



DISCUSSION
BRIEF

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The EU's role in the implementation of the Global Compact on Refugees

ASYLUM





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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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Discussion Policy Brief

The EU's role in the implementation of the Global Compact on Refugees

By Roberto Cortinovis, [Centre for European Policy Studies](#)

1. SCOPING THE DEBATE

The Global Compact on Refugees (GCR), affirmed by the United Nations (UN) General Assembly in December 2018, represents the international reference framework for planning and monitoring policy responses to address refugee situations in the future.¹ 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.

Paragraph 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 Compact includes a Programme of Action that advances a set of new structures and arrangements to strengthen responsibility sharing and expand the scope of

lasting solutions. Specifically, the GCR envisions a Global Refugee Forum to be held periodically at the ministerial level starting in December 2019. In that venue, states and other actors can make pledges of support to meet the goals of the Compact in the form of financial, material, or technical assistance, places for resettlement and complementary pathways for admission to third countries, as well as other actions that States and stakeholders have elected to take, for example through policies and practical steps to promote refugee inclusion (UNHCR, 2019a).²

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)³. It also foresees increased collaboration among

² See <https://www.unhcr.org/preparatory-meetings.html>

³ As stated in paragraph 3 of the GCR, its implementation engages the following 'relevant stakeholders': "international organizations within and outside the United Nations system, including those forming part of the International Red Cross and Red Crescent Movement; other humanitarian and development actors; international and regional financial institutions; regional organizations; local authorities; civil society, including faith-based organizations; academics and other experts; the private sector; media; host community members and refugees themselves".

¹ See "The Global Compact on Refugees. Final Draft" (as of 26 June 2018). <https://www.unhcr.org/5b3295167.pdf>



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).

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 regarding the role and contribution of the EU and its Member states in the achievement of the Compact's objectives (ECRE, 2019; Carrera and Cortinovis, 2019).

2. KEY ISSUES AND CONTROVERSIES

2.1. Containment vs international protection

The centrality of the notion of 'containment' to the functioning of the global refugee regime is reflected in a substantial body of scholarly work that has focused on the practice and legality of containment – or migration management – practices and instruments. Scholarly work has analysed a range of unilateral containment policies, including visa controls and policies, carrier sanctions, the use of the 'safe third country' and 'safe country of origin' concepts, readmission agreements and arrangements and interdiction at sea (Costello, 2019; Cortinovis and Carrera, 2019).

When assessing the GCR, and its nexus with the Global Compact on Migration, through the lens of refugee containment literature, Costello (2019) underlines how migration control practices suppress refugee mobility and bear down particularly heavily on refugees and would-be refugees. In her view, the bifurcation of the UN Global Compacts on refugees and migration into two separate processes risks solidifying a distinction between the

categories of 'refugee' and 'migrant' that has important consequences for refugee mobility and rights. This approach artificially reframes many people in search of international protection as 'migrants' and may lead to an unlawful sidelining of states' international and regional human rights and refugee law commitments. While acknowledging the positive potential, inherent in the GCR design, to develop better resettlement opportunities, Costello (2019) points out the risk that the UN GCR "may serve to legitimate refugee containment, rather than open up greater mobility opportunities for refugees".

The relationship between containment and mobility in the governance of the global refugee regime is reflected at EU level. During recent decades, the EU has developed a complex and diversified matrix of policy, legal and financial instruments to involve third countries in the management of migration, borders and asylum. More recently, scholars have identified how 'in the name of the 2015 European Refugee Humanitarian Crisis', EU cooperation with third countries on asylum and migration has been re-



prioritised, leading to the adoption of a number of non-legally binding political 'arrangements'. The literature has identified a shift in EU policy: from an approach emphasising formal cooperation through legal acts and international agreements, towards another calling for informal channels and political tools or non-legally binding/technical arrangements of cooperation often linked to emergency-driven EU financial tools (Carrera et al., 2018, 2019).

The 2016 EU-Turkey Statement to stop the flow of irregular migrants to Greece, the EU-Libya cooperation at maritime and land borders, which involve training, equipping and funding the Libyan Coastguard (including through EU financial support), as well as a number of informal arrangements covering readmission and border control with some of the main countries of origin of migration flows to Europe are major examples of EU containment policies (Cortinovis and Conte, 2018). These policies exemplify a 'contained mobility' logic, whereby restrictive and selective mobility/admission arrangements for refugees have been progressively consolidated and used in exchange of, or as incentives for, third country commitments to EU readmission and expulsions policy, with little consideration of their concrete negative impacts on human rights and international and regional refugee commitments (Carrera and Cortinovis, 2019)

2.2 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). UNHCR estimates that 1.4 million persons will be in need of resettlement in 2019, with just 55,680 people resettled via UNHCR in 2018 (UNHCR, 2018).

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. These are aimed 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 (par. 94). 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 migration avenues, which may include family reunification, education and



labour opportunities (UNHCR, 2019b; UNHCR/OECD, 2018).

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 to 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 beyond the 50,000 places already pledged by member states by October 2019 (ECRE, 2019).

Civil society actors have also 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 situation. Against attempts to link the provision of resettlement places to third countries' cooperation in the field of migration control included in the proposal for an EU Resettlement Framework put forward by the Commission in 2016,⁴ 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 lifesaving tool and a durable solution", which lay at the heart of the UN GCR guiding principles.⁵

⁴ Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council, COM(2016) 468 final.

⁵ 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

Stakeholders have called on EU member states to expand complementary pathways to protection in EU member states, including through expanded family reunification, education and labour opportunities (European Resettlement Network, 2018a, 2018b). A number of considerations and protection safeguards to be considered when designing pathways for refugees based on migration avenues. First, to provide added value compared to current responses, complementary should always be additional – not a substitute – to established humanitarian entry channels and procedures. 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 are safeguarded. Beneficiaries must in all cases be protected against non-refoulement and be able to apply, without prejudice, for asylum at any time (Norwegian Refugee Council et al., 2018).

2.3 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

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>).



is identified as a key priority for furthering the objectives of the Compact. (par. 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. 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 2019, including in the forms of additional financial assistance (ECRE 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 a large number of existing financial instruments into a broad Neighborhood, Development and International Cooperation Instrument (NDICI) with a volume of EUR 90 billion (European Commission, 2018).⁶ 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 Develop-

ment Fund (EDF) – currently one of the key financial instruments to provide assistance to African, Caribbean and Pacific Countries – into the EU budget. A key aspect of the proposed Regulation is the attempt to ensure flexibility in the provision of EU external funding. To increase the ability of the EU to respond flexibility 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 EDF into the EU budget could be offset by the large amount of unallocated money foreseen by the “flexibility cushion” (ECRE, 2018b). The assessment of ‘emergency’ instruments established to address the so-called ‘refugee crisis’ in 2015-2016, notably the EU Trust Fund for Africa and the Refugee Facility for Turkey has pointed to the trade-off that exists between the priority to increase ‘flexibility’ and ‘speed’ in funding delivery on the one hand and democratic, legal and financial accountability and the EU's budgetary integrity on the other (Carrera et al., 2018b).

Civil society organizations have also firmly stressed how the mobilization of EU resources in the framework of political “agreements” with countries driven by an overarching containment approach (such as the 2016 EU-Turkey Statement and the EU Partnership Framework with third countries), do not align with humanitarian and development principles enshrined in EU Treaties and UN human

⁶ The analysis developed in this Brief focuses on EU external funding instruments. However, EU internal funding to implement asylum policies in the member states also plays a key role in advancing the objectives of the GCR within Europe. For a detailed analysis of current the new legislative and budgetary proposals regarding asylum and migration for the Multiannual Financial Framework (2021-27) as well as key lessons learned during the previous financial cycle see Westerby (2019).



rights and refugee law commitments and are not conducive to sustainable solutions to complex refugee situations (Concord, 2018; Cortinovis and Conte, 2018; Carrera and Cortinovis, 2019).

2.4 GCR monitoring and accountability

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. Paragraph 102 of the GCR also foresees the development of indicators to assess progress towards the achievement of the Compact four main objectives ahead of the December 2019 Global Refugee Forum.

To support the periodic review of the Global Compact on Refugees and its impact, UNHCR developed a GCR Indicator framework that is expected to strengthen the availability of global data related to the four GCR objectives (UNHCR, 2019b). The Indicator framework reflects key areas of the GCR, including arrangements to support burden-and responsibility-sharing, areas identified as being in need of support, as well as interlinked aspects of displacement in host countries and countries of origin. While the Indicator framework is expected to provide a global overview of international solidarity and responsibility-sharing for refugee situations, and the related impact on refugees, UNHCR specifies that the Indicator

framework does not strive to be exhaustive and cover all aspects of forced displacement, as reflected by the limited number of indicators included.

Stakeholders welcomed UNHCR's effort to devise a set of indicators to assess implementation of the GCR as an important step in designing a robust monitoring framework and ensuring accountability towards achieving the Compact's objectives.⁷ 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. They underlined how the European Commission should take an active role in the development of indicators to reach the four objectives of the GCR in line with paragraph 102 GCR. The European Commission should report regularly on progress in relation to the identified indicators and the European Parliament should be given a role in monitoring the fulfilment of the pledges and on the funding from the EU budget used to support implementation of the GCR (ECRE, 2019).

⁷ See ReSOMA Final Synthetic Report – Implementing the UN Global Compact on Refugees: Which role for the EU?



References

Carrera, S., Cortinovis, R. (2019). The EU's role in implementing the Global Compact on Refugees. Contained mobility vs International Protection, CEPS Paper in Liberty and Security in Europe, No. 2018-04, April 2019. https://www.ceps.eu/wp-content/uploads/2019/04/LSE-04_ReSOMA_ImplementingGCR.pdf

Carrera, S., den Hertog, L., Kostakopoulou, D., and Panizzon, M. (2018a), *The External Facets of EU Migration, Borders and Asylum Policies: Intersecting Policy Universes*, Leiden: Brill Nijhoff.

Carrera, S., den Hertog, L., Núñez Ferrer, J., Musmeci, R., Pilati, M. and Vosyliute, L. (2018b). *Oversight and Management of the EU Trust Funds: Democratic Accountability Challenges and Promising Practices*. Study requested by the CONT Committee of the European Parliament, <https://www.ceps.eu/ceps-publications/oversight-and-management-eu-trust-funds-democratic-accountability-challenges-and/>

Carrera, S., Santos Vara, J., and Strik, T. (2019). *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis: Legality, Rule of Law and Fundamental Rights Reconsidered*, Edward Elgar Publishing.

Concord (2018). *Concord's concerns and redlines on the European Commission proposal for a single External Instrument*, https://concordeurope.org/wp-content/uploads/2018/04/MFF2021_CONCORD_reaction_SingleExternallInstrument_April2018.pdf?d65bd5&d65bd5

Cortinovis, R. and Conte, C. (2018). *Migration-related Conditionality in EU external funding*. ReSOMA Discussion Brief, <http://www.resoma.eu/publications/discussion-brief-migration-related-conditionality-eu-external-funding>

Costello, C. (2019). 'Refugees and (Other) Migrants: Will the Global Compacts Ensure Safe Flight and Onward Mobility for Refugees?' *International Journal of Refugee Law*, 30(4), 643–649.

ECRE (2018). *The price of rights: Asylum and EU external funding*, <https://www.ecre.org/wp-content/uploads/2018/05/Policy-Note-12.pdf>

ECRE (2019). *Global means global: Europe and the Global Compact on Refugees*. Policy Note #15. <https://www.ecre.org/wp-content/uploads/2018/11/Policy-Note-15.pdf>

European Commission (2018). Proposal for a Regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument. COM(2018) 460 final.



European Resettlement Network (2018a). Humanitarian admission programmes in Europe. Expanding complementary pathways of admission for persons in need of international protection, <https://www.resettlement.eu/page/ern-publications>

European Resettlement Network (2018b). Student Scholarships for Refugees: Expanding complementary pathways of admission to Europe, <https://www.resettlement.eu/page/ern-publications>

Gatti, M. (2018). Gatti, M. (2018). Too Much Unity in the European Union's External Migration Policy? Odysseus Network blogpost, <http://eumigrationlawblog.eu/too-much-unity-in-the-european-unions-external-migration-policy/>

Moreno-Lax, V. and Giuffré, M. (2017). 'The Rise of Consensual Containment: From 'Contactless Control' to 'Contactless Responsibility' for Forced Migration Flows'. In: S. Juss (ed.), *Research Handbook on International Refugee Law*. Cheltenham: Edward Elgar.

Norwegian Refugee Council, Danish Refugee Council, International Rescue Committee (2018). Access to resettlement and complementary pathways for Syrian refugees. <https://drc.ngo/media/4676369/dsp-resettlement2.pdf>

UNHCR (2018). UNHCR Projected Global Resettlement Needs 2019.

UNHCR (2019a). Complementary pathways for Admission of Refugees to Third countries. Key consideration. Office of the United Nations High Commissioner for Refugees. Division of International Protection (DIP) January 2019.

UNHCR (2019b). Global Compact on Refugees: Indicator Framework, <https://www.unhcr.org/5cf907854.pdf>

UNHCR/OECD (2018). Safe Pathways for refugees. OECD-UNHCR Study on third country solutions for refugees: family reunification, study programmes and labour mobility, <https://www.oecd.org/migration/UNHCR-OECD-safe-pathways-for-refugees.pdf>

Westerby, R. (2019). The Way forward. A Comprehensive Study of the new Proposals for EU funds on Asylum, Migration and Integration, <https://www.ecre.org/wp-content/uploads/2018/10/MFF-UNHCR-2.pdf>

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