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accompanying the

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

(recast)

Impact Assessment

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Lead DG: Justice, Freedom and Security

1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1. Background

1.1.1. Policy context

The Commission's Work Programme for 2008[1] included as one of its strategic initiatives the adoption of a proposal for amending Council Regulation (EC) No 343/2003 on the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (the Dublin Regulation).[2] Together with the proposal for revising the Reception Conditions Directive, this proposal is intended to contribute to the second stage of the Common European Asylum System (CEAS), as called for in the Hague Programme of November 2004. A road map has been prepared for this strategic initiative.[3]

Following the lifting of internal borders between Member States, a mechanism to determine responsibility for asylum applications lodged in the Member States was needed in order to ensure that in an area of free movement of persons each asylum application is examined by one Member State (therefore avoiding the situation of 'asylum-seekers in orbit', where no Member State is willing to accept responsibility for examining an application) and to prevent abuse of asylum procedures in the form of multiple applications submitted by the same person in several Member States with the sole aim of extending his or her stay.

Arrangements for determining responsibility for considering asylum applications were initially part of the intergovernmental Schengen Convention, and were then replaced by the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities[4] (the Dublin Convention).

The Treaty of Amsterdam, which altered the legal basis and procedure for asylum, required the Dublin Convention to be replaced with a Community legal instrument. The conclusions of the Tampere European Council of October 1999 stated that a CEAS, based on the full and inclusive application of the Geneva Convention, should include, in the short term, *inter alia*, a clear and workable method for determining the Member State responsible for the examination of an asylum application, as part of a fair and efficient asylum procedure.[5]

Rules to this end were laid down in the Regulations comprising what is known as the Dublin system: Council Regulation 343/2003/EC of 18 February 2003[6] (the Dublin Regulation), its implementing Commission Regulation 1560/2003 of 2 September 2003[7] (which together replaced the Dublin Convention), Council Regulation 2725/2000/EC of 11 December 2000[8] (the Eurodac Regulation)

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1 COM(2007) 640.
2 CLWP reference No: 2008/JLS/022.
3 http://ec.europa.eu/atwork/programmes/docs/clwp2008_roadmap_strategic_initiatives.pdf.
4 OJ C 254, 19.08.1997, p.1.
5 Presidency conclusions, Tampere European Council, paragraphs 14 and 15.
6 OJ L 50, 25.2.2003, p.1.
7 OJ L 222, 5.9.2003, p.3.

and its implementing Regulation 407/2002/EC of 28 February 2002.[9] The Dublin Regulation was considered the first cornerstone of the CEAS and was based on the same general principle as the Dublin Convention, namely that the responsibility for examining an application should lie with the Member State that played the greatest part in the applicant's entry into and residence within the territory of the Member States, apart from exceptions designed to protect family unity.

The Hague Programme further expanded on the Tampere objectives and called for the Commission to conclude an evaluation of the first stage of the asylum *acquis* and to submit the second-stage instruments and measures to the Council and the European Parliament with a view to their adoption before the end of 2010. The Commission **Policy Plan** for the CEAS ('the Policy Plan'), adopted on 17 June 2008[10], defined a road-map for the coming years and listed the measures that the Commission intends to propose in order to complete the second stage of the CEAS, including a proposal to amend the Dublin Regulation.

1.1.2. Organisation and timing, consultation and expertise

With a view to preparing for the second stage of asylum legislation, as called for by the Hague Programme, the Commission launched an evaluation process of the results achieved in the first stage of the establishment of the CEAS.

Regarding the Dublin system, the Commission followed a two-track approach to evaluating its application.

Firstly, a comprehensive **technical evaluation** was undertaken based on Article 28 of the Dublin Regulation and Article 24(5) of the Eurodac Regulation[11], which required the Commission to report on their application after three years of operation and to propose, where appropriate, the necessary amendments. The Evaluation Report issued by the Commission on 6 June 2007 ('the Evaluation Report') was based on a wide range of contributions from Member States, including answers to a detailed questionnaire sent by the Commission in July 2005, regular discussions in expert meetings and statistics. Contributions from other stakeholders were also carefully considered, in particular the Evaluation Report published by the UNHCR in April 2006[12] as well as critical reports from civil society organisations, such as the report by the ECRE/ELENA network published in March 2006.[13]

Secondly, the Commission considered that before proposing any new initiative, an in-depth reflection and debate with all relevant stakeholders on the future architecture of the CEAS was necessary. On 6 June 2007, it therefore presented a **Green Paper**[14] on the future of the CEAS ('the Green Paper') aiming to identify the possible options for shaping the second stage of the CEAS. While the Evaluation Report served as a technical assessment for the Dublin system, the consultation based on the Green Paper served as a **policy evaluation**. The response to the public consultation included 89 contributions from a wide range of stakeholders,[15] including 20 Member States, regional and local

8 OJ L 316, 15.12.2000, p.1.
9 OJ L 62, 5.3.2002, p.1.
10 COM(2008) 360, SEC(2008) 2030.
11 In order to provide a complete picture of the overall functioning of the Dublin system, the Commission presented a single evaluation covering the Dublin and the Eurodac Regulations as well as their implementing rules.
12 UNHCR, The Dublin Regulation, a UNHCR discussion paper, April 2006.
13 ECRE/ELENA, Report on the application of the Dublin II Regulation in Europe, March 2006.
14 COM(2007) 301.
15 The 89 contributions received are available at:

authorities, the Committee of the Regions, the Economic and Social Committee, the UNHCR, academic institutions, political parties and a large number of NGOs. The issues raised and the suggestions put forward during the consultation provided the main basis for the preparation of the Policy Plan and have also been taken into account in the preparation of the present proposal.

Furthermore, several **expert meetings** were organised between October 2007 and July 2008 with Member States,[16] NGOs and the UNHCR,[17] lawyers and judges,[18] and Members of the European Parliament[19] in order to seek their opinion on the improvements needed to the Dublin Regulation. Member States were also consulted on the main issues the Commission intended to address in order to tackle the shortcomings identified in the application of the Dublin Regulation at the Immigration and Asylum Committee meeting on 5 March 2008.

The Commission ordered an external study ('the external study') to support the preparation of the Impact Assessment. The problem, objectives and policy options assessed were based on the Evaluation Report on the Dublin system, an analysis of the contributions to the Green Paper, the outcome of the expert meetings as well as contributions from the contractor. Important data were also collected from literature reviews, such as reports by the UNHCR, ECRE and Save the Children. The report of the European Parliament on the evaluation of the Dublin system[20] has also been taken into consideration.

This report also incorporates comments submitted during an inter-service steering group meeting attended by representatives of the RELEX, SANCO, EAC and ELARG Directorates-General on 20 June 2008. The Directorates-General consulted have had also the opportunity to submit their comments on the final text of the Commission's proposal to amend the Dublin Regulation during the inter-service consultation procedure.

1.2. The Impact Assessment Board

The Commission's Impact Assessment Board (IAB) was consulted on the draft final Impact Assessment report and issued its opinion on 7 October 2008.[21] The IAB considered that 'the report is generally of good quality and proportionate to the issues it deals with'. The IAB also formulated a number of recommendations, which have been taken into account in this report. The main recommendations were: (i) Specify the number of Member States affected by the various problems and the policy options and where possible the number of asylum-seekers involved; (ii) Clarify the modalities of two of the preferred policy options, namely the policy option regarding the suspensive effect of an appeal and the policy option regarding the suspension of Dublin transfers in limited and well-defined circumstances; (iii) Assess the proportionality of individual options rather than that of the preferred package as a whole.

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http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/news_contributions_asylum_system_en.htm . An analysis of the contributions is attached in Annex 1.

16 Meetings were held within the Dublin contact committee on 19 October 2007, and with a selected number of Member States on 12 February 2008.

17 Meetings organised on 18 February 2008 and 29 April 2008.

18 The meeting with lawyers took place on 17 March 2008 and the meeting with judges took place on 10 July 2008. A broad range of issues were discussed at these meetings (Asylum Procedures Directive and practical cooperation), including Dublin-related issues.

19 5 March 2008, this meeting was organised in connection with the Policy Plan, but Dublin-related issues were discussed as well.

20 P6_TA-PROV(2008)0385, 02.9.2008.

21 The opinion will be available here: http://ec.europa.eu/governance/impact/cia_2008_en.htm.

2. PROBLEM DEFINITION

2.1. Scope of the problem

From 2006 until the first half of 2007, out of approximately 183 200 asylum applications (lodged in those Member States applying the Dublin system at that time) Member States reported having received nearly 39 000 Dublin requests (21.3%) and sending out nearly 46 700 (25.5%).[22] Of the incoming requests received in that period, around 23 000 requests were accepted (59%) and around 12 500 of these were transferred to the responsible Member State (54.5%).[23]

Although the number of asylum-seekers in the EU-27 has almost halved since 2003 (from a total of 337 235 to 186 890 in 2007 — -45%), it should be noted that the figures for 2007 reveal an increase in the numbers of those seeking protection in Europe. Assuming that this trend continues, the scale of the problem would increase as well, since more asylum applicants could fall under the Dublin system.

As already stated in the Evaluation Report on the Dublin system, shortcomings in the availability and/or comparability of the existing statistical data make comparisons and analysis very difficult. Therefore, this report could not provide statistical data for all of the problems identified. In particular, the data on the number of asylum-seekers potentially affected by these problems are limited. However, in particular for the problems relating to the protection of asylum-seekers (such as the detention of asylum-seekers subject to the Dublin procedure or family reunification problems), it is important to highlight that, even if the number of potential asylum-seekers affected was limited, the policy measures presented would still be justified given that fundamental rights are at stake.

2.2. What is the issue or the problem that may require action?

The Evaluation Report concluded that overall, the objectives of the Dublin system, notably to establish a clear and workable mechanism for determining responsibility for asylum applications, have to a large extent been achieved. Nevertheless, it also identified a number of deficiencies mainly related to the practical application and effectiveness of the system, including issues concerning the protection afforded to asylum seekers subject to the Dublin procedure.

Problems regarding the current level of protection given to asylum seekers falling under the Dublin procedure were also pointed out in the contributions received on the Green Paper as well as in the reports by the UNHCR and various NGOs. At the same time, the report of the European Parliament on the evaluation of the Dublin system identified a number of problems and made a series of recommendations, primarily relating to the need to strengthen the protection aspect of the Dublin instrument.

This initiative aims to address those concerns and others that emerged during the consultation process.

2.2.1. Unclear or inadequate operational provisions of the Dublin Regulation are

[22] See glossary in Annex 4 for an explanation of what is meant by incoming and outgoing requests. A significant mismatch is evident between the numbers of incoming and outgoing requests submitted under the Dublin Regulation. This may be explained by different definitions of registration used by Member States or by the incompleteness of some of the data provided.

[23] Given the unavailability of data on the number of accepted and effected outgoing requests, only the incoming data could be taken into account in the calculations. For detailed statistical data on this subject see Annex 3.

counterproductive for the efficiency of the system and create hardship for asylum-seekers

The Evaluation Report and the consultation process identified a number of issues that impede the fully efficient operation of the system, thus creating practical difficulties for Member States in implementing it and having a negative impact on asylum-seekers.

The following main deficiencies have been identified:

a. Delays in the procedure for determining the Member State responsible, with corresponding hardship for the asylum-seeker(s) concerned as a result of delayed access to the asylum procedure.

The Dublin Regulation sets various time limits for the procedure to determine the Member State responsible. The overall objective is to ensure that Member States decide quickly on who is responsible in order to guarantee the rapid processing of asylum applications. As found in the Evaluation Report and in consultation with stakeholders, while most of the time limits under the Dublin Regulation are appropriate, there are three instances where the time limits appear to be inadequate, leading to delays in the procedure for determining the Member State responsible. The first concerns requests to **take back** an asylum-seeker who has already filed an application in one Member State and then moved to another (Article 16). The second concerns requests to bring together family members and other dependent relatives on **humanitarian grounds** (Article 15). The third concerns **requests for information** needed for the implementation of the Regulation (Article 21).[24]

Regarding **take-back requests**, the Regulation does not set time limits for submitting such requests to the Member State presumed to be responsible but only for replying to such requests. As highlighted in the Evaluation Report, the absence of time limits for submitting this type of request is seen by several Member States as being detrimental to the efficiency of the system. The UNHCR mentioned cases where it took more than three months from the moment the asylum claim was lodged for the authorities to make a request to another Member State to take back the individual.[25] For requests on **humanitarian grounds**, the Regulation does not set any time limits for making such requests or for replying to them, leading to different interpretations on the part of the Member States: while some consider that the deadlines for take-charge requests[26] should apply, others consider it impossible to apply time limits to requests on humanitarian grounds, as the circumstances for reuniting family members can be unpredictable. However, the impossibility of setting a time limit can only apply to the submission of requests on humanitarian grounds and not to the reply to such requests. In practice, as stated in the Evaluation Report, most Member States that apply the humanitarian clause complained that they did not receive any reply at all to their requests, possibly because, among other things, there is no time limit for a reply to be provided. For **requests for information**, the time limit for replying to them is six months. As information sharing between Member States is essential for implementation of the Regulation, several Member States and the UNHCR argued that the current time limit is too long. Long delays in responding to requests for information could also in some cases make it impossible for the requesting Member State to respect the time limit for making a request to take charge of an asylum-seeker (3 months), therefore resulting in it becoming responsible by default for examining the application in accordance with Article 17(1)

[24] For further explanations of these terms, see glossary in Annex 4.

[25] UNHCR report, p.37.

[26] See glossary in Annex 4 for an explanation of this term.

of the Regulation. This is because, before submitting a request, Member States have to possess clear proof or information indicating that the requested Member State is responsible.

In conclusion, as a result of inadequate time limits, delays occur in the procedure for determining responsibility, with a negative impact on both Member States (for instance the wrong Member States could be deemed responsible by default, as explained above) and asylum-seekers (the examination of the merits of their claims will be delayed, with the corresponding uncertainty and anxiety).

Although it is not feasible to indicate the number of Member States where this problem occurs and the number of asylum-seekers potentially affected, as this is a general problem linked with the functioning of the system, it possibly concerns most Member States and most asylum-seekers.

b. Despite a sizeable increase, the limited number of implemented transfers remains an important flaw of the system, since its efficiency is mainly based on the timely transfer of asylum-seekers to the Member State responsible for examining their applications

The Dublin Regulation lays down several rules regarding the transfer of asylum-seekers from the Member State where they are staying to the Member State responsible. In particular, transfers have to be carried out as soon as practically possible, after consultation between the Member States involved and within at most six months (which may be extended to one year in the case of imprisonment and to 18 months if asylum-seekers abscond) of the acceptance of a request. A series of practical arrangements between Member States are also set out in the Dublin Implementing Regulation, such as on how transfers may be carried out (i.e. on voluntary basis, by supervised departure or under escort) and on cooperation on transfers between Member States.

However, despite the existing rules, Member States often encounter practical difficulties in implementing accepted transfers and a large number are not carried out. Between March 2003 and December 2005 (the reference period for the Evaluation Report), implemented transfers represented 52.28% of outgoing acceptances and 40.04% of incoming acceptances.[27] This represents a considerable increase in comparison with the number of transfers under the Dublin Convention, where only 27% of outgoing acceptances and 25.62% of incoming acceptances were followed by transfers. However, the number of implemented transfers still remains low in comparison with the number of acceptances: in 2006, implemented transfers represented 61.3% of outgoing acceptances and 54.4% of incoming acceptances. This is further confirmed by the data for the first half of 2007 (outgoing transfers were 57.61% of accepted requests while incoming transfers accounted for 53.6% of accepted requests).[28]

As illustrated in the Evaluation Report, all Member States reported a lower number of transfers than acceptances. The Evaluation Report showed that Lithuania, Estonia and Malta carried out all accepted transfers, but as the numbers were very low they cannot be considered to be of any statistical significance.[29] One group of Member States had outgoing transfer rates much higher than the average of 52.28%. The Czech Republic with 91.51% had the highest rate. This was followed by a group of Member States with rates higher than 70%, namely the United Kingdom (88.43%), Iceland (84.61%), Luxembourg (75.65%) and the Netherlands (73.13%). In three Member States the rate was between 50% and 70%, namely in Norway, Germany and Ireland. In Finland, Greece, Italy, Slovenia, Hungary, Portugal, Spain, Slovakia and Austria the rate was below the average (between

[27] See glossary in Annex 4 for an explanation of the terms.

[28] For further information on transfers, see Tables I, II, III, IV in Annex 3.

[29] The assessment is based on the analysis of outgoing transfers.

15 and 32%). The lowest proportion of effected transfers was seen in Austria, where only 14.9% of all accepted outgoing requests were followed by effected transfers.

In 2006, Estonia, Cyprus and Iceland carried out all accepted requests, but given the low numbers in question these data are not very relevant from a statistical point of view.[30] The United Kingdom had the highest transfer rate with 97.06%, followed by the Czech Republic with 91.10% and Finland with 90.59%. The Member States with rates higher than 70% were Luxembourg (83.22%) and Denmark (73.72%). In five Member States the rate was between 50% and 70%, namely in Germany, Ireland, Netherlands, Portugal and Norway. In Austria, Slovenia, Greece and France, the rate was between 40% and 48%. In Italy, Hungary and Slovakia the rate was between 19% and 26%. Finally, the Member State with the lowest proportion of effected outgoing transfers was Spain, with only 14%.

The Evaluation Report showed that certain Member States in particular frequently exchanged asylum-seekers between themselves. For instance, in the second half of 2005, Germany accepted 383 requests from Austria, while Austria accepted 190 requests from Germany. The Dublin Regulation does not provide for Member States that frequently exchange asylum-seekers due to various factors, such as their geographical situation, to limit the number of asylum-seekers to be transferred by agreeing to 'cancel' an equal number of transfers so as to carry out a one-way transfer of a limited number of persons.

From the perspective of the sending Member State (the Member State which did not implement the transfer), non-effected transfers mean a waste of the financial and human resources used in the procedure for determining responsibility. On top of this there are the costs of assuming responsibility by default. However, the receiving Member State (the one normally responsible) would be relieved of the costs of receiving asylum-seekers and examining their applications. Finally, non-effected transfers are also problematic in view of the political objectives of the system, which is to establish the responsibility of a Member State for examining an application on the basis of objective criteria. From this point of view, if decisions are not followed by transfers, the Dublin Regulation could for instance be seen as failing to address the phenomenon of secondary movements.

From the standpoint of applicants, if transfers are not carried out, they would in principle remain within the Member State of their choice, although the period for gaining access to the asylum procedure as such might be longer than if they had been transferred without delay to the responsible Member State. However, in certain circumstances, a failed transfer might also be to the disadvantage of asylum-seekers, for instance when this would prevent them from reuniting with members of their family in the responsible Member State.

This problem appears to be due to two sets of **factors**. One concerns insufficient coordination and disagreement between Member States on the practical arrangements for transfers, due in some cases to a lack of detail in the legal text. For instance: Member States often choose different days and times when asylum-seekers can be transferred; they do not always exchange relevant information prior to undertaking a transfer; there is a lack of clarity on who is to pay the **transportation costs**;

[30] Data submitted by some Member States (in 2006 by Lithuania and Poland) show the number of transfers to be higher than the number of accepted requests. The former should normally coincide with the latter or be lower. This discrepancy could be due to the fact that some Member States might not register requests accepted implicitly (in accordance with Articles 18(7) and 20(1)(c) of the Dublin Regulation). Therefore, data provided by these Member States, included in Annex 3, should be considered with caution. In the calculation of the average rate of effected transfers, the number of transfers for these Member States has been considered equal to the number of accepted requests.

there are no rules in the Dublin Regulation on the procedure to follow in the event of **erroneous transfers** (where Member States transfer the wrong person) or in the case of **decisions overturned** on appeal after the person has been already transferred.

The second set of factors explaining the limited number of implemented transfers concerns mainly the actions of asylum-seekers. The Evaluation Report mentioned three main causes in this regard:

- **Absconding of asylum-seekers** after the decision: i.e. where an asylum-seeker decides to disappear after announcement of the transfer decision, in order to avoid being transferred. This appears to be essentially linked to the existence of pull factors in the Member State where they are, such as positive perception of the asylum system in terms of reception conditions and recognition rates, the fact that a large community of the same origin is living in the same Member State, etc. Some Member States pointed out that asylum-seekers are encouraged to abscond by a rule of the Dublin Regulation (Articles 19(4) and 20(4)) under which the responsibility of a Member State ceases after 18 months in cases where asylum-seekers abscond, with the result that they are able to remain within the Member State of their choice.

- **The suspensive effect of appeals against transfer decisions**: i.e. where the transfer is suspended and the person can remain in that Member State until a decision is taken on the appeal. However, the number of such cases should be limited, given that Member States have a low rate of appeal and suspensive effect seems to be rarely granted (see also section 2.1.4.b).

- **Illness, trauma or voluntary return** of asylum-seekers to their country of origin are other causes of non-effected transfers. There are no statistics on how many transfers were not carried out because of these reasons.

c. Non uniform application and divergences between Member States regarding the circumstances and procedures for applying certain rules and criteria of the Dublin Regulation affect the proper functioning of the system

As demonstrated in the Evaluation Report, a number of rules and criteria established by the Dublin Regulation are not clear and/or are not applied in a uniform manner by the Member States. This mainly concerns the cessation of responsibility clauses and the discretionary clauses (the sovereignty and humanitarian clauses). Disputes arising from the non-uniform application of these clauses not only affect the efficiency of the system but are also detrimental to asylum-seekers, since they create delay and uncertainty.

Regarding the cessation of responsibility clauses: the principle is that the responsibility of a particular Member State to take charge of or take back applicants to examine their application for asylum, or to return third-country nationals whose applications have been previously rejected, is not indefinite. The Dublin Regulation thus contains a series of provisions setting out the circumstances where responsibility ceases. As shown in the Evaluation Report, three of these instances have been identified as causing particular problems in Member States: Articles 4(5), 16(3) and 16(4),[31] which state that the responsibility of a Member State ends if, among other things, it can be proved that the applicant has left the territories of the Member States for at least three months or that the applicant has been expelled.

In particular, the following problems have been identified:

[31] See glossary in Annex 4 for further explanation of these Articles.

- from the wording of these Articles, it is not clear ***which Member State bears the burden of proof***, i.e. is it the **requested Member State** (meaning the responsible Member State asked to take charge or take back an asylum applicant but which refuses to do so by invoking a cessation of responsibility clause) which has to provide evidence that the person has effectively **left** the country or has been expelled or is it the **requesting Member State** that has to prove that the person has **not left** the territory or has not been expelled;

- the ***consequences of the cessation of responsibility*** are not clear, i.e. it is not clear what happens if a new application is lodged in the same Member State after the cessation of responsibility;

- the expressions 'state in which he may lawfully travel' and 'adopted and actually implemented' in Article 16(4) give rise to difficulties of interpretation among Member States. For instance, for some Member States (at least three), the notion of 'state in which he may lawfully travel' does not include the Member States, for others it does not include the Schengen States and for others (at least four) it includes all possible countries where a person may legally travel. Regarding the expression 'adopted and actually implemented' it is not clear for instance if it is sufficient to **deliver a request** to leave the country or if the person actually has to **leave** the country.

Divergent interpretations have also been observed in the application **of the discretionary clauses,** which allow Member States to derogate from the criteria for determining responsibility.

Regarding the sovereignty clause (Article 3(2)): the principle is that each Member State retains the right to examine any asylum application submitted to it, even if it is not the Member State responsible under the criteria laid down in the Regulation. Firstly, it has emerged from the consultation that there is some confusion among the Member States about their obligation to first carry out the procedure to determine responsibility before applying the sovereignty clause, despite the fact that this obligation seems to be clearly established under the Regulation.[32]

The application of the sovereignty clause without carrying out the procedure to determine responsibility could be seen in certain circumstances as being less resource-intensive for **Member States** than launching the Dublin procedure. However, for **asylum-seekers**, the application of the sovereignty clause without carrying out the procedure for determining responsibility could have negative consequences, notably when this would prevent them from rejoining family members in another Member State (in cases where as a result of the procedure for determining responsibility, the responsible Member State is the one where family members of the asylum-seeker are staying, in accordance with the current Articles 6, 7 or 8).

The fact that the Dublin Regulation does not require the consent of the asylum-seeker for the application of the sovereignty clause[33] is another linked problem, since, as mentioned in the Evaluation Report, in some cases the asylum-seeker might not necessarily implicitly consent with the application of this clause and would prefer the designation criteria to be strictly applied, notably when this would allow him or her to rejoin family members in another Member States.

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[32] The obligation to first carry out the procedure to determine responsibility can be inferred from Article 4: 'The process of determining the Member State responsible under this Regulation shall start as soon as an application for asylum is first lodged with a Member States' and from the introductory part of Article 3(2): 'By way of derogation from paragraph 1, each Member State may examine an application for asylum lodged with it by a third-country national, **even if such examination is not its responsibility under the criteria laid down in this Regulation.'** The obligation to inform the concerned Member States about the taking of responsibility can be read in the last part of Article 3(2).

[33] This obligation figured however in the Dublin Convention.

Secondly, some confusion exists with regard to the obligation to inform the other Member States about the decision to apply the sovereignty clause (final part of Article 3(2)). It is also not clear by which means such information has to be transmitted. If the Member State making use of this discretionary power does not inform the other Member States about the taking of responsibility, there is a risk that simultaneous procedures are carried out in several Member States on a single application, which is obviously inefficient and resource-consuming and against the objectives of the system.

Finally, another issue that has proved to be problematic in practice concerns the circumstances under which the sovereignty clause can be used, which are not specified in the Regulation. Member States apply it for different reasons, ranging from humanitarian to purely practical. For example, Austria, Finland and Ireland apply it if there is a risk of violation of Article 3 of the European Convention on Human Rights. Germany and Italy apply it when processing a claim under an accelerated procedure would be less resource-intensive than launching a transfer request under the Dublin procedure. This clause was designed to respond to situations which are not explicitly provided for in the Regulation, so Member States have flexibility in applying it. However, experience has shown that in some cases the sovereignty clause has been used against the interest of asylum-seekers, in particular when this has been for practical reasons, as highlighted by the UNHCR.[34]

Regarding the humanitarian clause (Article 15): the principle is that any Member State, even if it is not the Member State responsible under the criteria set out in the Regulation, may, on humanitarian grounds, in particular based on family or cultural considerations, bring together family members and other dependent relatives in order to examine their applications for asylum, at the request of another Member State.

Regarding the procedure for applying the humanitarian clause, Member States have been confronted with several difficulties, due in particular to the fact that:

- the Regulation is not clear about which Member State can make a request on humanitarian grounds (i.e. any Member State as outlined in Article 15(1) of the Dublin Regulation or, as laid down in Article 13(1), the Member State carrying out the procedure to determine responsibility, or the Member State responsible);

- the Regulation does not contain an explicit obligation to justify a refusal to accept a request on humanitarian grounds;

- the practical arrangements are not working satisfactorily or are not comprehensive enough, e.g. there are no clear arrangements for obtaining the consent of the persons involved in the procedure;

- it is difficult to obtain proof of the family link and/or the dependency situation;

Other problems related to the application of this clause are identified and explained in points 2.2.2. and 2.2.5.

As a result of the lack of clarity and comprehensiveness of this provision, its application varies widely from one Member State to another[35], and is subject to disagreements between Member

[34] UNHCR report, p.31.

[35] As shown in the Evaluation Report, some (such as Estonia, Cyprus, Latvia, Lithuania, Malta, Slovenia, Iceland) have never made use of it and others (such as Greece, Spain, Italy, Luxembourg, Hungary) have

States. Those primarily affected are the asylum-seekers themselves, who might be prevented from being reunited with family members or dependent relatives for humanitarian reasons (see also point 2.2.2).

As the Dublin procedure, with one exception (the sovereignty clause), always involves at least two Member States, it is self-evident that non-uniform interpretation of its provisions may hinder the procedure for determining responsibility.

2.2.2. Disputes between Member States concerning the application of the Dublin rules are not tackled in an efficient way

Member States often encounter problems in practice and have divergent views on the application of the Regulation, as is also highlighted in the Evaluation Report. In some cases, this seems to be due to the lack of clarity of the legal text (see for instance the point above on the cessation of responsibility). In some other cases, this is linked with the high level of proof Member States require for the application of certain provisions (for instance those relating to family unity). Lengthy disputes or disagreements compromise the objective of the system, which is to determine the Member State responsible as quickly as possible in order to guarantee the rapid processing of asylum applications. In some cases, moreover, Member States appear to give up on resolving their disputes, which obviously has a detrimental effect both on one of the Member States involved (which will have to examine the application despite the fact that the correct implementation of the Dublin rules could designate another Member State as responsible) and on asylum-seekers (in particular if not reunited with members of their family).

Based on the significant number of questions Member States regularly raise on the interpretation of various provisions of the Regulation (some of which are discussed at informal Dublin experts' meetings), the majority of Member States can be considered to have divergent views on the application of certain provisions of the Regulation.

The Dublin Regulation does not contain a general mechanism for settling disputes or differences of opinion between Member States concerning the application of the Regulation. The conciliation mechanism in Article 14 of the Implementing Regulation has a limited scope (as it only applies to disputes on the humanitarian clause), and its decisions are not binding. For these reasons, the conciliation mechanism has never been used by Member States, despite the fact that they often cannot agree on the need to bring family members together or on the place where this should occur. The fact that the conciliation mechanism for the humanitarian clause is not used diminishes the chances of relatives to be reunited on humanitarian grounds, which in some cases, as mentioned in the Evaluation Report, could amount to a breach of the fundamental right to family unity as enshrined in Article 7 of the Charter of Fundamental Rights and in Article 8 of the European Convention on Human Rights.

Some of the practical difficulties Member States encounter with the implementation of the Dublin Regulation are discussed during the informal meetings the Commission organises twice a year with Dublin experts from all Member States and with the participation of the UNHCR. However, there is no structured follow-up to these discussions and the conclusions reached are not binding. Therefore, their real impact is questionable.

2.2.3. Transfers under the Dublin procedure could contribute to further overburdening

applied it in very few cases, while Poland has based 50% of its requests on this provision.

Member States facing particular pressure

The IA on the Policy Plan showed that the distribution of asylum applicants between Member States remained substantially unequal in 2006, so some Member States can undeniably be considered to be 'overburdened' when the flow of asylum-seekers they receive is compared to the size of their population. Two main reasons have been identified for the overburdening of certain Member States: geographical situation (this would apply to countries like Malta, Cyprus, Greece and Slovakia) and a 'positive perception' of the asylum system (for countries like Sweden, Belgium and Austria, with relatively good reception conditions for asylum-seekers and higher recognition rates).

As regards the impact of the Dublin procedure on national asylum systems, the Evaluation Report has demonstrated that the Dublin mechanism did not increase or decrease the total number of asylum-seekers by more than 5% in most Member States. However, in the case of Poland, the increase was around 20% and, in the case of Slovakia, Lithuania, Latvia, Hungary and Portugal, around 10%. In 2005, the incoming transfers under the Dublin System were equally balanced between border and non-border Member States[36] and data from 2006 seem to confirm this finding. In 2005, the number of incoming transfers to external border countries was 3 055, while there were 5 161 incoming transfers to Member States without an external border. In 2006, border countries received 3 050 incoming transfers as against 4 984 received by non-border countries.[37]

Based on the available statistical data, transfers seem to be mainly towards countries that can be considered to be relatively 'under-burdened' from a demographic point of view. There were some exceptions for 2006, however: Greece and Malta (considered as 'overburdened' from a demographic point of view) and the Slovak Republic (considered as 'averagely overburdened'). Therefore, it can be stated that, overall, the Dublin system has a redistributive impact on national asylum systems, and is not in itself a cause of particular asylum pressure or overburden on Member States. In some cases, however, there is a risk that Dublin transfers place an even greater burden on Member States that are already facing a slight or large overburden.

As also highlighted in the Evaluation Report, the Dublin System may *de facto* result in **additional burdens** on Member States that have limited reception and absorption capacities and that find themselves under particular migratory pressure.

In cases of pre-existing deficiencies of the asylum systems of some Member States and in exceptional situations of particular pressure, transfers under the Dublin Regulation, which allocates in most cases responsibility to the first country of entry (in accordance with Article 10(1)), may add to the burden of those Member States and in some cases can result in the concerned Member States not being able to guarantee an appropriate standard of protection (see also section 2.2.4).

Another situation where Dublin transfers could create further overburdening for certain Member States is where they receive a considerably higher number of asylum applications than the average, as a result of the 'positive perception' of their asylum systems by asylum applicants. For instance, in Sweden, the number of asylum applications by Iraqi citizens increased from 2 330 in 2005 to 8 950

[36] For assessing the impact of Dublin transfers on the Member States, the Evaluation Report considered as **border countries** those countries with sea borders exposed to migration flows ('Southern border') and those with land borders with third countries ('Eastern border'). Finland is an exception to the principle, as it has borders with Russia but is considered a non-border country because of the lack of migration flows on its border with Russia. **Non-border countries** are those countries without land borders with third countries (except borders with Switzerland) and without sea borders exposed to migration flows.

[37] See Table V in Annex 3.

in 2006 and to 18 560 in 2007.

For the time being, there is no mechanism in the Dublin Regulation to prevent, in cases of particular pressure on certain Member States, Dublin transfers further adding to the burden of those Member States and possibly creating the risk of breaching the protection standards under the EU asylum *acquis*.

2.2.4. Transfers under the Dublin procedure could, in exceptional circumstances, result in asylum-seekers not receiving an adequate standard of protection

For the Dublin system to function adequately, all Member States have to provide harmonised and adequate standards of protection for asylum-seekers. However, as demonstrated in the IA on the Policy Plan, at this stage of the CEAS, there are still significant differences between the Member States in terms of procedures for granting international protection and reception conditions for asylum-seekers. The asylum system and practice of some Member States is not always adequate, so returns under the Dublin procedure could sometimes result in asylum-seekers not receiving an adequate standard of protection.

The return of asylum-seekers to Greece under the Dublin Regulation is one recent example that can be mentioned in this context. As evidenced by the UNHCR in a report from April 2008[38], Greece seems to face considerable structural and qualitative shortcomings with its asylum system and practice, with a substantial number of asylum-seekers facing serious challenges in accessing and enjoying effective protection in Greece. The UNHCR has therefore advised the Member States to refrain from returning asylum-seekers to Greece until further notice and to examine themselves those applications (i.e. applying the sovereignty clause in Article 3(2)).

Member States have reacted differently to the uncertain asylum situation in Greece and the calls by the UNHCR and various NGOs to suspend Dublin returns: one State has suspended all returns to Greece but without taking responsibility for those cases and examining them, at least three other States have suspended the return of only vulnerable groups, while the majority of States appear to continue to send asylum-seekers to Greece.

Under the current Regulation, the Commission does not have concrete tools to provide proper assistance in such situations and to propose a uniform line to be adopted by all Member States.

Moreover, besides Greece, reception conditions are of concern in at least three other Member States (Austria, France and Spain), which do not apply the Reception Conditions Directive to asylum-seekers under the Dublin procedure.[39] For the period 2005-2006 the average number of affected applicants per year in these three Member States was approximately 7 300 (figure based on the number of outgoing Dublin requests sent by these Member States during the period).

Regarding the number of Dublin asylum-seekers potentially affected by this problem in Greece, based on the number of transfers between January 2005 and June 2007, approximately 1 200 asylum-seekers who were previously under the Dublin procedure could have been affected by the problem of poor reception conditions.

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38 UNHCR position on the return of asylum-seekers to Greece under the Dublin Regulation, 15 April 2008.

39 Odysseus Academic Network, *Comparative Overview of the Implementation Directive 2003/9 of 27 January 2003 laying down Minimum Standards for the Reception of Asylum Seekers in the EU Member States*. Concerning the level of reception conditions in the Member States, see the IA on the Directive […/.../EC] laying down minimum standards for the reception of asylum seekers, SEC (2008) 2944.

These data have to be used with great caution. They just give an indication of the potential number of asylum-seekers that could have received an inadequate level of protection in the Member States mentioned. There are no statistics available as to the exact number of asylum-seekers in this situation.

2.2.5. Inadequate information and legal safeguards for asylum-seekers

Accurate and comprehensive information about the rules and implications of the Dublin procedure as well as adequate legal safeguards are essential for the protection of the rights of asylum-seekers subject to the Dublin procedure and in order to improve the prospects of them respecting the system rather than trying to evade it.

The Evaluation Report and the consultation process identified the following flaws in the Dublin Regulation in this regard:

a. Often, asylum-seekers are not properly informed about the Dublin procedure and their rights under it

Article 3(4) of the Dublin Regulation obliges Member States to inform the asylum-seeker '*in writing in a language he or she may reasonably be expected to understand regarding the application of [the] Regulation, its time limits and its effects*'. Despite the existence of this legal obligation, the Evaluation Report has emphasised the general lack of awareness of asylum-seekers of the procedure for determining responsibility and the fact that, in many cases, they do not understand why they are sent to a country other than the one of their choice. The communication policy varies widely from one Member State to another, with certain Member States having good information tools while others providing only a low level of information and/or in an inadequate form.

As regards the form in which the information has to be provided, although Article 3(4) requires Member States to inform applicants in writing, at least five Member States appear not to do so.[40] Moreover, the fact that the legal text is silent on the need, in some cases, to provide information also in other forms than in writing, might lead to practices that do not accommodate the needs of persons who might be unable to make use of a written text. As regards the **language** in which the information is provided, data gathered in 2006 indicate that some Member States (such as Slovakia, UK, Norway, Germany, and Austria) make information available in more than 15 languages, while others provide translations in fewer than 10 languages (such as Lithuania, Latvia and Romania). There are also divergent practices regarding **the stage of the procedure when** information is provided to asylum-seekers, with some Member States informing them at the very beginning of the procedure (or even before receiving an application for asylum, such as Greece), some both at the beginning and during the procedure (such as Lithuania and the Netherlands), some only during the interviews (such as Cyprus), and some only when there are indications that another country might be responsible for the asylum application.[41] **As far as the content is concerned,** the too general requirement obliging Member States to inform asylum-seekers about '*the application of the Regulation, its time limits and its effects'* leads to cases where important aspects of the Dublin Regulation are not covered. For instance, as highlighted by the UNHCR, some Member States do not provide information about family reunification possibilities or about humanitarian considerations, or do not explain the time limits for the procedure.

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40 UNHCR report, p.13.

41 Based on information provided by Member States within the Dublin Contact Committee, November 2006.

It is self-evident that without timely, accurate and comprehensive information about the Dublin procedure, asylum-seekers cannot effectively exercise their rights. The Evaluation Report also showed that the lack of awareness of asylum-seekers of the Dublin procedure, in particular the consequences of making a second application in a different Member State, could be one of the reasons why the issue of **secondary movements** has not been so far adequately tackled.

b. The effectiveness of the right to remedy for asylum-seekers is not fully guaranteed

Although the Dublin Regulation has been conceived as an instrument addressing mainly the relationship between Member States and therefore does not contain general provisions regulating the relationship between Member States and individuals,[42] it does provide some procedural safeguards, directly linked to Dublin transfer decisions. For example, Member States have the possibility to allow under their national legislation the **right to appeal** a transfer decision (Articles 19(2) and 20(1)(e)) together with the **suspensive effect** of an appeal, which suspends the carrying out of a transfer until a decision on the appeal has been taken.

However, as pointed out in particular by the UNHCR and NGOs and also mentioned in the Evaluation Report, this right to remedy is not considered effective for several reasons, in particular:

- Although in practice all Member States allow for the **possibility to appeal or review** a transfer decision, asylum-seekers do not always appear able to make effective use of it. The Evaluation Report showed that, apart from Austria and Norway, most Member States have a low rate of appeal. This is due in particular to the fact that transfer decisions are communicated to asylum applicants only very shortly before the transfer takes place[43] and to the fact that asylum applicants do not have rapid access to legal aid. There are also noteworthy differences in the form and content of the transfer decisions issued by the Member States, partly due to the lack of detail in Articles 19(1), (2) and 20(1)(e), which for instance leave open the procedure for informing asylum applicants about the transfer decision (i.e. orally or in writing, language to be used, etc.) and do not say much about the content of transfer decisions (e.g. they do not explicitly require decisions to include information on appeal or review possibilities).

- As underlined in the Evaluation Report, the **suspensive effect of an appeal or review** is rarely granted, meaning that in most cases, despite lodging an appeal against the transfer decision, the asylum applicant will be transferred to the Member State supposedly responsible before a final decision has been taken on the appeal. The conditions under which suspensive effect can be granted differ from Member State to Member State, but usually this happens in cases of serious illness or risk of breach of the European Convention on Human Rights. Although the Regulation does not indicate whether any judicial review of transfer decisions should be limited only to the interpretation of the Dublin criteria and the respect of its procedural rules or whether it could be extended to the examination of the legal and factual situation of the receiving Member State, based on the jurisprudence of the European Court of Human Rights,[44] Member States have the obligation to ensure that Dublin transfers do not result in a violation of international human rights

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42 In general, the duties and rights tying Member States and asylum-seekers are addressed by other EU asylum instruments, in particular by the Reception Conditions Directive, which applies throughout the asylum procedure and therefore also throughout the Dublin procedure.

43 The UNHCR reported that in the Czech Republic, Finland, France, Germany and Luxembourg, for instance, transfers take place on the same day or shortly after when the asylum-seeker is notified of the transfer decision, allowing very little time to prepare an appeal.

44 T.I. v UK, application No 43844/98, Admissibility decision of 7 March 2000.

law, in particular the principle of *non-refoulement*[45], as laid down in Article 33 of the Geneva Convention and in Article 19 of the Charter of Fundamental Rights. In view of the continued inequalities in the level of protection across the EU, a non-suspensive appeal may in certain cases lead to asylum-seekers being transferred to a place where they do not enjoy the same standard of protection. Problems also have been encountered where suspensive effect was not granted (and therefore the transfers were enforced), but the decision to transfer was overturned on appeal. The Regulation has no rules on the procedure to be followed in these cases. Such situations delay the process and create uncertainties for asylum-seekers.

c. Custodial measures are commonly used by several Member States with corresponding hardship for the asylum-seekers involved, especially where vulnerable groups are concerned

The Reception Conditions Directive states in Article 7(3) that Member States may, where necessary for example for legal reasons or reasons of public order, confine an applicant to a particular place in accordance with their national law. According to Article 18 of the Asylum Procedures Directive, Member States may not hold persons in detention solely because they are asylum applicants. If they are held in detention, Member States must ensure the possibility of speedy judicial review. However, the Dublin Regulation contains no provisions specifically concerning the detention of Dublin applicants.

As pointed out in the Evaluation Report, several Member States commonly detain asylum-seekers subject to the Dublin procedure throughout the process for determining responsibility or immediately after announcement of the final decision (United Kingdom, Iceland, Luxembourg, and Netherlands) in order to avoid possible absconding. The Czech Republic usually detains all migrants even if they have lodged an application for asylum. Norway and Ireland also apply detention but in a more limited way. Detention pending transfer appears in some cases to take place even if applicants for asylum indicate their willingness to return or to be transferred to the Member State responsible. For instance, the UNHCR has reported the case of a family, including at least one minor, who despite their agreement to be reunified with their extended family in another Member State, were nevertheless detained. In some cases, detention appears to be wrongly used simply to accelerate the Dublin procedure under Article 17(2), which allows a Member State to claim urgency in receiving a reply to its request in the case of detention.

The principle of non-detention, i.e. asylum-seekers should not be detained solely on account of being asylum-seekers, as enshrined in the Asylum Procedures Directive, should be applicable to all asylum-seekers, including those coming under the Dublin procedure. The detention of asylum-seekers per se does not infringe that principle if used in limited and justified cases. However, given that the legal instruments dealing with the issue of detention are not clear about the grounds, limits and procedural guarantees to be respected where asylum-seekers, including those under the Dublin procedure, are detained, it is very difficult to assess whether the practice of some Member States on this matter, as criticised by the UNHCR, NGOs and the Council of Europe, among others,[46] does or does not comply with current EU or international standards.[47]

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[45] See glossary in Annex 4 for an explanation of this term.

[46] Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, made the following comments about the Dublin system: 'I am concerned by the fact that some EU Member States detain asylum-seekers when their transfers are under way to the Member State responsible for examining their application, in the context of the Dublin II Regulation. The "Dublin II Regulation" should be revised in order to reflect the basic principle of non-detention of asylum seekers. An effective EU-wide monitoring system is also necessary so that places used for detaining asylum seekers are under constant surveillance by an independent organ. Special attention, in this context, should be paid to the widely used detention in airport (transit) areas.'

The harsh impact on the individuals concerned is self-evident, in particular where persons with medical needs, women and children are detained. For Member States, it is evident that detaining most Dublin cases puts a strain on their detention capacities and involves considerable costs. Regarding the detention of children, the UN Committee on the Rights of the Child has stated that 'detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof.'[48]

It is not possible to estimate the number of detained asylum seekers under the Dublin procedure due to the fact that Member States either do not provide for such data or the available data are not comparable since they also include other third-country nationals in detention.

d. The principle of effective access to the asylum procedure once the procedure for determining responsibility is completed and asylum-seekers are transferred to the Member State responsible is not fully guaranteed

The Dublin Regulation in its Article 3(1) establishes the general principle under which asylum-seekers subject to a Dublin transfer decision must have full access to the asylum procedure once transferred to the Member State responsible, meaning that Member States have to make a full assessment of the protection needs of these asylum-seekers. However, the Regulation is not clear in several respects, in particular whether the principle applies to cases both under the first instance procedure and under the appeal procedure. It is not clear from Article 16(1) whether, for example, in the case of a withdrawal of the application in the responsible Member State and submission of a new application in a different Member State, the asylum-seeker, upon being returned to the responsible Member State under the Dublin rules, should be able to have the examination of his or her case completed. The Asylum Procedures Directive contains general provisions dealing with procedures at first instance and appeal procedures, which generally do not tackle the specific situation of asylum-seekers subject to the Dublin procedure.

Based on the Evaluation Report as well as reports from the UNHCR and NGOs, it can be stated that asylum-seekers subject to the Dublin procedure are in some cases unable to have their asylum claims assessed on merits or to lodge an appeal where a negative first-instance decision was issued in the responsible Member State. For instance, Greece was until April 2006 suspending and closing the claims of those asylum-seekers who left their place of residence without authorisation. These cases could be re-opened and examined on their merits only in very limited circumstances. As a consequence, asylum-seekers risked being removed from Greece to their country of origin without any substantive examination of their claim, in possible violation of the principle of *non-refoulement*.[49] Research by the UNHCR and ECRE also revealed other cases where other Member States appeared to close or reject asylum claims or presume them withdrawn due to the absence of asylum-seekers from their territories (such as Ireland and the Netherlands), or cases where asylum-seekers did not have the opportunity to have their applications assessed in appeal, due to the fact that a negative first-instance decision was issued during their absence and they were returned to that State under Dublin rules after the time limits for appeal had lapsed (as in Austria, Belgium, Hungary, the Netherlands, Portugal and Spain).

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47 For instance Article 6 of the Charter of Fundamental Rights, and Article 5 of the European Convention on Human Rights.

48 United Nations Committee on the Rights of the Child, General Comment No 6 (2005), CRC/GC/2005/6, paragraphs 61-63.

49 The Greek authorities have meanwhile adopted new legislation guaranteeing respect for the principle of access to the asylum procedure.

Another problematic aspect is the provision in Article 3(3) whereby Member States retain the right, under their national law, to send an asylum applicant to a third state. This provision can be interpreted as allowing Member States to apply the 'safe third country' concept (now included in the Asylum Procedures Directive) to countries outside the Dublin system. However, the reason why this Article does not include any explicit reference to the 'safe third country' concept but rather refers to Member States' national law is that at the time the Dublin Regulation was adopted, such a concept was not yet part of the EU asylum *acquis*. However, with the adoption of the Asylum Procedures Directive, this notion became part of the EU legislative framework governing asylum. If Member States continue to apply this provision based on their national law, there is a clear risk of infringing the Asylum Procedures Directive. In concrete terms, problems can arise for example in cases where the Member State to which a transfer request is made were to apply the safe third country concept where the requesting state would not do so because it did not consider that the third country could be regarded as safe for the applicant. This has given rise to concerns about 'chain *refoulement*'.[50]

2.2.6. Family unity and the interests of children and other vulnerable groups are not sufficiently ensured by Member States

a. Asylum-seekers under the Dublin procedure could in some cases be prevented from reuniting with family members

Family links play an important role in determining the Member State responsible for examining an asylum application. The Regulation contains several binding provisions meant to protect the unity of a family, namely Articles 7, 8 and 14. Moreover, the discretionary clauses (the sovereignty and humanitarian clauses) aim to avoid situations where family members not strictly meeting the definitions in the binding provisions would be separated due to the strict application of the Dublin criteria.

However, in practice, reports from the UNHCR and NGOs as well as the Evaluation Report show that **asylum-seekers are or could in some cases be prevented from reuniting with members of their families**. This obviously creates hardship for the families concerned, and could increase the level of secondary movements as asylum-seekers could be pushed into illegality. In addition, such practices may violate the right to family life and the rights of the child (Articles 7 and 24 of the Charter of Fundamental Rights).

This is **due** either to restrictive practices on the part of Member States (for example, as indicated in the Evaluation Report, the fact that they usually require too high a level of proof for the family link or the fact that they do not apply the discretionary clauses very often) and/or legal gaps (such as the fact that the humanitarian clause does not fully oblige Member States to bring together dependent relatives or does not provide for the possibility to bring together relatives who are not necessarily dependent). The **restrictive definition of 'family members'** — as the spouse, minor unmarried children, the father, mother or guardian when the applicant is a minor and unmarried — as well as **certain procedural limitations** (such as the fact that asylum-seekers can be reunited with a member of their family who has applied for asylum in another Member State only if that member of the family has not yet received a first decision regarding the substance of his/her application) or **'status' limitations** (such as the fact that asylum seekers cannot be reunited with members of their family who are legally resident in other Member States on grounds other than that of being refugees, such as for instance being beneficiaries of subsidiary protection), coupled with the non-application by

[50] See glossary in Annex 4 for an explanation of this term.

Member States of the discretionary provisions, can result in the separation of relatives. The situation of children is of particular concern.

The Dublin Regulation does not apply for the time being to **applicants for and beneficiaries of subsidiary protection**[51], as at the time of its adoption, the concept of subsidiary protection was not yet part of the EU asylum *acquis*. The concept was incorporated, however, with the adoption of the Qualification Directive.[52] In practice, all Member States have already introduced a single procedure for **applying** for international protection (i.e. without distinguishing between applications for asylum and for subsidiary protection), so the fact that applicants for subsidiary protection are currently excluded from the scope of the Dublin Regulation should not create difficulties in practice. In other words, concerns that the application of the Dublin Regulation could be undermined by those seeking protection being able to evade its terms by claiming subsidiary protection and therefore not coming under the procedure for determining responsibility could only exist if in practice Member States had not already opted for a single procedure. However, the fact that the **beneficiaries of subsidiary protection** are excluded from the scope of the Dublin Regulation means that asylum-seekers can be excluded from some of the family reunification provisions (e.g. an asylum-seeker currently cannot be reunited with a family member who is a beneficiary of subsidiary protection in another Member State).Given that Member States are increasingly granting international protection in subsidiary forms,[53] the probability of asylum-seekers being prevented from reuniting with beneficiaries of subsidiary protection is high.

b. The needs of vulnerable groups under the Dublin procedure are not sufficiently addressed

The issue of protecting vulnerable groups and other persons with special needs throughout the asylum procedure, thus including the Dublin procedure, is in principle tackled by the Reception Conditions Directive. However, in order to respond to the particular needs of this group of people in the context of the Dublin procedure, some elements are also addressed in the Dublin Regulation. Several protection gaps have nonetheless emerged, concerning primarily the treatment of unaccompanied minors and other persons with special needs such as people who are suffering from trauma or particular illnesses or are torture survivors.

Regarding the **treatment of unaccompanied minors** under the Dublin procedure, there are concerns that their claims are not always handled in line with their best interests, meaning in particular that in some cases they are prevented from reuniting with their families.[54] The Dublin Regulation does already include several provisions aiming to guarantee that Member States respect the best interests of the child in implementing the Dublin procedure, in accordance with Article 24 of

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51 Under the Qualification Directive, a '"person eligible for subsidiary protection" means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm (…), and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country' [Article 2 (e)].

52 Directive 2004/83/EC of 29 April 2004, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304, 30.9.2004).

53 Between 2003 and 2006, the proportion of positive decisions under the Geneva Convention did not change significantly (5.09% vs 7%), but the percentage of positive decisions granting subsidiary forms of protection more than tripled (from 4.57% in 2003 to 15.24% in 2006).

54 UNHCR provides evidence of cases where, for example, a minor was prevented from reuniting with his parents based on the fact that he had previously applied in a different Member State and that, despite his age, he was mature enough to be excluded from the application of Article 6. In one case this led a minor to seriously injure himself while trying to avoid the transfer and reunite with his parents.

the Charter of Fundamental Rights and Article 3 of the UN Convention of the Rights of the Child. Under Article 6, when unaccompanied minors apply for asylum, the Member State where a member of their family is legally present is responsible for examining their claim, provided that this is in the best interest of the child. If no family member is legally present, the Member State where the asylum application is lodged is responsible. Under Article 15(3), if the asylum-seeker is an unaccompanied minor who has a relative or relatives in another Member State who can take care of him or her, Member States must if possible unite the minor with his or her relatives, unless this is not in the minor's best interest. While Article 6 **obliges** Member States to reunite unaccompanied minors with members of their **nuclear family**, Article 15 only **allows** Member States to reunite them with their **extended family**.

Several legal gaps and divergent interpretations have been identified during the evaluation process, such as:

- Article 6 is unclear in respect of the different types of transfers that an unaccompanied minor could be subject to. While the great majority of Member States appear to consider that an unaccompanied minor cannot be subject to a take-charge procedure for reasons other than family reunification, some (such as Greece and Hungary) reported having received frequent requests to take charge of unaccompanied minors on account of irregular border crossing or issuance of a visa. Confusion also exists in respect of the possibility to send back unaccompanied minors to a country where they have previously applied for asylum, in cases where they cannot be reunited with their family. As highlighted in the Evaluation Report, some Member States, such as Norway, refrain from making requests to take back unaccompanied minors.

-Article 6 does not explicitly require a 'best interest' determination in all transfers involving minors, but limits it only to situations where minors may be reunited with their families.

-Because of the semi-compulsory nature of Article 15(3) ('Member States shall **if possible** unite the minor'), Member States might not reunite minors with members of their extended family (as opposed to the nuclear family in Article 6) who could take care of them, even when this would be in their best interests.

The Evaluation Report highlighted shortcomings in the availability of data regarding the number of unaccompanied minors subject to the Dublin procedure, due to the fact that only few Member States provided such data. However, based on the available data (in the Netherlands, during the reporting period, out of 654 requests to other Member States to take charge of an asylum-seeker, 16 concerned unaccompanied minors, and out of 754 requests from other Member States to take charge of an asylum-seeker, 10 concerned unaccompanied minors) the Evaluation Report concluded that there are a number of unaccompanied minors subject to the Dublin procedure. Therefore, it can be considered that at least these people could have been affected by the above-mentioned problems.

Regarding other asylum-seekers with special needs, the consultation process revealed that they are not adequately protected under the Dublin Regulation. For instance, people who suffer traumas, persons with medical needs, etc. may see themselves subject to a transfer to a Member State responsible for dealing with their claims but which cannot provide them with adequate treatment. Another issue of concern is the fact that there are cases where Member States do not share relevant information before a transfer is carried out, notably on the medical condition of the person to be transferred. The consequences of failure to share relevant information can be fatal for the individuals concerned, such as in one case revealed by the UNHCR where the applicant committed suicide. The Regulation does not include explicit provisions addressing these issues.

2.3. How would the problem evolve, all things being equal

The existing EU measures do not satisfactorily address the problems described above.

Due to the complexity of the Dublin Regulation, there is still room for improvement and alignment of Member States' practices, on the basis of the mutual trust and cooperation on which the Dublin system is founded. However, the past years of implementation have shown that the existing forms of practical cooperation among Member States in order to align their interpretation and practical understanding of the provisions of the Regulation are not sufficient to address the problems identified with the system in a comprehensive way.

The fact that the Dublin Regulation, as part of the first stage of the CEAS, was the result of a sensitive political compromise, adopted by unanimous vote in the Council, meant that the final text contained many ambiguities and legislative gaps. This explains why there is still much scope for improving the existing instrument. Examples of situations that would remain problematic under the status quo are:

-The efficient functioning of the mechanism: the absence of adequate time limits, the fact that the procedures and circumstances for the application of certain clauses are not clear, the fact that there is no effective mechanism for tackling disputes between Member States, the lack of comprehensive rules on transfers, etc., will continue to hinder the system from fully achieving its objectives.

- Response to situations of particular pressure: the fact that there is no mechanism in the Dublin Regulation to suspend transfers to a particular Member State confronted with an exceptional situation of migratory pressure would create a further burden for this Member State, which might then not be in the position to provide asylum-seekers with an adequate standard of protection. Only an EU mechanism that all Member States would together apply in circumstances of particular pressure can be expected to provide the affected Member State with adequate solidarity.

- Level of protection granted to people subject to the Dublin procedure: the fact that asylum-seekers often are not properly informed about the Dublin procedure, that the effectiveness of the right to remedy is not fully guaranteed, that custodial measures are increasingly used by Member States on a systematic basis, that the management of vulnerable groups is not properly ensured and that the unity of asylum-seekers' families is not always guaranteed will continue to have a negative impact both on asylum-seekers' rights and on the effectiveness of the system, since people will try to avoid the system rather than comply with it. This is therefore likely to contribute to an increase in the level of 'asylum shopping'.

If no action at EU level is taken, the identified problems will continue to persist, since the present wording of the Regulation is insufficient to ensure optimum effectiveness of the system and protection of people in need of international protection. Member States could decide to follow certain interpretations of their own, which might interfere with the correct and uniform application of the Dublin Regulation, thus resulting in serious divergences and creating legal uncertainty.

2.4. Does the EU have the power to act?

2.4.1. EU right to act and subsidiarity

Title IV of the EC Treaty ('TEC') on visas, asylum, immigration and other policies related to free movement of persons confers certain powers on these matters on the European Community. These powers must be exercised in accordance with Article 5 TEC, i.e. if and in so far as the objectives of

the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

More specifically, the current legal basis for Community action regarding *criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States* is established in **Article 63(1)(a) TEC**.

The reasons and need for a common intervention at EU level are clearly expressed in the section below.

2.4.2. Transnational nature of the problem

Based on the preferred policy option of the IA on the CEAS, the results of the wide consultations conducted on the Green Paper on the CEAS and various expert meetings, a clear need emerges for EU joint action to ensure a more efficient and protective Dublin system.

The need for a mechanism to determine responsibility for asylum applications lodged in the Member States resulted directly from the progressive establishment of an area of free movement for persons and in order to prevent the phenomena of 'asylum-seekers in orbit' (where no country accepts responsibility for deciding whether to give asylum or not) and 'asylum shopping' (where asylum-seekers apply for asylum in several Member States in order to extend their stay in the Member States). This mechanism establishes mutual rights and obligations mainly between Member States. By their very nature, these rights and obligations could not be established by Member States acting alone, but only at Community level.

It is therefore clear that the problems identified with the application of this mechanism are of a transnational nature and cannot be tackled by Member States acting in isolation, but only by adequate and streamlined coordination at EU level. For example: a common procedure could not operate without common time-limits clearly identified in a Community instrument; the phenomena of 'asylum-seekers in orbit' and 'asylum-shopping' can be prevented only by coordinated EU action; etc. Only action at EU level could guarantee that the Regulation will be uniformly interpreted and applied by Member States, this being essential for the adequate functioning of the system, which by definition requires the involvement of more than one Member State in the procedure.

Moreover, the competence of the EU must be also recalled when it comes to solidarity, given the indisputable need for a coordinated EU approach to tackle situations where the application of the Dublin system could further overburden Member States facing particular pressure.

The EU actions discussed in this impact assessment will not go beyond what is required in terms of adding value at EU level. The proportionality of the options will be carefully assessed so as to determine whether or not they go beyond what is necessary to achieve the objectives set out in section 3.

2.5. Consultation of interested parties

The following main findings regarding the improvements needed to the Dublin system emerged from the replies to the Green Paper on the future CEAS and from the consultations held by the Commission with various stakeholders, as noted in point 1.1.2:

- **Member State governments** generally support the current Dublin system, although they agree that improvements are needed on a number of issues, such as:

– extension of the scope of the Regulation to include applicants for and beneficiaries of subsidiary protection;

– the need to clarify several clauses in the Regulation, such as the cessation of responsibility clause and the discretionary clauses;

– the need to improve the performance of the Dublin mechanism in carrying out transfers;

– the need for better exchange of information prior to a transfer being carried out, in particular medical information;

– the need to improve the effectiveness of the conciliation mechanism, in general by providing a handbook on solutions reached in the past within expert meetings or bilaterally between Member States;

– some Member States recognise the necessity of, or explicitly request, more measures for burden sharing (i.e. through financial solidarity and asylum expert teams);

– the need to build and strengthen legal safeguards in the Dublin Regulation (supported only by a limited number of Member States);

– the need to improve **Commission Regulation 1560/2003** implementing the Dublin Regulation.

- **UNHCR and NGOs**, while generally agreeing on the need to have a system for allocating responsibility, argue for a fundamentally different approach, based on allocation of responsibility according to where the asylum application is made. However, in the absence of a political will for such an important change, a number of improvements are proposed for the system in the short term, such as:

– clarifying that Dublin claimants should have access to the asylum procedure in all circumstances;

– clarifying that the **Reception Conditions Directive** fully applies to Dublin cases;

– providing detailed and complete **information** to applicants for international protection about the Dublin procedure;

– offering an effective remedy against a Dublin decision, in particular granting **suspensive effect for appeals** against Dublin transfers;

– **broadening the family unity criteria** (extending the definition of family member; allowing reunification at any stage of the asylum procedure; allowing reunification not only with recognised refugees, but also with beneficiaries of subsidiary protection as well as other legal residents such as naturalised refugees);

– ensuring that the best interests of the child are always taken into account;

– restricting to the greatest extent possible the detention of Dublin claimants;

– reducing **time limits** for replies to requests and for transfers;

– clarifying **transfer conditions** and ensuring compliance with **human rights;**

– introducing burden sharing measures.

- **The European Parliament** has issued an own-initiative report in reply to the Commission's Evaluation Report of the Dublin system, in which a number of improvements to the system are suggested, most of them similar to those proposed by the UNHCR and NGOs.

3. Objectives

3.1. General objectives

The general objectives of Community intervention in the future development of measures to determine responsibility in the second stage of the CEAS are as follows:

1. To ensure that the needs of applicants for international protection are comprehensively addressed under the mechanism for determining responsibility, and to increase the system's efficiency in order to reduce the time and resources spent by Member States;

2. To contribute to better address situations of particular pressure on Member States' reception facilities and/or asylum procedural capacities.

3.2. Specific objectives

The proposal to amend the Dublin Regulation(s) should pursue the following specific objectives:

1. To ensure that the procedure for determining responsibility operates smoothly;

2. To ensure that disputes between Member States are tackled in an efficient way;

3. To prevent further overburdening of Member States confronted with situations of particular pressure and to ensure that asylum-seekers receive an adequate standard of protection;

4. To strengthen the legal safeguards for asylum-seekers and enable them to better defend their rights;

5. To ensure respect for the right to family unity and to improve the management of vulnerable groups in order to address their special needs.

3.3. Operational objectives

A non-exhaustive list of operational objectives is suggested below.

The following operational objectives will contribute to achieving specific objective 1:

1a. To establish adequate time limits for take-back requests, for requests for information and requests on humanitarian grounds;

1b. To clarify the practical arrangements for transfers, such as the issue of who has to pay the transportation costs;

1c. To clarify the circumstances and procedures for applying the discretionary clauses (humanitarian and sovereignty) and the cessation of responsibility clause.

The following operational objective will contribute to achieving specific objective 2:

2. To establish an effective dispute settlement mechanism.

The following operational objective will contribute to achieving specific objective 3:

3. To establish a mechanism to prevent Member States experiencing particular pressure on their asylum systems from being further overburdened because of Dublin transfers and to prevent Dublin transfers resulting in asylum-seekers not receiving an adequate standard of protection.

The following operational objectives will contribute to achieving specific objective 4:

4a. To further specify the information Member States have to provide to asylum-seekers and the form and timing for doing so and to introduce the obligation to hold a specific Dublin interview;[55]

4b. To strengthen several provisions of the Regulation to ensure that the right of remedy is effective;

4c. To clarify several provisions of the Regulation to ensure that in all cases the Member State responsible proceeds to the full assessment of the protection needs of the asylum applicant and to clarify the exception from the principle of access to the asylum procedure;

4d. To define clear and limited exceptional circumstances under which asylum-seekers subject to the Dublin procedure can be detained, with due consideration given to the situation of minors, in order to comply with the principle that asylum-seekers may not be detained solely because they are asylum-seekers.

The following operational objectives will contribute to achieving specific objective 5:

5a. To extend the right to family reunification;

5b. To further specify the rules applicable to unaccompanied minors, in particular to better define the best interests of children in accordance with their rights;

5c. To extend the scope of the humanitarian clause to allow for reunification with the extended family;

5d. To establish a mechanism for the sharing of relevant information between Member States before a transfer is carried out, notably on the medical condition of the persons to be transferred.

4. LIST OF SUB-OPTIONS

[55] This operational objective will also contribute towards specific objective 1.

Status Quo

The existing legal framework would remain unchanged and ongoing activities in the Member States would continue. The Commission would continue monitoring the implementation of the Dublin Regulation.

4.1. Ensuring that the procedure for determining responsibility operates smoothly

1) Legislate:

- Delays in the procedure for determining the Member State responsible

The following sub-options 'a' and 'b' are alternatives:

a. Amend the Dublin Regulation to: 1) fix a time limit for requesting a Member State to take back an asylum-seeker, which should be **shorter** than the deadline for requesting to take charge (currently 3 months) when the request is based on evidence from the EURODAC database; 2) reduce the deadline for responding to requests for information from **6 to 4 weeks** and oblige Member States to justify any delays in replying — moreover, a Member State not respecting the time limit for replying to an information request should not be able invoke the expiry of the time limit for submitting a take-charge/take-back request as grounds for refusing such a request if that Member State is determined to be responsible; and 3) make the deadline for replying to requests on humanitarian grounds **identical** to the deadline for replying to take-charge requests (2 months) and set no deadline for submitting a request;

b. Amend the Dublin Regulation to: 1) make the time limit for requesting a Member State to take back an asylum-seeker **identical** to the time limit for take-charge requests (3 months) regardless of whether the request is based on evidence from EURODAC database or not; 2) **keep the current deadline** of 6 weeks for responding to requests for information, but explicitly state that this should be a maximum and moreover provide for it to be further shortened by means of administrative bilateral agreements; and 3) make the deadline for **both** making a request and replying to a request on humanitarian grounds **identical** to that for replying to take-charge requests (2 months);

- Limited number of implemented transfers

Sub-options 'a', 'b', 'd' are complementary. Sub-option 'c' is an alternative to the others.

a. Amend the Dublin Regulation and Implementing Regulation[56] in order to establish in particular that the transferring Member State is to bear the transfer costs, and to clarify the consequences in the case of erroneous transfers or where a transfer decision is overturned on appeal after the person has already been transferred;

b. Amend the Dublin Regulation to allow Member States to conclude bilateral arrangements for 'cancellation' of the exchange of equal numbers of asylum-seekers in well-defined circumstances in order to simplify and rationalise the transfer process. To ensure that such arrangements are in conformity with the Regulation, they should be approved by the Commission;

c. Amend the principles of the Dublin Regulation to replace the current system of physically

[56] A proposal for amending the Implementing Regulation may be submitted at a later stage.

transferring asylum-seekers, when not against their best interests, with a compensation mechanism whereby the Member State responsible for examining the application transfers a financial amount to the Member State where the applicant is physically located. The procedure for determining responsibility would still be carried out, but instead of asylum-seekers being transferred to the responsible Member State, they would remain on the territory of the Member State where they applied for asylum or were found to be illegally staying, except when the transfer is necessary for reasons of family unity or, in the case of children, in the best interest of the child. The amount to be transferred by the responsible Member State would be based on a monthly cost per asylum-seeker calculated for each Member State;

d. Amend the Dublin Regulation to abolish the rule contained in Articles 19(4) and 20(2) under which the responsibility of a Member State ceases after a period of 18 months if an asylum-seeker absconds. That means that an asylum-seeker who reappears even after 18 months will still be subject to transfer towards the Member State responsible.

- Clarify the circumstances and procedure for applying the cessation of responsibility clause and the discretionary clauses

The following sub-options 'a' and 'b' are alternatives:

a. Amend the Dublin Regulation to clarify in particular that for the **cessation of responsibility** clauses it is the **requested Member State**[57] which has to prove that the third-country national left the territory of the EU (in the case of Article 16(3)) or has been expelled (in the case of Article 16(4)). Regarding the **sovereignty clause**, it should be clarified that the Member State applying it has to inform the other Member States of the application of the clause, information which should be sent both via the existing bilateral secure network DubliNet and the EURODAC database. The circumstances for the application of the sovereignty clause should be left open, but it should be specified that it may be used mainly for humanitarian reasons. Moreover, the condition of the applicant's consent for the application of the clause should be reintroduced. Regarding the **humanitarian clause**, the Member State able to make a request on humanitarian grounds should be clearly identified in the Regulation, Member States should be obliged to justify a refusal to accept a request on humanitarian grounds, and practical arrangements for obtaining the written consent of persons to be reunited should be included in the Implementing Regulation. Other modifications to the humanitarian clause are included in option 1a) for objective 4.1 (as regards deadlines), options 1b) for objective 4.5 (vulnerable groups and family unity), and option 1b) for objective 4.2.

b. Amend the Dublin Regulation to clarify in particular that for the **cessation of responsibility** clauses it is the **requesting Member State** which has to prove that the third-country national has left the territory of the EU (in the case of Article 16.3) or has been expelled (in the case of Article 16(4)). Regarding the **sovereignty clause**, the Member State that applies it should inform only the Member States potentially involved in the Dublin procedure of the application of the clause, using the existing bilateral secure network 'DubliNet'. Under this option, the circumstances for applying the sovereignty clause should be exhaustively identified (limited to humanitarian cases) and the consent of the asylum-seeker will not be required. Another modification to the sovereignty clause is included in option 1b) for objective 4.3. Regarding the **humanitarian clause**, it should be specified that any Member State can make a humanitarian request, that there is no obligation to justify a refusal on humanitarian grounds and that the practical arrangements for obtaining written consent

[57] Meaning the Member State who has been requested to take charge of or take back an asylum applicant but who refuses to do so by invoking the cessation of responsibility clause.

will be left to the Member States applying the clause to decide on a case-by-case basis.

2) Practical cooperation:

The following sub-option 'a' is complementary to the legislative sub-options addressing the issue of 'limited number of implemented transfers'. Sub-option 'b' is complementary to the legislative sub-options for 'clarifying the circumstances and procedure for applying the cessation of responsibility clause and the discretionary clauses'.

a. Identify and disseminate best practices in performing transfers of asylum-seekers via meetings of experts. Encourage greater practical cooperation between Member States, in particular on the days and times chosen for transferring asylum-seekers under the Regulation.

b**.** Create a manual (handbook) on the application of the Dublin Regulations, which should contain answers to questions raised by Member States' experts on the application of the Regulations in concrete cases. This should be developed by the Commission in cooperation with the Member States during expert meetings. The handbook should be used as a reference for similar cases.

4.2. Ensuring that disputes between Member States are tackled in an efficient way

1) Legislate

Sub-options 'a', 'b', 'c' and 'e' are alternatives. Sub-option 'd' is complementary to 'a' and 'b'.

a. Amend the Dublin Regulation to create an independent structure/body with the role of settling disputes on all issues regarding the application of the Dublin Regulation (with its decision to be binding) as well as with an advisory/consultation role;

b. Amend the Dublin Regulation to include a conciliation mechanism for all matters of dispute on the application of the Dublin Regulation;

c. Create the structure referred to under a) within the future European Asylum Support Office (EASO). This option would imply giving the EASO decision-making powers;

d. Use the EASO expertise in order to provide support for the application of the Dublin Regulation (gathering information, support to monitoring etc), with no decision-making powers;

e. Amend only the Dublin Implementing Regulation to keep the current conciliation mechanism for humanitarian cases but make its decisions binding.

2) Practical cooperation*:*

Sub-option 'a' is an alternative to 'b' but complementary to the legislative sub-options.

a. Create a manual (handbook) on the application of the Dublin Regulations, which should contain answers to questions raised by Member States' experts on the application of the Regulations in concrete cases. This should be developed by the Commission in cooperation with the Member States during expert meetings. The handbook should be used as a reference for similar cases;

b. Use the current informal Dublin expert meetings to solve disputes between Member States, with the Commission proposing a solution and the Member States not in dispute voting, but the results of

the vote would not be binding.

4.3. Preventing further overburdening of Member States confronted with situations of particular pressure

1) Legislate

Sub-options 'a' and 'b' are complementary, while 'c' and 'd' are alternatives to 'a' and 'b'.

a. Amend the Dublin Regulation to establish a provision for suspending Dublin transfers in limited and well-defined circumstances in order to respond to **two different situations**: **the first** is the case where a Member State is faced with an exceptional situation of particular pressure on its asylum system and where Dublin transfers, if undertaken, would aggravate this situation; **the second** concerns the case where there are concerns that the standards of protection in a certain Member State are not in conformity with the EU acquis on asylum, so in order to adequately protect the asylum-seekers concerned, Dublin transfers towards that particular Member State should be suspended. This would be a general mechanism, meaning that all Member States would stop transfers to a specific Member State and as a result would become responsible for dealing with the asylum applications of those persons whose transfers have been suspended.

Regarding the **procedure** for taking such a decision, the affected Member State (for the first case) and the concerned Member State (for the second case) should send a motivated request to the Commission which should include, among other things, relevant information regarding the asylum situation in a particular Member State which could justify a suspension of transfers. For the second case under discussion, it is important that the Commission keeps the right to decide to suspend transfers even in the absence of a request in that sense from a Member State. Based on a careful assessment of the asylum situation in that particular Member State, as well as after examining other factors such as the potential consequences of such a decision for the other Member States, the Commission may decide to suspend transfers towards that Member State, after which it has to communicate the decision to the Member States and the Council, in line with the relevant comitology rules. In view of the urgency of the situations under discussion, any decisions in this respect would have to be taken promptly and therefore very short time limits need to be established. The decision to suspend transfers in exceptional cases of particular pressure could justify granting the special emergency financial support already available under the European Refugee Fund, should the Member State facing particular pressure make a request for assistance. The suspension would last for 6 months, which could be extended for a further 6 months if the grounds for suspension still persist.

b. Amend the Dublin Regulation to allow for an overburdened Member State to request another Member State bilaterally to apply the sovereignty clause and therefore take responsibility for asylum applicants for whom the overburdened Member State would be responsible under the Dublin criteria (i.e. those asylum-seekers would not be transferred any longer). The discretionary nature of the sovereignty clause would still be retained, meaning that the requested Member State would be free to accept such a request or not. The Commission should be notified of the use of this mechanism in order to ensure adequate monitoring.

c. Amend the Dublin Regulation to allow an overburdened Member State to unilaterally decide not to accept transfers of asylum-seekers from other Member States in exceptional situations of particular pressure. The notion of 'particular pressure' should be clearly defined by the Commission.

d. Define a principle of structural solidarity based on a financial compensation mechanism regulated at EU level (based on a monthly cost per asylum-seeker and applicant for subsidiary protection calculated for each Member State) that transfers resources from a fund managed at EU level to those Member States suffering an excessive burden. To this end, the maximum burden that can be tolerated by a Member State would need to be defined (based on an index to be determined in line with the reception capacities of the Member States);

***2) Practical cooperation**:*

This sub-option is partially alternative to the legislative sub-options.

a. Set up asylum expert teams coordinated at EU level to assist Member States that would be overburdened by the high number of Dublin transfers. However, this option should apply if there has been no decision to suspend returns (under 1a) or where such a decision has been taken for a temporary period until the situation is stable in the affected Member States.

4.4. Strengthening the legal safeguards for asylum-seekers and enabling them to better defend their rights

- Information

1) Legislate

Sub-options 'a' and 'b' are alternatives, sub-option 'c' is complementary to 'a' and 'b'.

a. Amend the Dublin Regulation to further specify the form (which should be age-appropriate), language and content of information and the stage of the procedure when it should be provided to asylum-seekers. The **general information** about the Dublin procedure should be given to all asylum-seekers upon lodging their applications. During the Dublin procedure, Member States should provide **further specific information** to those asylum-seekers for which another Member State accepted responsibility, such as information on available legal remedies against a transfer decision and entities that may provide legal assistance. Moreover, Member States should be obliged to hold a specific Dublin interview with asylum-seekers subject to the Dublin procedure, during which, if need be, they should be informed orally about the application of the Regulation. The interview must be held in good time, as soon as possible after the lodging of an application for international protection.

b. As in option a), amend the Dublin Regulation to further specify the form, language and content of information and the stage of the procedure when it should be provided to asylum-seekers. The **general information** about the Dublin procedure should be given to all asylum-seekers upon lodging their applications. Unlike with option a), **no further specific information** would be provided to those asylum-seekers for whom another Member State accepted responsibility and no Dublin interview would be held.

c. Amend the Dublin Regulation to provide for a standard EU-wide multilingual leaflet about the Dublin procedure, to be agreed under the comitology procedure. Based on the different leaflets already existing in several Member States on the Dublin procedure, the Commission would propose a standard information leaflet to be discussed and decided upon in comitology meetings. The leaflet would in particular include information on the Dublin rules, the rights of asylum-seekers under the Dublin procedure, and the remedies available. Member States would have to ensure the translation of the leaflet (for instance using EU funding) in the languages most frequently used or understood by

asylum-seekers entering their territories. The different language versions should be exchanged between Member States. Member States may include further details in the leaflet adapted to their national contexts.

2. Practical cooperation:

This sub-option is an alternative to the legislative sub-option 'c'.

a. The same leaflet mentioned under 1c) would be discussed and agreed at Dublin experts' meetings, rather than in the comitology procedure.

- Effective right to remedy

1. Legislate:

Sub-options 'a', 'b' and 'c' are alternatives.

a. Amend the Dublin Regulation to establish an **automatic suspensive right of appeal** against a Dublin transfer decision, which entails the right to remain in the territory until a final decision is taken on the appeal. In addition, clarify the right to legal assistance and further specify the procedure for notification of transfer decisions to asylum-seekers, in particular as regards the time, form and content of such notifications;

b. Amend the Dublin Regulation to establish the right to appeal against a Dublin transfer decision and the right for an asylum-seeker to **request suspensive effect of the appeal** and to remain in the territory until a decision is taken on the request for suspensive effect. As in option a), clarify the right to legal assistance and further specify the procedure for notification of the decision, in particular as regards the time, form and content of such notifications;

c. Amend the Dublin Regulation to establish the right to appeal against a Dublin transfer decision and to **oblige the courts** to examine on their own initiative the need to temporarily suspend enforcement of a transfer decision (i.e. whether applicants should remain in the territory pending the outcome of their appeal). The criteria the courts should use in deciding on the need to suspend enforcement of a transfer decision, pending the outcome of an appeal, will be left to the Member States. In addition, as in option a), clarify the right to legal assistance and further specify the procedure for notification of the transfer decision to the asylum-seeker, in particular as regards the time, form and content of such notifications.

- Custodial measures

Sub-options 'a', 'b' and 'c' are alternatives.

a. Include a provision in the Dublin Regulation to forbid detention of Dublin claimants under all circumstances;

b. Include a provision in the Dublin Regulation to reiterate the principle that asylum-seekers may not be detained solely on account of their status as asylum-seekers and to forbid the detention of asylum-seekers subject to Dublin procedure except as an extraordinary measure of final resort, after a transfer decision has been notified to the person concerned and where any other non-custodial measures are unlikely to achieve satisfactory results, in particular because there are objective reasons to believe that there is a risk of the person concerned absconding. The detention of minors should be

forbidden unless this is in their best interest, for instance for family reasons. Such a provision would also clarify that asylum-seekers detained under the Dublin procedure would enjoy the same standards of protection as those laid down in the Asylum Procedures Directive and the Reception Conditions Directive.

c. Amend the Asylum Procedures Directive/the Reception Conditions Directive to include a specific provision on the detention of Dublin applicants, with the content of b) above.

- Principle of effective access to the asylum procedure and its exception

Sub-options 'a' and 'b' are alternatives.

a. Amend the Dublin Regulation in order to clarify that an asylum-seeker subject to the Dublin procedure shall in all circumstances have an effective access to the asylum procedure. In particular, it would be laid down that Member States would have to revoke any decision to discontinue the examination of an application after its withdrawal by the applicant and ensure that the examination of the application is completed. Moreover, in view of ensuring coherence between the Dublin and the Asylum Procedures Directive, several issues regarding the access to appeal procedures for asylum-seekers under the Dublin procedure may need to be further clarified in the context of the upcoming proposal amending the Asylum Procedures Directive. Regarding the issue of sending an asylum-seeker to a third-country, this right would be retained, but only after careful examination of the safe third-country criteria set out in Article 27 of the Asylum Procedures Directive.

b. Amend the Dublin Regulation in order to clarify that an asylum-seeker subject to the Dublin procedure must have access to the asylum procedure only in the first instance without further specifications as provided under option a). Retain the right of Member States to send an asylum-seeker to a third country without modification, i.e. in accordance with its national law (not with the Asylum Procedures Directive) and in compliance with the Geneva Convention.

4.5. Ensuring respect for family unity and improving the management of vulnerable groups in order to address their special needs

1) Legislate

- Vulnerable groups (unaccompanied minors and other persons with special needs, such as people suffering from trauma, particular illnesses, etc.)

Sub-option 'a' is an alternative to 'b'. Sub-option 'c' is an alternative to 'd', but both are complementary to 'a' and 'b'.

a. Amend the Dublin Regulation to establish a separate procedure for determining responsibility in cases concerning **vulnerable groups, notably unaccompanied minors**. Such a procedure should in particular include shorter deadlines than those applicable to normal cases, and Member States have to designate specific authorities to deal only with these cases.

b. Amend the Dublin Regulation and the Dublin Implementing Regulation in order to further clarify and strengthen the applicability of the Dublin rules **to unaccompanied minors** in accordance with the UN Convention on the Rights of the Child. This option would aim, among other things, to: clarify the applicability of the principle of the 'best interests of the child' in determining the responsible Member State; make compulsory the right of unaccompanied minors to reunite with

relatives who can take care of them; and include rules on information sharing (such as on age and level of education) and on the representation of unaccompanied minors throughout the procedure. However, the procedure for determining responsibility as such would remain unchanged, meaning in particular that the same deadlines for making and responding to requests would continue to apply.

c. Amend the Dublin Regulation to include new criteria under which vulnerable persons should never be subject to a Dublin transfer decision unless this is in their best interests (such as where a person with medical needs has to be transferred to a Member State that has the necessary medical treatment facilities).

d. Amend the Dublin Regulation and the Implementing Regulation to include different provisions to take better account of the situation of asylum-seekers with special needs, such as a new provision obliging Member States to exchange relevant information (such as medical information) before carrying out Dublin transfers (and introducing a standard form for the information to be exchanged, to be annexed to the Implementing Regulation).

2) Practical cooperation

Sub-options 'a' and 'b' are complementary to the legislative sub-options.

a. Member States to provide staff involved in the procedure for determining responsibility with appropriate **training**, in particular so that they can appropriately handle cases involving vulnerable groups.

b. Set up a network of Member State experts dealing with minors.

Legislate:

- Family reunification

Sub-options 'a' and 'b' are alternatives.

a. Amend the Dublin Regulation to extend the right to family reunification by including applicants for and beneficiaries of subsidiary protection within the scope of the Regulation. Moreover, **the current restrictive definition of family members should be fully enlarged** to encompass, for instance, siblings, unmarried couples in a genuine and stable relationship in accordance with their national law, dependants, families set up during flight and in exile etc. The extension of the definition would mean that Member States would be obliged to reunite all extended relatives, regardless of whether they are dependent or not.

b. As in option a), amend the Dublin Regulation to extend the right to family reunification by including applicants for and beneficiaries of subsidiary protection within the scope of the Regulation. In addition, the Regulation would extend the right to reunification to **dependent relatives.** The definition of 'family member' would be enlarged, but only in order to ensure respect for the principle of the best interests of the child (e.g. the principle would remain that children should be unmarried to be considered part of the family, but when it is in their best interests, married children may be considered to be family members;[58] in the case of a child asylum-seeker, minor unmarried siblings would be included as members of the family, etc.). Moreover, the application of the humanitarian

[58] For example, a married child may be in a forced marriage or separated from the spouse.

clause would be extended to relatives who are not necessarily dependent on one another in a strict sense (such as adult siblings could be). As the humanitarian clause is a discretionary provision, Member States would have the possibility but not the obligation to reunite extended (non-dependent) relatives.

5. Assessment of the policy sub-options and identification of the preferred option

For the assessment of the **status quo**, see Annex I.

Administrative costs are presented in Annex V. However, this impact assessment does not include implementation costs as the data submitted by Member States on the application of the Dublin Regulation do not allow such costs to be identified.

5.1. Ensuring that the procedure for determining responsibility operates smoothly

Legislation

– Delays in the procedure for determining the Member State responsible (because of inadequate time limits)

Regarding the time limits for **take-back requests:** firstly, given that take-back requests will in most cases be based on evidence obtained from the EURODAC database, there should be no difficulty in establishing time limits. This should be feasible both for a take-back request based on a subsequent asylum application (made by the same applicant in the requesting Member State) and where an applicant was found to be illegally staying in the requesting Member State but without applying again for asylum there, given that in both cases EURODAC database can be checked (for the first case Member States have the obligation to check the EURODAC database whereas in the second case it is left at Member States' discretion) in order to verify whether the person concerned has lodged a previous application in a different Member State. Secondly, regarding **the duration of the time limit**: a deadline shorter than for a take-charge request is feasible given that, in most cases, the requesting Member State will be able to search and quickly find out in the EURODAC database whether the person concerned had previously applied for asylum in another Member State. However, the deadline should not be too short either, in order to accommodate situations where, because of the bad quality of fingerprints, the requesting Member State might need to undertake additional checks. Where the take-back requests are based on other evidence than EURODAC, the deadline should be longer since it should in principle take longer in order to identify the Member State responsible. In this case, the same deadline as for take charge requests could be applied.

Regarding replies to **requests for information**, a deadline of 4 instead of 6 weeks is more reasonable, as replies are often necessary in order to allow Member States to identify the Member State responsible and submit take-charge requests in particular. Several Member States and the UNHCR have indeed argued for shortening this deadline. In order to ensure compliance with the set time-limit, it is important to oblige Member States to justify any delays in the reply. Moreover, although it is difficult to apply a general sanction for failing to meet the deadline, it is important to lay down a rule to prevent Member States misusing this provision (i.e. deliberately not providing a reply to an information request, in order to prevent the requesting Member State from meeting the time limit for submitting a request). Although the text of the Regulation is not clear on the possibility to conclude bilateral agreements to shorten the time limits for replying to information requests, some Member States have done so and have information requests dealt with within 4 weeks. This is clear

proof that a reduction of the time limit is feasible. The use of the same time limit by all Member States will obviously contribute to a more efficient procedure, so it is preferable to lay down this obligation in the legal text instead of having it dealt with by bilateral agreements.

In the case of **humanitarian requests**, the establishment of a time limit for replying to such requests will bring certainty for the requesting Member State and asylum-seekers regarding the outcome of the procedure. However, it would not be feasible to fix a time limit for sending requests on humanitarian grounds as well, as the circumstances for reuniting family members under the humanitarian clause can be unpredictable.

All the above-mentioned deadlines could entail some additional costs in terms of personnel and procedures in order to comply with them.

Taking into account the above arguments, the preferred policy measure to address the issue of delays in the procedure for determining the Member State responsible is **policy option a)**. For Member States, it is less time-consuming and prevents disputes. For asylum-seekers, faster determination of responsibility will lead to quicker examination of their claims, therefore reducing the uncertainty and anxiety due to delays in the procedure and potentially easing the integration process in the responsible Member State. At the same time, a swifter procedure could help prevent secondary movements of asylum-seekers who, due to delays in decisions and the resulting insecurity, could decide to move to another Member State, for instance to rejoin family members on their own. As this option introduces new obligations, it will affect those Member States that in practice have considerable delays in dealing with requests. Regarding requests for information, this option will only affect those Member States that have not concluded bilateral agreements to shorten the time limits.

Policy option a) is proportionate to the set objective, since it is based on the existing time limits adapted in order to take into account the specificities of each measure. In particular: 1) the time limit for requesting an asylum-seeker to be taken back will use as a benchmark the time limit for take-charge requests; 2) the implementation impact of reducing the time limit for requests for information (from 6 to 4 weeks) will be insignificant; 3) the time limit for replying to a request on humanitarian grounds will be the same as the time limit already set for take-charge requests.

– **Limited number of implemented transfers**

The financial **compensation mechanism (option c)** could in principle eliminate the inefficiencies linked with carrying out physical transfers (except when transfers are still necessary to ensure family unity or if they are in the best interests of a child applicant), since the physical transfers will be replaced by financial transfers, ensuring a more streamlined and certain outcome for the Dublin procedure. Applicants' needs and interests would be further taken into account (they would remain in principle in the Member State of their choice, so their integration would be in principle facilitated and the phenomenon of secondary movements could be reduced) and their protection would improve since many protection related issues are linked to physical transfers (information on transfers, continuity in the protection of vulnerable groups, etc.).

However, this option has a number of considerable difficulties and negative impacts. Firstly, it would not meet the current political objectives of the Dublin system and could increase the asylum pressure on the most 'attractive' Member States, with possible negative financial consequences and negative perceptions in society and therefore negative impacts on the integration of applicants. Legal uncertainties would arise, in particular as far as 'take-back' cases are concerned, with the risk of

having applications examined twice (e.g. when an applicant applies for asylum in a second Member State while his or her previous application is still being examined in a first Member State, in which case the second Member State would keep him or her on its territory instead of returning the person to the first Member State for completing the examination of his or her application). Moreover, such a mechanism could be subject to abuse (for instance, it could be seen as a 'pull' factor encouraging movement to a particular state for economic reasons and lodging an asylum application there in order to ensure non-removal). For these reasons, this policy measure could also be considered as not fully respecting the principle of proportionality.

From a financial point of view, additional and unpredictable administrative expenses (beyond the financial compensation received) could occur for those Member States having to manage greater numbers of people. Moreover, the trade-off between physical and financial transfers (the financial compensation received may be lower than the cost of transferring the applicants and vice versa), might create implementation difficulties, since some Member States could for instance end up facing higher costs by transferring funds to another Member State than if they received and managed these people themselves.

The **abolition of the cessation of responsibility clause (option d),** meaning that an asylum-seeker who absconded but reappeared after 18 months would still be subject to transfer to the Member State responsible, is not expected to bring about a significant increase in the number of the implemented transfers and therefore make the system more efficient. Experience with the former Dublin Convention, which did not impose such limits, showed that asylum-seekers can go missing even without the existence of such limits. This option would most likely lead to a precarious situation for asylum-seekers, who could abscond anyway and would only be pushed into illegality. Of the 17 Member States that expressed their views on this matter, only 6 would like to see this change made in the Dublin Regulation. The 11 others as well as the UNHCR were not in favour.

Under **option a),** a series of practical arrangements for transfers, e.g. on the issue of costs or the consequences of an erroneous transfer or of overturning of a decision on appeal after the person has been already transferred, would be incorporated or further clarified in the Dublin Regulations. This would eliminate the doubts or disputes between Member States on these issues, so transfers could be expected to be more swiftly implemented. In addition, the financial and human resources used in the procedure to determine responsibility, which would normally be wasted in the case of non-implemented transfers, would be used more efficiently. This option will also greatly benefit applicants, ensuring more certainty about the outcome of the procedure and about their rights (e.g. in the case of erroneous transfer, applicants would be sent back and the examination of their claims would be guaranteed; under no circumstances would they themselves have to bear the cost of transfer, etc.). These clarifications have in general been welcomed both by civil society and by the Member States.

The option regarding the possibility for Member States to conclude bilateral agreements to cancel the exchange of equal numbers of asylum-seekers **(option b)** could have a positive impact both in terms of the efficiency of the system and as regards the protection of applicants' interests. For Member States, such agreements would reduce the workload and operating costs of the departments responsible for transfers. For asylum-seekers, they would remain in most cases within the Member State of their choice, where they would probably be more likely to integrate. Moreover, secondary movements after transfers could be further reduced.

However, this option, already part of the initial Commission's proposal for the Dublin Regulation,

was rejected during the negotiations in the Council, among other things because of the lack of objective criteria for selecting the candidates for actual transfers and the fact that Member States would face too much litigation from asylum-seekers complaining about legal uncertainty. During the consultations for the current proposal, this idea was generally not welcomed by the Member States, for the same reasons as expressed before. This option was rejected by the European Parliament as well.

Taking into account the above arguments, the preferred policy measure to address the issue of the limited number of implemented transfers is policy option a), which will clarify the practical rules Member States have to comply with when implementing transfers. This measure is therefore in line with the principle of proportionality, since it does not introduce new obligations for Member States.

– **Clarifying the circumstances and procedure for applying the cessation of responsibility clause and the discretionary clauses**

Regarding the **cessation of responsibility clauses,** Member States generally agreed during the expert meetings that the requested Member State (the one asked to take charge of or take back an applicant but who refuses to do so by invoking a cessation of responsibility clause) bears the burden of proof, i.e. has to deliver evidence that the person concerned has effectively left the territory of the EU or has been expelled. This seems to be the correct legal solution.

Regarding the procedure for applying the **sovereignty clause:** informing via 'DubliNet' the other Member States potentially involved in a concrete Dublin case of the decision to apply the sovereignty clause would avoid procedures relating to the same asylum-seeker being carried out simultaneously in several Member States. However, this will still entail the risk of carrying out repeated procedures regarding other possible applications the same person could lodge in the future in other Member States (different from the ones involved in the past). This would be inefficient, resource-consuming and against the political objectives of the system. It is therefore important that once a Member State takes responsibility in accordance with this provision, it also uses the EURODAC database for the transmission of this information, which will ensure that all potentially involved Member States in the future will be informed in an efficient manner that another Member State already accepted responsibility, eliminating therefore the risk of multiple procedures.

Regarding the **circumstances** for applying the sovereignty clause, providing an exhaustive list would not be appropriate, given that it would be difficult for legislation to cover all situations that can arise in practice. Moreover, the nature of the clause, which is discretionary, would be changed. However, it is important to clarify the nature of the provision which has been conceived in order to be used mainly for humanitarian reasons.

In addition, reintroducing the obligation to obtain the **consent** of the asylum-seeker concerned by the application of the sovereignty clause would ensure that the clause will not be applied when it goes against the interests and fundamental rights of the person concerned. During the consultation process, the European Parliament, the UNHCR and NGOs as well as a minority of Member States which expressed their opinion on this issue (4 out of 19) welcomed the reintroduction of the consent, which was seen as a crucial element ensuring that the clause is not used in a manner which would undermine the provisions pertaining to family reunification in particular. The majority of Member States consider however that such an obligation would cause additional administrative burden and legal difficulties since the procedure will become more complicated. Despite this opposition, it is first considered that since the fundamental rights of asylum-seekers are at stake, the need to ensure

adequate protection for asylum-seekers overrides the practical concerns expressed by the majority of Member States. In addition, given that the Regulation already obliges Member States to ensure that asylum-seekers give their approval for the application of certain provisions related to family unity (e.g. Article 7 and 8), it is considered that introducing this obligation also for the application of the sovereignty clause should not create a disproportionate burden on Member States. Finally, there is no evidence to demonstrate that Member States were indeed confronted with practical difficulties in this respect under the Dublin Convention which required the consent of the asylum-seeker.

Regarding the **humanitarian clause,** specifying that any Member State could make humanitarian requests and that refusals do not have to be justified, while leaving the practical arrangements for obtaining written consent to be decided by the Member States concerned on a case-by-case basis, would not satisfactorily address the objectives of making the system operate more smoothly and better protecting the rights of the persons concerned to family reunification, as the rules would continue to be unclear or not uniformly applied. During the consultation process, experts generally agreed that these objectives could be achieved better by clearly identifying those Member States that can make a request on humanitarian grounds, by obliging Member States to justify a refusal to accept a humanitarian request and by including rules on obtaining the written consent of the persons involved.

Taking into account the above arguments, the preferred policy measure to address the issue of unclear circumstances and procedures for applying the above-mentioned clauses is **policy option a)**. The clarifications proposed under this option are expected to make the procedure for determining responsibility run more smoothly. Member States will have a better idea of the circumstances in which the clauses can be applied and the procedure to follow. This will also help prevent disputes between Member States, which affect the proper functioning of the system. At the same time, as delays and uncertainties in the procedure will be reduced, the rights of asylum-seekers subject to the Dublin procedure will be better taken into account, in particular as far as family reunification is concerned, under both the humanitarian and sovereignty clauses. For instance, the probability of the humanitarian clause being applied will increase, since any refusal to apply it will have to be duly justified.

Moreover, the preferred policy option does not go beyond what is necessary to achieve the stated objective since: 1) the clarification regarding the cessation of responsibility clauses seems to be in line with the interpretation given in most Member States; 2) the application of both the sovereignty and humanitarian clauses remains discretionary, with the proposed changes aiming to better regulate their application so that appropriate consideration is given to asylum-seekers' rights.

The implementation of this policy measure would incur some financial and administrative costs, to cover in particular the sometimes additional procedures for the discretionary clauses. This is the case, for instance, for the obligation to justify refusal of a humanitarian request, or the procedure to obtain the consent of applicants on the application of the sovereignty and humanitarian clauses. In some cases, however, Member States already apply these procedures in practice, in line with the spirit of the Regulation, so the clarifications are not expected to increase costs in all cases. At the same time, the costs of disputes or delays in the application of these clauses or potential duplicated procedures would be reduced and thus give rise to savings. Finally, the protection aspect of the clarifications overrides the financial considerations.

Practical cooperation:

The policy measures coming under practical cooperation are expected to offer considerable support to Member States in applying the Regulation in general and in particular in the application of difficult clauses such as those mentioned above. They complement the legislative measures set out above, which together will adequately tackle the current problems affecting the efficiency of the system and the protection of individuals. The creation of a handbook, as an immediately consultable reference for Member States, allowing for more uniform and timely application of the Regulation, was welcomed by Member States during the consultation process. Although soft-law measures, they are expected to greatly contribute to achieving the objectives, so both policy measures are identified as the preferred options.

5.2. Ensuring disputes between Member States are tackled in an effective way

Legislation:

Improving the existing conciliation mechanism set up by the Implementing Regulation only for disputes on the humanitarian clause, by making its decisions binding **(policy option e)**, is not expected to satisfactorily address the objective of ensuring that all disputes are tackled in an effective way and therefore improve the efficiency of the procedure for determining responsibility. Indeed, the proposed improvements to the conciliation mechanism would only ensure that disputes concerning the application of the humanitarian clause would be tackled in an effective way, since Member States would have to comply with the decisions of the conciliation mechanism. However, the proposal to make its decisions binding might encounter legal and political difficulties. Moreover, the resolution of disputes in other fields of application of the Regulation would remain at the discretion of Member States, with the consequence that no effective solution would be ensured. This would continue to hinder the objective of having a speedy Dublin procedure, in view of a quick access to the examination on the merits of applications.

Policy option b) would ensure that Member States have the legal possibility to use the existing conciliation mechanism for disputes on any matter related to the application of the current Regulation. Member States could therefore be more inclined to make use of this mechanism, given that, as stated in the problem definition, one of the reasons for this mechanism never being applied so far is its limited scope. However, given that such a mechanism will not be binding, its use might remain limited. This is because, as stated in the problem definition, its non-binding nature may be another reason why Member States have not used this mechanism.

The creation of an independent structure/body with both an advisory/consultation role and a role in settling disputes on all issues concerning the application of the Dublin Regulation (with binding decisions) **(policy options a) and c))** would considerably improve the efficiency of the procedure for determining responsibility, by ensuring that **all matters of dispute** are settled in an effective way by a competent independent body and that its decisions are complied with by the Member States. Moreover, such a body would play an important **advisory/consultation** role, for instance by making recommendations on matters relating to the application of the Dublin Regulation with the aim of ensuring more uniform application. Regarding the **institutional framework** for the operation of such a body, while policy option a) proposes the creation of a new structure under the Dublin Regulation (which could follow, for instance, the model of the Article 29 Working Party on the protection of individuals with regard to the processing of personal data[59]), policy option c) provides for such a structure to be set up within the future European Asylum Support Office (EASO). Policy

[59] Article 29 of Directive 95/46/EC, OJ L 281, 23.11.1995, p. 31-50.

option d) has a more limited role for the EASO, which will not have decision making powers but only a supporting role (gathering information, support to monitoring etc.).

Although the creation of an independent structure/body (a) is expected to achieve the general objective of improving the efficiency of the procedure for determining responsibility and better addressing the needs and rights of applicants for international protection, it would encounter considerable difficulties as far as the feasibility of implementation is concerned, with disagreements on the composition and role of the body. Moreover, the proposal to make its decisions binding might encounter legal and political difficulties. In addition, there is a risk of duplication of work between this body, the existing committees (the comitology committee set up by Article 27 of the Dublin Regulation) and the informal Dublin Contact Committee (informal meetings of Dublin experts). Moreover, in terms of financial feasibility, the creation of the new body would require additional financial resources.

As for the role that the EASO could play in order to facilitate application of the Dublin Regulation, this will have to be decided in the context of the proposal on the EASO, which will undergo a separate IA. Without prejudging that decision, it is considered that the EASO could play an important supporting role for the application of the Dublin Regulation (policy option d).

Given the above arguments, the preferred policy options are b) and d). Although policy option b) might have limited use, it appears to be the only one that is legally and politically feasible at this stage. From the consultation process, it emerged that several Member States were in favour of this option. Moreover, the envisaged measure is in line with the principle of proportionality, since it is based on an existing mechanism whose scope will merely be extended as stated above. Policy option d) would have to be reassessed in a separate IA, but at this stage it is considered that it could support the mechanism to be set up in the Dublin Regulation.

***Practical cooperation**:*

Policy option b), which consists of using the current informal Dublin experts' meetings to solve disputes between Member States, is not expected to bring about any considerable improvement over the status quo. Firstly, using an informal framework for solving disputes between Member States might be difficult to achieve. Moreover, the solutions reached during those meetings would at best be perceived as a form of political pressure on the Member States in dispute, since decisions would not be binding.

Policy option a), which envisages the creation of a handbook (the same as that referred to under point 1), would increase the efficiency of the mechanism for determining responsibility by providing an immediately consultable reference, which would in principle help prevent disputes between Member States by ensuring more uniform and timely application of the Regulation, or enable disputes to be solved in an efficient manner by the Member States involved. The preferred policy option for practical cooperation is therefore policy option a). Although, as with policy option b), the handbook would be non-binding, it is considered that it can gain a morally binding character by being a permanent reference for Member States.

5.3. Preventing further overburdening of Member States facing particular pressure

Legislate:

Under **policy option c)**, overburdened Member States subject to particular asylum pressures could

unilaterally decide to block incoming transfers of applicants for which they are responsible. This option would benefit the affected Member State, which would no longer have to deal with these asylum applications, as well as the applicants, since they would remain within Member States capable in principle of dealing with them adequately. However, considerable difficulties would be encountered in the application of such a mechanism. Firstly, providing a comprehensive definition of the term 'particular pressure' to include all situations that could occur in practice is a cross-cutting issue, which might be politically difficult to deal with it only in the Dublin context. Secondly, there are concerns that such a mechanism could be abused by Member States 'pretending' to be overburdened, which would disrupt the proper functioning of the Dublin system. Consequently, this policy measure could also be considered as not fully respecting the principle of proportionality. Finally, financial and administrative costs would arise for those Member States no longer able to transfer the asylum-seekers and thus obliged to examine their applications, with the consequence that they could themselves become overburdened. For asylum-seekers, not being transferred to overburdened Member States would in principle ensure better protection of their rights and needs, although they could in some cases be prevented from being reunited with family members present in the overburdened countries.

Under policy option d), the financial compensation mechanism to be regulated at EU level would provide resources to overburdened Member States in order to improve their reception and processing capacities (i.e. more asylum personnel and construction of temporary reception structures) for coping with Dublin transfers that could add to the pressure. The definition at EU level of an appropriate indicator for situations of particular pressure would facilitate the application of this mechanism. However, this option presents considerable difficulties in terms of implementation and financial feasibility. Firstly, as also explained for policy option c), the definition of 'particular pressure' might encounter difficulties. Moreover, Member States (in particular those with less than the average EU burden) are likely to be reluctant to bear additional costs to support Member States that have been determined to be responsible but are facing particular pressure. Moreover, there would be concerns that, given the unpredictable and sudden emergence of situations of particular pressure, overburdened Member States may not be able to make the best use of these additional resources within a short period of time, also because their physical reception capacities are limited. Regarding applicants, they might be negatively perceived by the receiving societies, as they will be seen as adding to already existing migratory pressures.

Policy options a) and b) are complementary as the former sets up a general (compulsory) mechanism to suspend Dublin transfers and the latter provides for a bilateral (discretionary) mechanism. Suspending transfers as a **general mechanism** would avoid further overburdening those Member States with limited asylum reception facilities and/or procedural capacities, and would also guarantee adequate protection for people in need of international protection. Moreover, by obliging the Member States suspending transfers to examine the applications of the asylum-seekers concerned, the Member State under pressure would be better able to remedy the exceptional asylum situation (as asylum-seekers would no longer be transferred) and the needs of the people involved would be better addressed since their access to the asylum procedure would not be further delayed. The emergency financial support that could be triggered by the suspension of transfers following a request for assistance from the Member State under particular pressure would enable it to manage the situation of particular pressure or to improve the level of protection offered to asylum-seekers in a more efficient way, and could limit the period under which a suspension of transfers is needed.

Given the unpredictability of asylum flows and possible changes in national asylum contexts, it is very difficult to estimate how often such decisions to suspend transfers would be taken in practice.

However, based on past statistical data for certain Member States facing particular pressure, mainly because of their geographic location, a general approximation of the number of suspended transfers can be provided. For instance, if transfers of asylum-seekers to Greece, Italy, Malta and Cyprus had been suspended in 2006, it can be stated that, based on the number of accepted incoming transfers for that year, provided in Annex 3, a total of 2 498 asylum-seekers (1 179 transferred to Greece, 1 159 to Italy, 33 to Cyprus and 127 to Malta) would have remained in the other Member States.

The procedure envisaged for the suspension of Dublin transfers would ensure that decisions can be taken rapidly, since it will be for the Commission to decide whether it is justified to suspend transfers and since very short time limits for taking such decisions will be set up. A different procedure whereby the decision would be taken by the Member States in a committee (such as the regulatory procedure established in Article 5 of Council Decision 1999/468/EC) or by the Council would require much longer time frames and would therefore not address the concerned crisis situations in a smooth and adequate way. The fact that any decision to suspend transfers will have to be reasoned and include, among other things, an assessment of the situation in the Member State affected and the consequences of suspension for the other Member States is a guarantee that such decisions could not be taken on a systematic basis, which could endanger the smooth running of the Dublin procedure. In addition, the procedure established would ensure the possibility for Member States to contest the Commission's decision.

The 6 months period of suspension, which could be extended with further 6 months when the grounds for suspension still persist, is considered to be a reasonable time limit to allow for a change in the circumstances of the Member State concerned by the suspension. This time limit would also prevent major disruptions in the functioning of the system, and would guarantee that the Dublin system will continue to run smoothly after that period.

During the consultation process, no clear position was taken by the Member States. Although this measure is considered to have a highly political relevance, it would only be applied in limited and well-defined circumstances. Therefore, no strong concerns are expected on the part of Member States.

Regarding the **bilateral** mechanism, no major implementation difficulties are foreseen, since its application would be left to the complete discretion of Member States. Such a mechanism is less political as it involves only two Member States and does not require a decision at EU level, so would be easier to implement than the general mechanism. Member States would be able to apply it even if the circumstances pertaining in a given Member State do not give rise to a high level of concern, as would be the case for option a). Therefore, the threshold for applying option b) is lower than for applying option a). In practice, option b) could be applied when a Member State under particular pressure were to receive a significant number of asylum-seekers from a particular Member State (and only a limited number from the other Member States). This mechanism could be applied independently of the implementation of policy option a) (e.g. if a general decision to suspend transfers is taken by the Commission for Member State A, bilateral agreements could still be concluded for other Member States equally under pressure but not meeting the threshold required for a general decision; conversely, if no general decision is taken by the Commission to suspend transfers to Member State A, the other Member States could still decide to agree bilaterally to suspend transfers to A). However, the real impact of such a mechanism is highly questionable, because of its voluntary nature.

In the case of both options a) and b), financial and administrative costs would arise for those

Member States suspending transfers (in principle less burdened than those to which the transfers will be suspended) and therefore having to bear all the costs of taking on the asylum applications. However, if transfers were not suspended, there is also the risk that applicants would illegally move from the overburdened Member States, so additional costs could still arise to address these irregular movements. The originally responsible Member State would make long-term savings as it would no longer have to incur the costs of dealing with asylum applications if the other Member States suspended the transfers.

The suspension of transfers would not automatically lead to the granting of assistance from the emergency measures fund under the ERF, but would only serve as justification for such assistance, following a request from the Member State facing particular pressure. The budgetary impact for the ERF would thus depend on each individual case, taking into consideration the existence of other possible applications for the emergency fund with a view to ensuring the equitable distribution of funds. In 2008, the Commission received two applications for the emergency fund, from Italy and Malta. Malta applied for approximately €400 000 in order to improve its reception capacities and Italy applied for €19 million to better cope with the surge in asylum flows in 2008. Any decision on the allocation of funding would have to accommodate the needs of both Member States and comply with the total amount available for emergency measures under the ERF for 2008, i.e. €10 million. Given the above arguments, policy option a) is the preferred legislative policy option. This option is proportionate to the objective of preventing further overburdening of Member States facing particular pressure and ensuring adequate protection for asylum-seekers, since the circumstances under which it can be applied are limited and the special procedure for deciding to suspend transfers will guarantee that this will not happen in unjustified cases.

***Practical cooperation**:*

Alongside the preferred legislative policy option, the creation of asylum expert teams would be extremely useful for addressing situations of particular pressure, and is therefore identified as the preferred practical cooperation option. Asylum expert teams would assist existing personnel in overburdened Member States to cope with the flows of asylum-seekers, in particular those resulting from incoming Dublin transfers. This option would help ensure adequate protection for applicants sent to overburdened Member States as well as the smooth operation of their asylum systems, preventing their breakdown due to additional numbers of asylum-seekers.

The creation of asylum expert teams would incur financial and administrative costs in order to recruit professionals in this area and provide them with appropriate training on how to deal with situations of particular pressure. There would also be the additional expenses of sending the experts to overburdened Member States and supporting them there.

These impacts will be further assessed in the context of the IA for the proposal on the EASO, which will address the issue of setting up asylum expert teams from a wider perspective (not only in the Dublin context).

5.4. Strengthening the legal safeguards for asylum-seekers and enabling them to better defend their rights

Legislate:

– **information**

Both policy options a) and b), by providing more accurate and comprehensive **general information**

about the Dublin procedure to all asylum-seekers upon lodging an application, would considerably increase their awareness of the procedure for determining responsibility, which on the one hand would allow them to better defend their rights (such as the right to family reunification) and on the other hand would encourage a more cooperative attitude on their part and help reduce secondary movements. The obligation to hold an interview is not only an additional guarantee for asylum-seekers under the Dublin procedure, ensuring for instance that they will receive adequate information about the procedure and their rights, but is also expected to considerably facilitate the procedure for determining the Member State responsible. Indeed, Member States will have the opportunity to gather all necessary information on the context in which an asylum-seeker arrived in the Member States, essential for determining the Member State responsible. Arranging the interview in good time will ensure its effectiveness. At least 5 Member States already hold interviews with Dublin asylum-seekers, so at least for those Member States no implementation difficulties should arise.

Unlike **option a)**, however, **option b)** does not call for the provision of **specific information** to asylum-seekers during the Dublin procedure and does not provide for the obligation to hold interviews with asylum-seekers subject to the Dublin procedure. As it provides for a lower level of information than policy option a) and it does not require Member States to hold Dublin interviews, option b) will offer a less adequate level of protection for asylum-seekers throughout the Dublin procedure and will not facilitate the procedure for determining the Member State responsible.

In terms of financial feasibility, both options a) and b) would incur increased costs, as Member States would have to adapt their existing information methods to the new legal requirements (as set out in the administrative cost assessment in Annex 5). For policy option a), additional costs would be incurred to provide further specific information to applicants and to hold Dublin specific interviews. However, savings would be made in the long term, as the information provided would foster a more cooperative and compliant attitude on the part of applicants, which would in turn ensure smoother functioning of the procedure. Moreover, the interviews would also reduce the time spent in identifying the responsible Member State, ensuring therefore a more efficient procedure. Finally, there seems to be general agreement among stakeholders on the need to increase the level and quality of information provided to asylum-seekers subject to the Dublin procedure.

Given the above arguments, the preferred policy option is **policy option a**). This option does not go beyond what is necessary in order to achieve the set objective, given in particular that the obligations it provides for are already part of the practice of several Member States**.**

Regarding policy option c), given the fact that it proposes the same solution as the policy measure for practical cooperation, only adopted in a different form, it is considered below.

Practical cooperation

As a complementary measure to the preferred legislative option a), a standard EU-wide multilingual leaflet about the Dublin procedure and applicants' rights under it, which would have to cover at least the requirements of the Regulation, would be an important guarantee that all applicants will receive adequate and similar information in all Member States, leading to better protection of their rights. In order to ensure that national issues are adequately taken into account, Member States may, if they so wish, include further details in the leaflet adapted to their national contexts.

From an institutional point of view, this information tool could be conceived and agreed either in the comitology procedure **(policy option c)** or in practical cooperation **(policy option a)**. It would in

principle take less time to conceive and adopt it under practical cooperation than under comitology, which is a formal procedure requiring, among other things, compliance with certain preliminary legal requirements (i.e. the proposal amending the Dublin Regulation — the parent text — would have to provide for adopting such a leaflet in the comitology procedure and only after the adoption of that proposal in the co-decision procedure, could the proposed text be agreed in the comitology procedure). However, a text adopted in the comitology procedure has the advantage of being binding, which is not the case for a measure adopted under practical cooperation. Moreover, under practical cooperation, there is a risk that some Member States might not agree with such an initiative or with the content of the leaflet. Consequently, some Member States could continue to inform asylum-seekers inadequately, so the objective of better protecting asylum-seekers would not be adequately met by policy option a). In contrast, policy option c) will achieve that objective.

In terms of financial feasibility, both options would incur costs to ensure that all Member States distribute the leaflet widely. National adaptations of the leaflet to take account of national contexts might incur additional costs. Costs would also arise for the translation of the leaflet, but Member States could use EU funding for this purpose. Moreover, synergies would be achieved if Member States exchange among themselves the different language versions they possess.

Given the above arguments, the preferred option here is policy option c). This option does not go beyond what is necessary to achieve the set objective. The Regulation in force already provides for a committee to assist the Commission in the implementation of certain provisions. The adoption of a leaflet under the comitology procedure will therefore not require the creation of a new committee and will fall within the competence of the committee already in place.

Legislate

– Effective right to remedy

Under **policy option c),** the right to appeal a transfer decision would be legally confirmed, thus providing a solid legal safeguard for asylum-seekers subject to transfer decisions. Moreover, the fact that the courts would be obliged to examine on their own initiative the need to temporarily suspend the enforcement of a transfer decision would provide an important legal guarantee for asylum-seekers. In assessing the need to suspend a transfer decision, courts should generally look at the nature of the rights at stake and the individual circumstances of each case (e.g. a person's physical state or mental capacity, risk of violation of the principle of *non-refoulement*, risk of infringing the right to family reunification, the reception conditions in the receiving Member State, etc.). As also highlighted in the problem definition, in the rare cases where suspensive effect is currently granted, this is done in the event of serious illness of the person to be transferred or where there is a risk of breaching the European Convention of Human Rights if the transfer goes ahead. Given the different situations that could arise in practice in view of the particular circumstances of each individual case, and given that this concerns the administrative law and practice of Member States, it would not be appropriate to specify in the Regulation the grounds under which courts should decide to suspend the enforcement of a transfer decision.

This option also has the advantage of adequately responding to the concern to have a balanced procedure in terms of efficiency and protection, since an appeal will not automatically suspend the implementation of the transfer decision (as in **policy option a**), but only when the competent courts deem it necessary, in a case-by-case assessment.

Indeed, while **policy option a)** offers an absolute guarantee of protection for asylum-seekers, it

could have a negative impact on the smooth operation of the system, as all transfers against which appeals are lodged will be suspended. This would bring about considerable delays in the procedure and could have negative consequences for the asylum-seekers themselves, if the examination of the merits of their applications is delayed. Moreover, there is a risk that if appeals are automatically suspensive, they could be lodged only as a stalling tactic (for the sole reason of prolonging the stay within the Member State where the application was lodged), circumventing the entire system. This is also a risk for policy options b) and c), but is much more limited than in policy option a), as the authorities are expected to take quick decisions on the matter.

Finally, **policy option b)** is less protective than policy option c), as the need to suspend the transfer of an asylum-seeker will not be examined automatically by the competent courts, but only at the request of asylum-seekers, who might not necessarily be in the position to make such a request (for example because they might not have the required legal counselling).

Therefore, the only option that would guarantee the effectiveness of the right to remedy, thus improving the protection of applicants while also taking into account the specificities of the Dublin procedure, is **policy option c)**, which is therefore the preferred option. In comparison to the status quo, the preliminary procedural guarantees of the right to appeal would be clarified and strengthened (improved notification procedure, right to legal assistance, etc.), which would substantially improve the situation of applicants, who will be provided with adequate means in order to understand the decision and possibly exercise their right to remedy. The efficiency of the system would be increased as well, since for instance a decision recognising the suspensive effect of an appeal would avoid additional time and resources being spent on bringing back the applicant if the decision is overturned on appeal and would prevent secondary movements (i.e. the applicant returning irregularly while the appeal process is under way).

Since, as stated in the problem definition, most Member States do not seem to effectively safeguard the right to remedy, they will have to bring their policies into line with the proposed preferred policy option.

In terms of costs, a legally confirmed right to appeal would not entail any further costs since it would just confirm the existing practice of Member States. The obligation to decide on the suspensive effect of an appeal would entail both administrative costs for the judicial procedure and the costs of the prolonged stay in the Member State where the right to appeal is exercised. However, as explained above, in the case of suspensive effect, savings could arise because the costs of returning transferees due to overturned decisions would be avoided. Costs would also arise for strengthening the preliminary procedural guarantees (in particular legal assistance and better notification), in particular for those Member States that currently do not provide adequate guarantees. The Member States most affected by these costs could be the non-border countries, since they account for the highest number of outgoing transfers.

Regarding the number of asylum-seekers who might have suspensive effect granted for their appeals, based on the number of accepted incoming Dublin transfers in 2006 (figures given in Annex 3), it can be concluded that if all asylum-seekers subject to a transfer decision were to appeal against it and if the courts were to decide in all cases to grant suspensive effect, a maximum of 14 768 asylum-seekers could have benefited from this measure in all Member States in 2006.

However, these data have to be used extremely cautiously due to several factors. Firstly, the unpredictability of asylum flows and changes that could occur in the asylum practices of Member

States, the unpredictability of the proportion of asylum-seekers falling under the Dublin procedure and those likely to appeal a transfer decision, as well as the particularities of each case, make it difficult to provide reliable estimations. Secondly, given that the Dublin system is based on the presumption that all Member States offer an adequate standard of protection, so that transferring asylum-seekers should not in principle lead to infringements of their fundamental rights, the suspension of transfers for this reason should in theory be infrequent (although in reality, as pointed out in section 2.2.4., the asylum system and practice of some Member States is not always adequate). The current practice of Member States, which rarely grant suspensive effect to an appeal, would lead to the same conclusion.

Finally, it is considered that independently of the number of potential asylum-seekers affected, the policy measure presented would still be justified given that their fundamental rights are at stake. It is also clear that the measure is proportionate to the set objective, given that, as demonstrated above, it offers a balanced solution between the need to adequately protect asylum-seekers' rights and the need for a system that operates smoothly.

Stakeholders' opinions on these issues are quite divergent: while most Member States are generally reluctant to introduce an obligation to examine the need to temporarily suspend enforcement of a transfer decision and to increase the legal safeguards in general in the Dublin Regulation, the UNHCR supports this option, while the EP even calls for the automatic suspension of transfers in the event of appeals.

– **Custodial measures**

Prohibiting in general the detention of all asylum-seekers subject to the Dublin procedure **(option a)** might be unjustified and disproportionate, given that under certain circumstances detention is needed to ensure that asylum-seekers do not abscond and that they are transferred to the responsible Member State (i.e. that the result of the Dublin procedure is implemented).

Option b) would adequately achieve the objective of offering adequate protection to asylum-seekers, while at the same time ensuring the system operates efficiently. This option would ensure that the detention of Dublin asylum-seekers is not arbitrary by providing clear grounds for it as well as ensuring that detainees enjoy the same reception conditions and procedural guarantees as other detained asylum-seekers not subject to the Dublin procedure. The fact that this is a specific form of detention only concerning asylum-seekers subject to the Dublin procedure justifies having it regulated in the Dublin Regulation rather than in the Asylum Procedures and the Reception Conditions Directive. While these instruments contain general provisions about the conditions and grounds for detention of asylum-seekers in general and therefore can be considered as 'lex generalis' for Dublin as well, it is more reasonable to regulate the Dublin-related grounds for detention in the Dublin Regulation, which will function as a 'lex specialis'. Therefore, **policy option c)** is not adequate.

Taking into account the above arguments, the preferred policy measure to address the issue of the arbitrary detention of Dublin asylum-seekers is **policy option b)**. Respect for the rights of asylum-seekers would be guaranteed and at the same time the system will continue to work efficiently, by allowing Member States to detain asylum-seekers in exceptional circumstances, when there is a clear risk of absconding and thus hindering implementation of the Dublin procedure. The fundamental rights of applicants, in particular the right to freedom of movement, will be guaranteed. Moreover, in terms of social impacts, this measure will limit the possibility of applicants being isolated from society through detention, which will also positively influence society's perception of them (i.e. they

will not be perceived as criminals or illegal immigrants, as often currently happens). While this option would raise certain concerns, in particular on the part of those Member States that seem to use detention for Dublin cases on a systematic basis throughout the Dublin procedure, it would be welcomed by the European Parliament, the UNHCR and civil society, since it is in line with international standards.

Finally, the preferred policy option is in line with the principle of proportionality, since, as demonstrated above, it provides a balanced solution between the need to ensure respect for fundamental rights and the need for Member States to have the discretion to use detention where justified.

– **The principle of effective access to the asylum procedure and the exception to this principle**

Regarding access to the asylum procedure: clarifying the principle of an effective access to the asylum procedure for asylum-seekers under the Dublin procedure, will guarantee that the merits of an asylum-seeker's claim are always examined in the responsible Member State. In particular, by explicitly laying down that any decision to discontinue the examination of an application has to be revoked by the responsible Member State when the asylum-seeker is sent back to that Member State pursuant to the Dublin rules, would prevent wrong applications of the Dublin Regulation in this respect in the future, as was the case for Greece until April 2006. Moreover, clarifying the application of the principle of access to appeal procedures for asylum-seekers under the Dublin procedure in line with the Asylum Procedures Directive is an equally important and complementary safeguard, needed in order to avoid possible negative consequences of incorrect first-instance decisions and to ensure compliance with the principle of *non-refoulement.* However, this issue may need to be further considered in the larger context of access to appeal procedures for all asylum-seekers (and not only those under the Dublin procedure) and therefore it may be necessary to assess it within the context of the upcoming proposal amending the Asylum Procedures Directive.

Regarding the application of the safe third-country criteria: If Member States were to continue to apply their national rules on this issue, they might infringe the Asylum Procedure Directive, which sets out clear conditions Member States have to consider when assessing the safe third-country criteria. The stipulation that Member States will be able to send asylum-seekers to a third country only after careful examination of the safe third-country criteria laid down in the Asylum Procedures Directive is in conformity with the asylum *acquis* and is an important safeguard in order to prevent indirect *refoulement*.

Based on the above arguments, the only option that would adequately strengthen the legal safeguards for asylum-seekers subject to the Dublin procedure, ensuring that asylum-seekers have the right to a full and fair examination of their claims in all circumstances, **is option a)**. This option respects the principle of proportionality since it only aims to clarify the principle of effective access to the asylum procedure and the exception to this principle, in accordance with the Asylum Procedures Directive, in order to ensure that equal standards apply to all asylum-seekers.

This option is expected to be well received by some Member States, while possibly raising concerns for others, in particular those which currently do not always seem to guarantee the principle of effective access to the asylum procedure, and which might incur additional administrative and financial costs as a result. The European Parliament, the UNHCR and civil society are expected to welcome this measure.

5.5. Ensuring respect for family unity and improving the management of vulnerable groups in order to address their special needs

Legislate

– **Vulnerable groups (unaccompanied minors and people with special needs, such as people suffering from trauma, particular illnesses, etc.)**

Policy option a) would ensure that vulnerable groups, including unaccompanied minors, undergo a specific, accelerated procedure for determining responsibility. The management of vulnerable groups would be greatly improved by creating a separate procedure for them, with shorter deadlines for determining the Member State responsible and the designation of specific experienced authorities to deal only with cases involving vulnerable groups. This separate procedure would ensure that applicants with special needs do not suffer additional hardship due to the delays and hindrances characterising the current system. Moreover, the fact that their cases would be considered by specific authorities experienced in this area would be an extra guarantee that their special needs are correctly considered during the procedure. However, this option would present political difficulties in gaining the approval of Member States, which would very likely raise concerns about possible abuses of such a separate procedure by applicants who could pretend to be vulnerable in order to have their cases addressed more quickly and effectively. Moreover, creating a new separate procedure, with shorter deadlines and dedicated authorities, would require considerable restructuring of the current units in the Member States, with more employees needed and therefore significantly increased costs. In some Member States, given the small Dublin units they have because of the modest number of Dublin cases, such a separation would be moreover difficult to implement.

Policy option b) would reinforce and streamline the treatment of unaccompanied minors, in particular by ensuring that the best interests of the child are always considered in determining the Member State responsible, that their right to reunification with their enlarged family who could take care of them is always guaranteed, that they enjoy the same facilities and protection in the event of transfer (through the sharing of relevant information between Member States such as information on schooling, etc.) and that they can receive legal representation throughout the procedure. Although this option does not require setting up a completely new procedure with new deadlines and specific authorities as with policy option a), it is expected to achieve a similar level of protection for the asylum-seekers involved. This option would incur costs too, but they are expected to be lower than for putting in place a completely new procedure. The main cost driver for policy option b) would be the obligation to provide unaccompanied minors with a representative throughout the Dublin procedure, requiring those Member States which do not already do so to devote resources to providing this additional service to applicants.

Under policy option c), the problem of adequately addressing vulnerable groups' needs under the criteria for determining responsibility (in particular continuity in protection) would be eliminated, with exceptions made for cases where a transfer decision is in the best interests of applicants with special needs, in which case they would still undergo the transfer process. By allowing vulnerable groups to remain in the Member State where they lodged their application, unless their best interests require otherwise, this option prevents possible infringements of their fundamental rights if they were to be sent to a different Member State. Moreover, they would have immediate access to the asylum procedure. However, as for policy option a), this option could be abused by applicants in order to remain in the Member State where they want to stay. Moreover, leaving the choice of the responsible

Member State to the applicant could overburden those Member States perceived as being more 'attractive' than others, which would then incur increased costs to provide the additional services required to cater for the special needs of such persons.

Policy option d) would ensure continuity in the protection offered to asylum-seekers (in particular those persons with special medical conditions), through close cooperation between Member States and the exchange of all relevant information before a transfer is carried out, in particular medical information (using a standard EU form). The sharing of medical information would ensure both the efficient transfer of the persons involved and the proper protection of these persons in the receiving Member State. The issue of exchanging medical information is expected to raise some concerns on the part of Member States, in particular regarding the confidentiality of medical information, which would need to be fully guaranteed. This option is not expected to give rise to significant costs. The costs of information exchange would be marginal (the standard form could be sent through the existing secure DubliNet network already used by Member States for exchanging personal data on applicants).

Based on the above arguments, the preferred policy options that would adequately address the needs of vulnerable groups are policy option b) (for unaccompanied minors) and policy option d) (for all persons with special needs). By including new rules and safeguards or clarifying the existing rules, these policy options would ensure that the Dublin procedure is applied to this category of applicants in an adequate, efficient way that would ensure their protection. The preferred policy options comply with the principle of proportionality since: 1) the safeguards proposed for unaccompanied minors reflect existing obligations under international law, in particular the UN Convention on the Rights of the Child; 2) the mechanism for exchanging (medical) information about the person to be transferred will not impose a disproportionate burden on Member States since they already collect relevant data at national level and will only have to ensure their transmission to the Member State responsible for examining the asylum application.

Practical cooperation

Policy measure a) would ensure that staff involved in the Dublin procedure are well trained in order to adequately handle the cases of vulnerable groups. Along with the preferred legislative policy measures identified above, this practical cooperation action would further guarantee that the special needs of this group of persons are carefully considered during the Dublin procedure. The implementation of this option requires an increase in the financial and administrative spending by Member States on the Dublin procedure. However, Member States can apply for European funding (European Refugee Fund) to support part of the costs involved in training.

Under policy option b), without having to designate specific authorities to deal only with minors, Member States could create, under practical cooperation, a network of experts that could meet regularly in order to exchange best practices on the implementation of the strengthened provisions of the Dublin regulation for dealing with minors. This idea has been already suggested by one Member State in the context of the existing informal meetings of experts and should in principle be supported by most delegations. In terms of cost, the creation of the network under Eurasil would avoid any extra spending.

Based on the above arguments, both policy measures for practical cooperation are preferred, as they will significantly contribute, together with the preferred legislative options, to improving the management of vulnerable groups and minors in particular.

– **Family reunification**

Policy option a), which proposes extending the current restrictive definition of family members, would oblige Member States to reunify extended family members (where at least one is subject to the Dublin procedure) in all circumstances, thereby increasing the protection of their rights (in particular the right to family unity). Moreover, this could contribute to reducing secondary movements of applicants throughout the EU in order to reunite with extended relatives and could have important positive social impacts. However, this option presents considerable political difficulties, as it would go against the rest of the asylum and immigration *acquis*, which has a restrictive definition of family members. Moreover, Member States could also invoke practical difficulties, such as the difficulty of proving links with the extended family, and the risk of abuse by applicants.

Policy option b) also enhances the right of family members to be reunited. However, although it covers applicants for and beneficiaries of subsidiary protection, also included in policy option a), it is limited to two main groups: children and dependent relatives (vulnerable groups). It is considered that the political environment is favourable to such an extension, as the need to substantially increase the protection of children and other vulnerable groups has been identified as one of the essential elements for the second stage of the Common European Asylum System. Moreover, this option would also increase the possibility for Member States to reunify extended relatives who are not dependent on one another strictly speaking. This last aspect would be left to the discretion of the Member States, so should not raise implementation concerns. This policy option has a considerable impact on fundamental rights, as the right to family reunification would be considerably extended. The social impacts would be relatively good as well, as family reunification is an important factor offering a firm basis upon which applicants could start their social integration process in the receiving society. Moreover, by providing increased protection to applicants through family reunification, this option could reduce the tendency to resort to secondary movements. In terms of financial feasibility, the increased right to family reunification would incur financial and administrative costs, as more applicants would meet the criteria of the Regulation.

The preferred policy option is therefore policy option b), which will considerably increase the protection of applicants under the Dublin procedure while at the same time remaining feasible. This option does not go beyond the objective, which is to ensure family unity.

6. Assessment of the preferred option

On the basis of the assessment in chapter 5, it is clear that none of the individual policy sub-options completely address the problems or fully achieve the policy objectives. It is also worth noting that not all the policy sub-options are mutually exclusive, therefore various combinations have been considered in arriving at the preferred policy option. By combining different policy sub-options, a higher degree of effectiveness could be achieved.

A table summarising the individual policy sub-options included in the preferred option can be found in Annex 2.

The following rating symbols are used:

+ represents a positive impact in comparison to the status quo

- represents a negative impact or difficulty in terms of feasibility in comparison to the status quo

0 represents no impact, i.e. the same as the status quo

Preferred Option		
Assessment Criteria	**Rating**	**Justification of the rating and aspects of the policy sub-option needed to achieve the impact**
Relevance		

To ensure that the needs of applicants for international protection are comprehensively addressed under the mechanism for determining responsibility, and to increase the system's efficiency in order to reduce the time and resources spent by Member States	+	This policy option is **strongly relevant** for ensuring the protection of applicants and improving the efficiency of the mechanism for determining responsibility. **Shorter deadlines** for **information requests** (4 weeks) and an adequate deadline for **take-back requests** (shorter than for take-charge requests when based on EURODAC evidence) and for **humanitarian requests** (2 months) would make the Dublin procedure more efficient and address the needs of applicants in a more timely manner. The practical transfer arrangements (such as rules on responsibility for costs) would address the need to **eliminate possible uncertainties or delays deriving from unclear provisions** of the Dublin Regulation. By further clarifying the conditions and circumstances for applying the cessation of responsibility and discretionary clauses, this policy option will **help make the mechanism for determining responsibility run more smoothly and provide more protection**. The manual/handbook would be of considerable support in correctly applying the Regulation. The extension of the current conciliation mechanism to cover all matters of dispute on the application of the Dublin Regulation could improve the efficiency of the procedure for determining responsibility. Efficiency would also be increased by using the expertise of the European Asylum Support Office to provide support for the application of the Dublin Regulation and devising a manual/handbook. Efficiency would be enhanced by **avoiding further overburdening those Member States whose asylum processing and reception capacities are under strain** by **suspending transfers** in limited and well-defined circumstances and adequately addressing the protection needs of the applicants concerned since a non-overburdened Member State would take responsibility for them. Moreover, asylum expert teams would help ensure that Dublin mechanism continues to function efficiently and provide protection in cases of particular pressure on a certain Member State. **Applicants for international protection would be adequately protected** by providing them with the necessary information on the functioning of the Dublin system as soon as they lodge their applications and by arranging Dublin interviews. Moreover, by providing **further specific information** (e.g.. on the right to appeal a transfer decision), applicants would be in a better position to defend their rights and to act in a **manner compatible with the principles of the Dublin mechanism,** which could reduce the number of secondary movements. The EU leaflet would facilitate and support the provision of adequate information. The **right to appeal** a transfer decision would be **confirmed,** the possibility of granting suspensive effect to an appeal on a transfer decision would be introduced and the preliminary procedural guarantees would be strengthened (improved notification procedure, right to legal assistance), thus substantially improving the protection of applicants. Moreover, the possibility to grant suspensive effect for an appeal could increase the efficiency of the system by avoiding people being returned in the event of decisions being overturned. **The detention** of applicants would be appropriately limited, thus increasing their protection. However, in order to ensure the effectiveness of the Dublin mechanism, detention would be allowed but only in well-identified exceptional circumstances (where there is a genuine risk of absconding). By ensuring effective access to the asylum procedure, the present option guarantees the **comprehensive protection of applicants** and correct application of the principles of the Dublin Regulation. The **protection** of applicants would **also** be **guaranteed when they are to be sent to a third country**. This policy option would ensure that the Dublin procedure is applied **efficiently and in a protective manner in respect of vulnerable groups**, especially unaccompanied minors and people with special medical needs. The introduction of **staff training and expert networks** would help considerably to increase efficiency and protection. The right to **family reunification** would be extended (for applicants and beneficiaries of subsidiary protection), reinforced (for dependent relatives) or presented as a possibility to Member States (for non-dependent relatives), thus increasing the standard of protection for applicants and helping to reduce the level of secondary movements.

To contribute to better addressing situations of particular pressure on Member States' reception facilities and/or asylum procedural capacities	+	The present option would be **highly relevant** in achieving this objective. Suspending Dublin returns in certain circumstances would respond to the flaw in the current mechanism for determining responsibility. The overburdened responsible Member State **would not receive additional applicants** until it is capable of doing so, once the situation of particular pressure is over. Moreover, overburdened Member States facing particular pressure would benefit from emergency financial support upon request. Finally, **asylum expert teams** would give **essential support to overburdened Member States in managing mass inflows of applicants, in particular those coming under Dublin transfers**. These teams would ensure that overburdened Member States are still able to cope and that people's needs are adequately considered in these particular circumstances too.
Feasibility		
Implementation feasibility	-	The present policy option has **considerable but manageable implementation difficulties**. Setting time limits for submitting take-back requests, reducing deadlines for information requests and setting a deadline for replying to requests based on humanitarian grounds should not give rise to major concerns on the part of Member States. No major difficulties are expected for clarifying the practical rules on transfers. The exchange of best practices would be at the discretion of the Member States. Member States could raise some concerns regarding the conditions for the application of the **discretionary clauses,** in particular with respect to the reintroduction of the asylum-seeker's consent. The **manual/handbook** would not pose any relevant difficulties. The broadening of the **conciliation mechanism** would not face major implementation difficulties, since decisions will remain non-binding. The same goes for the manual/handbook envisaged. A mechanism for suspending transfers could raise **some political difficulties**, but they are expected to be overcome by clearly identifying the limited circumstances under which the mechanism could be activated. The creation of asylum expert teams should not raise major concerns either. Member States would have to **further commit to providing adequate information** to applicants, as a basic requirement. An **additional commitment** would then be required **for the further specific information** called for by this option. The EU leaflet would possibly reduce the implementation difficulties. The arranging of Dublin interviews might raise concerns in those Member States which currently do not hold them. The possibility for **suspensive effect** to be given to an appeal against a transfer decision **should not constitute a major concern**, since judges would be entitled to refuse such a request if not justified. However, this is generally perceived as a sensitive political issue, and thus likely to raise some concerns for Member States. Moreover, the obligation to provide **legal assistance** and the strengthening of other preliminary procedural guarantees (**notification procedure)** would require an **additional commitment** on the part of the Member States and may give rise to some **contrasting opinions.** **The limitations proposed for detention** are expected to raise some concerns especially among those Member States that systematically use detention throughout the Dublin procedure. The need to ensure effective access to the asylum procedure may require **additional commitment from Member States which currently do not entirely comply with this obligation.** Moreover, the fact that Member States would have to conform to Article 27 of the Asylum Procedures Directive would require them to **respect a common interpretation that may not correspond to their national interpretations**. Some implementation difficulties may arise especially for those measures designed to ensure the adequate protection of **unaccompanied minors** under the procedure for determining responsibility, whereas other minor difficulties would occur with more general measures for **vulnerable groups**. Training for staff and expert networks would encounter marginal implementation difficulties. The extension of the right to family unity would raise considerable concerns on the part of Member States, as they would have to ensure family unity for a larger number of applicants. The changes in some cases would be perceived as a limitation of their current discretionary power to use certain clauses (such as the possibility to reunite dependent relatives under the humanitarian clause, which will be transformed into an obligation).

Financial feasibility	-	The measures increasing the standard of protection would incur increased financial and administrative costs, whereas those measures that improve the efficiency of the Dublin system would generally entail only short-term additional costs and possible long-term cost reductions or savings. Setting **time limits** e.g. for submitting take-back requests and reducing those for information requests would incur **additional administrative costs**. However, some **economies of scale could be achieved in the medium term** because of a more efficient process. For the practical measures concerning transfers, in particular the issue of transfer costs, the costs would be borne mainly by non-border Member States. The exchange of best practices would give rise to voluntary costs for Member States. Some financial and administrative **costs would arise for the additional procedures** to be implemented when the discretionary clauses are applied. **Savings would arise** to the extent that **costs related to disputes or delays in the application of the cessation or discretionary clauses are reduced**, also with the support of the manual/handbook, which would incur low additional costs. No financial costs would arise for extending the current conciliation mechanism. The manual/handbook would entail limited costs. **Some Member States would face further costs if they suspend outgoing transfers** due to situations of particular pressure in the responsible Member State, as they would take charge of the people not being transferred. Overall, **Member States with currently less than the average EU burden would have to bear the major part of the costs** in situations of particular pressure. **Costs would rise** where Member States have to **adapt their existing information** to the form, language and content called for by this policy option. Comparable **additional costs** would be incurred **for the further specific information to be provided**. **Savings could arise if the information provided fosters a more collaborative and compliant attitude** on the part of applicants under the Dublin procedure. The EU leaflet would possibly reduce the overall costs of providing this information. Additional costs would also arise for those Member States which currently do not hold Dublin interviews. If accepted, the **suspensive effect of an appeal against a transfer decision could on the one hand incur costs for the Member State where the applicant is to remain temporarily. On the other hand, it could also bring about savings** due to the fact that the **costs of possible returns** following overturned decisions **would be avoided**. The strengthening of preliminary procedural guarantees would require some Member States to **increase expenditure** (in particular for the provision of legal assistance). The major part of the costs could be borne by non-border Member States. Reducing the cases where Dublin applicants can be **detained** should in principle lead to **savings**, as the strain on Member State detention facilities and the considerable costs this implies would be reduced. This could apply mainly to the non-border Member States. Increased financial and administrative **costs would arise for those Member States which do not always fully guarantee access to the asylum procedure**. **Savings** could occur only to the extent that effective access to the asylum procedure would **reduce irregular movements**. Costs would increase to deal with **unaccompanied minors** (i.e. representation) and to exchange medical information regarding vulnerable transferees. Costs would increase for **training staff** and setting up an **expert network**. However, a large proportion could also be co-financed by projects under the European Refugee Fund. No costs would be required for setting up an expert network, if this is done under Eurasil. Financial and administrative costs would derive from the **increased right to family reunification,** as more applicants would come under the criteria of the Regulation.
Expected Impacts		

Social impacts at Member State level	+	The Dublin system has an impact on Member State societies by allocating asylum seekers throughout the Member States, who then have to integrate within their receiving societies while their applications are being examined. The longer applicants have to wait for their Member State of destination to be decided, the worse it is for their integration. Finally, the more the measures address and reduce irregular secondary movements, the better it is for social acceptance and integration in the receiving societies. Setting time limits for take-back requests and reducing those for information requests, as well as for requests based on humanitarian grounds, would address **situations of delay**, which can weigh on receiving communities, and have a positive impact by **reducing the incentive to resort to irregular movements,** thereby **possibly reducing the number of illegal cases in other Member States**. The measures regarding the discretionary clauses in particular take full account of the interests and needs of applicants which could **smooth their integration within their receiving societies**. By providing adequate information to applicants for international protection as soon as their applications are lodged would ensure that applicants are **immediately aware of their position and rights within the Member States**, **providing the basis for adequate social integration.** The **additional specific information** would enhance this impact. The possibility to **appeal against transfer** decisions reinforces the protection of applicants while the **suspensive effect of such appeals** may prevent them having to be transferred back and forth between Member States and thus worsening their social isolation. The **limitation of detention** would reduce the social isolation this entails and could change the negative perception often encountered in receiving societies, associating Dublin cases with criminals or illegal immigrants. Full access to the asylum procedure at the end of the procedure for determining responsibility would allow applicants to benefit from **rights and facilities to help with their social integration in receiving societies** (i.e. access to healthcare). Improved measures for v**ulnerable groups**, in particular unaccompanied minors, would address the needs of these people and enable them to **better integrate in and be less of a burden to receiving societies** once the Dublin procedure is concluded. Adequately trained staff with a network of experts behind them would ensure that applicants' social needs are better addressed. This policy option would greatly reinforce the right to **family unity** of applicants for international protection, including applicants for and beneficiaries of **subsidiary protection**, thereby providing these people with an **extremely important support for social integration**.
Economic impacts at Member State level	+	The Dublin mechanism has an economic impact in the way it distributes applicants (as potential temporary labour force) throughout the Member States and to the extent that it prevents irregular movements that place applicants in irregular situations that can feed the informal economy. Increased consideration for applicants' needs and interests in applying the discretionary clauses reduces the **incentive for these people to resort to irregular movements.** The provision of adequate information to applicants for international protection as soon as they lodge their applications would foster a more compliant attitude towards the functioning of the procedure for determining responsibility and **applicants would be less prone to move irregularly.** The **legal safeguards** provided by the right to appeal, possible suspensive effect and notification may reduce **irregular movements** on the part of applicants. By limiting the use of detention, this option could increase the **number of applicants entering the host Member State's labour market** during the procedure for determining responsibility. Ensuring that applicants access the asylum procedure in the first and second instances would **allow and encourage them to remain in a legal situation**. This would increase the chances of applicants **legally accessing the labour market,** in the receiving Member State. The broadened **right to family unity** could entail the **redistribution** of applicants throughout the Member States, and therefore a **minor or major concentration of potential temporary labour** in certain Member States, where they could enter the informal economy wherever this redistribution generates an excess on local labour markets. However, this measure could reduce secondary movements to achieve family unity.

Impact on third countries	+	The potential impact of the Dublin system on third countries depends on the degree to which its efficient functioning and its protection are increased and could attract further flows of applicants, thereby relieving possible asylum pressures on third countries of origin and increasing flows through transit countries. However, this impact will generally be extremely limited, and mostly result from the extension of the right to family unity, which would marginally increase the number of applicants arriving, since they would know that they would have better chances of reuniting with their relatives once they apply in the EU.
Fundamental rights	+	The preferred policy option has an impact on fundamental rights in that they will be better taken into consideration in the implementation of the Dublin procedure. The change in the time limits will **considerably reduce delays** during which fundamental rights may not be adequately addressed (e.g. the period of time during which family members could be kept separately would be reduced). The confirmation that applicants would not have to bear the transfer costs themselves would protect them better, their choices would be better taken into consideration, and the **right to family unity would be guaranteed**. The clarifications in the discretionary clauses would **fully address the right to family unity** of applicants for international protection. The provision of information to applicants in a specific form, language and content would allow them to learn and understand their status and rights as soon as they lodge their applications. This would provide them with a **strong basis for defending their fundamental rights**. The right to appeal, the possible suspensive effect and the notification procedure provide **additional safeguards** to applicants and ensure that the right to an **effective remedy is fully respected**. **The right to liberty and free movement** would be reinforced by the limitation of detention. The principle of an **effective access to the asylum procedure** once the Dublin procedure is completed, which is part of the **right to asylum** would be strengthened. Compliance with Article 27 of the Asylum Procedures Directive would ensure that **applicants' fundamental rights are also respected if the responsible Member State decides to send them to a safe third country**. The fundamental rights of **vulnerable groups**, especially unaccompanied minors, would be adequately taken into consideration. **Trained staff** would guarantee these fundamental rights more effectively with the support of a **network of experts** to indicate the correct level and method of protection for vulnerable groups. The **right to family unity** would be considerably reinforced and protected within the mechanism for determining responsibility, by extending the scope of family reunification under the Dublin procedure.

6.1. Assessment of proportionality and EU added value

The preferred option is proportional to the objectives defined in this impact assessment and represents a balanced solution between the benefits achieved (i.e. having a more efficient and a more protective system) and the efforts to be made by Member States to implement them.

The preferred option will ensure that the Regulation is more consistently applied by Member States, while also improving the consistency with the EU asylum *acquis*, in particular the Qualification Directive and the Asylum Procedures Directive. At the same time, the Regulation will provide for a concrete solidarity mechanism to be activated at EU level in cases of particular pressure on the asylum systems of certain Member States.

7. MONITORING AND EVALUATION

In order to monitor whether the revised Regulation is being effectively followed by Member States, the Commission will carry out regular evaluation and reporting. Regular expert meetings will

continue to be held to discuss implementation problems and exchange best practices between Member States.

The entry into force of the Regulation on Community statistics on migration and international protection,[60] which includes specific references to the Dublin-related statistical data, will contribute to ensuring adequate monitoring and evaluation.

Moreover, as announced in the Policy Plan, in addition to evaluation at regular intervals, the Commission is committed to re-evaluating the principle on which the Dublin system is based once the second stage of the CEAS is in place.

The following main indicators could be used to assess the progress and effectiveness of the preferred policy option in achieving the objectives:

- Implementation by Member States of the amendments proposed to the Dublin Regulation;
- Resources devoted to implementing the amendments proposed to the Dublin Regulation;
- Number of effected transfers of asylum seekers in comparison with the number of accepted transfer requests;
- Number of disputes settled under the dispute settlement mechanism;
- Number of cases where the sovereignty and humanitarian clauses are applied;
- Resources used to inform and provide legal assistance to applicants for international protection under the Dublin procedure;
- Number of applicants subject to the Dublin procedure;
- Transfers suspended in situations of particular pressure;
- (Distribution of) applications for international protection relative to population size (per 1000 inhabitants) per Member State;
- Number of asylum expert teams set up and sent to Member States under particular pressure.

[60] Regulation (EC) No 862/2007, OJ L 199, 31.7.2007.

ANNEX 1: Assessment of the status quo

No EU action		
Assessment Criteria	**Rating**	**Justification of the rating and aspects of the policy option necessary to achieve the impact**
Relevance		
To ensure that the needs of applicants for international protection are comprehensively addressed under the mechanism for determining responsibility, and to increase the system's efficiency in order to reduce time and resources spent by Member States	0	The current Dublin system suffers from a **series of limitations** that keep it from attaining its overall objective. **The protection** of applicants for international protection is not comprehensively addressed throughout the procedure for determining responsibility. The **information** provided to applicants does not always allow them to understand and defend their cases during the Dublin procedure, and the **legal safeguards** currently provided are not adequate to ensure their effective protection. In particular, the **right to remedy**, i.e. to appeal against a Dublin decision, is not always guaranteed, and the principle of **effective access to the asylum procedure** is not ensured. Member States would continue to use **custodial measures** discretionally with the risk of infringing applicants' fundamental rights. Preserving the status quo also means that **vulnerable groups** subject to the Dublin procedure would continue to receive a low standard of protection. In particular, unaccompanied minors would still run the risk of not having their specific situation adequately addressed within the procedure. Moreover, the right to **family unity** within the Dublin procedure would continue to be limited (e.g. asylum-seekers would not be allowed to reunite with beneficiaries of subsidiary protection; reuniting with dependent relatives would not be obligatory, etc.). **In terms of efficiency**, the main hindrances to the smooth operation of the Dublin mechanism are **ineffective transfers**, **inadequate time limits** and **non-uniform application of certain provisions such as the discretionary and cessation clauses**, together with other secondary factors. Maintaining the status quo would therefore leave the issue of ineffective transfers, with its consequent waste of time and resources, unaddressed, as would be the case for time limits, which, due to their absence (i.e. for take-back requests and requests on humanitarian grounds) or their inadequacy (i.e. information requests), create **delays in the procedure for determining responsibility**. Likewise, preserving the status quo in the application of the cessation and discretionary clauses would also be inefficient since Member States would continue to interpret and apply these clauses in divergent ways, leading to **uncertainties in the functioning of the Dublin procedure and would moreover continue to impact negatively on asylum-seeker's rights**. Finally, the current **conciliation mechanism is ineffective**, since it is limited to the application of the humanitarian clause and its decisions are not binding. The status quo entails preserving a situation where **disputes** on problematic areas of application of the Dublin mechanism (not only on the humanitarian clause) would **continue to cause delays** and **inadequate application** of the procedure for determining responsibility.
To better address situations of particular pressure on Member States' reception facilities and/or asylum procedural capacities	0	If the status quo is maintained, the Dublin mechanism would continue to **function regardless of the burden** on certain Member States. Therefore, the **Dublin mechanism can increase**, both in real and potential terms, the burden on certain Member States and possibly **overburden** their **asylum systems** if they are already facing particular pressure.
Feasibility		
Implementation feasibility	0	No additional measures would be implemented, so there are no difficulties or risks in this respect.
Financial feasibility	0	No additional financial and administrative costs would be incurred in preserving the status quo.
Expected Impacts		

Social impacts at Member State level	0	Maintaining the status quo **does not have any relevant positive social impacts**. On the contrary, the **exclusion of applicants for (and beneficiaries of) subsidiary protection from the Dublin allocation criteria** (i.e. family reunification) deprives these people, whose number in Europe is growing, of an important factor for social integration. The **inadequate consideration of issues of family unity and the special needs of vulnerable applicants** can give rise to **secondary movements** driving these people into illegality and causing them to be negatively perceived by host societies. The fact that applicants may be deprived of family unity consequently deprives them of a **major factor for social integration**. The **lack of legal safeguards** also deprives applicants for international protection of important support for their social integration**. Custodial measures lead to social isolation** and negative perceptions on the part of the host societies, and **lack of information** can prevent applicants from fully exercising their rights. The **allocation of applicants** regardless of exceptional situations of particular pressure that could arise in certain Member States can also affect the **level of integration and social perception** of these people in overburdened receiving countries.
Economic impacts at Member State level	0	The economic impacts of the status quo are also **not positive**. The **level of secondary movements,** which is to a certain extent caused by the inadequate functioning (i.e. on family unity) or ineffective deterrence (i.e. information) of the Dublin system, could be seen as a **potential source of illegal labour** for the informal economy. The **distribution of asylum seekers** regardless of whether a Member State is overburdened could lead to irregular labour on a saturated labour market.
Impact on third countries	0	The **extremely limited impact** that a responsibility allocation system could have on third countries consists in the degree to which its functioning and the protection it offers could attract further flows of applicants, thereby relieving possible asylum pressures on third countries of origin and increasing flows through transit countries. It could be argued for instance that the **uncertainty surrounding the possibility of reuniting with family members** once applicants arrive in the EU can be a factor in deterring applicants from coming to the EU. Therefore, **maintaining the status quo would have little impact on third countries**.
Fundamental rights	0	The current system for determining the responsible Member State has an impact on fundamental rights to the extent that it imposes conditions on the enjoyment of these rights (e.g. right to liberty and security, right to family unity). The exclusion of certain categories of persons (such as beneficiaries of subsidiary protection) from the scope of the Dublin Regulation is a limitation on the right to family unity. The systematic recourse to **custodial measures** is a serious limitation on the **right to liberty and freedom of movement**, whereas inadequate consideration of **special needs** can considerably affect applicants' **right to security**.

ANNEX 2: Summary of the preferred policy option

Specific Objectives	PREFERRED POLICY OPTION
Ensuring that the procedure for determining responsibility operates smoothly	**Legislate** Amend the Dublin Regulation to: 1) fix a time limit for requesting a Member State to take back an asylum-seeker, which should be **shorter** than the deadline for requesting to take charge (currently 3 months) when the request is based on evidence from the EURODAC database; 2) reduce the deadline for responding to requests for information from **6 to 4 weeks** and oblige Member States to justify any delays in replying — moreover, a Member State not respecting the time limit for replying to an information request should not be able invoke the expiry of the time limit for submitting a take-charge/take-back request as grounds for refusing such a request if that Member State is determined to be responsible; and 3) make the deadline for replying to requests on humanitarian grounds **identical** to the deadline for replying to take-charge requests (2 months) and set no deadline for submitting a request. Amend the Dublin Regulation and Implementing Regulation in order to establish in particular that the transferring Member State is to bear the transfer costs, and to clarify the consequences in the case of erroneous transfers or where a transfer decision is overturned on appeal after the person has already been transferred. Amend the Dublin Regulation to clarify in particular that for the **cessation of responsibility** clauses it is the **requested Member State**[61] which has to prove that the third-country national left the territory of the EU (in the case of Article 16(3)) or has been expelled (in the case of Article 16(4)). Regarding the **sovereignty clause**, it should be clarified that the Member State applying it has to inform the other Member States of the application of the clause, information which should be sent both via the existing bilateral secure network DubliNet and the EURODAC database. The circumstances for the application of the sovereignty clause should be left open, but it should be specified that it may be used mainly for humanitarian reasons. Moreover, the condition of the applicant's consent for the application of the clause should be reintroduced. Regarding the **humanitarian clause**, the Member State able to make a request on humanitarian grounds should be clearly identified in the Regulation, Member States should be obliged to justify a refusal to accept a request on humanitarian grounds, and practical arrangements for obtaining the written consent of persons to be reunited should be included in the Implementing Regulation **Practical Cooperation** Identify and disseminate best practices in performing transfers of asylum-seekers via meetings of experts. Encourage greater practical cooperation between Member States, in particular on the days and times chosen for transferring asylum-seekers under the Regulation. Create a manual (handbook) on the application of the Dublin Regulations, which should contain answers to questions raised by Member States' experts on the application of the Regulations in concrete cases. This should be developed by the Commission in cooperation with the Member States during expert meetings. The handbook should be used as a reference for similar cases.
Ensuring disputes between Member States are tackled in an effective way	**Legislate** Amend the Dublin Regulation to include a conciliation mechanism for all matters of dispute on the application of the Dublin Regulation. Use the EASO expertise in order to provide support for the application of the Dublin Regulation (gathering information, support to monitoring etc), with no decision-making powers. **Practical Cooperation** Create a manual (handbook) on the application of the Dublin Regulations, which should contain answers to questions raised by Member States' experts on the application of the Regulations in concrete cases. This should be developed by the Commission in cooperation with Member States during expert meetings. The handbook should be used as a reference for similar cases.

[61] Meaning the Member State who has been requested to take charge of or take back an asylum applicant but who refuses to do so by invoking the cessation of responsibility clause.

Preventing further overburdening of Member States facing particular pressure	**Legislate** Amend the Dublin Regulation to establish a provision for suspending Dublin transfers in limited and well-defined circumstances in order to respond to **two different situations**: **the first** is the case where a Member State is faced with an exceptional situation of particular pressure on its asylum system and where Dublin transfers, if undertaken, would aggravate this situation; **the second** concerns the case where there are concerns that the standards of protection in a certain Member State are not in conformity with the EU acquis on asylum, so in order to adequately protect the asylum-seekers concerned, Dublin transfers towards that particular Member State should be suspended. This would be a general mechanism, meaning that all Member States would stop transfers to a specific Member State and as a result would become responsible for dealing with the asylum applications of those persons whose transfers have been suspended. **Practical Cooperation** Set up asylum expert teams coordinated at EU level to assist Member States that would be overburdened the high number of Dublin transfers. However, this option should apply if there has been no decision to suspend returns or where such a decision has been taken by the Commission, for a temporary period until the situation is stable in the affected Member States.
Strengthening the legal safeguards for asylum-seekers and enabling them to better defend their rights	**Legislate** Amend the Dublin Regulation to further specify the form (which should be age-appropriate), language and content of information and the stage of the procedure when it should be provided to asylum-seekers. The **general information** about the Dublin procedure should be given to all asylum-seekers upon lodging their applications. During the Dublin procedure, Member States should provide **further specific information** to those asylum-seekers for which another Member State accepted responsibility, such as information on available legal remedies against a transfer decision and entities that may provide legal assistance. Moreover, Member States should be obliged to hold a specific Dublin interview with asylum-seekers subject to the Dublin procedure, during which, if need be, they should be orally informed about the application of the Regulation. The interview must be held in good time, as soon as possible after the lodging of an application for international protection. Amend the Dublin Regulation to provide for a standard EU-wide multilingual leaflet about the Dublin procedure, to be agreed under the comitology procedure. Based on the different leaflets already existing in several Member States on the Dublin procedure, the Commission would propose a standard information leaflet to be discussed and decided upon in comitology meetings. The leaflet would in particular include information on the Dublin rules, the rights of asylum-seekers under the Dublin procedure, and the remedies available. Member States would have to ensure the translation of the leaflet (for instance using EU funding) in the languages most frequently used or understood by asylum-seekers entering their territories. The different language versions should be exchanged between Member States. Member States may include further details in the leaflet adapted to their national contexts. Amend the Dublin Regulation to establish the right to appeal against a Dublin transfer decision, and to **oblige the courts** to examine on their own initiative the need to temporarily suspend enforcement of a transfer decision (i.e. whether applicants should remain in the territory pending the outcome of their appeal). The criteria the courts should use in deciding on the need to suspend enforcement of a transfer decision, pending the outcome of an appeal, will be left to the Member States. In addition, the right to legal assistance will be clarified and the procedure for notification of the transfer decision to the asylum-seeker, in particular as regards the time, form and content of such notifications will be further specified. Include a provision in the Dublin Regulation to reiterate the principle that asylum-seekers may not be detained solely on account of their status as asylum-seekers and to forbid the detention of asylum-seekers subject to a transfer decision except as an extraordinary measure of final resort, after a transfer decision has been notified to the asylum-seeker and where any other non-custodial measures are unlikely to achieve satisfactory results, in particular because there are objective reasons to believe that there is a risk of the asylum-seeker absconding. The detention of minors should be forbidden unless this is in their best interest, for instance for family reasons. Such a provision would also clarify that asylum-seekers detained under the Dublin procedure would enjoy the same standards of protection as those laid down in the Asylum Procedures Directive and the Reception Conditions Directive. Amend the Dublin Regulation in order to clarify that an asylum-seeker subject to the Dublin procedure shall in all circumstances have an effective access to the asylum procedure. In particular, it would be laid down that Member States would have to revoke any decision to discontinue the examination of an application after its withdrawal by the applicant and ensure that the examination of the application is completed. Moreover, in view of ensuring coherence between the Dublin and the Asylum Procedures Directive, several issues regarding the access to appeal procedures for asylum-seekers under the Dublin procedure may need to be further clarified in the context of the upcoming proposal amending the Asylum Procedures Directive. Regarding the issue of sending an asylum-seeker to a third-country, this right would be retained, but only after careful examination of the safe third-country criteria set out in Article 27 of the Asylum Procedures Directive.

Ensuring respect for family unity and improving the management of vulnerable groups in order to address their special needs	**Legislate** Amend the Dublin Regulation and the Dublin Implementing Regulation in order to further clarify and strengthen the applicability of the Dublin rules **to unaccompanied minors** in accordance with the UN Convention on the Rights of the Child. This option would aim, among other things, to: clarify the applicability of the principle of the 'best interests of the child' in determining the responsible Member State; make compulsory the right of unaccompanied minors to reunite with relatives who can take care of them; and include rules on information sharing (such as on age and level of education) and on the representation of unaccompanied minors throughout the procedure. However, the procedure for determining responsibility as such would remain unchanged, meaning in particular that the same deadlines for making and responding to requests would continue to apply. Amend the Dublin Regulation and the Implementing Regulation to include different provisions to take better account of the situation of asylum-seekers with special needs, such as a new provision obliging Member States to exchange relevant information (such as medical information) before carrying out Dublin transfers (and introducing a standard form for the information to be exchanged, to be annexed to the Implementing Regulation). Amend the Dublin Regulation to extend the right to family reunification by including applicants for and beneficiaries of subsidiary protection within the scope of the Regulation. In addition, the Regulation would extend the right to reunification to **dependent relatives.** The definition of 'family member' would be enlarged, but only in order to ensure respect for the principle of the best interests of the child (e.g. the principle would remain that children should be unmarried to be considered part of the family, but when it is in their best interests, married children may be considered to be family members; in the case of a child asylum-seeker, minor unmarried siblings would be included as members of the family, etc.). Moreover, the application of the humanitarian clause would be extended to relatives who are not necessarily dependent on one another in a strict sense (such as adult siblings could be). As the humanitarian clause is a discretionary provision, Member States would have the possibility but not the obligation to reunite extended (non-dependent) relatives. **Practical Cooperation** Member States to provide staff involved in the procedure for determining responsibility with appropriate **training**, in particular so that they can appropriately handle cases involving vulnerable groups. Set up a network of Member State experts dealing with minors.

ANNEX 3: Statistical data

Table I: Rate of effective incoming transfers per Member State (2006)

	Number of effected incoming requests	Number of accepted incoming transfers	Rate of effective incoming transfers
BE	91	913	9.97%
CZ	270	534	50.56%
DK	0	162	0.00%
DE	2574	3649	70.54%
EE	1	3	33.33%
EL	501	1179	42.49%
ES	174	397	43.83%
FR	0	1664	0.00%
IE	65	87	74.71%
IT	507	1159	43.74%
CY	6	33	18.18%
LV	1	2	50.00%
LT	5	11	45.45%
LU	54	74	72.97%
HU	260	451	57.65%
MT	59	127	46.46%
NL	603	987	61.09%
AT	678	1204	56.31%
PL	1011	2148	47.07%
PT	7	23	30.43%
SI	81	196	41.33%
SK	437	954	45.81%
FI	66	287	23.00%

SE	0	1758	0.00%
UK	399	752	53.06%
IS	0	0	n.a.
NO	341	798	42.73%
TOTAL	8034	14768	54.40%[62]

[62] The overall average percentage of effective transfers is based only on those Member States for which complete data are available (BE, DK, FR, FI and SE are therefore not included in the total).

Table II: Rate of effective incoming transfers per Member State (first half of 2007 — January to June)

	Number of effected incoming requests	Number of accepted incoming transfers	Rate of effective incoming transfers
BE	73	436	16.74%
BG	7	11	63.64%
CZ	125	204	61.27%
DK	n.a	177	n.a.
DE	1148	1469	78.15%
EE	1	2	50.00%
EL	351	1149	30.55%
ES	55	185	29.73%
FR	513	886	57.90%
IE	27	45	60.00%
IT	474	960	49.38%
CY	9	25	36.00%
LV	3	5	60.00%
LT	9	12	75.00%
LU	22	34	64.71%
HU	96	162	59.26%
MT	30	117	25.64%
NL	228	275	82.91%
AT	399	601	66.39%
PL	257	558	46.06%
PT	11	28	39.29%
RO	7	33	21.21%
SI	37	98	37.76%

SK	171	308	55.52%
FI	50	89	56.18%
SE	n.a.	329	n.a.
UK	207	316	65.51%
IS	1	2	50.00%
NO	203	405	50.12%
TOTAL	4514	8415	53.64%[63]

[63] The overall average percentage of effective transfers is based only on those Member States for which complete data are available (DK and SE are therefore not included in the total).

Table III: Rate of effective outgoing transfers per Member State (2006)

EU-25 MS +IS and NO	Number of accepted outgoing requests	Number of effected outgoing transfers	Rate of effective outgoing transfers
Belgium	1702	n.a.	n.a.
Czech Republic	146	133	91.10%
Denmark	156	115	73.72%
Germany	3496	2115	60.50%
Estonia	2	2	100.00%
Greece	16	7	43.75%
Spain	157	22	14.01%
France	1754	847	48.29%
Ireland	498	293	58.84%
Italy	256	49	19.14%
Cyprus	2	2	100.00%
Latvia	0	0	0.00%
Lithuania	3	4	133.33%[64]
Luxembourg	143	119	83.22%
Hungary	38	9	23.68%
Malta	0	2	n.a.
Netherlands	1595	1082	67.84%
Austria	2337	942	40.31%
Poland	86	269	312.79%[65]
Portugal	28	15	53.57%
Slovenia	25	11	44.00%
Slovak Republic	124	33	26.61%
Finland	829	751	90.59%
Sweden	1358	n.a.	n.a.
United Kingdom	1531	1486	97.06%
Iceland	9	9	100.00%
Norway	829	461	55.61%

64 Data submitted by this Member State show the number of transfers to be higher than the number of accepted requests. These figures should normally coincide or the number of transfers should be lower than the number of acceptances. This discrepancy could be due to the fact that some Member States might not register requests that have been accepted implicitly (in accordance with Articles 18(7) and 20(1)(c) of the Dublin Regulation). Therefore, in the calculation of the final average, the number of transfers undertaken by this Member State is considered equal to the number of accepted requests.

65 Idem.

Average	*14 060*	*8595*	61.13%[66]

Source: Ernst &Young elaboration of data provided by DG JLS

[66] The overall average percentage of effective transfers is based only on those Member States for which complete data are available (BE and SE are therefore not included in the average). For Lithuania and Poland, the number of effected transfers is considered equal to the number of accepted requests for the reasons explained above.

Table IV: Rate of effective outgoing transfers per Member State (first half of 2007 — January to June)

EU-27 MS +IS and NO	Number of accepted outgoing requests	Number of effected outgoing transfers	Rate of effective outgoing transfers
Belgium	716	227	31.7%
Bulgaria	0	0	-
Czech Republic	57	62	108.77%[67]
Denmark	139	n.a.	-
Germany	1860	1126	60.54%
Estonia	0	0	-
Greece	3	1	33.33%
Spain	50	16	32%
France	995	415	41.71%
Ireland	162	100	61.73%
Italy	270	49	18.15%
Cyprus	0	0	-
Latvia	0	0	-
Lithuania	3	1	33.33%
Luxembourg	34	26	76.47%
Hungary	21	8	38.1%
Malta	0	0	-
Netherlands	525	495	94.29%
Austria	765	399	52.16%
Poland	34	89	261.76%[68]
Portugal	14	2	14.29%
Romania	6	6	100%
Slovenia	7	9	128.57%[69]
Slovak Republic	34	24	70.59%
Finland	162	140	86.42%
Sweden	1462	n.a.	-
United Kingdom	696	573	82.33%
Iceland	12	6	50%
Norway	478	266	55.65%

67 See footnote 60.

68 Idem.

69 Idem.

70 The overall average percentage of effective transfers is based only on those Member States for which

Average	*6904*	*3978*	***57.61%***[70]

Source: Ernst &Young elaboration of data provided by DG JLS

Table V: Effect of Dublin transfers on the asylum burden of Member States (2006)

MS	Burden (application/ population ratio)[71]	Real terms[72]		Potential terms[73]	
		Net Dublin transfers (incoming - outgoing transfers)	Influence of net Dublin transfers on first applications	Net Dublin transfers (incoming - outgoing transfers)	Influence of net Dublin transfers on first applications
BE	0.8	n.a.	n.a.	-789	-8.90%
CZ	0.3	137	5.02%	388	14.21%
DK	0.3	n.a.	n.a.	n.a.	n.a.
DE	0.3	459	2.18%	153	0.73%
EE	0.0	-1	-20.00%	1	20.00%
EL	1.1	494	4.03%	1163	9.48%
ES	0.1	152	2.87%	240	4.53%
FR	0.4	n.a.	n.a.	-90	-0.34%
IE	1.0	-228	-5.38%	-411	-9.69%
IT	0.2	458	4.43%	903	8.72%
CY	5.9	4	0.09%	31	0.68%
LV	0.0	1	10.00%	2	20.00%
LT	0.0	1	0.69%	8	5.52%
LU	1.1	-65	-12.38%	-69	-13.14%
HU	0.2	251	11.87%	413	19.53%
MT	3.1	57	4.49%	127	10.00%

complete data are available (DK and SE are therefore not included in the average). For the Czech Republic, Poland and Slovenia, the number of effected transfers is considered equal to the number of accepted requests for the reasons explained above.

71 The average EU burden (applications/population ratio) is 0.4 applications per 1000 inhabitants.

72 Number of effected transfers.

73 Number of accepted transfers but not necessarily effected.

NL	0.9	-479	-3.31%	-608	-4.20%
AT	1.6	-264	-1.98%	-1133	-8.49%
PL	0.1	742	17.56%	2062	48.80%
PT	0.0	-8	-6.15%	-5	-3.85%
SI	0.2	70	14.00%	171	34.20%
SK	0.5	404	14.18%	830	29.12%
FI	0.4	n.a.	n.a.	-542	-23.82%
SE	2.7	n.a.	n.a.	400	1.64%
UK	0.5	-1087	-3.90%	-779	-2.80%
IS	0.1	-9	-22.50%	-9	-22.50%
NO	1.1	-120	-2.26%	-31	-0.58%

Net transfers for border and non-border Member States[74]

	Incoming transfers	**Outgoing transfers**	**Total Net Transfers (Incoming — Outgoing)**
Total border MS[75]	3050	425	2625
Total non-border MS[76]	4984	6640	-1656

Source: Ernst &Young elaboration of data provided by DG JLS

[74] The totals for border and non-border Member States are calculated only for those Member States for which data are complete for the first and second halves of 2006.

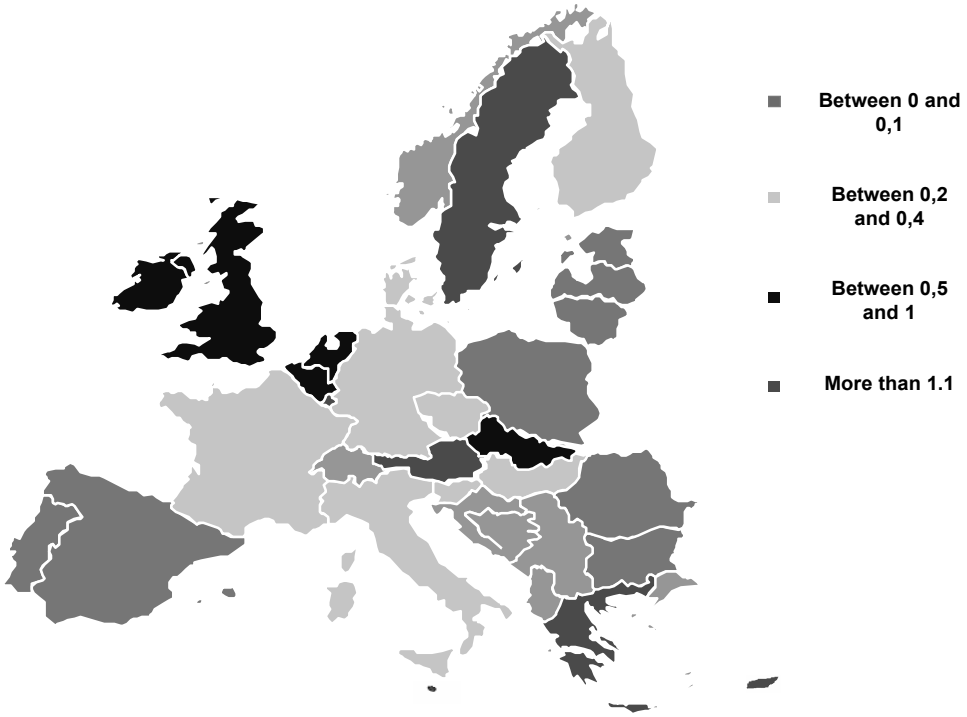
[75] EE, EL, ES, IT, CY, LV, LT, HU, MT, PL, PT, SI, SK.

[76] BE, CZ, DK, DE, FR, IE, LU, NL, AT, FI, SE, UK, IS, NO.

Map 1

New asylum applications relative to population size (per 1000 inhabitants): distribution of burden between Member States in 2006

Source: EUROSTAT



ANNEX 4: ASYLUM GLOSSARY

Asylum

Asylum is a form of protection given by a State on its territory based on the principle of '*non-refoulement*' (see below) 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.

Chain *refoulement*

Refugees who are sent back to another country which then sends them back to their home country are said to suffer indirect or chain *refoulement*, which similarly contravenes the protection provided under Article 33 of the 1951 Convention Relating to the Status of Refugees.

Non-refoulement

This is the key principle of international refugee law, which requires that no State may return a refugee in any manner to a country where his/her life or freedom may be endangered. The principle also applies to rejection at the frontier. It is set out in Article 33 of the 1951 Convention Relating to the Status of Refugees and constitutes the legal basis for the obligation of States 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'. Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in the light of the jurisprudence of the European Court of Human Rights, and Article 3 of the UN Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment are also considered bases for '*non-refoulement*' obligations.

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 EU legislation as the status granted by a Member State to a person who is a refugee and admitted as such to the territory of that Member State. In terms of the Geneva Convention, refugee status is defined as the status possessed by a person who fulfils the requirements of the definition of refugee as laid down in the Convention.

Subsidiary protection

The EU Qualification Directive created subsidiary protection status in order to give protection to certain categories of persecuted people who are not covered by the 1951 Geneva Convention on refugees. It grants a lower level of rights than the status under the Geneva Convention.

Unaccompanied minors

Unaccompanied minors are persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person. They include minors who are left unaccompanied after they have entered the territory of Member States.

Vulnerable persons

In accordance with the Reception Conditions Directive, vulnerable persons refers to minors, unaccompanied minors, disabled persons, elderly people, pregnant women, single parents with minor children, and persons who have been subjected to torture, rape of other serious forms of psychological, physical or sexual violence. Under national law and practices Member States could further categorise vulnerable persons.

Terms/provisions in the Dublin Regulation:

Take charge

'Take charge' means the procedure under which a Member State takes responsibility for an applicant on the basis of the objective and hierarchical criteria laid down in the Regulation (such as family reasons, legal or illegal entry, etc.) and consequently has to examine the application.

Take back

'Take back' refers to the situation where the applicant leaves the territory of the responsible Member State and enters another Member State where he or she might apply again for international protection or might stay without permission, in which case the responsible Member State must at the latter's request take him/her back.

Requests for information

For the purpose of applying the Dublin Regulation or examining an application for asylum, any Member State can request information from another Member State concerning an asylum-seeker. This information can cover, among other things, personal data, such as the personal details of the applicant and his/her family members, and identity or travel documents. Such information is often necessary for determining responsibility, so it is very important that Member States reply swiftly to such requests. The Regulation sets out detailed data protection rules.

Incoming requests

Requests for an asylum seeker to be taken back in order to complete his/her asylum application, or for taking charge of an asylum seeker in order to examine his/her asylum application, sent by another Member State to the reporting Member State.

Outgoing requests

Requests for an asylum seeker to be taken back to complete his/her asylum application, or for taking

charge of an asylum seeker in order to examine his/her asylum application, sent by the reporting Member State to another Member State.

Cessation of responsibility clauses

According to Article 4(5) of the Dublin Regulation, the procedure for determining the Member State responsible lies with the Member State where the application is first lodged. Consequently, that Member State is obliged to take back the applicant even if the latter has travelled to another Member State during the course of the procedure. However, this obligation ceases if the applicant has left the territories of the Member States for at least three months or if another Member State grants the asylum-seeker a residence document.

According to Article 16(3) of the Dublin Regulation, the responsibility to take charge of or take back a person ceases when that person has left the territory of the Member States for at least three months, unless the Member State responsible has issued him/her a valid residence document.

According to Article 16(4) of the Dublin Regulation, the obligation to take back a person ceases where the responsible Member State has adopted and actually implemented, following withdrawal or rejection of the asylum application, the provisions that are required before that person can go to his/her country of origin or to another country to which he may lawfully travel.

Member States

Currently, the notion of 'Member States' under the Dublin Regulation means all 27 EU Member States, as well as the associated countries applying the Dublin *acquis*, i.e. Norway and Iceland. The Dublin system has been further extended to Switzerland through an international agreement (which was signed in October 2004 and entered into force in March 2008, its application being linked to the lifting of internal border controls, expected for December 2008). Liechtenstein is also expected to become a member of the Dublin system in the near future (Protocol signed in February 2008).

However, for the purpose of the Evaluation report on the Dublin system, which assessed the application of the Dublin and Eurodac Regulations from their respective entry into force dates until the end of 2005, 'Member States' meant 26 EU Member States (24 EU Member States — all except Romania, Bulgaria and Denmark — plus two associated countries — Iceland and Norway). This is because, until 21 February 2006, Denmark did not take part in the Dublin Regulation and Romania and Bulgaria were not yet Member States.

ANNEX 5: The likely administrative costs of the preferred policy option

1. Administrative costs of the preferred policy option

Administrative costs[77] have been assessed with regard to obligations to provide information associated to:

- the obligation to provide applicants with general information about the Dublin procedure, upon lodging their applications;
- the obligation to provide certain applicants with further specific information during the Dublin procedure, in particular information on available legal remedies against a transfer decision and entities that may provide legal assistance;
- the exchange of information between the sending and the receiving Member State before carrying out a transfer, in particular medical information about the persons to be transferred;
- the tools for practical cooperation (identification and diffusion of best practices,[78] handbook on the application of the Dublin Regulation)[79].

These are the main elements of the preferred policy option which entail additional administrative costs and which are associated with specific types of obligations and required actions listed in the table below.

[77] 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*'.

[78] Identification and diffusion of best practices relates to the policy objectives of ensuring that Dublin system operates smoothly, in particular by ameliorating the transfer mechanism.

[79] Administrative costs have been assessed in accordance with the EU Standard Cost Model Manual.

Table I: Types of obligations and actions required for each individual policy measure

Policy measure	Type of obligation	Type of action required
1. Obligation to provide applicants with general information about the Dublin procedure 2. Obligation to provide certain applicants with further specific information about Dublin	Other — Creation of information	Familiarising with the information obligation
		Training authorities on the information obligations
		Retrieving relevant information from existing data
		Adjusting existing data
		Copying
		Submitting the information
Exchange of information between the Member States involved about the applicants to be transferred, in particular persons with special needs	Submission of recurring reports	Familiarising with the information obligation
		Training staff on the information obligations
		Retrieving relevant information from existing data
		Submitting the information
		Filing the information
Identification and diffusion of best practices	Other — Creation of information	Producing new data
		Submitting the information
Creating a handbook on the application of the Dublin Regulation	Other — Creation of information	Producing new data
		Designing information material
		Submitting the information

Firstly, **new information** would have to be **created and provided to applicants concerning:**

1. the functioning of the Dublin procedure in general;

2. specific details, such as on entities that may provide legal assistance.

This measure would entail familiarising staff with the new obligations and training them in how to provide such information. Such information would have to be prepared by retrieving additional details on these obligations. This would then be added to the existing material already provided to applicants and be copied and distributed to these people.

Secondly, Member States would be obliged to **exchange information** before transferring applicants, in particular vulnerable persons. This would entail familiarising Dublin staff and training them to retrieve specific files or reports and submit information to the responsible Member State where the applicants are to be transferred. A standard form for the submission of information is to be adopted under the comitology procedure and used by all Member States.

Thirdly, **the identification and diffusion of best practices** require time. The exchange of best practices would be organised at EU level.

Fourthly, the **creation of a handbook** on the application of the Regulation would require time to be produced (by the Commission in cooperation with Member States in the course of expert meetings), formatted and subsequently submitted to Member States.

2. Main assumptions used to assess the costs of the preferred policy option

On the basis of the above considerations, the administrative costs have been assessed for two scenarios:

- Scenario 't_0': 1st year of implementation of the preferred policy option
- Scenario 't_0+2': 3rd year of implementation of the preferred policy option.

These scenarios have been developed in order to assess the main administrative costs of launching the new measures and then maintaining them.

Main assumptions of Scenario 't0'[80]

With reference to Table I, the following main assumptions have been made in order to estimate the administrative costs of the preferred policy option:

- Concerning the costs of familiarising staff with the obligations and training personnel in the Member State Dublin units,[81] the following estimations have been made[82]:

[80] It should be noted that the numbering of the assumptions follows the numbering of the cost items in Table II.

[81] The need to familiarise staff with obligations relates to the following measures: (i) general information by Member States to applicants about the Dublin mechanism, (ii) information for applicants on specific issues such as on entities that may provide legal assistance, (iii) exchange of information between the Member States involved about the applicants to be transferred.

[82] The estimates are based on the information contained in Member State contributions on the application of the Dublin system. It should be noted that the information provided on the number of staff working on the

1. an average of 2 senior officials (directors and heads of unit) per Member State would be familiarised with the obligations for the submission of forms[83] and the need to provide additional information on certain aspects of the Dublin procedure such as on entities that may provide legal assistance (assumption: two working days required, with an estimated total of 32 working hours per Member State);

2. an average of 15 officials per Member State would require training on the obligations for preparing and submitting information[84] (assumption: training course lasting two working days, with an estimated total of 240 hours per Member State).

- Concerning implementation **costs** for the **remaining actions**[85], the following assumptions, in terms of working hours (WH), have been made for the following actions:

3. 64 WH for each Member State to **retrieve detailed information** on the Dublin procedure in general and the further specific issues such as entities that may provide legal assistance;

4. 16 WH for each Member State to **adjust the existing information** material to include details of the Dublin procedure and further specific issues such as entities that may provide legal assistance (assuming that each Member State will have to do this once a year);

5. 12 WH for each Member State to **copy the amended information** material with details of the Dublin procedure and further specific issues such as entities that may provide legal assistance (assuming that each Member State will have to do this once a year);

6. 0.1 WH for each Member State to **supply the information** to applicants for international protection (based on the average number of applications per Member State in the past 5 years (2003-2007), i.e. 8 920.54[86];

7. 0.5 WH for each Member State to **retrieve information** on transferees, in particular vulnerable persons (assuming that files on these people already exist). This would be done for each vulnerable transferee, with the annual number of such people transferred on average by each Member State estimated to be 199.51[87];

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application of the Dublin mechanism is not always reliable, given that Member States may have given different interpretations as to who exactly should be considered as 'Dublin personnel'.

83 The submission of forms is related to the exchange of information between the Member States involved, on the applicants to be transferred.

84 The information relates to: (i) general information to applicants about the Dublin mechanism, (ii) information for applicants on specific issues such as on entities that may provide legal assistance, (iii) exchange of information between the Member States involved about the applicants to be transferred.

85 Submitting the information; Filing the information; Retrieving relevant information from existing data; Adjusting existing data; Copying; Producing new data; Designing information material.

86 It should be noted that this average is based on the EU-27 Member States plus Norway, since the data for Iceland are incomplete.

87 This assumption is based on an estimate drawn from a study carried out by ICAR (Information Centre about Asylum and Refugees) concerning vulnerable groups in the asylum process in the UK, which, as the UK received the highest average number of applications in the past 5 years (2003-2007), constitutes a representative sample for estimating the proportion of vulnerable applicants in total applications in the EU (Vulnerable groups in the asylum determination process, Thematic Briefing prepared for the Independent Asylum Commission, Information Centre about Asylum and Refugees (ICAR), 2007). An estimate was made of the proportion of vulnerable people in the average number of outgoing transfers per Member State, but excluding BG and RO, since the available data are for 2006 and BG and RO were not yet Member States at

8. 0.1 WH in each Member State for **submitting the information** concerning transferees, in particular vulnerable persons, to the responsible Member State. This would be done for each vulnerable transferee, with the annual number of such people transferred on average by each Member State estimated to be 199.51 (assuming that most information will be submitted electronically);

9. 0.5 WH in each Member State to **file the information** received on transferees, in particular vulnerable persons. This would be done for each vulnerable transferee, and the annual number of such people transferred on average by each Member State is estimated to be 199.51.

10. 350 WH for the Commission's DG JLS to (i) **diffuse the best practices** on the application of the policy option, (ii) **draft the handbook on the application of the Dublin Regulation** (submission costs are considered zero since the information would be uploaded on the website or submitted electronically);

11. 16 WH for DG JLS to **design the handbook on the application of the Dublin Regulation** (assuming that DG JLS will already have other handbook formats available).

- 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 EU-27. 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)[88], median gross annual earnings in industry and services in the EU-25 in 2002 (the outcome of the Structure of Earnings Survey 2002)[89], and average hourly labour costs in industry and services of full-time employees in enterprises with 10 or more employees in 2002)[90]. 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 2008[91]. 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 Centre[92]. 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

the time.

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

89 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.

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

91 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.

92 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.

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**.

Main assumptions of Scenario 't_0+2'[93]

With reference to Table I, the following main assumptions have been made in order to provide an estimate of the administrative costs of the preferred policy option:

- Concerning the **costs** of **familiarising staff with the obligations** and **training personnel in the Member State Dublin units**[94], no additional cost would be incurred two years after the initial implementation of the preferred option;

- Concerning implementation **costs** for the **remaining actions**[95], assuming that there will be no further need to **continue to identify and diffuse best practices and the handbook on the application of the Dublin Regulation**, the following assumptions, in terms of working hours (WH), have been made for the following actions:

1. 8 WH for each Member State to **retrieve updated information** on the Dublin procedure in general and on further specific issues such as on entities that may provide legal assistance;

2. 4 WH for each Member State to **adjust the existing information** material to include details of the Dublin procedure in general and further specific issues such as on entities that may provide legal assistance (assuming that each Member State will have to do this once a year);

3. 12 WH for each Member State to **copy the information** material with details of the Dublin procedure in general and further specific issues such on entities that may provide legal assistance (assuming that each Member State will have to do this once a year);

4. 0.1 WH for each Member State to **supply the information** to applicants for international protection (based on the average number of applications per Member State in the past 5 years (2003-2007), i.e. 8 920.54);

5. 0.5 WH for each Member State to **retrieve information** on transferees, in particular vulnerable persons. This would be done for each vulnerable transferee, with the annual number of such people transferred on average by each Member State estimated to be 199.51[96] (assuming that files on these people will already exist);

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93 It should be noted that the numbering of the assumptions follows the numbering of the cost items in Table III.

94 The need to familiarise staff with obligations relates to the following measures: (i) general information by Member States to applicants about the Dublin mechanism, (ii) information for applicants on specific issues such as on entities that may provide legal assistance, (iii) exchange of information between the Member States involved on the applicants to be transferred.

95 Submitting the information; Filing the information; Retrieving relevant information from existing data; Adjusting existing data; Copying; Producing new data; Designing information material.

96 This assumption is based on an estimate drawn from a study carried out by ICAR (Information Centre about Asylum and Refugees) concerning vulnerable groups in the asylum process in the UK, which, as the UK received the highest average number of applications in the past 5 years (2003-2007), constitutes a representative sample for estimating the proportion of vulnerable applicants in total applications in the EU (Vulnerable groups in the asylum determination process, Thematic Briefing prepared for the Independent Asylum Commission Information, Centre about Asylum and Refugees (ICAR), 2007). An estimate was made of the proportion of vulnerable people in the average number of outgoing transfers per Member State, but excluding BG and RO since the available data are for 2006 and BG and RO were not yet Member States at the time.

6. 0.1 WH in each Member State for **submitting the information** concerning transferees, in particular vulnerable persons, to the responsible Member State. This would be done for each vulnerable transferee, with the annual number of such people transferred on average by each Member State estimated to be 199.51 (assuming that most information will be submitted electronically);

7. 0.5 WH in each Member State to **file the information** received on transferees, in particular vulnerable persons. This would be done for each vulnerable transferee, with the annual number of such people transferred on average by each Member State estimated to be 199.51.

- **Labour costs:** no significant changes in labour costs (see Scenario '0') due to the short period since 'Scenario 0' and expected inflation rates at EU level'

EU Cost Model: Policy Options Obligations in 'Scenario t0'

Proposal on the future development of measures on the criteria and mechanisms to determine the Member State responsible for assessing asylum applications, based on Council Regulation 343/2003/EC

No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	Tariff (€ per hour)		Time (hour)		Price (per action or equip)		Freq (per year)	Nbr of entities	Total nbr of actions	Total cost		Regulatory origin (%)		
						i	e	i	e							Int	EU	Nat	Reg
1			Submission of (recurring) reports Other	Familiarising with the information obligation	MS Asylum Services	23		32,00				745,6	1,00	29	29	21.622	100 %		
2			Submission of (recurring) reports Other	Training members and employees about the information obligations	MS Asylum Services	23		240,00				5.592,0	1,00	29	29	162.168	100 %		
3			Other	Retrieving relevant information from existing data	MS Asylum Services	23		64,00				1.491,2	1,00	29	29	43.245	100 %		
4			Other	Adjusting existing data	MS Asylum Services	23		16,00				372,8	1,00	29	29	10.811	100 %		
5			Other	Copying (reproducing reports, producing labels or leaflets)	MS Asylum Services	23		12,00				279,6	1,00	29	29	8.108	100 %		
6			Other	Submitting the information (sending it to the designated recipient)	MS Asylum Services	23		0,10				2,3	8.920,54	29	258.696	602.761	100 %		
7			Submission of (recurring) reports	Retrieving relevant information from existing data	MS Asylum Services	23		0,50				11,7	199,51	29	5.786	67.404	100 %		
8			Submission of (recurring) reports	Submitting the information (sending it to the designated recipient)	MS Asylum Services	23		0,10				2,3	199,51	29	5.786	13.481	100 %		
9			Submission of (recurring) reports	filling the information	MS Asylum Services	23		0,50				11,7	199,51	29	5.786	67.404	100 %		
10			Other	producing new data	EU DG JLS Services	23		350,00				8.155,0	1,00	1	1	8.155	100 %		
11			Other	Designing information material (leaflet conception…)	EU DG JLS Services	23		16,00				372,8	1,00	1	1	373	100 %		

EU Cost Model: Policy Options Obligations in 'Scenario t0'

Proposal on the future development of measures on the criteria and mechanisms to determine the Member State responsible for assessing asylum applications, based on Council Regulation 343/2003/EC

No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	Tariff (€ per hour)	i	Time (hour)	e	i	Price (per action or equip)	e	Freq (per year)	Nbr of entities	Total nbr of actions	Total cost		Int	Regulatory origin (%) EU	Nat	Reg
1			Submission of (recurring) reports Other	Familiarising with the information obligation	MS Asylum Services		23	32,00					745,6	1,00	29	29	21.622		100 %		
2			Submission of (recurring) reports Other	Training members and employees about the information obligations	MS Asylum Services		23	240,00					5.592,0	1,00	29	29	162.168		100 %		
3			Other	Retrieving relevant information from existing data	MS Asylum Services		23	64,00					1.491,2	1,00	29	29	43.245		100 %		
4			Other	Adjusting existing data	MS Asylum Services		23	16,00					372,8	1,00	29	29	10.811		100 %		
5			Other	Copying (reproducing reports, producing labels or leaflets)	MS Asylum Services		23	12,00					279,6	1,00	29	29	8.108		100 %		
6			Other	Submitting the information (sending it to the designated recipient)	MS Asylum Services		23	0,10					2,3	8.920,54	29	258.696	602.761		100 %		
7			Submission of (recurring) reports	Retrieving relevant information from existing data	MS Asylum Services		23	0,50					11,7	199,51	29	5.786	67.404		100 %		
8			Submission of (recurring) reports	Submitting the information (sending it to the designated recipient)	MS Asylum Services		23	0,10					2,3	199,51	29	5.786	13.481		100 %		
9			Submission of (recurring) reports	filling the information	MS Asylum Services		23	0,50					11,7	199,51	29	5.786	67.404		100 %		
10			Other	producing new data	EU DG JLS Services		23	350,00					8.155,0	1,00	1	1	8.155		100 %		
11			Other	Designing information material (leaflet conception…)	EU DG JLS Services		23	16,00					372,8	1,00	1	1	373		100 %		

Total administrative costs (€) 1.005.533

EU Cost Model: Policy option obligations in 'Scenario t0+2' **Proposal for the future development of the criteria and mechanisms to determine the Member State responsible for assessing asylum applications, based on Council Regulation 343/2003/EC**						**Rate (€ per hour)**		**Time (hours)**		**Price (per action or equip.)**	**Freq (per year)**	**No of entities**	**Total No 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	Retrieving relevant information from existing data	MS Asylum Services	23		8.00		186.4	1.00	29	29	5 406		100 %		
2			Other	Adjusting existing data	MS Asylum Services	23		4.00		93.2	1.00	29	29	2 703		100 %		
3			Other	Copying (reproducing reports, producing labels or leaflets)	MS Asylum Services	23		12.00		279.6	1.00	29	29	8 108		100 %		
4			Other	Submitting the information (sending it to the designated recipient)	MS Asylum Services	23		0.10		2.3	8 920.54	29	258 696	602 761		100 %		
5			Submission of (recurring) reports	Retrieving relevant information from existing data	MS Asylum Services	23		0.50		11.7	199.51	29	5 786	67 404		100 %		
6			Submission of (recurring) reports	Submitting the information (sending it to the designated recipient)	MS Asylum Services	23		0.10		2.3	199.51	29	5 786	13 481		100 %		
7			Submission of (recurring) reports	Filing the information	MS Asylum Services	23		0.50		11.7	199.51	29	5 786	67 404		100 %		
													Total administrative costs (€)	**767 267**				