors that could not be delocalized, such as "agriculture, care, construction, extraction, fisheries and hospitality."

In addition, there is a lack of legal pathways for those escaping war and violence. The policy making in the area of Common European Asylum System has experienced deeper the 'policy paralysis'—the insistence on the consensus as opposed to the QMV has made it impossible to move ahead with the asylum package. Also, currently the proposal on humanitarian visas is pending, that could be seen as

one of the ways to contribute to the objective 5.

Several other EU policies enacted in a 'crisis mode' stand at odds with the objectives of the GCM, such as 'ad hoc disembarkation arrangements' with the objective 8 "to save lives and establish coordinated international efforts on missing migrants". The currently proposed Returns Recast directive with the objective¹³ "to use migration detention only as a measure of last resort". Thus, question arises how the tensions between the GCM objectives undertaken by 19 EU Member States and ongoing or newly undertaken EU level legislation, policies and operational responses can be resolved?

CONCLUSION: WHAT IMPACTS OF THE GCM IN THE EU POLICY MAKING IN THE AREA OF MIGRATION AND BORDERS?

Twenty years after the Tampere Council, EU has developed an exclusive competences on the multiple migration management related issues, including the legal migration directives, border control procedures, various tools aiming at addressing irregular migration, including anti-migrant smuggling, returns, etc. Even when the EU does not have an exclusive competence, EU institutions and its agencies are increasingly getting involved in various internal and external migration-management policies and practices that are covered by the objectives of the GCM, from search and rescue to screening and vulnerability assessment procedures at hotspots. In addition, EU has been providing fora and funding to enable EU Member States' (MS) cooperation with third countries as to address the 'root causes' – such as via Trust

Fund for Africa, Madad Fund, Facility for Refugees in Turkey and etc.

The EU delegation has been actively calling for the global solution for the refugee and migration crises. Thus after the New York Declaration in 2016 it has actively participated in the consultations as to ensure that drafting of the GCM, reflects EU policies and priorities. European Commission claimed that the final draft of the GCM of July 2018, was in line with EU's objectives, so did 27 EU Member States (with exception of Hungary that departed already in March).

EU has not found one voice to speak at the UN level, with three EU Member States, namely, Czech Republic, Hungary, and



Poland, voting against and five more abstaining, and Slovakia not attending the conference at all. On the one hand, the controversy around the GCM has showed how democratic processes can be exploited by a small interest groups that has prevented 'unified EU approach'. On the other hand, the fact that 19 EU Member States have politically re-committed to their obligations under international human rights, humanitarian and labour law, presents an opportunity for creating a 'long-term and comprehensive EU legal migration strategy', but only if the EU qualitative majority vote is being actively used in the Council.

In the last months before the Marrakech summit "populists and far right activists" have managed to create panic around the GCM by manipulating public opinion and exploiting the pre-existing divisions in the society along the party lines, generational divides (Huddleston and Sharif 2019;). It also fueled 'right' vs 'left' party politics at national level, and in particular, reflected the diverging objectives between the Ministries of Foreign Affairs and Ministries of Interior, that have led certain Ministers to depart – in Belgium it was Minister of Interior who had to give up, while in Slovakia – Minister of Foreign Affairs was threatening to resign. The EU Delegation to the UN and a number of academics have warned, essentially, this controversy has weakened EU's role on migration internationally (European Commission 2019; Carrera et al. 2018; Gatti 2018; Melin 2019; Ferris and Donato 2019; Allison et al. 2019).

In total 152 countries have signed the GCM, showing the global consensus that

'no state' alone can deal with the phenomenon, that there is a common understanding on migration and that a global cooperation framework is needed. It has now to be implemented both internally within the majority of the EU Member States and externally - with majority of EU's Global partners. The divisions inside the EU raises several questions to be answered by the new EU legislature on defining what will be the EU's role in implementing the GCM:

- Will EU use GCM as an opportunity come up with a long term and comprehensive strategy in the area of migration? Or will the EU continue to search for consensus subjecting its policies to a lowest common denominator?
- Which Directorates General in the Commission, EU agencies and supervisory authorities could play a role in the implementation and oversight of the Member States implementing the GCM?
- How EU can leverage is multi-stakeholder fora, policy tools and funding to promote the objectives of the GCM?
- What should be the role of EU justice and home affairs agencies that are 'supporting the Member States'? What to do when some MS are engaging in practices that are departing from the GCM and EU's legal framework?
- And finally, how EU level institutions and agencies could be held accountable for implementing the GCM?



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This project has received funding from the European Union's Horizon 2020 research and innovation program under the grant agreement **770730**



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ReSOMA - Research Social Platform on Migration and Asylum

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