

The Marrakesh Compact, The Global Compact for Refugees and Covid19 in the EU

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Linking the two Compacts

- Refugee Compact: Refugee Convention - the cardinal principle: non-refoulement; (para 5).
- Marrakesh Compact: UN Human rights conventions – the insertion of non-refoulement (Convention against Torture, Convention against Enforced Disappearance etc): situation of vulnerability (para 13).

Non-refoulement or situation of vulnerability?

- A Common principle – how does it apply?
- Requirement to determine whether a person is a refugee, or in need of international protection;
- The administrative category: the asylum seeker – between making the claim and the determination.

Non-refoulement/situation of vulnerability at the external border

- Closing external borders: expression of sovereignty;
- Compatibility with non-refoulement;
- What are states' duties to refugees at borders?
- The duty to examine the claim in a fair procedure.

EU Policy and Non-refoulement

External borders: Schengen Border Code
(without prejudice to non-refoulement);

Procedures Directive: special arrangements for
determining applications made at the border;

Safe third countries, safe countries of origin =
manifestly unfounded applications.

Covid 19 and the EU external border

Closure of the external borders for non-essential travel: Schengen (EU Statement 17 March);

Schengen non-EU states;

Non-Schengen EU states;

The obligation not to refouler?

External Borders: Essential or Non-essential Travel?

- Guidelines to Border Guards 16 March – no mention of non-refoulement;
- European Commission COM(2020) 115 – temporary restrictions – not to affect “Persons in need of international protection or for other humanitarian reasons.”

Intra-Schengen Borders

- The theoretical application of Dublin III?
- 26 Schengen States (Croatia to be approved);
- 14 states introduce temporary intra-Schengen state border controls on Covid19 grounds; 3 on foreseen Covid19 grounds;

Detention of Asylum Seekers

- Always only a last resort – Marrakesh Compact Objective 13; Refugee Compact alternatives to detention Para 1.5;
- Practice: reception centres going into lockdown; detention of migrants subject to expulsion decisions – legality where expulsion is no longer possible?

Covid19 and Procedures

- Importance of the personal interview (Procedures Directive) – Marrakesh Compact Para 27 (c) border management; Refugee Compact Para 62 – assistance to states to get procedures right;
- Suspension of interviews on Covid19 grounds – eg Austria, Cyprus, the Netherlands;
- Complete suspension of migration services: France, Greece.

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