

## **Global Compact for Safe, Orderly and Regular Migration**

### **Comments on the zero draft plus by the Special Representative of the Secretary General on Migration and Refugees, Council of Europe, March 2018**

#### **I. Introduction**

1. In January 2016, in response to the unprecedented number of migrants and refugees who arrived in Europe over the course of 2015, the Secretary General appointed a Special Representative on Migration and Refugees to work with the relevant structures within the Council of Europe, our member states and other international organisations, to coordinate assistance and support for member states and contribute to international cooperation in this area.
2. The Special Representative fully supports efforts by the international community to work together to address the challenges linked to migration and to secure the protection of the human rights of all of those in migration. He welcomes the zero draft of the Global Compact for Safe, Orderly and Regular Migration (GCM), which is an ambitious but balanced document, based on existing standards. He supports the objectives and the actionable commitments it contains, which if implemented will contribute significantly to the protection of all those in migration. He commends in particular the human rights-based approach of the GCM, building on the 2016 New York Declaration. It is encouraging to see that many of the human rights standards of the Council of Europe are reflected in the present draft. These standards must be maintained as negotiations progress.
3. The commitments set out in the GCM apply to all migrants. It is important to clarify the scope, and in particular those who benefit from the commitments in the GCM, at the outset of the document as well as its relationship with the Global Compact for Refugees (GCR). A number of the objectives and actionable commitments focus on economic migrants (for example, pathways for regular migration and decent work). However, refugees, individuals granted subsidiary or temporary protection, asylum-seekers and others who are compelled to leave their countries of origin are also migrants. It should be clear to what extent their specific interests and needs will be reflected in the GCM, and to what extent they will be represented in the GCR. Cross-referencing once the texts reach a more advanced stage may be one way to ensure the comprehensiveness and complementarity of the two Compacts.
4. The Special Representative has prepared the present submission following consultation with other services of the Council of Europe secretariat involved in migration issues.

#### **II. The Preamble and guiding principles**

5. Both the GCR and the GCM highlight the role that regional organisations can play in the implementation of the compacts. A reference in the GCM Preamble in broad terms to the importance of regional cooperation in the field of migration would serve to underline that role. It would also give visibility to the work that regional organisations carry out in this area and encourage the full inclusion of regional bodies in securing the implementation of the objectives and actionable commitments set out in the GCM. Paragraph 2 of the Preamble would also

benefit from a reference to regional, as well as international, human rights treaties. In the European context, the European Convention on Human Rights establishes the principal human rights standards to be applied in the context of migration.

6. The Special Representative subscribes to the view that management of migration is a shared responsibility but acknowledges the challenge that this presents. He would welcome more concrete commitments regarding how responsibilities will be shared in practice. The GCM's reference to states' overarching obligation to respect, protect and promote the human rights of migrants is particularly important and reflects the Council of Europe's own approach in this field. The inclusion of rule of law and due process, human rights, gender-responsive and child-sensitive as guiding principles is also very positive. However, more could be done in the text of the objectives and actionable commitments to truly mainstream these important principles in the GCM. For example, references to specific human rights obligations in relevant contexts, in particular the fundamental human rights principle of *non-refoulement*, are infrequent and gender-responsiveness is reflected in only 8 out of 22 objectives despite its relevance to other objectives.

### **III. Implementation, follow-up and review**

7. The ambitious nature of the GCM and the broad commitments it lays out provide the foundations for real improvements in the management of migration and the treatment of migrants across the globe. However, the GCM will have failed if these broad commitments do not ultimately lead to concrete changes on the ground. The provisions on implementation would provide a much-needed sense of direction if more fully developed in the GCM. Thought should be given to identifying specific actions to be undertaken, with appropriate timelines where possible, to achieve the objectives and commitments outlined. The composition, purpose and role of the capacity-building mechanism should be more carefully described, and it should be directly linked to achieving outcomes that will contribute to the realisation of the GCM's objectives. Training of legal professionals to enhance their ability to protect migrants' human rights would also help secure the implementation of a number of the commitments in the GCM.
8. The current draft largely relies on the UN and its Secretary General to press forward with ensuring that states deliver on the commitments made. However, it is here that regional organisations could play a central role. As regards European countries, the Council of Europe is particularly well placed to assist its 47 member states to work towards achieving the goals set out in the GCM. A number of binding human rights standards applicable to migrants are already in place. Bodies have been established to monitor states' implementation of these standards and to assist them in achieving greater compliance. The Committee of Ministers provides a political forum in which states' representatives can engage in discussion of migration-related issues and make recommendations which, although not binding, offer useful guidance in a wide variety of areas. Further, most Council of Europe Conventions are open to participation by non-member states. Accession to these treaties would provide support to other states to put in place a legal framework designed to assist them to achieve the objectives and actionable commitments set out in the GCM. The Council of Europe has also developed extensive training modules in the field of human rights for legal professionals, several of which address migration-related human rights.

9. It would therefore be beneficial to refer expressly to the role of the regional organisations, such as the Council of Europe, in the context of discussion of the implementation of the GCM and to envisage their full involvement in the implementation, follow-up and review process. An addition in paragraph 42 inviting the Secretary General to establish coordination with relevant regional bodies could encourage full engagement by them and capitalise on the experience and expertise that they can offer.

#### **IV. The objectives and actionable commitments**

10. The comments below highlight what the Special Representative considers to be the strong points of various objectives as well as any perceived shortcomings or omissions. They also explain how the Council of Europe could, and already does, contribute to the realisation of the GCM commitments through the normative frameworks it has established as well as the support and expertise it offers to its member states to help them meet agreed targets. This is considered useful and informative for the GCM drafters, both from the perspective of seeking to give more substance to the commitments as well as from the point of view of identifying more clearly how they might be implemented.

##### *1. Objective 1: Data collection*

11. The Special Representative welcomes the commitment under Objective 1 to collecting reliable data, disaggregated by age and sex. However, the need to put in place data protection safeguards and respect migrants' privacy should be the subject of a specific, separate action under this objective. All data collected, whether at source or via other record-holders, must be subject to appropriate data protection guarantees and should be anonymised wherever possible to protect the privacy of the data subjects. Data gathered under this objective should not be used for any purposes other than those envisaged in the objective itself.
12. The Council of Europe has developed extensive standards on data protection. The key principles are set out the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which is the only international treaty in this field. States which are not members of the Council of Europe may accede to the Convention: more than 50 countries around the world have already signed it. The Convention is currently being updated to address that challenges for privacy resulting from the use of new information and communication technologies, to strengthen its follow-up mechanism and to ensure it is compatible with various normative frameworks around the world. The principles of the Convention are further elaborated through recommendations to Government, adopted unanimously by the Committee of Ministers. Although these recommendations are not legally binding, they contain real standards of reference for all states, whether they are parties to the Convention or not. The right to protection of personal data has also been developed by the interpretation of the right to respect for private and family life under Article 8 of the European Convention on Human Rights by the European Court of Human Rights. In a number of judgments, the Court has clarified the data protection standards that apply to the collection and processing of personal data. The Court's judgments are binding on the parties to the case.

### *2. Objective 3: Provision of information at all stages of migration*

13. The Special Representative's fact-finding missions have shown that states frequently fail to provide information, or to provide the information at a time and in a manner which allow it to be properly digested and understood. He therefore considers this objective to be a key goal. He particularly welcomes the clarification that information should be provided "at all stages of migration" since his experience confirms that provision of information should be a continuing obligation which lasts from arrival through to integration or return. However, this latter aim does not appear to be adequately reflected in the actionable commitments: for example, paragraph 18d) refers to information to be provided to newly-arrived migrants but migrants who have been in a country for some time may be in equal need of such information. It would be useful to underline that information needs may evolve and that, as a consequence, authorities should assess information needs on an individual basis at the various different stages of the migratory process. It should also be clarified that information must be provided in a child-sensitive and gender-responsive manner and should take into account language restrictions, literacy limitations and connectivity constraints. For migrants who have residence rights, there should be an emphasis on the provision of information on integration opportunities, such as language-learning or other relevant courses, educational possibilities and other community outreach programmes, as well as information on the rights and obligation linked to their residence status.
14. The European Court of Human Rights has underlined the importance of the provision of information on access to international protection and the applicable procedures, as part of Council of Europe member states' obligations under Articles 2 (right to life) and 3 (prohibition of torture) of the European Convention on Human Rights. The need to ensure access to information has been included in the Council of Europe's 2017-2019 Action Plan on Protecting Refugee and Migrant Children, adopted by the Committee of Ministers in May 2017. As part of the Action Plan's implementation activities, a handbook on child-friendly information for migrant children is currently being drafted and will be made available in several languages in due course. The preparation of an on-line course for legal professionals on refugee and migrant children will be completed in 2018 and will cover the right to child-friendly information. The Council of Europe's 2018-2023 Gender Equality Strategy, adopted in March 2018, underlines the need for measures to ensure that migrant women have access to information about their rights and the services available.

### *3. Objective 4: Proof of legal identity and documentation*

15. The Special Representative considers that proof of identity and statelessness are two separate, albeit interlinked issues. It may be helpful to avoid confusion by setting out the specific commitments in respect of each in separate objectives.
16. Provisions concerning official identity documents and the sharing of data give rise to data protection concerns which are not addressed in the text as it currently stands (see comments regarding Objective 1 above). Proof of identity should not form the basis of discriminatory treatment, profiling or identification of those to be deported.
17. The Council of Europe has been active on the issue of statelessness for some time. Important instruments have been adopted, including the 1997 European Convention on Nationality and a

recommendation of the Committee of Ministers (CM/Rec(2009)13) on the nationality of children. The Convention is open to accession by non-Council of Europe member states. In 2016, the Parliamentary Assembly of the Council of Europe adopted resolution 2099 (2016) on the need to eradicate statelessness of children. The resolution sets out specific actions which it calls on member states to take to eradicate childhood statelessness. Article 8 of the European Convention on Human Rights (right to respect for private and family life) has also been interpreted as providing protection against the arbitrary denial of citizenship. The Council of Europe's 2017-2019 Action Plan on Protecting Refugee and Migrant Children includes an action to ensure that every child has a nationality. Work is now under way in the European Committee on Legal Cooperation to examine how the principle of avoiding statelessness in respect of child migrants can be implemented in practice.

*4. Objective 5: Enhance availability of pathways for regular migration*

18. Regular migration pathways are one important way to tackle the problems of smuggling and human trafficking. However, this objective focuses heavily on pathways for economic migrants; it is regrettable that commitments in respect of those who are compelled to leave their countries of origin and in respect of family reunification are not given more prominence. As regards those compelled to leave their home countries, in addition to the pathways mentioned reference should be made to resettlement schemes. This is a particular area where the shared responsibility of states is in play and experience in Europe over the past four years shows that it is also an area where much work still needs to be done. By providing those affected with the opportunity to seek some form of protection in their home state, or another neighbouring state, we can remove the need for them to embark on treacherous journeys which risk their lives and well-being. We can also better manage migration by reducing impromptu arrivals which put a strain on the resources of receiving countries.
19. The actionable commitment in respect of family reunification could be strengthened by using the positive language of measure to promote the right to family unity rather than simply referring to the removal of barriers. The best interests of the child should be taken into account in decision-making in this area. A reference to procedural requirements for family reunification processes would also be a welcome additional guarantee.
20. Article 8 (right to respect for private and family life) of the European Convention on Human Rights has essentially been interpreted as securing a right to family reunification for refugees and requiring a speedy, attentive and careful examination of their reunification requests. The European Court of Human Rights has also explained the standards that apply to requests for family reunion by those who are not recognised refugees. The Council of Europe's Commissioner for Human Rights published in 2017 an issue paper on realising the right to family reunification of refugees in Europe in which he set out a series of recommendations. The Council of Europe's 2017-2019 Action Plan on Protecting Refugee and Migrant Children includes measures to assist children and families to restore family links and be reunified. In the course of the next two years, the Council of Europe will prepare and publish a handbook on standards and good practices and will develop a training module on family reunification as part of a training course of refugee and migrant children.

5. *Objective 6: Fair recruitment and conditions that ensure decent work*

21. The focus of the commitments here is on labour mobility. Access to the labour market of those compelled to leave their countries of origin is not explicitly addressed in any of the outlined commitments. These individuals who have been granted residence rights in the host country should also have the opportunity to earn their livelihood. Failure to make provision for this increases the risk of destitution, exploitation of the vulnerable (in particular children) and social exclusion. The question of child labour of migrant children is not addressed in the GCM. However, the experience of the Special Representative has indicated that in some places this is a particular cause for concern. Commitments aimed at identifying child labour by migrant children, tackling the reasons for it and prosecuting and punishing those responsible, either in this objective or Objective 7 concerning vulnerabilities in migration, would be a welcome addition.
22. The European Social Charter guarantees a broad range of human rights related to employment and requires that enjoyment of the rights it affords be guaranteed without discrimination. Article 4 of the European Convention on Human Rights guarantees the right not to be held in slavery or servitude or subjected to forced labour and Article 11 guarantees to the right to freedom of assembly and association to all those within Council of Europe member states' jurisdiction. Article 14 and Protocol No. 12 to the Convention guarantee the right not to be discriminated against. The Council of Europe offers expertise and technical support to assist its member states to meet these standards.

6. *Objective 7: Addressing and reducing vulnerabilities in migration*

23. The Special Representative welcomes this objective but considers that it ought to be strengthened by identifying those who are deemed to be vulnerable. This group includes children, pregnant and breastfeeding women, women with children, victims of gender-based violence and torture, women travelling alone, victims of trafficking, LGBTI individuals, migrants with mental and physical illnesses and the elderly. Paragraph 22c) should expressly mention the importance of giving specific consideration to the particular needs of each of the different vulnerable groups. Paragraph 22e) should refer specifically to the need to strengthen national child protection systems, should make clear that the appointment of a guardian for unaccompanied and separated children should occur immediately and should refer to the importance of an effective guardianship system that limits the number of children assigned to any one guardian.
24. The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) requires criminalisation of sexual offences against children. The Convention is open to accession by non-Council of Europe member states. It requires parties to adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators. The Lanzarote Committee monitors whether parties effectively implement the Convention. In 2017 it adopted a special report on protecting children affected by the refugee crisis from sexual exploitation and sexual abuse. It is now considering follow-up activities based on the findings and recommendations of the report, in line with the 2017-2019 Action Plan on Protecting Refugee and Migrant Children. The Council of Europe has also adopted a 2016-2021 Strategy for the rights of the child which contains measures relevant to the protection of children in migration. The Council of Europe is also working on standard-setting in respect of guardianship and age assessment, as provided for in its 2017-2019 Action

Plan on Protecting Refugee and Migrant Children. Draft recommendations of the Committee of Ministers on these two subjects are under discussion and it is hoped that they will be adopted before the end of 2018. A training course for legal professionals on refugee and migrant children is currently being developed and will cover their rights, guardianship and age assessment procedures among other topics. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) creates a legal framework to protect women against all forms of violence and prevent, prosecute and eliminate violence against women and domestic violence. It also establishes a specific monitoring mechanism (GREVIO) to ensure effective implementation of its provisions by the parties. The Convention is open to accession by non-member states. The Council of Europe's Human Rights Commissioner is active in drawing attention to shortcomings in the protection of vulnerable people in migration and in pressing for measures to strengthen their protection, including through dialogue with member states' government. Anti-trafficking standards of the Council of Europe are discussed in the context of Objective 10, below.

*7. Objective 8: Save lives and coordinate efforts on missing migrants*

25. The Special Representative would welcome an express reference to the principle of *non-refoulement* in this context. It should be underlined that this principle applies to all migrants including those who would not qualify for asylum under the 1951 Refugee Convention. Again, the sharing of data should be accompanied by appropriate data protection safeguards. As regards missing migrants, specific commitments should be envisaged in respect of missing migrant children, including enhanced cross-border police cooperation and coordination to trace children who have disappeared on the migratory route.
26. The principle of *non-refoulement* is reflected in the interpretation of Articles 2 (right to life) and 3 (prohibition of torture) of the European Convention on Human Rights. The European Court of Human Rights has clarified that the actions of the authorities of a member state at its borders or on the high seas will generally fall within that state's jurisdiction for the purposes of the Convention. It has consistently underlined in its judgments that expulsions, including pushbacks, cannot take place where there are substantial grounds for believing that a person, if expelled, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the receiving country. As regards the commitment to enhance reception and assistance capacities, the Council of Europe in its 2017-2019 Action Plan on Protecting Refugee and Migrant Children underlined the support which will continue to be provided in this respect by its Development Bank. The Action Plan also proposes the preparation of a recommendation for adoption by the Committee of Ministers on appropriate standards of reception for migrant children. A resolution of the Parliamentary Assembly of the Council of Europe on harmonising the protection of unaccompanied minors in Europe (Resolution 2136(2016)) calls on member states to reinforce cross-border police cooperation and coordination to enhance the protection of unaccompanied migrant children who go missing.

*8. Objective 9: Strengthen the transnational response to smuggling*

27. The commitment to tackle smuggling is key to disrupting irregular migration flows. However, the GCM should explicitly recognise the role that corruption plays in facilitating smuggling networks. A commitment from states to ensure that corruption in all its form is not an impediment to the

effective management of migration flows, together with specific actions to tackle corruption, would strengthen this objective.

28. The Council of Europe 2017-2019 Action Plan on Protecting Refugee and Migrant Children includes an action on tackling the smuggling of migrant children. In June 2017 the Council of Europe held a conference to discuss best practices and concrete measures to prevent and combat the smuggling of migrants, strategies for more efficient co-operation and information exchange. By way of follow-up, the European Committee on Crime Problems decided to set up two expert working groups, one dealing with preventive measures and the other with practical measures to improve international co-operation. The first meetings of the two working groups are expected to take place in the coming months. The Council of Europe has established standards in the field of corruption, most notably in its 1999 Criminal Law Convention on Corruption and Civil Law Convention on Corruption. Both treaties are open to accession by non-member states. The Group of States against Corruption (GRECO) monitors states' compliance with the Organisation's anti-corruption standards.

*9. Objective 10: Prevent and combat trafficking in persons*

29. As with smuggling, corruption plays a central role in enabling trafficking networks to flourish. A similar commitment to take action to tackle corruption in all its forms would therefore contribute to the realisation of this objective.
30. The 2005 Council of Europe Convention on Action against Trafficking in Human Beings has a comprehensive scope of application, encompassing all forms of trafficking and all persons who are victims of trafficking. The Convention is not restricted to Council of Europe member states; non-members states may also accede. The main added value of the Convention is its human rights perspective and focus on victim protection, which make it particularly relevant to the actionable commitment set out at paragraph 24e) of the GCM. Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations it contains, including the Group of Experts on Action against Trafficking in Human Beings (GRETA). GRETA undertakes country visits to identify gaps and needs in current procedures for the identification of trafficking victims. The 2017-2019 Council of Europe Action Plan on Protecting Refugee and Migrant Children includes actions to protect children from trafficking. Under the Action Plan, work is expected to begin shortly on a compendium of good practices in the fight against child trafficking. The Council of Europe has also developed a training course for legal professionals on trafficking in human beings.

*10. Objective 11: Manage borders in an integrated, secure and coordinated manner*

31. The Special Representative fully supports the statement in paragraph 25 that borders will be managed based on the rule of law and in full respect of the human rights of all migrants, regardless of their migration status. Monitoring is critical in this context. Again, he would welcome an express reference to the fundamental principle of *non-refoulement* (see Objective 8 above). He would also propose a commitment in paragraph 25e) to ensuring that an effective complaints mechanism is in place to enable all third-country nationals who complain of human rights abuses at borders to lodge a complaint and have that complaint examined by an independent and impartial body offering human rights-compliant procedures. Where pre-screening is envisaged, data protection concerns arise and an express reference to the need for



safeguards would therefore also be welcome here. Such screening should also be child and gender-sensitive and be carried out by suitably qualified staff.

32. Articles 2 (right to life), 3 (prohibition on torture) and 13 (right to an effective remedy) of the European Convention on Human Rights impose obligations on states to investigate complaints of ill-treatment. The European Court of Human Rights in its case-law has clarified the procedural requirements of such investigations. The Council of Europe's data protection standards have been explained in the context of Objective 1.

#### *11. Objective 12: Strengthen procedures for status determination*

33. Objective 12 provides the gateway between the GCM and the GCR. Among other things, the status determination will decide whether migrants benefit only from the commitments set out in the GCM or whether they will, in addition, benefit from the particular commitments outlined in the GCR. There is a need for clear language in both Compacts so as to remove any doubt as to which individuals fall within the category of "refugee" for this purpose. The commitments in this objective are important, although there appears to be some overlap with other areas of the GCM (e.g. Objectives 7 and 10). It may be better to develop the commitments under the substantive objectives concerned and cross-refer to them, than to include further, similar, commitments related to vulnerable migrants and trafficking under Objective 12.
34. Procedural guarantees for status determination procedures – including the right to legal assistance where appropriate, the right to participate in the proceedings, the right to be heard and present evidence and the right to an effective remedy against a negative decision – are missing from the commitments under this objective. These provide an important safeguard for migrants and the Special Representative would welcome an express reference to them here. There is also a need for procedures concerning children to be child-friendly, with particular safeguards in place to ensure that the child is fully involved and understands the procedure applied as well as its ramifications.
35. Articles 2 and 3 of the European Convention on Human Rights have been interpreted to include procedural safeguards applicable to asylum procedures. These include the safeguards listed above. The Council of Europe has developed a training course for legal professionals on asylum and human rights. Under the Council of Europe's 2017-2019 Action Plan on Protecting Refugee and Migrant Children, the Organisation is also working on measure to improve access to child-friendly procedures. A training course on refugee and migrant children which will include a module on child-friendly procedures is being developed. A compilation of good practices on child-friendly migration-related procedures will also be prepared.

#### *12. Objective 13: Migrant detention as a last resort*

36. The Special Representative strongly supports the emphasis on the lawfulness of detention, the development of alternatives to detention for migrants and efforts to end the immigration detention of children. The procedural guarantees referred to in paragraph 28c) should be explicitly set out. There should also be an express right for detainees to challenge the legality of their detention via judicial review procedures. The commitment in paragraph 28e) could underline that detention of migrants is only justified for as long as diligent action is being taken to identify or to deport them, to prevent migrants from languishing in detention for long periods of time while the authorities are inactive. The reference to ensuring that, as a minimum, access

to food, healthcare and adequate accommodation is granted is an important provision. Migrants in detention should also have access to information about their rights and responsibilities, to relevant non-governmental organisations, to legal assistance and to outside space. Conditions of detention should be gender-sensitive and should cater for any specific needs or vulnerabilities of the particular detainees. The commitment that migrants be detained separate from criminals in non-punitive detention facilities is welcome. It would be helpful to clarify, with this in mind, that migrants should never be detained in police stations while awaiting an administrative decision, since such facilities are unsuitable for anything other than a very short-term stay.

37. Article 5 (right to liberty and security) of the European Convention on Human Rights as interpreted in the case-law of the European Court of Human Rights establishes the standards to be applied by the member states of the Council of Europe in respect of detention. Detention of migrants can only be ordered to prevent a person from effecting an unauthorised entry into a country or in respect of a person against whom action is being taken with a view to deportation. Procedural guarantees apply, including the right to challenge the legality of detention before a court and the right to a speedy judgment. In the case of children, the Court's position to date has been that detention must be a measure of last resort and conditions of detention must be suitable for children in order for it to be compatible with Article 5. It has only once found these conditions to be satisfied. The Council of Europe's 2017-2019 Action Plan on Protecting Refugee and Migrant Children includes an action to avoid resorting to the deprivation of liberty of children on the sole ground of their migration status. In implementation of this action, a conference on ending immigration detention of children was held in Prague in September 2017 to identify best practices and potential recommendations in this area. The Steering Committee for Human Rights, which operates under the Committee of Ministers, is currently developing guidance on alternatives to detention, on the basis of which a training course will be developed for relevant professionals. The Parliamentary Assembly of the Council of Europe has launched a campaign to end immigration detention of children.
38. Article 3 (prohibition on torture) of the European Convention on Human Rights requires that conditions of detention are adequate. As regards migrant detention, the European Court of Human Rights has made it clear that police stations are not appropriate premises for the detention of persons awaiting an administrative decision and has clarified the relevant factors for determining whether accommodation is adequate. It has emphasised that special needs must be taken into account. The Court has without exception found a violation of Article 3 in cases in which children have been held in immigration detention. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment monitors the application of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to detention situations. It conducts periodic visits to all member states and may also make unannounced visits if it considers it necessary to monitor a particularly serious situation. The Committee delegation has unlimited access to places of detention, can interview persons deprived of their liberty in private and can communicate freely with anyone who can provide information. It reports on its missions; reports may be made public. The Committee secretariat has recently published a factsheet on immigration detention, providing guidance to member states. The Steering Committee on Legal Cooperation is working on codifying standards applicable in respect of conditions of detention of migrants.

### *13. Objective 15: Access to social services*

39. The Special Representative welcomes this key commitment to ensure that migrants, regardless of their migration status, have non-discriminatory access to healthcare, education, housing, social protection and other basic services. This commitment should be more expressly reflected in paragraph 30b) by a specific reference to prohibition of discrimination on grounds of migration status. Firewalls are an important safeguard to promote migrants' access to services in practice; the Special Representative therefore supports the reference to firewalls in paragraph 30d) and would propose a similar reference in 30e), to prevent data provided in the context of a complaint being used for immigration enforcement purposes. General data protection safeguards could, in addition, be referred to here. The provision of information about available services and how to access them is also central to ensuring the effectiveness in practice of this objective. It would moreover be useful to include a commitment to providing intercultural competence training for key front-desk service professionals.
40. The European Social Charter guarantees a broad range of everyday human rights related to housing, health, education, social protection and welfare. It emphasises protection of vulnerable persons such migrants and requires that rights be guaranteed without discrimination. Under the Council of Europe's 2017-2019 Action Plan on Protecting Refugee and Migrant Children, the Organisation is currently working on preparing a training course on refugee and migrant children which will include a module covering their socio-economic rights. The Council of Europe's 2018-2023 Gender Equality Strategy, adopted in March 2018, refers to the need for measures to ensure that migrant, refugee and asylum-seeking women have access to their human and social rights in relation to employment, housing, health, education, social protection and welfare where applicable, as well as access to information about their rights and the services available. The European Commission against Racism and Intolerance published its General Policy Recommendation No. 16 in March 2016. Among other things, it calls on member states to ensure that all irregularly present migrants are protected against discrimination, to respect their fundamental human rights in the fields of education, health care, housing, social security and assistance, labour protection and justice, to decouple immigration control and enforcement from the provision of services, and to ensure that irregularly present migrants have full, non-discriminatory access to administrative and judicial remedies without the risk that their data will be shared for immigration control purposes.

### *14. Objective 16: Full inclusion and social cohesion*

41. The integration of migrants in local communities is an essential component of migration management. The Special Representative fully supports the actionable commitments outlined under this objective. Access to language learning opportunities, the labour market and education are central to the success of integration policies. Paragraph 31k) could be further strengthened by the inclusion of provision of linguistic or other necessary extra-curricular support for migrant children entering mainstream education. The reference to family reunification in this context, recognising its relevance to migrants' integration, is also positive. Some further thought could be given to the question of political participation of migrants at local level to give them a stronger stake in their communities.
42. The actionable commitments here align closely with the work of the Council of Europe on migrant inclusion at local level. The Intercultural Cities Programme supports cities in reviewing

their policies through an intercultural lens and developing comprehensive intercultural strategies to help them manage diversity positively and realise the diversity advantage. It is open to non-Council of Europe member states and counts among its members cities in Japan, Australia and Mexico for example. The fifth monitoring round of the European Commission against Racism and Intolerance focused on integration, including the integration of migrants. The Commission has reported on a number of countries and made recommendations. The Council of Europe has also launched a project on linguistic integration of adult migrants. In the context of this project, it has developed a linguistic toolkit, launched in 2017, designed to assist organisations that provide language support for refugees. It offers information on cultural and language awareness and language learning, guidance on finding out about language needs and planning language support, and diverse learning activities. The Council of Europe's 2017-2019 Action Plan on Protecting Refugee and Migrant Children envisages a number of actions in this field, including information-gathering on education provision to migrant children and their integration into mainstream education, identification and sharing of good practices in this area and subsequent development of a guide and other follow-up measures. The Committee of Ministers adopted a recommendation on life projects for unaccompanied migrant minors (CM/Rec(2007)9), the implementation of which is to be reviewed under the 2017-2019 Action Plan. The 2016-2019 Action Plan on Building Inclusive Societies also sets out relevant actions which could improve the social inclusion of migrants. One of the Special Representative's priorities is migrant integration and possibilities for action are under consideration, based among other sources on the 2016 Issue Paper *Time for Europe to get migrant integration right* published by the Council of Europe's Commissioner for Human Rights. The 1992 Convention on the Participation of Foreigners in Public Life at Local Level could provide guidance on extending limited political rights to migrants. It is open to accession by non-member States.

*15. Objective 17: Eliminate discrimination and promote fact-based public discourse*

43. As regards tackling discrimination, xenophobia and hate crimes, the Special Representative welcomes the actions proposed. It would be helpful to refer specifically to the need to take into account the particular needs and vulnerabilities of different groups, including women and girls, LGBTI individuals. The European Commission against Racism and Intolerance has a great deal of experience in this area, offering support to Council of Europe member states in addressing these issues through periodic reporting and the publication of recommendations. Articles 2 (right to life), 3 (prohibition on torture), 8 (respect for private and family life) and 14 (prohibition of discrimination) and Protocol No. 12 to the Convention (prohibition of discrimination) provide important safeguards in this respect. Through its case-law, the European Court of Human Rights has underlined in particular the necessity of thoroughly investigating potential racist motives for ill-treatment. Training of relevant professionals could also help to ensure disseminate the relevant standards to enhance the protection of migrants in this respect.
44. The need to create counter narratives, to address the challenge of "fake news" and to present to communities the benefits of migration deserves more attention than it is currently given in this objective. Promoting independent, objective and quality media report is only one element of this. Other relevant commitments include a commitment by governments to use objective, fact-based language when discussing migration, a commitment to ensure that the public have access to reliable and accurate data and a commitment to take measures to investigate and put in place safeguards against the dissemination of "fake news", in compliance with freedom of expression.

45. Article 10 of the European Convention on Human Rights guarantees press freedom as one of the essential foundations of a democratic society. But the Court has clarified that the protection afforded by Article 10 to journalists is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the principles of responsible journalism. In some cases involving racist and xenophobic speech the Court has invoked Article 17 (prohibition of abuse of rights) to preclude applicants from relying on the right to freedom of expression at all. The Parliamentary Assembly of the Council of Europe has drawn attention to the image of migrants in the media on several occasions over the past twenty years. The Committee of Ministers responded by adopting recommendations on hate speech and on the media and the promotion of a culture of tolerance. The European Commission against Racism and Intolerance has also emphasised the need to encourage debate within the media on the image that they convey of minority groups in connection with the fight against terrorism, and the responsibility of the media to avoid spreading biased information. The Council of Europe's 2017-2019 Action Plan on Protecting Refugee and Migrant Children includes several actions to tackle hate speech and to exchange good practices in this area. A report on media coverage of the "refugee crisis" was published by the Council of Europe in 2017 and existing media-diversity tools are being promoted.

*16. Objective 18: Recognition of skills, qualifications and competences*

46. The Special Representative's fact-finding missions have confirmed that non-recognition of skills, qualifications and competences can be a significant obstacle to education and employment. He therefore strongly supports the inclusion of this objective in the GCM.

47. The 1997 Convention on the Recognition of Qualifications concerning Higher Education in the European Region (Lisbon Recognition Convention), developed by the Council of Europe and UNESCO, is the key legal instrument for recognition of qualifications across Europe. Non-Council of Europe states may accede to the Convention. The Committee of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region is responsible for promoting the application of the Convention and overseeing its implementation. It can adopt recommendations, declarations, protocols and models of good practice to guide the competent authorities of participating states. The European Network of National Information Centres on Academic Mobility and Recognition (the ENIC Network) upholds and assists the practical implementation of the Convention by the competent national authorities. Under the auspices of the Convention, the Council of Europe has developed a European qualifications passport for refugees. The passport is a document providing an assessment of higher education qualifications based on available documentation and a structured interview. It also presents information on the applicant's work experience and language proficiency. The document provides reliable information for integration and progression towards employment and admission to further studies.

*17. Objective 19: Contribution of migrants and diasporas to sustainable development*

48. The objective concerning the contribution of migrants and diasporas to sustainable development in all countries is heavily focussed on maintaining and strengthening links with their countries of origin. However, migrants and diasporas also have a great deal to contribute to their host countries and this should also be reflected in this objective.

49. In September 2017 the Parliamentary Assembly of the Council of Europe launched a Parliamentary Network on Diaspora Policies and declared 8 September as the European Day of Diasporas. The main aim of the network is to promote policy and legislative reforms regarding the role of diasporas in countries of origin and host societies. It will also promote political cooperation between countries of origin and host societies and the democratic participation of diasporas, as well as the role of diaspora associations in the integration of migrants in host communities and enhanced dialogue between members of the network and diaspora associations.

*18. Objective 21: Dignified and sustainable return, readmission and reintegration*

50. Returns are an essential part of any migration policy and it is right that they are addressed in the GCM. The focus on facilitating dignified, human rights-based returns is welcome but a direct reference to respect for the principle of *non-refoulement* would be a welcome addition. As regards children, it should be made clearer that they should only be returned where it is determined that return would be in their best interests. While cooperation with countries of origin may in some cases be necessary in order to secure the necessary travel documents, this should be made subject to safeguards to ensure full respect for the human rights of those being returned. Individualised assessments leading to returns decisions should also take into account private and family life considerations and determine whether a return would be proportionate. Express reference of the right to legal assistance, to a hearing, to present evidence, to receive reasons for a return decision and to have the opportunity to appeal to an independent and impartial body would further strengthen respect for applicable due process guarantees referred to in paragraph 36e). Monitoring mechanisms are important: they should also be independent. Reference to independent mechanisms competent to accept and investigate complaints of ill-treatment or other human rights abuses during returns operations would complement monitoring mechanisms and contribute to ensuring accountability.

51. As already mentioned, the European Convention of Human Rights safeguards the right to *non-refoulement*, the right to respect for private and family life and the right to an effective remedy. The European Court of Human Rights, through its case-law, has given further guidance of what is required from states in this respect, including the applicable procedural guarantees. In 2005 the Committee of Ministers adopted Twenty Guidelines on Forced Return, bringing together the Council of Europe's standards and guiding principles and identifying best practices. The Guidelines serve as a practical tool for use by both governments in the drafting of national laws and regulations on the subject and all those directly or indirectly involved in forced return operations. The Council of Europe's Human Rights Commissioner also raises human rights concerns regarding the manner in which returns in Europe are carried out. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment can monitor return flights in the context of its country visits. GRETA also gives particular attention to the forced return of migrants and may investigate and report on allegations that returns have taken place in breach of the Organisation's standards.

## **V. Concluding remarks**

52. The Special Representative congratulates the co-facilitators of the GCM on an excellent draft, which forms a solid basis for negotiation. He expresses the hope that the human rights-based

approach and important fundamental rights principles will be enhanced, and not reduced, during the negotiation process. He underlines the significant support that the Council of Europe can give – not only to its own member states but more widely – in terms of elaboration of relevant standards, guidance on practical measures to ensure that they are fully respected and in some cases monitoring to identify where applicable standards have not been fully implemented.

53. The Special Representative will continue to engage with and follow the GCM process. He is happy to provide further information on the various different actions of the Council of Europe, either to inform the actionable commitments or as part of a discussion about implementation of the GCM now or in the future.