



## General Assembly

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### Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration

Marrakech, Morocco, 10 and 11 December 2018

Agenda item 10

#### Outcome of the Conference

#### **Letter dated 5 December 2018 from the Austrian Federal Minister for Europe, Integration and Foreign Affairs addressed to the Special Representative of the Secretary-General for International Migration**

Let me start by congratulating you on your nomination to be the Secretary-General of the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration, which is going to take place in Marrakech.

In this context, allow me to inform you that, after careful consideration, the Austrian Federal Government has decided not to join the Global Compact for Safe, Orderly and Regular Migration and not to send a representative to the Intergovernmental Conference. Austria will also abstain from the vote in the General Assembly of the United Nations following the Conference. Please find attached the explanation of vote that Austria intends to make on that occasion (see annex).

The reason for this decision is that the Government of Austria does not consider the Global Compact to be the right instrument to regulate international migration and that Austria must remain entirely sovereign in the area of migration. The Austrian Government underlines that the Global Compact does not establish any legal obligations for Austria and may not lead to the emergence of customary international law. The Global Compact shall not serve national or international courts as a point of reference for the clarification of legal provisions.

I should be grateful if you would make this letter and the attached declaration of vote known to all States participating in the Intergovernmental Conference, as well as to the delegations accredited as observers.

It goes without saying that the Austrian Federal Ministry for Foreign Affairs, as well as myself, remain at your entire disposal for any clarification you might wish to have regarding the subject matter.

*(Signed)* Karin Kneissl



**Annex to the letter dated 5 December 2018 from the Austrian Federal Minister for Europe, Integration and Foreign Affairs addressed to the Special Representative of the Secretary-General for International Migration**

**Austrian explanation of vote**

The Republic of Austria is a State under the rule of law with a functioning judiciary. All judicial and administrative decisions of the Republic are rendered in full respect of human rights as enshrined in national laws, as well as in international treaties. The Republic sovereignly decides on the admission of migrants to Austria. A human right to migrate is unknown to the Austrian legal order. Austria rejects the creation of the category of “migrant”, which does not exist under international law.

Austria is drawing a clear distinction between legal and illegal migration. Austria opposes watering down this distinction, as would result from the Global Compact for Safe, Orderly and Regular Migration.

Access to the Austrian labour market, as well as the granting of social benefits or health care, must exclusively adhere to the rules set out by Austrian law. The Global Compact may not at any point impact on these legal provisions. Any such intentions are firmly rejected. This also applies to the creation of new entitlements or rights for migrants through the Global Compact. Austria particularly rejects the following points of the Global Compact to the extent that they go beyond existing Austrian law:

- Facilitation of change of status between regular and irregular migrant
- Facilitation of family reunification
- Improved inclusion in the labour market
- Enabling the transfer of social security rights
- Provision of basic social services
- Provision of school resources
- Access to higher education
- Recognition of non-formally gained qualifications
- Facilitation of the setting up of businesses
- Access to the health-care system
- Relocation options for climate refugees
- Adoption of best practices in the field of integration
- Prosecution of hate crimes
- Information on legal paths for prosecution to the benefit of victims of hate crimes (criminal charges, claims for damages)
- Avoiding criminal profiling based on race, ethnicity or religion
- Motivating the exposure of intolerance
- Avoiding detention and the prohibition of collective expulsions

Austria objects to the Global Compact becoming customary international law or having legal effect in Austria as soft law or by any other means. The Compact shall not serve national or international courts as a point of reference for the clarification

of legal provisions. In addition, the Compact shall not lead to any shift of competences within the European Union.

The Republic of Austria, represented by the Austrian Federal Government, therefore does not adopt the Global Compact. Austria has declared this in writing vis-à-vis the United Nations and expresses through its abstention from the vote that it will not join the Compact. In this context, it states the following:

- Austria explicitly declares that the Global Compact is non-legally binding under international law.

The Global Compact shall not be interpreted as *opinio juris* or State practice for the emergence of customary international law, nor shall any general principle of law evolve from it; in such a case, Austria would have to be regarded as a “persistent objector”.

In the event that any binding provision were to be created or adopted on the basis of the Global Compact, Austria shall not be bound under international law to any such provision.

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