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from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

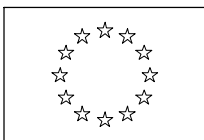
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to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Annexes to the COMMISSION STAFF WORKING DOCUMENT
accompanying the Proposal for a Directive of the European Parliament and of
the Council on minimum standards on procedures in Member States for
granting and withdrawing international protection
- Impact Assessment

Delegations will find attached Commission document SEC(2009) 1376 - part II.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.10.2009
SEC(2009) 1376
(part II)

Annexes to the

COMMISSION STAFF WORKING DOCUMENT

accompanying the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on minimum standards on procedures in Member States for granting and
withdrawing international protection**

Impact Assessment

{COM(2009) 554}
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1. ANNEX 1 GLOSSARY

Asylum

Asylum is a form of protection given by a State on its territory based on the principle of ‘non-refoulement’ and internationally or nationally recognised refugee rights. It is granted to persons who are unable to seek protection in their country of citizenship and/or residence in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

Common European Asylum System

Rules and principles at European Union level leading to a common asylum procedure and a uniform status, valid throughout the Union, for those granted asylum. The major aims and principles were agreed to in October 1999 at the European Council in Tampere (Finland) by the Heads of State or Government. The second phase in the establishment of the Common European Asylum System started with the adoption of The Hague programme in November 2004.

Dublin system

The Dublin Convention and its successor, the Dublin Regulation, set the rules concerning which Member State is responsible for handling an asylum application. The objective of the system is to avoid multiple asylum applications, also known as ‘asylum shopping’. The Dublin system comprises the Dublin and Eurodac Regulations and their implementing regulations.

Geneva Convention

The Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 ("Geneva Convention"), sets out the grounds on which persons should be recognised as refugees and the rights that signatory states should afford to them. The Qualification Directive acknowledges that the Geneva Convention "provide[s] the cornerstone of the international legal regime for the protection of refugees" and recalls that the Tampere European Council agreed to work towards establishing a CEAS "based on the full and inclusive application" of this Convention, "thus affirming the principle of non-refoulement and ensuring that nobody is sent back to persecution".

Human Rights instruments

In addition to the Geneva Convention, further sources for defining grounds for granting protection are international and regional notably the European Convention on Human Rights ("ECHR"), the International Covenant on Civil and Political Rights and the UN 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These instruments prohibit the expulsion of a foreigner to a country where he/she would be subjected to torture, inhuman or degrading treatment or punishment, but do not address the issue of a status that this person should be granted in the host state. The subsidiary protection regime introduced by the Qualification Directive draws on the prohibition of refoulement enshrined in these instruments but additionally addresses this

gap by imposing on Member States the obligation to provide the persons concerned a consolidated set of rights.

Non-refoulement

The key principle of international refugee law, which requires that no State shall return a refugee in any manner to a country where his/her life or freedom may be endangered. The principle also encompasses non-rejection at the frontier. Its provision is contained in Article 33 of the 1951 Convention Relating to the Status of Refugees and constitutes the legal basis for States' obligation to provide international protection to those in need of it. Article 33(1) reads as follows: 'No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'.

Refugee

A person who fulfils the requirements of Article 1(A) of the Geneva Convention. Article 1(A) defines a refugee as any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Refugee status

This is defined in the Qualification Directive as the status granted by a Member State to a third country national person who fulfils the requirements of the refugee definition as laid down in the Geneva Convention.

Subsidiary protection

The Qualification Directive created the subsidiary protection status in order to give protection to certain categories of persecuted people who are not covered by the Geneva Convention on refugees. This status contains a lower level of rights than the Geneva Convention status.

Tampere European Council

In October 1999 the Tampere European Council adopted a comprehensive approach to put into practice the new political framework established by the Treaty of Amsterdam in the area of Justice and Home Affairs. The Council set ambitious objectives and deadlines for action in all relevant areas, including asylum and immigration, police and justice cooperation and fight against crime.

The Hague programme

The Tampere programme, adopted by the Tampere European Council in 1999, set the agenda for work in the area of Justice and Home Affairs for the period 1999-2004. Likewise, the European Council adopted in 2004 The Hague programme, which covers

the period 2005-2010, and provides, inter alia, for the continuation of efforts aimed at establishing common European asylum and immigration policies.

Secondary movements

Secondary movements by asylum-seekers take the form of multiple applications for asylum submitted simultaneously or successively by the same person in several Member States. Secondary movements by refugees can also take the form of "asylum shopping", when, despite the fact that they already received international protection, they apply again for asylum in another Member State.

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Rebuttable presumption of safety: A presumption is a legal conclusion compelled by a predetermined set of circumstances. A rebuttable presumption of safety means that the presumption could be challenged.

Safe countries: Safe country of origin, safe third countries, first country of asylum are distinct notions:

- **Safe country of origin:** According to the Procedures Directive a country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined of Article 9 of Directive 2004/82/EC, no torture or inhuman or degrading treatment or punishment and no threat of indiscriminate violence in situations of international armed conflicts.
- **First country of asylum:** A first country of asylum is a country in which a person has been granted a durable solution.
- **Safe third country:** A safe third country is a country in which an asylum seeker could have found protection as a refugee, and in which he/she has been physically present prior to arriving in the country in which he/she is applying for asylum.

'Ex nunc' assessment: An 'Ex nunc' assessment is a Latin expression used to signify that the assessment is valid only for the future.

Modus operandi: term used to describe someone's habits or manner of working, the method of operating or functioning.

'Proprio motu': A 'proprio motu' is a Latin expression signifying acting independently, on his/her own motion.

Stand still clause: A stand still clause is a provision which allows a MS to preserve status quo.

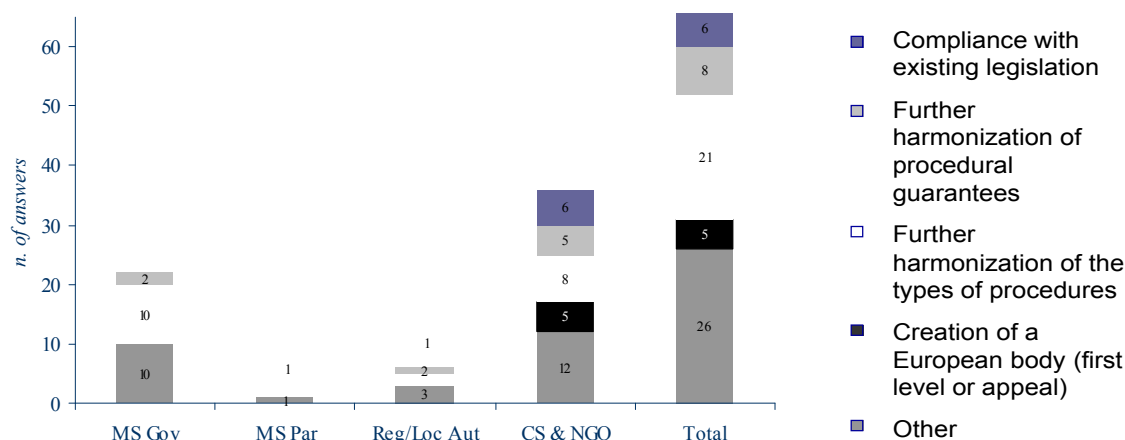
2. ANNEX 2 CONSULTATION WITH STAKEHOLDERS

Green paper consultation

In the context of the consultation launched in June 2007 with the Green Paper on asylum, the Commission received 89 contributions from a wide range of stakeholders, including 20 MS, regional and local authorities, the Committee of the Regions and the European Economic and Social Committee, UNHCR, academic institutions, political parties and a large number of NGOs¹. The main findings regarding the necessary improvements to the Procedures Directive which emerged from the replies to the Green Paper may be summarized as follows²:

I. Achievement of a common asylum procedure and aspects for a further law approximation

- There was a recognition of the importance of **better defining a common asylum procedure** by the majority of the contributions, in terms of both reaching adequate **compliance with existing legislation** and defining a **new instrument at EU level**;



- Some requests for a new intervention related to some specific aspects were flagged: (i) harmonization of types of procedure (21/66); (ii) harmonization of procedural guarantees (10/66); (iii) institution of a European body (5/66).
- **MS Gov** stressed the necessity for a further **law approximation and/or common asylum procedure** mainly focused on the following aspects:

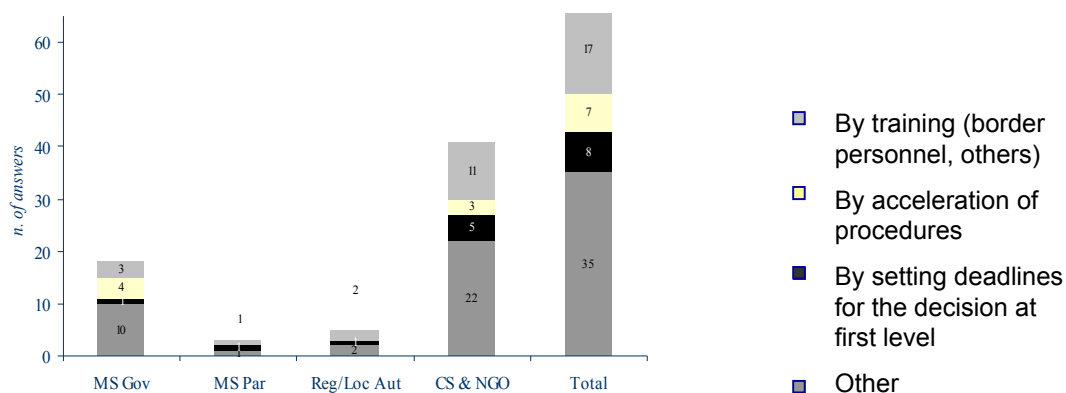
¹ The full text of these contributions is available at: http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/news_contributions_asylumssystem_e.htm

² The numbers indicated in the analysis refer to the number of preferences expressed, for each question, per each of the single criteria identified (i.e. 3/7 MS Gov = 3 preferences expressed for a certain criteria on 7 total preferences expressed by respondent MS Gov)

- the definition of a **new EU legislative instrument harmonizing the types of procedures** for asylum applications (10/22 (i.e. DK, IE);
- the **harmonization of guarantees linked to asylum procedures**;
- Various indications were given by MS Gov (i.e. FR) and NGOs to create European guidelines for interpretation or implementation of EU legislation, associated also with reflections (i.e. SE) on the possibility of EU of becoming party to the Geneva Convention as a single entity;
- DE supported the implementation of the CEAS, but with the condition of not defining detailed or binding procedural dispositions (especially on specific issues like access to the labor market);
- A few MS Gov (i.e. UK) together with Regional and Local Authorities (hereinafter Reg/Loc.Aut.) highlighted the need for a preliminary evaluation of the first phase of implementation of the CEAS before further improving or developing the legislation;
- NGOs contributions stressed the following elements:
 - the basic need to foster MS legislations to **comply with EU existing legislation**;
 - the necessity of supporting the **creation of a European judicial body** as a means for going towards the **definition of a common asylum procedure**;
 - the necessity of **granting the fundamental right of appeal** on behalf of asylum applicants.

II. Enhancement of effectiveness of access to asylum procedure and areas of improvement for efficiency and protection guarantees

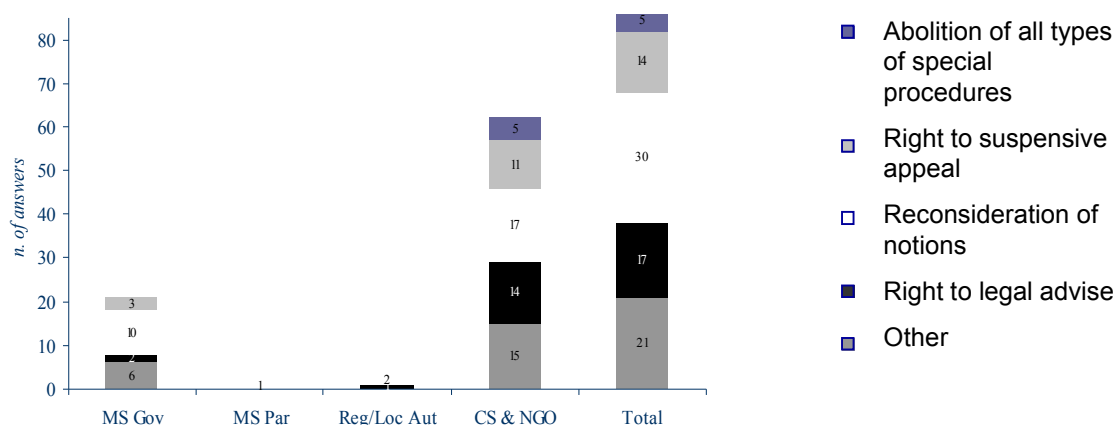
- A low concentration of indications was detected on how to enhance the **effectiveness of the access to asylum procedures**, apart from a certain convergence on the necessity of **training asylum staff** (18/67);



- The definition of **deadlines for the decision at first level** (8/67) and the **acceleration of procedures** (7/67) were considered as two relevant aspects on which to intervene.
- The enhancement of the **effectiveness of access to asylum procedures** was considered as a main issue on which to intervene by MS Gov, with specific referral to:
 - the need for **acceleration of procedures** (4/18 (i.e. SE, LV));
 - the importance of **training of personnel** (3/18 (i.e. MT, SE));
 - the necessity of **revising the concept of “safe European third country”** (CZ);
 - the relevance of **setting deadlines for first level decision** (LV);
- DE did not find shortcomings in the current regulations, suggesting to identify national deficiencies during the evaluation process of the first phase of CEAS;
- NGOs and CS, indicating means for enhancing the effectiveness of the asylum procedure and improving the efficiency and protection guarantees, supported the following steps:
 - the granting of professional and legal assistance to asylum seekers before and during the asylum procedure;
 - the setting of deadlines for first level decision;
 - the training of personnel;
 - the access to information by applicants for international protection;
 - the efficient circulation and exchange of information between the national authorities in charge of the procedures;
 - the improvement of airport and sea procedures.

III. Reconsideration of existing notions and procedural devices

- A focus was placed on the necessity of revising some relevant notions (30/87): (i) first country of asylum, (ii) safe third or third European country, (iii) safe country of origin;
- Right to legal advice (17/87) and to suspensive appeal (14/87) were considered as crucial procedural devices on which to intervene.



Revision wanted for notions³ of:

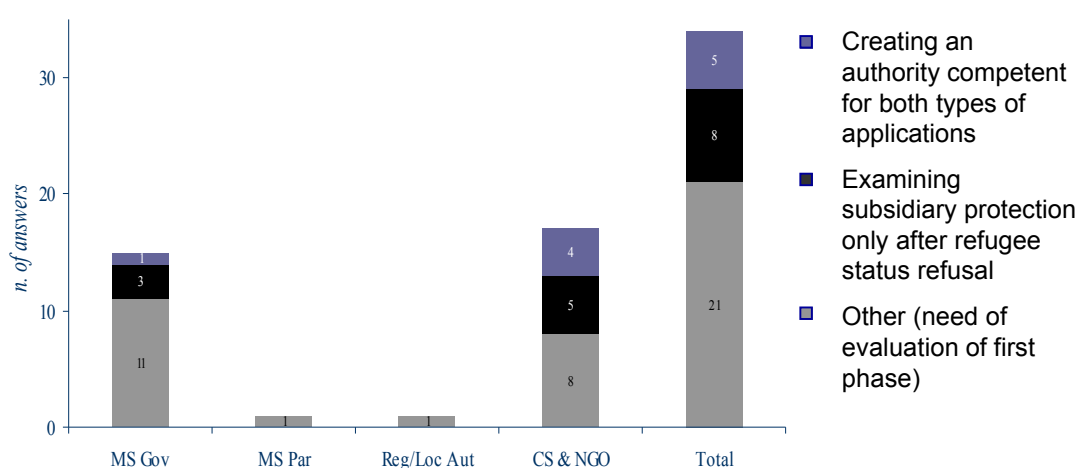
- “Safe third country” (EE, DE, PT);
- “Safe European third country” (CZ, FR, PT);
- “Safe country of origin” (EE, PT, SI);
- An **EU list** suggested for:
 - “Safe countries” (CZ, SI);
 - “Safe countries of origin” (FR, DE);
 - “Safe European third countries” (HU);
- Right to suspensive appeal and right to legal assistance were mentioned by some MS Gov (i.e. FR and SE respectively) as concepts to be further reviewed;
- A review of these concepts was supported also by a meaningful number of NGOs (11/62 and 14/62 respectively);
- The abolition of any kind of special procedure separate from the regular asylum procedure was supported by various NGOs: their application diminish applicants’ protection guarantees;

³ LV supports existing concepts of first country of asylum, safe third country and safe country of origin.

- NGOs generally asked for a more precise definition and improved application of two concepts:
- access to asylum procedures;
- procedural guarantees;
- The personal interview to the applicant and refusal of asylum applications were also mentioned by some NGOs as a matter of further revision.

IV. Design of a mandatory single procedure for assessing applications for refugee status and for subsidiary protection

- A low concentration of indications was collected on how to design a **mandatory single procedure**;



- The **examination of subsidiary protection only after having discarded refugee status** emerged as a possible procedure to achieve a more efficient system at EU level for processing applications (8/34).
- The design of a **mandatory single procedure** was **supported in principle by some MS Gov** (i.e. FR, DE), with **no particular uniform indication** emerging on how such a procedure should be designed:
 - reference to the Geneva Convention and international refugee law to develop a single procedure suggested by some (i.e. PT);
 - procedure to be based on the following steps according to NL: (i) registration (with restricted reception); (ii) interim period (medical examination, legal assistance, information), (iii) asylum application period (interviews, Dublin research, assessment of the type of procedure to be applied);
 - definition of an authority competent for both procedures (MT);
 - divergences in suggesting either independent authorities or cooperation amongst existing authorities;

- The examination of subsidiary protection after the denial of refugee applications was considered as a correct procedure by a few MS Gov (3/15 (i.e. HU));
- A moderate consensus was built on the need for a better and more in-depth evaluation of the first phase of implementation of CEAS before proceeding with a single procedure and the second phase of harmonization in general (i.e. UK, HU and few NGOs);
- The examination of subsidiary protection after the denial of refugee applications (5/17) and the definition of an authority competent for both procedures (4/17) collected appreciations on behalf of NGOs.

Consultations with Government, Civil Society and UNHCR experts in the course of preparing the impact assessment

Overview of stakeholder consultations undertaken to inform the impact assessment		
Type of consultation	Meeting participants/respondents to questionnaires	No participation / no information received from
Meetings held		
Experts' meeting on the Asylum Procedures Directive, 25 February 2008	<p>Representative from the following 20 Member States participated:</p> <p>Austria, Czech Republic, Estonia, Finland, France, Germany, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.</p>	<p>The following seven Member States did not participate in the meeting:</p> <p>Belgium, Bulgaria, Cyprus, Spain, Greece, Luxembourg, Hungary.</p>
Experts' meeting on the Asylum Procedures Directive, 17 March 2008	<p>Legal advisors from the following 20 Member States participated:</p> <p>Austria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, , Poland, Romania, Slovakia, Slovenia, , Sweden and the United Kingdom.</p> <p>UNHCR was also represented</p>	<p>The following six Member States did not participate in the meeting:</p> <p>Belgium, Bulgaria, Luxembourg, the Netherlands, Portugal, Spain.</p>
Experts' meeting on the Asylum Procedures Directive, 29 September 2008	<p>Representatives from the following 18 Member States participated:</p> <p>Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Hungary, Ireland, Italy, Lithuania, Malta, the Netherlands, Poland,</p>	<p>The following eight Member States did not participate in the meeting:</p> <p>Cyprus, Germany, Greece, Latvia, Luxembourg, Romania, Slovenia and Spain.</p>

Overview of stakeholder consultations undertaken to inform the impact assessment		
Type of consultation	Meeting participants/respondents to questionnaires	No participation / no information received from
	<p>Portugal, Sweden, Slovakia and the United Kingdom.</p> <p>Five NGOs also took part in the meeting:</p> <p>The Hungarian Helsinki Committee, the Dutch Refugee Council, the Slovak Human Rights League, the Finnish Refugee Advice Centre and the Lithuanian Red Cross as well as UNHCR Brussels.</p>	
Experts' meeting on the Asylum Procedures Directive, 25 November 2008	<p>Government experts from 25 Member States participated:</p> <p>Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Spain, Finland, France, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, the Netherlands, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia and the United Kingdom.</p>	<p>The following one Member States did not participate in the meeting:</p> <p>Germany did not participate in the Experts' meeting on the Asylum Procedures Directive.</p>
NGOs meeting on the Asylum Procedures Directive, 8 January 2009	<p>Representatives from 21 NGOs participated:</p> <p>Jesuit Refugee Service (JRS), European Women's lobby (EWL), International Rehabilitation Council for the Victims of Torture (IRCT), PIC, Evangelische Kirche in Deutschland (EKD), Italian Council for Refugee (ICR), Caritas Sweden, Caritas Europa, Asylkoordination Austria, Office of Citizenship and Migration Affairs, Save the Children's, Asylum Aid UK, Comisión Española de Ayuda al Refugiado (CEAR), Amnesty International EU Office (AI), Greek Council for Refugees, France Terre d'Asile (FTA), Organization for Aid to Refugees, Swedish Red Cross,</p>	

Overview of stakeholder consultations undertaken to inform the impact assessment		
Type of consultation	Meeting participants/respondents to questionnaires	No participation / no information received from
	Dutch Council for Refugees, ECRE.	
Experts' meeting on the Asylum Procedures Directive, 12 January 2009	Representatives from 19 Member States participated: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Hungary, Ireland, Italy, Latvia, Malta, the Netherlands, Poland, Portugal, Sweden, Slovakia and the United Kingdom.	The following eight Member States did not participate in the meeting: Finland, Germany, Greece, Lithuania, Luxembourg, Romania, Slovenia and Spain.
Questionnaires circulated		
DG JLS questionnaire to the Member States on the implementation of certain provisions of the Asylum Procedures Directive, 23 October 2008 DG JLS circulated the questionnaire to the national contact points for the Asylum Procedures Directive in 26 EU Member States	<i>Twenty Member States responded to the DG JLS questionnaire:</i> Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Sweden, Slovakia and United Kingdom.	The following six Member States did not submit responses: Germany, Greece, Ireland, Malta, Slovenia and Spain.
GHK questionnaire to the Member States on the implementation of certain provisions of the Asylum Procedures Directive, 28 November 2008	<i>Fourteen Member States responded to the GHK questionnaire:</i> Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Finland, France, Hungary, Latvia, Lithuania, Malta, Poland, Sweden and Slovakia.	<i>The following twelve Member States did not submit responses:</i> Estonia, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Romania, Slovenia, Spain and the United Kingdom.
GHK questionnaire to civil society representatives	<i>The following NGOs submitted replies to the GHK survey:</i> Dutch Council for Refugees (The Netherlands), Flemish Refugee Action (Belgium), France Terre d'Asile (France), Helsinki Foundation for Human Rights (Poland), Hungarian Helsinki Committee (Hungary), Irish Refugee Council (Ireland), Italian Council for Refugees (Italy), Lithuania Red Cross society (Lithuania), Medical Centre for the Rehabilitation of the Victims of torture (Greece), Norwegian Organisation for Asylum Seekers (Norway), Portuguese Refugee Council (Portugal), Romanian National Council for Refugees (Romania), Slovak Humanitarian Council (Slovakia)	

Stakeholders views on policy options:

(I) To ensure access to asylum procedures

Member States agree with the specific reference to the territorial waters but highlighted that most problems however occurred in relation to the international waters, which are not covered by the Directive. Most also have a competent authority in place for registering applications and indicated that border personnel in general received specific information and training on how to deal with applicants for international protection.

They are however very concerned about the provision of interpretation services as well as of legal advice to persons that have not clearly expressed that they wish to request asylum. There was overall consensus that the provision of such support would lead to an increase in bogus claims as any irregular migrant could feel encouraged to apply for asylum.

The NGOs, on the other hand, were all in favour of the wider option, as they considered it was very important to screen, profile and identify those persons that may be in need of protection, but who for one reason or another find it difficult or impossible to express their wish to request asylum. The latter are mostly persons with special needs, for which a possible return could be very dangerous. The UNHCR was also in favour of the wider option, but indicated that the key issues to be addressed in the Directive in relation to access to protection would be: a) Good and clear information to all persons that may wish to apply for asylum, including those that have not yet expressed this and b) Specific support, such as interpretation and legal advice, at least at regular entry points.

(II) To remove derogations and improve procedural safeguards

Member States are very mixed on in particular the issue of free legal assistance. In consultations, several countries testified the benefits and long term cost savings, whilst others perceive it as an unnecessary financial burden. In particular Bulgaria, Cyprus, France, Italy and Poland considered, during the consultation meeting with the Member States experts, raised a number of issues, such as the technical obstacles Italy would face to provide legal advice in an administrative decision in general.

Furthermore, with regard to the option which restricts legal assistance to persons with special needs, both Member States and NGOs have expressed their concerns with regard to using the notion of special needs as a pre-condition for receiving free legal assistance, because of possible difficulties to establish 'timely and correctly' the special needs of the person concerned. NGOs also raised the issue of variations in the interpretation of 'persons with special needs', which varies across the EU, and are in favour of free legal assistance to all applicants who lack resources. The UNHCR was concerned that any decision to consider a person to have special needs would be a legal one. In this case, which could thus be challenged by others. Whilst in principle persons with special needs would strongly benefit from additional support, option 2, which extend the right to free legal assistance to all applicants who lack financial resources in procedures at first instance, could actually give rise to an additional burden as many applicants would challenge any decision stating that they do not have special needs.

Member States have also commented on the role of the legal advisor, e.g. that s/he should be an observer only for example in personal interviews.

Access by NGOs is also perceived in a mixed way by Member States, but most could agree provided the ultimate decision as to which NGOs could be involved is up to the Member State. The UNHCR considered that the current provision in the Directive is de

facto outdated as they work less and less with ‘implementing’ partners and as already many NGOs operate in the Member States without needing their specific consent.

(III) To improve guarantees for applicants with special needs

Member States have some practical concerns, for example, how to assess if a person is a minor, and are also concerned about the definition of special needs becoming too broad. They also raise potential negative effects in relation to trafficking and smuggling due to in particular the exemption of border procedures for unaccompanied minors.

NGOs are on the other hand very much in favour of the measures foreseen, and have also made specific suggestions on certain groups and specific changes to the Directive, in relation to for example women asylum seekers and minors. They are also in favour of making some guidelines (e.g. gender) to be legally binding. The UNHCR supports that the full set of basic guarantees and principles should be provided to persons with special needs.

(IV) To approximate accelerated procedures

Improving procedural safeguards in accelerated procedures (option 1) and to provide for a limited and exhaustive list of grounds for an accelerated examination (option 2) lead to objections from those Member States that at present do not provide for the basic principles as guarantees, which would be compulsory according to the provisions in both options. Whilst most countries agreed on the need to reduce the number of grounds included in article 23(4), by either merging or deleting some of these grounds, they are unlikely to agree with limiting acceleration of the procedure to one ground only, namely the manifestly unfounded cases.

Furthermore, reducing the possibilities for Member States to use accelerated procedures could lead to objections to policy option 2 from those Member States that currently use this possibility quite frequently (e.g. Latvia, Poland, Slovakia) and for which the option would lead to increased costs.

NGOs are, on the other hand, not in favour of policy option 1. They would prefer accelerated procedures to be abolished or only used to prioritise cases that can be approved directly. The notion ‘manifestly unfounded’ should be narrow. NGOs could accept a well-defined policy option 2. The UNHCR also stressed the need for the definition of ‘manifestly unfounded’ to be very narrow.

(V) To consolidate the applications of the safe country of origin notion

It is likely that Member States who currently do not use the safe country of origin concept and do not have such a list (six Member States, Belgium, Finland, Italy, Latvia, the Netherlands and Sweden). These may object in particular to the option removing a common list of safe countries of origin and deleting derogation clauses as it would imply a higher burden in terms financial costs (e.g. staff costs). Member States who used the national designation of article 30(2) are also unlikely to be in favour of the policy option.

Politically, policy option which would keep a common list, however, appears as the most sensitive option, as it was one of the key obstacles in the earlier negotiations on the directive. Member States’ positions do not seem to have shifted.

(VI) To reinforce MS' capacity to deliver reliable decisions within a reasonable time

Member States would welcome the suggestion to treat subsequent applications through the admissibility procedure, as in their view this would help to reduce the number of abusive claims. The 6- month length of asylum procedures appear to reflect the average processing time in the majority of MS.

(VII) To enhance accessibility and quality of remedies

Policy option laying down all elements of the right to effective remedy in the directive is likely to be the least controversial option. Some Member States may, however, object to the automatic suspensive effect (of certain appeal procedures), because they prefer to grant this on a case-by-case basis.

Member States are likely to strongly object to more detailed description of appeal procedures and question whether the Commission has the competence to adopt such far-reaching measures with wide implications for the national legal systems.

The UNCHR stresses the need for all appeals to have suspensive effect, with the exception of manifestly unfounded cases (which would however need to correspond to a very narrow definition). They also consider it very important for appeal bodies to be able to have a wide scope (e.g. they challenged the limited scope of the appeal body in the Netherlands).

3. ANNEX 3 NEW ASYLUM APPLICATIONS IN EU, 1987-2007

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	
EU27	162775	210745	291645	397025	511185	672385	516705	300290	263655	227835	242845	313645	380450	406585	424180	421470	344800	276675	234675	197410	222170	EU27
EU15																						EU15
BE	5975	4510	8190	12945	15445	17675	26715	14340	11410	12435	11790	21965	35780	42690	24505	18800	13585	12400	12575	8870	11120	BE
DK	2725	4670	4590	5290	4610	13885	14345	6650	5105	5895	5100	5700	6530	10345	12510	5945	4390	3235	2280	1960	2225	DK
DE	57380	103075	121320	193065	256110	438190	322600	127210	127935	117335	104355	98645	94775	78565	88285	71125	50565	35605	28915	21030	19165	DE
GR	6300	9300	6500	4100	2700	2110	860	1105	1280	1640	4375	2950	1530	3085	5500	5665	8180	4470	9050	12265	25115	GR
ES	2500	4515	4075	8645	8140	11710	12645	11990	5680	4730	4975	4935	8405	7925	9490	6310	5765	5365	5050	5295	7195	ES
FR	27670	34350	61420	54815	47380	28870	27565	25960	20415	17405	21415	22375	30905	38745	47290	51085	59770	58545	49735	30750	29160	FR
IE	50	50	40	60	30	40	90	360	420	1180	3880	4625	7725	10940	10325	11635	7485	4265	4305	4240	3935	IE
IT	11000	1300	2240	3570	24490	2590	1320	1830	1760	680	1890	13100	18450	15195	17400	16015	13705	9630	9345	10350	14050	IT
LU	100	45	85	115	240	120	225	260	280	265	435	1710	2930	625	685	1040	1550	1575	800	525	425	LU
NL	13460	7485	13900	21210	21615	20345	35400	52575	29260	22855	34445	45215	39275	43895	32580	18665	13400	9780	12345	14465	7100	NL
AT	11405	15790	21880	22790	27305	16240	4745	5080	5920	6990	6720	13805	20130	18285	30125	39355	32360	24635	22460	13350	11920	AT
PT	180	250	115	60	235	655	2090	615	330	270	250	355	305	225	235	245	115	115	115	130	225	PT
FI	50	65	180	2745	2135	3635	2025	835	850	710	970	1270	3105	3170	1650	3445	3090	3575	3595	2275	1405	FI
SE	18115	19595	30335	29420	27350	84020	37580	18640	9045	5775	9680	12840	11220	16285	23500	33015	31355	23160	17530	24320	36205	SE
UK	5865	5740	16775	38200	73400	32300	28500	32830	43965	29640	32500	46015	71160	80315	71365	103080	60045	40625	30840	28320	27905	UK
CY												225	790	650	1620	950	4405	9675	7715	4540	6770	CY
CZ											2110	4085	7355	8790	18095	8485	11400	5300	3590	2730	1585	CZ
EE											0	25	25	5	10	10	15	10	10	5	15	EE
HU										1260		7120	11500	7800	9555	6410	2400	1600	1610	2115	3420	HU
LV												35	20	5	15	25	5	5	20	10	35	LV
LT											240	160	145	305	425	365	395	165	100	145	125	LT
MT											70	160	255	160	155	350	455	995	1165	1270	1380	MT
PL								600	840	600	3580	3425	3060	4660	4480	5170	6810	7925	5240	4225	7205	PL
SK						85	95	140	360	415	645	505	1320	1555	8150	9745	10300	11395	3550	2850	2640	SK
SI								30	35	35	70	335	745	9245	1510	650	1050	1090	1550	500	370	SI
BG											370	835	1350	1755	2430	2890	1320	985	700	500	815	BG
RO					315	425	930	645	635	585	1425	1235	1665	1365	2280	1000	885	545	485	380	660	RO

Remarks:

Annual total for 2007 for some MS is based on aggregation of monthly figures Jan-Dec.

In following MS UNHCR data for 2007 have been used:

BE

IT

Source: Eurostat

4. ANNEX 4 NEW ASYLUM APPLICATIONS AND ASYLUM DECISIONS CONCERNING IRAQ, RUSSIA AND SOMALIA CITIZENS, 2007 (ONLY DATA DISAGGREGATED BY CITIZENSHIP INCLUDED)

	IRAQ							RUSSIA							SOMALIA						
	Asylum applications	Total decisions	Geneva Convention	Humanitarian status	Other positive decisions	Rejections	Other non-status decisions	Asylum applications	Total decisions	Geneva Convention	Humanitarian status	Other positive decisions	Rejections	Other non-status decisions	Asylum applications	Total decisions	Geneva Convention	Humanitarian status	Other positive decisions	Rejections	Other non-status decisions
EU27	38195	31785	6905	11025	160	10870	2815	16300	16535	3835	3200	80	6365	3045	9230	5670	1475	2215	20	1690	260
BE	590	1005	120	265	na	615	na	930	1930	480	0	na	1450	na	65	125	10	25	na	90	na
DK	1070	380	0	335	na	45	na	115	35	0	15	na	15	na	35	10	0	5	na	10	na
DE	4325	7780	5760	35	na	1025	960	770	1210	200	25	na	570	415	120	180	65	50	na	35	30
GR	5475	4030	65	10	0	3950	10	50	35	0	5	0	25	5	175	125	0	0	0	115	5
ES	1580	1040	20	0	na	1020	na	75	115	20	0	na	95	na	145	100	0	0	na	100	na
FR	145	145	45	25	na	75	na	3220	1675	300	0	na	1375	na	45	65	30	0	na	35	na
IE	280	240	100	na	na	140	na	50	45	5	na	na	40	na	140	115	30	na	na	90	na
IT	0	na	na	na	na	na	na	0	na	na	na	na	na	na	0	na	na	na	na	na	na
LU	15	na	na	na	na	na	na	15	na	na	na	na	na	na	0	na	na	na	na	na	na
NL	2005	na	na	na	na	na	na	80	na	na	na	na	na	na	1875	na	na	na	na	na	na
AT	470	405	215	na	na	95	95	2675	3650	2635	na	na	540	475	465	305	190	na	na	40	70
PT	0	0	0	0	0	0	0	5	5	0	0	0	5	0	20	0	0	0	0	0	0
FI	290	330	20	165	40	100	10	165	185	25	5	0	130	25	80	240	0	225	0	10	0
SE	18560	13610	155	9565	120	2380	1390	790	1000	5	240	65	460	230	3350	1930	115	1415	20	270	110
UK	2075	1675	210	135	na	1265	60	125	150	10	0	na	130	5	1960	1980	975	110	na	860	35
CY	200	225	5	115	na	20	90	60	400	0	0	na	15	385	10	5	5	0	na	0	0
CZ	45	80	15	35	0	10	20	70	185	20	45	0	95	20	5	15	10	5	0	0	0
EE	0	0	0	0	0	0	0	5	5	0	0	0	5	0	0	0	0	0	0	0	0
HU	135	120	65	5	0	5	45	50	50	0	0	0	10	40	100	40	30	0	0	0	10
LV	0	0	0	0	0	0	0	5	5	0	0	0	0	0	0	0	0	0	0	0	0
LT	0	0	0	0	0	0	0	55	60	0	35	0	20	10	0	0	0	0	0	0	0
MT	5	5	0	5	na	0	na	0	0	0	0	na	0	na	585	380	5	370	na	5	na
PL	20	45	5	15	0	15	5	6670	5440	135	2830	15	1280	1180	10	0	0	0	0	0	0
SK	130	145	0	40	0	20	80	305	340	0	0	0	95	245	10	10	0	10	0	0	0
SI	5	5	0	0	0	5	0	10	5	0	0	0	0	5	0	0	0	0	0	0	0
BG	530	330	0	275	0	10	40	0	5	0	0	0	5	5	0	5	0	0	0	0	0
RO	245	190	105	0	0	75	10	5	5	0	0	0	5	0	30	40	10	0	0	30	0

Remarks

Data rounded up to the nearest 5.

EU27 - data for not all MS available.

Italy - no data for 2006 (breakdown by citizenship) and 2007 available.

Luxembourg - no decision data by citizenship available.

Annual total for 2007 for some MS is based on aggregation of monthly figures Jan-Dec.

In following MS only partial statistics for 2007 available:

BE - 2007 Jan-Oct

Source: *Impact assessment on Policy plan on asylum: an integrated approach to protection across the EU*, table 5 annexes, SEC(2008)2029, Brussels 2008

5. ANNEX 5 ANALYSIS OF STATISTICS ON POSITIVE AND NEGATIVE DECISION ON ASYLUM APPLICATIONS

Eurostat figures for 2003 and 2006 show that the number of total positive decisions has increased for all EU countries but Bulgaria, Greece, Ireland, Lithuania, Portugal and Sweden (comparison was not possible for Italy and Netherlands as information was not available for 2003). The number of rejections has decreased throughout the EU except for Austria, Cyprus, Greece, Malta, Slovenia and Slovakia.

Data extracted from EUROSTAT tables on asylum decisions for 2005, 2006 and 2007 available at <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tps00021> While the number of asylum decisions was available for most countries in 2007, it was still missing for four MS. It was therefore decided that it would be more appropriate to use 2006 data which had information for all countries. With regard to 2008, data for the whole year was missing for most countries.

In relation to the percentage of rejections on total decisions, comparison of data between 2003 and 2006 showed that the portion had decreased from 70% to 57.87%, whilst initial data for the first three quarters of 2008 show that the percentage of rejections on total decisions has increased back to 72%. However this may not indicate a general trend amongst MS to reject applications. Analysis of rejections by MS between 2007 and 2008 reveals that whilst the number of rejections has decreased for most countries, in those countries where the number of rejections has increased, it has done so significantly: Bulgaria +25%, Malta +190% and Sweden 19%. These significant increases could explain the increase in total proportion of rejections in relation to total decisions.

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. It should also be noted that, in addition to positive decisions and rejections, there is a third type of decisions: 'other non-status decisions'. These three decision types sum up to 100% of decisions.

Data extracted from EUROSTAT statistics available at:

<http://nui.epp.eurostat.ec.europa.eu/nui/show.do>

6. ANNEX 6 STATISTICS ATTESTING THE WIDE DIVERGENCES IN THE APPLICATION OF SUBSTANTIVE GROUNDS OF INTERNATIONAL PROTECTION

These divergences are illustrated firstly by **the variability of the percentages of total positive decisions in the different MS**. In 2007 the share of total positive decisions ranged between 0% and 4% of the total first instance decisions in some MS such as Greece (0.8%), Slovenia (1.8%), Cyprus (2.9%), Slovakia (3.3%) and Spain (4.5%). On the other hand, it was higher in the MS that in recent years have rendered most asylum decisions across the EU, i.e. Germany (27.5%), France (11.5%) and United Kingdom (24.6%); and significantly higher in certain MS: Sweden (48.2%), Luxembourg (52.2%), Denmark (55.9%) and Malta (65.4%). The data for Sweden are particularly relevant considering that it had the highest number of asylum applications in the EU in 2007⁴.

Further evidence of divergences is provided by the analysis of recognition rates recorded in the MS regarding asylum applicants of the same nationality. A comparison of recognition rates for the period 2005-2007 shows for instance, that concerning 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 Sweden that percentage was 98%, in the UK 20% and in Greece less than 2%⁵. In 2007, in Belgium 14% of Afghans asylum seekers received a protection status while 98% were granted protection in Italy⁶. The above shows that, despite the measures adopted in the first phase of the CEAS, it is still the case that asylum seekers have very different prospects of finding protection, depending on where in the EU their applications are examined.

The substantial divergences in the interpretation of the rules of the Qualification Directive are further exemplified by the fact that, again regarding asylum applicants coming from the same country of origin and having similar backgrounds, **certain MS tend to a large extent to grant refugee status whereas others opt for subsidiary protection**. To cite a few examples, looking at the positive decisions regarding Iraqi asylum applicants in 2007, Sweden granted refugee status to 155 persons and subsidiary protection to 9,565 persons, (thus, with regard to the proportion of positive decisions concerning refugee status and subsidiary protection, only approximately 1.6% were granted refugee status), whereas Germany granted refugee status to 5,760 persons and subsidiary protection to 35 (here, only 0.6% were granted subsidiary protection status). In the same year and regarding Somali applicants, Sweden granted refugee status to 115 persons and subsidiary protection to 1,415 (7.5% were thereby granted refugee status);

⁴ Data extracted from the EUROSTAT database
<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tps00021>

⁵ See below Table on New asylum application 1987-2007

⁶ UNHCR statistical yearbook 2007 (Annexes) available at:
<http://www.unhcr.org/statistics/STATISTICS/4981b19d2.html>

inversely, the United Kingdom granted refugee status to 975 persons and subsidiary protection to 110 (corresponding to 10.1% for the latter group)⁷.

The overall recognition practices in 2008 provide further evidence of such divergences: Germany granted 7310 refugee statuses and 1440 subsidiary protection statuses, whereas Italy granted 585 refugee status and 2455 subsidiary protection statuses; Sweden 1080 refugee statuses and 3040 subsidiary protection statuses; Malta on the other hand granted refugee status in only 20 cases but 1,385 subsidiary protection statuses⁸. In 2008, Bulgaria, Malta and Slovakia were the countries delivering the highest proportion of subsidiary protection statuses with respectively 95%, 99% and 82% of the total positive decisions resulting in subsidiary protection status. On the other hand, Hungary, Romania and Poland were the countries with the lowest proportion of subsidiary protection granted, with respectively 15%, 12% and 24% of positive decisions resulting in subsidiary protection status⁹.

⁷ See below Table on New asylum applications 1987-2007

⁸ See below for references to first instance decisions in 2008

⁹ These figures have been calculated on the basis of the information available on EUROSTAT; information was not available for the following countries: Estonia, Ireland, Greece, Cyprus, Latvia, Luxembourg and Slovenia. Statistics are available at:
<http://nui.epp.eurostat.ec.europa.eu/nui/show.do> (total positive decisions for the three first quarters of 2008)
<http://nui.epp.eurostat.ec.europa.eu/nui/show.do> (subsidiary protection decisions for the three first quarters of 2008)

7. ANNEX 7 FIRST INSTANCE DECISIONS ON APPLICATIONS BY CITIZENSHIP, AGE AND SEX - QUARTERLY DATA (ROUNDED) FOR 2008

Geneva Convention Status

MS	2008q01	2008q02	2008q03	2008q04	Total
BE	575	800	555	:	1,930
BU	5	10	5	5	25
CZ	35	70	30	35	170
DK	40	:	:	:	40
DE	1,975	1,555	1,960	1,820	7,310
EE	5	0	0	0	5
IE	115	75	65	:	255
GR	45	55	245	:	345
ES	60	5	5	50	120
FR	1,325	1,265	915	:	3,505
IT	220	250	115	:	585
CY	:	:	:	:	:
LV	0	0	0	:	0
LT	0	5	0	0	5
LU	20	15	5	:	40
HU	20	90	35	:	145
MT	0	10	0	10	20
NL	170	150	105	:	425
AT	570	520	520	:	1,610
PL	25	40	40	:	105
PT	5	0	5	0	10
RO	45	10	20	:	75
SI	0	0	0	0	0
SK	0	0	5	15	20
FI	15	40	10	:	65
SE	235	465	380	:	1,080
UK	1,150	1,275	1,125	:	3,550
Total	6,655	6,705	6,145	1,935	21,440

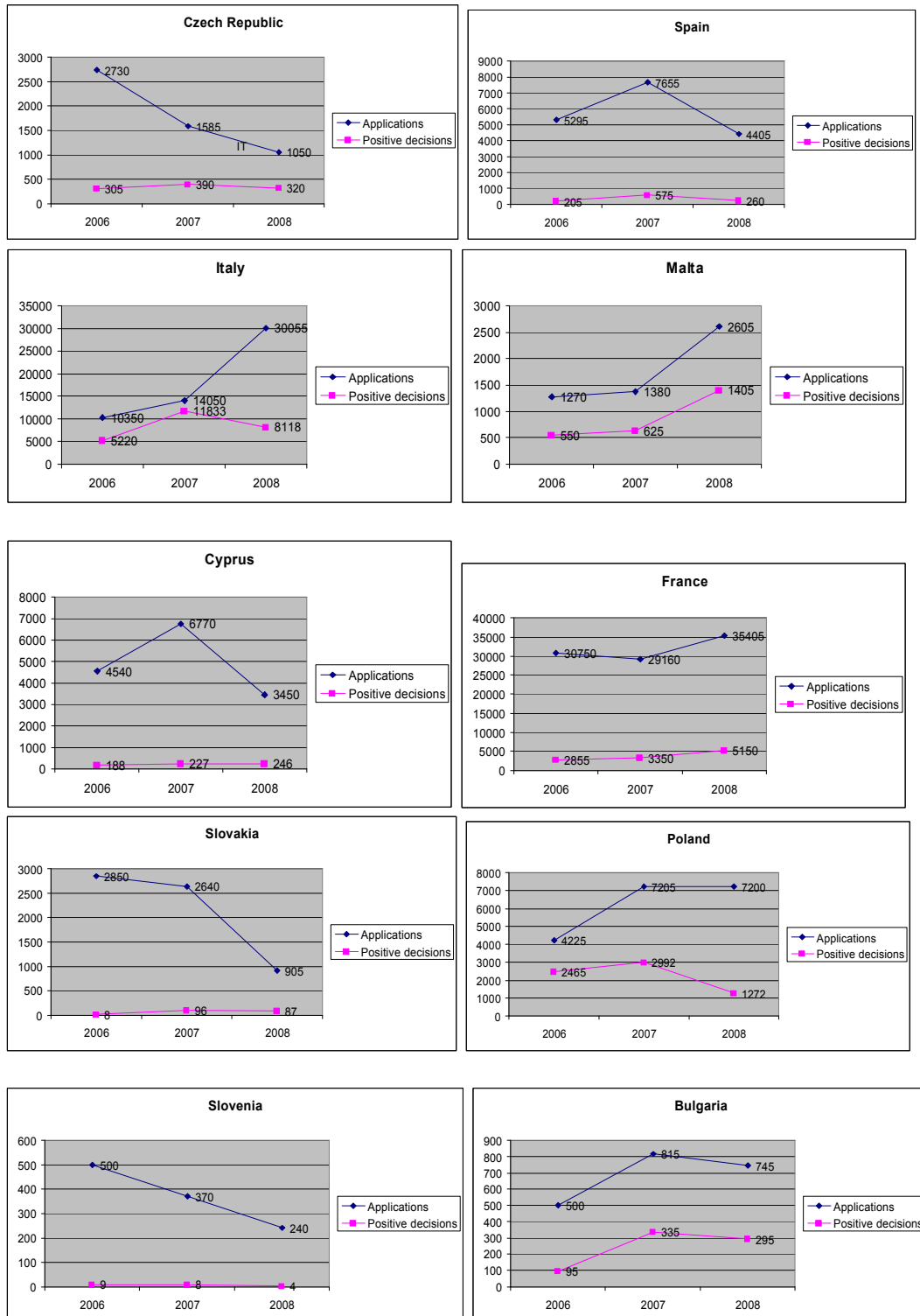
Source: Eurostat

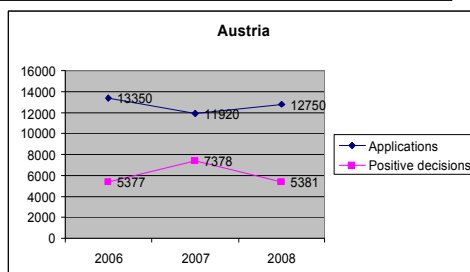
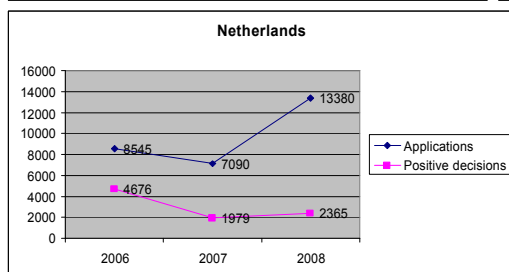
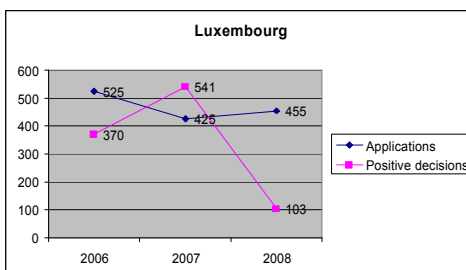
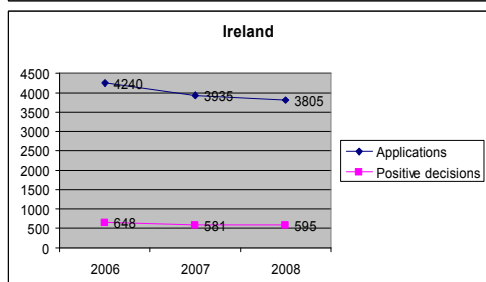
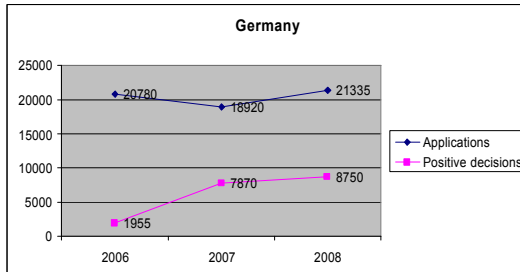
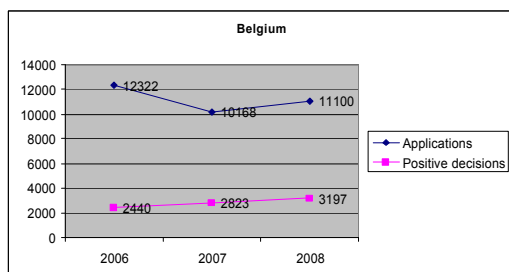
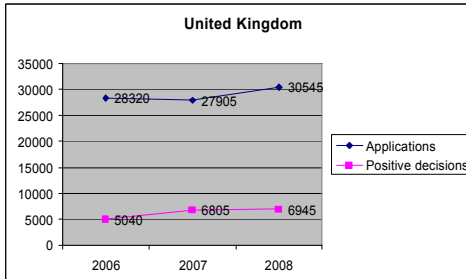
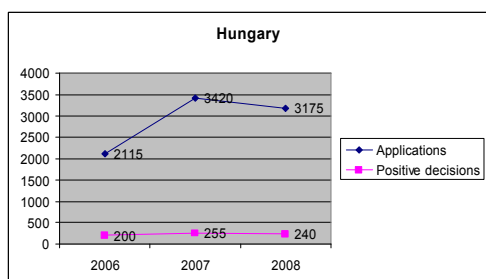
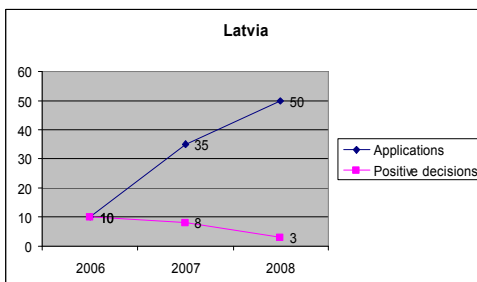
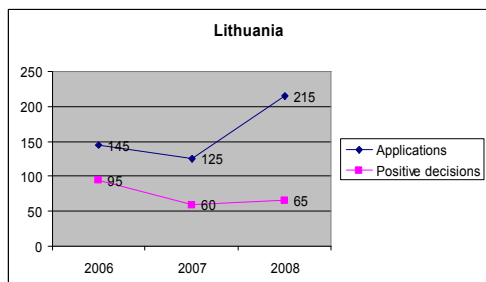
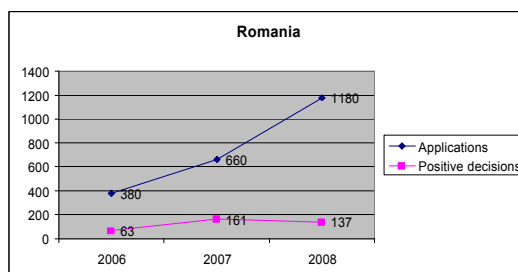
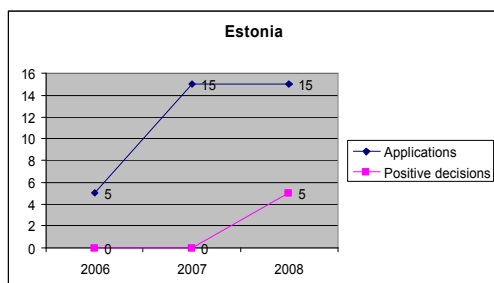
Subsidiary protection

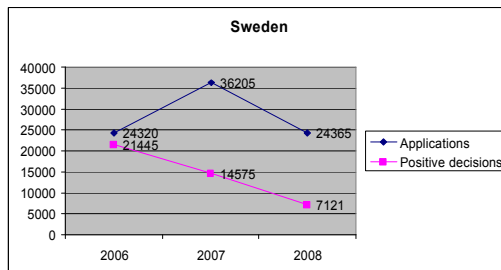
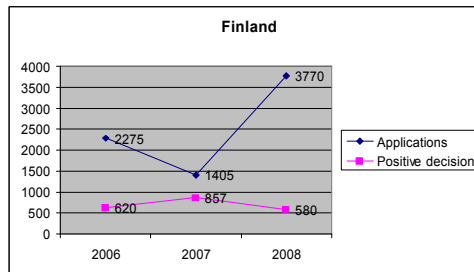
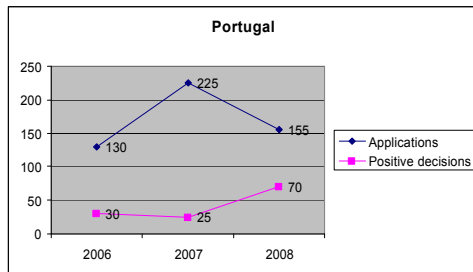
MS	2008q01	2008q02	2008q03	2008q04	Total
BE	80	125	85	:	290
BU	60	95	105	10	270
CZ	50	65	25	:	140
DK	85	:	:	:	85
DE	400	305	380	355	1,440
EE	0	0	0	0	0
IE	0	0	0	:	0
GR	0	0	0	:	0
ES	45	10	5	20	80
FR	70	40	320	:	430
IT	635	1,275	545	:	2,455
CY	:	:	:	:	
LV	0	0	0	0	0
LT	15	10	10	:	35
LU	:	:	:	:	
HU	0	10	35	:	45
MT	565	120	445	255	1,385
NL	370	380	430	:	1,180
AT	265	285	270	:	820
PL	:	0	345	:	345
PT	30	15	10	5	60
RO	0	5	5	:	10
SI	0	0	0	0	0
SK	15	10	20	20	65
FI	90	105	95	:	290
SE	775	1,310	955	:	3,040
UK	475	570	570	:	1,615
Total	4,025	4,735	4,655	665	14,080

Source: Eurostat

8. ANNEX 8 COMPARISON OF TRENDS REGARDING ASYLUM INFLUXES AND RECOGNITION RATES







9. ANNEX 9 OMISSIONS OF PERSONAL INTERVIEWS

Omissions of personal interviews		
Country	Omission of the personal interview on the basis of Article 12(2)(b) APD	Omission of the personal interview on the basis of Article 12(2)(c) APD
AT	No	No
BE	No	No
BG	No	No
EL	Yes	Yes
CY ¹⁰	Yes	Yes
CZ	No	No as regards interviews on the substance Yes as regards admissibility interviews, including cases of subsequent applications
EE	No	Yes
ES ¹¹	Yes	Yes
DE	No	No as regards interviews on the substance Yes in cases falling under the safe third country notion
FI	No	No as regards first applications Yes as regards subsequent applications
FR	No	Yes

¹⁰ Data refer to draft legislation

¹¹ Data refer to pre-transposition legislation in force

Omissions of personal interviews		
Country	Omission of the personal interview on the basis of Article 12(2)(b) APD	Omission of the personal interview on the basis of Article 12(2)(c) APD
HU	No	No
IE	No	No
IT	No	No
LU	No	No
LT	No	No
LV ¹²	No	No
MT	Yes	Yes
NL	No	No
PO	No	Yes
PT	No	No as regards first applications Yes as regards subsequent applications
RO	No	No
SE	No	No
SI	No	Yes
SK	No	No
UK	Yes	Yes

Source: Information has been obtained from the Member States as part of their replies to the DG JLS questionnaire and from NGOs as well as through a desk analysis of national legislation. The information is based on the Member States' replies unless otherwise indicated.

¹² Data refer to draft legislation

10. ANNEX 10 COSTS FOR PROVIDING FREE LEGAL ASSISTANCE AT FIRST INSTANCE

Member States were requested to *inter alia* provide information on the costs of free legal assistance particularly at first instance. Five Member States (Austria, Hungary, the Netherlands, Lithuania and Sweden) have responded to this request. Similar costs levels per capita were reported by the Netherlands (approximately 750 euro) and Sweden (in 2008, costs were around 900 euro). In Austria, € 583.000 were allocated in 2007, and € 587. 000 - in 2008 to finance legal advice in the initial stage of the asylum procedure. Lithuania, however, reported much lower costs (95 euro *per capita*), and Hungary indicated that, in 2008, the rate was 3000 Ft/hour (app.11,5 EUR) where the total costs *per capita* depended on the number of hours spent and types of actions undertaken by the adviser.

With regard to the costs implications of the present proposal, it includes provisions to provide free legal assistance at first instance to asylum seekers who *lack financial resources* to be able to stand for such costs¹³. The costs ranges for providing free legal assistance *per capita* outlined above give an idea of the costs implications for the Member States, however, as no information on the proportion of asylum seekers who may lack financial resources or *de facto* need legal assistance¹⁴ is available, overall costs for the Member States are difficult to estimate.

In the long term, costs for free legal assistance at first instance may, however, be outweighed as ‘frontloading’ (which the provision of legal aid at first instance would *inter alia* contribute to) is economically and administratively advantageous, as testified by Belgium, Finland, Lithuania, and the Netherlands in the consultations. Whilst requiring substantial initial investments for Member States who currently do not provide for free legal assistance at first instance and other new elements that promote frontloading¹⁵, there is evidence that the policy of frontloading leads to higher recognition rates at the first instance and lower numbers of applications that have to be treated in appeal procedures. This reduce both the overall costs of the examination and the reception costs, including accommodation, food, clothing and financial benefits. In fact, several Member States who do not, for example, provide legal assistance or clear communication in the first instance, have at present extremely low first instance decision.

In addition to increasing the effectiveness of the asylum procedure, frontloading also ensures a fair treatment of applications and allows for their full scrutiny. Applicants not

¹³ Due to the significant variation in costs, it has not been deemed appropriate to estimate the average costs. Outlining the range of costs per capita gives a better idea of how much may be spent by individual Member States.

¹⁴ Lithuania indicated that not all asylum seekers *in fact* made use of legal advice, whilst Austria indicated that it intended to increase the number of legal advisors as there were only 14 advisors appointed to provide legal assistance to asylum seekers

¹⁵ The following elements of *frontloading* are essential: The provision of good quality information and feedback opportunities from the very start and throughout the procedure; Limitations to the extent Member States can treat applications through accelerated procedures and derogate from basic principles and guarantees, such as omitting personal interviews; Quality reasoning and decision making, Placing addition focus on the special needs of woman and vulnerable applicants; and, Removing some of the root causes of subsequent applications.

in need of international protection can be easier and quicker returned, whilst applicants in need of international protection have quicker clarity on their status.

Thus, the provision of free legal assistance at first instance may not only be financially advantageous as it may prevent, in combination with other safeguards and quality assurance arrangements, appeal procedures and related costs (e.g. welfare provision to applicants awaiting the outcomes of their appeals or the examination of repeated applications), but, importantly, from a Human Rights perspective, it is likely to reduce the numbers of applicants and their dependents who need to leave in legal uncertainty.

Overview of costs for providing free legal assistance at first instance	
Country	Costs per capita
Austria	<p>Legal advice is provided in the admission procedure (i.e. in the initial 20 days of the asylum process). Services of legal advisors are covered by the Government. At the moment there are 14 legal advisors in AT; however, an increase to 22 legal advisors is planned.</p> <p>Ministry of the Interior costs of legal advice without EU- funds: 2007: € 583.000,- 2008: € 587.000,-</p>
Hungary	<p>The fees of the expert providing legal aid/representation can be broken down to his/her costs incurred and to its hourly rate. The hourly rate of an expert providing legal aid/representation is defined in the law on the annual budget of Hungary. In 2008 this rate is 3000 Ft/hour (app. 11,5 EUR).</p>
Netherlands	<p>All legal assistance is free for asylum seekers throughout the process, including preparation for interviews, discussion of the interview and the intended decision to reject the asylum application, the submission of a view on the intended decision and legal assistance during the appeal procedure.</p> <p>There are three points at which legal assistance is required (including or excluding the provisional ruling) and with the following fixed points allocation ('hour allocation'). A payment that reflects the hours spent on the case in question.</p> <p>Intended decision is granted 7 points</p> <p>One point represents a payment of € 107.02.</p> <p>Thus, 7 points equals 747.14 euro.</p>
Lithuania	<p>In the majority of cases, legal aid at first instance covers one consultation and participation in an interview (however, not in all interviews, as this is obligatory only in cases of (a) unaccompanied children; and, (b) (in other cases) when an applicant requests so).</p> <p>There are cases when the same applicant receives legal advice several times, but this is not common practice.</p>

Overview of costs for providing free legal assistance at first instance	
Country	Costs per capita
	<p>Not all asylum applicants obtain legal aid; the individual asylum seekers need to approach a lawyer.</p> <p>Costs are as follows:</p> <p>Consultation – 190 LTL (55 euro);</p> <p>Participation in the interview – 140 LTL (40 euro);</p> <p>Provided each type of service is provided only once, the cost per capita at first instance would be 95 euro.</p> <p>In 2008 Lithuania spent 155,000 LTL (app. 45 000 eur) for legal aid for both first instance and appeal procedures.</p> <p>It can be noted that free legal assistance in Lithuania is much higher in appeal procedures than at first instance. Costs for appeal procedures include:</p> <p>Preparation of procedural documentation for an appeal – 400 LTL (116 euro);</p> <p>Representation in the District Court – 240 LTL (70 euro);</p> <p>Representation in the Highest Court – 110 LTL (32 euro).</p> <p>However, as the proportion of appeal procedures and first instance procedures is not known for 2008, it is not possible to estimate the total costs for first instance decisions in Lithuania in 2008.</p>
Sweden	<p>During 2007 the cost to provide free legal assistance in the Swedish Refugee Board (i.e. the determining authority) was 6,167 SEK (app. 629 euro) per capita and from January-October 2008 it was 8,952 SEK per capita (app. 912 euro).</p>

11. ANNEX 11 COSTS RELATED TO AN EXAMINATION OF AN APPLICATION AT FIRST INSTANCE

In the questionnaire, DG JLS asked Member States to provide information on the financial costs required:

- the costs required to examine an application at first instance
- the costs required to provide applicants with information on their rights and obligations during the procedure pursuant to Article 10 (1) (a) APD;
- the costs required to provide the services of an interpreter pursuant to Article 10 (1) (b) APD.

MS	Examination of application in first instance: costs	Provide applicants with information on their rights and obligations (Article 10 (1) (a)): costs	Provide services of interpreters Article 10 (1) (b)): costs
CY	No information provided	No information provided	Interpretation: 11.96 euro per hour for the interview Translation: 13.67 euro per page translated.
CZ	No information provided	No information provided	Costs for interpreters: 2006: app € 435 2007: app € 345 2008 (from January to October): € 252
EE	Salaries of the personnel of the Determining authority: 2006: 840,123.87 EEK (app. 53,716 euro) 2007: 876,001.19 EEK (app. 56,010 euro).	<ul style="list-style-type: none"> • Information material on asylum seekers' rights and obligations during the procedure were produced in eight languages (in total 700 ex): 138,128.85 EEK (app. 8,832 euro) (costs for compilation, translation, design and printing). 	Costs for interpretation /translation: 2006: app. 10,000 EEK (app. 639 euro) 2007: app. 99,000 EEK ¹⁶ (app. 6330 euro) In 2008, 61,495.70 EEK (app. 3,932 euro) (video conference equipment for interviews with asylum seekers when no interpreter is available in Estonia)
FI	An asylum decision (examination of the need for international protection in substance): 1,490 euro (including the work and a part of the general costs) A decision on the refusal of entry: 1,516 euro	No information provided	Interpretation of an asylum interview: 263 euro

MS	Examination of application in first instance: costs	Provide applicants with information on their rights and obligations (Article 10 (1) (a)): costs	Provide services of interpreters Article 10 (1) (b)): costs
	<p>Translation of documents: 42 euro</p> <p>Costs per applicant:</p> <p>Asylum seeker, a positive decision on international protection: 1,795 euro</p> <p>Asylum seeker, a negative decision on international protection, a residence permit on another ground: 2,656 euro</p> <p>Asylum seeker, a negative decision and a decision on refusal of entry: 3,311 euro</p> <p>Cases based on the application of Dublin II: 328 euro</p>		
FR	<ul style="list-style-type: none"> The average cost of an asylum examination by the OFPRA was 663 euro in 2006. This cost was estimated to be 510 euro in 2007. It does not include the “social” costs (e.g. at the reception centre) 	<ul style="list-style-type: none"> No information provided 	<ul style="list-style-type: none"> Average cost for a hearing/interview with an interpreter: 64 euro (2008) Estimated to be up to 77 euro in 2009.
HU	<ul style="list-style-type: none"> No information provided 	<ul style="list-style-type: none"> No information provided 	<ul style="list-style-type: none"> Costs for interpretation range 6 to 80 euro per hour.
LT	No information provided	<p>Costs relate to legal assistance at first instance:</p> <p>Consultation – 190 LTL (55 euro);</p> <p>Participation in the interview – 140 LTL (40 euro);</p> <ul style="list-style-type: none"> 	<ul style="list-style-type: none"> No information provided
LU	No information provided	<ul style="list-style-type: none"> 24,360 euro 	<ul style="list-style-type: none"> 2006: 81,410.48 euro 2007: 88,728.88 euro 2008 (January to October): 88,587.85 euro
NL	<p>Accelerated procedure: €10,293/ completed application.</p> <p>Regular procedure: €2,777/</p>	No information provided	<p>2007 approx.: €5.5 mln.</p> <p>2008 approx. €6.5 mln. up to and including October. Approx. €7.8 mln. on an annual basis.</p>

MS	Examination of application in first instance: costs	Provide applicants with information on their rights and obligations (Article 10 (1) (a)): costs	Provide services of interpreters Article 10 (1) (b)): costs
	<p>completed application.</p> <p><i>Costs from 2007. The costs include overheads (Interpreters, Accommodation) and exclude the cost of process representation (costs for completing appeal).</i></p>		2009: costs estimated at €10 mln.
SE	Total cost of completing an examination of an asylum application in the first instance was 233,297 SEK in 2007 and 416,763 SEK January-October 2008.	The costs to provide the services of an interpreter were 2,064 SEK per asylum seeker in 2007 and 4,214 SEK per asylum seeker January-October 2008.	No information provided
SK	<p>Direct costs for one asylum applicant per one accommodation day: 615,49 SK (20,43 euro)¹⁷</p> <p>In 2006 the cost was higher: 698,14 SK (23.17 euro) primarily due to financing provided by ERF since 1.1.2007.</p> <p>For the first half of 2008, direct costs for one asylum applicant per one accommodation day was 689,96 SK (22.90 euro)</p>	Written instruction on rights and obligations are provided to asylum seekers and beneficiaries of international protection. The translation costs for these (into 19 languages) were 385,878.40 SKK (12 808.82 euro) in 2008.	No information provided

¹⁷

Taking into account costs for accommodation, boarding, protection of asylum facilities, interpretation services, transport, health care costs, pocket money, other expenses expended on asylum applicants and salaries of personnel working in asylum facilities

12. ANNEX 12

Overview of national lists of safe countries of origin	
Country	
Austria	Australia, Iceland, Canada, Liechtenstein, New Zealand, Norway, Switzerland, Bulgaria and Romania
Czech Republic	Iceland, Canada, Norway, United States of America, Switzerland
Germany	Ghana, Senegal
France	Former Republic of Macedonia, Benin, Bosnia-Herzegovina, Cap-Vert, Croatia, Georgia, Ghana, India, Madagascar, Mali, Maurice, Mongolia, Senegal, Tanzania, and Ukraine.
Luxemburg	Albania, Benin, Bosnia and Herzegovina, Cap-Vert, Croatia, Ghana, Former Republic of Macedonia, Mali, Montenegro, Senegal, Ukraine; along with male asylum seekers from Benin, Ghana, Mali.
Romania	Andorra, Australia, Croatia, Liechtenstein, San Marino.
Slovakia	Australia, Ghana, Croatia, Iceland, Japan, South Africa, Canada, Kenya, Lichtenstein, Mauritius, Norway, New Zealand, Seychelles Islands, USA, Switzerland.
UK	Albania, Bolivia, Bosnia, Brazil, Ecuador, India, Jamaica, Macedonia, Mauritius, Moldova, Mongolia, Montenegro, Peru, Serbia, South Africa and Ukraine; along with male asylum seekers with clearly unfounded claims from the Gambia, Ghana, Kenya, Liberia, Malawi, Mali, Nigeria and Sierra Leone.

13. ANNEX 13 NATIONAL ASYLUM SYSTEMS AND COSTS

In the questionnaire, DG JLS asked Member States to provide information on the financial costs and human resources employed in national asylum procedures. In particular, Member States were requested to provide

- the financial costs required to complete an examination of an asylum application in the first instance and, if possible, the breakdown of these costs;
- the number of personnel employed within the responsible authorities

The bellow table reflects Member States' responses as well as results of desk research, conducted by GHK

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications for international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
AT	No information provided	11,944,856	11,920	1,000 euro per applicant	No omission of personal interview Free legal assistance at certain stages Use of accelerated procedures Use of border procedures	28%

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications of international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
BE	No information provided	20,425,000	11,575	1,765 euro per applicant	Free legal assistance No omission of personal interview Use of accelerated procedures	22%
BG	No information provided	1,885,500 ¹⁸	815	<i>578 euro per applicant, when assuming that the procedure represents 25% of the total costs.</i>	No omission of personal interviews The accelerated procedure for all applicants in the initial stage	22%

¹⁸ Also including all the relevant activities for asylum-seekers' reception, accommodation and maintenance, and the integration measures for refugee or subsidiary protection holders.

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications for international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
CY	Head of the Asylum Service, 28 administrative officers Cyprus is the only Member State that provided the number of personnel employed in other responsible authorities involved in examination process of applications: 12 administrative officers, 3 members of the Committee and 5 secretaries work for the Reviewing Authority for Refugee.	No information provided/available	6, 780	Almost 242 applicants / staff employed	Omission of personal interview No free legal assistance Information in a language to be 'reasonably understand' or 'supposed to be understood' Use of accelerated procedures	3%
CZ	237 employees in the determining authority	5,107,578 ¹⁹	1, 585	6.68 applicants / staff employed	Omission of personal interview at the	12%

¹⁹ Wages and salaries for all asylum facilities

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications of international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
				806 euro per applicant, when assuming that the procedure represents 25% of the total costs.	admissibility stage Advice and counselling by NGOs Use of accelerated procedures Use of border procedures	
GE	No information provided	No information provided	19,165		No free legal assistance No omission of personal interview Border procedures	13%
EE	5 persons including the Head of Department are working for	No information provided	15	3 applicants / staff employed	Omission of personal interview	11%

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications for international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
	the Refugee Department of CMB.				Use of accelerated procedures Use of border procedures	
ES	No information provided	7,000,000 ²⁰	7,195	973 euro per applicant	Omission of personal interview Accelerated procedures Border procedures	5%
FI	60 persons are employed within the Asylum Unit of the Immigration Service. The number of case-workers is	No information provided	1405	23.41 applicants / staff employed	No omission of personal interview Free legal assistance	29%

²⁰

The budget for applications is assumed to be the difference between the total budget and what is provided to NGOs.

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications for international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
	about 40.				Use of accelerated procedures	
FR	In 2007, 400 persons were employed at the OFPRA (i.e. the determining authority)	42,700,000	29,160	1,464 euro per applicant 72.9 applicants/staff member	Omission of personal interview No free legal assistance at first instance Derogations from the material requirements for the national designation Use of accelerated procedures	9%
GR	No information provided	No information provided However, the	25,115	-	Omission of personal interview Accelerated procedures Border procedures	1%

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications of international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
		<p>presidential decree</p> <p>transposing the Directive maintains that 8,000,000 will be required annually to implement its provisions</p>			<p>No free legal assistance</p> <p>Applications are examined by police officers</p>	
HU	The number of personnel employed in the determining authority is 52.	No information provided	3420	65.7 applicants / staff employed	<p>Free legal assistance</p> <p>Border procedures</p> <p>No omission of personal interview</p>	10%
IE	No information provided	No information provided	3,935	-	<p>No free legal assistance</p> <p>Accelerated procedures</p>	9%

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications for international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
					No omission of personal interview	
IT	Approx. 150 eligibility officials and 100 support staff in Territorial Commissions responsible for the examination at first instance	No information provided	No information available	-	No omission of personal interviews The safe country of origin notion is not used No free legal assistance, but quasi-judicial hearing at 1 st instance with UNHCR participation)	41%
LU	The number of personnel employed in the determining authority is 20.	9,249,512 ²¹	425	21.25 applicants / staff employed	Free legal assistance Use of accelerated procedures	47%

²¹ Including reception services, interpretation and allocations to NGOs.

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications for international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
LT		934,200	125	7,474 euro per applicant	No omission of personal interview	59%
LV	4 employees are working at the Department (1 Director, 2 Deputy Head, 1 Senior Officer)	224,848	35	8.75 applicants / staff employed 6,424 euro per applicant	No free legal assistance Use of accelerated procedures No omission of personal interview	39%
MT	No information provided	130,638	1,380	95 euro per applicant	Omission of personal interview (not applied in practice) No free legal assistance (but NGOs provide bona fide services)	52%

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications for international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
NL	Staff establishment at the Immigration and Naturalisation Service in relation to Asylum: Staff establishment for 2008 is 738.6 FTE	105,850,000	7,100	9.61 applicants / staff employed 14,908 euro per applicant	Free legal assistance No omission of personal interview Participation of NGOs in personal interviews Use of accelerated procedures	38%
PO	No information provided	1,035,001.19	7,205	144 euro per applicant	Omission of personal interview Legal clinic providing bona fide services, a large number of Chechen asylum seekers) Use of accelerated procedures	36%

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications of international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
PT	No information provided	No information provided	225	-	Omission of personal interview in certain cases Free legal assistance Use of accelerated procedures Use of border procedures	23%
RO	No information provided	211,202 ²²	660	320 euro per applicant	No free legal assistance Omission of personal interview Use of accelerated procedures	16%
SE	2007: 1,690	No information	36 205	21.42 applicants / staff	Free legal assistance	40%

²² Including administrative expenditure, medicines, medical materials, interpreters

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications for international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
	2008 (January to October) 1,893.	provided		employed	No omission of personal interview The safe country of origin notion is not used	
SI	No information provided	No information provided	370	-	Border procedures Accelerated procedures Omission of personal interviews	1%
SK	The number of personnel employed is 119 employees.	N/A	2640	22.18 applicants / staff employed	No free legal assistance Information in a language to be 'reasonably understand' or 'supposed to be understood'	1%

National asylum systems and costs						
Country	Number of staff employed in the determining authority	Total budget for the asylum procedure in 2007 in euro	Number of applications of international protection (Source: Eurostat, 2007, provisional figures)	Number of applicants per staff member Average costs of applications	Derogations / Additional provisions	% positive decisions (EU average: 21%) in 2005- 2007
UK	No information provided	365,000,000 ²³	27,905	13,080 euro per applicant	Free legal assistance Use of accelerated procedures	19%

²³

It is assumed that the budget for applications is around half of the total budget allocated to asylum

14. ANNEX 14 ADDITIONAL PROBLEM: INCOHERENCE BETWEEN DIFFERENT EU INSTRUMENTS DEALING WITH INTERNATIONAL PROTECTION

While the Qualification Directive provides for the two forms of international protection, the Asylum Procedures Directive, as a general rule, applies to an examination of the protection needs under the Refugee Convention only. However, Member States operating a single procedure in which asylum applications are examined both as applications on the basis of the 1951 Refugee Convention and as applications for subsidiary protection are obliged to apply the Asylum Procedures Directive throughout their procedure pursuant to Article 3 (3). 24 out of 26 Member States covered by the Directive operate a single procedure at the national level and therefore are obliged to apply the Directive's standards when examining the protection needs in relation to both the refugee definition and the grounds of subsidiary protection²⁴.

Yet a closer look at the interplay between the substantive and procedural rules on international protection indicates several systemic flaws in the Community framework on asylum procedures capable to undermine the proper application of the Qualification Directive. Thus, the Qualification Directive makes it clear that subsidiary protection should be complementary and additional to the refugee protection enshrined in the Geneva Convention²⁵. While recital (2) to the Asylum Procedures Directive contains a reference to the call of the Tampere Council to ensure the full and inclusive application of the Refugee Convention, a hierarchy between refugee status and subsidiary protection is not explicitly provided for in the Directive. In this respect, the Community *acquis*, as it stands now, offers the beneficiaries of subsidiary protection and their family members lower entitlements in comparison with those available to refugees and their family members. This concerns not only economic and social benefits set out in the Qualification Directive, but also the right to family reunification.

Indeed, Directive 2003/86/EC setting out common rules on the exercise of the right to family reunification by third-country nationals residing lawfully in Member States ("the Family Reunification Directive") explicitly excludes beneficiaries of subsidiary protection from its scope. As revealed by the Commission evaluation of the application of the Family Reunification Directive²⁶, this has resulted in diverse approaches to the right of family reunification of subsidiary protection beneficiaries in Member States²⁷. Community rules on the duration of residence permits and the possibility to obtain travel documents again differentiate between refugees and subsidiary protection beneficiaries. It is also worth mentioning that, from a technical point of view, an examination of the protection needs under the Refugee Convention is more complex than the one dealing with subsidiary protection and requires special skills and qualifications. Thus, subsidiary

²⁴ Ireland and Greece are the only Member States which do not explicitly provide for a single procedure in their national legislation).

²⁵ Recital 24 QD, plus, Art. 2 (e) QD: "a person who does not qualify as a refugee")

²⁶ Report on the application of Directive 2003/86 on family reunification of third country nationals, October 2008

²⁷ While AT, CZ, EE, FR, FI, LU, NL, PT and SE apply the Directive to subsidiary protection beneficiaries, national legislation of Lithuania, for example, explicitly denies the right to family reunification for beneficiaries of subsidiary protection.

or other protection statuses based on national legislation can be granted more easily but include lower rights and have less potential to lead to durable solutions.

In this respect, a number of Member States the percentage of positive decisions on subsidiary protection has been significantly higher, as compared to positive decisions on refugee status²⁸. While this phenomenon may be partly explained by the increasingly complex nature of factors causing displacement, on the one hand, and the introducing of the Community framework on subsidiary protection, on the other, it is also evident that procedural arrangements and institutional attitudes do have impact on the application of the substantive grounds of international protection.

Furthermore, both protection regimes represent rights pursuant to Community law and, therefore, require access to effective judicial remedy. Thus, when a person is granted subsidiary protection at first instance, he/she should still be able to challenge the decision to reject her / his protection needs under the Refugee Convention before a court or tribunal. The Directive clearly lacks the potential to accommodate the specifics of legal status of appellants in such cases. Consequently, the appeal procedure would fall within the scope of national law leading to discrepancies as regards the procedural opportunity and arrangements to challenge a negative decision with regard to refugee status and legal status of the appellant pending the outcomes of appeal procedures. In this respect, the consultations with Member States have revealed different approaches and arrangements, which are presented in the table below. For example, in the Member States where applicants can appeal against a decision to not grant the refugee status (but subsidiary protection instead), in four countries (Czech Republic, Latvia, Poland, Slovakia) the applicant no longer continues to benefit from the earlier granted protection status while awaiting the outcome of the appeal and is considered an asylum seeker. In four countries, the appeal body dealing with the case can actually overturn the first instance decision on the other protection status, with the potential to deny this first status too (Belgium, Czech Republic, Latvia, Poland, Slovakia).

The current Directive also contains important gaps with regard to the identification of persons who fulfil the criteria for granting subsidiary protection. In particular, it leaves room for accelerating and, consequently, rejecting protection claims of those applicants who do not raise grounds which are relevant to the 1951 Refugee Convention refugee definition but who nevertheless would qualify for subsidiary protection. This is the case with Article 23 (4) (a), (b) and (g), Article 31 (1), Article 32 (3), (4) APD.

Operation of the single procedure in the Member States
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²⁸ 2007: LU: 15,0 / 33,3, PT 4,5/18,2, FI 3,2/ 24,2 , SE 2,6/42,3, CZ 6,2 / 11, LT 6,9/34,5, MT 0,5 / 64,9, PL 2,4/46,4, BG 1, 9/41,6. Source: Eurostat

Member State	Operates single procedure for RF and SP (Y/N)	Examines application 1 st for RF, 2 nd for SP (Y/N)	Possibility to appeal against not granting of RF in first instance (Y/N)	Applicant continues to benefit from protection status granted by first instance body, while awaiting outcome of appeal (Y/N)	If applicant appeals against first instance decision not to grant RF, then appeal body cannot overturn first instance decisions on other protection statuses (Y/N)
AT	Y	Y	Y	Y	Y
BE	Y	Y	Y		N, the appeal body (a tribunal) can decide that the first instance administrative body “was too generous” and deny SP
CY	Y	Y	Y		Y. The decision of the first instance body, the Asylum Services, can be appealed to a second instance, a quasi judicial body who can overrule the first instance decision.
CZ	Y	Y	Y	N, decision of first instance is not considered to have come into force; hence, applicant treated as asylum seeker	N
ES	Y	Y	Y		Y, principle of administrative law that an appeal administrative body cannot worsen the situation of the applicant
FR	Y	Y	Y	Y	
HU	Y	Y	Y	Y	Y, appeal body can only re-examine one element (i.e. decision

Operation of the single procedure in the Member States

Member State	Operates single procedure for RF and SP (Y/N)	Examines application 1 st for RF, 2 nd for SP (Y/N)	Possibility to appeal against not granting of RF in first instance (Y/N)	Applicant continues to benefit from protection status granted by first instance body, while awaiting outcome of appeal (Y/N)	If applicant appeals against first instance decision not to grant RF, then appeal body cannot overturn first instance decisions on other protection statuses (Y/N)
					on RF)
IT	Y	Y	Y	Y	Y
LV	Y	Y	Y	N, decision of first instance is not considered to have come into force; hence, applicant treated as asylum seeker	N
MT	Y	Y	Y	N/A	N/A
NL	Y	Y	Y	N/A	N/A
PL	Y	Y		N, appeal reviews <i>all elements</i> of first instance decision; therefore, the right of protection is not granted if the first decision is challenged	N (see left)
PT	Y	Y	Y	N/A	N/A
SE	Y	Y, third status	Y	Y	Y
SK	Y	Y	Y	N, person is regarded as asylum seeker until a final decision is made on his/her case	N (see left)
UK	Y	Y	Y	N/A	N/A

Likewise, the Asylum Procedures Directive does not encompass rules on procedures for the withdrawal of subsidiary protection status. Given that the Qualification Directive sets out the substantive criteria for the withdrawal of both refugee status and subsidiary protection, the current asymmetry puts beneficiaries of subsidiary protection in a disadvantaged position as they cannot rely on procedural guarantees available for refugees pursuant to Community Law.

In this respect, Eurostat statistics for 2008 show that several Member States did use the possibility to withdraw subsidiary protection:

Subsidiary protection					
MS	2008Q01	2008Q02	2008Q03	2008Q04	Total
BE	0	0	0	0	
BG		0	0	0	
CH					
CZ	0	0	0	0	
DE	90	60	60	30	240
EE	0	0	0	0	
ES	0	0	0	0	
EU27					
FI	0	0	0		
FR	0	0	0		
GR	0	0	0		
HU	0	0	0		
IE	0	0	0		
IS	0	0	0		
IT	0	0	0		
LT	0	0	0		
LV	0	0	0	0	
MT	0	0	5	20	25
NO					
PL	0	0	0		
PT	0	0	0	0	
RO	0	0	0		
SE	10	10	20		40
SI	0	0	0	0	
SK			0		
TR					
Total					305

Finally, the Asylum Procedures Directive lacks coherence with the Dublin regulation. In accordance with Recital 29, the Directive does not deal with the procedures governed by the Dublin Regulation. This leaves room for ambiguity on whether applicants who are the subject to the Dublin procedure may benefit from the basic principles and guarantees set out in the Directive. In addition, the notion of implicit withdrawal or abandonment of the application does not take into account the needs of persons transferred to the responsible Member State pursuant to the Dublin Regulation to re-access the asylum procedure, generating a risk of denial of protection.

- to ensure consistency between substantive and procedural rules on international protection
- to ensure coherency between asylum procedures and Dublin procedures.

In the context of the **specific objective 1.4**²⁹, the following objectives have been identified:

- to reduce unreasonably lengthy procedures
- to prevent the proliferation of disparate procedures between MSs.

POLICY OPTION

Harmonising references to refugee status and to subsidiary protection and introducing common rules on a single procedure

Legislative

Option 1: To harmonise definitions and references.

To amend the definitions in the Directive to make sure that it is applicable to all applications for international protection, namely those for refugee status and subsidiary protection, and to harmonise references to refugee status and subsidiary protection throughout the Directive. This would imply, as a minimum:

- Changing the title of the directive and adding definitions such as “beneficiaries of subsidiary protection”, “subsidiary protection status” and “withdrawal of subsidiary protection status”;
- Streamlining terms in relation to asylum, such as replacing “application / applicant for asylum” with “application / applicant for international protection” and adding “subsidiary protection (status)” when reference is made to “refugee status”;

Option 2: To introduce common rules on a single asylum procedure and integrate Dublin cases in the asylum procedure

To address the key elements of a single asylum procedure at the Community level. These would include a mandatory sequence of an examination of protection needs, the principle of a single determining authority, and the requirements for decision making at first instance and access to effective remedy in relation to both sets of substantive criteria provided for in the Qualification Directive. To extend the Directive's provisions on the withdrawal of refugee status to cases of withdrawal of subsidiary protection. Applicants whose protection needs under the Refugee Convention are rejected whilst subsidiary protection is granted would be entitled to appeal against the decision in relation to refugee status while benefiting from subsidiary protection status pending the outcomes of the appeal procedure. In addition, to underline that the Directive covers persons who are the subject to the Dublin procedures and that the notion of implicit withdrawal of the application does not apply to persons transferred to the responsible Member State pursuant to the Dublin Regulation. To provide for the possibility to extend time limits for lodging appeals to enable Dublin returnees to have access to effective remedy.

²⁹ Specific objective 1.3. reads as follows: **to improve the efficiency of decision-making**

Under option 1, Member States would maintain or introduce a single procedure at national level in which applications are examined both as applications on the basis of the Refugee Convention and as applications for subsidiary protection (a single procedure), whilst Member States would preserve a wide margin of flexibility to determine the content and organisation of those procedures. This option would address, to certain extent, the current asymmetry in the acquis, as the Directive would provide for procedural rules in relation to both forms of international protection provided for in the Qualification Directive. This would enable national administrations to increase or maintain the efficiency of the asylum process. However, option 1 still leaves room for discrepancies in Member States' procedural arrangements as regards an examination of protection needs in relation to the two sets of substantive criteria. In particular, the option lacks necessary procedural devices to ensure a correct identification of persons who fulfil the requirements of the refugee definition. Access to effective remedy in view of obtaining refugee status would be subject to different national rules. This could subsequently lead to different results when applying the two sets of substantive criteria in member States and continue to contribute secondary movements.

Option 2 provides for additional safeguards aimed at ensuring a proper assessment of the two sets of substantive criteria for granting international protection and thus has the potential to secure a more harmonised and accurate application of the Qualification Directive. Importantly, the option addresses institutional and organisational aspects of a single procedure at first instance and takes into account the specifics of a single procedure when dealing with appeals against first instance decisions. This would allow to frontload the resources and to process applications comprehensively and efficiently. The mandatory sequence of an examination, the requirement to give precise reasons for rejecting a claim for refugee status while granting subsidiary protection as well as access to effective remedy in such cases would effectively contribute to identifying genuine refugees. Subsequently, the option is of paramount importance for securing that secondary legislation is in line with the Refugee Convention as provided for in Article 63 (1) of the Treaty. The option also addresses the current gap between the Asylum procedures Directive and the Dublin Regulation, which in at least three Member States is leading to the discontinuation of applications. Thus, asylum applicants who are the subject to the Dublin procedures would enjoy full access to Directive's principle and guarantees, whilst persons transferred to the responsible Member States could effectively re-access the asylum process.

Comparison of financial impacts

Both options would entail costs for those Member States that need to transpose the new provisions into national legislation.

Option 1 would imply low costs as nearly all Member States already apply a single procedure which is applicable to all applications for international protection. Option 2 could involve higher investments as it may require institutional changes in some Member States. In several Member States, costs for appeal will also increase as applicants could appeal against a decision to grant subsidiary status instead of the refugee status. Applying the Directive also to Dublin cases, as proposed under option 2, will increase costs in Member States which currently do not apply the directive to these cases (even though it appears to be the case already in all Member States). Excluding the opportunity to invoke

implicit withdrawal in Dublin cases will increase costs in at least three Member States which currently are discontinuing or rejecting applications on this basis.

In the longer term, both options have the potential to bring financial gains by making the asylum process more efficient and by reducing appeal costs. Such gains could be particularly significant under option 2.

Social effects and Fundamental Rights

Both options would ensure increased equality of treatment, with option 2 having higher effects than option 1 due to its inclusion of the Dublin cases. Option 2 would also have higher impacts on access to justice and access to social protection for the same reasons. In addition, the improved asylum process, managed by a single authority and following certain ‘compulsory’ steps, would help to improve the quality of decision making due to a more efficient and effective institutional organisation. Options 1 and 2 enhance respect for the following Articles of the Charter of Fundamental Rights: Article 18 (Right to asylum), Article 19 (Protection in the event of removal, expulsion or extradition), Article 47 (Right to an effective remedy and to a fair trial). Option 2 would enhance these rights more effectively than option 1.

Stakeholder views

Overall, the vast majority of Member States are already operating the single procedure with a single determining body. As there are still some differences, it is more likely that countries will be in favour of option 1, which would give them the possibility to preserve their own existing practices. Option 2 may be considered too prescriptive for some Member States, in particular with regard to appeals against granting of subsidiary protection. NGOs are broadly in favour of option 2, which they consider an advance towards both harmonisation and supporting the right to asylum with effective procedural opportunities to exercise that right, a core principle of EU law. The UNHCR also sees the benefits of option 2, given the tendency of some Member States to grant subsidiary protection rather than refugee status. They however point out that the sequence alone will not improve protection standards, and that this should be combined with improvements to the qualification grounds as set in the Qualification Directive.

Preferred option

The preferred option would be option 2

15. ANNEX 15 ASSESSMENT OF EFFECTIVENESS, EFFICIENCY AND COHERENCE OF SUB-OPTIONS

In the following tables the different options are rated - from 0 (no impact in terms of effectiveness/efficiency/coherence) to 5 (very high level of effectiveness/efficiency/coherence)- considered against the baseline scenario in terms of effectiveness in achieving the set specific objectives, efficiency and coherence. It should be underlined that **these are only some of the factors taken into account in the overall assessment** in order to determine the elements that should be included in the preferred policy option. Further factors assessed include proportionality and the social impacts of the different options and their impacts on fundamental rights.

4.2.1. To ensure access to asylum procedures

	Effectiveness	Efficiency	Coherence
Baseline scenario	<p>0: No impact</p> <p>The Directive's ambiguity on access procedures and non-availability of services at the initial stage will preserve the current obstacles.</p> <p>Jurisprudence and infringement cases would help clarify certain elements of access procedures but no systemic impact is expected. National practices will vary broadly, whereas practical cooperation stand-alone will be insufficient to change institutional attitudes.</p>	<p>0: No impact</p> <p>The baseline scenario implies no additional costs. It would not however lead to sustainable and systemic improvements, and the flaws in access procedures would persist.</p>	<p>0: No impact</p> <p>The Asylum Procedures Directive would continue to lack elements to back up the refugee related provisions of the SBC. The accessibility of the Qualification Directive and of the Reception Conditions Directive would not improve.</p>
Option 1 (legislative)	<p>3:</p> <p>The improved clarity of access related standards and the envisaged responsibilities of front line authorities would make procedures more accessible. Since the availability of information and services at the entry points would continue to be limited, some asylum seekers might still not be able to communicate their protection needs to the border or immigration authorities, whilst insufficient fairness of border and admissibility procedures might prevent asylum seekers from getting access to substantive examinations.</p>	<p>3:</p> <p>Since MS have already in place access procedures, the expected costs mainly relate to adapting existing instructions and training materials in line with the amended Directive. ERF support could be made available, and the overall costs are expected to be limited. Since the option would be insufficient to address all access related problems, its overall efficiency would also be limited.</p>	<p>3:</p> <p>The option is coherent with the Schengen Borders Code (SBC) and the Return Directive which oblige MS to respect the principle of non-<i>refoulement</i> when conducting border and immigration controls and with the Dublin Regulation and the Reception Conditions Directive which apply from the moment the application has been submitted. The option lacks elements needed to adequately address challenges of mixed arrivals: a person may be returned or rejected before he/she articulates a request for international protection or gets to the competent authority.</p>

Option 2 (legislative)	3,5: The option accommodates the specifics of mixed arrivals and has a stronger potential to ensure access to procedures for applicants with special needs. The basic guarantees would become accessible at the very beginning of asylum process, while the enhanced transparency would have long term systemic impacts on access procedures. Some applicants might be wrongly deprived from having their applications examined in substance, since the option contains no safeguards against possible error when applying admissibility grounds.	3,5: Although the option implies higher costs in comparison to the baseline scenario and option 1, the proposed elements are indispensable to ensure that an applicant is (i) aware of the possibility of requesting protection and (ii) able to communicate such a request to the authorities concerned. Since the initial communication aims at establishing the wish to apply for protection rather than a substantive examination, the overall costs will not be significant.	4 The option is coherent with and complements the Directive's guarantees for applicants (Art. 10) and the rights of a legal counsellor or advisor (Art. 16). It provides a necessary procedural back up to Art. 3 (b) of the Schengen Borders Code which requires MS to respect the rights of persons requesting international protection when conducting border controls.
Option 3 (legislative)	4: The option ensures that (i) the competent authorities are accessible and have a positive obligation to register the application, that (ii) the applicant is able to communicate his/her request to border guards and/or immigration authorities when present at the border and that (iii) admissibility and/or entry procedures takes into account his/her particular circumstances. The option has a strong potential to facilitate access to effective remedy in the case of an inadmissibility decision or a decision to refuse entry in border procedures. The envisaged measures address, in a comprehensive and systemic way, all 3 sets of obstacles hampering the access and are expected to produce maximum impacts.	4: While the option implies the highest costs in comparison to the base line scenario, they are not expected to be excessive or disproportionate. The option brings important impacts in terms of effectiveness. All the elements of the option are eligible for ERF support.	4,5: In addition to the characteristics described under "Option 2. Coherence", the option is in line and compliments the Commission proposal for amending the Dublin regulation.
Option 4 (practical cooperation)	2.5 Practical cooperation stand-alone is insufficient to ensure systemic and durable impacts, since it lacks binding effect.	2.5 Practical cooperation would produce costs for training and for setting up profiling and monitoring mechanisms. It will be largely covered by the	4 The option is coherent with the proposed legislative options and compliments the Dublin regulation, the Schengen Borders Code and the

	Its impact may also be limited due to staff turnover. Certain problems, such as instructions or responsibilities of border guard or immigration authorities, are legal by their nature and therefore may only be addressed by a legislative intervention. The option has a strong potential to complement and strengthen impacts of legislative options.	EASO and FRONTEX. It will be also eligible for ERF support. The limited effectiveness of practical cooperation standalone would reduce the efficiency of the option.	Return Directive. It improves the accessibility of the Reception Conditions Directive.
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4.2.2. To remove derogations and improve procedural safeguards

	Effectiveness	Efficiency	Coherence
Baseline scenario	<p>0:</p> <p>Insufficient and vague standards will be capable of leading to administrative errors, and applicants will be provided with different levels of procedural safeguards depending on where in the EU their application is examined. Future case law of the ECJ and, where relevant, of national courts might, to some extent, clarify the scope of certain procedural safeguards, whilst possible infringement proceedings and enhanced practical cooperation would lead to better MS' compliance with the Directive. These <i>ad hoc</i> measures, however, will not be able to either eliminate derogations from the current standards or, where relevant, introduce a new standard.</p>	<p>0:</p> <p>Findings of national courts and the ECJ may lead to changes in national legislation and practices thus implying additional costs for MS concerned. It is not, however, feasible to estimate in advance the magnitude of these costs, since it is not clear which standards in which MS may be affected by developments in jurisprudence.</p>	<p>0:</p> <p>The ECJ and national case law may expectedly clarify the impact of procedural guarantees on different notions of the directive as well as their interplay with the proposed amendments to the Dublin regulation.</p>
Option 1 (legislative)	<p>3,5:</p> <p>The deletion of derogations from the basic guarantees will improve the fairness of first instance procedures and provide more favourable conditions for applicants to substantiate their application. The adequateness of procedural guarantees will be further improved by providing applicants with special needs with free legal assistance. The effectiveness of this option may be hampered by possible difficulties to establish timely and correctly the special needs of the applicants, whilst the impact of personal interviews will vary between MS due to differences in</p>	<p>3,5:</p> <p>While the option brings additional asylum personnel labour and legal assistance costs, the enhanced guarantees should improve the quality of 1st instance decisions thus limiting recourse to appeals and subsequent applications and reducing the overall costs.</p>	<p>3,5:</p> <p>The option is coherent with the principle of adequate and complete examination (Arts. 8 (2), 23 (2) APD) and the requirements to take into account particular circumstances of the applicants when applying the safe third country, safe country of origin and safe country of asylum notions. The enhanced right to remain during the examination procedures is coherent with the principle of <i>non-refoulement</i> as set out in Art. 21 of the Qualification Directive. The option may lack arrangements aimed at (i) enhancing access to effective remedy under Art. 39 APD for all asylum seekers, since</p>

	the quality and accuracy of the outcomes of interviews.		legal assistance is envisaged for applicants with special needs only, and (ii) enabling applicants to communicate the elements of their applications as required by Art. 4 (1) of the Qualification Directive.
Option 2 (legislative)	4: In comparison to option 1, option 2 has a stronger potential to increase the fairness of first instance procedures and to facilitate MS' effort to take accurate decisions, since the right to legal assistance would become accessible for all asylum applicants at first instance. The option is expected to have positive systemic impacts on different stages and elements of asylum process, all of them being relevant to the specific objectives of the proposal, namely: increased accessibility and fairness of procedures, better determinations of protection needs, improved efficiency and quality of procedures, and better access to effective remedy.	3: The option implies higher costs in comparison to the baseline scenario and option 1 in particular in those MS which currently do not give legal aid to asylum applicants in first instance procedures (11 MS). These investments should, however, be outweighed by long term financial and administrative savings due to reduced recourse to appeals and subsequent applications. It will contribute to the increased overall efficiency of the procedures, in terms of duration and financial costs. The duration of receiving reception support will be reduced.	4 The option is coherent with Art. 4 (1) of the Qualification Directive and instrumental to facilitate applicants' access to procedural rights, including appeal rights, and ensure that they comply with procedural guarantees (Arts. 10, 11 and 39 APD). The option also facilitates access to information and effective remedy envisaged in the Commission's proposals for the revised Reception Conditions and Dublin instruments.
Option 3 (legislative)	4,5: The option gives applicants a realistic opportunity to present the elements of their application, thus facilitating access to protection for those who fulfil the substantive criteria. The first instance determinations would be based on complete and accurately established factual circumstances leading to the improved quality and defendability of decisions.	3: While the option implies additional interpretation and labour costs, it is also capable of bring long term savings as described under option 2. The option contributes to achieving 3 specific objectives, since it (i) improves the fairness of procedures, (2) promotes quality and efficient decision making and (3) enhances access to effective remedy. All elements of the option are eligible for ERF support.	4: In addition to the characteristics described under "Option 2. Coherence", the option should further support the application of Art. 4 (1) of the Qualification Directive and the envisaged measures on personal interviews introduced in the Commission's proposal for the revised Dublin Regulation.
Option 4 (practical cooperation)	2.5: Practical cooperation stand-alone will be insufficient to ensure systemic and durable impacts. Since asylum procedures are legal administrative procedures the outcomes of practical cooperation will only be effective if they	2.5: Financial impacts of practical cooperation activities for MS are reduced by the fact that such activities are eligible for ERF support and would also be covered by the EASO mandate. However, given the limitations of its	4: The option is relevant to enhancing MS' capacity to comply with their obligations under all relevant instruments of the <i>acquis</i> (the Qualification Directive, the Dublin Regulation and the Reception

	correspond to applicable legal rules. However, the option has a strong potential to complement and strengthen impacts of legislative options.	effectiveness on its own, practical cooperation can only contribute to a limited extent to facilitating first-instance procedures and reducing appeals overall and to reducing secondary movements and subsequent costs related in particular to Dublin procedures.	Conditions Directive).
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4.2.3. To improve guarantees for applicants with special needs

	Effectiveness	Efficiency	Coherence
Baseline scenario	<p>0 : No impact</p> <p>Gender, age and trauma neutrality of the current standards will only partially be addressed by possible improvements at national level. The latter may result from <i>ad hoc</i> national initiatives, UNHCR advocacy efforts and/or practical cooperation activities. The impacts will be limited to the MS concerned and will vary across the EU.</p>	<p>0: No impact</p> <p>The efficiency of the current standards will remain low, since the current procedures will largely remain gender, age and trauma neutral. Recourse to subsequent applications in cases involving gender and age based persecution will lead to further delays in delivering final determinations.</p>	<p>0: No impact</p> <p>The potential of the directive's standards to procedurally back up the notion of gender/age based persecution and the notion of past persecution/serious harm will remain low.</p>
Option 1 (legislative)	<p>3:</p> <p>The option would make procedures more responsive to the special needs of women and vulnerable asylum seekers. The envisaged measures should facilitate access to procedures for applicants with special needs and enable them to better present and substantiate their cases. Time pressures associated with accelerated, admissibility and border procedures would continue to re-produce the risk of error in cases involving applicants with special needs.</p>	<p>3:</p> <p>The option produces additional costs related to the medico-legal certification of symptoms of torture. Additional costs may also result from measures aimed at improving representation of unaccompanied minors and gender/age sensitive interviewing. The implied costs are not considered to be excessive given the basic nature of the proposed standards.</p>	<p>3:</p> <p>The option is coherent with both Art. 4 (1) of the Qualification Directive and the principle of adequate and complete examination (Arts. 8 (2), 23 (2) APD). It is also supportive to and develops further the requirements for personal interviews (Art. 13 APD). The option may lead to asymmetry with the current standards on accelerated and border procedures which allow MS to accelerate any examination, including in cases involving applicants with special needs.</p>
Option 2 (legislative)	<p>3.5:</p> <p>While sharing the impacts of option 1, option 2 should have stronger overall impacts, since it mainstreams gender, age and trauma consideration throughout the procedure. It also contributes to achieving 3 operational objectives (i.e. (i) improved</p>	<p>3.5:</p> <p>The option does not require direct investments in services to asylum seekers. It would however require additional reception and labour costs at first instance, since applicants with special needs would be provided more time and support to substantiate their applications. Better</p>	<p>4:</p> <p>The option would adequately back up the notion of gender/age based persecution and the notion of past persecution/serious harm set out in the Qualification Directive.</p>

	<p>fairness; (ii) quality and efficiency of decision making and (iii) access to effective remedy). The option would not be able to eliminate risks resulting from procedural devices (i.e. accelerated procedures).</p>	<p>attention to the special needs in the initial stage would have positive impacts on the overall efficiency of asylum process.</p>	
<p>Option 3 (legislative)</p>	<p>5:</p> <p>In addition to impacts, described under option 2, the option reduces the risk of error resulting from pressures associated with certain procedural devices, such as manifestly unfounded applications, accelerated or border procedures.</p>	<p>4:</p> <p>The option implies higher reception costs in comparison to the baseline scenario and option 1 since certain applicants with special needs would be given more time to substantiate their claims.</p> <p>These investments should, however, be outweighed by long term financial and administrative savings due to reduced recourse to appeals and subsequent applications. It will contribute to the increased overall efficiency of the procedures, in terms of the length of asylum process and the financial costs involved.</p>	<p>4</p> <p>The option makes organisational elements of procedures responsive to the needs of vulnerable applicants. It is also in line with the Commission's proposal for the revised Reception Conditions Directive which provides for special measures aimed at identification of applicants with special needs and reinforces protection against detention of this category of applicants.</p>
<p>Option 4 (practical cooperation)</p>	<p>2:</p> <p>Practical cooperation stand-alone would be insufficient to address risks resulting from procedural arrangements set out in national legislation. At the same time, its combination with legislative options would contribute to more consistent and accurate application of the envisaged standards.</p>	<p>4:</p> <p>Financial impacts of practical cooperation activities for MS are reduced by the fact that such activities are eligible for ERF support and would also be covered by the EASO mandate. However, given the limitations of its effectiveness on its own, practical cooperation can only contribute to a limited extent to enhancing substantive equality in the asylum process.</p>	<p>4:</p> <p>The option is coherent with the notion of gender/age related persecution and the notion of past persecution/serious harm set out in the Qualification Directive. It is also supportive to MS' efforts to provide guarantees to applicants with special needs under the Dublin Regulation and Reception Conditions instruments.</p>

4.2.4. To approximate accelerated procedures

	Effectiveness	Efficiency	Coherence
<p>Baseline scenario</p>	<p>0 :</p> <p>The ambiguity of the current standards will lead to further proliferation of disparate accelerated, manifestly unfounded and/or priority procedures. No significant case law is expected. The Commission's role would also be limited, given a wide margin of discretion MS enjoy</p>	<p>0:</p> <p>Continuous recourse to appeals and subsequent applications as well as secondary movements would hamper the overall efficiency of current arrangements on accelerated and priority procedures.</p>	<p>0:</p> <p>The current standards would continue to negatively affect the fairness of examination procedures thus causing tension with the directive's basic principles and guarantees. The reliability of decisions taken in accelerated procedures would remain low leading to the divergent</p>

	under the current standards.		implementation of the Qualification Directive.
Option 1 (legislative)	2,5: The option would increase the fairness of accelerated procedures in particular by giving to applicants the opportunity of substantiating his/her case in a personal interview. It lacks the potential to reduce disparate procedures between MS, and the time pressures would continue to negatively affect the assessment of applications by the asylum authorities.	3: The option implies additional labour costs to interview all applicants in accelerated procedures. While the costs are expected to be low, the limited potential of the option to achieve objectives negatively affect its overall efficiency, since appeals and subsequent applications would produce additional processing and reception costs.	3,5: The option is coherent with the preferred option on procedural guarantees. It lacks the potential to ensure an appropriate examination of applications in line with Art. 8 (2) APD and may be insufficient to achieve the efficiency objective (Recital 3 to the APD). It should lead to more consistent application of the Qualification Directive.
Option 2 (legislative)	4: The functional role, grounds and time limits for accelerated procedures would be more clearly defined leading to the convergence of procedures between MS. It would also improve the reliability of first instance decisions, since the grounds for accelerated examinations would be linked with the strength of the claim, while the asylum authorities would be given the necessary time to adequately assess the elements of the application.	4: The option implies higher reception costs and costs related to the reorganisation of asylum procedures. It, however, should increase the overall efficiency of procedures, since it would reduce additional reception and processing costs related to appeals and subsequent applications.	4 The option contributes to ensuring both the efficient and fair asylum procedures.

4.2.5. To consolidate the safe country of origin notion

	Effectiveness	Efficiency	Coherence
Baseline scenario	0 : The Commission's monitoring activities might bring more consistency in the implementation of the safe country of origin notion. While this would address problems related to the incorrect and/or incomplete transposition of the directive, vague material requirements for the national designation, lack of arrangements on follow up regular assessments of the situation in the country of origin, omission of personal interviews and non-suspensive appeals would preserve divergent arrangements between MS and the level of procedural fairness of procedures based on this notion would remain low.	0: While the current standards allow MS to take decisions quickly, the lack of comprehensive assessment opens room for subsequent applications and continues to cause, alongside other factors, secondary movements. More importantly, it does not resolve the problems identified.	0: The current standards would continue to negatively affect the fairness of examination procedures thus causing tension with the directive's basic principles and guarantees.

Option 1 (legislative)	3: The option would lead to more reliable determinations, since decisions would be based on up to date information and individual circumstances be taken into account. The effectiveness of the notion would increase since the responsibility for the approval and amendment of the list would lay with MS which opted for its use, based on the requirements set out in the directive. The option leaves room for divergent national arrangements, since MS using the notion would stick to different sets of material requirements, while other MS would be free to refrain from using the notion.	3: The option releases MS from the current obligation to implement the Community list of safe countries of origin thus implying savings in labour costs. MS would need to invest in regular assessments of the situation in the country. The ERF funding and the EASO's support to MS in collecting quality country of origin information would allow MS to optimise their financial allocations.	3: The option is coherent with the preferred options on procedural guarantees and accelerated procedures. It is also in line with the current standards which require MS to consider individual circumstances of the applicant (Art. 31 (1) APD and obtain up-to-date information on the situation in the country of origin (Art. 8 (1) (b) APD). It may lack the potential to address the current asymmetry with Art. 4 (1) and (3) (a)) of the Qualification Directive which require MS to assess all relevant elements of the application and facts related to the country of origin.
Option 2 (legislative)	4: In addition to the positive impacts described under option 1, option 2 would lead to better consistency in implementing the safe country of origin notions since all national lists would be governed by common material requirements.	4 The option implies higher reception and processing costs in MS which currently derogate from the agreed material requirements. It would however lead to more consistent and reliable determinations, based on the safe country of origin notion.	4: In addition to the positive impacts described under option 1, the option is also consistent with Art. 4 (1) and (3) (a) of the Qualification Directive, since it requires more rigorous assessment of the situation in the country of origin.
Option 3 (legislative)	3: The option has a strong potential to ensure consistent application of the notion, since only countries which appear on the common list would be considered as safe in all 26 MS. The arrangement would be less responsive to developments in the countries of origin since any amendments to the list would require actions at EU level involving both the Council and the European Parliament. This might lead to implementation problems and affect MS' international obligations under the Geneva Convention and Human Rights treaties.	4 The option implies higher reception and processing costs in MS which currently derogate from the agreed standards and/or use wider national lists. Lesser costs would be required to regularly assess the situation in the safe countries.	2: The option lacks consistency with the principle of the adequate examination and the QD requirement to assess the relevant facts, since all 26 MS, including those objecting to including a safe country in the list, would be obliged to follow the common list and consider applications from persons from safe countries as unfounded.
Option 4 (practical)	2 Practical cooperation coordinated	2 Financial impacts of practical	3 The activities are consistent with

cooperation)	by the EASO might lead to better quality of country of origin information used for the designation of safe countries and follow up assessments. While being insufficient to address divergences caused by different standards, it could approximate national lists, if the agreed material requirement were equally applicable in all MS.	cooperation activities for MS are reduced by the fact that such activities are eligible for ERF support and would also be covered by the EASO mandate. However, given the limitations of its effectiveness on its own, practical cooperation can only contribute to a limited extent to approximating MS' approaches.	and supportive to options 1 and 2. They are less relevant to option 3. Practical cooperation would enhance MS' capacity to comply with their obligations under Art. 4 (1) of the Qualification Directive.
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4.2.6. To reinforce MS' capacity to deliver reliable decisions within a reasonable time

	Effectiveness	Efficiency	Coherence
Baseline scenario	<p>0: No impact</p> <p>The lack of a level playing field in the area of quality assurance will continue to limit the effectiveness of the current directive. It will also negatively affect the effectiveness of the EASO's activities, since the degree of acceptance of its services will vary between MS. Given positive feed backs of MS on the UNHCR quality initiatives, more MS may be willing to join them. This would improve decision making in the concerned MS. The sustainability of the quality assurance pilots would however depend on the level of institutional ownership of the concept, which would again vary between MS. No relevant international / Community case law is expected. Due to the ambiguity of the current standards on the quality decision making, it would be very difficult for the Commission to substantiate possible infringement cases.</p>	<p>0: No impact</p> <p>While the current standards allow MS to take decisions quickly, the lack of comprehensive assessment opens room for subsequent applications and continues to cause, alongside other factors, secondary movements. More importantly, it does not resolve the problems identified.</p>	<p>0: No impact</p> <p>The current standards would continue to negatively affect the fairness of examination procedures thus causing tension with the directive's basic principles and guarantees. The directive's potential to back up the Qualification Directive would remain limited, and the divergent interpretation of substantive grounds of international protection between MS would persist.</p>
Option 1 (legislative)	<p>3:</p> <p>The option would definitely improve the quality of decision making leading to more reliable</p>	<p>3:</p> <p>The option produces costs for a number of MS to (i) reattribute functions between authorities, (b)</p>	<p>4:</p> <p>The option backs up the qualification directive, in particular its Art. 4, by improving the</p>

	<p>decisions. More refugees and persons eligible for subsidiary protection would enjoy quicker access to international protection status in line with the Qualification Directive. Increased defendability of first instance decisions would contribute to reducing reception and processing costs related to the appeal proceedings. The preparedness of the asylum personnel to correctly apply the Qualification Directive would become equivalent across the EU. Same applies to the administrative capacity of MS to handle caseloads. This would enable MS to better and more consistently benefit from the EASO's support services, in particular those related to training and assistance to MS under pressures. The option would be able to only partly enhance the efficiency of procedures, since subsequent applications caused by the current procedural arrangements would continue to delay final determinations. Access to the Qualification Directive would remain unequal between MS, since the length of first instance procedures would continue to vary.</p>	<p>allocate sufficient staff, and (c) put training arrangements in place. The ERF funding and EASO's support would allow MS to optimise their financial investments. The investments would improve the consistency and reliability of first instance examinations under the Qualification Directive across the EU. The option should bring long term savings.</p>	<p>preparedness of the asylum personnel to assess the claims and deliver reliable determinations. It also contributes to achieving the objective of ensuring fair procedures. The option is consistent and tent</p>
<p>Option 2 (legislative)</p>	<p>4:</p> <p>In addition to the positive impacts described under option 1, option 2 would set out common targets for delivering first instance decisions, thus improving transparency and efficiency of procedures. It would also lead to more effective application of arrangements on subsequent applications.</p>	<p>5:</p> <p>The option implies no additional costs in comparison to option 1. It also enhances the MS' capacity to deliver quicker final determinations, thus potentially reducing reception and labour costs.</p>	<p>4:</p> <p>The option enhances the accessibility of the Qualification Directive for persons genuinely in need of protection. It is also consistent and interlinked with the Commission's proposal for establishing the EASO.</p>
<p>Option 3 (practical cooperation)</p>	<p>3:</p> <p>Practical cooperation coordinated by the EASO would strengthen the quality of decision making in those MS which voluntarily accept good practices and ensure their sustainability. The impacts would vary depending on (i) the level of institutional ownership and (ii) the preparedness of national asylum systems to accept and implement the outcomes of the cooperation activities. Practical cooperation would have lesser impact of the efficiency of</p>	<p>2 :</p> <p>Practical cooperation would require allocations from both the national budgets and the EU programmes (Costs of quality initiatives amount to 125 000 EUR per MS, based on current ERF projects; the envisaged budget for developing the EAC in Feb. 2008 – Sept. 2010 is 2 830 00 EUR, including 1 080 000 EUR in kind contribution). The activities would be largely covered by the EASO budget. Given effectiveness constraints and lesser potential to deliver consistent impacts across the</p>	<p>4:</p> <p>The activities are consistent with and supportive to the application of the Qualification Directive and the Dublin Regulation.</p>

	procedures, since efficiency problems are largely rooted in legislation.	EU, the efficiency of the option stand alone may be lower in comparison to the legislative options.	
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4.2.7. To enhance accessibility and quality of remedies

	Effectiveness	Efficiency	Coherence
Baseline scenario	<p>0: No impact</p> <p>The ECJ and ECtHR rulings may lead to better accessibility of remedies and clarify the scope of judicial review. The ECJ case law impact may however be limited, since only national courts "against whose decisions there is no judicial remedy under national law", may seek ECJ position on the Directive's standards. The infringement proceedings might give the ECJ the opportunity to interpret the APD standards in line with the general principles of Community Law but the lack of binding standards in the directive would limit the Commission's ability to substantiate the case. Court's contribution would be of <i>ad hoc</i> and not of systemic nature.</p>	<p>0: No impact</p> <p>Developments in Community and international case law may produce additional costs for MS. It is difficult to predict the magnitude of costs, since it is not feasible to foresee which elements of the current standards might be addressed by the ECJ rulings.</p>	<p>0: No impact</p> <p>Limited access to effective remedy and insufficient scrutiny of first instance decisions by judiciary would continue to negatively affect the application of the Qualification Directive. Divergent interpretations of substantive grounds of international protection would persist.</p>
Option 1 (legislative)	<p>4:</p> <p>The option would enhance the accessibility of courts or tribunals increasing the potential of the directive to comply with international standards on access to effective remedy. The scope and nature of review would be brought in line with respective case law of the ECJ and the ECtHR. Equality of arms would be better ensured to all parties to appeal procedures. This would lead to better supervision of first instance decisions by judiciary, limit room for administrative error and reduce the risk of <i>refoulement</i>.</p>	<p>4:</p> <p>The option implies reception and processing costs resulting from better accessibility of remedy. The magnitude of costs would however be limited since the caseloads would not be significantly increased given the potential of other options (on procedural guarantees and procedural; notions) to limit the number of cases requiring appeal examinations. The <i>ex-nunc</i> and full assessment of the claims by appeal bodies would limit recourse to subsequent applications.</p>	<p>4:</p> <p>The option improves the assessment of the protection needs and therefore ensures better consistency with the Qualification Directive. It is in line with the discussed options on procedural guarantees, access to procedures and safe countries of origin notion.</p>
Option 2 (legislative)	<p>4:</p> <p>The option would lead to the harmonisation of asylum appeal procedures leading to better consistency in implementing the directive's provisions on access to effective remedy.</p>	<p>2:</p> <p>The option implies significant costs related to the reorganisation of asylum appeal systems in MS. The magnitude of costs might be disproportionate to the objectives pursued.</p>	<p>3:</p> <p>The option shares impacts described under option 1. It may however cause tension with the principle of procedural autonomy of MS.</p>

4.2.8. To harmonise references to refugee status and to subsidiary protection and introduce common rules on a single procedure³⁰

	Effectiveness	Efficiency	Coherence
Baseline scenario	<p>1 :</p> <p>The fact that MS already have a national single procedure in place allows expecting more coherent application of the Qualification Directive and the Asylum Procedures Directive. At the same time, with the absence of common rules on a single procedure, a trend to grant subsidiary protection might further develop and affect more MS. Dublin procedures would not be adequately integrated in asylum procedures across the EU.</p>	<p>1: No impact</p> <p>No additional allocations would be required. Several MS would have higher reception costs for persons granted subsidiary protection who appeal the first instance decisions with a view to obtaining refugee status. Additional processing and reception costs are also expected with regard to genuine refugees granted subsidiary protection in cases of successful appeals. No impacts on withdrawal procedures are expected.</p>	<p>0: No impact</p> <p>The asymmetry between the Qualification Directive and the Asylum Procedures Directive would persist. This would leave room for the incorrect application of substantive grounds of protection (i.e. the grant of subsidiary protection to persons eligible to refugee status). Beneficiaries of subsidiary protection who are the subject to revocation (withdrawal) procedures would continue to be excluded from procedural guarantees available for refugees.</p>
Option 1 (legislative)	<p>3:</p> <p>The option would enhance Community level procedural guarantees for persons who are not eligible for refugee statuses but fulfil the subsidiary protection criteria. It would have no impacts on the correct identification of genuine refugees.</p>	<p>3:</p> <p>The option implies no additional costs in comparison to the baseline scenario. Its added value is however limited since the majority of MS have already harmonised reference to the two sets of substantive grounds in their national legislation.</p>	<p>3:</p> <p>The option improves coherence within the <i>acquis</i>. All the procedural notions and devices of the asylum procedures directive would take into account the protection needs in line with the two sets of substantive criteria. It has no impacts on Dublin procedures.</p>
Option 2 (legislative)	<p>4:</p> <p>In addition to impacts of option 1, the option contains crucial elements capable of ensuring "full and inclusive application of the Refugee Convention." It secures equal procedural protection for both refugees and beneficiaries of subsidiary protection in the withdrawal procedures. The option also enhances fairness of Dublin procedures and secures better re-access to examination procedures for persons transferred under Dublin arrangements to the responsible MS.</p>	<p>4:</p> <p>No substantive costs are expected. Improved coherence between the asylum instruments would also support MS' efforts to deliver reliable determinations at first instance, thus reducing recourse to appeals and subsequent applications.</p>	<p>5:</p> <p>The option is in line with the Qualification Directive and compliments the Commission's proposal for the revised Dublin Regulation. Given a central role of the APD in the CEAS, it is expected to improve coherence within the <i>acquis</i> as a whole.</p>

³⁰

The problem definition and the policy options are discussed in annex 14.

16. ANNEX 16 ASSESSMENT OF THE STATUS QUO

Assessment of the status quo		
Assessment Criteria	Rating (from 0, i.e.no impact, to 5)	Motivation of the rating
Relevance		
1.1. To ensure that asylum procedures are accessible to persons seeking international protection	0	<p>At present, several obstacles exist in relation to the accessibility of the asylum procedure for persons seeking international protection. These relate in particular to:</p> <p>access to the Member State, as measures to prevent the entry of irregular migrant, if not accompanied by appropriate safeguards, may at the same time hamper access for persons intending to request asylum</p> <p>Difficulties to express a request for international protection at the EU external borders</p> <p>Obstacles related to getting access to the authorities competent to register the claim</p> <p>Legal barriers, such as the inadmissibility and/or border procedures.</p> <p>Several Member States, such as the Netherlands and Finland, are arguing for improved access to procedures, to ensure that the foreign national is not turned away at the border or not allowed to formulate his or her request for international protection. Problems have in particular been noted with regard to the surveillance of sea or land borders. There has been also reports that persons in detention centres (e.g. in Greece and Italy) may lack information on and have limited access to asylum procedures. While profiling and monitoring mechanisms aimed at identifying asylum seekers in mixed arrivals³¹ have been introduced on <i>ad hoc</i> basis in some MS (e.g. Italy, Hungary, Slovakia, Poland, Slovenia), such protection-sensitive border control measures have not been mainstreamed at the entire EU external border. 12 Member States (SL, GE, CZ, EE, HU, RO, SP, PT, AU, GR) have border procedures in place capable of rejecting the claim within very short time limits. Access to effective remedy is not always adequately ensured in such</p>

³¹ The pilot profiling mechanisms have been tested at the external maritime border within "the Presidium project", involving the Italian Ministry of Interior, UNHCR, IOM and the Italian Red Cross. "

Assessment of the status quo		
Assessment Criteria	Rating (from 0, i.e.no impact, to 5)	Motivation of the rating
		<p>procedures. Officials at border entry points are not always trained in how to deal with asylum seekers. In the present situation, it cannot be expected that all Member States will voluntarily address these issues, with the persisting danger of refoulement.</p> <p>Practical cooperation and e.g. the establishment of the European Asylum Support Office may lead to some 'voluntary' improvements compared to the present situation, e.g. through peer pressure, the development of specific projects (e.g. remote interpretation) and the identification of good practices (e.g. the quality initiatives). The development of guidelines for border guards may also bring a more consistent approach to border procedures. Similarly, lobbying and studies (conducted by UNHCR, academics, NGOs etc.) may also have some positive impacts on the Member States with regard to access to procedures. However, by not establishing certain principles and issues in Community law, changes in the Member States can always occur, for example due to national developments (e.g. change of government etc.), resulting in both positive and negative developments in relation to granting protection to applicants and beneficiaries for international protection. Acceding Member States are also left with a high level of discretion.</p> <p>Taking all these drivers for improvements or worsening of current problems into account, it is not expected that the objective will be achieved. Furthermore, the countries where improvements are most urgent are likely to be least 'willing to learn' on a voluntary basis, although they, naturally, would need to take relevant case law into account.</p>
1.2 To improve fairness of asylum procedures	0	<p>The Directive in its present form leads to (a risk of) administrative error and arbitrariness in asylum procedures, which has a negative impact on asylum seekers' (equal) access to international protection and limited the overall efficiency of asylum process, since rejected applicants increasingly tend to recourse to subsequent applications, as attested by asylum statistics (the problem is particularly evident in CZ, AU and FR). Specific problems identified relate to:</p>

Assessment of the status quo		
Assessment Criteria	Rating (from 0, i.e.no impact, to 5)	Motivation of the rating
		<p>Insufficient opportunity for asylum seekers to articulate and support the elements of their application as in at least 10 Member States a personal interview on substance can be omitted, not allowing a proper assessment of the individual circumstances of the applicant. Applicants' insufficient awareness of rights and obligations, since less than half of the Member States provide some form of institutionalised legal assistance in the first instance.</p> <p>The use of accelerated procedures, used by 25 MS, which do not enable applicants to fully prepare their claim and make it impossible for authorities to assess the latter.</p> <p>Specific obstacles for women and persons with special needs, due to a lack of gender, age and trauma sensitive arrangements.</p> <p>Several improvements can be expected, in particular in relation to appeal procedures, as a result of recent ECJ and ECtHR rulings and findings, which for example stress the principles of a rigorous and effective scrutiny, impartiality and independence. In addition, Similar to objective 1.1., peer pressure, the identification of good practices, lobbying, studies and practical cooperation may have some positive impacts.</p> <p>However, by not establishing certain principles and issues in Community law, changes in the Member States can always occur, for example due to national developments (e.g. change of government etc.), resulting in both positive and negative developments in relation to granting protection to applicants and beneficiaries for international protection. Acceding Member States are also left with a high level of discretion.</p> <p>On balance, it is not expected that the objective will be achieved through the status quo. In particular, the countries where improvements are most urgent are likely to be least 'willing to learn' on a voluntary basis.</p>
1.3. To harmonise procedural notions with a view to facilitating reliable determinations across the EU	0	<p>Disparity of procedures will persist, and the types and lengths of accelerated, manifestly unfounded and/or priority procedures will vary significantly between MS. Specific problems identified relate to:</p>

Assessment of the status quo		
Assessment Criteria	Rating (from 0, i.e.no impact, to 5)	Motivation of the rating
		<ul style="list-style-type: none"> - divergent grounds and lengths of accelerated, priority and/or manifestly unfounded examinations; - insufficient time given to the determining authority to deliver reliable decisions; - insufficient fairness of procedures. <p>These problems negatively affect the overall efficiency of asylum process. No significant international or national case law impact is expected. The EASO's role in this respect will be also limited since its will not able to influence procedural devises set out in national legislation. This will further cause secondary movements towards more efficient and fair procedures and unequal distributions of applications between MS. This will force MS concerned to procedurally response to these challenges on a unilateral basis bringing more divergences.</p>
1.4 To ensure consistency between different EU instruments dealing with international protection ³²	0	<p>Under the Status Quo, inconsistencies with notably the Qualification Directive and the Dublin Regulation would continue to exist. Indeed, the experience of introducing subsidiary protection at the national level has shown a tendency to reduce numbers of positive decisions on refugee status. Research also demonstrates that a single procedure, if not equipped by additional safeguards, may lead to "watering down the Refugee Convention. Due to the inconsistencies, in at least four Member States the applicant no longer continues to benefit from the earlier granted protection status while awaiting the outcome of the appeal and is considered an asylum seeker. In four countries, the appeal body dealing with the case can actually overturn the first instance decision on the other protection status, with the potential to deny this first status too. Finally, the Asylum Procedures Directive lacks coherence with the Dublin regulation. In accordance with Recital 29, the Directive does not deal with the procedures governed by the Dublin Regulation. This leaves room for ambiguity on whether applicants who are the subject to the Dublin procedure may benefit from the basic principles and guarantees set out in the Directive.</p>

³²

The assessment of this problem as well as relevant policy options are provided in Annex 15

Assessment of the status quo		
Assessment Criteria	Rating (from 0, i.e.no impact, to 5)	Motivation of the rating
		<p>Furthermore, in at least three Member States, persons returned pursuant to the Dublin Regulation have seen the examination of their asylum applications discontinued or their application rejected.</p> <p>Some improvements can be expected as a result of practical cooperation, the exchanges of good practices and peer pressure / lobbying. These are expected to be minor, given that the inconsistencies are systemic flaws between the Directives which are unlikely to be voluntarily addressed by the Member States.</p> <p>In fact, by not making certain improvements to relevant Community law, changes in the Member States can always occur, for example due to national developments (e.g. change of government etc.), resulting in both positive and negative developments in relation to granting protection to applicants and beneficiaries for international protection. Acceding Member States are also left with a high level of discretion.</p> <p>On this basis, it is not expected that the objective will be achieved through the status quo.</p>
1.5 To improve the quality and efficiency of decision-making	0	<p>The Directive provides only few standards relevant to the quality and efficiency of asylum decision making, whilst the level of development of MS' quality and efficiency assurance systems vary significantly leading to the lack of a level playing field. This negatively affects the reliability of decisions preserving a margin for administrative error, on the one hand, and negatively affecting the overall efficiency of the process, on the other. The core procedural notions and devices relevant to the efficiency objective, including the time frame for asylum procedures and procedural approaches to subsequent applications, are currently addressed at Community level in a fragmental and limited way only. The specific problems identified includes:</p> <ul style="list-style-type: none"> - insufficient preparedness of the asylum personnel and different institutional capacity of MS to handle caseloads, - involvement of immigration or border guard authorities in the asylum decision making, - delays in delivering first instance decisions bring a number of negative implications, for example with regard to the execution of return decisions in respect of failed asylum applicants. - inadequate arrangements on subsequent applications. In 2008, subsequent applications made amounted to 35.5%

Assessment of the status quo		
Assessment Criteria	Rating (from 0, i.e.no impact, to 5)	Motivation of the rating
		<p>in Czech Republic, 29.4% in Belgium, 21.6% in Germany, 17.2% in Poland and 12.8% in the Netherlands. The root causes relate, amongst other issues, to the fact Member States have no explicit obligation to consider any new elements or further representations submitted by the applicant before the first instance decision or final decision by appeals bodies is taken and a lack of <i>ex nunc</i> examination of protection needs by appeal bodies. MS response to these challenges unilaterally, since the directive does not secure a common procedural response to this phenomenon.</p> <p>Some improvements can be expected as a result of practical cooperation, the exchanges of good practices and peer pressure / lobbying. These are expected to be minor, given the wide discretion provided for in the Directive. Lengthy procedures and high numbers of subsequent applications will continue to delay examination procedures in the first and second instance. The establishment of the EASO may lead to some ‘voluntary’ improvements of the quality of procedures compared to the present situation, e.g. through the development of a common training programme, guidelines, good practice exchanges and peer learning. The quality initiatives of the UNHCR could also be adopted by a higher number of Member States. This would not lead, however, to systemic and consistent impacts, since changes in the Member States can always occur, for example due to national developments (e.g. change of government etc.), resulting in both positive and negative developments in relation to granting protection to applicants and beneficiaries for international protection. Acceding Member States are also left with a high level of discretion.</p> <p>On this basis, it is not expected that the objective will be achieved through the status quo, which implies a further proliferation of disparate procedures between the Member States.</p>
1.6 To improve access to effective remedy across the EU.	0	<p>Accessibility and quality of remedies vary, as appeal procedures do not in all countries undertake a full and <i>ex nunc</i> assessment by independent and impartial appeal bodies, suspensive effect is not always guaranteed, legal assistance is not systematically made available and time limits for lodging appeals are too short to meet, thus reducing the accessibility of remedies. Significant</p>

Assessment of the status quo		
Assessment Criteria	Rating (from 0, i.e.no impact, to 5)	Motivation of the rating
		variations in shares of appealed decisions (from 30 % in SP, to 49,9 % in Germany), to 87.5 % in FR) and in the rates of successful appeals are indicative in this respect. While some improvements can be expected as a result of the evolving respective case law of the ECJ and of the ECtHR , the impacts will not be either systemic or consistent across the EU.
Feasibility		
Transposition and implementation feasibility	0	The Status quo does not involve any legislative action, i.e. no provisions will need to be transposed.
Financial feasibility	0	The Status quo would not bring about any additional financial costs than those that are currently being incurred or planned.
Political feasibility	0	The Status quo will not require any political decisions to be taken.
Expected impacts		
Financial and economic impacts	0	The economic impacts of maintaining the status quo would vary amongst the Member States depending on the number of applications for international protection, the number of first and second instance decisions, the number of persons employed in decision-making services and the overall costs incurred for national asylum systems. Current inefficiencies and ineffective decision-making would continue to exist.
Social impacts	0	<p>Maintaining the status quo would mean that there would continue to be protection gaps and varying recognition rates, negatively affecting the access to protection and justice.</p> <p>Without clarifying the territorial scope of the Directive, defining the obligations of competent authorities, improvements to basic principles and guarantees and an effective remedy, persons seeking asylum would continue to suffer from reduced access to social protection.</p> <p>In the absence of gender, trauma and age-related arrangements women and persons with special needs</p>

Assessment of the status quo		
Assessment Criteria	Rating (from 0, i.e.no impact, to 5)	Motivation of the rating
		<p>would continue to suffer from unequal treatment and discrimination. This social impact would also continue to be reduced by the inconsistencies between the Asylum acquis in relation to the refugee status, subsidiary protection and as a result of the many possibilities for Member States to derogate from basic principles and guarantees.</p> <p>Without clarifying the territorial scope of the Directive, defining the obligations of the competent authorities, introducing additional guarantees for persons who are physically present in the territory and wish to request international protection, better communication, including the possibility to challenge decisions, better application of the notion of safe country of origin across the EU, taking better account of the special needs of vulnerable and female asylum seekers persons seeking asylum would continue to have reduced chances to obtain protection and the necessary social and healthcare.</p> <p>As a result of continuing differences in the administrative capacity, the use of different authorities dealing with asylum claims and quality issues in relation to decision making and appeal procedures, reduced good governance would persist.</p> <p>The current negative social impacts would vary between the Member States, e.g. because of the current legal and practical situation.</p>
Impacts on fundamental rights		<p>As outlined in the problem assessment, Member States, in certain cases (e.g. the right to effective remedy), seem to currently not achieve fundamental rights standards, which is of great concern. This is mainly due to the derogations allowed for in the current text of the Asylum Procedures Directive and the proliferation of disparate procedures between the Member States. The efficiency and quality of decision-making also varies greatly. It would be necessary for the Member States to take relevant case law into account, which may raise the standards with regard to some fundamental rights, however, this can only be expected to address some of the identified problems.</p> <p>It is therefore likely that not all of the following rights of the Charter of Fundamental Rights of the European Union</p>

Assessment of the status quo		
Assessment Criteria	Rating (from 0, i.e.no impact, to 5)	Motivation of the rating
		<p>would be sufficiently promoted if the status quo is maintained:</p> <p>Article 7: Respect for private and family life</p> <p>Article 18: Right to asylum</p> <p>Article 19: Protection in the event of removal, expulsion or extradition</p> <p>Article 19: Protection in the event of removal, expulsion or extradition</p> <p>Article 23: Equality between men and women</p> <p>Article 24: The rights of the child</p> <p>Article 35: Health care</p> <p>Article 47: Right to an effective remedy and to a fair trial</p>
Impacts on third countries		<p>It is extremely difficult to assess what impacts the status quo could have on third countries; it would only be relevant to assess such impacts in combination with a group of measures in the area of asylum.</p>

17. ANNEX 17 CONTENT OF THE PREFERRED OPTION

Content of the preferred option		
Main issue/objective	Sub-issue (where relevant)	Description of preferred sub-options
1 To ensure that asylum procedures are accessible to persons seeking international protection	NA	<p>Legislative option 3 in combination with practical cooperation</p> <p><u>Option 3:</u> To amend the Directive to enable persons who wish to requesting protection to approach the competent authorities. To this end, to underline that the territorial scope of the Directive covers territorial waters; to require MS to ensure that all persons who intend to make an application for asylum have an effective opportunity to lodge an application as soon as possible; to underline that Member States should have to designate a competent authority responsible for the registration of applications for international protection and ensure that police, border guards, immigration authorities and administration of detention facilities should receive relevant instructions, including the obligation to register or forward to the competent authorities, whereas other authorities should be able to advise a person as to how and where s/he may lodge the application; to fix a reasonable time limit for completing formalities related to the registration of the applications. To require Member States to make information on access procedures as well as counselling and interpretation arrangements available for persons who are present at the border crossing points and immigration detention facilities and wish to apply for asylum; specify that organisations providing legal advice and counselling to asylum seekers should be allowed access to persons present at the border, in the transit zones or in detention facilities in agreement with the competent authorities of Member States. To revise the admissibility grounds, in particular the safe third country notion, with a view to bringing them in line with the Qualification Directive; require MS to provide for arrangements enabling the person concerned to make known her/his views as regards the grounds and information on which the authorities intend to base their decision to consider her/his application inadmissible; delete the European safe third country concept.</p> <p><u>Practical cooperation:</u> map jointly (national) guarantees for persons who are physically present in the</p>

Content of the preferred option		
Main issue/objective	Sub-issue (where relevant)	Description of preferred sub-options
		territory, including at the border, and wish to request international protection; develop EU-wide guidelines building on, for example, the UNHCR 10-point plan and test them at EU external borders; develop further and apply training programmes for border guards to raise awareness and improve skills for detecting requests for international protection, as well as addressing asylum seekers, including those with special needs; provide funding for border monitoring initiatives.
2. To improve fairness of procedures	Improving procedural safeguards	<p>Combination of legislative option 2 and some specific elements of option 3, accompanied by practical cooperation activities</p> <p><u>Option 2:</u> To amend the Directive to enhance procedural principles and guarantees. In particular, to make it clear that personal interviews should be conducted with all asylum applicants with the exception of well founded cases and cases where the applicant is unfit or unable to be interviewed; to delete derogations from the basic principles and guarantees in border procedures; to clarify grounds for removing an applicant from the territory to ensure that extradition treaties are not used to return the applicant to her/his country of origin; to extend guarantees applicable to UNHCR partners to other non-governmental organisations; to extend the right to free legal assistance to asylum seekers, who lack financial resources, in procedures at first instance.</p> <p>Option 3: To require MS (i) to allow a legal advisor to be present in the personal interview, (ii) to make a transcript of the interview and give the opportunity to the applicant to comment on its content at the end of the interview; (iii) to allow applicants to have access to the transcript before a decision is taken.</p> <p><u>Practical cooperation:</u> map and promote good practices in relation to personal interviews, legal assistance and interpretation services; provide support to MS through the Interpreters' pool and allocate funding for</p>

Content of the preferred option		
Main issue/objective	Sub-issue (where relevant)	Description of preferred sub-options
		legal assistance.
	Setting procedural guarantees for applicant with special needs	<p>Legislative option 3 in combination with practical cooperation</p> <p><u>Option 3:</u> To amend the Directive to introduce the notion of applicants with special needs to be accompanied by additional guarantees enabling the applicants to access asylum procedures and present the elements of their application for international protection as completely as possible and with all available evidence. In particular, to define the qualifications of the guardian, and to specify that the guardian shall have the right to apply for asylum on behalf of an unaccompanied minor, to delete the current possibility to refrain from appointing a representative where the unaccompanied minor is 16 years old or older and to provide for free legal assistance for unaccompanied minors throughout the asylum process, to introduce an obligation of Member States to inform each adult in private of her/his right to make a separate application for international protection and to give dependent adults the opportunity of presenting their individual circumstances to the personnel of the determining authority, to provide for the right of a child to lodge an application for international protection subject to the maturity test, to define the role of and procedure for obtaining medico-legal reports to document signs of past persecution or serious harm, to provide survivors of torture with necessary time to prepare for a personal interview on the substance of the application and to introduce gender and age sensitive requirements for interviewing asylum applicants, such as the obligation to provide an interpreter of the same sex and the requirement to conduct interviews with minors in a child friendly manner. In addition, to clarify in recital 9 that international obligations as regards the rights of women and vulnerable groups should be duly taken into account when applying the Directive and to</p>

Content of the preferred option		
Main issue/objective	Sub-issue (where relevant)	Description of preferred sub-options
		<p>exempt survivors of torture, persons with mental disabilities and unaccompanied minors from accelerated procedures which are based on the notion of manifestly unfounded applications. The latter category, unaccompanied minors, is also exempted from border procedures and the safe third country notion. This option also provides for including gender, trauma and age related issues in the training programmes for personnel of the responsible authorities.</p> <p><u>Practical cooperation</u>: map national policies and practices on procedural arrangements for applicants with special needs; provide Community funding for national and cross border initiatives to develop gender, age and trauma sensitive procedures and evaluation mechanisms; develop EU wide gender, age and trauma related guidelines and provide support for training (through the EASO); promote gender and age sensitive COI.</p>
3.To harmonise procedural notions	Approximating accelerated, priority and manifestly unfounded procedures	<p>Legislative option 2</p> <p><u>Option 2</u>: To clarify the notion of manifestly unfounded applications and to provide for a limited and exhaustive list of grounds for an accelerated examination; to oblige Member States to ensure access to the improved procedural safeguards, including a personal interview, for all applicants who are the subject to accelerated procedures; to give the determining authority the necessary time to assess the elements of the application; to amend recital 11 emphasising that accelerated asylum procedures should be the exception; to leave discretion to Member States to provide for suspensive effect of appeals on a case by case basis.</p>
	Consolidating the notion of safe countries of origin	<p>Legislative option 2 in combination with practical cooperation</p> <p><u>Option 2</u>: Under this option, both the notion of a common list of safe countries of origin and derogations from the material requirements for the designation would be deleted. This would leave the designation of safe countries of origin to the discretion of Member States, subject to the provisions of the Directive. No</p>

Content of the preferred option		
Main issue/objective	Sub-issue (where relevant)	Description of preferred sub-options
		<p>derogation from the material requirements would be allowed. Member States would further be obliged to ensure a follow up review of the situation in third countries designated as safe countries of origin on a regular basis and to give the applicant the possibility of substantiating her/his claim.</p> <p><u>Practical cooperation:</u> map country of origin information (COI) used for the national designation; enhance an exchange of information on the use of the notion within the framework of the EASO and EURASIL and make services of the common COI portal available to MS. .</p>
4. To improve the quality and efficiency of procedures	N/A	<p>Legislative option 2</p> <ul style="list-style-type: none"> • <u>Option 2:</u> To reduce current derogations from the principle of a single determining authority, and specify that a substantive interview should always be conducted by the personnel of the determining authority; to introduce minimum requirements for the content of the interview; to require the determining authority (i) to dispose sufficient numbers of specialised in-house personnel who have the necessary skills and expertise to undertake their tasks and (ii) to make external expertise on specific issues available to case owners; to underline that the personnel of the determining authority should receive initial and follow up training, and specify the minimum requirements for its content. To lay down a reasonable time limit (e.g. 6 months) for taking first instance decisions on the substance of the application; to require MS to take into account new elements or representations before a final decision is taken; to specify that the subsequent application procedures should not apply to persons whose applications have been rejected as implicitly withdrawn; to explicitly merge the subsequent application procedures with admissibility procedures and allow MS to remove an applicant from the territory in cases of multiple subsequent applications frustrating the enforcement of a return decision. <p><u>Practical cooperation:</u> organise and support training for asylum personnel (through EASO); make the EAC fully operational and accessible; provide funding and institutional support (through EASO) to quality initiatives, based on UNHCR pilots; map and promote good practices in making procedures more efficient, such as the UK Case Owner Model; provide expert support and emergency funding to MS under pressures.</p>

Content of the preferred option		
Main issue/objective	Sub-issue (where relevant)	Description of preferred sub-options
5. To enhance access to effective remedy	N/A	<p>Legislative option 2</p> <p><u>Option 2:</u> To amend the Directive to address the elements of effective remedy, as developed by the ECJ and the ECtHR and provided for in the Charter, in asylum appeal procedures. In particular, to underline that the scope of review should include both facts and issues of law at least in procedures before a first level court or tribunal, and to specify that the review should be based on ex nunc examination of protection needs in respect of both sets of substantive criteria provided for in the Qualification Directive; to provide for automatic suspensive effect of appeals against decisions on (a) the substance of applications with the exception of manifestly unfounded applications, and (b) inadmissibility decisions and decisions taken in border procedures with the exception of identical subsequent applications and decisions taken pursuant to the Dublin Regulation. Where suspensive effect is not attached to appeals, interim measures may be granted by courts on a case by case basis. To require MS to make the materials used as a basis for a decision of the determining authority accessible to courts or tribunals in all cases; to require MS to set out reasonable time limits for lodging appeals.</p>
6. To ensure coherence between different EU instruments dealing with international protection	NA	<p>Legislative option 2</p> <p><u>Option 2:</u> To amend the Directive to address the key elements of a single asylum procedure at the Community level. These would include a mandatory sequence of an examination of protection needs, the principle of a single determining authority, and the requirements for decision making at first instance and access to effective remedy in relation to both sets of substantive criteria provided for in the Qualification Directive. Applicants whose protection needs under the Refugee Convention are rejected whilst subsidiary protection is granted would be entitled to appeal against the decision in relation to refugee status while benefiting from subsidiary protection status pending the outcomes of the appeal procedure. In addition, to expand the Directive's provisions on the withdrawal of refugee status to cases of withdrawal of subsidiary protection, and to underline that the Directive covers persons who are the subject to the Dublin procedures</p>

Content of the preferred option		
Main issue/objective	Sub-issue (where relevant)	Description of preferred sub-options
		and that the notion of implicit withdrawal of the application does not apply to persons transferred to the responsible Member State pursuant to the Dublin Regulation.

18. ANNEX 18 ASSESSMENT OF PREFERRED POLICY OPTION

Preferred policy option		
Assessment Criteria	Rating of relevance objectives from 0, i.e. no impact, to 5; other objectives -, 0, or +	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
Relevance		
1.1. To ensure that asylum procedures are accessible to persons seeking international protection	4	<p>The preferred option includes several elements that would bring about positive impacts in terms of removing obstacles to requesting international protection. This ultimately contributes to better access to international protection, by reducing the risk that persons are diverted away from the EU external borders and denied access without their protection needs being verified. The preferred option would also make the procedure for lodging an application more transparent and precise across the Union, since it would clarify the responsibility of competent authorities in an initial stage of the asylum process.</p> <p>More specifically, the preferred option would enable persons who wish to request protection to approach the competent authorities to a greater extent than at present by eliminating physical and formal obstacles. In particular, the option would:</p> <p>Widen the scope of the Directive to also cover territorial waters, which would strengthen protection against refoulement at the sea border and remove at least some of the physical obstacles to accessing the asylum procedure;</p> <p>Improve the access to information concerning the application process (at border crossing points and transit zones of airports or sea ports) by providing for communicative guarantees and institutional arrangements, which would enable persons wishing to apply for asylum to articulate their request for protection; and,</p> <p>Provide an effective opportunity to lodge an application as soon as possible, by clarifying the obligations of Member States.</p> <p>Reduce risk of incorrect application of admissibility grounds, thus ensuring that admissible claims are processed without delay while persons who do not meet</p>

Preferred policy option		
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		<p>admissibility criteria are properly identified and, where applicable, alternative solutions are implemented. The latter applies to the safe country of asylum and safe third country cases.</p> <p>With regard to points (ii) and (iii), the option would, for example, introduce obligations for competent authorities of Member States to register applications for international protection; ensure that staff of relevant authorities, including police, border guards and administration of detention facilities are provided with clear instructions on how to deal with these cases and the need to forward the application to competent authorities; clarify Member States' obligations in joint border surveillance operations, ensure the availability of interpretation arrangements; access of organisations providing legal advice and counselling to asylum seekers at borders, transit zones and detention facilities; and, registration of applications with a reasonable time limit (e.g. 72 hours) which will ensure that the examination of the claim can start as soon as possible. It would also specify that persons who have indicated that they want to make an application should be able to stay on the territory. Practical cooperation activities will further help to improve the reception of persons at the external border and the screening of people to ensure that <i>de facto</i> asylum seekers are enabled to make an application for asylum.</p> <p>Impacts will vary between the Member States depending on their present situation e.g. with regard to whether the country has external border or is involved in joint operations, whether border procedures are in place and if the safe third country concept is being used.</p>
1.2 To improve fairness of asylum process	4	<p>The Directive in its present form leads to (a risk of) administrative error and arbitrariness in asylum procedures, which has negative impacts on (a) asylum seekers' (equal) access to international protection and (b) the overall efficiency of asylum process. The preferred option would significantly reduce (the risk of) these problems compared to the current situation, by (i) limiting the possibilities for Member States to derogate</p>

Preferred policy option		
Assessment Criteria	Rating of relevance objectives from 0, i.e. no impact, to 5; other objectives -, 0, or +	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
		<p>from the basic procedural guarantees, with specific attention to persons with special needs; (ii) ensuring adequate procedural guarantees (again, also considering persons with special needs); (iii) improving the assessments in accelerated, manifestly unfounded and safe country of origin procedures; (iv) improving access for applicants to effective judicial remedy where procedures are challenged, (v) improving applicants' compliance with applicable procedural requirements.</p> <p>More specifically, the preferred option would bring about the following positive impacts for applicants:</p> <p>Being able to better articulate and support the elements of their application.</p> <p>The possibility to omit a personal interview would be deleted (which is currently possible in 10 Member States: CY, EE, EL, MT, PL, PT, FR, SL, SP, and UK). Free legal assistance would be available for applicants at first instance for those with limited resources, and the role of non-governmental organisations would be strengthened, leading to that the availability of independent counselling for asylum seekers would be improved in all stages of the asylum process. The preferred option would have particular benefits for persons with special needs, including minors (appointment of qualified guardian, who can apply for asylum on behalf of unaccompanied minors; interviews in a child- friendly manner), traumatised asylum seekers (role and procedure of medico- legal reports; necessary time to prepare for the personal interview) and women (information on the right to make a separate application for international protection; same sex interviewer, interpreter etc.).</p> <p>Better examination of protection needs.</p> <p><i>Better information on individual circumstances.</i> The deletion of the possibility to omit a personal interview</p>

Preferred policy option		
Assessment Criteria	Rating of relevance objectives from 0, i.e. no impact, to 5; other objectives -, 0, or +	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
		<p>would be crucial for assessing the individual circumstances of the applicant, not the least when applying the safe country of origin notion, and for drawing a conclusion as to whether the applicant's statements are credible. Furthermore, the concept of safe country of origin would need to be applied consistently in all Member States who choose to use this notion, without derogations from the substantive criteria, but with regular reviews of the situation in the third countries designated as safe countries. Finally, by e.g. defining the role and status of medico-legal reports and laying down adequate conditions for women, traumatised asylum seekers and children to disclose the circumstances they experienced in their country of origin, the option also contributes a better information basis for the determining authority with regard to asylum seekers with special needs.</p> <p><i>Limiting the use of accelerated, and, for asylum seekers with special needs, border procedures.</i> Accelerated procedures would be limited to clearly defined cases ('manifestly unfounded applications'), a reasonable time limit for an expedite examination be established and access to the improved procedural guarantees, including a personal interview, ensured. Furthermore, certain categories of applicants such as unaccompanied minors, victims of torture and persons with mental disabilities would be exempted from accelerated and/or border procedures.</p> <p><u>The principle of non-refoulement in asylum procedures would be better respected</u> through the elimination of a possibility to extradite an asylum applicant to her/his country of origin.</p> <p>The option would bring positive impacts on the overall efficiency of asylum process. In particular, it would:</p> <ul style="list-style-type: none"> (i) allow the asylum authorities to take robust decisions, based on complete and properly established factual circumstances of the claim, improve defendability of negative decisions and reduce risk of their annulment on procedural grounds by appeal bodies; (ii) improve transparency of procedures and promote partnership between asylum authorities and other actors of asylum process,

Preferred policy option		
Assessment Criteria	Rating of relevance objectives from 0, i.e. no impact, to 5; other objectives -, 0, or +	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
		<p>such as refugee assisting NGOs and legal service providers.</p> <p>The extent to which positive impacts will result from the option in the individual Member States depends on the present situation, i.e. to what extent the Member States already have similar provisions in place. In particular for (certain) Member States, the preferred option would contribute to higher quality decision making and prevent unnecessary litigation before appeal bodies. The provisions would also reduce the divergence between asylum procedures across the EU, and asylum procedures would become more transparent (e.g. by strengthening the role of non-governmental organisations).</p>
1.3. To harmonise procedural notions with a view to facilitating reliable determinations across the EU	4,5	<p>The preferred option would imply significant progress towards a more consistent application of the key procedural notions to the extent that it would clarify and better circumscribe definitions of the manifestly unfounded applications, accelerated procedures, prioritised procedures and safe countries of origin, and eliminate derogations. The directive's notions and devices will become less susceptible to administrative error, while providing asylum authorities with necessary procedural tools to prevent / respond to abuse and process quickly clearly unfounded or less complex applications. In particular, it would:</p> <ul style="list-style-type: none"> -give the asylum authorities necessary time to conduct a meaningful examination of the application and raise the overall fairness of accelerated procedures; -limit the use of accelerated procedures to manifestly unfounded or abusive cases while enabling MS to prioritise other cases, such as cases of applicants with special needs or well founded cases; -link the notion of manifestly unfounded applications with the strength of the claim in light of the Qualification Directive; -ensure the consistent application of the safe country of origin notion, based on common material requirements, regular reviews of the situation in countries designated as safe and procedural guarantees equally applied in all MS opted for this device.
1.4 To ensure consistency between different EU instruments dealing with international protection	4	<p>The preferred option would increase consistency with notably the Qualification Directive and the Dublin Regulation. This would be achieved by harmonising references to refugee status and subsidiary protection; by introducing common rules on a single procedure; and, by emphasising that the Directive covers persons subject to the Dublin procedures, and, that the notion of implicit withdrawal of the application does not apply to persons transferred to the responsible Member State pursuant to the Dublin Regulation.</p> <p>Ultimately, the preferred option would reduce the risk of rejecting protection claims of applicants who (i) do not raise grounds</p>

Preferred policy option		
Assessment Criteria	Rating of relevance objectives from 0, i.e. no impact, to 5; other objectives -, 0, or +	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
		<p>relevant to the Geneva Convention, but who would qualify for subsidiary protection, and (ii) who are subject to the Dublin procedures. Hence, asylum applicants subject to the Dublin procedures would enjoy full access to Directive's principles and guarantees, whilst persons transferred to the responsible Member States could effectively re-access the asylum process.</p> <p>The option would also decrease divergences between EU Member States, as it would establish key elements of the single procedure at EU level, including a mandatory sequence of an examination of protection needs, the principle of a single determining authority, requirements for decision making at first instance and access to effective remedy in relation to both sets of substantive criteria provided for in the Qualification Directive. The option would thereby promote the frontloading of resources, a comprehensive and efficient processing of applications, and contribute to identify genuine refugees.</p>
1.5. To improve the quality and efficiency of decision-making	4	<p>The preferred option would address several problems that decrease the quality and efficiency of decision-making, including causes of subsequent applications. The two issues are interlinked. The enhanced quality would be instrumental in achieving better efficiency. The quality would improve by</p> <ul style="list-style-type: none"> - introducing the principle of a single determining authority; - strengthening the administrative capacity to deal with asylum applications through the inclusion of provisions to provide personnel with necessary skills and expertise; - enhanced quality of interviews. <p>This would be reinforced through practical cooperation.</p> <p>Efficiency problems are further caused by the possibilities to derogate from the basic principles and guarantees, accelerated procedures, a lack of <i>ex nunc</i> examination of protection needs by courts or tribunals, the lodging of applications on behalf of dependent adults and minors (the personal interview may be omitted in these cases), unreasonable time limits for appeal and wide scope for diverse procedural approaches to subsequent applications in the Member States. In this regard, the preferred option would also contribute to eliminating the root causes of subsequent asylum applications and to consolidating the Directive's provisions dealing with subsequent applications, thus reducing disparate procedural arrangements in Member States, for example by encouraging the applicants and the determining authority to establish and assess all relevant elements of the application before a decision on the substance is taken at first instance.</p> <p><u>The improved efficiency and quality would have important</u></p>

Preferred policy option		
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		<p>positive impacts on the asylum acquis as a whole. In particular, it would:</p> <p>reduce MS 'reception costs, since (i) applications will be generally examined within 6 months, and (ii) more cases will result in a final decision already in the first instance;</p> <p>lead to quicker access to benefits set out in the Qualification Directive for genuine refugees and persons in need of subsidiary protection;</p> <p>enable MS to better identify cases of unfounded and abusive applications, including those based on false identity or nationality;</p> <p>improve credibility of asylum procedures leading to better public perception of asylum;</p> <p>support MS' efforts to remove from the territory failed asylum seekers, since robust decisions will be taken quicker;</p> <p>reduce possibilities for applicants with unfounded claims to benefit, for a long period of time, from reception conditions.</p>
1.6. To improve access to effective remedy across the EU.	4	<p>The preferred option will re-enforce MS' asylum appeal systems by improving the accessibility and quality of an effective remedy against negative first instance decisions before a court or tribunal. This will result in particular from:</p> <ul style="list-style-type: none"> - the requirement to set up reasonable time limits for lodging appeals and laying down the principle of suspensive effect of appeals; - the availability of legal assistance already in the first instance procedures; - the requirement for a court or tribunal to conduct an <i>ex nunc</i> and full review of both facts and points of law; - reinforcing the principle of equality of arms in asylum appeal proceedings.
Feasibility		
Transposition and implementation feasibility	3,5	<p>Key elements of the preferred option that promote a consistent transposition include:</p> <p>Removing derogations; and,</p> <p>Establishing more narrow definitions.</p>

Preferred policy option		
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		<p>As outlined above, the Directive in its present form leads to (a risk of) administrative error and lacks the potential to make procedures efficient. The preferred option would significantly reduce (the risk of) these problems compared to the current situation, by (i) limiting the possibilities for Member States to derogate from the basic procedural guarantees, with specific attention to persons with special needs; and, (ii) ensuring adequate procedural guarantees (again, also considering persons with special needs); (iii) improving the assessment of safety of third countries of origin; and, (iv) improving access for applicants to effective judicial remedy where procedures are challenged.</p> <p>Several of the elements that form part of the preferred option <i>oblige</i> Member States to take certain action or provide certain rights (which increases the likelihood of consistent transposition of high standards)³³. Indeed, the option would decrease divergences between EU Member States, as it would establish key elements of the single procedure at EU level, including a mandatory sequence of an examination of protection needs, the principle of a single determining authority, requirements for decision making at first instance and access to effective judicial remedy in relation to both sets of substantive criteria provided for in the Qualification Directive.</p> <p>However, a few provisions include terminology that may be interpreted in different ways in the Member States (e.g. provisions on training, the notion of persons with special needs, the notion of safe country of origin etc.). In many of these cases, the preferred option foresees practical cooperation in order to achieve a common understanding.</p> <p>In terms of implementation, inconsistencies could arise in particular with regard to the following elements of the preferred option:</p> <ul style="list-style-type: none"> • Type and amount of initial and ongoing training provided to various types of staff (police, border guards, and staff of the determining authority, e.g. case workers, interviewers etc.) and

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In particular, the preferred option would delete the possibility to omit a personal interview, and free legal assistance would need to be made available for applicants with limited resources at first instance. The option would also, for example, introduce obligations for the Member States to designate a competent authority for registration of applications for international protection; ensure that staff of relevant authorities, including police and border guards, are provided with clear instructions on how to deal with these cases and the need to forward the application to competent authorities; clarify Member States' obligations in joint border surveillance operations, ensure provision of interpretation services; access of organisations providing legal advice and counselling to asylum seekers at borders, transit zones and detention facilities; and, registration of applications with a reasonable time limit (e.g. 48 hours) which will ensure that the examination of the claim can start as soon as possible. It would also specify that persons who have indicated that they want to make an application should be able to stay on the territory.

Preferred policy option		
Assessment Criteria	Rating of relevance objectives from 0, i.e. no impact, to 5; other objectives -, 0, or +	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
		<p>the quality of this training.</p> <ul style="list-style-type: none"> Types of instructions provided to police, border guards and staff of detention facilities concerning how to ensure that all persons who wishes to apply for international protection receive information on how to do this, and monitoring of the extent to which these instructions are followed. Provision of interpretation services to ensure a necessary level of communication between the person concerned and border guards and police authorities. Determination of who has insufficient financial resources to be able to pay for legal assistance at first instance. To what degree it is ensured that communication during the interview takes place in a language that the asylum seeker understands (e.g. through face to face interpretation or remote interpretation or, as has been reported happens at present, via a summary of what is being said and not full interpretation). Provision of information to applicants on their right to comment on the report of the personal interview. Interpretation of the notion of ‘persons with special needs’, and the identification of these applicants. Time given to survivors of torture to prepare for the personal interview. Type of gender and age-sensitive requirements to interview asylum seekers, and how it is ensured that these are followed. ‘Necessary’ time taken for the determining authority to assess the elements of the application. Types of cases where accelerated procedures are used, and time taken to carry out accelerated procedures. Time taken to carry out ‘regular’ procedures. Use of the notion of ‘safe country of origin’ and ‘regular’ reviews of whether these countries are still to be considered as safe. ‘protected from external intervention or influence’. Determination and use of the possibility to prolong the time to take a decision from 6 to 9 months in ‘individual cases’.

Preferred policy option		
Assessment Criteria	Rating of relevance objectives from 0, i.e. no impact, to 5; other objectives -, 0, or +	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
		<ul style="list-style-type: none"> The interpretation of what ‘sufficient number of staff of the determining authority who have the necessary skills and expertise to be able to undertake their tasks’ means in practice.
Financial feasibility	3,5	<p>Some of the elements that form part of the preferred option could have important costs implications in some countries, depending on e.g. the existing support and measures in place, numbers/proportion of beneficiaries of international protection etc. Elements that could require substantial financial inputs by some countries resulting from, for example:</p> <p>Costs for providing free legal assistance at first instance to applicants who lack financial resources to stand for such themselves. Similar costs levels per capita were reported by the Netherlands (approximately 750 euro) and Sweden (in 2008, costs were around 900 euro). Lithuania, however, reported much lower costs (95 euro per capita). Due to the significant variation in costs and a limited number of Member States able to provide them to the Commission, it has not been deemed appropriate to estimate the average costs. As no information on the proportion of asylum seekers who may lack financial resources has been obtained, overall costs for the Member States have also not been possible to estimate. Despite the lack of data, it is however clear that this provision could, at least in the short term, imply significant costs for several Member States. However, when assessing the financial feasibility of the relevant provision, resulting benefits must also be taken into account. Indeed, in the long term, costs for free legal assistance at first instance may be outweighed as ‘frontloading’ (which the provision of legal aid at first instance would contribute to) is economically advantageous. Whilst requiring substantial initial investments for Member States who currently do not provide for free legal assistance at first instance and other new elements that promote frontloading³⁴, there is evidence that frontloading leads to higher recognition rates at the first instance and lower numbers of applications that have to be treated in appeal procedures. In fact, several Member States who do not, for example, provide legal assistance or clear communication in the first instance, have at present extremely low first instance decision rates (as low as 1% against a Community average of 21% in 2007), a high proportion of which is subsequently challenged. Indeed, according to Member States’ experiences, i.e. Belgium and Netherlands, provision of free legal assistance at first instance contributes to quality decision making and prevents unnecessary</p>

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The provision of good quality information and feedback opportunities from the very start and throughout the procedure; Limitations to the extent Member States can treat applications through accelerated procedures and derogate from basic principles and guarantees, such as omitting personal interviews; streamlining the examination process and posting sufficient numbers of qualified personnel, availability of in-house and external expertise, placing addition focus on the special needs of woman and vulnerable applicants; and, Removing some of the root causes of subsequent applications.

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		<p>litigation before appeal bodies. Thus, on balance, some costs would be absorbed or even outweighed.³⁵ The UK New Asylum Model provides solid evidence of this. While the costs of the model in 2007 – 2008 was £ 176 million, of which £80 million (45 %) was accounted for by accommodation and welfare support (UK received 23 000 applications in 2007), a separate process has been established to complete, by 2011, a backlog of some 400,000 – 450,000 cases unresolved before the introduction of the new asylum model. The UK Border Agency estimates that this backlog cost nearly £ 600 million in 2007-08, of which £ 430 million (72 per cent) was accounted for by accommodation and welfare support³⁶.</p> <ul style="list-style-type: none"> • Increased reception costs for enabling people to stay in the country as for example their appeal against a decision has suspensive effect or because they cannot simply be denied entry at the border. • Increased costs for support services and products, including the provision of information, interpretation and translation services, legal assistance, guardianship and medico-legal examinations and reporting. • Increased costs for staff involved in decision-making due to a reduction in the proportion of applications that can be treated through accelerated or border procedures, higher investments in the training of staff responsible for registering and processing applications and increased time inputs required for personal interviews and reporting on the latter. • Increased costs for staff constituting the first contact point for people in border zones and other entry points, as these would require additional training and guidance. <p>Investment at EU level would also be required to support practical cooperation, for example through the European Asylum Support Office, relating to identification of good practices, the sharing of learning, the preparation of guidance and various other activities. In addition, funding could be allocated, for example through the</p>

³⁵ In addition to increasing the effectiveness of the asylum procedure, frontloading also ensures a fair treatment of applications and allows for their full scrutiny. Applicants not in need of international protection can be easier returned and do not spend years awaiting decisions and appeals. Applicants in need of international protection have quicker clarity on their status and can start their integration into the new society. Thus, the provision of free legal assistance at first instance may not only be financially advantageous as it may prevent appeal procedures and related costs (e.g. welfare provision to applicants waiting), but, importantly, from a human rights perspective, it is likely to reduce the numbers of persons who need to wait for a decision for years.

³⁶ Management of asylum applications by the UK Border agency. Report by the Controller and Auditor General. Op.cit., page 4

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		<p>European Refugee Fund, to help some Member States in developing any new services that could be required as a result of the amendments to the Directive.</p> <p>Some Member States might therefore question the financial feasibility of the proposals and use it as an argument in any further negotiations. However, as further elaborated under the section discussing the financial and economic impacts, many costs could be largely off-set by financial gains on the longer term. Importantly, the preferred policy option is largely based on practices available in a number of Member States (e.g. legal assistance at first instance), which is an important indication of its feasibility.</p>
Political feasibility	3,5	<p>Certain legislative elements of the preferred option may invite objections from some Member States, which e.g. would prefer retaining a higher level of flexibility in the application of the Directive.</p> <p>Based on the consultation, MS are in principle in favour of considering the following elements: more clear rules on access to procedures, common rules on a single procedure, adjustment of the safe third country notion, improved arrangements for personal interviews, a revised list of grounds of accelerated procedures, more effective provisions for dealing with subsequent applications, common training requirements, and the scope of judicial review.</p> <p>Examples of elements which are likely to be more controversial can be expected include:</p> <ul style="list-style-type: none"> • Member States that at present do not provide for relevant guarantees, which would be compulsory, are likely to object against the removal of derogations. • With regard to the measures to improve the equal access of women and vulnerable asylum seekers, Member States have some practical concerns, for example, how to assess if a person is a minor, and are also concerned about the definition of special needs becoming too broad. Preliminary consultations with government experts' indicate that some Member States may be reluctant to explicitly exempt applicants with special needs, as a group, from accelerated and/or border procedures. • Whilst most countries agreed on the need to reduce the number of grounds included in Article 23(4) concerning the use of accelerated and prioritised procedures, by either merging or deleting some of these grounds, they are unlikely to agree with limiting acceleration of the procedure to one ground only, namely the manifestly unfounded cases. Furthermore, reducing the possibilities for Member States to use accelerated procedures could lead to objections from those Member States that currently use this possibility quite frequently (e.g. LV, PL,

Preferred policy option		
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		<p>SK) and for which the option would lead to increased costs.</p> <p>Introduction of free legal assistance at first instance to asylum seekers who lack financial resources to stand for this cost themselves. Countries that may object on the basis of comments made in the APD experts meeting in January 2009 include France, Italy, Cyprus and Latvia.</p> <ul style="list-style-type: none"> • Introduction of the possibility of appeals against granting of subsidiary protection; • Some Member States may object to the automatic suspensive effect (of certain appeal procedures), because they prefer to grant this on a case-by-case basis. • The provision of interpretation services as well as advice to persons in entry points. There was overall consensus among Member States that the provision of such support could lead to an increase in bogus claims as any irregular migrant could feel encouraged to apply for asylum. • Member States are very much in favour of practical cooperation, e.g. on the EAC.
Expected impacts		
Social impacts	4.5	<p>The preferred option would have the following social effects (the elements of the preferred option that in particular contribute to the effects are included in brackets):</p> <ul style="list-style-type: none"> • <u>Increased access to protection and justice</u> as a lower number of persons may be rejected because of e.g. increased consistency between relevant instruments (harmonisation of references to refugee status and subsidiary protection; introduction common rules on a single procedure; inclusion of Dublin cases), the elimination of derogations from basic principles and guarantees (e.g. by omitting the possibility to conduct a personal interview) and improved guarantees (including access to free legal assistance at first instance, improved communication of information to asylum seekers, ensuring guarantees in accelerated procedures, reasonable time limits, taking better account of the special needs of vulnerable and female asylum seekers etc.). Also the improved asylum process, managed by a single authority with staff with necessary skills and expertise and a better application of the notion of safe country of origin across the EU would have positive effects. • <u>Increased access to social protection</u> as persons seeking asylum would have increased chances of obtaining protection and the

Preferred policy option		
Assessment Criteria	Rating of relevance objectives from 0, i.e. no impact, to 5; other objectives -, 0, or +	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
		<p>necessary social and healthcare (clarifying the territorial scope of the Directive, defining the obligations of the competent authorities, introducing additional guarantees for persons who are physically present in the territory and wish to request international protection, better communication, including the possibility to challenge decisions etc.), because of the elimination of derogations from basic principles and guarantees (e.g. omitting the possibility to conduct a personal interview) and improved guarantees (access to free legal assistance at first instance, improved communication of information to asylum seekers, automatic suspensive effect in case of appeals, taking better account of the special needs of vulnerable and female asylum seekers). Positive effects would also result from the introduction of a single determining body, with strengthened administrative capacity to deal with asylum applications personnel with necessary skills and expertise.</p> <ul style="list-style-type: none"> • <u>Increased equality/non-discrimination</u>: in particular the elements that lead to increased consistency between different groups of applicants (harmonisation of references to refugee status and subsidiary protection; introduction of common rules on a single procedure; inclusion of Dublin cases) and the provisions that give increased access to protection (clarifying the territorial scope of the Directive, defining the obligations of the competent authorities, introducing additional guarantees for persons who are physically present in the territory and wish to request international protection, better communication, including the possibility to challenge decisions, taking better account of the special needs of vulnerable and female asylum seekers) would achieve positive effects. However, also access to effective remedy and the elimination of derogations from basic principles and guarantees (e.g. omitting the possibility to conduct a personal interview) as well as improved guarantees (access to free legal assistance at first instance, improved communication of information to asylum seekers, taking better account of the special needs of vulnerable and female asylum seekers) are key components of the preferred option that will enhance equality and non-discrimination. • <u>Better public health</u>: persons seeking asylum would have increased chances of obtaining protection and the necessary social and healthcare (clarifying the territorial scope of the Directive, defining the obligations of the competent authorities, introducing additional guarantees for persons who are physically present in the territory and wish to request international protection, better communication, including the possibility to challenge decisions, better application of the notion of safe country of origin across the EU, taking better account of the special needs of vulnerable and female asylum seekers) and e.g. the elimination of the possibility to omit a personal interview would lead to a better information basis for assessing the applicant's individual circumstances (for

Preferred policy option		
Assessment Criteria	Rating of relevance objectives from 0, i.e. no impact, to 5; other objectives -, 0, or +	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
		<p>example, when applying the safe country of origin notion, and for drawing a conclusion as to whether the applicant's statements are credible).</p> <ul style="list-style-type: none"> • <u>Good governance</u>: would be better achieved within Member States through the introduction of a single determining authority and strengthening of the administrative capacity to deal with asylum applications by providing personnel with necessary skills and expertise (including border guards). Good governance would be also improved through increased transparency of access and examination procedures, promoting a specialised and well prepared determining authority, strengthening the quality of administrative decision making and streamlining examination procedures. Increased preparedness of asylum personnel and better scrutiny of cases will be instrumental to prevent abuse of procedures. Improved access to effective remedy would lead to better supervision of governmental decisions and practices in the area of asylum by independent judiciary. <p>The benefits of the preferred option would vary between the Member States, e.g. because of the current legal and practical situation.</p>
Impacts on fundamental rights	4.5	<p>The preferred option would promote the following rights of the Charter of Fundamental Rights of the European Union (the elements of the preferred option that would particularly enhance each of the rights are included in brackets):</p> <ul style="list-style-type: none"> • <u>Article 18: Right to asylum</u> (Harmonisation of references to refugee status and subsidiary protection; introduction of common rules on a single procedure; better protection against refoulement; removing derogations from basic principles and guarantees and improve guarantees; access to effective remedy; limitations to using the accelerated procedure; improvements of the substantive criteria for defining third countries of origin as safe; ensuring equal access to protection for persons with special needs) • <u>Article 19: Protection in the event of removal, expulsion or extradition</u> (Harmonisation of references to refugee status and subsidiary protection; introduction of common rules on a single procedure; better protection against refoulement; removing derogations from basic principles and guarantees and improve guarantees; access to effective remedy; limitations to using the accelerated procedure; improvements of the substantive criteria for defining third countries of origin as safe; ensuring equal access to protection for persons with special needs) • <u>Article 23: Equality between men and women</u> (ensuring equal access to protection for persons with special needs)

Preferred policy option		
Assessment Criteria	Rating of relevance objectives from 0, i.e. no impact, to 5; other objectives -, 0, or +	Motivation of the rating and aspects of the policy sub-option necessary to achieve the impact
		<ul style="list-style-type: none"> • <u>Article 24: The rights of the child</u> (ensuring equal access to protection for persons with special needs) • <u>Article 35: Health care</u> (ensuring equal access to protection for persons with special needs) • <u>Article 47: Right to an effective remedy and to a fair trial</u> (Harmonisation of references to refugee status and subsidiary protection; introduction of common rules on a single procedure; access to effective remedy; full and <i>ex nunc</i> review of first instance decisions, improvements of the substantive criteria for defining third countries of origin as safe; ensuring equal access to protection for persons with special needs).
Impacts on third countries	-	<p>It is extremely difficult to assess what impacts the proposed provisions and practical cooperation measures could have on third countries, e.g. in terms of reduced rejections and persons returned, increased asylum applications, remittances etc. Moreover, it would only be relevant to assess such impacts in combination with a group of measures in the area of asylum. However, overall, the combination of provisions proposed as part of the preferred option can be expected to increase the access to procedures for persons seeking international protection. It is worth recalling, however, that the asylum <i>acquis</i> as such has an export value as a number of its notions have been incorporated in the asylum systems of third countries. Also, other industrialized countries (i.e. Australia, Canada and the USA) are closely following the developments in the EU asylum policy and practices. Importantly, the Asylum Procedures Directive is the only binding supranational set of rules governing asylum procedures in the world. In this respect, the preferred policy option would definitely contribute to setting advanced procedural standards in third countries.</p>

19. ANNEX 19 A COMPARATIVE ANALYSIS OF INTERNATIONAL STANDARDS AND THE KEY PRINCIPAL ELEMENTS OF THE PREFERRED OPTION

International standards / General Principles of Community Law	Authoritative interpretation by international courts and organisations	Insufficient and vague standards of the Directive	Envisaged standards
<p>The principle of <i>non-refoulement</i> (Art. 33 of the Geneva Convention, Art. 3 ECHR)</p>	<p>Access to asylum procedures:</p> <p>(a) Persons who express a wish to apply for asylum should be able to lodge an application for asylum (<i>UNHCR EXCOM conclusion No 8</i>)</p> <p>(b) Border guards and immigration officers should have clear instructions for dealing with asylum requests. They should be required to act in accordance with the principle of <i>non-refoulement</i> and to refer such cases to a higher authority. (<i>EXCOM conclusion No 80</i>)</p> <p>The right to remain:</p> <p>(c) Applicants should be allowed to remain in the territory until a final decision is taken (<i>UNHCR EXCOM conclusion No 8</i>).</p> <p>(b) Extradition may engage the responsibility of a State under the ECHR, where substantial grounds have been shown for believing that the person if extradited will face a real risk of torture, inhuman or degrading treatment (<i>Ryabikin v. Russia, Application no. 8320/04, 19 June 2008, para 110</i>).</p>	<p>Directive's provisions on access:</p> <p>(a) The directive does not define either the obligations of border guards / immigration authorities or the moment when the application is considered to be lodged.</p> <p>Art. 6 (1) allows MS to require that applications for asylum be made in person and/or at a designated place.</p> <p>Art. 6 (5) requires authorities likely to be addressed by someone who wishes to make an application to be able to advise him/her. No obligation to facilitate access to the competent authorities is set out.</p> <p>(b) Art. 7 (2): MS can make an exception to the right to remain where they will surrender / extradite a person to a third country.</p>	<p>Envisaged standards on access to procedures:</p> <p>To require MS to ensure access to procedures as soon as possible,</p> <p>To explicitly include territorial waters in the territorial scope of the Directive</p> <p>To define responsibilities of border guards and immigration authorities</p> <p>To fix a time limit for registering applications</p> <p>To underline that information about access procedures, counselling and interpretation arrangements should be made available for persons who are present at the border points</p>

			<p>(detention facilities) and wish to apply for asylum</p> <p>To specify that refugee assisting NGOs should be allowed access to persons present at the border, in the transit zones or in detention facilities, in agreement with and subject to the rules set out by MS.</p> <p>Envisaged standards on the right to remain</p> <p>To specify that extradition arrangements (treaties) may not be used to return an applicant to his/her country of origin</p>
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<p>The principle of <i>non-refoulement</i></p>	<p>Procedural guarantees to enable an applicant to substantiate his/her application.</p> <p><u>The right to a personal interview:</u></p> <p>(a) a person must be given a realistic opportunity to prove his/her case</p> <p><i>(Bahaddar v. The Netherlands (ECtHR, application 25894/94);</i></p> <p>(b) direct documentary evidence of the claim is often not available for asylum seekers, in particular in the case of fast procedures <i>(ECtHR, Said v. the Netherlands, 2005, para. 49)</i>.</p> <p>(b) <i>an applicant should be given a complete personal interview</i> (UNHCR EXCOM conclusion No 30).</p>	<p>Directive's standards on interviews:</p> <p>(a) Art. 12 (2) (b) and (c): MS</p> <p>may omit a personal interview on six grounds</p> <p>(b) The directive does not specify whether a personal interview should be conducted in the admissibility stage.</p>	<p>Envisaged procedural guarantees:</p> <p>To require MS to allow a personal interview to all asylum applicants</p> <p>To require MS to make a transcript of the personal interview and give to an applicant an opportunity to comment on its content</p>
<p>The principle of <i>non-refoulement</i></p>	<p>Procedural guarantees to enable an applicant to substantiate his/her application.</p> <p><u>Access to information and advice on procedures, rights and obligations:</u></p> <p>(a) The applicant should receive the necessary guidance as to the procedure to be followed</p>	<p>Directive's standards on access to information, counselling and advice:</p> <p>(a) Art. 10 (1) (a) requires MS to inform applicants <i>in a language which they may reasonably be supposed to understand</i> of the procedure to be followed and of their rights and</p>	<p>Envisaged procedural guarantees:</p> <p>To keep the current standard of Art. 10 (1) (a)</p> <p>To provide for free legal assistance at first instance for</p>

	<p>(EXCOM conclusions No 8);</p> <p>(b) Free legal assistance may need to be provided to a person in the less advantageous position in a pre - judicial procedure to safeguard rights guaranteed by Community Law (<i>Evans, Case C-63/01, 4 December 2003, paras 77, 78</i>).</p>	<p>obligations.</p> <p>(b) Art. 15 (1) requires MS to allow applicants, at their own cost, to consult in an effective manner a legal adviser or other counsellor.</p> <p>(c) Art. 10 (1) (c) allows applicants to communicate to the UNHCR or any other organisation working on behalf of the UNHCR. No standards on access to / by other service providers (NGOs) are set out.</p>	<p>persons who lack sufficient resources</p> <p>To allow a legal advisor (counsellor) to be present in an interview with the applicant</p> <p>To allow applicants to communicate to any refugee assisting NGOs</p>
<p>The principle of <i>non-refoulement</i></p>	<p>Procedural guarantees to enable an applicant to substantiate his/her application.</p> <p><u>Communication of information to the authorities:</u></p> <p>The applicant should be given the services of a competent interpreter for submitting his/her case to the authorities (UNHCR EXCOM conclusions No 8).</p>	<p>Directive's communicative guarantees:</p> <p>Art.13 (3) (b) allows MS to conduct an interview in a language which the applicant may reasonably be supposed to understand and in which he/she is able to communicate.</p>	<p>Envisaged communicative guarantees:</p> <p>To require MS to conduct a personal interview with the applicant in a language s/he understands and is able to communicate freely.</p>
<p>The principle of <i>non-refoulement</i></p> <p>The obligation to identify refugees (Article 1, the Geneva Convention).</p>	<p>Procedural guarantees for applicants with special needs</p> <p><u>General principles:</u></p> <p>(a) Persons whose <i>situations</i> are significantly different should be treated significantly differently (ECtHR, <i>Thlimmenos v. Greece</i>, Application No.</p>	<p>Directive's standards on applicants with special needs</p> <p><u>General principles:</u></p>	<p>Envisaged key guarantees for applicants with special needs</p> <p><u>General principles</u></p> <p>To set out the</p>

<p>The principle of non-discrimination (Art. 14 ECHR, general principles of Community Law)</p> <p>Protection of asylum seeking children (Art. 22, the CRC). The Child Rights Convention Article 22 CRC</p>	<p>34369/97, 6 April 2000, para 44)</p> <p>(b) Mechanisms for referral to psycho-social counselling and other support services should be made available where necessary (UNHCR Gender Guidelines).</p> <p><u>Guarantees for children:</u></p> <p>(b) States shall take appropriate measures to ensure that a child who is seeking refugee status receives appropriate protection (Article 22 CRC).</p> <p>Guarantees for applicants with gender related claims:</p> <p>(c) Women asylum-seekers should be interviewed separately, without the presence of male family members (UNHCR Gender guidelines).</p> <p>(d) Claimants should be informed of the choice to have interviewers and interpreters of the same sex as themselves (UNHCR Gender guidelines, EXCOM conclusion No 64).</p>	<p>The directive does not discuss the special needs of applicants. All guarantees and arrangements are gender, age and trauma neutral with the exception of special guarantees for unaccompanied minors (Art. 17).</p> <p><u>Guarantees for children:</u></p> <p>(a) Art. 6 (2) guarantees the right to apply for asylum only for adults having legal capacity.</p> <p><u>Guarantees for applicants with gender related claims:</u></p> <p>(b) Art. 6 (3): MS may provide that an application may be made by an applicant on behalf of his/her dependant adults.</p> <p>(c) No gender related standards are set out either in the lists of rights and obligations (Art.10, 11 APD) or in the provisions on interviews (Art. 13).</p> <p>(d) Art. 9 (3) allows MS to issue one single decision, covering all</p>	<p>notion of applicants with special needs</p> <p>To require MS to take steps to give to such applicants the opportunity to present the elements of their application as completely as possible and with all available evidence.</p> <p><u>Guarantees for children:</u></p> <p>To lay down the right of a minor to lodge an application on his/her behalf</p> <p>To require MS to conduct interviews with minors in a child friendly manner</p> <p>To define the qualifications of the guardian and entitle him/her to apply for protection on behalf of the minor</p> <p>To provide for free legal assistance to unaccompanied minors throughout the asylum procedure</p> <p><u>Gender related guarantees:</u></p> <p>To introduce</p>
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	<p>(e) The claimant should be assured that his/her claim will be treated in the strictest confidence, and information provided by the claimant will not be provided to members of his/her family (UNHCR Gender Guidelines).</p>	dependants.	<p>gender sensitive requirements for interviews and decisions (e.g. same sex interpreters, separate decisions)</p> <p>To inform dependent adults about the right to apply for asylum and give them the possibility of presenting their cases to the authorities</p>
The principle of <i>non-refoulement</i>	<p>Requirements for examination procedures:</p> <p>(a) The authorities must conduct a meaningful assessment of the claim</p> <p>(b) Time limits should not be so short as to deny an applicant a realistic opportunity to prove his or her claim. (<i>Bahaddar v. The Netherlands</i> (ECtHR, application 25894/94).</p> <p>(c) The applicant should be given a complete personal interview (UNHCR EXCOM conclusions No 30)</p>	<p>Directive's standards on examination procedures:</p> <p>Art. 23 (3): MS may prioritise or accelerate any examination</p> <p>Art. 23 (4), Art. 28 (2): MS may prioritise or accelerate examination procedures on 16 specific grounds, consider such applications manifestly unfounded and omit a personal interview on 5 grounds</p>	<p>Envisaged standards on accelerated /manifestly unfounded/ priority procedures:</p> <p>To introduce a limited and exhausted list of grounds for accelerated procedures, while preserving MS' discretion to prioritize other claims.</p> <p>To specify that the determining authority should be given a necessary time to conduct a rigorous assessment of the claim.</p>
The principle of <i>non-refoulement</i>	Requirements for asylum authorities and the length of procedures:	Directive's standards on decision making:	Envisaged standards on decision making:

<p>The obligation to identify refugees (Article 1, the Geneva Convention).</p> <p>The general principles of Community Law</p>	<p>(a) States should allocate sufficient personnel and recourses to refugee status determination bodies so as to enable them to accomplish their task expeditiously (EXCOM conclusions No 30)</p> <p>(b) Rights guaranteed by Community Law requires a procedural system which is easily accessible and ensures that the persons concerned will have their applications dealt with objectively and <u>within reasonable time</u> (<i>Panayotova</i>, 16 November 2004, Case C-327/02, para 27)</p>	<p>(a) Article 4 (2) lists 6 exceptions to the principle of a single determining authority. Immigration and border guard authorities involved in asylum decision making are not required to have knowledge of refugee law.</p> <p>(b) Article 23 (2) refers to 6 months as a desirable time limit for taking decisions, but specifies that this shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time – frame.</p>	<p>To reduce derogations from the principle of a single determining authority and specify that a substantive interview should always be conducted by the personnel of the determining authority.</p> <p>To require the determining authority to dispose sufficient numbers of specialised and trained in-house personnel</p> <p>To require MS to provide initial and follow up training to the asylum personnel and specify the minimum requirements for its content</p>
<p>Access to effective remedy (Art. 13 ECHR, general principles of Community Law)</p>	<p>Standards on effective remedy:</p> <p><i>(a) An appeal body must</i></p> <ul style="list-style-type: none"> - <i>be independent and impartial (a court or tribunal)</i> - ensure a full examination of facts and points of law; - carry out an <i>ex nunc assessment of the protection needs</i>, - enjoy access to materials upon which the administrative 	<p>Directive's standards on effective remedy:</p> <p>(a) The directive does not define the scope of review by a court (tribunal). Under Recital 27, "the effectiveness of the remedy, also with regard to the examination of the relevant facts, depends on the administrative and judicial system of each Member State seen as a whole."</p>	<p>Envisaged elements:</p> <p>To provide for a full and <i>ex nunc</i> assessment of appeals.</p> <p>To introduce the principle of automatic suspensive effect of appeals and specify exceptional cases</p>

	<p>authority based its decision,</p> <p>- ensure <i>equality of arms</i> of parties to proceedings.</p> <p>(b) Suspensive effect of appeals should be guaranteed.</p> <p>(c) The question whether the provision of legal aid is necessary for a fair hearing ...will depend, <i>inter alia</i>, upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and procedure and the applicant's capacity to represent him or herself effectively (<i>Airey</i>, pp. 14-16, § 26; <i>McVicar</i>, §§ 48 and 50; <i>P., C. and S. v. the United Kingdom</i>, no. 56547/00, § 91, ECHR 2002-VI; and also <i>Munro</i>, cited above).</p>	<p>(b) Art. 16 (1) and (2) allows MS to limits access to the file for a court (tribunal) in cases of national security. It also allows MS to limit access to the file for legal advisors on a series of grounds.</p> <p>(c) Art. 39 (3) leaves it to MS to provide (or not) for suspensive effect of appeals in national legislation.</p> <p>d) Art. 15 (2) (3) allow MS to derogate from the duty to grant free legal assistance in appeal proceedings before higher courts and where the appeal does not have prospects for success.</p>	<p>where suspensive effect may be granted on a case by case basis</p> <p>To require the determining authority to make materials on which it based its decision available to courts and tribunals in all cases.</p> <p>To require MS to lay down reasonable time limits for lodging appeals.</p>
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20. ANNEX 20 PREVALENCE OF TORTURE AMONG ASYLUM SEEKERS AND REFUGEES³⁷

I. General remarks

According to Amnesty International over 150 states worldwide continue to utilise torture against political or cultural minorities in order to maintain power. But because of its covert nature, it is impossible to quantify the number of torture survivors in the world.

Torture and torture sequels are a common problem in refugee populations, as persecution and torture are major reasons for fleeing one's country of origin. Various studies over the last decades have documented the high exposure rate to torture in refugee populations. Researchers commonly estimate that between 4-35% of any given refugee/asylum

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This analysis is prepared on the basis of information provided by the IRCT.

seeking group have experienced torture.³⁸ For example, the United States government Office of Refugee Resettlement counts between 400,000 – 500,000 torture survivors among refugees/asylum seekers in that country.

The Netherlands based War Trauma Foundation has calculated that worldwide, over 300 million persons have been affected by war and violence in conflicts since WWII. By extrapolation, 60-120 million suffer from post-traumatic stress disorder (PTSD) or related conditions after experiencing violence of war/conflict. Many post-conflict areas have less than one psychiatrist/psychologist per 100,000 to 1 million people.

II. Number of tortured refugees/asylum seekers in the EU treated by IRCT member centres

In 2008, IRCT members in Europe (including non-EU states) treated 23,883 clients. This number is second only to the Sub-Saharan African region for numbers seen. In the following you find the numbers of tortured refugees/asylum seekers treated by the IRCT member centres based in the EU; the data (if available) are taken from the centre's annual reports and IRCT's global directory *IRCT member centres and programmes* published in 2008.³⁹ With a few exceptions, all clients of the European rehabilitation centres originate from foreign countries.

Please note that these figures represent only those persons treated at IRCT member centres in the EU. Due to financial constraints rehabilitation centres are only able to provide specialized services to a very small part of the population in need. In average rehabilitation centres treat around 400 clients per year. Many more torture survivors may have received treatment at non-IRCT centres or through the public health system, and thousands more likely receive no support at all - especially those who are in immigrant detention facilities.

Austria: HEMAYAT, Organisation for Support of Survivors of Torture and War

Clients 2008: 684 clients including torture victims

Countries of origin 2008:

Foreign nationalities: Afghanistan 45, Egypt 1, Albania 1, Algeria 4, Armenia 13, Azerbaijan 7, Ethiopia 1, Belarus 6, Bosnia Herzegovina 5, Burundi 2, Côte d'Ivoire 1, Gambia 5, Georgia 26, Guinea 4, India 1, Iraq 19, Iran 30, Kirgizstan 4, Columbia 1, Congo 2, Kosovo 9, Croatia 2, Lebanon 2, Morocco 1, Moldavia 3, Mongolia 1, Nepal 1, Nigeria 8, , Pakistan 1, Ruanda 1, Dagestan 8, Ingushetia 4, Chechnya 391, Russian Federation 12, Serbia, Montenegro 7, Sierra Leone 2, Somalia 6, Sudan 3, Syria 5, Turkey 22, Turkmenistan 1, Ukraine 10, Uzbekistan 2, Vietnam 1, Stateless 1, Unknown 1, *EU nationality:* Austria 1

³⁸ See for example Baker R. Psychological consequences for tortured refugees seeking asylum and refugee status in Europe. In *Torture and its consequences*. Cambridge University Press, 1992, p.83-106; Jose Quiroga and James M. Jaranson, Politically-motivated torture and its survivors; A desk study review of the literature, Volume 15, No. 2-3, *Journal on Rehabilitation of Torture Victims and Prevention of Torture* 2005, pp. 6-7; Miserez D. *Refugees: the trauma of exile: the humanitarian role of the Red Cross and Red Crescent*. Dordrecht: Martinus Nijhoff Publishers, 1980:80-6.

³⁹ Available at <http://www.irct.org/Find-IRCT-members-33.aspx>.

Austria: OMEGA Health Centre, Society for Victims of Organised Violence and Human Rights Violations

Clients 2007: 1047 clients including 39 primary torture victims, 77 secondary torture victims

Countries of origin 2007:

Foreign nationalities: 69 different countries including Afghanistan 9%, Nigeria 3%, Kosovo

5%, Iran 4%, Georgia 3%, Bosnia 4%, Armenia 3%, Russia 4%, Chechnya 38%, Others 22%

Austria: ZEBRA, Intercultural Centre for Counselling and Psychotherapy

Clients 2007: 100 primary torture victims, 100 secondary torture victims + other victims

Countries of origin 2007:

Foreign Nationalities: Chechnya 329, Nigeria 204, Turkey 96, Bosnia 90, Ghana 74, Afghanistan 85, Croatia 49, Iran 23, Serbia 24, Kosovo 33, Others 362

EU Nationality: Romania 148

Bulgaria: ACET, Assistance Centre for Torture Survivors

Clients 2007: 40 primary torture victims, 65 secondary torture victims + other victims

In 2005 the Centre treated 48 refugees.

Denmark: OASIS, Treatment and Counselling for Refugees

Clients 2007: 45 primary torture victims, 15 secondary torture victims + 30 other clients

Note: Rehabilitation centres in Denmark treat only those persons with formalised asylum status in the country.

Denmark: RCT, Rehabilitation and Research Centre for Torture Victims

Clients 2007: 92 primary torture victims, 98 secondary torture victims

Denmark: RCT-Jutland, Rehabilitation Centre for Torture Victims, Jutland

Clients 2007: 80 primary torture victims, 20 secondary torture victims

Finland: CTSE, Centre for Torture Survivors in Finland

Clients 2007: 140 primary torture victims, 15 secondary victims

France: Parcours d'Exil

Clients 2007: 404 primary torture victims, 491 secondary torture victims + 2 other clients

Countries of origin 2007:

Foreign nationalities: 69 different countries, mostly African countries 85% (including refugees from Guinea 36%), Europe and former USSR 6%, Asia 7%, Americas (Haiti) 0,89%

Germany : bzfo, Berlin Center for the Treatment of Torture Victims

Clients 2007: 500 primary torture victims + 2000 other clients

Countries of origin 2007:

Foreign Nationalities: Angola 5, Congo 5, Armenia 6, Iraq 6, Russian Federation 6, Sierra Leone 7, Afghanistan 8, Serbia 8, Guinea 10, Azerbaijan 11, Uganda 14, Lebanon 19, Iran 25, Syria 29, Turkey 137, Kosovo 49, Bosnia-Herzegovina 36, Chechnya 36 + 39 other countries

EU-Nationality: Former GDR 13

Germany: Exilio, Help for Migrants, Refugees and Victims of Torture e.V.

Clients 2007: 35 primary torture victims, 40 secondary torture victims + 700 other clients

Countries of origin:

Foreign Nationalities 2007: Africa 8%, Latin America 2%, Asia 12%, Middle East 16%, Former Yugoslavia 23 %, Europe 16%, Other 3%, Unknown 20%,

Asylum Status: Exceptional leave to remain (Duldung in German) 55%, Residence Permit 37%, German Citizenship 4%

Germany: MFH, Medical Care Service for Refugees Bochum

Clients 2007: 46 primary torture victims, about 350 secondary torture victims + other clients

Countries of origin 2007:

Foreign Nationalities: Africa (Ghana, Nigeria, Congo, Morocco, Guinea) 24, Turkey 11, Latin America (Ecuador, Brazil) 5, Kosovo 9, Other (Pakistan, Montenegro, Russia, , Romania, US, Poland, Georgia, Bosnia) 31

EU Nationality: Bulgaria 10

Asylum Status: Exceptional leave to remain (Duldung in German) 143, Residence Permit 101, Other 16, Unknown 12

Germany: Refugio, Centre for Treatment, Counselling and Psychotherapy for Victims of Torture, Expulsion and Violence in Schleswig-Holstein Inc.

Clients 2007: 340 primary torture victims, 30 secondary torture victims

Hungary: Cordelia Foundation for the Rehabilitation of Torture Victims

Clients 2007: 189 primary torture victims, 40 secondary torture victims + 151 other clients

Countries of origin 2007:

Foreign nationality: Afghanistan 6, Albania 1, Armenia 4, Azerbaijan 1, Bangladesh 6, Bosnia 8, Cameroon 8, China-Tibet 1, Congo 3, Ethiopia 7, Georgia 8, Ghana 1, Guinea 2, Guinea-Bissau 1, India 1, Iran 9, Iraq 72, Israel 1, Ivory Coast 5, Kenya 2, Kosovo 2, Lebanon 3, Liberia 2, Macedonia 4, Mongolia 4, Nepal 1, Nigeria 8, Pakistan 1, Palestine 3, Russia 1, Sao Tome and Principe 1, Senegal 3, Serbia-Montenegro 33, Sierra Leone 1, Somalia 83, Sri-Lanka 1, Sudan 2, Turkey 5, Ukraine 3, Uzbekistan 1

EU-Nationality: Slovakia 2

Ireland: CCST, SPIRASI Centre for the Care of Survivors of Torture

Clients 2007: 900 primary torture victims

Countries of origin 2001 to 2007: 82 different countries including 68% African countries and 19% Middle East

Italy: NAGA_HAR Centre for Refugees and Torture Victims

Clients 2007: 82 primary torture victims

Italy: CIR, VI.TO, Hospitality and Care for Victims of Torture, Italian Council for Refugees

Clients 2007: 98 primary torture victims, 26 secondary torture victims

Countries of origin 2007:

Foreign Nationalities: Afghanistan, Eritrea, Ethiopia, Turkey, Sudan, Somalia, Togo, Iran, Cameroon, Guinea, Iraq, Columbia, Other

Netherlands, De Evenaar, Centre for Transcultural Psychiatry North Netherlands Department of GGZDrenthe, Community Mental Health Organization

Clients 2007: 30 primary torture victims, 30 secondary torture victims + 130 other clients

Netherlands: Foundation Centrum '45

Clients 2007: 250 clients including torture survivors

Netherlands: Phoenix Centre

Clients 2007: 40 victims of torture + 20 other clients

Netherlands: Psychotrauma Centrum Zuid Nederland

Clients 2007: 500 primary torture victims, 300 secondary torture victims + 200 other clients

Poland: CVPP, The Centre for Victims of Political Persecution, Chair in Psychiatry, Jagiellonian University, Collegium Medicum

No information available on the website

Romania: ICAR Foundation

Clients 2007: 906 clients, out of whom approximately 80% were primary torture victims and 20% secondary victims.

Country of origin:

Foreign Nationality: 10% asylum seekers and refugees in Romania, mostly from Iraq, Congo, Somalia and Zimbabwe

EU-Nationality: 90% victims of torture in Romanian communist interrogation centers and prisons

Sweden: The Red Cross Centre for Tortured Refugees, Stockholm

Clients 2007: 280 primary torture victims, 90 secondary torture victims

Note: The Center's activities concentrate on tortured refugees with permanent residence permits residing in Stockholm County and, to some extent, on asylum-seekers.

Sweden: The Swedish Red Cross Center for Victims of Torture and War, Malmö

Clients 2007: 150 primary torture victims + 200 other clients

Sweden: The Swedish Red Cross Center for Victims of Torture and War, Skövde (RKC)

Clients 2007: 120 clients including primary and secondary torture victims

Sweden: The Swedish Red Cross Centre for Victims of Torture, Uppsala

No information available on the website

United Kingdom: Medical Foundation for Victims of Torture

Clients 2007: 1933

Country of origin 2007:

Foreign Nationalities: Clients came from 95 countries, with the four largest groups representing Iran, Democratic Republic of the Congo, Sri Lanka and Iraq

EU Nationality: 16 clients in total from France, Germany, Lithuania, Poland and the UK

United Kingdom: Refugee Therapy Centre (RTC)

Clients 2007: 258 primary torture victims, 186 secondary torture victims

Country of origin 2007:

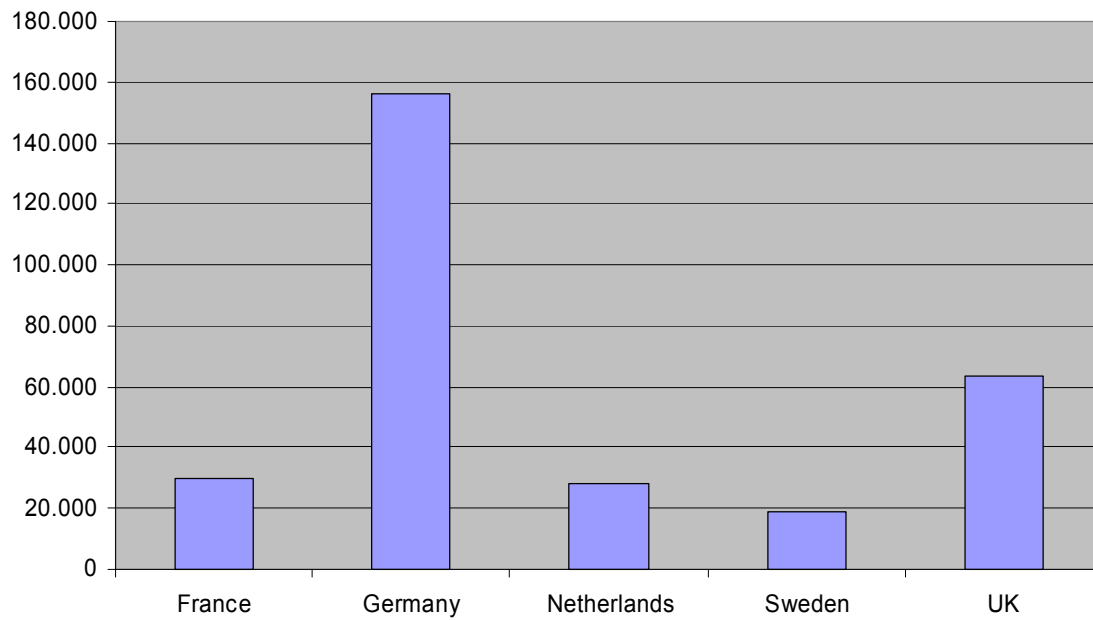
Foreign Nationalities: Refugees from over 37 countries, the top four countries of origin were Turkey (15%), Iran (14%), the Democratic Republic of Congo (12%) and Eritrea (10%)

III. Estimates

In 2007 IRCT had estimated the number of asylum seekers and refugees (based on the 2005 United Nations High Commissioner for Refugees figures⁴⁰) that would need specialized rehabilitation services every year in some European host countries – presuming that approximately 20% of the asylum seekers have been subject to any form of violence or torture. Please see the tables below. Although this survey is 2 years old, it may still be a good estimate of EU refugee populations in need as the situation has probably not changed considerably since 2007.

⁴⁰ Population of Concern including refugees and asylum seekers 2005 in the EU (date extracted 24 April 2007). Source: UNHCR Statistical Population Database, available at: <http://www.unhcr.org/statistics/45c063a82.html>.

Estimated Torture Victims



Estimated Torture Victims

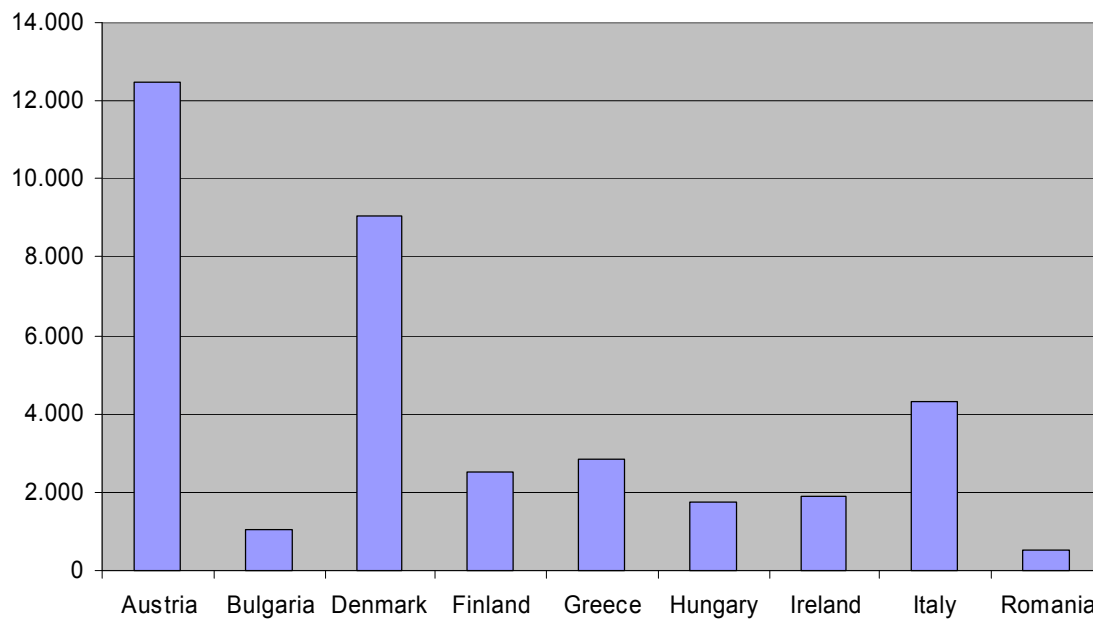


Table 1

IV. Indications of costs for certifying symptoms of torture:

Austria: Expertise on request of the court costs **195, 40 EUR**.

Germany: **Up to 2000 EUR** depending on the complexity of the case. This includes: reading the pre-existing documentations, anamnesis and examination (lasting at an

average of 5 hours, work of a Psychotherapist and a specially trained interpreter), working out and writing the expert-opinion.

Netherlands: The normal procedure would at least take 3-4 days in a clinical session. The costs are 850 EUR per day.

Romania:

Basic examination: 200 EUR.

Ireland: Depending on the case, **from 675 EUR to 965 EUR.**

The procedure in the Irish Centre for the Care of Victims of Torture (CCST) includes the following elements:

The procedure includes the following elements:

- (1) Referral considered by remit panel which is made up of CCST manager, director and co-ordinating physician.
- (2) If the request is considered appropriate client is registered and put on waiting list and legal representative is informed.
- (3) Appointment is offered, referrer is informed of appointment, interpreter organised if necessary.
- (4) Client is seen by examining physician. The average appointment time is 2 hours, includes full history taken and physical and mental state examination. In some cases a further assessment is required. Ongoing referral and GP liaison regarding client's well being also covered in this assessment if appropriate.
- (5) Report is dictated and typed
- (6) Report is reviewed and finalised by examining physician before review.
- (7) Report is reviewed by senior physician.
- (8) Report is amended and finalised by examining physician. (In some cases further input may be needed from senior physician)
- (9) Report is submitted to legal representative

Breakdown of minimum costs per report:	
3.5 hours physician hours (consultation and admin) @ €80	€280
1 hour review @ €80	€80
Client services co-ordinator time @ €35	€35
2 hours interpreting @ €60	€120
1 hour typing @ €25	€25
Remit panel	€40

Ongoing physician training	€45
Accommodation/Stationery/Postage/Overheads	€50
Total	€675
Complex reports when client has to be seen again or further information is required	
5.5 hours physician hours	€ 440
1.5 hours review	€ 120
Client services co-coordinator 1.5 @€ 35	€ 52.5
3 hours interpreting @ € 60	€ 180
1.5 hours typing @€25	€ 37.5
Remit panel	€ 40
Accommodation stationary/postage/overheads	€ 50
Ongoing physician training	€ 45
Total	€ 965

21. ANNEX 21 OVERVIEW OF INTERNATIONAL AND COMMUNITY STANDARDS ON ACCESS TO EFFECTIVE REMEDY

Effective judicial protection of rights the individuals derive from the Community legal order is a general principle of Community Law⁴¹, which is also enshrined in the EU Charter of Fundamental Rights⁴². In essence, the ECJ jurisprudence establishes several sets of requirements which are analysed below alongside the relevant elements of the ECtHR case law and national provisions of Member States.

In order to meet the requirements of effective judicial protection, appeal bodies must, first, be *independent* and *impartial*⁴³. The Directive, however, establishes only few requirements for appeal bodies. While it obliges the Member States to ensure an effective remedy before *a court or tribunal* within the meaning of Article 234 of the Treaty, it also maintains that the effectiveness of the remedy depends on the administrative and judicial system of each Member State seen as a whole⁴⁴. This arrangement leaves room for institutional modalities, where appeal bodies, at certain stages of the appeal process, are not necessarily capable to meet the requirements of independence and impartiality. In Greece, for example, representatives of the Ministry of the Interior and other governmental bodies are members of the Refugee Commission which examines appeals against negative decisions on asylum applications⁴⁵.

Also the notion of effective remedy requires a substantial review of both facts and issues of law. In *Dörr*, the Court explicitly applied this principle to immigration procedures concluding *inter alia* that Community law precludes national legislation under which *the decision to expel can be the subject only of an assessment as to its legality*⁴⁶. In *Wilson*, the ECJ held that a Community law provision requiring a remedy before a *court or tribunal* must be interpreted as meaning that it precludes an appeal procedure in which the initial decision is challenged at first instance before a body lacking independence and/or impartiality, where the appeal before the Supreme Court of that Member State permits judicial review of the law only and not the facts⁴⁷. Similarly, the ECtHR has repeatedly insisted on a *full and ex nunc* assessment of expulsion cases falling within the scope of Article 3 ECHR⁴⁸. It is also established *modus operandi* for the Court to collect relevant materials *proprio motu*.⁴⁹ In *Muminov*, the Court stressed that in order to comply with Article 13 ECHR courts must be able to "effectively review *the legality of executive discretion on substantive and procedural grounds* and quash decisions as

⁴¹ See *inter alia* *Union de Pequenos Agricultores*, Case C – 50/00, 2002, para 39.

⁴² Pursuant to Article 47 (1) CFR, *everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal*.

⁴³ As confirmed in the *Wilson* case, the concept of *independence* means that an appeal authority must act as a third party in relation to the authority which adopted the contested decision, while the notion of *impartiality* further requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law. Case C-506/04, 19 September 2006, paragraphs 49-52.

⁴⁴ See Article 39 (1) in conjunction with recital 27 APD

⁴⁵ Article 26, Presidential decree No 90.

⁴⁶ Case C-136/03, 2 June 2005, para 57.

⁴⁷ Case C-506/04, 19 September 2006, para 62

⁴⁸ In *Na v. UK*, the Court again instead that "A **full and ex nunc assessment** is called for as the situation in a country of destination may change in the course of time".

⁴⁹ See *inter alia* *Said v. the Netherlands*; Application no. 2345/02, 5 July 2005.

appropriate"⁵⁰. In this respect, the Asylum Procedures Directive does not address the scope of review in appeal procedures⁵¹. Nor does it provide for the assessment of future risks in relation to the substantive grounds provided for in the Qualification Directive. Instead, it simply contains an optional provision allowing Member States to examine further representations or the elements of the subsequent application in the framework of the examination of the decision under review or appeal⁵². The analysis of transposition measures reveals that the impact of the Directive on the scope of review in asylum procedures has been minimal. Furthermore, in many Member States the review before the Supreme Court (Council of State) is limited to issues of law. In light of the Wilson case, the availability of full review on substantive and procedural grounds at lower appeal instances which meet the requirements of impartiality and independence appears to be crucial in order to ensure access to effective judicial protection for asylum seekers in the Union.

Furthermore, the Directive's provisions explicitly allow Member States not to disclose restricted information, used in asylum cases, either to the applicant/legal representatives (on a number of grounds) or the appeal bodies (in cases of national security)⁵³. These arrangements may cause tension with the evolving ECJ jurisprudence. In Eurofood IFSC Ltd, the Court emphasised that "the right to be notified of procedural documents and, more generally, the right to be heard ... **occupy an eminent position in the organisation and conduct of a fair legal process**"⁵⁴. Also, it is apparent from the *People's Mojahedin Organization of Iran* cases that judicial authorities must be able to receive and examine the evidence alleged to be confidential or secrete⁵⁵. In *Guliev*, which concerned an expulsion case, the ECtHR found a violation of Article 8 ECHR referring *inter alia* to the fact that "the administrative courts relied on the ... [secrete] report but chose not to disclose the content thereof to the applicant, thus restricting his defence rights"⁵⁶. As regards Article 13 ECHR, the ECtHR has repeatedly insisted that legitimate national security concerns in expulsion cases must be balanced by arrangements which accord an individual *a substantial measure of procedural justice*⁵⁷.

In *Dorr*, the ECJ underlined that the safeguard of the right of appeal must be ***in fact available*** to a person. In the opinion of the Court, the immediate enforcement of a decision ordering expulsion would make that guarantee ***illusory***. In the context of asylum procedures, the problem of accessibility of remedy has two dimensions. First, short time limits for lodging appeals may create serious difficulties for asylum seekers to access

⁵⁰ *Muminov v. Rússia*, 11 December 2008, para 102

⁵¹ Recital 27 merely provides that the effectiveness of the remedy, ***also with regard to the examination of the relevant facts***, depends on the administrative and judicial system of each Member State seen as a whole.

⁵² Article 32 (1) APD

⁵³ Article 16 (1) APD

⁵⁴ Case C-341/04, 2 May 2006, para 66

⁵⁵ See cases T-228/02, T-284/08, T-256/07. The CFI *inter alia* outlined that *national authorities are not free from any review by the national courts simply because they state that the case concerns national security and terrorism*, Case T-228/02, para 156

⁵⁶ *Guliev v. Lithuania*, ECtHR, 16 December 2008, para 44

⁵⁷ See *Al-Nashif v. Bulgaria*, Application no. 50963/99, decision of 20 June 2002. In paragraph 137, The Court also maintained: "***The [appeal] authority must be competent to reject the executive's assertion that there is a threat to national security where it finds it arbitrary or unreasonable. There must be some form of adversarial proceedings, if need be through a special representative after a security clearance***".

judicial protection. In this respect, the Asylum Procedures Directive leaves it to Member States to establish time limits for lodging appeals (Article 39 (2) APD). Consequently, this has resulted in diverse arrangements in Member States (from 3 to 75 days). In particular, in some Member States (e.g. Hungary and Bulgaria) short time limits are provided in respect of decisions taken in border and/or accelerated procedures. In Italy, applicants placed in detention centres must lodge an appeal within 14 days, while the general time limit is 30 days⁵⁸.

While the *Dorr* case makes it clear that the ECJ does attach importance to the issue of suspension of immigration decisions, the Asylum Procedures Directive leaves it to Member States to provide, *where appropriate*, for rules dealing with the issue of suspensive effect⁵⁹. In this respect, the ECtHR has recently made several important pronouncements as to the manner in which suspensive effect has to be ensured in domestic systems to be in compliance with Article 13 ECHR. In *Gebremedhin*, which concerned an asylum seeker rejected in the border procedure, the Court, for the first time, used the notion of ***automatic suspensive effect*** of appeals⁶⁰. In *Muminov*⁶¹, which *inter alia* concerned an appeal to a higher court, the ECtHR insisted on "***the provision of an effective possibility of suspending the enforcement of measures whose effects are potentially irreversible.***" Finally, in *K.R.S.*⁶², the Court summarised its relevant case law on Article 13 APD claiming that the remedy must take ***the form of a guarantee*** and that ***it must have automatic suspensive effect.***

⁵⁸ Article 35, Decree (decreto legislativo) of 28 January 2008, no. 25.

⁵⁹ Article 39 (3), APD

⁶⁰ *Gebremedhin [Gaberamadhien] v. France* (application no. 25389/05).

⁶¹ *Muminov v. Russia*, (application no. 42502/06), judgement of 11 December 2008.

⁶² *K.R.S. v. the UK*, the inadmissibility decision of 2 December 2008.

22. ANNEX 22 ACCELERATED PROCEDURES

Table 1 Transposition of grounds (Article 23 (4) APD)

Articles according to which asylum claims can be treated in accelerated or prioritized procedures	Countries that have transposed the provision
<p>Article 23(4)(a)</p> <p>The applicant, in submitting his/her application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he/she qualifies as a refugee by virtue of Directive 2004/83/EC</p>	AT, BE, BU, CY, CZ, GR, LU, SI, PL, PT and RO
<p>Article 23(4)(b)</p> <p>The applicant clearly does not qualify as a refugee or for refugee status in a Member State under Directive 2004/83/EC</p>	AT, BE, BU, CY, EE, GR, LU, SI, PT and RO
<p>Article 23(4)(c)(i)</p> <p>The application for asylum is considered to be unfounded:</p> <p>(i) because the applicant is from a safe country of origin within the meaning of Articles 29, 30 and 31</p>	BU, CY, EE, FI, FR, GE, GR, LU, LV, SI, PL, PT and RO
<p>Article 23(4)(c)(ii)</p> <p>The application for asylum is considered to be unfounded:</p> <p>because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 28(1)</p>	BU, CY, FI, GR, LU, LV and PT
<p>Article 23(4)(d)</p> <p>The applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision</p>	BE, BU, CY, EE, GE, FR, GR, LU, SI, PL, PT and RO
<p>Article 23(4)(e)</p> <p>The applicant has filed another application for asylum stating other personal data</p>	BE, BU, CY, EE, FR, GE, GR, LU, LV, SI, PL, PT and RO
<p>Article 23(4)(f)</p> <p>The applicant has not produced information establishing with a reasonable degree of certainty his/her identity or nationality, or it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality</p>	BE, BU, CY, GR, LU, PT and RO
<p>Article 23(4)(g)</p> <p>The applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having been the object of persecution referred to in Directive 2004/83/EC</p>	AT, BE, BU, CY, GE, GR, LU, SI, PL, PT and RO
<p>Article 23(4)(h)</p> <p>The applicant has submitted a subsequent application which does not raise</p>	BE, BU, CY, CZ, FR, GR, LU and PT

Articles according to which asylum claims can be treated in accelerated or prioritized procedures	Countries that have transposed the provision
any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin	
Article 23(4)(i) The applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so	BE, BU, CY, EE, FR, GR, LU, LV, SI and PT
Article 23(4)(j) The applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal	BE, BU, CY, EE, FR, GR, LU, LV, PL, SI, PT and RO
Article 23(4)(k) The applicant has failed without good reason to comply with obligations referred to in Article 4(1) and (2) of Directive 2004/83/EC or in Articles 11(2)(a) and (b) and 20(1) of this Directive	BE, BU, CY, EE, GE, GR, LU, PT, SI and RO
Article 23(4)(l) The applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself/- himself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry;	BE, BU, CY, CZ, EE, GR, LU and PT
Article 23(4)(m) The applicant is a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law	BE, CY, EE, FR, GR, LU, LV, SI, PL, PT and RO
Article 23(4)(n) The applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation	BE, BU, CY, CZ, EE, GR, LU, SI and PT
Article 23(4)(o) The application was made by an unmarried minor to whom Article 6(4)(c) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin	EE, GE, GR, LU and PT.

Table 2. Number of applications channelled in accelerated procedures pursuant to

Article 23 (4) APD

Member State	Number of cases in accelerated procedures

Member State	Number of cases in accelerated procedures
Belgium	Danger to national security: 213 cases in 2007 EU citizens: 382 cases (700 persons) were rejected in 2007
Finland	2005: 70 safe country of origin, 796 manifestly unfounded applications 2006: 8 safe country of origin, 352 manifestly unfounded applications 2007: 33 safe country of origin, 306 manifestly unfounded applications
Hungary	2005: 30 applications concerning 42 applicants 2006: 42 cases concerning 45 applicants 2007: 21 cases concerning 26 applicants
Latvia	2005: 4 applications 2006: 1 application 2007: 6 applications
Poland	2005: 1,434 applications 2006: 210 applications 2007: 1,568 applications 2008: 945 applications
Slovakia	2005: 192 applications rejected as manifestly unfounded and inadmissible 2006: 334 applications rejected as manifestly unfounded and inadmissible 2007: 453 applications rejected as manifestly unfounded 2008 (until 30 Nov): 132 applications rejected as manifestly unfounded
Sweden	2005: 3,405 accelerated applications 2006: 2,180 applications 2007: 531 application

Table 3. Proportion of claims processed through accelerated procedures

Proportion of claims processed through accelerated/prioritized procedures		
Member State	Number of applications	Proportion examined through accelerated procedure
Latvia	2005: 20	20%
	2006: 8	12.5%
	2007: 34	17.6%
Hungary	2005: 1,609	2.61%

Proportion of claims processed through accelerated/prioritized procedures		
Member State	Number of applications	Proportion examined through accelerated procedure
	2006: 2,117	2.13%
	2007: 3,419	0.76%
Poland	2005: 13,928	1,434 (10%)
	2006: 14,437	210 (1%)
	2007: 19,265	1,568 (8%)
		All decisions negative
Slovakia	2005: NA	5.4%
	2006: NA	11.6%
	2007: NA	17.3%
		All decisions negative
Sweden	2005: 17,530	19%
	2006: 24,322	9%
	2007: 36,207	1%

23. ANNEX 23 TIMEFRAME(S) FOR COMPLETING AN EXAMINATION OF AN ASYLUM APPLICATION AT FIRST INSTANCE IN THE MEMBER STATES

Table 9.1 – Timeframe(s) for completing an examination of an asylum application at first instance in the Member States (Source: European Migration Network)	
Timeframe	Description
Belgium	101 weeks (from 01/01/2007-31/03/2008) (Processing time for AS who received a final decision)
Estonia	4 months in 2007.
France	<p>356 days (2007) 314 days (2006) 282 days (2005) (from the date of application and the date of cancelling decision or refusal decision before the court)</p> <p>105 days (2007) 110 (2006) 108 (2005) (from the date of application and the date of positive or negative decision of the OPFRA).</p>
Germany	On average, 21.7 months in 2006 (32,5% of the cases were closed within the first 6 months, 15% were finalised between 7 and 12 months, more than 10% between 19 and 24 months) (from the date of application until a possible final decision).
Hungary	<p>15 days for the first part (Preliminary assessment procedure) and 60 days for the second part (the in-merit procedure) which can be extended to 30 days.</p> <p>In appeal, the court shall decide on the statement of claim in a litigious procedure within 60 days of the receipt of the statement of claim.</p> <p>In practice, judicial procedure: 6 months to 1 year.</p>
Ireland	<p>In prioritised cases, time scales at first instance is: 17-20 working days.</p> <p>In non-prioritised cases, time scales at first instance is: 22-23 weeks. Some cases take significantly longer to complete due to, for example, medical reasons, non-availability of interpreters or because of judicial review proceedings.</p> <p>The Refugee appeal tribunal: 21 weeks on average to process and complete substantive appeals; 8 weeks for accelerated appeals; 9 weeks for prioritised cases.</p>

Table 9.1 – Timeframe(s) for completing an examination of an asylum application at first instance in the Member States (Source: European Migration Network)	
Timeframe	Description
Lithuania	3 months (decision at first instance from the day the application is received), 3 months (for the decision in appellate instance) =} so, in a routine procedure, the final decision is taken within 6 months.
Malta	6 months on average in the majority of cases (from the introduction of the formal asylum application till the first decision is reached) 4 months for the a final judicial decision (from the time the appeal is submitted) =} so 10 months for cases entering an appeal.
The Netherlands	Initial decision 14 weeks (2006) After appeal 14 weeks. (2006) 91% of final decisions taken within the target time limit (6 months)
Poland	For unfounded applications 2-3 months Other procedures: 8 months to 1,5 year (even though statutory limit is defined as 6 months)
Portugal	Admissibility phase 20 days; Concession phase 60 days. In practice, on average, final decision in 180 days.
Slovenia	No statistics on the average duration of the procedures for granting IP. However, statistics on the number of day the applicant stay on average in the Asylum Home 80 days (2007) 53 days (2008)
Spain	Ordinary procedure of refusal to consider an application: 60 days after filling the application Asylum applications at borders: the decision on the refusal to consider an application is taken within 7 days.

24. ANNEX 24 THE LIKELY ADMINISTRATIVE COSTS OF THE PREFERRED POLICY OPTION

Administrative costs⁶³ have been assessed with regard to obligations to provide information associated to:

- The obligation to provide applicants with general information about the various relevant elements of the Asylum Procedures Directive, including information on:
 - Interpretation services
 - Various information elements to enable applicants to access asylum procedures and present the elements of their application for international protection as completely as possible and with all available evidence
 - Access to legal assistance
 - Different types of procedures
 - The content of the review addressing both facts and figures
 - The time limits for decision-making
 - Etc.
- The provision of specific instructions to police, border guards, administration of detention facilities and other authorities likely to be addressed by someone who wishes to make an application for international protection, including:
 - To whom these persons should be referred to
 - The type of information to provide to people that may be requesting such protection.
- The obligation to provide information to organisations providing legal advice and counselling to potential asylum seekers, which are allowed access to persons present at the border, in the transit zones or in detention facilities.
- The legal duty of personnel of responsible authorities to undertake an identification procedure concerning applicants with special needs (to be accompanied by additional guarantees).

⁶³ According to the EC IA guidelines, ‘Administrative costs are defined as the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. Information is to be construed in a broad sense, i.e. including costs of labelling, reporting, monitoring and assessment needed to provide the information and registration’.

- The obligation to include gender, trauma and age related issues in the training programmes for personnel of the responsible authorities, as well as general regular training.
- The legal duty concerning appeal procedures, in particular that the review should be based on ex nunc examination of protection needs, that some should have suspensive effects, etc.
- The tools for practical cooperation (identification and diffusion of best practices, mapping studies of particular approaches, development of guidelines, etc).

These are the main elements of the preferred policy option (PO) which entail additional administrative costs and which have been associated with the types of obligation and required actions listed in table A.1 below.⁶⁴

The table also includes the main assumptions used to assess the costs associated with the preferred policy option

On the basis of these elements, the administrative costs have been assessed according to two scenarios:

- Scenario “t0”: first year of implementation of the preferred PO
- Scenario “t0+2”: third year of implementation of the preferred PO.

These scenarios have been developed in order to assess the main administrative costs related to the “start-up” expenses of the new measures and those related to the costs needed to maintain these measures.

⁶⁴

The provided classification of type of obligation and actions required in relation to each individuated policy measure entailing additional administrative costs have been established according to the EU Standard Cost Model Manual.

Table A.1: Main elements of the preferred PO entailing additional administrative costs

Policy measure	Type of obligation	Type of action required	Main assumptions of Scenario “t0”	Main assumption of Scenario “t0+2”
The obligation to provide applicants with general information about the various relevant elements of the Asylum Procedures directive	Other — Creation of information	Familiarising with the information obligation	An average of 5 senior officials (director, deputy directors and heads of units) per MS would be deputed to familiarise themselves with the revised obligations (assumption: two working days required, for an estimated total of 96 working hours per MS)	No additional costs
		Training authorities on the information obligation	An average of 20 officials per MS would be involved in training about the revised obligations (assumption: training course lasting 3 working days, with an estimated total of 480 hours per Member State)	No additional costs
		Submitting the information	The provision of information on the rights and benefits to the applicants is estimated to require 0.2 hour per applicant. Based on the average number of applications per Member State in the past 5 years (2003-2007: 255,146 applicants), this amounts to 127,573 hours.	The provision of information on the rights and benefits to the applicants is estimated to require 0.2 hour per applicant
The provision of specific instructions to police, border guards, administration of detention facilities and other relevant authorities	Other — Creation of information	Familiarising with the information obligation	An average of 3 senior officials (director, deputy directors and heads of units) per MS would be deputed to familiarise themselves with the revised obligations (assumption: two working days required, for an estimated total of 48 working hours per MS)	No additional costs
		Training authorities on the information obligations	An average of 40 border officials, etc. per MS would be involved in training about the revised obligations (assumption: training course lasting 1 day, with an estimated total of 320 hours per Member State)	Rerunning training for new officials, etc. An average of 20 border officials, etc. per MS would be involved in training about the revised obligations (assumption: training course lasting 1 day, with an estimated total of 160 hours per Member State)
		Producing new data	Development of guidelines or brochure, estimated at 20 working hours per MS	No additional costs
		Submitting the information	Dissemination of guidelines or brochure to relevant MS staff, estimated at 40 working hours per MS	Possible re-dissemination of the guidelines / brochure estimated at 40 working hours per MS
The obligation to provide information to organisations providing legal advice and counselling to potential asylum	Other — Creation of information	Familiarising with the information obligation	An average of 2 senior officials (director, deputy directors and heads of units) per MS would be deputed to familiarise themselves with the revised obligations (assumption: 0.5 working day required, for an estimated total of 8	No additional costs

Table A.1: Main elements of the preferred PO entailing additional administrative costs

Policy measure	Type of obligation	Type of action required	Main assumptions of Scenario “t0”	Main assumption of Scenario “t0+2”
seekers			working hours per MS)	
		Training authorities on the information obligation	Time inputs included in training of the 40 border officials, etc. above	Time inputs included in training of the 20 border officials, etc. above
The legal duty of personnel of responsible authorities to undertake an identification procedure concerning applicants with special needs	Submission of recurring report	Familiarising with the information obligation	An average of 2 senior officials (director, deputy directors and heads of units) per MS would be deputed to familiarise themselves with the revised obligations (assumption: 0.5 working day required, for an estimated total of 8 working hours per MS)	No additional costs
		Training authorities on the information obligation	Time inputs included in the training on general information about the various relevant elements of the Asylum Procedures Directive	No additional costs
		Filling in forms and tables	0.5 working hour for filling in the forms to be submitted for each vulnerable/person with special needs identified. This would occur for each vulnerable applicant and the annual number of these people entering on average each MS is estimated to be 5,742;	0.5 working hour for filling the forms to be submitted for each vulnerable/person with special needs identified.
		Submitting the information	0.1 working hour in each MS for registering the information concerning vulnerable persons	0,1 working hour in each MS for registering the information concerning vulnerable persons
The obligation to include gender, trauma and age related issues in the training programmes for personnel of the responsible authorities, as well as general regular training	Other — Creation of information	Familiarising with the information obligation	An average of 3 senior officials (director, deputy directors and heads of units) per MS would be deputed to familiarise themselves with the revised obligations (assumption: 1 working day required, for an estimated total of 24 working hours per MS)	No additional costs
		Training authorities on the information obligation	Time inputs included in the training on general information about the various relevant elements of the Asylum Procedures Directive	No additional costs
		Producing new data	Development of guidelines or brochure, estimated at 50 working hours per MS	No additional costs
		Submitting the information	Dissemination of guidelines or brochure to relevant MS staff, estimated at 40 working hours per MS	Possible re-dissemination of the guidelines / brochure estimated at 40 working hours per MS
The legal duty concerning appeal	Other — Creation of	Familiarising with the information obligation	An average of 3 senior officials (director, deputy directors and heads of units) per MS would be deputed to	No additional costs

Table A.1: Main elements of the preferred PO entailing additional administrative costs

Policy measure	Type of obligation	Type of action required	Main assumptions of Scenario “t0”	Main assumption of Scenario “t0+2”
procedures	information		familiarise themselves with the revised obligations (assumption: 1 working day required, for an estimated total of 24 working hours per MS)	
		Training authorities on the information obligation	An average of 20 appeal reviewers per MS would be involved in training about the revised obligations (assumption: training course lasting 0.5 working days, with an estimated total of 80 hours per Member State)	No additional costs
Definition of EU guidelines and mapping and diffusion of best practices	Other — Creation of information	Producing new data	240 working hours for the Commission’s DG JLS to develop guidelines, identify the best practices on the application of the policy option, etc	240 working hours for the Commission’s DG JLS to develop guidelines, identify the best practices on the application of the policy option, etc
		Submitting the information	80 working hours to disseminate the information	80 working hours to disseminate the information

Assumptions for the hourly labour costs of Member State asylum personnel

The hourly labour costs of Member State asylum personnel have been estimated on the basis of the EU average hourly labour costs in public administration (NACE L), extracted from Eurostat. Eurostat provides hourly and monthly labour costs and gross earnings per economic sector. However, for government (NACE section L, public administration and defence; compulsory social security), we only have information on the New Member States. Additional data were required to extend our information on labour costs to the entire EU27. Eurostat provides a number of possible indicators, namely average personnel costs in services in the EU-27 in 2003 (NACE sections G, H, I, and K)⁶⁵, median gross annual earnings in industry and services in the EU-25 in 2002 (the outcome of the Structure of Earnings Survey 2002)⁶⁶, and average hourly labour costs in industry and services of full-time employees in enterprises with 10 or more employees in 2002)⁶⁷. The relative differences between Member States in the level of labour costs according to the various sources compare fairly well. OECD data were used to forecast the level of annual labour costs per Member State in 2008⁶⁸. Information on the annual hours worked per employee in the total economy per Member State in 2005 was taken from the total economy database of the Groningen Growth and Development Centre⁶⁹. The end result is an average hourly labour cost per employee in NACE section L (public administration and defence; compulsory social security) of €24.30 in the EU-27 in 2008, and €23.30 excluding Denmark. On the basis of this result, the hourly rate for 2009 has been estimated by applying the growth rate for average hourly labour costs in the EU-27 between 2000 and 2005, thus obtaining a final rate of **€23.84**.

Tariffs: no significant changes in the tariffs (see Scenario “0”) due to the limited period elapsed from “Scenario 0” and the expected inflation rates at EU level (even though in the light of the economic crisis a minor decrease of the tariff could be expected).

⁶⁵ Eurostat, ‘Main features of the services sector in the EU’, *Statistics in Focus — Industry, trade and services* 19/2007.

⁶⁶ Eurostat, ‘Earnings disparities across European countries and regions. A glance at regional results of the Structure of Earnings Survey 2002’, *Statistics in Focus – Population and social conditions* 7/2006.

⁶⁷ Eurostat, *Europe in Figures 2005*, p. 169.

⁶⁸ OECD Economic Outlook 81 database. The average increase in labour costs in Poland, Hungary, the Slovak Republic and the Czech Republic was used for the New Member States that are not members of the OECD.

⁶⁹ Groningen Growth and Development Centre and the Conference Board, Total Economy Database, January 2007, <http://www.ggdc.net>. The average annual number of hours worked in the New Member States was 1 855 hours per worker, while the Eurostat data on labour costs per hour and per month result in an annual number of 1 800 hours worked in NACE section L, suggesting that the data match.

Table A.2: Policy Options Obligations in 'Scenario t0'

The future development of measures on procedures in Member States for granting and withdrawing refugee status, based on Council Directive 2005/85/EC						Tariff (€ per hour)		Time (hour)		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Total cost	Regulatory origin (%)			
No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	i	e	i	e						Int	EU	Nat	Reg
1			Other	Familiarising with the information obligation	MS Asylum Services	24		96.00		2,288.6	1.00	27	27	61,793		100%		
2			Other	Training members and employees about the information obligations	MS Asylum Services	24		480.00		11,443.2	1.00	27	27	308,966		100%		
3			Other	Submitting the information (sending it to the designated recipient)	MS Asylum Services	24		85,048.67		2,027,560.2	1.00	1	1	2,027,560		100%		
4			Other	Familiarising with the information obligation	MS Border and Asylum Services	24		48.00		1,144.3	1.00	27	27	30,897		100%		
5			Other	Training members and employees about the information obligations	MS Border and Asylum Services	24		320.00		7,628.8	1.00	27	27	205,978		100%		
6			Other	Producing new data	MS Border and Asylum Services	24		20.00		476.8	1.00	27	27	12,874		100%		
7			Other	Submitting the information (sending it to the designated recipient)	MS Border and Asylum Services	24		40.00		953.6	1.00	27	27	25,747		100%		
8			Other	Familiarising with the information obligation	MS Asylum Services	24		8.00		190.7	1.00	27	27	5,149		100%		
9			Other	Filling forms and tables	MS Asylum Services	24		2,871.00		68,444.6	1.00	1	1	68,445		100%		
10			Other	Submitting the information (sending it to the designated recipient)	MS Asylum Services	24		574.20		13,688.9	1.00	1	1	13,689		100%		
11			Other	Familiarising with the information obligation	MS Asylum Services	24		24.00		572.2	1.00	27	27	15,448		100%		
12			Other	Producing new data	MS Asylum Services	24		50.00		1,192.0	1.00	27	27	32,184		100%		
13			Other	Submitting the information (sending it to the designated recipient)	MS Asylum Services	24		40.00		953.6	1.00	27	27	25,747		100%		

The future development of measures on procedures in Member States for granting and withdrawing refugee status, based on Council Directive 2005/85/EC						Tariff (€ per hour)		Time (hour)		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Total cost	Regulatory origin (%)			
No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	i	e	i	e						Int	EU	Nat	Reg
14			Other	Familiarising with the information obligation	MS Asylum Services	24		24.00		572.2	1.00	27	27	15,448		100%		
15			Other	Producing new data	DG JLS	24		240.00		5,721.6	1.00	1	1	5,722		100%		
16			Other	Submitting the information (sending it to the designated recipient)	DG JLS	24		80.00		1,907.2	1.00	1	1	1,907		100%		
Total administrative costs (€)														2,857,555				

Table A.3: Policy Options Obligations in 'Scenario t0+2'

The future development of measures on procedures in Member States for granting and withdrawing refugee status, based on Council Directive 2005/85/EC						Tariff (€ per hour)		Time (hour)		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Total cost	Regulatory origin (%)			
No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	i	e	i	e						Int	EU	Nat	Reg
1			Other	Submitting the information (sending it to the designated recipient)	MS Asylum Services	24		85,048.67		2,027,560.2	1.00	1	1	2,027,560		100%		
2			Other	Training members and employees about the information obligations	MS Border and Asylum Services	24		160.00		3,814.4	1.00	27	27	102,989		100%		
3			Other	Submitting the information (sending it to the designated recipient)	MS Border and Asylum Services	24		40.00		953.6	1.00	27	27	25,747		100%		
4			Other	Filling forms and tables	MS Asylum Services	24		2,871.00		68,444.6	1.00	1	1	68,445		100%		
5			Other	Submitting the information (sending it to the designated recipient)	MS Asylum Services	24		574.20		13,688.9	1.00	1	1	13,689		100%		
6			Other	Submitting the information (sending it to the designated recipient)	MS Asylum Services	24		40.00		953.6	1.00	27	27	25,747		100%		
7			Other	Producing new data	DG JLS	24		240.00		5,721.6	1.00	1	1	5,722		100%		
8			Other	Submitting the information (sending it to the designated recipient)	DG JLS	24		80.00		1,907.2	1.00	1	1	1,907		100%		
Total administrative costs (€)														2,271,806				

25. ANNEX 25 ASYLUM APPEAL DATA

I. Data for selected MS

Member State	Recognition rate in first instance %	Rejection decisions	Appeals lodged	Rejection decisions appealed %	Appeals allowed	Appeals allowed %
United Kingdom ⁷⁰	26.8%	16755	14055	83%	3385	23%
France ⁷¹	11.6%	25922	22676	87.5%	5415	20%
Belgium ⁷²	14%	5600	5386	96%	469	10%
Germany ⁷³	27.6%	20702	10343	49.9%	n/a	n/a
Spain ⁷⁴	8.4%	1570	471	30%	27	5.4%
Denmark ⁷⁵	55.7%	376	300	79.8%	68	22.7%

If the percentages of rejection decisions appealed and of appeals allowed are weighted according to the relative weight of each of the above MS (measured by its share of the number of asylum applicants in the EU) and extrapolated to the rest of the EU, it appears that:

- 77% of rejection decisions are appealed in the EU;

⁷⁰ Source: <http://www.homeoffice.gov.uk/rds/pdfs08/hosb1108.pdf>

⁷¹ Source: http://www.commission-refugies.fr/IMG/pdf/CNDA-Rapport_d_activite_2007.pdf and http://www.ofpra.gouv.fr/documents/Rapport_OFPRA_2007_BD.pdf

⁷² Source: <http://www.rvv-cce.be> and http://www.cgvs.be/fr/binaries/Rapportannuel2006_tcm126-9209.pdf

⁷³ Source: http://www.bamf.de/cln_092/nn_442496/SharedDocs/Anlagen/DE/DasBAMF/Publikationen/broschuere-asyl-in-zahlen-2007.templateId=raw.property=publicationFile.pdf/broschuere-asyl-in-zahlen-2007.pdf

⁷⁴ Source: http://www.cear.es/files/Informe_Cear_2008.pdf

⁷⁵ Source: <http://www.nyidanmark.dk/NR/rdonlyres/EFB2567D-6C5F-4E4B-A6EF-3AE5F1ACEDDC/0/statisticaloverview2007.pdf>

- 18.5% of appeals are allowed in the EU (=grant protection status).

There were 143,956 negative decisions in first instance in the EU in 2007. Application of the 77% appeal percentage would mean that there were 110,846 appeals lodged throughout the EU.

If 18.5% of them were successful, it would mean that 20,506 applicants were granted protection in appeal.

Combining the two percentages (77% and 18.5%), the percentage of *appeal* recognition rate to be added to the *first instance* recognition rate can be established at 14.2%.

The percentage of positive decisions in first instance for 2007 (incl. also humanitarian statuses) was 25.14%. If 14.2% is added to that, the global recognition rate would be 39.34%.

II Provisional EUROSTAT data for 2008

2008	Total decisions	Total positive decisions	Percentage
BE	5.238	396	7,6
BG	27	9	33,3
CZ	:	:	N/A
DK	478	164	34,3
DE	11.072	2.777	25,1
EE	1	0	0,0
IE	2.460	293	11,9
GR	1.338	359	26,8
ES	:	:	N/A
FR	24.351	6.319	25,9
IT	1.653	1.621	98,1
CY	2.847	36	1,3
LV	13	0	0,0
LT	36	1	2,8
LU ¹⁾	668	246	36,8
HU	55	1	1,8
MT	2.688	1.411	52,5
NL	801	413	51,6
AT ²⁾	4.592	1.972	42,9
PL	183	29	15,8
PT	1	0	0,0
RO	:	:	N/A
SI	101	0	0,0
SK ³⁾	129	66	51,2
FI	94	82	87,2
SE	1.679	823	49,0
UK			N/A
EU	60.505	17.018	28,1

26. ANNEX 26 ASYLUM DECISIONS IN EU27 IN 2008 (FIRST INSTANCE)

Asylum decisions EU27 in 2008

	Absolute numbers					Percentages			
	Refugee status	Subsidiary	Humanitarian	Rejections	Total decisions taken	Refugee status	Subsidiary	Humanitarian	Rejections
Belgique	2550	430		10115	13095	19,5	3,3	0,0	77,2
Bulgarie	25	270		375	670	3,7	40,3	0,0	56,0
République tchèque	170	150	35	1205	1560	10,9	9,6	2,2	77,2
Danemark	200	315	210	525	1250	16,0	25,2	16,8	42,0
Allemagne	7310	1440	0	11465	20215	36,2	7,1	0,0	56,7
Estonie	5	0	0	5	10	50,0	0,0	0,0	50,0
Irlande	300	5	1160	3325	4790	6,3	0,1	24,2	69,4
Grèce	355	15	5	29080	29455	1,2	0,1	0,0	98,7
Espagne	150	110	15	4850	5125	2,9	2,1	0,3	94,6
France	4475	675		26610	31760	14,1	2,1	0,0	83,8
Italie	1695	7055	2100	9480	20330	8,3	34,7	10,3	46,6
Chypre						N/A			
Lettonie	0	0	0	10	10	0,0	0,0	0,0	100,0
Lituanie	10	55		45	110	9,1	50,0	0,0	40,9
Luxembourg	50	0	140	300	490	10,2	0,0	28,6	61,2
Hongrie	170	70	155	510	905	18,8	7,7	17,1	56,4
Malte	20	1385	0	1275	2680	0,7	51,7	0,0	47,6
Pays-Bas	515	1615	3550	5245	10925	4,7	14,8	32,5	48,0
Autriche	565	105	120	420	1210	46,7	8,7	9,9	34,7
Pologne	190	1075	1505	1475	4245	4,5	25,3	35,5	34,7
Portugal	10	60		40	110	9,1	54,5	0,0	36,4
Roumanie	85	10	15	565	675	12,6	1,5	2,2	83,7
Slovénie	0	0	0	155	155	0,0	0,0	0,0	100,0
Slovaquie	20	65	5	280	370	5,4	17,6	1,4	75,7

Finlande	85	430	130	1020	1665	5,1	25,8	7,8	61,3
Suède	1690	4820	1325	21695	29530	5,7	16,3	4,5	73,5
Royaume-Uni	4755	2190	135	16585	23665	20,1	9,3	0,6	70,1
Total EU27	25400	22345	10605	146655	205005	12,4	10,9	5,2	71,5

27. ANNEX 27 ASYLUM SEEKING UNACCOMPANIED MINORS

EUROSTAT provisional data on unaccompanied minors

2008	TOTAL	Y0_13	Y14_15	Y16_17	UNK
BE	487	51	98	338	0
BG	13	0	3	10	0
CZ	:	:	:	:	:
DK	302	:	:	:	:
DE	727	87	236	403	1
EE	0	0	0	0	0
IE	98	15	21	62	0
GR	296	35	46	215	0
ES	:	:	:	:	:
FR	410	13	11	386	0
IT	573	60	45	468	0
CY	:	:	:	:	:
LV	4	0	2	2	0
LT	:	:	:	:	:
LU	:	:	:	:	:
HU	176	1	175	0	0
MT	298	5	41	252	0
NL	725	31	143	444	107
AT	394	34	57	303	0
PL	:	:	:	:	:
PT	7	0	0	2	5
RO	:	:	:	:	:

SI	18	0	6	12	0
SK	71	16	55	0	0
FI	707	42	207	429	29
SE	1.510	170	433	907	0
UK	4.203	396	1.058	1.910	839

": " not available

Trends in flows of asylum seeking unaccompanied minors⁷⁶

Austria

Year	Total claims asylum by unaccompanied minors	Age groups	
		<12 yrs	<18 yrs
2006	414	56	358
2007	516	50	466
2008	770	64	706

Belgium

Year	Total claims asylum by unaccompanied minors	Sex		Age groups		
		Male	Female	<12 yrs	12-16 yrs	17 -18 yrs
2004		68,6%	31,3%	6%	52%	42%
2005	584	61,12%	38,88%	16	293	275
2006	449	295	154	22	236	191
2007	519	68,29%	31,71%	24	298	197
2008	521	372	149	27	51	198

Bulgaria

Year	Total claims	asylum by	Sex	Age groups

⁷⁶

The overview is based on MS replies to the EURASIL questionnaire

unaccompanied

	minors	Male	Female	<12 yrs	12-16 yrs	17 -18 yrs
2004	168	163	5	5	30	133
2005	138	138		4	45	89
2006	64	63	1	6	28	30
2007	23	23		1	9	13
2008	13	13			3	10

Czech Republic

Year	Total claims asylum by unaccompanied	Sex	Age groups			
	minors	Male	Female	<12 yrs	12-16 yrs	17 -18 yrs
2004	91	68	23	N/A	N/A	N/A
2005	100	75	25	N/A	N/A	N/A
2006	81	61	20	N/A	N/A	N/A
2007	51	N/A	N/A	N/A	N/A	N/A
2008	35	N/A	N/A	N/A	N/A	N/A

Hungary

Year	Total claims asylum by unaccompanied	Sex	Age groups			
	minors	Male	Female	<12 yrs*	12-16 yrs	17 -18 yrs**
2004	59	50	8	-	-	-
2005	41	37	4	-	-	-
2006	61	53	8	-	-	-
2007	73	66	5	-	-	-
2008	176	161	15	1 female	161 male	-
					14 female	

Ireland

Year	Total claims asylum by	Sex	Age groups
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	unaccompanied minors		
		Male (Age Group)	Female<12 yrs12-16 yrs17 -18 yrs
2004	128	56 (0,37,19)	72 (1,46,25)
2005	131	71 (0,41,30)	60 (1,36,23)
2006	131	70 (2,34,34)	61 (2,31,28)
2007	94	39 (2,23,14)	55 (3,23,29)
2008	98	51 (5,27,19)	47 (6,27,14)

Sweden

Year	Total asylum claims by unaccompanied minors	Sex		Age groups		
		Male	Female	<12 yrs	12-16 yrs	17 yrs
2004	388	225	163	44	212	132
2005	398	255	143	42	249	107
2006	820	645	175	44	516	260
2007	1264	1005	259	92	804	368
2008	1510	1201	309	93	1039	378

Finland

Year	Total asylum claims by unaccompanied minors	Sex	Age groups
		Male (Age Group)	Female<12 yrs12-16 yrs17 -18 yrs
2004	128	56 (0,37,19)	72 (1,46,25)
2005	131	71 (0,41,30)	60 (1,36,23)
2006	131	70 (2,34,34)	61 (2,31,28)
2007	94	39 (2,23,14)	55 (3,23,29)
2008	98	51 (5,27,19)	47 (6,27,14)

Slovakia

Year	Total claims unaccompanied minors	asylum by	Sex		Age groups		
			Male	Female	<12 yrs 0-14	12-16 yrs 15-17	17 -18 yrs
2004	196		174	22	14	182	
2005	100		96	4	4	96	
2006	139		131	8	11	128	
2007	157		156	1	1	25	131
2008	71		70	1	3	20	48

Lithuania

Year	Total claims unaccompanied minors	asylum by	Sex		Age groups		
			Male	Female	<12 yrs	12-16 yrs	17 -18 yrs
2004	11		6	5	1	1	9
2005	9		4	5		3	6
2006	3		3				3
2007	5		3	2	3	1	1
2008	1			1			1

United Kingdom

Year	Total claims unaccompanied minors	asylum by	Sex			Age groups			
			Male	Female	Unknown	<14 yrs	14-15 yrs	16 -17 yrs	Unknown
2004	2,990		2,010	980	*	285	830	1,805	70
2005	2,965		2,190	775	*	345	905	1,630	85
2006	3,450		2,585	865	5	495	940	1,840	180
2007 (P)	3,525		2,840	680	5	385	845	1,800	495
2008 (P)	3,970		3,475	480	15	440	1,075	1,665	790

Germany

Year	Total claims asylum by unaccompanied minors	Sex		Age groups		
		Male	Female	<12 yrs	12-16 yrs	17 -18 yrs
2004	636	397	239			
2005	331	213	118			
2006	186	101	85			
2007	180	121	59			
2008	324	232	92			

France

Year	Total claims asylum by unaccompanied minors	Sex		Age groups				Unknown
		Male	Female	<12 yrs	12-16 yrs	17 -18 yrs		
2004	1221	811	410	17	217	987		
2005	735	491	244	17	128	590		
2006	571	370	201	17	99	452		3
2007	459	290	169	6	84	369		
2008	410	257	153	7	87	316		