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Accompanying the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted

Impact Assessment

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| | | |
|-------|---|----|
| 1 | PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES ... | 4 |
| 1.1 | Background..... | 4 |
| 1.1.1 | Policy context | 4 |
| 1.1.2 | Organization and timing, consultation and expertise | 6 |
| 1.2 | The Impact Assessment Board | 7 |
| 2 | PROBLEM DEFINITION..... | 8 |
| 2.1 | Scope of the problem..... | 8 |
| 2.2 | What is the issue or the problem that may require action?..... | 8 |
| 2.2.1 | Harmonization on the basis of minimum standards: meaning, main elements and objectives | 9 |
| 2.2.2 | Problems with the standards set down by the current Directive..... | 10 |
| 2.2.3 | Statistical evidence of insufficient harmonization..... | 13 |
| 2.2.4 | The effect of insufficient harmonization on secondary movements..... | 14 |
| 2.2.5 | Insufficient harmonization as one of the factors for the unequal distribution of asylum seekers..... | 15 |
| 2.2.6 | Evidence for poor first instance decision-making | 15 |
| 2.2.7 | Difficulties in forecasting and quantifying costs in the asylum system | 16 |
| 2.2.8 | The economic situation..... | 16 |
| 2.3 | The Baseline scenario: "How would the problem evolve, all things being equal?" ... | 17 |
| 2.4 | Does the EU have the power to act?..... | 18 |
| 2.4.1 | The EU's right to act | 18 |
| 2.4.2 | Added value of EU action and respect for the principle of subsidiarity..... | 18 |
| 3 | OBJECTIVES..... | 19 |
| 3.1 | Global objective..... | 19 |
| 3.2 | Specific objectives | 20 |
| 3.3 | Operational objectives | 20 |
| 4 | POLICY OPTIONS | 21 |
| 4.1 | Status Quo..... | 21 |
| 4.2 | To limit the broad interpretation of "actors of protection" in line with the standards of the Geneva Convention | 21 |
| 4.3 | To limit the broad interpretation of the concept of "internal protection" in line with the standards of the Geneva Convention and the ECHR..... | 22 |

| | | |
|-------|--|----|
| 4.4 | To ensure a more inclusive interpretation of the concept "particular social group" in line with the standards of the Geneva Convention | 24 |
| 4.5 | To approximate the rights of beneficiaries of subsidiary protection to those of refugees | 26 |
| 4.5.1 | Duration of residence permits..... | 26 |
| 4.5.2 | Access to employment | 27 |
| 4.5.3 | Access to integration facilities | 28 |
| 4.6 | To enhance the integration of beneficiaries of international protection taking into account their specific needs | 29 |
| 4.6.1 | To enhance access to procedures for recognition of qualifications..... | 29 |
| 4.6.2 | To enhance access to vocational training and employment..... | 32 |
| 4.6.3 | To enhance access to integration facilities | 33 |
| 4.6.4 | To enhance access to accommodation | 34 |
| 4.7 | To better ensure the right of beneficiaries of international protection for respect of family life | 36 |
| 4.8 | Summary of further non contentious policy options selected | 38 |
| 5 | Presentation of the Preferred Policy Option | 39 |
| 6 | Assessment of Preferred Policy Option..... | 39 |
| 6.1 | EU added value..... | 39 |
| 6.2 | Proportionality | 39 |
| 6.3 | Summary of relevance, feasibility and expected impacts..... | 40 |
| 6.4 | Potential magnitude of financial impacts | 44 |
| 6.4.1 | Potential costs | 44 |
| 6.4.2 | Potential savings | 48 |
| 6.4.3 | Assistance from the European Refugee Fund and from the Asylum Support Office. | 49 |
| 6.4.4 | Longer term benefits of successful integration..... | 50 |
| 6.5 | Tackling abuse of the asylum system | 50 |
| 7 | Monitoring and Evaluation | 51 |

Lead DG: Justice, Freedom and Security

1 PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1 Background

1.1.1 Policy context

Creating a Common European Asylum System (CEAS) as a constituent part of an Area of Freedom, Security and Justice emerged from the idea of making the EU a single protection area for persons in need of protection, based on the full and inclusive application of the 1951 Geneva Convention relating to the Status of Refugees ("Geneva Convention") and on the common humanitarian values shared by all Member States (MS). The objective pursued is a level playing field, where persons genuinely in need of protection are guaranteed access to a high level of protection under equivalent conditions in all MS and where those found not to be in need of protection are treated fairly and efficiently. As set out in the Tampere European Council Conclusions and confirmed in the Hague Programme, **the objectives of the CEAS consist in the establishment of a common asylum procedure and a uniform protection status valid throughout the EU.**

In line with the Tampere Conclusions, the first stage of the creation of the CEAS involved harmonising MS' legal frameworks on the basis of common minimum standards. Considerable progress between 1999 and 2006 included the adoption of the four main legislative instruments which make up the current *acquis*. Council Directive 2004/83/EC (the "Qualification Directive") defined common criteria for the identification of persons in need of international protection and ensured that at least a minimum level of benefits is available for these persons in all MS.

The Hague Programme invited the Commission to evaluate the first-phase asylum instruments and to submit the second-phase instruments to the Council and the European Parliament before the end of 2010. On the basis of this evaluation, shortcomings have been identified and it is clear that the agreed common minimum standards have not created the desired level playing field.

In the Policy Plan on Asylum¹ ("Policy Plan") of 17 June 2008, the Commission proposed the completion of the second phase of the CEAS through raising the standards of protection and ensuring their consistent application across the EU. The European Pact on Immigration and Asylum ("Pact"), adopted by the European Council on 17 October 2008, provided further political endorsement and impetus to this objective, by calling for initiatives to complete the establishment of the CEAS with a view to offering a higher degree of protection.

In accordance with the roadmap set out in the Policy Plan, the Commission adopted, on 3 December 2008, proposals for the amendment of three first-phase instruments, e.g. the Dublin Regulation, the Eurodac Regulation and the Reception Conditions Directive², and, on 18 February

¹ Policy Plan on Asylum 'An integrated approach to protection across the EU' COM(2008) 360

² Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (COM (2008) 815 final/2); 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 (COM (2008) 820 final/2); Proposal for a Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No [...] [establishing the

2009, a proposal for the establishment of a European Asylum Support Office ("EASO")³. Further measures to be taken in the short-term in accordance with the Policy Plan include a proposal for the amendment of the Asylum Procedures Directive⁴, to be adopted together with the proposal for the amendment of the Qualification Directive, as well as measures to reinforce the external asylum dimension, including by establishing a joint EU resettlement scheme and further developing Regional Protection Programmes.

There are several reasons why, in the present settings, a revision of the Directive can be realistically expected to achieve higher and more harmonised protection standards than those established in the first phase:

a) As will be demonstrated in detail below, the restrictive interpretation of human rights instruments forming the basis of the existing Directive's standards, the ambiguity, the possibilities for derogation and the low level of harmonization which characterize the Directive are due, to a large extent, to the unanimity requirement for its adoption. A fundamental difference in the political and legal framework for the adoption of the second-phase Directive is the **applicability of Article 251 TEC ('the co-decision procedure')**, which means qualified majority voting in the Council and a stronger role for the European Parliament as co-legislator.

b) Negotiations in the 2nd phase will start from a solid basis: certain progress has already been accomplished and the amending proposal is based on a thorough assessment of the implementation of the Directive, taking into account the results of the evaluations and the consultations with MS. On this basis, **the amendments proposed seek to remedy the deficiencies identified and to address the concerns expressed by the MS themselves**. For instance, the MS themselves have acknowledged the difficulties involved in implementing some of the vague and ambiguous provisions of the Directive; thus, the clarification of concepts and removal of current ambiguities is expected to result in streamlining, facilitating and enhancing the quality of the first-instance examinations of asylum applications, as well as in reducing appeals. Similarly, in the Pact, the European Council pointed to the persistence of wide disparities amongst MS in the granting of protection and the form of protection granted as the main problem to be addressed and called for a higher degree of protection.

c) A further factor expected to facilitate the adoption of the higher standards proposed is that they correspond to a large extent to **recent developments in the case-law of the ECtHR and the ECJ**, as well as in national jurisprudences. The standards set in the relevant rulings do not suffice as such to address the problems and inconsistencies identified, but can provide the basis for the establishment of *acquis* rules benefitting from the accessibility and coherent application across the EU guaranteed by the Community legal and institutional framework

d) Furthermore, the proposed legislative harmonisation based on high standards should not be seen in isolation but rather as **a necessary complement, a piece to be added in a puzzle of EU policies and measures**:

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] (COM (2008) 825 final) and Proposal for a Directive of the European Parliament and the Council laying down minimum standards for the reception of asylum seekers (COM 2008(815 final/2)

³ Proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office (COM (2009) 66 final)

⁴ Council Directive 2005/85/EC of 1 December 2005, on procedures in MS for granting and withdrawing refugee status (OJ L 326, page 13)

- The revision of the Qualification Directive is in particular complementary to the revision of the Asylum Procedures Directive. The revision of the latter Directive aims at providing asylum authorities with **procedural tools which can adequately back up the correct and consistent implementation of the substantive criteria** of the Qualification Directive and more generally at **boosting the overall capacity of asylum authorities to make robust decisions and to efficiently manage the asylum process**, through a wide range of frontloading measures.
- At the same time, by enabling authorities to process claims more rapidly while reaching solid decisions and thus to better deal with abuse, the Qualification Directive fits in the **broader context of measures taken to improve the credibility of the asylum process** notably by increasing the effectiveness of return policies, in particular through the entry into force of the "Return Directive" and the creation of the European Return Fund.
- Ensuring that asylum seekers have equal access to protection throughout the EU through further harmonization of rules and practices regarding the granting of protection, as envisaged by the revision, is **a prerequisite for the effective functioning and the credibility of the Dublin System**. As demonstrated in the Commission's proposal for its revision, the underlying principles of this System have been considered worth to uphold in the second phase. However, it has become clear that further efforts towards the achievement of a level-playing field are urgently needed with a view to ensuring that the Dublin System can operate in a fair and efficient manner.
- The proposals for the revision of the Dublin Regulation and the Reception Conditions Directive contain elements regarding, for instance, the respect of the principle of non-discrimination and other fundamental rights or broadening the definition of family members which should be reflected in the revision of the Qualification Directive in order to **ensure coherence in the instruments of the second-phase acquis**.
- With a view to reducing secondary movements, the proposed revision of the Qualification Directive aims at addressing one of the relevant drivers, namely that asylum seekers have different chances of finding protection and the possibility to obtain, once recognised, different levels of rights in the different MS. It is thus **part of a broader effort made in the second phase to reduce secondary movements**: other drivers relating to the divergences in reception conditions and asylum procedures are being addressed in parallel, through the revision of the Reception Conditions Directive and the Asylum Procedures Directive. The approximation of national practices will also increase as a result of enhanced practical cooperation through the creation of the EASO. In parallel, as a means of addressing the consequences of the uneven distribution of asylum seekers, further measures are being currently developed to ensure that responsibility for processing asylum applications and granting protection in the EU is shared more equitably, notably by assisting, based on the principle of solidarity, those MS which because of their geographical position are faced with particular pressures.

1.1.2 *Organization and timing, consultation and expertise*

The Commission presented in June 2007 a **Green Paper**⁵ on possible options for the second phase of the CEAS. The contributions received from a wide range of stakeholders put across a

⁵ COM (2007) 301

broad range of views and ideas on possible amendments to the Directive. The Commission has collected information about the transposition and implementation of the Directive through its monitoring activities and has taken into account several **studies**⁶ evaluating the implementation of the Directive and notably a report carried out, on behalf of the Commission, by the academic network Odysseus (the "Odysseus report")⁷. Moreover, an **external study**⁸ was conducted on behalf of the Commission, analysing the existing evidence and results of consultation and questionnaires and further data was collected from academic publications and from commentaries by UNHCR and civil society stakeholders.

The Commission organised several **experts' meetings** to discuss possible amendments to the Directive: a meeting with judges, academics, UNHCR and a selected number of experts from MS on 26.06.2008; two meetings with MS (one at experts' level on 19.11.2008 and another one in the context of the Committee on Immigration and Asylum on 12.12.2008) and two meetings with NGOs, on 8.1.2009 and 23.2.2009⁹. The report also incorporates comments submitted during two meetings of the **Inter-service Steering Group**, on 18.12.2008 and 18.2.2009. In addition, bilateral consultations took place with DG EMPL, MARKT and EAC as well as with the Legal Service.

1.2 The Impact Assessment Board

The Impact Assessment (IA) was revised to take into account the opinions issued by the Impact Assessment Board on 6 April and 28 July 2009¹⁰. In particular, the IA explains to what extent the revision of legal norms can address the problem of low and diverse standards and how the harmonisation of minimum standards can contribute to a fairer burden-sharing among MS. Furthermore, it demonstrates more clearly the proportionality of the envisaged measures, it systematically refers to the number of MS potentially affected so as to provide indications of the magnitude of the implementation costs and further develops the monitoring and evaluation arrangements. In addition, the IA explains in a more comprehensive manner the different factors contributing to insufficient harmonisation and their interrelation with the flows of asylum seekers towards the different Member States. Finally, it specifically refers, for the different policy issues addressed, to the existing human rights standards set by EU or international law and demonstrates the necessity of EU action in those areas.

⁶ Further studies include: UNHCR, "Asylum in the European Union, A study on the implementation of the Qualification Directive", November 2007 <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=473050632&page=search> (the "UNHCR study"); ELENA/ECRE, "The impact of the EU Qualification Directive on International protection", October 2008, http://www.ecre.org/files/ECRE_OD_study_full.pdf ("ECRE study"); France Terre d'Asile, "Asile La protection subsidiaire en Europe: Un mosaïque de droits", Les cahiers du social no 18, Septembre 2008; Dutch Refugee Council/ECRE, 'Networking on the Transposition of the Qualification Directive', December 2008, <http://www.qualificationdirective.eu/research>; Nijmegen University, "The Qualification Directive: Central themes, Problem issues, and Implementation in selected MS", Karin Zwaan (ed), 2007

⁷ Available at http://ec.europa.eu/justice_home/doc_centre/asylum/studies/wai/doc_asylum_studies_en.htm

⁸ GHK, Impact assessment studies on The future development of measures on the qualification and status of third country nationals or stateless persons as persons in need of international protection and on the content of the protection granted, based on Council Directive 2004/83/EC and The future development of measures on procedures in MS for granting and withdrawing refugee status, based on Council Directive 2005/85/EC, Multiple framework service contract JLS/2006/A1/004.

⁹ The main findings of all these consultations are presented in Annex 2.

¹⁰ The opinion will be available at: http://ec.europa.eu/governance/impact/cia_2009_en.htm.

2 PROBLEM DEFINITION

2.1 Scope of the problem

Following an increase between 1996 and 2002, fuelled by conflicts in former Yugoslavia, in the period 2003-2006 numbers of asylum seekers in the EU27 decreased sharply: from 344,800 asylum applications in 2003 to 197,410 in 2006 (-42.7%)¹¹. This decreasing trend stopped in 2007, as numbers of applications rose to 222,170 (+12%), mainly due to the inflow of Iraqi asylum seekers. In 2008 there was a further increase (+8%) compared to 2007, as the number of applications reached **257,375**¹². Even so, asylum seekers **represent a small fraction of overall migration flows to the EU** (estimated at **1.5 -2 m** immigrants per year).

The number of persons residing with a (refugee or other, humanitarian) protection status in the EU at the end of 2007 was close to **1.4 m**, amounting thus to approximately **7.5%** of the population of legally residing third country nationals (estimated at 18.5m) and representing **0.3% of the total EU population** in 2007 (estimated at 497m). It should also be pointed out that this 1,4m represents **a small part of the worldwide population of refugees, estimated at 11.4 m in 2007**¹³.

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

The flows of asylum seekers across the EU and the ways that individual MS choose to address these flows and handle asylum applications are interrelated in complex ways.

The diversity of national asylum legislations and practices was recognised from the beginning as one of the main factors affecting asylum flows¹⁴. Indeed, it was precisely with a view to limiting the impact of this factor on asylum flows the Tampere programme called for the adoption of legislative instruments harmonizing national asylum rules on the basis of minimum standards.

However, as will be demonstrated below, the adoption of such standards was not sufficient in itself: divergences in asylum legislations and practices persist, despite the first phase of harmonization. There are several causes for these persistent divergences and, as will be demonstrated below, in sections 2.2.2 and 2.3, they are interlinked¹⁵. These factors include:

- **the incomplete and/or incorrect transposition and application** of the acquis' rules, **including the implementation of lower standards** than those established by the acquis ;
- **the implementation of higher standards** than those established by the acquis;
- **the vagueness and ambiguity** of the acquis' standards.

¹¹ See table new asylum applications 1987-2007 in Annex 3

¹² See Table in Annex 4

¹³ UNHCR Annual Statistics Report 2007, available at www.unhcr.org/statistics

¹⁴ Further factors include linguistic and cultural links, family ties, the presence of immigrant communities as well as geography. Indeed, as will be demonstrated below under section 2.2.5, some MS receive very high numbers of asylum seekers due to their geographical position. The different measures aimed at helping those MS adequately deal with these flows relate to financial solidarity, to burden sharing through relocation of beneficiaries of international protection and to tasks to be assigned to the future EASO.

¹⁵ For instance, the vagueness, the ambiguity and the gaps in the Directive also make it difficult to substantiate infringement cases in cases of incomplete or incorrect implementation.

The Commission is constantly and systematically monitoring the implementation of the asylum acquis by MS and any problems identified as flowing from the incomplete transposition or the incorrect implementation of these rules, including the implementation of lower standards, can only be addressed by infringement procedures.

Regarding the possibility for MS to go beyond the minimum standards prescribed by the acquis, as will be explained in more detail below under section 2.2.1, this possibility reflects the sovereign right of States to go beyond the minimum core of obligations established by human rights instruments and it is fundamental and inherent in human rights rules. Accordingly, all asylum Directives allow MS to introduce or retain more favourable standards, in so far as those standards are compatible with their rules. This possibility cannot be precluded and the ensuing divergences cannot be addressed by legislative measures. It is the European Court of Justice that, by applying this compatibility test, could eventually impose certain limits and define more clearly which more favourable national standards may be considered admissible.

However, the last factor, i.e. the vagueness and ambiguity of the acquis' standards themselves can (and indeed can *only*) be remedied by the amendment of the first-phase legislation as called for by the Hague Programme.

2.2.1 Harmonization on the basis of minimum standards: meaning, main elements and objectives

Pursuant to Article 63 TEC, measures on qualification for refugee status and subsidiary protection are confined to setting **minimum standards**. This means that they aim at a certain degree of harmonization - and thus not at full harmonization - by establishing **common denominators which are binding on all MS**. However, they do not preclude MS from maintaining or introducing standards which are more favourable to the beneficiary of the EU legislation, provided that such alternative national standards do not annihilate the objective of harmonization. This approach is particularly relevant in the field of asylum. Indeed, the whole human rights edifice is based on international law instruments establishing a common core of obligations, whilst allowing signatory states to go beyond this minimum. As in other fields of EU law, the concept of harmonization on the basis of minimum standards addresses the division of powers between the Community and the MS¹⁶, not the specific content of Community measures. **Hence, the common denominators established by way of minimum standards may set a high level of protection.**

With a view to achieving the goals of the CEAS, the Directive aimed at ensuring that

- MS apply **common criteria for the identification** of persons genuinely in need of international protection and that
- at least **a certain level of benefits** would be available for these persons in all MS.

These minimum standards should therefore establish truly *common* denominators, achieving a meaningful level of harmonization. The **main elements** constituting the basis **for these binding common denominators** are¹⁷

¹⁶ The extent to which a Community measure may regulate a certain issue must be assessed by means of the principles of subsidiarity and proportionality.

¹⁷ Recitals 2, 3, 10 and 11 of the Directive

- **the full and inclusive application of the Geneva Convention**, which provides the cornerstone of the international regime for the protection of refugees, guaranteeing the principle of non-refoulement and ensuring that nobody is sent to persecution and,
- the **fundamental rights** flowing from general principles of Community law, which, themselves, are the result of constitutional traditions common to the MS and the European Convention on Human Rights, as enshrined, moreover, in the EU Charter of Fundamental Rights ("the Charter").

However, these human rights and refugee law standards **set solely the lower threshold**, not the upper limits of harmonization. Thus, **harmonization** cannot take place at a level lower than these standards, but **may always go beyond this threshold, in line with the objectives set in the EU context and subject to the respect of proportionality and subsidiarity**.

Harmonization on the basis of these standards **should help to limit the secondary movements** of asylum seekers between MS, **where such movement is purely caused by differences in legal frameworks** (recital 7 of the Directive). At the same time, by ensuring that asylum seekers have equal access to protection in all MS, this harmonization constitutes a **prerequisite for the fair and efficient operation of the Dublin system**, which limits the possibility for asylum seekers to choose the MS which will examine their application.

2.2.2 Problems with the standards set down by the current Directive

On the basis of the contributions, evaluation reports, studies and ad hoc consultations referred to in section 1.1.2, the Commission has identified¹⁸ as a main problem that **the minimum standards adopted are vague and ambiguous**. As a result:

- **they are insufficient to secure full compatibility with the evolving human rights and refugee law standards and**
- **they have not achieved a sufficient level of harmonisation**
- **they impact negatively on the quality and efficiency of decision-making.**

Because of the unanimity requirement for the adoption of the Directive several of its provisions are formulated in a vague and ambiguous manner whereas others allow derogations from its rules. Additionally, in some cases, compromise was reached at the level of the more "conservative" or

¹⁸ Asylum decisions are made on a case-by-case basis and their outcome depends not only on the applicable rules and their interpretation, but also on the credibility of the claims and the individual circumstances of the applicants. Moreover, MS do not systematically collect information on the specific grounds on which applications are accepted or rejected. As a result, it is not possible to determine with precision whether and to what extent the interpretation of certain provisions of the Directive in ways that may be incompatible with international standards have actually led to rejections of applications. The problems described below have been identified mainly on the basis of the – mostly anecdotal – evidence provided by the evaluation studies and the consultations: it refers to cases in the administrative and judicial practice in MS illustrating how the Directive allows for divergent interpretations and for measures that do not meet international standards. Indeed, even the UNHCR study, which was based on the sampling and analysis of a substantial number of asylum decisions and case files, could not establish more general decision-making patterns, as in many cases the assessment of the individual cases takes into account combinations of elements and the decisions themselves are not – or not sufficiently – motivated.

even restrictive interpretation of the Geneva Convention, the ECHR and other human rights instruments which are the sources of the international obligations that MS have in common¹⁹.

The Directive's provisions are not, as such, incompatible with the abovementioned refugee law and human rights standards. However, the cumulative effect of all these restrictive provisions, ambiguities, deliberate "gaps" and derogation possibilities is that the current Directive does not guarantee the full compatibility of national implementation measures with these standards and allows for wide divergences amongst national decision-making practices. In some cases it may even encourage such divergences, as MS may consider themselves bound by their international obligations to provide higher standards than those established by the Directive. Indeed, in some of these cases, the need to apply higher standards has been explicitly affirmed in the jurisprudence developed since the adoption of the Directive by the European Court of Justice (ECJ), the ECtHR and national jurisdictions. Finally, as a result of the vagueness and ambiguity of the applicable rules, **decision-makers have difficulties to reach quickly robust decisions on individual applications**, whereas the possibility to interpret concepts in different ways results in **intensive recourse to appeals and to subsequent applications, and in high rates of successful appeals against negative decisions.**

It should be further noted that **the current standards of the Directive are also not adequate to attain the objectives set by the Hague programme**, i.e. **the establishment of a common asylum procedure and a uniform protection status**. Support for these aims was demonstrated again very recently in the Pact, where the European Council highlighted its concern that "**considerable disparities remain** between one Member State and another concerning the grant of protection and the forms that protection takes" and called for "new initiatives to complete the establishment of a Common European Asylum System, provided for in the Hague Programme, **and thus to offer a higher degree of protection**".

Moreover, **the current standards of the Directive regarding the rights** to be granted to beneficiaries of international protection with a view to supporting their integration **are also not adequate to ensure effective access to the rights guaranteed by the relevant international instruments in a consistent manner in all Member States. In the same vein, they are not adequate neither to achieve the Treaty objective of promoting social cohesion and the integration of legally residing third-country nationals nor to give effect to the integration mandate set by the Tampere and the Hague Programmes.** These provisions of the Directive reflect the legal standards provided by relevant refugee law and human rights instruments²⁰. However, it appears, on the basis of extensive research, that they do not take sufficiently into account the specific practical difficulties faced by beneficiaries of international protection compared to other legally residing third-country nationals. As a result, **they do not ensure the consistent and effective implementation of the relevant legal standards.**

Of relevance in this respect is the **emerging European framework on integration. In relation specifically to beneficiaries of international protection**, the need has been repeatedly acknowledged for MS to **promote their social, economic and cultural integration in so far as it**

¹⁹ Moreover, it should be noted that refugee and human rights obligations are the subject of a constantly evolving authoritative interpretation by competent national and international bodies and jurisdictions, such as the UN High Commissioner for Refugees, who has supervisory responsibility for the Geneva Convention, the European Court of Human Rights (ECtHR), the International Criminal Court etc, with a view to address the evolving nature of persecution and geopolitical developments

²⁰ For a detailed presentation of these standards see Annex 23

contributes to economic and social cohesion, the maintenance and strengthening of which is one of the Community's fundamental tasks provided for in Articles 2 and 3(1)(k) of the Treaty²¹. In Tampere, the European Council had stated that the **legal status of third-country nationals should be approximated to that of Member States' nationals** and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.

The Hague Programme in particular called for further progress with respect to the **fair treatment** of legally resident third-country nationals in the EU and the **active elimination of obstacles to the integration of all third-country nationals settled on a long-term basis** in the MS. In line with this mandate, a series of important developments took place, including the adoption by the Council of Common Basic Principles on integration, the adoption of a Common Agenda for Integration establishing a working framework for the integration of third-country nationals and the setting up of a European Fund for Integration.

The Pact provided further impetus, inviting MS to establish "ambitious integration policies" including "specific measures to promote language learning and access to employment, essential factors for integration". Against this background, in the Council Conclusions following the **European Ministerial Conference on Integration** of 3/4 November 2008, MS agreed to give particular attention, when defining and implementing their national integration policies, to certain themes. These include introduction arrangements, access to housing, and the development of measures aimed at facilitating access to employment, such as individually tailored employment support measures, measures designed to identify previously acquired vocational skills and experience and, above all, to improve the recognition of such skills and experience.

The above problems are manifest in the following provisions of the Directive²²:

1) The definitions of the concepts "actors of protection" and "internal protection" do not contain adequate criteria for assessing the level and effectiveness of protection required, in line with the Geneva Convention and the ECHR, thus allowing MS to reject claims and return applicants to their country of origin despite the lack of effective protection. Moreover, these concepts are defined in a broad and vague manner which creates a risk of diverse recognition practices.

2) The definition of the concept "membership of a particular social group" regarding the significance to be attached to gender-related aspects allows for interpretations which may result in denial of protection for women, as well as for diverse recognition practices of applicants with similar claims.

3) Differences in the content of protection for refugees and beneficiaries of subsidiary protection are not objectively justified from a fundamental rights perspective. Based on the assumption that the protection needs of the latter category would be of a short duration, the Directive allows MS to limit their rights. This possibility has been used by a small number of MS, resulting in different levels of rights being granted to them in different MS. However, practical experience shows that

²¹ See for instance Decision No 573/2007/EC of the European Parliament and the Council of 23 May 2007, establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" and repealing Council Decision 2004/904/EC (OJ L 144, p.1, "ERF"), recital 15.

²² For a concise comparison of the standards of the Directive with the standards/objectives to be attained in the second phase, see table in Annex 23. For a detailed analysis of these problems on the basis of information provided by the evaluation reports and collected in the context of recent consultations see Annexes 5- 12 and 18.

this initial assumption was not accurate and can no longer serve as justification for such limitations of rights, assessed against the principle of non-discrimination. This differential treatment is further incompatible with the call of the Hague programme for a uniform protection status.

4) The specific integration needs of beneficiaries of international protection are not met: The Directive grants beneficiaries of international protection access to a series of rights, aimed at supporting their integration in the host societies; however, it does not take sufficiently into account the wide range of practical obstacles they encounter which are linked to their specific situation. For instance, they are often unable to provide documentary evidence to prove their claimed academic and professional qualifications or their limited financial capacities prevent them from seeking recognition of their qualifications or from following vocational training. Information on the concrete implementation of the Directive's provisions in MS' is fragmentary; however, numerous relevant studies demonstrate the disparities in MS' practices and that overall the rights formally granted to beneficiaries of international protection are often *de facto* unavailable to them: they lack effective access to sustainable employment and integration, resulting in losses for the receiving societies and their economies²³.

5) The definition of "family members" does not cover cases where the beneficiaries of protection are minors or the wide range of situations where a minor might be considered dependent. To this extent, it does not give full effect to the principle of the primacy of the best interests of the child flowing from the UN Convention on the Rights of the child.

2.2.3 *Statistical evidence of insufficient harmonization*

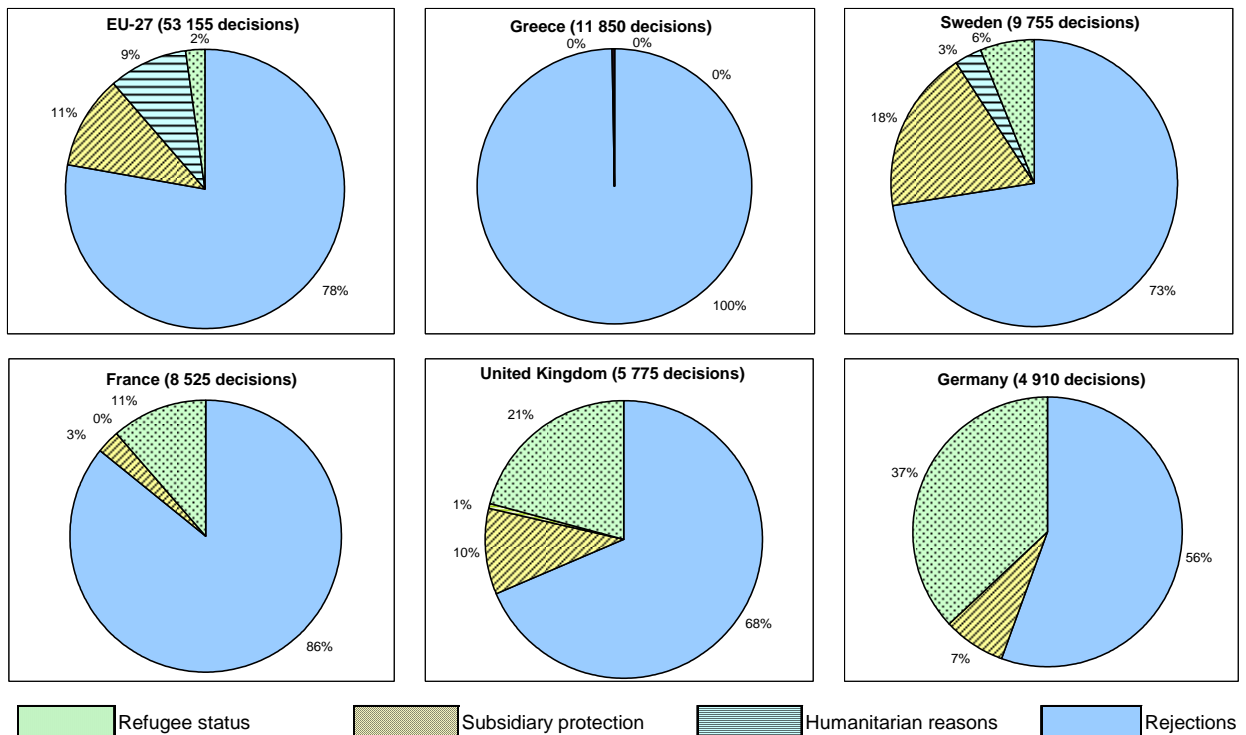
The wide divergences in the application of the Directive are illustrated by ample statistical evidence. To cite a few examples²⁴:

- Percentages of total positive decisions in the different MS in 2007 varied from 27.5% in Germany, to 0.8% in Greece;
- Recognition rates for applicants from the same nationality for the period 2005-2007 varied significantly: for instance, for asylum seekers from Russia (mostly of Chechen background), from 63% in Austria to 0% in Slovakia; the percentage of positive decisions for Somali asylum-seekers was 98% and 55% in Malta and in the UK against 0% in Greece.
- Again regarding asylum applicants having the same nationality, certain MS tend to grant refugee status whereas others opt for subsidiary protection. On positive decisions regarding Iraqi applicants in 2007, Sweden granted refugee status to 155 persons and subsidiary protection to 9,565, whereas Germany granted refugee status to 5,760 persons and subsidiary protection to 35.
- The figures below show the different outcomes of first-instance decisions taken in selected MS in the 4th quarter 2008²⁵:

²³ For a detailed presentation of the problems, and references to the relevant studies see Annex 9

²⁴ For references and more information on relevant statistics see Annex 13

²⁵ Source: Eurostat. EU-27: Refugee status and rejections: no data for DK, IT and CY available. Subsidiary protection: no data for DK, IT and CY available. Humanitarian reasons: no data for DK, FR, IT, CY and AT



2.2.4 The effect of insufficient harmonization on secondary movements

Evidence suggests that **the harmonization achieved by the Directive has not had any effect on secondary movements. Multiple applications remained high – at 17% in 2006 and 16% in 2007²⁶**, whereas certain MS continue to be more "attractive" destinations than others. For instance, between January and December 2006, Belgium, Germany, France, Sweden and the United Kingdom received more than 3000 multiple applications while countries such as Cyprus and Portugal had received less than 100 such applications and Estonia one. In order to counter such secondary movements the Dublin mechanism has been established, setting criteria for the determination of the MS responsible for the examination of each asylum application. This mechanism limits the possibility for asylum seekers to choose the MS that will examine their application, based on the premise that they have similar chances of finding protection in all MS. However, to the extent that such a level-playing field has not yet been achieved, this system creates a phenomenon decried as an "asylum lottery".

Evidently, there is a multitude of reasons why asylum seekers may find one country more "attractive" than others: linguistic and cultural ties, presence of friends and relatives, even the size of the development aid it provides (as a proxy for the country's reputation for generosity)²⁷. However, their chances to obtain a status or a higher level of rights there also play a decisive role. Indeed, statistics provide clear indications of **the impact of asylum policy rules on secondary movements**: countries which introduced restrictive measures have often seen a decrease in the number of applications soon after the changes were implemented, e.g. Germany after 1993, Spain

²⁶ For more information on relevant statistics see Annex 14

²⁷ The findings of recent studies on the distribution of asylum applications across receiving countries are largely consistent with the responses from surveys of asylum seekers about why they chose one destination rather than another: they suggest that, while asylum policies do influence the numbers of applications, asylum flows are determined mostly by variables not related to asylum policy; see Timothy J. Hatton, "European asylum policy", National Institute Economic Review no 194, October 2005, available at <http://ner.sagepub.com/cgi/content/abstract/194/1/106>

in 1995, and Denmark in 2001. The gaps and ambiguities inherent in the Directive's provisions allowed Sweden to restrict its policies concerning Iraqi asylum seekers in 2007. As a result, **Sweden witnessed a decrease by 2/3** in the number of applications from that country in 2008, whereas its restrictive policy had a impact on its neighbouring countries: the number of applications from Iraqis **in Germany and the Netherlands more than doubled** in 2008 compared to 2007, **Finland received 4 times** as many and **Norway three times** as many²⁸.

2.2.5 *Insufficient harmonization as one of the factors for the unequal distribution of asylum seekers*

The numbers of asylum-seekers per 1,000 inhabitants for the period 2004-2008²⁹ show that the most affected MS form two groups. Some MS are affected due to their geographical position (Cyprus, Greece, Malta): they are the first MS where the asylum-seekers arrive, even if they are not their desired destination. As a result, even MS with poor reception conditions and low recognition rates receive very high numbers of asylum-seekers. Other MS are affected due to their perceived generosity, measured both in reception conditions and in recognition rates, which are higher than the EU average (23% in 2007): Sweden (46%), Austria (32.4%), Luxembourg (48%). MS offering high protection standards appear to carry a heavier burden in relative terms than MS offering lower standards and recognition rates. Indeed, the fact that **Sweden receives five times more asylum applications than Spain**, which is a border country, may be attributed to a large extent to the higher standards of protection it grants to asylum applicants and the higher recognition rate (around **46%** in 2007 compared to Spain's **4.5%**)³⁰. A clear articulation between recognition rates and distribution of applications amongst MS is further demonstrated in the tables in Annex 16.

2.2.6 *Evidence for poor first instance decision-making*

There are indications that the vagueness and ambiguity in current substantial criteria may have a negative impact on the quality of first instance examinations and on the solidity of the decisions taken. Firstly, MS are confronted with high numbers of repeated claims. In 2008, subsequent applications amounted to 36.4% in the Czech Republic, 28.5% in Belgium, 20.7% in Germany, 15.4% in Poland and 12.3% in the Netherlands. In the same year, out of 197,284 applications recorded in EURODAC, in **31,910** cases the same person had already made at least one asylum application before. Furthermore, in average, around **80 % of rejection decisions are appealed in the EU**. These high percentages of subsequent and multiple applications as well as the particularly high percentage of appeals can partially be attributed to attempts by rejected asylum seekers to prevent their removal and prolong their entitlement to reception conditions. However, when considered in combination with the high rate of successful appeals (in 2008, **28%** of appeals in the EU resulted in overturning negative decisions³¹), they also point to **the low defendability of initial determinations and to the need to improve the robustness of negative decisions and reduce the risk of their annulment**.

²⁸ Asylum applications by Iraqis in Sweden decreased from 18,560 in 2007 to 6,330 in 2008, whereas in Germany they increased from 4,325 in 2007 to 7,135 for Jan-Oct 2008, in the Netherlands from 2,005 in 2007 to 4,805 for Jan-Oct 2008 and in Finland from 290 in 2007 to 765 for Jan-Oct 2008); Source: Eurostat.

²⁹ See Annex 15.

³⁰ See tables in Annex 13

³¹ In 2008 appeals thus resulted in 18,500 final decisions to grant protection in addition to 47,745 positive first-instance decisions; for data on appeals in 2007 and 2008 see Annex 17

2.2.7 Difficulties in forecasting and quantifying costs in the asylum system

It is impossible to forecast the financial impact of changes to the CEAS for several reasons. Firstly, the size or profile of flows of refugees fleeing in response to events around the world cannot be predicted from year to year. These events determine the personal motives and circumstances of individual applicants, which in turn determine the grounds on which their applications are accepted or rejected by MS³². Secondly, MS have not been able to provide statistics on why, over a given period, certain applications have been accepted and others rejected. Protection is granted on a case-by-case basis as the result of a complex, context-specific analysis of the credibility of the claim and the individual circumstances of the applicant.

Moreover, there is no information available on the overall costs of hosting beneficiaries of protection³³. Different rights, such as access to education, recognition of qualifications, social welfare or employment support, are granted on the basis of individual needs and MS do not segregate statistics on the basis of such criteria. This problem is recognised by the EU, and it is being addressed by greater cooperation and information sharing among MS, the institutions and NGOs, soon to be assisted by the EASO.

It is thus impossible to estimate how many applicants might actually be affected by any amendments to the grounds of protection or to assess the effects of any amendments to the rights granted to beneficiaries of protection. This is unfortunately a constraint which future proposals must work within.

Of course, raising the standards of protection would make the EU a more attractive place for refugees. Evidence suggests, however, that such 'pull' factors are more relevant to economic migrants. Genuine refugees do not have a choice: they must leave their country to protect their lives. 'Push' factors are stronger than pull factors, as has been apparent following conflicts in the former Yugoslavia, Chechnya, Afghanistan and Iraq. **Any major conflicts in regions neighbouring the EU will inevitably result in flows of refugees to the EU, irrespective of the level of protection provided.** As an indication it may be noted that, even if refugee flows increased by, for instance, 50%, they would still be close to the average for the past 20 years (340,000) while at the same time the creation of a level-playing field under the proposal would mitigate the effects of this increase by leading to a more equal distribution of asylum seekers amongst MS³⁴.

2.2.8 The economic situation

In the present context, it is also necessary to take into account the **severe strains that the current financial crisis is putting on MS' budgets** and its effects on public support for measures to the advantage of beneficiaries of protection³⁵. Raising the standards regarding the grounds for

³² To cite a theoretical example: if for instance the multi-national troops currently present in Iraq and who are potential actors of protection withdraw, the Directive's provisions on actors of protection, which are now often relevant in the determination of claims by Iraqi asylum seekers, would no longer be relevant for a large number of asylum claims in the EU. Depending on future conflicts around the world, different provisions of the Directive and other grounds of protection may acquire greater relevance in the future.

³³ As will be indicated below, the scant information collected on specific aspects does not allow for plausible estimates.

³⁴ See Impact assessment to the Policy Plan on Asylum 'The Persistence of refugee flows towards the EU', (SEC (2008) 2029) p. 5

³⁵ EU citizens may initially perceive any 'special' treatment for this category as unfair. According to a recent Eurobarometer survey of public opinion, 54% of EU citizens disagree with the idea that immigrants are needed to work in certain sectors of the economy in view of the ageing European population and the shortage of labour in certain sectors of the economy,

granting protection could result in higher recognition rates, thus incurring additional costs for some MS in terms of granting these persons the rights attached to their status. Further costs will result for some MS from raising the level of rights granted to beneficiaries of protection.

Any further **measures in this area can be co-funded by the European Refugee Fund (ERF)**. In the longer term, some costs may be offset to a certain extent by savings in terms of welfare assistance, by the contributions of the beneficiaries to the economies of the host state and, more importantly, by the decreases in costs entailed by the proposal. However, **MS have legal obligations from a fundamental rights perspective** regarding beneficiaries of international protection, who do not arrive in the EU to obtain access to the labour market but to seek protection. In this sense, integration support can be considered to form part of the protection to be provided to them. Furthermore, the principle of non-discrimination, enshrined inter alia in Article 21, of the EU Charter is also relevant to the treatment to be afforded to them.

2.3 The Baseline scenario: "How would the problem evolve, all things being equal?"

The problems identified above may be addressed to a certain extent by the case law of the ECJ and ECtHR, as they may be asked to provide guidance aimed at addressing inconsistencies and possible protection gaps. However, by its very nature, such **guidance by the ECJ and ECtHR cannot systematically or fully address the identified problems, but only on an *ad hoc*, case-by-case basis. The impact of the ECJ may be particularly limited**, since only national courts against whose decisions there is no judicial remedy may seek its guidance through preliminary questions and these courts might not always be accessible to asylum seekers. Moreover, their rulings can interpret or annul existing rules but they **cannot create new ones. Unless taken over and enshrined in the EU acquis, the standards they establish do not benefit from the accessibility and coherent application across the EU** guaranteed by the Community legal and institutional framework. These problems **could not be adequately addressed by infringement procedures** either, as the problems identified do not flow from the incomplete transposition or the incorrect implementation of the Directive, but from the vagueness, the ambiguity and the gaps in the Directive, which make it difficult to substantiate infringement cases.

Practical cooperation, to be reinforced through the establishment of the EASO, may result in raising current standards and in increased convergence of national practices, e.g. through training, awareness raising, peer pressure, the identification of good practices and the provision of enhanced country of origin information. In particular, the EASO may reinforce the impact of the Directive's rules through the assessment of the asylum situation in the EU and recommendations on the implementation of the asylum instruments. However, such measures are **insufficient, on their own, to adequately and comprehensively address the problems** which flow from the ambiguities and possibilities for derogations in the legislation itself. It is also questionable whether those MS where improvements are most urgently needed will respond to a **voluntary** approach.

Both the ECJ and ECtHR case-law and enhanced practical cooperation have the potential to contribute to clarifying the rules of the Directive and thus to enhance the quality and efficiency of national asylum procedures. However, given the above mentioned limits to their impacts, **it is**

whereas in the ten new MS (excluding Bulgaria and Romania) this figure is much higher, reaching close to 80% (compared to 49% in the fifteen old MS) http://ec.europa.eu/public_opinion/archives/ebs/ebs_215_en.pdf (pp. 39-40). However, other recent surveys show that attitudes towards genuine refugees are more positive than they are towards immigrants in general and that the humanitarian motives underlying refugee protection are more widely supported than negative press coverage would suggest; see Timothy J. Hatton, "European asylum policy", op.cit. p 113.

unclear to what extent they may result in a systematic overall improvement or a significant reduction of the duration of the asylum process, of the possibilities for abuse and of the costs involved across the EU.

Developments at national level (e.g. change of government, factual developments, re-evaluation of the situation etc.) **and eventual positive or negative impacts on asylum policy are impossible to predict.** To cite an example, on the basis of their experience with the implementation of the subsidiary protection regime, several MS have taken steps towards closing the gaps between the rights provided to beneficiaries of subsidiary protection and refugees, realizing that a differentiation does not make sense in view of the similarity of the protection needs and the administrative burdens it entails. However, a few MS still differentiate, and at least one MS adopted new legislation introducing a differentiation with respect to the conditions for providing benefits to family members of beneficiaries of subsidiary protection as late as in January 2009. More generally, there are no indications that future developments will probably lead to higher standards or to increased harmonization; rather the opposite. Indeed, **as the current financial crisis is putting severe strains on MS' budgets, it entails an increased risk of xenophobic tendencies and of pressures to resort to measures which could undermine the effective protection of fundamental rights.** MS may choose for instance to focus on their own nationals before allocating resources to beneficiaries of protection or even to lower their standards so as to reduce the influxes of asylum seekers and deflect them elsewhere.

Moreover, the persistence of divergences would result in the persistence of **high levels of secondary movements within the EU and, consequently, in the continuation of an intensive use of the Dublin system,** with all the costs resulting for MS from its implementation. At the same time, the MS receiving higher numbers of asylum seekers as a result of providing higher standards (and possibly even other MS) **might be inclined to lower their standards** (see section 2.2 above).

By contrast, it would be **impossible to determine if - and to what extent - the maintenance of the status quo would have any impact on the overall asylum flows to the EU,** since refugee flows are mainly driven by push factors such as political instability, no/poor rule of law, lack of respect for human rights, undemocratic regimes and armed conflicts and cannot be predicted³⁶.

2.4 Does the EU have the power to act?

2.4.1 The EU's right to act

The current legal base for Community action regarding the qualification and status of refugees and beneficiaries of subsidiary protection is established in Article 63 1(c), 2(a) and 3(a) TEC.

2.4.2 Added value of EU action and respect for the principle of subsidiarity

The issues identified are of a transnational nature and cannot be tackled by MS acting in isolation. Action at the EU level can be expected to be more effective than MS action in several respects.

i) The objectives set by the Hague Programme - and confirmed in the Pact - regarding a uniform protection status and the integration of third-country nationals **cannot be attained by unilateral MS action.**

³⁶ As demonstrated in the reversal of trends described in section 2.1 above: following a sharp decrease in the period 2003-2006, asylum flows have increased again significantly since 2007.

ii) It is unlikely that the level of protection will be comprehensively raised to meet the higher international standards as they have evolved through MS' unilateral actions. On the contrary, 'a race to the bottom' may occur, since those MS currently providing more generous protection standards may be inclined to lower their standards in order to avoid "attracting" larger numbers of asylum seekers. As indicated above, the current financial crisis aggravates this danger. **The present circumstances lend thus particular urgency to the need for the EU to proactively dissuade MS from resorting to measures which could undermine the effective protection of fundamental rights³⁷.**

iii) Secondary movements and the uneven distribution of asylum seekers and beneficiaries of protection are cross-border issues that can only be addressed at EU level. Evidently, no action is possible with a view to addressing the factors leading to secondary movements which are not related to asylum policy (such as the "friends and relatives" effect, cultural and linguistic links or employment opportunities). However, it is imperative to tackle those factors which are linked to the divergences of national legislations and practices and to different levels of rights provided in different MS **and this can be achieved solely by enhanced harmonization at the EU level.** Such harmonisation can indeed **drastically reduce asylum seekers' incentive for movements and reduce the costs of transfers under the Dublin Regulation.**

iv) Ambiguities and vagueness in the existing acquis can only be resolved at EU level. Action by MS cannot lead to an overall improvement of the quality and efficiency of the asylum process throughout the EU. Although authorities and courts in individual MS might attempt to clarify the meaning of certain notions, possibly also using the practical cooperation channels or seeking guidance from the ECJ, such actions cannot comprehensively and systematically address the problems resulting from the vagueness and ambiguity inherent in several provisions of the Directive. As a result, there would be no significant improvement in terms of frontloading and shortening the duration of asylum procedures nor in terms of achieving more solid, robust first-instance decisions which are not frequently overturned on appeal.

Compliance with the principle of subsidiarity in this respect is confirmed by the ECJ's case-law, according to which, once the Council 'has found it necessary to improve the existing level of protection (minimum standards in the area of health and safety) and to further harmonise the law in this area while maintaining improvements already made, the achievement of this objective necessarily presupposes Community action³⁸.

3 OBJECTIVES

3.1 Global objective

The global objective for the development of rules on the qualification and status of beneficiaries of international protection in the second phase of the CEAS is **to achieve higher standards of protection across the EU for persons in need of international protection.** This objective is in line with the strategy for the completion of the CEAS announced by the Commission in the Policy

³⁷ Indeed, the whole creation of a CEAS and the Qualification Directive, in particular, "pursues the objective of developing a fundamental right to asylum which follows from the general principles of Community law which, themselves, are the result of constitutional traditions common to the Member States and the ECHR, as reproduced, moreover, in the Charter [of Fundamental Rights]". See Opinion of Advocate General Poiares Maduro of 9 September 2008 in Case C-465/07, Elgafaji, point 21

³⁸ Case C-377/98, Netherlands v Council, paragraph 52, concerning the "Working time Directive"

Plan, falling, more specifically, within the cross-cutting objective to achieve "better and more harmonized standards of protection".

3.2 Specific objectives

The proposal to amend the Directive should pursue the following specific objectives:

1. To ensure the full and inclusive application of the Geneva Convention and full respect of the ECHR and of the EU Charter of Fundamental Rights;
2. To approximate the content of protection granted to refugees and beneficiaries of subsidiary protection;
3. To raise the overall content of protection taking into account the specific needs of beneficiaries of international protection;
4. To improve the efficiency of the asylum process;
5. To ensure the consistent application of agreed protection standards across the EU.

3.3 Operational objectives

The following operational objectives will contribute to achieving **specific objectives 1, 4 and 5:**

- To limit the broad interpretation of the concepts "actors of protection" and "internal protection" in line with the standards of the Geneva Convention and the ECHR
- To ensure a more inclusive interpretation of the concept "membership of a particular social group" in line with the standards of the Geneva Convention
- to ensure a more inclusive interpretation of the "causal nexus requirement" in line with the Geneva Convention³⁹
- to prevent the unwarranted cessation of protection status⁴⁰

The following operational objective will contribute to achieving **specific objectives 2, 4 and 5:**

- To eliminate unjustified differences between the rights granted to refugees and beneficiaries of subsidiary protection

The following operational objectives will contribute to achieving **specific objectives 3 and 5:**

- To enhance the integration of beneficiaries of international protection taking into account their specific needs
- To better ensure the right of beneficiaries of international protection for respect of family life.

³⁹ See Annex 18 and section 4.8 below.

⁴⁰ See Annex 18 and section 4.8 below.

4 POLICY OPTIONS

Given the diversity of problems identified, it is not possible to identify one single all-embracing policy option. Therefore, different policy options, legislative and non-legislative, have been identified for addressing each objective. **A systematic comparison of the different options in terms of effectiveness, efficiency and coherence against the baseline scenario is presented in tables in Annex 19.**

4.1 Status Quo

The existing legal framework would remain unchanged and ongoing activities would continue. The Commission would continue monitoring the implementation of the Qualification Directive. For an assessment of the status quo see Annex 20.

4.2 To limit the broad interpretation of "actors of protection" in line with the standards of the Geneva Convention

Option 1 (legislative): To specify that the list of actors of protection is an exhaustive one, to clarify that "parties" means political parties or entities and to require that such actors have administrative authority and full control over the territory and population in question.

Option 2 (legislative): As under option 1, to specify that the list of actors of protection is exhaustive, as well as to require that protection must be effective and durable and that the parties and organisations in question are willing and able to enforce the rule of law.

Option 3 (practical cooperation): MS could jointly map interpretations and share information on the criteria used to assess which actors of protection in certain third countries are potentially able to ensure adequate protection.

Option 1 would ensure clarity as to the exhaustive character of the list and would stipulate with precision under what conditions parties and organisations may be equated to States regarding their ability to provide protection. However, this may exclude entities which might not have a "political" character or the attributes of a State but which would nevertheless be able to effectively provide protection in the context of a given country/society.

Option 2 would also ensure clarity as to the exhaustiveness of the list and would strengthen the criteria to be applied in assessing the adequacy, accessibility and effectiveness of protection. Firstly, it would ensure that the "willingness to protect" may not be deemed sufficient in the absence of the "ability to protect", hereby also excluding parties (such as NGOs) which try to provide protection but do not have the (military, legal, etc.) power to do so. Secondly, even actors who are willing *and able in principle* to provide protection but not providing it in reality or who can provide protection only on a temporary basis are excluded from the scope of the concept. Thirdly, the requirement to enforce the rule of law would give more prominence to the already applicable condition relating to the operation of an effective legal system, thus clearly excluding entities such as criminal networks, warlords or guerrillas or even non-governmental organisations as potential actors of protection. The enforcement of the rule of law would also imply the enforcement of human rights standards. Finally, there would be more consistency in the approach under the Directive to the assessment by MS of whether a change in the situation in the country of origin is "significant and non-temporary nature" before deciding on cessation (Article 11(2)).

Option 3 would be a useful complement to the tighter definition of "actors of protection". Several MS receive the same caseloads, i.e. asylum applicants from the same countries of origin and

presenting similar claims. Exchange of information on the criteria used to assess potential actors of protection in these countries and the results of these assessments would contribute significantly to the approximation of national decision-making practices. Such cooperation could take place in the context of EURASIL and would benefit from the creation of the EASO.

Comparison of financial impacts: For MS that previously rejected applications on the basis that (particular) “actors of protection” (Option 1) or a (certain) level and type of protection (Option 2) are present in the applicant’s country of origin, both options may result in higher recognition rates. It is likely that there will be a greater increase of positive decisions under option 2 than option 1, as more MS will have to restrict their interpretation of “actors of protection”.

Social effects and fundamental rights: Under both legislative options, a number of applicants who under the current provision of the Directive could be denied protection on the basis of the presence of “actors of protection” might be granted protection in the future. This access to protection will be better enhanced under Option 2. Both Options 1 and 2 enhance respect for Articles 18 and 19 of the Charter but protection standards would be raised higher under option 2.

Overall assessment: To the extent that it imposes rather stringent conditions for the definition of the entities able to provide protection, Option 1 appears disproportionate. To the extent that it strengthens and clarifies the criteria for assessing the nature of the protection instead of overly restricting the definition of actors of protection, Option 2 appears more adequate and proportionate to achieve both enhanced compatibility with the Geneva Convention and enhanced quality and efficiency of decision-making. Option 3 imposes no obligations on MS, since they participate in cooperation activities on a voluntary basis. Option 2 should therefore be combined with Option 3 as part of the preferred policy option.

4.3 To limit the broad interpretation of the concept of "internal protection" in line with the standards of the Geneva Convention and the ECHR

Option 1 (legislative):

- *To specify the criteria to be used for the "reasonableness" analysis based on the relevant UNHCR Guidelines, i.e. safety and security of the applicant, respect for his/her fundamental rights and the possibility to survive at a basic level of subsistence;*
- *To confirm that the concept of internal flight alternative may apply notwithstanding technical obstacles to return to the country of origin but to specify that such obstacles must be of a temporary and exceptional nature and that they should not preclude the return for a period exceeding 6 months from the date of the decision, citing as examples the closure of airports and natural disasters;*
- *To specify that applicants falling within the scope of this option should be granted refugee status or subsidiary protection during the period in question, depending on what status they would be eligible for if the internal flight alternative would not apply.*

Option 2 (legislative):

- *To introduce an additional requirement, namely that the applicant should be able to travel to, gain admittance and settle in the proposed alternative location;*

- *To delete the possibility to apply the internal flight alternative despite technical obstacles.*
- *To include an explicit reference to the obligation of the competent authorities to obtain precise and up-to-date information on the general situation in the country.*

Option 3 (legislative):

- *To impose on MS the obligation to demonstrate on an individual basis that the conditions for applying the internal flight alternative are fulfilled while specifying that the duty of the applicant to substantiate his/her claim in accordance with Article 4(1) of the Directive would not be affected*
- *to introduce an additional requirement, namely that the applicant should be safely, legally and practically able to travel to, gain admittance and settle in the proposed alternative location;*
- *To delete the possibility to apply the internal flight alternative despite technical obstacles.*

Option 4 (practical cooperation): MS could map the criteria for assessing “reasonableness” and exchange information relevant for the assessment of the existence of an internal flight alternative in specific third countries, possibly with the assistance of the EU Portal on Country of origin information and more generally of the EASO.

Option 1 would limit the scope for broad and divergent interpretations of internal protection and technical obstacles and would provide a clear framework for the reasonableness analysis, so as to limit the potential for violations of Article 3 ECHR, as interpreted in the Salah Sheekh judgment.

Option 2 would ensure conceptual coherence, by specifying that, for a Member State to deny its protection to an applicant, the absence of a well-founded fear of persecution or of risk of serious harm is not sufficient. It would also ensure that the concept of internal flight alternative under EU law is closely modelled on the core obligations flowing for the MS from the ECHR. To the extent that it would essentially transpose in the Directive the conditions set out in the Salah Sheekh judgment, it would not be open to criticisms about imposing "new", additional obligations on MS. Moreover, the deletion of the "technical obstacles" derogation would clearly and unquestionably ensure full compatibility with ECHR and the Geneva Convention. Finally, the reference to the obligation of the competent authorities to obtain precise and up-to-date information on the general situation in the country reflects the requirement for the examination of applications established in Article 8(1) of the Asylum Procedures Directive.

Option 3 has all the advantages of Option 2 but, in addition, it would have an even greater positive effect in terms of achieving high protection standards across the EU, to the extent that it explicitly places on MS the burden of proof that an area constitutes an internal flight alternative.

The practical cooperation option would not suffice in itself to achieve the set objective, i.e. to restrict the broad interpretation of the concept of internal flight alternative in a manner consistent with the ECHR. However, as a complement to the legislative amendments, it could contribute significantly to the approximation of national decision-making practices.

Comparison of financial impacts: Under all options, MS which previously applied the notion of internal flight alternative in a broader manner would now carry the additional costs involved in granting protection to a larger number of applicants. Such costs are likely to be higher under Options 2 and 3, since the reference to technical obstacles would be removed. On the other hand, Option 1 would entail higher costs than Options 2 and 3 as a result of the specific time limit introduced for the duration of the technical obstacles, which would require authorities to re-open the files to re-assess the case and to issue a new decision once this period has expired. Option 3 may potentially incur additional costs for some MS, where the applicants carry the burden to prove that there is no internal protection for them anywhere in the country of origin. These MS may have to undertake additional research to collect evidence so as to fulfil their obligation to demonstrate that a certain area is as an internal flight alternative for the applicant.

Social effects and fundamental rights: All legislative options would have a positive effect on access to protection, as improved requirements would be put in place for defining whether an alternative location is safe and the risk of being sent back to the country of origin in violation of Article 3 ECHR would be significantly reduced. All options would also improve access to justice, as they would enhance the right to appeal. These effects would be higher under Options 2 and 3 than under Option 1, as they remove the possibility to return applicants despite temporary technical obstacles, and even higher under Option 3, as it imposes the burden of proof on MS. The rights covered under Articles 18 and 19 of the Charter would be better respected under Option 2 than under Option 1 and even better under Option 3 as the latter would ensure improved access to protection and a lower risk of refoulement. Where the applicant concerned is an unaccompanied minor, all options would also positively impact on the rights of the child (Article 24) by providing better protection of children and their best interests, to the extent that they impose a careful consideration of the individual circumstances in view of clearer and stricter criteria.

Overall assessment: By establishing criteria to be used for the reasonableness analysis, Option 1 might result in introducing "new", additional restrictions to the use of the concept. Options 2 and 3, on the other hand, would only introduce in the Directive the conditions set out in the Salah Sheekh judgment; thus, they would not go beyond the transposition of MS' obligations under the ECHR into the EU acquis. Option 3 might meet resistance from the Member States which currently do not carry the burden of proof. Option 2 appears thus to be the most balanced and proportionate approach, which would be appropriate to facilitate decision-making and also to bring the concept in line with relevant standards. Option 4 imposes no obligations on MS, since they participate in cooperation activities on a voluntary basis. The preferred option should therefore comprise Options 2 and 4.

4.4 To ensure a more inclusive interpretation of the concept "particular social group" in line with the standards of the Geneva Convention

Option 1 (legislative): To explicitly allow MS to adopt the alternative application of the two relevant criteria by providing for the possibility to define a particular social group based on either one of the two criteria mentioned including based solely on gender-related aspects.

Option 2 (legislative): To replace the last phrase of Article 10(1)(d) with a provision specifying that gender related aspects should be given due consideration for the purposes of recognising membership of a particular social group or identifying a characteristic of such a group.

Option 3 (legislative): To replace the last phrase of Article 10(1)(d) as under Option 2 and also to specify that, for this ground to apply, it suffices that one of the two requirements is met

Option 4 (practical cooperation): MS could cooperate to jointly map the interpretation of the ground "membership of a particular social group" with regard to gender-related issues and its effects on the process and outcomes of determining whether an applicant is to be granted international protection or not.

Option 1 would explicitly endorse the broad interpretation of this notion, i.e. the alternative application of the criteria, which is already applied by at least 10 MS in their legislation and/or jurisprudence and would possibly encourage others to adopt it. It would thus clarify the scope of this notion and create favourable conditions for a more inclusive application of the Geneva Convention. However, to the extent that such a broadening of the concept would only be optional, it would be an inadequate measure in terms of ensuring a consistent interpretation and preventing potential protection gaps. In sum, Option 1 closely resembles the status quo.

Option 2 would not address the general issue of the application of the two criteria, but would provide specific guidance on the weight to be attached to issues arising from the applicant's gender and would impose an overall obligation to duly consider such issues in the assessment of the claim and specifically within the context of the definition of a particular social group. It would thus ensure consistency of national practices and would address the risk of gaps in the provision to women of the protection flowing from this Convention.

Option 3 presents all the advantages of Option 2 but would also bring clarity about the more general issue of the scope of the concept. It would further ensure that all MS adopt a progressive and inclusive application of this Geneva Convention ground and would comprehensively address the risk of gaps in the provision of the protection flowing from this Convention.

The practical cooperation option could be particularly helpful to those MS which might need to broaden their current interpretation and application of this concept and could in any case contribute to the approximation of national decision-making.

Comparison of financial impacts: Options 1 and 3 would incur costs related to higher recognition rates for those MS (at least 12) that currently apply cumulatively the relevant criteria. These extra costs will not apply to the (at least 10) MS that have already adopted an alternative approach to the concept. All legislative options would incur costs for those MS (at least 14) that currently do not provide the possibility to define a particular social group on gender related aspects alone and as a consequence may deny certain female applicants international protection. These extra costs will not apply to the (at least 11) MS that already provide for such a possibility. In the case of Option 1 all the above costs would be limited as they would affect only those MS which voluntarily accept to change their approach.

Social effects and fundamental rights: The effect of Option 1 on access to protection would be marginal, as it does not oblige Member States to change their approach. Option 2 would substantially improve the equality of treatment of female applicants and increase their chances of being granted protection. Option 3 would have an even higher impact, as it would also tackle the general issue of the application of the relevant criteria. In the MS affected, Option 3 would also ensure better respect of the rights covered under Article 18 and especially Article 19 of the Charter than all the other options.

Overall assessment: All legislative options can be considered proportionate; however it appears that Option 1 would be an inadequate measure in terms of raising protection standards, improving efficiency and ensuring a consistent application. Option 3 would have the most positive effects in

terms of ensuring that all MS adopt a progressive and inclusive application of this Geneva Convention ground but it might meet with strong resistance from a significant number of Member States. Therefore, Option 2 appears as the most proportionate and adequate to achieve the set objectives. Option 4 imposes no obligations on MS, since they participate in cooperation activities on a voluntary basis. The preferred option should therefore be a combination of Options 2 and 4.

4.5 To approximate the rights of beneficiaries of subsidiary protection to those of refugees

4.5.1 Duration of residence permits

Option 1 (legislative): To prolong the minimum duration of the residence permits granted to beneficiaries of subsidiary protection from the current 1-year period to 2 years.

Option 2 (legislative): To oblige MS to grant beneficiaries of subsidiary protection residence permits valid for at least 3 years, but to include as a compulsory element that the MS should re-assess at the moment of renewal whether the conditions for the protection status are still fulfilled.

Option 3 (legislative): To oblige MS to grant beneficiaries of subsidiary protection residence permits valid for at least 3 years, as is currently the case for refugees.

Option 1 would not result in a similar level of entitlements for beneficiaries of subsidiary protection and refugees, although it would lead to an improvement in those MS (at least 11) that currently grant beneficiaries of subsidiary protection the minimum (1 year) residence permit. Some MS may still opt for more beneficial terms, in particular those (at least 7) MS which grant permits of 3 years or more. This means that the protection standards across the EU would not be entirely consistent, but in any case to a higher degree than at present. Standards would be enhanced in those MS (at least 8) that currently grant resident permits of less than 2 years.

Under Option 2, beneficiaries of subsidiary protection would be entitled to a residence permit of equal duration as refugees. Protection standards would be increased in those countries that currently grant permits valid for a period shorter than three years (at least 12 MS; in addition to those granting permits of one year, Poland grants a permit of two years), but decreased in those MS that currently renew residence permits automatically. It would also satisfy the need felt by certain MS to assess the persistence of protection needs of beneficiaries of subsidiary protection more strictly than in the case of refugees.

Option 3 would imply the complete approximation of the duration of residence permits granted to the two categories, thus raising the content of the status of beneficiaries of subsidiary protection and enhancing consistency in the application of the Directive. It would also lead to optimal streamlining of the relevant administrative procedures.

Comparison of financial impacts: Option 1 would result in a limited reduction of the administrative and financial costs associated with the renewal of residence permits for those MS that issue permits valid for one year only. However, this reduction would not be as important as under option 3, where the need for renewal only would need to be assessed every three years on a case by case basis. In practice, option 3 would imply that those MS which check the need for protection every year at present would only need to do this every three years. Option 2 on the other hand, which would introduce an obligation to verify whether protection needs persist at the end of the 3 year period, would imply an additional administrative burden on the MS, in particular for those countries that currently already issue permits valid three years or more, and only re-assess the need on a case by case basis. For the MS which assess the need for protection on a

yearly or every second year basis, an assessment every three years could, however, even imply a cost reduction. In practice the obligation to re-assess the need for protection would mean that within a three years period, all these beneficiaries' (need for) residence permits would need to be checked by the MS. Depending on the number (and proportion) of beneficiaries of subsidiary protection in the country, this requirement would be more costly in some MS than others.

Social effects and fundamental rights: All three options will lead to increased equality, access to social protection and integration for beneficiaries in some MS, but impacts will vary between the options. Option 3 will achieve the highest level of equality, protection and integration, whereas option 1 will have the least positive effects, since it would result in a better situation in the lowest number of MS and during the shortest time period. Indeed, longer validity of residence permits can be expected to have more positive effects on both social protection and integration. All options promote the rights in Articles 18 and 21 of the Charter. These rights would be enhanced to the highest degree by option 3 and to the lowest degree by option 1. As regards the situation of children and their right to such protection and care that is necessary for their well being (Article 24), option 3 would have the strongest positive impact.

Overall assessment: Option 1 is inadequate to achieve the desired level of approximation of rights, streamlining of procedures and consistency of standards. Option 2 is disproportionate in view of the additional administrative burden it implies in a compulsory manner, given that MS can on their own initiative check the persistence of protection needs as often as they see fit. Compared to these options, and taking into account that it would have the strongest positive impacts from the social/fundamental rights perspective, Option 3 should be the preferred policy option.

4.5.2 Access to employment

Option 1 (legislative): To guarantee beneficiaries of subsidiary protection access to employment-related education opportunities under the same conditions as refugees but to make their access to the labour market conditional on MS' compliance with the transitional arrangements in the Accession Treaties.

Option 2 (legislative): To establish a temporal limit of 6 months for the application of the limitations allowed by the current Qualification Directive.

Option 3 (legislative): To oblige MS to grant beneficiaries of subsidiary protection unconditional access to employment and to activities such as employment-related education opportunities, vocational training and practical workplace experience, as is currently the case with refugees.

Option 1 would not result in a complete approximation but would greatly reduce the scope of discretion currently provided by the Directive, which allows for the situation of the labour market to be taken into account including (and thus not exclusively) for possible prioritisation of access. Moreover, it would accommodate MS' obligations under the transitional arrangements set by the Accession Treaties: those MS that restrict access of workers from the Accession countries would have to give labour market access to beneficiaries of subsidiary protection only after they have given preferential labour market access to nationals from these "new" MS (according to the principle of "Community preference"). However, as the obligations imposed on MS in the context of economic migration and the ensuing principle of Community preference do not apply in the context of asylum, the imposition of such a condition might appear unnecessarily restrictive.

The establishment of a temporal limit envisaged under option 2 would mean that beneficiaries of subsidiary protection would have unconditional access to the labour market and to employment related education opportunities etc. at the latest 6 months after receiving their status. This option would thereby increase, but not completely approximate the relevant entitlements to those of refugees. Consistent application of standards would be promoted, but differences would remain between those MS which choose not to restrict the access to 6 months after receiving the status and those which do. It would have no impact in terms of streamlining administrative procedures.

Option 3 would imply the complete approximation of access to employment for the two categories, thus improving the content of the status of beneficiaries of subsidiary protection and enhancing consistency, as well as streamlining procedures. This option would further be consistent with the Proposal for the amendment of Directive 2003/9/EC (the Reception Conditions Directive)⁴¹ which grants asylum seekers unconditional access to the labour market.

Comparison of financial impacts: All options would have labour market impacts for the three MS which currently apply the limitation allowed by the Directive. Option 3 would have the strongest impact, to the extent that it would imply the complete elimination of any limitations currently applied. At the same time, all these options would have – again variable - impacts in terms of increasing the possibilities for beneficiaries of international protection to become self-sufficient and thus in terms of reducing social welfare costs and increasing fiscal contributions. In this respect as well, Option 3 would achieve higher positive impacts than the other two options, which both still reduce the access of beneficiaries of subsidiary protection to the labour market. Option 3 would result in administrative savings, to the extent that it would streamline procedures.

Social effects and fundamental rights: All three options would lead to increased equality/non-discrimination and integration for beneficiaries in some MS, but impacts would vary between the options. Option 3 would achieve the highest level of equality and integration, whereas option 1 would have the least positive effects, since it would maintain a difference between EU nationals and beneficiaries of subsidiary protection in certain MS. All three options promote the rights established in Articles 15, 16 and 21 of the Charter; however, these rights are promoted to a higher extent by option 3 than options 1 and 2.

Overall assessment: All three options appear proportionate. However, in view of its higher positive social and financial impacts as well as its increased adequacy to achieve all relevant objectives, Option 3 should be the preferred option.

4.5.3 Access to integration facilities

Option 1 (legislative): MS could maintain the current possibility to grant beneficiaries of subsidiary protection access to integration facilities where it is considered appropriate, but only for a period of 1 year from the date the protection status is granted.

Option 2 (legislative): MS could be obliged to grant beneficiaries of subsidiary protection access to integration programmes equivalent to those provided to refugees.

Option 3 (legislative): It could be envisaged to oblige MS to grant beneficiaries of subsidiary protection access to integration facilities under the same conditions as to refugees.

⁴¹ Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum seekers (OJ L 31 of 6.2.2003, p. 18)

Option 1 means that the ten MS that currently limit the access of beneficiaries of subsidiary protection to integration facilities to situations ‘where it is considered appropriate’ could continue to do so, but only for a period of 1 year from the date the protection status is granted. Protection standards would therefore be increased in these ten MS, and entitlements approximated to a level equivalent to that of refugees after a period of one year. The consistent application of protection standards across the EU would therefore also be promoted.

Option 2 would raise current standards by removing the discretion of MS to provide access to integration facilities only where they consider it appropriate while at the same time allowing MS a certain degree of flexibility in the content and structure of the integration programmes to be provided to beneficiaries of subsidiary protection. The option would improve, but not eliminate current inconsistencies in the application of protection standards across the EU.

Option 3 would imply the complete approximation of the rights granted to the two categories regarding access to integration facilities, thus raising the content of the status of beneficiaries of subsidiary protection, streamlining procedures and enhancing consistency. It would further have a decisive impact in terms of facilitating the integration of beneficiaries of subsidiary protection.

Comparison of financial impacts: All options would imply increased financial costs for the ten MS that currently apply limitations. Option 1 would result in the lowest level of costs, as the MS would not have to provide integration programmes until after one year. Option 2 would oblige the MS to grant beneficiaries of subsidiary protection access to integration programmes *equivalent* to those provided to refugees, and would therefore lead to a higher level of costs than option 1. The same is relevant for option 3, which would imply that the same integration programmes need to be provided to both categories. However, costs are likely to vary between the MS depending on how they interpret or apply ‘equivalent’ and what measures are put in place for refugees. Option 3 would also result in administrative savings, to the extent that it would streamline procedures.

Social effects and fundamental rights: All three options would lead to increased equality/non-discrimination, access to the labour market and social protection and integration for beneficiaries in some MS; however, impacts will vary between the options and between the MS. Option 3 would achieve the greatest benefits, whereas option 1 would have the least positive effects, since it would result in a better situation only after one year. All three options promote the rights established in Articles 14, 15, 16, 21 and 24 of the Charter. These rights would be promoted most through the implementation of option 3 and least through the implementation of option 1.

Overall assessment: Option 1 might be more acceptable to those MS adopting a differentiated approach, but there are no reasonable and objective justifications for maintaining a differentiation. Option 2 might be the most proportionate, given the level of flexibility it allow MS. However, it would not be sufficiently effective in terms of achieving the set objective: raising the standards streamlining procedures and ensuring consistency. Option 3 is proportionate but also the most effective in this respect. It should therefore constitute the preferred option.

4.6 To enhance the integration of beneficiaries of international protection taking into account their specific needs

4.6.1 To enhance access to procedures for recognition of qualifications

Option 1 (legislative): MS could be encouraged to grant beneficiaries of international protection who cannot provide documentary evidence of their qualifications access to alternative

appropriate schemes for the assessment, validation and accreditation of their prior learning. It would be further specified that any such measures should not affect MS' obligations under the EU rules on the recognition of professional qualifications. Moreover, MS could be encouraged to exempt beneficiaries of international protection from the fees involved or to grant them financial assistance to meet these costs, where they consider it necessary.

Option 2 (legislative): An obligation could be imposed on MS reflecting the content of the Council of Europe's Convention on the recognition of qualifications concerning higher education in the European region (Lisbon Convention)⁴², namely to take all feasible and reasonable steps within the framework of their education system and in conformity with their constitutional, legal, and regulatory provisions to develop procedures designed to assess fairly and expeditiously whether beneficiaries of international protection fulfil the relevant requirements for access to higher education, to further higher education programmes or to employment activities, even in cases in which the qualifications obtained in one of the Parties to this Convention cannot be proven through documentary evidence. MS could further be obliged to exempt beneficiaries of protection from the fees involved in the recognition procedures or to grant them financial assistance, on condition that the persons concerned produce evidence of their inability to meet these costs.

Option 3 (practical cooperation): MS could exchange best practices and information on the assessment of qualifications of beneficiaries of international protection obtained in different third countries, for instance, regarding the curricula or the training courses followed. MS could share knowledge gained and tools developed in this area. This option could also include the development of tools such as handbooks or databases containing information collected in the context of previous evaluations of qualifications regarding nationals of different third countries as well as the identification of cost-efficient solutions for provision of financial support.

Option 1 would address all types of qualifications and would accommodate the specificities of the situation of beneficiaries of protection, by encouraging the adoption of appropriate procedures. The specification that any relevant measures should not affect the relevant MS' obligations under the EU rules on the recognition of professional qualifications would ensure the compatibility of any national measures for the validation of professional qualifications, in particular with regard to regulated professions, with the EU acquis on the mutual recognition of professional qualifications.

Compared to option 2, this option defines in stricter terms the scope of its application by referring only to cases where the beneficiaries of international protection lack documentary evidence of their qualifications. This option would improve the content of entitlements, but would ensure a consistent application to a lesser extent than option 2, as MS would only be encouraged to implement such measures. Moreover, a simple encouragement regarding the provision of financial support would not have a binding effect, so its impact in terms of effectively raising the current standards would be more limited than that of option 2. Nevertheless, it would constitute a positive step in the direction of meeting the specific needs of beneficiaries and would not require MS who already follow a flexible approach in this respect to adopt more restrictive policies.

The integration within the EU asylum acquis of the obligations flowing from the Lisbon Convention, as envisaged under option 2, could provide an objective basis for the second-stage Qualification Directive to address the specific problems encountered by beneficiaries of international protection with regard to the recognition of their qualifications. Their needs would

⁴² 11.4.1997, <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=165&CL=ENG>, Article VII

further be met in a broad manner, since the relevant obligation has a scope that includes - but is not limited to - cases in which the qualifications obtained cannot be proven through documentary evidence. The fact that this Convention has been ratified so far by 22 MS further argues in favour of the feasibility of such an option. It should be noted however that its application is limited to qualifications obtained in one of the Contracting Parties and to the recognition of higher education only. It would not cover vocational education and training or upper secondary levels of education, nor would it cover academic qualifications for regulated professions as these would need to be recognised by chambers of commerce or other relevant bodies.

The obligation under Option 2 to ensure that beneficiaries of international protection are not prevented from using the recognition procedures because of financial constraints would have a decisive impact in terms of addressing the specificities of the situation of beneficiaries of international protection. On the other hand, requiring evidence of the inability of the persons concerned to assume the costs of the recognition procedures, as a necessary complement of such an obligation, would result in reducing the flexibility that MS currently have to provide for such exemptions on a case-by case basis and possibly under less stringent conditions.

Practical cooperation could facilitate the task of competent authorities in different MS who are called upon to make assessments of qualifications of beneficiaries of international protection, as it would increase their knowledge about the trainings and curricula provided in different third countries. Several existing national good practices could be further developed and transferred.

Comparison of financial impacts: Both options would result in additional costs in particular in those MS (at least 5) that currently have no specific provisions in place for the recognition of skills and competences for these specific groups. Option 2 would entail higher costs in general, as MS would be obliged take all feasible and reasonable steps to assist beneficiaries of international protection in the recognition of the skills. This obligation would however concern higher education only. Option 1 would also entail additional costs for those MS that would positively respond to the encouragement: whilst the number of persons would be limited to those who lack documentary evidence, this option would address all types of qualifications. Regarding the provision of financial support, option 2 would entail higher costs (for at least five MS) as these would be obliged to financially support the recognition procedures. On the other hand, other MS which previously applied a case-by-case approach could be encouraged to limit their exemptions to only those beneficiaries of international protection which can produce evidence of their inability to meet the relevant costs. The costs of option 1 would depend on the number of MS that would follow the recommendation.

Social effects and fundamental rights: Both options, option 1 for addressing all types of competences and skills, and option 2 for its obligatory nature for higher education would lead to improved access to the labour market and to personal empowerment. Indeed, more beneficiaries of protection would be able to find employment in their chosen field and would also receive improved equality of treatment and opportunities. However, option 1 would have a slightly lower positive effect as it only covers higher education. Both options would enhance respect for Articles 14, 15, 21 and 24 of the Charter.

Overall assessment: Option 1 is expected to have a lesser impact than Option 2 in terms of raising standards and ensuring consistency. However, Option 2 appears disproportionate, to the extent that it imposes on MS: i) an obligation to assist beneficiaries of protection in the recognition of their skills - indeed a rather broad obligation, which is not limited to cases of absence of documentary evidence - and ii) an obligation to help beneficiaries address relevant financial

constraints while at the same time reducing their flexibility regarding applicable conditions. Under these circumstances, Option 1, combined with Option 3, should be the preferred policy option.

4.6.2 *To enhance access to vocational training and employment*

Option 1 (legislative) would encourage MS to provide beneficiaries of international protection with access to suitable training courses to upgrade their skills and would oblige MS to offer beneficiaries of international protection counselling services offered by employment offices.

Option 2 (legislative) would oblige MS to ensure that beneficiaries of international protection have access to suitable training courses to upgrade their skills and to individual advice and guidance on vocational training and educational opportunities and to individual employment support.

Option 3 (practical cooperation): MS could explore what works best in terms of facilitating access to training and employment through the exchange of experience and good practice.

Option 1 has the potential to enhance the access of beneficiaries of protection to employment, although its impact can be expected to be more limited than that of option 2. Option 1 would also ensure consistency with the Commission's Proposal for an "EU Blue Card" Directive⁴³ which grants third country nationals falling within its scope access to counselling services afforded by employment offices. Because of its compulsory element and the broad scope of the obligations it would entail for MS, Option 2 would have a decisive impact in terms of effectively and comprehensively addressing the specific problems encountered by beneficiaries of international protection regarding access to vocational training and employment. Option 3 can assist MS to enhance their policies through the identification of good practices in the context of the Network of National Contact Points on Integration, and by learning from practices developed in the context of the ERF, the Integration Fund and the European Social Fund.

Comparison of financial impacts: Both legislative options could imply additional costs for those MS that currently do not provide 'suitable' training courses and guidance. Compared to option 1, Option 2 would lead to higher costs as it would involve an *obligation* to offer suitable training courses. Option 1 would incur such compulsory costs only to the extent that it provides for an obligation to offer employment counselling services.

Social effects and fundamental rights: Both legislative options would lead to increased access to the labour market, integration and social protection, in particular in those MS that currently provide limited services. Option 2 would achieve this to a higher degree than option 1, due to the obligation to provide and adapt relevant services to the beneficiaries' specific needs. Both Options 1 and 2 promote the rights established in Articles 14, 15, 16, 21 and 24 of the Charter. These rights are promoted to a higher degree by Option 2 than Option 1.

Overall assessment: Because of their compulsory character, measures envisaged under Option 2 appear disproportionate with regard to the objective and the status quo. Option 1 on the other hand appears not only adequate to achieve the set objective but also proportionate to it. Options 1 and 3 should thus form part of the preferred policy option.

⁴³ Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, COM(2007) 637 final, Article 15(1)(i).

4.6.3 To enhance access to integration facilities

Option 1 (legislative): To include in the relevant provision of the Directive (Article 33(1)) a reference to the "specific needs" of beneficiaries of international protection, so that MS would be obliged "to ensure access to integration programmes which they consider to be appropriate so as to meet the specific needs" of beneficiaries of international protection. As examples of such integration programmes, reference could be made to introduction programmes and language training courses tailored as far as possible to these specific needs.

Option 2 (legislative): The current vague formulations according to which MS should "make provision for integration programmes which they consider to be appropriate or create pre-conditions which guarantee access to such programmes" could be replaced by the direct obligation "to ensure access to integration programmes specifically designed to meet" the particular integration challenges faced by this category.

Option 3 (practical cooperation): Practical cooperation to develop common approaches and tools with regard to integration programmes and support on the basis of good practices identified in the MS and transnational cooperation projects.

Option 1 would require MS to develop in their integration policies a targeted response to the specific needs of beneficiaries of international protection. However, unlike option 2, it allows for an assessment of "appropriateness", which means that MS have the flexibility to apply the measures they consider most adequate and effective, taking into account relevant factors such as the educational levels and professional backgrounds of the persons concerned, the size and the composition of the communities of beneficiaries of international protection.

Option 2 would improve the content of entitlements to a higher degree than option 1, as the MS would be obliged to ensure access to integration programmes specifically designed to meet the particular integration challenges encountered by beneficiaries of international protection. It would also reduce, to a certain extent, the flexibility of MS by removing the reference to pre-conditions which guarantee access to integration programmes. Overall, this option would also increase to a higher degree the consistency of the application of the Directive by MS.

Option 3 can assist MS to enhance their policies through the identification of good practices in the context of the Network of National Contact Points on Integration, and by learning from practices developed in the context of the ERF, the Integration Fund and the European Social Fund.

Comparison of financial impacts: Both options would result in additional costs for the development and provision of targeted integration programmes in the MS that do not currently provide such programmes. The key difference between the options is that whereas option 1 implies that the specific needs of the beneficiaries are to be taken into account as 'appropriate', option 2 obliges the MS to ensure access to integration programmes specifically designed to meet their needs. Naturally, this difference has costs implications: costs for developing and providing introduction programmes and language courses tailored *as far as possible* (Option 1) to the beneficiaries' specific needs would lead to lower costs than integration programmes that *must take into account* the specific needs of the target group (Option 2).

Social effects and fundamental rights: Both options would lead to increased access to social protection and integration. Option 2 would achieve a higher level of protection and integration than option 1, due to the obligation to adapt the programmes to the beneficiaries' specific needs.

Both Options 1 and 2 promote the rights established in the Articles 14, 15, 16, 21 and 24 of the Charter. These rights are promoted to a higher degree by option 2 than option 1.

Overall assessment: Option 2 would raise current standards and ensure consistency to a higher degree than Option 1. However, in view of the degree to which it reduces flexibility for MS, it appears disproportionate. On balance, taking into account all the impacts described above, Option 1 appears more proportionate as well as adequate in terms of achieving the set objective. Option 3 imposes no obligations on MS, since they participate in practical cooperation activities on a voluntary basis. The preferred policy option should thus comprise options 1 and 3.

4.6.4 *To enhance access to accommodation*

Option 1 (legislative): To maintain the current standard (namely the obligation to guarantee beneficiaries of international protection access to accommodation under equivalent conditions as other legally resident third country nationals) while at the same time encouraging MS to put in place policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation.

Option 2 (legislative): To maintain the current standard while at the same time encouraging MS to grant them access under the same conditions as nationals.

Option 3 (legislative): To require that beneficiaries of international protection have access to accommodation under the same conditions as nationals.

Option 4 (legislative): To require that the accommodation to which beneficiaries of international protection have access should guarantee an adequate standard of living.

Option 5 (practical cooperation): Practical cooperation to identify and share best practices, in particular with a view to facilitating access to the private housing market and to assisting individuals who cannot compete on the private housing market in finding social housing, as well as regarding funding for programmes and projects to cover relevant costs.

Option 1 seeks to address the problems resulting from direct and indirect discrimination faced by beneficiaries of international protection in the housing market by calling on MS to develop and put in place housing policies aimed at preventing discrimination and achieving equality of opportunity. It reflects thus the approach advocated in the Handbook on Integration⁴⁴ regarding national housing policies towards immigrants.

Option 2 would have more positive effects as it would tend towards ensuring them access under the same conditions as nationals. However, a simple encouragement would not have a binding effect, nor achieve consistency in the level of rights provided by the different MS.

Option 3 would give concrete effect to the political mandate on integration by raising current standards to the level of rights enjoyed by nationals. In particular, it would be compatible with the overall approach followed by the Directive: the same standard (same conditions as nationals) applies for instance regarding the access of refugees to employment, to social welfare and to health care and the access of minors to education. Moreover, it would ensure consistency with the standards established in the "Long-term residents Directive", which guarantees third-country

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Second Edition, available at http://ec.europa.eu/justice_home/doc_centre/immigration/integration, pp. 32-36

nationals who are long-term residents in the EU equal access with nationals regarding access to procedures for obtaining housing⁴⁵.

It appears from information collected in the context of consultations with NGOs that the legislation of 5 MS (Bulgaria, Czech Republic, Hungary, Poland and Slovakia) does not set specific standards on housing with regard to their nationals. However, the absence of specific legislation does not necessarily mean that these MS do not provide any standards or adequate standards to their nationals or to third country nationals. Indeed these MS are also bound by the relevant human rights standards flowing from the EU Charter ("right to housing assistance so as to ensure a decent existence for all those who lack sufficient resources"), the European Social Charter and the Covenant on Economic, Social and Cultural rights. It is telling in this respect that, according to available information, at least 3 of these MS provide adequate accommodation standards to beneficiaries of protection, whereas one of them provides even more favourable standards than those required by the Directive⁴⁶.

Option 4 would provide an objective framework for establishing higher standards by linking them directly to the level established by the relevant human rights instruments. It would also be in line with the standards provided in the Reception Conditions Directive, which imposes an equivalent obligation with regard to asylum seekers. However, it might create a discrepancy in some cases, to the extent that it might result in granting in practice beneficiaries of protection higher standards than those to which nationals are entitled according to domestic legislation. Moreover, the reference to "adequate standards" is not specific enough as a benchmark to allow the Commission to monitor the level of standards available in the MS⁴⁷.

Option 5 would help MS map best practices in the context for instance of the ERF, the Integration Fund and the European Social Fund and identify the most effective and efficient ways in terms of actively assisting beneficiaries of protection in the search for accommodation meeting their individual needs and/or providing financial assistance (housing allowances or subsidies).

Comparison of financial impacts: Measures to provide access to accommodation do not necessarily imply high costs, as they do not necessarily mean actually providing accommodation. As demonstrated by current practices in several MS⁴⁸, to the extent that beneficiaries of protection have access to the labour market and are self-sufficient, measures to support their access to housing consist mainly in assistance in the search for accommodation: facilitating their access to the private housing market and assisting those who cannot compete on the private housing market in finding social housing. It is mainly in cases where beneficiaries of protection lack sufficient resources or for the duration of an initial "integration" period that MS provide allowances to help them cover housing costs or even housing in special centres.

All legislative options would result in additional costs for those MS which currently do not have in place anti-discrimination policies or which do not provide beneficiaries of protection access to

⁴⁵ Council Directive 2003/109/EC of 25 November 2003, concerning the status of third-country nationals who are long term residents (OJ L 16, p. 44) , Article 11(1)(f)

⁴⁶ In the Czech Republic, the state finances 5 "integration centers" where refugees can stay for a maximum period of 18 months; Hungary also provides refugees with the possibility to live in an open center for a period of 6 months which can be extended to 6 more months; in Poland, the state does not provide accommodation as such but grants substantial financial means to beneficiaries of international protection to find something on their own; Poland is further reported to provide more favourable standards. For more detailed information see Annex 11.

⁴⁷ This was one of the problems identified in the Commission in the context of the evaluation of the Reception Conditions Directive; see relevant Impact Assessment SEC (2008) 2944.

⁴⁸ For a detailed presentation see Annex 11

accommodation of adequate standards or under the same conditions as nationals, respectively. In the case of Options 1 and 2, only those MS which would voluntarily endeavour to raise their standards would be affected. The size of the additional costs would vary between MS. However, in the absence of precise information on the current legislations and practices of the different MS in terms of providing access to accommodation to nationals/third country nationals/beneficiaries of international protection, it is not possible to determine the size of the additional costs. It is however reasonable to assume that Options 3 and 4 would be more costly than Options 1 and 2.

Social effects and fundamental rights: All legislative options would lead to increased access to social protection and integration. Option 4 would achieve a higher level of protection and integration than all other options, and promote to a larger extent adherence to Articles 34(3) and 24 of the Charter. However, it could have negative impacts on equality of treatment/non-discrimination (Article 21) in those countries where beneficiaries of protection would have a right to adequate standard of living which may be superior to the standards applying to nationals.

Overall assessment: The impact of Options 1 and 2 in terms of raising current standards would be more limited than that of Options 3 and 4 since it is up to Member States to voluntarily comply. Option 4 would not only have strong social/fundamental rights impacts but it would also ensure consistency with human rights instruments as well as within the *acquis*. However, the discrepancy it would create compared to the legislative treatment of nationals in certain MS might have a negative impact on public support. Despite its non-compulsory character, the same objections would apply for Option 2. Option 3 would promote access to social protection and integration to a higher degree than options 1 and 2 and would not result in differentiations compared to nationals. However there are strong doubts about its feasibility in the light of the current economic situation. Option 1 appears thus more adequate and more proportionate to achieving the stated objective. Option 5 imposes no obligations on MS, since they participate in cooperation activities on a voluntary basis. Consequently, the preferred policy option should comprise options 1 and 5.

4.7 To better ensure the right of beneficiaries of international protection for respect of family life

Option 1 (legislative): To include in the definition of family members all the minor (married and unmarried) children of the beneficiary as well as the minor unmarried siblings of the beneficiary when the latter is a minor and unmarried, provided it is in their best interests to reside in the same country as the beneficiary and, where the beneficiary is a minor, his/her parents or another adult relative responsible for him/her, provided it is in his or her best interests to reside in the same country as these persons.

Option 2 (legislative): To include in the definition of family members the persons covered by Option 1 but without the condition referring to the best interests of the minor involved to reside in the same country as the other persons.

Option 3 (legislative): To include in the definition of family members i) the category referred to in Option 1; ii) families which have been founded during flight or upon arrival in the host State and iii) close relatives who lived together as a family unit at the time of leaving the country of origin and who were wholly or mainly dependent on the beneficiary of international protection for reasons related to their vulnerability or special needs.

Option 4 (legislative): As option 3, but without the condition of vulnerability or special needs.

Option 5 (practical cooperation): MS could jointly map their interpretations of the notion of family and in particular of the notions of dependency and the criteria they use to determine the best interests of the child as well as exchange good practices for the purposes of verifying family links

Option 1 would take into account the wide range of situations where a minor might be considered dependent, while ensuring that the decisive criterion is the best interest of the child. To this extent it would ensure coherence with the broadened definition of family members provided for in the Commission's proposals for the amendment of the Reception Conditions Directive and the Dublin Regulation. Thus, family members who are present in a Member State and would have already been granted, by virtue of the amended Reception Conditions Directive, the rights and benefits provided for family members of an asylum applicant will also be granted the rights and benefits laid down in the Qualification Directive where the applicant concerned is granted a protection status. More generally, it would increase consistency in protection of family members compared to the present situation. Finally, it has the potential to ensure full respect of the UN Convention on the Rights of the Child.

Option 2 would have all the advantages of Option 1, whereas additionally allowing for a broader application of the concept of family members.

Option 3 would have all the advantages of Option 1 but would also increase protection through the inclusion of families founded during flight or upon arrival in the host society (as this is currently omitted from the Directive), and in the 18 MS that have not opted for including close relatives. However, Option 3 would not increase protection standards to the same degree as option 4, due to the inclusion of the condition of vulnerability or special needs. On the other hand, by establishing this condition, it would provide authorities with objective criteria to verify whether the condition of dependency is fulfilled.

Option 4 would achieve a higher level of consistency than option 3, since it is likely that several MS (at least those 12 which currently apply broader definitions) would opt for higher standards than those established under option 3. Without a condition relating to vulnerability or special needs, it would also result in a higher level of standards than option 3, but would not provide an objective framework for applying the notion of dependency.

Practical cooperation could help MS to better define the criteria for determining the best interests of the child and to identify the most effective and cost-efficient methods for the verification of family links drawing on practices developed in other related policy contexts, such as of family reunification, but also in the context of the identification of vulnerable asylum seekers, in line with the Reception Conditions Directive.

Comparison of financial impacts: There is no precise data available on numbers of family members that would be affected by the broadening of the definition but all legislative options would lead to additional costs. Taking into account the size of the respective groups of potential beneficiaries, Option 4 would be the costliest one, followed in decreasing order by options 3, 2 and 1. Taking into account costs for processing of applications, Option 1 would be costlier than Option 2 whereas Option 3 would be costlier than Option 4, since Options 1 and 3 require specific assessments to determine not only the family or other relevant link but also whether it is in the best interests of the minor involved to reside in the same country or to establish the vulnerability or the special needs.

Social effects and fundamental rights: All options would lead to increased access to social protection and integration and promote the rights established in Articles 7, 18 and 24 of the Charter. Taking into account the size of the respective groups of potential beneficiaries, Option 4 would better ensure respect for all these Articles – followed in decreasing order by options 3, 2 and 1.

Overall assessment: Option 1 has a more limited scope than all other options; indeed, it does not go beyond what is necessary to ensure respect of the primacy of the best interests of the child in line with the UN Convention on the Rights of the child. Inversely, all other options might be perceived as overly broad and thus find less support amongst MS. On balance, option 1 therefore appears as the preferred legislative option in terms of raising standards, as well as in terms of feasibility and proportionality. Option 5 imposes no obligations on MS, since they participate in cooperation activities on a voluntary basis; it should also form part of the preferred policy option.

4.8 Summary of further non contentious policy options selected

A number of further policy options have been identified and assessed with a view to meeting the operational objectives. As they are not contentious, they are discussed in detail in Annex 18. Those which form part of the preferred policy option are as follows:

With a view to ensuring a more inclusive interpretation of the “causal nexus requirement” in line with the Geneva Convention:

- Legislative option: To specify that the causal link exists where there is a connection between the acts of persecution and the absence of protection against such acts.
- Practical cooperation: MS could cooperate to map the application of the nexus requirement in the MS and its effects on the process and outcomes of determining whether an applicant is to be granted international protection or not. The exchange of this information and best practices would serve as a basis to approximate national decision-making on the matter.

With a view to preventing the unwarranted cessation of protection status

- Legislative option: To incorporate in the Directive the obligation to apply in the case of cessation of both refugee and subsidiary protection status an exception to cessation relating to compelling reasons arising out previous persecution or serious harm.

With a view to ensuring the access of family members of beneficiaries of subsidiary protection to benefits under the same conditions as those applicable to family members of refugees

- Legislative option: To oblige MS to grant benefits to family members of beneficiaries of subsidiary protection under the same conditions as to family members of refugees.

With a view to ensuring that beneficiaries of subsidiary protection have the right to travel outside the MS' territory under the same conditions as those applicable for refugees.

- Legislative option: To eliminate the possibility to limit the reasons for which beneficiaries of subsidiary protection may travel outside the MS' territory

With a view to reducing cases in which MS can limit access to rights and benefits for beneficiaries of international protection

- Legislative option: to eliminate the possibility currently provided to MS to apply sanctions in the case of persons who engage in activities for the sole purpose of securing international protection.

5 PRESENTATION OF THE PREFERRED POLICY OPTION

The elements that constitute the preferred option are outlined in Annex 21.

6 ASSESSMENT OF PREFERRED POLICY OPTION

6.1 EU added value

The preferred option would add value in the following ways (for a detailed presentation of the added value/ the main advantages of the preferred option see Annex 22):

- By ensuring that the standards of the Qualification Directive are clear and adequate with a view to guarantee full compliance with international human rights and refugee law standards, the preferred option would attain **better respect for the right to asylum and more generally for fundamental rights, including the principle of non-discrimination.**

- By reducing room for doubt, uncertainty and administrative error, these amendments would **streamline and enhance the quality, fairness and effectiveness of the asylum procedure,** Frontloading would enable authorities to better deal with cases of unfounded and abusive applications and more generally to process claims more rapidly while reaching solid decisions, so that more cases would result in a final decision already in the first instance and prolonged litigations would be avoided. This would also lead to quicker access to the rights set out in the Directive for persons genuinely in need of protection while at the same time supporting MS' efforts to rapidly remove from the territory failed asylum seekers and improving the credibility of the whole process leading to a better public perception of asylum.

- By enhancing the consistent application of standards, these amendments would help **reduce secondary movements** and contribute to a more equal distribution of asylum seekers and beneficiaries of protection amongst MS.

6.2 Proportionality

The proportionality of the envisaged amendments is demonstrated by the following (for a concise comparison of the envisaged legislative amendments with the standards/objectives to be attained in the second phase see table in Annex 23):

- The amendments aimed at clarifying the grounds for protection **do not go beyond the requirements of the Geneva Convention, the ECHR and the general principles of Community law,** as interpreted in the case law of the ECtHR, the ECJ and national jurisprudences; rather, they closely reflect this case law and explicitly integrate it in the EU legislative acquis.

- The amendments giving effect to the call of the Hague Programme for a uniform protection status by approximating the rights of beneficiaries of subsidiary protection with those of refugees **address solely the differences in treatment which may no longer be considered as objectively**

justified. Further differences linked to the different grounds on which the statuses are granted and their different historical and legal origins (regarding, for instance, the type of travel documents to be issued or the grounds for exclusion) remain intact.

- More generally, regarding the amendments enhancing rights granted to beneficiaries of subsidiary/international protection, **only those elements which are indispensable for attaining the objectives set by the Hague Programme** and more generally relevant to the achievement of social and economic cohesion **have been selected** when developing the preferred option, whilst more far-reaching options have been discarded. For instance, the measures envisaged in order to enhance access to the labour market or to integration have been selected because they are sufficiently effective in terms of achieving these objectives and increasing equality and social protection without overly reducing national flexibility or encroaching on national competences. Indeed, they closely reflect the orientations established and the priorities set in the context of the emerging European integration framework. Moreover, they are designed either as encouragements or as result-oriented obligations, leaving modalities for achieving those targets to MS to maintain or establish in line with their administrative and institutional systems and accommodating to the maximum possible extent existing national arrangements. In cases where only fragmentary information about the current legislations and practices or the number of persons to be affected in the different MS is available (for instance regarding access to accommodation), particular care was taken to ensure that the options selected to be part of the preferred option are the "lightest" in terms of costs and administrative burdens as well as the least controversial.

6.3 Summary of relevance, feasibility and expected impacts

The relevance, feasibility and expected impacts of the preferred policy option are outlined below. Evidently, to the extent that standards currently applicable in MS vary, the impacts will also vary.

| Assessment Criteria | Rating | Motivation of the rating and relevant aspects of the preferred policy option |
|--|--------|---|
| <i>Relevance to specific objectives</i> | | |
| 1.To ensure the full and inclusive application of the Geneva Convention and full respect of the ECHR and of the EU Charter of Fundamental Rights | 4 | <p>The preferred policy option can be expected to have important positive impacts in terms of ensuring full compatibility with the relevant standards. In particular, it would :</p> <ul style="list-style-type: none"> - reduce the risk that persons are returned to (part of) a country where their access to effective protection cannot be ensured, by limiting the broad interpretation of ‘actors of protection’ and "internal protection"; -reduce the risk of denial of protection in cases i) where persons are persecuted for reasons not related to a Geneva Convention ground, but where State protection is withheld for such reasons, by ensuring a more inclusive interpretation of the ‘nexus requirement’ and ii) where issues arising from an applicant's gender are not sufficiently taken into account for the purposes of identifying a particular social group, by requiring that gender-related aspects should be given due consideration; -reduce the risk that persons who have suffered atrocious forms of persecution/harm are returned to their country of origin, by introducing a compulsory exception to cessation relating to compelling reasons arising out previous persecution/serious harm; - remove all differences of treatment of refugees and beneficiaries of subsidiary protection which are currently allowed by the Directive and which can no longer be considered as in line with the principle of non-discrimination |
| 2. To approximate the content of protection granted to refugees and beneficiaries of subsidiary protection | 4.5 | <p>The preferred option would substantially enhance the rights of beneficiaries of subsidiary protection ensuring equality of treatment with refugees in relevant aspects. In particular, it would grant them: the right to a residence permit valid at least three years; the right to travel outside the MS' territory under the same conditions as refugees; unconditional access to employment and employment-related education activities; increased access to social welfare and healthcare; enhanced access to integration facilities; benefits for family members under the same conditions as those applicable for family members of refugees.</p> |

| Assessment Criteria | Rating | Motivation of the rating and relevant aspects of the preferred policy option |
|---|--------|--|
| 3. To raise the overall content of protection taking into account the specific needs of beneficiaries of international protection | 4.5 | <p>As a result of the provisions introduced by the preferred option, beneficiaries of international protection would have enhanced access / rights regarding:</p> <ul style="list-style-type: none"> -Procedures for recognition of their qualifications: MS would be encouraged to adopt appropriate procedures for those cases where beneficiaries of international protection lack documentary evidence of their qualifications, and to exempt beneficiaries of international protection from fees or grant them financial assistance if they are unable to cover the costs; -Vocational training and employment: MS would be obliged to provide beneficiaries of protection with employment support and would be encouraged to facilitate their access to suitable training; - Integration programmes: MS would be obliged to ensure access to appropriate integration programmes that take into account their specific needs - Access to accommodation: MS would be encouraged to put in place anti-discrimination policies - Access to rights and benefits for beneficiaries of protection who obtained their status on the basis of "manufactured" claims: MS would no longer have the possibility to restrict this access - Best interests of the child: The broadened definition of "family members" takes into account ensures the full respect of the best interests of the child |
| 4. To enhance the efficiency of the asylum process | 4.0 | <p>The preferred option can thus be expected to facilitate, streamline and enhance the quality, the fairness and the effectiveness of the asylum process mainly in two ways:</p> <ul style="list-style-type: none"> - As a result of the <u>removal of the current ambiguities and of the clarification of the grounds for protection</u>, the Directive's notions would leave less room for doubt, uncertainty and administrative error, so as to enable asylum authorities to better deal with cases of unfounded and abusive applications and more generally to process claims more rapidly while reaching robust decisions. Therefore, more cases would result in a final decision already in the first instance and prolonged litigations would be avoided. This would also lead to quicker access to the rights set out in the Qualification Directive for persons genuinely in need of protection while at the same time supporting MS' efforts to rapidly remove from the territory failed asylum seekers and improving the credibility of the whole process leading to a better public perception of asylum. This result would be achieved in particular through the clarification and better definition of the concepts "actors of protection", "internal protection", "nexus requirement" and "membership of a particular social group". - As a result of the <u>approximation of the rights granted to the two categories of beneficiaries of protection</u>, the authorities would no longer need to apply separate conditions and procedures regarding residence permits and travel documents, access to employment, social welfare, healthcare and benefits for family members and to integration programmes. |
| 5. To ensure the consistent application of agreed high protection standards across the EU | 3.5 | <p>The preferred option would imply significant progress towards a more consistent application of agreed high protection standards across Europe to the extent that it would eliminate derogations, clarify and better circumscribe definitions and approximate the rights of beneficiaries of subsidiary protection and refugees. Consistent application would be particularly enhanced through the following amendments:</p> <ul style="list-style-type: none"> - The clarification and better definition of the concepts "actors of protection", "internal protection", "nexus requirement" and "membership of a particular social group"; - The elimination of the possibility to apply the concept of internal flight alternative notwithstanding technical obstacles; - The elimination of the possibilities for MS to grant beneficiaries of subsidiary protection and their family members a lower level of rights than those of refugees; - The elimination of the possibilities for MS to apply sanctions in the case of beneficiaries of international protection who obtained protection on the basis of "manufactured" claims; - The broadening in compulsory terms of the definition of "family members". <p>It should be noted however that some of the elements that form part of the preferred option enhance the consistent application of agreed high protection standards to a lesser degree than others, to the extent that they merely encourage MS to take certain measures or allow them a certain degree of flexibility. This is the case notably with the provisions aimed at facilitating the access of beneficiaries of international protection to suitable training, to</p> |

| Assessment Criteria | Rating | Motivation of the rating and relevant aspects of the preferred policy option |
|--|--------|--|
| | | <p>procedures for the recognition of qualifications and to integration facilities.</p> <p>The practical cooperation activities foreseen as part of the preferred policy option would also significantly contribute to reducing divergences in national approaches and decision-making practices.</p> |
| Transposition and implementation feasibility | 3.5 | <p>The elements outlined above that would promote a more consistent application of agreed high protection standards across Europe (notably the removal of possibilities for derogations regarding both grounds and content of protection and the clarification and better definition of grounds of protection) would evidently also promote a more consistent transposition and implementation of the Directive.</p> <p>However, a few provisions merely include an encouragement or terminology that may be interpreted in different ways in the MS. In most such cases, the preferred option foresees practical cooperation in order to achieve a common understanding. In terms of implementation, inconsistencies could arise concerning in particular with regard to the following elements of the preferred option:</p> <p><u>The entities which may be considered actors of protection:</u> Practical cooperation between the MS would serve to explore the different interpretations of “parties” and jointly define which actors of protection in certain third countries are potentially able to effectively ensure such protection.</p> <p><u>The criteria for the assessment of accessibility of protection:</u> Practical cooperation could help MS map the criteria they apply in the context of the “reasonableness” analysis and to reach a joint understanding of how accessibility of protection should be assessed. MS could also exchange information relevant for the assessment of the existence of an internal flight alternative in specific third countries, whereas the enhanced Country of origin information to be provided by the EASO would significantly improve the quality of such assessments throughout the EU.</p> <p><u>The elements in the situation in the country of origin which are relevant for the definition of a particular social group:</u> MS could cooperate to jointly map the interpretation of the ground and its effects on the process and outcomes of determining whether an applicant is to be granted international protection or not, which would serve as a basis to approximate national decision-making.</p> <p><u>The criteria to assess what integration programmes may be considered appropriate so as to take into account the specific needs of beneficiaries of international protection:</u> Practical cooperation would serve to develop common approaches and tools with regard to integration programmes and support provided to beneficiaries of protection.</p> <p><u>The modalities of policies aimed at preventing discrimination regarding access to accommodation:</u> Practical cooperation would help MS map best practices in the context for instance of the ERF, the Integration Fund and the European Social Fund and identify the most effective and efficient ways in terms of actively assisting beneficiaries of protection in the search for accommodation meeting their individual needs and/or providing financial assistance (housing allowances or subsidies).</p> <p><u>The criteria to define the best interests of the child :</u> Practical cooperation could include exchange of good practices</p> <p>Practical cooperation would evidently serve to ensure a consistent implementation of other provisions as well. For example, to approximate national decision-making on the implementation of the nexus requirement; explore what works best (and efficiently) in relation to procedures for recognition of competences gained in third countries; identify good and cost efficient practices concerning facilitation (also in financial terms) of access to recognition procedures, vocational training and employment.</p> |
| Financial feasibility | 3.5 | <p>Some of the elements that form part of the preferred option could lead to increased costs for providing protection to higher numbers of applicants and for granting to beneficiaries of international protection the enhanced rights attached to their status. Financial implications will vary amongst MS depending on e.g. the existing support and measures in place, numbers/proportion of beneficiaries of international protection etc.</p> <p>On the other hand, by frontloading, streamlining and enhancing the quality of the first-instance examination of asylum applications, as well as by reducing appeals, it can lead to a decrease in the financial and administrative costs of national asylum processing systems. Moreover, by reducing differences of legal frameworks and decision-making practices and achieving further harmonisation of the criteria used to grant protection as well as of the rights granted, the envisaged amendments can be expected to lead to a reduction of secondary movement and thus to reduce the costs incurred by MS, in particular, for the implementation of the Dublin system. Furthermore, in the longer term, the initial investments into integration support could be absorbed to a certain extent by the positive economic and social effects of sustainable employment and successful integration of beneficiaries. For a detailed analysis see under 6.3</p> |
| Political feasibility | 3.5 | <p>Certain legislative elements of the preferred option may invite objections from some MS, which e.g. would prefer retaining a higher level of flexibility in the application of the Directive, in particular those options that may have costs implications as higher numbers of statuses would be granted, and/or rights would be increased.</p> |

| Assessment Criteria | Rating | Motivation of the rating and relevant aspects of the preferred policy option |
|-------------------------------|--------|---|
| | | <p>Most MS are in principle in favour of the following elements (few objections are therefore expected): clarification of nexus requirement; introducing "compelling reasons" exceptions to cessation; access to rights and benefits independent of whether the person acted in 'bad faith' in order to obtain protection; the conditions for granting benefits to family members of beneficiaries of subsidiary protection; approximation of rights regarding access to social welfare, healthcare and integration facilities for beneficiaries of subsidiary protection.</p> <p>Examples of elements where objections can be expected to include: Limiting the broad interpretation of the concepts "actors of protection" and "internal protection" (MS which apply a more restrictive interpretation may object); Ensuring a more inclusive interpretation of the concept "particular social group" (MS which do not define a particular social group on gender-related aspects alone may object); Enhancing access to training and employment (opposition from certain MS that currently do not provide adapted services and support can be expected); Provision of integration facilities taking into account the specific needs of beneficiaries of international protection (may be perceived by certain MS as restricting their flexibility in the field of integration policy); The right to a three year residence permit for beneficiaries of subsidiary protection (consultations revealed some reservations).</p> |
| Social impacts | 4.5 | <p>The preferred option contains several elements which would produce positive social effects:</p> <p><u>Increased access to protection and justice:</u> a higher number of persons may obtain protection as a result of the clarification and definition in line with international standards of concepts: actors of protection, internal protection, nexus requirement, particular social group; introduction of limitations to cessation; certain amendments enhance access to protection in particular for female applicants (regarding the nexus requirement, particular social group).</p> <p><u>Increased social integration and access to the labour market</u> as a result of the measures to assist in the social and vocational integration of beneficiaries of protection (measures that take into account their specific needs regarding access to training, employment, integration facilities, recognition of qualifications, housing).</p> <p><u>Increased access to social protection</u> because of improvements of rights and benefits, in particular for certain categories of beneficiaries or their family members (limitations to cessation; elimination of the possibility to restrict benefits in cases of "bad faith"; rights of family members, enhanced rights of the child).</p> <p><u>Increased equality/non-discrimination:</u> in particular as a result of the measures that give beneficiaries of subsidiary protection - and their family members - the same rights as refugees, and of the amendments which enhance access to protection in particular for female applicants (regarding the nexus requirement, particular social group).</p> <p><u>Better public health:</u> some measures have a direct positive effect, such as increased rights to social welfare and healthcare (elimination of possibilities to restrict access of beneficiaries of subsidiary protection to social welfare and health care, elimination of the possibility to restrict benefits in cases of "bad faith", enhanced rights of family members), whereas others have an indirect effect, e.g. via enhanced access to employment/integration.</p> <p>However, some elements of the preferred option such as enhanced access to the labour market and accommodation could also be viewed negatively by nationals, in particular in the context of the current financial crisis.</p> |
| Impacts on fundamental rights | 4.5 | <p>The preferred option would promote the following rights of the EU Charter:</p> <p>Article 7: Respect for private and family life (enhanced rights of family members, access to accommodation under the same conditions as nationals)</p> <p>Article 14: Right to education (enhanced access to education and training, to recognition of qualifications and to integration programmes)</p> <p>Article 15: Freedom to choose an occupation and right to engage in work (enhanced access to education and training, to recognition of qualifications and to integration programmes)</p> <p>Article 16: Freedom to conduct a business (enhanced access to education and training, to recognition of qualifications and to integration programmes)</p> <p>Article 18: Right to asylum (amendments to concepts: actors of protection, internal protection, nexus requirement, particular social group; limitations to cessation; elimination of possibility to restrict benefits in cases of 'bad faith')</p> <p>Article 19: Protection in the event of removal, expulsion or extradition (amendments to concepts: actors of protection, internal protection, nexus requirement, and particular social group; limitations to cessation)</p> <p>Article 21: Non discrimination (amendments aimed at approximating the rights of beneficiaries of subsidiary protection to those of refugees)</p> |

| Assessment Criteria | Rating | Motivation of the rating and relevant aspects of the preferred policy option |
|----------------------------|--------|--|
| | | <p>Article 24: Rights of the child (amendments to concepts: actors of protection, internal protection, particular social group; longer duration of residence permits for beneficiaries of subsidiary protection, enhanced access to integration facilities, to, education, training and employment, access to accommodation under same conditions as nationals, measures ensuring better respect for family life).</p> <p>Article 34: Social security and social assistance: (elimination of possibilities to limit access of beneficiaries of subsidiary protection and certain family members and of the possibility to restrict benefits in cases of 'bad faith')</p> <p>Article 35: Healthcare: (elimination of possibilities to limit access of beneficiaries of subsidiary protection and certain family members and of the possibility to restrict benefits in cases of 'bad faith')</p> |
| Impacts on third countries | - | As refugee flows are mainly determined by push factors, it is impossible to determine if –and to what extent- the preferred option would have an impact on the overall asylum flows to the EU – see above under 2.2.7 |

6.4 Potential magnitude of financial impacts

6.4.1 Potential costs

As indicated above in section 2.2, there are particular difficulties in quantifying potential costs and savings of measures applied in the CEAS. As shown in the table below, the total numbers of asylum seekers/ beneficiaries of international protection in the MS potentially affected by the amendments are often the only possible indications of the potential magnitude of costs.

| Elements of preferred option | MS potentially affected | Numbers of applicants ⁴⁹ and of beneficiaries of international protection potentially affected ⁵⁰ – Other available indications on potential costs |
|---|---|---|
| <p>a) Activities of MS asylum personnel to provide information i) to asylum seekers on the various elements of the revised Directive and ii) to beneficiaries of international protection on their rights and benefits</p> <p>b) Activities related to mapping, identification and exchanges of good practices, in the context of practical cooperation</p> | All MS with the exception of DK | Based on a calculation of the hourly labour costs of MS asylum personnel at a rate of EUR 23.84, the likely total administrative costs of the preferred policy option amount to EUR 3,094,407 . The assessment of these costs is presented in detail in Annex 25. |
| Amendment of definition of "actors of protection" | It might affect in particular the recognition practices of BE, HU, SE and the UK . | In 2008 these MS received 15,940, 3,175, 24,875 and 30,545 applications respectively |
| Amendment of definition of "internal protection" | It might affect in different degrees many different MS; a clear picture arises only in the case of the deletion of Article 8(3), which has been transposed by CY DE, IE, LU, NL, PT, SK and the UK | In 2008 these 8 MS received in total 81,575 applications |

⁴⁹ Data extracted from table on numbers of applications in 2008; see Annex 4

⁵⁰ For total numbers of beneficiaries of international protection (refugees and beneficiaries of subsidiary protection) recognised between 2005 and 2008, see table in Annex 24

| | | |
|---|---|---|
| Amendment of notion of "particular social group" | Its impact can be identified mainly with regard to female applicants, as it has the potential to enhance access to protection for certain categories. To this extent it would affect AT, CY EE, EL, IT, LV, LI NL, PL, PT, RO, SK, SI, UK. | The 14 MS which would be affected received in 2008 a total number of 30,800 female applicants ⁵¹ |
| Amendment of definition of the nexus requirement | It would affect at least the 7 MS which apply a strict definition: IT, LV, LU, PT, RO, SK and the UK. It would also improve access to protection for female applicants, one of the groups that are particularly affected by persecution by non-State actors but denied State protection because of their gender. | In 2008 the 7 MS in question received in total 64,495 applications, of which 14,800 were lodged by women ⁵² . |
| Introduction of exceptions to cessation | MS which make use of the possibilities to apply cessation: BE, CZ, DE, EL, FR, FI, IE MT, PL and SE. | Cessation of refugee status was applied in 2008 in total in 6,715 cases (of which 6,110 in DE, 345 in EL, 95 in FR, 85 in FI, 40 in CZ, 20 in BE, 10 in SE and 5 in IE and in PL).). In the same year, cessation of subsidiary protection was applied in 305 cases (of which 240 in DE, 40 in SE and 25 in MT) ⁵³ . |
| Approximation of the rights attached to the two statuses | Overall impacts will vary significantly between MS: - some (such as IE, SE and UK) will practically not be affected at all , as they make no differentiation regarding the rights granted; - a majority of MS (including AT, BE, CZ, EE, FR, PL, RO and SI) maintain few differences (notably regarding the duration of residence permits), - whereas some MS make use of the possibilities for differentiation in different respects (CY, DE, LU, LV, MT, PL, PT) | |
| Elimination of the possibility to limit travel for beneficiaries of subsidiary protection to cases related to humanitarian reasons | AT, LU and ES would need to change the format of the travel documents they currently issue. The implementation of this amendment will not imply any costs in terms of rights. | The numbers of beneficiaries of subsidiary protection in these MS in 2005-2008 amount to 105, 840, and 215 respectively. It should be further noted that only part of these populations would seek to acquire a travel document. |
| Obligation for Member States to provide beneficiaries of subsidiary protection with unconditional access to the labour market | It will affect CY, DE and LU | The numbers of persons aged 15-64 who received subsidiary protection in these MS between 2005 and 2008 can be estimated at 445, 1,925 and 504 respectively. The comparison of these numbers with the numbers of persons aged 15-64 in the labour force of these MS shows that the impact of this amendment on their labour markets will be minimal: the numbers of beneficiaries of subsidiary protection who would potentially benefit from this amendment represent a percentage of 0.11% for CY, 0.0046 % for DE, and 0.23% for LU of the labour force of these MS ⁵⁴ . In reality, this impact will be even lower, as the overall numbers of beneficiaries of subsidiary protection of |

⁵¹ See Table in Annex 7

⁵² See Table in Annex 7

⁵³ See tables in Annex 18, under section 1.2

⁵⁴ See table in Annex 26. Data for Cyprus could not be disaggregated by age, so the figure of 445 includes all ages. Data were not available for 2008, so the data for Cyprus cover only 2005-2007.

| | | |
|--|---|--|
| | | working age include persons who possess no skills or will not seek employment and persons with special needs (importantly, an average 20% of asylum seekers populations are estimated to have suffered torture or other forms of violence ⁵⁵). |
| Elimination of the possibility to reduce to core benefits the access of beneficiaries of subsidiary protection to social welfare and healthcare | The approximation of rights regarding social welfare would affect DE, LU, LV and PT whereas the approximation regarding healthcare would affect only MT . | Due to the lack of information on the cost of social welfare/healthcare granted to refugees in these States and the cost of the core benefits they currently grant to beneficiaries of subsidiary protection, it is impossible to quantify the financial implications of the assimilation of the rights of beneficiaries of subsidiary protection to those of refugees in this respect. An indication of the potential magnitude of the costs can only be provided on the basis of the populations of beneficiaries of subsidiary protection hosted in these MS for the period 2005-2008: 3,375 (DE), 340 (LU), 5 (LV), 3,010 (MT) and 95 (PT) . |
| Elimination of the possibility to apply specific conditions for benefits to family members of beneficiaries of subsidiary protection | The only MS affected would be PL . | As there is no information available neither on the nature of the applicable conditions, nor on the numbers of family members that might be concerned or the costs of the benefits, the only indication is the number of beneficiaries of subsidiary protection in this country, i.e 7,820 persons between 2005 and 2008. |
| Elimination of the possibility to limit access to integration facilities for beneficiaries of subsidiary protection only to cases where it is appropriate | It may be expected to affect at least 8 MS: BG, CZ, DE, EE, HU, LT, SK and PT . | As there is no information available on what this "appropriateness test" signifies in their national practices, it is not possible to estimate the numbers of beneficiaries of subsidiary protection who are currently deprived of such access nor the numbers of beneficiaries who would benefit from this amendment. Due to the variation of the content of integration programmes in the different MS ⁵⁶ it is also not possible to identify the additional integration facilities to which they would have access as a result. Relevant data indicate that the ensuing costs will be very limited: the total population of beneficiaries of subsidiary protection in these countries for the period 2005-2008 amounted to 5,495 persons whereas the average per capita cost of integration programmes provided by one MS (PL) for the period 2005-2007 (EUR 682) ⁵⁷ |
| Enhancement of access to procedures for the recognition of qualifications of beneficiaries of protection | The only indications which may be drawn from the data available is that at least 4 MS (BE, NL, SK and SE) have in place procedures for the facilitation of access to recognition of qualifications for beneficiaries of international protection compared to nationals whereas at least 6 MS (EL, HU, LU, MT, PL and RO) do not . Moreover, it appears that, amongst those MS where recognition procedures are not free of charge, at least 4 MS provide beneficiaries of protection with financial assistance (LU, RO, SK SE), whereas at least 4 others not (CY, EE, EL, LV) . | The piecemeal information available on current practices in MS and the absence of data on the costs of such procedures, or on the numbers of beneficiaries of protection who have recourse to such procedures does not allow for a quantification of impacts of the amendments aimed at encouraging the use of alternative procedures and exemptions from the fees or grants to cover the fees. In the 6 MS that might be affected by the introduction of alternative procedures – <i>if they decide to transpose the new optional provisions</i> - the numbers of persons aged 15-64 who were granted protection between 2005-2008 amounted to 1,019 (EL), 1,089 (HU), 1,608 (LU), 6,028 (MT), 11,977 (PL) and 284 (RO) ⁵⁸ . Along the same lines, in the 4 MS that might be affected - <i>if they accepted to introduce financial measures for the facilitation of access</i> - these numbers amount to 0 (EE) , |

⁵⁵ For more detailed information on the prevalence of torture amongst asylum seekers and refugees see Annex 27

⁵⁶ See Annex 9

⁵⁷ Poland is the only MS that provided information on such costs, see Annex 28

⁵⁸ See table in Annex 26

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| | | <p>1,019 (EL) and 445 (CY) whereas no data is available for LV⁵⁹. Again, it should be noted that the impact will be even lower, as these numbers comprise persons who will not in reality seek to recognise skills or qualifications as well as persons who will not need any specific facilitation arrangements or financial support.</p> <p>More importantly however it should be noted that recognising existing skills and competences is far less costly than educating and training persons with no such abilities: for instance it can cost as little as £1,000 to prepare a refugee doctor to practise in the UK compared to £250,000 to train a doctor from scratch. It further appears that re-qualification projects have a success rate of more than 80%⁶⁰.</p> |
| <p>Mechanisms for employment support</p> | <p>Information available does not allow for the identification of those MS which might be affected.</p> <p>The impact should be limited, as beneficiaries of protection aged 15-64 recognised in EU27 between 2005 and 2008 are estimated at 245,132 and thus represent only 0.1% of the EU labour force (estimated in 2008 at 238,533,800)⁶¹.</p> <p>Again, it should be noted that these numbers also comprise persons who will not in reality seek to use such support mechanisms</p> | <p>There is no precise information on measures currently in place or costs of such measures. MS only provided overall costs for certain projects, without any indications on numbers of beneficiaries, so that valid costs estimations cannot be done. For instance, regarding job seeking assistance: Austria: €433,211.28; Hungary: €2,000; and, Slovenia: 2006: €14,457.15; 2007: €23,753.82; and, 2008: €3,116.52⁶².</p> <p>However, since relevant measures and structures must already exist for the benefit of nationals, the costs of extending them to beneficiaries of international protection should be limited.</p> |
| <p>Integration programmes considered appropriate to meet the specific needs of beneficiaries of international protection.</p> | <p>On the basis of available information, it is not possible to identify which MS – and to what extent – would be affected. However, since all MS offer integration programmes to beneficiaries of protection and more generally to legally residing third-country nationals, it can be expected that more targeted/specific programmes can draw on the know-how, structure and resources already in place. A relevant indication in this respect is that persons granted international protection in the EU between 2005-2008 (and thus - at least partly - eligible to benefit from integration programmes nowadays) represent only 1.07% of the EU population of third-country nationals⁶³.</p> | <p>Poland was the only country that provided data on numbers of refugees and costs of integration programmes: The average per capita cost for the period 2005-2007 was EUR 682. Information provided by other countries was not specific enough to allow for further per capita estimations⁶⁴.</p> <p>It should also be noted that the information provided by Poland refers to "general" integration programmes provided to beneficiaries of international protection; no information has been provided on costs for developing and providing such specifically targeted programmes</p> |

⁵⁹ See table in Annex 26. Data for Cyprus could not be disaggregated by age, so the figure of 445 includes all ages. Data were not available for 2008, so the data for Cyprus cover only 2005-2007.

⁶⁰ See Annex 10 presenting the results of projects conducted in different MS.

⁶¹ See table in Annex 26.

⁶² A full overview of the information provided by the MS is presented in Annex 29.

⁶³ See table in Annex 24

⁶⁴ For all available information see Annex 28.

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| <p>The elimination of the possibility to reduce the benefits granted where protection has been obtained in bad faith</p> | <p>It would affect BG, CY and MT.</p> | <p>Due to the lack of information on the numbers of cases where such sanctions are applied and on what such reductions imply in the practice of these MS in terms of rights and costs, it is impossible to quantify the financial implications of the amendment.</p> <p>The numbers of beneficiaries of international protection in these MS for the period 2005-2008 are as follows: 815 (BG), 540 (CY) and 3,100 (MT).</p> |
| <p>Policies against discrimination regarding access to accommodation</p> | <p>On the basis of the information available on national practices it is not possible to identify which MS do not have in place such policies</p> | <p>It is impossible to indicate with precision the changes in the legislation and the additional implementing measures that the MS which would accept to put in place such policies would need to implement or to estimate relevant costs, as there is no precise information on the measures actually implemented and the relevant costs.</p> |
| <p>Broadening the definition of family members</p> | <p>The 14 MS which currently do not apply broader definitions, DE, ES, FR, LV, LT, LU, HU, MT, NL, PL, RO, SI, SK, UK would be affected.</p> | <p>It is not possible to estimate the impacts since there is great variation in the MS' current practices and there is no information on the costs of the relevant benefits or on the numbers of persons who would benefit from such a broadening.</p> <p>According to a UK report, the number of "dependants" accompanying or subsequently joining principal applicants in 2007 were estimated to an average of 1 dependant for every 5 principal applicants. This report also notes however that an average 22% of such dependants were granted protection themselves⁶⁵. Moreover, the Directive's definition would cover only those dependants who are minors. Both these factors mean that <u>the percentage of dependants who would fall within this definition would be even smaller.</u></p> <p>The total number of persons having received international protection in the 14 MS concerned in 2005-2008 amounts to 92,590. Taking into account the above estimates, the overall number of "dependants" in a broad sense could be estimated at less than 18,500. It is however impossible to estimate how many amongst them are already covered by the Directive's definition of family members or would benefit from its broadening.</p> |

6.4.2 Potential savings

a) By diminishing the impetus for asylum seekers to move, the preferred option can reduce asylum flows within the EU, and the costs for the implementation of the Dublin system.

This system involves four categories of expenses: administrative costs related to the operation of Dublin units, operational and material costs of requests handling, costs relates to transfers, and costs related to the reception of applicants during the determination process, such as accommodation, allowances, health care, legal aid or costs of administrative custody measures. Due to the limited information available on these costs and the large disparities between these costs in different States participating in the Dublin System, only certain indications are possible. For example, handling outgoing or incoming requests in NOR costs approximately 880 € whereas in EE this does not exceed 15 € The most costly part of the procedure is transfers: in IE, the overall

⁶⁵ UK Home Office statistical bulletin: Asylum statistics 2007, available at <http://www.homeoffice.gov.uk/rds>, para. 18 -21.

cost of outgoing transfers in 2005 exceeded 100 000 € whereas the annual operation of the Dublin unit amounted to 250 000 € for that period. As for the total amount of reception related expenditures, it depends largely on the length of the Dublin procedure which varies from 22 days on average in the UK to 3 months in FI⁶⁶.

b) By enhancing solidity of first-instance decisions and reducing appeals, the preferred option can lead to **administrative and financial savings**: according to indications regarding procedures in the UK⁶⁷, **appeals can double the cost of an asylum claim**. As an indication of the considerable overall impact, an estimated 110,846 appeals were lodged in 2007⁶⁸.

Both the shortening of the duration of the first-instance procedure and the decrease of appeals would entail a **reduction of the costs involved in reception services**: There are indications that, on average, **1 reception year may cost approximately EUR 11,000 per person**⁶⁹ whereas the average length of first instance procedures is 6 months and of appeal procedures is 1 year. **Savings would evidently also be achieved in terms of administrative costs and specific costs associated with the appeals procedures** (such as costs for providing legal assistance).

c) As a result of the **approximation of the rights** granted to the two categories of beneficiaries of protection, the authorities would no longer need to apply separate conditions and distinct procedures for issuing residence permits and travel documents and for granting access to employment, social welfare, healthcare and benefits for family members and to integration programmes. **Relevant administrative procedures would be streamlined and costs associated with creating and maintaining different infrastructures (for instance for integration programmes) would be reduced**. The specific obligation for MS to grant beneficiaries of subsidiary protection residence permits valid for at least 3 years **will reduce administrative and financial costs associated with the renewal of residence permits for the 12 MS** (AT, BE, CZ, CY, EE, FI, FR, LT, LU, PL, RO, and SK) which currently grant them permits of a shorter duration, since they will be assessing the persistence of protection needs and apply the necessary administrative renewal procedures only every three years instead of every year. Further savings may result from the mainstreaming of the procedure for issuing residence permits of the same duration for both categories of beneficiaries of international protection. The only available indication is the **population of beneficiaries of subsidiary protection in these 12 MS in 2005-2008, which amounts to 13,075 persons**.

6.4.3 Assistance from the European Refugee Fund and from the Asylum Support Office

National measures to be taken in line with the standards of the proposal regarding the rights of beneficiaries of international protection are **eligible for co-funding under the ERF at a level of 50% or 75%**⁷⁰. In particular, the list of eligible actions includes: advice and assistance in areas such as housing, means of subsistence, integration into the labour market, medical, psychological

⁶⁶ For more information see Commission report on the evaluation of the Dublin System (SEC(2007) 742), p 14.

⁶⁷ In the context of the consultations, MS were asked to provide information on the costs of appeal procedures and, if possible, the breakdown of these costs. However, no such data were provided. A single indication can be found in the Report by the UK Home Office "Management of asylum applications by the UK Border Agency" of 8 January 2009, available at www.nao.org.uk

⁶⁸ See Annex 17

⁶⁹ This data includes however services provided in some MS to other third country nationals (see Impact Assessment on the revision of the Reception Conditions Directive, p. 45); for more detailed information see a summary of data available in Annex 30

⁷⁰ The Community contribution is 50% as a rule, but increased to 75% for actions addressing specific strategic priorities and in the MS covered by the Cohesion Fund (Article 14(4)).

and social care; actions enabling beneficiaries of international protection to adapt to the society of the MS in socio-cultural terms, and to share the values enshrined in the EU Charter; actions to promote durable and sustainable participation in civil and cultural life; measures focusing on education, vocational training, or recognition of qualifications and diplomas; actions designed to promote self-empowerment and to enable such persons to provide for themselves; and measures to support the acquisition of skills, including language training. The financial envelope of the ERF for the period 1.1.2008 to 31.12.2013 has been fixed at **EUR 628 million**.

The **establishment of the EASO** can be expected, through the pooling of good practice and the structured exchange of high-level expertise, to help MS identify the most cost-efficient ways to meet the higher standards aimed at, to a degree that would not be achieved within the framework of practical cooperation as it stands.

6.4.4 Longer term benefits of successful integration

It should be noted that in the longer term, **the initial investments into integration support could be offset to a certain extent by the positive economic and social effects of sustainable employment and successful integration of beneficiaries**. By facilitating access to the labour market, MS would achieve savings in terms of **avoiding the provision of welfare assistance and would benefit from tax contributions** submitted by employed beneficiaries of protection to their fiscal system. More generally, by promoting their self-sufficiency and their self empowerment, MS would **avoid the negative social and economic consequences of dependency and exclusion**.

As a rule, beneficiaries of international protection **are expected to reach a satisfactory level of self-sufficiency and integration more or less 2 years following the granting of protection**. Integration support is provided in most MS for approximately 1-1,5 years. Taking into account, in addition, their disadvantaged position in the labour market and the specific challenges they face, as well as the fact that a significant percentage are victims of violence or torture and that an even larger share of this population are persons who have been subject to severe traumas, extreme risks and poor social and health conditions, it can be assumed that it make take them even longer to reach such a milestone (significantly, in France the integration period lasts **5 years**).

6.5 Tackling abuse of the asylum system

Abuse within the scope of application of the Directive's rules relates to factual elements, the factual circumstances invoked by the asylum seekers/beneficiaries of international protection in their effort to convince the authorities that they fulfil the relevant legal criteria. Asylum seekers may make false claims regarding their background, their identity, nationality, personal history, the situation in their country of origin, the reasons for which they may be persecuted and other elements of their asylum claim; recognised beneficiaries of protection may produce false documents for instance to prove a family link or to claim welfare benefits to which they are not entitled.

Therefore, amendments to the legal conditions that must be fulfilled for obtaining protection or a certain right/benefit cannot as such encourage or facilitate abuse. For instance, the fact that access of female applicants to protection is enhanced as a result of broadening the notion of "particular social group" does not mean that it would be easier for women to obtain protection on the basis of false claims. Asylum authorities would still need to establish, on the basis of the individual circumstances of the applicants and taking into account the general situation in their country of origin, as well as on the basis of an assessment of their credibility, that they indeed fulfil the criteria of the new definition. Similarly, broadening the definition of "family members" does

not automatically make abuse easier than under the current provisions. As is the case already now in the context of the Qualification Directive but also in other policy contexts, such as family reunification, authorities will grant the relevant benefits only after verifying the existence of the claimed "family link", by requiring and assessing relevant evidence.

As indicated above, by clarifying and thus facilitating the application of the legal concepts, the revision of the Directive can strengthen the capacities of the authorities for an overall reliable determination of asylum claims. When the applicable legal criteria are clear and do not leave room for doubt and uncertainty, it is easier for the authorities to focus on the objective assessment of individual circumstances and of the credibility of the claims or on the verification of whether the legal conditions for obtaining a right are fulfilled - and thus to identify fraudulent claims.

However, measures aimed at directly enhancing the credibility assessment fall within the scope of the revision of the Asylum Procedures Directive. In this context it is envisaged for instance to improve the overall qualifications and abilities of the personnel, as well as certain aspects of the procedure such as the personal interviews with the applicants which can enable the authorities to reach an adequate and accurate assessment of the factual circumstances.

7 MONITORING AND EVALUATION

In addition to monitoring MS' compliance with the revised Directive, the Commission will ensure the monitoring and evaluation of the preferred policy option. The indicators listed below can be used to assess its efficiency and effectiveness in addressing the problems and meeting the policy objectives. They will be used by the Commission to assess the information received from MS for the purposes of preparing the reports to the EP and the Council on the application of the Directive, envisaged in Article 37 of the Proposal. The first report will be compiled once the deadline for transposition of the Directive expires and the subsequent ones every 5 years. MS are obliged to provide the data under points (1) to (9) pursuant to the "Migration Statistics Regulation"⁷¹, which establishes 2008 as the first reference year; *these data are disaggregated by age, sex and citizenship of the persons concerned*. Additionally, MS are obliged to provide the data under point (10) according to the Dublin and EURODAC Regulations, whereas data mentioned under (11) to (13) may be extracted from the annual and multi-annual ERF programmes submitted by MS. The relevant indicators are the following:

1. Numbers of asylum applicants or persons having been included in an asylum application as family members
2. Numbers of applications having been withdrawn
3. Numbers of persons covered by first instance decisions rejecting applications
4. Numbers of persons covered by first instance decisions granting or withdrawing refugee status or subsidiary protection
5. Numbers of applicants who are considered to be unaccompanied minors

⁷¹ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers (OJ L 199, p. 123)

6. Numbers of persons covered by final (appeal) decisions rejecting applications
7. Numbers of persons covered by final (appeal) decisions granting or withdrawing refugee status or subsidiary protection
8. Numbers of Dublin requests for taking back or taking charge of asylum applicants
9. Numbers of Dublin transfers
10. EURODAC hits
11. Costs of national actions relating to reception of asylum applicants
12. Costs of national actions relating to integration of beneficiaries of international protection
13. Numbers of persons benefiting from ERF-funded national actions
14. Level of financial resources allocated to MS from the ERF
15. Transposition by all Member States of the amendments proposed

Additional information on implementation measures and decision-making practices as well as relevant statistics will be collected in the context of **regular meetings with MS' experts within existing networks** (Contact Committees, Eurasil, *ad hoc* meetings with NGOs, UNHCR and other stakeholders). Moreover, the collection, evaluation and sharing of relevant information is expected to be an essential element of the work to be accomplished by the **EASO**. Three main aspects of its mission are relevant⁷²:

- It will organise, promote and coordinate all activities enabling the exchanging of information and the identifying and pooling of good practice in asylum matters between the MS.
- It will organise, coordinate and promote the exchange of information between national asylum authorities and between the Commission and national asylum authorities concerning the implementation of all asylum instruments, gathering in particular information on the processing of asylum applications by national authorities.
- It will collect and evaluate information on the implementation of the asylum rules by MS as part of its task to draw up annual reports on the situation of asylum in the EU.

Thus the EASO will not only institutionalise a comprehensive sharing of specific information on asylum processing through formalised procedures but will also ensure an in-depth systematic evaluation of the data collected. Its work in this area will thus result in **a qualitative and quantitative leap in the collection and evaluation of information**.

The systematic availability over longer periods of time of the data covered by the Migration Statistics Regulation, along with the structured and thorough collection, evaluation and sharing of significant quantities of information that will be accomplished by the EASO can be expected to crucially contribute to addressing the deficits and shortage of data encountered in the context of the

⁷² See relevant Proposal op.cit. Fn 3, in particular Articles 3,11 and 12.

preparation of the proposal for the amendment of the Qualification Directive and more generally to ensure that any future EU actions in the area of asylum can be based on a solid body of factual and statistical evidence and other related data.