



POLICY OPTION  
BRIEF

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MIGRATION

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



**ReSOMA** identifies the most pressing topics and needs relating to the migration, asylum and integration debate. Building on the identification of pivotal topics and controversies in the Discussion Policy Briefs, **ReSOMA Policy Option Briefs** put forward the policy alternatives that can fill the key gaps at EU/national level and map their support among stakeholders and researchers. In addition, they spell out which evidence is used by the advocates of these various solutions to argue for their effectiveness.

Under nine different topics, ReSOMA Policy Option Briefs capture available evidences and new analysis of the policy alternatives. They take stock of existing literature of policy solutions on asylum, migration and integration. They have been written under the supervision of Sergio Carrera (CEPS/EUI). Based on the Policy Option Briefs, other ReSOMA briefs will outline scenarios for reform paths in the asylum, migration and integration areas in line with realities on the ground, the rule of law and human rights.

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Policy Option Brief

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

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## INTRODUCTION

The initial ReSOMA Discussion Brief on Global Compact on Migration (Vosyliūtė 2019 b) has shed the light on opportunities and challenges for the EU in this policy area. In total, 152 countries around the Globe and among them – 19 EU Member States have voted for the Resolution adopting the GCM at the UN General Assembly (UN GA 2018).

The wide acceptance of GCM shows that there is a global consensus that 'no state' alone can deal with the phenomenon of migration. The GCM also provided a common understanding, shared values and objectives on which a global cooperation framework is based. It entails 'human rights based' and 'people-centred' approach to migration management or 'placing human rights at the heart' (Appap 2019; Ferris and Donato 2019; Melin 2019; Crepeau 2018; McAdam 2018; Gatti 2018; Peters 2018; Guild and Grant 2017).

The European Commission (2018) has also stressed that the GCM "largely reflects EU *acquis* and policy, and reflects the Union's objective to promote multilateral solutions to common problems". Nevertheless, three EU Member States voted against the GCM, five more abstained and one more have not participated in the final conference in Marrakech. The previous brief has raised the question, whether conversely these Member States are not departing from their own commitments under the current "EU *acquis* and policy" (Vosyliūtė 2019 b). The initial brief also elaborated that divisions within and among the EU Member States, will not prevent furthering EU action in the area of migration and development cooperation, if qualitative majority vote is being applied consistently.

In any case the GCM has now to be implemented both internally within the majority of the EU Member States and externally – with the EU's partners in the immediate EU's neighbourhood and elsewhere in the world. The current Policy Options brief elaborates on three potential options with a different level of ambition, focusing on opportunities in the area of legal migration. They are reflecting the GCM objectives 5 and 6 in greater detail. This Policy Options brief relies on research conducted for the EP LIBE Committee on the "Cost of Non-Europe in the Area of Legal Migration" (Carrera et al. 2019a) and on the Fitness Check of Legal Migration *Acquis* conducted by the European Commission (2019a). On basis of abovementioned research and policy developments three policy options or scenarios with a different degree of ambition at the EU level are identified and elaborated in this paper:

- Policy Option 1: EU comes up with a new vision and commits to devise a new comprehensive long-term strategy in the area of migration – high-level of ambition – wide scope
- Policy Option 2: Harmonisation of international norms across the EU acquis – starting with Binding code for all third country nationals – high level of ambition – narrow scope
- Policy Option 3: The Rule of Law as a condition for supporting EU Member States in implementing GCM – low level of ambition-wide scope

## **POLICY OPTION 1: NEW COMPREHENSIVE LONG-TERM EU STRATEGY IN THE AREA OF MIGRATION**

### **1.1. Who proposed it?**

In 1999 Tampere Council Conclusions have foreseen the progressive building of a common EU immigration policy. The Tampere programme has been developed in line with the EU legal principles and fundamental rights. It has been followed-up by the Stockholm programme, however, it lacked the overall vision – how the migration should look in 10 or 30 years? Europe 2020 strategy contained an attempt to look 10 years ahead.

Europe 2020 strategy, proposed by José Manuel Barroso Commission back in 2010 has aimed at creation of a comprehensive labour migration policy, and aimed at better integration of third country nationals. It was based on the medium and long-term EU labour market needs as well as forecasts of a shrinking working age population. The strategy has approached labour migration from third countries as a way to solve upcoming challenges within the EU society and labour market - to meet the Union's goals for "smart, sustainable and inclusive growth" (European Commission 2010).

The narrative on labour migration was positive: "to promote a forward-looking and comprehensive labour migration policy which would respond in a flexible way to the priorities and needs of labour markets" (European Commission 2010:17). Strategy also included migrants' needs in the EU anti-poverty flagship initiative, as one of the most at risk of poverty groups, however the rationale was, that their integration should contribute in the EU work force (European Commission 2010:18). This strategy was EU-centric - it has put EU labour market-needs above the migrant-rights or the needs of countries of origin, thus it would be short of the GCM principles.

This strategy has been only half followed-through, since subsequent, by Jean Claude-Juncker Commission (2014 – 2019) has changed the course in the midst of crises. President Juncker has changed the course of the EU with his political guidelines "Towards New Migration Policy" aimed at attracting the talents and at keeping EU external borders secure. He has pledged before the EP that:

“I want Europe to become at least as attractive as the favourite migration destinations such as Australia, Canada and the USA. As a first step, I intend to review the “Blue Card” legislation and its unsatisfactory state of implementation (European Commission 2014).

The Syrian crisis, and the EU and certain governments discourse about the ‘European refugee and migration crisis’ has challenged any long-term or comprehensive strategy or forward-looking legislative initiatives at the Council of the EU. Thus, even the recast of Blue Card Directive was subject to controversies and is still pending.

Out of various goals, declared in the European Agenda on Migration, Juckers managed to approve various operational measures and handbooks that were aimed at strengthening border controls, fighting irregular migration, migrant smuggling, increasing containment practices and return rates (Carrera 2019). The ‘short-termism’ and ‘false pragmatism’ could be illustrated by disengagement from Search and Rescue zones, in contradiction with European Agenda on Migration, that declared that ‘saving lives is a priority for the EU’. And even the funding for the Frontex maritime operation has been tripled, it did not become a pro-active EU Search and Rescue mission, replacing Mare Nostrum. The EU’s disengagement from SAR zones in Central Mediterranean and contracting Libyan coastguard to perform ‘pull-back’ operations has increased the risks to migrants, as well as blurred the responsibilities over international maritime law, humanitarian and human rights law (Carrera and Cortinovis 2019b). The private NGO Search and Rescue missions have been labelled as ‘migrant smugglers’ (Carrera et al. 2019 b, 2018 b and 2018 c; Moreno, Ghezlbash, and Klein 2019). These policies also lead to loss of human lives or inhuman and degrading treatment in Libyan camps, and increased precarity of those who are ‘contained’ in overcrowded EU hot-spots, or reside within the EU without needed papers (Crepeau 2018; Basaran and Guild 2018; Carrera and Cortinovis 2019a). This situation is in stark contradiction with the Objective 8 of the GCM, that calls governments to save lives and to exempt from prosecution humanitarian missions.

The escalating situation in the Mediterranean, including a high number of deaths prompted European Parliament (2016) to call for “a holistic approach to migration in the EU”. This strategy has discussed numerous aspects of migration and asylum management that are closely interlinked. For example, European Parliament (2016) asserted how in absence of legal migration pathways for asylum seekers and migrant workers are taken advantage by criminal migrant smuggling and human trafficking. European Parliament (2016) has called for broader legal migration channels meeting societal and labour market needs (para 122 - 123):

“Notes that the existing Union legislative framework regulating the access of third-country nationals to work in the Union is rather fragmented, as it focuses on specific categories of workers rather than on regulating, generally, all migrant workers; Takes the view that, in the long run, the Union will need to establish more general rules governing the entry and residence for those third-country nationals seeking employment in the Union to fill the gaps identified in the Union labour market; “

The European Commission (2019b) in its draft proposal for the Council of the EU authorising approval of the GCM has elaborated that such comprehensive and long term strategy already exists. Commission has elaborated on the wide-scope of such strategy as:

“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.”

The initial ReSOMA discussion brief questions, whether this is expressed intention or overstatement, while many of the legislative proposals aimed at resolving abovementioned channels have been still pending at the Council of the EU, with exception of the Students recast Directive (Vosyliūtė b). So far, EU has been criticised by some academics, for the short-term vision, that has not included the migrant rights, as well as needs of the countries of origin, into the equation (Basaran and Guild 2018; Carrera 2019; Crepeau 2018).

The Van der Leyen's Commission has recently announced about the “New Pact on Migration and Asylum” that seems to delineate the division between migration, asylum and intra-EU mobility, as well to increase the reliance on the countries of origin and transit:

“This will be a *whole-of-route* approach, acknowledging that the internal and external aspects of migration are inextricably linked. The reform of the Common European Asylum Policy will remain an essential part of this comprehensive approach. The Commission will deliver a more resilient, more humane and more effective migration and asylum system, which will also underpin confidence in the Schengen Area of free movement” (European Commission 2020a).

The outgoing Finnish presidency of the Council of the EU (2019) has explained that:

“The *whole-of-route* approach entails looking at the different routes from a broad perspective and studying the patterns and profiles along the whole route from countries of origin through transit countries to the EU, thereby contributing to a comprehensive understanding of the dynamics of the routes, including the respective root causes of irregular migration.”

It remains to be seen how the ‘*whole-of-route*’ of the route approach can uphold the right to asylum, since everyone are presumed as irregular migrants. It entails EU policing of people on the move in third countries, and may result fewer opportunities for mobility even within the region. The ‘*whole-of-government*’ approach seems to have a different meaning than in the GCM, that different governmental policies can be leveraged for migration management purposes. The ‘*whole-of-society*’ approaches seem missing. It remains to be seen what will be the follow up and what kind of non-legislative and legislative measures under the Treaty Articles 78 and 79.

For the moment visits to capitals and search for the bi-lateral compromise between the European Commission and certain governments looks like the New Pact, will be shaped as more inter-governmental and not supranational agreement. The patchy and mainly, non-

legislative initiatives are reflecting the political sensitivities in the area of migration. Thus, New Migration and Asylum Pact is not likely to provide a much-needed vision where EU should be in 10, 20 or 50 years in the area of migration. It is more likely that proposals will have lower in ambition to facilitate migration and will continue to raise expectations on border control agencies to prevent the refugees and other migrants from arriving.

## 1.2. What are the conditions for success?

First of all, creating a new vision - requires a visionary leadership at the European Commission or at the Council of the EU that would engage 'whole society'. Also, it requires to drop the 'EU-centred' approaches and to engage with third countries as partners. It entails doing away with various manifestations of 'flexible solidarities' or 'principled pragmatism', when EU Member States are allowed to pick and choose, but showing real solidarity and concerted effort, while upholding the EU and international standards. A comprehensive and long-term migration policy would have to look beyond party politics, beyond the needs of the EU and to take into account the long-term needs of migrants, their countries of origin, transit, EU society and also the EU labour market.

The GCM stresses on the 'common understanding', 'shared responsibilities' and 'unity of purpose'. The latter entails a number of guiding principles, including people-centred, human rights-based, gender-responsive and child-sensitive approaches to migration. The recital 15 (f) defines that:

"By implementing the Global Compact, we ensure effective respect for and protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle. We also reaffirm the commitment to eliminate all forms of discrimination, including racism, xenophobia and intolerance, against migrants and their families" (UN General Assembly 2018).

This policy option requires EU to find a new narrative on migration, that would be migrant-centred and human rights based. In addition, it would need to include 'whole-of government' including different vertical and horizontal levels of governance as well as 'whole of society' approaches, including migrants themselves, diaspora communities, and civil society, who are seen as partners.

In terms of more concrete costs, the EU policy makers, would need to pass a legislation at EU level corresponding all the GCM objectives. Including in line with the GCM objectives 5 and 6 that foresee increased facilitation of legal migration and ethical recruitment practices (see more detailed elaboration on Option 2), objective 18 – on easier recognition of qualifications, as to promote legal migration opportunities. The diaspora communities are supported as the key agents of development of their countries of origin (objective 19), their remittances are 'faster, cheaper, and safer' and larger share of them reach the families (objective 20).

The GCM implementation would require establishing EU SAR mission, in line with the objective 8. Also, GCM objective 13 would be realised, if the EU and its member states would be

using detention as a last resort and would work towards alternatives, for example, relocating people from overcrowded EU's hotspots into, various open and community-based reception centres across the EU. For the objective 9, to be realised, the EU Facilitators' package also would need to be replaced by the new EU Migrant Smuggling Directive in line with the UN Migrant Smuggling protocol. Also, the EU would need to review its own legislation, such as visa and carrier sanctions policies, that are co-creating the need for migrant smuggling. More focus is placed to address human trafficking that is more exploitative and violent crime.

In line with objectives 7 and 15 all migrants, and in particular those in vulnerable situations are provided all basic services, including food, shelter, medical assistance, legal aid. Local authorities are cooperating with civil society, local communities to address these vulnerabilities. This means, that migrants are encouraged to report ongoing crimes to police. There is a labour rights procedure against employers for non-payment of salaries, and cooperation with the labour inspectorates. Only voluntary returns are organised in line with the objective 21, that are 'safe and dignified' and that lead to durable solutions for migrants themselves. On-case-by-case basis the forced returns are organised, as an exceptional measure. The states also come to recognise, that non-returnable migrants should be integrated locally, as to reduce their vulnerabilities and exploitation, EU wide 'regularisation programmes' are started to protect many undocumented migrants that have been living and contributing to their local communities (objective 7).

### **1.3. What are the potentials and feasibility?**

The new holistic and long-term vision of migration in the EU, would mean 'more EU' in this area. The new approach would give a safe, legal and orderly ways for people to reach the EU – whether they want to engage in high-skilled or medium-low-skilled jobs, study or to reunify with their families, some 'climate emergency schemes' are also designed recognising the EU's contribution in adaptation to the severe climate events.

Migrants' remittances and skills are nurtured as to further benefit the countries of origin. Such long-term policy would give a credibility for the EU and third countries to engage with the EU in development cooperation, state building, creating social innovations, as cooperation is not based on the 'migration conditionalities' set by the EU, but on genuine interest in addressing the challenges in the countries of origin and transit are facing.

Safe, regular and orderly migration from third countries would benefit the EU societies, EU labour markets. It would ensure the sustainability of the European welfare state model. The European Commission, back in 2010 has forecasted, that:

“the working-age population in the Union is projected to decline by 7,5 million by 2020; whereas projections on the development of labour market needs in the Union points to emerging and future shortages in specific fields.”

Thus, human rights centred approach would shift policy, operational and funding tools to provide alternatives for the situations in the Central and Western Mediterranean, Aegean Sea. Such approach would halt 'pullback and pushback' operations to third countries, such as Turkey, Libya, or Bosnia Herzegovina (PACE 2019).

The EU tax-payers' money that are currently sent for pre-frontier border control operations in these countries, could be better invested to advance the Sustainable Development Goals in countries of origin and destination, to invest more in Peace Keeping and State Building missions. For example, 4.7 billion channelled via EU Trust Fund for Africa, while having development among their goals, are not entirely devoted for development of countries of origin. While some of the projects continue to be embedded within the logic of SDGs, thanks to the mandates and principles of the implementing partners, others are creating new challenges. For example, projects in Libya, Ethiopia and Niger are making the EU funding conditional upon readmissions, or more stringent border controls, that conversely curtail the mobility and consequently, employment, education and even trade opportunities within the region (Carrera et al. 2018 d).

The EU vote at the UN General Assembly showed that there can be a Qualitative Majority at the Council of the EU for devising a comprehensive EU migration management policy at the EU level. However, this opportunity can be reaped if the 19 EU Member States that have approved the GCM are willing to push for the completely new vision.

At the moment, this policy option is not very likely. President elect Van der Leyen has announced new Migration and Asylum Pact, but at the same time communicated that she will look for consensus, including with the EU Member States that are back-sliding on the rule of law on their international commitments. It remains still questionable, whether the newly proposed Pact on Migration and Asylum and how much in line it will be with the Global Compact for Migration. It seems that new Commission will continue to maintain priority of strong border controls over the migrant rights, extending/opening new legal migration channels.

## POLICY OPTION 2: BINDING MIGRATION CODE

### 2.1. Who proposed it?

Binding Migration Code could be one concrete focus area for the EU policy makers on how to harmonise international human rights and labour law standards across different pieces of the EU legal migration acquis. Such migration code would simplify and would ensure the common standard of the rights of all third country nationals residing and working in the EU, in line with the objective 5 of the GCM. It foresees equal treatment of all categories of workers despite perceived skills levels.

The origins of this proposal are not the UN, but the EU institutions. Two decades ago, the European Commission has been ambitious about reaching the Tampere Milestones. In 2001 the Commission has drafted the so called 'General Framework' or 'Horizontal' directive, that aimed at setting a common procedure and set of residence and labour rights across the EU. The idea was silently withdrawn due lack of support by the relevant governments, and mainly, the ministries of interior. Quite, interesting that it contradicted the public opinion at that time, that was more in favour of migration management at European or international level, than at national level (Carrera et al. 2019 a). The momentum, was lost, and the EU took a sectoral or 'worker-by-worker' approach. The later approach has been criticised by academia and some of them have called for Binding or eventually Binding immigration code in the EU (Peers 2012; Peers 2014; Carrera, Guild and Eisele 2014; Basaran and Guild 2018).

The legal migration acquis is now composed of a wide array but 'patchwork' EU directives (see Table 1). Previous CEPS research has also highlighted that current sectorial nature allowed for 'unequal treatment' depending on the perceived skill-level or assigned category of third country national.

For example, Seasonal workers at the moment do not have the right to reunify with their family members, also they do not have intra-EU mobility rights, nor possibility to 'accumulate' the periods of stay for getting a Long-Term Residency. Moreover, they are depending on national legislation allowed only once to change sector or employer. Nevertheless, this right is even more limited due practical barriers, and thus leaves these seasonal workers to endure exploitative conditions. Civil society and trade unions, have raised concerns that Seasonal Workers, are at risk of physical, sexual assaults, and/ or sent out from the country without payment of salaries (Carrera et al. 2019a).

**Table 1. Types of EU legal migration directives**

Type of directive	Legal migration acquis	Transposition deadline
Horizontal	Single Permit Directive (2011/98/EU)	25.12.2013
Horizontal*	Family Reunification Directive (2003/86/EC)	03.10.2005
Horizontal*	Long-Term Residents Directive (2003/19/EC)	23.01.2006
Sectorial/First entry	EU Blue Card Directive (2009/05/EC) <b>Commission proposal for revision of the EU Blue Card tabled in June 2016 (COM(2016) 378 final)</b>	19.06.2011 <b>Still pending</b>
Sectorial/First entry	Seasonal Workers Directive (2014/36/EU)	30.09.2016
Sectorial/First entry	Intra-Corporate Transferees Directive (2014/66/EU)	29.11.2016
Sectorial/First entry	<b>Students and Researchers Directive ((EU)2016/801 – recast)</b>	23.05.2018

Source: Carrera et al. 2019 a, p. 5. Notes: \* The right to family reunification and access to the long-term residence, are also restricted to certain categories of workers.

## 2.2. What are the conditions of success?

Just like with the EU long-term and comprehensive strategy – this requires ‘common understanding’, ‘shared responsibilities’ and ‘unity of purpose’. Among the guiding principles, the most crucial for feasibility is changing the narrative on migration, and for the effective implementation – the embeddedness in the rule of law.

In line with the GCM objective 17, The EU policy makers, would need to effectively address ‘far right’ disinformation and propaganda campaigns that, until now have been effective in distorting public perceptions about migration and in dividing the European society. The perceptions about ‘negative public opinion’ have prevented progressive initiatives in the area of migration management, including on harmonising the EU Blue Card system. Thus, it could be hard to expect the overhaul of other EU sectorial directives without addressing the issue of narratives first.

Secondly, the rule of law and due process principle require that EU standards, including the EU equal provisions are applied consistently across the EU (see more discussion on Option 3).

## 2.3. What are the potentials?

In the area of Legal Migration, the most ambitious proposal was of having a **Binding Migration Code**, covering all third country nationals and ensuring equal treatment could be a way forward. Earlier analysis has shown that such legislative change is likely to have high returns. Previous CEPS research has also concluded, that (Carrera et al. 2019 a):

“EU’s internal market, national administrations and society via social support and pension schemes as well as third country national would benefit from closing the gaps and barriers at the EU level. More homogenous policy approach in the area of legal migration would lead to simplified procedures, more legal certainty, higher intra-EU mobility and thus would increase EU’s attractiveness.”

The study has more concretely estimated the potential individual and economic benefits emerging from the equal treatment and increased family reunification possibilities for all categories of workers (Carrera et al. 2019 a): “The Binding Immigration Code ensuring equality of treatment between third country workers and EU national workers would amount to over €15.75 billion individual benefits and €6 billion economic benefits (per year).”

In comparison, at the moment EU Trust Fund for Africa – to address the “stability and route causes for irregular migration and displaced persons in Africa [26 countries]” amounts to € 5,4 billion for 5 years (2015 - 2020), “with over 88% of the contributions coming from the EU, and around 12% from EU Member States and other donors” (European Commission 2020 b).

The study, however, estimated only expected direct income and tax contribution changes, other broader positive ‘overspill’ effects and economic benefits remain unaccounted, such as innovations and patents, participation in local economic life by purchasing local products and services, by filling in the bottleneck positions, that may slow down business from employing the local stuff for other positions, i.e. shortage of construction engineers, may prevent the employment of other construction workers.

The European Commissions’ Legal Fitness Check in the area of legal migration acquis, saw the added value of such Binding Migration Code across the EU, for the migrants, the EU economy, as well as national administrations (European Commission 2019a).

The Finnish Presidency of the Council of the EU (2019: 5), has cautioned on the EU rules to fit the national context, stressing on the need for ‘careful tailoring of the best tools to foster convergence among Member States’. More specifically, that: “The more Member States have the perception that EU legislation is meeting their concrete needs and taking into account their administrative realities, the more likely it is that implementation will be successful.” This approach is taking Member States, and Ministries of Interior, back at the centre, what is making ‘whole-of-government’ and ‘whole-of-society’ approaches more difficult, especially, when there is lack of transparency and accountability. The fact that Finnish Presidency Report on the ‘Way Forward’ was ‘Limited’ visibility is thus concerning.

Despite, the note of caution, more generally outgoing Finnish Presidency, remained open for ‘more EU’ in this area (Council of the EU 2019: 5): “We need to engage in a continuous discussion on how best to secure the intended EU added value from the commonly agreed rules and procedures” <...> “Specific attention should be paid to reaping the full benefits of the ambitious provisions on intra-EU mobility.”

The new Pact on Migration and Asylum, however is likely to focus on ‘intra-EU’ mobility for the Blue Card holders only. Nevertheless, this is a good start for making the case for expanding the intra-EU mobility and thus harmonising the different statuses and rights through one and Binding Migration Code within the EU.

## **POLICY OPTION 3: THE RULE OF LAW CONDITIONALITY FOR THE EU LEVEL FUNDING IN THE AREA OF MIGRATION**

### **3.1. Who proposed it?**

The policy option, here would entail setting the limits/restrictions on how much EU funding and operational measures, such as Frontex, EASO and Europol would be assigned to support the Member States, that are not or no longer meeting the rule of law criteria. The EU delegation (2019b) in the UN has argued that, states that have departed from the GCM, have also departed from the internationally agreed commitments on SDGs, and the EU's own legal principles and standards. Therefore, in particular, in the context, of cooperation with third countries and deployment of EU missions, such EU Member States, could not benefit as implementers or of getting operational support, i.e. if EU has started infringement proceedings, against illegal restrictive measures that are including deprivation of food in the border zones (Vosyliūtė 2019 b).

The Rule of Law conditionality has been widely debated in the new Multiannual Financial Framework Context, especially for the creation of Rights and Values programme that remains directly administered by the European Commission. It remains important priority for the overall EU credibility and relationships with certain governments, especially, against which the Article 7 procedures have been triggered by the European Parliament.

The visits of Commissioner for Home Affairs, Ylva Johanson and Vice-President for "promotion of our European way of Life" Margaritis Schinas to capitals, including Copenhagen and Budapest, show that Commission seeks more bilateral engagement with the more EU-sceptic governments that generally want 'less EU', also meaning, less EU values and standards in the area of migration. This should not be an option, as it risks jeopardising the credibility of the EU as a geopolitical actor. In particular in the context of the EU Agencies becoming more operational.

Their Mission Letters also have indicated that the focus will remain on 'effective returns' while linking with the asylum procedures, (Vosyliūtė 2019 a) and also on strengthening external borders by more rapidly deploying 10.000 Frontex officers, by 2024 (instead of 2027 as announced by the previous President of the Commission). This raises serious questions about potential cooperation and also the EU's responsibility for potential violations of fundamental rights, and good administration. For example, Frontex Executive Director, has announced the European Parliament LIBE Committee, how Hungary was attempting to return the Afghan national. In that particular case, the Frontex refused to cooperate as they deemed that EU agency is then breaching the principle of non-refoulement.

### 3.2. What are the conditions for success?

The rule of law and due process principle require that EU standards are applied consistently across the EU, with help of national, regional and international law (UN General Assembly 2018):

“Rule of law and due process: The Global Compact recognizes that respect for the rule of law, due process and access to justice are fundamental to all aspects of migration governance. This means that the State, public and private institutions and entities, as well as persons themselves are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international law.”

At the EU level this situation would require the special EU Rule of Law mechanism to be set up, that would ensure the on-going monitoring of the EU Member State (in)actions, towards all third country nationals and third country workers.

In addition, this policy option requires transparency of decision making and also democratic accountability via ‘whole-of-government’ and ‘whole-of-society’ approaches. This would entail the careful oversight by other governmental ministries, equality bodies, human rights institutions and watch-dog civil society, as well as international and regional human rights bodies. All of whom could feed their assessments into the EU Rule of Law Mechanism, that would have an independent, EU-legal framework tailored Venice-Commission-like body of distinguished experts, who would regularly and continuously evaluate all the EU Member States.

### 3.3. What are the potentials?

The implementation of the GCM risks to be treated as ‘menu a la carte’ where, measures in the area of tackling migrant smuggling and human trafficking (objectives 9 and 10 respectively) will be undertaken with more vigour, while the ones requiring more flexible legal migration channels risk to be unchanged or narrowed, thus co-creating the demand for migrant smuggling, and increasing vulnerabilities that can be used as means for human trafficking. In essence, the implementation of the GCM risks to be used as a trade-off for getting some political leverage to involve certain governments in exchange for cooperation in other EU policies or priorities, such as securing external EU borders.

The current situation in the area of migration is complex. Several Member States in the area of migration are backtracking on the fundamental rights, rule of law and democratic accountability standards, and this is applicable not only to Hungary and Poland (Vosyliūtė 2018 b; PACE 2019). Rule of Law, therefore, continues to be among the most important conditions to implement the GCM, but also to keep the EU level cooperation and assistance by the EU Justice and Home Affairs Agencies, to receive any kind of funding in the area to promote and implement the GCM.

## CONCLUSIONS

- **Policy Option 1: EU commits to devise a new comprehensive long-term strategy in the area of migration.** High-level of ambition required from all three co-legislators – the European Parliament, the incoming Commission and the Council to come up with a new and inspiring vision in the area of migration, that is in line with the GCM vision, principles and all objectives. They started from changing public discourse about migration as both opportunity and challenge of the globalised world. Policy makers realised that in the market of ‘ideas’, people with themselves bring ideas, knowledge, different worldviews, that enrich any society.

The EU level institutions and agencies in this case have a leading role in implementing the GCM. EU as a region becomes a global leader and a standard setter for the rest of the countries in the World in implementing the GCM. The EU starts by devising new and more accessible legal migration channels for workers, family members and students, as well as tourists. The human traffickers and smugglers are almost squeezed out of the picture, since people have regular alternatives, including to come to the EU with the tourist visa that became accessible to everyone. The EU is proud to have reduced the death rate in the Mediterranean, to nearly 0. The people do not he EU rescue mission, since Temporary Humanitarian Protection Directive is automatically activated when there are climate catastrophes or conflicts and carrier sanctions are lifted for movements from these areas - they can take regular flights, trains or busses to any destination in the EU, where they have relatives, friends or a sponsoring organisations and local communities.

- **Policy Option 2: Binding Migration Code - harmonisation of international norms across the EU-legal migration acquis.** Some revisions/guidelines of the current acquis, if/when it falls short of internationally agreed standards and GCM objective 5. As key objective of the GCM was to bring various readily agreed international labour and human rights standards into one document. Nevertheless, there is a high degree of fragmentation among commitments undertaken by various EU member states by (not) signing (n)or ratifying these standard setting documents (Carrera et al. 2019a). EU could harmonise such standards in the area of legal migration by putting back on agenda a Legal Migration Code. The EU could set the example by bringing common standards for all third country nationals, despite their perceived skills levels as foreseen by objective 5. The EU would ensure the equal treatment, and also could promote intra-EU mobility, since the ‘fair level playing field’ would be ensured among different EU Member States.
- **Policy Option 3: Rule of Law conditionality for support EU Member States in implementing GCM – low level of ambition.** This policy option does not give a big role for the EU to promote a new narrative, nor new legislation. The leadership weather and how to implement GCM remains with the EU Member States. However, more focus on enforcement of EU laws and policies via concerted action of EU agencies and

their operations, including in third countries, require double-checking how EU policies, operations and funding is being used. EU institutions and agencies are increasingly operational. EU can play a role in 'inserting safeguards' such as rule of law conditionality, for any EU Member State policies and practices. The concrete conditionalities should relate on the EU funding, and conditions for support from EU agencies. This policy option entails risk that there is a high degree of fragmentation and divergence between different EU Member States, that in a long run can paralyse further legislation in this area.

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# ReSOMA

RESEARCH SOCIAL  
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## ReSOMA - Research Social Platform on Migration and Asylum

is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe's well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

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