

**COMMISSION STAFF WORKING DOCUMENT**

**Accompanying document to the Policy Plan on the Common European Asylum  
System**

**Impact Assessment**

**Lead DG: Justice, Freedom and Security**

## **1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES**

The Commission's Work Programme for 2008<sup>1</sup> included the adoption of a Policy Plan on the Common European Asylum System (CEAS) as one of its strategic initiatives<sup>2</sup>. The Policy Plan should define a blueprint for the coming years and list the measures that the Commission intends to take in order to complete the second phase of the CEAS, and in particular in order to adapt the European legislation on reception conditions and assessment criteria, to achieve fuller harmonisation of national rules on eligibility criteria, and progress towards a single procedure for assessing applications for international protection. This should allow at the same time for a true expression of European values of solidarity. A road map was prepared for this strategic initiative<sup>3</sup>.

The Commission considered that, before proposing any new initiative, an in-depth reflection and debate with all the relevant stakeholders on the future architecture of the CEAS was necessary. It therefore presented in June 2007 a Green Paper<sup>4</sup> (hereinafter "the Green Paper") aiming to identify the possible options for shaping the second phase of the CEAS. The response to the public consultation included 89 Contributions from a wide range of stakeholders<sup>5</sup>, including 20 Member States, regional and local authorities, the Committee of Regions and the Economic and Social Committee, UNHCR, academic institutions, political parties and a large number of NGOs. The issues raised and the suggestions put forward during the consultation have provided the basis for the preparation of this Policy Plan.

The Commission ordered an external study<sup>6</sup> (hereinafter "the external study") in order to get support for the preparation of the Impact Assessment. The external study constitutes the main support for this report. The problem, objectives and policy options assessed were based on the interim report from the contractor prepared in close consultation with the Commission and on the basis of an analysis of the contributions to the Green Paper and existing evaluation reports of EC asylum instruments<sup>7</sup>.

The external study and this report have been drafted with input from numerous contacts between the Directorate-General for Justice, Freedom and Security and the contractor as well as one meeting of an inter-service steering group at which participated

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<sup>1</sup> COM (2007) 640

<sup>2</sup> CLWP reference No : 2008/JLS/020

<sup>3</sup> [http://ec.europa.eu/atwork/programmes/docs/clwp2008\\_roadmap\\_strategic\\_initiatives.pdf](http://ec.europa.eu/atwork/programmes/docs/clwp2008_roadmap_strategic_initiatives.pdf)

<sup>4</sup> COM (2007) 301

<sup>5</sup> The 89 contributions received are available at: [http://ec.europa.eu/justice\\_home/news/consulting\\_public/gp\\_asylum\\_system/news\\_contributions\\_asylum\\_system\\_en.htm](http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/news_contributions_asylum_system_en.htm). An analysis of the contributions is attached in annex 1.

<sup>6</sup> Impact assessments on certain instruments of the Common European Asylum Policy, Ernst&Young Financial Business Advisors S.P.A. (Specific contract No JLS/2007/A1/xx). The external study will be published at: [http://ec.europa.eu/dgs/justice\\_home/evaluation/dg\\_coordination\\_evaluation\\_annexe\\_en.htm](http://ec.europa.eu/dgs/justice_home/evaluation/dg_coordination_evaluation_annexe_en.htm)

<sup>7</sup> Report on the evaluation of the Dublin system (COM (2007) 299); report on the evaluation of the Reception Conditions Directive (COM (2007) 745)

representatives of the Directorates-General for External cooperation programmes (EuropAid) and for Humanitarian aid (ECHO)<sup>8</sup>.

The Commission's Impact Assessment Board (IAB) was consulted on the draft final Impact Assessment report and issued its opinion on 21 April 2008<sup>9</sup>. The IAB acknowledged the good and innovative way in which the specific and operational objectives were explicitly linked to the various aspects of the problem. The IAB also formulated a number of recommendations which have been taken into account in this report notably as regards (i) clarifying the distinction between harmonised and higher standards; (ii) better explaining the broader impacts that the proposed common higher standards may have on the Member States; (iii) Addressing more fully the issues of subsidiarity and proportionality, in particular for the area of integration policy; and (iv) clarifying the plans for a European Support Office.

The Green Paper has been the main tool for consultation of the relevant stakeholders. On 7 November 2007 a Public Hearing attended by around 200 participants was organised in Brussels to debate the different avenues for the further development of the CEAS. Furthermore, meetings were organised between December 2007 and March 2008 with academic experts<sup>10</sup>, Member States<sup>11</sup>, NGOs and UNHCR<sup>12</sup> and Members of the European Parliament<sup>13</sup> in order to seek their opinion on the future development of certain elements of the CEAS.

Most of the individual measures proposed in the Policy Plan will be the object of specific impact assessments. In particular the amendments to the Reception Conditions, Qualification and Procedures Directives and to the Dublin and Eurodac Regulations will be based on impact assessments, some of which are currently being prepared (amendments to the Dublin and Eurodac Regulations and to the Reception Conditions Directive).

## **2. PROBLEM DEFINITION**

### **2.1. Scope of the problem<sup>14</sup>**

#### *2.1.1. The persistence of refugee flows towards the EU*

Refugee flows worldwide, including the flows towards the EU, are mainly driven by push factors<sup>15</sup>: political instability, no/poor rule of law, lack of respect for human rights,

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<sup>8</sup> This meeting took place on 10 March 2008. Apart from the two Directorates-General whose representatives attended the meeting, the following services and Directorates-General were invited to attend: SG, SJ, BEPA, EMP, EAC, RELEX, DEV, ELARG, ESTAT, BUDG.

<sup>9</sup> The opinion will be made available here:

<sup>10</sup> This meeting took place on 7 December 2007

<sup>11</sup> Meetings took place in the context of contact committees on 11, 12, 25 February and in the Immigration and Asylum Committee of 5 March, 2008

<sup>12</sup> 18 February 2008

<sup>13</sup> 5 March 2008

<sup>14</sup> See also annex 3 for an overview of existing EU asylum instruments

undemocratic regimes, wars and civil conflicts, etc. Notwithstanding the positive impact that the EU's and the Member States' external policies might have in the long term on conflict prevention and on the development of stable, democratic and law-abiding regimes which can protect the lives and rights of their citizens, it can not reasonably be expected that the above mentioned push factors will disappear soon. It is therefore necessary to ensure that protection can be sought and obtained by third country nationals in the Member States of the EU, in compliance with international obligations to which all Member States have adhered, first and foremost the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees.

Notwithstanding the fact that refugee flows will not disappear in the foreseeable future, it's worthwhile mentioning that, apart from an increase between 1996 and 2002, substantially fuelled by further armed conflicts in the former Yugoslavia, in the last 15 years (1992-2007) there has been a substantial and sharp drop in the number of applications in the EU: considering indeed only EU 15, the number of applications fell from 672,385 recorded in 1992 to 197,145 in 2007.

Taking a closer look at the most recent trends, since 2003, the number of asylum-seekers in the EU has decreased sharply: from a total of 344,800 asylum applications lodged in EU 27 in 2003 to 222,165 in 2007 (- 35%)<sup>16</sup>. The drop in the number of applications lodged has been recorded in most EU Member States, with particularly significant falls in some of them (e.g. Slovenia (-65%), Austria (-63%), , Germany (-62%), France (-52%), while a limited number of Member States witnessed a significant increase in asylum applications: Greece (207%), Sweden (15%), Hungary (42%), Cyprus (54%). It must also be noted that the general decreasing trend of the period 2002-2006 has stopped in 2007, as the number of applications in the EU27 have risen from 197,410 to 222,165 (+12%), mainly due to the inflow of Iraqi asylum-seekers. When looking at asylum flows from a historical perspective, it is clear that there are ups and downs and that any new conflict, be it in the Balkans, the Caucasus, the Middle East or Africa, could lead to large flows of refugees fleeing towards the EU, as it happened in the past (namely with the Balkan and Chechen wars).

### 2.1.2. *The specific problems and their drivers*

#### 2.1.2.1. Legitimate measures against irregular immigration may be hampering access to protection in the EU for asylum-seekers

Recent times have seen significant year on year decreases in the number of persons seeking asylum in the EU. In 2006, however, the number of refugees worldwide rose for the first time in many years (to reach 9.9 million) while the number of asylum applications in the European Union (EU) reached a 20 year low (197,410). There are probably a number of factors influencing these trends. For example, more persons may be choosing to remain in the EU irregularly rather than enter an asylum procedure, for

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<sup>15</sup> Pull factors may also play a role at a second stage, i.e. when the asylum-seeker considers where to seek protection: the level of benefits granted by a country, the chances to receive protection, the existence of members of his/her community, etc. will partially determine the choice of destination for the asylum-seeker.

<sup>16</sup> See Table 3 in the Statistical Appendix in Annex 2.

reasons including lack of confidence in the asylum systems or a fear of being detained or transferred under the mechanism established by the Dublin II Regulation. However it is also beyond doubt that the reinforcement of the EU's external borders is having an impact in preventing refugees from seeking asylum in the EU. The limited accessibility of the EU's protection space can be traced back, among other reasons, to a reinforcement of the external borders of the EU, to the deterring effects of the visa policy and to the lack of protection-sensitive training for border guards, which may lead to problems when asylum is requested at the border.

With relatively few legal ways to enter the EU to seek protection, most asylum-seekers are forced into resorting to irregular means of travel, thus creating mixed flows as they travel with migrants who are not in need of protection and whose motivation is mainly the search of better living conditions. In these mixed flows, people often place themselves in the hands of unscrupulous smugglers or traffickers and/or take life-threatening risks to complete the journey to Europe. Many are suffering violence and human rights abuses along the way and many are dying. It has been estimated<sup>17</sup> that a minimum of 2,755 persons have died between 2003 and 2007 while trying to enter the EU by sea.

As an example of the mixed character of the migratory flows, it can be noted that since 2002, 48% of asylum applicants in Malta, most of whom arrive by sea in an irregular manner, were eventually recognised as in need of international protection. Meanwhile, to prevent irregular immigration, states are implementing an increasing array of border control measures that sometimes lack the necessary mechanisms to identify potential asylum seekers and allow their access to the territory and subsequently to an asylum procedure. This could lead to the violation of the principle of non-refoulement as enshrined in the 1951 Refugee Convention at Europe's borders. For instance, the current practice of some Member States, whose military vessels divert boats carrying immigrants in international or territorial waters of third countries in order to prevent them from arriving to their own coasts, could, under certain circumstances, be considered to infringe the non-refoulement principle if there are persons fleeing persecution aboard and no effort has been made by the Member States' authorities to identify them before diverting the boat. In addition, such practices could also seriously infringe other fundamental rights, such as right to life or prohibition of torture and inhuman or degrading treatment or punishment.

#### 2.1.2.2. Immigrants who are not in need of protection abuse the asylum system to enter and stay in the EU

It is beyond doubt that the asylum system is abused by immigrants who do not need protection and who, wishing to enter the EU mainly for economic reasons, claim asylum to ensure their entry and stay. The absence of legal ways for economic migrants wishing

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<sup>17</sup> See <http://www.noborder.org/dead.php>. This internet site documents incidents where immigrants have died while trying to enter Europe. The list is by no means complete as it only contains incidents that have been reported in the media. Most of the deaths at the border never make it into the papers. Also it only counts confirmed deaths while in incidents at sea (which make up the majority of the cases) there are often substantial amounts of people who are missing or unaccounted for. It is safe to assume that most of them have also died. Since the collection of data started in December 2002 the number of victims has risen to 2755. Of these, 588 persons died in 2003, 296 in 2004, 343 in 2005, 653 in 2006, 732 in 2007.

to work in the EU is in certain cases directing persons without protection needs to the asylum system.

Asylum decisions data provide important information about the percentage of asylum-seekers who get some type of protection in the EU and about those who don't.

An estimated 237,970 decisions on asylum applications were rendered in first instance<sup>18</sup> in the EU during 2006<sup>19</sup>. The positive decisions were 23.17% of total decisions: 55,135 asylum-seekers were recognized as refugees or given a subsidiary/other form of protection in the course of 2006. This means, when considering recent years, a significant increase in the share of positive decisions out of their total number: from 10.08% in 2003 to 23.17% in 2006. The percentage of rejections on total decisions has decreased during the years between 2003 and 2006 from 70% in 2003 to 58% in 2006.

Notwithstanding the increase in positive decisions, rejections are still the majority of decisions taken. This is a clear sign that not all those who request asylum are actually in need of protection, and that many use the asylum system to get entry and stay in the EU. Rejected asylum-seekers can often avoid being returned and become illegally staying migrants. It has been calculated in one Member State that out of the total of negative decisions issued in first instance in 2006, only 50% led to the removal of the failed asylum-seeker.

The impact of regularisations of illegally staying third country nationals on asylum flows would seem to be rather limited. Such regularisations are usually related to the existence of a large pool of irregular 'economic' immigrants: the majority of them never applied for asylum. There have been, however, some regularisations of persons whose asylum procedures had lasted too long, or who had received a negative decision but could not be expelled. The need for such type of regularisations as a last resort shows that there are negative consequences arising from never-ending procedures and the lack of clear rules on the treatment of certain categories of persons who do not qualify for international protection but who cannot be returned to their countries of origin.

2.1.2.3. Secondary movements of asylum-seekers and refugees applying for international protection in more than one Member State impose an unfair strain on national administrations and on asylum-seekers and refugees themselves

An important issue related mainly to the differences in recognition rates between Member States<sup>20</sup> and to the different integration systems established at national level, is the so-called "secondary movements" phenomenon. In the area of international protection, this wide phenomenon can involve both asylum-seekers and refugees.

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<sup>18</sup>See Tables 1, 5 and 6 in the Statistical Appendix in annex 2. It is important to note that the picture provided by first instance decisions data is not complete. Many rejection decisions are overturned in appeal. Therefore, the real percentage of positive decisions is higher than the one revealed by first instance decision data.

<sup>19</sup> Asylum decision data for all Member States for the year 2007 were not available at the time of preparation of this document. Therefore, 2006 asylum decision data are used.

<sup>20</sup>See section 2.1.2.6.

The secondary movements by asylum-seekers signifies the phenomenon of multiple applications for asylum submitted simultaneously or successively by the same person in several Member States.

The secondary movements by refugees could take the form of either "asylum shopping", when the third country national, despite the fact that they already received international protection, apply again for asylum in the same or in another Member State<sup>21</sup>, or of simple secondary movements when refugees move from one Member State to another one without applying again for asylum.

The phenomenon of secondary movements of asylum-seekers and refugees across the EU appears to be strongly related to the differences between Member States in terms of access to asylum procedures, receiving protection and obtaining a secure legal status, the lack of or inadequate knowledge about the asylum and asylum procedures, the reception conditions, the rights granted, as well as the possibility for social and economic integration.

From the point of view of the asylum-seeker, asylum shopping could in theory have the advantage of multiplying his/her chances of getting protection. From the point of view of refugees, asylum shopping could lead to a right to reside in a Member State other than the one in which they were recognized and admitted as refugees. One has to note though, that this right is currently not yet ensured at the EU level<sup>22</sup>. Nevertheless, moving from one Member State to another entails financial costs for the asylum-seeker, as well as distress and uncertainty.

Looking at the phenomenon from the Member States' perspective, it is clear that it is inefficient and resource consuming. Asylum procedures will be initiated, incurring human and other resources, only to be abandoned some time later if, for instance, the asylum-seeker fails to appear for an interview because he/she has moved on to another Member State, where a new procedure has started. This problem can sometimes replicate itself in several Member States. Irregular secondary flows by refugees who don't apply again for asylum may pose a problem of overburdening public services.

One of the aims of the Dublin system was to address the phenomenon of asylum shopping by asylum-seekers by deterring them to lodge more than one asylum application in the same or in a different Member State. However, the actual deterring effect is largely dependent on the quality and level of information asylum-seekers are provided with. As the Evaluation report on the Dublin system has shown, in the absence of appropriate practices in this area, it is questionable whereas the expected deterrent effect has been achieved.

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<sup>21</sup>Statistics on secondary movements by refugees are produced by the EURODAC Central Unit. They reveal that in the year of 2007, 204 refugees lodged a second asylum application after they have been recognized. These data are currently recorded only for statistical reasons and cannot as such be used for the time being in order to redress the secondary movements.

<sup>22</sup>The Commission proposed in 2007 the extension of the scope of the Long Term Residence Directive (EC/2003/109) to cover refugees and persons enjoying subsidiary protection.

Measuring the scale of **multiple applications by asylum-seekers**<sup>23</sup> is a complex task, since statistics produced by the Eurodac Unit don't allow to draw definite conclusions. They provide however an indication of the scope of the problem.

According to the Eurodac regulation, Member States are obliged to fingerprint every third country national applying for asylum over the age of 14. According to the annual statistics on the activities of the EURODAC Central Unit, in 2007 a total of 197,284 asylum applications were recorded in the system. Out of the total number of applications recorded, 16.17% were multiple applications (17% in 2006). Such a figure would suggest that in 31,910 cases, the same person had already made at least one asylum application before (in the same or in another Member State). However, discussions within the Eurodac expert group revealed that most Member States take fingerprints of asylum seekers also upon receipt of their transfer. This widespread practice<sup>24</sup> results in the statistics on "multiple applications" including also those asylum seekers who, falling under the provisions of the Dublin and Eurodac Regulations, are transferred from one Member State to another one, but they did not apply for asylum themselves, i.e. did not try to misuse the asylum system of Member States attempting to do "asylum shopping".

Notwithstanding this technical issue, the available statistical data give an indication that the phenomenon of asylum shopping is a relevant issue that must be tackled in the EU context.

Finally, it must be borne in mind that the recent enlargement of the Schengen zone may have an impact on the secondary movements of asylum-seekers. As movements within the Schengen zone are not subject to border controls, some asylum-seekers can be tempted to apply for asylum immediately after their entry into the zone (for instance in Poland if they come from the Caucasus region via Ukraine) and then continue their travel to a western European country where they would again apply for protection. This could also have happened before Poland fully joined the Schengen area, but then the asylum-seeker would have had more difficulties entering one of the 'old' Schengen countries.

#### 2.1.2.4. The asylum systems of some Member States are overburdened

The comparison of absolute numbers of asylum applications does not reflect other factors such as the size of public administrations or populations or the wealth of a country which vary widely between Member States and could all be said to affect a Member State's capacity for dealing with inflows of asylum seekers. Therefore, to assess whether the asylum system of a Member State is overburdened it is useful to look at indicators other than the absolute number of applications.

The "population ratio"; i.e. the number of asylum-seekers per 1000 inhabitants is widely used as a parameter giving at least some indication of the physical and administrative burden which asylum applications represent and enables comparison of the situation in different Member States

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<sup>23</sup>See table 2 in Statistical appendix in annex 2

<sup>24</sup>This has been identified as one of the problems in the implementation of the EURODAC Regulation

Data on asylum applications relative to the size of the resident population of the Member States show some interesting findings about the distribution of the burden of asylum seekers across EU Member States<sup>25</sup>:

- Cyprus received by far the largest number of applications for asylum in relative terms in 2006 (5.9), followed by Malta and Sweden, with 3.1 and 2.7 applications respectively per thousand population;
- Belgium, Luxembourg, Austria, Slovak Republic and United Kingdom remained over the EU average of 0.4 in 2006 but showed a significant decrease in the number of applications per thousand population between 2003-2006;
- The new Member States (excluding Cyprus and Malta) were generally positioned under the EU average in 2006.

On the whole, it is worth noting that the distribution of asylum applications between EU Member States remained substantially unequal. Therefore, it cannot be denied that some Member States, due to their geographical position or other reasons, can be considered to be 'overburdened' (especially in situations of particular pressure) when the flow of asylum-seekers they receive is compared to the size of their population.

It appears that there would be two main reasons for the overburdening of certain Member States: Geography (this would apply to countries like Malta, Cyprus, Greece and Slovakia) and a "positive perception" of the asylum system (for countries like Sweden, Belgium and Austria, with relatively good reception conditions for asylum-seekers and higher recognition rates). To these factors, it is of course necessary to add the personal preferences of the asylum-seekers, the existence of family or friendship links, historical and economical factors, etc.

Although there currently exists an expression of financial solidarity in the area of asylum (the European Refugee Fund, ERF), its current level of resources is not sufficient to alleviate the overburdened Member States.

A final remark on the Dublin system is necessary here. The system, whose primary objective is to allocate responsibility for asylum applicants, has sometimes been criticized as a 'burden shifting' mechanism which penalizes certain Member States. However, the evaluation of the Dublin system prepared by the Commission<sup>26</sup> has demonstrated that the problem is not made worse by the operation of the Dublin system. Indeed, the impact of the Dublin system on national asylum systems is of a redistributive nature as transfers take place mainly towards countries which can be considered to be relatively under burdened from a demographic/GDP point of view.

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<sup>25</sup> See Map 1 in the Statistical Appendix in Annex 2.

<sup>26</sup> COM (2007) 299

2.1.2.5. Increasingly, people are seeking protection for reasons not foreseen in the traditional refugee regime, i.e. in the Geneva Convention and its Protocol, and are receiving protection statuses with lower guarantees

A development to be stressed in the trends on positive asylum decisions between 2003 and 2006 is an ever-growing percentage of them granting subsidiary protection or other forms of protection based on national laws: the share of positive decisions under the Geneva Convention did not change significantly (5.09% vs 7.08%) specially when considering that the percentage of positive decisions granting subsidiary or other forms of protection more than tripled in the years concerned (from 4.57% in 2003 to 15.57% in 2006)<sup>27</sup>. On one hand, this trend can be partly explained by a growing mismatch between the nature of demand for protection and the criteria of the Geneva Convention: The drafters of the Convention had certain types of persecutions in mind, while today's refugees flee from newer forms of persecutions and conflicts not covered by the Convention. On the other hand, this depends on the fact that Member States have developed additional or subsidiary forms of protection so as to give asylum-seekers proper protection where they are not covered by the Geneva Convention but still need protection.

The Geneva Convention has served well its purpose for more than 50 years. Flexibility in its interpretation has allowed its application to situations which were maybe not foreseen in the 1950s. However, most persons looking for protection nowadays fall outside its scope, as they flee situations of armed conflict and not personal persecutions for political or religious or other reasons. It could therefore be justified to try to modify/update it. This would be a difficult and lengthy process as it is an instrument of international law ratified by most countries of the world.

This development reflects two major problems:

- The risk of a weakening of the general levels of protection, due to the fact that recognition of refugee status according to the Geneva Convention is becoming relatively rare. The Geneva Convention status includes a large number of rights attached to it, but is only granted under strict conditions. The other protection statuses can be obtained more easily but include fewer rights and are often limited in time. More and more people are being protected with these 'residual' statuses, often of precarious nature.
- The risk of the amplification of the substantial differences across the EU in terms of practices, procedures and decision-making process for granting protection, due to the fact that the alternative forms of protection have emerged without any coordination, and are constantly evolving in all the Member States. The proliferation of such diversity in national practices may appear to be incompatible with the often stated objective of harmonizing asylum policy in the EU.

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<sup>27</sup>See table 1 in Statistical Appendix in annex 2

#### 2.1.2.6. Divergent national practices lead to extreme differences in the recognition of protection in the Member States and causing inequalities in the level of protection across the EU

Substantial differences across the EU in terms of practices, procedures and decision-making processes for granting protection are reflected in the differences in recognition rates between Member States<sup>28</sup>. These differences are also caused by diverging understandings of fundamental rights and of some asylum definitions, which were left deliberately vague in certain EU asylum instruments in order to reach a compromise.

In 2006, the share of total positive decisions is highly variable:

- it ranges between 0% and 3% of total first instance decisions in some Member States like Slovakia (0.3%), Slovenia (1%), Greece (1.75%), and Cyprus (3%);
- it appears limited in those Member States rendering most asylum decisions across the EU: Germany (6.3%), France (7.7%), UK (18.3%);
- it is significantly higher in certain Member States: Austria (26%), Belgium (29%), Sweden (49%), Italy (56%); the data for Sweden is particularly relevant considering that it was the second most important country of asylum in the EU in 2006.

The analysis of recognition rates recorded in the Member States regarding asylum applicants of the same nationality also provides significant information. Indeed, highly different recognition rates with regard to the same nationality could point to different standards of treatment between asylum countries.

A comparison of data for the period 2005-2007 on recognition rates for asylum decisions rendered by EU Member States with respect to third-country nationals from selected third countries confirms the high variability in recognition rates across the EU<sup>29</sup>. For instance, on applications regarding asylum-seekers from Russia (mostly of Chechen background), in Austria 63% of decisions were positive while in Slovakia the percentage was 0%. 98% and 55% of Somali asylum-seekers got a positive decision in Malta and in the UK respectively while the percentage of positive decisions for the same group was 0% in Greece and Spain. In Belgium, 38% of Iraqi asylum-seekers received a positive decision, while in the UK that percentage was 20% and in Greece less than 2%.

On the whole, the analysis clearly shows that there are significant differences in recognition rates between Member States, mainly due to differences across EU in terms of practices, procedures, diverse country of origin information sources and decision-making processes for granting protection and, therefore, to a lack of harmonization of the national policies and procedures in the field of asylum and to poor cooperation and exchange of information between national asylum administrations; in this respect, the importance of country of origin information cannot be sufficiently underlined: if Member States have conflicting information about the situation in a particular third country (with one Member State being informed that the human rights situation in that country is deplorable while another one has information confirming a clear improvement in human

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<sup>28</sup> For the purpose of this analysis, the recognition rate is calculated as the number of total positive decisions as compared to the number of total decisions. See Tables 5 and 6 in Statistical Appendix in Annex 2.

<sup>29</sup> See table 7 in Statistical Appendix in annex 2

rights protection), it is more than logical that their asylum decisions on applicants coming from that country will be different. Different practical instructions at national level, including interviewing techniques, can also lead to very different results when assessing the credibility of the claims.

#### 2.1.2.7. Persons in need of protection face particular integration problems and some of them are in situations of vulnerability

Due to the forced nature of their migration and the traumatic experiences many of them have gone through, compared with other migrant groups, refugees will often have specific needs that have to be met in order to support their integration. They will often be one of the most vulnerable groups in society while also being the most resilient. It is therefore important that the special needs of refugees are recognised in integration policies and practices, including those of specific groups such as women and children, within an overall policy of mainstreaming.

The extent to which refugees are able to integrate is critically and inextricably linked to the additional rights they are accorded upon recognition of their need for international protection. In this context, not granting persons afforded a subsidiary protection status the same rights as those recognised as refugees under the 1951 Refugee Convention could be considered to hinder their integration. At present in most European countries a low proportion of refugees are recognised as such under the 1951 Refugee Convention<sup>30</sup> and instead they are granted inferior legal statuses, such as subsidiary protection, which often afford much more limited rights than Convention status.

Granting rights similar to those enjoyed by nationals or other third country nationals to all refugees would improve their integration prospects. For instance, refugees do not have yet the right to enjoy long-term resident status<sup>31</sup>. Such right would improve their access to social and economic rights as well as their freedom of movement. Another area where certain categories of protected persons have diminished rights is family reunification. It is difficult for refugees to rebuild their lives without the support of their families. For children (especially separated children) but also for refugees in general who have found safety and protection in Europe, one of the most pressing issues is concern for their family members left behind. However, certain categories of protected persons do not have full rights to family reunification and suffer restrictions related to length of residence, employment status, access to housing or earning capacity for example. This is particularly the case of beneficiaries of subsidiary protection, whose right to family reunification is currently not recognised at EU level.

Moreover, it is widely acknowledged that certain categories of asylum-seekers and refugees are in a particular vulnerable situation: unaccompanied children, victims of torture and women having suffered sexual violence are among them. In the particular case of children, for instance, although the best interests principle is sometimes raised in special provisions of the existing legislation concerning the treatment of children, there is

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<sup>30</sup> See point 2.1.2.5.

<sup>31</sup> As established by Directive 2003/109. The Commission proposed in June 2007 (COM (2007) 298) an amendment to the Directive so that it would also apply to beneficiaries of international protection. It is currently being negotiated in Council and EP.

no detailed guidance as to what the application of the principle means and how it should be applied in relation to different actions and steps in the procedure. Similarly, there are no standard obligations to ensure proper access to the asylum system for children, for example, through the obligation to provide children with adequate information, legal representation if necessary or the creation of child-friendly procedures. Crucially, there is no clear obligation concerning the appointment and role of a guardian for separated children.

Furthermore, the proper protection of refugee women very often lacks a gender-sensitive interpretation of the refugee definition as well as a gender-sensitive asylum procedure. Due sensitivity is not always paid to the particular difficulties and constraints that female asylum seekers may face when presenting their claims, in particular where they involve acts of sexual violation. Issues not completely explored in this context include the availability of trained female interpreters and interviewers, the confidentiality of records, as well as the availability and proper assessment of specific country of origin information on the role, status and treatment of women in the countries of origin.

#### 2.1.2.8. Worldwide, most refugees remain in regions close to their countries of origin, without durable solutions and imposing a burden on poor, developing countries

According to the United Nations High Commissioner for Refugees (UNHCR), between the 70s and the early 90s, there was a steady growth of the global refugee population (increased from 2.4 million in 1975 to 14.9 million in 1990), with a peak in 1993 when the number of refugees reached 18.2 million<sup>32</sup>.

The global refugee population decreased substantially between 2000 and 2005, although in 2006 the number of refugees increased for the first time in five years and stood at 9.9 million (+14% with respect to 2005). Refugees came mainly from countries affected by war, violence and chaos. By region, the CASWANAME region<sup>33</sup> is the world's most affected, with close to 4 million refugees, followed by Africa with close to 2.5 million. Europe comes third with 1.7 million refugees<sup>34</sup>. The countries hosting the biggest refugee populations are, in decreasing order: Pakistan, Iran, the US, Syria, Germany, Jordan, Tanzania and the UK.

At the same time, in 2006, a total of 605,000 new or appeal applications for asylum or refugee status were submitted to Governments or UNHCR offices in 151 countries, and out of the total of 605,000 asylum applications lodged during 2006, some 504,000 (83%) requests were submitted for the first time. Most applications were registered in Europe (307,000), followed by Africa (159,000), the Americas (78,000), Asia (53,500), and Oceania (7,100).

The figures on refugees and asylum-seekers confirm that, although the EU is the main destination for asylum-seekers among industrialized countries, most refugees in the world live in poor regions close to the areas of conflict, where resources for addressing their needs are scarce and where a durable solution for them is difficult to attain.

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<sup>32</sup> UNHCR 1995; UNHCR 2000.

<sup>33</sup> Central Asia, South West Asia, North Africa and Middle East

<sup>34</sup> See table 8 in Statistical appendix in annex 2.

## 2.2. How would the problem evolve, all things being equal?

The baseline scenario ('status quo') assumes that the existing EU legislative acquis in the area of asylum is not modified; that practical cooperation is developed in an ad hoc and decentralised way, with a relatively low level of resources; and that the external aspect of the asylum policy continues to support just a few third countries with limited financial support.

The existing EU and national measures do not satisfactorily address the problems described above. Most of these problems are persisting even after the adoption of certain common EU measures. Even if the existing EU legislative measures were to be perfectly implemented by the Member States, which is far from being the case, many problems would subsist. This is mainly due to the **gaps and relatively low common standards of the legislation** and the low level of solidarity existing today between Member States.

The evaluations already published of some of the EU instruments (Dublin system<sup>35</sup>, Reception Conditions Directive<sup>36</sup>) have acknowledged their positive elements while at the same time have pointed to shortcomings and problems in transposition. The fact that the legislation of the first phase of the CEAS was adopted by unanimous vote in the Council meant that in many cases the level of ambition of the final texts was rather low and equalled the lowest minimum denominator. This explains why there are still many possibilities for improvement of the existing instruments. Examples of situations which would remain problematic under the statu quo are:

- Integration of beneficiaries of subsidiary protection: this is the fastest growing group of beneficiaries of international protection. The level of rights they enjoy (as established in EU legislation – Qualification directive and Family reunification directive) is lower than the level of rights of Geneva Convention refugees. As an increasing number of positive decisions are granting subsidiary protection status, the result at EU level is the creation of a 'second class' of protected persons that will have less chances to integrate and contribute positively to the hosting societies.
- Reception conditions for asylum-seekers: given the very wide margin of manoeuvre left by the Directive on Reception Conditions, the differences in material conditions from one Member State to another are so big in terms of access to housing, health, education, social insurance, etc. that they are creating secondary movements of asylum-seekers who look for a more adequate level of support during the procedure. Vagueness in the definition of the cases when an asylum-seeker can be detained has led to some Member States systematically detaining all asylum-seekers while others never use detention. Finally, in some Member States access to the labour market is immediate, in others the asylum-seeker needs to wait one year.
- Procedures: rules for procedures at the border are less stringent and do not provide for adequate legal safeguards. Legal assistance and interpretation are not set guarantees, leading to asylum-seekers not being able to properly defend their

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<sup>35</sup>COM (2007) 299

<sup>36</sup>COM (2007) 745

cases. This may lead to refusal of protection at the border and refoulement, contrary to MS international obligations;

- Responsibility – the Dublin system: Although clearer rules on which Member State is responsible for an asylum application are part of the Dublin mechanism, there is a need for clarification of some of its provisions, to increase its efficiency. Even after many years of implementation, the Dublin mechanism seems to have only a limited effect deterring asylum-seekers from applying in more than one Member State: in recent years, between 15% and 20% of applications are repeated applications, i.e. persons who have already applied for asylum in another Member State.
- Solidarity: the only tool embodying solidarity is the ERF, which has a level of resources clearly below what is needed to effectively finance the real efforts made by Member States to implement refugee policy. As an example, the French asylum administration (OFPRA) alone costs more or less 50€ million a year and the total resources of the ERF for 2008 (for 27 MS) are around 75€ million. There have not been many additional financial possibilities in order to support overburdened countries.
- Practical cooperation: the current framework only provides for the possibility to finance ad hoc projects without much continuity; resources are scarce; coordination between Member States is still poor; quality of country of origin information varies from one MS to another and information is not fully shared; Eurasil meetings (where asylum experts from national administrations meet to exchange information and best practice) have been organised for years now without them seemingly having a significant impact, for instance, on an approximation of decision-making practices, which are still very divergent. Without structural support (both from a human and financial resources point of view), it will difficult to achieve the lever of coordination necessary to reach convergence of asylum-decisions in the Member States.
- External action: A number of projects have been financed in countries hosting large numbers of refugees, but the EU as such does not play an important role in essential areas like resettlement. The current external activities carried out by the EU and the Member States lack coherence and critical mass to be fully effective. For instance, the first Regional Protection Programmes pilot projects in Tanzania have been funded with 1.5€ million, which is clearly inadequate for a country hosting around 500,000 refugees. If there was a joint effort with Member States' national projects in the same region, the impact of the joint EU action would be more effective. Pooling of resources and a common approach to issues like resettlement could make a positive difference.

A general, horizontal problem which has been identified is the lack of an effective monitoring system of the implementation of the different instruments of the CEAS. The complexity of the legal texts adopted and the need to monitor implementation in 27 Member States makes the Commission's task of monitoring transposition and implementation a very difficult exercise.

Another worrying development could be a 'race to the bottom'. For instance, if a Member State maintains high standards of protection while its neighbours decrease their standards, there is a risk that the more 'generous' Member State starts receiving an increasing number of asylum-seekers and becomes thus overburdened. Such a Member State could choose to lower its standards of protection to align itself with its neighbours. Given its

particularities, in the area of asylum it is difficult to imagine a competition 'to the top' where Member States would compete between themselves by offering higher standards to asylum-seekers and refugees. The opposite is much more likely to happen, and this is why avoiding the 'race to the bottom' is an important justification for the establishment of higher standards of protection jointly at EU level rather than by individual action of the Member States.

The identified problems are likely to continue in the future if no action is taken to address them. The minimum legislative harmonisation reached so far will not be sufficient to ensure a high standard of protection in equal terms throughout the EU. Secondary movements will continue, fuelled by the divergences in national practices. And some Member States will continue to see their asylum systems overburdened.

2.3. Does the EU have the right to act? Treaty base, 'necessity test' (subsidiarity) and fundamental rights limits.

#### 2.3.1. *EU right to act and subsidiarity*

Title IV of the EC Treaty ('TEC') on visas, asylum, immigration and other policies related to free movement of persons confers certain powers on these matters on the European Community. These powers must be exercised in accordance with Article 5 TEC, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

More specifically, the current legal base for Community action in the area of asylum policy is established in **Article 63 (1) and (2) TEC**. These provisions state that the Council is to adopt "measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties" and also "measures on refugees and displaced persons" in areas such as Member State responsibility, reception conditions, refugee qualification, granting of protection (including temporary protection) and balancing of Member States' efforts in receiving asylum-seekers.

The current legal base is however likely to be replaced on 1 January 2009 by the new article 63 of the Treaty on the Functioning of the European Union ('TFEU'), which explicitly sets out the lay-out of the Common European Asylum System, differing from the TEC in several key ways.

First, the TFEU gives a rank or primary law to the key components of the CEAS, which are currently addressed in political documents (the Tampere Conclusions and the Hague Programme) and secondary law (references in recitals of the asylum Directives) only. Thus, once the TFEU has come into force, *uniform statuses for asylum* and *subsidiary protection* and *common asylum procedures* will become objectives of primary community law. This would bring a legal obligation to the Union institutions and the Member States to consider proposals for achieving those objectives through secondary legislation. Importantly, the TFEU provides that legislative instruments in the field of asylum should be adopted for the purpose of *a common European asylum system*. Thus, the very term CEAS will also rank as primary community law. This would allow promoting a systematic approach to the asylum *acquis* considering it as integrated law where all the

components should be interrelated leaving no space for gaps and inconsistencies. In this respect, the Qualification Directive and the Asylum Procedures Directive should play the key role as they codify substantive and procedural asylum law of Europe, which goes to the heart of the CEAS.

Second, the lay out of the CEAS set out in the TFEU allows targeting much higher level of harmonisation of substantive and procedural asylum legislation. Indeed, *common procedures* and *uniform statuses* clearly require reconsideration of the wide discretion currently enabling Member States to derogate from the agreed minimum standards. This could be of particular relevance for the subsidiary protection regime (rights and benefits of beneficiaries of subsidiary protection) and procedural safeguards (limiting the current wide space left for Member States to apply exceptions to the key principles and guarantees). Furthermore, the TFEU allows addressing the issue of transfer of protection with regard to persons granted refugee status. This level of ambition is hardly reachable under TEC.

While the TEC allows, to some extent, addressing gaps and inconsistencies embodied in the Qualification Directive and the Asylum Procedures Directive, the TFEU will enable a much higher level of harmonisation. **This justifies that, if amendments to these two Directives are considered necessary,, the related proposals should be presented once the new Treaty is in force. Eventual modifications to the Dublin Regulation and the Reception Conditions Directive, however, could be proposed under the current legal regime** as the new Treaty does not bring relevant changes in those areas.

Generally, it can be said that while the respect for subsidiarity will have to be evaluated for each concrete proposal in the preparatory phase, from the previous argumentations and from the clear request by Member States and other relevant stakeholders, as expressed during the Green Paper consultation, emerges the clear need for an EU joint action in order to have a coordinated management of asylum policy, both within the EU and vis-à-vis third-countries.

#### External aspects and subsidiarity

Finally, the TFEU states in its Article 63b that “The policies of the Union [...] and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States”. In stating this, it is important to note that the TFEU also lists "partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection" as an element of the CEAS. Apart from this mention of the external aspects of asylum policy in the new Treaty, from a subsidiarity point of view there are a number of reasons justifying EU action on external aspects of the asylum policy:

First, if one of the goals of the CEAS in its second phase is the establishment of an integrated and coherent space of protection in the EU and if the EU is to become a single area of protection, it would not make sense to deal with third countries on asylum issues on a national basis. It stems from the fulfilment of the CEAS at the internal EU level that common external action is necessary.

Second, from the point of view of effectiveness, it is clear that aggregated EU action instead of 27 differentiated programmes can have more positive impact. For instance on resettlement, if the EU could propose a joint EU quota to the UNHCR and jointly centralise the selection process, that would mean economies for the Member States and better chances of selecting the desired caseloads of persons to be resettled. Another example would be the Regional Protection Programmes, which do not seek to replace the existing national activities related to asylum in third countries but a better coordination between them, so that overlaps, and gaps, are avoided.

Third, the external aspects of the EU asylum policy must be seen in the wider context of the EU's external relations. Discussions with third countries do increasingly include a number of different issues, from visas, to trade, from development aid to fostering circular migration. Asylum cannot be left aside and must be included in these discussions/negotiations.

### Integration and subsidiarity

The Policy Plan is not supposed to dwell in-depth into aspects related to integration policy, as this is done in other Commission documents (Communication on the Common Basic Principles, Annual reports, Handbook on Integration, etc.). As stated there, integration policy is first and foremost a national competence and EU action should not replace it.

**The main actions to be proposed under the Policy Plan in the area of integration concern the level of rights**, some of which are already included in EU legislation, to be granted to the beneficiaries of subsidiary protection, in order to facilitate the integration of these persons in the society. Beneficiaries of subsidiary protection form an increasing percentage of the persons protected in the EU<sup>37</sup>, but they enjoy fewer rights than the Convention refugees. Given the fact that in practical terms the situation of the two groups is comparable, their level of rights should also be (close to) equivalent. A clear example is the lack of provisions in EU law on family reunification for subsidiary protection beneficiaries. A higher level of rights for these persons is necessary if the EU wants to avoid creating a subclass of protected persons and also to respond to the call of the Hague programme which mention the establishment of a uniform protection status in the EU.

From a subsidiarity point of view, common action is justified in order to avoid a 'race to the bottom'. If one Member State were to offer unilaterally a higher level of rights to subsidiary protection beneficiaries, it could see larger flows of asylum-seekers coming to its territory. If the increase in the level of rights is done jointly at EU level, there is no risk of creating this type of secondary movement. The granting of a common set of rights at EU level does not prevent further national action aiming at a good integration of the protected persons.

### Proportionality

As far as proportionality is concerned, once the need for common action at EU level has been acknowledged (subsidiarity test), it will be necessary to assess how far the EU measures should go. It clearly appears from the problem definition that a further level of

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<sup>37</sup> See section 2.1.2.5.

harmonisation is needed, but the exact level of appropriate harmonisation will have to be defined in the individual Impact Assessments for each of the proposed measures.

It must also be reminded that there have been repeated calls from the European Council, the Council and the European Parliament for the development of a Common European Asylum System. There are of course the two programmes in the area of Justice, Freedom and Security (Tampere and The Hague) agreed at European Council level. The Hague programme in particular requests a common procedure, uniform status, and an increase in practical cooperation, leading to the creation of a European Support Office.

There are recent Council conclusions on practical cooperation (February 2006 and April 2008) and on the external aspects of asylum (October 2005). The European Parliament has also called for a comprehensive CEAS, for instance in the Lambert report (November 2004) on procedures and countries of origin and in the Pirker report (May 2007) on practical cooperation.

The reasons for a common intervention at EU level are clearly expressed in the paragraphs below, where the necessity test, based on the transnational nature of the problem, is provided.

### *2.3.2. Transnational nature of the problem*

Due to the transnational nature of the problems related to asylum and refugee protection, the EU is well placed to propose solutions in the framework of the Common European Asylum System (CEAS). Starting from the minimum standards set out during the first phase of the CEAS, the differences between national legislations can still generate many indirect impacts between Member States, due to the fact that different asylum application processing, reception conditions, protection granting, integration and accompanying measures can produce distortions in the distribution and management of asylum seekers and refugees among Member States. Multiple applications and secondary movements of asylum seekers and refugees across Member States can be a consequence of significant divergences of national provisions and regulatory approaches in areas such as border procedures, appeal procedures or rights and benefits attached to the protection status granted. Asylum seekers and refugees are seemingly inclined to move, through legal or illegal channels, to those Member States which tend to grant the most appealing social, humanitarian and economic standards, highlighting the cross-border implications such movements entail (i.e. phenomena of “asylum-shopping”). Furthermore, Member States' mutual recognition of asylum status for those who have been granted such status in a different Member State is hindered by national practices. The clear need for an EU joint action in order to have a coordinated and shared management of asylum seekers and refugees in the EU territory emerges from these arguments.

As a natural consequence of such a need and in the respect of the implicit powers principle, a Community competence for the CEAS entails a corresponding external competence for the same field. Considering the above outlined necessity for an EU intervention, there is an equivalent necessity for the EU to manage the external dimension of asylum within the scope of its internal competence. The inclusion of asylum matters

within the EU's development cooperation policies is, in fact, directly linked to the management and effects of asylum seekers inflows on the CEAS. The external aspect of asylum policy has now been explicitly recognized in the article on asylum policy of the Treaty of Lisbon.

The correspondence between internal and external competence of the EU must be reminded also when it comes to solidarity and burden sharing. Given the need for a coordinated EU approach deriving from the unequal distribution and proportion of asylum seekers and refugees between Member States (which determines the bearing of unequal social and administrative costs), it is only straightforward that a corresponding approach under this aspect should be developed vis-à-vis third countries of transit and origin. In the light of this, an EU joint approach on asylum towards third countries is functional to the recognition of the EU as a single global player in this field.

For the above mentioned reasons, and others linked to the diversity of national administrative rules and procedures regulating this field, the establishment of a coherent legal framework can only be achieved at Community level.

#### 2.4. Summary of main conclusions drawn from the Green Paper consultation<sup>38</sup>

The Commission presented in June 2007 a Green Paper on the future of the Common European Asylum System. Its aim was to identify the possible options for shaping the second phase of the CEAS. The response to the public consultation included 89 Contributions from a wide range of stakeholders, including 20 Member States, regional and local authorities, the Committee of Regions and the Economic and Social Committee, UNHCR, academic institutions, political parties and a large number of NGOs.

This section presents the main conclusions drawn from the different contributions received, following the structure of the Green Paper.

##### **Legislative Instruments: Processing of asylum applications**

- Relevance attributed to the harmonization of asylum procedures, together with the revision of specific notions adopted (safe country of origin, safe third country, etc.)
- NGOs insist on procedural safeguards (access to asylum procedure, legal assistance and suspensive effect of right to appeal)
- Need for more training of asylum case officers requested by many contributions
- Wide agreement on the necessity of examining subsidiary protection after refugee status refusal, but no agreement on the system to manage the proposed procedure (in particular not on the creation of a single authority)
- No agreement on the joint processing of asylum application unless possibly in exceptional situations, such as for sharp increases in asylum applications

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<sup>38</sup> See annex 1 for an analysis of the contributions received during the Green Paper consultation

### **Legislative Instruments: Reception conditions for asylum applicants**

- Overall consensus to further harmonization of reception conditions:
  - Member States express a general consensus, with specific reserves depending on the subject (especially concerning access to labor market)
  - NGOs actively support harmonization process
- Focus, mainly expressed in NGOs contributions, on the possibility to give access to the labor market to asylum seekers after 6 months of permanence in EU, differently from what established in the current Directive, where one year is the time limit for having access to the labor market
- Consensus on the necessity of further standardization in the form and level of material reception conditions through intensified practical cooperation
- Length and conditions for detention are considered as an important aspect to be more precisely regulated both by Member States and NGOs.

### **Legislative Instruments: Granting of protection**

- Consensus on the necessity of further harmonizing the criteria for awarding refugee and subsidiary protection statuses
- Approximation of rights attached to refugee and subsidiary protection statuses supported by NGOs but not by Member States, which are generally supporting the definition of 2 different uniform statuses
- Introduction of categories of protection for non-removable persons supported by NGOs but much less by Member States
- General support in principle for the mutual recognition of national asylum decisions and the possibility of transfer of protection, but according to Member States it is too early to currently define a EU mechanism of mutual recognition

### **Legislative Instruments: Cross cutting issues**

Appropriate response to situations of vulnerability

- Consensus on the necessity of improving the rules on vulnerable asylum seekers, regarding in particular situations related to healthcare and gender and child specific issues
- Proposed methods for intervening on these issues are:
  - Exchange of best practices and definition of guidelines
  - Compliance with, and amendment of, legislation
  - Training of staff

## Integration

- Positive attitude towards measures to enhance integration of asylum-seekers expressed by NGOs, while Member States showed a general opposition to this option (for most of them, integration is only for recognised refugees or persons enjoying subsidiary protection)

## **Implementation – Accompanying measures**

- Methods to support practical cooperation, retained to be used by stakeholders, must be focused on:
  - training of staff
  - definition of EU guidelines on practical issues
  - improvement of the availability of information on the country of origin
- Complete agreement on the creation of an European Support Office (but without decision-making power in the view of Member States)

## **Solidarity and Burden Sharing: Responsibility sharing**

- MS Gov support the current Dublin system, but accept as NGOs the necessity or even request more burden sharing (through financial solidarity and asylum expert teams)
- It is necessary to improve the Dublin system on some points, in particular regarding family unity

## **Solidarity and Burden Sharing: Financial solidarity**

- According to stakeholders the functioning of ERF must be simplified and must become more flexible
- There is a necessity of a major information sharing regarding projects and best practices
- Some financing needs are considered by stakeholders as not adequately addressed, such as situations of particular or unpredicted pressure

## **External Dimension: Supporting third countries to strengthen protection**

- Need to evaluate Regional Protection Programmes before a further development and extension of the programmes themselves
- Capacity building considered as the main instrument for supporting third countries in dealing with asylum issues

## **External Dimension: Resettlement**

- EU common approach to resettlement is welcomed by the stakeholders, especially for facing particularly difficult situations: (i) mass flights situations; (ii) large natural disasters; (iii) civil war

#### **External Dimension: Addressing mixed flows at the external borders**

- Training of border guards and the support of asylum experts considered as the main measures through which increasing national capacities to establish effective protection-sensitive management systems

#### **External Dimension: The role of the EU as a global player**

- It is widely acknowledged the necessity of :
  - more common positions and practices at EU level
  - closer cooperation with UNHCR
- NGOs insist on EU responsibility for upholding refugee protection in third countries.

### **3. OBJECTIVES**

#### 3.1. General objective

The general objective of the second phase of the CEAS is to offer, through a comprehensive approach to protection across the EU, appropriate status, under equal conditions, to any third-country national requiring international protection in compliance with fundamental rights, in particular with the principle of *non refoulement*.

#### 3.2. Specific objectives

The policy shall in particular pursue the following specific objectives:

- I) To ensure that asylum procedures are accessible to the persons seeking protection and deal quickly and efficiently with those who do not need it<sup>39</sup>;
- II) To ensure higher common standards of protection<sup>40</sup>;
- III) To enhance prompt and effective support to national asylum administrations, by promoting practical cooperation<sup>41</sup>;
- IV) To foster solidarity mechanisms for dealing with persons in need of protection, between Member States and between the EU and third countries<sup>42</sup>;

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<sup>39</sup>This specific objective addresses problems identified in sections 2.2.2.1. and 2.2.2.2.

<sup>40</sup>This addresses problems identified in sections 2.2.2.3., 2.2.2.4., 2.2.2.5., 2.2.2.6. and 2.2.2.7.

<sup>41</sup>This addresses problems identified in sections 2.2.2.3. and 2.2.2.6.

V) To facilitate the integration of protected persons<sup>43</sup>;

VI) To prevent asylum shopping and secondary movements<sup>44</sup>.

The expression 'higher common standards' (specific objective II) deserves an explanation: **Further harmonisation** (i.e. common standards) is needed because the current common minimum rules, which leave wide margin of discretion to the Member States in their application, have not led to a level playing field and do not guarantee equality of protection across the EU. In a common space based on the respect of fundamental rights, it is not admissible that the national application of one of them, the right to asylum, varies so much between the Member States. **Higher standards** are necessary because harmonisation to the lowest common denominator, as is currently the case, does not ensure the right level of protection (access, legal safeguards, protection of children, care for special needs, etc.) for asylum-seekers and refugees in all the Member States and because setting higher standards can only be done jointly if a 'race to the bottom' is to be avoided.

Harmonisation must therefore be coupled with a high level of protection if it is to have positive effects and lead to the disappearance of the big differences in national practices.

### 3.3. Operational objectives

The following non exhaustive list of operational objectives is suggested:

- To adopt a common procedure for all persons requesting international protection<sup>45</sup>;
- To establish uniform statuses for refugees and beneficiaries of subsidiary protection<sup>46</sup>;
- To define a level playing field in the area of reception conditions of asylum seekers<sup>47</sup>;
- To develop integration measures and facilities for beneficiaries of international protection<sup>48</sup>;
- To better address the needs of vulnerable persons<sup>49</sup>;
- To develop a gender-sensitive interpretation of the refugee definition as well as a gender-sensitive asylum procedure<sup>50</sup>;
- To exchange best practice and country of origin and other relevant information, and to organize common trainings<sup>51</sup>

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<sup>42</sup>This addresses problems identified in sections 2.2.2.4. and 2.2.2.8.

<sup>43</sup>This addresses problems identified in sections 2.2.2.5 and 2.2.2.7.

<sup>44</sup>This addresses problems identified in section 2.2.2.3.

<sup>45</sup>This contributes to the achievement of specific objectives I and II

<sup>46</sup>Linked to specific objectives II and V

<sup>47</sup>Linked to specific objectives II, V and VI

<sup>48</sup>Linked to specific objective V

<sup>49</sup>Linked to specific objectives II and V

<sup>50</sup>Linked to specific objective I and II

- To establish an effective monitoring system of the practical implementation by the Member States of the CEAS legislation<sup>52</sup>;
- To improve the system of allocation of responsibility between Member States (Dublin system, including EURODAC)<sup>53</sup>;
- To establish tools for enhancing burden sharing between Member States<sup>54</sup>;
- To maximize the effectiveness of the European Refugee Fund<sup>55</sup>;
- To enhance solidarity with third countries, mainly through the development of resettlement<sup>56</sup>;
- To enhance development aid related to asylum capacity building programmes, including the Regional Protection Programmes<sup>57</sup>.

#### 3.4. Consistency with other EU policies and horizontal objectives as the Lisbon strategy and respect for fundamental rights

##### Fundamental rights

The CEAS must be seen in the wider context of the policies belonging to the area of Justice, Freedom and Security. The closest of these policies is the common immigration policy, which is however being developed on the basis of the needs of the economy and the labour market, while the CEAS is based on humanitarian, rather than economic, considerations. International law imposes a number of obligations to Member States irrespective of their cost. The development of asylum policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

This is confirmed in the Charter of Fundamental Rights which, once the Treaty of Lisbon enters into force, will have the same legal value as the Treaties. Article 18 of the Charter provides that:

*the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.*

This means that, once the Lisbon Treaty has come into force, secondary legislation on asylum will have to pass the Article 18 test. Furthermore, the Charter contains a number of general rights, including protection against *refoulement*, right to life, prohibition of

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<sup>51</sup>Linked to specific objective III

<sup>52</sup>Linked to specific objectives II and III

<sup>53</sup>Linked to specific objectives III, IV and VI

<sup>54</sup>Linked to specific objective IV

<sup>55</sup>Linked to specific objective IV

<sup>56</sup>Linked to specific objectives III and IV

<sup>57</sup>Linked to specific objective IV

torture and inhuman or degrading treatment or punishment, the right to effective legal remedies, the right to liberty and to security or rights of the child, which will also have an impact on asylum policy and have to be taken into account when assessing the possible options for developing the CEAS. All legislative proposals in this field have to be compatible with the Charter and are subject to an in depth impact assessment on fundamental rights.<sup>58</sup>

#### Proper functioning of the internal market

As stated above, economic considerations are secondary in the development of the CEAS. It is however possible to identify a loose connection of the CEAS with the functioning of the EU internal market: the differences in reception conditions and integration measures concerning the access to the labour market of asylum-seekers might determine an inefficient allocation of human capital throughout the EU common market. Multiple applications, secondary movements and measures of reallocation and of resettlement taken under the CEAS could undermine the internal market's capacity of distributing potential workforce wherever skill shortages require it. The same can be said about the lack of mutual recognition procedures of asylum granting decisions (based on common/harmonized standards and criteria): the current situation does not allow a refugee from moving freely to another Member State to cover skill shortages.

## **4. POLICY OPTIONS**

### 4.1. Policy option A – status quo

Current developments in Member States would continue within the existing legal framework, which would remain unchanged. Ongoing activities would continue. The existing legislative instruments should all be transposed by the Member States and their implementation monitored by the Commission.

### 4.2. Policy Option B1: Full scale harmonisation of EU legislation

This option would ensure that the EU asylum system becomes coherent, comprehensive and offering the highest standards by aiming towards complete harmonisation and the elimination of the shortcomings caused by the adoption of the lowest common denominator (imposed by the way the legislation was adopted – adoption by unanimity in Council) in the first phase of CEAS. This aim would be reached, inter alia, through:

The definition of adequate reception conditions for asylum seekers, via:

- introduction of a reference to national standards (social aid or minimum salary) in case of material support granted in money,
- the harmonised and unconditional access to labour market,
- the full access to healthcare, at the same level as nationals,

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<sup>58</sup> COM(2005) 172, 27.4.2005

- the legal duty for staff in contact with asylum seekers to refer special needs when discovered,
- a harmonised approach to detention.

The recognition of an adequate level of protection to persons in need of protection, through the introduction of the following main elements concerning the issue of qualification:

- the establishment of a single uniform status with same level of rights for both refugees and beneficiaries of subsidiary protection,
- the introduction of mutual recognition of statuses between Member States,
- the harmonization between Member States of statuses granted to other categories, like non removable persons,

The establishment of a uniform and efficient procedure of asylum, via the introduction of:

- a common single procedure through the harmonization of common attached guarantees (access to procedures, suspensive appeal, legal assistance, deadline for decision on substance in first instance, enhanced gender equality) for all types of existing national procedures,
- the establishment of a mechanism for the joint processing of asylum applications between Member States in cases of particular pressure,

The establishment of a higher degree of solidarity and responsibility among the Member States, and between the EU as a whole and third countries:

- the strengthening and clarification of several provisions in the Dublin and EURODAC Regulations in order to enhance the efficiency and ensure better compliance and uniform application by the Member States (in particular provisions on the humanitarian and sovereignty clause and those relating to family unity);
- measures to implement the principle of structural solidarity through the transformation of responsibility determination into a burden sharing mechanism allowing, among other measures, intra-EU reallocation of asylum seekers between Member States;
- the establishment of a mandatory resettlement scheme at European level for supporting third countries with large refugee populations;
- the adoption of a legally binding instrument providing for common procedural standards for Protected Entry Procedures (PEPs).

Modifications to all the existing instruments will ensure consistency and cross referencing in order to avoid the current situation where the instruments adopted at an earlier stage do not incorporate developments which were introduced by subsequent legislation.

#### 4.3. Policy Option B2: Further development of EU legislation

This option would focus on a continuation of efforts towards increasingly harmonised national asylum rules, without however reaching a complete harmonisation, and ensuring high standards of protection.

Further sub-options within this option will be assessed in the specific impact assessments for the amendments of existing instruments (Dublin and Eurodac Regulations; Reception Conditions, Procedures and Qualification Directive).

This option would consist of the introduction of the following main interventions in the field of reception conditions:

- the improvement of the provisions related to material reception conditions,
- the establishment of easier access to labour market for asylum-seekers, not hindered by additional national restrictions,
- the establishment of rules ensuring that detention is not arbitrary;
- effective identification of the health and material needs of vulnerable persons and persons with special needs, including gender considerations.

The introduction of the following main elements concerning the issue of qualification:

- the establishment of two single uniform statuses: one for refugees and one for beneficiaries of subsidiary protection,
- the extension to the beneficiaries of subsidiary protection of Community's rules on the right to family reunification,
- the exploration of possibilities for establishing an effective transfer of protection mechanism,
- the gradual approximation between Member States of statuses granted to other categories, like non removable persons,

The introduction of a new element on procedures:

- the definition of a single procedure through the harmonization of common attached guarantees (access to procedures, suspensive appeal, legal assistance, deadline for decision on substance in first instance, enhanced gender equality) for all types of existing national procedures

The following main interventions related to the issues of solidarity and responsibility among the Member States, and between the EU as a whole and third countries:

- the strengthening and clarification of several provisions in the Dublin and EURODAC Regulations in order to enhance the efficiency and ensure better compliance and uniform application by the Member States (in particular provisions on the humanitarian and sovereignty clause and those relating to family unity) and the possibility to suspend ('freeze returns') in certain cases the application of the Dublin rules to relieve overburdened Member States;
- the concretisation of a principle of exceptional financial solidarity to be enacted to support Member States in cases of particular pressure;
- the establishment of a voluntary resettlement system for supporting third countries with large refugee populations,
- the approximation of the different types of national Protected Entry Procedures.

Modifications to all the existing instruments will ensure consistency and cross referencing in order to avoid the current situation where the instruments adopted at an earlier stage do not incorporate developments which were introduced by subsequent legislation.

#### 4.4. Policy option C: Cooperation and exchange of best practices

This option would be focused on fostering practical cooperation between Member States: making the application of existing legislative instruments more uniform across Member States (in order to avoid disparities and consequently differences in the effective level of protection granted). This practical cooperation would also present some benefits for sustaining the external dimension of EU policy on Asylum issues.

This aim would be reached through the establishment of some type of structural and permanent support, possibly under the form of a European Support Office, which would be established by an EU Regulation or Decision and would be in charge of some or all of the following areas of activity:

##### Activities related to and joint assessment of Country of Origin Information (COI)

- Establishment and maintenance of a common EU portal
- Guidelines on the production of COI
- Guidelines on the assessment of specific caseloads (countries of origin, specific groups)

##### Activities related to training and capacity building

- EU-wide training facility on asylum
- Dissemination of best practice and other activities which contribute to the uniform interpretation and implementation of asylum legislation

##### Practical assistance to Member States

- Support to translation, interpretation in asylum procedures and cooperation in language analysis and document verification
- Support to Member States' efforts to address particular pressures (establishment, management and coordination of asylum expert teams)

##### Activities related to the external dimension

- Tasks regarding the implementation of Regional Protection Programmes
- Other aspects of the external dimension of asylum (e.g. regarding resettlement at EU level)

##### Evaluation and monitoring

- Coordination of a Quality Review Mechanism, which could consist of an evaluation mechanism of the asylum systems of the Member States focusing, for example, on situations where there are great divergences in asylum practices. This would be similar to the existing Schengen evaluation mechanism.

4.5. Policy Option D: Overall comprehensive legal instrument on asylum and creation of a European Asylum Authority

- An **overall legislative intervention on EU legislation** on Asylum aimed to consolidate the different existing legislative instruments. In content, the lines stated in option B1 would be almost entirely followed, but in form this option would lead to the adoption of a single instrument containing all European law on asylum (replacing the current set of directives and regulations), thus at the same time harmonising and consolidating.
- The **creation of a European Asylum Authority** in charge of managing and coordinating the joint EU policy on Asylum. Such an Authority would also take the form of an agency (as in option C, created by an EU Regulation or Decision, financed by the EU budget and with its own personnel) but would not only coordinate the practical cooperation activities listed there ('European Support Office'): it would also replace national administrative and judicial bodies adopting decisions on asylum applications. The Authority would therefore become the common European adjudicator centralising all asylum decisions and would have decision powers. This option therefore represents the most extreme way to ensure common application of EU asylum law throughout the EU.

## 5. ANALYSIS OF IMPACTS<sup>59</sup>

### 5.1. Identifying and assessing measurable impacts of each of the policy options

Policy Option A: Status quo		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
<b>Relevance</b>		
Ensure that asylum procedures are accessible to the persons seeking protection and deal quickly and efficiently with those who do not need it	0	The status quo would not enhance access to protection in the EU as the current identified obstacles (border security measures, visa policy, etc.) would not be counterbalanced by any compensatory measures aiming at making the EU territory more accessible for persons in need of protection.

<sup>59</sup> See annex 4 for an explanation of the assessment criteria

Policy Option A: Status quo		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Ensure higher common standards of protection	0	<p>Maintaining the status quo would prevent the CEAS from attaining a more integrated and comprehensive approach to asylum issues. The current system harmonises Member States' legal frameworks on the basis of <b>common minimum standards</b>. By preserving the CEAS in its current form, low standards and substantial differences between Member States will prevent the EU and its Member States to reach the desired higher common standards in the field of asylum.</p> <p>This policy option does not aim at raising standards. The <b>competence of establishing higher standards remains with Member States</b>, which can autonomously decide whether to stick to minimum standards or raise them. This naturally entails a different application of asylum legislation throughout the EU.</p> <ul style="list-style-type: none"> <li>○ A substantial level playing field in the area of reception conditions is still to be achieved, although the <b>Reception Conditions directive</b> has been transposed satisfactorily in the majority of Member States. The wide <b>discretion left by the directive</b> maintains notable differences between Member States regarding access to employment, healthcare, level and form of material reception conditions, free movement rights (detention) and needs of vulnerable persons;</li> <li>○ the late adoption and transposition deadline for the <b>Procedure directive</b> still makes the level of <b>common standards and approximation of laws uncertain</b> in this area. But it would appear that even after implementation of the common minimum standards in this field, an important degree of differentiation between Member States remains and many of them applying low standards;</li> <li>○ the creation of the <b>subsidiary protection status</b> and greater conformity of legal practice in some points of law (i.e. non-State actors of persecution or serious harm) are the results of the <b>Qualifications directive</b> up to now. There remain nevertheless divergences of interpretation on issues such as <b>internal protection alternative, actors of protection and qualification for subsidiary protection</b> which again limit the possibility of achieving higher common standards.</li> </ul>
To enhance prompt and effective support to national asylum administrations, by promoting practical cooperation	0	No further cooperation activities between Member States are foreseen to enhance the prompt and effective support to national administrations, apart from some ad hoc projects currently underway now.
Foster solidarity mechanisms for dealing with persons in need of protection, between Member States and between the EU and third countries	0	<p>The degree of <b>solidarity between Member States and between the EU and third countries remains unchanged</b>.</p> <p>This is even more so without the establishment of some type of <b>burden sharing mechanism</b>.</p> <p><b>Solidarity with third countries</b> is left to the <b>traditional EU development cooperation policies</b> as well as the <b>Regional Protection Programmes</b> whose extension is not foreseen in the current CEAS. The establishment of <b>resettlement programmes is left to Member States choice</b> and implemented on a national basis, therefore having a lesser impact than a EU scheme.</p>
Facilitate the integration of protected persons	0	The identified problems for the integration of refugees remain the same. In particular, subsidiary protection beneficiaries face problems to be reunited with their families and mobility of protected persons is hindered by the lack of an effective transfer of protection mechanism.
Prevent asylum shopping and secondary movements	0	<p>The <b>objectives of the Dublin system</b> (i.e. establishment of a clear and workable mechanism for determining responsibility for asylum applications) have been <b>generally achieved</b>. Nonetheless there are <b>concerns regarding its practical application and the effectiveness of the system which must be addressed</b>.</p> <p>The persistence of very different recognition rates and reception conditions in the Member States will encourage secondary movements of asylum-seekers wishing to improve their chances of getting protection.</p>

Policy Option A: Status quo		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
<b>Feasibility</b>		
Transposition feasibility		
- Under existing treaty	0	The policy option does not provide for further measures to be transposed and therefore there are no difficulties or risks in this sense.
- Under new treaty	0	The policy option does not provide for further measures to be transposed and therefore there are no difficulties or risks in this sense.
Implementation costs	0	No additional financial and administrative costs would be foreseen given the preserving of the status quo.
<b>Expected Impacts</b>		
Social impacts at EU and Member States level	0	The extent of <b>illegal flows, asylum shopping and secondary movements</b> currently taking place can negatively influence the <b>perception of asylum seekers</b> on behalf of countries of destination societies. Moreover, these flows determine how these people and beneficiaries of international protection are utilized in the <b>formal and informal labour market</b> , given the differences between Member States in granting access to the national labour markets.
Economic impacts at EU and national level	0	The economic impacts vary among MS depending on the level of asylum seekers and beneficiaries of international protection employed in the <b>informal labour market</b> and on the possibility of accessing the national labour market. At EU level this can determine <b>unbalances in the distribution of potential workforce</b> on the common market.
Impact on people in need of international protection	0	The impact of maintaining the status quo on people in need of international protection would be that of keeping <b>unequal access to protection throughout the EU</b> due to the great differences in recognition rates and to the types of statuses granted. The increased use of subsidiary protection status and national statuses determines a <b>lower degree of rights</b> granted to protected persons throughout the EU. Issues such as that of <b>detention would remain unchanged</b> , leaving asylum seekers in diverse and uncertain living conditions in different Member States.
Impact on third countries	0	Preserving the status quo would keep the EU from providing the level of support which is necessary for third countries to deal with asylum issues as effectively and efficiently as possible. Currently <b>RPPs are in a pilot phase and resettlement programmes are still managed at national level</b> , providing an insufficient support to third countries which are on the first line of refugee flows and often face difficulties in managing great asylum pressures.
<b>Fundamental rights</b>	0	The protection of fundamental rights is generally respected throughout the EU Member States. The preserving of the <b>status quo</b> could however <b>prevent</b> asylum seekers and beneficiaries of international protection from benefiting from <b>improved conditions linked to such rights</b> (i.e. reception conditions, qualifications, procedures, responsibility)

Policy Option B1: Full scale harmonisation of EU legislation		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
<b>Relevance</b>		
Ensure that asylum procedures are accessible to the persons seeking protection and deal quickly and efficiently with those who do not need it	√√	<p>Modifications to the <b>asylum procedures directive</b> to accommodate the specifics of mixed arrivals, including the situations when persons seeking international protection are present at the external maritime border of the EU. Such modifications would also better address the issue of how to deal with manifestly unfounded applications during the procedure.</p> <p>The adoption of a legally binding instrument providing for common procedural standards for <b>Protected Entry Procedures</b> from diplomatic representations of the Member States in third countries enhances the accessibility of the EU territory</p>
Ensure higher common standards of protection	√√√	<p>This policy option could strongly contribute to the definition of a common higher <b>level playing field</b> for the CEAS, through measures of harmonisation regarding reception conditions (i.e. <b>access to healthcare</b> and labour market), qualification (i.e. <b>single uniform status</b> for beneficiaries of international protection), and procedures (i.e. <b>common procedure</b>).</p> <p>The present option would create a CEAS in which Member States would still be competent for the management of asylum issues, but linked to a set of harmonised and common rules embodying high standards:</p> <ul style="list-style-type: none"> <li>○ the harmonised and unconditional <b>access to the labour market</b> and <b>to healthcare</b> characterize this option as strongly oriented towards <b>common standards of reception of asylum seekers</b>, as does the harmonised approach to <b>detention</b>. Moreover, these conditions would also be extended to <b>applicants of subsidiary protection</b>. The reference to <b>national standards</b> in the provision of material conditions however maintains a level of differentiation among Member States;</li> <li>○ the definition of a <b>common procedure</b> with <b>strong guarantees</b> decreases the <b>risk of unfair distribution of asylum applications</b> between Member States due to different procedural systems, and ensures <b>higher standards for the granting of protection</b>. The <b>extension of the scope</b> of procedures legislation (i.e. to Dublin Regulation) ensures also <b>procedural guarantees for persons under Dublin procedures and coherence between instruments</b>. Moreover, the definition of elements for the <b>identification of vulnerable people</b> determines a common broadening of protected categories according to international protection standards.</li> <li>○ the <b>common definition of international protection statuses</b> and <b>uniformity of protection granted to refugees and beneficiaries of subsidiary protection</b> throughout the EU would contrast and eliminate the diverse interpretations of qualification criteria. The introduction of <b>mutual recognition of statuses</b> would allow the complete applicability of the transfer of responsibility on asylum seekers and other persons asking for international protection between Member States, also as an expression of solidarity. Finally, the extension of the harmonisation process in granting other types of protection status to other categories such as <b>non removable persons</b> will make the CEAS truly comprehensive.</li> </ul>
To enhance prompt and effective support to national asylum administrations, by promoting practical cooperation	0	The present policy option would have a scarce impact on this specific objective, since it does not provide any new measures of practical cooperation between Member States.

Policy Option B1: Full scale harmonisation of EU legislation		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Foster solidarity mechanisms for dealing with persons in need of protection, between Member States and between the EU and third countries	√√√(√)	<p>The policy option would have a <b>significant effect on solidarity both between Member States and between EU and Third Countries</b>:</p> <ul style="list-style-type: none"> <li>○ by including burden sharing mechanisms: i) establishing <b>intra-EU reallocation of persons in need of protection</b> from overburdened Member States towards Member States which can offer them a durable solution, thus contributing to enhancing the real solidarity between Member States, besides favouring the system's overall efficiency, and ii) suspending the application of the Dublin rules to an overburdened Member State;</li> <li>○ Modifications to the Dublin system to improve its efficiency</li> <li>○ by establishing a <b>mandatory resettlement scheme</b> at a European level, thus helping the EU to support a greater number of persons in need of international protection by accepting refugees from third countries.</li> </ul>
Facilitate the integration of protected persons	√√√√	The modifications presented above to the Qualification directive to create uniform protection statuses will contribute to the integration of protected persons. The mechanism of transfer of responsibility will have the same positive effect.
Prevent asylum shopping and secondary movements	√√√	The higher level of protection standards across the EU represented by this option will lead to less secondary movements as the level of protection and benefits will be similar in all Member States. The modifications to the Dublin instruments will improve the efficiency of the system, which will act as a deterrent.
<b>Feasibility</b>		
Transposition feasibility		
- Under existing treaty	√	<p>The current treaty does not provide a legal basis for many of the elements proposed in this option, in particular on procedures and qualifications.</p> <p>Member States are not inclined to transfer sovereignty in areas such as such as the unconditional and harmonised access to labour market, granting of full access to healthcare, harmonisation regarding further categories of persons in need of international protection, definition of a common procedure with common guarantees, Protected Entry Procedures and a mandatory resettlement scheme</p>
- Under new treaty	√(√)	<p>The new treaty would open up certain possibilities but this option would imply many <b>difficulties of transposition at Member States level</b>.</p> <p>Moreover, ambitious <b>measures contained in this policy option touch many fields of Member States competence</b> and they therefore would have to face a drastic reduction in their decision making capacities. Options such as the unconditional and harmonised access to labour market, granting of full access to healthcare, harmonisation regarding further categories of persons in need of international protection, definition of a common procedure with common guarantees, Protected Entry Procedures and a mandatory resettlement scheme are all areas in which <b>Member States are not inclined to give up their sovereignty</b>.</p>

Policy Option B1: Full scale harmonisation of EU legislation		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Financial feasibility	√	<p>The considerable amendments and additional legislative measures this policy option entails will create <b>increased financial impacts on EU and Member States</b>.</p> <p>Given the high degree of harmonisation this policy option aims to achieve, the additional requirements regarding especially procedures and reception conditions would have considerable <b>financial and administrative costs to be sustained</b>, increasing the financial and administrative burden Member States have to bear. The cost of implementing resettlement programmes could also be considerable.</p> <p>The <b>positive aspect</b> is that the modifications concerning procedures and reception conditions, associated with the system of structural solidarity, could determine a <b>redistribution of incoming asylum flows between Member States</b>, eliminating the situation of overburden currently affecting some Member States, and generating a more equitable financial costs' allocation between Member States. Furthermore, the harmonised and unconditional <b>access to the labour market</b> after a shorter waiting period would allow asylum seekers to be more self-dependent, possibly cutting service costs and gaining from labour taxation.</p>
<b>Expected Impacts</b>		
Social impacts at EU and Member States level	√√	<p>A more level playing field will be created through the enhancing of the quality and efficiency of the asylum system as well as granting higher levels of protection throughout the EU, this option would allow persons in need of protection <b>to adapt and integrate in the countries of destination according to their preferences</b> (less incentive for asylum shopping and secondary movements based on procedural and reception conditions). Moreover, the same elements could reduce the phenomenon of illegal entry to EU, having a <b>positive impact on the EU society and on how asylum-seekers persons are perceived</b> within receiving communities. Also, the spreading of the burden between Member States, and the possibility of easier access to the labour market and to healthcare, would allow asylum seekers, refugees and subsidiary protection status to more easily <b>integrate into local societies, generating a limited impact associated to their path of integration</b> (perception of refugee population, development of illegal working and informal economy, etc.).</p> <p>Another possible effect would be increased asylum flows towards the EU, motivated by the higher level of protection available.</p>
Economic impacts at EU and national level	√	<p>By creating a fully harmonised CEAS, the present policy option would determine a fairer distribution of persons in need of protection among MS.</p> <p>This could diminish the level of illegal movements because of the generally increased efficiency and access the system grants to these people. Thus, such a decrease can <b>lower the quantity of illegal labour supply</b> which can be exploited by private operators in MS.</p> <p>Furthermore, the unconditional and harmonised <b>access to the labour market</b> could determine a slightly positive impact, at national and the EU level, in <b>tapping possible marginal skill shortages</b> in the labour market.</p>

Policy Option B1: Full scale harmonisation of EU legislation		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Impact on people in need of international protection	√√√	<p>This option would generate a <b>significant positive impact</b> on people in need of international protection.</p> <p><b>A transfer of protection mechanism would facilitate that refugees and beneficiaries of subsidiary protection move towards those EU Member States where they could adapt and integrate in the best way.</b></p> <p>Moreover, the enhanced possibility of access to protection and of economic and social integration granted by this policy option, as well as the fundamental rights which are delivered through the various instruments provided for within the areas of reception, procedures and qualification have an absolute <b>positive impact on people in need of international protection</b> who can benefit from enhanced protection mechanisms and reinforced reception and integration instruments. Finally, the provisions for <b>non removable persons</b> broaden the positive impact on people in need of protection.</p>
Impact on third countries	√√√	<p>A more accessible and efficient CEAS could generally create higher flows of refugees towards the EU and therefore relieve the burden they represent for certain Third Countries.</p> <p>Moreover, the enhancement of Protected Entry Procedures within countries of origin and transit could have a <b>positive impact on third countries</b> by opening up potential escape-valves for overburdened third countries. The <b>mandatory EU resettlement scheme</b> would be another mechanism of solidarity and would be considered as a measure of European cooperation with third countries delivering beneficial outcomes for the latter.</p>
<b>Fundamental rights</b>	√√√√	<p>The overall increase in protection and reception instruments compared to the current CEAS would <b>enhance the fundamental rights</b> recognized for people in need of international protection. Apart from the right to asylum, the measures provided would determine side effects in terms of the right to liberty and security and the right to dignity, of people asking for international protection. Moreover the present policy option is also addressing the special needs of categories of persons such as <b>non removable persons and vulnerable groups</b>.</p>

Policy Option B2: Further harmonisation of EU legislation		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
<b>Relevance</b>		
Ensure that asylum procedures are accessible to the persons seeking protection and deal quickly and efficiently with those who do not need it	√√√	An approximation of national Protected Entry Procedures could represent an important step towards improved accessibility to protection for certain categories of asylum-seekers. Modifications to the asylum procedures directive will equally improve aspects related to access to the procedure and to the treatment of manifestly unfounded applications.
Ensure higher common standards of protection	√√√	This option could <b>adequately contribute to foster a more integrated and comprehensive approach to asylum issues through a sensible increase of the common standards of protection.</b> On the whole, the instruments proposed are less binding compared to option B1, but the <b>establishment of higher common standards is achieved at an adequate comparative level</b> through measures of <b>further harmonisation</b> or broadening of existing legislation: <ul style="list-style-type: none"> <li>in terms of reception conditions, this is reached through a general <b>improvement of material reception conditions</b>, an easier <b>access to the labour market</b> for asylum-seekers and ensuring that detention is not arbitrary;</li> <li>as for procedures, the focus is on the definition of a <b>common procedure through the harmonisation of common higher procedural guarantees</b></li> <li>concerning qualification, the <b>establishment of two single uniform statuses</b> for refugees and for beneficiaries of subsidiary protection are a step towards raising common standards, including more detailed rules on what should be relevant for the assessment of gender-based claims, together with the extension of Community rules on the <b>right to family reunification to beneficiaries of subsidiary protection</b>. A higher margin of competence is left to Member States compared to option B1, requiring, instead of imposing mutual recognition, the exploration of possibilities for establishing an effective transfer of protection mechanism.</li> </ul>
To enhance prompt and effective support to national asylum administrations, by promoting practical cooperation	0	The present policy option would have little impact on this specific objective, since it does not provide any new measures of practical cooperation between Member States.
Foster solidarity mechanisms for dealing with persons in need of protection, between Member States and between the EU and third countries	√√√	The policy option would have a fair <b>effect on solidarity both between Member States and between the EU and Third Countries:</b> <ul style="list-style-type: none"> <li>defining a mechanism for exceptional financial aid to be granted in cases of particular pressure would contribute to enhancing solidarity between Member States, besides favouring the system's overall efficiency, allowing overburdened Member States the possibility to face mass flows of people searching for international protection through the financial support of the Union. This measure, associated to the <b>improvements to the different elements of the Dublin system</b>, would be also very relevant in enhancing the degree of responsibility sharing between Member States;</li> <li>the establishment of a <b>voluntary EU resettlement scheme</b> provides a lower profile than a mandatory system, but still effective, mechanism of solidarity in the external dimension of asylum issues, whose functioning would be mainly dependent on the approach towards international solidarity adopted by each Member State.</li> </ul>
Facilitate the integration of protected persons	√√√	The modifications to the Qualification directive to create uniform protection statuses will contribute to the integration of protected persons. The procedure for the confirmation of the protection status in another Member State could also have positive effects.

Policy Option B2: Further harmonisation of EU legislation		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Prevent asylum shopping and secondary movements	√√	The higher level of protection standards across the EU represented by this option will lead to less secondary movements as the level of protection and benefits will be similar in all Member States. The modifications to the Dublin instruments will improve the efficiency of the system, which will act as a deterrent.
<b>Feasibility</b>		
Transposition feasibility		
- Under existing treaty	√	Some of the proposed amendments to existing legislation are possible under the current treaty rules (namely on the Dublin system and on the Reception Conditions Directive) but other amendments aiming at higher standards would not be possible (i.e. procedures and qualifications).
- Under new treaty	√√(√)	The fact that the present option focuses prevalently on the <b>further but not complete harmonisation of national legislations</b> leaves a <b>satisfying margin of acceptability on behalf of Member States</b> : the adoption of measures for the further harmonisation/approximation in the areas concerning the building blocks of the current CEAS does not seem to put excessive pressure on Member States competencies, although there remain strong requirements as regards to procedures and qualification which could hinder the process of transposition. The new treaty allows for further harmonization in these two areas.
Financial feasibility	√√(√)	The less binding characteristic of the present policy option in comparison with option B1 would result in <b>lower financial and administrative costs</b> . There are however measures such as the extension of reception conditions to beneficiaries of subsidiary protection and the stronger guarantees related to procedures which inevitably <b>entail higher financial and administrative costs compared to the current CEAS</b> . Finally, as in policy option B1, easier <b>access to the labour market</b> can slightly dilute the overall financial impacts through increased autonomy of the asylum-seekers and higher taxes collected by the Member State.
<b>Expected impacts</b>		
Social impacts at EU and Member States level	√	Since this policy option addresses the same issues of policy option B1 but with a lower degree of legislative ambition, the effects it delivers from a social perspective can be diluted, both in a positive and negative sense. However, some specific aspects must be stressed: <ul style="list-style-type: none"> <li>the delay in the <b>access to the labour market</b> can have a marginal effect on the supply of illegal labour to EU markets (asylum-seekers may try to find labour for better subsistence in the short-term even when they're not authorised to do so), although the better provisions for reception conditions could counteract such a tendency;</li> <li>the definition of two different <b>protection statuses</b>, providing for different rights assigned to each status, could negatively affect the level of social integration of subsidiary protection beneficiaries, by determining side effects on EU civil society (perception of refugee population, development of illegal working and informal economy, etc.). However, the extension of the right to <b>family reunification to beneficiaries of subsidiary protection</b> can be seen as positive on this perspective.</li> </ul>
Economic impacts at EU and national level	√	A more harmonised CEAS could diminish the level of illegal movements because of the generally increased efficiency and access the system grants to these people. Thus, such a decrease can <b>lower the quantity of illegal labour supply</b> which can be exploited by private operators in MS. Furthermore, easier access to <b>the labour market would represent a positive improvement in comparison with the status quo</b> , even if it could still determine circular and short-term illegal employment within the EU informal market.

Policy Option B2: Further harmonisation of EU legislation		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Impact on people in need of international protection	√√√	In comparison to the current CEAS, this policy option definitely <b>improves the conditions for people in need of international protection</b> . Relevant elements as the clarification and possible broadening of <b>material reception conditions</b> , the increased consideration of the <b>needs of vulnerable groups</b> , the <b>stronger common guarantees related to procedures</b> and the <b>voluntary EU resettlement scheme</b> all positively affect the conditions for these people.
Impact on third countries	√√	As already stated, a more accessible and efficient CEAS would generally determine a more equitable distribution of the burden represented by the flows related to persons in need of international protection, therefore benefiting Third Countries. However, the main impact this policy option could generate on third countries is connected to the establishment of a <b>voluntary resettlement scheme</b> which, although not binding, could however foster a more cooperative approach of EU Member States towards overburdened third countries. Also, the <b>approximation of national PEPs</b> can contribute to the way flows of asylum seekers are managed within third countries when such a procedure is performed within these countries.
Fundamental rights	√√√	The level of <b>protection of fundamental rights</b> of people in need of international protection is <b>potentially enhanced through the various provisions regarding higher standards for reception conditions, qualifications and procedures</b> . In particular, provisions on procedural safeguards will be strengthened in this policy option.

Policy option C: Cooperation and exchange of best practices		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
<b>Relevance</b>		
Ensure that asylum procedures are accessible to the persons seeking protection and deal quickly and efficiently with those who do not need it	√√	As this option focuses exclusively on practical cooperation, it has a limited impact on improving access to the asylum procedures. However, better exchange of information and common training of border guards on asylum issues could be positive developments
Ensure higher common standards of protection	√	In this option, the establishment of higher common standards is dealt with exclusively through <b>enhanced cooperation between Member States</b> and therefore does not achieve a much higher level of common standards compared to the current CEAS. The extent to which this policy option achieves higher common standards depends on the positive impact of the practical cooperation between national administrations. A measure towards a reinforcement of the current standards on asylum issues could be the establishment of a <b>Quality Review Mechanism</b> for the implementation of asylum acquis, which however cannot be considered as the raising of common standards but only provides a way for monitoring the correct application of EU legislation by the Member States.

Policy option C: Cooperation and exchange of best practices		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
To enhance prompt and effective support to national asylum administrations, by promoting practical cooperation	√√√√	<p>The present policy option is entirely focused on the enhancement of a prompt and effective support to national administrations through cooperation between Member States.</p> <p>The degree of cooperation achieved is therefore greatly increased compared to the current CEAS and strongly looks for an <b>improved convergence in decision-making by Member States</b>.</p> <p>This is possible, inter alia, through:</p> <ul style="list-style-type: none"> <li>○ the <b>creation of a European Support Office</b> would provide an essential function of continuous support to the cooperation activities foreseen within this option;</li> <li>○ the dissemination of <b>best practices</b> contributing to the uniform interpretation and implementation of the asylum legislation;</li> <li>○ the <b>EU common training and learning facilities</b> on asylum address the need to enhance Member States capacities of implementing current EU legislation regarding the management of asylum flows, as do the <b>support to translation, document verification and interpretation in asylum procedures</b>;</li> <li>○ ad hoc cooperation measures such as the deployment of <b>Asylum support teams</b> and the <b>joint processing of asylum applications in cases of particular pressure</b>, together with cooperation based on <b>Member States-implemented projects through EU financial support</b> which offers the prompt and effective support to national administrations which is deemed necessary for an efficient functioning of the CEAS;</li> <li>○ the <b>joint assessment of Country of Origin Information (COI)</b>, that contributes to defining a reinforced cooperation system able to effectively support national administrations.</li> </ul>
Foster solidarity mechanisms for dealing with persons in need of protection, between Member States and between the EU and third countries	√√	<p>Solidarity between Member States is proven through the various cooperation measures which aim at sharing the burdens and responsibilities linked to the management of asylum issues (i.e. EU financial support, intra-EU reallocation scheme):</p> <ul style="list-style-type: none"> <li>○ <b>facilitating the implementation of the Dublin mechanism</b> as well as the fostering of an <b>intra-EU reallocation scheme based on voluntary involvement of Member States</b> is an important stepping stone in the direction of improving the current responsibility and burden sharing mechanism through cooperation activities;</li> <li>○ concerning solidarity with third countries, the present policy option does enhance current external solidarity measures through the <b>coordination of a voluntary resettlement system</b> and with the establishment of further <b>capacity-building programmes</b> (including the possibility of extending and replicating the Regional Protection Programmes).</li> </ul>
Facilitate the integration of protected persons	√√	The exchange of best practice on refugee integration measures and programmes can be beneficial
Prevent asylum shopping and secondary movements	√	Improved exchange of information in the context of the implementation of the Dublin rules can help preventing asylum shopping and secondary movements
<b>Feasibility</b>		
Transposition feasibility		
- Under existing treaty	√√√	The difficulty and risks of transposition are limited in this policy option, given the absence of legally binding instruments which can affect the extent of Member States competence and sovereignty.
- Under new treaty	√√√√	The new treaty would open up new possibilities specially in the area of cooperation with third countries.

Policy option C: Cooperation and exchange of best practices		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Financial feasibility	√√√	<b>Financial costs are likely to rise</b> due to the need to back up the various cooperation measures with adequate financial support (i.e. shared financial support to projects and training, financing capacity building programmes in third countries). <b>Implementation costs are also poised to grow</b> given the increased utilization of asylum personnel necessary to respond to the foreseen cooperation measures and to effectively conform to the EU guidelines covering the various asylum issues. The creation of the <b>European Support Office</b> would however help national administrations to moderate the increase in administrative costs in the long term as many tasks currently undertaken at national level would be carried out by the Support Office. .
<b>Expected Impacts</b>		
Social impacts at EU and Member States level	√	The present option does not deliver relevant impacts in the EU's society. Many of the cooperation measures focus on procedures, although the <b>Quality Review Mechanism</b> could affect the way asylum seekers and international protection beneficiaries are accepted within receiving societies (i.e. improved implementation of reception conditions). This option may have limited impact on the dimension of flows of these people within the EU through the facilitation of the <b>Dublin mechanism</b> and the <b>voluntary resettlement schemes</b> , and might contribute to a slight decrease in the social impacts that the current illegal movement of asylum seekers and beneficiaries of international protection deliver on Member States societies through illegal employment or creation of non-integrated communities.
Economic impacts at EU and national level	0(√)	The <b>only economic impact</b> the present option could deliver, in addition to the already existing ones within the current CEAS, concerns the portion of the <b>EU informal labour market</b> that is occupied by asylum seekers or irregularly employed beneficiaries of international protection. This impact however is extremely limited and potentially null, given that there are no provisions regulating the access of these people to the labour market and that illegal flows might not be effectively addressed through the mentioned cooperation instruments.
Impact on people in need of international protection	√√	People in need of international protection could potentially benefit from an enhanced cooperation and coordination between Member States since this could bring to an improved tackling of their needs and rights on the basis of current EU legislation. The <b>voluntary resettlement schemes</b> together with measures such as <b>asylum support teams</b> and the support to <b>translation and interpretation</b> are functional to improving the way asylum seekers and beneficiaries of international protection needs are addressed. Better exchange of COI and an approximation of decision-making practices could lead to an increase in the number of positive decisions and therefore to more persons protected in the EU.
Impact on third countries	√√	The <b>impact on third countries is positively increased</b> through mainly two measures: <ul style="list-style-type: none"> <li>○ Coordination of <b>voluntary resettlement schemes</b>;</li> <li>○ <b>Capacity building programmes – Regional Protection programmes.</b></li> </ul> Resettlement schemes can relieve third countries of physical and social overburdens whereas capacity building programmes help these countries to cope with such burdens.
Fundamental rights	√√	Fundamental rights largely remain unchanged in comparison to the current CEAS, exception made for an improved protection of these rights though <b>enhanced implementation of current EU legislation</b> which can be achieved through the application of an approximation of decision-making practices.

Policy Option D: Overall comprehensive legal instrument on asylum and creation of a European Asylum Authority		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact

Policy Option D: Overall comprehensive legal instrument on asylum and creation of a European Asylum Authority		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
<b>Relevance</b>		
Ensure that asylum procedures are accessible to the persons seeking protection and deal quickly and efficiently with those who do not need it	√√√	Concerning accessibility of procedures, refer to the elements described in option B1
Ensure higher common standards of protection	√√√√	<p>The ambition of this policy option in fostering an integrated and comprehensive asylum approach is extremely high. The definition of an <b>overall comprehensive legal framework instrument</b> guarantees a harmonious and high level of EU management of asylum issues. The creation of a <b>European Asylum Authority</b> in charge of managing and coordinating the joint EU policy on asylum is the most extreme sign of an integrated CEAS, based on a centralized managing mechanism at EU level.</p> <p>For a general overview of the relevance of this policy option in establishing higher common standards, refer to the assessment of policy option B1. In form, however, the legislative measures in this option would be bundled in a single legal instrument, possibly a Regulation, leaving little margin for diverging transpositions in the Member States.</p> <p>With reference to policy option B1, the main differences of the present option is the <b>joint processing of asylum applications managed by the European Authority</b> as a structural component of the future CEAS. The Authority would replace national administrative and judicial bodies with its decision making powers in individual cases.</p> <p>Moreover, the addition of a <b>European authority</b> constitutes a further <b>guarantee of uniformity</b> in the granting of protection and common standards on an EU and Member States level.</p>
To enhance prompt and effective support to national asylum administrations, by promoting practical cooperation	√√√√	Through the constitution of a <b>European Asylum Authority</b> , the level of cooperation and support to national administrations is reached at the highest institutional level. The cooperation activities included in policy option C would find a reference in a single EU body in charge of <b>monitoring and coordinating practical cooperation activities</b> and would <b>identify and share best practices with Member States, as well as take decisions in individual cases</b> .
Foster solidarity mechanisms for dealing with persons in need of protection, between Member States and between the EU and third countries	√√√	<p>For a general overview of the relevance of this policy option in fostering real solidarity between Member States and between the EU and third countries, refer to the assessment of policy option B1.</p> <p>The provision of an <b>EU Authority</b> increases the capacity of a selective and equitable burden and <b>responsibility sharing mechanism</b>.</p> <p>In the external dimension, the Authority would be in charge of developing <b>capacity building programmes</b> as well as monitoring the implementation of the <b>mandatory resettlement scheme</b>.</p>
Facilitate the integration of protected persons	√√√	The modifications presented above to the Qualification directive to create uniform protection statuses will contribute to the integration of protected persons. The mechanism of transfer of responsibility will have the same positive effect.

Policy Option D: Overall comprehensive legal instrument on asylum and creation of a European Asylum Authority		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Prevent asylum shopping and secondary movements	√√√√	<p>The higher level of protection standards across the EU represented by this option will lead to less secondary movements as the level of protection and benefits will be similar in all Member States.</p> <p>The modifications to the Dublin instruments will improve the efficiency of the system, which will act as a deterrent.</p> <p>The fact that only one central body will take decisions will eliminate the current problem of diverging decisions which lead in certain cases to the search of the most 'generous' system.</p>
<b>Feasibility</b>		
Transposition feasibility		
- Under current treaty	0	The current treaty would not allow for many of the elements of this option. The degree of centralization this policy option aims for makes the difficulty and risks of transposition extremely high. The constitution of a <b>European Asylum Authority</b> which would discharge Member States of competences which they are currently entitled to would deprive them of a relevant field of sovereignty which they are unlikely to give up.
- Under new treaty	√	Same as above, although certain elements of this policy option could become possible under the new rules. That would not be the case, however, of the creation of the European Asylum Authority
Financial feasibility	√√	The financial and administrative costs would probably be extremely <b>high in the short term</b> although the centralized management of the CEAS would subsequently lower them through a <b>burden sharing financing mechanism</b> for the functioning of the European Asylum Authority and the progressive reduction of competent national administrations.
<b>Expected Impacts</b>		
Social impacts at EU and Member States level	√√√	<p>For a general overview of the social impacts this policy option delivers, refer to the assessment of policy option B1.</p> <p>The additional procedural measures and guarantees provided for in this policy option confer a reinforced effect on the social impacts described in policy option B1. Generating an <b>extremely level playing field</b>, the present policy option can marginally increase its influence on <b>flows of asylum seekers and beneficiaries of international protection</b>, enabling these people to be integrated in Member States where they have probably the best chances of being accepted by local communities.</p> <p>The possibility of entering a single centralized application procedure may <b>increase the flows of people in need of international protection towards Europe</b>, determining <b>greater social impacts</b> on communities of destination due to the greater number of asylum seekers acceding to Member States territories. However, the <b>efficiency and monitoring</b> of the system on behalf of the <b>Authority</b> could, on the other hand, act as a deterrent towards the use of asylum shopping and larger inflows.</p>
Economic impacts at EU and national level	√√	See option B1

Policy Option D: Overall comprehensive legal instrument on asylum and creation of a European Asylum Authority		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Impact on people in need of international protection	√√√√	For a general overview of the impacts on people in need of international protection that this policy option delivers, refer to the assessment of policy option B1. The <b>guarantee of a uniform and high standard system based on a centralized European approach</b> provides asylum seekers and beneficiaries of international protection with elevated conditions of protection and social integration, receiving additional protection through the <b>monitoring of the EU Asylum Authority</b> .
Impact on third countries	√√√√	For a general overview of the impacts on third countries that this policy option delivers, refer to the assessment of policy option B1. In addition, the development of <b>capacity building programmes</b> by the <b>European Asylum Authority</b> must be considered as a positive impact on third countries.
<b>Fundamental rights</b>	√√√√	For a general overview of the impacts on asylum seekers' and beneficiaries of international protection's fundamental rights that this policy option delivers, refer to the assessment of policy option B1. As mentioned while analyzing the impacts on the people in need of international protection, a <b>common and centralized European asylum system adds further guarantees and protection</b> regarding the conditions linked to such rights.

## 6. COMPARING THE OPTIONS

### 6.1. Comparison of ratings, results of the weighing

		Policy Option A: Status Quo	Policy Option B1	Policy Option B2	Policy Option C	Policy Option D	Preferred policy option (B2+C)
Relevance	Ensure that asylum procedures are accessible to the persons seeking protection and deal quickly and efficiently with those who do not need it	0	√√√	√√√	√√	√√√√	√√√
	Ensure higher common standards of protection	0	√√√√	√√√	√	√√√√√	√√√
	To enhance prompt and effective support to national asylum administrations, by promoting practical cooperation	0	0	0	√√√√	√√√√√	√√√√
	Foster solidarity mechanisms for dealing with persons in need of protection, between Member States and between the EU and third countries	0	√√√(√)	√√√	√√	√√√√	√√√
	<b>Facilitate the integration of protected persons</b>	0	√√√√	√√√	√√	√√√√	√√√
	<b>Prevent asylum shopping and secondary movements</b>	0	√√√	√√√	√	√√√√	√√√
Feasibility	<b>Transposition feasibility</b>						
	- Under existing treaty	0	0	√√	√√√	0	√√(√)
	- Under new treaty	0	√(√)	√√√(√)	√√√√	√	√√√√
	<b>Financial feasibility</b>	0	√√	√√√(√)	√√√√	√√	√√√√
Impacts	<b>Social impacts at EU and MS level</b>	0	√√√	√√	√	√√√	√√√
	Economic impacts at EU and national level	0	√√	√√	0(√)	√√	√√
	<b>Impact on people in need of international protection</b>	0	√√√	√√√	√√	√√√√√	√√√
	<b>Impact on third countries</b>	0	√√√	√√	√√	√√√√	√√√
<b>Fundamental rights</b>		0	√√√√	√√√	√√	√√√√√	√√√

## 6.2. Preferred option

Through the establishment of further harmonization of national laws and by supporting cooperation between Member States to allow a more effective and efficient implementation of the legislation, a combination of **policy options B2 and C** has been identified as the preferred option through the comparative analysis carried out in the previous section. It was identified mainly in a **comparison with policy options B1 (also in combination with C) and D** where, maintaining almost the same level of positive impacts as the latter, it entails **lower transposition difficulties and financial and implementation costs**.

Option B1 presents a number of advantages and is in many aspects similar to B2, but the latter imposes a slightly lower level of harmonisation in some areas and has therefore better chances of being successfully transposed and implemented. Option D has one main drawback: the transfer of sovereignty from the Member States to the proposed European Asylum Authority does not have chances, at this stage, of being accepted by the majority of Member States.

Preferred Policy Option: Further harmonisation of EU legislation (B2) associated with cooperation and harmonisation of best practices (C)		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
<b>Relevance</b>		
Ensure that asylum procedures are accessible to the persons seeking protection and deal quickly and efficiently with those who do not need it	√√√	An approximation of national Protected Entry Procedures could represent an important step towards improved accessibility to protection for certain categories of asylum-seekers. Modifications to the asylum procedures directive will equally improve aspects related to access to the procedure and treatment of manifestly unfounded applications Better exchange of information and common training of border guards on asylum issues would be positive developments
Ensure higher common standards of protection	√√√	For a general overview of the relevance of this policy option in establishing higher common standards, refer to the assessment of policy option B2. Keeping in mind the coordinating role that the <b>European Support Office</b> would carry out in this option, important synergies are created with the establishment of a <b>Quality Review Mechanism</b> on how the asylum acquis is being implemented. Moreover, this option includes the following: <ul style="list-style-type: none"> <li>○ provisions for the establishment of <b>two single uniform statuses</b> for refugees and beneficiaries of subsidiary protection;</li> <li>○ <b>approximation of national procedures</b> based on the definition of a single procedure;</li> <li>○ the improvement of the provisions related to <b>material reception conditions</b> the clarification and improved definition of detention clauses to prevent it from being arbitrary;</li> <li>○ the creation of a specific procedure of identification of <b>vulnerable groups</b>.</li> </ul>
To enhance prompt and effective support to national asylum administrations, by promoting practical cooperation	√√√√	For a general overview of the relevance of this policy option in enhancing a prompt and effective support to national administration through cooperation activities between Member States, refer to the assessment of policy option C.

Preferred Policy Option: Further harmonisation of EU legislation (B2) associated with cooperation and harmonisation of best practices (C)		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Foster solidarity mechanisms for dealing with persons in need of protection, between Member States and between the EU and third countries	√√√	For a general overview of the relevance of this policy option in fostering real solidarity between Member States and between the EU and third countries, refer to the assessment of policy option B2. Also in this context, the <b>Quality Review Mechanism</b> would provide support to ensure the <b>proper implementation of the asylum acquis</b> . Furthermore, there will be a facilitation of the implementation of the <b>Dublin mechanism</b> through a number of amendments to ensure its efficiency. In an external dimension perspective, the establishment of a <b>voluntary resettlement system</b> would be backed up by the activity of <b>coordination</b> of this system provided by the <b>European Support Office</b> and other practical cooperation measures. Policy option B2 would then see the addition of <b>capacity building programmes</b> for third countries (including Regional Protection Programmes) as a major contribution to solidarity with third countries.
Facilitate the integration of protected persons	√√	The modifications presented above to the Qualification directive to create uniform protection statuses will contribute to the integration of protected persons. The procedure for the confirmation of the protection status could also have positive effects. Improved exchange of best practices on integration in the context of practical cooperation will be beneficial.
Prevent asylum shopping and secondary movements	√√	The higher level of protection standards across the EU represented by this option will lead to less secondary movements as the level of protection and benefits will be similar in all Member States. The modifications to the Dublin instruments will improve the efficiency of the system, which will act as a deterrent.
<b>Feasibility</b>		
Transposition feasibility		
- Under existing treaty	√√(√)	Some of the proposed amendments to existing legislation are possible under the current treaty rules (namely on the Dublin system and on the Reception Conditions Directive) but other amendments aiming at higher standards would not be possible (i.e. procedures and qualifications). The difficulty and risks concerning the practical cooperation elements of this option are limited.
- Under new treaty	√√√	The fact that the present option focuses prevalently on the <b>further but not complete harmonisation of national legislations</b> leaves a <b>satisfying margin of acceptability on behalf of Member States</b> : the adoption of measures for the further harmonisation/approximation in the areas concerning the building blocks of the current CEAS does not seem to put excessive pressure on Member States competencies, although there remain strong requirements as regards to procedures and qualification which could hinder the process of transposition. Moreover, the new treaty requires for further harmonization in these two areas. The new treaty slightly enlarges the scope for practical cooperation, specially with third countries.
Financial feasibility	√√	For a general overview of the financial and administrative costs this policy option entails, refer to the assessment of policy option B2. The <b>costs</b> sustained in policy option B2 <b>would be increased</b> with those foreseen for policy option C.
<b>Expected Impacts</b>		
Social impacts at EU and Member States level	√√	For a general overview of the social impacts this policy option delivers, refer to the assessment of policy option B2. The <b>additional social impacts</b> that cooperation activities and best practices can convey to those highlighted in policy option B2 <b>would be limited</b> . Refer to policy option C for details in this regard.

Preferred Policy Option: Further harmonisation of EU legislation (B2) associated with cooperation and harmonisation of best practices (C )		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Economic impacts at EU and national level	√√	A more harmonised CEAS could diminish the level of illegal movements because of the generally increased efficiency and access the system grants to these people. Thus, such a decrease can <b>lower the quantity of illegal labour supply</b> which can be exploited by private operators in MS. Furthermore, easier access to <b>the labour market would represent a positive improvement in comparison with the status quo</b> , even if it could still determine circular and short-term illegal employment within the EU informal market.
Impact on people in need of international protection	√√√	For a general overview of the positive impacts on people in need of international protection that this policy option delivers, refer to the assessment of policy option B2. Policy option B2 has reduced impacts on people in need of international protection compared to policy option B1. However, the <b>coordinated voluntary resettlement scheme</b> can have a positive impact on these people by guaranteeing them a durable solution. Furthermore, the present policy option adds measures which facilitate the addressing of these people's needs such as measures creating <b>asylum support teams</b> and supporting <b>translation and interpretation</b> services.
Impact on third countries	√√	For a general overview of the impacts on third countries that this policy option delivers, refer to the assessment of policy option B2. The addition of the impacts on third countries that practical cooperation delivers confers a positive overall impact of this policy option, combining a <b>coordinated voluntary resettlement scheme</b> with <b>capacity building programmes – Regional Protection Programmes</b> for third countries.
Fundamental rights	√√√	For a general overview of the impacts on asylum seekers' and beneficiaries of international protection's fundamental rights that this policy option delivers, refer to the assessment of policy option B2. The advantages conferred to the benefiting of fundamental rights within policy option B2 are further enhanced through the provisions foreseen in policy option C where <b>exchange of best practice and support measures</b> facilitate the delivering of adequate protection conditions.

### Main advantages

- It achieves relevant results in fostering an **integrated and comprehensive approach** to asylum issues, guaranteeing this objective through higher common standards of protection and the support of practical cooperation activities;
- It ensures improved access to protection by starting work on the approximation of national Protected Entry Procedures and by amending the Procedures directive to make it more 'access-sensitive'.
- It establishes **higher common standards in the field of asylum** through enhanced measures concerning **reception conditions** (i.e. easier access to labour market and healthcare), **procedures** (common procedure with strong guarantees), **qualification** (i.e. common definition of two international protection statuses, more detailed rules on what should be relevant for the assessment of gender-based claims, etc.);

- It enhances prompt and effective **support to national administrations** and **cooperation activities between Member States** by improving the convergence in decision making processes in Member States through the creation of a **European Support Office**<sup>60</sup> which would coordinate and monitor various activities (i.e. common training and learning facilities, country of origin information, translation services and asylum support teams, etc.); a specific impact assessment will look into the costs and sources of income for the proposed Support Office.
- It fosters real responsibility and **solidarity between Member States and between the EU and third countries** through improvements to the Dublin system and a **voluntary EU resettlement scheme** and the further development of **capacity building programmes, in the form of Regional Protection programmes**, in third countries;
- It promotes the integration of protected persons and specifically of persons enjoying subsidiary protection by increasing the level of the rights attached to their status.
- The generalization of higher common standards and the improvements to the Dublin system will prevent secondary movements and asylum shopping

As far as **impacts** are concerned:

- It creates a more level playing field throughout the EU, allowing a **more efficient management of refugee flows** between Member States, with a greater chance of integrating protected people in receiving communities;
- By enhancing access to the labour market for asylum-seekers, it has the potential of **slightly diminishing illegal labour supply** and tapping marginal skill shortages within the Member States labour markets;
- It provides greater protection to people in need of international protection by better addressing the needs of the more vulnerable groups, including due sensitivity to the particular difficulties and constraints that female asylum seekers may face when presenting their claims;
- It has an overall **high positive impact on third countries** by partially relieving them of possible asylum pressures through the voluntary **EU resettlement scheme** and allows them to increase their asylum management capacities through corresponding **capacity building programmes**;
- It enhances asylum seekers' and beneficiaries of international protection's fundamental rights by providing reinforced conditions through which they can benefit from such rights.

Concerning costs, the less binding characteristic of the present policy option would entail **lower financial and administrative costs in comparison to a full-scale harmonisation process**.

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<sup>60</sup> The creation of a support office will be consistent with the Commission's approach to agencies, as reflected in the communication "European Agencies – The Way Forward" (COM (2008) 135). Planned agencies in the area of Justice and Home Affairs, including the Support Office for Asylum, are not concerned by the 'freeze' of new proposals for regulatory agencies proposed in the Communication.

- There are however measures such as the extension of reception conditions to applicants of subsidiary protection and the stronger guarantees related to procedures which inevitably **entail higher financial and administrative costs compared to the current CEAS**, although the easier **access to the labour market** for asylum-seekers could slightly dilute the overall financial impacts.
- **Measures of practical cooperation will entail additional costs** due to the need to back up the various cooperation measures with adequate financial support (i.e. shared financial support to projects and training, financing capacity building programmes in third countries).
- **Administrative costs are also inclined to grow** given the increased utilization of asylum personnel necessary to respond to the foreseen cooperation measures. The creation of the **European Support Office** would however help national administrations to moderate the increase in administrative costs in the long term.

It is important to note that the preferred option incorporates most of the majority orientations identified during the Green Paper consultation<sup>61</sup>. *Main disadvantages*

In an optic of **comparison with the proposed policy options** (mainly with policy options B1 and D), the preferred policy option:

- Lacks an institutional body which centralizes all the operation of the CEAS, such as the European Asylum Authority of option D, which would allow to achieve further results in areas such as granting adequate standards of international protection through the supervising role of such an agency and the fact that it would harmonise asylum practice by its monopoly on asylum decisions;
- It still leaves a margin of discretion to Member States, which could lead to divergent practices
- It can also increase overall EU expenditure (but this can be compensated by a reduction in national expenditure)
- As far as **impacts** are concerned, it has the **potential of creating a pull factor, increasing the percentage of global asylum flows towards the EU**, due to the higher level of reception conditions for asylum-seekers and higher protection standards provided for beneficiaries of international protection statuses;

This last point deserves to be analyzed more in-depth.

On the basis of existing statistical data, it can be argued that asylum-seekers are informed of national asylum policies and of the legislative amendments and reorient their choice after a restrictive change. **Countries which have introduced restrictive measures have often seen a decrease in the number of asylum applications** soon after the changes were implemented.

The opposite phenomenon (an increase of refugee flows) can plausibly happen if the system is amended to offer higher standards and better access to protection and is therefore perceived to

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<sup>61</sup> See section 2.4. of this document for a summary of the main conclusions drawn from the Green Paper consultation

be more 'generous'. If the EU as a whole is perceived as offering better chances to protect asylum-seekers, will this lead to larger refugee flows reaching the EU?

First, it is necessary to recall that refugee flows are mainly determined by **push factors**. In this, refugee flows are different from labour migration flows, where both push and pull factors are important. Genuine refugees normally do not have a choice: they must leave their country to protect their lives and integrity. **A very generous EU asylum policy coupled with no conflicts in the vicinity of the EU will not produce larger refugee flows.** The same is not true of the opposite: if a conflict explodes close to the EU, higher numbers of asylum-seekers will arrive to the EU, irrespective of restrictive policies implemented by the Member States. And let's not forget that **Member States, bound by the Geneva Convention, the ECHR and soon the Charter of Fundamental Rights, cannot choose not to protect refugees.** They can, if they so wish, prevent the arrival of economic migrants but they have a legal and moral duty to protect refugees.

Second, it is important to look at the **effects within the EU**. The main effect can be expected to be a **redistribution between Member States**: the Member States which are perceived as less attractive or generous, once they implement higher standards of protection, could see more asylum-seekers applying for asylum; this would lead to less secondary movements and an unburdening of the more overburdened Member States (certainly of those which are overburdened because they are more generous, rather than because of their geographical location). From an internal perspective, thus, setting higher standards would have the positive effect of redistributing the 'burden' and the costs attached to it, which would not themselves increase. It must also be underlined that **an improved, faster and more efficient common procedure will decrease costs in the long term** and that **more equal chances of being protected across the EU will lead to less secondary movements** and therefore less costs related to the implementation of the Dublin system.

Third, the possibility of an increase of the total number of asylum-seekers arriving to the EU will first and foremost depend on the existence of crises producing refugees. Push factors, as stated above, are the main factor behind refugee flows. This, however, does not mean that a European system perceived as more welcoming for refugees could not act as a pull factor (secondary in importance to the main push factors). But **refugee flows, even if they were to increase by, for instance, 50% (thus reaching between 300,000 and 350,000 asylum-seekers per year) would still be within the average for the past 20 years (which stands at 340,000).** If this increase were to be sustained in an even way by all or most Member States (which should be the case under a system with common higher standards as the one proposed) no national system should suffer from overburdening. Moreover, **within the context of the migration flows reaching the EU (between 1.5 and 2 million immigrants per year), refugee flows are still a relatively small fraction, and will still be so even if they increase.**

Fourth, it is interesting to look not only at the possible increase in asylum-seeker flows, but also to a **possible increase in recognition rates in asylum decisions and to the effects of faster procedures.** In fact, asylum-seekers are more likely to pose a burden than persons whose status has been recognised. As long as the status determination is ongoing, the asylum-seeker has a number of needs which entail certain costs. However, once a person is granted protection status, if this person is properly integrated, he/she can soon become independent and self-sufficient, find jobs and become a net contributor to the social security system instead of a beneficiary. It is usually acknowledged that refugees have a higher educational level than other migrants, which they could use to the benefit of their host countries if their qualifications were properly recognised (recognition of qualifications is a problem not just for

refugees but for all migrants). An increase in positive decisions also means less enforcement costs related to dealing with the rejected asylum-seekers, which often become irregular migrants and are detained, removed, etc. or left 'in the wild' and risk becoming a threat for the public order.

### 6.3. Assessment and considerations of proportionality and EU added value

The preferred option is proportional to the objectives defined in this impact assessment and represents a lighter implementation burden for the Member States, in comparison with other options assessed, and notably B1 and D.

The preferred option has also the advantage of providing for more flexibility in implementation, which is important given the different importance of the asylum phenomenon in the Member States. As an example of this flexibility it could be mentioned that the voluntary resettlement scheme would allow those Member States which see small number of asylum-seekers arriving spontaneously to their territories to implement resettlement schemes, thus somehow compensating the reduced burden that regular asylum flows represent for them. At the same time, the Member States which normally receive large flows would rather concentrate on addressing them, instead of taking even more refugees from third countries under the resettlement scheme.

The new Treaty requires higher standards of protection, specially in the areas of Qualification and Procedures, in order to reach uniform statuses and a common procedure<sup>62</sup>. These goals can be reached through the further harmonisation proposed in the preferred option, but only after the entry into force of the new Treaty. Therefore, proposals for amendments to the Qualification and Procedures Directives will be presented once the new Treaty enters into force.

## 7. MONITORING AND EVALUATION

- The monitoring and evaluation of the implementation of the preferred option will be an important element to ensure the effectiveness of this Policy Plan. The Commission will ensure that the appropriate mechanisms to monitor the implementation of this Policy Plan are in place and will have a pre-eminent role in such monitoring process. The Commission will also be vigilant that standards of fundamental rights' protection of its proposals are not weakened during the legislative process.

The roadmap in Annex I of the Policy Plan provides an indicative and non-exhaustive timetable for work, in terms of action envisaged in order to implement the Policy Plan. Full evaluation and monitoring arrangements of each proposed measure will be explained in detail in the impact assessment to the specific measures.

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<sup>62</sup> See section 2.3.1. of this document for an analysis of the impact of the new Treaty.

The preferred option identified in the Impact Assessment includes the creation of a structure providing continuous support for practical cooperation in asylum matters. In the long term, the Commission will examine whether this new structure could be entrusted with monitoring tasks. It could for instance coordinate an asylum peer review scheme, which would consist of an evaluation mechanism of the asylum systems of the Member States focusing, among others, on situations where there are great divergences in asylum practices. This would be similar to the existing Schengen evaluation mechanism.

As for indicators to assess progress and effectiveness of the preferred option in achieving the policy objectives, the following can be taken into consideration:

- Number of new applications for asylum
- Number of rejections and of positive decisions granting refugee or subsidiary protection status
- Number of asylum-seekers in comparison with resident population and GDP
- Number of Dublin requests and transfers
- EURODAC hits
- Number of Regional Protection Programmes implemented, and resources dedicated for them
- Number of resettled refugees from third countries
- Number of asylum-seekers who are permitted entry under protected entry procedures
- Number of persons benefiting from ERF-funded activities
- Level of financial resources allocated for the ERF
- Level of financial resources allocated for practical cooperation activities, including for the creation of a European Support Office
- Number of trainings carried out, of asylum experts teams created and sent to overburdened Member States
- Number of persons enjoying some form of international protection who obtain the right to be joined by family members or to move to another Member State.