



ASYLUM

POLICY OPTION
BRIEF

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The EU's role in implementing the Global Compact on Refugees



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Policy Option Brief

The EU's role in implementing the Global Compact on Refugees

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1. INTRODUCTION

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 durable solutions. Specifically, the GCR envisions a Global Refugee Forum to be held periodically at the ministerial level starting in December 2019, whereby states and other actors can make pledges of support to meet the goals of the Compact (par. 17). This will be complemented by high-level officials' meetings, held every two years between Forums, to provide an opportunity for "mid-term review" of the achieved results. In addition, the GCR foresees the activation of so-called Support Platforms, composed of a group of states committed to mobilize contributions in favour of host countries facing large scale and complex refugee situations (par. 22).

The GCR also calls for the establishment of a multi-stakeholders and partnership approach, which foresees the involvement of a broad set of actors – including independent civil society organizations, local communities and refugees themselves – in the design, monitoring and implementation of the actions envisaged by the Compact (par. 33).² It also foresees

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

² 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

increased collaboration among states, international organizations and other relevant stakeholders to foster evidence-based policy responses through improved collection, analysis and sharing of data and statistics on refugee issues (par. 45). Finally, the Compact envisages the establishment of a Global Academic Network (GAN) on refugee, forced displacement, and statelessness issues involving universities, academic alliances, and research institutions, in cooperation with UNHCR. The GAN will aim at facilitating research, training and scholarship opportunities to produce deliverables in support of the GCR objectives (par. 43).

This Final Synthetic Report first describes the content and key governance mechanisms established by the GCR as well as the opportunities they provide for improving upon current EU policy responses in support of refugees. After that, the brief analyses a number of key policies priorities on which the EU (and its member states) should focus when implementing the GCR put forward by relevant stakeholders, including civil society, international organizations and academia. The identified priorities are the result of a process of consultation with relevant actors carried out in the framework of the ReSOMA project (Cortinovic, 2019a).

2. THE EU AND THE GLOBAL COMPACT ON REFUGEES

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.

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

At the first Global Refugee Forum, which will take place on 17 and 18 December 2019 in Geneva, all UN member States, non-member observer states as well as relevant stakeholders will have the opportunity to announce concrete pledges and contributions in order to meet the objectives of the GCR.³ Preparatory meetings among relevant parties are currently ongoing to discuss the contributions process and other key elements ahead of the Global Refugee Forum.⁴

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".

³ See <https://www.unhcr.org/pledges-and-contributions.html>

⁴ See <https://www.unhcr.org/preparatory-meetings.html>

The Global Refugee Forum represents a crucial stage in the process of implementation process of the GCR. Contributions by states parties as well as relevant stakeholders (such as civil society and international organisations) can take 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).

In view of the Global Refugee Forum in December, stakeholders have requested EU institutions and member states to work on an EU's collective commitment, calling on relevant Commission services, the European External Action Service and the Council of the EU to coordinate their pledges (2019). Also, contributions from civil society and other relevant stakeholders should be reflected in the EU commitments, including in the form of joint contributions. Crucially, stakeholders underlined the importance that EU and its member states concretely support implementation of the GCR not only in third countries but also within Europe, underlying the need to ensure consistency between EU policy responses in the field of migration and asylum and international protection and human rights standards (Carrera and Cortinovis, 2019).

3. IMPLEMENTING THE GCR: KEY POLICY OPTIONS

3.1. Containment vs international protection

The centrality of the notion of 'containment' to the functioning of the asylum governance regime has given rise to a substantial body of scholarly work on the practice and legality of containment – or migration management – practices and instruments. Scholarly work has analysed the practice and legality of a range of unilateral containment policies, including visa controls and policies, carrier sanctions (Rodenhauser, 2014, Scholten, 2015), the use of the 'safe third country' and 'safe country of origin' concepts (Moreno-Lax, 2015), and re-admission agreements and arrangements (Carrera, 2016, Carrera, 2018), interdiction at sea (Giuffré, 2013), and information campaigns (Gammeltoft-Hansen and Tan, 2017). A number of cooperative agreements and non-legally binding arrangements between states have also been the subject of academic work, as 'Global North' states have entered into agreements – both formal and informal – with partner states in containing refugees within regions of origin (Giuffré, 2013; Gammeltoft-Hansen and Hathaway, 2014; Moreno-Lax and Giuffré, 2017).

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 GCR and the GCM 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 side-lining 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 within the GCR is reflected at EU level. During the last decades, the EU has developed a complex and diversified matrix of policy, legal and financial instruments constituting cooperation with third countries in the management of migration, borders and asylum. The literature has identified a shift from emphasizing 'formal' cooperation through formal channels provided by legal instruments and international agreements, towards the increasing use of 'flexible' and 'non-legally binding' frameworks and hybrid legal-political instruments, some of which have been introduced in the name of 'crisis' (Carrera et al. 2018b; Carrera et al. 2019).

Recent examples of EU cooperation with third countries inspired by a logic of containment policies are the 2016 EU-Turkey Statement, the 2017 Memorandum of understanding between Italy-Libya as well a number of informal arrangements covering migration control and readmission with a number of countries in Africa and the Middle East (Carrera and Cortinovia, 2019). Policy initiatives which aim to prevent or restrict mobility of migrants and refugees in regions of origin, including through the provision of financial incentives to hosting countries in the region in exchange for their efforts in the field of migration management, negatively impact on refugee's access to protection and durable solutions.

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

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

While it fits in the logic of containing applicants for international protection and migrants at the EU external borders, experience with the hotspots approach implemented in Italy and

Greece, underlines a number of relevant fundamental rights issues associated with the use of accelerated border procedures. These include gaps in information, lack of legal assistance, under-identification of vulnerable persons, restricted freedom of movement, quasi detention practices, and degrading reception conditions (ECRE, 2016; Danish Refugee Council, 2019).

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

3.2 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).

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).

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).

In order to move towards a more structured and harmonised approach to resettlement, in July 2016 the European Commission tabled a proposal for a Regulation on an EU Resettlement Framework. which aims at reducing current divergences among member states' resettlement practices by fostering a “collective EU approach to resettlement” (European

Commission, 2016b). The proposal on a EU Resettlement Framework has raised several points of controversy of direct relevance when assessing it in light of the UN GCR framework (Carrera and Cortinovis, 2019). Article 4 of the proposal on “Regions or third countries from which resettlement is to occur” includes as a relevant factor for determining third countries to be prioritized for resettlement their ‘effective cooperation with the Union in the area of migration and asylum’. Such cooperation would be determined by the EU in light of the efforts undertaken by third countries in reducing the number of irregular migrants to the EU and increasing readmission rates of third country nationals found in an irregular situation in EU Member States, including their willingness to conclude readmission agreements.

Against attempts to link the provision of resettlement places to third countries’ cooperation in the field of migration control, civil society actors have stressed the need to preserve the humanitarian character of resettlement as a protection tool and as an expression of solidarity towards those countries mostly affected by refugee situation (Amnesty International 2016; International Rescue Committee 2018; ECRE 2018b). 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

In line with the commitment laid down in the GCR, attention is increasingly paid by a number of stakeholders on how to create complementary pathways to protection in EU member states, including family reunification, education and labour opportunities (European Resettlement Network, 2018a, 2018b; UNHCR, 2019b). Partnerships between public institutions, industry and educational institutions at the EU, national and local levels could also be established to design study programmes specifically targeted to refugees (UNHCR, 2015). As envisaged in the GCR, the engagement of a broad range of stakeholders has the potential to expand the availability of third country solutions for refugees. As recognized the UNHCR, the involvement of a broad range of stakeholders, including “States, regional and intergovernmental bodies, civil society, academia and other stakeholders play a critical role to support the establishment and development of protection-sensitive, accessible and scalable systems that incorporate the necessary protection safeguards as well as reduce and remove legal, administrative and practical obstacles preventing refugees from accessing complementary pathways” (UNHCR, 2019b).

Stakeholders have underlined a set of considerations and protection safeguards to be considered when designing pathways for refugees based on migration avenues. First, in order to provide added value compared to current responses, pathways in the above-mentioned areas should always be additional – not a substitute – to established humanitarian entry channels and procedures. A protection-sensitive approach should be adopted when exploring possible access by refugees to existing legal entry channels for study and work.

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 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>).

As those often provide for the right to stay in the destination country only for a limited period of time, special arrangements may be required to ensure that the rights of refugees and their protection needs are safeguarded. Beneficiaries must in all cases be protected against non-refoulement and be able to apply, without prejudice, for asylum at any time (Carrera and Cortinovis, 2019; Norwegian Refugee Council et al., 2018).

3.3 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 is identified as a key priority for furthering the objectives of the Compact. While needs-driven humanitarian assistance remains a priority, the Refugee Compact underlines the importance to deploy additional development resources, over and above regular development assistance, provided in ways that can be of direct benefit to refugees and host countries and communities (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.⁶ In line with the approach laid down in the GCR, the mobilization of predictable and additional funding is crucial to provide emergency assistance to displaced populations and promote the socio-economic support to refugees and their host communities.

Negotiations of the next Multiannual Financial Framework (MFF) 2021-2027 represent a key step for the EU to consolidate and scale up its engagement in global responsibility sharing for refugees and forced migrants. Civil society organizations have underlined the importance for the EU to prepare a collective commitment in view of the first Global Refugee Forum in 2019, including in the forms of additional financial assistance (ECRE 2019). In line with the multi-stakeholder and partnership approach advanced by the GCR, EU funding should be used to mobilize a plurality of actors, including independent civil society organizations, local communities and refugee-led organizations in support of the GCR objectives (Cortinovis, 2019b).

The Commission's structure for the new MFF 2021-2027 foresees a major restructuring of the external dimension of the EU budget, bringing together 12 existing financial instruments into a broad Neighborhood, Development and International Cooperation Instrument (NDICI) with a proposed volume of EUR 90 billion (European Commission, 2018b). One of the major changes foreseen by the Commission's proposal is to simplify the EU's external spending architecture by integrating the European Development Fund (EDF) – currently the largest

⁶ The analysis developed in this Policy Options Brief focuses specifically on EU external funding instruments. However, EU internal funding to implement asylum policies in the member states is also going to play 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 from the previous financial cycle see Westerby (2019).

financial instruments to provide assistance to African, Caribbean and Pacific Countries – into the EU budget.

Another key aspect of the proposed Regulation is the attempt to ensure flexibility in the provision of EU external funding. In the context of the 2015-2016 migration and refugee crisis problems were encountered to reallocate funds within the instruments under the EU budget as large amounts of funds had been bonded to long-term programs. To enable the EU budget to respond promptly to future emergency situations, the proposal foresees the introduction of a Rapid Response Component with worldwide coverage dedicated to quick response capacity in a number of areas, including strengthening resilience and linking humanitarian and development actions. In addition, the Commission proposes to create an “emerging challenges and priorities cushion” worth EUR 10 billion, to further increase the ability of the EU to respond flexibly to unforeseen events, including unexpected migratory pressure.

Preliminary analyses of the Commission proposed external budget for the next programming period have underlined how the potential gain in predictability and accountability stemming from the integration of the European Development Fund into the EU budget could be offset by the large amount of unallocated money foreseen by the “flexibility cushion” (ECRE, 2018c). 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., 2018c).

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 a comprehensive right based framework of cooperation and are not conducive to sustainable solutions to complex refugee situations (Cortinovis and Conte, 2018; Concord, 2018; Carrera and Cortinovis, 2019). In addition, references to the need to address the “root causes of irregular migration” increasingly used by EU institutions, seems to reflect a narrowly understood approach to the complex links between development processes and migration phenomena (Cortinovis and Conte, 2018; Castillejo, 2015; ECRE, 2018c).

Channeling EU development funds into the framework of ‘extra treaty’ arrangements with third countries that are driven by such an approach is not in line with UN Sustainable Development Goals (SDGs) or UN GCR principles and is not conducive to durable protection-driven solutions for refugees and other forced migrants. Development cooperation should not be ‘Euro-centric’ and instead aim mainly to meet the needs of developing countries. The ongoing negotiations on the next MFF 2021- 2027 should centre on increasing the transparency and accountability of EU funding instruments, limiting emergency-driven funding tools and ensuring full consistency between EU external migration and refugee policy and

the humanitarian and development principles enshrined in EU Treaties and UN human rights and refugee law commitments (Carrera and Cortinovis, 2019).

3.4 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, 2019). 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.

UNHCR's effort to devise a set of indicators to assess implementation of the GCR has been welcomed 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).

While recognizing the importance to monitor progress of the GCR by means of a set of commonly agreed indicators, stakeholders also reiterated the need to ensure independent monitoring and accountability of policies. Civil society and academia (including in the framework of the Global Academic Network on refugees, forced displacement, and statelessness issues envisaged by the GCR) should ensure that relevant issues not covered by the Indicator framework are addressed by independent monitoring and evaluation, particularly in areas such as access to protection, reception conditions, and refugees' access to social

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

and economic rights in their hosting countries. These are sensitive issues on which member states are reluctant to allow for a thorough monitoring of their policies and legal frameworks.

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

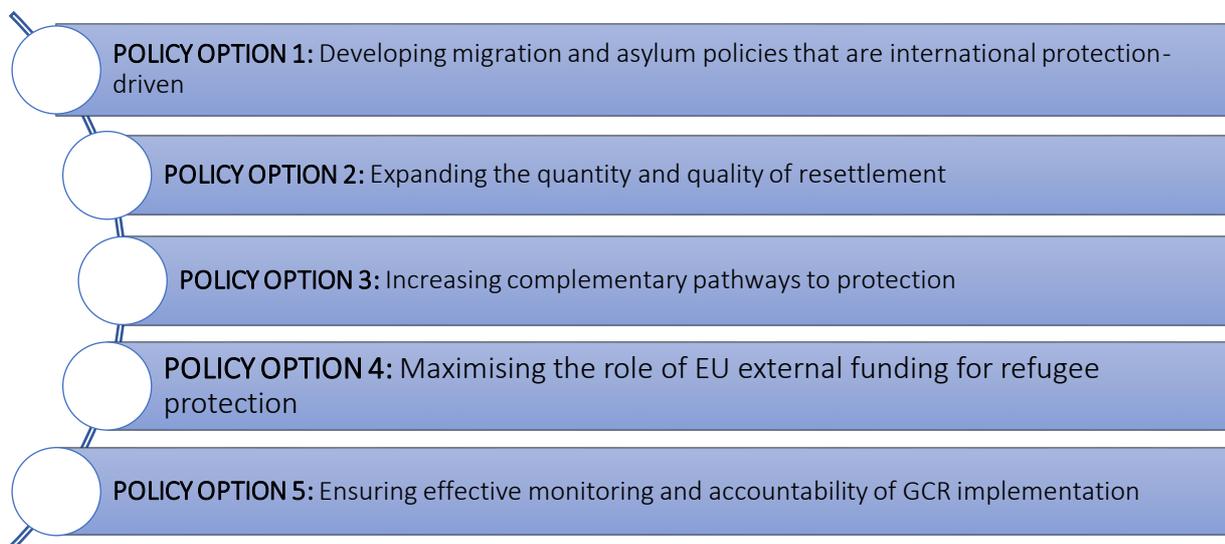
Measures that aim at restricting access to asylum in Europe and deflecting protection obligations to third countries on the other hand, stand in contradiction with the responsibility-sharing rationale of the GCR and also with the protection-based principles on which the CEAS is based (Carrera and Cortinovis,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

4. CONCLUSIONS AND SUMMARY OF POLICY OPTIONS

This Policy Options Brief has discussed some key areas on which EU policy-makers should focus when implementing the GCR. It was underlined how the GCR can constitute an opportunity to develop new governance mechanisms to engage states at a political level to leverage additional support for the functioning of the global refugee regime. At the EU level, the new mechanisms envisaged by the GCR could have the potential to foster bolder action to advance the objectives of the Compact. In particular, the GCR could be used as a reference framework to improve EU policies in a number of areas that are relevant to ensure a comprehensive response to refugee issues, from funding (both internal and external) to visa policy and the establishment of legal pathways to protection in EU member states.

Based on the analysis developed in this brief, it is possible to identify five policy priorities on which the EU should focus when implementing the GCR. The identified priorities are in line with the main objectives of the GCR and with its commitment to develop a multi-stakeholder approach involving all relevant actors and to promote evidence-based policy-making and practice.

Figure 1. EU Policy options on the implementation of the Global Compact on Refugees



OPTION 1: Developing migration and asylum policies that are international protection-driven

The increasing subordination of refugee protection to a logic of national security and immigration concerns has given rise to increasingly restrictive responses to migration and asylum movements. While the international community – including the EU and its member states – have reiterated their support to the international protection system, a number of national governments have introduced a set of control measures to prevent and deter the arrival of asylum seekers.

At the same time, the artificial bifurcation between the categories of “refugee” and “migrant” on which the current international system is based, also reflected in the choice to launch two global compacts on refugees and migrants as two separate processes, risk legitimising the adoption of a set of restrictive policies to address irregular migration – in areas such as border control, return or Search and Rescue (SAR) – which bear down heavily on refugee access to protection in Europe.

A comprehensive approach to refugee and forced displacement challenges requires the EU and its member states to rethink policies driven by an indiscriminate logic of containment, which de facto prevent refugees to exercise their right to seek asylum in Europe and circumvent states’ obligations under international law, first of the prohibition of refoulement.

OPTION 2 Expanding the quantity and quality of resettlement

The opening of legal channels for people in need of international protection to reach the territory of EU member states safely is necessary to counteract the range of restrictive measures in the field of legal migration - carrier sanctions, visa requirements, etc. – which de facto prevent asylum seekers to access protection in Europe. It is also of key importance as a demonstration of solidarity towards the main refugee hosting countries.

During the last few years, EU member states have adopted a number of commitments to increase the number of resettlement places, last a pledge in 2017 to resettle 50,000 people by October 2019.

While welcoming existing efforts, stakeholders have reiterated the need to increase the number of resettlement places made available by EU member states, in light of increasing resettlement needs at the global level. A coordinated approach at the EU level as the one included in the EU resettlement Framework proposed by the Commission in 2016, could be instrumental in boosting member states' commitment to resettlement and fostering a more coherent approach at the EU level in this area.

At the same time, it is crucial to preserve the humanitarian and protection driven character of resettlement and discard proposals to make the provision of resettlement places conditional on third countries cooperation in the field of migration control.

OPTION 3 Increasing complementary pathways to protection

Complementary pathways to protection, in the areas of family reunification, education and labour opportunities, have the potential to expand the range of possible third country-solutions for people in need of international protection, beyond formal resettlement programmes. The expansion of the so far limited opportunities for accessing protection in Europe through legal migration channels would benefit from the engagement of relevant state actors and various other stakeholders, including local communities, refugees, the private sector, academic institutions, to coordinate, promote and share best practices in the establishment and implementation of complementary pathways. As underlined by UNCHR, local, regional and national collaboration structures can also be established to coordinate complementary pathways programmes and initiatives and facilitate information sharing and coherence at the field level.

OPTION 4 Maximising the role of EU external funding for refugee protection

EU external funding as a key role to play in fostering support to the main refugee-hosting countries at the global level. Besides the provision of much needed humanitarian assistance, development assistance is also crucial to strengthen resilience of refugees and their host communities. Stakeholders have stressed how negotiations of the MFF 2021-2027 represents an important opportunity for EU institutions and member states to consolidate its role as a world's leading donor of humanitarian and development assistance. Civil society

stakeholders have underlined the importance for the EU to deliver on the EU's commitment to support lives in dignity and self-reliance. The EU Commission services in charge of external action and the EEAS should be responsible for developing EU relations with third countries grounded in the principles and vision set out in the 2016 Communication "Lives in Dignity" (European Commission, 2016c). The EU should not use external policy to prevent migration, including that of people seeking protection.

While the objective of breaking "financial silos", in particular the artificial separation between humanitarian and development assistance to displaced populations should be welcomed, EU development assistance should not be captured by migration-control objectives. This risk is particularly concrete in the current political context, in which pressures are multiplying on EU policy-makers to use development assistance for supporting EU efforts in the field of migration, not least through an increased use of different forms of conditionality.

OPTION 5 Ensuring effective monitoring and accountability of GCR implementation

Oversight and monitoring of implemented actions are crucial to ensure implementation of the GCR objectives. Stakeholders have recommended that the Commission should take an active role in the development of indicators to monitor progress towards the implementation of commitments, in particular those undertaken in the framework of the Global Refugee Forums.

While UNHCR efforts to develop a set of commonly-agreed indicators to monitor progress in achieving the Compact's objectives requires support from states parties and all other relevant stakeholders, independent monitoring and evaluation by civil society and academia should also be ensured. This is particularly the case of those policy areas that may not be adequately covered by the official evaluation framework, such as access to protection, reception conditions, refugees access to social and economic rights, including freedom of movements and the right to work.

References

- Amnesty International (2016). *Position paper on the Proposed EU Resettlement Framework*.
 Online: <https://www.amnesty.eu/news/amnesty-international-position-paper-on-the-proposed-eu-resettlement/>
- Carrera, S. (2016), *Implementation of EU Readmission Agreements: Identity Determination Dilemmas and the Blurring of Rights*, Springer Briefs in Law, Springer International Publishers.
- Carrera, S. (2018). 'On Policy Ghosts: Readmission Arrangements as Intersecting Policy Universes', in S. Carrera, L. den Hertog, M. Panizzon and D. Kostakopoulou (2018), *EU External Migration Policies in an Era of Global Mobilities: Intersecting Policy Universes*, Immigration and Asylum Law and Policy in Europe, Vo. 44, 10 December, pp. 21-59.
- 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., Lannoo, K., Stefan, M., Vosyliute, L. (2018a). Some EU governments leaving the UN Global Compact on Migration: A contradiction in terms? CEPS Policy Insights, No 2018/15, <https://www.ceps.eu/ceps-publications/some-eu-governments-leaving-un-global-compact-migration-contradiction-terms/>
- Carrera, S., den Hertog, L., Kostakopoulou, D., and Panizzon, M. (2018b), *The External Faces 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. (2018c). *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.
- Castillejo, C. (2015). *The European Union Trust Fund for Africa: A Glimpse of the Future EU Development Cooperation*. Discussion Paper 22/2016, German Development Institute, https://www.die-gdi.de/uploads/media/DP_22.2016.neu.pdf
- 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_SingleExternalInstrument_April2018.pdf?d65bd5&d65bd5
- Cortinovis, R. (2019a). ReSOMA Final Synthetic Report - Implementing the UN Global Compact on Refugees: Which role for the EU? <http://www.resoma.eu/node/1780>

- Cortinovis, R. (2019b). Contributing to global responsibility-sharing for refugees: the role of EU external funding, ReSOMA Policy Options Brief, http://www.resoma.eu/sites/resoma/resoma/files/policy_brief/pdf/POB%20Conditionality%20of%20External%20Funding.pdf
- 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.
- Danish Refugee Council (2019). Rights at risk: Implications of a closer nexus between asylum and return procedures. DRC Policy Brief. Online: <https://drc.ngo/news/rights-at-risk-implications-of-a-closer-nexus-between-asylum-and-return-procedures>
- ECRE (2016). The implementation of the hotspots approach in Italy and Greece: A study. Online: <https://www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report5.12.2016..pdf>
- ECRE (2018a). ECRE comments on the Commission proposal for a Recast Return Directive COM(2018) 634, <https://www.ecre.org/wp-content/uploads/2018/11/ECRE-Comments-Commission-Proposal-Return-Directive.pdf> ECRE (2019). *Global means global: Europe and the Global*
- ECRE (2018b). Untying the EU Resettlement Framework. ECRE's recommendations on breaking the link with migration control and preserving the humanitarian focus of resettlement, <https://www.ecre.org/wp-content/uploads/2016/10/Policy-Note-01.pdf>
- ECRE (2018c). *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 (2016a), Proposal for a Regulation establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM(2016) 467.
- European Commission (2016b). 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.ù
- European Commission (2016c). *Lives in Dignity: from Aid-dependence to Self-reliance. Forced Displacement and Development*. COM(2016) 234 final

- European Commission (2018a). Proposal for a Directive of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast), COM(2018) 634 final
- European Commission (2018b). Proposal for a Regulation of the European Parliament and of the Council establishing the Neighbourhood, Development and International Co-operation 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>
- Gammeltoft-Hansen, T. and Hathaway, J. C. (2014). 'Non-Refoulement in a World of Cooperative Deterrence'. *Columbia Journal of Transnational Law*, 53, 235.
- Gammeltoft-Hansen, T. and Tan, N. F. (2017). 'The End of the Deterrence Paradigm? Future Directions for Global Refugee Policy'. *Journal on Migration and Human Security*, 5, 28.
- 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/>
- Giuffré, M. (2013). 'State Responsibility Beyond Borders: What Legal Basis for Italy's Push-backs to Libya?' *International Journal of Refugee Law*, 24, 692-734.
- International Rescue Committee (2018). Unlocking frozen futures: Recommendations for an ambitious, humanitarian and sustainable Union Resettlement Framework. <https://www.rescue-uk.org/sites/default/files/document/1446/internationalrescuecommittee-unionresettlementframeworkbriefing-january2018final.pdf>
- Karas, T. (2018). Briefing: The new global refugee pact "A common concern for humankind". IRIN Analysis. Online: <http://www.irinnews.org/analysis/2018/12/18/briefing-new-global-refugee-pact>
- Moreno-Lax, V. (2015). "The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of Treaties." In: G.S. Goodwin-Gill and P. Weckel (eds), *Migration and Refugee Protection in the 21st Century: International Legal Aspects*. Leiden/Boston: Martinus Nijhoff Publishers.
- 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>

- Rodenhauser, T. (2014). 'Another Brick in the Wall: Carrier Sanctions and the Privatization of Immigration Control'. *International Journal of Refugee Law*, 26, 223-247.
- Scholten, S. (2015). *The privatisation of immigration control through carrier sanctions: the role of private transport companies in Dutch and British immigration control*. Leiden: Brill.
- UNHCR (2015). Higher education considerations for refugees in countries affected by the Syria and Iraq crises. <https://www.unhcr.org/protection/operations/568bc5279/highereducationconsiderations-refugees-countries-affected-syria-iraq.html>
- UNHCR (2019a). Global Refugee Forum, 17 and 18 December 2019. Guidance Note. Pledges and Contributions and Good Practices, <https://www.unhcr.org/5cc836594>
- UNHCR (2019b). 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 (2019c). Global Compact on Refugees: Indicator Framework, <https://www.unhcr.org/5cf907854.pdf>
- Westerby, R. (2019). The way forward. A reflection paper on the new proposals for EU funds on Asylum, Migration and Integration 2021-2027. <https://www.ecre.org/wp-content/uploads/2018/11/The-Way-Forward.pdf>



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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