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STUDY ON THE FEASIBILITY OF ESTABLISHING A MECHANISM FOR THE RELOCATION OF BENEFICIARIES OF INTERNATIONAL PROTECTION

[JLX/2009/ERFX/PR/1005](#)



RAMBOLL

EurAsylum

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LIST OF ABBREVIATIONS

CEAS	Common European Asylum System
CESEDA	French Code of Entry and Stay of Aliens and Asylum
CSCE	Conference on Security and Cooperation in Europe
EASO	European Asylum Support Office
EC	European Community
ECRE	European Council on Refugees and Exiles
EP	European Parliament
ERF/Refugee Fund	European Refugee Fund
EU	European Union
EUREMA	EU Relocation Malta
Eurostat	The statistical bureau of the European Union
GDP	Gross-national product
HEP	Humanitarian Evacuation Programme
IGC	Inter-governmental Conference
IOM	International Organization for Migration
NGO	Non-governmental organisation
OPFRA	French Office for the Protection of Refugees and Stateless Persons
OSCE	Organization for Security and Co-operation in Europe
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

ABBREVIATIONS OF MEMBER STATES

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DE	Germany
DK	Denmark
EE	Estonia
EL	Greece
ES	Spain
FI	Finland
FR	France
HU	Hungary
IE	Ireland
IT	Italy
LT	Lithuania
LU	Luxembourg
LV	Latvia
MT	Malta
NL	The Netherlands
PL	Poland
PT	Portugal
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovak Republic
UK	The United Kingdom

0. EXECUTIVE SUMMARY

1. Purpose of the study and political background

In the recent years the question of fostering solidarity among the EU Member States in the fields of migration and asylum has been brought up, among others, in the Commission's Policy Plan on Asylum, the Immigration and Asylum Pact, the Stockholm Programme and in relation to the establishment of the European Asylum Support Office. One aspect that has been highlighted is the way in which Member States can show solidarity towards each other in cases where a Member State is under specific and disproportionate asylum pressure. A possible way to support these Member States could be through the relocation of beneficiaries of international protection from such Member States to others.

The purpose of this study is to provide the European Commission with detailed information about the financial, political and legal implications of relocation of beneficiaries of international protection. The scope of the study covers the financial, political and legal implications of relocation of refugees¹, subsidiary protection beneficiaries and/or asylum seekers. Moreover, the purpose is also to examine *other options* available to better foster solidarity between Member States for the management of asylum flows.

In addressing those purposes, the study is further designed to respond to a number of questions related to the political, legal, financial and practical implications of relocation, by presenting the perspectives of the Member States with respect to different types of relocation mechanisms, assessing the extent to which different options can be adapted to the existing EU acquis, and finally by assessing the costs of the different options.

This study covers the 26 Member States of the European Union which participate in the European Refugee Fund, and therefore excludes Denmark. Specific emphasis has been placed upon Member States that are subject to specific and disproportionate pressures on their national asylum systems, Member States which have engaged in voluntary relocation schemes in the recent years and Member States which currently receive relatively few refugees, subsidiary protection beneficiaries and asylum seekers, and which in theory could become countries of reception in any future relocation mechanism.

2. Methodology

This feasibility study was conducted by collecting both primary and secondary data. The primary data consisted of a workshop with ten key stakeholders; case studies in nine Member States which have experience of international or European relocation, which face relatively high pressure on their asylum systems or which have relatively few refugees compared to their population size and GDP; and telephone or face-to-face interviews with the remaining Member States and selected international organisations (IOM, ECRE and UNHCR). In all the Member States the interviewed persons included at least one representative of the national authorities and in most cases a representative of an NGO or an international organisation based in the country.

The secondary data consisted of detailed reviews of existing literature in the form of 35 articles related to relocation, and key policy and legal documents.

The reviews of relevant articles and policy documents as well as the workshop with key stakeholders were used to develop the necessary background information for the study including developing two potential options for relocation. This information was used to design and structure the remaining data collection activities and the analysis. All the respondents were asked to comment on both options and based on their views, the more feasible of the two options was identified. The two options could be summarised as follows:

¹ To improve readability of the study we have chosen to use the term "refugee", by which is meant persons having the status defined by the Geneva Convention or subsidiary protection within the meaning of Directive 2004/83/EC.

- 1) Under Option 1, an EU legislative instrument creating a relocation mechanism would be adopted, allocating a quota for each Member State based on the country's GDP per capita and population density. The option could include both beneficiaries of international protection and asylum seekers, but distinct criteria would be used for both groups. The European Asylum Support Office would have a role in assessing which beneficiaries and asylum seekers would be relocated to which Member State. Funding for this option would be provided through the European Refugee Fund (ERF), with a specific ERF category of funding for the relocation of beneficiaries of international protection and possibly asylum seekers. The size of the ERF would need to be increased, so that an agreed level of compensation would be provided per asylum-seeker (for processing the claim) and per recognised refugee, as well as a flat-rate funding for each Member State.
- 2) Under Option 2, beneficiaries of international protection and possibly asylum seekers would be relocated on an *ad hoc* needs-assessment basis through an open pledging mechanism. The European Asylum Support Office (EASO) would carry out an annual assessment of the overall need for relocation across the EU. On the basis of that assessment, the EU would carry out an annual pledging exercise, during a dedicated high-level meeting. At this meeting each Member State would present the number of beneficiaries of international protection (and possibly asylum seekers) they would be willing to accept for relocation. Funding would be provided through the ERF. The size of the Fund would need to be increased, in line with a Member State agreement on the compensation that would be provided per asylum-seeker (to cover the processing of the claim of a relocated asylum-seeker) and per recognised beneficiary of international protection, as well as a flat-rate funding for each Member State. The ERF would also be adapted as follows:
 - A specific priority within the ERF would be devoted to relocation of beneficiaries of international protection. Co-financing would be increased to 90%.
 - Based on the quota agreed for each country a fixed amount per person relocated would be provided to each Member State (in a similar way to the €4,000 currently given per specific categories of resettled persons). The fixed amount would be deducted from the global budget of the ERF before allocating the remainder of the budget to national envelopes.

3. Problem definition and possible solutions

The Member States, the stakeholders and the NGOs in general agree that the EU has an uneven distribution of burden with respect to handling asylum flows. There is however some disagreement on the reasons for this uneven distribution resulting in some variances with respect to the opinions on how the challenge could best be addressed. According to Member States and other respondents, uneven distribution can be explained for example by geographical location of a Member State, the practices used by the Member States when processing asylum claims, the existence of communities of the same origin in the Member States, and the number of asylum claims relative to the capacities of the asylum systems.

Other reasons were mentioned although by fewer respondents. These include the integration capabilities, the Dublin system and issues concerning access to the territory of the European Union (sometimes portrayed as "Fortress Europe"). The Dublin system is increasing the pressure on countries with proximity to countries from which people flee and "Fortress Europe" increasing the general pressure on the asylum system, because this is the only possibility of entering Europe.

Depending on the main reason for the uneven distribution, the Member States and the other respondents pointed to three possible solutions for the uneven distribution: relocation of beneficiaries of international protection or asylum seekers; policy harmonisation; and technical and financial assistance.

Most Member States who see the practices in processing asylum claims, the reception conditions and the possibilities of integration as important reasons for an uneven distribution of burden tend to think that financial and technical assistance for asylum procedures, return or integration

measures and/or policy harmonisation would be the best solutions for the challenge. In general most respondents point to the need for combining relocation with policy harmonisation and/or technical and financial assistance.

4. Political implications

In past and current schemes, *asylum-seekers* have generally not been relocated. Although there are Member States that would seek to have relocation for asylum seekers, and in some cases only for asylum seekers, and indeed specifically not for refugees, (including the significant point that the requests for relocation are largely based on asylum seeker numbers, not the number of people actually granted protection), it was seen that a relocation scheme would be more politically feasible if it only began with refugees and beneficiaries of subsidiary protection, and asylum seekers were thus excluded. Due to both political and legal implications, one basis for this conclusion has been the complications of intertwining a relocation scheme with the Dublin system.

The Member States' views concerning the feasibility of including unaccompanied minors into a relocation mechanism varied. On the basis of past and current experience on relocation projects, it can be concluded that many Member States do not find it problematic to relocate unaccompanied minors. The interviews conducted during the course of the study indicate however that whereas some Member States are willing to include unaccompanied minors in a relocation scheme, others would see such inclusion as problematic, due to such issues as the lack of legal guardians, adequate reception mechanisms and the risk of increased smuggling of children.

Regardless of who might be relocated, very few interviewees representing Member State authorities seemed willing or able to provide an estimate of the number of beneficiaries of international protection and/or asylum seekers who might be subject to relocation. Those who were willing to suggest a number were all Member States anticipating the 'import' of relocated persons. Although there was a reluctance to talk about actual numbers, a majority of the Member States suggested that they would be potential importers of people if there were to be a relocation scheme.

One of the questions to be covered in this study was that of the potential pull factor of relocation, and any means to mitigate it. Malta reports no signs of pull factors as a result of current projects, and expressed no concern that this might be the case in the future, since there is neither a guarantee that a person arriving in Malta will be recognised as a beneficiary of international protection nor that they would prove successful in an application for relocation. France, on the other hand, has reported that new migration networks have been created in the country and that this could be a result of relocation from the countries in question. In interviews several Member States foresaw a pull factor either for themselves or for the EU as a whole if a relocation scheme were to be put in place. One or two Member States noted that the pull might not be on genuine asylum seekers but on irregular migrants and on smugglers planning to use the asylum and relocation combination to get individuals into Member States in which they preferred to live.

The idea that refugees or beneficiaries of subsidiary protection should apply for relocation is closely linked to the desire for voluntarism on the part of the individuals concerned. In interviews different interpretations of a relocated persons' voluntary participation emerged. This leads to the conclusion that it is not considered feasible for individuals to submit an application for relocation, and certainly not to a particular Member State, although legally it would be necessary to seek the consent to relocation of all lawfully staying asylum seekers or beneficiary of international protection.

Experience in the on-going EUREMA project suggests that some measure of external coordination is necessary where several Member States are concerned. Both of the options as presented indicate a strong role for the EASO. However, in the near future, at least, Member States would appear to prefer to keep decision-making in their own hands, having a coordinating and supporting role, but no more, for the EASO. For Option 1 this would likely mean that the EASO could gather applications for relocation, but rather than assigning a particular individual or family

to a Member State, it would need to present all cases to all Member States, which would then need to agree on which people they would accept. For Option 2, again, applications might be accepted through the EASO as the coordinating body and single 'face' for the refugees and beneficiaries of subsidiary protection, but they would then need to be circulated to the Member States, which would take their own decisions. However, this scheme would require some method of coordination and mediation for situations in which more than one Member State were willing to relocate an individual or family. For both options then, the EASO would become a sort of coordinating 'clearing house' for relocation – administratively managing the process, but not taking decisions on particular cases.

5. Legal implications

Whereas the fundamental legal obstacles to relocation on the national level are limited, the lack of possibilities for transfer of protection between Member States was seen as the most prominent of them. A possible effective solution would be to introduce full harmonisation between asylum systems in Europe or the adoption of some kind of transfer of protection mechanism within the EU. Despite the difficulties highlighted by the Member States, the majority of them claimed that if a political decision were made to launch an EU relocation scheme, they would be able to find a solution to receive refugees granted protection by another Member State. From a legal perspective, with respect to asylum seekers, there are possibilities for either a joint processing of asylum claims, or/and for the receiving Member State to examine asylum claims on the ground in the transferring Member State. However, this would lead to asylum seekers remaining in an insecure situation during the transfer and the examination of their claim would be further complicated and delayed. With respect to beneficiaries of international protection the situation would be different although still problematic. Apart from full harmonisation, a possible way of solving this problem would be to only include refugees who have been granted protection under the Geneva Convention rules, which are generally applied by all the Member States in a uniform way. However, for the relocation of beneficiaries of international protection to take place smoothly, a transfer of protection mechanism would be desirable.

The TFEU contains two articles, namely article 78 on a common asylum policy and article 80 on the principle of solidarity and fair sharing of responsibility, which are of relevance to the establishment of a relocation mechanism. The problem, however, is that article 78 (2) *litra c* concerns specifically a common system of *temporary* protection, while article 78 (3) refers to provisional measures in case of an *emergency* situation, when a Member State is confronted with a *sudden inflow* of third-country nationals. Article 80 on the principle of solidarity and fair sharing of responsibility, although of a more general nature, sets out the governing principles for the Union policies in the field of border, asylum and immigration. It may be argued that article 78 (2) *litra a* and *b* and article 80 can be used as a legal basis for establishing a relocation mechanism along the lines of Options 1 or 2. It could also be argued that the use of article 78 (3) as the legal basis for a relocation mechanism such as the one sketched out in Option 2, may be feasible due to its *ad hoc* nature, although it would require that the situation in the Member States concerned can be justified as an emergency situation with sudden high inflows, and moreover that the period during which the measures are implemented is limited in time (without this preventing the relocation of the persons concerned from being permanent). Against this background, for Option 1, which calls for a permanent legislative instrument, the use of article 78 (3) as a legal basis is more questionable due to the permanent nature of this option although this would eventually depend on the exact formulation of the legal instrument.

Option 2 provides for an extensive role for EASO. First of all, it is foreseen that EASO could be involved in establishing the basis on which the EU decision for relocation would be taken. This could involve fact-finding missions to the Member States. Secondly, it is proposed to leave it to the discretion of EASO to seek the consent of the individuals to be relocated and distribute them according to the Member States' capacity, as outlined in the decision and based on objective distribution principles. None of these activities runs counter to the purpose of the EASO as outlined in article 2² or the specific article 5 concerning the implementation of relocation on an

² Cf. Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office. OJ L132, 29.5.2010.

agreed basis. Both Options foresee a role for EASO in coordinating applications from beneficiaries of international protection for relocation to a specific country, although Member States will still be allowed to reject relocating a specific person under certain circumstances. The EASO Regulation allows for a wide interpretation of its mandate in this respect.

Even if Member States may not be legally required to seek *all* asylum seekers' consent to relocation, several Member States agree that the consent of the asylum seekers and the beneficiaries of international protection is both needed and desirable. Consequently, a feasible possibility for guaranteeing the rights of the persons to be relocated would be to first ensure the consent of all individuals to be relocated, for example by proposing a specific Member State to them and if they do not agree, to ask them to remain in the first country of asylum. Secondly, to develop a distribution key based on objective criteria.

6. Financial implications

Although Member States pointed to the need for financial support for an EU relocation mechanism, the form of such financial support does not appear to be a decisive question in establishing the overall feasibility of a relocation scheme. Financing relocation through the European Refugee Fund is nevertheless considered to be feasible by most Member States. However, interviews for this study suggest that the mechanism of double-incentives, already in use for resettlement under the current ERF, cause several Member States to be wary of the potential impact of a reduction in the national envelope for other ERF financed activities. In addition, there should be caution for making either financial gains or losses too significant for Member States that either participate in, or remain outside, a relocation scheme.

In interviews there seemed to be agreement that in case a fixed amount per relocated person is allocated, this should be higher than the current €4,000 that is granted for specific groups of resettled refugees. While the €4,000 is seen as an incentive of sorts, it actually covers only a small part of the costs incurred when resettling a person. There was however no agreement on an acceptable level of funding per relocated person, partly because the costs incurred differ from one Member State to another.

7. Comparison between options

Based on the above observations, a majority of the Member States would be in favour, at least initially, of Option 2, when having to choose between the two Options. However, when examining the feasibility of each Option in more detail, the following amendments have been recommended in order to increase their feasibility. For Option 1, asylum seekers should not be included; the EASO should be given a co-ordinating rather than a decision-making role; and additional criteria might need to be included beyond GDP and density. Funding should be available for technical assistance and twinning projects also in Option 1. For Option 2, asylum seekers should not be included; the EASO should be given a co-ordinating rather than a decision-making role; and Member States should not be able to specify the characteristics of the people they relocate beyond the need for international protection, or they should be required to take a balanced group, shared between those they find more 'desirable' and those individuals whose needs and vulnerabilities might be greatest.

8. Alternatives to relocation

Several interviewees made alternative or additional suggestions to Options 1 and 2. Seven scenarios were considered as alternatives to an EU-wide relocation scheme. These included: Status quo – *ad hoc* schemes; harmonisation (i.e. creating a Common European Asylum System); technical assistance; financial assistance; bi-lateral or sub-group relocation rather than an EU wide agreement (also known as enhanced cooperation); joint processing of asylum claims; and transfer of Protection status and 'open market'. While some of these potential alternatives might actually link together to form additional possible routes, full exploration of these alternatives would require a separate study and therefore are only signaled in this report.

9. Conclusions

The Member States agree on the fact that there is an uneven distribution of asylum burdens in the European Union. However, as there are, in the Member States' views, different reasons for the uneven distribution, there are also several possible solutions to this problem. While relocation of beneficiaries of international protection and/or asylum seekers is one of these solutions, there were several Member States who preferred policy harmonisation, technical and financial assistance, or a combination of these as the solution to the situation.

Whereas a limited number of Member States agree directly with a relocation mechanism as presented in the two Options, when asked to choose between the two Options, most Member States are in favour of Option 2, which creates an ad hoc mechanism based on a pledging exercise among the Member States.

Even though the views of the Member States differ also on the question of who to relocate, approximately half of the Member States are explicitly against relocating asylum seekers. It can thus be concluded that a relocation scheme would be more politically feasible if it at least began with only refugees and beneficiaries of subsidiary protection, and asylum seekers were excluded. Moreover, this approach would help to avoid any potential difficulties that may arise from reconciliation with the Dublin system.

The form of the financial support does not appear to be a decisive question in establishing the overall feasibility of a relocation scheme. Financing relocation through the European Refugee Fund is nevertheless considered to be feasible by most Member States. The Member States are however concerned about a possible decrease of their national envelope as a result of financing relocation. Therefore, if relocation is to become an integral part of solidarity and management of the migration flows, an increase of the ERF, ensuring at least a minimum national envelope for each Member State, is needed.

There seems to be a legal basis for both proposed options in the TFEU. It may be argued that article 78 (2) litra a and b and article 80 can be used as a legal basis for establishing a relocation mechanism along the lines of Options 1 or 2. It could also be argued that the use of article 78 (3) as the legal basis for a relocation mechanism such as the one sketched out in Option 2, may be feasible due to its *ad hoc* nature, although it would require that the situation in the Member States concerned can be justified as an emergency situation with sudden high inflows, and moreover that the period during which the measures are implemented is limited in time (without this preventing the relocation of the persons concerned from being permanent).

Whereas concrete recommendations are not within the scope of this study, some suggestions for the future, increasing the feasibility of the two Options under investigation, could be made.

- Asylum seekers should not be included in any EU relocation scheme, at least in the first instance, and until the legal and political tensions between potential relocation and the existing Dublin system have been resolved.
- Establish a mechanism to ensure that asylum seekers and beneficiaries of international protection agree with their relocation, but do not necessarily develop an application procedure, nor give individuals the ability to choose the Member State to which they would be relocated.
- The EASO should take on the role of a sort of coordinating 'clearing house' for relocation – administratively managing and coordinating the process, but taking no decisions on particular cases.
- Double-incentives should be avoided or if used, then treated with caution. If they are employed, then there should be a guaranteed minimum national envelope under the ERF for any Member States that choose not to participate in relocation.

- The fixed amount per relocated person should be higher than the current €4,000 per resettled person (specific groups), and should be Member State specific, taking into account the different costs incurred in relocating an individual.

1. INTRODUCTION

1.1 Purpose of the study

The purpose of this study is to provide the European Commission with detailed information about the financial, political and legal implications of *relocation* of beneficiaries of international protection. Relocation is understood as *"the transfer of persons having the status defined by the Geneva Convention or subsidiary protection within the meaning of Directive 2004/83/EC from the Member State which granted them international protection to another Member State where they will be granted similar protection and of persons having applied for international protection from the Member State which is responsible for examining their application to another Member State where their applications for international protection will be examined"* (cf. Tender Specifications). This means that the scope of the study covers the financial, political and legal implications of relocation of refugees³, subsidiary protection beneficiaries and/or asylum seekers.

In order to ensure the broadest possible coverage of the implications of relocation, the information on potential implications produced as well as any solidarity mechanisms proposed will distinguish between the two target groups:

- Refugees/subsidiary protection beneficiaries *and* asylum seekers
- Refugees/subsidiary protection beneficiaries

Moreover, the purpose is also to examine *other options* available to better foster solidarity between Member States for the management of asylum flows.

In addressing those purposes, the study is further designed to respond to a number of questions related to the political, legal, financial and practical implications of relocation, through presenting the perspectives of the Member States with respect to different types of relocation mechanisms, assessing the extent to which different options can be adapted to the existing EU acquis, and finally assessing the costs of the different options.

This study covers the 26 Member States of the European Union which participate in the European Refugee Fund, and therefore excludes Denmark. Specific emphasis has been placed upon Member States that are subject to specific and disproportionate pressures on their national asylum systems, Member States which have engaged in voluntary relocation schemes in the recent years and Member States which currently receive relatively few refugees, subsidiary protection beneficiaries and asylum seekers, and which in theory could become countries of reception in any future relocation mechanism.

Because it is likely that this study will feed into an actual impact assessment, this has been kept in mind when drafting the study design. Therefore problem definition and an assessment of the desired objectives of a future relocation mechanism have also been identified.

The next sections in this chapter discuss the methodology and political background of the study and present some recent experiences on relocation in the Member States. Chapters 3 to 7 provide the analysis of the data collected by presenting, first, the problem definition and desired objectives of a relocation mechanism (chapter 3). These are then followed by an overview of the two options (chapter 4) and a presentation of the political implications (chapter 5), the legal implications (chapter 6) and the financial implications (chapter 7) of a relocation mechanism, based on the research conducted. In chapter 8 the two options are compared and their overall feasibility assessed. Chapter 9 reviews possible alternatives to relocation, while chapter 10 presents the study's final conclusions.

³ To improve readability of the study we have chosen to use the term "refugee", by which is meant persons having the status defined by the Geneva Convention or subsidiary protection within the meaning of Directive 2004/83/EC.

1.2 Methodology

In this section a short description of the data sources and methodology of the study is presented.

The study has collected both primary and secondary data.

Primary data has included:

- One workshop with ten key stakeholders, where different relocation schemes as well as alternatives to relocation were discussed
- Case studies in nine Member States (Cyprus, France, Germany, Italy, Malta, Slovenia, Spain, Sweden and United Kingdom) where government representatives, international organisations (UNHCR, IOM), NGOs and other stakeholders were interviewed. In total 44 interviews were conducted as part of the case studies
- Telephone interviews in the remaining Member States with government representatives and/or NGOs and other stakeholders. In total 35 telephone interviews were conducted.
- Interviews with representatives of international organisations in Brussels (IOM, UNHCR, ECRE) and IOM Central and South Eastern European Office, as well as with one Member of the European Parliament.

A list of all interviewees and participants of the workshop can be found in Annex A.

Secondary data has included:

- A detailed review of existing literature. The database search returned a selection of 643 articles, which were sorted according to their relevance for the study. 64 articles were looked at more closely, and a detailed review was finally conducted of 35 articles relating to relocation
- A detailed review of key policy documents to describe the political background of relocation
- A detailed review of key legal documents, to answer the questions relating to the legal feasibility of relocation.

The reviews of relevant articles and policy documents as well as the workshop with key stakeholders were used to develop the necessary background information for the study including developing two potential options for relocation. This information was used to design and structure the remaining data collection activities and the analysis.

The case study countries were selected based on the following criteria:

- Member States which currently have experience of international/European relocation
- Member States who face relatively high pressure on their asylum systems
- Member States who have relatively few refugees compared to their population size and high GDP and who would thus be expected to receive refugees and possibly asylum seekers

Interview guides were developed for international organisations and NGOs, for Member States with experience of international/European relocation, and for Member States without experience of international/European relocation. Generally, the interview guides have included the same topics but with different weight and some additional questions for Member States that have experience of international/European relocation. The interview guides are attached in Annex E.

Respondents were identified using a snowballing approach where respondents identified initially were asked to help identify new respondents in order for all the questions to be answered. In some cases additional material was provided during or after the interviews (national studies, internal or external discussion papers, financial information, internal calculations etc.). Those were used as supplements in the analysis where relevant.

In the analysis of the qualitative data, the position of the Member States is presented based on the responses of government officials interviewed. The positions of the Brussels based international organisations are reported separately, while the positions of nationally based NGOs

in general are reported jointly, unless major differences between Member States could be identified. This approach was chosen as a result of the initial analysis indicating that the national NGOs tended to present the same perspectives on several of the questions.

In general the analysis presented is based on a triangulation of several different sources such as different types of respondent (government representatives, NGOs, international organisations etc.) and supporting documents (legal, financial, political).

1.3 Policy background

The issues of burden-sharing and relocation in the EU context formally emerged as the European Community developed plans to harmonise asylum policies in the late 1980s, and came to prominence initially with the conflicts in former Yugoslavia, particularly in the early 1990s. Indeed, the mid-1990s saw a crescendo of activity on the subject, and the pressure to agree on a formal mechanism for relocation has never been as strong since then.

Debates were at their height in the mid-1990s, but the discussion, while largely a product of the confluence of harmonisation and a refugee exodus within Europe, was also grounded in decades of participation in various forms of regional and global refugee 'burden-sharing'.

Burden-sharing in the previous decades had been linked to the Cold War, and to the resettlement of refugees as long-term residents or indeed people who would naturalize. In the 1990s, however, the discussions were linked to the consequences of civil war, and the fear of more of the same around Europe, and to protection as temporary with a focus on return.

Once a temporary protection mechanism had been agreed in 2001 without a strong burden-sharing element, the issue became de-coupled from civil war, and interdependent with EU policy harmonisation, or the development of a common policy – the discussion then being whether it is part of a common approach, or whether relocation can only be feasible, if ever, after full harmonisation has been achieved. As such, burden-sharing became an element of the European Refugee Fund (from a financial and technical assistance angle) and the issue hovers in discussion and implementation of EU measures such as the Dublin system, recent pilot projects of solidarity with 'front-line' Member States, and broad sweeping suggestions for reform of European refugee protection, such as that inspired by the UK's 2003 'Vision' paper⁴.

1.3.1 A product of its time

'Burden-sharing' arises in the Preamble of the 1951 Refugee Convention, Paragraph D: "Governments continue to receive refugees in their territories and that they act in concert in a true spirit of international cooperation in order that these refugees might find asylum and the possibility of resettlement"⁵. During the Cold War, the idea of 'burden-sharing' and relocation through resettlement was essentially a notion of the industrialised/richer/more distant states helping the developing/poorer/closer to origin states.

European experience of such 'burden-sharing' came in the form of the distribution of refugees following the Second World War, as well as participation in resettlement programmes for Hungarian refugees who reached Austria and then Yugoslavia in significant numbers (1956); Czechoslovaks reaching Austria (1968); to a lesser degree statistically Poles reaching Austria and west Germany (1981) and in assistance to states beyond Europe through resettlement of Indo-Chinese in the 1970s and 1980s.

All of these experiences of 'sharing the refugee burden' were products of their time and case specific. The European exoduses in which western European states accepted refugees for resettlement all had Cold War links, as did the willingness to step up and relieve Austria and other states of first asylum.

⁴ UK (2003) "New Vision for Refugees", 7 March 2003 http://www.proasyl.de/texte/europe/union/2003/UK_NewVision.pdf

⁵ Convention relating to the Status of Refugees (1951) 189 UNTS 137 (1951)

The debates on burden-sharing in the mid-1990s were also a product of their time, and focused on the consequences of civil war, of which it was feared more was to come in the European neighbourhood.

During the Yugoslav crisis and indeed in discussions of the Indo-Chinese refugee crisis in the 1980s, the notion of burden-sharing was closely linked to the granting of temporary protection⁶. States rejected systematic burden-sharing in the 1980s because of a sense that it would weaken rather than strengthen temporary refuge (as it was then labelled referring to first asylum in the region prior to resettlement) as a binding norm by providing states in Asia with an excuse for not complying with the request to grant first asylum⁷.

1.3.2 The debates of the 1990s

In the case of Bosnian refugees and asylum seekers the initial calls for burden-sharing came from Slovenia and Croatia (which were temporarily protecting hundreds of thousands, and in Croatia's case also dealing with significant internal displacement), with later requests for partner states to consider burden-sharing coming from Austria, Sweden and Germany within the Council of Europe and/or EU contexts. Slovenia and Croatia sought what might be called 'classic' burden-sharing – that is for richer states to take on some of the protection burden being shouldered by these successor states to Yugoslavia. Austria, Sweden and Germany were seeking something new, formal, and structural as a component of EU (or European) cooperation on refugee and asylum issues.

Back in 1992 the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC) held a series of meetings between its North American, Australian and European members and Bosnian, Croatian, Hungarian and Slovenian officials⁸. A proposal was developed for continuous sharing over time, based on fixed quotas offered by states linked to socio-economic parameters denoting 'absorption capacity' which themselves would be determined by the states involved. UNHCR, whose resettlement quotas the scheme was modelled on, feared that states would undermine the system by offering only low numbers and opposed the proposal. There was no strong state leading the discussions, so the proposal 'died quietly', although elements continued to emerge in later proposals, and still do.

Outside the EU, Austria and Sweden (not yet members) took elements of the IGC proposal and discussion to the Council of Europe and the CSCE (now OSCE), of which Sweden then held the rotating chair. The Swedish-Austrian proposal was discussed at a Council of Europe meeting of immigration ministers in Athens in November 1993⁹. The draft resolution stated that 'a more equal distribution' of *de facto* refugees from Yugoslavia would facilitate the provision of protection to all displaced persons, and called on "all states of the world to offer shelter and to host, on a more equitable basis, in particular displaced persons and war refugees from Bosnia and Herzegovina who cannot avail themselves of protection in the region."¹⁰

In the EU context meanwhile, the 1992 London meeting of European Immigration Ministers, which outlined 'Conclusions on People Displaced by the Conflict in the Former Yugoslavia' laid down principles for admission outside usual asylum channels (for former detainees, those who had been injured or were ill and could not be treated locally, and those who were "under a direct threat to life or limb and whose protection cannot otherwise be secured"). Others would be presumed manifestly unfounded in their claims. The Conclusions stated that Member States would admit 'in accordance with' national capabilities and 'in the context of coordinated action',

⁶ Van Selm-Thorburn, Joanne, *Refugee Protection in Europe: lessons of the Yugoslav Crisis* The Hague: Martinus Nijhoff 1998, pp125-130; Perluss and Hartman (1986), 'Temporary Refuge: Emergence of a customary norm', *Virginia Journal of International Law* Spring 1986

⁷ Perluss and Hartman, 'Temporary Refuge: Emergence of a customary norm', *Virginia Journal of International Law* Spring 1986, p. 588

⁸ Suhrke, Astri, 'Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action' *Journal of Refugee Studies* Vol 11 No. 4

⁹ *Ibid*

¹⁰ *Migration News Sheet*, November 1993 cited by Noll in Noll, Gregor, *Negotiating asylum: the EU acquis, extraterritorial protection, and the Common Market of Deflection*, Dordrecht: Martinus Nijhoff 2000, p.290

establishing two key principles of any sharing mechanism, but also tying it clearly to temporary protection¹¹.

The February 1994 Communication from the European Commission on asylum and immigration policies also broached the subject by including four paragraphs on 'burden-sharing'. The Communication talks of 'matching of national absorption capacities'¹² as 'not necessarily hav[ing] to amount to a formal arrangement for burden-sharing, but [offering] reciprocal assurance among Member States that, when they are confronted with serious problems in implementing their reception policies, that would not stand alone, but could reckon with active support from other Member States and from the Union itself'¹³. The Commission took note of the fact that the European Parliament had requested the submission of a proposal for a European Fund for Refugees¹⁴ and suggested that it would be logical for such a Fund to be used in emergency situations, such as mass influxes, where 'on a strictly voluntary basis and/or for geographical reasons a Member State may find itself undertaking responsibility for more people in need of international protection than it would have to under the criteria laid down in the Dublin Convention.'¹⁵

Under the German Presidency from July to December 1994, a draft resolution was tabled on 1 July 1994 (demonstrating the urgency with which Germany viewed the subject) which ultimately led to a significantly different final resolution adopted on 25 September 1995.

The draft resolution would have had Member States agree that the distribution of refugees should be based on indicative figures which would lead to quotas – not fixed quotas, but ones which could be adjusted in joint agreement in individual cases. The criteria for the distribution of refugees gave equal weight to Member States':

- 1) size of population as a proportion of the Union;
- 2) size of national territory as a proportion of the whole Union; and
- 3) gross domestic product as a proportion of the whole.

The draft set out the indicative figure for each Member State of this scale of distribution and Germany, France, Italy, the UK and Spain topped the table at 21.6; 19.4; 15.8; 14.3 and 13.6 percent respectively. Luxembourg, Ireland and Denmark would take the least at 0.1; 1.5 and 1.8 percent respectively.

The 1994 German Presidency draft included the acceptance of a shortfall for Member States that are using foreign and security policy measures, such as peace-keeping or peace-making under various auspices, to assist in controlling the refugee situation in the State of origin – and that such shortfalls should be covered by other Member States in proportion to their indicative figures.

In initial discussions most States declared an interest in open-ended debate, although many urged the need for caution. The UK and France repeated their message from other fora: they wanted to stick to discussion of financial burden-sharing only, voicing a fundamental opposition to quotas and indicative figures. Some Member States seemed prepared to take on discussion of the criteria for the calculation of the indicative figure. Germany also pondered whether previously received numbers of refugees should be taken into account in starting the scheme. The objecting states employed human rights arguments against coerced movement to reject the call¹⁶.

The Council Resolution on Burden-sharing with Regard to the Admission and Residence of Displaced Persons on a Temporary Basis of 25 September 1995, supplemented by the Council

¹¹ Suhrke, Astri, 'Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action' Journal of Refugee Studies Vol 11 No. 4 pp396-415 1998

¹² Commission of the European Communities, Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies, COM(94)23 final Brussels 23 February 1994, para 98 p.26

¹³ Ibid, para 99 p.26

¹⁴ A footnote on p.26 of COM(1994)23 refers to Paragraph 7 of Resolution A3-0280/92 adopted by the EP on 18 November, 1992).

¹⁵ Ibid, para 100 pp26-27

¹⁶ Van Selm-Thorburn, Joanne, Refugee Protection in Europe: lessons of the Yugoslav Crisis The Hague: Martinus Nijhoff 1998, p. 129

¹⁶ The figures could be contrasted by each independently with the proportion of protection seekers they had actually received and recognised from former Yugoslavia.

Decision 4 March 1996 on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis states that the "burden in connection with the admission and residence of displaced persons on a temporary basis in a crisis could be shared on a balanced basis in a spirit of solidarity, taking into account the contribution which each Member State is making to prevention or resolution of the crisis and all economic, social and political factors which may affect the capacity of a Member State to admit an increased number of displaced persons under satisfactory conditions."

The March 1996 resolution provides for an alert and emergency procedure for crises which require prompt response. On the initiative of the Presidency, a Member State or the Commission, the K.4 Committee may be convened as a matter of urgency to ascertain whether a situation exists which requires concerted action by the European Union for the admission and residence of displaced persons on a temporary basis. The resolution involves no formula for distribution, and no formal, systematic and long-term mechanism, but rather an *ad hoc* and situation-specific method for coordination.

Between 1995 and 1998, burden-sharing seemed more or less to have been dropped from the EU agenda. In 1996 there was no reference to burden-sharing as a priority for any member state in an official overview from the European Parliament for the IGC (EP 1996).

In 1997 the European Commission presented a proposal for a joint action on temporary protection in response to mass influxes. In 1998 a proposal for a Joint Action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons, known as the 'Solidarity Proposal' was added¹⁷. This latter proposal stipulated that "solidarity should principally take the form of financial assistance", but, "as a subsidiary point, equitable burden-sharing may also lead to a distribution between Member States of the beneficiaries of temporary protection; whereas, however, this distribution concerns people only before or on their arrival in a Member State of the Union".

Experience with displaced persons from Kosovo in 1999 pushed the Temporary Protection agenda to the forefront, and led to EU agreement and harmonisation on temporary protection (in principle if not, to date, in practice as the 2001 Directive on Temporary Protection has never been implemented). However, with regard to relocation, it produced another different *ad hoc* model of 'burden-sharing' through pledges to the Humanitarian Evacuation Programme (HEP). The pressure of public opinion in the face of images from Kosovo, suddenly divorced from what was regularly understood to be the general opposition to asylum seekers and refugees in a surge of 'humanity', caused governments to offer increasing numbers of places. However, the quotas offered were not linked to any formula, and could not become a model for any future mechanism. The Kosovo refugee crisis fundamentally altered the Temporary Protection/solidarity agenda and nexus for the EU.

Following the Kosovo Humanitarian Evacuation Programme, the Commission's Temporary Protection proposal was substantially revised, making temporary protection an administrative concept, a prelude to the assessment of asylum claims, rather than an alternative form of protection. The proposal did however contain an embryo of solidarity and peer-pressure by stating¹⁸ that the Member States should "receive persons who are eligible for temporary protection in a spirit of Community solidarity" and that they should "indicate - in figures or in general terms - their capacity to receive such persons" in the Council decision declaring the existence of a mass influx of displaced persons. The Temporary Protection Directive was adopted in 2001.

¹⁷ Commission of the European Communities Proposal for a Joint Action concerning solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons (98/C 268/14) (Text with EEA relevance) COM(1998) 372 final - 98/0222(CNS)

¹⁸ Article 25 of Council Directive 2001/55.

1.3.3 Beyond civil war and temporary protection – relocation and burden-sharing as part of the common policy to refugees

The subject of burden-sharing, including relocation, as part of the common approach to asylum and refugee protection in the European Union arises in various 'venues'. European Council Conclusions demonstrate the extent to which Member States wish to emphasise the subject, and the extent to which there is agreement in any particular direction. Discussions of new work programmes, and their outcomes, likewise illustrate the discussion of the moment and vision of the five years ahead. Practical work on associated measures already in place or those in development also gives a sense of how the issue is evolving.

The Tampere Conclusions in 1999, setting out the work programme for five years, stated that "the European Council urges the Council to step up its efforts to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States. The European Council believes that consideration should be given to making some form of financial reserve available in situations of mass influx of refugees for temporary protection. The Commission is invited to explore the possibilities for this."

Subsequent Council Conclusions in Laeken and Thessaloniki said nothing on burden-sharing or solidarity, although debates at the time of Thessaloniki focused very much on these issues as a result of a UK 'Vision' paper on the future of refugee protection in Europe, ensuing debates within the EU, and in the broader UN context.

The UK paper contained a proposal for developing Regional Protection Areas from which resettlement would be organised for those recognised as refugees. Anyone applying for asylum within the EU borders would be sent to one of these Regional Protection Areas in neighbouring states, and only be resettled to the EU if found to be in need of protection, at which point a measure of physical burden-sharing would be needed to decide who and how many refugees went to which Member State¹⁹. UNHCR stepped into the debate with a three-pronged proposal, which build on the UK suggestions, and adapted them to include an EU aspect with EU-based processing centres where there would be an emphasis on 'manifestly unfounded' cases.

Part of the outcome of this discussion, and a follow-on to UNHCR's own round of Global Consultations marking the 50th Anniversary of the 1951 Convention relating to the Status of Refugees, was High Commissioner Lubbers' 'Convention Plus' initiative, which began in June 2003. The initiative started in some senses as a corrective to the impressions generated by UNHCR's engagement with the ideas set out in the UK's vision paper and the EU debates around them leading up to the Thessaloniki European Council meeting²⁰. Convention Plus became an initiative focused on durable solutions and a global approach to refugee protection, including discussions on resettlement and its uses, 'protection in the region' and the linkages between development and migration/asylum.

The 2004 Hague Programme, the successor to the Tampere Conclusions, said "The second phase of development of a common policy in the field of asylum, migration and borders started on 1 May 2004. It should be based on solidarity and fair sharing of responsibility including its financial implications and closer practical cooperation between Member States: technical assistance, training, and exchange of information, monitoring of the adequate and timely implementation and application of instruments as well as further harmonisation of legislation."²¹

Any idea of burden-sharing involving relocation remained unmentioned.

In the period of activity under The Hague Programme (2005-2009) four issues with a bearing on burden-sharing were being discussed and/or implemented: the Dublin system, the transfer of protection status, resettlement and the European Refugee Fund.

¹⁹ UK Government, "New Vision for Refugees" from 7. March 2003, http://www.proasyl.de/texte/europe/union/2003/UK_NewVision.pdf

²⁰ UNHCR, Lubbers launches forum on Convention Plus initiative <http://www.unhcr.org/3efc7e7b2.html>

²¹ European Council Meeting In Brussels 4/5 November 2004 Presidency Conclusions, Hague Programme (Annex), p. 17 para 1.2

The Dublin system, initially based on the 1989 Dublin Convention, came into effect in 1997, and was replaced by the 'Dublin Regulation' in February 2003. An evaluation, based on operations under the Regulation, was published in 2007²². The system determines the Member State in which an asylum claim should be adjudicated according to an established set of criteria bearing on the relationship between the claimant and any Member States. In some instances, asylum applicants are transferred, or relocated, either returned to the state where an initial claim was, or should have been, lodged, or moved to a state where there are family members, for example, dependent on the priorities of applicable criteria. While the 2007 Evaluation noted serious difficulties with statistics across Member States, it suggested that between September 2003 and December 2005, fewer than 17,000 people had been transferred, although in more than 40,000 cases, the applicability of the regulation, indicating transfer could take place, had been accepted.

The Transfer of Protection status was the subject of a 2004 study for the European Commission, setting out the then state of play with regard to state actions in accepting requests for the transfer of refugee or protection status by people already recognised in another Member State²³. The study offered scenarios for how the transfer of protection status could be enhanced in the context of freedom of movement in the European Union and in the light of existing mechanisms, such as the 1980 Council of Europe Agreement on the transfer of responsibility for refugees, as well as bilateral arrangements. While agreement was in place for the movement of long-term resident third country nationals beneficiaries of international protection (refugees and those with subsidiary protection) were explicitly left out of that agreement, and to be the subject of a Commission proposal to extend the Directive. The Commission put forward its proposal in 2007, suggesting the conference of long-term residency on protected persons after five years, allowing them rights to movement equivalent to those of long-term residents, but no ability to have their protection status transferred to another Member State if they were to move and still be in need of protection²⁴.

The feasibility of resettlement programmes was also the subject of a Commission study in 2003 and a Communication from the Commission in 2009²⁵. The 2009 Communication notes the use of European Refugee Fund allocations to stimulate Member States' broader use of resettlement as a tool of international solidarity and protection, as well as a means of admission for refugees to Member States. The Communication sought further participation in resettlement on a voluntary basis.

The European Refugee Fund has, since 2000 been a mechanism for financial solidarity across the Union. In its initial incarnation the ERF supported Member State projects from 2000-2004 aimed at refugees and people with subsidiary or temporary protection (or who could be eligible for temporary protection) covering the conditions for reception; integration of persons whose stay in the Member State is of a lasting and/or stable nature; and repatriation, provided that the persons concerned have not acquired a new nationality and have not left the territory of the Member State. €187.541.160,68 were disbursed under the first phase: 95% supporting Member State projects and 5% of the total covering Community Actions (Commission 2005). In 2004 the Council agreed to extend the ERF for the period 2005-2010²⁶.

²² Commission of the European Communities (2007a) Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system SEC(2007)742, Brussels, 6.6.2007 COM(2007) 299 final(CNS) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0299:EN:NOT>

²³ Lassen, Nina M., Joanne van Selm, Jeroen Doomernik *et al*, Study on The transfer of protection status in the EU, against the background of the common European asylum system and the goal of a uniform status, valid throughout the Union, for those granted asylum Final Report Tender no. DG.JAI/A2/2003/001 25 June 2004 http://ec.europa.eu/justice_home/doc_centre/asylum/studies/docs/transfer_protection_status_rev_160904.pdf

²⁴ No agreement on the proposal has yet been reached.

²⁵ Van Selm, Joanne, Tamara Woroby, Erin Patrick and Monica Matts, Study on The Feasibility of setting up resettlement schemes in EU Member States or at EU Level, against the background of the Common European Asylum system and the goal of a Common Asylum Procedure http://ec.europa.eu/justice_home/doc_centre/asylum/studies/docs/resettlement-study-full_2003_en.pdf ; and Commission of the European Communities (2009b) Communication from the Commission to the European Parliament and the Council on the establishment of a joint EU Resettlement Programme COM(2009)456 final, SEC(2009)1127, SEC(2009)1128, Brussels, 2.9.2009 COM(2009)447 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0447:FIN:EN:PDF>

²⁶ Commission of the European Communities, Communication from the Commission to the European Parliament and the Council on the establishment of a joint EU resettlement programme COM(2009) 456 final, SEC(2009)1127, SEC(2009)1128, Brussels, 2.9.2009, COM(2009) 447 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0447:FIN:EN:PDF>

The 2005-2010 ERF II ran until the end of 2007 and a new ERF III began from 2008. This new format of the ERF included the possibility of awarding €4000 to the Member States per resettled refugee, if the resettled refugees fell under one of four categories listed in article 13 of the ERF Decision²⁷.

From 2008 onwards the Refugee Fund has been part of the general programme entitled 'Solidarity and Management of Migration Flows', which also includes a Borders Fund, an Integration Fund and a Return Fund. The aim of the programme is to address "the issue of a *fair share of responsibilities* between Member States as concerns the financial burden arising from the introduction of an integrated management of the Union's external borders and from the implementation of common policies on asylum and immigration"²⁸.

The total allocation to the four funds from 2007-2013 is €4020,37 Million with €699,37 Million of that being dedicated to the European Refugee Fund.

In 2008, under the French Presidency, the Council adopted the European Pact on Immigration and Asylum. Making an important political statement, the Pact represents the current level of Member State consensus with regard to the development of burden-sharing mechanisms for the European Union. Specifically, the Member States agree that:²⁹

for those Member States which are faced with specific and disproportionate pressures on their national asylum systems, due in particular to their geographical or demographic situation, solidarity shall also aim to promote, on a voluntary and coordinated basis, better reallocation of beneficiaries of international protection from such Member State to others, while ensuring that asylum systems are not abused.

Moreover, the Pact states that such reallocation should be funded by existing EU financial instruments.

In 2009 the Commission proposed to amend the Refugee Fund in the light of its proposal for a Joint EU resettlement programme. The mechanism under which Member States would be awarded a fixed amount of €4,000 per refugee resettled is continued but slightly modified. The proposal notes that: "Resettlement of the specific categories of persons according to common EU annual priorities needs to be carried out on a request of the UNHCR"³⁰.

The 2009 call for ERF projects included the category of:

Pilot projects aiming at supporting existing or creating new joint platforms for resettlement inside the EU or in third countries, in cooperation with UNHCR and possibly other relevant international organisations. This may include, among others, evacuation centres and common selection offices.

²⁷ (a) persons from a country or region designated for the implementation of a Regional Protection Programme; (b) unaccompanied minors; (c) children and women at risk, particularly from psychological, physical or sexual violence or exploitation; (d) persons with serious medical needs that can only be addressed through resettlement.

²⁸ Commission of the European Communities, Communication from the Commission to the European Parliament and the Council establishing a framework programme on Solidarity and the Management of Migration Flows for the period 2007-2013 Brussels, 6.4.2005, COM(2005) 123 final

2005/0046 (COD) 2005/0047 (COD) 2005/0048 (CNS) 2005/0049 (COD) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0123:FIN:EN:PDF>, p.4

²⁹ Council of the European Union, European Pact on Immigration and Asylum, Brussels, 24.9.2008, 13440/08, p. 12.

³⁰ Commission of the European Communities, Proposal for a Decision of the European Parliament and of the Council of amending Decision No 573/2007/EC 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, COM(2009)447 final, SEC(2009)127, SEC(2009)1128, COM(2009) 456 final 2009/0127 (COD) Brussels, 2.9.2009 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0456:FIN:EN:PDF>, p.4

The 2007-2013 funding programme was based on the priorities set out in the Hague Programme which ran from 2005-2010. Its successor, the Stockholm Programme was negotiated in 2008/9. A joint Swedish and Czech contribution to the 'Future Group' established to elaborate the Stockholm Programme asked in 2008³¹:

In a common asylum system, is there a need for a complementary mechanism in addition to the European Refugee Fund, to redistribute resources? What should then be redistributed – people or funds, or both?

In its June 2009 Communication on the development of the new programme, the European Commission noted that³²:

A mechanism for internal resettlement among the Member States of persons enjoying international protection that is voluntary and coordinated should be considered. An initial stage would consist in the introduction of a systematic programming of the funds for refugees under the European Refugee Fund as part of this internal solidarity. This programming should take account of objective criteria. The mechanism may include support for the setting-up of permanent reception and transit platforms in some Member States, plus specific arrangements for partnership with the UNHCR. In parallel to this initial approach, analysis of the feasibility and legal and practical implications of joint processing of asylum applications inside and outside the Union should continue. This analysis would be carried out so as to complement the common European asylum system and comply with the relevant international standards. Based on these studies and on an evaluation of the initial solidarity mechanism, a more permanent solidarity system might be envisaged from 2013. This system would be coordinated by the Support Office.

On 18 February 2009, the European Commission adopted a proposal for the establishment of a European Asylum Support Office, together with a proposal to amend the ERF in the light of the creation of such an office³³. The Council and Parliament reached political agreement in November 2009, and the Regulation establishing the European Asylum Office was adopted on 19 May 2010.³⁴ Article 5 of the Regulation is headed Supporting relocation of beneficiaries of international protection within the Union and states:

For Member States which are faced with specific and disproportionate pressures on their asylum and reception systems, due in particular to their geographical or demographic situation, the Support Office shall promote, facilitate and coordinate exchanges of information and other activities related to relocation within the Union. Relocation within the Union shall be carried out only on an agreed basis between Member States and with consent of the beneficiary of international protection concerned and, where appropriate, in consultation with the UNHCR.

In a draft statement of the Council's reasoning on the subject it says³⁵:

³¹ Future Group, the future EU Asylum Policy contributions from Sweden and the Czech Republic

<http://www.statewatch.org/news/2008/jul/eu-futures-apr-asylum-2008.pdf>, p.4

³² Commission of the European Communities, Communication from the Commission to the European Parliament and the Council, An area of freedom, security and justice serving the citizen Brussels, 10.6.2009 COM (2009) 262 final, p.28

³³ Commission of the European Communities Proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office, SEC(2009)153, SEC(2009)154, Brussels, 18.2.2009 COM(2009) 66 final 2009/0027(COD)

³⁴ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office. OJ L132, 29.5.2010.

³⁵ Council of Ministers of the European Union, Draft statement of the Council's reasons: Position at first reading adopted by the Council on 25/26 February 2010 with a view to the adoption of a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office, Draft statement of the Council's reasons Brussels, 19 February 2010 Inter-institutional File: 2009/0027 (COD) 16626/09 ADD 1 REV 2 <http://register.consilium.europa.eu/pdf/en/09/st16/st16626-ad01re02.en09.pdf> , p.4

With regard to the role of the Office concerning relocation of beneficiaries of international protection between Member States, the outcome of the informal contacts between Council and Parliament has been that development of intra community solidarity shall be carried out on an agreed basis, both between Member States and with the consent of the individual concerned. Moreover, where appropriate, a Member State shall consult the United Nations High Commissioner for Refugees (UNHCR).

The European Parliament's comments on the legislative proposal included an amendment requesting that the solidarity mechanisms be made binding, rather than voluntary.³⁶ The Parliament's proposal was for the EASO to "[...] support the implementation of binding solidarity mechanisms to promote a better reallocation of beneficiaries of international protection [...]. The opinion is also apparent in the Parliament's resolution on the proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)³⁷, where the Parliament proposes to add a reference to a legally binding instrument for solidarity.³⁸ This view differs somewhat from an earlier resolution by the Parliament. The European Parliament's initial view, as expressed in its resolution of 10 March 2009 on the future of the Common European Asylum System, was that resettlement and relocation mechanisms should be voluntary. More specifically the resolution stated that the European Parliament³⁹:

[...] takes the view that solidarity cannot be confined to the granting of financial resources and calls for the effective implementation of internal resettlement and relocation mechanisms on a voluntary basis as envisaged by the European Pact on Immigration and Asylum; is of the view that this would enable beneficiaries of international protection to be received by a Member State other than the country which has granted them the benefit of that protection.

The Stockholm Programme⁴⁰, which was adopted by the European Council in December 2009 as the multi-annual programme of the Union in the field of Justice and Home affairs in 2010-2014, states that "Effective solidarity with the Member States facing particular pressures should be promoted". The Council calls for a broad and balanced approach and for further analysis of mechanisms for voluntary and coordinated sharing of responsibilities between the Member States. The measures mentioned in the Stockholm Programme include capacity-building measures and secondment of officials in order to help those Member States facing particular pressures of asylum seekers.

³⁶ European Parliament legislative resolution of 7 May 2009 on the proposal for a regulation of the European Parliament and of the Council establishing a European Asylum Support Office. The resolution's proposal was as follows: For Member States which are faced with specific and disproportionate pressures on their national asylum systems, due in particular to their geographical or demographic situation, the Office will support the implementation of binding solidarity mechanisms to promote a better reallocation of beneficiaries of international protection from such Member States to others following non-discretionary, transparent and unequivocal rules, while ensuring that asylum systems are not abused.

³⁷ European Parliament legislative resolution of 7 May 2009 on the proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

³⁸ The proposed text states: In view of the fact that the Dublin system was not intended to be a mechanism for equitably sharing responsibilities with regard to the examination of applications for international protection, and that a number of Member States are particularly exposed to migratory flows, in particular by virtue of their geographical location, it is essential to reflect on and propose legally binding instruments to ensure greater solidarity between Member States and higher standards of protection. Such instruments should especially facilitate the secondment of officials from other Member States who assist those Member States which are faced with specific pressures and where applicants cannot benefit from adequate standards of protection and, where the reception capacities of one Member State are insufficient, facilitate the resettlement of beneficiaries of international protection in other Member States, providing that those concerned consent and that their fundamental rights are respected.

³⁹ European Parliament resolution of 10 March 2009 on the future of the Common European Asylum System (2008/2305(INI))

⁴⁰ Council of the European Union, Council Document 17024/09: The Stockholm Programme – an open and secure Europe serving and protecting the citizens. 2.12.2009.

In its action plan to implement the Stockholm Programme⁴¹, the Commission confirms the Establishing of a mechanism to review the Member States' national asylum systems and identify the issues related to capacities which will enable Member States to support each other in building capacity in 2011. It is also foreseen that the Commission will produce a Communication on intra-EU solidarity and evaluate and develop procedures for facilitation of the secondment of officials in 2011.

The Member State currently receiving most attention as being in need of solidarity expressed through relocation, and the future location of the European Asylum Support Office, is Malta.

Following its mission to Malta in July 2009 to assess the situation the Commission issued a revised report on this mission in October 2009⁴² in which it reports on the numbers of people relocated and resettled from Malta to fellow EU Member States and the US from 2005 to mid-2009. The Netherlands, Germany, Lithuania, Ireland and Portugal relocated (under their resettlement programmes where such programmes exist) 84 persons from Malta between 2005 and 2007. 92 beneficiaries of international protection were relocated to France from Malta in 2009. This means that a little over 4% of the people recognised by Malta as beneficiaries of international protection between 2002 and 2008 have been relocated within the EU. In addition, between 2007 and 15 June 2009, 292 beneficiaries of international protection were resettled from Malta to the United States. The number of beneficiaries resettled to the US in just over 2 years has, therefore, amounted to around 6% of the total number of persons recognised as beneficiaries of international protection by the Maltese authorities between 2002 and 2008⁴³.

⁴¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Delivering an area of freedom, security and justice for Europe's citizens. Action Plan Implementing the Stockholm Programme. COM (2010) 171 final, 20.4.2010.

⁴² Source: European Commission.

⁴³ Ibid. p .2

2. PAST EXPERIENCES OF RELOCATION OF BENEFICIARIES OF INTERNATIONAL PROTECTION

The past experiences of relocation of beneficiaries of international protection include the following:

- 2009 pilot project on the relocation of beneficiaries of international protection present in Malta to France
- The ongoing EUREMA project, relocating beneficiaries of international protection present in Malta to several EU Member States
- Bilateral relocation experiences between Malta and other EU Member States

These experiences are described shortly in the sections below and overall conclusions are drawn in the final section of this chapter.

2.1.1 2009 pilot project on relocation from Malta to France

The Pilot projects on the relocation of refugees located in Malta were initiated during the French Presidency of the Council in 2008. The reasons for this initiative were as follows:

- EU migration policy was a political priority for France which felt the need to pave the way towards more responsibility and solidarity
- A need to counterbalance the forced return operations implemented by France
- A need for solidarity towards refugees and beneficiaries of subsidiary protection (this implicitly excludes asylum seekers who have not been granted a status yet)
- A need for solidarity towards the EU Member States that are facing a disproportionate number of arrivals.

According to the French officials, the pilot project was aiming to help ease the disproportionate and exceptional situation in Malta.⁴⁴ The exceptionality of the situation was emphasised by the interviewees and the relocation mechanism was considered to be part of a global approach and fully-fledged EU migration policy that was promoted as a priority of the French Presidency. Due to high level support for the project, there were almost no domestic political obstacles hindering its implementation.

The 2009 pilot project was the first relocation operation of that size in France. The initial plan was to relocate 80 people during 2009, but in total 95 people were relocated under the pilot project. This target was set arbitrarily. The aim was to be high enough to be significant and meaningful, but at the same time not to be too high in order to accommodate increasing immigration pressure and a rising number of direct asylum claims in France. Four refugees and 91 beneficiaries of subsidiary protection were relocated. More specifically, the relocated persons included:

- 47 single adults
- 9 single women with children (18 persons in total)
- 18 children, including two unaccompanied minors
- 9 families (29 persons in total)
- 8 persons requiring specific long-term medical care

The same target number was set for the 2010 pilot project. France was willing to increase this target in order to support the efforts made by other countries that joined the operation, but was not in a position to do so, due to increasing migration pressure (+16% asylum claims in 2009 compared to 2008) and saturated reception capacities.

The relocation operation started in February 2009 and the people left Malta for France in July 2009. In order to accommodate the persons relocated, three temporary reception centres were used in three different regions. The locations were selected on the basis of the possibilities

⁴⁴ It was not specified what exactly was meant with disproportionate.

to create centres and the willingness of the local authorities to host the relocated people⁴⁵. Creating specific relocation-reception centres enabled France to receive all 95 persons at the same time, as the existing facilities would not have been able to absorb the high number of people arriving simultaneously, several of which had special needs. As the operation was highly political, having the facilities ready prior to arrival was important for ensuring success. Furthermore, creation of the centres facilitated access to EU funding.

The persons to be relocated were selected based on specific assessment criteria.⁴⁶ UNHCR, IOM, the Malta Emigrants Commission and the Jesuit Refugee Service were each asked to submit 50 candidates from whom the French would make their selection. A two point assessment was made in the pilot projects:

- Humanitarian criterion, where the aim was to relocate:
 - Refugees and beneficiaries of subsidiary protection only: asylum seekers, who were not yet granted a status, were excluded from the relocation operations. The main reason was that relocation of asylum seekers was not considered necessary due to the Dublin regulation. In addition, the French authorities considered that this would create problems for both the asylum seekers and the national authorities, as it would require several moves, and also render the procedure even more complex (how, for instance, to organise interviews as part of the asylum procedure)?
 - Among the refugees and beneficiaries of subsidiary protection, particular attention was paid to unaccompanied minors, women with children, victims of torture etc.
- Integration criterion: Persons to be relocated had to have a “potential for integration”. This meant that priority was given to persons meeting the following criteria:
 - education, skills and experience relevant to jobs that are difficult to fill in France
 - knowledge of French
 - persons with relatives in France
 - willingness to relocate and integrate in France

Applicants were required to complete a 14-page form and were selected by the French authorities mainly on paper, although some interviews were also conducted. Once participants had been identified, IOM arranged medical examinations, cultural orientation and travel.

No legal obstacles to the implementation of this relocation project were identified by the French authorities. Under the Code of Entry and Stay of Aliens and Asylum (CESEDA), France can issue two types of protection status: refugee status and subsidiary protection. Since 1 January 2004, any application for asylum should be addressed to the French Office for the Protection of Refugees and Stateless Persons (OFPRA). The CESEDA includes possibilities for the transfer of refugee status and subsidiary protection to France: the jurisprudence acknowledges the right of a person to have his/her status granted by another country fully recognised in France, provided this person is duly granted an authorisation to stay on the French territory.

On this basis French authorities have decided not to reconsider the status granted by the Maltese authorities to the beneficiaries of relocation, although slight differences in the asylum procedure and decision were observed. Yet, the French authorities only double checked that the persons to be relocated had not committed a crime and did not represent a serious threat to public order, public safety or security of the State. Upon arrival in France, the participants were placed in the reception centres where they would receive language and other integration support for up to one year.

In order to ensure that no political obstacles would arise, increased communication efforts were made towards the local authorities that had to grant the authorisation for opening new accommodation centres. This included a visit by the French mayors to Malta.

⁴⁵ Both the mayor and the local state representative had to agree to receiving migrants.

⁴⁶ French authorities do not talk about “selection” but “assessment” criteria.

With respect to potential pull factors following from the pilot project, it was assessed that three types of pull factor could arise:

- New migration networks in France: To date, France has received very few asylum seekers from the Horn of Africa. This has changed during the past 2-3 years and some have raised the concern that the relocation operations might have accelerated this process by creating new national communities in France
- There is always a risk that people might arrive in Malta with the hope of being relocated to another country
- Finally, French authorities have expressed concern about the risk of giving incentives to the Maltese authorities (or others) to be tempted to easily grant a refugee or subsidiary status to asylum seekers in the hope of having them relocated to another country

2.1.2 EUREMA

EUREMA (EU Relocation Malta) is a pilot project currently running in 10 Member States under which France⁴⁷ and Germany will each relocate around 100 beneficiaries of international protection located in Malta, with the other eight (Slovenia, Slovakia, Hungary, Poland, Romania, UK, Luxemburg and Portugal) each taking 6-10 persons.⁴⁸ Each of the participating Member States sets its own criteria: for example, language and job skills; specific nationalities and/or religions; those with family and friends in the country of destination; young people with families; people who are fit and healthy. All of the schemes operate on a similar basis.

- They are restricted to beneficiaries of international protection and (in most cases) those with subsidiary protection. So far, asylum seekers have not been included in any such schemes and there are no indications that they might be in the future.
- The Maltese agencies work together to identify those who would be interested in intra-EU relocation and put their names forward to the countries of relocation. This process has become more sophisticated with experience. Initially there was a problem of lack of co-ordination between agencies resulting in the same people being put forward by more than one agency. This was resolved by creating a database "register" of beneficiaries of international protection and those given subsidiary protection who wished to relocate (over 90% of the eligible population). The database includes full personal details of the potential participants.
- The destination countries set their criteria.
- UNHCR Malta puts forward potential candidates using the database to identify those who come closest to meeting the criteria. Ideally this will be 150-200% of the required number. Where there are insufficient candidates to meet the specific criteria, for example people with specific language skills, UNHCR will seek to negotiate alternatives.
- The destination countries make their choices in some cases on the basis of the papers but in others by interview.
- IOM manage the actual relocation process.

Those being relocated to Poland, for example, will be required to submit a fresh claim for international protection on arrival at the airport even though they have already been granted that status in Malta. This will be processed automatically but is necessary for the person to be recognised as being a beneficiary of international protection under Polish law, since no mechanism exists for transferring protection under EU law. In other countries national laws prevent them from taking people with subsidiary protection.

The need to explain the different arrangements in each of 10 countries also places an additional strain on the NGOs and creates difficulties both in understanding the implications and in choices for the applicants. UNHCR commented on how the extent to which people want to understand the detail and implications of their choices, for example concerning their future access to citizenship, had been underestimated, particularly in respect of countries where there are no informal networks to provide them with that information.

⁴⁷ The second pilot project between France and Malta.

⁴⁸ For example Slovenia does not accept those with subsidiary protection, as this is not possible within the Slovene legislation.

The selectivity being practiced by the receiving states also gives cause for concern that those left behind in Malta will be the most difficult cases both in terms of their circumstances (health etc) and their potential integration. NGOs are also concerned about being able to manage individual expectations and deal with those left behind. They have seen an increase in mental illness on the part of those who are rejected. Concerns about their families being unable to join them in Malta or the countries being proposed for relocation have exacerbated this situation and there is a risk of creating a cycle with rejection causing mental illness and then putting those people outside the criteria required by the countries of location.

The budget request for EUREMA was said by officials to be €1.9 Million but a more detailed breakdown is problematic because the main costs associated with the project relate to integration and the actual costs depend on how this is done, which varies between countries. Some countries for example are using facilities that are already available whilst others are establishing special support programmes for orientation, language training and finding work. The allowances received also vary between countries both in amount and the way in which they are paid (e.g. cash or vouchers).

The Member States participating in EUREMA mainly decided to take part in the project as a way of showing solidarity towards Malta, supporting the people living in the Maltese reception centres, and experiencing how a relocation exercise works in practice. It was noted by the interviewees that there is a need for clearer coordination between the different actors. The selection missions drawing closer, the Member States had not yet received case files of the people proposed to be relocated. It has proven difficult to find people matching the criteria set by some Member States, which has led to unpredictability for all sides.

2.1.3 Bilateral experiences

Malta - Netherlands

The Netherlands relocated 30 beneficiaries of international protection from Malta in 2005, as a follow-up to the Dutch Presidency of the Council and the newly published Hague programme. The relocation process was intended to be a one-off exercise and was hoped to create a snowball-effect, with other Member States following the Dutch example. The relocation was based on double-voluntarism, and only people who were willing to be relocated to the Netherlands were included in the scheme. The reception process followed the same pattern as earlier resettlement procedures, where the persons are accommodated in special provision facilities for six months after which they are free to move out. No additional asylum procedure was conducted, as the Netherlands recognised the Maltese decisions for granting protection. This did not cause any legal challenges.

Malta - Lithuania

Lithuania relocated six asylum seekers (two families) from Malta in 2006. The existing reception system in Lithuania was not considered to be sufficient, and therefore the reception system was adapted to better match the needs of the two families. Today both families have been granted refugee status, although they have experienced difficulties in integrating to Lithuania. They would now prefer to move to other European countries where communities of the same national background exist. Lithuania considers the exercise to have been costly and ineffective, the main reason being that the relocated persons were not sufficiently informed about Lithuania prior to relocation. Even though the relocation process was voluntary, there was a clear lack of information for the families to make an informed decision about their relocation.

2.1.4 Lessons learnt from past experiences

A number of "lessons learnt" can be drawn from the previous experiences of relocation, based on the above projects. As an overall conclusion it can be said that the past and current intra-EU relocation exercises have often been initiated as a sign of solidarity and political support, which is supported by the fact that both the Netherlands and France initiated the relocation exercises during or directly after their presidency of the Council.

1) Importance of coordination

The participants from the EUREMA project emphasised the need for external coordination (i.e. by EASO) in future relocation projects to ensure active communication between actors.

2) Integration not a relevant assessment criterion

The 2009 pilot project showed that it was not possible to rely on the integration potential of the relocated persons as an assessment criterion. The reasons for this were that:

- The candidates for relocation did not have the relevant skills. The example of the building sector was mentioned several times: while some of the candidates for relocation might have been working in the building sector in their countries of origin, their skills and experience were not always adapted to the requirements in the building sector in France.
- Refugees and beneficiaries of subsidiary protection in Malta mainly came from Sudan and the Horn of Africa. This implied that:
 - candidates rarely spoke French; illiteracy of women also proved to be an issue
 - candidates had no relatives in the country since there are no national communities from these countries in France

For this reason, the motivation and humanitarian criteria proved to be key to the assessment process. Therefore, the French authorities paid particular attention to the interviews that were conducted in Malta with the candidates for relocation, in order to assess their personal history and motivation.

3) Difficulties during the integration process can make future operations difficult

The profile of the persons relocated to France during the first pilot project posed several challenges for their integration, despite the efforts made to help them adapt to their new country (including, as mentioned before, specific accommodation centres, but also specially tailored support services). Indeed, by the end of March 2010:

- 3-4 had found a job
- 3-4 (not the same) had found their own accommodation

This appears to be caused by difficulties in finding work and supporting themselves. The French authorities expressed concerns about the situation. Indeed, by the end of June 2010, the ERF funding will dry up and the temporary centres will have to close down. However, when interpreting the above-mentioned results in terms of integration, one has to bear in mind that:

- The relocated persons arrived in France less than 10 months ago
- This was a special operation with high political visibility, and the expectations might have been too high
- The mass effect makes more visible the difficulties to integrate refugees
- The current economic situation is not favourable to anyone

This was acknowledged and, despite the disappointing results, France has participated in the second pilot project. Yet, it proves to be much more difficult to find appropriate locations in which to set up accommodation centres, as the local authorities have become more reluctant to cooperate due to the lack of clear success of the previous pilot project in terms of integration: relocated persons are now seen as an additional burden to an already difficult situation. One of the specificities of relocation operations is that they are organised in cohort, meaning that there is a mass effect which creates demands in terms of reception capacities, integration and political acceptance.

4) *More information is needed for the relocated persons (i.e. Communities etc.)*

The bilateral relocation project between Lithuania and Malta showed that it is important that the relocated persons are well informed about the Member State in which they will be relocated. In this way no false hopes will arise and integration process is more likely to succeed.

5) *Asylum-seekers have in general not been relocated*

- Most relocation experiences have been directed at beneficiaries of international protection. In Member States with resettlement experience the procedures used in resettlement have been applied to relocation. Relocating beneficiaries of international protection can however lead to a double administrative process, if the refugee status has to be re-assessed in the receiving country. In the case of the Maltese pilot projects the French legislation enabled the relocation to happen smoothly, as French legislation allows for transfers of protection from another country, including the recognition of the asylum decisions.

6) *No pull factors in Malta, although some were identified in France*

Malta has not reported any signs of pull factors as a result of the above experiences. Nor was any concern expressed that this might be the case in the future, since there is no guarantee that a person arriving in Malta will be recognised as a beneficiary of international protection nor that they would prove successful in an application under one of the schemes. Officials took the view that arrivals are affected by the situation in the third countries rather than in the EU, although this seems to relate mainly to the specific Maltese experience where many people have ended up by accident and where they see themselves as being stuck. It would not necessarily translate in the same way in other countries. France has reported that new migration networks have been created in the country and that this could be a result from relocation from the countries in question.

3. PROBLEM DEFINITION AND POSSIBLE SOLUTIONS

The objective of this chapter is to present a cross-analysis of the perspectives of all the respondents with respect to their assessment of the main challenges in the area, whether relocation is a possible solution and what the main objectives of a relocation mechanism should be.

3.1 The main challenges

All respondents agreed that there was an uneven distribution of burden with respect to handling asylum flows in the European Union. However, there seemed to be some disagreements as to what it is that creates the uneven distribution and most respondents stressed that there was not one single reason to explain this phenomenon. Most Member States as well as UNHCR and IOM, pointed to **geography as one reason** for the uneven burden. According to the Member States geography is currently placing several countries especially but not solely around the Mediterranean Sea under pressure. Other Member States, such as Austria, also experience high inflows of asylum seekers due to their geographical location.

Some Member States national NGOs and UNHCR moreover expressed the view that **the practices when processing asylum claims** provide another explanation. The argument here is that asylum seekers in general seek to lodge their claims in countries where they have the best chances of being granted protection. The uneven distribution is thereby created by the existing systems and practices.

A few Member States also pointed to **the existence of communities of same origin** as a reason for uneven burden on certain Member States. The existing communities can be a pull factor to a Member State both due to the fact that the Member State becomes known among the potential asylum seekers, and because an existing community is a sign to the potential asylum seeker that people from his/her origin can have a possibility to be granted asylum in the Member State in question.

The integration capabilities of the Member State were also mentioned by two Member States as a reason for uneven distribution. These can be both physical capabilities, such as existing infrastructure enabling the integration of the refugees or the willingness of the Member State to integrate the refugees.

Finally some Member States and UNHCR expressed the view that uneven burden was created by a combination of the **number of asylum claims and the capacities of the systems** in different Member States. These respondents referred to a "felt pressure" caused by the systems not being able to handle the number of asylum claims, even though in relative terms the numbers might not be high.

Several of the Member States and UNHCR pointed to the **Dublin system as a factor increasing the uneven distribution**. The reason is that the "burden" is kept within the Member States with external borders, due to the way the Dublin system is conceived.

Most stakeholders (IOM and several national NGOs) and one Member State further pointed to **humanitarian challenges**, whether they result from uneven distribution or the lack of policy harmonisation. These respondents stressed that in some Member States the current system increases the incentive to deter refugees from applying for asylum through:

- Having bad reception systems
- Having a low recognition rate

Finally some respondents, mainly from NGOs (ECRE and some national NGOs), saw **"Fortress Europe" as the main challenge**. According to them, the main challenge is the high number of economic refugees abusing the current system by applying for asylum, because they have no other legal possibility to enter the EU. According to these respondents the number of asylum applicants would decrease considerably if there were other means of entering Europe and find a

legitimate job. If it was possible to minimise the abuse of the system all countries would be able to handle their number of applicants and if specific situations would create an asylum flow, other Member States would be far more willing to share the burden.

Finally, some Member States and ECRE pointed to **resettlement** as the main issue to be addressed, and several Member States as well as international organisations agreed that it was important that any relocation mechanism does not interfere with the (in their view) more important task of resettlement. The reasons given were that:

- It is more important to support refugees in third countries, as asylum seekers who are already in EU have a minimum level of support guaranteed.
- If resettlement is increased and made effective, relocation would be less relevant as Europe would receive less asylum seekers at their borders.

The different explanations of what creates an uneven distribution naturally lead to different suggested solutions. This is described in the next section.

3.2 Responding to the challenges

Member States bordering the Mediterranean, who see external borders as the only or the main reason for the uneven distribution of burden with respect to handling asylum flows within the European Union tend to see **relocation** as the best solution to the uneven burden. Two Member States both expressed the view that relocation should be seen in a broader perspective, i.e.:

- In one Member State, both the government's and UNHCR's preference would be for a scheme that would operate prior to the arrival of asylum seekers in EU territory, by developing and implementing fully the Joint EU Resettlement Programme, and possibly by establishing a more comprehensive and integrated instrument that would include both resettlement and intra-EU relocation in a coordinated manner.
- In the other Member State, Government officials felt that EU migration should be viewed holistically with each Member State having a role in the process. This might be border control, for others it might be processing asylum seekers or integration.

A few other Member States also see relocation as a necessary answer to the challenges. Their argument, however, is that while the uneven distribution of burden can only be addressed through relocation, such a scheme would not solve other challenges in this policy area.

Most Member States who see the practices in processing asylum claims, the reception conditions and the possibilities of integration as important reasons for an uneven distribution of burden tend to think that **financial and technical assistance** for asylum procedures, return or integration measures **and/or policy harmonisation** would be the best solutions for the challenge. The underlying logic is that if policies are harmonised and the decision procedures in the Member States are equal, then there will be no need for relocation. This perspective is supported by a few Member States even though these countries also saw geography as one of the main reasons for the uneven distribution.

In general some Member States, as well as international organisations and most of the national NGOs, consider that **policy harmonisation and relocation need to be integrated**. For example:

- In one Member State, relocation is relevant if Member States can ascertain that they receive relocated beneficiaries of international protection for "good reasons" (geography) and not as a result of failing systems or a lack of goodwill
- In another Member State, the Government authorities consider that a responsibility-sharing mechanism should go hand in hand with capacity building instruments (e.g. a fully operational European Asylum office; a sizeable European Refugee Fund etc.) and proper enforcement of existing EU regulations
- IOM and UNHCR view relocation as a minor part in the overall approach, as it deals with the consequences but not the causes. Relocation can however be used to create incentives to improve systems (arrival, asylum and integration) where it is needed.

Technical and financial assistance as well as policy harmonisation also address the concerns of the international organisations and the national NGOs with respect to the main challenge being unequal treatment of asylum seekers and refugees.

- The main difference seems to be whether policy harmonisation is necessary before a relocation mechanism is established or whether a relocation mechanism can be used as a means to ensuring policy harmonisation and common standards. This discussion also influences the last element of this initial analysis: the potential objectives of a future relocation mechanism. The interviews clearly show that there is not necessarily an agreement on that point, with **some Member States seeing burden-sharing as the main objective while others see policy harmonisation and common standards as the main objective.**
- No specific solutions were presented with respect to the challenges posed by the Dublin system, concerning vulnerable asylum seekers and refugees, such as unaccompanied minors, nor with respect to the notion that resettlement is the main issue to be dealt with at a European level. Two Member States however expressed the view that an opportunity to suspend the Dublin procedures on a temporary basis would decrease the need for a relocation mechanism.
- Whereas the view of the European Parliament was not directly heard during the consultation phase of this feasibility study, it can to some extent be extracted from existing documents, as presented in section 1.3. In particular the resolution on the European Asylum Support Office shows that it is the view of the Parliament that solidarity mechanisms for relocation of beneficiaries of international protection are indeed needed, and that they should be binding to the Member States.

3.3 Summary

The Member States, the stakeholders and the NGOs in general agree that EU has an uneven distribution of burdens with respect to handling asylum flows. There is however some disagreement on the reasons for this uneven distribution resulting in some variances with respect to the opinions on how the challenge could best be addressed.

According to Member States and other respondents, the following can explain the uneven distribution:

- Geography
- The practices when processing asylum claims
- Existence of communities of the same origin
- Number of asylum claims relative to the capacities of the systems

Other reasons were mentioned although by fewer respondents, those include the integration capabilities, the Dublin system and issues concerning access to the territory of the European Union (sometimes portrayed as "Fortress Europe"). These respondents claim that the Dublin system increases the pressure on countries with proximity to countries from which people flee and that the "Fortress Europe" approach increases the general pressure on the asylum system, because that is the only possibility of entering Europe.

Depending on the main reason for the uneven distribution, the Member States and the other respondents point to the following solutions:

- Relocation
- Policy harmonisation
- Technical and financial assistance

In general most respondents see the need of combining relocation with policy harmonisation and/or technical and financial assistance.

4. THE OPTIONS

Two policy approaches to relocation, or options, were developed for the purpose of this study. These two Options are fundamentally different: one involves a set of criteria for determining Member State participation in a relocation scheme; the other can be characterised as a more *ad hoc* approach to meeting needs as they arise. The two Options also differ from one another with respect to the target group that would be relocated. Both Options include a financial component, which is loosely based on the model for the current European Refugee Fund. This chapter presents the two Options, as they will be the basis for the analysis in the next chapters, whereas their actual political, legal and financial feasibility will be discussed in the next chapters.

4.1 Option 1 'Relocation according to a pre-determined quota'

Under this Option, beneficiaries of international protection (both refugees as defined under the 1951 Convention and people with subsidiary protection as set out in the Qualification Directive) and, potentially, asylum seekers could all be relocated. The criteria for the two groups (beneficiaries of international protection and asylum seekers) would be distinct.

For beneficiaries of international protection, EU legislation would be introduced allocating a quota to each Member State based on the following two criteria:

- 1) The country's GDP/capita
- 2) The country's population density

In order to determine the numerical value of the quota, the overall number of international protection statuses granted by the European Union will be used. The calculations should be based on the most recent annual statistics available.

For asylum seekers likewise, EU legislation would be necessary in order to allocate a quota to each Member State based on two criteria:

- 1) The country's GDP/capita
- 2) The country's population density

In order to determine the numerical value of the quota, the overall number of asylum applications presented in the European Union will be used. The calculations should be based on the most recent annual statistics available.

Beneficiaries of international protection would be able to apply for relocation to a specific country. If space on that Member State's quota were to be available, criteria such as family ties or medical conditions could be taken into account in decisions on allowing relocation. Applications for relocation would be lodged with and assessed by the European Asylum Support Office (EASO). The EASO would then coordinate which refugees would be allocated to which Member State, taking into consideration the agreed quotas. Based on EASO's assessment the Commission would have to put forward a proposal for a decision. In principle Member States should relocate in accordance with the proposal, however, under delineated circumstances they could decline to relocate certain individuals. It would thus not be possible for a Member State to decide whether they receive for example vulnerable persons, such as unaccompanied minors.

In the case of **asylum seekers**, any necessary decisions based on the Dublin system would first be taken. Following a Dublin decision on Member State responsibility, consideration would be given as to whether asylum seekers should in fact be relocated (for example because the Member State responsible under Dublin would be exceeding its absorption and/or administrative capacities if more asylum seekers would be transferred there). Asylum seekers would not be consulted on such relocation, and the decision on the Member State to which they should be relocated would be taken by the EASO. In other words, an asylum seeker could be in Member State A, be transferable to Member State B under the Dublin system, but be relocated to Member State C as a result of an EASO decision on need according to burden-sharing arrangements,

following the processing of the claim (e.g. through joint processing by States C and A, while still in State A).

For asylum seekers the Member State responsible for processing the asylum claim would be responsible for returning anyone who is not recognised as being in need of international protection.

Funding for this option would be provided through the European Refugee Fund (ERF), with a specific ERF category of funding for the relocation of beneficiaries of international protection and possibly asylum seekers. The size of the ERF would need to be increased, so that an agreed level of compensation would be provided per asylum-seeker (for processing the claim) and per recognised refugee, as well as a flat-rate funding for each Member State. Co-financing would be increased to 90%.⁴⁹ The reason for the need to increase the ERF is embedded in the characteristics of Option 1, where all Member States would be involved in a relocation mechanism. This would very likely mean that the number of people to be relocated annually would be considerably higher than the current number of relocations supported by the ERF, and provided that the Member States would receive funding from the ERF to finance an important part of the costs of relocation, the ERF needs to be increased to cover these costs so that the existing ERF activities would not suffer financially from the introduction of a new relocation mechanism. Furthermore it is important to increase the size of the Fund in order to ensure that increasing the co-financing to 90% will not automatically lead to less and/or smaller projects being funded due to a higher need for EU funding.

4.2 Option 2: 'Relocation and burden-sharing on an *ad hoc* basis'

Under the second Option, beneficiaries of international protection (refugees and those qualifying for subsidiary protection as defined in the Qualification Directive) and possibly asylum seekers would be relocated on an *ad hoc* needs-assessment basis through an open pledging mechanism.

The EASO would carry out an annual assessment of the overall need for relocation across the EU. On the basis of that assessment, the EU would carry out an annual pledging exercise, during a dedicated high-level meeting. At this meeting each Member State would present the number of beneficiaries of international protection (and possibly asylum seekers) they would be willing to accept for relocation. The role of the Commission would be to secure a discussion concerning the positions and commitments of the Member States. Member States would indicate both the size of their available quota for acceptance of relocation and certain characteristics or groups of beneficiaries of international protection and/or asylum applicants they would be willing to accept (including, for example, vulnerable cases, unaccompanied minors, people with medical conditions etc).

Beneficiaries of international protection would be able to apply for relocation to a specific Member State. Criteria such as family ties or medical condition could be taken into account in prioritizing applicants for relocation. Individual or family applications for relocation would be lodged with and assessed by the EASO. The EASO would take the final decision on which refugees would be allocated to which Member State within the limits of the pledges made by the Member States.

Asylum seekers would not be consulted on their country of relocation and thus the country to which they would be relocated would be determined by EASO, following any necessary Dublin requests and their outcomes. The Member State responsible for processing the asylum claim would also be responsible for returning an asylum seeker who is not recognised as in need of international protection.

Member States could also offer pledges for 'twinning projects' and/or technical assistance, and other elements of support to heavily burdened states as an alternative to the relocation of beneficiaries of international protection or asylum seekers. Such projects or assistance could

⁴⁹ In practice this would mean that relocation activities should be included in the ERF as a specific priority, allowing for a higher level of co-financing. Currently specific priorities can get up to 75% of co-financing, whereas the Community Actions the level is 90%.

involve helping to process asylum claims, e.g. through the exchange of asylum officers as a method of 'joint processing', or the assistance and the transfer of knowledge on issues such as the establishment and operation of reception facilities. These projects and assistance could be an element in the building of trust between Member States on asylum decisions, and thus form a strengthening element in the process of harmonisation.

This option would not necessarily require a legislative initiative.

Funding will be provided through the European Refugee Fund. The size of the Fund should be increased, in line with a Member State agreement on the compensation that should be provided per asylum-seeker (to cover the processing of the claim of a relocated asylum-seeker) and per recognised beneficiary of international protection, as well as a flat-rate funding for each Member State. The ERF would also be adapted as follows:

- 1) A specific priority within the ERF should be devoted to relocation of beneficiaries of international protection. Co-financing should be increased to 90%.⁵⁰
- 2) Based on the quota agreed for each country a fixed amount per person relocated should be provided to each Member State (in a similar way to the 4000€ currently given per resettled person belonging to a specific group – see section 1.3.3). The fixed amount will be deducted from the global budget of the ERF before allocating the remainder of the budget to national envelopes.

The reason for increasing the size of the ERF is, in the case of Option 2, embedded in the "double-incentive", i.e. that Member States receive a fixed amount per relocated person and the global envelope is reduced accordingly. However, as it is not the intention of the proposal to put activities already funded by ERF at risk, it is important that the global envelope is increased in order to keep the national envelopes at a relatively balanced level. Furthermore it is important to increase the size of the Fund in order to ensure that increasing the co-financing to 90% will not automatically lead to less and/or smaller projects being funded due to a higher need for EU funding.

Specific funding should be set up for supporting "twinning projects" etc.

4.3 The impact of the quota in Option 1

The impact of the quota can be assessed by conducting a simulation based on the most recent annual statistics available.⁵¹ The figures used in the simulation can be found in Table 6 and Table 7 in Annex C.

The models presented to the Member States did not however take account of the size of the Member States, when GDP per capita is used. Whereas GDP per capita allows for a comparison of economies that are very different in size, each Member State's size should be factored in, in order to avoid situations where for example Luxembourg (which enjoys a high GDP per capita) will be allocated a quota only based on the GDP per capita and density, without taking into account the small size of the country. This is why the study team has chosen to include the Member States' population as a criterion in the simulation of the effects of the two criteria presented to the Member States. It should thus be emphasised that the Member States have not seen the quotas presented below and have not had the opportunity to comment on them. The options presented to the Member States only consisted of the two quotas presented above. The quotas have been included into the report in order to illustrate the different ways in which several criteria impact the distribution of beneficiaries of international protection and asylum seekers. As will be presented in the following chapters, Member States also pointed to several other criteria

⁵⁰ In practice this would mean that relocation activities should be included in the ERF as a specific priority, allowing for a higher level of co-financing. Currently specific priorities can get up to 75% of co-financing, whereas the Community Actions the level is 90%.

⁵¹ The most recent statistics available at the time of writing this report were GDP per capita (2007 from Eurostat), population (per 1.1.2008), number of asylum applications (in 2008) and number of positive decisions on asylum applications at first instance and final decisions on appeal (2008). The reason why 2007 and 2008 statistics are mixed is that whereas GDP statistics for 2008 were not available, number of positive decisions on asylum applications and first instance and final decisions on appeal were not available for 2007. In the future statistics from one specified year are however recommended to be used.

that could have been taken into account in a quota system. One of them, expressed by several Member States, was the integration capacity of the Member States, i.e. the existence of systems, resources and the experience of the officials and other stakeholders in receiving refugees and asylum seekers.

In order to assess the quota each Member State would have in terms of percentage of the total number of international protection statuses or asylum applications, the GDP distribution, density distribution and population distribution have been calculated (see Table 11 in Annex C). By applying these distribution shares to the overall number of international protection statuses granted in the European Union, and the overall number of asylum applications lodged in the European Union (see Table 6 and Table 7 in Annex C), using four different weightings, the quota for each Member State can be determined. The models presented below are not based on any specific theoretical reasoning, but have been selected arbitrarily as a means to illustrate the type of impact the change in weighting of different criteria would have on the quotas.

The density distribution has been calculated on the basis of the population density of each Member State (population/km²) and a density threshold at 200, meaning that no asylum seekers/beneficiaries of international protection would be allocated to the Member States with a population density of >200 people/km² under this criterion. The density threshold is not based on any theoretical choice, other than the fact that it represents roughly the EU population density average. It may be adjusted if considered necessary to achieve another pattern of distribution based on density. The lower the density threshold, and the higher the weighting placed on density, the greater the assumed capacity of the Member States with very low population density. It should however be considered that the model does not elaborate on the reasons for density (i.e. geographical reasons hindering settlement, such as mountains or deserts).

Placing a higher weight on the population density of a Member State, while keeping the density threshold at 200, allocates a higher share of international protection holders and asylum seekers to the Member States with low population density.

The impact of the population criterion has been calculated using four different models. The different weightings illustrate the way in which the different criteria impact the quota:

Model 1:

GDP per capita weight 33,3%, Population weight 33,3%, Density weight 33,3%

Model 2:

GDP per capita weight 40,0%, Population weight 40,0%, Density weight 20,0%

Model 3:

GDP per capita weight 60,0%, Population weight 30,0%, Density weight 10,0%

Model 4:

GDP per capita weight 30,0%, Population weight 60,0%, Density weight 10,0%

Table 1 below illustrates the distribution of **beneficiaries of international protection**⁵² within the European Union when taking into consideration all three criteria and when using a density threshold of 200.

The column "Change compared to total 2008" shows the difference between the number of positive decisions on asylum applications at first instance and final decisions (i.e. number of

⁵² It should be noted that no calculations have been done of the potential of a Member State to relocate both beneficiaries of international protection and asylum seekers in terms of density threshold. The calculations do not consider the possibility that a Member State's capacity to receive asylum seekers may change depending on whether the Member State also receives beneficiaries of international protection, and vice versa.

beneficiaries of international protection) in 2008 and the quota assigned to the Member State. The negative figures in the table below do not necessarily indicate that the Member State in question will in the future become "an exporter" of beneficiaries of international protection or asylum seekers (i.e. countries where people are relocated from). However, it shows mainly the difference between the assigned quota and the number of beneficiaries or asylum seekers that the Member State in question had in 2008. If the number of beneficiaries of international protection and/or asylum seekers does not exceed the quota during the year of assessment and relocation, then the Member State will not become an "exporter".

However, if the number of positive decisions remains on the level of 2008 during the year of assessment, it can be said that the negative numbers in column "Change compared to total 2008" indicate how many persons would be relocated under each model.

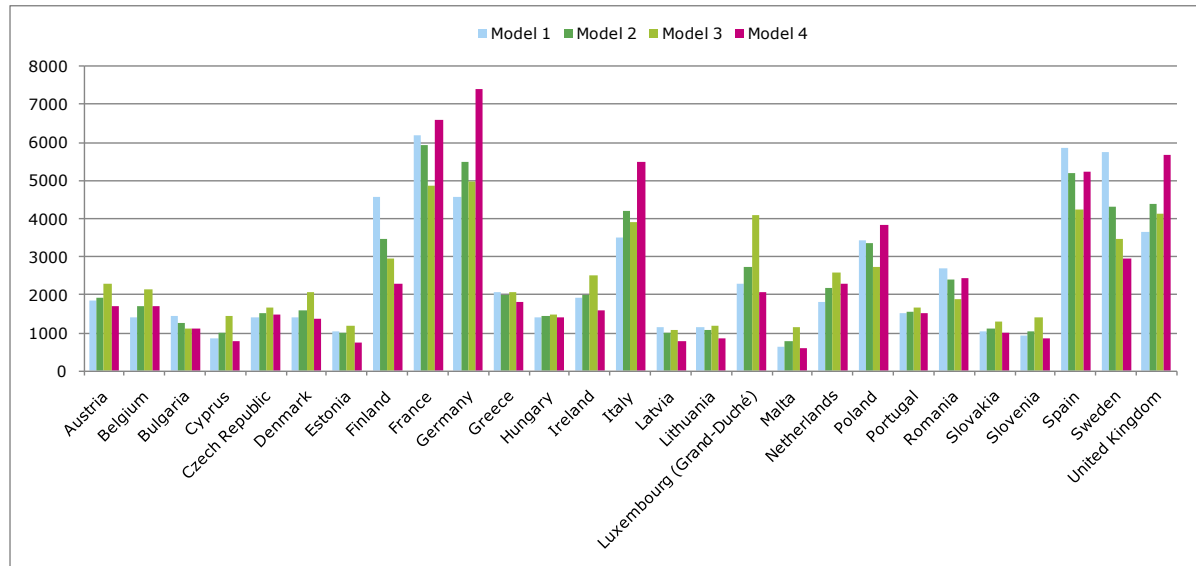
Table 1: Distribution of beneficiaries of international protection at density threshold of 200 (source: Table 6)

	Distribution of beneficiaries of international protection according to weighting				Change compared to total 2008				Beneficiaries in 2008
	Model 1	Model 2	Model 3	Model 4	Model 1	Model 2	Model 3	Model 4	Total
GDP/capita	33,3	40	60	30	33,3	40	60	30	
Population	33,3	40	30	60	33,3	40	30	60	
Density	33,3	20	10	10	33,3	20	10	10	
Austria	1,830	1,922	2,280	1,701	-3,590	-3,498	-3,140	-3,719	5,420
Belgium	1,415	1,698	2,128	1,694	-2,485	-2,202	-1,772	-2,206	3,900
Bulgaria	1,438	1,252	1,099	1,125	1,133	947	794	820	305
Cyprus	859	997	1,430	770	844	982	1,415	755	15
Czech Republic	1,404	1,508	1,677	1,495	1,169	1,273	1,442	1,260	235
Denmark	1,405	1,584	2,058	1,379	730	909	1,383	704	675
Estonia	1,034	994	1,191	737	1,029	989	1,186	732	5
Finland	4,551	3,451	2,958	2,295	3,971	2,871	2,378	1,715	580
France	6,187	5,928	4,873	6,597	-5,283	-5,542	-6,597	-4,873	11,470
Germany	4,577	5,493	4,973	7,385	-6,073	-5,157	-5,677	-3,265	10,650
Greece	2,072	1,995	2,058	1,817	1,697	1,620	1,683	1,442	375
Hungary	1,416	1,424	1,462	1,399	1,176	1,184	1,222	1,159	240
Ireland	1,923	1,995	2,509	1,589	1,328	1,400	1,914	994	595
Italy	3,517	4,184	3,894	5,475	-4,598	-3,931	-4,221	-2,640	8,115
Latvia	1,135	1,016	1,088	766	1,135	1,016	1,088	766	0
Lithuania	1,154	1,074	1,167	862	1,084	1,004	1,097	792	70
Luxembourg (Grand-Duché)	2,283	2,738	4,087	2,072	2,178	2,633	3,982	1,967	105
Malta	644	773	1,143	596	-766	-637	-267	-814	1,410
Netherlands	1,805	2,166	2,600	2,273	-560	-199	235	-92	2,365
Poland	3,441	3,342	2,713	3,822	2,166	2,067	1,438	2,547	1,275
Portugal	1,507	1,556	1,661	1,524	1,437	1,486	1,591	1,454	70
Romania	2,687	2,388	1,890	2,438	2,547	2,248	1,750	2,298	140
Slovakia	1,030	1,095	1,287	1,000	940	1,005	1,197	910	90
Slovenia	927	1,046	1,423	848	927	1,046	1,423	848	0
Spain	5,860	5,210	4,229	5,216	5,585	4,935	3,954	4,941	275
Sweden	5,757	4,300	3,480	2,935	-1,363	-2,820	-3,640	-4,185	7,120
United Kingdom	3,638	4,366	4,137	5,685	-6,357	-5,629	-5,858	-4,310	9,995
EU-27	65,495	65,495	65,495	65,495	0	0	0	0	65,495

When assessing the quota based on the three criteria, there are some Member States where the current numbers of positive decisions on asylum applications at first instance and final decisions on appeal exceed the quota in terms of all four weightings. This indicates that these Member States are currently giving more positive decisions than their capacity relative to their GDP per capita, population and population density. These Member States are Austria, Belgium, France, Germany, Italy, Malta, the Netherlands, Sweden and the UK.

Figure 1 below provides a graphic illustration of the division of the quotas among the Member States as well as of the difference of the four models used.

Figure 1: Distribution of beneficiaries of international protection at density threshold of 200

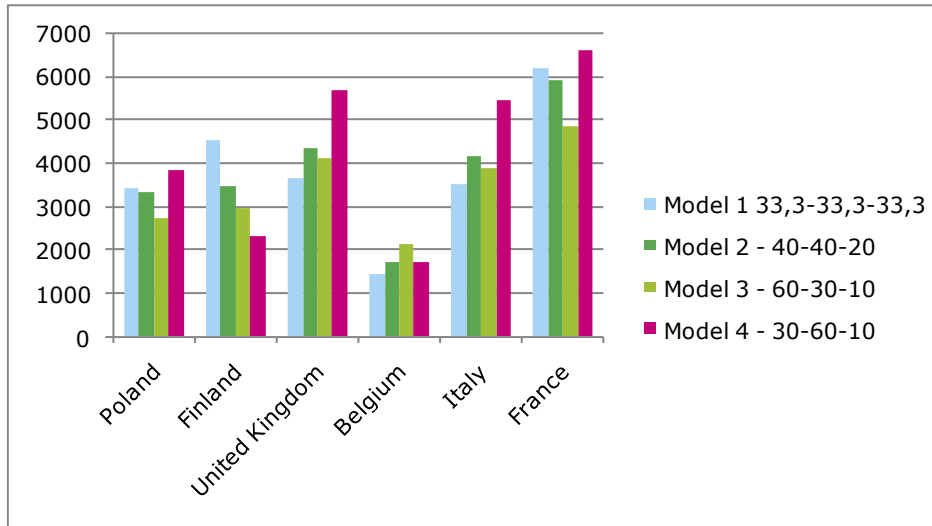


In order to illustrate the impact of the quotas on different types of Member State, we have selected six Member States with different characteristics as 'example countries' through which the impact can be demonstrated in more detail. The Member States have been selected based on the following characteristics:

- 1) Low GDP per capita distribution: Poland
- 2) Low population density: Finland
- 3) High GDP per capita distribution: United Kingdom
- 4) High population density: Belgium
- 5) Close to average GDP per capita distribution: Italy
- 6) Close to average population density: France

The impact of the different weightings on these Member States is illustrated in the figure below:

Figure 2: Distribution of beneficiaries of international protection in example countries (density threshold 200)



Looking more specifically at our example countries (Figure 2) it can be seen that the inclusion of population as a criterion balances out the quota for the Member States with a smaller population (Belgium, Finland), while the other two criteria still weigh heavily on the quota, thus bringing the quota of Finland (models 1-3) higher than that of Poland, with a significantly higher population, and that of Belgium, with a somewhat higher population. Weighting the population 60% evens out the quotas of the Member States with high population (the UK, Italy, France), but no important differences exist in the models where density is weighed higher than 10%.

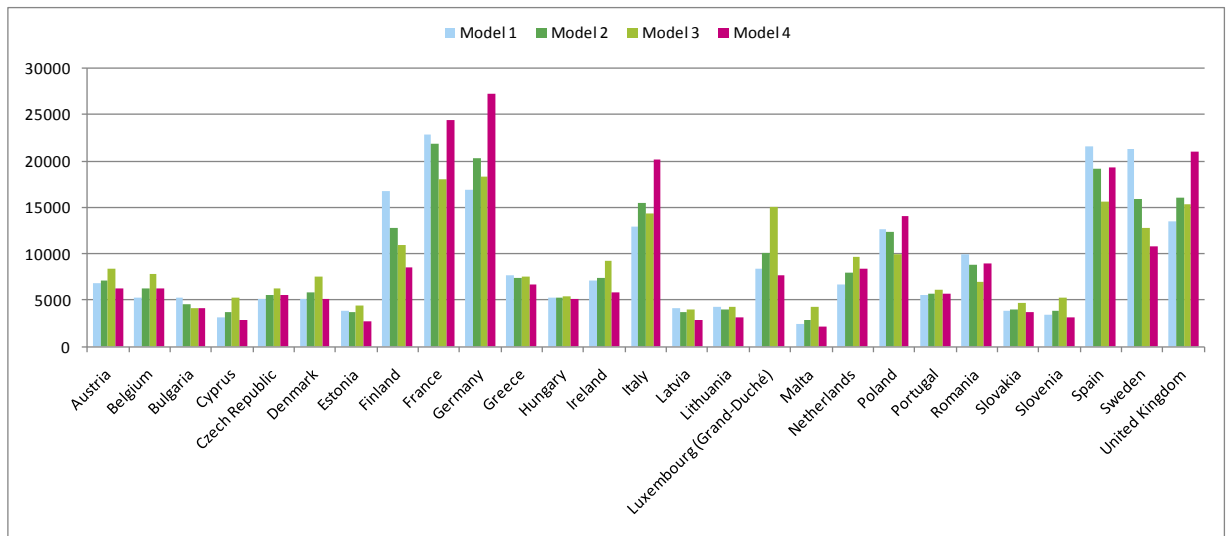
Whereas the above figures concern beneficiaries of international protection, similar calculations have also been made concerning asylum seekers. Table 2 below illustrates the distribution of **asylum seekers** among Member States when taking into consideration all three criteria and when using a density threshold of 200. The difference between the number of asylum seekers in 2008 and the quota is also illustrated.

Table 2: Distribution of asylum seekers at density threshold of 200 (source Table 7)

	Distribution of asylum applications according to weighting				Change compared to 2008				Asylum seekers 2008
	Model 1	Model 2	Model 3	Model 4	Model 1	Model 2	Model 3	Model 4	Total
GDP/capita	33,3	40	60	30	33,3	40	60	30	
Population	33,3	40	30	60	33,3	40	30	60	
Density	33,3	20	10	10	33,3	20	10	10	
Austria	6,753	7,092	8,415	6,279	-5,997	-5,658	-4,335	-6,471	12,750
Belgium	5,224	6,268	7,853	6,251	-6,171	-5,127	-3,542	-5,144	11,395
Bulgaria	5,309	4,621	4,057	4,152	4,564	3,876	3,312	3,407	745
Cyprus	3,172	3,679	5,277	2,841	-278	229	1,827	-609	3,450
Czech Republic	5,181	5,565	6,188	5,517	4,131	4,515	5,138	4,467	1,050
Denmark	5,187	5,847	7,596	5,089	2,812	3,472	5,221	2,714	2,375
Estonia	3,817	3,668	4,395	2,720	3,802	3,653	4,380	2,705	15
Finland	16,797	12,738	10,916	8,472	13,027	8,968	7,146	4,702	3,770
France	22,834	21,881	17,985	24,346	-19,011	-19,964	-23,860	-17,499	41,845
Germany	16,893	20,272	18,356	27,257	-4,472	-1,093	-3,009	5,892	21,365
Greece	7,645	7,363	7,597	6,705	-12,240	-12,522	-12,288	-13,180	19,885
Hungary	5,227	5,257	5,396	5,163	2,052	2,082	2,221	1,988	3,175
Ireland	7,098	7,364	9,262	5,866	3,293	3,559	5,457	2,061	3,805
Italy	12,979	15,442	14,371	20,206	-17,076	-14,613	-15,684	-9,849	30,055
Latvia	4,188	3,749	4,014	2,827	4,138	3,699	3,964	2,777	50
Lithuania	4,258	3,965	4,307	3,183	3,738	3,445	3,787	2,663	520
Luxembourg (Grand-Duché)	8,426	10,107	15,086	7,649	7,971	9,652	14,631	7,194	455
Malta	2,376	2,852	4,218	2,199	-229	247	1,613	-406	2,605
Netherlands	6,661	7,994	9,595	8,390	-6,719	-5,386	-3,785	-4,990	13,380
Poland	12,699	12,333	10,012	14,106	5,494	5,128	2,807	6,901	7,205
Portugal	5,561	5,742	6,132	5,626	5,406	5,587	5,977	5,471	155
Romania	9,918	8,814	6,977	8,997	8,738	7,634	5,797	7,817	1,180
Slovakia	3,800	4,040	4,749	3,689	2,895	3,135	3,844	2,784	905
Slovenia	3,420	3,860	5,253	3,129	3,180	3,620	5,013	2,889	240
Spain	21,626	19,228	15,607	19,252	17,186	14,788	11,167	14,812	4,440
Sweden	21,248	15,871	12,845	10,831	-3,117	-8,494	-11,520	-13,534	24,365
United Kingdom	13,427	16,112	15,268	20,984	-17,118	-14,433	-15,277	-9,561	30,545
EU-27	241,725	241,725	241,725	241,725	0	0	0	0	241,725

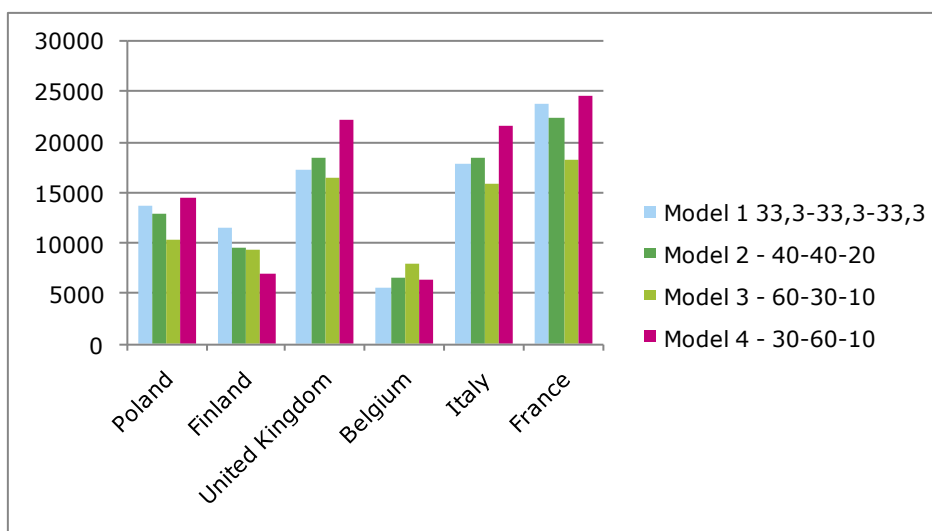
Figure 3 below provides a graphic illustration of the division of the quotas among the Member States as well as of the difference of the four models used.

Figure 3: Distribution of asylum seekers at density threshold of 200



The observations with respect to the size of the quota are similar to those presented in chapter 4.3 when discussing the quota of beneficiaries of international protection. We can however see that the number of asylum seekers assigned to Poland is higher than that assigned to Finland in all the different models. United Kingdom and Italy would receive very similar levels of asylum seekers, and when weighting the population at 60%, the share of these Member States increases strongly.

Figure 4: Distribution of asylum seekers in model countries (density threshold 200)



In order to change the way in which population density factors in the final quotas, the density threshold can be modified. Changing the density threshold upwards will have the impact that less Member States will have a negative potential population capacity, and that the assumed total capacity of the European Union will increase sharply. Therefore, under this population density threshold, there are more Member States sharing the total number of beneficiaries of international protection/asylum seekers, although the share allocated to the Member States with very low density decreases.⁵³

⁵³ Density distribution at a density threshold of 1000 can be found in Table 12 in Annex C

Table 3 illustrates the distribution of beneficiaries of international protection among Member State when taking into consideration all three criteria and when using a density threshold of 1,000.⁵⁴ The difference between the number of asylum seekers in 2008 and the quota is also illustrated.

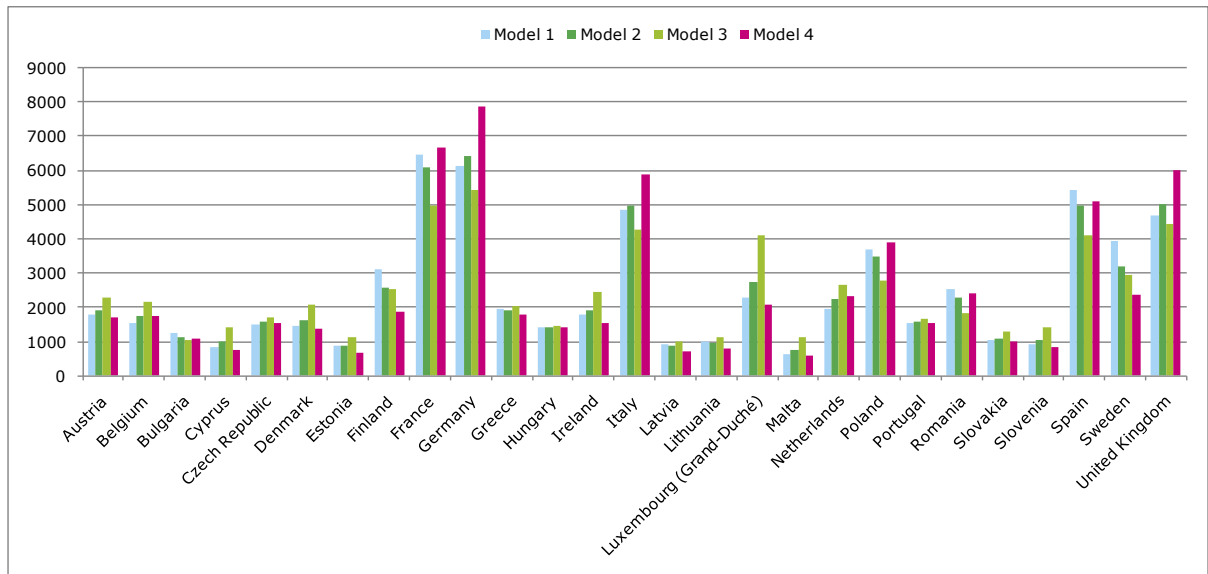
⁵⁴ Similar calculations for asylum seekers can be found in Annex C.

Table 3: Distribution of beneficiaries of international protection at density threshold of 1000 (Source: Table 6)

	Distribution of beneficiaries of international protection according to weighting				Change compared to total 2008				Beneficiaries in 2008
	Model 1	Model 2	Model 3	Model 4	Model 1	Model 2	Model 3	Model 4	Total
GDP/capita	33,3	40	60	30	33,3	40	60	30	
Population	33,3	40	30	60	33,3	40	30	60	
Density	33,3	20	10	10	33,3	20	10	10	
Austria	1,804	1,906	2,272	1,694	-3,616	-3,514	-3,148	-3,726	5,420
Belgium	1,529	1,767	2,162	1,728	-2,371	-2,133	-1,738	-2,172	3,900
Bulgaria	1,242	1,134	1,040	1,066	937	829	735	761	305
Cyprus	850	991	1,427	767	835	976	1,412	752	15
Czech Republic	1,500	1,565	1,705	1,523	1,265	1,330	1,470	1,288	235
Denmark	1,449	1,611	2,071	1,392	774	936	1,396	717	675
Estonia	871	896	1,142	688	866	891	1,137	683	5
Finland	3,096	2,578	2,521	1,859	2,516	1,998	1,941	1,279	580
France	6,464	6,095	4,956	6,680	-5,006	-5,375	-6,514	-4,790	11,470
Germany	6,141	6,431	5,442	7,854	-4,509	-4,219	-5,208	-2,796	10,650
Greece	1,941	1,917	2,019	1,778	1,566	1,542	1,644	1,403	375
Hungary	1,430	1,433	1,466	1,403	1,190	1,193	1,226	1,163	240
Ireland	1,776	1,907	2,465	1,545	1,181	1,312	1,870	950	595
Italy	4,835	4,975	4,289	5,870	-3,280	-3,140	-3,826	-2,245	8,115
Latvia	916	884	1,022	700	916	884	1,022	700	0
Lithuania	988	975	1,117	813	918	905	1,047	743	70
Luxembourg (Grand-Duché)	2,293	2,744	4,090	2,075	2,188	2,639	3,985	1,970	105
Malta	644	773	1,143	596	-766	-637	-267	-814	1,410
Netherlands	1,948	2,252	2,643	2,316	-417	-113	278	-49	2,365
Poland	3,692	3,492	2,788	3,897	2,417	2,217	1,513	2,622	1,275
Portugal	1,550	1,582	1,674	1,538	1,480	1,512	1,604	1,468	70
Romania	2,523	2,290	1,841	2,388	2,383	2,150	1,701	2,248	140
Slovakia	1,042	1,102	1,290	1,003	952	1,012	1,200	913	90
Slovenia	921	1,042	1,421	846	921	1,042	1,421	846	0
Spain	5,445	4,961	4,104	5,092	5,170	4,686	3,829	4,817	275
Sweden	3,920	3,198	2,929	2,383	-3,200	-3,922	-4,191	-4,737	7,120
United Kingdom	4,686	4,994	4,451	6,000	-5,309	-5,001	-5,544	-3,995	9,995
EU-27	65,495	65,495	65,495	65,495	0	0	0	0	65,495

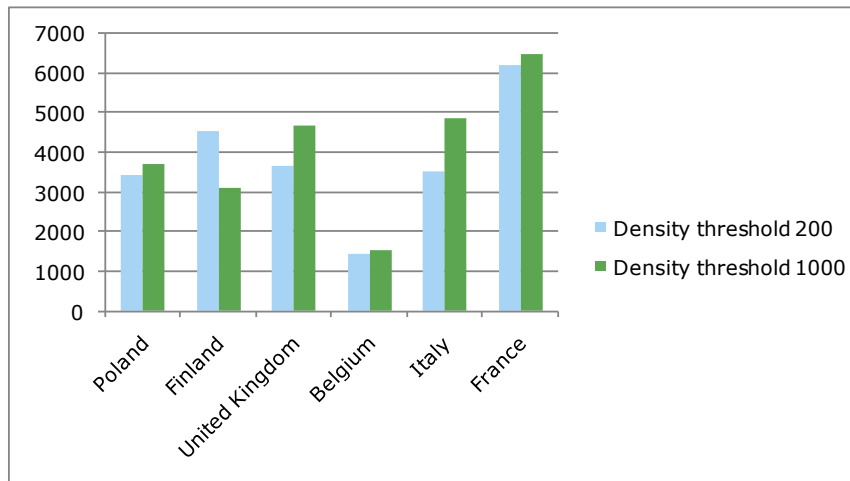
Figure 5 below provides a graphic illustration of the division of the quotas among the Member States as well as of the difference of the four models used.

Figure 5: Distribution of beneficiaries of international protection at density threshold of 1000



The difference between the two density thresholds used (200 and 1000) can be illustrated through our six model countries (Figure 6).

Figure 6: Impact of density threshold on Model 1 in model countries (beneficiaries of international protection)



When looking at the distribution of beneficiaries of international protection according to model 1 (where all criteria weigh equally), it can be seen that using a density threshold of 1,000 the quota will increase in all the Member States except for Finland which has a very low density. In Belgium (a Member State with a high density) the change is however not as important.

The above calculations have shown to us that the way in which the quota is calculated (i.e. how the criteria weigh) has an important impact on the final distribution of beneficiaries of international protection between the Member States.

5. POLITICAL IMPLICATIONS

5.1 Introduction

With regard to the political implications of relocation and specifically the two options presented in this study, the Member States were asked to:

1. Make estimates of the number of persons who could be subject to relocation in their Member State under their preferred model;
2. Assess the likelihood that asylum flows to their Member State would increase as a result of the implementation of their preferred option;
3. Suggest possible ways to limit any potential pull factors resulting from their preferred model; and
4. Assess whether the feasibility of the option changes, in case vulnerable persons (including unaccompanied minors) are included in the mechanism.

Some interviewees restricted themselves to one option in answering these questions, others spoke more broadly. There was sometimes divergence of opinion between individuals representing the same institution in a Member State. The description of the political outcomes of the options and of relocation generally that follows is therefore a reflection of the range of responses given, and of the points which emerged as cutting across all options, regardless of particular preferences or even a Member States willingness or otherwise to eventually participate in relocation.

Five issues emerged as cross-cutting themes reflecting the political implications of relocation. These are the issues of:

- Who would be relocated: beneficiaries of international protection, asylum seekers or both of these groups?
- How many places would be available, or needed, for relocation?
- Would relocation be a pull factor for new asylum seeking arrivals either in individual States, or for the Union as a whole?
- What would the role of the European Asylum Support Office be?

Following discussion of these four issues, the political implications of the two options as these emerged through the interviews will be set out.

5.2 Relocation for whom?

Member States appear to hold quite differing views on which groups should be included in any relocation scheme, regardless of the option selected, or variations on the options that were suggested. Indeed, every variation on the groups to be included or excluded was offered.

Several Member States did **not want to see asylum seekers included**, and almost half of these were quite insistent that relocation of asylum seekers could not be considered. For most of these Member States questions relating to the implementation of the Dublin system were a reason for excluding asylum seekers. A few Member States stated that Dublin is a cornerstone of the asylum procedure as it is progressing in a more harmonised form, and indicates responsibility, both of which factors would be undermined by the operation of a relocation scheme for asylum seekers. A relocation scheme for asylum seekers would, one Member State noted, require a renegotiation of the Dublin system which is not currently politically feasible. Another Member State suggested that if relocation would lead to asylum seekers being able to decide where they apply for asylum then Dublin would simply be finished, which would be a pull factor for the European asylum system.

One Member State wanted to see a relocation scheme limited to **refugees only**, so not including asylum seekers or people with subsidiary protection. Two Member States cautioned that if only beneficiaries of international protection were to be included then care would need to be taken

that procedures were not sped up and made flexible in order that people were recognised and could then be relocated.

One Member State wanted to see a relocation scheme **only for people with subsidiary protection and asylum seekers**, so excluding refugees, for which this state does not offer transfer of protection status. Some Member States said a relocation scheme should **include asylum seekers** and three of these would like a scheme which is **only for asylum seekers**, indicating that the call for relocation is about the burden of asylum seekers, not the burden of people benefiting from international protection. One of the Member States suggested starting with beneficiaries of international protection and later expanding the relocation scheme to asylum seekers. Two Member States also pointed out that if relocation were for asylum seekers only there would be no concerns about mutual recognition or joint processing.

A few Member States indicated **no preference about the groups to be included**. In one of these cases there was a reluctance to include asylum seekers rather than an explicit statement against their inclusion, and that Member State was keen on relocation. In the other cases where no preference was indicated there was also no enthusiasm for relocation.

Most NGOs and UNHCR indicated that relocation should in their opinion be for both asylum seekers and refugees. ECRE was an exception to this, as Dublin was seen as confusing the issue, making the entire situation costly and lengthy for all involved.

Beyond a discussion of the status of people who could potentially be relocated, a few Member States commented on the potential for the **inclusion of vulnerable groups** to alter the political implications of relocation models – but in different ways. One said vulnerable groups should not be included as they would only present problems; two others said vulnerable groups should be part of the total as it would make the whole approach easier to explain to the public and more morally palatable; and a third said it did not see the point in considering vulnerable groups as separate in this context – relocation should either be for everyone or for no-one. One Member State noted also that it is in its special interest to support vulnerable groups, and in particular families and single mothers. On the basis of past and ongoing relocation projects it can be assessed that Member States are in general not against the relocation of vulnerable groups. At least three Member States included vulnerable people in the group of relocated people.

More specifically concerning **unaccompanied minors**, one Member State stated a fear that including vulnerable groups, most particularly unaccompanied minors, would give rise to a surge in smuggling in that particular group. The same Member State also warns about the special care required for handling unaccompanied minors and the financial and other costs associated with their ongoing care and children's need for stability. The question of guardianship was lifted by a few Member States as being a decisive one. Whereas in one Member State the lack of guardians is the main issue, in another Member State the existence of a guardianship mechanism makes relocation of unaccompanied minors difficult (see section 6.1). A few Member States stated that including unaccompanied minors in the group of persons being relocated would not change the political feasibility of a relocation mechanism. One Member State noted that even though reception of vulnerable people in general would be difficult (in particular due to the existing medical system), unaccompanied children could be included in a relocation mechanism.

In sum, there seems to be little or no agreement on who could be included in any relocation scheme. The numbers issue for Member States experiencing significant arrivals is a matter of asylum seekers, so that is the problem for which relief is sought. However, a number of barriers arise, particularly in relation to the Dublin system. Barriers similarly arise to the relocation of beneficiaries of international protection, including on the transfer of their protection and/or recognition of their status (see chapter 0). The larger group of Member States is that which indicates that asylum seekers should be excluded, however, the interviews suggest that they do not form a majority of all (or the 26) Member States.

5.3 How many places for relocation, and where?

Regardless of who might be relocated, very few interviewees representing Member State authorities seemed willing or able to respond to the question posed to them about an estimate of a number of beneficiaries of international protection and/or asylum seekers who might be subject to relocation. Those that were willing to suggest a number were all Member States anticipating the 'import' of relocated persons⁵⁵. One NGO interviewee suggested that a small-scale programme, in which small Member States might accept 5-10 people for relocation in a year would be inefficient, and that numbers would need to be larger.

An issue which arose in connection to the question of the number of places for relocation was the direction in which interviewees envisaged relocation might operate. Several (17) Member States would see themselves as importers under a relocation scheme. Some (6) of these indicated numbers between 5 and 20 persons for relocation, or said 'a small number' or a 'symbolic number'. The authorities of one Member State estimated that the number of beneficiaries that might be relocated from other Member States would amount to approximately 7000. One of the Member States that saw itself as an importer noted a fear that the number of relocated persons they would be expected to take would be higher than they could cope with in the light of their infrastructure, another alluded to capacity issues as constraining the number they could accept, and third said the number would have to be small to ensure social cohesion. Another Member State indicated that it was unimaginable that relocation could take place due to its current resource issues and the economic crisis. One Member State said the number would surely be influenced by political and economic factors. One Member State which saw it would actually be expected to export rather than import said it would never ask for relocation for people who had sought asylum there.

Some Member States suggested they would be 'candidates' to export beneficiaries of international protection and/or asylum seekers. In two cases these States thought others would expect them to be importers in a relocation scheme, but they could politically explain to their populations the export and not the import of relocated beneficiaries of international protection (both of these states would not include asylum seekers in a relocation scheme). A few Member States suggested that although they would benefit from the relocation of beneficiaries of international protection and asylum seekers away from their territory, they might be reluctant to seek such relocation because of the signal that would send of an inability to manage its asylum system. Another Member State suggested that the numbers would be different under the two different options.

One Member State indicated that it could be either an 'importer' or 'exporter' of people to be relocated. It would currently see itself as a potential 'exporter' but could envisage 'importing' if its own numbers of asylum seekers and beneficiaries of international protection were to go down as a result of the levelling of the playing field, which it would see as essential for participation in, or the development of, a relocation scheme. One said it would surely be an importer unless irregular immigrant numbers were somehow factored in.

Three Member States did not indicate whether they thought they would be importers or exporters, in two of these cases the Member States reject the idea of a relocation scheme.

Although there was a reluctance to talk about actual numbers, a majority of Member States suggested they would be potential importers of people if there were to be a relocation scheme.

When asked about the main factors influencing the yearly number of persons to be relocated, a few Member States raised public opinion and the ways to manage it as factors in making relocation politically viable and thus increasing the number of people that a Member State will relocate. The fact that relocation might be a 'hard sell' could be a strong factor in assessing its political feasibility. One eastern Member State said it would recall for the public the way in which its own citizens were accepted as refugees and resettled and relocated during a Cold War crisis.

⁵⁵ The total of their estimates came to between 7,045 and 7,110 persons (as some indicated an estimated range rather than a direct number). It should however be taken into account that 7,000 of these were expected to be relocated to one specific Member State.

One Member State noted that as long as overall numbers were kept in check, relocation could be sold to the national public as solidarity with other Member States, but if numbers rose then there would be problems. Another Member State noted the need to conduct awareness-raising campaigns. NGOs in that state suggested the public would not accept intra-EU solidarity as a sufficient reason for the arrival of relocated beneficiaries of international protection. One Member State indicated that Option 1, with a quota, would be particularly difficult to 'sell' to the public, and could make the public turn against refugees more generally.

The non-governmental and international organisations in one Member State noted that all immigrants – regular, irregular, refugees, asylum seekers etc. – were viewed unfavourable, partly due to the authorities' management of the issue in their opinion – and so relocation would be viewed unfavourably by the public.

5.4 Would relocation be a pull factor?

Whether a relocation scheme would prove to be a pull factor for asylum seekers was one of the three main questions put to interviewees. Several (13) Member States suggested that **relocation could be a pull factor**, either for themselves as individual states, for other Member States, or for the EU as a whole. These Member States gave varying reasons as to why this would be the case:

- Some (6) pointed to a general pull factor based on the knowledge that a relocation programme exists, and thus prompting asylum seekers and smugglers to target states from which relocation was occurring, although one noted that the scheme might not matter so much: the EU is simply a pull factor
- One Member State suggested that participating in relocation as a receiving state might make them look tolerant and flexible, and that in itself could be a pull factor, increasing the number of asylum seekers arriving in that State
- One Member State saw the creation of new ethnic or minority communities through the relocation of nationalities not previously present in the receiving Member State as sign of a pull factor following from relocation.

At the same time, one NGO suggested that if relocation created a pull towards Member States that currently have disproportionately small case load it could be a good thing, as it would mean they would actually and actively be participating in the European refugee protection regime.

Some Member States foresaw **no pull factor** for themselves, whether or not they anticipated that they saw the EU would experience an increase in asylum applications as a result of relocation. One Member State foresaw, partly on the basis of its experience with the pilot project, no pull factor linked to relocation. This prediction was based on the fact that no person arriving in any Member State, including one from which relocation might take place, is guaranteed that their asylum claim will be recognised, or that they would be successful in any application for relocation. The stakeholders in this Member State considered that people were arriving mostly 'by accident', pushed by factors in third countries, rather than pulled by policies in Europe, although they did acknowledge that this might be different in other Member States. Similarly, UNHCR suggested that there should not be a pull factor as relocation alone should not influence the rate of status recognition across the EU.

A few Member States suggested **ways to limit the potential pull factors of a relocation scheme**. One indicated that limiting the pull factors would be a matter of image – the mechanism would need to be low profile, it was suggested, however annual talks at a high-level, for example, would make this impossible, and trying to lower the profile would contradict the political need to make solidarity and burden-sharing visible for the EU population. One Member State said the best way to limit potential pull factors would be to exclude asylum seekers. Another suggested that those most likely to be attracted to apply for asylum as a result of the opportunities for relocation would not be refugees but irregular migrants looking for a way in.

One Member State suggested the potential general pull factor generated by knowledge that relocation was possible could be mitigated if policy harmonisation took place, or if the relocation were to primarily take place towards less popular (Eastern) Member States.

There was, thus, no consensus on the role that a relocation scheme could potentially play in encouraging asylum-migration to the EU or to individual Member States, and varying views on how any potential pull factor could be limited.

5.5 Role of the Commission and of the European Asylum Support Office

Both the Commission and the European Asylum Support Office were given a role in both options presented to interviewees. In particular the role of the EASO was referred to by several (15) Member States and some (2) organisations.

A few Member States foresaw a strong role for the EASO, if in differing ways (in one case taking decisions as portrayed in Option 1, in another having an Option 2 style role in technical assistance, support and the strengthening of asylum systems in those Member States where this is necessary).

Some (8) other Member States said EASO involvement should be in a strictly coordinating role and questioned the way in which EASO's role was sketched in both options as more important than its existing mandate would suggest. These states stressed that the EASO has no decision-making power in individual cases. One Member State pointed to the need to alter the regulation on the EASO mandate, foreseeing that a small change for coordination of relocation and signalling the need on the basis of an established formula should be feasible, whereas a major change to allow decision-making was very unlikely in the near future. A few other Member States also noted that a significantly different and more substantial role for the EASO would be possible only many years in the future.

One Member State noted that EASO will have an important role to play, but that this role would be on practical cooperation between Member States to implement the Common European Asylum System, and the EASO should not be distracted by allocating resources to assessing applications for intra-EU relocation. This Member State also felt that allowing beneficiaries of international protection to apply to specific Member States based on criteria such as family ties or medical issues could undermine the principle in the EASO Regulation that Member States voluntarily agree to relocate individuals.

Although not all Member States discussed the role of the EASO, those that did were reluctant to see as strong a role as that portrayed in the options presented. That there should be some coordination was broadly accepted by those Member States commenting on this issue in the interviews, but extending the mandate of the EASO to give it decision-making powers was viewed by these States as going too far (at least at this point in time).

Concerning the role of the Commission, this was discussed by a few Member States and international organisations. These were supporting a strong role for the Commission, where EASO would coordinate closely with the Commission. One of the Member States proposed that the need for relocation should be decided on by the Commission, whereas an international organisation suggested that the Commission drives the legislative measures and conveys the important messages.

5.6 The position of the 26 Member States concerning the two options

In this section each of the two developed options will be dealt with in turn in the first two sections. In each of the sections there will be discussion of the different categories – persons benefiting from international protection and asylum seekers, where distinctions arose in the course of interviews, and what the political implications could be of each option as indicated by Member States, UNHCR, IOM and NGOs.

5.6.1 Option 1: Relocation according to a pre-determined quota

Option 1 seemed to be in general the less favoured one of the two options among the Member States.

Some (8) Member States, whether the interviewees appeared to favour Option 1 or not, expressed doubts about the political feasibility of a quota system. NGOs which preferred Option 1, as well as some that prioritised Option 2 because it seemed more likely to win political support, also voiced doubts as to the political viability of Option 1, at least in the short-term. One international organisation suggested that the political feasibility would differ dependent on whether the system would be about refugees (where it would be less feasible because Member States would want to determine status themselves) or with asylum seekers. One Member State noted that it would be almost impossible for it to join such a scheme due to the domestic arrangements for the creation of immigration policy, and specifically the need for complex negotiations were a quota to be involved. One Member State noted that if one could ignore what already exists then Option 1 might be the ideal – but we are not starting with a clean slate.

Several Member States, NGOs and international organisations expressed concerns about the connections between this type of relocation scheme and the Dublin system.

There were particular doubts as to whether agreement would be achievable on the criteria to be used and how the quota would be calculated, particularly if the system would look only to future numbers and not past contributions.

Some Member States and organisations suggested additional criteria such as the available infrastructure for reception; the possibility for integration including the background of refugees ; taking account of existing migrant stock or the percentage of foreign population, including irregular migrants; size of territory rather than population, so that smaller Member States would get a smaller quota; population rather than population density, since no-one should be relocated to an area with low population density; repatriation rates; Member State compliance with the right to non-refoulement; the best interest of the child; family unity; that voluntary repatriation has been considered and has been ruled out; responsibility for border control; unemployment rates.⁵⁶

One Member State suggested a quota system would be counter-productive: that by telling migrants they have to be in a given Member State one would only find that they undertake secondary movements. Another Member State suggested that a quota system would need to involve compulsion, because the people who should be relocated might otherwise waste the places available by not moving, particularly in the early days, before (new) communities have been established.

A few Member States pointed to concerns about social cohesion and ethnic communities as criteria for determining who should be relocated where under a quota (or any) relocation system. This concern was expressed as a quota emphasising numbers above integration. One Member State suggested that a quota system as expressed in Option 1 would likely be seen by the public as being imposed by 'Brussels and the Commission', and therefore it would not gain popular support.

A few Member States suggested that a quota would offer a more predictable system than an *ad hoc* approach, but one noted that even with predictability, Member States would need a significant amount of time to prepare, and there could be a public backlash, particularly if quotas were high. Two NGOs contended that a quota would be necessary to ensure Member States (and particularly smaller Member States) participated – that if the system were more informal and

⁵⁶ The statistics available have allowed the study team to calculate an amended quota for each Member State, based on the number of persons granted international protection in each Member State in 2008 and the number of asylum applications lodged in the Member States in 2008. The calculation attempts to take into account the existing burden on the Member States and to adapt the quotas in such a way that Member States that have dealt with relatively high shares of beneficiaries of international protection and asylum seekers will have a relatively smaller quota. The calculation is illustrated in Annex C.

voluntary then Member States would not relocate because they did not feel that they had to do so.

A few Member States and organisations suggested that there could be a phased approach – starting with Option 2, and moving to Option 1 – with the trigger according to at least one Member State being full harmonisation. One Member State which opposes Option 1 also called Option 2 a place to start.

5.6.2 Option 2: 'Relocation and burden-sharing on an *ad hoc* basis'

Some (6) Member States saw Option 2 as much more politically feasible than Option 1, or the only feasible alternative. A few Member States view this option as in fact replicating the current situation. For some of these Member States, and others who see this option as going beyond the current situation, the twinning, cooperation and technical assistance aspects of burden-sharing are more attractive elements than the relocation.

A few Member States noted that Option 2 would be preferable because it allows states to maintain autonomy and freedom, and leaves scope for different approaches. The fact that the system would be voluntary for both states and individuals was appreciated by a few Member States, one of them noting that the voluntary nature would mean they could withdraw if need be at any time.

One NGO noted that an advantage to Option 2 might be that there would be psychological pressure between Member States, encouraging them to increase their 'quotas' and shaming them if they only relocated a few refugees or asylum seekers while other states relocated hundreds or thousands. One Member State also labelled Option 2 a peer pressure mechanism. As a 'flip' side to this, one Member State suggested that Option 2 could produce a kind of competition between Member States, whereby some would not find candidates for relocation, because others were deemed more attractive, thus letting open relocation places go unfilled.

Another Member State said that precisely this type of popularity contest would be a reason for not allowing beneficiaries (it did not want asylum seekers included) to choose whether to apply to relocate, or to apply to a particular state. If a Member State proved to be a 'magnet' for a particular nationality of beneficiary, for example, then there could be problems with integration it noted. Another Member State said that the people to be relocated should not choose – they should be told where to go e.g. by EASO.

A few other Member States said they specifically wanted to see double-voluntarism.

There seem to be some variations on what is understood by 'voluntary' for beneficiaries and/or asylum seekers. In particular there are distinctions made concerning whether voluntary means the individual must make an application, and actively choose a state and relocation, or whether voluntary means that the individual agrees to relocate. One Member State seems to see agreeing to relocate as covering the 'voluntary' aspect, for example.

Option 2 included the idea that Member States could suggest the characteristics of people to be relocated that they would prefer, or require.

Two Member States were against the inclusion of such characteristics. One said that factors such as ethnic origin, age, gender, education etc. would be used, and that this would largely defeat or at least distort the core objectives of any EU responsibility sharing instrument, as well as making the entire option less viable. The other suggested that allowing the Member States to which people would relocate to specify the desirable characteristics would essentially mean the more difficult cases would be left behind in the Member States with which solidarity was supposed to be being shown, and said there should be more balance. There might, for example, not be enough people with the right characteristics to fill a 'quota' or open slots. It was also noted that the only criteria that the US sets for its resettlement programme with Malta are that the people are refugees with no material connection to terrorism.

One Member State however saw the ability for Member States to say what type of people they would accept as being important in a system which would allow States to be quite free in their approach, and to maintain differences. A few Member States wanted to specify characteristics such as ethnicity to maintain social cohesion and promote integration.

IOM suggested that there should be some kind of repartition key between the 'desirable' characteristics and vulnerable persons, ensuring states that relocate take both.

5.7 Summing up on the political implications

While no hard and fast conclusions can be drawn from this overview of the political implications of the options for relocation described in this study and presented to interviewees in the 26 Member States involved in the ERF, eight points can be drawn out for observation and future analysis.

1. A relocation scheme should not include asylum seekers, at least in the first instance, and until the overlap, or clash, with the Dublin System has been resolved

Although there are some (9) Member States that would seek to have relocation for asylum seekers, only for asylum seekers, and indeed specifically not for refugees, the larger number seem to prefer to exclude asylum seekers at least in the first instance. Those who assert that asylum seekers should be included have a pragmatic argument: the numbers problem is rather more with arrivals of people seeking protection than with the number of people being granted protection. However, the pragmatic argument on the side of excluding asylum seekers might prevail politically, because it is concerned primarily with existing agreements and practice, as well as with the potential for the relocation of asylum seekers to stall some Member States' evolution towards harmonisation and a common asylum system in practice and on paper. The specific concerns related to Dublin, and the sequencing of asylum applications, decisions about Member State responsibility, transfer and relocation applications and requests are legal rather than political. However, the decisions concerning how to resolve these issues will certainly be political ones. Resolving these issues would delay any decision to embark on relocation indefinitely, so if the EU is to engage with relocation in deeper practice than is currently the case, asylum seekers will need to be excluded at least in the beginning, regardless of the option chosen.

2. Difficult to assess the number of beneficiaries or international protection/asylum seekers to be relocated

Regardless of who might be relocated, very few interviewees representing Member State authorities seemed willing or able to provide an estimate of the number of beneficiaries of international protection and/or asylum seekers who might be subject to relocation. Although there was a reluctance to talk about actual numbers, a majority of Member States suggested they would be potential importers of people if there were to be a relocation scheme.

3. No clear signs of pull factors have been identified as a result of past and current relocation projects

Malta reports no signs of pull factors as a result of current projects, and expresses no concern that this might be the case in the future, since there is neither guarantee that a person arriving in Malta will be recognised as a beneficiary of international protection nor that they would prove successful in an application for relocation. France, on the other hand, has reported that new migration networks have been created in the country and that this could be a result from relocation from the countries in question. In interviews more Member States foresaw a pull factor either for themselves or for the EU as a whole if a relocation scheme were to be put in place than thought there would be no pull factor. One or two Member States noted that the pull might not be on genuine asylum seekers but on irregular migrants and on smugglers planning to use the asylum and relocation combination to get individuals to states in which they preferred to live.

4. Accord a coordinating and support role to the European Asylum Support Office, but no decision-making agenda.

Both of the options as presented indicate a strong role for the EASO. Under Option 1 as drafted for refugees and beneficiaries of international protection applications for relocation would be lodged with and assessed by the European Asylum Support Office, whose mandate would need to be adapted accordingly. The EASO would then provide an assessment to the European Commission on which refugees would be allocated to which Member State, taking into consideration the agreed quotas. The Commission would then prepare a proposal on the allocation to the Member States. In principle Member States should relocate in accordance with the EASO proposal, however, under delineated circumstances they could decline to relocate certain individuals.

Under Option 2 as drafted individual or family applications for relocation would be lodged with and assessed by the EASO. The EASO would take the final decision on which refugees would be allocated to which Member State within the limits of the pledges made by the Member States.

However, in the near future, at least, Member States would appear to prefer to keep decision-making in their own hands, having a coordinating and supporting role, but no more, for the EASO.

For Option 1 this would likely mean that the EASO could gather applications for relocation, but rather than assigning a particular individual or family to a Member State, it would need to present *all* cases to *all* Member States, which would then need to agree on which people they would accept.

Similarly to Option 1, for Option 2, applications for relocation might be accepted through the EASO as the coordinating body and single 'face' for the refugees and beneficiaries of subsidiary protection, but the applications would have to be presented to the Member States participating in the relocation mechanism, which would take their own decisions, and need some method of coordination and mediation for situations in which more than one Member State proved willing to relocate an individual or family.

For both options then, the EASO would become a sort of coordinating 'clearing house' for relocation – administratively managing the process, but taking no decisions on particular cases.

Box 1: Example of pledging and allocating refugees in the US and Canada

The US and Canada, as part of their long-standing refugee resettlement programmes, have models of placing refugees in a given city or region which could be drawn upon in the creation of the EU's relocation scheme.

In Canada, resettled refugees arriving on the Government assisted programmes (rather than under private sponsorship) are 'destined' ie sent to a location within Canada where community resources and services are thought by the Government to best support their resettlement and integration needs, while at the same time not overburdening Canada's main cities. For destining purposes, Canada is organised into five regions. Priorities for determining where to place refugees include: if the refugee has relatives in Canada; French and non-English speakers are generally destined to Québec; and the rest are dispersed across the country.

In the US, the organisations that deal with integration and social assistance programmes for resettled refugees (mostly NGOs and some states) have a weekly allocation meeting to decide which families will be sent to which US states. The organisations sit around a table with paperwork showing essential characteristics of families due to be resettled: number of family members, genders, ages, any particular medical conditions, relatives already in the US etc. The representatives of the organisations then go around the table selecting families in turn. Organisations which are meant to take more refugees according to their funding from the Government might take larger families, or more families; any existing family connections are taken into account. By the end of the session organisations might need to 'barter' a few families to make the numbers and proportions each organisation or state is supposed to take match up.

5. Policy harmonisation and/or technical assistance should be promoted

Some (11) Member States stress that policy harmonisation is either a prerequisite for or a necessary element in any relocation scheme. Asylum or broader immigration policy harmonisation could potentially be included in the two options as a type of 'pay off' or *quid pro quo* of relocation. The suggestion then would be along the lines of 'you need us to relocate people to help you out largely because your system is not yet in order. If we do this, you must adapt x, y and/or z in your legislation or practice, so that it is less likely that you will need relocation in the future, other than due to geography and/or a real crisis emanating from somewhere relatively closer to you than to us. And if you do not adapt as we suggest, then we will not relocate people from your territory again'.

Concerning inclusion of technical assistance or twinning projects in the two options, the views of the Member States differ. Several Member States stress that technical assistance, twinning or training should be a part of any relocation scheme. Technical assistance, twinning or training could be written into a programme based on Option 2 in various ways. It could be something participating states are obliged to undertake in addition to relocating some people, as a measure intended to resolve some of the issues which gave rise to a need for relocation. It could also be written into the Option as something some Member States do instead of relocation, while other Member States relocate people. In Option 1, technical assistance could likewise be written in as an obligation accompanying a quota – with varying levels of required assistance linked to the quota a State is expected to take. The link could be inverse (the higher the quota, the lower the technical assistance requirement and vice versa). In that case, there would be a need to somehow quantify technical assistance vis-à-vis relocation.

6. Start with small numbers to make relocation understandable and acceptable to the general public.

A sense that experts working on refugee and asylum issues across Europe worry that the public would not accept relocation, largely due to fear of the scale of movements, leads to the suggestion that any relocation programme should start with relatively small numbers. Indeed, this has largely been the case for the existing pilot projects (see chapter 0), and is reflected in the fact that of the Member States that indicated any number of persons they could envisage relocating, the majority gave numbers below 20.

For Option 1, starting with low numbers might involve a cap on the number of relocation places, either per Member State, or in total. If the cap was to be on the total, then quotas could reflect the percentage outcome for Member States from the calculations involved, applied to the total number of persons to be relocated.

For Option 2, as a non-binding and flexible approach, the implication might be that Member States would anyway start small. Only one Member State suggested a number that exceeded 20 in the course of interviews for this study. If there is no pressure to volunteer elevated numbers from the beginning, Member States might be more inclined to participate in a scheme, offering just a few places, to test the process and adapt the programme once practical and real implications have been experienced.

7. Ensure that Member States involved in relocation do not substitute this for participation in an EU resettlement programme

EU Member States and the European Commission have been working hard to develop greater commitment across the EU to resettlement, demonstrating the strength of European participation in the global refugee regime, as actively offering protection as well as granting refuge to those who arrive seeking asylum. In the first act of intra-EU relocation in recent years, as a one off event, the Netherlands used places on its resettlement programme to offer protection to people who had been initially granted protection in Malta. The US is making available places for refugees in Malta on its resettlement programme to help relieve the burden there. However, intra-EU relocation and resettlement of refugees are quite distinct activities, and in order to avoid confusion, or the appearance of preferences and priorities, if both are operating at the EU level they should not be substitutes for one another or overlapping programmes, but clearly distinct categories, each contributing in different ways to their separate goals, even if they share the aim of inter-state solidarity.

8. Whether as criteria for a re-modelled Option 1 or as elements of the selection procedure based on characteristics for Option 2, issues such as integration and links to existing ethnic communities should be involved in decisions on relocation. However, for Option 2, it should be ensured that no Member State can 'cherry pick'.

Migration and refugee protection are not only about numbers and arrivals in a territory, but also about the long-term for states and individuals, and thus about integration. A Member State involved in pilot relocation projects noted the perception that new ethnic communities were being created through relocation efforts, and that relocation was stimulating new arrivals on its shores of groups that were previously not attracted to its territory. Other Member States noted that they preferred that attention be paid to the ethnic groups already present in their territories in decisions on relocating persons, to facilitate integration and for the purposes of presentation to the public at large.

For Option 1, including links to existing ethnic communities as a criteria could mean weighting quotas dependent on potential relocation groups, to make relocation of a particular nationality or group more likely, or exclusively, targeted at Member States in which that group is already present. Or, it could be a question of using ethnicity at the application stage to determine where a refugee would be relocated, rather than a criterion used in quota-creation.

For Option 2, Member States might be able to pledge a higher number for relocation if the group to be relocated includes members of previously settled communities, or co-language groups, for example. However, in considering the issue of characteristics as a selection criterion for Option 2, there must be an awareness of the possibilities for 'cherry picking' and the flaws of such an approach in terms of solidarity (e.g. leaving the most 'difficult' cases for the Member States from which relocation takes place; a competition for refugees and beneficiaries of subsidiary protection on the basis of immigration characteristics, etc.). The suggestion noted above that if such characteristics as potential for economic integration were to be used they should be used in an overall balanced approach (e.g. that if a Member State seeks people to relocate who have skills, then that Member State is required to take a proportionate number of people with medical needs or other vulnerable cases) should be taken into account.

5.8 Concluding on the feasibility of the two Options (political implications)

Based on the political implications as set out above, the options would gain in feasibility if the following was taken into account:

OPTION 1

Three changes should be made to Option 1:

- Asylum seekers would not be included
- The EASO would be given a co-ordinating rather than a decision-making role
- Additional criteria might be included beyond GDP and density; however, there is a long list from which a selection could be made.

OPTION 2

Option 2 should be changed in three ways:

- No asylum seekers would be included
- The EASO would have a co-ordinating and not a decision-making role
- Either Member States would not be able to specify characteristics beyond the need for international protection, or they would be required to take a balanced group, shared between those they found more 'desirable' and those individuals whose needs and vulnerabilities might be greatest.

6. LEGAL IMPLICATIONS

6.1 National legal implications

The general picture shows that only a few Member States see national legislation as a potential obstacle to establishing a relocation mechanism. For the majority of the Member States there are no fundamental obstacles or nothing that could not be amended in order to implement a common mechanism for relocation.

One of the major obstacles which a number of countries point to, is the fact that there is no mechanism for transferring protection status under EU law, and therefore a refugee status granted by one Member State may not necessarily be recognised in another Member State. Currently the legal standards regarding beneficiaries of international protection differ according to Member State, and as a consequence harmonised legislation may be necessary in order to accept the status for beneficiaries of international protection granted by other Member States. Member States also point to the different legal standards with respect to return of migrants, to reception conditions, and to family reunification, which could potentially pose a problem and create differential treatments. Also, specifically in relation to **vulnerable groups such as unaccompanied minors**, it appears that Member States apply different degrees of protection which could prove difficult to reconcile within a relocation scheme. In one Member State unaccompanied minors receive a legal guardian who is responsible for the minor until the age of eighteen. As a result unaccompanied minors cannot be relocated without the consent of the legal guardian until they reach the age of eighteen. Moreover, one Member State possesses legislation, according to which access to national territory of unaccompanied minors younger than 18 should be refused in the absence of a legally resident adult duly authorised by the legal representatives of the minor to take responsibility for his stay in the country.

Linked to this, some NGOs have also mentioned that even if asylum seekers and refugees were consulted during the relocation process they would be in a weak position given that it would be very difficult to understand the ramifications of their choice, for example concerning their future access to reception conditions, integration measures, citizenship etc.

Among the countries that have identified national legal implications, the most common problem seemed to be that national asylum legislation require that the persons to be relocated submit a (new) claim for asylum on the territory of the Member State to which they are relocated. Yet other Member States point to the current division of competences within the national asylum system or constitutional rights to seek asylum. National legal implications may constitute a hindering factor, but a number of Member States also indicate that national or bilateral solutions may exist along the lines of those used for resettlement. However, these would very much depend on national political will. In only two countries (France and Bulgaria) are status determination decisions made by other Member States recognised.⁵⁷

6.2 Legal implications with respect to the current EU legal framework

There is currently no legal framework for relocating beneficiaries of international protection and asylum seekers in Europe, and therefore if such a system were to be established a number of changes to the current EU acquis would need to be introduced.

A number of European legislative instruments which would be influenced by any system of relocation have been identified. In the following sections we analyse the main legal implications on the existing European legal framework with respect to the two options.

⁵⁷ Although it is in principle possible to recognise status decisions from other countries in France, they did apply a specific procedure when admitting relocated refugees from Malta, see also section 2.1.1.

6.2.1 Feasibility of a relocation scheme under the legal bases in the Treaty on the Functioning of European Union⁵⁸

The TFEU contains two articles, namely article 78 on a common asylum policy and art. 80 on the principle of solidarity and fair sharing of responsibility, which are of particular relevance to the establishment of a relocation mechanism.

According to article 78 (2) litra e of the TFEU, the Union shall, within the framework of establishing a common policy on asylum, subsidiary protection and temporary protection adopt criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection. Under this article clearly falls the issue of determining who is responsible for processing asylum claims, and thus article 78 (2) litra e provides the legal basis for the Dublin system. However, article 78 (2) litra e does not only mention criteria but also mechanisms, and in this respect it could be argued that a relocation mechanism for asylum seekers would also find its legal basis within this article.

When it comes to establishing a mechanism for relocating people benefitting from international protection, article 78 is more ambiguous and several different interpretations are possible.

Article 78 (2) litra a, mentions the adoption of measures providing a uniform status of asylum for third-country nationals which are valid throughout the Union and litra b mentions adoption of a uniform status of subsidiary protection for third-country nationals, without obtaining European Asylum, who are in need of international protection.

With reference to developing a common policy on asylum, both subsections mention adoption of measures comprising "a uniform status". This concept could be developed and understood within the broader context of creating a common European asylum system, particularly if read in conjunction with article 80. A wide interpretation of article 78 (2) litra a and b in conjunction with article 80, may permit the measures comprising a uniform status valid throughout the Union to be understood as some kind of instrument or mechanism which allows all Member States to commonly accept third-country nationals' need for protection and facilitate their transfer between Member States according to burden sharing principles, but without establishing a legal reciprocal asylum status. In this respect it should be recalled that art. 78 is rooted in article 63 (1) and (2) and article 64 (2) of the TEC, and that article 63 (2) specifically mentions establishment of measures promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons. It may be argued that article 78 (2) litra a and b and article 80 can be used as a legal basis for establishing a relocation mechanism along the lines of Options 1 or 2.

It could also be argued that article 78 (3), which states that under an emergency situation, when a Member State is confronted with a sudden inflow of third-country nationals, provisional measures may be adopted, would be a possible legal basis. However, using this legal basis would require that the relocation mechanism is only used in emergency situations, that the inflows can be characterised as being sudden or unexpected and that the measures to be adopted are of a provisional nature. In other words, the use of article 78 (3) as the legal basis for a relocation mechanism such as the one sketched out in Option 2, may be feasible due to its ad hoc nature, although it would require that the situation in the Member States concerned can be justified as an emergency situation with sudden high inflows. The measures should be ad hoc and therefore cease to exist once the problem the measures have served to address has been resolved. As mentioned above, article 78 is rooted in article 64 (2) of the TEU, which contains a wording very similar to the one in article 78, and in which it is stated that measures should not have a duration exceeding six months. Whether it is a de facto emergency situation will depend on each individual Member State and its relative asylum pressures, and the mechanisms put in place to tackle large inflows (for further analysis of these criteria see also chapter 6.2.5). With regard to Option 1, which calls for a permanent legislative instrument, the use of article 78 (3) as a legal basis is questionable due to its structural nature although this would eventually depend on the exact formulation of the legal instrument. Concerning Option 2, the requirement that the measures adopted under article 78 (3) be 'provisional' could be seen as an obstacle for any type

⁵⁸ Council of the European Union, 6655/1/08 REV 1, Brussels, 30 April 2008.

of relocation mechanism, even an *ad hoc* one, given that the relocation of the persons concerned will not be temporary but for the long term. However, if the word 'provisional' is interpreted as being applicable just to the time period during which relocation can be offered to certain groups of persons present in a Member State but not to the length of the period during which a relocated person will reside in the Member States where he/she has been relocated, then Option 2 could be based on this article.

The use of article 80 (on its own) as a legal basis for a relocation mechanism is also questionable. The article is of a general nature, setting out the governing principles for the Union policies in the field of border, asylum and immigration.

Based on a teleological reading, article 80 would however support the above mentioned understanding of article 78 (2) as a possible legal basis for a relocation mechanism either in the form of a legal instrument (Option 1) or an *ad hoc* mechanism (Option 2) as well as 78 (3) as a possible legal basis for an *ad hoc* relocation mechanism for beneficiaries of international protection (Option 2), which indeed is a mechanism seeking to achieve the overall purpose of article 78 and the establishment of a common European policy in the field of asylum (the *effet utile* principle).

6.2.2 The voluntary or compulsory character of the relocation mechanism for the Member States, and the consequences of this choice for the legal form the mechanism could take

As was suggested in the previous sections, Option 1 must generally be understood as being a compulsory measure. Once a legal instrument has been adopted and transposed nationally, Member States cannot decline to take part in the burden-sharing scheme, since the refugee burden will be divided among all the participating Member States based on a quota devised on the basis of objective criteria (see also chapter 3). That said, it is clear that the adoption of such an instrument would have to rely on some negotiated consensus between the Member States and the European Parliament. Option 2, in turn, contains a voluntary element, meaning that the Member States would only offer their assistance on a voluntary basis. However, despite its voluntary nature, Option 2 may still exert some political pressure on the Member States to show solidarity.

6.2.3 Reconciliation of any future mechanism with the system for allocation of responsibility for asylum applicants established by Regulation 2003/343 (Dublin system)⁵⁹

The Dublin Regulation contains a number of provisions determining which Member State is responsible for processing an asylum claim and the obligations deriving from that responsibility. A number of hierarchical responsibility criteria determine which Member State must be entrusted with the examination of the application for asylum (the so-called take charge criteria). They essentially concern family unity, the issuance of residence permits and visas, illegal entry and stay and legal entry. The Dublin Regulation also contains readmission rules which apply when a person has previously lodged an application for asylum in one Member State and is subsequently present in a second Member State (the so-called take back criteria). The aim of the readmission rules is to ensure that an applicant cannot pursue an asylum claim in a Member State other than the one which is considered responsible to examine his claim.

Provided certain conditions laid down in the Dublin Regulation are fulfilled, the responsible Member State would be obliged to take charge or to take back the asylum seeker and to examine or continue the examination of the claim for asylum. This obligation may clash with a relocation mechanism. Careful examination therefore needs to be made of the persons subject to relocation, so as to avoid for instance the risk of them being sent back within the remit of the Dublin system only to be relocated to a different country. Such a scenario would not only be

⁵⁹ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national (OJ L 50 of 25 of February 2003, p. 1)

inappropriate from a humanitarian perspective, it would also be administratively and economically burdensome for the Member States.

The clash between a relocation mechanism and the Dublin system is only relevant in relation to asylum seekers. Once an asylum seeker has obtained an international protection status any relocation operation would only require his or her consent. That said, with respect to reconciling the Dublin system with the Options under scrutiny in this study, the most clear legal solution would be in fact to exclude all asylum seekers from a relocation scheme. By doing so, the Dublin system would not be affected by any relocation scheme whatever form it may take. Whether or not the refugee or subsidiary protection beneficiary had earlier been transferred under the Dublin system would be irrelevant. This approach also corresponds with the views of at least half of the Member States who claimed they did not want to see asylum seekers included in a relocation scheme, and the main reasons for this is indeed the risk of undermining the existing Dublin system. Some Member States, on the other hand, said that a relocation scheme should include asylum seekers and some of these found that it should only include asylum seekers (see also chapter 5.2).

As explained above, the Dublin Regulation contains clear rules and principles for determining responsibility and cannot be seen as a burden sharing instrument. The eventual inclusion of asylum seekers in relocation schemes would be an exception from those rules and would therefore imply a modification of the Dublin Regulation in order to lay down the possibility for such arrangements between Member States. However, even the co-existence of the two legal regimes (Dublin and relocation) could lead to legally uncertain situations.

However, if asylum seekers were indeed to be included in a future relocation scheme, then would the two options comply with the Dublin system?

Under the Dublin system **two possible scenarios**, which may have an effect on the possibility for relocating asylum seekers, can be drawn up:

1. Member State A starts the Dublin procedure and Member State B is considered responsible for examining the claim for asylum (positive decision);
2. Member State B rejects the responsibility under Dublin, and Member State A is responsible for examining the claim for asylum (negative decision).

Both scenarios relate to when an asylum seeker lodges an application for asylum and where the Member State considers that another Member State is responsible for examining the claim for asylum and thus launches the "take charge or the take back" procedure (cf. articles 17 and 20 in the Dublin Regulation). The main reason for excluding asylum seekers under the Dublin procedure, irrespective of the outcome of the decision (scenario 1 and 2 above), would be that before the decision is taken to send the person to the responsible Member State (positive Dublin decision) and the actual transfer has been implemented, considerable time may have elapsed and it can be argued that the asylum applicant at this point should have his or her claim examined, rather than being put into a new procedure awaiting a possible further transfer (relocation). In this respect it should be mentioned that art. 4 of the Asylum Qualifications Directive⁶⁰ states that all elements needed to substantiate the application for international protection must be submitted by the asylum seeker. His ability to do so, as well as to maintain a coherent and plausible statement, may be hampered by the time elapsed. In addition, humanitarian reasons, which in particular apply to applicants who have been subject to persecution or serious harm or vulnerable persons such as unaccompanied minors, elderly people, disabled people etc., should be taken into consideration. Both the society and the applicant for asylum have an interest in getting the case examined and a final decision taken as quickly as possible irrespective of the outcome of the decision. On the one hand, in case of rejection of asylum, a rapid decision will improve the possibilities for reintegration in the country of origin, and would make it less costly for the hosting society, in particular if the asylum

⁶⁰ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304 of 30 September 2004, p. 12)

applicant is returning voluntary to the country of origin. On the other hand, if refugee status is granted, then it will be in all parties' interest to start the integration process as soon as possible. The leading principle should therefore be that asylum seekers do not spend an inordinate amount of time in the asylum systems of Europe.

It can however be discussed whether a rejection of the request to take charge or to take back an asylum applicant (negative Dublin decision) would allow the Member State who launched the Dublin procedure to relocate the asylum seeker in question. In principle this would be possible, but a similar timing argument, including the time spent by asylum seekers in the European system as mentioned above, can be put forward, implying that this may not be a desirable solution.

In addition, both scenarios would introduce an exception from one of the underlying principle of the Dublin Regulation, namely that once a Member State is identified as responsible to examine an application, that Member State keeps its responsibility unless a series of exhaustively foreseen circumstances leading to a cessation of responsibility intervene. A relocation mechanism does not fall under those circumstances; therefore a modification of the Regulation would be required.

However, most frequently the asylum seeker will remain in the Member State in which he/she lodged his/her application for asylum, and it would in principle be possible to include the applicant in the relocation scheme of the Member State in which he lodged his/her asylum claim. In this respect, it could be possible to include in the legal instrument or political decision on relocation specific paragraphs setting out the specific circumstances under which an asylum seeker would be included in the relocation scheme, namely when he/she does not fall under the scope of the Dublin system. This situation, however, gives rise to the question of whether it is reasonable to treat asylum seekers differently? And moreover, whether there is a risk that such a differential treatment may lead to possible push or pull factors? Similarly, would it lead Member States to be more reluctant to start the Dublin procedure, if they know that they then cannot relocate these asylum seekers irrespective of the outcome of the decision? The answer to these questions will eventually rely on the effectiveness and the magnitude of the relocation scheme, and in this respect it should also be recalled that asylum seekers will be eligible for relocation once they are granted international protection status.

In conclusion, the possibility of reconciling the Dublin system with a relocation scheme for asylum seekers appears to be legally difficult and politically sensitive, since this could be seen as an attempt to change the principles on which the Dublin system is based. From the consultation process it resulted that Member States are generally favouring excluding asylum seekers from a relocation system.

6.2.4 Possibilities or guidance offered by the existing EU acquis (including eventual amendments), for example Council Directive 2001/55/EC, for facilitating relocation;

The Council Directive 2001/55/EC⁶¹ (herein after referred to as the Temporary Protection Directive) deals with the situation of mass influx, and provides in this respect for temporary protection. Thus **the possibilities for amending this directive to accommodate the need for a relocation mechanism are rather limited**. In order to have sufficient effect relocation needs to be of a lasting nature and provide for full integration into society. The legal basis, article 78 (2) litra c, explicitly points out that the protection to be provided is of a temporary nature.

The question, however, is whether the Temporary Protection Directive could be used more widely in order to alleviate the asylum pressure on particular Member States. The Temporary Protection Directive was devised as a direct result of the experience of handling the mass influx of displaced persons from the conflict in former Yugoslavia and later the Kosovo crisis. The directive was therefore originally adopted to deal with this type of exceptional conflicts in neighbouring third-

⁶¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212 of 7 August 2001, p. 12)

countries. According to the directive mass influx is defined as “arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme” (article 2, litra d). Whether a situation of mass influx of displaced persons exists is decided upon by the Council and is binding for all Member States. Whether the Temporary Protection Directive can be used in situations which currently takes place in Malta is therefore open for discussion.

Box 2: Possible use of the Temporary Protection Directive in Malta?

The relative burden of asylum flows compared with their resident population is very high in Malta (18.18 asylum seekers per 1000 residents) compared with the EU average (2.52 asylum seekers per 1000 residents). Whether this ratio can be characterised as “mass influx” is however more doubtful. Many of the current asylum seekers in Malta receive international protection (in 2008 a total of 1,410 persons were granted refugee status (20) or subsidiary protection (1,390) out of 2,915 decisions made) and it can therefore be argued that a situation of “displaced persons” exists. However, whether this is due to higher recognition rates in Malta (the recognition rate in 2008 was 52.4% compared to an EU average of 28.3%) or to the severe situation of the asylum seekers arriving in Malta is also arguable. Several arguments can be put forward, but the decision will eventually depend on the political will of the Member States and discussions in the Council. In this respect it should be mentioned that the temporary protection mechanism established by the directive has never been used.

The Temporary Protection Directive does, however, offer some inspiration when reflecting on what precisely the EU decision as part of Option 2 should contain. Article 5 of the Temporary Protection Directive clearly outlines what the Commission's proposal for a decision should include, what the Council's decision should include and what it should be based upon.

Option 2 calls for EASO to establish the basis on which the EU should take its decision. Guided by article 5 (4) of the Temporary Protection Directive the decision on relocation could be based on the following elements:

1. EASO's examination of the 'sudden' nature of inflows of third-country nationals to specific Member States, and a description of the specific groups of third-country nationals;
2. EASO's assessment of the need for carrying out relocation, taking into account the emergency of the situation and the inability of the Member States to deal with the current situation;
3. EASO's assessment of the need for and possibilities for providing other specific assistance, for example joint processing of asylum claims, technical assistance etc.

Based on EASO's examination, the Commission would have to put forward a proposal for a decision. This decision could - in a similar way as stated in article 5 (3) of the Temporary Protection Directive- include:

1. a description of the specific groups of third-country nationals to whom the relocation scheme should apply;
2. the date from which the relocation should take effect;
3. information received from Member States on their reception capacity (in the same way as is requested in article 25 of the Temporary Protection Directive) including capacity to accept vulnerable groups;
4. other types of assistance which Member States could provide either in connection with relocation or as an alternative to relocating people.

Besides input from EASO in the form of the above mentioned examination and assessment, the Commission would have to discuss in advance of the proposal for a decision on establishing an ad hoc relocation mechanism, the different Member States positions and commitments.

The next section elaborates on the examination and assessment to be carried out by EASO ahead of a decision.

6.2.5 Grounds for triggering the relocation schemes

The previous sections have not touched upon the specific grounds on which a relocation procedure should be triggered. Besides being closely related to the discussion on the legal basis, which calls for the fulfilment of a number of fundamental criteria which need to be in place before article 78 (3) and 80 can be applied to a relocation mechanism, the question must also address material conditions under which the relocation mechanism should take effect, and how and by whom the existence of these circumstances should be established.

Using the legal basis of article 78 (2) litra a and b and article 80 does not require that any specific legal conditions are fulfilled, but it would be possible to develop within both Option 1 and 2 some material conditions which need to be in place in order to trigger the relocation scheme. Despite the fact that article 5 in the EASO regulation does not deal with relocation as such, but only with related activities, it contains some inspiration which could also be used for triggering a relocation scheme. Article 5 make a reference to Member States which are faced with specific and disproportionate pressures on their asylum and reception systems due in particular to their geographical or demography situation. Article 5 should be read in conjunction with article 8, which specifies that particular pressure "may be characterised by the sudden arrival of a large number of third-country nationals who may be in need of international protection and may arise from the geographical or demographical situation of the Member State". In other words, a relocation scheme (in either the format of Option 1 or 2) could be triggered, if EASO finds while examining and assessing the overall situation across Europe, that one or several Member States are in a position where they face particular pressure which at the same time is considered disproportionate in relation to other countries and/or the Member States ordinary asylum pressure, and this pressure can be said to result from, for example, their geographical or demography situation. Should these criteria be fulfilled EASO can recommend that relocation is used. Article 8 does however enable a broader interpretation of particular pressure and it is thus possible that there are grounds other than sudden arrival and geographical or demographical situation that cause particular pressure.

On the other hand, should the legal basis of article 78 (3) and 80 be used, then three basic legal conditions should be fulfilled: 1) existence of an emergency situation; 2) a sudden inflow of third-country nationals; and 3) measures of provisional nature. The third criterion is not a material one, but is pertinent to the type of measures to be implemented in the event the first two criteria are fulfilled, and therefore will not be elaborated further. In the context of relocation it does not necessarily mean that the persons to be relocated will only stay temporarily in the Member State which accepts to relocate them, but that the period during which relocation will take place between the Member State affected by the sudden inflows and the emergency situation will be limited in time.

Definitions of an emergency situation vary according to country and policy area, however, an emergency situation may in general terms be described as a situation which poses an immediate risk to health, life, property or environment, and thus requires urgent intervention in order for the situation to be mitigated.

The existence of a sudden inflow of third country nationals would have to be based on a Member State's most recent statistics on newly arrived third country nationals and an assessment of their relative burden in relation to the country's resident population or similar objective parameters.

Irrespective of which criteria are chosen, the EASO would have an important role to play in assessing whether these two basic criteria are fulfilled. In order to establish whether an emergency situation exists or whether Member States are faced with disproportionate pressures on their asylum and reception systems, fact-finding missions to those Member States claiming to experience these sudden inflows of third-country nationals could be carried out. Such missions would report on the health and living conditions of the third country nationals, including the basic principles and guarantees concerning material conditions as set out in the Directive on minimum

standards for the reception of asylum seekers⁶² (i.e. is the Member State able to inform asylum seekers within reasonable time, able to issue the necessary documentation within the set deadlines, provide access to education of minors, provide adequate standard of living etc.), as well as the Directive on minimum standards on procedures in the Member States for granting and withdrawing refugee status⁶³ (i.e. is the Member State able to provide interpretation, do the staff examining applications have the relevant knowledge with respect to standards applicable in the field of asylum and refugee law, etc.) Furthermore, the ability to integrate the third country nationals might also be taken into account, since this a major element in any relocation system⁶⁴.

The examination carried out by EASO would provide a good indication of the actual situation in the Member States and the need for relocation and other ad hoc measures.

6.2.6 Responsibilities for protection by the Member States before, during and after the relocation, including transfer of protection schemes

As was discussed in previous sections, the most prominent national legal challenge concerns the lack of possibility for transfer of protection schemes between Member States. The majority of Member States have explained that according to national law, they do not recognise a refugee status determined by another Member State and/or they require the relocated persons to apply for asylum upon arrival at their border or within their territory in order for them to be eligible for protection in their Member State.

When assessing the protection possibilities before, during and after relocation, one must first and foremost distinguish between relocation of asylum seekers and persons benefitting from international protection. Secondly, one has to consider that relocation under Option 2 can take different forms.

With respect to asylum seekers several scenarios for relocation under Option 2 can be outlined. For example a Member State might agree only to receive a number of asylum seekers provided their claims for asylum have been processed either jointly with the transferring Member State or by the receiving Member State individually. The transferring Member State would have to deal with those applicants not being granted protection by the receiving Member State. This scenario could entail setting up a national autonomous asylum examination team within the transferring Member State with a view to examining the claims for asylum, and grant the relevant protection status according to national laws in the receiving Member State. From that point in time it would be the receiving Member State's full responsibility to ensure the transport back of the relevant people to its territory, including providing the necessary travel documents.

Another possible scenario would include providing asylum seekers with a "laissez passer" to travel to the receiving Member State (following similar principles set out in the Dublin Regulation article 19), who would then take over full responsibly once the asylum seekers arrive at the border, including returning any unsuccessful applicants to their countries of origin. The asylum seekers would then be treated as ordinary, spontaneous asylum seekers, although they would be excluded from the Dublin procedure as discussed above. The main disadvantage of the latter procedure would be that the asylum seekers would remain in an insecure situation during the transfer and the examination of their claim would be further delayed. Moreover, it is possible that the receiving Member State would encounter difficulties in assessing their statements; in particular their travel routes and reasons for applying for international protection (cf. article 4 (1) of the Qualifications Directive⁶⁵). This could jeopardise the overall credibility of the applicants since their statements may be found not to be coherent and implausible and running counter to available specific and general information (cf. article 4 (5) litra c⁶⁶).

⁶² Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31 of 6 February 2003, p. 18)

⁶³ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326 of 13 December 2005, p. 13);

⁶⁴ IOM and UNHCR stressed in interviews that integration has to play an important role in any relocation mechanism.

⁶⁵ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304 of 30 September 2004, p. 12);

⁶⁶ Ibid

Moreover, several Member States fear that relocating asylum seekers would lead to **pull factors** which may result in an increased inflow of third-country nationals (see also chapter 5.4).

With respect to beneficiaries of international protection the situation would be different. The main problem as outlined above is that the vast majority of Member States are not in a position to recognise each other's asylum decisions (reciprocity). As long as the asylum systems in the European Union are not fully harmonised this problem will continue to occur. Some Member States do not wish to recognise other Member States' asylum decisions partly because of a lack of trust in each other's asylum processing systems or because they feel that not all Member States do their utmost to deal with the inflow of third-country nationals on their territory. Another fear is that mutual recognition of status determination decisions may eventually lead to freedom of movement for refugees within Europe. Other Member States explain that they are not in a legal position to recognise other Member States' decisions.

Apart from harmonisation, a possible solution would be to start a new asylum procedure once the refugees granted protection in the transferring Member State arrive at the border of the receiving Member State, as a *pro forma* procedure or a special "light" asylum procedure with the sole purpose of providing the persons with a status that is legally recognised in the Member State. However, the problem of different qualification standards in the Member States remains. For example if an applicant, who is already recognised by the transferring Member State, is unsuccessful in being granted protection status in the receiving Member State, this would create an untenable situation.

A possible way of solving this problem would be to only include refugees who have been granted protection under the Geneva Convention rules, which are generally applied by all the Member States in a uniform way. The number of refugees receiving the Geneva Convention protection status is however very limited (in 2008 only 20 people in Malta out of 1,410 positive decisions received refugee status) and is therefore not likely to dilute the need for relocation.

Alternatively, it appears that it will be necessary to establish a proper legal mechanism for the transfer of protection in all Member States to enable the relocation of beneficiaries of international protection. In this respect, it must be noted that a decision on proposals to extend long-term residence status to refugees, and with it to allow free movement for residence, within certain limitations, has not yet been reached (see also chapter 1.3). Moreover, in the Stockholm Programme the European Council has invited the Commission "to consider, once the second phase of the CEAS has been fully implemented and on the basis of an evaluation of the effect of that legislation and of the EASO, the possibilities for creating a framework for the transfer of protection of beneficiaries of international protection when exercising their acquires residence rights under EU law". Following this invitation, the Commission has scheduled for 2014⁶⁷ a Communication on a framework for the transfer of protection of beneficiaries of international protection and mutual recognition of asylum decisions.

With respect to the transfer of protection status it should be noted that a European Agreement on Transfer of Responsibility for Refugees (Council of Europe) entered into force in 1980. Not all EU Member States are parties to the convention.⁶⁸ The agreement however deals with the possibility for transferring refugee protection status (according to the 1951 Geneva Convention or the 1967 Protocol) from one state to another. According to article 2, responsibility shall be considered transferred "on the expiry of a period of two years of actual and continuous stay in the second State with the agreement of its authorities or *earlier if the second State has permitted the refugee to remain in its territory either on a permanent basis...*". Thus parties to the convention will be able to transfer protection by providing leave to remain on their territories in the form of a residence permit for refugees granted status by other countries.

That said, a number of Member States agree that only minor difficulties exist and anticipate that it would be possible to establish specific national procedures or use existing resettlement

⁶⁷ See the Action Plan Implementing the Stockholm Programme, COM(2010)171

⁶⁸ The following countries are not signatories to the convention: BG, CY, EE, FR, HU, IE, LV, LT, MT, SK and SI

procedures, for those beneficiaries of international protection who are to be relocated under a common EU relocation mechanism. In other words, if a political decision was made to launch a relocation scheme, most Member States (all except four) claim they would be able to find a solution to receive refugees granted protection by another Member State.

6.2.7 Rights of the persons to be relocated before, during and after the relocation, including an assessment of the implications of receiving the agreement of the person to be relocated

The voluntary character of the relocation mechanism must be discussed both in relation to asylum seekers and to beneficiaries of international protection. Both Options distinguish between these two groups in a way which **allows only beneficiaries of international protection to be consulted** on their countries of relocation. Consultation of beneficiaries of international protection can here be understood as either allowing the individual to apply for relocation to a specific country or as agreeing to relocation (see also the discussion in chapter 5.6.2).

It is clear that according to customary international law Member States are free to control the entry and residence of foreigners. The Treaty of the European Union recognises the right to free movement to all European citizens and this right is progressively extended to third-country nationals, i.e. through the Long-term Residence Directive. Third country nationals are also guaranteed freedom of movement, including the right to emigrate and to move freely within the state's territory, under several international human rights instruments, including article 2 of ECHR of Protocol No. 4. However, this guarantee on freedom of movement has never extended the right to immigrate other than to one's own country, and article 2(1) of Protocol No. 4 does not concern the right to free movement *between* the state parties to the protocol⁶⁹. Article 4 of Protocol No. 4 explicitly states that "collective expulsion of aliens is prohibited", and according to case law, state parties cannot expel foreigners without taking into account, genuinely and individually, the personal circumstances. Moreover, article 1 of Protocol 7 clearly outlines some procedural safeguards, relating to expulsion of foreigners, stating that they can only be expelled pursuant to a decision reached by law and the competent authorities, except in cases of "public order". Based on this reading of articles 2 and 4 of Protocol No. 4, and article 1 of Protocol 7, it is therefore unlikely that even if most asylum seekers can be characterised as "lawfully resident aliens" within the EHCR, they can be relocated without the consent of the individual person.

Several Member States agree that the consent of the asylum seekers or the beneficiaries of international protection is both needed and desirable when implementing a relocation mechanism. Relocating asylum seekers against their own free will is, according to Member States, not likely to succeed and may even result in additional costs for detention and supervised transfers.

However, the need to consult the individuals on the country to they would wish to be relocated, or allowing them to apply to a specific country according to family ties, medical situation, educational background etc, is only advocated by few Member States. This is because such a consultation mechanism may be difficult to control, and may thus create an unintentional pull factor and increase the number of refugees. Moreover, some Member States may be more 'popular' than others, thus creating an uneven distribution which would not necessarily benefit the integration of the relocated individuals. Generally, Member States are therefore in favour of implementing an objective distribution key, although several additional criteria were also suggested (see also chapter 5.6.1). This viewpoint is also supported by UNHCR. **Vulnerable groups or unaccompanied minors** should either be part of this objective distribution key or only be accepted by Member States on a voluntary basis.

Consequently, a feasible possibility for guaranteeing the rights of the persons to be relocated would therefore be to first ensure the consent of all individuals to be relocated, for example by proposing a specific Member State to them and if they do not agree to ask them to remain in the first country of asylum. Secondly, to develop an objective distribution key based, for example, on arrival dates, or a concept where for every ten 'ordinary' refugees accepted for relocation, Member States would need to accept at least one vulnerable person.

⁶⁹ (EU) No. 439/2010 of the European Parliament and the Council of 19 May 2010 establishing a European Asylum Support Office.

6.2.8 Role of the Commission and the European Asylum Support Office in any relocation mechanism;

The role of the Commission and the European Asylum Support Office has already been described in some detail above in chapter 5.5. In this section we restrict ourselves to outlining some legal comments restricted to mostly Option 2.

The purpose and role of EASO are specified in the Regulation establishing the Office⁷⁰. According to article 2 (1) of the Regulation the purpose of the Support Office is to *facilitate, coordinate and strengthen* practical cooperation among Member States on many aspects of asylum and to help improve the implementation of the Common European Asylum System. Article 2 (2) furthermore indicates that the Support Office shall provide effective operational support to Member States subject to particular pressure on their asylum and reception systems, drawing upon all useful resources at its disposal which may include the coordination of recourses provided for by Member States under the conditions laid down in the Regulation.

In article 5, which is about supporting relocation of beneficiaries of international protection within the Union, it is clearly stated that besides promoting, facilitating and *coordinating* exchange of information, EASO can also carry out other activities related to relocation within the Union. Finally it is specified that relocation shall be carried out *on an agreed basis* among Member States. It is thus clear that EASO has no decision-making powers with respect to relocation.

Option 2, as presented in section 4.2, provides for a very extensive role for EASO. First of all it is foreseen that EASO could be involved in establishing the basis on which the decision for relocation should be taken. This could involve fact-finding missions to the Member States. Secondly, it is proposed to leave it to the discretion of EASO to seek the consent of the people to be relocated and distribute them according to the Member States' capacity as outlined in the decision and based on objective distribution principles. None of these activities runs counter to the purpose of the EASO as outlined in article 2 or the specific article 5 concerning carrying out relocation on an agreed basis. Based on this, it does therefore not seem indispensable to change the mandate of EASO in order to implement a relocation mechanism. However, within both Options a role for EASO is foreseen in handling applications for relocation from beneficiaries of international protection for relocation to a specific country, although Member States will still be allowed to reject relocating a specific person under certain circumstances. As mentioned above, the EASO Regulation does not provide EASO with any decision-making powers with respect to "taking of decisions by Member States' asylum authorities on individual applications for international protection", cf. article 2 (6). The Regulation does however not contradict the role proposed for EASO in deciding which refugees or asylum-seekers would be relocated to which Member State. On the contrary article 5 mentions that EASO "shall promote, facilitate and coordinate exchanges of information and other activities related to relocation". The article leaves open what is understood by coordination, as well as the more specific definition of "other activities".

In this respect it must however be recalled that the majority of Member States are against letting asylum seekers and beneficiaries of international protection having a say in which country they should be relocated although this may not be legally possible (see also the discussion in chapter 6.2.7 above on relocation without consent of the individual). Moreover, it should be recalled that, as described in chapter 0 concluding on the political implications, the Member States are reluctant to provide EASO with powers to take decisions on particular individual cases.

Very few Member States have expressed an opinion about the mandate of EASO, and they generally doubt the feasibility of undertaking major changes to its mandate. However, small adjustments such as including some criteria which would be used to assess whether a Member State is facing a disproportionate burden, or criteria for a distribution key, would probably be feasible according to some of these Member States.

⁷⁰ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office. OJ L 132, 29.5.2010.

In terms of the Commission's role in relation to the two Options, it is clear that Option 1 requires the adoption of an instrument. The Commission's role in this respect would therefore mainly be to facilitate the development and adoption of such an instrument. With respect to Option 2, the Commission's role would be slightly different. Option 2 requires a decision by the EU, and the Commission's role would therefore mostly be of a facilitating nature. As described above, while the EU would, within Option 2, base its decision on an examination and assessment made by the EASO, the Commission would have to secure a discussion in advance of the proposal for an EU decision and the Member States' positions and commitments. The Commission can thereby ensure that the relocation measures whether consisting of financial support, technical assistance or reception capacity reflect as far as possible the situation in each of the countries concerned.

Finally, because Option 2 requires a political decision by the EU, the Commission's role would mostly be of a facilitating character.

6.3 Summing up on legal implications

Although this study is not in a position to draw firm legal conclusions, a number of important points for further consideration and analysis can be highlighted.

1. Fundamental legal obstacles at national level to relocation are limited

The general picture shows that only a few Member States see national legislation as a potential obstacle to establishing a relocation mechanism. For the majority of the Member States there are no fundamental obstacles or nothing that could not be amended in order to implement a common mechanism for relocation.

2. Articles 78 and 80 of the TFEU as legal bases

Articles 78 and 80 offer different possibilities for defining an appropriate legal basis for a relocation mechanism, either under Option 1 or 2.

The use of article 78 (3) as the legal basis for a relocation mechanism such as the one sketched out in Option 2 could be possible, provided that the measures put in place are of a *ad hoc* and not lasting nature – in the sense that they are applied during a limited period of time, without that preventing the relocation of persons concerned to become *permanent*- and that the situation can be characterised as an emergency situation to tackle sudden inflows of third-country nationals.

3. The Dublin system could be reconciled with a relocation mechanism covering only beneficiaries of international protection

The clash between a relocation mechanism and the Dublin system is only relevant in relation to asylum seekers. Once an asylum seeker has obtained an international protection status any relocation operation would only require his or her consent.

The possibility of reconciling the Dublin system with a relocation scheme for asylum seekers appears to be legally difficult, albeit not impossible. Irrespective of which one of the two Options is chosen, Member States are however generally favouring excluding asylum seekers from a relocation system.

4. Inspiration can be found in the existing EU acquis

The possibilities for amending the Council Directive 2001/55/EC⁷¹ on temporary protection which deals with the situation of mass influx to accommodate the need for a relocation mechanism are rather limited.

⁷¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212 of 7 August 2001, p. 12)

The Temporary Protection Directive does, however, offer some inspiration when reflecting on what precisely the EU decision as part of Option 2 should contain with respect to what the Commission's proposal for a relocation decision should include, what the EU's decision should include and what it should be based upon.

5. Two essential grounds for triggering the relocation schemes should be implemented

Several criteria could be foreseen in order to trigger relocation. Article 5 in the EASO regulation offers inspiration when it refers to 'Member States which are faced with specific and disproportionate pressures on their asylum and reception systems, due in particular to their geographical or demographical situation' Nonetheless, reading article 5 in combination with article 8, makes it possible to understand "particular pressure" to be caused by other reasons than geographical or demographical situation. Moreover, if article 78 (3) is used as a legal basis for Option 2 this would in addition require: 1) existence of an emergency situation; 2) a sudden inflow of third-country nationals; and 3) measures of provisional nature.

The EASO would have an important role to play in assessing whether these basic criteria are fulfilled.

6. Transfer of protection remains problematic – but is still legally feasible

With respect to asylum seekers there are possibilities for either joint processing of asylum claims, or/and the receiving Member State examining asylum claims on the ground in the transferring Member State. However, this would lead to asylum seekers remaining in an insecure situation during the transfer and the examination of their claim would be further complicated and delayed.

With respect to beneficiaries of international protection the situation would be different although still problematic. Apart from full harmonisation, a possible way of solving this problem would be to only include refugees who have been granted protection under the Geneva Convention rules, which are generally applied by all the Member States in a uniform way. However, for the relocation beneficiaries of international protection to take place smoothly, a transfer of protection mechanism is going to be desirable. That being said, the majority of Member States claimed that if a political decision was made to launch a relocation scheme, they would be able to find a solution to receive refugees granted protection by another Member State.

7. Obtaining asylum seekers and refugees' acceptance to relocation would be desirable

Even if Member States may not be legally required to seek *all* asylum seekers' consent to relocation, several Member States agree that the consent of the asylum seekers and the beneficiaries of international protection is both needed and desirable.

Consequently, a feasible possibility for guaranteeing the rights of the persons to be relocated would therefore be to first ensure the consent of all individuals to be relocated, for example by proposing a specific Member State to them and if they do not agree to ask them to remain in the first country of asylum. Secondly, to develop a distribution key based on objective criteria.

8. EASO Regulation leaves room for interpretation of the mandate of EASO

Option 2 provides for an extensive role for EASO. First of all, it is foreseen that EASO could be involved in establishing the basis on which a decision for relocation should be taken. This could involve fact-finding missions to the Member States. Secondly, it is proposed to leave it to the discretion of EASO to seek the consent of the individuals to be relocated and distribute them according to the Member States' capacity as outlined in the decision and based on objective distribution principles. None of these activities runs counter to the purpose of the EASO as outlined in article 2 or the specific article 5 concerning carrying out relocation on an agreed basis.

However, within both Options a role for EASO is foreseen in handling applications from beneficiaries of international protection for relocation to a specific country, although Member States will still be allowed to reject relocating a specific person under certain circumstances. The EASO Regulation allows for a wide interpretation of whether this role is within the mandate of EASO.

6.4 Concluding on the feasibility of the two Options (legal implications)

Based on the above consideration, the legal feasibility of each Option is assessed below.

OPTION 1

- Fundamental legal obstacles at national level to Option 1 are limited
- The use of article 78 and 80 TFEU as a legal basis for Option 1 could be possible
- It could be possible to reconcile the Dublin system with relocation covering beneficiaries of international protection
- The consent of asylum seekers and refugees to relocation is desirable
- The EASO Regulation leaves room for interpretation of the mandate of EASO.

The legal feasibility of Option 1 cannot be ruled out

OPTION 2

- Fundamental legal obstacles at national level to Option 2 are limited
- The use of article 78 (3) as the legal basis for Option 2 could be possible and thus three basic conditions should be fulfilled: 1) existence of an emergency situation; 2) a sudden inflow of third-country nationals; and 3) measures of a provisional nature
- It could be possible to reconcile the Dublin system with relocation of beneficiaries of international protection
- The consent of asylum seekers and refugees to relocation is desirable. The EASO Regulation leaves room for interpretation of the mandate of EASO

Option 2 is legally feasible

7. FINANCIAL IMPLICATIONS

In addition to the political and legal implications, the financial implications are an important element in the assessment of a relocation mechanism.

As specified in the terms of reference, the chapter on financial implications was to look at the costs of relocating a person, the overall costs of a relocation mechanism under different options as well as different possibilities for the European Union to support relocation under the existing financial instruments, and to propose ideas about how relocation could be better supported in the future. Moreover, the practical aspects related to relocation should be looked at through an analysis of past experiences of relocation.

7.1 Costs of relocation

7.1.1 Costs of relocating a person

In order to gain an overview of the **costs of relocating a person** in each Member State, all interviewees were to provide estimates of immediate/logistical costs, such as travel, first reception, health checks and administrative costs of implementing the relocation, as well as long-term costs, directed for example at integration measures and long-term social benefits to the study team. The following table was used to collect the data:

Table 4: Data collection sheet for financial data

	Annual cost per person				Data source
	2007		2008		
	Asylum seeker	Recognised refugee*	Asylum seeker	Recognised refugee*	
Short-term costs					
Transport of an asylum-seeker or refugee to another MS					
First reception					
- Costs for a reception centre (short term housing)					
- Health check of an asylum seeker or refugee					
- Preparing administrative documentation in the sending country					
- Preparing administrative documentation in the receiving country					
- Translation or interpretation					
- Other costs (specify in comment field)					
Support for unaccompanied minors					
Support for other vulnerable groups					
Processing an asylum claim through all legal instances					
Other short-term costs (specify in comment field)					
Long-term costs					
Integration measures					
- Cultural orientation					
- Language tuition					
- Vocational or other education					
- Schooling of minors					
Housing/accommodation					
Social benefits					
Other long-term costs (specify in comment field)					
* please specify what types of refugees are covered by the figure (Geneva, subsidiary protection)					

In particular Member States with past or current experience of intra-EU relocation were asked to provide estimations for costs occurred during and after the relocation exercise. However, the data received from the Member States has been very scattered and heterogeneous. With respect to the level of detail, the data differed from daily cost per person to the total state budget for asylum and integration related questions. An overview of data received from each Member State

is provided in Annex D. There can be several reasons for the difficulty of collecting comparable data from the Member States. One of the main reasons is the divergence between the levels of indicators from one Member State to another. Whereas some Member States report on the exact costs of schooling a minor (refugee or asylum seeker), others only report on the total costs for integrating minors or the total costs for education, including minors and adults. Another reason is that it can be challenging for the Member States to assess which migration, asylum and integration-related costs are directly related to relocation. For example the costs of language tuition can cover language tuition for asylum seekers, refugees and labour migrants, in which case it is difficult to identify the cost for a specific group of people. There are also Member States where calculations do not exist, for example for practical or political reasons.

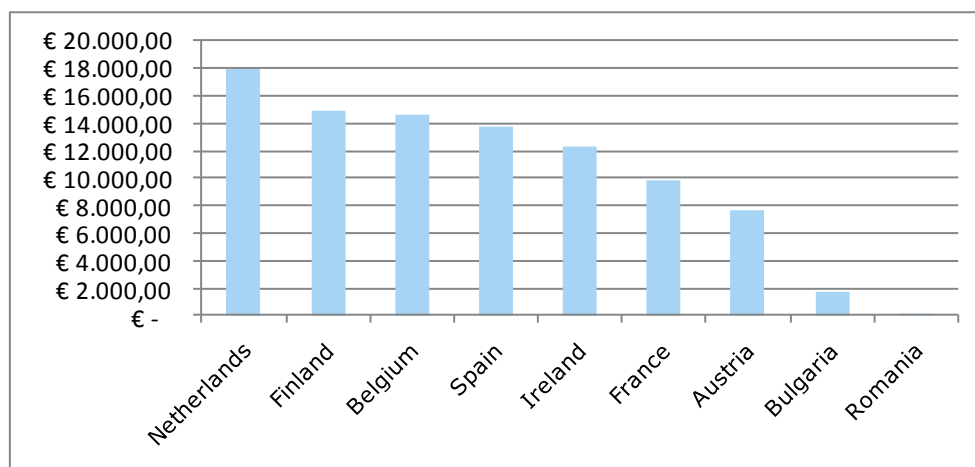
For example the Maltese officials stated that while total budget for EUREMA (EU Relocation Malta) was €2 Million, the main part of these (€1.9 Million⁷²) was budgeted for integration measures. A more detailed breakdown of these €1.9 Million is problematic because the actual integration costs depend on how this is done, which varies between countries. Some countries for example are using facilities that are already available whilst others are putting on special support programmes for orientation, language training and finding work. The allowances received also vary between countries both in amount and the way in which they are paid (e.g. cash or vouchers).

The range of costs of relocating a person during EUREMA was estimated at €4,000-13,000, although in some cases countries made no charge on the budget. Administrative costs also varied by country with some countries charging for sending teams to Malta to interview candidates for relocation whilst others chose not to do so. The relocation exercises conducted in Malta have been highly bureaucratic. NGOs and charities in Malta have provided a significant amount of support in this respect through pre-counselling and the initial sifting and presentation of candidates; negotiations with the individual countries on who to take; orientation and preparing successful candidates for departure. Much of this cost is absorbed into normal running costs but with some charges made under the programme for additional resources (UNHCR for example had bid for two additional consultants.) It was also noted that some of those who are relocated go to centres that have already been funded by the EU and would therefore be making a second charge for the same facility.

The above reasons make it impossible to establish a per capita cost which is transferrable because the costs depend on the countries involved.

The only reasonably comparable data received concerns the costs for accommodation in a reception centre, where data was received from nine Member States. As can be seen from Figure 7 below, the annual cost per person ranges from €18,000.00 in the Netherlands, to €191.30 in Romania. This suggests that collecting data in more than these nine Member States is essential in order to assess the total costs of relocating a person.

⁷² Overall cost related to the integration of 238 individuals across 8 Member States covering accommodation, language courses, health services, allowances etc. over a 12-month period.

Figure 7: Costs of accommodation in a reception centre per person per year

In terms of assessing the cost of relocating a person, the most relevant data was received from France based on the 2009 pilot project with Malta, which was financed by the ERF Community Actions. The estimated costs were calculated based on previous experience on resettlement. The final costs were as follows:

Table 5: Relocation cost per person (2009 pilot project from Malta to France)

TOTAL per person	€ 7,974.00
Selection and travel phase	€ 1,073.00
	€ 225 per person were allocated to IOM in order to deliver medical checks and pre-departure measures, transport and administrative support for the transfer of persons.
Accommodation and support in France	€ 6,901.00
	Cost per person per day: €26-27 (based on the cost in provisory reception centres for refugees).

However, as demonstrated above in terms of costs of accommodation in a reception centre, the costs of relocating a person vary greatly from one Member State to another. Using financial data from one Member State, such as the above figures from France, as an indication of the cost in another Member State will not allow for any kind of assumptions to be made on the real costs in each Member State.

Instead of assessing the relocation costs per person in each Member State, the study team has decided to look qualitatively at the two options and to assess their feasibility based on the interviews.

7.1.2 Overall costs of relocation

Concerning the assessment of the *overall* costs of a relocation mechanism, the lack of financial data in section 7.1.2 on costs of relocating a person makes a specific assessment of the overall costs impossible. When the costs per person in each Member State are not known, any assessment based on the costs of one relocation operation (such as the 2009 pilot project from Malta to France) would merely show an indication of the costs occurred. However, as was suggested by Figure 7, costs that are known, such as those relating to accommodation in reception centres, differ greatly according to Member State. This is why using the costs from the 2009 pilot project as a basis for calculating the overall costs of relocation could have both a negative and a positive effect on the feasibility of a relocation mechanism, depending on the Member States. Moreover, such calculations would require a qualified assessment of the number of persons to be relocated annually. In relation to Option 1, such an assessment can be made

based on the simulations presented in chapter 0 and based on the numbers of beneficiaries of international protection/asylum seekers in 2008. A specific density threshold, model and difference factor will however have to be selected.

With respect to Option 2, any calculations would be purely speculative, since the number of persons relocated will depend fully on the willingness of each Member State to relocate.

As a conclusion, it has not been possible for the study team to estimate the overall costs of the two relocation mechanisms proposed.

Instead, the feasibility of both Options in terms of financial implications has been researched in a qualitative manner. All Member State representatives and other interviewees have been presented with the same two options and have been asked to assess the feasibility of the financing mechanism. The views of the interviewees are presented below.

A general comment concerning the financial implications of a relocation mechanism was made by one interviewee, who pointed out that a responsibility-sharing mechanism would be economically inefficient, as it would create additional administrative burdens. The coordination and transfer of asylum seekers and refugees across Europe would be highly time consuming and would require, for example, expanded housing possibilities for the individuals waiting to be transferred. A similar comment was made by another respondent, according to whom the high administrative costs, relative to the actual financial benefits, incurred by public administrations in implementing the ERF regulations are a potential disincentive in the implementation of any future intra-EU relocation programme.

ECRE pointed out that based on knowledge gained from the implementation of the Dublin II Regulation it can be anticipated that any relocation mechanism will be very expensive. What is decisive is the quickness of a mechanism, because the longer the waiting times, the higher the costs of relocation.

7.2 The Options

In addition to assessing the feasibility of the two Options, the terms of reference specify that the study is to propose different possibilities for the Union to support relocation under the existing financial instruments, namely the European Refugee Fund, and propose ideas about how relocation could be better supported in the current and the next generation of financial instruments, i.e. after 2013.

The proposal on the way in which relocation could be better supported is embedded in the two options. In the below sections we present the considerations behind the financial part of each option and their feasibility in the view of the Member States

7.2.1 Feasibility of Option 1

As discussed in chapter 4 above, funding for Option 1 would be provided through the European Refugee Fund, with a specific priority for the relocation of beneficiaries of international protection and possibly asylum seekers. The size of the ERF would need to be increased considerably⁷³, so that an agreed level of compensation would be provided per asylum-seeker (for processing the claim) and per recognised refugee, as well as a flat-rate funding for each Member State. Co-financing would be increased to 90%.

Including a specific priority for relocation rather than using a reserve provides more flexibility in terms of allocating funding towards areas where they are needed. Having a reserve would impose a risk, where funding that may not be needed a specific year is hard to redeem.

Co-financing has been increased in order to send a strong signal to the Member States and to provide an additional incentive to burden-sharing.

⁷³ On the reasoning, please see section 4.1.

A few Member States stated that the way in which possible relocation exercises are financed is **an irrelevant question** as long as no general agreement exists for the need for relocation. For example one Member State stated that the voluntarism of a relocation mechanism rather than its financial implications is a key factor in determining the Member States' support for relocation. Another Member State considers that an even distribution of relocated people is in itself what is needed to even out financial consequences; additional financial support is not essential. Some representatives of international organisations supported the view that the financial element is not the main driver in solving the current problems.

Some Member States agree however that relocation exercises, if implemented, **should be financed by the European Refugee Fund**. One Member State underlines the importance of a timeframe that exceeds one year in order to provide more long-term security for relocation and integration activities.

Other Member States point to the **limitations of the ERF in supporting relocation**. Whereas Ireland requests a reasonable balance between ERF funding and the Member States' contribution in order to keep the Fund from growing out of proportion, two Member States consider the ERF to be too bureaucratic to be used in such a mechanism. What is needed, instead, is a financial system that is flexible and easily adapted to the needs at any point in time.

Some Member States **see the increase in co-funding to 90% positively**, as this is considered to be a true incentive for Member States to relocate. At the same time the 10% of national funding shows that the Member State is committed to the relocation exercise. One Member State stresses the problems incurred by the fact that the Member State authorities cannot use salaries as co-funding while NGOs and others can.

According to one Member State, however, increasing the co-financing to 90% seems unnecessary.

Some of the NGOs pointed out that an adequate financial support system could make Option 1 more feasible.

7.2.2 Feasibility of Option 2

Similarly as in Option 1, funding in Option 2 will also be provided through the European Refugee Fund. The size of the Fund should be increased considerably, in line with a Member State agreement on the compensation that should be provided per asylum-seeker (to cover the processing of the claim of a relocated asylum-seeker) and per recognised beneficiary of international protection, as well as a flat-rate funding for each Member State. The ERF would also be adapted as follows:

- 1) A specific priority within the ERF would be devoted to relocation of beneficiaries of international protection. Co-financing would be increased to 90%.
- 2) Based on how many persons each Member State agrees to relocate, a fixed amount per person relocated would be provided to each Member State (in a similar way to the €4,000 currently given per resettled person, see section 1.3.3). The fixed amount would be deducted from the global budget of the ERF before allocating the remainder of the budget to national envelopes (double-incentive).

To ensure funding for projects that are directed at technical assistance and expert support, specific funding should be set up for supporting "twinning projects".

The idea behind Option 2 is that there is a greater need for incentives (since the mechanism is voluntary and based on a pledging exercise) for the Member States to participate in relocation activities. This is why the fixed amount provided for each relocated person will be subtracted from the global ERF envelope before dividing it among the Member States. A similar mechanism is now used for supporting Member States that resettle refugees from third countries. For example in 2008, some €10 Million were allocated to the Member States resettling refugees. These €10 Million were subtracted from the global envelope of approximately €90 Million, before calculating the national envelopes of each Member State on the basis of the remaining €80

Million. The question is naturally what would happen if the number of people in need of relocation increases sharply and much of the global amount is used before the national envelopes have been determined. One solution for this issue would be to establish a cap for the share of funding to be dedicated to relocation, in order to ensure that the funding would not dry out before determining the national envelopes.

In order to avoid the above risks, it is proposed that the size of the Fund should be increased considerably⁷⁴, with an equivalent amount adequately covering the financing of the fixed amount per relocated refugee/asylum seeker.

A number of Member States raised concerns about the double incentives incorporated in the financial structure of Option 2. One Member State stated that it is important that the financial mechanism does not enable Member States to get too big financial benefits from the Fund. Similarly, it is also important that the "penalty" (i.e. a strong reduction of national envelope) for not relocating is not set too high. Another Member State fears that the double incentives may give too much importance to relocation and may not cover the other funding needs of the ERF. On similar lines, another Member State emphasises that there should not be a higher financial incentive to relocate from another Member State than to support refugees and asylum seekers arriving spontaneously at the borders of a Member State. A double incentive structure would only work if additional funding was provided, which is not considered by the interviewees to be feasible under current budget constraints. One Member State, on the other hand, underlines that the economic incentives are not sufficient in order to increase the Member States' willingness to share responsibility for asylum seekers and refugees, as this willingness entails a political dimension. The fixed funding connected to relocation is therefore not supported by that country and should only be used as a measure for sharing the costs if no other measures are put into practice. One Member State stated that because of the differing funding needs of each Member State, the Member States should be able to use the resources from the Fund according to their specific needs. This is also the fear of several NGOs, whose work is based on the existence of national ERF envelopes. It was stressed that Member States not participating in the relocation scheme would be left with a system where the capacities of the government to support direct asylum seekers would be weakened.

There are however some Member States that support the idea of double incentives. The importance of ensuring a minimum level of a national envelope is however stressed. One Member State emphasised that the way in which financial support is calculated should not allow for Member States to receive considerable amounts if they do not take sufficient burden through their own system or through a relocation mechanism.

Other Member States take the stand that while supporting Member States with a fixed amount per person is an interesting incentive, it is only symbolic unless the amount per person is drastically increased from the €4,000 that is now provided for each resettled refugee. There are however also Member States, who prefer financing based on actual costs rather than a standard amount. Whereas Ireland agrees that the €4,000 does not cover the costs, it is not in favour of increasing the ERF.

As in Option 1, there is one Member State who is in general opposed to the use of ERF in option 2 due to its bureaucratic nature.

As mentioned earlier in this report, several Member States see technical assistance or twinning projects as an essential part of any burden-sharing mechanism. When combined with relocation, this would mean, from a financial point of view, that both options should include a funding mechanism for supporting twinning and technical assistance projects. Whether the funding mechanism should be conditioned to relocation or not (i.e. relocation is a precondition to receiving funding for other related projects) did not receive a conclusive answer in this study. There are also Member States that are doubtful about the possibilities provided by technical assistance and twinning projects.

⁷⁴ On the reasoning, please see section 4.2.

Concerning the fixed amount per relocated person under Option 2, the Member States indicate that it should be directed, for example, at pre-departure measures, transfer costs, processing costs, appropriate accommodation and supporting improvements in systems. Some countries stressed the need to support integration activities of relocated refugees through the ERF, as integration costs are the most important expenses entailed by a relocation exercise.

One Member State considers that the fixed funding should be directed at the costs connected to receiving asylum seekers and refugees as a whole. This means that the funding should not only cover the costs for the actual application process but also the assistance given to the individual during the asylum period. The importance of an extensive grant that also covers the reception system is mainly motivated by the need to secure social rights.

Some Member States underline the need to include in the options funding for building infrastructure and capacity in the receiving Member State. For one of these Member States this is in particular important if asylum seekers are to be relocated. Another Member State considers however that the administrative costs of a purely relocation-related burden-sharing mechanism are too high, which is why technical assistance should only be a component of a larger responsibility sharing scheme that would include relocation.

When looking at the views of the international and intergovernmental organisations, IOM proposes that the fixed amount should be used for:

- operational activities that have to be implemented (transportation);
- costs related to the selection procedure (transport of staff to the country of relocation);
- reception structures (minimum standards); and
- housing

Structures that already exist (such as integration mechanisms) should not be taken into account.

The view of UNHCR differs somewhat from this, as they point to the need to support integration from the fixed amount:

- For asylum seekers: reception, asylum processes and integration
- For refugees: Integration system, accommodation, space in reception centres.

7.2.3 Costs associated with the proposed Options

When looking more closely at the costs that each option would entail, the following (non-exhaustive) overview can be provided:

OPTION 1	
Costs to Member States:	Financing the 10% of the relocation costs not covered by EU co-financing
	Costs of administering the funding provided through the ERF specific priority on relocation (national level)
	Financing long-term integration costs (when not supported by the European Integration Fund)
Costs to the European Union:	Costs of the legislative procedure putting the mechanism in place
	Additional cost for increasing the European Refugee Fund to cover additional relocation costs
	Costs of administering the funding provided through the ERF specific priority on relocation (EU level)
	Financing the 90% co-financing share
	Administering the relocation mechanism through EASO
OPTION 2	
Costs to Member States:	Financing the 10% of the relocation costs not covered by EU co-financing
	<ul style="list-style-type: none"> • Administration costs in relation to processing applications for relocation from refugees/asylum seekers •
	Costs of administering the funding provided through the ERF specific priority on relocation (national level)
	Costs of diminishing ERF envelope in case the Member State is not relocating
Costs to the European Union:	Financing long-term integration costs (when not supported by the ERF)
	Additional cost for increasing the ERF to cover additional relocation costs
	Costs of administering the funding provided through the ERF
	Financing the 90% co-financing share
	Administering the relocation mechanism through EASO

7.3 Summing up on financial feasibility

Despite the fact that the financial implications of the two options could not be calculated due to the lack of data, a number of concluding remarks concerning the financial feasibility of the two options can be provided based on the above discussion.

1. The financial element of a potential relocation mechanism is not decisive at this point

Several Member States pointed out that while financial support will indeed be needed in case an intra-EU relocation mechanism is put in place, the way in which the financial support is established is not the decisive question when assessing the overall feasibility of a mechanism.

2. Double-incentives should be avoided or used in a careful manner

Even though the mechanism of double-incentives is already in use in the field of resettlement under the current ERF, several Member States were cautious of the impact that the reduction in the national envelope may have on other activities financed by the ERF. It was also stressed that there should neither be too big wins nor too big losses to Member States participating or not participating in a relocation mechanism. In case it is decided to include the double-incentive as a part of a future responsibility-sharing mechanism, then a minimum size national envelope should be guaranteed also to those Member States who decide not to participate in intra-EU relocation.

3. The fixed amount per relocated person should be higher than the current amount per resettled person in a specific situation

The Member States agreed that in case a fixed amount per relocated person is allocated, this should be higher than the current €4,000 that is granted for each resettled refugee in a specific situation. While the €4,000 is seen as an incentive of a kind, it covers only a small share of the costs incurred when resettling or relocating a person. There was however no agreement on an acceptable level of funding per relocated person, partly because this differs according to Member State. Therefore, there might be merit in adapting the fixed amount per Member State according to the real costs incurred.

4. Technical assistance should be included in both options

There is a need for funding directed at technical assistance and twinning. Such projects are needed both in case a relocation mechanism is on an ad hoc basis (Option 2) and when it is based on a permanent legislative solution (Option 1).

7.4 Concluding on the feasibility of the two Options (financial implications)

Based on the above considerations, the preferred options in terms of financing are as follows:

OPTION 1

- Funding would be provided through the European Refugee Fund. The size of the Fund would be increased to ensure adequate funding for all Member States to relocate.
- A specific priority within the ERF would be devoted to the relocation of beneficiaries of international protection/asylum seekers. Co-financing is increased to 90%.
- Funding would be available for technical assistance and twinning projects.

OPTION 2

- Funding would be provided through the European Refugee Fund. The size of the Fund would be increased to mitigate the effect of the double-incentive and ensure continued support for other ERF funded activities.
- A specific priority within the ERF would be devoted to the relocation of beneficiaries of international protection/ asylum seekers. Co-financing is increased to 90%.
- A fixed amount per person to be relocated would be located to each Member State. The fixed amount would be subtracted from the global ERF envelope before allocating the remainder of the budget to national envelopes. The fixed amount should be higher than the current €4,000 per resettled person. By increasing the size of ERF it should be ensured that the national envelopes are not reduced to any notable extent.
- Specific funding would be established to support technical assistance and twinning projects.

8. COMPARISON BETWEEN OPTIONS

This chapter summarises the previous chapters by providing an overview of the ways in which the two options for relocation of beneficiaries of international protection and/or asylum seekers should be reformulated according to Government officials interviewed in the course of this project, and by comparing the two options and their feasibility.

The comparison is based on the two options, **reformulated on the basis of the research in such a way that the elements making them more feasible have been incorporated**. This means, however, that the Member States have not had the opportunity to comment on the reformulated options, since their views have only covered specific components of each of the two options rather than a full assessment of how the options should be revised. Therefore it is important to stress that the ways in which the two options have been reformulated in the tables below in order to make them *more feasible* have not been endorsed as such by the Member States.

Without taking into account the assessment of their legal feasibility, the two options would, based on the views of the Member States, gain in feasibility by incorporating the following features:

	Option I	Option II
WHO WILL BE RELOCATED?	Beneficiaries of international protection, i.e. as defined by the 1951 Geneva Convention and persons eligible for subsidiary protection, as defined in Council Directive 2004/83/EC.	Beneficiaries of international protection, i.e. as defined by the 1951 Geneva Convention and persons eligible for subsidiary protection, as defined in Council Directive 2004/83/EC.
WHAT ARE THE CRITERIA?	<p>A formal EU legislative text, proposed by the Commission, will allocate a predetermined quota to each Member State.⁷⁵</p> <p>The beneficiaries of international protection will have the possibility to apply for relocation to a specific country. Criteria such as family ties or medical condition may be taken into account.</p> <p>This application for relocation should be lodged with, and assessed by EASO, but the final decision on the persons to be relocated will be taken by the Member State.</p> <p>In addition, the Member States can offer to provide technical assistance or “twinning projects” to help process asylum claims or provide reception facilities.</p>	<p>Based on an assessment, to be carried out by EASO, which will inform the overall need for relocation across the EU, an annual pledging exercise among the Member States will be organised.</p> <p>Each country will in turn state how many beneficiaries of international protection they are willing to accept for relocation.</p> <p>The beneficiaries of international protection have the possibility to apply for relocation to a specific country. Criteria such as family ties or medical condition may be taken into account. This application should be lodged with, and assessed by EASO. The final decision on which refugees will be allocated to which country will be decided upon by the Member States participating in the relocation mechanism within the limits of the pledges.</p> <p>In addition, the Member States can offer to provide technical assistance or “twinning projects” to help process asylum claims or provide reception facilities.</p>

⁷⁵ There was no agreement on the different criteria to be used. This is why no specific criteria have been assigned to the option. The calculations in the annex show the impact of the using four different criteria: GDP/capita, population density, population, and the number of positive decisions given to beneficiaries of international protection in 2008.

		This option would not necessarily need a legislative initiative.
FINANCE	<p>Funding would be provided through the European Refugee Fund. The size of the Fund would be increased.</p> <p>Specific funding would be devoted to the relocation of beneficiaries of international protection/ asylum seekers. Co-financing would be increased to 90%.</p> <p>Funding would be available for technical assistance and twinning projects.</p>	<p>Funding would be provided through the European Refugee Fund. The size of the Fund would be increased.</p> <p>Specific funding would be devoted to the relocation of beneficiaries of international protection / asylum seekers. Co-financing would be increased to 90%.</p> <p>A fixed amount per person to be relocated would be allocated to each Member State. The fixed amount would be subtracted from the global ERF envelope before allocating the remainder of the budget to national envelopes. The fixed amount should be higher than the current €4,000 per resettled person. By increasing the size of ERF it should be ensured that the national envelopes are not reduced to any notable extent.</p> <p>Specific funding would be established to support technical assistance and twinning projects.</p>

The table below assesses the feasibility of both options in their new formulation, including the assessment of the legal feasibility. For each evaluation question, and where possible, the "more feasible option" has been identified.

	Option 1	Option 2	More feasible option
To what extent does the option address the challenge of uneven burden-sharing?	Option 1 addresses the challenge of an uneven burden based on numbers relative to capacities. If properly designed it will also address the challenges related to lack of common procedures.	Option 2 addresses the challenge of an uneven burden based on numbers relative to capacities. If properly designed it will also address the challenges related to lack of common procedures.	-
To what extent will the option bring about the expected results?	Since Option 1 is about relocation, this option will address the uneven burden related to numbers of refugees and possibly asylum seekers relative to the capacities of the Member States. This option, however, will not necessarily lead to policy harmonisation or improved procedures.	Since Option 2 only foresees relocation on a voluntary basis, based on a pledging system involving the member states, there are no formal guarantees that this option will bring about the necessary results with respect to distributing the burden. Neither can it be ensured that this option will lead to policy harmonisation or improved procedures.	1
Political feasibility			
What is the position of the 26 Member States?	Only two Member States would favour Option 1, if given the choice. The political feasibility of a quota system is questioned by eight Member States. The main cause of concern is that the Member States will not have a say in whether they participate or not in a relocation scheme. When asked to choose between the two options, four Member States chose Option 1.	Six Member States would favour Option 2, if given the choice. When asked to choose between the two options, 17 Member States chose Option 2. The main reason given is that Option 2 does not require a legislation and that the Member States will have the last say in whether or not they relocate	2
		Five Member States were against both options, even when asked to	

		select the more feasible one.	
Estimate of number of persons who could be subject to relocation	The number of persons who would be subject to relocation is expected to be larger within Option 1. However, most Member States are currently unable to assess actual numbers. Since most Member States consider that political feasibility increases with limited numbers, Option 1 is seen as the least feasible one.	The number of persons who would be subject to relocation is expected to be smaller with Option 2. However, most Member States are currently unable to assess actual numbers. Since most Member States consider that political feasibility increases with limited numbers, Option 2 is seen as the more feasible one.	2
Likelihood that asylum flows increase due to the implementation of the option	Knowledge of a specific number of people being subject to relocation may increase the asylum flows. Unwillingness to be relocated to any Member State may do the opposite. The risk of increased asylum flows is smaller when asylum seekers are not relocated.	The voluntarism of the mechanism makes it difficult to anticipate how many people might be relocated. This may help manage asylum flows. The risk of increased asylum flows is smaller when asylum seekers are not relocated.	-
Legal feasibility			
Feasibility of the option under the new legal basis in the Treaty	The legal feasibility of Option 1 cannot be ruled out. Only 2 Member States expressed clearly that they found that the legal basis for this option was questionable.	No Member States questioned directly the legal feasibility of Option 2 and it thus seems feasible under certain conditions: <ol style="list-style-type: none"> 1) Existence of an emergency situation 2) Sudden inflow of third country nationals 3) Only provisional measures 	2
Reconciliation of the option with the Dublin system	The legal basis is not clear enough for an assessment of the possibility to reconcile with the Dublin system to be made.	Under certain circumstances the Dublin system could be reconciled with a relocation mechanism including asylum seekers.	2
The role of the EASO in any relocation mechanism	The EASO Regulation leaves room for interpretation of the mandate of EASO.	The EASO Regulation leaves room for interpretation of the mandate of EASO.	-
Financial feasibility			
Estimate of overall costs	Since clear overall costs could not be established, Member States have not been able to express their views on the financial feasibility of the option. Financing through the ERF is considered to be feasible by most Member States.	Since clear overall costs could not be established, Member States have not been able expressed their views on the financial feasibility of the option. Financing through the ERF is considered to be feasible by most Member States. There is no consensus among Member States on the need for double-incentives. Feasibility increases if it is ensured that national envelopes do not decrease to any notable extent.	-

9. ALTERNATIVES TO RELOCATION

Several interviewees made alternative or additional suggestions to options 1 and 2. Seven scenarios can be considered as alternatives to an EU-wide relocation scheme. These are:

1. Status quo – *ad hoc* schemes etc
2. Harmonisation – creating a Common European Asylum System
3. Technical assistance
4. Financial assistance
5. Bi-lateral or sub-group relocation rather than EU-wide agreement
6. Joint processing
7. Transfer of protection status and 'open market'

Some of these potential alternatives might actually link together to form additional possible routes. In some cases, full exploration of these alternatives would require another complete study – so they are noted as potential alternatives to relocation, but not fully explored here.

1. Status quo – *ad hoc* schemes etc.

One alternative to developing an EU-wide system for relocation would simply be to continue with the current situation. Under such a scenario there might be occasional *ad hoc* schemes, where several, but not all, Member States offer relocation, and they and others also could offer technical assistance of various kinds, to Member States facing particular pressures. Financial assistance could be provided under the ERF to Member States managing specific problems or relocating people.

One advantage to sticking with the status quo would be that there would be no need for negotiations on an EU-wide scheme.

Disadvantages to taking this course would include that Member States facing pressures would not necessarily see long-term assistance, or solidarity.

2. Harmonisation – creating a Common European Asylum System

The full harmonisation of asylum and refugee policies, for a common European system, is sometimes suggested as an alternative to relocation (now) – or as a pre-condition. Where a national asylum policy or the administration and implementation of that policy is not meeting EU standards, the suggestion is that that Member State is largely responsible for the fact that it cannot cope with the arrival situation that it faces. In that case, relocating people would be condoning the inadequate system or operation. As such, relocation would be offered as the 'carrot', the reward for creating and fully operating and managing a common European asylum system. It would also be the expression of solidarity in a situation where geography alone, or as a major factor, where policy and implementation are not factors, creates an asylum situation that a given Member State cannot be expected to handle alone.

Insisting on harmonisation first would, again, avoid the need for negotiations on another subject – or indeed another facet to a common asylum system. As this statement reveals, harmonisation might obviate the need for relocation, or precisely demonstrate that it is really necessary. However, it is possible that a common or single, European asylum system itself needs relocation as an element to make it work. There is then, to some degree, a question of which is the chicken and which the egg in this 'alternative'.

However, one Member State indicated that while technical assistance was potentially helpful it would not alleviate the longer term burden felt by the first host country in terms of the financial, social and political costs of reception and integration, whereas relocation would. Another Member State suggested technical assistance would do nothing – only harmonising legislation would have any impact.

3. Technical assistance

In order to increase administrative capacities, and comparability of implementation of EU asylum policy, technical assistance could be carried out to a greater degree than is currently the case. Such assistance can consist of training and study visits, for example, or of lending staff, introducing ideas for how to improve reception facilities, decision-making and other elements in the implementation of asylum directives.

Familiarity with 'best practices' and with each others' ways of dealing with issues could lead both to an optimal system, and to a shared basis of understanding for future common policy making in the asylum area.

Increased technical assistance might thus feed into policy harmonisation, and to the common implementation of directives and regulations. However, technical assistance also has its limits: some would not want it to 'spill over' into joint processing, for example.

4. Financial assistance

There are situations in which the capacity to deal with asylum arrivals is constrained by financial issues in a Member State. Financial burden-sharing – essentially offering financial support to a state receiving a high number of claims, in order for that Member State to better manage reception, processing and return, has long been considered an alternative to relocation or physical burden-sharing (see chapter 1.3 and Annex F).

Financial assistance could go via the ERF. Perhaps there could also be an option to provide financial assistance instead of relocation placed under a modified version of the Option 2 set out in this report – so that in an EU-wide relocation scheme, some Member States would relocate, some would offer financial assistance only, and some might do both, alongside appropriate ERF funding to Member States.

One advantage to including financial assistance as an alternative to relocation for some Member States would be to have all Member States on board with a scheme. Another might be that for those Member States where relocating itself is seen as non-feasible whereas contributing to protection elsewhere is deemed an acceptable form of solidarity in the realm of public and political opinion, they could participate in a way that accorded with national sentiment.

A disadvantage might be that Member States choose only financial assistance, which might not resolve the issues causing the over-burdening, particularly if not linked to other alternatives like technical assistance and/or (pressure for increased) harmonisation.

5. Bi-lateral or sub-group relocation rather than EU wide agreement⁷⁶

Another alternative to an EU-wide relocation scheme might be for interested Member States to develop bi-lateral partnerships including relocation, or, if several Member States were to be interested, then they could follow the route of developing a sub-group which would move forward on an issue that the EU as a whole is not yet ready for, following past experience in both the migration (Schengen) and other areas of European integration. This is called "enhanced cooperation". This measure, which is included in article 326 of the Treaty on the functioning of the European Union, is currently being implemented in the case of cross-border divorces, where 12 Member States have expressed interest in moving forward together after the Commission's

⁷⁶ One of the respondents mentioned a sub-group for which you should qualify through having good procedures. When in, then relocation should be possible following a full Option 1.

proposal became deadlocked in the Council. Enhanced cooperation was introduced by the Treaty of Amsterdam, where it was termed 'closer cooperation', and was established with its new name "enhanced cooperation" in the Treaty of Nice. The Lisbon Treaty makes it possible for a minimum of nine Member States to cooperate using the institutional framework of the Union.

An advantage to taking this route would again be the avoidance of EU-wide negotiations on the subject, while allowing Member States that feel relocation is a useful and perhaps necessary tool to demonstrate partnership and solidarity to move ahead. A sub-group of States moving forward on relocation could also provide a model (with positive and negative examples based on experience) for any future EU-wide efforts to establish a scheme.

An obvious disadvantage to this route would be that it would potentially, at least in the short-term, appear to fly in the face of progress towards a harmonized, common European asylum system.

6. Joint processing

Joint processing is proffered as an alternative to relocation, but in fact it would involve a movement of individuals, actively engaged by the Member States, even if that movement were not relocation from a Member State where a claim was processed by the authorities there, to another Member State which had no role in the processing. Joint processing would mean either that two (or more) sets of authorities assess a claim in the state of arrival, or that two (or more) Member States assess a claim in a joint processing centre, located inside (or potentially outside) the EU, but without a national asylum claim or procedure from the state where the centre is located being required.

Joint processing is a wide-ranging discussion in its own right. Most recently, it has been included in the Commission's action plan to deliver justice, freedom and security to its citizens (2010-2014) as the subject of a Communication to be issued in 2014, which will assess the possibilities and the difficulties as well as the legal and practical implications of joint processing of asylum applications within the Union.⁷⁷ As an alternative to relocation as set out in the two options above, joint processing would have potential advantages in terms of the ease of status recognition, and facilitating movement to a Member State that already saw the individual as a beneficiary of international protection in its own eyes, and not with some degree of suspicion in case the Member State that processed the asylum claim got it wrong somehow, or is not trustworthy (e.g. might have granted status to facilitate relocation etc).

In terms of disadvantages as an alternative to relocation, the time needed to establish mechanisms and locations for joint processing might call efficiency into question in the face of any current and pressing needs to move to show solidarity, even if this measure would be used together with other alternative elements, like technical assistance and shorter-term, bi-lateral or sub-group relocation programmes.

7. Transfer of protection status and 'open market'

The logic of this alternative is to allow refugees to choose their own location, after an initial period of time for qualification as a long-term resident. The Study on the Transfer of Protection Status⁷⁸ has previously set out the issues related to this subject, and work has been on-going. The Commission has scheduled for 2014 a Communication on a framework for the transfer of protection of beneficiaries of international protection and mutual recognition of asylum decisions, in line with the Stockholm Programme requirements.

By allowing refugees and beneficiaries of subsidiary protection to transfer their protected status to the state in which they choose to live as long-term residents (with all the pertaining duties, obligations and rights), the opportunity to take up a life in a state where there are connections,

⁷⁷ European Commission press release RAPID MEMO/10/139, 20.4.2010,

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/139&format=HTML&aged=0&language=en&guiLanguage=en>.

⁷⁸ http://ec.europa.eu/justice_home/doc_centre/asylum/studies/docs/transfer_protection_status_rev_160904.pdf

or employment possibilities, for example, would open, and, if one were to extend 'free market' thinking, then people who are located in a Member State where such possibilities are few would self-relocate. Theoretically this could be a cheaper alternative for Member States than taking on the administrative, transportation and reception costs of relocating refugees and beneficiaries of subsidiary protection. Equally theoretically, protected persons should then go to places where they can make the most of life, cutting the costs for healthcare, for example.

If these theories would prove correct there could be economic advantages to Member States, as well as life-enhancing advantages to protected persons.

However, such a market for self-relocation would not necessarily be entirely manageable: while people would presumably follow ethnic, linguistic, cultural and family connections, as well as job, housing and education opportunities, they might not always have full information about the situation in their 'dream' destination, and additional services of some sort might be required, and new political and policy problems could arise.

Three suggestions were made linked to the Dublin system: two Member States suggested stopping or suspending transfers under Dublin, while one NGO suggested cancelling Dublin completely, allowing asylum seekers to apply in the Member State in which they wanted to live.

10. CONCLUSIONS

The main purpose of this study has been to provide detailed information about the political, legal and financial and practical implications, including potential pull factors, of the *relocation* of asylum seekers and beneficiaries of international protection. In addition, the study has examined *other options* available to better foster solidarity between Member States for the management of asylum flows.

This report has demonstrated that Member States, international organisations operating across the EU and non-governmental organisations in various Member States as well as at the EU level generally concur that there is an uneven distribution of burdens as far as the management of asylum flows is concerned. However, as much as there is broad agreement on the fact of an apparently uneven distribution of asylum seekers and the associated costs, there is disagreement on the reasons for this, and thus there are various views on how the challenges posed by this uneven distribution could best be handled.

Various factors are thought to cause the uneven distribution:

- Geography
- Procedures used to assess claims for asylum
- Integration potential
- Existing communities of the same origin
- Proportion of claims relative to asylum system capacity

Three primary policy approaches to the challenge of uneven distribution of asylum seekers were suggested by respondents in interviews for this study:

- Relocation
- Policy harmonisation
- Technical and financial assistance

Lessons have been learnt from past and current pilot projects which can be drawn on for thinking about a future relocation scheme. In addition, the interviews conducted for this study revealed several lessons on the political, legal and legal implications foreseen for any attempt to develop a EU relocation scheme. These lessons taken together can be summarised as follows:

1. The TFEU contains two articles, namely article 78 on a common asylum policy and article 80 on the principle of solidarity and fair sharing of responsibility, which are of relevance to the establishment of a relocation mechanism. The problem, however, is that article 78 (2) *litra c* concerns specifically a common system of *temporary* protection, while article 78 (3) refers to provisional measures in case of an *emergency* situation, when a Member State is confronted with a *sudden inflow* of third-country nationals. Article 80 on the principle of solidarity and fair sharing of responsibility, although it is more of a general nature, setting out the governing principles for the Union policies in the field of border, asylum and immigration. It may be argued that article 78 (2) *litra a* and *b* and article 80 can be used as a legal basis for establishing a relocation mechanism along the lines of Options 1 or 2. It could also be argued that the use of article 78 (3) as the legal basis for a relocation mechanism such as the one sketched out in Option 2, may be feasible due to its *ad hoc* nature, although it would require that the situation in the Member States concerned can be justified as an emergency situation with sudden high inflows, and moreover that the period during which the measures are implemented is limited in time (without this preventing the relocation of the persons concerned from being permanent) . Against this background, for Option 1, which calls for a permanent legislative instrument, the use of article 78 (3) as a legal basis is questionable due to the permanent nature of this option although this would eventually depend on the exact formulation of the legal instrument.
2. In past and current schemes, asylum-seekers have generally not been relocated. Although the interviews conducted for this study show varying views on whether or not asylum seekers should be included in relocation (including the significant point that the

requests for relocation are largely based on asylum seeker numbers, not the number of people actually granted protection), it was seen that a relocation scheme would be more politically feasible if it at least began with only refugees and beneficiaries of subsidiary protection, and asylum seekers were excluded. Due to both political and legal implications, one basis for this conclusion has been the complications of inter-twining a relocation scheme with the Dublin system.

Suggestion: Asylum seekers should not be included in any EU relocation scheme, at least in the first instance, and until the legal and political tensions between potential relocation and the existing Dublin system have been resolved.

3. The Member States' views concerning the feasibility of including unaccompanied minors into a relocation mechanism varied. On the basis of past and current experience on relocation projects, it can be concluded that Member States do not find it problematic to relocate unaccompanied minors. The interviews conducted during the course of the study indicate however that whereas some Member States are willing to include unaccompanied minors in a relocation scheme, other Member States see it as problematic, due to questions such as lack of legal guardians, adequate reception mechanisms and risk of increased smuggling of children.
4. Regardless of who might be relocated, very few interviewees representing Member State authorities seemed willing or able to provide an estimate of the number of beneficiaries of international protection and/or asylum seekers who might be subject to relocation. Those who were willing to suggest a number were all Member States anticipating the 'import' of relocated persons. Although there was a reluctance to talk about actual numbers, a majority of Member States suggested they would be potential importers of people if there were to be a relocation scheme.
5. One of the questions to be covered in this study was that of the potential pull factor of relocation, and any means to mitigate it. Malta reports no signs of pull factors as a result of current projects, and expresses no concern that this might be the case in the future, since there is neither guarantee that a person arriving in Malta will be recognised as a beneficiary of international protection nor that they would prove successful in an application for relocation. France, on the other hand, has reported that new migration networks have been created in the country and that this could be a result from relocation from the countries in question. In interviews several Member States foresaw a pull factor either for themselves or for the EU as a whole if a relocation scheme were to be put in place. One or two Member States noted that the pull might not be on genuine asylum seekers but on irregular migrants and on smugglers planning to use the asylum and relocation combination to get individuals into Member States in which they preferred to live.
6. The idea that refugees or beneficiaries of subsidiary protection should apply for relocation is closely linked to the desire for voluntarism on the part of the individuals concerned. In interviews different interpretations of a relocated persons' voluntary participation emerged. This leads to the conclusion that it is not considered feasible for individuals to submit an application for relocation, and certainly not to a particular Member State, although legally it would be necessary to seek the consent to relocation of all lawfully staying asylum seekers or beneficiary of international protection.

Suggestion: Establish a mechanism to ensure that asylum seekers and beneficiaries of international protection agree with their relocation, but do not necessarily develop an application procedure, or give individuals the ability to choose the Member State to which they would be relocated. Ensure candidates for relocation receive full information both about the implications of their relocation and about the Member State to which they will be relocated before seeking their agreement to participate in the process.

7. Experience in the on-going EUREMA project suggests that some measure of external coordination is necessary where several Member States are concerned. This would indicate that a role for EASO should be considered for any future broad EU relocation scheme. However, the interviews conducted for this study led to the conclusion that the EASO should be accorded a coordinating and support role, but no role in decision-making. Option 2 provides for an extensive role for EASO, including involving the office in establishing the basis on which the EU decision for relocation should be taken and to seek the consent of the individuals to be relocated and distribute them according to the Member States' capacity as outlined in the decision and based on objective distribution principles. However, within both Options a role for EASO is foreseen in handling applications from beneficiaries of international protection for relocation to a specific country, although Member States will still be allowed to reject relocating a specific person under certain circumstances. EASO Regulation allows for a wide interpretation of whether this role is within the mandate of EASO.

Suggestion: The EASO should take on the role of a sort of coordinating 'clearing house' for relocation – administratively managing the process, but taking no decisions on particular cases.

8. In general respondents tended to suggest that if there were to be a EU relocation scheme it would need to be combined with policy harmonisation and/or technical and financial assistance. There were also suggestions that a sufficient level of harmonisation and implementation of the harmonised or common policy, together with appropriate technical, and where necessary financial, assistance, could result in a reduced need for relocation. In such a scenario it was suggested that the reasons for the uneven distribution would become more apparent, and thus willingness to act might increase. Interviews for this study indicated that there is broad support for policy harmonisation and/or technical assistance whether as a prerequisite for relocation, an alternative to relocation or alongside relocation. The interviews also indicated the need for funding directed at technical assistance and twinning projects.

Suggestion: Both technical assistance and policy harmonisation could be written in to a relocation scheme as *quid pro quos* or, in the case of technical assistance and any twinning projects, as elements that count as replacements for certain levels of relocation.

9. Although Member States pointed to the need for financial support for an EU relocation mechanism, the form of that financial support does not appear to be a decisive question in establishing the overall feasibility of a relocation scheme. Financing relocation through the European Refugee Fund is nevertheless considered to be feasible by most Member States. However, interviews for this study suggest that the mechanism of double-incentives, already in use for resettlement under the current ERF, cause several Member States to be wary of the potential impact of a reduction on the national envelope for other ERF financed activities. In addition, there should be caution for making either financial gains or losses too significant for Member States that either participate in, or remain outside, a relocation scheme.

Suggestion: Double-incentives should be avoided or if used, then treated with caution. If they are employed, then there should be a guaranteed minimum national envelope under the ERF for any Member States that choose not to participate in relocation.

10. In interviews there seemed to be agreement that in case a fixed amount per relocated person is allocated, this should be higher than the current €4,000 that is granted for specific groups of resettled refugees. While the €4,000 is seen as an incentive of sorts, it actually covers only a small part of the costs incurred when resettling a person. There was however no agreement on an acceptable level of funding per relocated person, partly because the costs incurred differs from one Member State to another.

Suggestion: The fixed amount per relocated person should be higher than the current €4,000 per resettled person (specific groups), and should be Member State specific, taking into account the different costs incurred in relocating an individual.

11. The 2009 pilot project demonstrated the difficulties of employing 'integration potential' criteria for assessing and selecting people to be relocated. Candidates often did not have the skills that were sought, or if they appeared to then those skills proved not to be of the standards expected in national employment sectors. Candidates also often did not speak the languages sought, and had no relatives already resident in the country to which they were to be relocated, in large part because they came from different countries of origin than previous migrants arriving in that country. However, the interviews demonstrated that some attention to links to existing ethnic communities could usefully be paid in a broader scheme involving all Member States, to facilitate integration. Nonetheless, 'cherry picking' in terms of skill-based criteria should be avoided.

Suggestion: If the pool of potential candidates for relocation is sufficiently large, certain criteria such as language or ethnic group relations could be applied in deciding to which Member State some people should be relocated. However, personal characteristics such as skills should not be employed in selecting individuals for relocation as they are poor predictors of integration, and sometimes could lead to disappointment on both sides. The primary criterion, and often sole criterion, should be the need for protection or objective criteria such as date of arrival.

12. The lack of possibilities for transfer of protection between Member States was seen as the most prominent national legal challenge. A possible effective solution would be to introduce full harmonisation between asylum systems in Europe or the adoption of some kind of transfer of protection mechanism within EU. The scale of the problem and the possible alternative solutions however differs according to the target group. With respect to *asylum seekers* there are possibilities for either joint processing of asylum claims, or/and the receiving Member State examining asylum claims on the ground in the transferring Member State. However, this would lead to asylum seekers remaining in an insecure situation during the transfer and the examination of their claim would be further complicated and delayed. With respect to *beneficiaries of international protection* the situation would be different although still problematic. A possible solution would be to only include refugees who have been granted protection under the Geneva Convention rules, which are generally applied by all the Member States in a uniform way. Despite the difficulties highlighted by the Member States, the majority of them claimed that if a political decision was made to launch an EU relocation scheme, they would be able to find a solution to receive refugees granted protection by another Member State.

Suggestions: As a first step towards full harmonisation, it could be useful to establish a mechanism for confirming protection status in the 'importing' state, particularly to ensure trust, and to avoid the risk of speedy and inappropriate handling of cases in order to permit relocation.

13. Past and current schemes have been *initiated as a sign of solidarity and political support*. Both the Netherlands and France initiated relocation exercises from Malta during or directly after their Presidency of the Council, and in both cases these Member States had actively promoted EU solidarity during their Presidency, in the Hague Programme negotiations in the case of the Netherlands and in the Pact on Immigration in the case of France. In the interviews conducted for this study some doubt seemed to be cast on the broader European public's willingness to view the relocating of (more) refugees to their territories as a legitimate act of solidarity with fellow EU Member States. As such public opinion towards relocation (and particularly 'importing' refugees) was brought out as an important factor in the feasibility of an eventual proposal for a relocation scheme, as was public opinion towards solidarity on the asylum issue itself.

Suggestion: A relocation scheme should start out with small numbers, allowing a measure of solidarity while gradually introducing public opinion to the notion of this expression of support to fellow Member States.

14. Based on the above observations, a majority of the Member States would be in favour, at least initially, of Option 2. However, when examining the feasibility of each Option in more detail, the following amendments have been recommended. For Option 1, asylum seekers should not be included; the EASO should be given a co-ordinating rather than a decision-making role; and additional criteria might need to be included beyond GDP and density. Funding should be available for technical assistance and twinning projects also in Option 1. For Option 2, asylum seekers should not be included; the EASO should be given a co-ordinating rather than a decision-making role; and Member States should not be able to specify the characteristics of the people they relocate beyond the need for international protection, or they should be required to take a balanced group, shared between those they find more 'desirable' and those individuals whose needs and vulnerabilities might be greatest.
15. Several interviewees made alternative or additional suggestions to Options 1 and 2. Seven scenarios were considered as alternatives to an EU-wide relocation scheme. These included: Status quo – *ad hoc* schemes; harmonisation (i.e. creating a Common European Asylum System); technical assistance; financial assistance; bi-lateral or sub-group relocation rather than an EU wide agreement; joint processing of asylum claims; and transfer of Protection status and 'open market'. While some of these potential alternatives might actually link together to form additional possible routes, full exploration of these alternatives would require a separate study and therefore are only signaled in this report.

ANNEX

ANNEX A: LIST OF INTERVIEWEES

Member State	Name	Organisation
AT	Dr. C. Pinter	UNHCR
	Mr. Gerald Dreveny	Ministry of Interior
BE	Ms. Lieta Goethijn	Immigration Office
	Ms. Vinciane Masurelle	FEDASIL
	Mr. Stijn De Decker	Perm Rep, JHA Counsellor
BG	Ms. Petya Karayaneva	UNHCR
	Ms. Anna Andreeva	State Agency of Refugees
	Ms. Daniela Georgieva	State Agency of Refugees
	Ms. Vanya Kasovska	State Agency of Refugees
CY	Mr. Makis Polydorou	Head of the Asylum Service
	Mr. Sotos Ktoris	Coordinator in the Asylum Service
	Ms. Emilia Strovolidou	UNHCR
CZ	Ms. Marcela Skalkova	UNHCR
	Mr. Tomas Urubek	Department for Asylum and Migration Policy, Ministry of Interior
DE	Dr. Karsten Kloth	Directorate-General for Migration, Integration, Refugees Ministry of the Interior
	• Ms. Argentina Szabados	• IOM Germany, Nuremberg
	Mr. Nasim Faruk	IOM Germany, Nuremberg
	Ms. Anna Büllesbach	UNHCR Representation Germany, Nuremberg
	Mr. Hartfried Wolff, MP	FDP-Party Group, German Parliament
	Ms Kaili Didrichson	Migration and Border Policy Department
IE	Mr. Patrick McHale	Ministry of Justice, Irish Naturalisation and Immigration Service, Asylum Policy Division
	Ms. Jo Ahern	Integration Centre
EL	Dr. Konstantinos Koutras	Permanent Representation of Greece to the European Union Chef de l'Unité Justice et Affaires Intérieures
	Mr. Julián Prieto	Spanish Asylum Office
ES	Mr. Javier Sánchez Ribas	Spanish Red Cross
	Ms. Maricela Daniel	UNHCR Madrid
	Ms. Arja Kekkonen	Ministry of Interior, Migration Department
FI	Ms. Ida Staffans	Finnish Refugee Advice Centre
	Ms. Julia Capel-Dunn	Ministry of immigration, integration and national identity
FR	Ms. Frederique Doublet	Ministry of immigration, integration and national identity
	Mr. Ahmed Chtaiabat	OFII (Office Français de l'Immigration et de l'Intégration - French agency in charge of migration and welcoming foreign people)
	Ms. Novita Amadei	IOM France
	Ms. Alin Chindea	IOM, Central EE Regional Office
	Ms. Petra Jeney	Department of Justice and Home Affairs Cooperation and Migration Ministry of Justice and Law Enforcement
IT	Mr. Renato Franceschelli, Mr. Dario Caputo Mr. Angelo Carbone	Ministry of Interior
	Mr Christopher Hain	Italian Council of refugees

	Ms. Carmela Godeau, Mr. Nadan Petrovic, Mr. Flavio Di Giacomo	IOM
LT	Mr. Gintaras Valiulis	Migration Department under the MoI
	Ms. Laurynas Biekša	Red Cross, legal assistance
LU	Mr. Jean-Paul Reiter	Ministry of Foreign Affairs, Head of Asylum Office
LV	Mr. Kaspars Āboliņš	European Affairs Division of the Ministry of Interior
	Mr. Jānis Citskovskis	Office of Citizenship and Migration Affairs
	Ms. Baiba Bieža	Shelter "Safe House"
MT	Mr. Mario Caruana	Director General Operations, Ministry of Justice and Home Affairs
	Rev. Alfred Vella	Malta Emigrants Commission
	Mr. Jon Hoisaeter	UNHCR
	Ms. Eleonora Servino	IOM
	Mr. Alexander Torell	Organisation for the Integration and Welfare of Asylum Seekers
NL	Ms. Liesbeth Bos	Ministry of Justice
	Mr. Gert Versluis	Deputy Director, Dutch Immigration Service
	Ms. Lara Talsma	Dutch Council for Refugees
PL	Ms. Karolina Marcjanik	Office For Foreigners
	Ms. Agata Forys	Helsinki Foundation for Human Rights
PT	Ms. Cristina Barateiro	Asylum and Refugees Department, Portuguese Immigration Service
	Ms. Mónica d'Oliveira Farinha	Portuguese Refugee Council
RO	Mr. Radu Mircea	Romanian Immigration Office
SE	Mr. Johan Alfredsson	Division for Migration and Asylum Policy, Ministry of Justice
	Ms. Margareta Bergman	Swedish Migration Board
	Ms. Carin Bratt	Division for Migration and Asylum Policy, Ministry of Justice
	Ms. Liv Feijen	UNHCR Regional Office for the Baltic and Nordic countries
	Mr. George Joseph	Caritas
	Ms. Monika Wendelby	Swedish Migration Board
SI	Mr. Matjaz Dovzan	Migration and Integration Directorate, Ministry of the Interior
	Ms. Katarina Vucko	Mirovni institute
	Ms. Neza Kogovsek	Mirovni Institute
	Mr. Dean Susmelj	IOM
	Mr. Franci Zlatac	Slovene Philanthropy
SK	Mr. Bernard Prielcel	Migration Office Ministry of the Interior
	Mr. Stefan Sido	Foreign Aid and Projects Unit
UK	Ms. Tessa Smith	UK Border Agency
	Mr. Phil Douglas	UK Border Agency
	Mr. Hugh Ind	UK Border Agency
	Mr. Alexander de Chalus	UNHCR London
	Ms. Clarissa Azkoul	IOM London
	Ms. Gemma Juma	Refugee Council

Other stakeholders	
Mr. Simon Busuttil	Member of the European Parliament
Mr. Pascal Reyntjens	IOM Brussels
Mr. Bjarte Vandvik	European Council on Refugees and Exiles, Brussels
Ms. Madeline Garlick	UNHCR Brussels
Participants at the stakeholder workshop 1.2.2010 in Brussels	
Dr. Eiko Thielemann	Migration Studies Unit, London School of Economics and Political Science
Prof. Philippe De Bruycker	Odysseus Network, University Libre de Bruxelles
Ms. Jo De Backer	International Organization for Migration
Ms. Elaine Cutajar	Maltese Permanent Representation to the EU
Ms. Jan Micallef	Assistant to Maltese MEP, Simon Busuttil
Mr. Johannes van Gemund	UNHCR
Mr. Bjarte Vandvik	European Council on Refugees and Exiles, Brussels
Mr. Kris Pollet	European Council on Refugees and Exiles, Brussels
Mr. Peter Diez	Dutch Permanent Representation to the EU
Ms. Muriel Guin	European Commission, DG JLS
Mr. Jordi Garcia-Martinez	European Commission, DG JLS

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ANNEX C: SIMULATION DATA

Table 6: Positive decisions on asylum applications at first instance and final decisions on appeal, 2008 (rounded figures)⁷⁹

	Refugee status	Subsidiary protection status	Total
Austria	3,755	1,665	5,420
Belgium	3,350	550	3,900
Bulgaria	30	275	305
Cyprus⁸⁰	10	5	15
Czech Republic	130	105	235
Denmark	310	365	675
Estonia	5	0	5
Finland	90	490	580
France	9,670	1,800	11,470
Germany	8,935	1,715	10,650
Greece	360	15	375
Hungary	175	65	240
Ireland	590	5	595
Italy	1,805	6,310	8,115
Latvia	0	0	0
Lithuania	15	55	70
Luxembourg (Grand-Duché)	105	0	105
Malta	20	1,390	1,410
Netherlands	590	1,775	2,365
Poland	195	1,080	1,275
Portugal	10	60	70
Romania	100	40	140
Slovakia	20	70	90
Slovenia	0	0	0
Spain	160	115	275
Sweden	1,900	5,220	7,120
United Kingdom	7,715	2,280	9,995
EU-27 total	40,045	25,450	65,495

⁷⁹ Source: Eurostat Statistics in focus 92/2009.

⁸⁰ Final decisions on appeal

Table 7: Number of asylum applications received by the EU Member States (2008)⁸¹

	Number of asylum applications 2008
Austria	12,750
Belgium	11,395
Bulgaria	745
Cyprus	3,450
Czech Republic	1,050
Denmark	2,375
Estonia	15
Finland	3,770
France	41,845
Germany	21,365
Greece	19,885
Hungary	3,175
Ireland	3,805
Italy	30,055
Latvia	50
Lithuania	520
Luxembourg (Grand-Duché)	455
Malta	2,605
Netherlands	13,380
Poland	7,205
Portugal	155
Romania	1,180
Slovakia	905
Slovenia	240
Spain	4,440
Sweden	24,365
United Kingdom	30,545
EU-27	241,725

⁸¹ Source: European Commission: Asylum in the European Union – Statistical data. Document received from DG JLS.

GDP distribution

As specified by Eurostat, "GDP (gross domestic product) is an indicator for a nation's economic situation. It reflects the total value of all goods and services produced less the value of goods and services used for intermediate consumption in their production. Expressing GDP in PPS (purchasing power standards) eliminates differences in price levels between countries, and calculations on a per head basis allows for the comparison of economies significantly different in absolute size." Below, each Member State's GDP per capita is expressed in PPS. The GDP distribution has been calculated by each Member State's share of the total GDP of the European Union.

Table 8: GDP per capita distribution

	GDP in Purchasing Power Standards, 2007 (Source: Eurostat)	GDP per capita distribution
Austria	30.60	4.6%
Belgium	28.80	4.3%
Bulgaria	9.40	1.4%
Cyprus	23.30	3.5%
Czech Republic	19.90	3.0%
Denmark⁸²	30.20	4.6%
Estonia	17.10	2.6%
Finland	29.40	4.4%
France	27.00	4.1%
Germany	28.80	4.3%
Greece	23.10	3.5%
Hungary	15.60	2.4%
Ireland	36.80	5.6%
Italy	25.80	3.9%
Latvia	13.90	2.1%
Lithuania	14.80	2.2%
Luxembourg (Grand-Duché)	68.60	10.4%
Malta	19.00	2.9%
Netherlands	32.90	5.0%
Poland	13.60	2.1%
Portugal	18.80	2.8%
Romania	10.40	1.6%
Slovakia	16.90	2.6%
Slovenia	22.10	3.3%
Spain	26.20	4.0%
Sweden	30.60	4.6%
United Kingdom	29.10	4.4%
EU-27	662.70	100.0%

⁸² Denmark has been kept in the calculations in order to provide a complete picture of the situation in the European Union. Denmark does however not participate in the European Refugee Fund.

Density distribution

Table 9: Density distribution at threshold of 200

	Total area EU-27 (km ²)	Population EU-27 (1.1.2008 Eurostat)	Density	Population capacity calculated at density threshold	Adjusted: positive capacities only	Density distribution
Austria	83,870	8,282,984	98.76	8,491,016	8,491,016	2.1%
Belgium	30,528	10,584,534	346.72	-4,478,934	0	0.0%
Bulgaria	111,910	7,679,290	68.62	14,702,710	14,702,710	3.6%
Cyprus	9,250	778,684	84.18	1,071,316	1,071,316	0.3%
Czech Republic	78,866	10,287,189	130.44	5,486,011	5,486,011	1.4%
Denmark	43,094	5,447,084	126.40	3,171,716	3,171,716	0.8%
Estonia	45,000	1,342,409	29.83	7,657,591	7,657,591	1.9%
Finland	338,000	5,276,955	15.61	62,323,045	62,323,045	15.3%
France	550,000	63,623,209	115.68	46,376,791	46,376,791	11.4%
Germany	356,854	82,314,906	230.67	-10,944,106	0	0.0%
Greece	131,957	11,171,740	84.66	15,219,660	15,219,660	3.7%
Hungary	93,000	10,066,158	108.24	8,533,842	8,533,842	2.1%
Ireland	70,000	4,312,526	61.61	9,687,474	9,687,474	2.4%
Italy	301,263	59,131,287	196.28	1,121,313	1,121,313	0.3%
Latvia	65,000	2,281,305	35.10	10,718,695	10,718,695	2.6%
Lithuania	65,000	3,384,879	52.08	9,615,121	9,615,121	2.4%
Luxembourg (Grand-Duché)	2,586	476,187	184.14	41,013	41,013	0.0%
Malta	316	407,810	1290.54	-344,610	0	0.0%
Netherlands	41,526	16,357,992	393.92	-8,052,792	0	0.0%
Poland	312,697	38,125,479	121.92	24,413,921	24,413,921	6.0%
Portugal	92,072	10,599,095	115.12	7,815,305	7,815,305	1.9%
Romania	237,500	21,565,119	90.80	25,934,881	25,934,881	6.4%
Slovakia	48,845	5,393,637	110.42	4,375,363	4,375,363	1.1%
Slovenia	20,273	2,010,377	99.17	2,044,223	2,044,223	0.5%
Spain	504,782	44,474,631	88.11	56,481,769	56,481,769	13.9%
Sweden	449,964	9,113,257	20.25	80,879,543	80,879,543	19.9%
United Kingdom	244,820	60,781,352	248.27	-11,817,352	0	0.0%
EU-27	4,328,973	495,270,075	114.41	370,524,525	406,162,319	100.0%

In this way a potential population capacity of the European Union and of each Member State has been estimated. The density distribution has been calculated by dividing the total European Union density capacity with each Member State's individual capacity (only positive capacities have been included in the calculation).

Population distribution

Including the population of each Member State as a criterion can have several impacts on the quotas of the Member State. Since GDP per capita and density have been used as criteria, there is no factor to reflect the size of the Member States, and population has therefore been added as a third criterion. Alternatively total GDP (GDP/capita x population) could have been used, but this would not have allowed for variations in the weights to GDP/capita and population. The population distribution below describes the share of EU population in each Member State as of 1.1.2008.

Table 10: Population distribution

	Population EU-27 (1.1.2008 Eurostat)	Population distribution
Austria	8,282,984	1.7%
Belgium	10,584,534	2.1%
Bulgaria	7,679,290	1.6%
Cyprus	778,684	0.2%
Czech Republic	10,287,189	2.1%
Denmark	5,447,084	1.1%
Estonia	1,342,409	0.3%
Finland	5,276,955	1.1%
France	63,623,209	12.8%
Germany	82,314,906	16.6%
Greece	11,171,740	2.3%
Hungary	10,066,158	2.0%
Ireland	4,312,526	0.9%
Italy	59,131,287	11.9%
Latvia	2,281,305	0.5%
Lithuania	3,384,879	0.7%
Luxembourg (Grand-Duché)	476,187	0.1%
Malta	407,810	0.1%
Netherlands	16,357,992	3.3%
Poland	38,125,479	7.7%
Portugal	10,599,095	2.1%
Romania	21,565,119	4.4%
Slovakia	5,393,637	1.1%
Slovenia	2,010,377	0.4%
Spain	44,474,631	9.0%
Sweden	9,113,257	1.8%
United Kingdom	60,781,352	12.3%
EU-27	495,270,075	100.0%

The percentage distributions of all three criteria (density at the threshold of 200) among the Member States are as follows:

Table 11: Percentage distributions of the three criteria

	GDP per capita distribution	Density distribution	Population distribution
Austria	4.6%	2.1%	1.7%
Belgium	4.3%	0.0%	2.1%
Bulgaria	1.4%	3.6%	1.6%
Cyprus	3.5%	0.3%	0.2%
Czech Republic	3.0%	1.4%	2.1%
Denmark	4.6%	0.8%	1.1%
Estonia	2.6%	1.9%	0.3%
Finland	4.4%	15.3%	1.1%
France	4.1%	11.4%	12.8%
Germany	4.3%	0.0%	16.6%
Greece	3.5%	3.7%	2.3%
Hungary	2.4%	2.1%	2.0%
Ireland	5.6%	2.4%	0.9%
Italy	3.9%	0.3%	11.9%
Latvia	2.1%	2.6%	0.5%
Lithuania	2.2%	2.4%	0.7%
Luxembourg (Grand-Duché)	10.4%	0.0%	0.1%
Malta	2.9%	0.0%	0.1%
Netherlands	5.0%	0.0%	3.3%
Poland	2.1%	6.0%	7.7%
Portugal	2.8%	1.9%	2.1%
Romania	1.6%	6.4%	4.4%
Slovakia	2.6%	1.1%	1.1%
Slovenia	3.3%	0.5%	0.4%
Spain	4.0%	13.9%	9.0%
Sweden	4.6%	19.9%	1.8%
United Kingdom	4.4%	0.0%	12.3%
EU-27	100.0%	100.0%	100.0%

Table 12: Density distribution at threshold of 1000

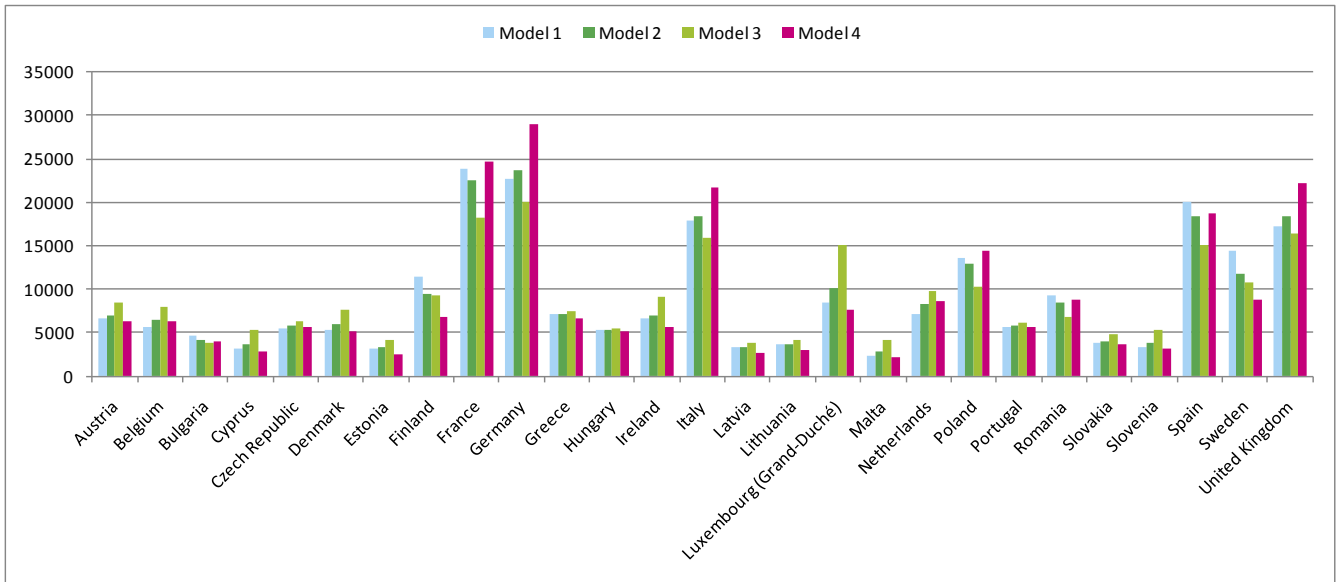
	Total area EU-27 (km ²)	Population EU-27 (1.1.2008 Eurostat)	Density	Population capacity calculated at density threshold	Adjusted: positive capacities only	Density distribution
Austria	83,870	8,282,984	98.76	75,587,016	75,587,016	2.0%
Belgium	30,528	10,584,534	346.72	19,943,466	19,943,466	0.5%
Bulgaria	111,910	7,679,290	68.62	104,230,710	104,230,710	2.7%
Cyprus	9,250	778,684	84.18	8,471,316	8,471,316	0.2%
Czech Republic	78,866	10,287,189	130.44	68,578,811	68,578,811	1.8%
Denmark	43,094	5,447,084	126.40	37,646,916	37,646,916	1.0%
Estonia	45,000	1,342,409	29.83	43,657,591	43,657,591	1.1%
Finland	338,000	5,276,955	15.61	332,723,045	332,723,045	8.7%
France	550,000	63,623,209	115.68	486,376,791	486,376,791	12.7%
Germany	356,854	82,314,906	230.67	274,539,094	274,539,094	7.2%
Greece	131,957	11,171,740	84.66	120,785,260	120,785,260	3.2%
Hungary	93,000	10,066,158	108.24	82,933,842	82,933,842	2.2%
Ireland	70,000	4,312,526	61.61	65,687,474	65,687,474	1.7%
Italy	301,263	59,131,287	196.28	242,131,713	242,131,713	6.3%
Latvia	65,000	2,281,305	35.10	62,718,695	62,718,695	1.6%
Lithuania	65,000	3,384,879	52.08	61,615,121	61,615,121	1.6%
Luxembourg (Grand-Duché)	2,586	476,187	184.14	2,109,813	2,109,813	0.1%
Malta	316	407,810	1290.54	-91,810	0	0.0%
Netherlands	41,526	16,357,992	393.92	25,168,008	25,168,008	0.7%
Poland	312,697	38,125,479	121.92	274,571,521	274,571,521	7.2%
Portugal	92,072	10,599,095	115.12	81,472,905	81,472,905	2.1%
Romania	237,500	21,565,119	90.80	215,934,881	215,934,881	5.6%
Slovakia	48,845	5,393,637	110.42	43,451,363	43,451,363	1.1%
Slovenia	20,273	2,010,377	99.17	18,262,623	18,262,623	0.5%
Spain	504,782	44,474,631	88.11	460,307,369	460,307,369	12.0%
Sweden	449,964	9,113,257	20.25	440,850,743	440,850,743	11.5%
United Kingdom	244,820	60,781,352	248.27	184,038,648	184,038,648	4.8%
EU-27	4,328,973	495,270,075	114.41	3,833,702,925	3,833,794,735	100.0%

Table 13: Distribution of asylum seekers at density threshold of 1000 (source Table 7)

	Distribution of asylum applications according to weighting				Change compared to 2008				Asylum seekers 2008	
	Model 1	Model 2	Model 3	Model 4	Model 1	Model 2	Model 3	Model 4	Total	
GDP/capita	33,3	40	60	30	33,3	40	60	30		
Population	33,3	40	30	60	33,3	40	30	60		
Density	33,3	20	10	10	33,3	20	10	10		
Austria	6,657	7,035	8,386	6,251	-6,093	-5,715	-4,364	-6,499	12,750	
Belgium	5,643	6,520	7,979	6,377	-5,752	-4,875	-3,416	-5,018	11,395	
Bulgaria	4,583	4,185	3,839	3,935	3,838	3,440	3,094	3,190	745	
Cyprus	3,138	3,658	5,267	2,831	-312	208	1,817	-619	3,450	
Czech Republic	5,534	5,777	6,294	5,623	4,484	4,727	5,244	4,573	1,050	
Denmark	5,349	5,944	7,644	5,137	2,974	3,569	5,269	2,762	2,375	
Estonia	3,215	3,308	4,214	2,540	3,200	3,293	4,199	2,525	15	
Finland	11,426	9,515	9,305	6,860	7,656	5,745	5,535	3,090	3,770	
France	23,856	22,494	18,291	24,653	-17,989	-19,351	-23,554	-17,192	41,845	
Germany	22,663	23,734	20,087	28,988	1,298	2,369	-1,278	7,623	21,365	
Greece	7,165	7,075	7,453	6,561	-12,720	-12,810	-12,432	-13,324	19,885	
Hungary	5,277	5,287	5,411	5,178	2,102	2,112	2,236	2,003	3,175	
Ireland	6,557	7,039	9,099	5,704	2,752	3,234	5,294	1,899	3,805	
Italy	17,846	18,362	15,831	21,666	-12,209	-11,693	-14,224	-8,389	30,055	
Latvia	3,379	3,264	3,772	2,585	3,329	3,214	3,722	2,535	50	
Lithuania	3,645	3,597	4,123	2,999	3,125	3,077	3,603	2,479	520	
Luxembourg (Grand-Duché)	8,463	10,129	15,096	7,659	8,008	9,674	14,641	7,204	455	
Malta	2,376	2,852	4,218	2,199	-229	247	1,613	-406	2,605	
Netherlands	7,190	8,311	9,754	8,549	-6,190	-5,069	-3,626	-4,831	13,380	
Poland	13,627	12,890	10,290	14,384	6,422	5,685	3,085	7,179	7,205	
Portugal	5,722	5,840	6,180	5,675	5,567	5,685	6,025	5,520	155	
Romania	9,311	8,450	6,795	8,815	8,131	7,270	5,615	7,635	1,180	
Slovakia	3,846	4,067	4,762	3,703	2,941	3,162	3,857	2,798	905	
Slovenia	3,398	3,847	5,246	3,122	3,158	3,607	5,006	2,882	240	
Spain	20,095	18,310	15,148	18,793	15,655	13,870	10,708	14,353	4,440	
Sweden	14,469	11,803	10,811	8,797	-9,896	-12,562	-13,554	-15,568	24,365	
United Kingdom	17,295	18,433	16,429	22,144	-13,250	-12,112	-14,116	-8,401	30,545	
EU-27	241,725	241,725	241,725	241,725	0	0	0	0	241,725	

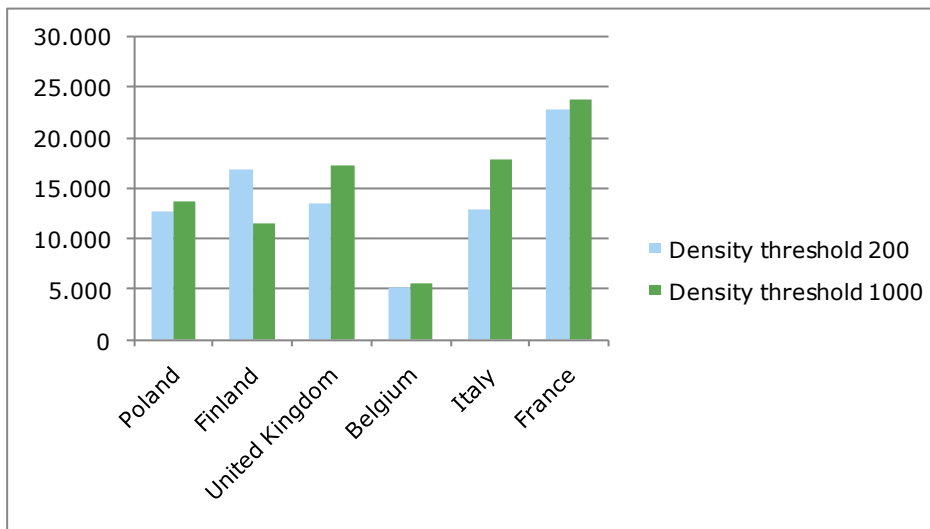
Figure 8 below provides a graphic illustration of the division of the quotas among the Member States as well as of the difference of the four models used.

Figure 8: Distribution of asylum seekers at density threshold of 1,000



The impact seen on the six model countries (Figure 9) resembles that seen when applying the two density thresholds on the beneficiaries of international protection (chapter 4.3), and the impact is clear in the countries with a low density (Finland) and a high density (the UK).

Figure 9: Impact of density threshold on Model 1 in model countries (asylum seekers)



An interesting criteria derived from the research conducted during the study is that some Member States proposed taking into account the existing burden on a Member State in terms of asylum applications lodged and international protection statuses granted when calculating the quota. In the below sections, the impact of the existing number of international protection beneficiaries or asylum seekers has been calculated based on the models 1-4, as presented in chapter 4.3.

Model 1:

GDP per capita weight 33,3%, Population weight 33,3%, Density weight 33,3%

Model 2:

GDP per capita weight 40,0%, Population weight 40,0%, Density weight 20,0%

Model 3:

GDP per capita weight 60,0%, Population weight 30,0%, Density weight 10,0%

Model 4:

GDP per capita weight 30,0%, Population weight 60,0%, Density weight 10,0%

In both cases the distribution allocated in the earlier models has been adjusted against the distribution of people in 2008⁸³ (as % of total beneficiaries/asylum seekers in the European Union) with the aim of reducing the quotas of Member States that received a relatively large percentage in 2008. In this model the decisive factor is the variable difference factor (i.e. the extent to which the distribution of people in 2008 weights - negatively - in the final calculation). The difference factor used in the following calculations is 25%. This means that:

New distribution = Distribution model 4-7 x (100% + 25%) - Distribution 2008 x 25%

More specifically, the distribution allocated in models 1-4 weighs 125%, and 25% of the distribution in 2008 is then subtracted. The calculation is illustrated below.

⁸³ In order to provide a more accurate overall picture of the existing number of international protection beneficiaries or asylum seekers, it is recommended that the quotas are in the future calculated based on an accumulated number covering several years (minimum two). The reason why this has not been done in the present report is that the way in which the positive decisions concerning beneficiaries of international protection are calculated has changed between 2007 and 2008, which is why it has not been possible to calculate accumulated numbers.

Table 14: Impact of the difference factor in distribution (beneficiaries of international protection, density threshold 200)

	Distribution according to models 1-4 (density threshold 200)				Distribution of persons granted international protection (2008)		Distribution with difference factor 25%			
	Model 1	Model 2	Model 3	Model 4	Total (nr.)	Total (%)	Model 1	Model 2	Model 3	Model 4
GDP/capita	33,3	40	60	30			33,3	40	60	30
Population	33,3	40	30	60			33,3	40	30	60
Density	33,3	20	10	10			33,3	20	10	10
Austria	2.8%	2.9%	3.5%	2.6%	5,420	7.4%	1.4%	1.6%	2.3%	1.2%
Belgium	2.2%	2.6%	3.2%	2.6%	3,900	5.1%	1.2%	1.8%	2.6%	1.7%
Bulgaria	2.2%	1.9%	1.7%	1.7%	305	0.4%	2.6%	2.3%	2.0%	2.0%
Cyprus	1.3%	1.5%	2.2%	1.2%	15	0.0%	1.6%	1.9%	2.7%	1.5%
Czech Republic	2.1%	2.3%	2.6%	2.3%	235	0.3%	2.6%	2.8%	3.1%	2.8%
Denmark	2.1%	2.4%	3.1%	2.1%	675	1.2%	2.4%	2.8%	3.7%	2.4%
Estonia	1.6%	1.5%	1.8%	1.1%	5	0.0%	2.0%	1.9%	2.3%	1.4%
Finland	6.9%	5.3%	4.5%	3.5%	580	1.0%	8.5%	6.4%	5.4%	4.2%
France	9.4%	9.1%	7.4%	10.1%	11,470	15.0%	7.4%	6.9%	4.9%	8.2%
Germany	7.0%	8.4%	7.6%	11.3%	10,650	14.0%	4.7%	6.4%	5.4%	10.0%
Greece	3.2%	3.0%	3.1%	2.8%	375	0.5%	3.8%	3.7%	3.8%	3.3%
Hungary	2.2%	2.2%	2.2%	2.1%	240	0.5%	2.6%	2.6%	2.7%	2.6%
Ireland	2.9%	3.0%	3.8%	2.4%	595	2.3%	3.4%	3.6%	4.6%	2.8%
Italy	5.4%	6.4%	5.9%	8.4%	8,115	12.8%	3.6%	4.9%	4.3%	7.4%
Latvia	1.7%	1.6%	1.7%	1.2%	0	0.0%	2.2%	1.9%	2.1%	1.5%
Lithuania	1.8%	1.6%	1.8%	1.3%	70	0.1%	2.2%	2.0%	2.2%	1.6%
Luxembourg (Grand-Duché)	3.5%	4.2%	6.2%	3.2%	105	0.2%	4.3%	5.2%	7.8%	3.9%
Malta	1.0%	1.2%	1.7%	0.9%	1,410	1.8%	0.7%	0.9%	1.6%	0.6%
Netherlands	2.8%	3.3%	4.0%	3.5%	2,365	8.0%	2.5%	3.2%	4.1%	3.4%
Poland	5.3%	5.1%	4.1%	5.8%	1,275	3.7%	6.1%	5.9%	4.7%	6.8%
Portugal	2.3%	2.4%	2.5%	2.3%	70	0.1%	2.8%	2.9%	3.1%	2.9%
Romania	4.1%	3.6%	2.9%	3.7%	140	0.2%	5.1%	4.5%	3.6%	4.6%
Slovakia	1.6%	1.7%	2.0%	1.5%	90	0.1%	1.9%	2.1%	2.4%	1.9%
Slovenia	1.4%	1.6%	2.2%	1.3%	0	0.0%	1.8%	2.0%	2.7%	1.6%
Spain	8.9%	8.0%	6.5%	8.0%	275	0.4%	11.1%	9.8%	8.0%	9.9%
Sweden	8.8%	6.6%	5.3%	4.5%	7,120	11.4%	8.3%	5.5%	3.9%	2.9%
United Kingdom	5.6%	6.7%	6.3%	8.7%	9,995	13.4%	3.1%	4.5%	4.1%	7.0%
EU-27	100.0%	100.0%	100.0%	100.0%	65,495	100.0%	100.0%	100.0%	100.0%	100.0%

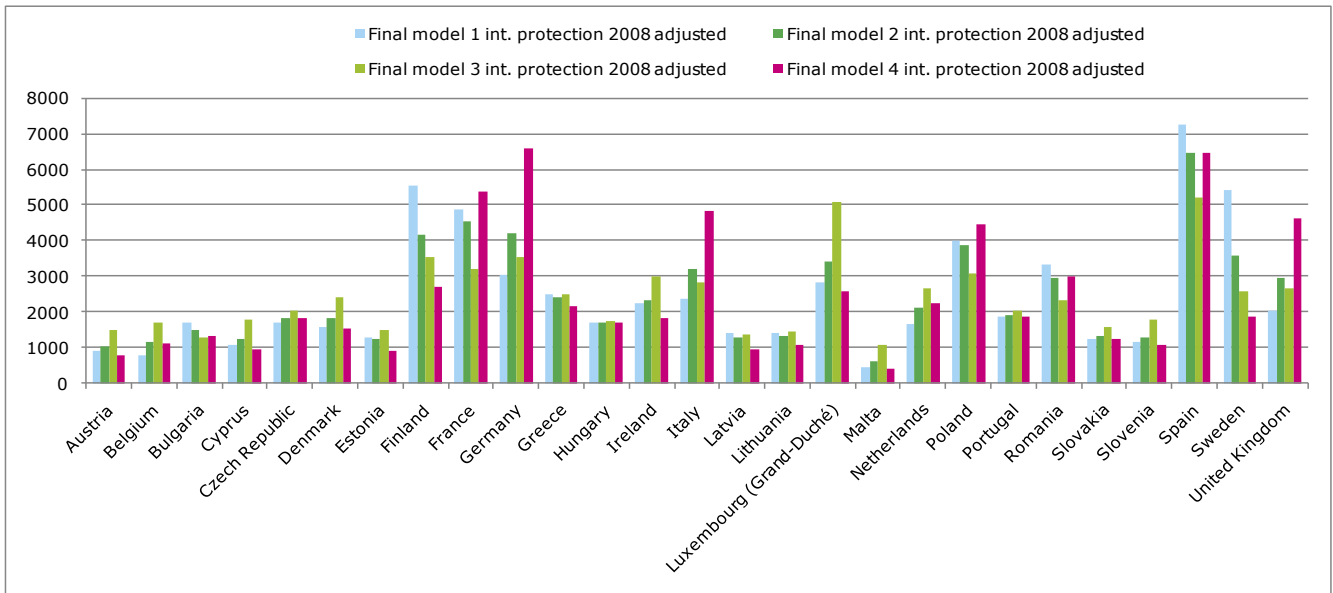
In numbers the above calculation translates into the following quotas:

Table 15: Distribution of beneficiaries of international protection with density weighting 200 and difference factor 25%

	Distribution of beneficiaries of international protection according to weighting				Change compared to 2008				Total beneficiaries 2008
	Model 1	Model 2	Model 3	Model 4	Model 1	Model 2	Model 3	Model 4	
GDP/capita	33,3	40	60	30	33,3	40	60	30	
Population	33,3	40	30	60	33,3	40	30	60	
Density	33,3	20	10	10	33,3	20	10	10	
Austria	932	1,047	1,495	772	-4,488	-4,373	-3,925	-4,648	5,420
Belgium	794	1,148	1,685	1,142	-3,106	-2,752	-2,215	-2,758	3,900
Bulgaria	1,722	1,489	1,298	1,330	1,417	1,184	993	1,025	305
Cyprus	1,071	1,242	1,784	959	1,056	1,227	1,769	944	15
Czech Republic	1,696	1,826	2,037	1,810	1,461	1,591	1,802	1,575	235
Denmark	1,588	1,812	2,404	1,555	913	1,137	1,729	880	675
Estonia	1,291	1,241	1,487	920	1,286	1,236	1,482	915	5
Finland	5,544	4,169	3,552	2,724	4,964	3,589	2,972	2,144	580
France	4,866	4,543	3,224	5,378	-6,604	-6,927	-8,246	-6,092	11,470
Germany	3,059	4,203	3,554	6,569	-7,591	-6,447	-7,096	-4,081	10,650
Greece	2,496	2,400	2,479	2,177	2,121	2,025	2,104	1,802	375
Hungary	1,710	1,720	1,768	1,689	1,470	1,480	1,528	1,449	240
Ireland	2,255	2,345	2,988	1,838	1,660	1,750	2,393	1,243	595
Italy	2,367	3,201	2,839	4,815	-5,748	-4,914	-5,276	-3,300	8,115
Latvia	1,418	1,270	1,359	957	1,418	1,270	1,359	957	0
Lithuania	1,424	1,325	1,441	1,061	1,354	1,255	1,371	991	70
Luxembourg (Grand-Duché)	2,828	3,397	5,083	2,564	2,723	3,292	4,978	2,459	105
Malta	452	613	1,076	392	-958	-797	-334	-1,018	1,410
Netherlands	1,665	2,116	2,659	2,250	-700	-249	294	-115	2,365
Poland	3,982	3,858	3,072	4,459	2,707	2,583	1,797	3,184	1,275
Portugal	1,866	1,927	2,059	1,888	1,796	1,857	1,989	1,818	70
Romania	3,324	2,950	2,328	3,012	3,184	2,810	2,188	2,872	140
Slovakia	1,265	1,346	1,586	1,227	1,175	1,256	1,496	1,137	90
Slovenia	1,158	1,307	1,779	1,060	1,158	1,307	1,779	1,060	0
Spain	7,256	6,444	5,217	6,452	6,981	6,169	4,942	6,177	275
Sweden	5,416	3,595	2,570	1,888	-1,704	-3,525	-4,550	-5,232	7,120
United Kingdom	2,049	2,958	2,672	4,608	-7,946	-7,037	-7,323	-5,387	9,995
EU-27	65,495	65,495	65,495	65,495	0	0	0	0	65,495

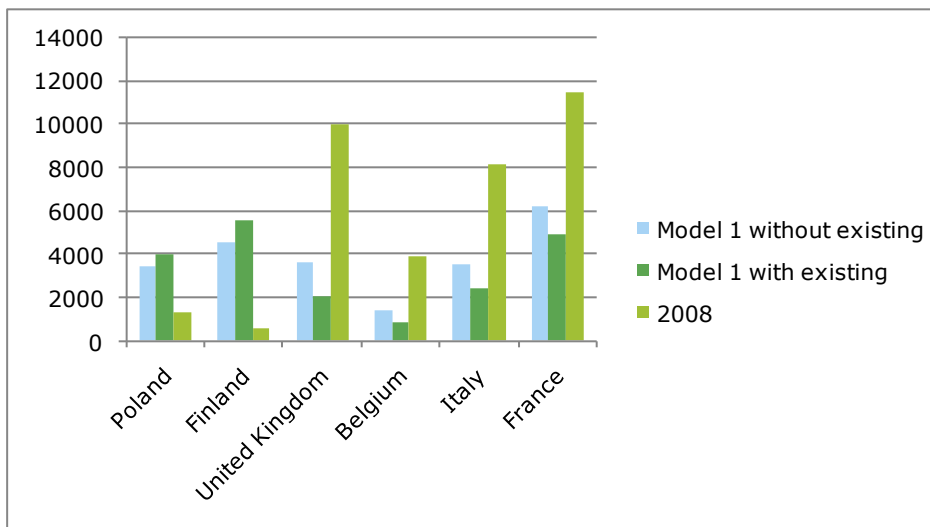
Figure 10 below provides a graphic illustration of the division of the quotas among the Member States as well as of the difference of the four models used.

Figure 10: Distribution of beneficiaries of international protection with density weighting 200 and difference factor 25%



Looking back at our example countries, the impact of the existing number of beneficiaries of international protection as a criterion is clear. When comparing the quota assigned to the six Member States in model 1 (all three criteria weigh equally), with the quota taking into account the existing number of beneficiaries (Figure 11), and with the number of beneficiaries of international protection in 2008, we can see that the four Member States (the UK, Belgium, Italy, France) with a higher existing number of beneficiaries than the quota in model 1 will have a somewhat *smaller* number of beneficiaries assigned to their quota when the existing number is taken into account. The opposite can be said of the two Member States (Finland, Poland), where model 1 quota exceeds the existing number of beneficiaries of international protection.

Figure 11: The impact of existing population of beneficiaries of international protection on the quota



When looking at the number of asylum applications lodged in the Member State as a criterion for calculating the quota for asylum seekers, the following distributions apply.

Table 16: Impact of the difference factor in distribution (asylum applications)

	Distribution according to models 1-4				Distribution of asylum applications (2008)		Distribution with difference factor 25%			
	Model 1	Model 2	Model 3	Model 4	Total (nr.)	Total (%)	Model 1	Model 2	Model 3	Model 4
GDP/capita	33,3	40	60	30			33,3	40	60	30
Population	33,3	40	30	60			33,3	40	30	60
Density	33,3	20	10	10			33,3	20	10	10
Austria	2.8%	2.9%	3.5%	2.6%	12,750	5.3%	2.2%	2.3%	3.0%	1.9%
Belgium	2.2%	2.6%	3.2%	2.6%	11,395	4.7%	1.5%	2.1%	2.9%	2.1%
Bulgaria	2.2%	1.9%	1.7%	1.7%	745	0.3%	2.7%	2.3%	2.0%	2.1%
Cyprus	1.3%	1.5%	2.2%	1.2%	3,450	1.4%	1.3%	1.5%	2.4%	1.1%
Czech Republic	2.1%	2.3%	2.6%	2.3%	1,050	0.4%	2.6%	2.8%	3.1%	2.7%
Denmark	2.1%	2.4%	3.1%	2.1%	2,375	1.0%	2.4%	2.8%	3.7%	2.4%
Estonia	1.6%	1.5%	1.8%	1.1%	15	0.0%	2.0%	1.9%	2.3%	1.4%
Finland	6.9%	5.3%	4.5%	3.5%	3,770	1.6%	8.3%	6.2%	5.3%	4.0%
France	9.4%	9.1%	7.4%	10.1%	41,845	17.3%	7.5%	7.0%	5.0%	8.3%
Germany	7.0%	8.4%	7.6%	11.3%	21,365	8.8%	6.5%	8.3%	7.3%	11.9%
Greece	3.2%	3.0%	3.1%	2.8%	19,885	8.2%	1.9%	1.8%	1.9%	1.4%
Hungary	2.2%	2.2%	2.2%	2.1%	3,175	1.3%	2.4%	2.4%	2.5%	2.3%
Ireland	2.9%	3.0%	3.8%	2.4%	3,805	1.6%	3.3%	3.4%	4.4%	2.6%
Italy	5.4%	6.4%	5.9%	8.4%	30,055	12.4%	3.6%	4.9%	4.3%	7.3%
Latvia	1.7%	1.6%	1.7%	1.2%	50	0.0%	2.2%	1.9%	2.1%	1.5%
Lithuania	1.8%	1.6%	1.8%	1.3%	520	0.2%	2.1%	2.0%	2.2%	1.6%
Luxembourg (Grand-Duché)	3.5%	4.2%	6.2%	3.2%	455	0.2%	4.3%	5.2%	7.8%	3.9%
Malta	1.0%	1.2%	1.7%	0.9%	2,605	1.1%	1.0%	1.2%	1.9%	0.9%
Netherlands	2.8%	3.3%	4.0%	3.5%	13,380	5.5%	2.1%	2.7%	3.6%	3.0%
Poland	5.3%	5.1%	4.1%	5.8%	7,205	3.0%	5.8%	5.6%	4.4%	6.5%
Portugal	2.3%	2.4%	2.5%	2.3%	155	0.1%	2.9%	3.0%	3.2%	2.9%
Romania	4.1%	3.6%	2.9%	3.7%	1,180	0.5%	5.0%	4.4%	3.5%	4.5%
Slovakia	1.6%	1.7%	2.0%	1.5%	905	0.4%	1.9%	2.0%	2.4%	1.8%
Slovenia	1.4%	1.6%	2.2%	1.3%	240	0.1%	1.7%	2.0%	2.7%	1.6%
Spain	8.9%	8.0%	6.5%	8.0%	4,440	1.8%	10.7%	9.5%	7.6%	9.5%
Sweden	8.8%	6.6%	5.3%	4.5%	24,365	10.1%	8.5%	5.7%	4.1%	3.1%
United Kingdom	5.6%	6.7%	6.3%	8.7%	30,545	12.6%	3.8%	5.2%	4.7%	7.7%
EU-27	100.0%	100.0%	100.0%	100.0%	241,725	100.0%	100.0%	100.0%	100.0%	100.0%

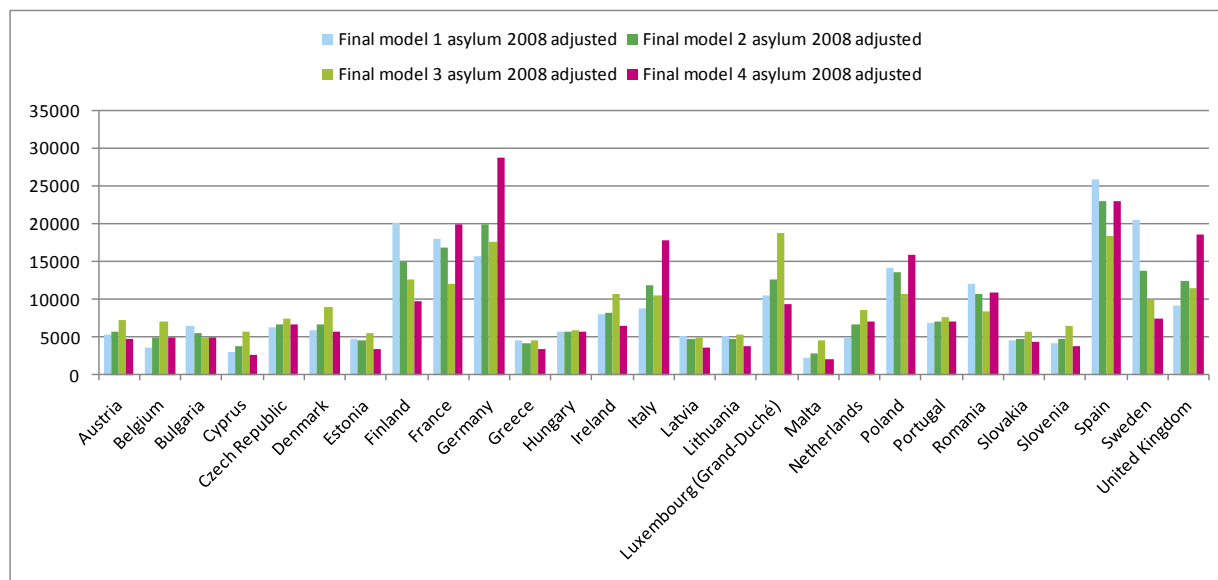
In numbers the above calculation translates into the following quotas:

Table 17: Distribution of asylum seekers with density weighting 200 and difference factor 50%

	Distribution of asylum seekers according to weighting				Change compared to 2008				Total asylum applications 2008
	Model 1	Model 2	Model 3	Model 4	Model 1	Model 2	Model 3	Model 4	
GDP/capita	33,3	40	60	30	33,3	40	60	30	
Population	33,3	40	30	60	33,3	40	30	60	
Density	33,3	20	10	10	33,3	20	10	10	
Austria	5,253	5,678	7,331	4,662	-7,497	-7,072	-5,419	-8,088	12,750
Belgium	3,681	4,987	6,967	4,965	-7,714	-6,408	-4,428	-6,430	11,395
Bulgaria	6,450	5,590	4,885	5,004	5,705	4,845	4,140	4,259	745
Cyprus	3,103	3,736	5,734	2,689	-347	286	2,284	-761	3,450
Czech Republic	6,214	6,694	7,472	6,633	5,164	5,644	6,422	5,583	1,050
Denmark	5,890	6,715	8,901	5,767	3,515	4,340	6,526	3,392	2,375
Estonia	4,767	4,582	5,490	3,396	4,752	4,567	5,475	3,381	15
Finland	20,054	14,980	12,703	9,647	16,284	11,210	8,933	5,877	3,770
France	18,081	16,889	12,020	19,971	-23,764	-24,956	-29,825	-21,874	41,845
Germany	15,776	19,999	17,603	28,730	-5,589	-1,366	-3,762	7,365	21,365
Greece	4,586	4,232	4,525	3,410	-15,299	-15,653	-15,360	-16,475	19,885
Hungary	5,740	5,778	5,951	5,660	2,565	2,603	2,776	2,485	3,175
Ireland	7,921	8,254	10,626	6,382	4,116	4,449	6,821	2,577	3,805
Italy	8,710	11,788	10,450	17,744	-21,345	-18,267	-19,605	-12,311	30,055
Latvia	5,222	4,674	5,005	3,521	5,172	4,624	4,955	3,471	50
Lithuania	5,192	4,826	5,254	3,849	4,672	4,306	4,734	3,329	520
Luxembourg (Grand-Duché)	10,419	12,520	18,743	9,447	9,964	12,065	18,288	8,992	455
Malta	2,319	2,913	4,621	2,097	-286	308	2,016	-508	2,605
Netherlands	4,982	6,647	8,649	7,143	-8,398	-6,733	-4,731	-6,237	13,380
Poland	14,073	13,615	10,713	15,831	6,868	6,410	3,508	8,626	7,205
Portugal	6,912	7,139	7,626	6,994	6,757	6,984	7,471	6,839	155
Romania	12,102	10,723	8,426	10,951	10,922	9,543	7,246	9,771	1,180
Slovakia	4,524	4,823	5,710	4,385	3,619	3,918	4,805	3,480	905
Slovenia	4,215	4,765	6,506	3,851	3,975	4,525	6,266	3,611	240
Spain	25,923	22,925	18,399	22,956	21,483	18,485	13,959	18,516	4,440
Sweden	20,469	13,747	9,965	7,447	-3,896	-10,618	-14,400	-16,918	24,365
United Kingdom	9,147	12,504	11,449	18,593	-21,398	-18,041	-19,096	-11,952	30,545
EU-27	241,725	241,725	241,725	241,725	0	0	0	0	241,725

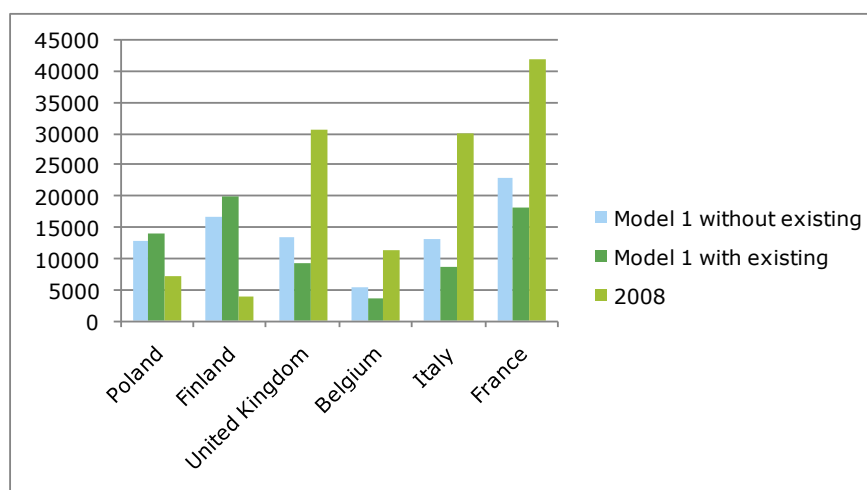
Figure 12 below provides a graphic illustration of the division of the quotas among the Member States as well as of the difference of the four models used. What can be observed is that the quotas assigned to Member States with more than 10% of the asylum applications in 2008 (France, Italy, Sweden, the UK) are clearly lower in models 1-3, where population does not weigh in as heavily as in model 4.

Figure 12: Distribution of asylum seekers with density weighting 200 and difference factor 25%



When looking at our example countries (Figure 13), the impact of the existing number of asylum seekers can be clearly seen in the four Member States with a higher existing number of asylum seekers than the quota calculated in model 1. For Poland the difference between the two ways of calculating is not as important as for other countries, due to the fact that its current share of asylum seekers (in %) is close to the distribution assigned to it in model 1 (both with and without taking into account the existing asylum seekers).

Figure 13: The impact of existing population of asylum seekers on the quota



The above calculations show us that by applying the three variables; population, per capita GDP and density, a wide range of possible models may be constructed by applying different weights. These three variables reflect the population and integration capacity, the wealth and the space that all represent different contributions to the estimation of the capacity of a Member State. The use of existing numbers of beneficiaries of international protection/asylum seekers seems however to be somewhat less important, since the use of the above mentioned three variables (i.e. implementing a quota system) will, after a few years, make previous numbers less

interesting. With this it is meant that when a quota system has been in used for two-three years, it will not be necessary to the same extent to take into account the numbers of beneficiaries of international protection/asylum seekers in each Member State, as the division is based on a quota.

Based on the response from the Member States to the criteria assigned in Option 1 as a basis for calculating the quota, both the population and the existing number of beneficiaries of international protection/asylum seekers have been taken into account when assigning a quota to each Member State. While the different models have illustrated the difference in the distribution between the Member States when weighing the four criteria differently, a more specific decision on which weighting to be used is not considered to be necessary within the scope of this report. There are however a number of issues that need to be taken into consideration:

1) Density threshold

Changing the density threshold has an important impact on the distribution between the Member States. Increasing the density threshold will give a smaller number of Member States a negative population capacity, and there will be more Member States to share the total number of beneficiaries of international protection/asylum seekers. The share allocated to the Member States with a very low density therefore will decrease. The impact of density can however be balanced by weighing down the impact of density distribution in the models used.

2) Relative weights applied

It is important to realise that even if it is reasonable to take all three aspects: integration capacity, wealth, and space into account, there is no single set of weights or distribution pattern, which is absolutely fair or optimal. There is also no particular reason to choose the equal weights (33-33-33%) as a kind of neutral set of weights. There are a multitude of other weights and weighting models that would have given slightly different results, and the weighted averages might have been based on multiplication instead of addition of individual weights.

ANNEX D: FINANCIAL DATA

Table 18: Financial data received from the Member States

	TYPE OF EXPENSE (YEAR 2008)																				
	Total costs	Transport of an asylum-seeker or refugee to another MS	Costs for a reception centre (short term housing)	Health check of an asylum seeker or refugee	Preparing administrative documentation in the sending country	Preparing administrative documentation in the receiving country	Translation or interpretation	Other reception costs (what?)	Support for unaccompanied minors	Support for other vulnerable groups	Processing an asylum claim through all legal instances	Other short term costs (what?)	Integration measures in general	Cultural orientation	Language tuition	Vocational or other education	Schooling of minors	Long-term housing/accommodation	Social benefits	Other long-term costs (what?)	Currency
Austria			X																		EUR
Belgium			X																		EUR
Bulgaria	X		X	X			X		X	X			X	X	X	X	X	X	X	X	EUR
Czech Republic																					
Cyprus																					
Estonia																					
Finland			X						X				X								EUR
France		X	X		X			X					X					X			EUR
Germany																					
Greece																					
Hungary																					
Ireland			X	X ⁸⁴				X							X	X	X	X			EUR
Italy	X									X											EUR
Latvia																					
Lithuania	X																				EUR
Luxembourg																					
Malta ⁸⁵		X	X	X	X		X	X					X								
Netherlands			X			X												X			EUR
Poland															X						PLN
Portugal	X																				
Romania	X	X	X	X		X	X	X	X					X			X	X			RON
Slovenia	X																				EUR
Slovakia																					
Spain			X																		EUR
Sweden						X		X					X								SEK
UK	X							X													GBP

⁸⁴ 2007 data.

⁸⁵ The Maltese figures are not by person. All figures but costs for reception centre and translation costs are from the EUREMA project.

ANNEX E: INTERVIEW GUIDES

Member States with relocation experience

Presentation of the consultant and the assignment:

Name:

Company:

The Directorate-General for Justice, Freedom and Security has commissioned Ramboll Management Consulting and Eurasyllum Ltd with a study on the feasibility of establishing a mechanism for the relocation of beneficiaries of international protection. The objective of the feasibility study is to provide the European Commission with comprehensive information on the **financial, juridical, political implications of relocation and other options available to better foster solidarity between the Member States for the management of asylum flows**. The results of the study will feed into the Commission's further deliberations on developing a series of burden sharing mechanisms in the field of asylum.

The purpose of the interview is to:

- Hear your perspectives on the extent to which there is an uneven distribution of responsibilities on managing asylum flows within the MS27 of the EU.
- Hear about your experiences with relocation (responsibility-sharing), including the
 - Background for the decision to take part in relocation
 - Description of the current responsibility-sharing mechanism/system
 - Results of the responsibility-sharing mechanism
 - Shortcomings and advantages of the current mechanism
- Hear your initial reactions on the two examples of responsibility-sharing in a European context [refer to the e-mail with description of the two options and the simulations with you have been given].

It is important that we initially stick to discussing the two presented options and why you would prefer one to the other if you should choose. This is important for analytical reasons, as it will keep the discussion practical and focused. Later it will be possible to point to other options or change components in the proposed options. Prioritising between the two options is thereby **not** the same as accepting any one of them!

On the need for a responsibility sharing mechanism within EU

1. Is there an uneven distribution of responsibilities in handling asylum flows in Europe?
2. If yes:
 - a. What is the main challenge?
 - b. What are the reasons for the uneven distribution?
 - c. Is it necessary to build a mechanism to handle this challenge?
 - d. What should be the objectives for such a system?
3. If no, go to next question

On existing experience

According to our research your country already has some experience with responsibility-sharing mechanisms. [Describe the relocation mechanism we want to enquire about].

4. Could you shortly describe what prompted the decision to initiate/participate in this responsibility sharing mechanism (what challenges was it designed to solve)?

5. What were the main political obstacles/ objections and how were they overcome?
 - a. Were the possibility of pull-factors (more applicants) discussed as a likely result of the scheme?

We will now present you with some of the main features of the mechanism, that our desk study has provided us with. We would like to ask you to confirm the findings from our study, and to explain:

- The reasons behind the choices made
 - The considerations you had, and the challenges you meet for each main feature
6. Who is being relocated? [fill in answer]
 - a. Is this a correct description of who is being relocated within the mechanism?
 - b. Why this specific group?
 7. What are the distribution criteria for relocation? [fill in answer]
 - a. Is this a correct description of the bases for the distribution criteria for receiving refugees and/or asylum seekers?
 - b. Why these criterions?
 8. How does the financial compensation scheme function [fill in answer or ask if not available in documents]:
 - a. How are the necessary funds to be relocated through the financial compensation scheme collected (who pays, how much, based on what criteria)?
 - b. How much is given in "compensation" per person relocated, and how is it calculated?
 - i. Does it differ between types of relocated refugees / asylum seekers?
 - c. Who is the recipient?
 - a. Why were the specific elements in the financial compensation scheme chosen?
 9. In order to introduce the responsibility-sharing mechanism were any large reforms necessary:
 - a. Legal
 - b. In terms of reception procedures
 - c. Financial
 - d. Other
 10. Could the same system have been developed if including [mention the examples not included in the system in question]
 - a. Only refugees
 - b. Refugees and asylum seekers
 - c. Refugees, asylum seekers and vulnerable (unaccompanied children)
 - d. Only vulnerable (unaccompanied children)
 11. Does/ did the responsibility-sharing mechanism solve the problems it was addressing?
 - a. Which ones did it solve
 - i. Can you be sure that it is because of the mechanism?
 - b. Which ones did it not solve?
 - ii. Why not?
 12. Based on your experience, what would be your advice to the European Commission if they are to develop a responsibility-sharing mechanism?

On the two options

[The respondent has already received a description of the two options and of the process of the interview, but recapitulate shortly and asks him/her to keep that information in front of him/her. Countries with experience in relocation should only answer to question 10, 18 and 19 of this section, unless there is time for more!]

13. Which of the two options would you prefer and why? It is also a possibility to combine elements from the two options.
 - a. Why do you prefer that [option] are being relocated?
 - b. Why do you prefer [option] as the criteria?
 - c. Why do you prefer [option] as the financial scheme for compensation?
14. If you take the chosen option as the outset, but can choose five changes or additions to it, what would they then be?
 - a. Why?
15. Do you think that another solution than responsibility-sharing would better address the uneven distribution of responsibilities in handling asylum flows in Europe?
 - a. Which one?
 - b. How? [Here they need to explain how this solves the problem, not just why it is a better option for them]

Countries without experience relocation experience

Presentation of the consultant and the assignment:

Name:

Company:

The Directorate-General for Justice, Freedom and Security has commissioned Ramboll Management Consulting and Eurasyllum Ltd with a study on the feasibility of establishing a mechanism for the relocation of beneficiaries of international protection. The objective of the feasibility study is to provide the European Commission with comprehensive information on the **financial, juridical, political implications of relocation and other options available to better foster solidarity between the Member States for the management of asylum flows**. The results of the study will feed into the Commission's further deliberations on developing a series of burden sharing mechanisms in the field of asylum.

The purpose of the interview is to:

- Hear your perspectives on the extent to which there is an uneven distribution of responsibilities on managing asylum flows within the MS27 of the EU.
- Hear your initial reactions on the two examples of responsibility-sharing in a European context [refer to the e-mail with description of the two options].

It is important that we initially stick to discussing the two presented options and why you would prefer one to the other if you should choose. This is important for analytical reasons, as it will keep the discussion practical and focused. Later it will be possible to point to other options or change components in the proposed options. Prioritising between the two options is thereby **not** the same as accepting any one of them!

On the need for a responsibility sharing mechanism within EU

1. Is there an uneven distribution of responsibilities in handling asylum flows in Europe?
2. If yes:
 - a. What is the main challenge?
 - b. What are the reasons for the uneven distribution?
 - c. Is it necessary to build a mechanism to handle this challenge?
 - d. What should be the objectives for such a system?
3. If no, go to next question

On the two options

[The respondent has already received a description of the two options and of the process of the interview, but recapitulate shortly and asks him/her to keep that information in front of him/her.]

4. Which of the two options would you prefer and why? It is also a possibility to combine elements from the two options.
 - a. Why do you prefer that [option] are being relocated?
 - b. Why do you prefer [option] as the criteria?
 - c. Why do you prefer [option] as the financial scheme for compensation?
 - d. How does it address the challenge identified in the start of the interview?

Political implications [based on the chosen option]

5. What would you estimate to be the yearly number of persons who could be subject to relocation to or from your country were this option to be enforced?
 - a. If they cannot answer ask them about the two different options would have different results in this respect and why/how?
6. What would be the main factors influencing the yearly number of persons who could be subject to relocation to or from your country were this option to be enforced?
 - a. If they cannot answer ask them about the two different options would have different results in this respect and why/how?
7. Do you think that this responsibility-sharing mechanism would increase the number of asylum applicants in your country:
 - a. Why?
8. What could be done to limit the risk that the responsibility-sharing mechanism results in increased number of asylum applicants?
9. Would the political implications and / or feasibility change if the option included asylum seekers?
10. Would the political implications and / or feasibility change if the option included vulnerable (unaccompanied children)?

Legal implications [based on the chosen option]

11. Is there anything in your current national legislation that hinders the adaptation of this option?
 - a. What?
 - b. What would need to be changes for the option to be possible to adopt?
12. Would the answer change if the option included asylum seekers?
13. Would the answer change if the option included vulnerable (unaccompanied children)?

Financial implications [based on the chosen option]

14. What should a yearly fixed amount funding (fixed amount mentioned in Option 2) be directed at?
15. Can you provide us with a very rough basis assessment of (if not in numbers then with respect to how it should be calculated):
 - a. The amount per person for processing asylum claims
 - b. The amount per person for processing asylum claims for vulnerable persons
 - c. The amount per person for receiving a relocated refugee and / or asylum seeker
 - d. The amount per person for receiving a vulnerable refugee and / or asylum seeker

Free-styling [based on the chosen option]

16. If you take the chosen option as the outset, but can choose five changes or additions to it, what would they then be? Why?
17. Do you think that another solution than responsibility-sharing would better address the uneven distribution of responsibilities in handling asylum flows in Europe?
 - a. Why?
 - b. How? [Here they need to explain how this solves the problem, not just why it is a better option for them]

International organisations

Presentation of the consultant and the assignment:

Name:

Company:

The Directorate-General for Justice, Freedom and Security has commissioned Ramboll Management Consulting and Eurasyllum Ltd with a study on the feasibility of establishing a mechanism for the relocation of beneficiaries of international protection. The objective of the feasibility study is to provide the European Commission with comprehensive information on the **financial, juridical, political implications of relocation and other options available to better foster solidarity between the Member States for the management of asylum flows**. The results of the study will feed into the Commission's further deliberations on developing a series of burden sharing mechanisms in the field of asylum.

The purpose of the interview is to:

- Hear your perspectives on the extent to which there is an uneven distribution of responsibilities on managing asylum flows within the MS27 of the EU.
- Hear about your experiences with relocation (responsibility-sharing)
 - Background for the decision to relocate
 - Description of the responsibility-sharing mechanism
 - Results of the responsibility-sharing mechanism
 - Shortcomings and advantages of the mechanism
- Hear your initial reactions on the two examples of responsibility-sharing in a European context [refer to the e-mail with description of the two options].

It is important that we initially stick to discussing the two presented options and why you would prefer one to the other if you should choose. This is important for analytical reasons, as it will keep the discussion practical and focused. Later it will be possible to point to other options or change components in the proposed options. Prioritising between the two options is thereby **not** the same as accepting any one of them!

On the need for a responsibility sharing mechanism within EU

Is there an uneven distribution of responsibilities in handling asylum flows in Europe?

1. If yes:
 - a. What is the main challenge?
 - b. What are the reasons for the uneven distribution?
 - c. Is it necessary to build a mechanism to handle this challenge?
 - d. What should be the objectives for such a system?
2. If no, go to next question

On existing experience

3. Do you know of any particularly good examples of responsibility sharing that could be used as a basis for developing a mechanism at European level?

Could you describe the mechanism?

4. Who is being relocated?
 - a. Should it be the same group of people at European level?
 - b. Why (not)?
5. What are the distribution criteria for relocation?
 - a. Should it be the same distribution criteria at European level?
 - b. Why (not)?

6. If financial compensation scheme exists: What is the base for financial compensation in terms of how much, based on what criterions, how is it calculated, who is the recipient etc.?
 - a. Should it be the same type of compensation scheme at European level?
 - b. Why (not)?
7. If financial compensation does not exist: does the system compromise any other types of compensation?
 - a. Could the same system be used at European level?
 - b. Why (not)?
8. Does/ did the responsibility-sharing mechanism solve the problems it was addressing?
 - a. Which ones did it solve
 - i. Can you be sure that it is because of the mechanism?
 - b. Which ones did it not solve?
 - ii. Why not?
9. Could the same system have been developed if including [mention the examples not included in the system in question]
 - a. Only refugees
 - b. Refugees and asylum seekers
 - c. Refugees, asylum seekers and vulnerable (unaccompanied children)
 - d. Only vulnerable (unaccompanied children)

On the two options

[The respondent has already received a description of the two options and of the process of the interview, but recapitulate shortly and asks him/her to keep that information in front of him/her. Countries with experience in relocation should only answer to question 10, 18 and 19 of this section, unless there is time for more!]

10. Which of the two options would you prefer and why? It is also a possibility to combine elements from the two options.
 - a. Why do you prefer that [option] are being relocated?
 - b. Why do you prefer [option] as the criteria?
 - c. Why do you prefer [option] as the financial scheme for compensation?

Political implications [based on the chosen option]

11. What would you estimate to be the yearly number of persons who could be subject to relocation within EU, were this option to be enforced?
 - a. Is that more or less than with the other option?
12. What would be the main factors influencing the yearly number of persons who could be subject to relocation to or from your country were this option to be enforced?
 - a. Would that be different with the other option?
13. Do you think that this responsibility-sharing mechanism would increase the number of asylum applicants in EU:
 - a. Why?
 - b. Would that be different with the other option?
14. What could be done to limit the risk that the responsibility-sharing mechanism results in increased number of asylum applicants?
15. Would the political implications and / or feasibility change if the option included asylum seekers?

Legal implications [based on the chosen option]

16. Does the existing EU aquis offer any inspiration as to how this option could be constructed legally?
 - a. With respect to the rights and responsibilities of the MS?
 - b. With respect to the rights and responsibilities of the persons to be relocated?
 - c. With respect to the voluntary or compulsory character of the option?
 - d. With respect to which grounds should trigger the use of a relocation scheme? [the Temporary Protection Directive (which can be used if there is a mass influx of refugees in EU) does mentioned some grounds which can trigger its application]
17. What should be the role of the Commission and the EASO under such a mechanism?
18. Are there anything in the current legal basis in the Treaty that hinders the adaptation of this option? [only ECRE]
 - a. What?
 - b. What would need to be changes for the option to be possible to adopt?
19. Do you know of anything in the future legal basis in the treaty that hinders the adaptation of this option? [only ECRE]
 - a. What?
 - b. What would need to be changes for the option to be possible to adopt?
20. Would the answer change if the option included asylum seekers?
 - a. How to ensure reconciliation with the Dublin system?

Financial implications [based on the chosen option]

21. What should a yearly fixed amount be directed at?
22. Can you provide us with a very rough basis assessment of (if not in numbers then with respect to how it should be calculated):
 - a. The amount per person for processing asylum claims [might have been answered as part of question 4]
 - b. The amount per person for processing asylum claims for vulnerable persons [might have been answered as part of question 4]
 - c. The amount per person for receiving a relocated refugee and / or asylum seeker [might have been answered as part of question 4]
 - d. The amount per person for receiving a vulnerable refugee and / or asylum seeker [might have been answered as part of question 4]
 - e. The yearly flat-rate funding for each MS
23. If the option were to be supported by the European Refugee Fund, how should this then be structured?

Finalisation

24. Based on your experience, what would be your advice to the European Commission if they are to develop a responsibility-sharing mechanism?

ANNEX F: LITERATURE REVIEW

The overall purpose of conducting a literature review as part of the study on relocation of refugees was two-fold. First, the literature review aimed to provide the European Commission with an overview of what literature exists in the field of burden-sharing and relocation of refugees, and what the main implications of these different models for burden-sharing are, including their conclusions and recommendations. The literature review will thus serve as background information when looking more in detail into the specificities of relocation as a solidarity mechanism in the second part of the study⁸⁶. However, as a secondary purpose, the literature review has a specific methodological merit which is to identify an alternative option to relocation which can be used when examining the financial, legal, political and practical implications of relocation in the second part of the study.

Therefore, in this chapter we present, first, the methodology used to carry out the literature review i.e. the search strategy, the actual search and how the literature has been coded in order to analyse the literature identified (section 2.1). Secondly, we present the analytical result of the literature review (section 2.2), and thirdly, we present the results of the workshop conducted with various stakeholders and academics, which aimed to explore further the different options for burden-sharing (section 2.3). Finally, we present the proposal of the Consortium for the best alternative option to relocation to be included in the second part of the study (section 2.4)

Initial methodological considerations

Search strategy

The literature review was carried out using the methodology of Rapid Evidence Assessment which is a particular form of meta-evaluation designed to cover relatively quickly a large number of studies in order to provide evidence for policy making. A memorandum containing the specific review protocol was developed with a view to outlining the research question, types of literature, search facets, time span to be covered, languages and geographical coverage. The contents of the memorandum, which was agreed with the European Commission, can be summarised in brief as follows:

Research question: *What knowledge exists about burden-sharing options in the areas of asylum, immigration and border control?*

Types of literature: Peer reviewed scientific studies and other relevant studies/papers developed by different stakeholders.

Time span: 1990-2010

Languages and geographical coverage: English, French and German literature, and excluding burden-sharing issues in developing countries in Africa and Asia.

Search facets chosen:

- Burden sharing
- Relocation
- Resettled
- Solidarity
- Refugee, asylum, border or immigration

Searching and coding of literature

The initial search for relevant studies has been carried out by Alan Gomersall, who is senior visiting research fellow with Kings College London.

The full search strategy chosen was based on the search facets presented above:

⁸⁶ Tender Specifications (Invitation to tender N. JLS/2009/ERFX/PR/1005)

((Burden shar* or relocate* or resettle* or solidarit*) and (refugee* or asylum or border* or immigra*)) not (health or mental or medic* or psychol* or nurs*).

Search facets health, mental, medic*, psycho* and nurs* were left out of the search strategy due to the excessive amount of articles concerning the physical and mental health of asylum seekers and returning refugees within the initial search strategy.

The databases that were searched through included the following:

- Social Policy & Practice
- Community Abstracts
- ASSIA
- Web of Knowledge (Social Science Citation Index)
- Sociological Abstracts (2003-2010)
- Worldwide Political Science Abstracts
- Social Services Abstracts
- British Humanities Index
- National Criminal Justice Reference Service
- BL Direct (2009-2010)
- Criminal Justice Abstracts.

With the exception of BL Direct and Sociological Abstracts the search was limited to the past 10 years. The full search strategy was used in all cases.

The search returned a selection of 643 articles. The research conducted by Alan Gomersall was supplemented with a few studies identified by the European Commission. Phone calls were also made to relevant stakeholders in the field (UNHCR, ECRE and IOM) to identify additional relevant (unpublished) studies, but without any success.

The abstracts of the articles found through the database search and supplied by the European Commission were reviewed and 64 articles were selected for a preliminary study. Of these 64 articles 29 were deemed not to be directly relevant to the study. The main reasons for this were that many articles were only discussing resettlement of refugees through UNHCR's resettlement programme; they dealt with migration in general, rather than concentrating on refugees; or they studied the different aspects of seeking asylum, rather than concentrating on burden-sharing.

35 articles were selected to be studied in the literature review. The full list of literature found and used in the review can be found in Annex A.

The literature review was conducted using the qualitative analysis tool Nvivo, which allows for the coding of articles based on a node tree created specifically for this assignment. The node tree used when conducting the literature review is presented below:

1. General background on burden-sharing
2. Type of burden-sharing
 - 2.1. Area
 - 2.1.1. Asylum
 - 2.1.2. Border control
 - 2.1.3. Immigration
 - 2.2. What level
 - 2.2.1. National
 - 2.2.2. Transnational
 - 2.3. What are the reasons for establishing burden-sharing?
 - 2.4. What are the goals of burden-sharing?
 - 2.5. What are the main elements of burden-sharing?
 - 2.6. When was burden-sharing established?
 - 2.7. Who was involved in designing and implementing the burden-sharing programme
3. Description of the political feasibility of burden-sharing
 - 3.1. Advantages

- 3.2. Disadvantages
- 3.3. Other interesting comments on political feasibility
- 4. General consequences of burden-sharing
 - 4.1. Financial consequences
 - 4.1.1. Characteristics of refugees covered by the programme
 - 4.1.2. Estimated long-term costs by refugee
 - 4.1.3. Estimated short-term process costs by refugee
 - 4.1.4. Other financial information
 - 4.2. Legal consequences
 - 4.2.1. Implications of compulsory elements
 - 4.2.2. Implications of voluntary elements
 - 4.2.3. Legal consequences for the EU
 - 4.2.4. Legal consequences for the Member States
 - 4.2.5. Legal consequences for the refugee
 - 4.2.5.1. Are the changes positive or negative?
 - 4.2.5.2. How does it influence status and rights?
 - 4.2.5.3. What are the pitfalls?
 - 4.2.6. Other interesting comments on the legal consequences
- 5. Results of burden-sharing
 - 5.1. Failures
 - 5.2. Success factors

Analytical results of the literature review

The academic literature discussing burden-sharing in the field of asylum is rather limited to date. Betts and Durieux (2007) describe the international asylum regime as being comprised of two different aspects: asylum and burden-sharing. Whereas asylum refers to the states' obligations towards the refugees that reach their territory, burden-sharing refers to the obligation that states may have to support the protection of refugees also outside their own territory. Betts and Durieux emphasise also that the existing legal sub-regime for asylum is relatively strong, whereas the existing norms or rules on burden-sharing are few.⁸⁷ Skran (1995, referred to in Ucarer 2006) adds to this the concept of assistance, including material relief and assistance in repatriation or resettlement.⁸⁸

Vink and Mejerink (2003) link burdens in the field of asylum to "all costs for host states that may be incurred in the process following an initial application for asylum, such as administration and examination of asylum claims, temporary housing and legal assistance of asylum applicants, societal integration of recognised refugees, and the removal of 'bogus' asylum seekers." The costs related to the "asylum-burden" can be financial, organisational or societal, meaning that all burdens related to asylum seekers and refugees cannot directly be measured in terms of money.⁸⁹ According to Noll (2003), the use of the term "burden" in relation to refugees tends to amplify a short-term bias in the time frame, as according to him, refugees provide a net benefit rather than a burden to the receiving society after a couple of years in a country.⁹⁰

In this paper burden-sharing mechanisms in the field of asylum have not been separated. This means that both research on burden-sharing mechanisms related to asylum-seekers (i.e. processing, housing, legal assistance) and to beneficiaries of international protection (i.e. relocation, integration) are presented.

⁸⁷ p. 510.

⁸⁸ p. 222.

⁸⁹ p. 298.

⁹⁰ p. 237.

Why do states theoretically accept to share burdens?

Before discussing the different solutions for burden-sharing in the field of asylum in the European Union, it is relevant to look at the motives that states may have to share these burdens. One interesting view as to why states should share the burdens of asylum is that instead of only being a method for the over-burdened countries to minimise the burden they are experiencing, burden-sharing can be seen as a way to maintain and restore the states' admission capacity in the long term.⁹¹

In the European Union the main argument given for burden-sharing in the field of asylum has been to show solidarity to the efforts of the other Member States in providing protection. Solidarity is a value that is also well embedded in the Member States' traditions. As Thielemann (2006) points out, the Member States have long traditions in including provisions of solidarity in their constitutions as a form of balancing out economic, financial or infrastructural imbalances between the different regions and territorial entities of the country.⁹²

With respect to existing national dispersal mechanisms, both the German and UK dispersal mechanisms were according to Boswell introduced as a response to the growing public concerns about the social and economic costs of asylum, in particular with respect to the accommodation of asylum seekers.⁹³ In the UK the dispersal mechanism was introduced as a way to relieve the social tensions caused by the concentration of asylum seekers in specific areas, but also to locate asylum seekers in the regions of the UK that are outside of London and Southeast of England.⁹⁴ In Germany the dispersal mechanism was also seen as a way to reduce the attractiveness of seeking asylum in Germany.⁹⁵

In Australia, the national dispersal mechanism had as one of its goals to assist the refugees to contribute to the Australian society and the building of regional economies as soon as possible after their arrival.⁹⁶

Theoretically, the literature presents three main reasons for states to accept to share burdens in the field of asylum:

- 1) Norms
- 2) Cost-benefit
- 3) International obligations

Norms

One reason for states to be willing to share burdens in the field of asylum is related to the norms that a state adheres to. The research indicates that countries that are more liberal with respect to providing welfare and social security, as well as countries that spend a bigger than average share of their budget on foreign aid, are also more likely to agree on receiving refugees, also as a result of a burden-sharing mechanism.⁹⁷ Countries are also worried that if they do not cooperate in the field of asylum, there will be an under-provision of protection, increasing the suffering of the asylum seekers and refugees.⁹⁸

Cost-benefit considerations

Research also points to cost-benefit considerations as a background for countries' willingness to agree to burden-sharing in the field of asylum. The cost-benefit view looks at burden-sharing from the point of view, where sharing burdens functions as a mutual insurance in case of a situation of mass influx of refugees or other similar crisis situations. These kinds of schemes are however only likely to include countries that have a similar perception of risks that are worth sharing.⁹⁹ As Noll puts it, when a Member State does not expect such a crisis to happen, where

⁹¹ Hailbronner 2000 in Barbou des Places & Deffains.

⁹² p. 10.

⁹³ p. 317.

⁹⁴ Hynes 2009, p. 102.

⁹⁵ Boswell 2003a, p. 319.

⁹⁶ Johnston et al. 2009, p. 193.

⁹⁷ Thielemann 2003a.

⁹⁸ Thielemann 2006, p. 10.

⁹⁹ Thielemann 2003a, p. 256.

the reciprocal returns would materialise, signing of an "insurance policy" is considered as wasting of resources. Noll (2003) points however out that "recent history has proven that migration flows and their destinations can change relatively fast [...], which might promote a change of perception with the more reluctant Member States".¹⁰⁰

International obligations

One motivation for the states to approve of burden-sharing mechanisms in the field of asylum can be related to their interests in supporting international obligations, such as the continuation of the European integration project, or the system of international refugee protection. Uncoordinated action by the EU Member States can lead to the weakening of credibility of the European cooperation and the consequences of each Member State developing their own standards for refugee protection ("race to the bottom") may lead to the unravelling of basic international human rights norms.¹⁰¹

Why do asylum seekers choose specific countries?

In order to address the unequal distribution of refugees in the European Union, it is important to understand the root causes of the unequal distribution – why asylum seekers end up seeking asylum in a specific country.¹⁰² According to Hatton (2004), there is a balance of choice and constraint involved in choosing the destination. The following should be taken into consideration:

- Historical ties (language, existing networks of migrants)
- Ease of access (geographical, transportation)
- Perceptions of economic and social conditions.¹⁰³

Thielemann (2003b) found that the main reasons for asylum seekers choosing a specific destination were labour market conditions (as reflected in the unemployment rate), the existing stock of foreign nationals (the friends and relatives effect), and the country's reputation for generosity (as measured by overseas development aid).

How can burdens be shared?

According to Noll, there are three points of potential burden-sharing during the refugee's path:

- Sharing the burden of preventing and resolving refugee crises
- Sharing the burden of preventing and deflecting arrivals
- Sharing the burden of reception.¹⁰⁴

Boswell (2003b) provides an interesting overview of the different mechanisms for burden-sharing and examples of existing systems under each mechanism:

	Direct burden-sharing		Indirect burden-sharing
	Financial Transfer	Physical Dispersal	Influence incentive structure
National	Center-periphery financial flows	Dispersal of asylum seekers	
Intra-European	European Refugee Fund	Kosovo Humanitarian Evacuation Programme	EU harmonisation of asylum legislation
International	Financing refugee camps in regions of origin (1950s concept)	Resettlement	Recent proposals for reception in the region

Below we present five general options for burden-sharing that, at least to some extent, take into account all these three stages where burdens can be shared. However, when discussing refugees, instead of asylum-seekers, the costs incurred to a state after the accepted asylum claim should

¹⁰⁰ Noll 2003, p. 241.

¹⁰¹ Thielemann 2006, p. 12.

¹⁰² Czaika 2009, p. 92.

¹⁰³ P. 17.

¹⁰⁴ P. 242.

also be taken into consideration. The reviewed literature discusses these costs to a very limited extent, however, pointing out the differences between financial costs, organisational costs and societal costs.

Policy harmonisation – sharing of norms

Policy harmonisation in the field of asylum entails that the states are sharing their norms.¹⁰⁵ The underlying theory behind policy harmonisation postulates that the more generous the asylum system of a country, with lengthier periods of review and longer appeal procedures, the more likely is the country to receive a greater number of applications than the neighbouring countries with more restrictive policies.¹⁰⁶

Policy harmonisation (with respect to tightening the asylum policy) can, according to Hatton (2004), be divided into four different areas:

- Tightening access to the country's borders
- Toughening asylum procedures
- Outcome of asylum claims
- Treatment of asylum seekers during processing¹⁰⁷

The goal of harmonising policies is to limit the phenomenon of "asylum shopping" – asylum seekers choosing a specific country where they decide to apply.

Possibilities for harmonisation

The boxes below illustrate the two different end-poles of options for using policy harmonisation as the mechanism for burden-sharing in the field of asylum. Any selected method to harmonise the policies in the field of asylum could be placed in any location between these two options, depending on the assessment of feasibility by the Member States. The different aspects to take into consideration include for example the following:

- Harmonisation in all four areas or only some of them?
- Does policy harmonisation also lead to common procedures, such as joint processing of asylum-seekers?

Policies completely harmonised – legislation exactly same in all MS (strict/loose)

All MS choose legislation independently

Financial transfers – sharing of costs

According to Dean & Nagashima (2007), industrial countries often suggest that they can better fulfil their role in the refugee protection regime by paying for it in developing countries, mainly by providing financial support to UNHCR. This is for example the case of Japan.¹⁰⁸ Another possibility is that countries support the refugee burden experienced by other states by providing financial support that the receiving countries can use to handle the inflows of asylum seekers.

Currently, financial burden-sharing in the European Union in the field of asylum functions mainly through the European Refugee Fund (ERF). The financial burden-sharing mechanism- is based on a system of financial transfers, where each Member State receives a bulk of funding in order to organise reception, integration and repatriation of asylum-seekers, refugees and displaced persons. The ERF has both a proportional and a fixed element, where the fixed amount specifies a minimum amount of financial support allocated to each Member State and the remainder of is divided between the Member States on the basis of the number of refugees that each Member State has received (applications, accepted refugees, temporary protection) in the past three years.¹⁰⁹

¹⁰⁵ Vink & Meijerink 2003, p. 300.

¹⁰⁶ Byrne 2003, p. 341. This view has however been contested by for example Thielemann (2006).

¹⁰⁷ P. 22.

¹⁰⁸ P. 481.

¹⁰⁹ Presented in Thielemann 2005.

However, states often consider the non-financial costs of refugee protection to be the most burdensome. These include for example the organisational costs of both the processing of asylum seekers, as well as the societal costs that are attached to the integration of beneficiaries of international protection. For example in Germany it was found that the national dispersal mechanism has been effective in redistributing financial costs of receiving asylum seekers but the system has also exacerbated inter-ethnic tensions and racial violence, which may be considered to be societal costs of refugee protection.¹¹⁰

Possibilities for financial transfers

The boxes below illustrate the two different end-poles of options for setting up a mechanism for financial transfers. Any mechanism for financial transfers could be placed in any location between these two options, depending on the assessment of feasibility by the Member States. "Providing protection" refers here to protection to both asylum-seekers and refugees. The different aspects to take into consideration include for example the following:

- Financial transfers according to absolute or relative burden?
- How is it defined how much each state pays? Population, GDP, same proportions as used in the Council?
- Do the financial transfers cover reception, integration and repatriation, or for example only reception costs?
- Which categories of beneficiaries of international protection are included?

All costs incurred from providing protection are shared evenly between MS

Financial transfers occur on voluntary basis

Relocation – sharing of people

Relocation of people is considered by the researchers to be a relatively controversial option for burden-sharing. Below we present some ways in which research proposes to structure a relocation mechanism, as well as consideration of the implications of a relocation mechanism.

The rationale behind relocation of people, instead of for example sharing the costs of asylum, is that it is assumed that hosting refugees entails costs that cannot be reimbursed financially.

Transnational relocation mechanisms

A basic possibility for relocating refugees inside the European Union is to assign to each state a quota of refugees, which would make each state responsible for a certain number of refugees. Such a proposal for an EU-wide relocation mechanism was presented by Germany in 1994. This mechanism involved a relocation mechanism based on:

- Population size
- Size of Member State Territory
- GDP

The exact proposal read as follows: 'Where the numbers admitted by a Member State exceeds its indicative figure [...], other Member States which have not yet reached their indicative figure [...] will accept persons from the first State'.¹¹¹

When considering quotas of asylum seekers it should however be recognised that costs of providing protection (i.e. processing asylum claims, relocating refugees, integration) can differ greatly from one country to another. This is why a mechanism of relocation perhaps should also take into account the relative costs of admitting refugees.

National dispersal mechanisms

National dispersal mechanisms are used, for example, in Germany and the UK. Whereas the German dispersal mechanism aims at dispersing costs through the physical dispersal of refugees between the federal states, in the UK the dispersal system is a combination of both financial

¹¹⁰ Boswell 2003a, p. 316.

¹¹¹ Quoted in Thielemann 2003a, p. 260.

dispersal mechanisms and a system of physical dispersal. In Australia, refugees with no existing family or social links are resettled to regional towns throughout the country.¹¹²

In Germany the asylum seekers are distributed proportionately to the population of each federal state. Asylum seekers do not have a say in choosing their place of residence and they are confined to the region where they are staying.¹¹³

In the UK the dispersal mechanism is only directed at those asylum seekers who cannot afford to pay for their own accommodation or who cannot stay with family and friends.¹¹⁴

The feasibility of the national dispersal systems in the UK and Germany was, according to Boswell (2003a), directly related to the existence of a pattern of inter-regional burden-sharing, or a strong central government with a competence to impose a top-down solution for burden-sharing.¹¹⁵

Possibilities for relocation

The boxes below illustrate the two different end-poles of options for setting up a mechanism for relocation of refugees. Any mechanism for relocation of people could be placed in any location between these two options, depending on the assessment of feasibility by the Member States. The different aspects to take into consideration include for example the following:

- How should the size of the quota of each Member State be decided, e.g. GDP, population, territory, length of external borders, same proportions as used in the Council?
- Are national dispersal mechanisms allowed as a part of the relocation mechanism?
- Are regional and local level actors consulted?
- What is the degree of voluntarism from the refugee's point of view?

All refugees are allocated to the Member States based on a quota

Relocation occurs on voluntary basis (ie. When a recipient country offers to receive refugees)

Public goods

Suhrke (1998) was the first researcher to apply the theory of public goods to the question of burden-sharing in the field of refugee protection. The basic thought that she offers is that when one state admits refugees, the other states benefit from the greater international order that follows, regardless of whether the state itself admitted any refugees or not.¹¹⁶

A challenge with respect to public goods, presented in 1966 by Olson and Zeckhauser (referred to in Barbou des Places & Deffains), is that it can be expected that countries with high GNP and bigger population will take upon themselves a greater relative burden than the poorer and smaller nations. Olson and Zeckhauser reached this conclusion when studying the burden-sharing mechanisms of NATO. This assumption has however been shown to be false in the field of refugee protection in Europe, where Thielemann (2003a) shows that the highest burdens are instead predominantly taken by the smaller states, such as Sweden, Denmark and Austria, who ranked nr. 8-10 when comparing the GNP of EU Member States in 1999.¹¹⁷

The public good theory can also be taken to a second level, where burden-sharing is not only supported by the creation of the public good that benefits everyone, but also by benefits that are exclusive to a country.¹¹⁸ One model of burden-sharing suggests that different countries can specialise in specific aspects of burden-sharing according to their comparative advantage as to the type and level of contribution they make to international public goods.¹¹⁹

¹¹² Johnston et al. 2009, p. 193.

¹¹³ Boswell 2003a, p. 319.

¹¹⁴ Boswell 2003a, p. 321.

¹¹⁵ P. 333.

¹¹⁶ P. 398.

¹¹⁷ P. 264.

¹¹⁸ Betts 2003; Thielemann 2006, p. 6.

¹¹⁹ Thielemann & Dewan 2006, p. 351.

How can burdens then be shared in the context of public goods? An option presented by Thielemann and Dewan proposes that burdens could be shared by trading public goods. In this model some countries would provide protection to refugees, whereas others would contribute to the public goods by providing development aid or peace-keeping operations.¹²⁰

Possibilities for trading public goods

The below boxes illustrate the two different end-poles of options for setting up a mechanism for "trading" public goods. Any mechanism for public goods trading could be placed in any location between these two options, depending on the assessment of feasibility by the Member States. The different aspects to take into consideration include for example the following:

- How are proportions defined: how many peace-keepers correspond to how many refugees? How much development aid corresponds to how many refugees?

All countries are specialised in the provision of a public good that best fits their interests

The different public goods are not considered "exclusive", but all states participate in the provision of all public goods.

Market-based allocation mechanism

The market-based allocation mechanism is an amended form of both the traditional quota system and the public goods mechanism presented above. This model has been presented by Schuck (1997), and consists of the possibility for the participating states to trade their quota by paying other countries to fulfil their obligations. When a quota is assigned to a country, it decides whether it will use the quota and offer protection to asylum seekers or refugees, or whether it attempts to trade the quota with another country (or several). The different payment methods could be credit, commodities, development assistance or for example political support. The payment should be sufficient to compensate for the additional burden that the country where the refugees are relocated will endure.¹²¹

Possibilities for market based allocation mechanisms

The boxes below illustrate the two different end-poles of options for setting up a mechanism "trading" public goods. Any mechanism for public goods trading could be placed in any location between these two options, depending on the assessment of feasibility by the Member States. The different aspects to take into consideration include for example the following:

- Are states free to assess how much they expect to be paid for the reception of refugees, or is there a fixed market-mechanism and "price"?

All refugees included in quotas – countries can trade the whole quota away against anything that they see valuable

Trading of quotas in principle allowed, but only against very strict rules and guidelines

Discussion

Whichever of the above options may be chosen, there is a need for the European institutions, to:

- 1) guarantee the continuous commitment of the Member States to the burden-sharing scheme; and
- 2) co-ordinate the allocation of quotas (if financial transfers, relocation or market based allocation mechanisms are chosen).¹²²

Similarly, one must determine whether the burden-sharing mechanism will be based on a rigid legal contract, specifying all rules and situations where burden-sharing will be applicable, or whether it is sufficient to agree on a framework contract, which specifies a negotiation procedure that should be used in case relevant burdens and risks materialise.¹²³

¹²⁰ Thielemann & Dewan 2006.

¹²¹ Schuck 1997, pp. 282-288.

¹²² For example Czaika 2009, p. 109, mentions similar tasks.

¹²³ Noll 2003, p. 246.

Whereas the five options presented above were prominent in the research literature analysed during this literature review, several other options were also presented by the researchers. These include for example:

- Joint processing of asylum seekers, where Member States could introduce a system for examining jointly groups of applicants with similar asylum claims, or from the same country or region of origin.¹²⁴

¹²⁴ Garlick 2006, p. 602.

Below, the different options for burden-sharing in the field of asylum are presented in a table in random order.¹²⁵

Option	Advantages			Shortcomings			Other issues
	Financial	Political	Legal	Financial	Political	Legal	
Sharing of costs	If the "costs of an asylum seeker" can be determined, financial burden-sharing mechanism would be a relatively simple way to compensate for the costs occurred to the receiving state since only one mode of payment (money) would be used.	States have already agreed to a certain level of financial burden-sharing through ERF.	A mechanism already exists in ERF.	Costs of admitting refugees differ from one MS to another – how to define the "price" of a refugee? How to calculate the relative burden? Restricts the acceptable "currency of trade" to cash Financial mechanisms (e.g. ERF) are often poorly targeted. The formula they use may result in the provision of support to wealthy states but not benefit sufficiently those with the greatest need.	If states do not expect to receive something in return ("insurance policy"), they are not likely to want to pay. There is a risk that MS may inflate their costs. State behaviour unlikely to through the provision of financial support		
Sharing of people	Only way to equalize costs effectively May lessen the overall refugee burden (knowledge of relocation keeps applicants away)	Evens out social costs. Has been shown to work in the UK, DE and DK, albeit internally.	The need to determine the state of first entry to the EU abolished	Total costs may be higher Costs and work burden for NGOs and local level are increased in the countries of destination	Needs a strong approval among politicians and the population, otherwise may lead to resentment, in particular in countries with high unemployment	Secondary "uprooting" of people – cuts them away from family/friends (social support networks) Possible violation of human rights Lack of social support networks in the destination	At what stage should relocation be considered – reception, application, following approved claim? Could lead to a high number of disappearances among asylum-seekers. Required from receiving state: sufficient experience of integrating ethnic minorities and adequate social and legal support

¹²⁵ The advantages and disadvantages presented in the table are based on the reviewed literature, the opinions of the participants at the stakeholder workshop and the observations of the study team.

Option	Advantages			Shortcomings			Other issues
	Financial	Political	Legal	Financial	Political	Legal	
						country	services. Important to differ between temporary and long-term relocation. Who has to agree?
Policy harmonisation		No "race-to-the bottom"	Ensures the same treatment to refugees in all MS		Undermines the states' flexibility to choose the most efficient contribution to refugee protection.	Does not take into account the specific situation of a country (i.e. location at the external borders of the EU). Does not take into account MS practice, for example attitudes towards third countries.	Different levels of harmonisation: <ul style="list-style-type: none"> • A minimum level – approximation • Common standards for example through EU rules • Unification • Mutual recognition
Market-based allocation mechanism		EU could function as a "central entity possessing the requisite legal authority".			States have no incentive to conclude such an agreement because it would limit their freedom of action. Difficult to administrate.	How to ensure the quality of protection in the countries that accept other countries' quota refugees? Market mechanism could allow and encourage states to "traffic human beings".	

Option	Advantages			Shortcomings			Other issues
	Financial	Political	Legal	Financial	Political	Legal	
Public goods		No "race-to-the-bottom"		Costs of participation are uncertain over time			Could consider giving technical assistance under this option