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

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Abstract

This paper examines the controversies surrounding the adoption of the United Nations Global Compact on Migration (GCM) and their impacts for the European Union. On the one hand, the EU lost the momentum to speak with one voice in the final conference in Marrakech and at the UN General Assembly, as three Member States voted against the GCM and five abstained (one did not attend the conference). On the other hand, 19 EU Member States did sign the GCM. It shows a positive political commitment among these Member States to develop future policies at EU level. This paper offers an overview of the EU's role in implementing the GCM, and in particular the EU's commitment to creating "availability and flexibility of pathways for regular migration" (objective 5). It argues that while some EU legal migration policies are generally in line with the GCM, some current EU Directives on labour immigration fall short of the standards laid down in the International Labour Organisation instruments and the principle of non-discrimination among different categories of workers (Carrera et al. 2019a). Moreover, EU irregular migration policies, such as the newly proposed recast EU Return directive, are incompatible with the GCM, for example in relation to objective 13 "using detention as a last resort measure" or objective 7 that also proposes to facilitate access for "non-removable" migrants "to an individual assessment that may lead to regular status". The Paper concludes by opening up some questions for future assessments of the EU's role in implementing the GCM. Will EU legislators use the GCM as an opportunity to develop a long-term and comprehensive strategy in the area of migration? Or will they continue searching for consensus among all Member States and subjecting the Union's policies to 'intergovernmentalism' and the lowest common denominator?

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Introduction

On 10 December 2018 in Morocco, representatives of 164 participating states and the EU have attended the Intergovernmental Conference to approve the Global Compact for Safe, Orderly and Regular Migration (known as the Global Compact for Migration – GCM) (European Commission 2019a). On 19 December 2018 the UN General Assembly has endorsed the GCM in the resolution 73/195. On this occasion, 152 countries, including 19 EU Member States, have voted in favour (UN General Assembly 2018). A number of controversies led three EU Member States to vote against the GCM (Czech Republic, Hungary and Poland), five more (Austria, Bulgaria, Italy, Latvia and Romania) to abstain and Slovakia did not attend this UN General Assembly meeting.

This paper elaborates how the controversies surrounding the GCM have emerged and what impacts it had. The paper asserts that the decision of some EU Member States to leave the GCM, has weakened EU's institutional position in the international arena and, in particular, the principle of 'sincere cooperation' in EU's external action (Melin 2019; McAdam 2018). However, the fact that 19 EU Member States have signed the GCM, shows that, despite controversies, there is a political commitment to approve policies at EU level that aim at better facilitating rather than preventing migration, in line with the Qualitative Majority Vote at the Council (Carrera 2019; Crépeau 2018).

Although at the moment EU has no formal role within the implementation and the follow-up of the GCM, in practice the EU and its agencies are already contributing to the achievement of many GCM objectives in the areas of development cooperation, non-discrimination and integration of Third Country Nationals, irregular migration and border controls, legal and labour migration policies, etc. (European Economic and Social Committee 2019; European Commission 2018). This paper offers a quick overview of the EU's role in creating "availability and flexibility of pathways for regular migration" and ways in which the EU's legal migration acquis is in line with and in which ways falling short of this GCM objective. Instead of conclusions, it leaves some questions open for further elaboration.

1.   The GCM as an unprecedented victory for multilateralism

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

In December 2018 in Morocco, representatives of 152 countries, including 19 EU Member States, signed The Global Compact for Safe, Orderly and Regular Migration (known as the

Global Compact for Migration – GCM) (UN General Assembly 2018). The signing of the GCM has been celebrated by many academics and civil society as an "unprecedented victory of multilateralism" since it meant that, for the first time, a truly global framework for cooperation had been agreed in the area of migration (Donato and Ferris 2019) or the "beginning for the global regulation of migration" (McAdam 2018: 573). Although the GCM has not created new rights, nor it is a legally binding document, it has been considered as a political re-commitment to internationally agreed human rights and labour rights standards (Crépeau 2018; Gatti 2018; McAdam 2018; Peters 2018; Allison et al. 2019; Carrera 2019).

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

The International Labour Organisation (ILO) has taken the first steps towards preventing labour rights abuses and the severe exploitation of migrant workers, namely with the Migration for Employment Convention (Revised) No. 97 of 1949 and the Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975. The ILO has also been leading the process of drafting the International Convention for the Protection of the Rights of All Migrant Workers and their Family Members (ICRMW) (UN General Assembly 1990). It constituted a first attempt to create a legally binding instrument in the area of international migration that has "extended well beyond prior conventions" and for the first time articulated a set of human rights applicable to all migrants (Donato and Ferris 2019: 55). In addition, the ICRMW was coupled with an oversight mechanism – the Committee on Migrant Workers. Even such a robust international framework has failed to create international consensus: while countries of origin have welcomed and ratified the ICRMW, the countries of destination see it as too ambitious, and refrained from signing and/or ratifying it.

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

In contrast, the drafting of the GCR has been rooted in the well-developed international framework where all current EU Member States had readily accepted obligations under international humanitarian law, including the 1951 Geneva Convention and its protocols. It was also guided by the already established role of the UNHCR that is also supposed to be the key 'catalyst' for implementation (Carrera and Cortinovis 2019a; Ferris and Donato 2019).

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

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

The GCM text has been seen as 'ambitious'; however, at the same time, it was not intended to be a legally binding document (Allison et al. 2019; Carrera et al. 2018a; Gatti 2018; Peters 2018). Nevertheless, the GCM has proved an important step in the area of Global Migration Governance 'the GCM for the first time set out a comprehensive framework for migration' (Ferris and Donato 2019:119). Such international cooperation on migration needs to be based on a "common understanding, shared responsibilities and unity of purpose regarding migration, making it work for all" (GCM, Preamble 9). Thus, the GCM proposes a new normative approach and narrative on migration. The GCM stresses that national borders should be managed in line with international humanitarian and human rights law. It underlines that human rights are "the precondition for the deliberative politics and for legitimation of the rule-of-law-based power" (Carrera et al. 2018a: 8). The GCM also elucidates interdependencies between countries of origin, transit and destination and highlights that a common approach is needed, as "no State can address the phenomenon alone".

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

competences (objective 18), to managing borders (objective11) or facilitating return operations and reintegration (21) in line with already existing human rights standards.

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

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

While it does not create new rights, the former UN Special Rapporteur on Migrants' Rights, Francois Crépeau, saw a potential in the GCM to develop "from a normative framework to a binding document" as occurred with the Universal Declaration of Human Rights at the UN level, or with the Fundamental Rights Charter within the EU (Lesinska 2019b). It could potentially take decades for this to happen.

Among some of the key innovations, the GCM has reinstated the principle of a 'firewall' in its objective 15 to provide access to basic services to all migrants. In addition, although watered down, there is a provision calling for regularisation of 'non-removable' migrants. The objective 7 on "addressing and reducing vulnerabilities in migration" calls on governments (GCM, para. 23 (i)) "to build on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status." Also a number of principles have been reiterated, such as the "best interest of the child" or "detention as a last resort".

2. The vote at the UN General Assembly: divisions among and within EU Member States

Among the 19 signatory EU Member States, the majority signed the Compact without any remarks. Denmark, Lithuania, the Netherlands, Malta, and the UK highlighted in their explanatory memorandums the non-binding legal nature of the GCM (Melin 2019; Carrera et al. 2018a). Only five countries around the globe voted against the final text of the GCM, namely the Czech Republic, Hungary, Poland and two countries whose state-building was based on migration – the United States and Israel.

Figure 1. Comparison of the vote of the EU Member States and EEA/ Schengen zone countries (inner circle) and the rest of the UN States Parties (outside circle)
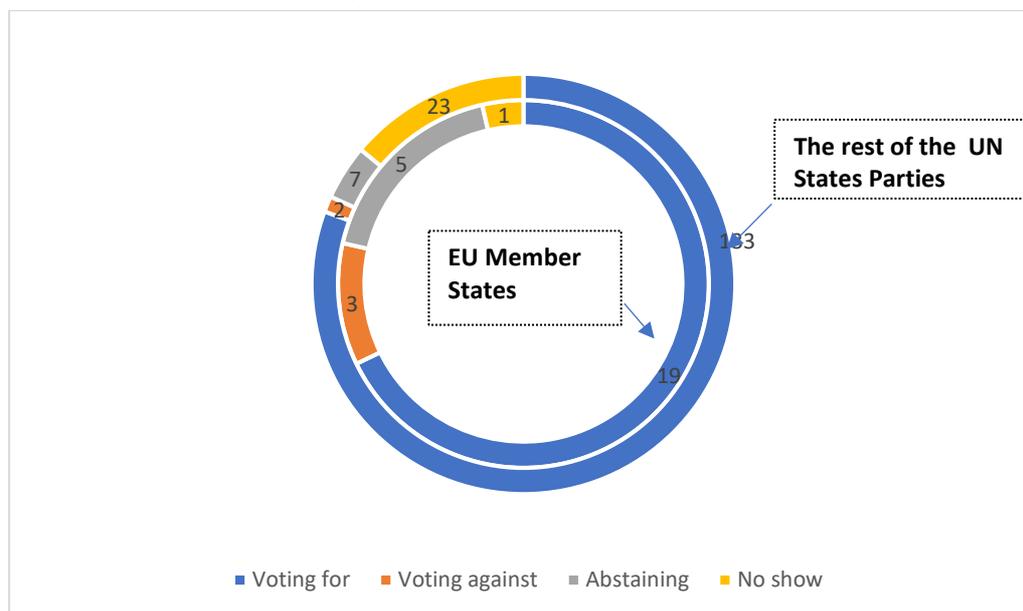
Source: Author, 2019 on the basis of the UN official data.

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

A further 24 countries did not attend the vote at the UN General Assembly, including one EU Member State – Slovakia. Differently from the ICRMW, while the old divisions between the global North and global South were on display at the UN General Assembly, eight of the total 24 countries that did not vote or did not show up at the meeting were in the UN list of the least developed countries in the world, namely Afghanistan, Benin, Guinea, Kiribati, Sao Tome/Principe, Somalia, Timor-Leste, Vanuatu. The rest were either small island nations with high income or low/middle income countries.

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

The vote in Marrakech also showcased the normative clash between EU Member States seeing migration as a 'threat' or 'danger' and those seeing migration and mobility as an 'opportunity' for innovation, economic growth, for demographic change, for development (Crépeau 2018; McAdam 2018; Carrera et al. 2018a; Huddleston and Sarif 2019). The withdrawals from the GCM negotiations made opposition within the Member States more visible, between ministries/or functions falling under leadership of different parties and also between the

Ministries of Foreign Affairs and Ministries of Interior, as occurred in Austria, Belgium, Slovakia, Italy and Germany (Carrera et al. 2018a; Melin 2019; Gatti 2018).

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

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

The following paragraph shows how the above-mentioned divisions within society have been exploited and artificially manipulated in the final months before the Marrakech conference.

The final text of GCM was already agreed in July 2018 after a two-year process where Ministries of Foreign Affairs and also the EU Delegation to the UN had been carefully ensuring that the text was in line with national and EU priorities. However, in the run-up to adoption, the GCM became a subject of various controversies, including of the disinformation campaign "led by right-wing populists and right-wing extremists" (Institute for Strategic Dialogue 2019a):

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

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

The vote at the UN General Assembly indeed culminated in some of the EU governments leaving the GCM, while most of the myths and "contradictions in terms" could have been dispelled by simply reading the text of the GCM (Carrera et al. 2018a). The Institute for Strategic Dialogue (ISD) thus concluded that "right-wing extremist and right-wing populist actors played a disproportionate role" in why EU Member States left the GCM. These developments should be assessed relative to the actual context where a majority of people are positive about migration. A ReSOMA brief on public opinion concluded that despite various disinformation campaigns "public opinion remains relatively positive, stable and hard-to-change in most parts of Europe, even among people who lived near EU hotspots, refugee routes and reception centres" (Huddleston and Sarif 2019: 20).

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

In this case, the unity of the EU's voice in its external action has been challenged and in particular the principle of sincere cooperation (Melin 2019). The first to contradict the EU's position was the right-wing government of Hungary led by Viktor Orbán, in March, 2018. This came as no surprise, given its anti-migration rhetoric, non-compliance with the EU principles of equal solidarity and failure to respect the EU's founding values (Carrera et al. 2018a; Carrera 2019; Melin 2019).

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

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

A similar controversy arose in Slovakia, where the Minister of Foreign Affairs, Miroslav Lajcak, who was at that time also acting as President of the UN General Assembly, had strongly supported the GCM (Melin 2019). However, the opposition submitted the GCM, a non-binding document, for parliamentary backing, which was not granted and thus the Slovak Representation decided not to attend the vote at the UN General Assembly.

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

Academics note, that precisely, the globally agreed normative understanding of migration as not solely a challenge, but also as an opportunity has led some governments, and, in particular, the Ministries of Interior to rebel (Crépeau 2018; Carrera et al. 2018a; Gatti 2018). Objective 17 of the GCM, which called for fighting xenophobia and promoting evidence-based discourse on migration, aimed to counter the strategies where politicians have built their political capital on anti-migrant sentiments. It is thus precisely such politicians and movements that aimed to sabotage the GCM process. The far-right parties and populist politicians have based their arguments against the GCM on account of it opening the doors for irregular migration. Academia has asserted, that by refusing to cooperate internationally, such politicians were in fact, conversely 'calling for more irregular, unsafe and unregulated migration' (Carrera et al. 2018a).

3. GCM vote as a lost opportunity for 'unified EU's approach' in the international arena

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

The Commission argued that the latter consensus also constituted a unified EU approach to signing the GCM. The legal analysis (Melin 2019) showed that the preceding documents, while indicating the support for the GCM, lacked sufficient precision as to what the Union position was to constitute a basis on which the Commission could negotiate. This analysis revealed that for non-binding documents, the EU actually has no precise procedure that needs to be followed, namely, whether the Commission needs authorisation from the Council and at which stage of the procedure.

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

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

The outcome of three EU Member States contradicting the official position, and five more abstaining, not only violated the 'principle of unity in the international representation of the Union', but also weakened the EU's negotiating power and credibility in the international arena in the field of migration and, possibly, beyond (European Commission 2019a). The European Commission (2018) highlighted this in its proposal for a Council decision to authorise the Commission to approve the final draft of the GCM on behalf of the Union, as it:

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

If this is the case, the import of nine Member States contradicting the EU position, is deeper than simply the issue of "unity of EU representation". It means that EU Member States voting against and abstaining from the GCM are signalling their departure not only from internationally agreed human rights and international labour standards, but also from their commitments to EU legal principles, such as non-discrimination, equal solidarity, loyal and sincere cooperation, and respect of fundamental rights.

4. GCM vote as a possibility for EU to build a comprehensive and long-term strategy on migration

Despite the lack of unanimity discussed above, the GCM vote gives a new impetus to people-centred and human rights-based EU policymaking in the area of migration. If the GCM votes reflect the genuine positions of the19 EU Member States, then there is one more reason to celebrate the GCM as a victory – if a qualified majority vote, and not unanimous consensus keeps being applied in EU-level decision-making. Figure 2 below converts EU Member States votes in the UN General Assembly on resolution 73/195 into a calculation of a qualified majority vote in the Council in the EU.

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

The European Commission (2018), in its draft proposal for the Council of the EU authorising approval of the GCM "in the field of development cooperation" made an overstatement, at best, that EU already has created such strategy:

> "Over the past years, the Union has built a comprehensive long-term strategy on migration covering all aspects of this phenomenon, from saving lives, offering protection to those in need, addressing the root causes of irregular migration and forced displacement as well as providing support to forcibly displaced populations around the world. This strategy is built on partnership and close cooperation with partner countries and organisations such as the African Union, the United Nations and its Agencies. This comprehensive approach should be promoted globally."

Indeed, in the area of migration there have been major developments taking place since the 1999 Tampere Conclusions. The EU has gained competences in various migration-related areas – from developing legal migration *acquis*, the Schengen Borders Code, Visa Code, and the Common European Asylum System. Despite this, academia argues that EU is still far away from having a 'long-term strategy', when we speak about migration (Crépeau 2018; Carrera 2019; Carrera et al. 2019a; Allison et al. 2019). For example, Crépeau (2018: 651) highlights that, unlike in the other areas, strategic planning in the area of migration management is lacking: "The timeline of these policies always seems to be now – 'stopping migration now', 'sending back migrants now', 'bringing IT technicians now'."

Figure 2. The outcome of the GCM in light of the qualified majority vote rule at the Council*
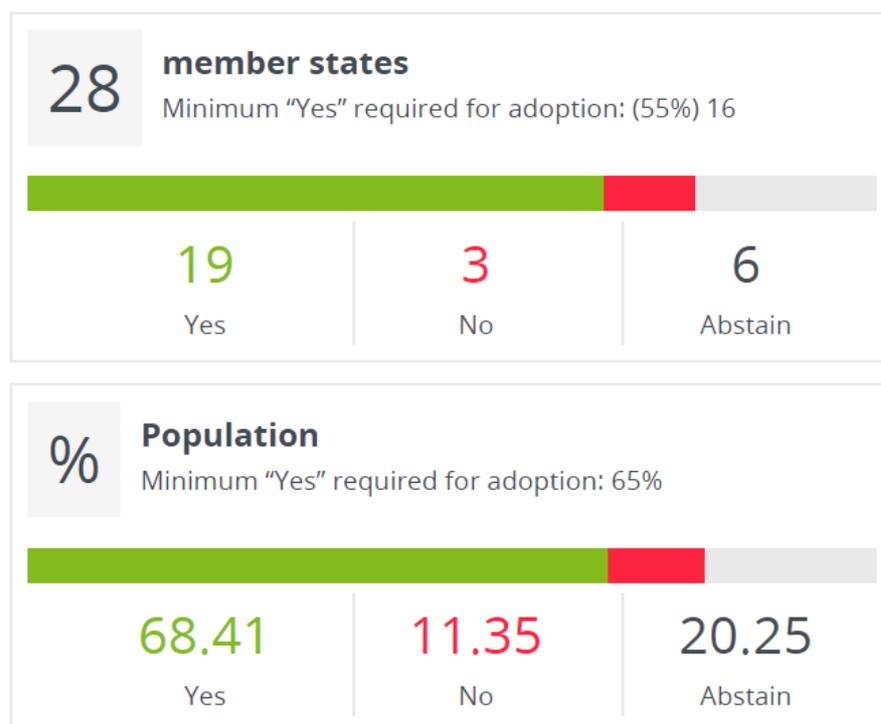
Notes: *Slovakia not attending the conference counts as 'abstaining'.
Source: EU QMV calculator on the basis of UN official data 2019.

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

Even more shortcomings have been identified in the EU legal migration *acquis* aimed at middle and low-skilled migration. For example, the Seasonal Workers Directive prescribes that the working and living conditions of seasonal workers may fall short of international human rights and labour rights standards. Seasonal workers, depending on the transposition by the Member State, currently have only one opportunity to change employer or sector. However, the barriers in practice, and the risk of falling into irregularity makes it virtually impossible for the majority of seasonal workers to use the possibility provided in law. Also, seasonal workers have no right to bring their family members into the EU, which now stands in contrast with GCM paragraph

21(i) where States Parties agreed to "facilitate access to procedures for family reunification for migrants at all skills levels".

In addition, a number of third-country nationals are not covered by any of the 'first entry' directives and in particular in those sectors where predominantly undocumented or undeclared migrant workers are being exploited. For example, there are no schemes at EU level to admit migrant domestic or other care workers, thus they sometimes find themselves in situations of labour exploitation, forced labour and servitude. A previous study has called for a binding immigration code that is horizontally applicable to all categories of third-country nationals (Carrera el al. 2019 a). While the GCM calls for new pathways, some academics considered as a shortcoming that it does not explicitly mention the responsibilities of these sectors. For example, Francois Crépeau (2018) saw this as a "blind spot left in the GCM":

> "[the GCM] does not mention that destination countries must reduce their underground labour markets, which acts as a major pull factor for undocumented migration" and that it has led to "delocalization of labour conditions from the global South to the global North" in the sectors that could not be delocalized, such as "agriculture, care, construction, extraction, fisheries and hospitality."

In addition, there is a lack of legal pathways for those escaping war and violence. The policymaking in the area of the Common European Asylum System has experienced even deeper 'policy paralysis' – the insistence on a consensus as opposed to QMV has made it impossible to move ahead with the asylum package. Also, the proposal on humanitarian visas, that could be seen as one of the ways to contribute to the objective 5, is currently pending.

Several other EU policies enacted in 'crisis mode' stand at odds with the objectives of the GCM, such as 'ad hoc disembarkation arrangements' with objective 8 "to save lives and establish coordinated international efforts on missing migrants", or the currently proposed Returns Recast directive with objective 13 "to use migration detention only as a measure of last resort" (Vosyliūtė 2019). Thus, the question arises how the tensions between the GCM objectives undertaken by 19 EU Member States and ongoing or newly undertaken EU-level legislation, policies and operational responses can be resolved.

Conclusion: What impacts of the GCM in EU policymaking in the area of migration and borders?

Twenty years after the Tampere Council, the EU has developed an exclusive competence on multiple migration management related issues, including the legal migration directives, border control procedures, various tools aiming at addressing irregular migration, including anti-migrant smuggling, returns, etc. Even when the EU does not have an exclusive competence, EU institutions and agencies are increasingly becoming involved in various internal and external migration-management policies and practices that are covered by the objectives of the GCM, from search and rescue to screening and vulnerability assessment procedures at hotspots, the role of civil society (Carrera and Cortinovis 2019a and 2019b; Carrera et al. 2019b, 2018b and

2018c). In addition, the EU has been providing forums and funding to enable EU Member State cooperation with third countries as to address the 'root causes' – such as via International Development Aid (IDA) instruments, International Partnership Agreements (IPAs) with EU neighbourhood countries and increasingly via extra-EU budget instruments such as the Trust Fund for Africa (Carrera et al. 2018d).

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

The EU has not found one voice to speak at the UN level, with three EU Member States, namely the Czech Republic, Hungary, and Poland, voting against and five more abstaining, and Slovakia not attending the conference at all. On the one hand, the controversy around the GCM has showed how democratic processes can be exploited by small interest groups, thwarting a 'unified EU approach'. On the other hand, the fact that 19 EU Member States have politically re-committed to their obligations under international human rights, humanitarian and labour law presents an opportunity for creating 'a comprehensive long-term strategy on migration' (European Commission 2018), but only if qualified majority voting is being actively used in the Council.

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

In total, 152 countries signed the GCM, highlighting the global consensus that 'no state' alone can deal with the phenomenon, that there is a common understanding on migration and that a global cooperation framework is needed. It has now to be implemented both internally within the majority of EU Member States and externally – with majority of the EU's global partners. The divisions within the EU raise several questions to be answered by the new EU legislature on defining what will be the EU's role in implementing the GCM:

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

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