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# The Cost of Non-Europe in Asylum Policy

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EPRS | European Parliamentary Research Service

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PE 627.117 – October 2018

EN



# The Cost of non-Europe in Asylum Policy

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According to international and EU law, EU Member States have committed to offering protection to those who have to leave their home country to seek safety from persecution or serious harm. However, there are significant structural weaknesses and shortcomings in the design and implementation of the Common European Asylum System (CEAS), and related measures. Beyond the tragic loss of 8 000 lives in the Mediterranean in 2016-2017 alone, this cost of non-Europe report estimates both the individual impact in terms of fundamental rights protection and the economic costs of gaps and barriers in the CEAS.

The cost of the status quo is estimated at approximately €49 billion per year). This figure includes costs incurring due to irregular migration, lack of accountability in external action, inefficiencies in asylum procedures, poor living conditions and health, and reduced employment prospects leading to lower generation of tax revenue. This report identifies seven policy options for the EU to tackle the identified gaps and barriers. It argues that these policy options could bring about many benefits, including better compliance with international and EU norms and values; lower levels of irregular migration to the EU and costs of border security and surveillance; increased asylum process effectiveness and efficiency; faster socio-economic integration of asylum-seekers; increased employment and tax revenues; and reinforced protection of human rights in countries of return.

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## **LINGUISTIC VERSIONS**

Original: EN

Manuscript completed in October 2018.

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PE 627.117  
ISBN: 978-92-846-3345-6  
DOI: 10.2861/760528  
CAT: QA-04-18-820-EN-N

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## Executive summary

EU Member States have committed themselves to offering protection to those who have to leave their home country to seek safety from persecution or serious harm. The leading international standard is the 1951 Geneva Convention on the protection of refugees. All Member States are party to the European Convention on Human Rights (ECHR) and hence subject to the jurisdiction of the European Court of Human Rights (ECtHR). The ECHR contains a number of provisions which are applicable to asylum applicants, notably leading to the prohibition of forcing refugees or asylum-seekers to return to a country in which they are liable to be subjected to persecution (non-refoulement principle). At EU level, the right to asylum is enshrined in the Charter of Fundamental Rights.

The EU recently experienced a relative increase in asylum applications, with a peak in 2015, when 1.3 million applications were lodged across the Member States. As safe passage opportunities, which would enable asylum-seekers to lodge an application in the EU, are limited, most of them arrived via perilous smuggling routes across the Mediterranean, mostly to Italy and Greece. Limitations in the capacity to provide adequate management of arrivals, reception conditions, and registration of individuals, and lack of EU common action, led to onward movements towards other EU Schengen Member States, some of which reacted by reintroducing border controls. This reintroduction seriously undermines the founding principles of the European integration project.. Even after the 2015 peak in arrivals, major limitations in EU action are evident and challenges related to migration management remain one of the most important concerns among citizens, according to recent Eurobarometer surveys.

Against this background, the European Parliament has called for a holistic EU approach to migration, covering legal migration, border control and visa policy, as well as an asylum policy based on the principle of solidarity and the fair sharing of responsibilities between Member States.

State of play, gaps and barriers in EU action and cooperation in the area of asylum

Through the Common European Asylum System (CEAS), the EU has developed legal and policy instruments for the management of asylum in the EU that apply from the moment someone has lodged an asylum application until the moment the application has been recognised or rejected upon appeal, at which stage the individual becomes eligible for return. The CEAS consists of rules regarding:

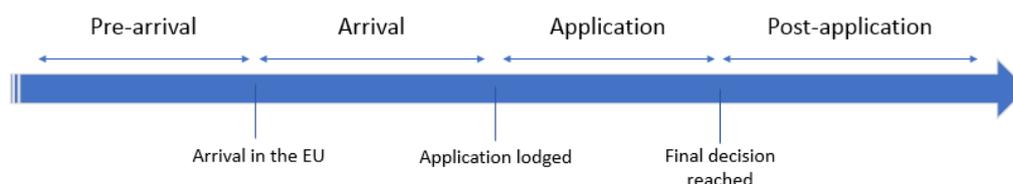
- the allocation of responsibility for examining asylum applications (Dublin Regulation);
- a European system for the comparison of fingerprints of asylum applicants (Eurodac);
- reception conditions for asylum-seekers;
- asylum procedures; and
- qualification criteria for international protection.

In addition, rules have been established regarding the possibility to offer temporary protection, and an EU Agency has been founded to enhance practical cooperation among Member States on asylum-related matters and to assist Member States in implementing their obligations under the CEAS. Closely related measures concern resettlement, family reunification and the return of third country nationals who stay in the EU illegally, including through a new partnership framework and readmission agreements and arrangements with third countries.

However, there are significant structural weaknesses and shortcomings in the design and implementation of the CEAS and related measures, as exposed by the handling of the relatively high number of asylum applicants during recent years. This report maps gaps and barriers in the CEAS

and related measures along the stages of the asylum journey, from the pre-arrival phase, to the arrival, application and post application phase. These gaps arise either from shortcomings in the implementation of EU legislation at national level, or from gaps in current EU legislation or policies. The report points out that non-compliance with fundamental rights is a concern throughout all of the stages charted in figure 1 below.

Figure 1 – Stages of the asylum journey



Source: MILIEU, executive summary

As regards the **pre-arrival stage**, there are no legislative mechanisms at EU level or under the CEAS providing legal pathways to the EU for the purpose of international protection. Furthermore there is no common EU policy on resettlement, with the actual number of those being resettled remaining limited, certainly in view of those in need of protection. As a result, as discussed in more detail in the European added value assessment on humanitarian visas, most asylum-seekers have to rely on smugglers and perilous journeys across the Mediterranean to be able to lodge an asylum application. In an attempt to prevent departures from source and transit countries, the EU uses external action tools in the area of migration. However, these suffer from several limitations, especially the lack of mechanisms to ensure the legality and accountability of funds granted, and the risk of distorting political and development cooperation relationships. Also, the mismanagement of EU funded border activities may result in human rights abuses.

At the **arrival stage**, the current CEAS puts a disproportionate responsibility on certain Member States, is unfair, creates practical and legal hurdles for the applicants and creates incentives for irregular entry and secondary movements. In particular, the Dublin Regulation was not designed to ensure sustainable sharing of responsibility for asylum applicants across the EU, particularly at times of high numbers of applications. The overburdening of some border Member States contributed to inadequate reception conditions, and to the failure to register asylum applicants in the Eurodac system. Furthermore, the preferences of asylum-seekers are only very partially taken into account in the determination of the Member State responsible for their application. This affects their chances of successful integration should their application be recognised.

During the **application stage**, problems persist due to the weak implementation in some Member States of the Qualifications and Asylum Procedures Directive. Standards among Member States also diverge, resulting in wide differences in the quality of reception conditions, length of asylum procedures, recognition rates, and in the way the decision to grant either refugee status or subsidiary protection is taken. Overall, monitoring and guidance provided to national authorities on all these aspects is lacking.

Migrants and refugees legally residing in the Union need to be able to start their life in their host societies as soon as possible, including through access to education, training and the labour market, and family reunification. However, during the **post-application phase**, there are administrative obstacles to accessing the labour market, services for socio-economic integration across Member States are limited and mutual recognition of positive asylum decision is lacking. Migrants are also insufficiently protected against discrimination and hate crimes. Furthermore, those not eligible for protection in the Union should be returned safely on the basis of readmission agreements and

arrangements with third countries in compliance with the Union's fundamental rights obligations. However, barriers to the implementation of the Return Directive can also be identified, including the limited execution of return decisions and the lack of monitoring mechanisms to follow up on return operations in third countries to prevent human rights violations.

#### Impact of the current gaps and barriers in EU cooperation and action

The report draws a distinction between impacts at the individual level, due to an inadequate protection of fundamental rights and freedoms, and economic impacts upon Member States and the EU.

At the individual level, the gaps in EU asylum policy and related measures identified put asylum-seekers under threat of violation of fundamental rights at different stages of the 'asylum journey'. At the pre-arrival phase, the lack of safe legal pathways to arrive in the EU to lodge an asylum application forces asylum-seekers to follow dangerous routes. This results in a high number of deaths in the Mediterranean (about 8 000 between 2016 and 2017). The lack of legal pathways and the current limitations to EU external action moreover undermine access to the right to asylum and the prohibition of torture and inhumane treatment, since pushbacks, pullbacks and repatriations may occur towards countries where migrants' fundamental rights are not respected. At the arrival and application stages, the right to asylum itself can be undermined because of deficiencies in the Dublin system and lack of convergence in asylum procedures and reception conditions. The gaps in the asylum procedure and reception conditions risk particularly impacting, in terms of violations of rights of the child, when asylum-seekers are minors, especially if unaccompanied. In the post-application stage, while international and EU law confer civil, economic and social rights on beneficiaries of international protection, there are barriers to implementing these in practice because of pitfalls in integration policies and cases of discrimination. Possible wrongful return decisions, moreover, may undermine the right to asylum and the principle of non-refoulement.

Together with these high costs in terms of individual rights and liberties, the gaps in the European asylum legislation and policies identified lead to a number of economic impacts for both the Member States and the EU. These economic impacts comprise:

1. costs related to the control and prevention of irregular migration, smuggling and human trafficking;
2. funding for external action and cooperation attempting to limit departures, with accountability problems and risk of violation of human rights;
3. poor living conditions and health at different stages of the asylum journey (including an estimate of the cost of lives lost in the Mediterranean);
4. inefficiencies in asylum procedures, especially during Dublin transfers, asylum applications and returns of unsuccessful applicants; and
5. reduced employment prospects, leading to lower generation of tax revenue, because of lower employment levels among asylum-seekers and refugees, and the risk they are driven into the shadow economy.

The impacts are summarised in the table below, where the cost of the status quo for each one is reported. **The overall cost of the status quo is about €49 billion per year (out of which the estimated cost of lost lives is around €12 billion).**

Table 1: Summary of the impacts of the gaps/barriers and their estimated costs

Impact	Description	Estimated annual costs
<b>Impacts on irregular migration</b>	Costs related to control of irregular migration and cost of human trafficking	€19.7 - 33.2 billion
<b>Impacts on external action and development cooperation</b>	Costs associated with the attempt to limit departures from countries of origin and transit via external action tools	€1.7 billion
<b>Impacts on employment and integration</b>	Costs of limited labour market integration of refugees and tax loss due to shadow economy	€2.1-2.7 billion
<b>Impacts on living and health conditions of asylum-seekers</b>	'Value of life losses', costs related to detention and poor reception facilities, healthcare costs	€11.8-17.7 billion
<b>Impacts on the efficiency of procedures</b>	Costs of inefficiencies in Dublin transfers, at the application stage and in case of returns	€2.5-4.9 billion
<b>Total</b>		€37.8-60.2 billion

Source: EPRS, authors' development, based on MILIEU

Options for action and cooperation at EU level that could address the identified gaps and barriers  
The identified gaps and barriers could be overcome through cooperation at EU and national level. This report identifies seven options for action and cooperation at EU level, roughly following the stages of the asylum journey, notably:

1. introducing EU legislation on humanitarian visas;
2. further expanding the mandate of the European Asylum Support Office;
3. improve implementation and monitoring of the CEAS;
4. taking individual preferences into account when identifying the Member State responsible for examining an asylum application;
5. foster access to employment and integration;
6. ensuring human rights and financial accountability in external funding and returns to third countries; and
7. EU accession to the European Convention on Human Rights.

Further action and cooperation at EU level would:

- ensure better compliance with international norms, EU values and rights;
- support third countries in tackling the root causes of displacement;
- lower the levels of irregular migration to the EU;
- lower the costs of border security and surveillance;
- enhance the management, efficiency and coordination of the asylum process;
- enable faster socio-economic integration of asylum-seekers and refugees;
- stimulate employment, increase tax revenues and economic growth;
- reinforce protection of human rights in countries of return.

In terms of costs, additional human and financial resources should be envisaged, notably to:

- further boost the capacity of the EU asylum agency and national asylum authorities and those assisting in the integration of asylum-seekers and refugees;
- support new EU activities in terms of monitoring and evaluation of readmission agreements and arrangements with third countries;
- update EU information systems; and
- provide improved integration programmes for beneficiaries of international protection.

Considering the costs, the net benefits of these policy options would overall total about **€22.5 billion per year**.

It should be noted that only the outcomes of some policy options have been quantified. These are: Option 1 (humanitarian visas), Option 2 (increased mandate for the European Asylum Support Office (EASO)), Option 3 (Improve implementation and monitoring of the CEAS), Option 4 (take individual preferences into account when identifying the Member State responsible for examining an asylum application), and Option 5 (foster access to employment and integration). In these cases, a number of assumptions have been made in order to calculate expected costs and benefits (the assumptions are illustrated in the annexed research paper); the estimates should therefore be taken with caution. For the other options, the paper presents qualitative assessments.

## Background and methodology

The notion of the 'cost of non-Europe' was introduced by Michel Albert and James Ball in a 1983 report commissioned by the European Parliament. It was also a central element of a 1988 study carried out for the European Commission by the Italian economist Paolo Cecchini on the cost of non-Europe in the single market.<sup>1</sup> This approach was revisited in a cost of non-Europe in the single market report of 2014.<sup>2</sup> In the latest Interinstitutional Agreement on Better Law-making it was agreed that analysis of the potential 'European added value' of any proposed Union action, as well as an assessment of the 'cost of non-Europe' in the absence of action at Union level, should be fully taken into account when setting the legislative agenda.<sup>3</sup>

Cost of non-Europe (CoNE) reports are designed to examine the possibilities for gains and/or the realisation of a 'public good' through common action at EU level in specific policy areas and sectors. They attempt to identify areas that are expected to benefit most from deeper EU integration, and for which the EU's added value is potentially significant.

On 4 October 2016, coordinators of the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE) requested that the European Added Value Unit within the European Parliamentary Research Service (EPRS) produce a report on the cost of non-Europe in the area of freedom, security and justice. In response to that request, the European Added Value Unit is preparing a report, which will give an overview of the current state of play in the main policy areas covered by the area of freedom, security and justice (AFSJ) within the competence of the LIBE Committee. The report will map the current gaps and barriers and estimate their impacts in the establishment of this area. Those impacts will be measured in terms of both economic impacts and impacts on individuals in terms of protecting their fundamental rights and freedoms.<sup>4</sup> Finally, it will

<sup>1</sup> See Commission on the European Communities, *Europe 1992, the Overall Challenge*, SEC (1988) 524.

<sup>2</sup> Z. Pataki, [The cost of non-Europe in the single market](#), Cecchini revisited, an overview of the potential economic gains from further completion of the European single market, EPRS, European Parliament, 2014.

<sup>3</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12.5.2016, p. 1–14.

<sup>4</sup> C. Moraes, [A Europe of Costs and Values in the Criminal Justice Area](#) in: EUCRIM 2016/2, p. 88: 'Nowadays, in the context of global economic and humanitarian crises, many voices are questioning the role and the very existence of the Union. It is therefore time to look back on Professor Cecchini's report and reflect on the cost of non-Europe in the

provide options for action at EU level to address the identified gaps and barriers together with an estimate of their potential costs and benefits.

The following areas will be covered in the report:

1. asylum, migration, border control;
2. police and judicial cooperation in the fight against crime and terrorism; and
3. fundamental rights.

A number of relevant studies have already been published covering the added value of an EU mechanism to monitor and enforce democracy, the rule of law and fundamental rights in the Member States and within EU institutions,<sup>5</sup> and the benefits of further EU action and cooperation to ensure free movement within the Schengen Area,<sup>6</sup> to protect procedural rights and ensure adequate detention conditions<sup>7</sup>, to ensure equality and fight against racism and xenophobia,<sup>8</sup> organised crime, corruption<sup>9</sup> and terrorism,<sup>10</sup> A briefing summarising the interim results was produced in October 2017.<sup>11</sup>

This cost of non-Europe report focuses on asylum, with an emphasis on the Common European Asylum System and other interrelated policy and legal instruments. It does not cover instruments, policies and issues related to legal migration and the control of the EU's external borders, which are the subject of two complementary Cost of Non-Europe reports, ongoing at the time of writing. The study does not extensively discuss the issue of legal pathways to seek asylum in the EU and humanitarian admissions, as it was reviewed in a separate European Added-Value study.<sup>12</sup>

The report takes account of the need to incorporate economic costs as well as costs to individuals in terms of protecting their fundamental rights and freedoms resulting from the gaps and barriers to European cooperation and action, as well as the benefits of fully using the potential for EU action and legislation, in accordance with the Treaties.

It seeks to answer the following questions:

1. What is the current state of play, and what are the gaps and barriers in European cooperation and action, in the area of asylum?;
2. What is the impact of the current gaps and barriers in action and cooperation at EU level?; and
3. What are the options for action at EU level that could address the gaps and barriers identified, and what are their potential costs and benefits?

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area of freedom, security and justice in order to calculate its economic value – not always an easy task – and the cost to citizens in terms of their fundamental rights and freedoms<sup>1</sup>.

<sup>5</sup> W. van Ballegooij, T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights](#), EPRS, European Parliament, 2016.

<sup>6</sup> W. van Ballegooij, [The cost of non-Schengen: Civil liberties, justice and home affairs aspects](#), EPRS, European Parliament, 2016.

<sup>7</sup> W. van Ballegooij, [The cost of non-Europe in the area of procedural rights and detention conditions](#), EPRS European Parliament, 2017.

<sup>8</sup> W. van Ballegooij with J. Moxom, [The cost of non-Europe in the area of equality and the fight against racism and xenophobia](#), European Parliament, 2018.

<sup>9</sup> W. van Ballegooij, T. Zandstra, [The cost of non-Europe in the area of organised crime and corruption](#), EPRS, European Parliament, 2016.

<sup>10</sup> W. van Ballegooij, P. Bakowski, [The cost of non-Europe in the fight against terrorism](#), EPRS, European Parliament, 2018.

<sup>11</sup> W. van Ballegooij, [Area of freedom, security and justice: untapped potential](#), EPRS, European Parliament, 2017.

<sup>12</sup> W. van Ballegooij, C. Navarra, [European added value assessment on humanitarian visas](#), EPRS, European Parliament, 2018.

In terms of methodology, the report mainly relies on desk research, which includes reports on Member States' implementation of relevant EU law. EPRS also commissioned a research paper from MILIEU, which conducted desk research and interviews with relevant stakeholders and quantified the impacts of gaps and barriers in the area, where feasible and appropriate (MILIEU (2018)). This research paper is annexed to this cost of non-Europe report.

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**Annex:** Research paper on the cost of non-Europe in the area of asylum, by Milieu Ltd.

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# 1. State of play, gaps and barriers in EU action and cooperation in the area of asylum

## Key findings

- EU Member States have committed to offering protection to those who have to leave their home country to seek safety from persecution or serious harm.
- However, there are significant structural weaknesses and shortcomings in the design and implementation of the Common European Asylum System (CEAS), and related measures, as exposed by the handling of the relatively high number of asylum applicants during recent years.
- Nine gaps and barriers have been identified along the asylum journey. The lack of compliance with fundamental rights is to be seen as a horizontal gap.

## 1.1. State of play

EU Member States have committed to offering protection to those who have to leave their home country to seek safety from persecution or serious harm. The leading international standard is the 1951 Geneva Convention on the protection of refugees and its 1967 Protocol. All Member States are party to the European Convention on Human Rights (ECHR) and hence subject to the jurisdiction of the European Court of Human Rights (ECtHR). The ECHR contains a number of provisions which are applicable to asylum applicants, notably leading to the prohibition of forcing refugees or asylum-seekers to return to a country in which they are liable to be subjected to persecution (non-refoulement principle).<sup>13</sup> Furthermore, the 1982 United Nations Convention on the Law of the Sea requires assistance to be given to persons in distress and requires signatories to promote effective search and rescue services. At EU level the right to asylum is enshrined in Article 18 of the Charter of Fundamental Rights.<sup>14</sup>

In accordance with Article 67 of the Treaty on the Functioning of the European Union (TFEU), the Union aims at building a Common European Asylum System (CEAS), consisting of rules regarding:

- The allocation of responsibility for examining asylum applications (Dublin Regulation);<sup>15</sup>
- A European system for the comparison of fingerprints of asylum applicants (Eurodac);<sup>16</sup>

<sup>13</sup> In accordance with Article 3 ECHR.

<sup>14</sup> Cf. MILIEU (2018), chapter 2, p. 23-25.

<sup>15</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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, OJ L 180, 29 June 2013, p. 31–59.

<sup>16</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29 June 2013, p. 1–30.

- Reception conditions for asylum-seekers;<sup>17</sup>
- Asylum procedures;<sup>18</sup> and
- Qualification criteria for international protection.<sup>19</sup>

In addition, rules have been established regarding the possibility to offer temporary protection,<sup>20</sup> and a European Asylum Support Office (EASO)<sup>21</sup> was founded to enhance practical cooperation among Member States on asylum-related matters and for assisting Member States in implementing their obligations under the CEAS. Closely related measures concern resettlement, family reunification,<sup>22</sup> and the return<sup>23</sup> of irregularly staying third country nationals, including through readmission agreements<sup>24</sup> and arrangements with third countries.<sup>25</sup>

According to the United Nations High Commissioner for Refugees (UNHCR) figures, the EU receives approximately 3 % of asylum-seekers and 'other persons of concern', including internally displaced persons, who remain in the country of origin, where they experienced persecution. This is illustrated in figure 2 below.

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<sup>17</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ L 180, 29 June 2013, p. 96–116.

<sup>18</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29 June 2013, p. 60–95.

<sup>19</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20 December 2011, p. 9–26.

<sup>20</sup> 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, 7 August 2001, p. 12–23.

<sup>21</sup> 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 May 2010, p. 11–28.

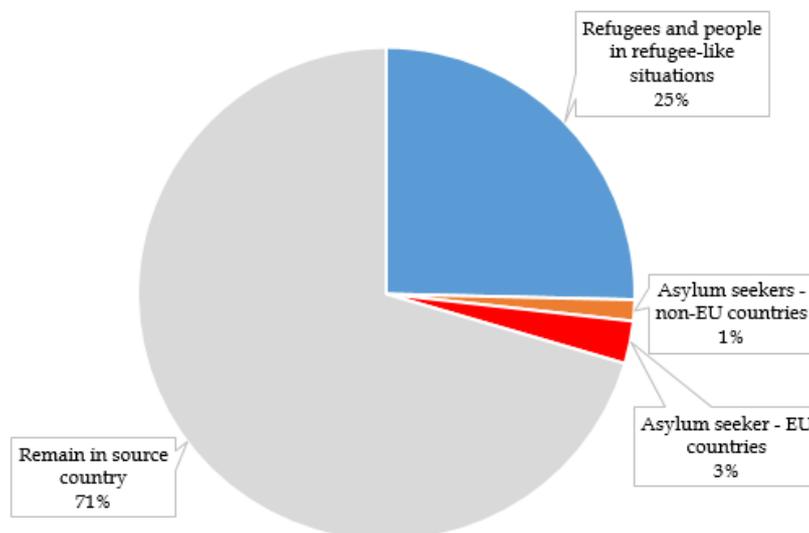
<sup>22</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3 October 2003, p. 12–18.

<sup>23</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24 December 2008, p. 98–107.

<sup>24</sup> An overview of readmission agreements is provided on the European Commission [Directorate-General for Migration and Home Affairs](#) (DG HOME) website.

<sup>25</sup> Cf. MILIEU (2018), p. 26–28.

Figure 2 – Persons of concern in 2016 – a global perspective



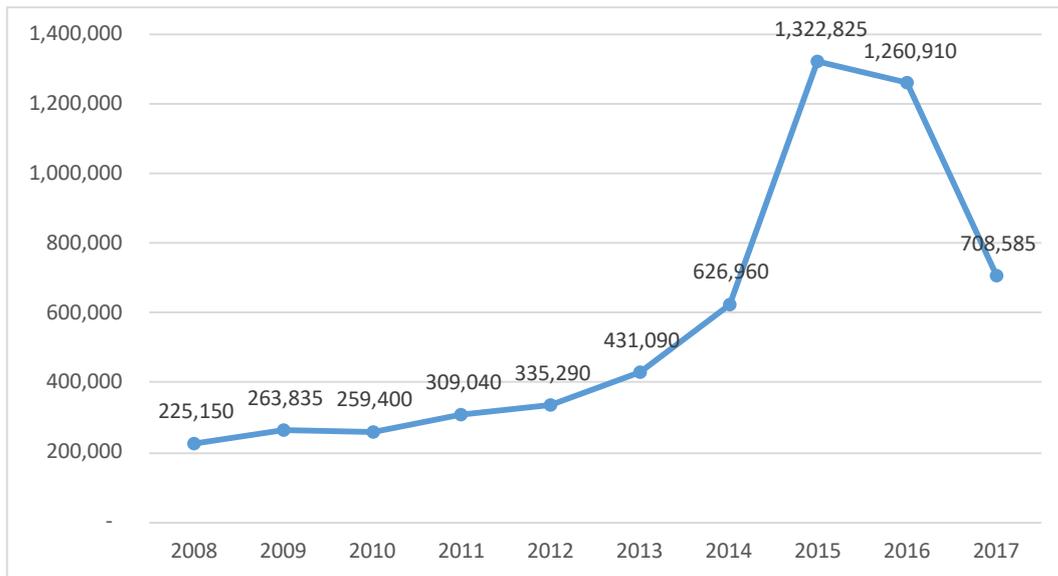
Source: W. van Ballegooij, C. Navarra, European added value assessment on humanitarian visas, EPRS, European Parliament, 2018, based on 2016 figures from the UNHCR.

Tasked by the European Council, the European Commission presented a European agenda on migration on 13 May 2015, in an overarching policy document covering both short- and long-term measures.<sup>26</sup> At the same time, asylum applications reached a peak in 2015, when 1.3 million applications were lodged across the Member States. As safe passage opportunities, which would enable asylum-seekers to lodge an application in the EU, are limited, most of them arrived through smuggling routes across the Mediterranean, mostly to Italy and Greece. The lack of common action and intra-EU solidarity had a particular impact on Greece. Its lack of capacity to receive and register migrants arriving at its external borders also led to their onward movement towards other EU Member States via the Western Balkans. In its turn this triggered the reintroduction of internal border controls by certain Schengen Member States.<sup>27</sup>

<sup>26</sup> COM (2015) 240 of 13 May 2015.

<sup>27</sup> Cf. W. van Ballegooij, [The cost of non-Schengen: Civil liberties, justice and home affairs aspects](#), EPRS, European Parliament, 2016.

Figure 3 – Number of extra-EU asylum applicants in the EU, by year, 2008-2017



Source: MILIEU, chapter 2.

On 14 September 2015, the Council adopted a first decision allowing Greece and Italy to benefit from the temporary relocation of 40 000 asylum-seekers to other Member States.<sup>28</sup> On 22 September 2015, a second decision was adopted on the relocation of a further 120 000 asylum-seekers from Greece, Italy and Hungary over two years.<sup>29</sup>

Furthermore, on 20 July 2015, the Member States agreed to resettle 22 504 displaced persons in clear need of international protection directly from third countries.<sup>30</sup> On 29 September 2016, the Council adopted an amending decision allowing a further 54 000 persons to be resettled, subtracting this number from the total relocation goal of 160 000.

On 27 September 2017, the Commission presented a recommendation on a new EU resettlement scheme to bring at least 50 000 of the most vulnerable persons in need of international protection to Europe over the next two years. The new scheme should be in place by October 2019 and replaces previous schemes. The Commission has set aside €500 million to support Member States' resettlement efforts. It will cover the period until the proposed permanent EU resettlement framework is adopted.<sup>31</sup> The Commission announced that following the recommendation,

<sup>28</sup> By December 2017, a total of 32 366 asylum-seekers (10 842 from Italy and 21 524 from Greece) had been effectively relocated; Legislative train schedule, [1st emergency relocation scheme](#), European Parliamentary Research Service, July 2018.

<sup>29</sup> However, by December 2017, a total of only 32 366 asylum-seekers (10 842 from Italy and 21 524 from Greece) had been effectively relocated Legislative train schedule, [2nd emergency relocation scheme](#), European Parliamentary Research Service, July 2018.

<sup>30</sup> Resettlement consists of the selection and transfer of already-recognised refugees from a country of first asylum to a third State that agrees to admit them as refugees and grant them permanent residence; [UNHCR Resettlement Handbook](#).

<sup>31</sup> [EU resettlement framework](#), Legislative train schedule, European Parliament, July 2018.

19 Member States had pledged to provide a total of 39 758 resettlement places by December 2017.<sup>32</sup>

Furthermore, on 18 March 2016, the European Council and Turkey reached an agreement aimed at stopping the flow of irregular migration via Turkey to Europe. According to the EU-Turkey Statement, all new irregular migrants and asylum-seekers arriving from Turkey to the Greek islands and whose applications for asylum have been declared inadmissible should be returned to Turkey. In accordance with the Statement, for every Syrian being returned to Turkey from the Greek islands, another Syrian is resettled in the EU. As of July 2018, 15 114 Syrian refugees had been resettled from Turkey to EU Member States.<sup>33</sup>

### 1.1.1. Reform of the CEAS

In its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the European Parliament advocated substantial reform of the Dublin Regulation and a centralised EU asylum system.<sup>34</sup> On 4 May 2016, the Commission adopted the first package of proposals for CEAS reform with the following initiatives:

1. Proposal for a regulation to reform the Dublin system;<sup>35</sup>
2. Proposal for a regulation to amend Eurodac;<sup>36</sup>
3. Proposal for a regulation to establish an EU Asylum Agency to replace EASO.<sup>37</sup>

On 13 July 2016, the Commission put forward a second package of proposals for CEAS reform. The package includes:

1. A proposal for a new regulation to replace the Asylum Procedures Directive;<sup>38</sup>
2. A proposal for a new regulation to replace the Qualification Directive;<sup>39</sup>
3. Proposed targeted modifications of the Reception Conditions Directive.<sup>40</sup>

At the time of writing, most of these proposals are still being discussed between the European Parliament and the Council, with the attempt to achieve a fairer distribution of asylum applications through a reform of the Dublin system being the most controversial point.<sup>41</sup>

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<sup>32</sup> Progress report on the European Agenda on Migration, COM (2018) 301 of 16 May 2018, Annexes 1-5; [Urgency resettlement scheme](#), Legislative train schedule, European Parliament, July 2018.

<sup>33</sup> [Operational implementation of the EU-Turkey statement](#), DG HOME, European Commission, July 2018; [EU-Turkey statement and action plan](#), European Parliament, Legislative train schedule, July 2018.

<sup>34</sup> Resolution of 12 April 2016 on the [situation in the Mediterranean and the need for a holistic EU approach to migration](#), European Parliament, P8\_TA-PROV(2016)0102.

<sup>35</sup> [Revision of the Dublin Regulation](#), Legislative train schedule, European Parliament, July 2018.

<sup>36</sup> [Recast Eurodac Regulation](#), Legislative train schedule, European Parliament, July 2018.

<sup>37</sup> [Strengthening the European Asylum Support Office](#), Legislative train schedule, European Parliament, July 2018.

<sup>38</sup> [Reform of the Asylum Procedures Directive](#), Legislative train schedule, European Parliament, July 2018.

<sup>39</sup> [Reform of the Qualifications Directive](#), Legislative train schedule, European Parliament, July 2018.

<sup>40</sup> [Reform of the Receptions Conditions Directive](#), Legislative train schedule, European Parliament, July 2018.

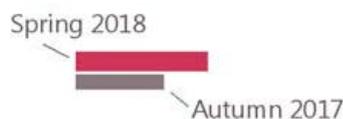
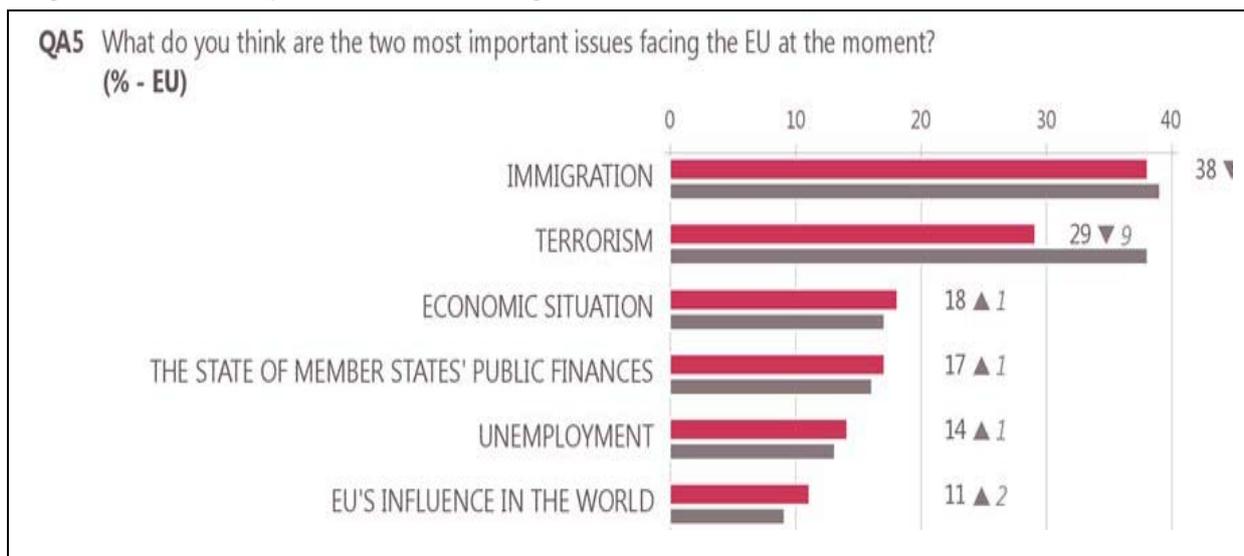
<sup>41</sup> For more details see MILIEU, chapter 2.3. (ongoing developments); N. Atanassov, C. Dumbrava, M. Mentzelopoulou, A. Radjenovic, [EU asylum, borders and external cooperation on migration, recent developments](#), EPRS, European Parliament, 2018.

Furthermore, in September 2018, the Commission proposed to reinforce the EU's agency for asylum to equip it with the necessary staff, tools and financial means to support Member States.<sup>42</sup> The agency would thus be able to carry out the entire administrative phase of the asylum procedure, as well as take part in EU migration management teams in hotspots and potential future controlled centres to implement tasks, such as receiving arrivals, distinguishing between persons in need of protection and those who are not, and carrying out asylum and return procedures.

At the same time, the Commission also proposed a targeted review of the Return Directive.<sup>43</sup> The aim is to simplify border procedures by reducing time limits for appeal and abolishing the option for voluntary departure. The Commission is also proposing to change the rules on detention and appeals against return decisions in the case of rejected asylum-seekers, and reinforcing the obligation to cooperate in order to prevent abuses. Furthermore, Member States will have to set up voluntary return programmes and will be able to shorten the period for voluntary return.

As Eurobarometer surveys show, challenges related to migration management remain one of the most important concerns for citizens and are at the core of EU policy priorities for the coming years. Immigration is currently cited by approximately 40 % of those surveyed by Eurobarometer as one of the two most important issues facing the EU.

Figure 4 – Most important issues facing the EU at the moment



Source: European Commission, Standard Eurobarometer, Spring 2018.

<sup>42</sup> [Amended proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation \(EU\) No 439/2010](#), COM(2018) 633 final of 12 September 2018

<sup>43</sup> [Proposal for a directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals \(recast\)](#), COM(2018) 634 final of 12 September 2018.

## 1.2. Gaps and barriers

There are however significant structural weaknesses and shortcomings in the design and implementation of the CEAS and related measures, as exposed by the above-mentioned handling of the relatively high number of asylum applicants during recent years. This report maps nine gaps and barriers in the CEAS and related measures along the stages of the asylum journey from the pre-arrival phase, to the arrival, application and post-application phase. These gaps either arise from shortcomings in the implementation of EU legislation at national level, including due to a lack of capacity or preparedness, or from gaps in current EU legislation or policies. A horizontal barrier concerns non-compliance with fundamental rights obligations throughout all the stages. This is illustrated in table 2 below:

Table 2 – Overview of the gaps and barriers

Stages of the asylum journey and gaps and barriers	
Pre-arrival	<b>Gap/Barrier 1:</b> Limited legal pathways to the EU for people in need of international protection
	<b>Gap/Barrier 2:</b> Limitations of EU external action
Arrival	<b>Gap /Barrier 3:</b> Dublin does not ensure solidarity and fair sharing of responsibility among Member States
	<b>Gap/Barrier 4:</b> The mechanism to determine MS responsibility for the examination of asylum claims does not work
Application	<b>Gap/Barrier 5:</b> Lack of harmonisation and implementation of EU legislation with respect to qualification of beneficiaries of international protection and asylum procedures
	<b>Gap/Barrier 6:</b> Lack of harmonisation and implementation of EU legislation with respect to reception conditions
Post-application	<b>Gap/Barrier 7:</b> Shortcomings in integration services, obstacles for accessing the labour market and discrimination
	<b>Gap/Barrier 8:</b> Lack of mutual recognition of positive asylum decisions
	<b>Gap/Barrier 9:</b> Practical barriers to the implementation of the Return Directive
Horizontal	Non-compliance with fundamental rights obligations

Source: MILIEU, chapter 3.

As regards the pre-arrival stage, no legislative mechanisms at EU level or under the CEAS exist that provide legal pathways to the EU for the purpose of international protection. Furthermore there is no common EU policy on resettlement, with the actual number of those being resettled remaining limited, certainly in view of the number of those in need of protection. As a result, as discussed in more detail in the European added value assessment on humanitarian visas, most asylum-seekers have to rely on smugglers and make perilous journeys across the Mediterranean to be able to lodge an asylum application. Mechanisms to ensure the accountability of EU external action in the area of migration are also lacking. This might result in the embezzlement of funding, or in the diversion of

development cooperation funds from poverty eradication objectives. EU funded border management activities could potentially also result in human rights abuses.

At the arrival stage, the current CEAS places disproportionate responsibility on certain Member States, is unfair, creates practical and legal hurdles to the applicants, and creates incentives for irregular entry and secondary movements. In particular, the Dublin Regulation was not designed to ensure the sustainable sharing of responsibility for asylum applicants across the EU, particularly at times of a relatively high number of applications. Border Member States, such as Italy and Greece, have not been able to cope with the large numbers of arrivals, leading to inadequate reception conditions, as well as a failure to register asylum applicants in the Eurodac system. Furthermore, asylum-seekers' preferences are only partially taken into account in the determination of the Member State responsible for them, which affects their chances of successful integration should their application be recognised.

During the application stage problems persist due to weak implementation in some Member States of the Qualifications and Asylum Procedures Directive. Application of standards also diverges between Member States, resulting in wide differences in the quality of reception conditions, length of asylum procedures and recognition rates. Convergence is also lacking as regards the decision to grant either refugee status or subsidiary protection, and insufficient monitoring and guidance is provided to national authorities on all these aspects.

Migrants and refugees legally residing in the Union need to be able to start their life in their host societies as early as possible, including through access to education, training and the labour market and family reunification. However, during the post-application phase administrative obstacles hamper access to the labour market, and services for socio-economic integration across Member States are limited. Migrants are insufficiently protected against discrimination and hate crimes. In addition, mutual recognition of positive asylum decisions is lacking. Furthermore, those asylum-seekers who are ineligible for protection in the Union are currently not returned safely on the basis of readmission agreements and arrangements with third countries, in compliance with the Union's fundamental rights obligations. Barriers to implementing the Return Directive can also be identified, including a limited execution of return decisions and a lack of monitoring mechanisms to follow up on return operations in third countries to prevent human rights violations.

## 2. Impact of the current gaps and barriers in EU cooperation and action

### Key findings

Beyond the tragic loss of 8 000 lives in 2016-2017 alone, gaps and barriers in EU asylum policies have a number of consequences at both individual and societal levels. This cost of non- Europe report estimates, on one hand, the individual impacts in terms of fundamental rights protection, and, on the other, the economic costs of gaps and barriers in the CEAS.

The economic cost amounts to approximately €49 billion per year. This figure comprises costs due to irregular migration, funding for external action and cooperation, inefficiencies in asylum procedures, poor living conditions and health, and poor employment prospects leading to lower generation of tax revenue.

### 2.1. Conceptual framework

The identified gaps and barriers in EU action and cooperation in the area of asylum have a number of impacts both at the individual and the societal/economic level.

Given the complexity of the issue, it is not feasible to make a one-to-one match between gaps and impacts. The relationship is mediated by four main 'transversal issues'.

First, Member States and the EU have exhibited low capacity and/or resources for effectively coordinating and managing policy responses. These relate, for example, to the failure to establish legal pathways for asylum-seekers to lodge their applications safely<sup>44</sup> and to the lack of solidarity within the Dublin system (gaps 1 and 3).

Second, individual needs and preferences are not properly taken into account. This is especially true for the Dublin Regulation (gaps 3, 4 and 8). This – together with poor reception conditions (gap 6) – may lead to a greater prevalence of secondary movements and limitations to the integration of beneficiaries of international protection into social and economic life. Although this study focuses only on aspects that can be ascribed to gaps in the CEAS, it is important to mention that improvements in other areas of migration policies may have positive spillovers on asylum management, especially if they open safe and legal channels for economic migration.<sup>45</sup> This would allow migrants' needs to be better identified, providing a wider range of options for residing legally in the EU.

Third, because of a lack of harmonisation in asylum procedures and of mutual recognition of asylum decisions (gaps 5, 6 and 8), the asylum process is characterised by low level predictability.

Fourth, asylum-seekers and beneficiaries of international protection may be discriminated against or exploited at various stages of the journey. This is especially relevant because of limitations in EU external action that expose asylum-seekers to risks of human rights violations in third countries

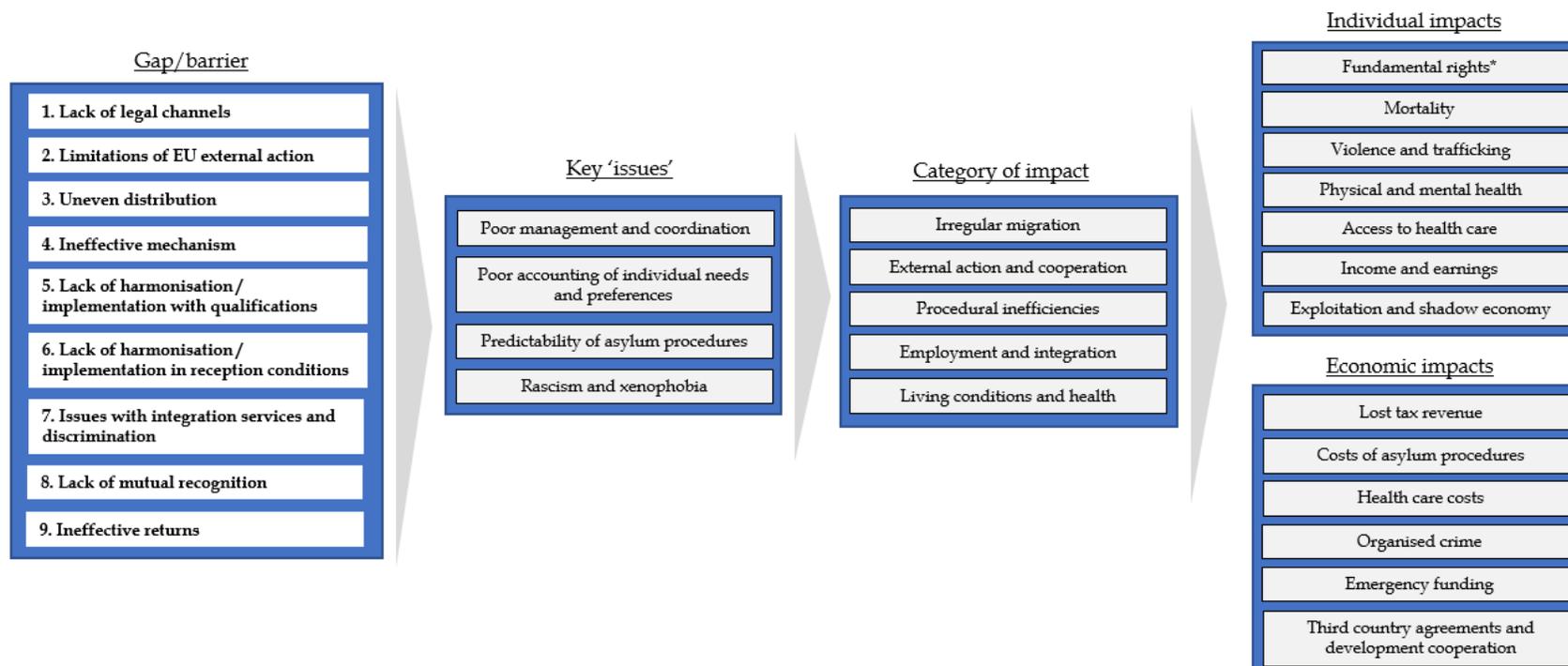
<sup>44</sup> W. van Ballegoij, C. Navarra, [European added value assessment on humanitarian visas](#), EPRS, European Parliament, 2018.

<sup>45</sup> Toaldo M., 2017, [Don't close borders, manage them: how to improve EU policy on migration through Libya](#), European Council on Foreign Relations.

(gap 2) and because of pitfalls in integration policies (gap 7), especially concerning employment, access to health and housing.

Gaps have impacts at both individual and economic level. These effects are presented as follows: section 2.2 presents impacts on individuals adopting a fundamental rights perspective. Section 2.3, analyses the societal impacts, estimated in economic terms. However, it should be noted that the economic costs estimated are closely related to a number of individual impacts, as highlighted in the overview below.

Figure 5 – Overview of gaps, transversal issues and impacts

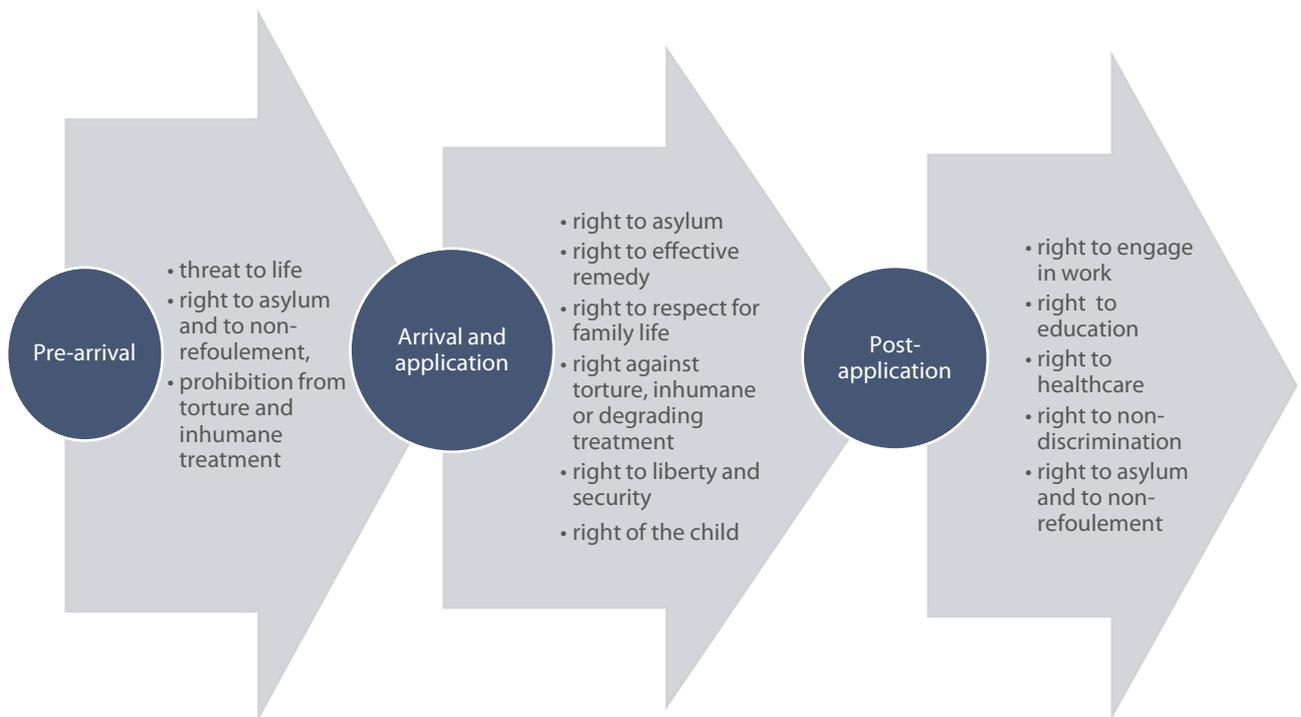


Source: Milieu (2018)

## 2.2. Impact at individual level in terms of protecting their fundamental rights and freedoms

The mentioned gaps and barriers pose serious threats to individual protection of fundamental rights provided by international and EU law. This occurs at different stages of the 'asylum journey', as shown in figure 4.

Figure 6 – Risks of non-compliance with fundamental rights throughout the asylum journey



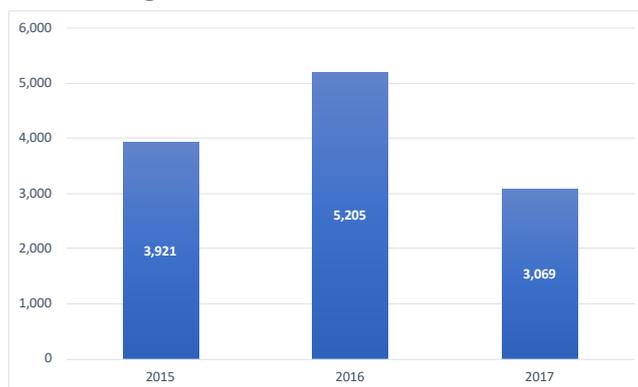
Source: EPRS

At the **pre-arrival phase**, the lack of safe legal pathways to arrive in the EU to lodge an asylum application has firstly the effect of forcing asylum-seekers to take dangerous smuggling routes. This results in a high number of deaths in the Mediterranean, as is shown in the graph below (figure 5). Even though the number of arrivals has been declining since 2015, the number of deaths at sea increased in 2016 before falling, but at a slower pace.<sup>46</sup> The lack of legal pathways moreover undermines the right to asylum and to non-refoulement, and the prohibition from torture and inhumane treatment, since pushbacks, pullbacks and repatriations may occur towards countries where migrants' fundamental rights are not respected.<sup>47</sup>

<sup>46</sup> In the following section, a translation of the number of lost lives in the Mediterranean into economic loss is given. This procedure is subject to a delicate ethical debate, which will be discussed at a later point.

<sup>47</sup> Milieu (2018) section 3.V.5 and '[Detained and Dehumanised, Report On Human Rights Abuses Against Migrants In Libya](#)', United Nations Support Mission in Libya, Office of the United Nations High Commissioner for Human Rights, December 2016.

Figure 7 – Missing and dead migrants, 2015-2017



Source: Milieu (2018), chapter 2

At the **arrival and application stages**, the right to asylum itself can be undermined by deficiencies in the Dublin system and a lack of convergence in asylum procedures, because some applicants cannot effectively access procedures, or applications are not given due consideration.<sup>48</sup> Uneven access to legal aid, can furthermore undermine the right to an effective remedy. A number of pitfalls in the implementation of rules regarding reception conditions can be detrimental to the applicant's physical and psychological integrity and can undermine the right to family life and the freedom from torture, inhumane or degrading treatment. Moreover, the right to healthcare can be undermined due to overcrowding and sub-standard conditions in reception centres. The use of detention raises concerns with respect to the right to liberty and security. The gaps in the asylum procedure and reception conditions may have a particular impact on children's rights, when asylum-seekers are minors, especially if unaccompanied.

In the **post-application stage**, while international and EU law confer civil, economic and social rights on beneficiaries of international protection, barriers prevent these from being implemented in practice. Firstly, pitfalls in integration policies obstruct the right to engage in work (which would restore autonomy to applicants for international protection), and undermines the right to private life.<sup>49</sup> Delays in asylum decisions, shortcomings in integration services and discrimination may also limit access to education and healthcare for asylum-seekers. The right to non-discrimination may be infringed when beneficiaries of international protection are not treated equally to EU citizens, especially when accessing employment. Finally, in cases where applicants receive a negative response, wrongful return decisions – which might be the result of shortcomings in the implementation of the Return Directive – may undermine the right to asylum and the principle of non-refoulement.

### 2.3. Economic impacts

Together with the high costs in terms of individual rights discussed in the previous section, the gaps in the CEAS and related policies identified lead to a number of economic impacts on both the Member States and the EU.

<sup>48</sup> Milieu (2018), section 3.V.6.

<sup>49</sup> Milieu (2018), section 3.V.7.

Economic impacts and their quantification are summarised in table 3. The overall figure is about €49 billion per year.

All impacts affect costs borne partly by the EU and partly by the Member States. Impact on employment and integration is borne by Member States, since it is measured as the tax loss for the employment gap suffered by refugees.

Even if a counterfactual analysis could not be carried out, this study underlines that choices can be made to ensure greater protection of fundamental rights and also to reduce existing costs under the status quo, as well as to trigger untapped economic benefits from better integration.

It is important to note that the proposed EU multiannual financial framework 2021-2027 puts greater emphasis on border control, rather than on migration management and asylum.<sup>50</sup> This means, on one hand, that the costs related to gaps at the pre-arrival stage and to control of irregular migration are expected to rise with respect to the figures estimated in this study. On the other hand, it raises doubts about the adequacy of funding to address the gaps on reception and integration policies. To the contrary, these, according to some academics, are crucial to a sustainable management of asylum policies at the local level, where support is provided for both newly-arriving migrants and destination communities.<sup>51</sup>

Table 3 summarises the impacts and their estimated annual costs, with each impact detailed in the following paragraphs. Concerning the estimates, it should be noted that, when the costs refer to gaps that apply to all migrants, an adjustment factor takes account of the present study's focus on only people moving to seek international protection (for more details, see Milieu, 2018 section 4.I).

Table 3 – Summary of impacts and associated costs

Impact	Description*	Estimated annual costs
Impacts on irregular migration	Costs related to control of irregular migration and cost of human trafficking	€19.7 - 33.2 billion
Impacts on external action and development cooperation	Costs associated with the attempt to limit departures from countries of origin and transit via external action tools	€1.7 billion

<sup>50</sup> The Asylum and Migration Fund would increase by 36 % and the Integrated Border Management Fund (IBMF) by 197 %. See M. Parry and M. Sapała, [2021-2027 Multiannual financial framework and new own resources: Analysis of the Commission's proposal](#), EPRS, European Parliament, 2018.

<sup>51</sup> F. Pastore (ed), [Beyond the Migration and Asylum Crisis, Options and Lessons for Europe](#), Aspen Institute Italia, 2017.

Impact	Description*	Estimated annual costs
Impacts on employment and integration	Costs of limited labour market integration of refugees and tax loss because of shadow economy	€2.1-2.7 billion
Impacts on living and health conditions of asylum-seekers	'Value of life losses', costs related to detention and poor reception facilities, healthcare costs	€11.8-17.7 billion
Impacts on the efficiency of procedures	Costs of inefficiencies in Dublin transfers, at the application stage and in case of returns	€2.5-4.9 billion
Total		€37.8-60.2 billion

Source: EPRS, authors' elaboration based on Milieu (2018). When a range is provided, this reflects 'low' and 'high' scenarios, where 2016 data are used to build the 'high scenario' and 2017 data are used to build the 'low scenario' (the range of the estimated impact on irregular migration reflect also different estimates of the cost of trafficking). When the costs refer to policies that apply to all migrants, the estimates are adjusted to take account of the focus on people moving to seek international protection only (see Milieu, 2018 for more details). \*These summarise the detail of the gaps involved in each impact, as described in Section 4.II in Milieu (2018) in annex.

### 2.3.1. Impacts on irregular migration

Some of the gaps analysed increase the probability that asylum-seekers will end up in an irregular situation, thereby becoming 'irregular migrants'. Firstly, the lack of legal channels to travel to Europe to lodge an application, i.e. humanitarian visas,<sup>52</sup> imply that the large majority of asylum-seekers have to enter the EU using irregular means, making them irregular until the application is lodged (gap 1). Secondly, the fact that the current Dublin system does not ensure solidarity and that individual preferences are only partially taken into account (gap 3), causes secondary movements of asylum-seekers at the arrival and application stages. Thirdly, barriers to the implementation of the Return Directive (gap 9) imply that some orders to leave are not executed: people that receive an order to return but do not do so are assumed to become irregular.<sup>53</sup>

Irregular status bears a number of negative consequences at the individual level, in terms of reduced exercise of rights and the risk of exploitation. Irregular migration also represents an economic cost

<sup>52</sup> See W. van Ballegooij, C. Navarra, [European added value assessment on humanitarian visas](#), EPRS, European Parliament, 2018.

<sup>53</sup> See table 9 in Milieu (2018).

for Member States and the EU, composed of several elements.<sup>54</sup> The lack of legal channels to seek asylum to the EU implies higher border security and surveillance costs (estimated at €352 million per year). Added to this cost are the widely varying costs of search and rescue missions by commercial ships (€19-216 million per year). Asylum-seekers are also at high risk of becoming victims of human trafficking in their journey to the EU, which is often facilitated by smuggling networks. Sources suggest that these organised crime activities have an annual cost to the EU that can range between €12.3 and €25.6 billion per year.<sup>55</sup> If policy responses include addressing irregular migration through closing internal borders, new potential costs may be faced. A recent study estimated the economic impacts of re-establishing border controls within Schengen on the single market:<sup>56</sup> the cost (discounted to take only what may be ascribed to asylum policies into consideration), amounts to €7 billion per year. To these amounts, the cost of lost tax revenues should be added, should migrants gravitate to working in the shadow economy instead of the formal sector because of their irregular status.<sup>57</sup>

### 2.3.2. Impacts on external action and development cooperation

The EU and its Member States have entered several arrangements with third countries to manage irregular migration to the EU, tackle smuggling and discourage departures to the EU. Examples are the EU-Turkey Statement<sup>58</sup> (the Facility for Refugees in Turkey amounted to €1.5 billion per year in 2016 and 2017), and the EU Trust Fund for Africa, which supports activities for the Libyan Coast Guard and Navy to conduct search and rescue operations, and funds development projects aimed at 'addressing the root causes of migration'. This Trust Fund, amounting to €3.4 billion in total (about €774 million annually) is mostly funded through the European Development Fund and the EU budget. Overall, the cost of third country agreements considered here is €1.6 billion per year. In addition, the level of development funds used for migration policy objectives has been estimated at €70 million per year.<sup>59</sup>

The externalisation of asylum and migration procedures represents a cost and poses some serious problems. Firstly, accountability in the use of these funds is limited, as they are linked to the objective of reducing irregular arrivals to the EU. This risks distorting political cooperation with third countries in this direction (some academics underline the risk that the EU is subjected to imbalanced diplomatic pressure by third countries).<sup>60</sup> Moreover, there is a risk of diverting aid funds from the aims of development cooperation (and especially poverty eradication), to containment and limitation of migration. Importantly, in some transit states, proper scrutiny of actual standards of

<sup>54</sup> For the detail of the calculations, see Milieu (2018) in annex. See especially table 8 for a deconstruction of the costs. To be noted that an adjustment factor is applied to take account that not all irregular migrants are asylum-seekers.

<sup>55</sup> The calculation is provided in the annexed Milieu (2018) paper.

<sup>56</sup> W. van Ballegooij, , [The cost of non-Schengen: Civil liberties, justice and home affairs aspects](#), EPRS, European Parliament, 2016.

<sup>57</sup> The last aspect is considered in section 2.3.3.

<sup>58</sup> Council of the European Union, 2016.

<sup>59</sup> [EU Cooperation with third countries in the field of migration](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2015. This figure has been adjusted according to the methodology described above.

<sup>60</sup> F. Pastore F. (ed), 2017, *Beyond the Migration and Asylum Crisis, Options and Lessons for Europe*, Aspen Institute Italia, 2017.

respect of migrants' fundamental rights is problematic, while in some cases it has been verified that these are not respected, as in the Libyan case.<sup>61</sup>

### 2.3.3. Impacts on employment and integration

Several gaps and barriers in the CEAS affect the employment potential of asylum-seekers and beneficiaries of international protection. These gaps have an individual impact in terms of lower employment, earnings, and poorer working conditions for asylum-seekers and refugees, and have an impact in terms of tax revenues lost for Member States. Employment and tax revenues are affected mainly via two channels: lower refugee employment rates, and lower wages (especially because of gaps 5, 7 and 8), and a greater risk of working in the shadow economy because of the risk of irregular status (related to impact assessed in section 2.3.1).

Milieu (2018) estimates the employment and the income gap between beneficiaries of international protection and the native population, in order to estimate the cost of these gaps in terms of tax loss for the Member States. Overall, beneficiaries of international protection have a 34 % reduced likelihood of finding employment, compared with the native EU population.<sup>62</sup> Costs are estimated in two scenarios: the first assumes that the employment gap is closed, but beneficiaries of international protection work at the minimum wage, while the second assumes that they work for the average wage of the 'native population'. Closing both gaps would lead to a gain of €1.4 billion-1.9 billion per year.

Tax loss can also derive from people working in the shadow economy instead of the formal sector. This may be the case for asylum-seekers who engage in secondary movements because of shortcomings in the Dublin system (gap 3). These are estimated at between 246 000 and 295 000 people: the tax loss associated with their employment in the shadow economy is estimated at between €652 and €783 million per year (Milieu, 2018).

### 2.3.4. Impacts on asylum-seekers' living and health conditions

The gaps and barriers identified have an impact on asylum-seekers' health and living conditions at different stages of the journey. These impacts affect people at the individual level first of all, but this has also societal costs, which are reviewed in this section.

In the pre-arrival phase, asylum-seekers' poor travel conditions are well documented: the more salient data is the number of deaths in the Mediterranean Sea, reaching about 8 000 people in the two years considered in this study (2016-2017). Even though the number of arrivals has been declining since 2015, the number of lives lost during travel across the Mediterranean is not falling at the same pace. Measuring the societal cost of these lost lives is a delicate ethical issue. This study nevertheless presents estimates of this value. The reason for this estimation is that, in an exercise of quantification and measurement, not to do so risks underestimating a factor of crucial importance. Consistency with previous studies is also required, and especially with the cost of non-Europe report

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<sup>61</sup> Milieu (2018) section 3.V.5 and [and 'Detained and Dehumanised, Report On Human Rights Abuses Against Migrants In Libya'](#), United Nations Support Mission in Libya, Office of the United Nations High Commissioner for Human Rights, December 2016.

<sup>62</sup> Milieu, 2018, section 4.II.4, using data from the Labour force survey, 2014.

on the fight against terrorism.<sup>63</sup> The calculation, using the 'value of statistical life' methodology, provides a picture of the value of 'lost lives', as between €9.3 and €15 billion per year.<sup>64</sup>

Moreover, in the application stage, asylum-seekers face a higher risk of poor reception conditions due to the mismatch in the number of asylum-seekers and the capacity of the most impacted Member States to host them. The Asylum, Migration and Integration Fund (AMIF) was created to support 'hotspot' facilities in Italy, Greece and Bulgaria (€2.3 billion annually). Nevertheless, concerns regarding the health and psychological conditions in hotspots have been raised, especially in terms of the effectiveness of vulnerability screenings, overcrowded facilities, limited access to healthcare, and specific abusive situations experienced by women.<sup>65</sup> Gaps in reception conditions at the application stage produce greater healthcare expenditures and poorer health outcomes for asylum-seekers. Residential segregation, barriers to access to education and xenophobia adversely impact asylum-seekers' living and health conditions, both at the application stages and when international protection is granted. The health and psychological costs due to the use of detention are a cross-cutting issue across stages, especially if conditions do not meet the standards established by the Reception Conditions Directive. Overall, it is estimated<sup>66</sup> that asylum-seekers' health expenditure is 10 % higher with respect to the 'native' population, especially because of greater hospitalisation costs due to lack of access to primary care. This amounts to €197-€351 million per year. The effects of chronic mental stress should be added to this cost, but could not be quantified.

### 2.3.5. Impacts on the efficiency of procedures

A number of gaps and barriers across the asylum process generate inefficiencies that are reflected in additional costs borne by the Member States and the EU, especially during Dublin transfers, asylum applications and returns. The main underlying causes of inefficiencies are poor management of asylum procedures that can lead to greater utilisation of coercion and delays, and the poor predictability of asylum procedures. This is reflected in the high rate of appeals. While some level of appeals may be expected, a high rate of appeals is a symptom of an ineffective judicial system.

The Dublin system, beyond the limitations highlighted elsewhere, suffers some specific inefficiencies.<sup>67</sup> The lack of effective mechanisms to identify the Member State responsible for processing the application and a lack of solidarity in the Dublin system lead to:

- transfer requests that ultimately fail (cost of €186-236 million per year, which could be avoided in a more predictable system);
- high numbers of appeals against Dublin transfers (at an estimated cost of €74-87 million per year); and
- transfers that are approved but not implemented (€390 to €509 million per year);
- transfers that do not have a distributive effect (€16 million per year).

The cost of detention during Dublin transfers amounts to €7-10 million per year and may be due to the lack of harmonisation of reception conditions, which may push people to abscond to avoid being transferred.

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<sup>63</sup> W. van Ballegooij, P. Bakowski, [The cost of non-Europe in the fight against terrorism](#), EPRS, European Parliament, 2018.

<sup>64</sup> Milieu, 2018 section 4.II.5.

<sup>65</sup> Milieu, 2018, *ibid.*

<sup>66</sup> Milieu, 2018, *ibid.*

<sup>67</sup> This is a non-exhaustive summary, for the complete report on inefficiencies, see Milieu, 2018, section 4.II.3.

In the application phase, lack of legal pathways and solidarity mechanisms between Member States and the consequent uneven distribution of applications can produce delays in the managing of asylum procedures. Other impacts in terms of procedural inefficiencies at this stage are due to multiple applications (€178-428 million per year); these may be consequences of the lack of harmonisation in qualifications and reception conditions across Member States. Moreover, the lack of harmonisation of qualification criteria, produces very different recognition rates and types of protection granted to asylum-seekers from the same country of origin. The perception that standards may not be applied equally across Member States may lead to a higher number of appeals, with an estimated cost of €1.4-3.2 billion per year.

In the case of negative responses to applications, greater standardisation and predictability in asylum procedures could potentially increase the probability of a voluntary return. This has a cost-related impact, since forced returns are substantially more expensive than a voluntary return; the former is estimated to be €3 414 per individual, compared with €560 per voluntary return. The estimated costs would be of €272-401 million per year.

### 3. Options for action and cooperation at EU level that could address the gaps and barriers

#### Key findings

This report identifies seven policy options for the EU and its Member States to tackle the identified gaps and barriers: introducing EU legislation on humanitarian visas; further expanding of the EASO/Agency for Asylum mandate; improving the implementation and monitoring of the CEAS; taking individual preferences into account when identifying the Member State responsible for examining an asylum application; fostering access to employment and integration; ensuring accountability in external funding and the safety of returnees to third countries; and EU accession to the European Convention on Human Rights.

Overall, the expected net benefits of these policy options is about €22.5 billion per year.

This report identifies seven policy options for the EU and its Member States to tackle the identified gaps and barriers:

- 1 Introducing EU legislation on humanitarian visas. EU legislation on humanitarian visas would establish conditions for safe access to Schengen Member States, allowing individuals to apply for international protection. Once in the EU, asylum-seekers would lodge an application for asylum following the established CEAS processes and procedures. At the time of writing, the LIBE committee of the European Parliament is considering a legislative own-initiative report on the matter.<sup>68</sup>
- 2 Expanding the EASO/Agency for Asylum mandate would allow the Agency to assist in the registration of asylum-seekers, first screening of asylum claims and the determination of protection needs, as well as determination of the Member State responsible for handling the asylum claim, and the voluntary return of those with clearly unfounded claims. The Agency could also be given delegated executive power to carry out status determination functions in Member States that have a high number of arrivals, building on the joint processing currently occurring in hotspots. The establishment of 'reception centres' in some Member States managed by the Agency could also be envisaged, which should result in ensured adequate reception conditions.
- 3 Improving the implementation and monitoring of the CEAS. Building on the proposal for an EU agency for asylum this option would allow the CEAS to provide binding guidelines on qualification, asylum procedures and reception conditions. As regards country of origin information, a peer review system consisting of an independent panel of experts could be set up to assess the information produced by the Agency. The Agency should also be further empowered to monitor detention practices and the provision of legal assistance. The European Commission should also continue to strictly monitor the implementation of the CEAS in partnership with the United Nations, Council of Europe and other EU institutions, agencies and bodies, such as the European Court of Auditors.

<sup>68</sup> European Parliament, Procedure file, Humanitarian visas, 2017/2270(INL).

- 4 Taking individual preferences into account when identifying the Member State responsible for examining an asylum application. This option would build on and go beyond the proposed reforms of the Dublin Regulation by expanding the notion of 'genuine links' to include family links beyond the 'nuclear family', language skills, previous work experience or study in an EU Member State and regular residence or private sponsorship. Applicants without pre-existing links with a particular Member State would be reallocated through a corrective allocation system, taking account of the GDP and population size of the individual Member States. However, these applicants should still have a choice between all Member States, with the exception of the ten Member States with the highest number of applications.
- 5 Fostering access to employment and integration by eliminating restrictions to accessing the labour market that are currently in place in certain Member States, offering integration programmes and tailored services in key areas (language training, entrepreneurship), and launching communication and anti-discrimination campaigns to educate the public and alter the negative perceptions about asylum-seekers and refugees.
- 6 Ensuring accountability in external funding and the safety of returnees to third countries, including through the creation of a specialised EU trust fund office within the Commission. This would ensure consistent governance and management, the ex-ante assessment and ex-post evaluation of the fundamental rights impact of projects and periodic evaluations of the human rights standards of third countries receiving returnees; and
- 7 EU accession to the European Convention on Human Rights, which is expected to lead to a better judicial protection of human rights since norms adopted by the EU would become subject to review by the European Court of Human Rights. This would include the possibility for an individual applicant to bring a case against the EU to the ECtHR. Article 6(2)) TFEU establishes an obligation for the EU to accede to the ECHR. Following the negative Court of Justice opinion<sup>69</sup> on the initial draft accession agreement, renegotiation is underway, taking account of the concerns expressed by the Court.

Those policy options would:

- Ensure better compliance with international norms, EU values and rights;
- Support third countries in tackling the root causes of displacement;
- Lower levels of irregular migration to the EU;
- Lower costs of border security and surveillance;
- Enhance the management, efficiency and coordination of the asylum process;
- Enable faster socio-economic integration of asylum-seekers and refugees;
- Stimulate employment, increase tax revenues and economic growth;
- Reinforce protection of human rights in countries of return.

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<sup>69</sup> CJEU, Opinion 2/13 of 18 December 2014. Opinion pursuant to Article 218(11) TFEU, draft international agreement, Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Compatibility of the draft agreement with the EU and TFEU Treaties.

In terms of costs additional human and financial resources should be envisaged notably to:

- further boost EU asylum agency and national asylum authorities capacity and that of those assisting in the integration of asylum-seekers and refugees;
- support new EU activities in terms of monitoring and evaluation of readmission agreements and arrangements with third countries;
- update EU information systems;
- provide improved integration programmes.

Table 4 – Overview of the policy options and their assessment

Policy options	Stages and Gaps/barriers	Potential costs and benefits
<b>Option 1: EU legislation on humanitarian visas</b>	Pre-arrival: Gap/Barrier 1	<p><b>Benefits:</b> Lower levels of irregular migration to the EU leading to lower costs of border security and surveillance, organised crime and search and rescue missions. Could also lead to a lower loss of life at sea.</p> <p><b>Costs:</b> Additional human resources needed to review applications and provide legal aid and translation. Other costs may include updating the VIS IT system and providing for a security screening.</p> <p><b>Net benefits:</b> The net benefits would be approximately €6.2 billion. The magnitude is highly dependent on the design of the policy option and the extent that asylum-seekers substitute the legal channel option for the irregular channel.</p>
<b>Option 2: Increase the mandate for EASO</b>	Arrival, application, post-application: Gap/Barriers 3, 4, 6 and 9	<p><b>Benefits:</b> Increased efficiencies with respect to Dublin transfers in addition to lower levels of secondary movement and a decreased risk of Member States reintroducing internal border controls.</p> <p><b>Costs:</b> Additional cost for expanding the role and responsibilities of EASO to coordinate arrivals and reception (estimated to be €15 million) and EU asylum appeal tribunal.</p> <p><b>Net benefits:</b> At least €9.4 billion per year.</p>
<b>Option 3: Improve implementation and monitoring of the CEAS</b>	Arrival and application: Gap/Barriers 5 and 6	<p><b>Benefits:</b> Increased protection of fundamental rights, due to reinforced monitoring. Greater harmonisation among the MS could lead to a lower rate of appeal. Lower use of forced returns due to increased predictability of asylum decisions.</p> <p><b>Costs:</b> Increased costs due to the expanded role of EASO, estimated to be from €839 thousand to €2.1 million per year.</p> <p><b>Net benefits:</b> €1.7-2.0 billion per year.</p>
<b>Option 4: Take individual preferences into account when identifying the Member State responsible for examining an asylum application</b>	Arrival, application, post-application (integration): Gap/Barriers 3, 4 and 8	<p><b>Benefits:</b> Increased protection of individual's right to respect private and family life. Elimination of take-back requests, reduction in expected rate of appeals to transfer requests and reduction in secondary movements.</p> <p><b>Costs:</b> This option would have minimal costs implications, related to setting up an algorithm that support the application of the fair allocation mechanism.</p> <p><b>Net benefits:</b> €980 million to €1.3 billion per year.</p>
<b>Option 5: Foster access to employment and integration</b>	Post-application (integration): Gap/Barriers 7	<p><b>Benefits:</b> Increased protection of individual's right to work and non-discrimination. Host countries would benefit from enlarged labour force and increased tax revenue.</p> <p><b>Costs:</b> Costs of an integration programme should be considered and could be on the order of €1 000 to 10 000 per individual.</p>

Policy options	Stages and Gaps/barriers	Potential costs and benefits
		<b>Net benefits:</b> The annual long-term net benefits (up to 2060) were estimated to be on the order of €3.9 billion. The evidence suggests that the net benefits would be greatest for interventions that improve knowledge of the host country's language.
<b>Option 6: Cooperation with third countries</b>	Pre-arrival and post-application (return): Gap/Barriers 1, 2 and 9	<b>Benefits:</b> Supporting third countries to tackle root causes of displacement; this has the potential to reduce the risk of persons embarking on dangerous journeys to the EU, and must be accompanied by efforts to open up legal pathways to the EU. Reinforced protection of human rights in countries of return, by setting up a monitoring system. <b>Costs:</b> Costs would be related to new activities of the EU in terms of monitoring and evaluation of readmission agreements with third countries. These costs are expected to be low. <b>Net benefits:</b> Benefits are difficult to quantify, as many factors affect refugee movements but, in the long-run, the balance between costs and benefits is expected to be positive.
<b>Option 7: EU accession to the ECHR</b>	All stages: Horizontal barrier (Non-compliance with fundamental rights obligations)	<b>Benefits:</b> Additional external scrutiny mechanism to monitor compliance with fundamental rights by the EU, and enhanced consistency between the CJEU and ECHR. <b>Costs:</b> Costs are expected to be limited as Member States are already bound by the ECHR. <b>Net benefits:</b> Positive, as it would provide additional external scrutiny by the ECtHR, enhance consistency between the jurisprudence of the CJEU and ECtHR and improve judicial protection for an applicant to bring a case to court without having to fulfil the requirements of the CJEU.

Source: MILIEU, chapter 5.

The net benefits of these policy options are overall about **€22.5 billion per year** (see below for a breakdown of this estimate).

It should be noted that only some options have been quantitatively assessed, which is likely to result in an underestimation of the overall benefits. The main results of the quantitative assessment are the following:<sup>70</sup>

- Option 1: EU legislation on humanitarian visas: the expected net benefits would be approximately €6.2 billion per year;<sup>71</sup>
- Option 2: Expanding the mandate of EASO is estimated producing net benefits of at least €9.4 billion per year;
- Option 3: Improving the implementation and monitoring of the CEAS leads to a net benefit of €1.7-2 billion per year;

<sup>70</sup> For the detail on the calculations, see Milieu, 2018, section 5.

<sup>71</sup> This policy option is detailed in W. van Ballegooij, C. Navarra, [European added value assessment on humanitarian visas](#), EPRS, European Parliament, 2018 and the calculation of the potential benefit is detailed in Milieu, 2018, section 5.1.

- Option 4: Taking individual preferences into account when identifying the Member State responsible for examining an asylum application leads to a net benefit of €980 million-€1.3 billion per year;
- Option 5: Fostering access to employment and integration of beneficiaries of international protection has a net benefit of €3.9 billion per year, in the long-term (50 years) perspective;

In these cases, a number of assumptions have been made in order to calculate expected costs and benefits (the assumptions are illustrated in the annexed research paper); the estimates must therefore be taken with caution. For options 6 and 7, the paper in annex presents a qualitative assessment: both options are expected to provide positive benefits, which are difficult to quantify because of their nature. The benefits, costs and net benefits of the various policy options are described further in the table below.

## 4. Recommendations

Greater coordination of EU asylum measures may lead to major improvements, both in terms of respect of fundamental rights and in terms of economic gains. These ameliorations include both cost reductions that could be avoided if alternative approaches were taken, and the realisation of untapped economic benefits.

Gaps and barriers in the Common European Asylum System and related measures could be addressed through the introduction of EU legislation on humanitarian visas; further expanding the EASO/the EU agency for asylum mandate; improving the implementation and monitoring of the CEAS; taking individual preferences into account when identifying the Member State responsible for examining an asylum application; fostering access to employment and integration; ensuring accountability in external funding and safety of returnees to third countries; and EU accession to the European Convention on Human Rights.

Further action and cooperation at EU level would ensure better compliance with international norms, EU values and rights; support third countries in tackling the root causes of displacement; lower levels of irregular migration to the EU; lower costs of border security and surveillance; enhance the management, efficiency and coordination of the asylum process; enable faster socio-economic integration of asylum-seekers and refugees; stimulate employment; increase tax revenues (based on which we assume a positive impact on economic growth); and reinforce protection of human rights in countries of return.

In quantitative terms, the net benefits of these policy options have been estimated to be around €22.5 billion per year. It should be noted that not all the potential benefits could be assessed in quantitative terms.

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# ANNEX

## The Cost of Non-Europe in the area of Asylum

Final Research Paper  
by Milieu Ltd

### **Abstract**

The handling of the arrival of asylum-seekers to the EU in recent years has revealed critical shortcomings of the EU's Common European Asylum System that challenge the EU's core values of freedom and democracy and international legal obligations and have dire impacts on individuals and society. In response the EU has taken several short-term actions and launched a wider discussion to reform the system. This Research Paper identifies and assesses ten key gaps and barriers in the EU Common Asylum System. The assessment is based on an independent and comprehensive review and considers both legal and economic perspectives. The economic analysis identified five categories of impact stemming from the gaps and barriers that include irregular migration, funding for external action and cooperation, inefficiencies in asylum procedures, dimmer employment prospects leading to lower generation of tax revenue and poor living conditions and health. The Research Paper defines seven policy options for the EU to tackle the identified gaps and barriers. The potential benefits outweigh the expected costs for all the options considered. Estimates of net benefits are developed for several policy options.

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Manuscript completed in August 2018

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## List of Abbreviations and Acronyms

AIDA	Asylum Information System Database
AMIF	Asylum, Migration and Integration Fund
CEAS	Common European Asylum System
CFR	Charter of Fundamental Rights
CJEU	Court of Justice of the European Union
COI	Country of Origin Information
CoNE	Cost of Non-Europe
CSDP	Common Security and Defence Policy
DG HOME	Directorate-General of the European Commission for Migration and Home Affairs
EASO	European Asylum Support Office
EC	European Commission
EP	European Parliament
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECRE	European Council on Refugees and Exiles
EMN	European Migration Network
EEPO	European Employment Policy Observatory
EPRS	European Parliamentary Research Service
ESIF	European Structural and Investment Funds
ECtHR	European Court of Human Rights
EU	European Union
eu-LISA	European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
FEAD	Fund for European Aid to the Most Deprived
FRA	European Union Agency for Fundamental Rights
FRONTEX	European Border and Coast Guard Agency
IOM	International Organisation for Migration
LIBE	Civil Liberties Justice and Home Affairs
MS	EU Member State

NGO	Non-governmental organisation
OECD	Organisation for Economic Cooperation and Development
SCO	Safe Country of Origin
TCN	Third-Country Nationals
TEUF	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees (UN Refugee Agency)

## Executive Summary

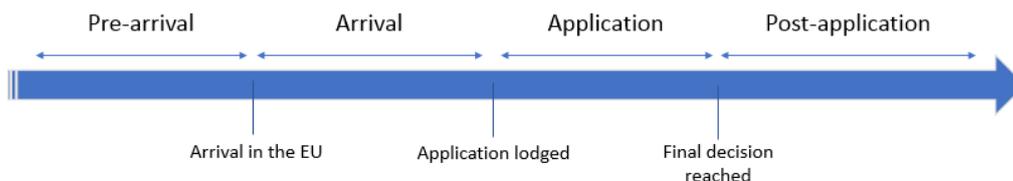
The right to asylum generally refers to the protection granted by a State to someone who has been forced to leave his or her home country to seek safety from persecution or serious harm. From a global perspective, UNHCR estimates that 67.7 million persons were in need of protection in 2017. **The number of persons in need of protection has increased over time due to a greater prevalence of conflict and forced displacement.** Of the global figure of persons in need, an estimated 3 percent sought asylum in the EU (UNHCR, 2017). In recent years, the compliance of the EU Common European Asylum System with international refugee law and human rights standards has been called into question. Moreover, studies and other research suggest that its shortcomings have led to adverse impacts on asylum-seekers, the EU and its Member States.

This Research Paper was prepared at the request of the European Parliament's EU Added Value Unit. Its objective is to identify gaps and barriers in EU action in the area of asylum<sup>1</sup>, analyse their impact on individuals and the economy, and define a set of policy options to tackle the gaps and barriers. **Chapter 1** presents the background to the study and the methodological approach.

**Chapter 2** of the Research Paper reviews the state of play, which includes the trends and profile of asylum-seekers to the EU and the legal and policy frameworks in place at the time this study was published<sup>2</sup>. Through the 'Common European Asylum System' (CEAS) the EU has developed legal and policy instruments for the management of asylum in the EU that covers different stages of the asylum journey. The CEAS incorporates and further develop the key principles of international legislation, including the 1951 Geneva Convention and its 1967 Protocol.

**Chapter 3** presents the most pressing shortcomings of the CEAS identified through a comprehensive review of research, studies and academic literature. In total, we identified **nine prominent gaps and barriers in action and cooperation at EU level** along the four stages of the asylum journey. These four stages of the journey are defined in the Research Paper as pre-arrival, arrival, application and post-application as shown in Figure 1 below.

**Figure 1: Stages of the asylum journey**



Almost all of these gaps and barriers identified have impacts on the fundamental rights of individuals. For this reason, the Research Paper also considers a horizontal barrier on non-compliance with fundamental rights obligations.

Table 1 below provides an overview of the all the gaps and barriers identified.

<sup>1</sup> This Research Paper focuses on the CEAS and interrelated instruments (e.g. the resettlement scheme, EU external policy, the Return Directive). It does not cover legal migration, control of EU external borders and humanitarian admissions - subject of other reports.

<sup>2</sup> The study reflects the CEAS in place in August 2018.

**Table 1: Overview of the gaps and barriers**

Stages of the asylum journey and Gaps and barriers	
Pre-arrival	<b>Gap/Barrier 1:</b> Limited legal pathways to the EU for people in need of international protection
	<b>Gap/Barrier 2:</b> Limitations of EU external action ( <i>Lack of mechanisms to ensure accountability of EU external actions; a significant amount of development aid is diverted to border management activities with reports of human rights abuse which have been linked to such actions</i> )
Arrival	<b>Gap /Barrier 3:</b> Dublin does not ensure solidarity and fair sharing of responsibility among Member States ( <i>The capacity of Member States is not taken into account in the determination of the responsible Member State and the Dublin rules have a limited redistributive effect; different capacity in terms of reception conditions across the Member States</i> )
	<b>Gap/Barrier 4:</b> The mechanism to determine MS responsibility for the examination of asylum claims does not work ( <i>The choice of asylum-seekers is only very partially taken into account in the choice of MS in which they lodge an asylum application; the Dublin Regulation entails long and costly procedures and shortcomings in its implementation</i> ).
Application	<b>Gap/Barrier 5:</b> Lack of harmonisation and implementation of EU legislation with respect to qualification of beneficiaries of international protection and asylum procedures ( <i>Divergent application of the EU Qualification and Asylum Procedures Directive across Member States and limited role of EASO</i> )
	<b>Gap/Barrier 6:</b> Lack of harmonisation and implementation of EU legislation with respect to reception conditions ( <i>Divergent application of the EU Reception Conditions Directive and different capacities across MS</i> )
Post-application	<b>Gap/Barrier 7:</b> Shortcomings in integration services, obstacles for accessing the labour market and discrimination
	<b>Gap/Barrier 8:</b> Lack of mutual recognition of positive asylum decisions
	<b>Gap/Barrier 9:</b> Barriers in the implementation of the Return Directive ( <i>Limited execution of return decisions; risks of wrongful returns; shortcomings in the monitoring return operations in third countries to prevent human rights violations</i> )
Horizontal	Non-compliance with fundamental rights obligations ( <i>While fundamental rights are protected in international and EU law, in practice they are not always complied with</i> ).

Chapter 4 reviews the impacts of the gaps and barriers on individual asylum-seekers, refugees and EU society. In total, the assessment identified five broad categories of impact which included within them impacts on individuals and society. Characterisation of these impacts drew on data from a range of sources including asylum population statistics from Eurostat, academic literature and findings from policy research including evaluations. In addition, two years with differing levels of asylum applications lodged were considered to more accurately assess the impacts – 2016 represented a ‘high scenario’ while 2017 represented a ‘low scenario’. The quantitative assessment of costs focuses on the five broad categories of impact - irregular migration, external action and cooperation, procedural inefficiencies, lost tax revenue and elevated costs for living conditions and health. It drew on several Cost of non-Europe studies led by the European Parliament Research Service on the topics of procedural rights and detention conditions, internal border controls, and equality and xenophobia. Each category of impact included more specific economic and individual impacts, which were characterised in quantitative and monetary terms when possible. Some impacts such as living conditions, mental stress, risk of exploitation and access to healthcare and health status could only be assessed qualitatively.

The monetized findings are summarised in Table 2. Together, all these impacts can be considered

as the ‘the Cost of Non-Europe’, i.e. the cost of lack of EU action in the area of asylum. It is important to highlight that these figures reflect impacts that incurred in 2016 and 2017. The policy area of asylum is rapidly shifting in the EU, one recent development being the ring-fencing and substantial increase in funding for migration and border management. As a specific example, the 2021-2027 Multi-Annual Financial Framework proposes a tripling of the budget for Frontex (EPRS, 2018).

**Table 2: Summary of the impacts of the gaps/barriers**

Impact	Cost components	Estimated costs per year <sup>3</sup>
Irregular migration	Border security and surveillance, security, private search and rescue missions	EUR 19.7-33.2 billion*
External action and development cooperation	Third country agreements, development cooperation, emergency funding	EUR 1.7 billion
Inefficiencies in asylum procedures	Dublin transfers, asylum applications, and forced returns	EUR 2.5-4.9 billion
Lost tax revenue due to limited employment opportunities and discrimination	Beneficiaries of international protection having poor employment opportunities; Asylum-seekers falling into shadow economy	EUR 2.1-2.7 billion
Greater costs for living conditions and healthcare	Lost lives, healthcare utilisation among asylum-seekers, emergency funding for hotspots	EUR 11.8-17.7 billion
Estimated total:		EUR 38-60 billion

*Note:* The assessment identified other key impacts that could not be monetised. These included chronic mental stress and infringements on fundamental rights. \* The risk of asylum-seekers falling into the shadow economy is reflected in the estimate for lost tax revenue.

Chapter 5 defines **seven policy options for EU Action** proposed to address the identified gaps and barriers in Chapter 3. In some cases, these options take into account proposals already part of the current reform of the CEAS and the ongoing debates.

**Policy Option 1 – EU legislation on humanitarian visas**, which can offer a legal channel for persons in need of protection to seek asylum in the EU. The policy option would support the safe passage of asylum-seekers to the EU and thus lower the utilisation of smuggling networks as well as the risk of exploitation, violence and death. Once in the EU, asylum-seekers would lodge an application for asylum following the established processes and procedures of the Common European Asylum System.

**Policy Option 2 - Increased mandate for EASO** (or a new EU Agency for Asylum) for the registration of asylum-seekers; first screening and determination of the MS responsible; and delegated executive power to carry out status determination functions in those Member States with a high number of asylum-seekers. This could lead to more efficient management of the procedures at arrival and carrying out Dublin transfers. It could also reduce the risk of Member States introducing internal border controls and eliminate the need for emergency funding as the upscaling of reception would be institutionalised with the policy option. The system would be activated in certain Member States upon the assessment of the needs by an EU Agency for Asylum.

<sup>3</sup> For more detail and complete calculations, please see Chapter 4.

**Policy Option 3 - Improve implementation and monitoring of the CEAS**, including through binding guidelines by EASO (or new EU Agency for Asylum) on qualification, asylum procedures and reception conditions; enhanced monitoring by the EU Agency for Asylum and a peer review system of Country of Origin Information reports used to assess asylum claims. In addition to increased protection of fundamental rights (due to reinforced monitoring), this option is expected to lead to greater harmonisation among the Member States and greater predictability of judicial decisions on asylum claims. In turn, a decrease in multiple applications could be expected, with consequent fiscal savings for the EU and its Member States.

**Policy Option 4 - Take individual preferences into account when identifying the Member State responsible for examining an asylum application:** this option would promote the establishment of a fair sharing mechanism that would take into account to some extent the preference of destination for asylum-seekers through the corrective allocation system<sup>4</sup>:the asylum-seeker could be given the choice from all Member States with the exception of the ten Member States with the highest number of applications. The concept of genuine link could also be extended (e.g. to include wider family members, language skills). The main expected benefit is the decline in secondary movements and multiple applications, along with the number of appeals to transfer decisions. In the long-term, the restrictions to free choice and movement of beneficiaries of international protection throughout the EU could be further lifted through the mutual recognition of asylum decisions.

**Policy Option 5 - Foster access to employment and integration:** host countries would benefit from higher entrepreneurship, tax revenue and economic growth, which could amount to EUR 15.3 - 30.6 billion per year. Asylum-seekers and beneficiaries of international protection would also benefit from greater access to healthcare and the exercise of their right to work and non-discrimination.

**Policy Option 6 - Cooperation with third countries:** This policy has two options that address the concerns in the status quo that development aid is being diverted for border management and the limited effectiveness. In part a) projects funded in the context of the EU external migration policy such as through the EU Trust Fund for Africa) must be accompanied by accountability mechanisms to ensure proper project selection and spending, including *ex ante* and ongoing assessments of the impact of projects on fundamental rights, particularly of migration management projects. Rather than focusing on border management, such EU actions should focus on the drivers of forced displacement, including through projects aimed at education, health, infrastructure, innovation, good governance and women's empowerment, and tackling security threats. Part b) would seek to ensure safety of return operations, through mechanisms for the monitoring and evaluation of human rights standards in countries of return, as part of readmission agreements.

**Policy Option 7 - EU accession to the ECHR:** this option would promote the establishment of an additional scrutiny mechanism to monitor compliance with fundamental rights by the EU, and enhanced consistency between the CJEU and ECHR.

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<sup>4</sup> In line with the current proposal of the European Parliament.

Table 3 presents an overview of these seven policy options and the gaps/barriers they address. All options were found to offer the EU net benefits in various degrees. The potential benefits of the policy options stem from the reduction of costs identified in the status quo.

**Table 3: Overview of the policy options and the assessment**

Policy options	Stages and Gaps/barriers	Potential costs and benefits
Option 1: EU legislation on humanitarian visas	Pre-arrival: Gap/Barrier 1	<p><b>Benefits:</b> Lower levels of irregular migration to the EU leading to lower costs of border security and surveillance, organized crime and search and rescue missions. It could also lead to a lower loss of life at sea.</p> <p><b>Costs:</b> Additional human resources needed to review applications and provide legal aid and translation. Other costs may include updating the VIS IT system and providing for a security screening.</p> <p><b>Net benefits:</b> The net benefits would be approximately EUR 6.2 billion. The magnitude is highly dependent on the design of the policy option and the extent that asylum-seekers substitute the legal channel option for the irregular channel.</p>
Option 2: Increase the mandate for EASO	Arrival, application, post-application: Gap/Barriers 3, 4, 6 and 9	<p><b>Benefits:</b> Increased efficiencies with respect to Dublin transfers in addition to lower levels of secondary movement and a decreased risk of Member States reintroducing internal border controls.</p> <p><b>Costs:</b> Additional cost for expanding the role and responsibilities of EASO to coordinate arrivals and reception (estimated to be EUR 15 million) and EU asylum appeal tribunal.</p> <p><b>Net benefits:</b> At least EUR 9.4 billion per year.</p>
Option 3: Improve implementation and monitoring of the CEAS	Arrival and application: Gap/Barriers 5 and 6	<p><b>Benefits:</b> Increased protection of fundamental rights, due to reinforced monitoring. Greater harmonisation among the MS could lead to a lower rate of appeal. Lower use of forced returns due to increased predictability of asylum decisions.</p> <p><b>Costs:</b> Increased costs due to the expanded role of EASO, estimated to be from EUR 839 thousand to EUR 2.1 million per year.</p> <p><b>Net benefits:</b> EUR 1.7-2.0 billion per year.</p>
Option 4: Take individual preferences into account when identifying the Member State responsible for examining an asylum application	Arrival, application, post-application (integration): Gap/Barriers 3,	<p><b>Benefits:</b> Increased protection of individual's right to respect private and family life. Elimination of take-back requests, reduction in expected rate of appeals to transfer requests and reduction in secondary movements.</p> <p><b>Costs:</b> This option would have minimal costs implications, related to setting up an algorithm that support the application of the fair allocation mechanism.</p>

Policy options	Stages and Gaps/barriers	Potential costs and benefits
	4 and 8	<b>Net benefits:</b> EUR 980 million to EUR 1.3 billion per year.
Option 5: Foster access to employment and integration	Post-application (integration): Gap/Barriers 7	<p><b>Benefits:</b> Increased protection of individual’s right to work and non-discrimination. Host countries would benefit from enlarged labour force and increased tax revenue.</p> <p><b>Costs:</b> Costs of an integration programme should be considered and could be on the order of EUR 1,000 to 10,000 per individual.</p> <p><b>Net benefits:</b> The annual long-term net benefits (up to 2060) were estimated to be on the order of EUR 3.9 billion. The evidence suggests that the net benefits would be greatest for interventions that improve knowledge of the host country’s language.</p>
Option 6: Cooperation with third countries	Pre-arrival and post-application (return): Gap/Barriers 1, 2 and 9	<p><b>Benefits:</b> Supporting third countries to tackle root causes of displacement; this has the potential to reduce the risk of persons embarking on dangerous journeys to the EU, and must be accompanied by efforts to open up legal pathways to the EU. Reinforced protection of human rights in countries of return, by setting up a monitoring system.</p> <p><b>Costs:</b> Costs would be related to new activities of the EU in terms of monitoring and evaluation of readmission agreements with third countries. These costs are expected to be low.</p> <p><b>Net benefits:</b> Benefits are difficult to quantify, as many factors affect refugee movements but, in the long-run, the balance between costs and benefits is expected to be positive.</p>
Option 7: EU accession to the ECHR	All stages: Horizontal barrier (Non-compliance with fundamental rights obligations)	<p><b>Benefits:</b> Additional external scrutiny mechanism to monitor compliance with fundamental rights by the EU, and enhanced consistency between the CJEU and ECHR.</p> <p><b>Costs:</b> Costs are expected to be limited as Member States are already bound by the ECHR.</p> <p><b>Net benefits:</b> Positive, as it would provide additional external scrutiny by the ECtHR, enhance consistency between the jurisprudence of the CJEU and ECtHR and improve judicial protection for an applicant to bring a case to court without having to fulfil the requirements of the CJEU.</p>

## 1. INTRODUCTION

### I. Background

Asylum generally refers to the protection granted by a State to someone who has been forced to leave his or her home country to seek safety from persecution or serious harm. The right to asylum is a fundamental right, enshrined in the Charter of Fundamental Rights of the European Union, and granting it is an international obligation, first established in the 1951 Geneva Convention on the protection of refugees.

The EU received a relative increase in asylum application since in 2015, when 1.3 million applications were lodged across the Member States. While these figures decreased in the following years, challenges related to migration remain one of the most important concerns in citizens' opinion<sup>5</sup> and are at the core of EU policy priorities for the coming years.

Although the number of asylum applicants has increased since 2008, the share remains relatively small compared to the EU population. **Asylum applicants represented less than a quarter percent of the EU-28 population in 2017 or an estimated 716 thousand persons**<sup>6</sup>. A number of other countries have had a stronger response to the need. Turkey hosts the largest number of refugees, which includes 3.3 million registered Syrian refugees<sup>7</sup>. Lebanon hosted 1,018,416 persons,<sup>8</sup> amounting to one quarter of its population.

The increase of arrivals of asylum-seekers in the EU has **revealed gaps and barriers in the EU's Common European Asylum System**. The EU has taken several short-term actions in response to what is commonly referred to as the 'migration crisis'. In 2016 the EU launched a reform of the Common European Asylum System (CEAS) that is still under discussion.

In a resolution adopted in 2016<sup>9</sup>, the **European Parliament** called for a '**holistic EU approach to migration**', encompassing its numerous and complex aspects. Besides stressing the importance of solidarity as the guiding principle of the Union action on migration<sup>10</sup>, the Resolution pointed to the need for (*inter alia*): a robust Union response to prevent the 'escalating death toll of migrants attempting to cross the Mediterranean', a truly uniform CEAS, opportunities for the integration of refugees into the host society, and a more effective Union's return system.

### II. Objectives and scope

The European Parliament's European Added Value Unit, DG EPRS, has requested the preparation of a Research Paper on the *Cost of Non-Europe (CoNE) in the area of Asylum*. The objective of the research paper is to analyse the impact on individuals and the economy of gaps and barriers in European Union (EU) action, as well as identifying and assessing options to close those gaps and barriers at EU level.

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<sup>5</sup> For example, according to Special Eurobarometer of the European Parliament of April 2017, 58% of respondents considered the EU's actions regarding migration inadequate and 73% wanted the EU to intervene more than at present (European Parliament, 2017 a).

<sup>6</sup> Authors' calculations based on data from Eurostat. The EU's population in 2017 was estimated to be 511.8 million. The share of asylum-seekers in the EU was estimated to be 0.14%.

<sup>7</sup> UNHCR, Syria emergency: <http://www.unhcr.org/syria-emergency.html>

<sup>8</sup> Of those people, 998,890 are refugees and 15,333 asylum-seekers.

<sup>9</sup> European Parliament, 12 April 2016, [Resolution on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration](#), P8\_TA(2016)0102.

<sup>10</sup> Article 80 of the Treaty of the Functioning of the European Union (TFEU). See also Section 2.II.1.

This research paper focuses on the CEAS and other interrelated policy and legal instruments (e.g. the resettlement scheme, cooperation agreements with third countries, the Return Directive). It does not cover instruments, policies and issues related to legal migration and control of EU external borders, which are the subject of two complementary 'Cost of Non-Europe' reports, ongoing at the time of writing. The study does cover the issue of legal pathways to seek asylum in the EU and humanitarian admissions, which was reviewed in a separate European Added-Value study (van Ballegooij and Navarra, 2018).

The analysis focuses on the instruments of the CEAS currently in force as a baseline. The proposed reforms and ongoing developments are considered at the end of each sub-section.

### III. Methodological approach

The approach to identifying the CoNE in the area of asylum was guided by three main research questions:

- (1) What is the current State of Play, and what are the gaps and barriers in EU action in the area of asylum, in accordance with the EU Treaties and within the competence of the LIBE Committee of the European Parliament?
- (2) What is the impact of the current gaps and barriers affecting action and cooperation at EU level?
- (3) What are the options for action at EU level to address the gaps and barriers identified, and what are the potential costs and benefits of those options?

**Chapters 2 and 3** map the state of play and identify the main gaps and barriers in the EU action and cooperation in the area of asylum. **Gaps and barriers** are intended as shortcomings due to: barriers in the implementation of the current EU legislation and policy, or gaps in the existing EU legal and policy framework. Moreover, specific attention is placed on the compliance with fundamental rights obligations. Gaps and barriers in the implementation of the current EU legal and policy framework, indeed, can result in violations of fundamental rights protected at EU and international level. The analysis covers issues related to the compliance with ten migration-related fundamental rights concerns, selected on the basis of key human rights reports (e.g. the Fundamental Rights Agency's monthly data collection on migration-related fundamental rights concerns)<sup>11</sup>.

In **Chapter 4**, we identify the **impacts** stemming from the existing gaps and barriers and seek to characterize them in quantitative and qualitative terms.

In order to identify and assess the impacts, the gaps and barriers presented in Chapter 3 are aggregated into 'main issues' that characterise the current situation and lead to further impacts. Each of these 'main issues' is caused by several gaps and barriers in EU cooperation and, in turn, represents a 'driver' of further impacts on the EU economy and society, and on individuals (specifically, asylum-seekers and beneficiaries of international protection). A conceptual model is used to illustrate the links between issues (or drivers) and impacts to be assessed in qualitative and quantitative terms.

The impacts identified and assessed in Chapter 4 are categorised into economic impacts on the EU and its Member States as well as impacts on individuals. In total, six different types of impacts were identified and characterised in quantitative and qualitative terms.

Finally, building on the analysis of the main gaps and barriers and their related impacts and costs, **Chapter 5** identifies and assesses a list of **options for EU action**.

The research focuses on the years following the so-called 'migration crisis', which started in 2015

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<sup>11</sup> Fundamental Rights Agency, [Regular overviews of migration-related fundamental rights concerns](#).

and put at a strain the current CEAS. The paper, thus, takes into account the most recent data, literature and policy initiatives, with focus on the years between 2015 and mid- 2018, and aims to provide an overview of the most recent debates on the topic.

The research team reviewed the legal instruments and relevant literature, including European Parliament resolutions, Commission implementation reports and analyses published by NGOs, international organisations and research institutes, focusing on the most prominent gaps and barriers affecting current EU action. Interviews with selected stakeholders were also carried out (notably, two interviews with UNHCR and one with the European Commission – Directorate General Migration and Home Affairs).

Quantitative data used in the report are mainly based on recent statistics available from Eurostat, primarily from 2016 and 2017. In some cases, when Eurostat statistics are not available, the research relies on other datasets (e.g. EASO data on asylum applications, or OIM data on deaths at sea) or estimates taken from academic literature and studies. This combination of sources aims to provide a more complete and updated picture. When different datasets are combined, limitations and issues in terms of data comparability are pointed out.

Finally, it is worth mentioning that the list of gaps and barriers, although extensive, could be not exhaustive: given the complexity of the topic and the ongoing developments, other issues could become relevant. Box 1 reports the main definitions used in the report.

Box 1: Main definitions used in the report

**Asylum-seeker or asylum applicant:** 'A third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken (Article 2(b) of the Reception Conditions Directive 2013/33/EU)

**Refugee:** 'A third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it' (Article 2(d), [Directive 2011/95/EU](#)).

**Refugee status** means the recognition by a Member State of a third-country national or a stateless person as a refugee (Article 2(2) of the Qualification Directive 2011/95/EU).

**Subsidiary protection:** 'Person eligible for subsidiary protection means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm,, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country' (Article 2(f) Qualification Directive 2011/95/EU) In this report, the term '**beneficiary of subsidiary protection**' is also used and refers to a person who has been recognised as eligible for subsidiary protection and been granted subsidiary protection status by a Member State (Article 2(e) Qualification Directive 2011/95/EU).

**Beneficiary of international protection:** a person who has been granted refugee status or subsidiary protection status (Article 2(b), Qualification Directive 2011/95/EU).

**Onward movement of asylum-seekers and refugees:** There is no clear or universally accepted definition of the phenomenon of refugees, whether they have been formally identified as such or not (asylum-seekers), who move in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere, is a matter of growing concern. This concern results from the destabilizing effect which irregular movements of this kind have on structured international efforts to provide

appropriate solutions for refugees. Such irregular movements involve entry into the territory of another country, without the prior consent of the national authorities or without an entry visa, or with no or insufficient documentation normally required for travel purposes, or with false or fraudulent documentation.<sup>12</sup> The European Commission derives its definition of secondary movements from this Conclusion.<sup>13</sup>

**Irregular migration:** Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. From the perspective of destination countries irregular migration is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country (International Organisation for Migration, [Key Migration Terms](#))

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<sup>12</sup> UNHCR, Executive Committee 40<sup>th</sup> session, Executive Conclusion No. 58(XL) (1989) on [The problem of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection](#), para (a).

<sup>13</sup> The movement of migrants, including refugees and asylum-seekers, who for different reasons move from the country in which they first arrived to seek protection or permanent resettlement elsewhere ([EMN Glossary](#)).

## 2. STATE OF PLAY

### Key findings

- The right to asylum is enshrined in international and EU instruments. The 1951 Convention and its 1967 protocol are the cornerstone of refugee protection at international level and have been incorporated in EU law which, in some respects goes beyond international obligations.
- The EU has the competence to 'frame a common policy on asylum, immigration and external border control' (Article 67 of the TFEU). As of 1999, the EU legislator has gradually developed the so-called 'Common European Asylum System' (CEAS), providing legal and policy instruments for the management of asylum in the EU.
- Most asylum-seekers arrive to the EU by sea. Despite a decreasing trend in the number of arrivals, the number of dead and missing migrants continued to increase in 2017.
- The European Asylum Support Office (EASO) has been operational since 2011 and supports Member States with qualification and asylum procedures to better harmonise these procedures. This includes training and developing reports on country of origin information (COI). The Agency's current mandate does not include monitoring and providing guidance.
- In 2016 the EU launched further reforms to the CEAS, many of which are still under discussion.

This chapter presents an overview of the main trends relating to the arrival of asylum-seekers in the EU, including available information on origin and destination countries, and the profile of asylum-seekers. It also discusses the EU commitments to international legal instruments and the current EU action in the field of asylum.

### I. Trends in asylum applications

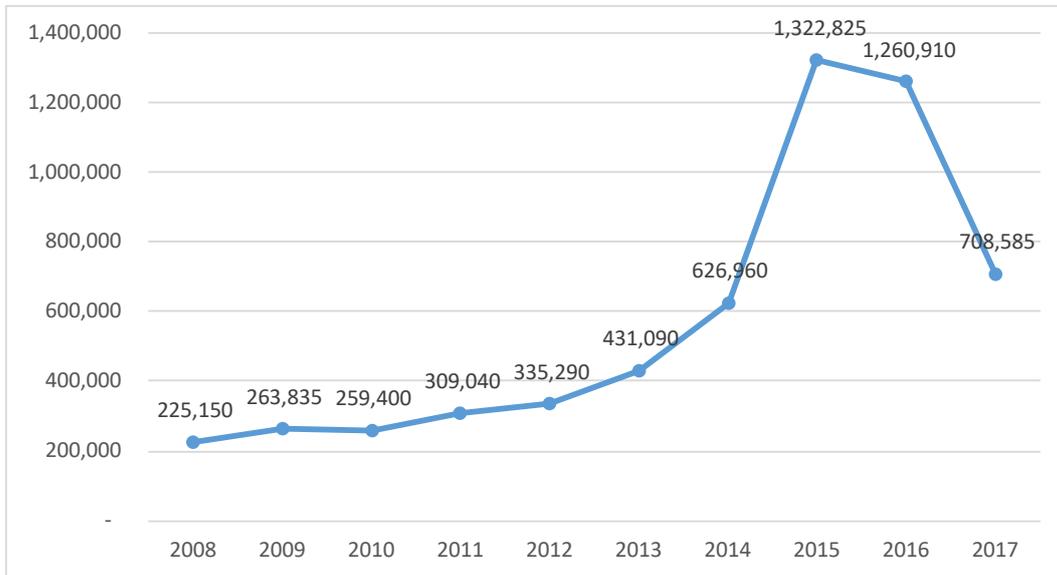
#### 1. Overview of asylum applications

The number of asylum applicants<sup>14</sup> in the EU **increased from 2008 until 2016**, with a higher number of arrivals recorded in **2015**, when the number of asylum-seekers exceeded 1.3 million (see Figure 2). As shown in Figure 2 below, the number of arrivals decreased by 46 percent in 2017 compared to 2015, reducing to an estimated 708 000 asylum applications.

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<sup>14</sup> The figures presented refer to asylum applicants, rather than first-time asylum applicants, as the corresponding Eurostat data turned out to be more accurate for certain years and countries. First-time asylum applicants are individuals who submitted an application for international protection for the first time (Eurostat, 2017b). Therefore, the number of asylum applicants is usually higher than the number of first-time asylum applicants. The variation between the two values at the EU level ranges from 32 % in 2008 to 4 % in 2016 (authors' calculations based on Eurostat, 2017a). It should, however, be noted that the greater variation in 2008 is possibly due also to missing data for first-time asylum applicants for certain countries.

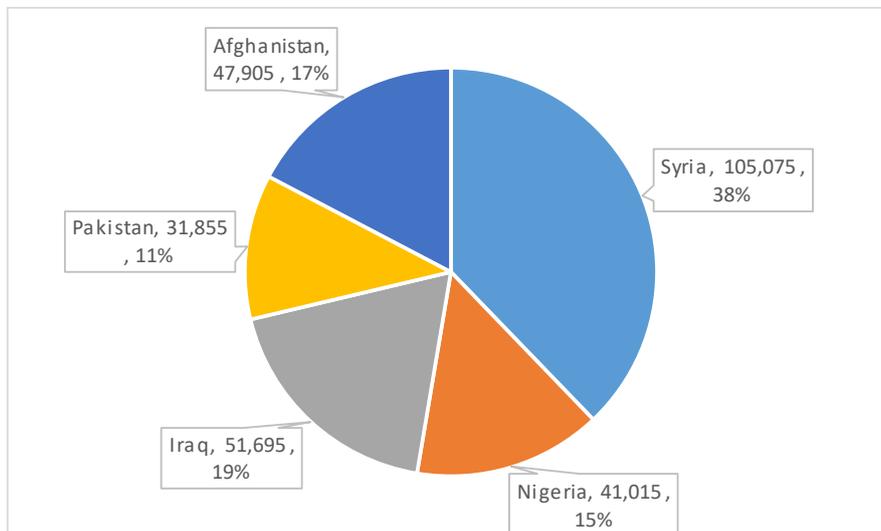
**Figure 2: Number of extra-EU asylum applicants in the EU, by year, 2008-2017**



Source: Author calculations based on Eurostat (2017a); Note: the figures presented refer to ‘asylum applicants’, not to ‘first-time applicants’.

The increase of arrivals can be partly attributed to the outbreak of civil war in **Syria** in 2011. Iraqis, Afghans, Pakistani and Nigerian applicants also account for a significant share of the asylum-seekers in the EU during this period (see Figure 3).

**Figure 3: Asylum applicants in the EU, by country of origin – top 5 nationalities, 2017**

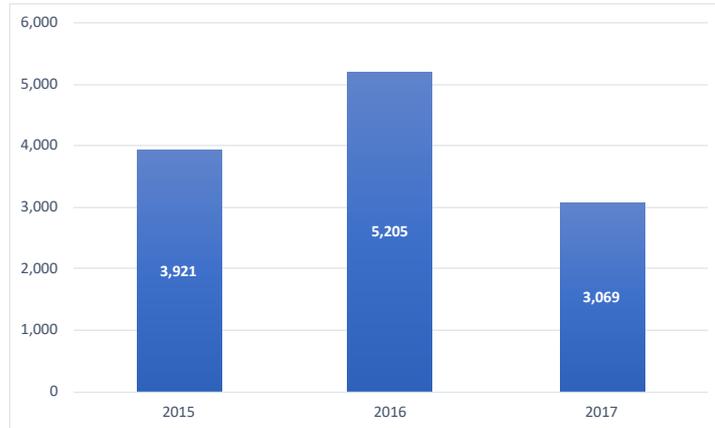


Source: Author calculations based on Eurostat (2017a); Note: the figures presented refer to ‘asylum applicants’, not to ‘first-time applicants’.

The **large majority of asylum-seekers** arrive in the EU as irregular migrants **by sea**. Between 2015 and 2017 the figure ranged from about 94 percent to 97 percent (UNHCR, 2017). A **high death toll** was recorded on these routes. Despite the decrease in the number of arrivals, the number of dead and missing migrants in the Mediterranean and in Europe increased between 2015 and 2016 (from 3,921 – or 0.4 percent of total arrivals – to 5,205 – or 1.3 percent of total arrivals). As a proportion of total arrivals, the share of **dead and missing migrants continued to**

**increase in 2017** to 1.8 percent (although the absolute number decreased to 3,069) (see Figure 4)<sup>15</sup>.

**Figure 4: Missing and dead migrants, 2015-2017**



Source: IOM, 2017a; IOM. 2017b.

## 2. The profile of asylum-seekers in the EU

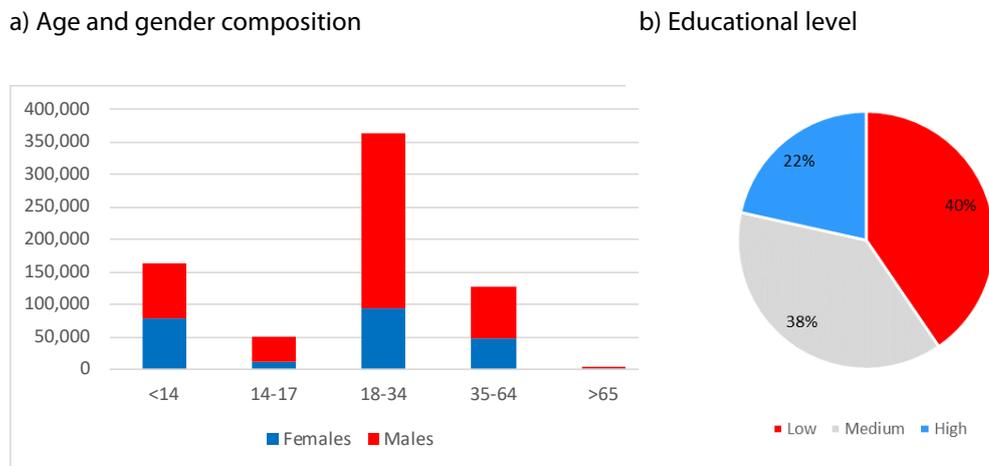
In 2017, the majority of asylum applicants in the EU were male (67 percent of the total) and **people of working age** (69 percent of the total are between 18 and 64 years old). OECD, 2018 projects that refugees will bolster the size of the EU's working age population by 0.4 percent.

**Asylum-seekers or refugees in the EU tend also to be better educated than the population in their origin or source countries** (OECD, 2018b). Data on educational attainment of recently arrived asylum-seekers and refugees indicate that there are substantial differences between national groups. For example, Syrians and Iranians tend to have a higher educational attainment than asylum-seekers from Afghanistan, Eritrea and Somalia (OECD, 2018).

However, evidence suggests that asylum-seekers and refugees are less educated than native-born in EU host countries. They were less likely to have tertiary education and more likely to have secondary or less education as compared with native-born people (Tanay & Peschner, 2016). Data from the Labour Force Survey shows that in 2014 most of refugees in the EU (regardless of their year of arrival) had at least a medium educational level (**OECD and European Commission, 2016**) (see Figure 5).

<sup>15</sup> Slightly different data is reported by UNHCR: 2017: 3,139 out of 172,753; 2016: 5,096 out of 362,753; 2015: 3,771 out of 1,015,078 (<http://data2.unhcr.org/en/situations/mediterranean>). The reasons for the discrepancy are not known.

**Figure 5: Age and gender composition of asylum-seekers (2016), and educational level of refugees<sup>16</sup> (2014)**



Source: a) Eurostat, 2017a; b) Tanay, F. & Peschner, J., 2016, p. 115, Chart 3.10. High educational level = level of qualification equal or above tertiary education level (ISCED 5–6); medium = upper secondary and post-secondary non-tertiary education (ISCED 3 to 4); low = up to lower secondary school level (ISCED 0-2).

### **Asylum-seekers and refugees fare more poorly on the labour market than the native-born.**

Estimates indicate that in the first five years after arrival, only one in four refugees is employed, while their employment rate reaches 56 percent after 10 years. It 'takes up to 20 years (for refugees) to have a similar employment rate as the native-born' (OECD and European Commission, 2016, p. 21). OECD, 2018 projects that recent arrivals of refugee will increase the labour market participation rate by 0.25 percent by 2020. Another study projects that beneficiaries of international protection will add 0.1-0.2 percent to EU GDP in the same time frame (Kancs & Lecca, 2017).

Entering the labour market is particularly **challenging for refugee women** (who have an employment rate, on average, 17 percentage points lower than that of refugee men). Moreover, refugees tend to be in **hard-to-fill positions** (such as the care sectors, cleaning, catering, construction and menial jobs'), are more likely than natives to be in part-time employment (30 percent vs. 17 percent), and to be **overqualified** (almost three times compared to natives). Several obstacles hinder the ability of asylum-seekers and beneficiaries of international protection to secure employment. Issues related to the knowledge of the language and the recognition of skills and diplomas are paramount obstacles, while 'other factors, such as skills mismatch, lack of social capital and discrimination' also play an important role (OECD and European Commission, 2016, p. 25; UNHCR, 2013, p. 26).

## **II. Legal and policy framework: international obligations, EU action and ongoing developments**

All EU Member States are signatories of the 1951 Geneva Convention and its 1967 protocol, that represent the cornerstone of refugee protection at international level. Member States are also bound by the European Convention on Human Rights and other international conventions such as the Convention on the Rights of the Child. The Geneva Convention and its protocol have been incorporated in EU law which, in some respects, goes beyond international law (e.g. by

<sup>16</sup> These statistics refer to all refugees (= 'persons who came for reasons of humanitarian, international or subsidiary protection', definition used in the Labour Force Survey, see Tanay, F. & Peschner, J., 2016, p. 110) currently residing in the EU, aged 25 to 64 years, regardless of their year of arrival.

introducing the concept of subsidiary protection for persons at risk of serious harm, including in situations of international or internal armed conflict<sup>17</sup>). Other international and EU legal instruments safeguarding the rights of applicants and beneficiaries of international protection apply and are described in sections 1 and 2 below.

## 1. International legislation: obligations of the EU and its Member States

At international level, the right to asylum is enshrined in Article 14 of the non-binding **Universal Declaration of Human Rights** (adopted in 1948 by the United Nations) and the 1951 **United Nations Convention relating to the Status of Refugees** (hereinafter 'the 1951 Geneva Convention') and the **1967 Protocol Relating to the Status of Refugees** (hereinafter 'the 1967 Protocol'). Article 1 of the 1951 Geneva Convention (as modified by the 1967 Protocol) defines a refugee as a person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.' The 1951 Geneva Convention guarantees the right to asylum but not the right to be granted refugee status, which remains at state discretion. All EU Member States are signatories to the 1951 Geneva Convention and implement the Convention through national legislation (which must also comply with the EU legal framework described in the following sub-section).

There are **other international instruments** binding on EU Member States that are relevant to safeguarding the rights of applicants and beneficiaries of international protection. An important instrument is the **European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**, adopted in 1950 by the Council of Europe and to which all Member States are signatories. In particular Article 3 prohibits a person from being subjected to torture or to inhuman or degrading treatment or punishment and Article 13 guarantees the right to an effective remedy. Articles 5 and 8 also guarantee the right to liberty and security and the respect of private and family life, respectively. Other instruments include the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights; the Convention on the Rights of the Child.

With respect to **rescue at sea**, Article 98 of the United Nations Convention on the Law of the Sea of 1982 requires assistance to be given to persons in distress (Article 98(1) and requires signatories to promote effective search and rescue services (Article 98(2)). The Guidelines on the Treatment of Persons Rescued at Sea from the UN International Maritime Organisation also stipulate that "the government responsible for the Search and Rescue region in which survivors were recovered is responsible for providing a place of safety or ensuring that such a place of safety is provided".

Several institutions are involved in monitoring the implementation of international obligations. The **United Nations High Commissioner for Refugees (UNHCR)** is the UN Refugee Agency that monitors the application of the 1951 Geneva Convention and its 1967 protocol. It advises Member States and the EU on fulfilling their international obligations, including through guidance and recommendations. The **European Court of Human Rights** monitors compliance with human rights enshrined in the ECHR, including the right to asylum, right to liberty and non-refoulement, and other social economic rights. Its judgments finding violations are binding on

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<sup>17</sup> Article 2 of [Directive 2011/95/EU](#) of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337, 20.12.2011, OJ L 337, 20.12.2011 - hereafter 'Qualification Directive'.

EU Member States. The **European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment** visits places of detention to evaluate the treatment of detained person in Council of Europe Member States. As part of the dialogue with the Member States, it shares its findings and provides recommendations in country visit reports and requires states to provide answers to the issues raised. In March 2017 it issued a factsheet on immigration detention, outlining its standards in this matter.<sup>18</sup> UN human rights treaty bodies monitor the implementation of human rights treaties, including the **Committee against Torture** which monitors the implementation of the UN Convention against Torture.

## 2. EU and legal policy framework

### 2.1. EU legal basis for action in the field of asylum

The principles of international legislation have been integrated in the EU legislation. The **right to asylum** is enshrined in Article 18 of the **Charter of Fundamental Rights of the European Union** (hereinafter 'the **Charter**'). It relates to complying with the principle of non-refoulement and applies to EU institutions and Member States when implementing EU law. Compliance with EU law is monitored by the Commission (as the 'guardian of the treaties'). Violations of EU law are adjudicated in national courts. The **Court of Justice of the EU (CJEU)** has an interpreting role and can be referred to for a preliminary hearing under 267 TFEU. The CJEU also has an adjudicating role in actions against the EU institutions, or against Member States in the context of infringement proceedings to monitor the correct application of EU law (Article 226 TFEU). The right to asylum under Article 18 of the Charter must be guaranteed with due respect for the 1951 Geneva Convention and its 1967 Protocol, and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter '**TFEU**')<sup>19</sup>.

Article 19 of the Charter also prohibits returning a person to a country where 'there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment', in line with the **principle of non-refoulement** established by Article 33 of the 1951 Geneva Convention.

The right of the EU to act in the area of asylum and establish secondary legislation is established by the TFEU. The adoption of the Treaty of Lisbon and the Stockholm Programme in 2009 increased the EU competence in this field to go beyond minimum standards in certain areas and reinforced the role of EU institutions in asylum policy.

Title V of the TFEU on freedom, security and justice sets out the competencies of the EU in this area. **Article 67(2)** TFEU states the competency of the EU to '**frame a common policy on asylum, immigration and external border control**, based on **solidarity** between Member States, which is fair towards third-country nationals'. Box 2 recaps the articles of the TFEU establishing the competence of the EU in the field of asylum.

#### Box 2: EU legal basis: relevant articles of the TFEU

**Article 78 TFEU** provides the specific legal basis for developing a common policy on asylum, subsidiary protection and temporary protection, in accordance with the Geneva Convention and other relevant treaties (Article 78(1) TFEU). Article 78(2) TFEU lists specific measures to be adopted for the CEAS, including a) a 'uniform status' of asylum for nationals of third countries; b) a uniform status of

<sup>18</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [Immigration detention](#), Factsheet, March 2017.

<sup>19</sup> [Treaty on the Functioning of the European Union](#) (consolidated version) (TFEU), OJ C 326, 26.10.2012.

subsidiary protection<sup>20</sup>; c) the establishment of a 'common system' of temporary protection in the event of massive inflows; d) 'common procedures for the granting and withdrawing of uniform asylum and protection status'; e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection; f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection; and g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

**Article 78(3) TFEU** provides the legal basis for adopting provisional measures in the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of third-country nationals.

**Article 79(4) TFEU** also provides that 'the EU may establish measures to provide incentives and support for the action of the Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States'.

**Article 80 TFEU** states that 'the policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle'.

A **central principle** established by the TFEU (Article 80) is that policies relating to border checks, asylum and immigration are governed by **solidarity, and responsibilities between Member States should be shared fairly**. The meaning and scope of these principles are not further defined. De Bruycker highlights that this obligation does not relate to balancing responsibility and solidarity, as suggested in the December 2016 Council Conclusions<sup>21</sup>, but rather relates to achieving solidarity through a fair sharing of responsibilities (De Bruycker & Tsourdi, 2016). Other authors have highlighted that solidarity and responsibility are 'inextricably' interlinked and the need to strengthen this link (Morano-Foadi, 2017).

## 2.2. EU secondary legislation in the field of asylum and implementation at national level

On the basis of the competence established in the TFEU, the EU has gradually developed secondary legislation. Following the special meeting of the European Council in Tampere in 1999, the Council agreed to establish a Common European Asylum System (CEAS)<sup>22</sup>. Since early 2000s, the EU has developed the instruments to build the CEAS, which provides the overall legal and policy framework for the management of asylum in the EU and, to date, consists of:

- **Legislative instruments** harmonising the asylum process - these instruments govern the qualification of applicants for international protection and foresee the rights they can benefit (Qualification Directive), the procedures for granting and withdrawing international protection (Asylum Procedures Directive<sup>23</sup>) and the reception conditions

<sup>20</sup> In the EU asylum is referred to as 'international protection' and covers both refugee status and subsidiary protection. Under Article 2 of the [Qualification Directive](#), the term 'refugee' is based on Article 1 of the 1951 Geneva Convention, while a 'person eligible for subsidiary protection' means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

<sup>21</sup> [European Council meeting of 15 December 2016 – Conclusions](#).

<sup>22</sup> [Tampere European Council 15 and 16 October 1999, Presidency Conclusions](#).

<sup>23</sup> [Directive 2013/32/EU](#) of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180, 29.6.2013 - hereafter 'Asylum Procedures Directive'.

for applicants for international protection (Reception Conditions Directive<sup>24</sup>). In addition, the Dublin III Regulation<sup>25</sup> sets out the rules determining which Member State is responsible for examining an application for international protection. The Eurodac Regulation<sup>26</sup> establishes an EU asylum fingerprint database to assist the implementation of the Dublin Regulation.

- **Policy instruments** including programmes supporting resettlement and relocation, funding programmes (the Asylum, Migration and Integration Fund, AMIF); co-operation with third countries (including the 2016 EU-Turkey deal).
- The **European Asylum Support Office (EASO)**, an EU Agency supporting the implementation of the CEAS and fostering cooperation among Member States<sup>27</sup>.

In addition, the CEAS interplays with: the **return framework** (i.e. the Return Directive<sup>28</sup>); the EU instruments for integrated **border control and management** (the European Border and Coast Guard Agency, the Internal Security Fund - Border and Visas instrument, related rescue operations); instruments for the management of **legal migration** (e.g. family reunification, labour migration); EU External policy. While the return framework and aspects of the EU external policy are addressed in this paper, the issues related to border control and legal migration are the subject of other studies carried out by the European Parliament and as such not covered in this report.

The instruments making up the **CEAS implement the principles of international legislation** and, in some ways, **go beyond the Geneva Convention** (for example the EU Qualification Directive extends the granting of 'subsidiary protection' to persons facing a "serious and individual threat [...] by reason of indiscriminate violence in situations of international or internal armed conflict"). However, **issues related to the full implementation of the CEAS**, which also affect compliance with fundamental rights obligations, have been raised.

### 2.3. Ongoing developments

In February 2016, the **European Council** called for a reform of the CEAS to 'ensure a humane and efficient asylum policy'. In its Resolution of 12 April 2016<sup>29</sup>, the **European Parliament** indicated the need for a **comprehensive action in the area of asylum and migration** and a **better implementation of the CEAS**, by touching upon several aspects, including relocation and resettlement, the revision of the Dublin Regulation, the mutual recognition of positive asylum

<sup>24</sup> [Directive 2013/33/EU](#) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013 - hereafter 'Reception Conditions Directive'.

<sup>25</sup> [Regulation \(EU\) No 604/2013](#) of the European Parliament and of the Council of 26 June 2013 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), OJ L 180, 29.6.2013 - hereafter 'Dublin Regulation'.

<sup>26</sup> [Regulation \(EU\) No 603/2013](#) of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 (recast), OJ L 180, 29.6.2013 - hereafter 'Eurodac Regulation'.

<sup>27</sup> EASO has been created by [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.

<sup>28</sup> [Directive 2008/115/EC](#) of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008 - hereafter 'Return Directive'.

<sup>29</sup> European Parliament, 12 April 2016, [Resolution on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration](#), P8\_TA(2016)0102.

decisions, integration and returns. In April 2016, the European Commission launched the **reform of the CEAS**, currently under negotiation<sup>30</sup>. A series of proposals to reform the current instruments were adopted in the following months. This included the recast of the Dublin Regulation, the Eurodac Regulation and the Reception Conditions Directive, as well as proposals for an Asylum Procedures Regulation, and a Qualification Regulation, and proposals for the establishment of the European Union Agency for Asylum (EUAA) and for the establishment of a Union Resettlement Framework.

The **European Parliament** has highlighted some key points in relation to the CEAS instruments and the ongoing reform:

- A new system to determine which EU member state should be responsible for examining an asylum application should be established to ensure **solidarity and fair sharing of responsibility** among Member States as well as **appropriate and fast procedures**. In its Resolution of 12 April 2016, the Parliament called for a reform of the **Dublin Regulation** starting from the revision of the criterion whereby the Member State of first entry is responsible for the examination of a claim for international protection<sup>31</sup>. In the context of the ongoing reform of the **Dublin Regulation**, the European Parliament has proposed a permanent and automatic relocation mechanism, which takes into account Member States' population size and economy. The Parliament has also recommended setting up a system of incentives and disincentives to prevent absconding and secondary movements<sup>32</sup>.
- The need for the full implementation of the **common rules for asylum procedures** and a **uniform asylum status** valid throughout the EU, and for measures that **ensure protection of fundamental rights** and **integration** of refugees in the host country. In relation to the reform of the **Qualification Directive**, for example, the European Parliament has focused on combining 'protection with integration rather than punitive measures', and on approximating the length of refugees' and subsidiary protection beneficiaries' residence permits. The approximation of the two statuses represents another means 'to build a legal framework encouraging their integration'<sup>33</sup>. As regards the **Reception Conditions Directive**, the European Parliament has put emphasis on the prevention of secondary movements through measures that de-incentivise asylum applicants from leaving the Member State responsible (e.g. by ensuring high quality reception conditions), rather than through punitive measures. The European Parliament's report on the proposed recast Reception Conditions Directive has stressed the need for integration of asylum applicants in the host society, by providing access to the labour market no later than two months after applying for asylum (instead of the

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<sup>30</sup> European Commission, Communication from the Commission to the European Parliament and the Council, *'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe'*, COM(2016) 197 final.

<sup>31</sup> European Parliament, 12 April 2016, *Resolution on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration*, P8\_TA(2016)0102, para. 34.

<sup>32</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 6 November 2017, *Report 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)*, Explanatory Statement.

<sup>33</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 28 June 2017, *Report on the proposal for a regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents*, Explanatory Statement.

current nine months), and language courses from day one of the procedure. Moreover, the report also highlights the need to limit the use of detention of asylum-seekers (as a last resort measure and always based on a decision by a judicial authority), ensure high protection of children and extra measures to protect the fundamental rights of applicants with special needs<sup>34</sup>.

- A **strengthened mandate for EASO**, as a fully-fledged EU Agency assisting Member States in crisis situations and providing the necessary operational and technical assistance<sup>35</sup>.
- The need for an **EU binding approach to resettlement**, providing resettled persons with a long-lasting solution<sup>36</sup>. Moreover, the European Parliament has called for the use of humanitarian admissions and humanitarian visas, as ways to complement resettlement and 'provide persons in need of international protection with means of accessing a third country in order to apply for asylum'<sup>37</sup>. The European Parliament has launched a European Parliament own-initiative report on Humanitarian Visas. A draft study assessing the economic and legal impacts of a possible EU Scheme on Humanitarian Visas has been published in July 2018<sup>38</sup>.

During the Summit on 28 June 2018<sup>39</sup>, the European Council discussed migration priorities and the ongoing reforms. In particular, the Council discussed the following:

- The European Council called for stepping up border management and the effective return of irregular migrants, in co-operation with third countries. The European Council also urged the Council and the Commission to explore the concept of **regional disembarkation platforms**, in close cooperation with relevant third countries as well as UNHCR and IOM. On EU territory, the Council called for **voluntary 'controlled centres'** financed and managed by the EU for a rapid and secure processing to distinguish between irregular migrants, who would be returned, and those in need of international protection, for whom the principle of solidarity would apply.
- It also called for increasing development efforts, including funding and enabling an increase in African and European private investment.
- With regard to the reform of the Dublin Regulation, point 12 of the Council conclusions only refer to reaching a 'consensus on the Dublin Regulation to reform it based on a responsibility and solidarity'. A report on progress will be made during the October 2018 European Council.

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<sup>34</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 10 May 2017, [Report on the proposal for a directive laying down standards for the reception of applicants for international protection \(recast\)](#), Explanatory Statement.

<sup>35</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 21 December 2016, [Report on the proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation \(EU\) No 439/2010](#), Explanatory Statement.

<sup>36</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 23 October 2017, [Report on the proposal for a regulation establishing a Union Resettlement Framework and amending Regulation \(EU\) No 516/2014](#), Explanatory Statement.

<sup>37</sup> European Parliament, 12 April 2016, [Resolution on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration](#), P8\_TA(2016)0102, para. 24 and 26.

<sup>38</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 22 June 2018, [Draft Report with recommendations to the Commission on Humanitarian Visas](#) (Rapporteur: Juan Fernando López Aguilar); A draft report accompanying the European Parliament's legislative own-initiative report has been published in July 2018 (see van Ballegooij & Navarra, 2018).

<sup>39</sup> [European Council Conclusions, 28 June 2018](#).

The Commission further expanded on the **controlled centre concepts** in a concept note of 24 July 2018.<sup>40</sup> It proposed that such a centre would be managed by the host Member State with full support from the EU and EU Agencies and could have a temporary or ad-hoc nature.<sup>41</sup> The main features of such centres are: **full operational support** with disembarkation teams of European border guards, asylum experts, security screeners and return officers, with the EU budget covering all costs; **rapid, secure and effective processing** to reduce the risk of secondary movements and accelerate the process to determine the status of the person concerned; and **full financial support** to the Member States to cover infrastructure and operational costs; as well as €6,000 per person to Member States accepting transfers of those disembarked.

The Commission concept note of 24 July 2018 also expanded on the **main features of regional disembarkation arrangements**, stating that these should be **developed by the UNHCR and IOM**, with EU financial and operational support for disembarkation and post-disembarkation activities and border management. The concept note suggests that **resettlement possibilities will not be available to all disembarked persons** in need of international protection and that points of reception should be established as far away as possible from points of irregular departure. It also indicates that there should be **no detention or camps** and that there should be a set of established procedures and rules to ensure safe processing in full respect of international law and human rights<sup>42</sup>. Specific aspects of the ongoing reform are also discussed in Chapter 3.

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<sup>40</sup> European commission press release, Managing migration: Commission expands on disembarkation and controlled centre concepts, Brussels, 24 July 2018.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

### 3. GAPS AND BARRIERS

#### Key findings

- There are no legislative mechanisms at EU level or under the CEAS that formally recognise or set out a way for individuals to legally reach EU borders.
- Only a small share of asylum-seekers was actually relocated under the Relocation Scheme.
- A small share (12 percent) of Dublin transfer requests are carried out. A low share of orders to leave are also effectively made.
- Recognition rates varied significantly across member States from 8 to 84 percent.
- A number of shortcomings hinder the integration of asylum-seekers who receive a positive decision into the labour market. These challenges include difficulties in recognition of professional qualifications and discrimination.
- Gaps and barriers in the CEAS infringe on ten fundamental rights protected by international and EU legislation.

As discussed in the previous chapter, the EU has set up a body of legal and policy tools in the area of asylum, which incorporates and further develops the key principles of the Geneva Convention and its Protocol (including the right to asylum and the non-refoulement principle) as well as other international instruments such as the ECHR and relevant UN Human Rights Conventions including the Convention against Torture and the Convention on the Rights of the Child. The legal framework provides for fundamental rights guarantees throughout the different steps of the asylum journey.

However, as the European Parliament stressed in a 2016 Resolution, ‘many alerts, including the infringement decisions adopted by the Commission, show that **the CEAS has not been fully implemented in many Member States**<sup>43</sup>. In 2015, the Commission adopted 40 infringement decisions against 20 Member States, reflecting problems in the transposition and implementation of the EU asylum acquis (European Commission, 2015). The increase in asylum application in 2015 exposed the limitations of the current Dublin system which allocates responsibility to Member States located on external borders (e.g. lack of capacity to register and channel asylum-seekers, suspension of Dublin transfers, closing of internal EU borders, etc.). Moreover, harmonisation of asylum procedures and reception conditions has not been achieved across Member States. These divergences undermine the creation of a truly Common European Asylum System and the implementation of the principle of solidarity and responsibility sharing.

Following the journey of an individual from the beginning to the end of the asylum process, our analysis identified **nine main gaps/barriers**.

These gaps/barriers either arise from **shortcomings in the implementation of EU legislation at national level**, often due to the lack of capacity or preparedness of Member States, or from problems of implementation of the CEAS, which leaves significant room for divergent practices across Member States. In some instances, the issues identified stem (also or exclusively) from **gaps in the current EU legislation or policies**. For example, there are limited legal pathways for asylum-seekers to reach the EU, and a lack of mechanisms ensuring a ‘fair’ distribution of asylum-seekers across the EU.

Most of the gaps/barriers (six out of nine) are due to a combination of both: shortcoming in implementation at national level and gaps in the current legislation.

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<sup>43</sup> European Parliament, 12 April 2016, [Resolution on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration](#), P8\_TA(2016)0102.

The table below presents a summary of these gaps/barriers, along with a short description of their underlying causes.

**Table 4: Summary of the gaps/barriers identified and underlying causes**

Policy area	Gaps/barriers
<b>Pre-arrival</b> (instruments allowing persons in need of international protection to reach the EU and on cooperation with Third Countries)	
Legal pathways to the EU	<ul style="list-style-type: none"> <li>▪ Gap: Lack of EU legislation setting out legal pathways for those in need of international protection.</li> <li>▪ Gap/barrier: There is no common EU policy on resettlement. EU resettlement framework does not entail common rules and procedures and consists of ad hoc multilateral and national resettlement programmes.</li> </ul>
EU external action	<ul style="list-style-type: none"> <li>▪ Gap: EU external action (such as the EU Trust Fund for Africa) lack accountability mechanisms to monitor violations of human rights in third countries</li> <li>▪ Barrier: a large proportion of development aid is diverted towards border control, security and migration management, with severe human rights consequences recorded in third-country transit countries.</li> </ul>
<b>Arrival</b> (determination of the Member State responsible for assessing the asylum application)	
Dublin Regulation to determine Member State to process asylum application	<ul style="list-style-type: none"> <li>▪ Gap: The Dublin Regulation does not include a mechanism ensuring solidarity and fair sharing of responsibility among Member States. Additional initiatives have been taken on an ad-hoc basis (e.g. relocation and hot-spot approach), while a strong and structural financial solidarity has been missing (EU funding driven by emergency).</li> <li>▪ Barrier: different capacity in terms of reception conditions across the Member States leading to non-compliance with fundamental rights.</li> <li>▪ Gap: Asylum applicants do not have any choice as regards to the Member State where to lodge an application, a factor fuelling secondary movements and reducing opportunities for socio-economic integration (in the application and post-application phase).</li> <li>▪ Barrier: The Dublin Regulation entails long and costly transfer procedures; shortcomings in the implementation of the Dublin and Eurodac Regulations led to the missed registration of asylum applicants in the country of first arrival.</li> </ul>
<b>Application</b> (asylum procedure and reception conditions)	
Qualification of beneficiaries of international protection and asylum procedures	<ul style="list-style-type: none"> <li>▪ Gap: Limited role of EASO – its mandate does not include monitoring and providing guidance.</li> <li>▪ Barrier: Weak implementation in some Member States (despite infringements procedures) and divergent application of the EU Qualification and Asylum Procedures Directive across Member States.</li> </ul>
Reception conditions	<ul style="list-style-type: none"> <li>▪ Gap: Limited role of EASO in monitoring reception conditions across the Member States.</li> <li>▪ Barrier: Weak implementation in some Member States (despite infringements procedures); divergent application of the EU Reception Conditions Directive and different capacities across Member States; waiting time and administrative obstacles for the access to the labour market.</li> </ul>

Policy area	Gaps/barriers
<b>Post-application</b> (integration of beneficiaries of international protection or the return of rejected asylum-seekers)	
Integration services and issues related to discrimination	Barrier: Waiting time and administrative obstacles for the access to the labour market, limited services for socio-economic integration across Member States, and limited protection from discrimination and hate crimes.
Mutual recognition of positive asylum decisions	Gap: Under EU legislation a positive asylum decision taken in one Member State is not recognised in another Member State.
Implementation of the Return Directive and return operations	<ul style="list-style-type: none"> <li>▪ Barrier: Limited execution of return decisions.</li> <li>▪ Gap: Lack of monitoring mechanism to follow-up on return operations in third countries.</li> </ul>

Both gaps in the legislation and barriers to implementation have **detrimental effects on fundamental rights and the respect of the related international obligations**. The fundamental rights impacts are described with respect to each Gap/Barrier.

The non-compliance with fundamental rights is also described as a gap in its own right at the end of this section (Section 3.V, Horizontal Gap/Barrier: non-compliance with fundamental rights). This includes the right to asylum and non-refoulement, the right to respect of private and family life, the right to liberty and prohibition from torture, inhumane and degrading treatment, the right to life, the rights of the child, the right to an effective remedy, the right to access healthcare, education and employment, and the right to non-discrimination. While this list of rights is not exhaustive, these particular rights were selected as being key fundamental rights concerns, as identified in human rights reports including the Fundamental Rights Agency's monthly data collection on migration-related fundamental rights concerns<sup>44</sup>. These issues are discussed in detail in this chapter in particular Section V in relation to the respect of fundamental rights obligations, and across the different stages of the asylum process.

The sections that follow (from 3.I to 3.IV) provide a discussion of the gaps/barriers identified at each stage of the asylum journey. At each stage, the applicable international and EU legislation is outlined. Non-compliance with fundamental rights obligations is discussed in Section 3.V, as a horizontal Gap/Barrier.

## I. Pre-arrival stage

The 1951 Geneva Convention requires states to grant access to the right to asylum, but it does not establish that asylum-seekers should be granted entry to territory of the signatory states. There is no common EU policy on resettlement and so far resettlement initiatives have consisted of ad hoc multilateral and national resettlement programmes.

Border surveillance operations need to respect human rights and refugee law (i.e. the principle of non-refoulement) and, in case of operations carried out at sea, the international law of the sea. This section addresses the gaps and barriers of the EU action with respect to: provision of legal avenues for persons in need of international protection to reach the EU, in order to avoid smuggling and dangerous journeys; cooperation between the EU and Third Countries in order to control inflows of asylum-seekers into the EU.

<sup>44</sup> Fundamental Rights Agency, [Regular overviews of migration-related fundamental rights concerns](#).

## 1. Gap/Barrier 1: Limited legal pathways to the EU

The legal pathways in the EU law for persons in need of international protection to reach the EU are limited.

There **are no legislative mechanisms at EU level or under the CEAS providing legal pathways to the EU for the purpose of international protection.** The Schengen and visa acquis are incomplete and ambiguous with regards to the situation of asylum-seekers, while the asylum acquis does not regulate access to the CEAS but only concerns ‘applicants’ for international protection who lodge an asylum claim. As a consequence, before arrival at the EU external borders, asylum-seekers are in practice assimilated to the category of ‘irregular migrants’ and the large majority of them (up to 90 percent of those subsequently recognised refugees and beneficiaries of subsidiary protection) reach the EU territory irregularly (van Ballegooij & Navarra, 2018). In this context, Member States have taken initiatives to offer means of humanitarian admission, usually through small-scale Protected-entry Procedures (PEPs) such as: resettlement<sup>45</sup>, community and private sponsorship schemes<sup>46</sup>, or ‘humanitarian corridors’<sup>47</sup>. As noted in the recent EPRS report on Humanitarian Visas, with the exception of resettlement, these schemes largely vary across Member States (e.g. in terms of eligibility criteria, content of protection statuses); moreover, they represent small-scale initiatives, not up-scaled at the EU level and sometimes ‘symbolic’ in terms of numbers of asylum-seekers actually offered with a legal channel to the EU (van Ballegooij & Navarra, 2018)<sup>48</sup>. At EU level, efforts have focused especially on **resettlement**, a ‘durable solutions’ which involves ‘the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status’. The applicants are determined to be refugees by UNHCR (UNHCR, 2011).

Following an increase of asylum applications in the EU in 2015, the EU and its’ Member States have taken several initiatives<sup>49</sup>:

- In 2015, the **European Resettlement scheme** led to the resettlement of 18,366 persons to 24 Member States (out of a target of 22,504 resettlement places agreed on 20 July 2015) (European Commission, 2017 a);
- The **EU Turkey Statement** of 18 March 2016<sup>50</sup>, which allowed the resettlement of more than 11,000 Syrian refugees from Turkey between April 2016 and November 2017 (European Commission, 2017 b);

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<sup>45</sup> ‘Resettlement means the admission of third-country nationals and stateless persons in need of international protection from a third country to which or within which they have been displaced to the territory of the Member States with a view to granting them international protection.’ (European Commission, [Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation \(EU\) No 516/2014 of the European Parliament and the Council](#), COM (2016) 468).

<sup>46</sup> There is no common definition at EU level. A 2016 study of the European Migration Network (EMN) provides the following definition of private sponsorship: ‘A key element of private sponsorship is that a person, group or organisation assumes responsibility for providing financial, social and emotion support to a resettled person or family, for a predetermined period of time (usually one year) or until the person or family becomes self-sufficient.’ (EMN, 2016, pp. 50, 51).

<sup>47</sup> A form of humanitarian admission experimented in France and Italy in 2017.

<sup>48</sup> The EPRS study highlights several other drawbacks of the existing PEPs, including the fact that ‘most of them provide for a secondary means of access to protection by already-recognised refugees, instead of granting a primary way for unrecognised claimants to reach Schengen territory and apply for asylum on arrival’ (van Ballegooij & Navarra, 2018, p. 28).

<sup>49</sup> An EU resettlement programme had been already established in 2009 (Communication from the Commission to the European Parliament and the Council on the establishment of a joint EU resettlement programme - COM(2009) 456 final). However, results were limited.

<sup>50</sup> European Council, 18 March 2016, [EU-Turkey statement](#).

- In 2017, the Commission adopted a **recommendation on enhancing legal pathways for persons in need of international protection**, including the target to resettle 50,000 persons by 31 October 2019<sup>51</sup>. At the end of 2017, pledges made by 19 Member States amount to 39,758 persons (European Commission, 2017 c).

These initiatives are resulting in a **gradual increase in resettlement places** in the EU compared to the global level. According to UNHCR data, in 2015, EU Member States absorbed more than 11 percent of UNHCR resettlement departures; this share increased to 35 percent in 2017 (see Table 5).

**Table 5: UNHCR resettlements**

Years	UNHCR resettlement departures towards		EU share (a/b)
	a) All countries of resettlement	b) EU MS	
2011	61,649	4,125	6.69 percent
2012	69,252	4,405	6.36 percent
2013	71,449	5,445	7.62 percent
2014	73,608	8,894	12.08 percent
2015	81,891	9,627	11.76 percent
2016	126,291	13,277	10.51 percent
2017	65,109	22,989	35.31 percent
<b>Total</b>	<b>549,249</b>	<b>68,762</b>	<b>12.52 percent</b>

Source: (UNHCR, 2018 b)

However, the **number of resettled people remains limited** compared to the number of refugees worldwide. In 2016, less than 1 percent of the total 17 million refugees of concern to UNHCR worldwide were resettled (UNHCR, 2018 c).

In the EU, in a context of high numbers of spontaneous arrivals, some Member States have been reluctant to accept additional refugees through resettlement programmes, due to the lack of reception capacity and integration services, but also to the lack of political will (European Parliamentary Research Service, 2017 c).

Overall, a gap remains in the legal framework for access to protection in the EU. This issue has been recognised in the New York Declaration on Refugees and Migrants, adopted in 2016 by the United Nations General Assembly, and including the commitment 'to expand the number and range of legal pathways available for refugees to be admitted to or resettled in third countries'. At the moment, in the absence of legal pathways, asylum-seekers face significant risks while trying to reach the territory of a Member State (see Section I.1 above). Rescue operations in the Mediterranean Sea increased during the 2015-2016 period<sup>52</sup>. However, attempts to restrict the arrival of asylum-seekers in the EU have raised concerns in terms of **violations of international obligations**. For example, the code of conduct for organizations operating rescue boats (aiming to limit the action of privately-operated ships bringing refugees to Italy from waters off the Libyan coast) has been considered by United Nations human rights Special Rapporteurs as a breach of international obligations, under which **migrants should be allowed to disembark at the nearest port where their lives and freedom would not be threatened** (OHCHR, 2017).

<sup>51</sup> Commission Recommendation (EU) 2017/1803 of 3 October 2017 on [Enhancing legal pathways for persons in need of international protection](#), C(2017) 6504, recital 16.

<sup>52</sup> Through the establishment of the Frontex-led Operations Triton and EUNAVFOR Med, the increased involvement of NGO and commercial vessels (Frontex, 2017).

## 2. Gap/Barrier 2: Limitations of EU external action

*Agreements with third countries: lack of mechanisms to ensure human rights protection*

The EU and its Member States have entered several agreements with third countries to manage irregular migration to the EU, tackle smuggling and avoid asylum-seekers and migrants embarking on dangerous routes.

For example, under the **EU-Turkey Statement**, Turkey progressively receives EUR 3 billion to alleviate the burden of hosting over three million Syrian refugees (European Council, 2016 a). The EU and its implementing partners (IOM; UNHCR) also provide **external assistance** through: **co-operation on migration and protection of migrants in Libya** (assisting voluntary humanitarian returns and evacuations from Libya through the emergency transit mechanism); capacity building in Libya; Common Security and Defence Policy (CSDP) missions (EUNAVFOR Med Operation Sophia and EUBAM Libya). According to recent estimates, under the EU Emergency Trust Fund for Africa for the Horn of Africa, North Africa, the Sahel and the Lake Chad region, EUR 3 billion (out of the total of EUR 3.4 billion available) has already been used to fund projects related to the management of migration and the policing of borders<sup>53</sup>.

While the lower number of crossings has achieved one of the stated goals of **EU co-operation with third countries**, on the other hand the closing off of the central Mediterranean route has also led to the containment of refugees and migrants in Libya where they are **exposed to violations and abuses** (Amnesty International, 2017). Especially the situation of migrants in Libya has raised serious human rights concerns. Libya is not a signatory of the 1951 *Refugee Convention* and 'has no domestic law or procedure for considering asylum claims'. Despite that, agreements between EU Member States and Libya (e.g. the *Memorandum of Understanding* between the Italian government and the Libyan government signed in 2017) do 'not make any reference to the country's international legal obligations nor does it establish an *independent* monitoring mechanism' (Nakache & Losier, 2017).

Risks of human rights violations in Turkey have also been raised, and the designation of Turkey as a 'safe country'<sup>54</sup> has been questioned (Statewatch, 2016) (Dutch Council for Refugees and ECRE, 2016). Research between 2016 and 2017 has shown that asylum-seekers readmitted from Greece to Turkey have been subject to serious human rights violations and infringements of procedural rights, 'a situation that could lead to violations of the principle of non-refoulement' (Ulusoy & Battjes, 2017).

Overall, the externalisation of asylum and migration procedures is interlinked with risks of serious human rights violations, as also highlighted by a recent draft Resolution of the Council of Europe (Parliamentary Assembly of the Council of Europe, 2018).

While the **EU and its Member States have so far not been held formally responsible for violations of human rights in the context of the CEAS external dimension policy**, there is a wide debate on this. The European Parliament resolution on human rights and migration in third countries from October 2016<sup>55</sup> stressed the need for a human rights-based approach, and the need to 'promote and protect the rights and dignity of the migrants inside EU borders as outside'

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<sup>53</sup> [Speech by the President of the European Parliament to the European Council meeting on 28 June 2018.](#)

<sup>54</sup> Turkey is one of the countries included in the proposed EU common list on safe countries of origin (European Commission, [Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU](#), COM(2015) 452 final). Negotiations are currently suspended.

<sup>55</sup> European Parliament, 25 October 2016, [Resolution on human rights and migration in third countries](#), TA(2016)0404, para. X.

(Adorna, et al., 2017). Regarding cooperation with Libya, legal scholars have drawn the attention to Article 16 of the International Law Commission (ILC) Articles on 'Responsibility of States for internationally wrongful acts'. This Article states that 'a State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and (b) The act would be internationally wrongful if committed by that State'<sup>56</sup>. However, 'there are legal issues concerning the interpretation of the above provisions' and the question on whether the EU and its Member States hold responsibility for violations of human rights occurring in Libya remains unsolved (Skordas, 2018).

#### *Other criticism of EU external policy and directing development assistance to migration*

The European Parliament has criticised the EU external migration policy (i.e. the Global Approach to Migration and Mobility, the proposed Partnership Framework, the Emergency Trust Fund for Africa, the actions launched under the European Agenda on Migration) and its increasing emphasis on border control, security and migration management, at the expenses of poverty alleviation and development (Latek, 2017). Several NGOs have expressed similar concerns (Concord, 2017; Join NGO statement 2016). There have also been criticisms raised concerning the transparency and accountability of the use of the funds. A study from the European Parliament highlighted significant deviations compared with other EU external instruments in relation to governance, management, monitoring and oversight of the EU Trust Funds.<sup>57</sup>

The new Multi-Annual Financial Framework 2021-2027 (MFF) puts a strong focus on the protection of external borders: out of EUR 34.9 billion allocated to 'Migration and Border management', around EUR 21.3 billion (or 61 percent) are dedicated to border management (integrated border management fund and budget for decentralised agencies) (European Commission, 2018 f).

Moreover, EU Member States started to use Official Development Assistance (ODA) to cover the costs of the immediate response to recent arrivals of asylum-seekers to the EU (so called in-donor refugee costs). In 2015, in-donor refugee costs in Austria, Greece, Italy, the Netherlands and Sweden were between 23 percent and 34 percent of total ODA (OECD, 2018). Using ODA to cover refugee costs implies a shifting of resources and the reduction of those available for development cooperation in developing countries.

### **3. Ongoing developments**

The current Proposal for a Regulation establishing a Union Resettlement Framework<sup>58</sup> is expected to be an important step for increasing the scale of resettlement into Europe. However, the European Parliament has stressed that resettlement should offer a durable solution to resettled persons and it should remain a humanitarian programme and should not be used to boost cooperation of third countries on migration matters (as proposed by the European

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<sup>56</sup> United Nations, [General Assembly resolution 56/83 of 12 December 2001, Annex: Responsibility of States for Internationally Wrongful Acts](#), Chapter IV, Article 16.

<sup>57</sup> Oversight and Management of the EU Trust Funds Democratic Accountability Challenges and Promising Practices, Policy Department for Budgetary Affairs Directorate General for Internal Policies of the Union, [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603821/IPOL\\_STU\(2018\)603821\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603821/IPOL_STU(2018)603821_EN.pdf).

<sup>57</sup> Ibid.

<sup>58</sup> European Commission, [Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation \(EU\) No 516/2014 of the European Parliament and the Council](#), COM (2016) 468.

Commission)<sup>59</sup>.

The European Parliament has also stressed on several occasions the need for opening safe and legal channels to asylum-seekers and potential migrants, also as a means for disrupting the business of human traffickers and organised crime networks<sup>60</sup>. The European Parliament is drafting a legislative own-initiative report on Humanitarian Visas, that puts forward three possible EU options to adopt EU legislation on the matter<sup>61</sup>.

UNHCR is developing “a global compact on refugees”, expected to be presented in 2018, aiming to strengthen the international response to large movements of refugees by, among others, expanding ‘access to resettlement [...] and other complementary pathways’. The draft Zero published in January 2018 calls for increasing the scope, size, and quality of, resettlement programmes exploring the idea of a multi-year resettlement pledging process where appropriate, with the involvement of stakeholders such as the private sector, civil society, individuals, and academia (UNHCR, 2018).

## II. Arrival stage

Once asylum-seekers have reached EU territory, the EU asylum acquis applies. As a first step, the **Dublin Regulation** (or ‘Dublin System’) sets out criteria and mechanisms for determining the Member State responsible for examining an application for international protection. According to its rules, each application has to be examined by one single Member State. The responsibility for treating the application is determined by a list of criteria with a strict hierarchy. If no Member State can be identified, the first Member State ‘in which the application for international protection was lodged shall be responsible for its examination’ (Article 3(2) of the Dublin Regulation).

The Eurodac Regulation facilitates the application of the Dublin Regulation by setting up a computerized central database of fingerprint data. The Regulation obliges Member States to take the fingerprints of every applicant of at least 14 years of age and to transmit that data to a Central System (Article 9(1) of the Eurodac Regulation).

In 2015, two emergency measures were activated to support the most exposed border countries (Italy and Greece): a relocation mechanism and the so-called ‘hotspot approach’<sup>62</sup>.

The correct and efficient implementation of the Dublin Regulation is key for granting the right to apply for asylum, laid down in the 1951 Geneva Convention and EU legislation (including the CFR and the TFEU). Evidence shows that the overall implementation of the Dublin system is ‘in many cases failing in its objective to quickly identify a responsible Member State so that applicants can access an asylum procedure in a timely manner’ (UNHCR, 2017, p. 156). Moreover, the Dublin Regulation does not ensure solidarity and fair sharing of responsibility among Member States, which are the founding principles of the EU action in this area (established in the

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<sup>59</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 23 October 2017, [Report on the proposal for a regulation establishing a Union Resettlement Framework and amending Regulation \(EU\) No 516/2014](#), Explanatory Statement.

<sup>60</sup> See also: European Parliament, 5 April 2017, [Resolution on addressing refugee and migrant movements: the role of EU External Action](#), P8\_TA(2017)0124, para. 47; European Parliament, 29 April 2015, [Joint Motion for a Resolution on the latest tragedies in the Mediterranean and EU migration and asylum policies](#), P8\_TA(2015)0176, para. 9 and 14; European Parliament, 12 April 2016, [Resolution on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration](#), P8\_TA(2016)0102, para. 101.

<sup>61</sup> Draft report accompanying the European Parliament's legislative own-initiative report has been published in July 2018 (see Van Ballegooij & Navarra, 2018).

<sup>62</sup> [Council Decision \(EU\) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece](#), OJ L 239, 15.9.2015; [Council Decision \(EU\) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece](#).

TFEU).

### 1. Gap/Barrier 3: Dublin does not ensure solidarity and fair sharing of responsibility among Member States

*Capacity/readiness of Member States is not taken into account in the determination of the responsible Member State and Dublin has a limited redistributive effect*

**Asylum applications are not equally distributed** across the EU, and Member States receiving the highest number of asylum applications do not necessarily correspond to the main countries of arrival. Many asylum-seekers arrive in Member States on the EU external borders (e.g. Italy, Greece, Bulgaria), but attempt reach other Member States (because of social and family networks, or economic conditions of the host country) (Radjenovic, 2017, pp. 1, 2). Between 2008 and 2017, around **90 percent of all asylum applications were concentrated in 10 EU Member States** (Germany, France, Sweden, Italy, Hungary, United Kingdom, Austria, Netherlands, Belgium and Greece). Between **2015-2017, 80 percent of all applications in 2015 were received by six Member States**: Germany, Austria, Hungary, France, Italy and Sweden. Germany alone received 59 percent of total applications in 2016. In 2017, this share was reduced to 31 percent (Eurostat, 2017 a).

While EU asylum policies should be governed by the principle of solidarity and fair sharing of responsibility among Member States, the Dublin system **was not designed to allow for fair distribution of asylum-seekers in the EU** and it does not take into account the Member State's capacity to process claims. As such, it gives little consideration to the **principle of solidarity and fair sharing of responsibility** under Article 80 TFEU. It has been argued that 'the key elements of Dublin III Regulation are unconstitutional, as there are no functional mechanisms ensuring a proper allocation and reallocation of responsibilities among States' (Küçük, 2016).

The evaluation of the Dublin Regulation also showed that some Member States transfer back and forth an equal number of asylum-seekers with the same Member States, resulting also in practice in a **limited redistributive effect of the Dublin transfers** (ICF, 2015). In addition, systematic flaws in the asylum procedure and reception conditions of certain Member States have led to the **suspension of transfers** under the Dublin system. The ECHR and CJEU have ruled that a transfer should not occur if an individual faces a real **risk of inhuman and degrading treatment**<sup>63</sup>.

#### *Relocation system and Hotspot approach*

As a response to structural deficiencies of the Dublin system and the increasing number of applicants arriving in Europe in 2015, the EU set up **emergency relocation schemes**, i.e. provisional measures in support of Greece and Italy to relocate 160,000 persons 'in clear need of international protection' to other Member States. In line with the Dublin system, relocations did not take the preferences of asylum-seekers into account. This scheme represented a completely new approach at EU level but, in practice, **only a small percentage of asylum-seekers were actually relocated** under the Relocation Schemes: as of 5 February 2018, 21,729 persons had been relocated from Greece, and 11,853 from Italy (European Commission, 2018 d). The **low numbers of relocation** can be attributed to the insufficient financial compensation provided by the EU<sup>64</sup>, and to the resistance of several EU Member States, with some of them challenging the

<sup>63</sup> ECtHR - M.S.S. v Belgium and Greece [GC], Application No. 30696/09, 21-01-2011; CJEU - C-411-10 and C-493-10, Joined cases of N.S. v United Kingdom and M.E. v Ireland.

<sup>64</sup> Under the relocation schemes, the Member States receive a lump sum of EUR 6,000 per relocated applicant. The European Commission itself previously estimated the average cost per relocated refugee to be at EUR 8,000 (Ramboll and Eurasylum, 2010).

Council Decision and refusing to participate<sup>65</sup>. The relocation programme came to an end in September 2017, although Member States are encouraged to continue it on a voluntary basis.

The **Hotspot approach** was set up in 2015 and represented a completely new type of action at EU level. The European Asylum Support Office (EASO), the European Border and Coast Guard Agency (Frontex), Europol and Eurojust cooperated with the authorities of frontline EU Member States facing disproportionate numbers of asylum-seekers, to help them fulfil their obligations under EU law. The goal was to strengthen the capacity of border Member States and, specifically, to support Italy and Greece with identification, registration and fingerprinting, determining protection needs and to support relocation/return.

Several challenges were encountered at the start of its implementation (in terms of reception conditions, inadequate protection measures for children, insufficient capacity to identify vulnerable persons, etc.), although according to DG HOME the processes and standards have been gradually streamlined and improved<sup>66</sup>. However, according to different sources, the hotspot approach didn't produce tangible results while issues in terms of violation of human rights emerged (Guild, et al., 2017; Maiani, 2016 a). Guild et al. (2017) have argued that, 'by providing a binary choice between protection or return, the hotspot approach over-simplifies the complexities involved in status determination, disregarding basic guarantees, and with the potential to hamper access to asylum (Article 18 CFR) and ultimately lead to refoulement (Articles 4 and 19 CFR)'. On this matter, civil society organisations have raised serious concerns with regard to access to procedures and reception conditions in hotspots (Box 3 below).

**Box 3: Challenges related to the implementation of the EU hotspot approach (Danish Refugee Council, 2017)**

<u>Procedures</u>
<ul style="list-style-type: none"> <li>• Lack of <b>interpreters and mediation services</b> for less common languages;</li> <li>• Limited access to <b>legal assistance</b>;</li> <li>• <b>Low level of identification of vulnerable asylum-seekers</b>. Significant delays in vulnerability screenings and less visible vulnerabilities risk being overlooked altogether.</li> <li>• <b>Presence of third country consular officials</b> during registration procedures (E.g. Gambian and Nigerian officials). The presence of consular officials from new arrivals' countries of origin presents serious risks to the right of asylum-seekers to an effective and independent procedure and may expose them and their families to threats in their country of origin.</li> <li>• <b>Discrimination on basis of nationality</b>: In the Greek hotspots, new arrivals from countries with asylum claim recognition rates below 25 per cent are channelled into the fast-track border procedure on the basis of nationality; Syrians are prioritised over other nationalities in registration, identification and access to asylum procedures.</li> </ul>
<u>Reception Conditions</u>
<ul style="list-style-type: none"> <li>• <b>Undignified reception conditions</b>: overcrowding; limited access to healthcare; lack of information; lack of support for vulnerable groups.</li> <li>• <b>Detention of asylum-seekers</b> in the hotspot or restricted freedom of movement: new arrivals prevented from leaving the Greek hotspots for 25 days. After the initial 25 days, applicants are issued an asylum-seeker card either with or without geographical restriction. Those that have a geographical restriction cannot leave the Hotspot until the determination of the asylum application.</li> </ul>

Moreover, the hotspot approach has raised a range of legal and administrative challenges linked with the role of different actors, the division of powers between the EU and its MS, and the increased power of EU Agencies. In Greece, EASO-deployed experts at hotspots have conducted

<sup>65</sup> Slovakia and Hungary asked the CJEU to annul the decision; the Court dismissed the actions brought by Slovakia and Hungary by a judgement of 6 September 2017 (Judgment of the Court of 6 September 2017, Joined Cases C-643/15 and C-647/15, [Slovak Republic and Hungary v Council of the European Union](#) (ECLI:EU:C:2017:631)).

<sup>66</sup> Interview with DG Home.

part of the asylum process on behalf of the Greek Asylum Service (asylum admissibility interviews and submission of findings, on the basis of which the Service issues the final admissibility decision), going beyond a consulting and support role (Tsourdi, 2017). Moreover, it has been noted that the emphasis on control and removal has also resulted in a broadened role of Frontex, going beyond its mandate. While the involvement of different actors and the establishment of a cooperative approach represent a positive element, also uncertainties about roles and responsibilities of each actor have emerged (Guild, et al., 2017).

#### *Financial solidarity and recourse to emergency funding*

The increase of asylum applications highlighted the **insufficiency of the EU budget** to manage and support the efforts of the Member States. Between 2015 and 2017, EU emergency funding under the AMIF amounted to around EUR 0.5 billion, allocated to 14 Member States, EU Agencies and international organisations (EASO, IOM and UNCHR) for support actions specifically in Italy, Greece and Bulgaria (European Commission, 2017 d). Despite the mobilisation of emergency resources, some Member States committed significant amounts of national budget. For example, in Italy, the national immigration expenditure has been quantified in 2.6 billion in 2015 and estimated at 3.3 billion in 2016 (including costs of reception facilities, sea rescues, healthcare and education) (Italian Ministry of Finance, 2016). As another example, the EU will allocate to Germany around €4.5 billion in the next budget period 2021-2027 as compensation for the financial burden of taking in some 1.7 million refugees since 2013 (DW, 2018).

A related issue has been the general lack of preparation of the EU for emergencies. Article 33 of the Dublin III Regulation mandates EASO to provide information and recommendations within the Early Warning, Preparedness and Crisis Management Mechanism (EWM) where there are particular deficiencies in Member States' asylum systems. As of 2018, this mechanism has not been activated<sup>67</sup>.

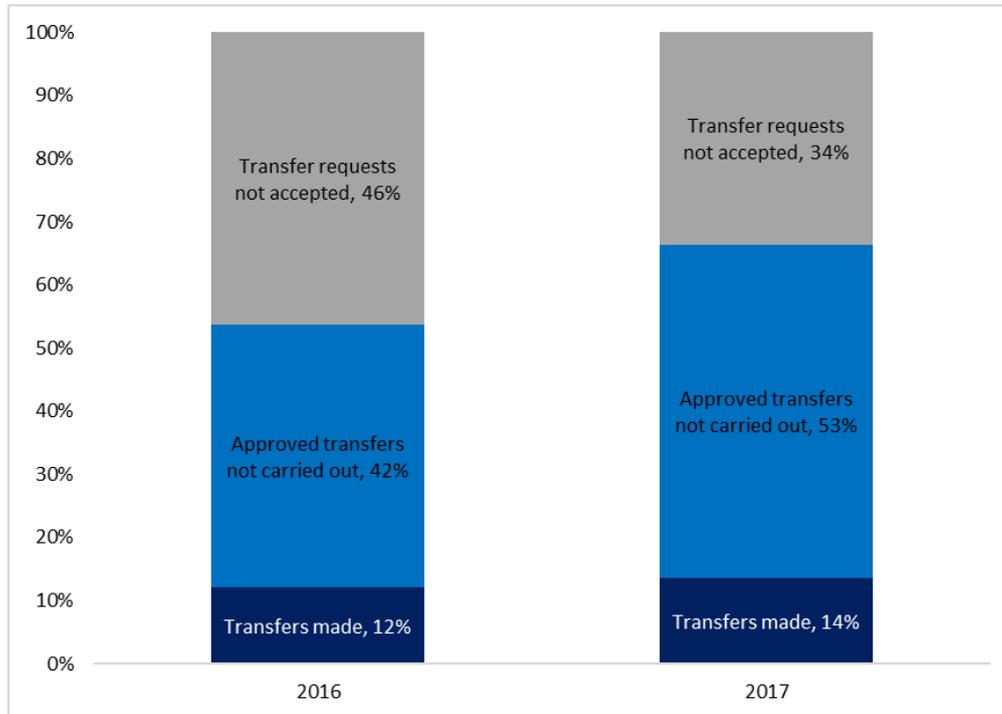
## **2. Gap/Barrier 4: The mechanism to determine MS responsibility for the examination of asylum claims does not work**

### *Low number of actual transfers under the Dublin Regulation and length of procedures*

The basic principle behind the application of the Dublin Regulation is that, once the Member State responsible for assessing an asylum application is defined, the asylum-seeker is transferred to that Member State. However, the **rate of transfers accepted by Member States and actually implemented is low**. Even when there is agreement on the responsible Member State, **transfers happen only to a limited extent** (see Figure 6). In 2016, the number of requests actually resulting in transfers of the applicant was 12 percent (Eurostat, 2017 e). Several factors explain the low level of actual transfers: applicants absconding; gaps in administrative capacity (lack of staff) and budgetary constraints; problems in coordination between authorities and restrictive requirements for incoming transfers (e.g. transfer can only happen in a given time slot, or only a number of incoming transfers per day can be accepted), applicants unfit to travel because of vulnerability or health concerns (ECRE, 2017 a; UNHCR, 2017). When transfers happen, procedures under the Dublin Regulation are **lengthy and costly**. Even when the deadlines are respected, applicant may wait up to 11 months (for take-charge requests) or 10 months (for take-back requests) before the examination of the asylum claim can start (ICF, 2015).

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<sup>67</sup> No information confirming the activation of this has been found.

**Figure 6: Overview of Dublin transfer requests**

Source: Constructed by authors using data from Eurostat.

Moreover, the higher number of asylum applications in 2015 further challenged the correct application of the Regulation, by leading to **gaps in registration of migrants at their first country of entry**, as required under the Eurodac Regulation. Border and transit EU Member States did not correctly implement the Dublin system, by not taking fingerprints, and waiving through asylum-seekers, also because of lack of sufficient capacity. For example, Greek authorities estimated in August 2015 that more than a third of migrants arriving on Lesbos, Kos and other islands were not fingerprinted, also due to the lack of equipment at entry points (Ekathimerini, 2015). Another reason is that migrants avoid registration on Eurodac either by damaging their fingerprints or refusing to be fingerprinted and paying smugglers to reach other Member States through risky channels (Wagner, et al., 2016).

Overall, the Dublin system does not work and, being a cornerstone of the EU asylum acquis, it creates negative effects on the overall functioning of the CEAS (Maiani, 2016; Filippo, 2016 a). The causes of this failure can be traced back to several factors: in addition to the length and complexity of procedures, a key issue, highlighted by several commentators, is that the Dublin regulation **neglects the preferences of asylum-seekers** (as regards to the Member State where they lodge an application) and represents a fundamentally **coercive system** (Heijer, et al., 2016; Di Filippo, 2016; Guild, et al., 2015; Maiani, 2016).

The misguided assumption behind the criteria to establish the Member State responsible for assessing an asylum application is that there is a level playing field across Member States (e.g. equivalent national asylum procedures, reception conditions, integration services, opportunities) and, thus, 'it does not matter where the asylum-seeker lodge an application' (Heijer, et al., 2016). Apart from the consideration given to asylum-seekers with family members already residing in a Member State, the criteria established by the Dublin disregard the individual choice and 'do not take into proper account the whole familiar situation and the existence of other substantial links able to identify the State more properly equipped to host the asylum-seeker and secure his/her quick integration and self-empowerment' (Di Filippo, 2016). Of course, many disparities exist across Member States and some Member States can be more attractive

than others for an asylum-seeker because of different reasons (including the existence of the personal and social networks).

These elements result in an inherently coercive system that provides no incentives for asylum-seekers to comply but, on the contrary, has prompted the lack of cooperation by asylum applicants and the recourse to coercive measures (e.g. detention used to secure transfers) as a means to prevent secondary movements (Heijer, et al., 2016; Di Filippo, 2016; Guild, et al., 2015; Maiani, 2016).

### 3. Ongoing developments

Since 2009, the European Parliament has been supporting the establishment of a binding mechanism for the fair distribution of asylum-seekers among Member States<sup>68</sup>.

The current Commission proposal for a Dublin IV Regulation<sup>69</sup> puts forward a ‘fairness mechanism’ to determine when a Member State has a disproportionately high number of asylum-seekers (to be applied when a Member State is above 150 percent of the reference share) and a ‘solidarity contribution’ (EUR 250,000 per applicant where a Member State does not accept the re-allocation). Compared to the European Commission’s proposal, the European Parliament has proposed an automatic relocations system giving the applicant the option to choose between the ‘four Member States which have received the lowest number of applicants in relation to their fair share’. Although limited, the possibility of choice given to the applicant is expected to reduce the risk of secondary movements<sup>70</sup>. Discussions are also ongoing in relation to the establishment of a permanent crisis relocation mechanism. The proposal suggests indicators to be used to assess crisis situations in a Member State’s asylum system as well as temporary measures to share Member States’ responsibilities in the event of an increase of asylum applications. Member States may refuse to relocate an applicant only with regard to concerns of national security or public order or in line with the exclusion provisions set out in Directive 2011/95/EU. On arrival, Member States ‘remain responsible for examining the application for international protection’ but are supported by other Member States<sup>71</sup>.

### III. Application stage

The 1951 Geneva Convention sets out criteria for assessing claims for international protection. In addition, the UNHCR has developed guidelines for assessing such claims, including guidelines for assessing child asylum claims<sup>72</sup> or victims of trafficking<sup>73</sup> for example, or for determining how

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<sup>68</sup> For example: European Parliament, 25 November 2009, [Resolution on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme](#), P7\_TA(2009)0090, para. 55.

<sup>69</sup> European Commission, [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 \(recast\)](#), COM(2016) 270 final, pp. 18 and 19.

<sup>70</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 6 November 2017, [Report 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 \(recast\)](#), Explanatory Statement.

<sup>71</sup> European Commission, [Proposal for a Regulation establishing a crisis relocation mechanism](#), COM (2015) 450 final.

<sup>72</sup> UNCHR, 2009, [Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1A\(2\) and 1\(F\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees](#).

<sup>73</sup> UNCHR, 2006, [Guidelines on international protection: the application of Article 1A\(2\) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked](#).

to assess whether asylum-seekers are ‘members of a particular social group’<sup>74</sup>.

At EU level, EU Directives harmonise rules across Member States for processing asylum applications, by establishing minimum standards for: the qualification of Third-Country Nationals (TCNs) or stateless persons as beneficiaries of international protection (Qualification Directive); the procedures for granting and withdrawing international protection (Asylum Procedures Directive). Minimum standards regarding the reception conditions for applicants for international protection are also established by the Reception Conditions Directive.

While extensive rules have been developed at EU level for harmonising asylum procedures, qualification rules and reception conditions, these rules are not applied consistently across the EU.

## 1. Gap/Barrier 5: Lack of harmonisation across Member States with respect to qualification of beneficiaries of international protection and asylum procedures

### 1.1. Qualification of beneficiaries of international protection

*Lack of convergence on determination of asylum claims and divergent recognition rates*

A central objective of the CEAS is to ensure that asylum claims are examined according to equal standards throughout the EU.

Despite significant progress made through subsequent amendments, the Qualification Directive still leaves some room for discretion to Member States, resulting in differences in implementation across the EU (see Box 4).

#### Box 4: Provisions of the recast Qualification Directive leaving room for Member State discretion

- Article 15(c) **notion of serious harm** - the notion of serious harm due to indiscriminate violence in an international or internal armed conflict<sup>75</sup> has led to divergent applications by national authorities and courts due to differences in interpretation of concepts such as ‘civilian’ and ‘armed conflict’ (ECRE, 2013).
- **Optional provisions** including Article 5(3) on protection needs arising *sur place* in cases of subsequent applications

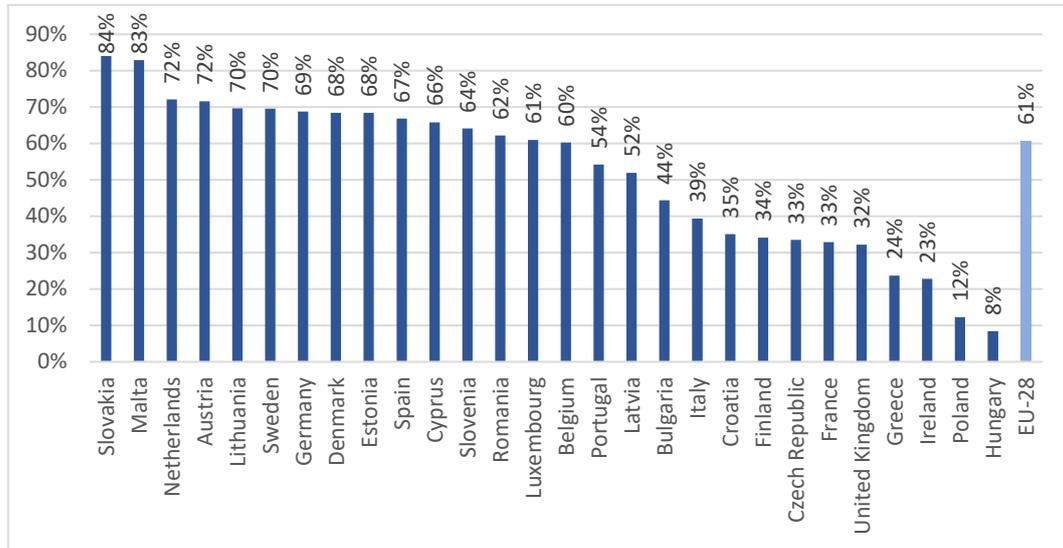
**Recognition rates of first instance decisions<sup>76</sup> varied significantly across Member States** in 2016, ranging from 84 percent in Slovakia to 8 percent in Hungary, with an overall EU-28 recognition rate of 61 percent (see Figure 7)<sup>77</sup>.

<sup>74</sup> UNCHR, 2002, [Guidelines on International Protection No. 2: “Membership of a particular social group” within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.](#)

<sup>75</sup> [Qualification Directive](#), Article 15(c), ‘Serious harm consists of: serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.’

<sup>76</sup> Asylum applications can be rejected or result in different positive decisions, in that international protection can be granted under four different statuses: refugee status, authorisation to stay based on humanitarian reasons, subsidiary and temporary protection status (EASO, 2017, p. 23). The share of positive decisions in the total number of asylum decisions represents the asylum recognition rate (Eurostat, 2014).

<sup>77</sup> It should be noted that the total number of decisions varies greatly across Member States. This variation contributes to the discrepancies in recognition rates.

**Figure 7: Asylum recognition rate of first instance decisions for extra-EU citizens, 2016**

Source: Authors' calculations based on Eurostat (2017c).

Recognition rates of first instance decisions vary greatly across Member States **even for asylum applicants of same nationalities**. For example, the recognition rate of Syrian applicants in 2016 varied from 10 percent in Hungary to 100 percent in other EU Member States (authors' calculations based on Eurostat, 2017c).

**Divergences** among Member States are also related to the **protection status granted** (i.e. refugee status or subsidiary protection). The type of protection status granted matters because **beneficiaries of subsidiary protection benefit from more limited rights than refugees**, as regards residence rights<sup>78</sup>, access to social welfare<sup>79</sup> and family reunification<sup>80</sup>.

The large differences in recognition rates can be due to different factors, including the lack of knowledge of EU law in administrative and judiciary bodies, the quality of procedures and the availability of legal aid, interpreters, the legal culture of the Member State, affecting the application of procedural guarantees.

Together with differences in reception conditions and other factors (such as presence of diasporas, labour market opportunities), different asylum recognition rates across Member States can also contribute to **secondary movements** within the EU and **multiple applications** (ICF, 2015).

#### *Challenges in conducting individual assessments in the context of large scale arrivals*

The recast Qualification Directive requires individual assessments of claims. However, an increase in arrivals in 2015 created a **backlog in some Member States' asylum systems** (ICF, 2016).

The **Temporary Protection Directive (TPD)** 2001/55/EC was introduced to allow Member States

<sup>78</sup> Beneficiaries of refugee status receive a residence permit valid for at least three years while beneficiaries of subsidiary protection receive a residence permit of at least one year (Article 24 of the Qualification Directive).

<sup>79</sup> Discretion given to Member States to limit social assistance to beneficiaries of subsidiary protection to *core benefits* (Article 28(2) of the Qualification Directive).

<sup>80</sup> Article 3(2)(c) of the [Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification](#) excludes from its scope beneficiaries of subsidiary protection, while allowing Member States to adopt or maintain more favourable provisions.

to grant immediate temporary protection for one year to a predefined group of persons in case of 'mass influx'<sup>81</sup>. It can be activated through a Council decision adopted by qualified majority (Article 5(1) of the TPD). However, the Directive **has never been triggered**, despite a request to trigger it in 2011 by Italy and Malta following a high number of applications from Tunisia in the context of the Arab Spring. The main weaknesses of the Directive identified in a 2016 study commissioned by the Commission include a lack of clear definition of 'mass influx' resulting in a high threshold; a lengthy activation procedure influenced by the political factor; the reluctance of Member States to trigger a system that can act as a pull factor for migrants (ICF, 2016).

The European Parliament called for a revision of the Temporary Protection Directive in 2015 and 2016 resolutions<sup>82</sup>. However, to date it seems more likely that the Commission will pursue the adoption and usage of other measures through the relocation decisions, the proposal for a permanent crisis relocation mechanism and the corrective allocation mechanism introduced under the Dublin Regulation proposal<sup>83</sup>.

## 1.2. Asylum procedures

The Asylum Procedures Directive sets out more or less harmonised procedures for determining asylum claims, including common procedural safeguards, rules to ensure access to the asylum procedure, and procedural rules at first instance and appeal. The transposition of the Directive has been problematic in many EU Member States, with failures to transpose and inconsistencies in application (European Commission, 2016 a).

### *Differences across Member States with regards to adherence to time limits for asylum procedures*

Article 31(3) of the Asylum Procedures Directive stipulates that **first instance decisions** should in principle be concluded **within six months** of lodging the application, subject to derogations. Where Member States have set out time limits for completing asylum procedures, in practice these **are often not observed**. There are also reports of the length of procedures varying depending on the nationality (ECRE, 2016 c)<sup>84</sup>. The Fundamental Rights Agency highlighted particular delays in Austria, Finland, Germany, Greece, Spain and Sweden (Fundamental Rights Agency, 2018).

The deficiencies in accessing the procedure stem from the unclear legal distinctions between the notions of 'making' and 'lodging' applications, as well as insufficient capacity of national administrations for the timely registration of applications (ECRE, 2015).

While Article 31(6) of the Asylum Procedures Directive requires national authorities to inform applicants of any delays in the examination of procedures, the Directive does not provide for consequences for failure to comply with the time limits.

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<sup>81</sup> The Directive defines such a mass influx situation as the 'arrival in the community of a large number of displaced persons, who came from a specific country or geographical area, whether the arrival in the Community was spontaneous or aided, for example through an evacuation programme' (Art 2(d)).

<sup>82</sup> [Joint Motion for a Resolution on the latest tragedies in the Mediterranean and EU migration and asylum policies](#), P8\_TA(2015)0176, para. 6; European Parliament, 12 April 2016, [Resolution on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration](#), P8\_TA(2016)0102, paras. 40-42.

<sup>83</sup> Respectively: European Commission, [Proposal for a Regulation establishing a crisis relocation mechanism](#), COM (2015) 450 final; European Commission, [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 \(recast\)](#), COM(2016) 270 final.

<sup>84</sup> For example, while Germany has an average processing time of 7.3 months for all caseloads, Somali applicants wait on average 21.9 months before receiving a first instance decision (ProAsyl, 2016).

Regarding **appeals**, the Asylum Procedures Directive does not stipulate time limits and leaves this to the discretion of Member States (Article 46(10)). Where Member States have stipulated time limits, these vary from one month (Poland) up to 15 months (Austria) (ECRE, 2015).

*Differences with respect to the quality of asylum procedures, inconsistent application of accelerated procedures and risks of breaches of procedural rights*

There are large differences across Member States in the application of the Asylum Procedures Directive, relating to: legal aid (e.g. in some Member States legal aid is not provided in first instance), quality of information provided to the applicant, time for appeals, or judicial review (e.g. in some Member States, the court cannot overturn first instance decisions and grant protection. Thus, in case of successful appeals, the case has to be assessed again by the first instance authority<sup>85</sup>).

Article 31(8) of the Asylum Procedures Directive provides for ten optional grounds for accelerating procedures, thereby **leaving a wide margin of discretion** for Member States to apply accelerated procedures. Moreover, the Directive **does not provide any time-limits** for the accelerated procedure. The national time limits to process asylum claims using accelerated procedures range from several days to five months. For example, in Bulgaria and Malta, the maximum duration of accelerated procedure is three and six days respectively, which leaves the applicants with very little time to prepare (Orav & Apap, 2017). Accelerated procedures and their inconsistent application across the EU increase the **risk of breach of procedural rights**, often resulting in individual counselling not being available (Wagner, et al., 2016). This exacerbates the **lack of access to legal aid, interpretation and information** recorded in many EU Member States (Fundamental Rights Agency, 2018).

As part of accelerated procedures, the Directive allows Member States to use **Safe Countries of Origin** (SCO) lists<sup>86</sup>, which allows for faster processing of claims that are likely to be unfounded. While a proposal for a Regulation has been put forward<sup>87</sup>, there is no list of SCO and Safe Third Countries at EU level. On the one hand, this procedure is **applied inconsistently** across the EU, with consequences in terms of different recognition rates<sup>88</sup>. The Commission has noted that at least 12 Member States apply this concept<sup>89</sup>, while some might apply it in practice without a formal list (AIDA, 2015). In addition, there are divergences in the countries on the SCO lists (Orav & Apap, 2017). On other hand, the trend of adopting a nationality driven approach rather than individual assessments has been criticised as ignoring the complexity of asylum and mixed migration with increased risks of *refoulement*. In several occasions, the European Parliament has

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<sup>85</sup> Cases on effective judicial review have been opened against Hungary, Slovakia and Bulgaria, respectively: Alekszj Torubarov v. Hungary (Case C-556/17); QJ v. Slovakia (Case C-113/17); Serin Alheto v. Bulgaria (Case C-585/16).

<sup>86</sup> Safe Countries of Origin (SCO) are considered in international law and EU law as countries in which 'there is a democratic system and generally and consistently no persecution, no torture or inhuman or degrading treatment or punishment, no threat of violence, and no armed conflict' (European Commission, 2018 a).

<sup>87</sup> The Commission has proposed that once adopted, the draft regulation establishing an EU common list of safe countries of origin should be integrated in the draft Asylum Procedures Regulation. On 12 April 2017, the Council announced the suspension of negotiations on the draft Regulation establishing an EU common list of safe countries of origin ([European Parliament Legislative Train 12.2017](#)).

<sup>88</sup> 15 out of 28 EU Member States apply the 'safe country of origin' concept in their asylum procedures (Statewatch, 2015).

<sup>89</sup> European Commission, [Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU](#), COM(2015) 452 final.

stressed that the adoption of SCO lists should not preclude the right of the applicants to individual assessments<sup>90</sup>.

### 1.3. Limited role of EASO

The European Asylum Support Office was set up by Regulation (EU) 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office and has been operational since 2011. Activities involve supporting Member States with qualification and asylum procedures to better harmonise these procedures. This includes training and developing reports on country of origin information (COI). The Agency's current mandate **does not include monitoring and providing guidance**, which is a gap in its ability to ensure convergence of procedural standards and recognition rate. It also does not have any competence in status determination.

Recent studies suggest that EASO has had little operational impact due to its limited resources and scale of operations (Wagner, et al., 2016). The Proposal for a Regulation on the European Union Agency for Asylum put forward in May 2016 recognises these weaknesses and proposes to extend the mandate of EASO for it to become a fully-fledged Agency<sup>91</sup>. Its mandate would include **monitoring** the implementation of all aspects of the CEAS and **issuing guidance** that Member States would be required to observe. It would also have a power to intervene in situations where Member States have not taken remedial actions. The proposal also foresees a mandatory **asylum intervention pool** composed of 500 experts proposed by Member States. The proposed Regulation does not go as far as to grant the new EU Agency for Asylum a protection mandate. The costs and feasibility of hiring an additional 500 experts should be considered in light of the proposed Multiannual Financial Framework (MFF) for 2021-2027<sup>92</sup>. The proposed budget for external border protection includes funding for 10,000 border guards. In June 2018, FRONTEX employed 1,700 border guards (European Commission, 2017).

## 2. Gap/Barrier 6: Lack of harmonisation across Member States with respect to Reception conditions

The Reception Conditions Directive ensures a dignified standard of living for applicants (recital 11) within the EU and Member States are obliged to ensure certain fundamental rights<sup>93</sup>. Article 17 of the same Directive provides that 'material reception conditions' need to 'provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health'. The Directive aims to increase the level of harmonisation of reception conditions, including rules on material reception conditions, access to health care, employment, as well as provisions regulating detention, and identification of vulnerable persons. A key principle of the Directive is the individual assessments of applicants' vulnerability in order to address their specific needs, which may be due to their young or old age, disability, or having been victims of trafficking or abuse. In addition, unaccompanied minors should receive the

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<sup>90</sup> European Parliament, 12 April 2016, [Resolution on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration](#), P8\_TA(2016)0102, para. 64; European Parliament, 25 October 2016, [Resolution on human rights and migration in third countries](#), TA(2016)0404, para. 14.

<sup>91</sup> European Commission, [Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation \(EU\) No 439/2010](#), COM (216) 271 final.

<sup>92</sup> A budgetary increase of funds for external borders, migration and refugee flows is proposed to grow from EUR 13 billion to EUR 34 billion over the funding period. [http://europa.eu/rapid/press-release\\_MEMO-18-4127\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-4127_en.htm)

<sup>93</sup> Among these are access to housing (Article 7), healthcare (Article 19), financial allowances (Article 17 (5)), an adequate standard of living (Article 17 (2)), access to employment within nine months (Article 15) and access to education for minors (Article 14).

assistance of a qualified representative; the best interest of the child as well as family unity should be primary considerations at all times.

Challenges relate to the **provision of accommodation, detention practices, vulnerability assessments, and divergence in reception conditions across Member States**. This can be attributed to some extent to the discretion left for Member States to apply certain provisions of the Reception Conditions Directive. However, a main challenge relates to implementation and limited reception capacities.

#### *Vulnerability assessments*

The Reception Conditions Directive requires Member States to **assess special reception needs** (Articles 21 and 22), although it does not specify the way such assessments should be made, which is left to the discretion of Member States.

Practices for the identification of vulnerable persons vary across Member States, for example in France a vulnerability assessment is made during the first interview, while in Poland border guards carry out vulnerability assessments (to identify victims of trafficking). The identification does not always encompass all vulnerable persons listed in the Reception Conditions Directive. The absence of a clear legal framework, coupled with the higher number of arrivals of asylum-seekers, and shortage in reception capacities, result in an arbitrary identification of vulnerable persons (Wagner, et al., 2016).

#### **Box 5: Vulnerable persons**

Article 21 of the Reception Conditions Directive refers to vulnerable persons by including the following categories: 'minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation'.

#### *Minors*

Children, including unaccompanied children, represent a significant share of asylum applicants in the EU. According to UNHCR figures, more than 32,000 children arrived in Italy, Greece, Spain and Bulgaria in 2017; 46 percent of them were unaccompanied or separated children. Children are often accommodated in adult facilities, there are delays in appointing guardians, and unaccompanied children are detained without careful, individual assessment of necessity and proportionality, as required by Articles 6 and 52(1) of the Charter and as a measure of last resort as required by the Reception Conditions Directive (Article 11(2)) (Fundamental Rights Agency, 2016 a). In this context, a recent resolution of the European Parliament on protection of children in migration<sup>94</sup> underlined the fact that all children are entitled to all the rights enshrined in the UN Convention on the Rights of the Child, and called on the Member States to ensure (inter alia) the activation of child protection officers, separate reception facilities, 'dignified accommodation and healthcare', the building of individual plans. The resolution also stressed that children should not be detained for immigration purposes.

#### *Access to labour market*

Access to employment is granted to asylum-seekers, under the Reception Conditions Directive, within nine months of the lodging of an application (Article 15(1))<sup>95</sup>. Nevertheless, the recent

<sup>94</sup> European Parliament, 3 May 2018, [Resolution on protection of children in migration](#), P8\_TA(2018)0201, para. 14.

<sup>95</sup> Although this section focuses on beneficiaries of international protection, access to employment for asylum-seekers is discussed in this section, as part of the general issues related to labour market integration.

Commission's proposal reforming the Qualification Directive noted that 'there is a considerable variation among Member States' policies in the duration of the residence permits granted, as well as regards to access to rights'<sup>96</sup>. Table 6 reviews some key barriers to labour markets for asylum-seekers in the Member States. For example, the waiting time experienced by asylum-seekers to access the labour market varies across Member States and, in some cases, exceeds the nine months required by the Reception Conditions Directive with an EU average of almost 7 months.

**Table 6: Restrictive labour market policies**

Time limits to access	Labour market test	Restrictions to sectors
<i>No time limits:</i> IE, LT, EL, PT, SE	<i>Yes:</i> AT, HU, LU, UK, DE	<i>Yes:</i> AT, BG, CY, RO
<i>After 2-6 months:</i> AT, BG, BE, FI, DE, IT, RO	<i>No:</i> BE, BG, HR, CY, CZ, DE, EE, FI, FR, EL, SE, ES, SV, RO, PT, PL, LV, IT	<i>No:</i> BE, CR, CZ, DK, EE, FI, FR, DE, EL, HU, IT, LV, LU, MT, NL, PL, PT, SV, ES, SE, UK
<i>6-9 months:</i> CY, CZ, DE, EE, LU, NL, PL, ES	<i>Information not available:</i> IE, LT, SK	<i>Information not available:</i> IE, LT, SK
<i>After 9 months:</i> HR, FR, HU, LV, MT, SK, SV, UK		

Source: (OECD, 2015 b) & (EEPO, 2016)

### 3. Ongoing developments

Already in 2016, the European Parliament had highlighted the need for comprehensive reform of the CEAS, with one of the objectives being that of achieving further harmonization and build a truly common system<sup>97</sup>. The proposals currently under discussion moves towards greater harmonisation across Member States, with regards to criteria for recognising applicants for international protection, rights granted to beneficiaries of international protection, and reception conditions. In addition, as mentioned above, a proposal giving a new role to EASO has been put forward in May 2016.

The European Parliament has defined a set of amendments for each proposal, aiming, inter alia, to: further align the duration of residence permits under refugee status and subsidiary protection status, in line with the current best practices in the Member States<sup>98</sup>; providing legal assistance throughout the asylum procedure and 'as soon as possible after the wish to obtain international protection has been declared'<sup>99</sup>; strengthen the protection of fundamental rights, the ability to quickly identify persons with special reception needs, and ensure child-friendly reception

<sup>96</sup> European Commission, [Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents](#), COM(2016) 466 final, p. 4.

<sup>97</sup> European Parliament, 12 April 2016, [Resolution on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration](#), P8\_TA(2016)0102.

<sup>98</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 28 June 2017, [Report on the proposal for a regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents](#), Amendment 6.

<sup>99</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 12 May 2017, [Draft report on the proposal establishing a common procedure for international protection in the Union](#), Amendment 79.

conditions and full access to 'necessary healthcare, including sexual and reproductive health services and mental healthcare'<sup>100</sup>.

In June 2018, the European Parliament and the Council reached a provisional agreement on the reform of the Reception Condition Directive<sup>101</sup>. The deal includes the establishment of stricter time limits for access to the labour market: asylum-seekers will be allowed to work 6 months after lodging an application, instead of current 9 months<sup>102</sup>.

#### **IV. Post-application stage: integration or return**

The 1951 Geneva Convention sets out the rights granted to refugees including the right to engage in gainful employment (Chapter III of the Geneva convention), provisions on welfare including access to housing and public education (Chapter IV). The CFR and the ECHR also include provisions regarding the right to education and to engage in work are also protected under the CFR (right to education - Art. 14; Right to engage in work - Art. 15) and the ECHR (right to education - Art. 2 Protocol 1). Finally, the EU Qualification Directive also determines the content of international protection (Chapter VII of the Qualification Directive), including access to employment (Article 26), education (Article 27), social welfare (Article 29), healthcare (Article 30), accommodation (Article 32) and access to integration facilities (Article 34). However, there are considerable differences in the application of these rights across Member States and barriers to their practical implementation.

Regarding the return of rejected asylum-seekers, relevant international obligations are those related to the principle of non-refoulement; in addition, the possible deprivation of liberty of irregular migrants (pending the execution of the return) has to be legitimate in light of international fundamental rights obligations established in the ECHR (Art. 3 and 5 of the ECHR and Art. 6 of the CFR) and the CRF. At EU level, the Return Directive lays down common standards and procedures for the return of non-EU nationals who are staying in the EU irregularly, including safeguards regarding detention (Art. 15 of the Directive).

##### **1. Gap/Barrier 7: Discrepancies among Member States, shortcomings in integration services and issues related to discrimination**

*Rights granted to beneficiaries of international protection, implementation across Member States and administrative barriers*

The Qualification Directive includes provisions aimed at ensuring the access of beneficiaries of international protection to education, employment, social welfare and healthcare. Access is granted under the same conditions as nationals. Some limitations might apply for beneficiaries of subsidiary protection, and in the case of accommodation (where the access is granted under the same conditions as third-country nationals legally residing in the Member State) (see Box 6).

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<sup>100</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 10 May 2017, [Report on the proposal for a directive laying down standards for the reception of applicants for international protection \(recast\)](#), Explanatory Statement.

<sup>101</sup> Following the initial European Commission proposal (European Commission, [Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection \(recast\)](#), COM(2016) 465 final).

<sup>102</sup> European Parliament, [Legislative Train Schedule](#), accessed on 18 July 2018.

**Box 6: Provisions of the recast Qualification Directive regarding access to education, labour market, social welfare, healthcare and accommodation**

*Access to education, participation and performance*

Article 27(1) requires full access to the education system for all minors granted international protection, under the same conditions as nationals. In the case of adults, Member States should allow access to language and other kinds of courses (Article 27(2)) and ensure access to employment-related education opportunities (Article 26(2)).

*Access to employment*

Under Article 26, Member States are required to authorise unrestricted labour market access for persons with refugee status and – in most Member States – also to persons with subsidiary protection status in accordance with rules generally applicable for all national and EU citizens.

*Access to social welfare*

According to Article 29, ‘Member States shall ensure that beneficiaries of international protection receive [...] the necessary social assistance as provided to nationals of that Member State.’

However, according to the same Article, Member States may limit social assistance granted to beneficiaries of subsidiary protection status to core benefits.

*Access to healthcare*

Article 30 ensures access to healthcare under the same conditions as nationals, including treatment of mental disorders when needed.

*Access to Accommodation*

According to Article 32, ‘Member States shall ensure that beneficiaries of international protection have access to accommodation under equivalent conditions as other third-country nationals legally resident in their territories’. The Directive, while allowing national practice of dispersal of beneficiaries of international protection, also encourages Member States to undertake policies aimed at preventing discrimination.

Regarding beneficiaries of international protection, in some Member States, before being able to access the labour market, they need to obtain a residence permit, employment licenses or other documents. For example, in Malta an employment license (i.e. a work permit valid for 12 months, renewable) is required from the Employment and Training Corporation. The process can be long, costly (EUR 58) and complex. In other cases, the short duration of residence permits or the lack of clarity as regards the rights granted to refugees or beneficiaries of subsidiary protection might negatively affect labour market integration. Employers may be unwilling to hire, request a work permit (if requested by the Member State) and invest in the training of a person that may leave in the short-term, or might be uncertain about the status of refugees and beneficiaries of subsidiary protection and prefer other candidates (OECD and UNHCR, 2016).

Difficulties in the **recognition of professional qualifications** can also represent an obstacle to accessing the labour market. Asylum-seekers usually flee without documentation, or their diplomas might not be recognised by the hosting country. Article 28 of the recast Qualification Directive states that Member States must endeavour to facilitate full access for beneficiaries of international protection who cannot provide documentary evidence of their qualifications to appropriate schemes for the assessment, validation and accreditation of their prior learning. However, the process can be long, and requirements might apply that are difficult for refugees to fulfil, such the presentation of original copies (Cyprus) or the dominance of the local language (Hungary) (European Commission, 2016 b). Discrepancies across the EU also arise in areas where the Qualification Directive leaves discretion to Member States for example with respect to the **right to accommodation**.

*Instruments for the socio-economic integration of beneficiaries of international protection and*

*shortcomings*

Article 34 of the Qualification Directive establishes that the Member States have to ensure access to integration programmes. However, the content of integration programmes offered is left to the discretion of Member States<sup>103</sup>.

Several funding instruments and policy initiatives target beneficiaries of international protection and asylum-seekers or can be mobilised to support their socio-economic integration in the host countries. Notably:

- The AMIF has been established for the period 2014-2020, with a total of EUR 3.1 billion. Its purpose is to grant financial assistance to the development of the CEAS, to support legal migration, promote the integration of migrants, enhance fair and effective return strategies and increase solidarity and responsibility sharing between Member States (European Commission, 2018 e).
- European Structural and Investment Funds (ESIF) and other funding instruments, such as the Fund for European Aid to the Most Deprived (FEAD), can also support the social inclusion and economic integration of refugees<sup>104</sup>.
- Several action plans and initiatives for the sharing of practices have been launched and include, for instance, the Action Plan on Integration of Third-Country Nationals<sup>105</sup>, the European Website on Integration (European Commission, 2018 c), and the Repository of promising practices on social and labour market integration of refugees and asylum-seekers (European Commission, 2018 b).

Regarding policies and funding instruments potentially supporting integration of beneficiaries of international protection, information on the impacts achieved is scarce. Regarding the AMIF, the allocation of funding to the three main objectives (asylum, integration & legal migration, or return) vary significantly across Member States. Asylum has been prioritised in Malta, Greece and Croatia, which allocate to this objective more than 40 percent of the AMIF funding. Other Member States have prioritised return (UK, Netherlands, Greece, Bulgaria and Spain) (Darvas, et al., 2018). Stakeholders have pointed some shortcoming in the implementation of the AMIF, including the excessive focus on return in some Member States (see Box 7).

**Box 7: ECRE and UNHCR report on the implementation of the AMIF (UNHCR and ECRE, 2018)**

The report noted that the provision of integration services improved in several Member States thanks to the AMIF, along with the engagement of local authorities and awareness-raising measures. However, some issues have been pointed out, including:

- Inappropriate allocations across policy areas: some Member States have an undue focus on return, while in some Member States allocation for integration is insufficient.
- Lack of transparency on priority setting and lack of information on implementation and impacts: AMIF National Programmes lack transparency regarding priority and objective setting, project

<sup>103</sup> Integration policies across Member States are not intended to be harmonised. According to Article 79 (4) of the TFEU, 'The EU may establish measures to provide incentives and support for the action of the Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States'.

<sup>104</sup> For example, the European Social Fund (ESF) regulation explicitly mentions facilitating the social inclusion and integration into the labour market of refugees and asylum-seekers as one of the targets (European Commission, 2015 a).

<sup>105</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, [Action Plan on the integration of third country nationals](#), COM(2016) 377 final.

award decision-making and the rate and nature of implementation.

- Little impact was achieved in countries with no national strategy in the area of integration (Bulgaria, Hungary and Slovakia).

While the **knowledge of the language** is one of the most important elements affecting socio-economic integration, the access to language courses is hindered by many factors, including their direct costs, childcare obligations (detering female beneficiaries), or cultural factors. Courses might also be ill-adapted to illiterate beneficiaries (EMN, 2015). Poor language skills also prevent access to relevant information and, in some case, they represent an additional barrier to benefitting from available services.

Aside from language courses, the **lack of tailored and specialised support** might undermine successful integration in these different areas:

- Employment - Integration programmes and public employment services are often insufficient, throughout the EU. This can be due to a lack of resources or because programmes are underfunded and fragmented within Member States (because the competency is held at local or regional level) (European Commission, 2016 b).
- Healthcare – Counselling services face a lack of personal and economic resources and, in some cases, assistance is provided only in one language (European Commission, 2016 b). Some countries the staff in institutions providing social security are insufficiently trained in working with beneficiaries of international protection (EMN, 2015).
- Education - While children benefitting from international protection can access the same services as nationals, once they are enrolled in the mainstream education system, they often need additional and specialised support. In several EU Member States problems have been reported with teachers not being trained or lacking experience of working with refugees (Koehler, 2017).

The type and quality of integration services vary across Member States. For example, not all Member States provide flexible arrangements for integration courses, childcare during the courses, housing support, etc (European Commission, 2016 c).

While most Member States have several types of labour market integration measures for refugees in place, there are still some gaps: for example, in nine Member States, there is no general adult education for low-educated learners; assessment of skills and alternative measures to recognize foreign qualifications are only provided in 18 and 21 Member States, respectively (Tanay & Peschner, 2016). Furthermore, measures are only accessible to refugees in most Member States, and only in half of them or less (depending on the measure) to asylum-seekers. Employment-related measures (on-the-job training/job placement, upskilling (Vocational Education and Training - VET), job-search training/counselling, measures to recognize foreign qualifications and systematic skills assessment) are provided for asylum-seekers in only nine or fewer Member States. However, if such measures are only accessible after the outcome of the asylum application, delays to? the labour market integration process of refugees are a likely result.

#### *Discrimination issues and segregation*

Finally, **discrimination** is a key obstacle limiting integration and full participation of beneficiaries of international protection. A poll carried out among a total of 10,000 European citizens showed that almost 60 percent of them were worried that refugees increased the likelihood of terrorism and 50 percent believe that refugees imposed an economic burden by taking jobs and social benefits (Wike, et al., 2016). This perception however is not matched by the evidence as reviewed in a Cost of non-Europe study in the area of terrorism (van Ballegooij and Bakowski, 2018).

Data collected by the Fundamental Rights Agency (as of November 2016) indicates that **hate crimes** (violence, harassment, threats and xenophobic speech) against asylum-seekers and migrants is 'pervasive and grave across the EU'. In 2015, in Germany only, more than 1,000 incidents 'targeting asylum accommodations' were recorded<sup>106</sup>. Greece documented 75 racist crimes against migrants or refugees in the same year, with a majority of victims having suffered personal injuries. Similar findings were reported in the Netherlands, and Finland, some of the few Member States that monitor and collect data on hate crimes against asylum-seekers (FRA 2016). The report highlights also a worrisome trend of growing online hate speech targeting asylum-seekers, with investigation remaining difficult. While hate crimes are rarely reported (*inter alia*, because of lack of information on what hate crime is or lack of knowledge of means of protection), 'victim support services tailored to the needs of asylum-seekers and migrants appear to be limited in the Member States' (Fundamental Rights Agency, 2016). The CoNE report in the area of Equality found that the current EU instruments to combat discrimination on the basis of race and ethnicity are limited or not fully implemented at national level (ineffective sanctions related to the implementation of the Framework Decision on Racism and Xenophobia; Online hate speech insufficiently addressed by the Framework Decision on Racism and Xenophobia; barriers to the effective national implementation of the Racial Equality Directive) (van Ballegooij & Moxom, 2018). The study found that these gaps and barriers in EU legislation may contribute to an increased likelihood of assault among racial and ethnic minorities as well as a lower likelihood of employment. A greater risk of assault was associated with poorer health status and productivity, leading to lower earnings and tax revenue. A lower likelihood of employment was also associated with lower earnings and generation of tax revenue.

## 2. Gap/Barrier 8: Lack of mutual recognition of positive asylum decisions

Mutual recognition supposes the recognition of national standards and decisions of one Member State by other Member States.

Article 78(2.a) of the TFEU states that the Common European Asylum System should comprise 'a uniform status of asylum for nationals of third countries, *valid throughout the Union*'.

However, the recognition of the status of beneficiary of international protection in one Member State does not imply the recognition by other Member States. Conversely, mutual recognition can be found in other parts of the EU, including in the field of asylum (i.e. in relation to negative asylum decisions) and regarding return decisions.

This means that beneficiaries of international protection do not have the right to move and live freely in all Member States.

The Long-Term Residence Directive<sup>107</sup> was extended in 2011 to beneficiaries of international protection, allowing for free movement when they obtain long-term residence. However, some limitations apply. There is no obligation on the second Member State to automatically accept this application: the long-term resident might be subject to expulsion, and the right to work is not automatically granted to a long-term resident moving to another Member State.

In 2016, the European Parliament recalled that 'mutual recognition by Member States of positive asylum decisions is a logical step towards proper implementation of Article 78(2)(a) TFEU, which calls for 'a uniform status of asylum valid throughout the Union'<sup>108</sup>. The current approach has

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<sup>106</sup> Data referred to 'cases with proven right-wing motivation or where right-wing motivation cannot be excluded', provided by the German Bundestag (2016), Federal government's response to a parliamentary minor interpellation, 23 September 2016 (Fundamental Rights Agency, 2016).

<sup>107</sup> [Council Directive 2003/109/EC](#) of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004.

<sup>108</sup> European Parliament, 12 April 2016, [Resolution on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration](#), P8\_TA(2016)0102, para. 39.

been criticised by legal scholars, NGOs and UNCHR (ECRE, 2014; UNCHR, 2014). Free movement across Member States would also increase opportunities for jobs, integration and family reunification (UNCHR, 2014).

### 3. Gap/Barrier 9: Barriers in the implementation of the Return Directive

In case of rejected asylum applications (as well as in relation to all forms of irregular stay/refusal or withdrawal of a residence permit), the Return Directive provides for common standards for returning irregular migrants, including common rules on procedural safeguards and detention. Article 4 of the Directive requires Member States to respect the principle of non-refoulement, according to which a person should not be returned to countries where his or her fundamental rights, life and liberties are threatened. The Directive also mentions to the use of EU or bilateral readmission agreements with third countries, as a way of facilitating return operations (Article 3).

There is no consolidated data on the number of return decisions, but there is a wide discrepancy between the number of return decisions issued and the number of actual returns. In 2016, **around 36 percent of the irregular migrants that were ordered to leave the EU departed effectively**<sup>109</sup>.

Several reasons can explain the **low number of actual return operations**. While absconding is probably the most important one, medical reasons or special considerations required when returning vulnerable persons are also present (EMN, 2016). In other cases, **administrative and organisational** issues slow down or make impossible the return, notably: difficulties in the acquisition of travel and identity documents (especially when copies of the originals are not available and there is a lack of cooperation from the country of origin); lack of human or economic resources (e.g. make any obligatory consular interviews costly and challenging to arrange); or the length of the return procedure (the decision to return and the return order can both be appealed and in most cases this has a suspensive effect) (Mixed Migration Platform, 2017) (EMN, 2016).

As pointed out in the European Agenda on Migration, failed asylum claims and ineffective return can **corrode confidence in the system** and create an incentive for **irregular migration**.

However, the implementation of the Return Directive has been strongly criticised also for other shortcomings.

Issues in terms of **misuse of detention** and the punitive orientation of the overall return procedures have been raised (ECRE, 2017 b) (EMN, 2016).

A prerequisite to return is that **fair and consistent asylum systems** thoroughly examine individual situations. Because of divergent recognition rates across the EU, this prerequisite is not met and risks arise in terms of **wrongful return** of persons genuinely in need of international protection (ECRE, 2017 b). Moreover, following return actions, the **situation of returnees** is not properly monitored (ECRE, 2017 b). In 2015, the European Parliament expressed 'concern at the treatment of migrants who are forcibly returned to their countries of origin or to third countries **without adequate follow-up of their situation**' and called for actions to monitor the situation and difficulties faced by returnees<sup>110</sup>. The wrongful return of genuine asylum-seekers and the lack of monitoring following return operations put at a risk the respect of the principle of non-refoulement, a cornerstone of the international legislation and EU asylum acquis<sup>111</sup>.

<sup>109</sup> European Commission, 2017, [Communication from the Commission to the European Parliament and the Council on a more effective return policy in the European Union - A Renewed Action Plan](#), COM/2017/0200 final.

<sup>110</sup> European Parliament, 25 October 2016, [Resolution on human rights and migration in third countries](#), TA(2016)0404.

<sup>111</sup> See, for instance, the case of the deportation of Sudanese citizens from Belgium that were allegedly tortured when back in their country (Tahrir Institute for Middle East Policy, 2017).

#### 4. Ongoing developments

The ongoing reform of the Qualification Directive aims to ‘further harmonise the rights of beneficiaries of international protection, [...] by clarifying the scope of the rights and obligations of beneficiaries, in particular as regards social security and social assistance’.

The European Parliament has called for strengthened integration policies for beneficiaries of international protection (in full respect for the competences of Member States), also by facilitating the recognition of foreign qualifications by other Member States, and by allowing beneficiaries of international protection to move to another Member State where they have an offer of employment<sup>112</sup>. The draft report of the European Parliament on the reform of the Qualification Directive stresses the need to favour integration, long-term social cohesion and security for all (rather than punitive measures).

Regarding return, the European Parliament, the Council and the CJEU have repeatedly affirmed the need to ensure that migrants are returned only if the country of return is safe for them, and has advocated for EU-wide readmission agreements that take precedence over bilateral ones between Member States and third countries.<sup>113</sup>

As mentioned in Section IV.4, in June 2018, a provisional agreement has been achieved between the European Parliament and the Council, establishing access to the labour market 6 months after lodging an application. Furthermore, asylum-seekers should have access to language courses from day one<sup>114</sup>.

#### V. Horizontal Gap/Barrier: Non-compliance with fundamental rights obligations

The analysis of the gaps and barriers in this section raise important fundamental rights issues and non-compliance with rights protected under EU and international law. **Ten fundamental rights**, protected by international and EU legislation, have been identified as relevant: Right to asylum; right to respect for private and family life; right to liberty and security; prohibition from torture, inhumane or degrading treatment; rights of the child; right to access to healthcare; right to engage in work; right to education; right to non-discrimination and the right to an effective remedy.

At **international level**, these rights are set out in various instruments binding on EU Member States, including the ECHR, the 1951 Geneva Convention, and other measures such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights (ICCPR); The Convention on the Rights of the Child (CRC).

At **EU level**, these rights and freedoms are set out in the **European Charter of Fundamental Rights** (CFR), which applies to EU institutions and also Member States when implementing EU law. The **legislative instruments part of the CEAS** also protects these rights. For example, the EU Qualification Directive asserts these rights in its Chapter VII (content of international protection), including protection from refoulement (Article 21), maintaining family unity (Article 23), access to employment and education (Articles 26 and 27), and rights for unaccompanied minors (Article 31).

Table 23 in Annex 1 outlines the rights that are particularly relevant to asylum-seekers and

<sup>112</sup> European Parliament, 12 April 2016, [Resolution on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration](#), P8\_TA(2016)0102, paras. 43, 44, 46 and 47.

<sup>113</sup> European Parliament, 25 October 2016, [Resolution on human rights and migration in third countries](#), TA(2016)0404; European Parliament, 12 April 2016, [Resolution on the Situation in the Mediterranean and the Need for a Holistic EU Approach to Migration](#), P8\_TA(2016)0102, para. 59.

<sup>114</sup> European Parliament, [Legislative Train Schedule](#), accessed on 18 July 2018.

beneficiaries of international protection and the corresponding legislative instruments that, at international and EU level, protect these rights. The table shows that all the fundamental rights relevant to our analysis and protected by international legislation are also covered by several instruments in EU law.

Issues are related to the **non-compliance with these rights in practice**: while **these rights are protected in international and EU law, in practice they are not always complied with**. Instances of non-compliance are outlined in Table 7 and analysed in the context of the asylum journey.

**Table 7: Non-compliance with fundamental rights resulting from gaps/barriers 1-9**

	Right to asylum and non-refoulement	Right to respect for private & family life	Right to liberty and security	Prohibition from torture, inhumane or degrading treatment	Rights of the child	Right to access to healthcare	Right to engage in work	Right to education	Right to non-discrimination	Right to effective remedy
CFR article:	Art. 18	Art. 7	Art. 6	Art. 4	Art. 24	Art. 35	Art. 15	Art. 14	Art. 21	Art. 47
ECHR Article	n/a <sup>115</sup>	Art. 8	Art. 5	Art. 3	n/a <sup>116</sup>	n/a <sup>117</sup>	Case law <sup>118</sup>	Art. 2 Protocol 1	Art. 14	Art. 13
<b>1.Lack of legal channels</b>	✓									
<b>2. Limitations of EU external action</b>				✓						
<b>3. Uneven distribution</b>	✓	✓		✓	✓					✓
<b>4. Ineffective mechanism</b>	✓	✓	✓	✓	✓					✓
<b>5.Lack of harmonizatio</b>	✓				✓					✓

<sup>115</sup> The Convention does not contain an express provision on asylum. However, case-law of the Court developed since 1989 provides for a set of standards for asylum-seekers to be respected by parties to the Convention. (CoE, 2010, "Asylum and the European Convention on Human Rights", *Human rights files*, No. 9, <http://www.refworld.org/pdfid/4ee9b0972.pdf>)

<sup>116</sup> The Convention or its Protocols do not contain a provision on the rights of the child and case-law is applicable (see, for instance, a list of recent case-law at: [https://www.echr.coe.int/Documents/FS\\_Childrens\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Childrens_ENG.pdf)). The CoE has also enacted the European Convention on the Exercise of Children's Rights

<sup>117</sup> The Convention does not have an express provision on healthcare. However, case-law has been developed due to the increasing difficulty to define boundaries between the fundamental rights of the Convention and socio-economic rights, such as healthcare (ECHR, 2015, "Health-related issues in the case-law of the European Court of Human Rights", *Thematic Report*, [https://www.echr.coe.int/Documents/Research\\_report\\_health.pdf](https://www.echr.coe.int/Documents/Research_report_health.pdf))

<sup>118</sup> The Convention does not have an express provision on the right to engage in work. However, the case-law of the Court protects certain aspects of this right (O'Connell, R., 2012, "The Right to Work in the European Convention on Human Rights", *European Human Rights Law Review*, No. 2, 2012, pp 176-190, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2017651](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2017651))

	Right to asylum and non-refoulement	Right to respect for private & family life	Right to liberty and security	Prohibition from torture, inhumane or degrading treatment	Rights of the child	Right to access to healthcare	Right to engage in work	Right to education	Right to non-discrimination	Right to effective remedy
CFR article:	Art. 18	Art. 7	Art. 6	Art. 4	Art. 24	Art. 35	Art. 15	Art. 14	Art. 21	Art. 47
ECHR Article	n/a <sup>115</sup>	Art. 8	Art. 5	Art. 3	n/a <sup>116</sup>	n/a <sup>117</sup>	Case law <sup>118</sup>	Art. 2 Protocol 1	Art. 14	Art. 13
n/implementation with regards to qualifications										
6. Lack of harmonization/implementation in reception	✓	✓		✓	✓	✓	✓	✓	✓	✓
7. Issues with integration services and discrimination						✓	✓	✓	✓	
8. Lack of mutual recognition										
9. Ineffective returns	✓		✓							

## 5. Pre-arrival

The **lack of legal pathways** (*Gap/Barrier 1*) and pushbacks/pullbacks at sea undermines the **right to asylum and non-refoulement**, as well as other fundamental rights including the rights of the child, prohibition from torture, inhumane and degrading treatment and the right to life.

In the *Hirsi Jamaa vs. Italy* case (2012), the ECtHR considered that when a person is under the continuous and exclusive de jure and de facto control of a parties' authority, the ECHR applies even if the event occurred outside the territory of the State (and, therefore, outside the territorial scope of the Convention) (ECRE, 2017 c).

Hirsi Jamaa vs. Italy case (2012), ECtHR, Application No. 27765/09

The applicants, eleven Somali nationals and thirteen Eritrean nationals, were part of a group of about two hundred individuals who left Libya aboard three vessels with the aim of reaching the Italian coast.

On 6 May 2009, the Italian military ships intercepted them in Maltese waters and returned them to Libya. The applicants complained that during that voyage the Italian authorities did not inform them of their real destination and took no steps to identify them. On arrival in the Port of Tripoli, following a ten-hour voyage, the migrants were handed over to the Libyan authorities.

Two of the applicants died in unknown circumstances after the events in question.

The Court considered that the applicants were under the jurisdiction of Italy for the purposes of the Convention and agreed that there were violations of Article 3 on **torture**, Article 4 of Protocol No. 4 on the prohibition of **collective expulsion** of aliens and Article 13 (right to effective remedy) taken in conjunction with Article 3 and with Article 4 of Protocol No.4.<sup>119</sup>

## 6. Arrival and application

The deficiencies in the Dublin system (in particular transfers to Member States with deficient asylum systems) and the lack of convergence of asylum procedures (*Gap/Barrier 4 and 5*) also undermine the **right to asylum** because some applicants do not effectively access procedures; or asylum applications are not duly considered. Violations of Article 3 and Article 13 in conjunction with Article 3 were found in the landmark case of *M.S.S v. Belgium and Greece*:

ECtHR - M.S.S. v Belgium and Greece [GC], Application No. 30696/09

The case involved Afghan citizen who requested asylum in Belgium. The Belgian authorities applied the Dublin Regulation and transferred the applicant back to Greece, the country through which he entered the EU. In Greece, the applicant was detained in degrading conditions, first, and released after while the decision was made with no accommodation, work permit or any kind of resources.

The applicant filed a claim against Belgium and Greece on the basis of Article 2 of the Convention (right to life), Article 3 (prohibition on torture or to inhuman or degrading treatment or punishment) and Article 13 (right to an effective remedy). The Court decided that Greece violated Article 3 because of the applicant's conditions of detention and Article 13 taken with Article 3 in relation to deficiencies in asylum procedures. The Court also found a violation of Article 3 because the applicant was sent back to Greece and exposed to deficient asylum procedures.

The Court ruled that in applying the Dublin rules, Member States must first verify how the national authorities apply their legislation on asylum in practice before returning asylum-seekers.

<sup>119</sup> See also [EDAL database](#).

In the **CJEU Abdullahi judgment**<sup>120</sup>, the court ruled, in the context of a take charge request of a Somali applicant by Austria to Hungary, that **the only way** in which the applicant for asylum can call into question the transfer to the first EU Member State of arrival is by pleading ‘**systemic deficiencies in the asylum procedure** and in the conditions for the reception of applicants for asylum in that latter Member State, which provide substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights’. The **ECHR took a less restrictive approach** in the **Tarakhel**<sup>121</sup> case concerning a family of Afghans who arrived in Italy but then moved on to Austria and then Switzerland. The court found the complaints of a violation of Article 3 of the Convention admissible, ruling that systemic deficiencies or flaws are only one way to demonstrate a risk of ill-treatment on return, in light of the applicant’s individual circumstances.

Uneven access to legal aid (*Gap/ Barrier 5*) can have a significant impact on the outcome of an application for international protection and undermines the **right to an effective remedy**.

I.M. v. France (I.M. v. France, 2012), ECtHR

The case concerns a Sudanese national from Darfur who alleged that the decision of the French authorities to deport him to Sudan would place him at a risk of inhuman or degrading treatment, in breach of Article 3 of the ECHR and that he had not had access to effective remedy in France under the fast track asylum procedure, in breach of Article 13 of the ECHR.

The ECtHR found a violation of the **right to effective remedy** under Article 13 with regard to the claim under Article 3. The court ruled that the detained foreigner could not effectively lodge an application for asylum under the fast track procedure (which includes shorter time periods for lodging an application), and had not had adequate access to legal and linguistic assistance (the allegation of violation of Article 3 was considered inadmissible as the applicant had been granted asylum on appeal by the national asylum appeal court).

Shortages in accommodation places, poor living conditions in the reception centres, overcrowding and sub-standard conditions (*Gap/ Barrier 6*) are all detrimental to the applicant’s physical and psychological integrity, undermining the **right to family life** as set out under Article 7 of CFR and the **right against torture, inhumane or degrading treatment** as set out under Article 4 of CFR.

CJEU -Case C-79/13, Saciri, 27 February 2014

A family sought asylum in Belgium in 2010 and the agency responsible for providing reception told them that they could not provide them with accommodation. The asylum-seekers searched for accommodation in the private market and requested financial support to another public agency. This support was refused due to the fact that they were not living in a public accommodation provided by the first agency. The Brussels Higher Labour Court requested a clarification from the CJEU regarding the state’s obligations to provide financial allowance to asylum-seekers (under the Reception Conditions Directive).

The CJEU considered that if a Member State provide material reception to asylum-seekers in the form of a financial allowance, this allowance “must be sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence by enabling them to obtain housing, if necessary, on the private rental market.”<sup>122</sup> The allowances must be also enough to preserve the family unity and the best interests of the child. Additionally, the Court considered that the saturation of asylum reception centres is not a justification for any derogation from meeting the

<sup>120</sup> CJEU decision in C-394/12 Abdullahi, 10 December 2013.

<sup>121</sup> ECtHR - Tarakhel v. Switzerland, Application no. 29217/12.

<sup>122</sup> Recital 42, Case C-79/13, Saciri

reception conditions standards.

ECtHR - S.F. and Others v. Bulgaria, Application No. 8138/16, 7 December 2017

On 14 August 2015, the applicants (a couple with their sons), who fled from Iraq, were served with orders for removal from Bulgaria and detained. The applicants lodged an application to the ECtHR against Bulgaria alleging that the conditions in which they had been kept in the border police's detention facility in Vidin had been **inhuman and degrading**.

The Court found a breach of Article 3 ECHR and noted that the **detention of minors**, whether accompanied or not, raises particular issues in that regard, since they are extremely vulnerable and have specific needs. Although the amount of time spent in the detention centre was short (between 32 and 41 hours), the lack of access to food and water for over 24 hours, the prohibition of access to a toilet and the conditions in the border police's detention facility (paint peeling off the walls and ceiling, dirty and worn out bunk beds, mattresses and bed linen and litter and damp cardboard on the floor) must have considerably affected the applicants both physically and psychologically.

The **right to liberty and security** as enshrined under Article 5 ECHR and Article 6 of CFR protects an individual's freedom from unreasonable detention, is a concern at various points in the asylum journey, including pending Dublin transfers; during the asylum procedure and during return procedures.

Under the Dublin III Regulation (Article 28) and the Reception Conditions Directive (Article 8), asylum-seekers can be detained when there is a "risk of absconding [...]" (*Gap/Barrier 4*), yet neither of the legislation defines or clarifies the meaning of 'risk' (AIDA, 2015). There are reports and cases of the misuse of detention within the context of returns (*Gap/Barrier 9*).

ECtHR – O.M. v. Hungary, Application no. 9912/15, 5 July 2016

The case involved an asylum-seeker who was detained for 58 days due to the fact that his identity and nationality had not been clarified and the risks of absconding.

The ECtHR found the **detention** of an asylum-seeker in Hungary was arbitrary, in violation of Article 5(1) ECHR. The Court found that the Hungarian authorities had failed to make an individualised assessment and to take into account the applicant's vulnerability in the detention facility based on his sexual orientation.

The Court highlighted that authorities should exercise special care when deciding on **deprivation of liberty** to avoid situations generating the plight that forced asylum-seekers to flee in the first place.

CJEU, Said Shamilovich Kadzoev (Huchbarov) (Bulgaria), C-357/09 PPU, 30 November 2009

The case concerned the detention pending removal by Bulgarian authorities of a man whose nationality was disputed. The applicant was detained in 2006, and several applications for refugee status were rejected. In 2008 the applicant unsuccessfully applied for a less coercive alternative to detention.

The CJEU clarified the concept 'reasonable prospect of removal' of Article 15(4) of the Return Directive. According to the ruling, a person must be released when it appears that a reasonable prospect of removal no longer exists. Furthermore, it must be apparent that the removal can be carried out in a successful way. This does not happen where it appears unlikely that the person will be admitted to a third country. In all cases, the Court clarified that detention to proceed with the removal can only be applied if it is necessary to ensure the successful removal.

The **rights of the child** set out under Article 24 of CFR seek to extend particular care of human rights' protection of children. Children, many of which are unaccompanied, face particularly serious challenges across the asylum journey. As a vulnerable group, refugee children and their rights are susceptible to violation and abuse due to the systematic flaws in the asylum procedure and reception centres (*Gaps/Barriers 3, 4, 5 & 6*).

## 7. Post-application

While international and EU law confer civil, economic and social rights to beneficiaries of international protection, there are barriers to implementing these in practice. Many of these rights also apply to asylum-seekers during the application phase, as set out in the Reception Conditions Directive (Recast).

The **right to engage in work** set out under Article 15 of CFR is an important right that can ensure that the autonomy of applicants for international protection can be restored. Obstacles to the right to work also undermine the right to private life under Article 7 of the CFF (and Article 8 of the ECHR). The 1951 Geneva Convention does not offer as many guarantees as EU rules, but requires that refugees who are lawfully staying in a country of asylum have a right to wage-earning employment identical to the greatest access afforded to the most favoured foreigners (17(1)) and that refugees should have access to the labour market after three years residence (Article 17(2)). Obstacles to achieving these e right was discussed in *Gap/Barrier 7* with regards to difficulties for beneficiaries of international protection to access to labour market and shortcomings of integration measures.

**Access to education** as set out under Article 14 of CFR is another important right related to the generation and leveraging of human capital. Delays in asylum procedures (such as *Gap/Barrier 4*) and obstacles to accessing education experienced by beneficiaries of international protection (*Gap/Barrier 7*) may further prolong access to education for minors, which can have a lasting impact over their life-course in terms of income generation and productivity.

### ECtHR – B.A.C. v. Greece, Application no. 11981/15, 13 October 2016

The applicant was a Turkish national who fled Turkey after being persecuted, tortured and arrested due to his political opinion. In 2002, he reached Greece and his asylum application was rejected at first instance. On appeal, the Advisory Board on Asylum issued a favourable opinion in respect of the applicant, however the decision was not communicated to the applicant.

From 2003 to 2015, the applicant lived in Athens and renewed his asylum-seeker's card every six months, which did not give him the right to work or other rights such as opening a bank account.

In 2015, the applicant complained before the ECtHR of an **infringement of his private life, protected in 8 ECHR**, on the grounds that he had lived in Greece for twelve years in a situation of uncertainty which had a substantial impact on his **working and family life** (inability to obtain a work permit, apply to university, etc).

The ECtHR found a **breach of Article 8** recognising that the uncertainty of the applicant's status negatively affected his private life. The court also found a **violation of Article 13** on the basis that the competent authorities had failed to establish an effective and accessible procedure to protect the right to private life by means of appropriate regulations to guarantee that the applicant's asylum request is examined within a reasonable time.

The **right to healthcare** as enshrined under Article 35 of CFR ensures that all persons are entitled to receive appropriate physical and mental health care, including access to medical services and sanitation. Asylum-seekers' right to access healthcare can be undermined due to over-crowding and sub-standard conditions in reception centres (*Gap/Barrier 6*). Furthermore, the lack of specialised support, including mental care for beneficiaries of international protection (*Gap/Barrier 7*) does not ensure the fulfilment of this right.

The **right to non-discrimination** as set out under Article 21 of CFR provides a legal basis for the equal treatment of individuals from a different racial/ethnic group, religious belief, language or nationality. This right may be infringed when beneficiaries of international protection are not treated at par with EU citizens, especially when accessing employment (*Gap/ Barrier 7*).

Discrimination also hinders the applicant's prospect of integration.

Finally, **wrongful return decisions**, which might be the result of shortcomings in the implementation of the Return Directive (*Gap/Barrier 9*), undermine the **right to asylum** and the key principle of non-refoulement.

## 4. ASSESSMENT OF THE IMPACTS

### Key findings

- The gaps and barriers have several issues in common, which drive adverse impacts on individuals, the Member States and the EU. These issues were poor management of asylum inflows, poor accounting of individual needs and preferences and low predictability of asylum procedures.
- Irregular migration emerged as a key impact with high associated costs (estimated EUR 33-36 billion per year)
- Inefficiencies in asylum procedures were also considerable (est. EUR 2.1-4.4 billion) and exceeded the estimated loss in tax revenue (est. 1.1-1.8 billion) due to poorer employment opportunities and lower productivity.
- Over 8,000 deaths were recorded in the Mediterranean Sea in 2016 and 2017. In addition, the poor living conditions experienced by asylum-seekers, particularly in hotspots and detention centres, also presents challenges to physical and mental health.

This chapter investigates the impacts of gaps and barriers in EU asylum policy, which were identified and described in Chapter 3. Section I presents an overview of the methodology while Section II presents the findings of the assessment. A wide range of economic and individual impacts were identified and many were quantified and monetised in annual values. The impacts on fundamental rights were considered a horizontal issue and are reviewed in Chapter 3 subsequent to the presentation of each gap and barrier (see Chapter 3.V).

### I. Methodology

The identified gaps and barriers cut across stages of the asylum journey. These stages were defined as pre-arrival, arrival, application and post-application. An asylum-seeker may be affected by more than one Gap/Barrier, and the direct impacts may lead to other impacts for the individual in a later stage of the journey. For example, inefficiencies at the arrival stage (i.e. time for the execution of the transfer) create further delays that affect the application and post-application stages (i.e. delayed starting of the application for asylum, in turn reflected in delays in stepping-up the efforts for integration).

In assessing the impacts of the gaps and barriers, we sought to identify the key underlying issues. A 'key issue' may be raised by one or more Gap/Barriers and an impact may be associated with one or more Gap/Barriers. The 'key issues' are explained in greater detail below with references to all of the gaps and barriers considered:

- Poor management and coordination. Member States may exhibit low capacity or resources to coordinate an effective response within the established time limits. The inability to respond adequately may generate delays and other adverse impacts such as the over-utilisation of detention. This issue is reflected in the lack of solidarity with respect to the Dublin system (*Gap/Barrier 3*), the lack of legal channels (*Gap/Barrier 1*) to some extent and also the limited execution of return decisions (*Gap/Barrier 9*).
- Poor accounting of individual needs and preferences. The asylum procedure does not take into account individual needs and preferences, which may lead to lower levels of consent and a greater prevalence of secondary movements. Greater consideration of individual preferences and needs may promote the integration of beneficiaries of international protection into society and the economic returns of that integration. This

issue is most evident in the ineffective mechanism to identify Member State responsibility (*Gap/Barrier 4*) and the lack of mutual recognition (*Gap/Barrier 8*).

- Low predictability. The asylum process is characterized by a low level of external predictability (e.g. asylum inflow shifts by year) as well as internal predictability (e.g. outcomes of asylum decisions). Internal predictability is related to the transparency of procedures and a joint understanding of the decisions reached. Low predictability may be a driver of appeals (OECD, 2013), which the analysis identified as a major driver of inefficiency and costs. This issue is most evident with the lack of harmonization with regards to qualifications and reception conditions (*Gap/Barriers 5 and 6*).
- Discrimination and xenophobia. Asylum-seekers and beneficiaries of international protection may be discriminated against or exploited at various stages in the journey. Discrimination may take the form of discriminatory and xenophobic attitudes of the native population as well as institutional discrimination in the labour market as well as other sectors of activity. Such experiences may be a direct infringement on their health and well-being, while others hamper their potential to integrate into society. This issue is most evident with the limitations of EU external action (*Gap/Barrier 2*) and integration services (*Gap/Barrier 7*).

**These four 'key issues' mapped to four economic impacts and five individual impacts.** The economic impacts included irregular migration, external action and cooperation, and inefficiencies in asylum processes and procedures, and lost tax revenue. Individual impacts included mortality and exploitation, discrimination and xenophobia, poor living conditions, limited access to healthcare and limited opportunities for employment and labour market integration. In addition, vulnerable populations such as **children, women and individuals with disabilities and chronic conditions may suffer worse impacts** particularly when protective measures are not in place.

Based on the conceptual framework we developed a **database of relevant indicators** by Member State. Some indicators were directly taken from the source (e.g. number of asylum applications from Eurostat) while others were constructed based on studies and evaluations. Two key sources of information were an evaluation of the Dublin III Regulation carried out in 2015 (ICF, 2015) and a study on the feasibility of joint processing of asylum applications in the EU ( Ramboll and Eurasyllum, 2010). the available information (e.g. daily cost of reception). An overview of the indicators can be found in Annex 2.I. In addition, the analysis drew from an extensive review of published studies from research organisations, academic publications and interest groups focused in the area of asylum. Estimates from several published Cost of non-Europe studies were also incorporated. For example, we drew from studies on procedural rights and detention conditions, internal border controls in the Schengen area, and equality and xenophobia.

To the extent possible, we constructed quantitative annual estimates for each of the identified impacts with respect to each of the relevant gaps/barriers. In cases where an impact could not be monetised we presented the impacts in terms of the number of individuals affected.

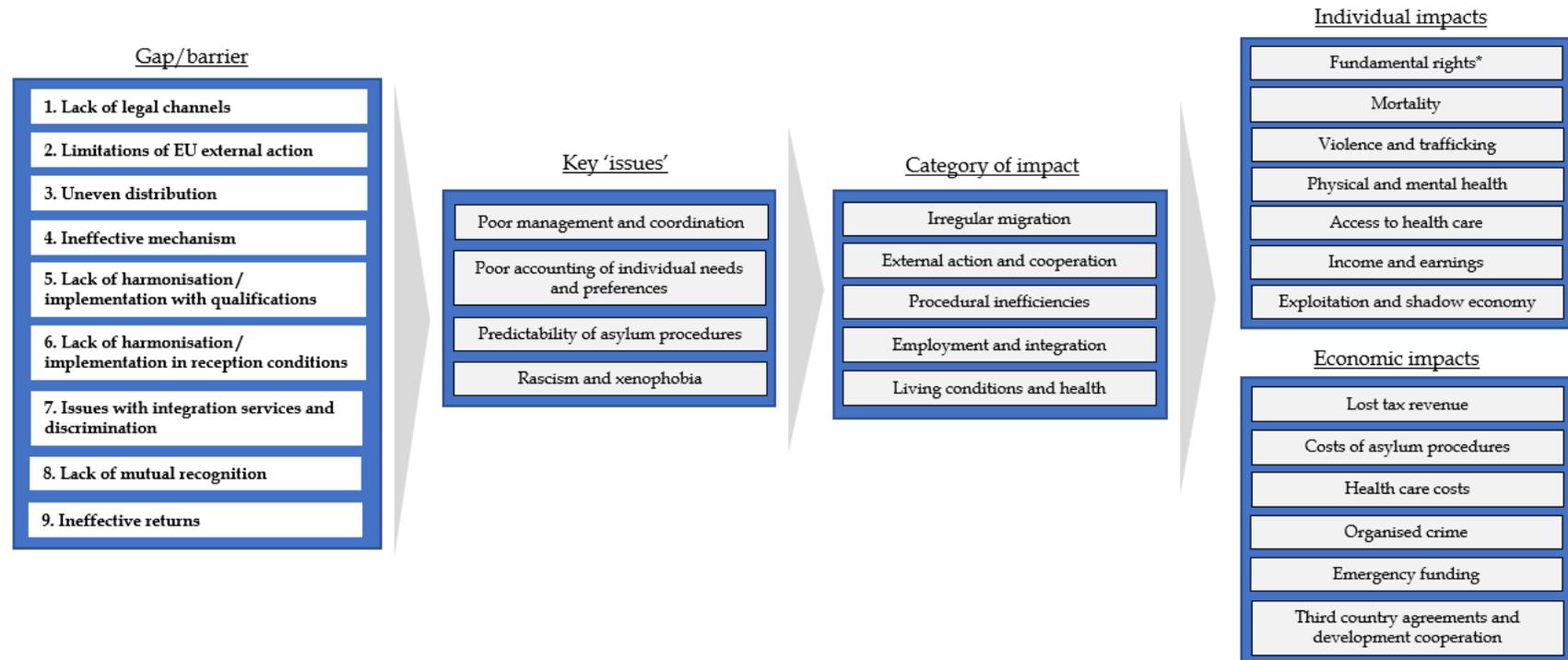
The number of asylum applications lodged in the EU every year emerged as a key variable and driver of costs and other impacts. For example, the estimated number of affected individuals may be high due to the large number of asylum applications lodged that year rather than a reflection of the Gap/Barrier. To base our assessment of the gaps and barriers on just one year of data may thus be weak and misleading. For this reason, we considered two different years - 2016 represents a 'high scenario' when asylum inflows were above average, but less than 2015 levels while 2017, when inflows declined, represents a 'low scenario'. Each quantitative finding is presented as a range, which reflects the different estimates for the two different years.

A key challenge in estimating these impacts is the extent to which the costs (in particular indirect

costs) are due to shortcomings in the CEAS as opposed to shortcomings in EU legislation more broadly. This was an issue particularly for the first two categories of impact – irregular migration and external action. Presenting the overall costs for these impacts would overstate the impacts of the gaps and barriers in the CEAS. We define an **adjustment factor** to break down the overall costs into these two components – costs due to shortcomings in the CEAS and other EU action. This adjustment factor is based on two proxies. The first is the number of asylum applications lodged per year, which is a proxy for the number of asylum-seekers traveling to the EU. The second is the number of irregular border crossings reported by FRONTEX, which is a proxy for the overall level of irregular migration. More than 1.8 million irregular border crossings were detected in 2015 (European Commission, 2018). In that same year, 1.3 million asylum applications were recorded in Eurostat. An estimated 97 percent of these individuals entered the EU via irregular means. Thus, we define the adjustment factor to be 0.70 (97% of 1.3 million divided by 1.8 million). This adjustment factor is used in several of our estimations. The implicit assumption in defining this adjustment factor is that all asylum applications are lodged by asylum-seekers who traveled to the EU via an irregular channel.

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**Figure 8: Conceptual framework**

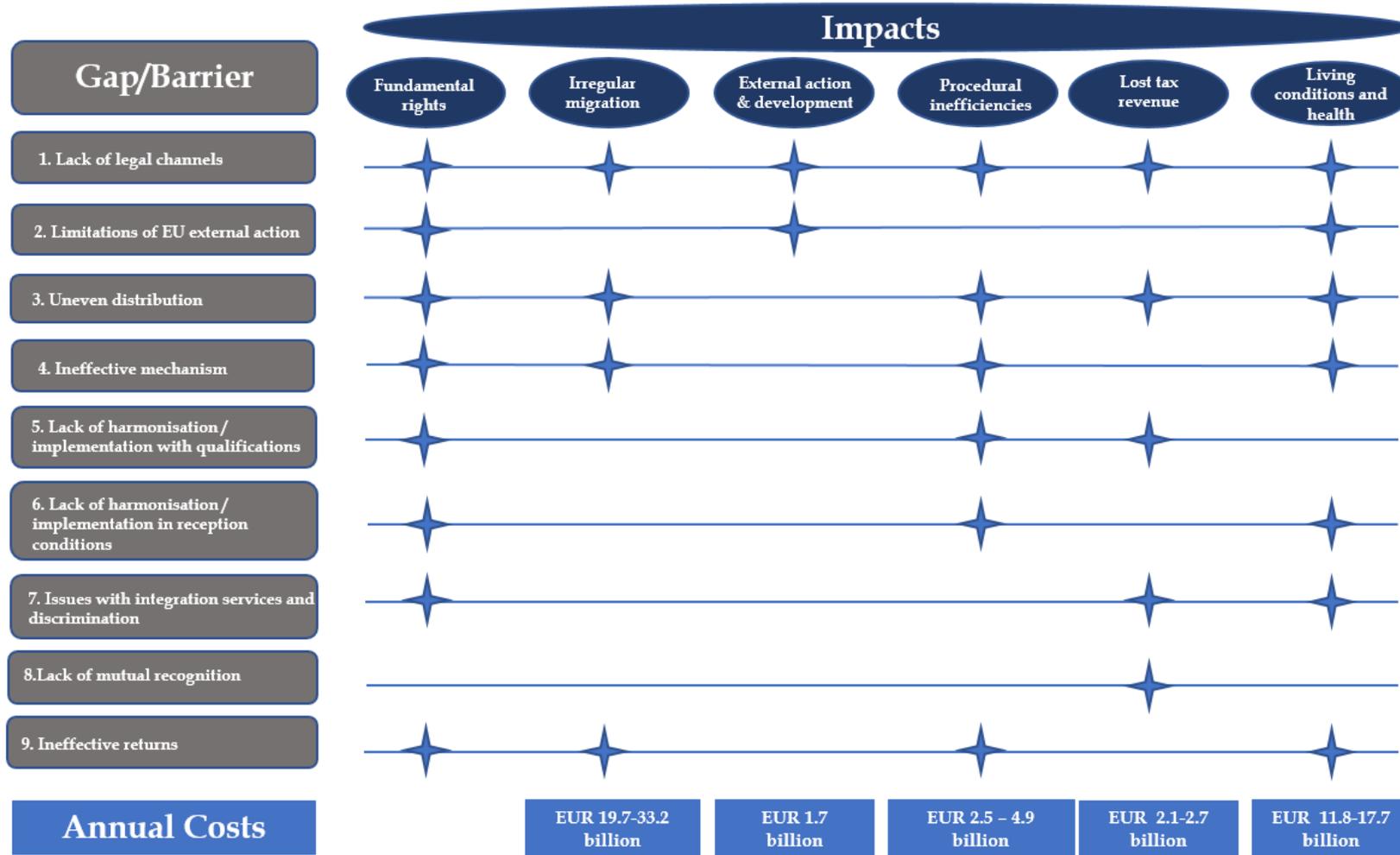


Source: Developed by study authors. \* Impacts on fundamental rights are assessed in Chapter 3.V. The remaining impacts are assessed in this chapter.

## **II. Findings**

Figure 9 presents an overview of the key findings from the analysis. It highlights the mapping of the gaps/barriers to the six impacts and the main quantitative results.

**Figure 9: Overview of findings on the impacts of the status quo**



The findings with respect to each of the six impacts is reviewed below. A more detailed presentation of the calculations can be found in Annex 2.II.

### 1. Irregular migration

Irregular migration is one of the key impacts of the gaps and barriers in the CEAS. Asylum-seekers arriving in the EU are typically irregular due to the lack of legal channels (*Gap/Barrier 1*). Asylum-seekers who lodge an application and subsequently move to another Member State transition into irregular status. Lastly, asylum-seekers who receive a negative decision on their asylum application and do not return to the source country are also in an irregular status.

An assessment of an EU legislative proposal on humanitarian visas found that irregular migration is associated with a range of economic impacts on the EU and its Member States in addition to adverse impacts on individuals (van Ballegooij and Navarra, 2018). From the EU and Member State perspective, irregular migration implies significant direct costs in terms of **border security and surveillance, search and rescue missions and emergency funding for hotspots**. The 2021-2027 Multi-Annual Financial Framework proposes a new heading for migration and border management (Heading 4) and a substantial increase to funding for border management. Spending in the area of migration and border management would more than double overall, with the budgets for some agencies such as Frontex being tripled from current levels (EPRS, 2018). Irregular migration may also increase the risk that Member States introduce **temporary internal border controls in the Schengen area, as well as higher levels of organised crime**.

From the individual's perspective, the key consequence is the lack of access to the formal labour market and national social protection systems. As a result they may face a **greater risk of exploitative labour practices and abuse** reflected in lower wages and job security. These impacts may translate to impacts for the EU and Member States in terms of lower tax revenue and a proliferation of the shadow economy.

Table 8 presents an overview of the estimated costs associated with irregular migration. An adjustment factor is applied in all of the estimates to better reflect the costs due to shortcomings in the CEAS rather than EU action in the area of migration more broadly<sup>123</sup>. All of the estimates are described in greater detail in the remainder of the section except for the estimate for secondary movements, which is elaborated upon in Section 4.

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<sup>123</sup> For more information on the adjustment factor, please see Section I.

**Table 8: Estimated impacts – costs related to irregular migration**

Gap/barrier	Type of impact	Assessment	Estimated annual cost	EU/MS	
				EU	MS
Gap/Barrier 1	Border security and surveillance <sup>1</sup>	ISF: EUR 7 million for EU actions and EUR 73 million for emergency assistance; Frontex: EUR 270 million; EU-LISA EUR 153 million	EUR 352 million*	✓	±
	Private shipping – search and rescue missions <sup>1</sup>	EUR 23,000 to EUR 216,000 per rescue operation	EUR 19-216 million*		✓
	Organised crime <sup>1</sup>	Human trafficking: EUR 17.5-36.5 billion; Europol Migrant Smuggling Centre: EUR 5 million	EUR 12.3-25.6 billion*	✓	±
Gap/Barriers 1, 3 and 4	Risk to closing internal Schengen borders <sup>2</sup>	EUR 100 billion over 10 years	EUR 7 billion*	✓	±
Gap/Barrier 3	Secondary movements and risk of falling into the shadow economy	246-295 thousand asylum-seekers engaged in secondary movements and were recorded in more than one Member State	This cost is presented in Section 4 – Employment and integration		✓
<b>Total costs related to irregular migration:</b>			<b>EUR 19.7-33.2 billion</b>		

<sup>1</sup> Estimates for these impacts are presented in greater detail in van Ballegooij and Navarra, 2018. <sup>2</sup> Estimates from other Cost of non-Europe reports. <sup>3</sup> Estimated based on data from secondary sources including asylum statistics from 2016 and 2017. See text in the section below for information on the calculation. \* The adjustment factor of 0.70 was applied. ± Member States may also incur these costs, but they were not estimated in this study.

Most of the estimates presented in Table 8 are based on figures presented in van Ballegooij and Navarra, 2018. Four of these estimates are linked with the lack of legal channels to seek asylum to the EU (*Gap/Barrier 1*). With regards to **border security and surveillance**, the estimate reflects actions taken under the ISF- Border and Visas instrument and Frontex to harmonise border control measures across the Member States. Since 2016, Frontex supported both border management and return operations. The adjustment factor was applied for most of these estimates, assuming that some share of border security and surveillance costs is due to irregular migration stemming from gaps and barriers in EU action outside the remit of the CEAS. The estimate also includes the cost of operation EU-LISA, which is an IT system that facilitates the exchange from Eurodac between the Member States.

The 2014-2017 annual work programmes from **ISF - Border and Visas** provide information on the costs of EU activities promoting the harmonisation of border control measures across different actors and the Member States.<sup>124</sup> This paper found a stable outlay or fixed cost of about EUR 10 million each year for grants, procurement, training and other actions, of which an estimated 70% is related to border management (EUR 7 million)<sup>125</sup>. Actual costs are likely to be higher, due to the requirement that Member States provide co-financing and other adjustments. In addition, emergency assistance was provided through ISF-Borders and Visas through a separate budget line. In 2017, emergency assistance from ISF – Border and Visas was EUR 73 million. Italy and Greece were the primary recipients of this financial support in 2015 and 2016<sup>126</sup>.

The annual budget for **Frontex** in 2017 was about EUR 270 million. About 20 percent of this funding was dedicated to the return of illegal migrants. The 2021-2027 Multi-Annual Financial Framework proposes a new heading for migration and border management (Heading 4) with an overall budget line of EUR 30.8 billion over the period. Spending in this area would more than double overall, with the budgets for some agencies such as Frontex being tripled from current levels (EPRS, 2018). The budget for the Asylum and Migration Integration Fund (AMIF) was not included in the calculation because these funds are used for the integration of asylum-seekers and economic migrants, not for border control.

The actual level of costs is expected to be higher due to Member State expenditures, which are not reflected. Member State expenses on border control and management fall disproportionately on border Member States that are the main countries of arrival. For example, it is estimated that Italy spent EUR 3.4 billion in 2016 alone to respond to irregular inflows, of which 25 percent was dedicated to sea rescue (van Ballegooij and Navarra, 2018).

The cost of **search and rescue missions of commercial ships** falls mainly on the Member States. Van Ballegooij and Navarra, 2018 estimate that the cost per mission ranges from EUR 23,000 to EUR 216,000. The number of missions carried out however, is more difficult to obtain. Based on a personal correspondence with the European Community Shipowners' Association, we obtained an estimate of 1,424 search and rescue missions in 2016 and 1,166 such missions in 2017 that were carried out in the Central Mediterranean. Based on these figures, we estimate the overall cost to be EUR 27 to 308 million. The adjustment factor was applied to this figure as some of the individuals rescued may be economic migrants.

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<sup>124</sup> The most recent work programme provided the basis for the review, which was conducted on 9 March 2018. These work programmes were accessed from the DG HOME website: [https://ec.europa.eu/home-affairs/financing/fundings/security-and-safeguarding-liberties/internal-security-fund-borders/union-actions\\_en](https://ec.europa.eu/home-affairs/financing/fundings/security-and-safeguarding-liberties/internal-security-fund-borders/union-actions_en). Activities for border management and the common visa policy share the same budget line. However, it is possible to distinguish activities supporting the different objectives through an activity-level review. ISF - Borders and Visa instrument has an initial allocation of EUR 2,760 million for the 2014-2020 period.

<sup>125</sup> This estimate is based on a review of the itemised figures included in the 2014 budget.

<sup>126</sup> Breakdown by country is not available for other years. Funds to Greece and Italy was 57% of the total in 2015 and 39% of the total in 2016.

Asylum-seekers are also at high risk for **human trafficking** in their journey to the EU, which is often facilitated by smuggling networks. Due to the lack of available estimates, a range was constructed based on several research studies and the estimated number of trafficked persons in the EU available from Eurostat. The estimated cost had two components. The first was the cost experienced by the victims themselves and the second component was the cost to criminal networks involved in trafficking. The adjustment factor was applied to the overall sum as human trafficking may be ascribed to issues beyond the EU's asylum policy. The steps taken to reach the estimated range of EUR 17.6 billion to EUR 36.5 billion is described in detail in Annex 2.1.

In addition, irregular migration may increase the risk of closing internal borders. A recent study estimated the economic impacts of border controls within Schengen on the single market (van Ballegooij, 2016). The study found that border controls generated costs in terms of **delays for commuters, tourists and road freight as well as altered expectations in capital markets**. The costs of reintroducing border controls in the Schengen area has repercussions on the internal market estimated to be at least EUR 100 billion over 10 years. In addition, costs for border security and officers of EUR 20 billion initial and EUR 2-4 billion recurrently per year. For this study, we consider an annualised figure for the impacts on the internal market (EUR 10 billion). The adjustment factor is applied as part of the cost may not be directly linked to asylum policy, but the EU's migration policy in general.

The monetised estimates focus on the pre-arrival stage, however, **irregular migration is a concern at the subsequent stages due to certain gaps and barriers**. The sources of irregular migration in the arrival, application and post-application stages is described below. The impacts of irregular migration in these stages is primarily related to the shadow economy and informal employment, leading to lower tax revenue. The monetisation of these impacts are discussed in Section 4.

**Secondary movements** of asylum-seekers in the arrival and application stages can also be understood as irregular migration. Data on the number of foreign hits registered in the Eurodac system can provide insight as to the overall magnitude of this phenomenon (EU-LISA, 2017 and EU-LISA, 2018)<sup>127</sup>. In total, there were an estimated 295,171 such hits in 2016 and 245,931 in 2017. These individuals are at risk for falling into the shadow economy generating a negative cost for Member States. The estimation of this cost is presented in Section 4.

Using available data, we also investigated the potential magnitude of irregular migration stemming from barriers in the implementation of the Return Directive (*Gap/Barrier 9*). Individuals whose claim for asylum are rejected receive a court order to leave the EU. However, some may remain in the EU and transition into irregular migrant status (*Gap/Barrier 9*)<sup>128</sup>. For this estimation we reviewed the estimated number of asylum-seekers rejected at first and final instances. We then considered what share was likely to have left the EU. While such figures were not available, we drew on a reasonable proxy for the estimation, which was the overall number of return orders and returns in the EU. These figures included both economic migrants and asylum-seekers. The data suggest that **about half of individuals who were ordered to return did in fact return** in 2016, while the share decreased in 2017 to about 40 percent (see Annex 2.II.1 for more information). We assume that the individuals who did not return remained in the EU as an irregular migrant. We estimate that 316,032 rejected asylum-seekers remained in the EU in 2016 while the corresponding figure for 2017 was 164,220. The higher figure for 2016 is largely due to the higher overall number of asylum applications lodged that year as compared with 2017.

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<sup>127</sup> We relied on Category I foreign hits.

<sup>128</sup> Please refer to Chapter 3 Section IV.4 for reasons behind the ineffectiveness of return orders.

**Table 9: Estimated number of irregular migrants by gap/barrier**

Stage	Gap/Barrier	Est. number of individuals
Pre-arrival	1 – lack of legal channels	687 thousand – 1.2 million
Arrival and application	3 – Dublin does not ensure solidarity	246-295 thousand secondary movements
Post-application	9 – barriers to return	256 thousand to 316 thousand

Note: The calculations for the estimated number of individuals is described in the text below and in Annex 2.II.1. Lower and upper bound estimates are based on 2016 and 2017 figures.

## 2. External action and cooperation

Shortcomings in the CEAS, in particular Gap/Barrier 2, may also have negative repercussions on the EU's external action and development cooperation. One of the key components of EU external action is third country agreements, a notable example being the **EU-Turkey Statement** (Council of the European Union, 2016). Another is the **EU Trust Fund for Africa**, which supports activities for the Libyan Coast Guard and Navy to conduct search and rescue operations and to weaken smuggling networks and partly funds projects aimed at "addressing the root causes of migration". In the June 2018 European Council summit, Council agreed to launch the second tranche of the Facility for Refugees (European Council, 2018). It was also agreed at the summit to transfer EUR 500 million from the 11<sup>th</sup> EDF reserve to the **EU Emergency Trust Fund for Africa**, which already holds EUR 3.37 billion (European Commission, 2018). These funds are dispersed mainly through the EDF, DCI, ENI, DG HOME, and DG ECHO, and amount to about EUR 774 million per year<sup>129</sup>.

With respect to development cooperation, there are a number of relevant EU instruments that have been increasingly used to support EU migration policy objectives (European Parliament-LIBE, 2015). Such funding includes the Regional Development and Protection Programmes (RDPPs) and Mobility Partnerships (MPs). The level of **development funds used for migration policy objectives** has been estimated at EUR 100 million per year (European Parliament-LIBE, 2015).

Table 10 presents an overview of the costs associated with the impacts on EU external action and development cooperation. The adjustment factor is applied to more accurately assess the costs due to shortcomings in the CEAS rather than EU action related to migration more broadly<sup>130</sup>.

**Table 10: Estimated impacts – costs related to external action and cooperation**

Type of impact	Estimated annual cost	Assessment	EU/MS	
			EU	MS
Third country agreements	EUR 1.6 billion*	Emergency Trust Fund for Africa: EUR 774 million; Turkey agreement: EUR 1.5 billion	✓	

<sup>129</sup> The level of funding was divided by five as the Fund runs for five years from 2015 until 2020.

<sup>130</sup> For more information on the adjustment factor, please see Section I.

Development cooperation	EUR 70 million*	Development cooperation: EUR 100 million	✓	*
Total:	EUR 1.7 billion			

Note: Estimates for these impacts are presented in greater detail in van Ballegooij and Navarra, 2018. \* The adjustment factor of 0.70 was applied.

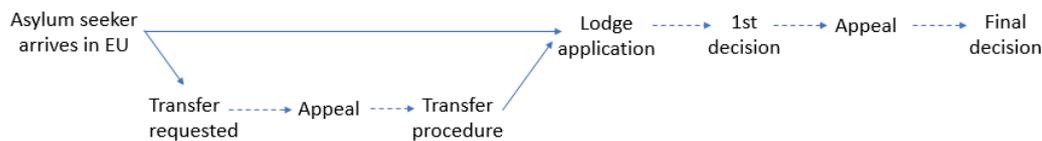
### 3. Procedural inefficiencies

A number of the gaps and barriers across the asylum process generate inefficiencies that are reflected in additional fiscal costs borne by the Member States and the EU. Our analysis focuses on fiscal inefficiencies in the following areas: (1) Dublin transfers; (2) Reception; (3) Asylum applications; and (4) Returns.

The analysis identified several underlying themes that cut across the four areas. For example, **poor management of asylum inflows can lead to greater utilisation of coercion and delays** at multiple stages generating greater costs for individuals, Member States and the EU. Guild et al, 2015c character the costs associated with coercion and delays in a qualitative manner. In this analysis we attempt to quantify some of these costs for the EU and the Member States.

Another common theme was **delays**. Figure 10 illustrates the general process that occurs from the time an asylum-seeker arrives in the EU and a final decision is reached. The dashed lines indicate where delays may occur. The same individual may experience delays at multiple points in the asylum process that accrue into a larger, cumulative delay.

**Figure 10: Steps in the asylum procedure**



Note: Dashed lines indicate where delays may occur.

Another key theme is the **poor predictability of asylum procedures** in the status quo. Limited predictability would imply that judicial decisions are not made in a consistent, transparent way across Member States or even across cases. This is reflected in a high rate of appeals to decisions regarding transfers and asylum decisions, which may drive judicial costs for Member States and delays in completing the asylum procedure. The appeals procedure draws on time and financial resources that may have been avoided if the first decision accurately responded to the case and was accepted by the asylum applicant. While some level of appeals may be expected, a high rate of appeals is a symptom of an ineffective judicial system (OECD, 2013).

Table 11 provides a summary of the findings while more information for each area is presented in the sub-sections below.

**Table 11: Overview of findings - procedural inefficiencies**

Area	Gap/Barrier	Inefficiency identified	Fiscal cost (EUR)
Dublin transfers	3 – lack of solidarity	Transfers that have no impact on the distribution of asylum-seekers across the EU	EUR 16 million

Area	Gap/Barrier	Inefficiency identified	Fiscal cost (EUR)
	1 – lack of legal channels	Unclear criteria and rules	EUR 186-236 million
	4 – ineffective mechanism	High rate of appeals	EUR 74-87 million
	4 – ineffective mechanism	Transfers that are approved but not carried out	EUR 390-509 million
	6 – reception conditions	Risk of absconding during transfer procedures and the consequent use of detention	EUR 7-10 million
	<b>Sub-total:</b>		
Applications	3 – lack of solidarity	Delays in processing applications due to uneven distribution	Robust relationship and evidence not available.
	5 – qualifications 6 – reception conditions	Asylum applications lodged in more than one Member State	EUR 178-428 million
	5 – qualifications	Appeals to asylum decisions	EUR 1.4-3.2 billion
	<b>Sub-total:</b>		
Returns	5 – qualifications 9 – ineffective returns	Forced rather than voluntary returns	EUR 272-401 million
	<b>Total fiscal costs of inefficiencies</b>		<b>EUR 2.5-4.9 billion</b>

Note: Lower and upper bound estimates are based on 2016 and 2017 figures.

### **Dublin transfers**

The gaps and barriers studied generate several types of inefficiencies with respect to Dublin transfers. First of all, the lack of solidarity to ensure a greater sharing of responsibility (*Gap/Barrier 3*) is reflected in **transfers that have no impact on the distribution of asylum-seekers across the EU**. For example, there may be four approved transfers from Country A to B and eight approved transfers from Country B to A. Rather than make 12 transfers between the two countries, simply making a transfer of four individuals from Country B to A would lead to the same redistributive result for lower cost. We conducted a pair-wise review of outgoing transfers across all the Member States and identified such instances of unnecessary transfers in 2016. In total, we estimated that 3,048 transfers out of a total of 18,406 transfers (or 17 percent) would not affect redistribution. Some share of these 3,048 transfers may need to occur due to the hierarchy of criteria and the unique background of each asylum-seeker. We assume that 20 percent of the 3,048 non-redistributive transfers are needed, leaving 2,438 transfers which could be eliminated. The fiscal cost of the remaining transfers was estimated based on the cost of

carrying out a Dublin transfer and the cost of reception during the six-month period in which a transfer should be carried out as per the Dublin Regulation. In total, the additional fiscal burden was estimated to be EUR 16 million in 2016<sup>131</sup>.

The ineffective mechanism to determine the Member State responsible for examining an asylum application (*Gap/Barrier 4*) also implies inefficiencies with regards to the number of outgoing transfer requests that are not approved by the receiving country. The ineffectiveness may be exacerbated by the lack of clear traceability and documentation due the absence of legal channels (*Gap/Barrier 1*). In 2016, only 54 percent of outgoing transfer requests were approved while the share was 66 percent in 2017. We assume that **a mechanism with clear criteria and rules would instead imply greater predictability and management of asylum flows** - that almost all transfer requests would be approved while for other individuals the sending country would take responsibility to examine the application. The Dublin III Regulation indicates time limits to submit a transfer and to respond to it. Cost savings could be gained by limiting the number of individuals held during this waiting period to those for whom the request would be approved. We estimate this savings to be approximately EUR 236 million in 2016 and EUR 186 million in 2017<sup>132</sup>.

The analysis also found that a **high number of approved transfers are not carried out**. As highlighted in Section 1, there were an estimated 64 to 83 thousand failed Dublin transfers each year. In this situation, the Member State where the asylum-seeker is at that time is obliged to take responsibility for examining the individual's application for asylum after 12 months (ECRE, 2016 d). This waiting period could have been avoided if all approved transfers were carried out, or if Member States took the responsibility to examine the application of such asylum-seekers from the beginning. We estimate the fiscal cost by multiplying the cost of reception over a period of six months for this sample of asylum-seekers. We multiply the figure by six months rather than 12 months to obtain a more conservative figure that accounts for the likelihood that some waiting period may still be unavoidable. This cost was estimated to be EUR 390 to 509 million<sup>133</sup>. A key assumption in that all these asylum-seekers remain in reception centres in the Member State during the waiting period. In practice, they may be held in detention or may abscond.

The unclear criteria and rules governing which Member State takes responsibility for an asylum application (*Gap/Barrier 4*) may also be a driver of the **high rate of appeals made to transfer requests**. ICF, 2015 estimates that the rate of appeal to transfer requests was 54 percent. **Greater clarity in the rules may result in greater predictability of which Member State has responsibility and the individual's acceptance of the Dublin transfer request** leading to a lower rate of appeals. We estimated the fiscal cost of appeals to transfer requests and considered an alternate scenario where the rate of appeals was 10 percent. The fiscal cost associated with appeals includes the judicial costs for processing the request as well as the provision of reception during the time period. ICF, 2015 estimates that the judicial costs are about EUR 870 per applicant. With regards to reception, we assumed the waiting period for the appeal to be about one month based on a proposed time limit of 15 days in the Dublin IV Regulation. Based on these parameters, we estimated the fiscal costs associated with appeals to transfer requests to be EUR 74 million in 2016 and EUR 87 million in 2017<sup>134</sup>.

The lack of harmonisation across Member States with regards to reception conditions (*Gap/Barrier 6*) may increase the **risk of absconding during transfer procedures and the consequent use of detention** by Member States. Another study assumed that detention was

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<sup>131</sup> Please refer to Annex 2.II.3 for more information on the calculation.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

used in 6.4 percent of approved transfer requests and the average detention period was two weeks (ICF, 2015). From a fiscal point of view, the use of detention is also more costly than reception. The evidence base suggests that the **average daily cost of detention per asylum-seeker in the EU was four times higher than for organised reception**<sup>135</sup>. We estimated the additional fiscal burden to Member States for using detention rather than organised reception. Based on these assumptions, we estimate the additional fiscal burden to be EUR 7.4 million in 2016 and 9.5 million in 2017<sup>136</sup>.

### **Asylum applications**

The analysis identified three sources of inefficiencies related to asylum applications in the status quo that have implications for fiscal costs for the Member States. These three issues were:

- Delays in processing asylum applications due to an uneven distribution;
- Asylum applications lodged in more than one Member State (also known as multiple applications); and
- Appeals to asylum decisions.

Each of these issues is described in more detail below along with a quantitative assessment of its fiscal impact on the Member States.

Limited legal pathways to the EU and the lack of solidarity and fair sharing of responsibility (*Gap/Barriers 1 and 3*) imply an uneven distribution of asylum-seekers across the Member States. Member States hosting a higher number of asylum-seekers confront greater costs, which are footed by national budgets and only mitigated to a limited extent by EU subsidies. For example, as shown in Box 8, Germany and Italy footed significant costs to provide for reception of asylum-seekers in recent years.

### **Box 8: Costs of reception for Member States: Germany and Italy**

In recent years, Germany has provided reception to a comparatively large share of asylum-seekers in the EU. The table below highlights the annual inflows and costs incurred by the country between 2015 and 2017. In 2016, **Germany** incurred a cost of over EUR 9.2 billion for the reception of these individuals.

<b>Germany</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Number of asylum applicants	441,800	722,265	222,683
Average annual cost for reception	€5,200,000,000	€9,234,000,000	€2,293,733,724

Sources by year: 2015: Eurostat news release 4 March 2016 (Eurostat, 2016 a) and (Kruger, 2017); 2016: Eurostat First time asylum applicants in the EU28 and (Kruger, 2017); 2017: AIDA- Statistics for Germany, and Forms and Levels of Material Reception Conditions 22 March 2018 (AIDA 2017).

The table below provides similar statistics for **Italy**, which has also hosted a large number of asylum-seekers. In 2016, these costs were an estimated EUR 1.6 billion.

<b>Italy</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
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<sup>135</sup> We estimate that the average daily cost of detention was EUR 135 per asylum-seeker as compared with EUR 34 for organised reception. Annex 3.I. provides information on how these estimate were obtained and the sources.

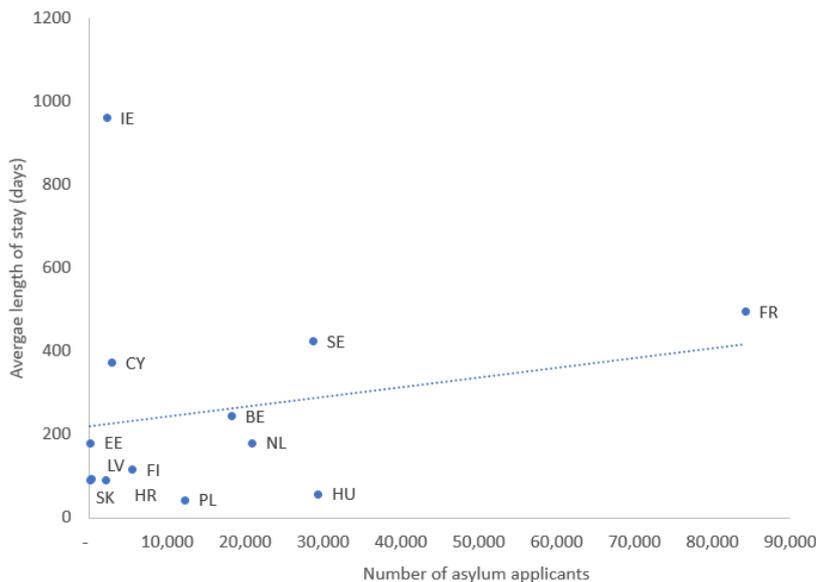
<sup>136</sup> Please refer to Annex 2.II.2 for more information about this calculation.

Number of asylum applicants	83,970	123,600	130,119
Average annual cost for reception	€1,072,716,750	€1,578,990,000	€1,662,270,225

Sources: Italian Ministry of Interior (Italian Ministry of Interior, 2016; Italian Ministry of Interior, 2017) and (ENM, 2017).

The uneven distribution of asylum-seekers across the Member States (*Gap/Barrier 3*) may also contribute to **delays during the application period**. Figure 11 plots the number of asylum applications in 2016 by the average length of stay, based on a survey carried out by the European Migration Network<sup>137</sup>. Each point in the chart represents a country. In total 12 countries are represented. A positive correlation between the number of asylum applicants in the Member State and the average length of stay in the same country is evident – a linear trend applied to the data suggests that an additional 1,000 applications would increase the average length of stay for each asylum-seeker in that country by 2 days. This finding could imply that an additional 15,000 applications would increase the length of stay by one month. These findings suggest that a **‘fairer’ distribution** of examining asylum applications by Member State capacity **may shorten the length of stay** in some Member States, reducing the costs of reception. Another study however, did not find a definite relationship between the number of asylum applications and the processing time, suggesting that the latter may be driven to a large extent by national asylum procedures (Dustmann et al, 2017). More robust evidence is needed to draw a conclusion regarding the relationship between the number of applicants and length of stay.

**Figure 11: Average length of stay in reception centres and the number of asylum-seekers (2016)**



Source: Estimates on average length of stay were made based on information provided in EMN, 2017. We obtained 2016 figures for the number of asylum-seekers from (Eurostat, 2017 b). The countries depicted include Slovakia, Finland, Croatia, the Netherlands, Hungary, Sweden, Ireland, France, Estonia, Latvia, Poland and Belgium.

The earlier legal analysis identified a lack of harmonisation across Member States in terms of qualification and reception conditions (*Gap/Barriers 5 and 6*). This lack of harmonisation may be

<sup>137</sup> The scatterplot is based on a sample of 12 Member States for which information on the length of stay could be determined from the survey results. These countries were Ireland, Cyprus, Estonia, Sweden, France, Hungary, the Netherlands, Latvia, Slovak Republic, Finland, Belgium and Poland.

a driver of secondary movements and the lodging of **multiple asylum applications** in different Member States. As a proxy for multiple applications, we used the number of Category 1 foreign hits registered in the Eurodac system (EU-LISA, 2017 and EU-LISA, 2018). These estimates may include individuals who lodged asylum applications in two Member States as well as individuals who entered the first Member State irregularly and moved to another Member State to lodge an application<sup>138</sup>. The number of foreign hits in the EU was 295,171 in 2016 and 245,931 in 2017. To put these figures into perspective, they represent 27 percent of all asylum applications lodged in the EU in those two years. We assumed that 15 to 30 percent of foreign hits included individuals who lodged applications in two different Member States. The cost of processing their asylum applications would be twice as high as for other asylum-seekers. Only one application would be valid while the costs associated with the other application would be a pure fiscal loss. Drawing on estimates for the cost of preparing an asylum application (Matrix and ICMPD, 2013), we estimate that this fiscal loss on Member States to be EUR 178 to 428 million per year<sup>139</sup>.

We investigated another inefficiency related to the lack of harmonisation and implementation with regards to qualification (*Gap/Barrier 5*), which is the perception that the **same standards are not being applied equally across Member States**. This is especially evident in the wide variation in the recognition rate and the type of beneficiary protection granted to asylum-seekers from the same nationality and the same year across Member States. For example, Figure 7 shows that the recognition rate varies from eight percent in Hungary to 84 percent in Slovakia with an overall average in the EU of 61 percent. It is unlikely that all of this variation can be due to the unique features of asylum-seekers and rather reflects to a large extent the lack of harmonisation in procedures across Member States. illustrates the wide range in the recognition rate.

The perception that standards are not being applied equally (*Gap/Barrier 5*) may be a likely contributor to the **high rate of appeal** associated with first instance decisions. In 2016, appeals were lodged for an estimated 16 percent of asylum decisions in the EU while in 2017 the appeal rate was 40 percent<sup>140</sup>. The costs of these appeals may vary across Member States due to differing institutional arrangements. For example, in some countries the appeals are examined by a dedicated administrative authority while in others the appeals are the responsibility of a judicial or quasi-judicial authority (AIDA, 2016). We developed an estimate for the cost of an appeal to an asylum decision based on information from several sources and also considered the cost of reception during the appeal period. In addition, we considered a scenario where the rate of appeals was reduced to 10 percent. Using these figures, we estimated the cost of a high rate of appeals to asylum decisions to be on the order of EUR 1.4 to 3.1 billion per year<sup>141</sup>.

### **Return of rejected asylum-seekers**

The lack of harmonisation with respect to asylum procedures and the limited predictability of judicial decisions may also have fiscal implications for the return of rejected asylum-seekers (*Gap/Barriers 5 and 9*). A rejected asylum-seeker may choose not to return voluntarily if he or she believes that the claim for asylum was not assessed fairly in accordance with the expected standards. **Greater standardisation and predictability in asylum procedures could potentially increase the probability of a voluntary return.** This has fiscal implications for

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<sup>138</sup> These hits represent “the fingerprint dataset of every applicant for international protection, aged 14 or older, who lodges an application in a Member State. These data are stored in the database and compared with all the data already held, namely the same type of data (category 1) and the data related to persons apprehended when irregularly crossing the external border of a Member State (category 2).”

<sup>139</sup> Please refer to Annex 2.II.2 for more information on the calculation.

<sup>140</sup> Estimate based on Eurostat figures on final decisions on asylum applications; for more information on the calculation, see Annex 2.II.2.3

<sup>141</sup> More information on these calculations can be found in Annex 2.II.2.3

Member States as the evidence suggests that voluntary returns are by and large less expensive than forced returns (ICF, 2015).

We estimated the fiscal cost associated with forced returns rather than voluntary returns. **A forced return is substantially more expensive than a voluntary return** – the former is estimated to be EUR 3,414 per individual as compared with EUR 560 per individual<sup>142</sup>. The estimate for a forced return includes the cost of holding an individual in detention over a two-week period.

Estimates are available for the number of rejected asylum-seekers EU-wide, but not the share who leave the EU. We estimated this figure drawing from information on the overall number of orders to leave the EU and the number who followed orders to leave through voluntary and forced means. In total we estimate that the number of rejected asylum-seekers who left the EU was 326,482 in 2016 and 222,044 in 2017. Using additional data from Eurostat, we estimated that about 43 percent of these individuals left the EU through forced means<sup>143</sup>. Considering an alternative scenario where all these individuals instead return voluntarily, we estimate a cost savings of EUR 401 million in 2016 and EUR 272 million in 2017 across the EU. Additional savings may be generated by the lower number of individuals in need of safeguards pending return, for example, emergency health care (Return Directive, Article 14).

Box 8 highlighted how the uneven distribution of asylum-seekers due to *Gap/Barriers 1 and 3* leads to higher fiscal costs for some Member States. In addition, **the uneven distribution of asylum-seekers may affect the costs for returning rejected asylum-seekers**. Member States hosting a higher number of asylum-seekers can expect a higher number of rejections and higher costs associated with promoting their departure from the EU. Box 9 provides some information about the return of rejected asylum-seekers in the same two countries reviewed earlier in the discussion on costs incurred in the application stage (see Box 8).

#### **Box 9: Costs of return for Member States: Germany and Italy**

**Germany** has long been a destination of choice for refugees to the EU. In 2017, Germany processed more asylum applications than all other 27 EU countries combined<sup>144</sup>. This also means a higher volume of returns than many other Member States – in 2017, there were a total of 198,935 negative decisions representing 46 percent of total rejections. To address this, Germany developed a comprehensive voluntary return program for failed asylum-seekers. One example to assist with voluntary returns is return counselling. This free service guides individuals through the process and their options, (even offering to apply with IOM to cover travel costs if necessary to return). Depending on status, some individuals also receive financial start-up assistance and the possibility of reintegration programmes at the country of origin<sup>145</sup>. For a few months, the German Federal Ministry of the Interior had also launched a program called *Your Country, Your Future, Now!* which offered housing aid for 12 months upon return to one's country of origin<sup>146</sup>.

<sup>142</sup> For information on the sources of these estimates as well as the overall calculation of fiscal burden, please refer to Annex 2.II.2.

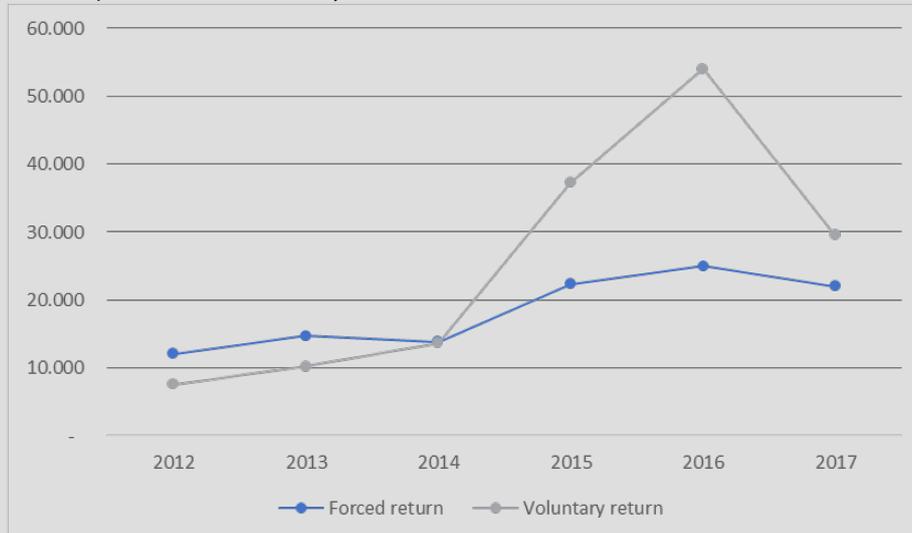
<sup>143</sup> See Table 30 in Annex 2.II.1.

<sup>144</sup> DW *German pilots refuse to carry out deportations* 2017. <https://www.dw.com/en/german-pilots-refuse-to-carry-out-deportations/a-41638832>

<sup>145</sup> German government Information portal on voluntary return <https://www.returningfromgermany.de/en>

<sup>146</sup> *Your Country, Your Future, Now!* Information Form [http://www.bamf.de/SharedDocs/Anlagen/EN/Downloads/Infothek/Rueckkehr/starthilfeplus-informationsblatt-erweiterung\\_englisch.html](http://www.bamf.de/SharedDocs/Anlagen/EN/Downloads/Infothek/Rueckkehr/starthilfeplus-informationsblatt-erweiterung_englisch.html)

Lately, the deportation process has been greatly slowed by a striking number of appeals to deportation orders and rejected asylum applications (nearly 50 percent in 2017)<sup>147</sup>. The figure below provides figures for German deportations and voluntary returns since 2012.



Source: Bundesregierung *Increase in annual deportations 2016*  
[https://www.bundesregierung.de/Content/EN/Artikel/2016/02\\_en/2016-02-17-kabinett-rueckfuehrungen\\_en.html](https://www.bundesregierung.de/Content/EN/Artikel/2016/02_en/2016-02-17-kabinett-rueckfuehrungen_en.html) and for 2016, 2017 figures:  
<http://www.bamf.de/EN/Infothek/Statistiken/FreiwilligeRueckkehr/freiwillige-rueckkehr-node.html>

In **Italy**, the number of rejected decisions on asylum decisions is also high – in 2017, there were 43,105 negative decisions representing 10 percent of the total in EU countries. In addition, forced returns appear to be on the rise. The Italian Interior Minister announced in 2017 his intent on stressing forced returns as the fundamental instrument for migratory flow management. The Minister also announced Italy's intent on doubling the funds for Assisted Voluntary Returns (AVR)<sup>148</sup>. This focus on forced returns comes in spite of Italy having been condemned by the European Court for Human Rights in 2012 for the forced return of Somali and Eritrean asylum-seekers into Libya<sup>149</sup>.

#### 4. Employment and integration

Several gaps and barriers in the CEAS mitigate the employment potential of asylum-seekers leading to a reduced level of income for individuals and tax revenue for Member States. Shortcomings in integration services (*Gap/Barrier 7*) is one likely contributor of this situation. Different types of recognition status (*Gap/Barrier 5*) and the lack of mutual recognition of positive asylum decisions (*Gap/Barrier 8*) are also likely to play a role. The **extended waiting periods** related to some gaps and barriers (for example, *Gap/Barriers 1 and 4*) may also delay social and labour market integration. For example, the Dublin procedure and the asylum application may each take more than a year. In a more optimal scenario, this waiting time may be devoted to adapting one's skills or searching for employment. A delay of even one year implies one year lost in terms of skill development and learning, which would have a longstanding impact on wages and productivity over the course of one's working life.

**Residential segregation** and **discrimination** may also limit employment potential and integration through physical and social barriers as highlighted in another Cost of non-Europe

<sup>147</sup> DW *German pilots refuse to carry out deportations 2017*. <https://www.dw.com/en/german-pilots-refuse-to-carry-out-deportations/a-41638832>

<sup>148</sup> Open Migration *5 things to know about Italy's plan for immigration 2017*. <https://openmigration.org/en/analyses/5-things-to-know-about-italys-plan-for-immigration/>

<sup>149</sup> European Court of Human Rights *Case of Hirsi Jamaa and Others v. Italy* 2012. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-109231%22%5D%7D>

study (van Ballegooij and Moxom, 2018). The study found that racial/ethnic discrimination is associated with a 5 percent lower probability of employment and a 10 percent increased probability of assault, leading to poorer health status and productivity. Beneficiaries of international protection may reside in areas that are on the periphery or in rural areas that are distant from economic opportunity (Fundamental Rights Agency, 2018 a). Moreover, residential segregation may restrict the **development of social contacts** that support entry into the labour market (Tanay & Peschner, 2016). For example, local authorities noted that for an urban reception centre in the Netherlands “people encounter each other automatically and therefore blend more naturally” (Fundamental Rights Agency, 2018 a). Among recent asylum-seekers and refugees without completed tertiary education in Germany, 60 percent found their first job in the host country through social contacts (Brucker, et al., 2016).

For the assessment, we estimated the conditional employment and income gap between asylum-seekers and the native population and estimated the associated lost tax revenue. We also consider the increased risk that some asylum-seekers face with regards to falling into the shadow economy. These individuals face greater vulnerability and risk due to the lack of control of working conditions and remuneration as well as social benefits. The economies of the Member States also suffer due to the reduction in taxable income.

Table 12 presents an overview of the findings. More information about each of the two calculations is presented below.

**Table 12: Overview of findings - employment and labour market integration**

Gap/Barrier	Source of cost	Loss in tax revenue for MS (EUR)
3 – Dublin does not ensure solidarity	Secondary movements – employment in the shadow economy	EUR 652-783 million
5 – qualifications	Employment and wage gap between asylum-seekers and beneficiaries of international protection as compared with natives	EUR 1.4-1.9 billion
7 – integration		
8 – mutual recognition		
Total:		EUR 2.1-2.7 billion

Section 1 of this chapter presents estimates for the number of asylum-seekers who fall into irregular status at different stages in the asylum journey. One of these groups – **asylum-seekers who engage in secondary movements due to shortcomings in the Dublin system** – is at risk for falling into the shadow economy. We estimate the size of this group to be about 295,500 persons (295,171 in 2016 and 245,931 in 2017 – see Table 27 – for more information).

These individuals were registered in more than one Member State. Their application for asylum should only be considered in the Member State where the application was first lodged and the individual would not have the right to work legally in the destination country. Without access to the formal labour market nor means to support themselves, these individuals may have to resort

to the shadow economy to survive. Overall, the shadow economy is estimated to employ up to 30 million persons in the EU representing about 9-30 percent of GDP depending on the country (Schneider & Williams, 2013).

Asylum-seekers may earn less in the shadow economy than they would otherwise earn in the formal labour market. Economic studies from several countries suggest a sizeable wage gap between formal and informal labour particularly for low-skilled work (Tansel & Acar, 2016; Krstić & Sanfey, 2010; Gindling et al, 2016). One study investigated the wage differential in Turkey using multiple estimation approaches (Tansel & Kan, 2012). The authors found a wage gap in simple regression models, but not in a more rigorous model with fixed effects. Given the mixed literature in this area, we did not consider lower wages as an impact of shadow economy employment in this study.

Several gaps and barriers (5, 7 and 8) contribute to the **employment and wage gap between asylum-seekers and natives**. For example, Gap/barrier 5 may lead to differential employment rates depending on the recognition status. Gap/barriers 7 and 8 may lead to delays to labour market integration and fewer opportunities for integration. We estimated the employment gap drawing from an econometric analysis of the Labour Force Survey in 2014 (OECD and European Commission, 2016). This survey included an ad-hoc module on migration, which allows for an investigation of differential labour market outcomes for beneficiaries of internal protection, other migrants and the native population in the EU. The study found that beneficiaries of international protection overall had a 34 percent reduced likelihood of employment as compared with the native population in the EU<sup>150</sup>. We assumed that the additional employed individuals would work in minimum wage positions, given studies suggesting that refugees are primarily engaged in low-income employment (UNHCR, 2013 a; OECD and European Commission, 2016). In addition, we assumed that 30 percent of them would work part-time based on OECD and European Commission, 2016, which found a higher share of part-time work among refugees than the native population (30 versus 17 percent). The associated loss in tax revenue per person would be EUR 2,230 (part-time) and EUR 4,459 (full-time).

With these assumptions we developed estimates of lost tax revenue for three scenarios, from which we obtained estimates for the employment and wage gaps, which are presented in the table below. More information about the scenarios and calculations can be found in Annex 2.II.3.

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<sup>150</sup> The econometric results can be found in Annex E of the study.

**Table 13: Overview of findings for employment and income gaps**

Scenario	Key assumptions	Annual loss in tax revenue generated	
		2016	2017
Employment gap only	Beneficiaries of international protection had the same employment rate as natives and were employed in the minimum wage positions (Scenario 2 – Scenario 1)	EUR 998 million	EUR 756 million
Employment and wage gaps	Beneficiaries of international protection had the same employment rate and income level as natives (Scenario 3 – Scenario 1)	EUR 1.9 billion	EUR 1.4 billion

A key assumption in these calculations is that beneficiaries of international protection have the potential to be attain the same levels of employment and income as natives. In reality some differences may remain even after all gaps and barriers are tackled due to variations in educational background and experiences between the two groups<sup>151</sup>.

Beneficiaries of international protection have a positive contribution to the economy in the status quo – defined as Scenario 1 in this exercise. This contribution, however, could be higher in the absence of certain gaps and barriers. More of these individuals may be employed or may be earning a higher wage. Another study conducted by the Joint Research Committee also finds a positive impact of this population on the EU's GDP (Kancs and Lecca, 2017). Using a general equilibrium modelling approach, the study finds that beneficiaries of international protection contributed an estimated 0.05 percent to the EU's GDP in the short-run (up to 2020) and 0.15 percent in the long-term (up to 2060). The study goes further to assess the net benefits for the provision of integration services. These findings are reviewed in Chapter 5 in the context of assessment of the policy options.

## 5. Living conditions and health

Gaps and barriers across the four stages also have adverse impacts for the health and well-being of asylum-seekers. Poor living conditions is a key driver of these impacts and is thus reviewed in this section together with health. Other key drivers are the lack of predictability of asylum procedures and social and cultural barriers, which can contribute to the mental stress of asylum-seekers. Impacts on individuals can translate to economic impacts in terms of lower productivity in the labour force and higher healthcare costs.

In the **pre-arrival stage**, there is a high number of **deaths and disappearances** of asylum-seekers due to the pursuance of high-risk travel routes, which is linked with the limited availability of legal pathways (*Gap/Barrier 1*). Travel to the EU may consist of several legs of journey, as well as travel to a debarking location. There were over 8,000 recorded deaths in the Mediterranean Sea in 2016 and 2017 combined, of which we assume that about 72 percent were asylum-seekers<sup>152</sup>. These individuals are exposed to a high risk of exploitation and violence,

<sup>151</sup> For more information on the profile of asylum-seekers, please refer to Section 2.I.2.

<sup>152</sup> The IOM missing migrants project estimates a minimum of 5,143 deaths or disappearances while in 2017 the figure was 3,139. These individuals may include both asylum-seekers and migrants. Following our earlier methodology, we apply an adjustment factor of 72% to estimate the subset of asylum-seeker deaths. See Section 4.I for more information.

particularly women who are additionally exposed to sexual violence (van Ballegooij and Navarra, 2018). The limitations of EU external action (*Gap/Barrier 2*), in particular the lack of mechanisms to ensure the protection of human rights, may also contribute to this situation.

The loss of life was translated into monetary figures using the 'value-of-statistical-life' approach pioneered by an expert on the economics of risk and uncertainty named Kip Viscusi. Values of a statistical life (VSL) been widely used to inform policy design in the United States since the mid-1980s. The values are extrapolated from the marginal cost of an additional unit of risk, which is estimated by asking workers what they would need to be compensated to ensure greater risk in the workplace. The quantitative valuation of life is controversial yet remains important in order to consider the loss of life in benefit cost calculations.

**Table 14: Overview of findings – health and living conditions**

Gap/Barrier	Indicator	Est. number of people affected	Key issues	Quantitative findings
1 – lack of legal channels	Arrivals via Mediterranean Sea <sup>1</sup>	172-364 thousand	Loss of life Trauma and health disorders	EUR 9.3-15 billion per year
3 – lack of solidarity	Asylum applications in Italy, Greece and Bulgaria <sup>2</sup>	191-193 thousand individuals	Greater demand for reception than capacity Overcrowded facilities	EUR 2.3 billion in spending for ‘hotspots’ per year
4 – uneven distribution				
6 – reception	Asylum applications <sup>2</sup>	709-1,300 thousand individuals	Residential segregation Barriers to education for youth	EUR 197-351 million in healthcare costs per year
7 – integration	Positive decisions – first and final <sup>2</sup>	538-711 thousand individuals	Discrimination and xenophobia Barriers to access housing	Chronic mental stress ( <i>could not be estimated</i> )
9 – ineffective returns	Forced returns <sup>3</sup>	95-140 thousand individuals	Detention	
Total:				EUR 11.8 – 17.7 billion

Sources: <sup>1</sup> International Organisation for Migration; <sup>2</sup> Eurostat. Note: Lower and upper bound estimates are based on 2016 and 2017 figures. <sup>3</sup> Estimated based on data from Eurostat. The figure assumes that the share of asylum seekers who are forcibly returned is the same as the overall share of irregular migrants who are returned.

To estimate the loss of life, we considered a hypothetical scenario where the asylum-seekers who died managed to survive and subsequently applied for asylum in the EU. A share of these asylum-seekers would receive a positive decision on their asylum application and could remain in the EU. The remainder would receive a negative decision and be ordered to leave the EU. We applied a VSL to each of these two groups drawing from a base value of USD 9.6 million (Viscusi and Masterman, 2017)<sup>153</sup>. Through this approach we estimated the loss of life to be 15 billion in 2016 and 9 billion in 2017. The higher costs in 2016 are due to the higher number of deaths recorded in that year. For more information on this calculation please refer to Annex 2.II.4. Asylum-seekers who survive the journey may also suffer adverse impacts to their health. Several research studies provide a greater understanding of the health impacts of the precarious travel to the EU to seek asylum. One study found that the main health concern was the exposure to trauma (Pfortmueller, et al., 2016). This trauma manifested itself in health problems related to the gastrointestinal system and also an increased risk of acute infectious disease (Pfortmueller, et al., 2016). Exposure to conflict and persecution in the home country is also associated with **post-traumatic stress disorder** (Hocking, et al., 2015). Child and adolescent asylum-seekers may suffer more due to their greater vulnerability and are also at higher risk for mental illness, especially unaccompanied minors (Wiese & Burhorst, 2007; Norredam, et al., 2017; Hebebrand, et al., 2016). While all Member States conduct health screenings of asylum-seekers who arrive in the EU, none collected systematic data on health status nor healthcare utilisation in 2016 (FRA, 2016).

In the **arrival stage**, asylum-seekers face a higher risk of poor reception conditions due to the mismatch in the number of asylum-seekers and the capacity of the most impacted Member States to host them. A large amount of emergency funding was directed towards the establishment of 'hotspots' to alleviate this imbalance. While Article 18(9) of the Reception Conditions Directive allows for emergency measures 'only for reasonable period of time', some of these have become permanent (Wagner, et al., 2016; ECRE, 2016 b). Between 2015 and 2017, EU emergency funding under the **AMIF** amounted to around EUR 4.6 billion (EUR 2.3 billion annually) was allocated to 14 Member States, EU agencies and international organisations (EASO, IOM and the UNCHR) for support actions in Italy, Greece and Bulgaria (European Commission, 2017)<sup>154</sup>. About EUR 150 million was provided through AMIF and ISF to support the operation of hotspots in Greece (European Commission, 2016), of which EUR 12.7 million was designated for reception facilities (European Commission-DG HOME, 2016).

Concerns have been raised about the **reception conditions in hotspots** with respect to the conduct of vulnerability screenings, the limited availability of interpreters and mediation services, overcrowded facilities, and limited access to healthcare (Danish Refugee Council, 2017). These concerns are greater with respect to **vulnerable persons** (AIDA, 2016 b). One study documented high levels of victimisation among refugee women and youth in Belgium and the Netherlands (Keygnaert, et al., 2012). The UNHCR received a high number of reports from women in reception centres in Greece who experienced sexual and gender-based violence that may be in part due to shared living spaces and the low provision of security (UNHCR, 2018 a). Unaccompanied and separated minors represent another vulnerable population of concern (see Box 10). Another study highlighted the higher risk of assault related to racial and ethnic discrimination (van Ballegooij and Moxom, 2018). The higher risk of assault was found to translate to lower health status and lower productivity. The estimated impact on tax revenue is included under the impact category of employment and tax revenue (see Section 4).

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<sup>153</sup> VSL vary by agency and across countries. This particular value was identified as an appropriate base value in a recent publication by Dr Viscusi.

<sup>154</sup> Funding levels were estimated to be EUR 2.5 billion annually.

**Box 10: Providing accommodation for unaccompanied and separated minors**

Vulnerable groups require particular attention and accompanying measures in order to ensure that their fundamental rights are fully respected particularly with respect to living conditions. Additional and measures may imply higher costs of reception for Member States. One key group are unaccompanied and separated minors. In 2016, there were an estimated 63,240 such children (Eurostat, 2017).

A study conducted by UNICEF assessed reception conditions for unaccompanied and separated minors in the Nordic States – Denmark, Finland, Iceland, Norway and Sweden (Byrne & Hansen, 2018). It found that institutional arrangements were the most common while some countries (Denmark, Finland, Sweden and Norway), housed unaccompanied and separated minors in **separate reception facilities**. Staff in these reception centres may provide psychological support, monitor individual educational plans and support with administrative procedures.

The authors of the study identified a number of challenges in the countries. They suggest that **standards and safeguards** for these children may be improved if the management of reception was under the responsibility of child welfare authorities rather than asylum authorities. The legal entitlement to education often only applies to basic education while access to secondary and vocational education may be supported to some extent. Moreover, these children may be **delayed in school enrolment** due to requirements for language training. The authors suggest that such training could be provided in the schools themselves as is done in Finland. Unaccompanied and separated children also **may not have full access to health and medical services** although mental health issues are considerable in this population. This issue may infringe on the rights of the child as well as the rights to education and healthcare (see Section 3.V for more information).

A survey conducted by the European Migration Network provides information about the costs of providing organised accommodation for unaccompanied and separated minors (EMN, 2017). The average cost for a member of this vulnerable group was estimated to be more than four times higher than the average cost for an adult asylum-seeker in the same set of countries.<sup>155</sup> For example, in **Finland**, the costs for an adult in a reception centre is estimated to be EUR 49/day while the costs of an unaccompanied minor in a dedicated facility is EUR 208/day and an accompanied minor in an assisted accommodation centre is EUR 136/day. In the **UK**, the Home Office provides funding to local authorities to cover the costs associated with providing foster parents and social worker care.

Member States may hold asylum-seekers in **detention** during the arrival and post-application stages. Detention may be especially confining especially if conditions do not meet the standards established in the Reception Conditions Directive and are of indefinite length. AIDA, 2018 highlights poor living conditions in detention facilities in a number of Member States. A cost of non-Europe study on detention conditions uncovered detrimental impacts on the physical and mental health of detainees as well as an elevated suicide rate (van Ballegooij, 2017). Another study found that deteriorations in physical and mental health could occur even after just a few weeks in detention. Individuals in these centres experience a high degree of isolation and the health impacts are worsened by the language barriers (Jesuit Refugee Service, 2010). Guild et al, 2015c suggest that considering the needs and preferences of individuals may limit the need for coercion and detention.

In the application and post-application stages, asylum-seekers may have **greater healthcare expenditures** and **poorer mental health** status due to gaps and barriers in reception conditions (*Gap/Barrier 6*) and integration services (*Gap/Barrier 7*). Protracted asylum procedures coupled with restrictions on labour market activity experienced during the application and post-application stages (*Gap/Barriers 7 and 8*) may also have an adverse impact on mental health. A series of econometric studies undertaken by a group of researchers in the Netherlands suggest that challenges faced during the post-application stage such as discrimination lead to more

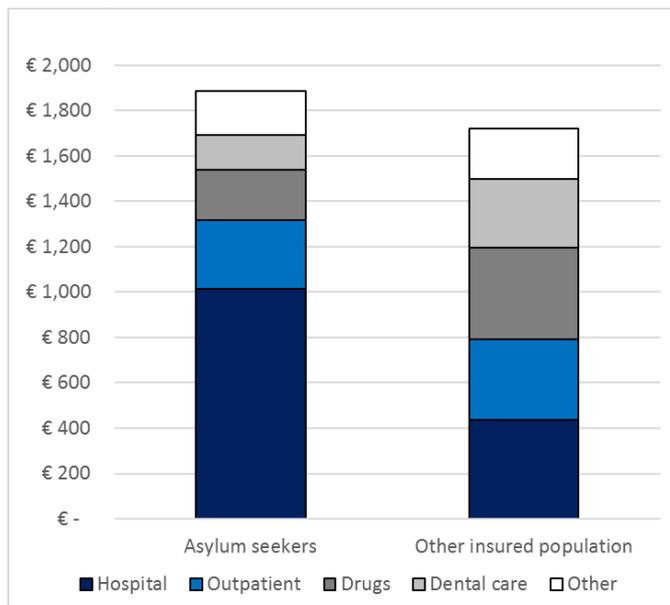
<sup>155</sup> Author calculation based on information reported by SE, FI and IT. See Annex 2.I for more information.

adverse impacts on mental health than experiences from the pre-arrival stage (Laban, et al., 2004; Laban, et al., 2005; Laban, et al., 2008)<sup>156</sup>.

One study carried out a quantitative analysis of healthcare expenditures among asylum-seekers who had lodged an application and a comparable sample of regularly insured individuals from the native population in Germany (Bauhoff and Geopffarth, 2018). The study found that **asylum-seekers had almost twice as many inpatient admissions as natives**, and many of these admissions were for conditions that could be treated through preventive or outpatient care. Overall, the healthcare expenditures of asylum-seekers were 10 percent higher than the native population. The study concludes that better access to primary care may reduce the use of emergency care, leading to lower healthcare costs.

We estimated the additional healthcare costs incurred by asylum-seekers based on information from Bauhoff and Geopffarth, 2018. We assumed that the 10 percent higher costs applied to all asylum-seekers who lodged an application in the EU. The average healthcare costs in the EU was assumed to be EUR 2,781 per person (OECD, 2016). Based on these figures we estimated the additional healthcare costs to be in the range of EUR 197 to 351 million<sup>157</sup>.

**Figure 12: Estimated healthcare costs for asylum-seekers and a comparison group in Germany**



Source: Bauhoff and Geopffarth, 2018.

The studies we reviewed highlighted several other issues that could not be quantified, but remained relevant. One of these issues is the education of minors, which may be affected by the residential segregation experienced by asylum-seekers (*Gap/Barrier 7*). Children of asylum-seekers (or minor asylum-seekers) are generally ensured the right to education, but **the availability and quality of schooling may be limited**. For example, a study found limited opportunities for asylum-seeking children to attend school outside urban areas in the Greek islands (Fundamental Rights Agency, 2018 a). In some cases, asylum-seekers or refugees might

<sup>156</sup> One study found that a stay of more than two years was associated with two times the risk for developing a psychiatric disorder (Laban et al, 2004).

<sup>157</sup> The number of asylum applications (1,260,910 in 2016 and 708,585 in 2017), multiplied by average health care costs in the EU in 2015, multiplied by 10 percent.

be placed in specific schools or classes (i.e. suffer from school segregation), as a result of policies avoiding the mixing of native and immigrant students, or actions taken by the 'native parents' (who decide to move their children to other schools) or by the 'immigrant parents' (e.g. creation of 'Islamic schools' by Muslim families).

In several Member States, **beneficiaries of international protection receive little assistance in finding permanent accommodation**. Municipal housing is often only available to nationals (Fundamental Rights Agency, 2018 a). A housing allowance might not be available for those who receive other types of support (Fundamental Rights Agency, 2018 a). In Italy, they do not receive any kind of financial support, 'forcing many people to live in 'informal settlements' (Scholten, et al., 2017). In Germany, one quarter of asylum-seekers or recent beneficiaries of international protection did not receive assistance to find housing (Brucker, et al., 2016). Moreover, awareness of specific support services for asylum-seekers and beneficiaries of international protection was low even in the case when they were available (Brucker, et al., 2016). These restrictions to access housing exacerbate the challenges already faced by beneficiaries of international protection due to their poor economic situation or discriminatory and xenophobic attitudes of landlords (EMN, 2015).

## 5. POLICY OPTIONS

### Key findings

- In total, seven policy options for EU Action have been identified. They address gaps and barriers experienced across the four stages of the asylum journey and represent possible solutions to address the main problems of the current system.
- All policy options offer positive net benefits to the EU in various degrees. The magnitude of costs reflects the level of EU action and cooperation.
- Policy options that address irregular migration and procedural inefficiencies promise large benefits. All policy options can offer sizeable benefits to individual asylum-seekers as well, although these could not be monetized.

This chapter presents and reviews a set of policy options for greater EU action and cooperation in the area of asylum. In total, **seven options are put forward that seek to address the key areas of concern highlighted in the assessment of the status quo**. In some cases, these options are based on proposals already put forward in context of the current reform of the CEAS and the ongoing debate. The literature screened during the study has been also taken into account.

The status quo found a sizeable impact on irregular migration and health, in addition to procedural inefficiencies to a lesser extent. **In recognition of the concentration of costs related to these three categories of impact, we present several options that have potential to address and mitigate them**. Specifically, four options focus on these impact categories (Options 1, 2, 3 and 4).

The policy options make a significant effort towards the recognition of ten fundamental rights that are infringed upon in the status quo (see Section 3.V for more information). The legal analysis found that several gaps and barriers impacted the **right to asylum and non-refoulement**. Several policy options address this concern most notably Policy Option 1, which proposes a legal channel for persons in need to protection to seek asylum in the EU. Policy Options 2 and 3 can help to protect several other fundamental rights including:

- The right to prohibition from torture, inhumane or degrading treatment;
- The rights of the child and the right to education; and
- The right to effective remedy.

Policy Option 4 is notable in its recognition of an individual's right to private and family life. Policy Option 5 promotes the right to engage in work, the right to access healthcare and the right to non-discrimination. Policy Option 6 promotes the protection of human rights outside the EU in particular in countries of return. The last policy option promotes the protection of all fundamental rights and thus reinforces the others.

The policy options also promise other benefits that can be understood as the reduction of costs incurred in the status quo. These benefits as well as the costs to introduce the policy options were explored in the assessment. The findings for each policy option are summarised in Table 15 below. More information about the calculations can be found in Annex 2.III.

**Table 15: Possible policy options – summary of costs and benefits**

Policy options	Stages and Gaps/barriers addressed	Potential costs and benefits
Option 1: EU legislation on humanitarian visas	Arrival: Gap/Barrier 1	<p><b>Benefits:</b> Lower levels of irregular migration to the EU and lower costs of border security and surveillance. It could also lead to a lower loss of life at sea.</p> <p><b>Costs:</b> Additional human resources needed to review applications and provide legal aid and translation. Other costs may include updating the VIS IT system and providing for a security screening.</p> <p><b>Net benefits:</b> The net benefits would be at least EUR 7.5 billion. The magnitude is highly dependent on the design of the policy option and the extent that asylum-seekers substitute the legal channel option for the irregular channel.</p>
Option 2: Increased mandate for EASO	Arrival, application, post-application: Gap/Barriers 3, 4, 6 and 9	<p><b>Benefits:</b> Increased efficiencies with respect to Dublin transfers in addition to lower levels of secondary movement and a decreased risk of Member States reintroducing internal border controls.</p> <p><b>Costs:</b> Additional cost for expanding the role and responsibilities of EASO to coordinate arrivals and reception (estimated to be EUR 15 million) and EU asylum appeal tribunal.</p> <p><b>Net benefits:</b> At least EUR 9.4 billion per year.</p>
Option 3: Improve harmonisation, implementation and monitoring of the CEAS	Arrival and application: Gap/Barriers 5 and 6	<p><b>Benefits:</b> Increased protection of fundamental rights, due to reinforced monitoring. Greater harmonisation among the MS could lead to a lower rate of appeal with a cost savings of EUR 1.7-1.9 billion per year.</p> <p><b>Costs:</b> Increased costs due to the expanded role of EASO, estimated to be from EUR 839 thousand to EUR 2.1 million per year.</p> <p><b>Net benefits:</b> EUR 1.7-1.9 billion per year.</p>
Option 4: Take individual preferences into account when identifying the Member State responsible for examining an asylum application	Arrival, application, post-application (integration): Gap/Barriers 3, 4 and 8	<p><b>Benefits:</b> Increased protection of individual's right to respect private and family life. Elimination of take-back requests, reduction in expected rate of appeals to transfer requests and reduction in secondary movements.</p> <p><b>Costs:</b> This option would have minimal costs implications, related to setting up an algorithm that support the application of the fair allocation mechanism.</p> <p><b>Net benefits:</b> EUR 980 million to EUR 1.3 billion per year.</p>
Option 5: Foster access to employment and integration	Post-application (integration): Gap/Barriers 7	<p><b>Benefits:</b> Increased protection of individual's right to work and non-discrimination. Host countries would benefit from enlarged labour force and increased tax revenue.</p> <p><b>Costs:</b> Costs of an integration programme should be considered and could be on the order of EUR 1,000 to 10,000 per individual.</p> <p><b>Net benefits:</b> The annual long-term net benefits (up to 2060) were estimated to be on the order of EUR 3.9 billion.</p>

Policy options	Stages and Gaps/barriers addressed	Potential costs and benefits
		The evidence suggests that the net benefits would be greatest for interventions that improve knowledge of the host country's language.
Option 6: Cooperation with third countries	Pre-arrival and post-application (return): Gap/Barriers 1, 2 and 9	<p><b>Benefits:</b> Supporting third countries to tackle root causes of displacement; this has the potential to reduce the risk of persons embarking on dangerous journeys to the EU, and must be accompanied by efforts to open up legal pathways to the EU. Reinforced protection of human rights in countries of return, by setting up a monitoring system.</p> <p><b>Costs:</b> Costs would be related to new activities of the EU in terms of monitoring and evaluation of readmission agreements with third countries. These costs are expected to be low.</p> <p><b>Net benefits:</b> Benefits are difficult to quantify, as many factors affect refugee movements but, in the long-run, the balance between costs and benefits is expected to be positive.</p>
Option 7: EU accession to the ECHR	All stages: Horizontal barrier (Non-compliance with fundamental rights obligations)	<p><b>Benefits:</b> Additional external scrutiny mechanism to monitor compliance with fundamental rights by the EU, and enhanced consistency between the CJEU and ECHR.</p> <p><b>Costs:</b> Costs are expected to be limited as Member States are already bound by the ECHR.</p> <p><b>Net benefits:</b> Positive, as it would provide additional external scrutiny by the ECtHR, enhance consistency between the jurisprudence of the CJEU and ECtHR and improve judicial protection for an applicant to bring a case to court without having to fulfil the requirements of the CJEU.</p>

### 1. Policy Option 1: EU legislation on humanitarian visas

The humanitarian visa option would respond to Gap/Barrier 1 on the lack of legal channels to seek asylum in the EU. The option aims to give those seeking international protection a legally viable way to enter the EU to make their asylum claim. The EU legal framework currently focuses on resettlement of those already recognised as refugees, as do Member State efforts such as humanitarian admission programmes, private sponsorship and family reunification schemes. The focus on those already declared refugees fails to be a durable solution of primary access for those seeking international protection. In addition, those admitted through the existing schemes are low compared to the need.

EU legislation on humanitarian visas would establish conditions for safe access to the Schengen space (i.e. to Schengen Member States) to allow asylum-seekers to apply for international protection under EU law. Article 77 (2) (b) TFEU and Article 78 (2) (g) TFEU would be the most appropriate legal bases for this policy option. Once in the EU, asylum-seekers would lodge an application for asylum following the established processes and procedures of the Common European Asylum System.

The European Parliament LIBE Committee has put forward a legislative proposal on this topic (European Parliament 2018). Accompanying this proposal is a Parliament European Added Value

Assessment (EAVA) which highlights a range of benefits in terms of fundamental rights and economic impacts of adopting this policy option (van Ballegooij and Navarra, 2018).

The legislative proposal considers three different approaches:

- **A ‘visa waiver’ approach:** individuals from third countries with a high number of persons in need could travel without a visa to the EU via regular commercial means;
- **Limited territorial visas (LTV) for asylum-seeking purposes:** individuals from third countries with a high number of persons in need would be able to apply for a LTV Schengen visa from a Member State consulate and if granted, could travel to the EU via regular commercial means; and
- **EU-wide international protection application travel permits:** individuals from third countries with a high number of persons in need could apply for a humanitarian visa from European External Action Service (EEAS) representations abroad.

Regardless of the approach taken, adoption of clear rules through humanitarian legislation would offer a legally viable way to apply for international protection in the EU and would allow for improved:

- Security screening of potential asylum-seekers;
- management of arrivals; and
- and preparation and coordination capabilities post-arrival.

The costs and benefits of this policy option depend on the approach taken. The expected costs would be the least for the visa waiver approach and would be greater for the EU visas approach. The expected benefits for the EU and the Member States would be greater with the visa options due to the potential to manage the arrival of asylum-seekers to the EU. The improved management of the arrival of asylum-seekers could generate several benefits related to irregular migration and health.

**Table 16: Assessment of Policy Option 1**

Individual benefits / fundamental rights
Greater compliance with EU values and fundamental rights, reduced risk of sexual violence and trafficking and reduced risk of mortality. Better reception conditions at arrival.
Economic benefits
This policy option could lead to lower levels of irregular migration to the EU leading to lower costs of border security and surveillance, organized crime and search and rescue missions. It could also lead to a lower loss of life at sea as asylum-seekers may pursue the legal channel rather than travel to the EU via irregular means. We consider a conservative scenario where the policy option reduces these costs associated with irregular migration and the loss of life by 20 percent. With this assumption the policy option would generate benefits on the order of EUR 4.4 to 8.2 billion annually <sup>158</sup> . With the projected increase in funding for border management in the Multi-Annual Financial Framework 2021-2027, the benefits may enlarge to EUR 4.4 to 8.3 billion per year <sup>159</sup> . Other benefits could be gained from the greater

<sup>158</sup> This figure was calculated as follows: 20% of the sum of EUR 352 million (border management), EUR 19-216 million (search and rescue missions), EUR 12.3-25.6 billion (organised crime) and EUR 9.3-15 billion (lost lives).

<sup>159</sup> This figure updates the previous calculation using a sum of EUR 1,015 million for border management, assuming a tripling of funds as noted in EPRS, 2018.

management, coordination and efficiency in carrying out asylum procedures.

### Costs

Additional human resources needed to review applications and provide legal aid and translation. Other costs may include updating the VIS IT system and providing for a security screening. The human resources and security screening costs would vary by the number of applicants for humanitarian visas.

### Cost of Non-Europe

The assessment found that the net benefits would be approximately EUR 6.2 billion. This figure hinges on the assumption that irregular migration and lost lives would decrease by 20 percent as a result of the policy option and that the costs would be minimal relative to the benefits.

## 2. Policy Option 2: Increased mandate for EASO (or a new EU Agency for Asylum) at arrival and application stage

This option aims to operationalise the principle of “solidarity and fair sharing of responsibility” among Member States for managing asylum applications in the EU.

The option promotes a joint EU effort to support Member States of first arrival and Member States receiving a higher proportion of asylum applications, through two components or sub-options: **a) Increased mandate for EASO (or a new EU Agency for Asylum) in Greece, Italy and other Member States, coordinated by EASO and supported by EU funding.** The system would be activated upon the **assessment of the needs by the EU Agency for Asylum** and would aim to ensure adequate and swift procedures for:

- Registration of asylum-seekers (in line with the rules of the Dublin and Eurodac Regulations);
- First screening of asylum claims and determination of the protection needs;
- Determination of the Member State responsible for an asylum application, support to the correct application of the Dublin Regulation, and swift implementation of the related transfers. Return operations, including voluntary return, in case of clearly unfounded asylum claims.
- The EU Agency for Asylum could be given delegated executive power to carry out status determination functions in those Member States that have a high number of arrivals (e.g. Italy and Greece). This would be a step further to the joint processing approach currently occurring in the Greek hotspots.

Regarding the latter point, the question of who would carry out the status determination claims and appeal mechanisms would need to be assessed; as well as questions of appropriate safeguards to ensure independence and accountability of the Agency. It could be envisaged that this role would be taken on by personnel trained by the EU Agency for Asylum. More sensitive decisions (such as questions where exclusion clause arises under Article 12 or 17 of the Qualification Directive) could be reserved for national staff, with specific criteria developed to define ‘sensitive cases’.

A specialised EU court should review decisions on the basis of EU Asylum Law (Hailbronner, 2015). This could be in the form of an **EU asylum appeal tribunal** attached to the CJEU. If necessary, several regional EU appeal bodies could be set up to avoid the creation of one too large body.

Procedural guarantees should be ensured at all stages, in line with the EU law. This sub-option would institutionalise and build on the experience of the hotspot approach in Greece and Italy

since 2015.

In the longer term, several authors have suggested a full europeanisation of the EU asylum process. Goodwin-Gill for example refers to a European Migration and Protection Agency competent 'to fulfil collectively and to implement the individual obligations of Member States' (Goodwin-Gill, 2015). Guild, 2016 has also suggested that 'a new agency may be the best viable route to achieving a real and effective CEAS' but that it should be truly dedicated to international protection. Den Heijer et al, 2016 argue that they do not believe such transfer of power would be impossible on the basis of Article 78(2)(e) TFEU and the Treaty's clearly stated objective of a CEAS. However, they refer to some risks of further harmonization, including the fact that if Member States retain sovereignty on some parts of EU asylum policy such as detention, return, relocation, the system would be vulnerable. The setting up of such a centralized body would require adequate safeguards to ensure accountability, including monitoring as mentioned above.

This sub-option would help to address Gap/Barrier 4 (*The mechanism to determine MS responsibility for the examination of asylum claims does not work*), Gap/Barrier 9 (*Barriers in the implementation of the Return Directive*).

**b) Establish 'reception centres' in some Member States that are managed by EASO or a new EU Agency for Asylum.** This sub-option would be in addition to a). The aim would be that of ensuring adequate reception conditions and support improvements especially for vulnerable migrants and minors. This sub-option would contribute to overcome the current lack of harmonisation (*Gap/Barrier 6: Lack of harmonisation across Member States with respect to Reception conditions*), which might lead to violations of fundamental rights, but also affect the functioning of the Dublin system (if transfers to Member States not offering adequate reception capacity are suspended) and fuel secondary movements.

Overall, there is the need to support the capacity of the Member States in their capacity to provide dignified reception conditions to asylum-seekers, together with a shift from an emergency-driven approach to more structural financial solidarity.

**Table 17: Assessment of Policy Option 2**

Individual benefits / fundamental rights
Asylum-seekers could benefit from an increased recognition of their needs (e.g. vulnerable groups) and a number of their fundamental rights specifically, the right to asylum, the right to prohibition from torture, inhumane or degrading treatment, the rights of the child, and the right to respect for privacy and family life. This recognition is presently limited due to the stretched capacity of border Member States.
Asylum-seekers may face a reduced likelihood of sexual violence and improved living conditions and health. The increased efficiency in the asylum procedure at the arrival stage could also promote swifter integration in post-application stage, in these cases where a positive decision is reached on the asylum application.
Economic benefits
The centralisation of tasks related to asylum-seekers would bolster the capacity of overstretched border Member States to register them, implement transfers, provide reception and enforce returns for unfounded cases. Economic impacts would be evident in terms of the elimination of transfers that do not affect redistribution, a higher approval rate of transfer requests, a lower rate of appeals to transfer requests, lower levels of secondary movement and a decreased risk of Member States reintroducing internal border controls.
Under sub-option a), transfer procedures would be carried out more swiftly due to the increased coordination between Member States through EASO. Cost savings due to increased efficiencies with

transfers could lead to a cost savings of EUR 154-245 million<sup>160</sup>.

With the addition of sub-option b) the costs for 'hotspots' would be eliminated (EUR 2.3 billion) while the incidence of secondary movements overall may also decline<sup>161</sup>, leading to a lower risk of Member States introducing internal border controls (EUR 7 billion).

Border Member States would benefit from sub-option a) while Member States providing reception to a disproportionately high number of asylum-seekers would benefit from sub-option b).

### Costs

The costs associated with this option would primarily be a transfer of costs that are currently incurred by Member States to the EU. The policy option would introduce an additional cost for expanding the role and responsibilities of EASO to coordinate arrivals and reception. This cost was estimated to be about 30 percent of EASO's current budget (estimated EUR 83 million in 2016). In addition, there would be the cost for setting up and operating an EU asylum appeal tribunal. This tribunal may also oversee appeals to humanitarian visas (van Ballegooij and Navarra, 2018). This cost may be offset to some extent (estimated 40 percent) by the efficiency gains from the centralisation of registration and reception activities. The additional costs of the option were estimated to be EUR 15 million<sup>162</sup>.

### Cost of Non-Europe

The CoNE is estimated to be at least EUR 9.4 billion per year<sup>163</sup>.

## 3. Policy Option 3: Improve harmonisation, implementation and monitoring of the CEAS

In line with the proposal for a Regulation on the European Union Agency for Asylum<sup>164</sup>, currently under discussion, this policy option considers increasing guidance and monitoring to improve the harmonisation and implementation of the CEAS:

- **Guidance to Member States:** the EU Agency for Asylum should support Member States with **binding guidelines** on qualification, asylum procedures and reception conditions (e.g. in relation to detention, safeguards for minors, women, other vulnerable categories), with the aim of strengthening harmonisation across Member States. The proposal Regulation of the European Parliament and of the Council on the EU Agency for Asylum and repealing Regulation (EU) No 439/2010 Article 12 does not mention that the guidelines should be binding. The proposal could be strengthened in this respect to make the guidelines binding on Member States, while allowing for Member States to derogate in special cases, on the basis of a clear justification.
- **Country of Origin Information (COI):** a peer review system should be set up to assess the information produced by the Agency consisting of an independent panel of COI experts.
- **Enhanced monitoring by the EU Agency for Asylum:** the option considers going beyond the proposal for a Regulation on the EU Agency for Asylum to extend the

<sup>160</sup> Please refer to Annex 2.III.1 for more information on the calculation and the assumptions.

<sup>161</sup> In the status quo, 246-295 thousand secondary movements were observed. See Chapter 4.II.2 for more information.

<sup>162</sup> 30% of EASO's current budget was estimated to be EUR 25 million. About 40% would be offset by efficiency gains leaving 60% as an additional cost. We estimate 60% of EUR 25 million to be EUR 15 million.

<sup>163</sup> This figure was estimated as the sum of the following: EUR 154 million + EUR 7 billion + EUR 2.3 billion – EUR 40 million

<sup>164</sup> COM (2016) 271 final.

Agency's competence for monitoring/assessing detention practices and legal assistance, and incorporating opinions/assessment from civil society and UNHCR.

- **The European Commission** should also continue to fully use its Treaty based powers to follow on infringement procedures. In 2016 the Commission reported that 58 infringement decisions (letter of formal notice, reasoned opinion) had been adopted in 2015 in relation to the transposition and compliance with the EU asylum acquis, including 21 on the transposition and implementation of the Asylum Procedures Directive.
- The **European Parliament** could also continue to carry out special monitoring through its committees, and request the **Court of Auditors** to examine the use of AMIF funds for reception and asylum procedures particularly in Member States where shortcomings were observed. The Court of Auditors, so far, has published a special report on the 'hotspot' approach<sup>165</sup>, on the effective contribution of the European Integration Fund and European Refugee Fund to the integration of third-country nationals in the EU<sup>166</sup>, and on the Asylum, Migration and Integration Fund (AMIF)<sup>167, 168</sup>.
- UNHCR should also play an important role in monitoring compliance with the CEAS, for example through direct observation of asylum procedures and guidance.

Through these activities, increased monitoring could help to mitigate the strong discrepancies evident across Member States with regards to qualification, asylum procedures and reception conditions (*Gap/Barrier 5: Lack of harmonisation across Member States with respect to qualification and asylum procedures; Gap/Barrier 6: Lack of harmonisation across Member States with respect to Reception conditions*). Over time, the policy option could contribute towards convergence in recognition rates and the types of safeguards offered to asylum-seekers during the assessment of the asylum claims.

**Table 18: Assessment of Policy Option 3**

Individual benefits / fundamental rights
Individuals would benefit from increased protection of their fundamental rights including the right to prohibition from torture, inhumane or degrading treatment, rights of the child, and the right to respect for privacy and family life. As a result, individuals, in particular the most vulnerable such as women and children, may face a lower risk of violence, sub-standard living conditions and poor health. The increased efficiency in the asylum procedure in the application stage could also promote swifter integration in post-application stage, assuming that a positive decision is reached on the asylum application.
Economic benefits
Greater harmonisation on qualification and procedures could lead to a lower rate of appeal. Assuming that the rate of appeal decreases by half, a savings of an estimated EUR 1.7-1.9 billion could be generated <sup>169</sup> . Secondary movements and multiple applications may also decline <sup>170</sup> . Lastly, the use of

<sup>165</sup> Court of Auditors (2017), [Special report no 06/2017: EU response to the refugee crisis: the 'hotspot' approach](#).

<sup>166</sup> Court of Auditors (2012), [Special report no 22/2012: Do the European Integration Fund and European Refugee Fund contribute to the integration of third-country nationals?](#)

<sup>167</sup> Court of Auditors (2016), [Annual report of the Court of Auditors on the implementation of the budget concerning the financial year 2015](#) (OJ 2016/C 375/01).

<sup>168</sup> Court of Auditors (2017), [Annual report of the Court of Auditors on the implementation of the budget concerning the financial year 2016](#) (OJ C 322 of 28.09.2017).

<sup>169</sup> Please see Annex 2.III.2 for more information regarding the calculation.

<sup>170</sup> The costs associated with secondary movements is not accounted for in this policy option, but in

forced returns may also decline with greater harmonization and predictability of asylum decisions. Assuming that the use of forced returns declines by 30 percent, an additional savings of EUR 82-120 million may be gained<sup>171</sup>.

#### Costs

The costs of the proposal for a Regulation on the EU Agency for Asylum were estimated at EUR 364 million for 2017-2020. We review the annual costs for two categories in the proposal that are included in this option. Some of the activities included in this policy option would go beyond the proposal, although their cost implications would be minimal. As such, we inflate the costs by 2-5 percent to account for these additional activities. In total, we estimate the average costs for the option to be EUR 839 thousand to EUR 2.1 million per year<sup>172</sup>. Additional costs may be attributed to the higher monitoring activities of the European Commission and European Parliament.

#### Cost of Non-Europe

The CoNE is estimated to be at least EUR 1.7-2.0 billion per year<sup>173</sup>.

### 4. Policy Option 4: Take individual preferences into account when identifying the Member State responsible for examining an asylum application

The current EU asylum system is characterised by a top-down approach, where the Member State of destination of an asylum-seeker is determined based on the hierarchical criteria of the Dublin Regulation. These criteria only partially take into account the needs and preferences of asylum-seekers.

This option considers a deeper reform of the Dublin Regulation than is currently proposed by the European Commission, including some elements proposed by the European Parliament.

- Allocation **based on 'genuine links'**: The Commission proposal envisages broadening the scope of family members to siblings. As suggested by Di Filippo (Fillipo, 2016), the appreciation of family links could be extended in the following ways:
  - **Wider family links**: the cultural concept of family in some countries of origin can be broader than the nuclear family, and particularly where families have been dispersed. The family links could be extended to wider categories of relatives, including cousins, aunt/uncles, or grandparents.
  - **Language skills**: these could be taken into account when allocating responsibility. While this may disproportionately concern some Member States where the national language is spoken outside the EU, this would be remedied through the quota mechanism (Fillipo, 2016)
  - **Previous work experience or study in an EU Member State and regular residence**
  - **Private sponsorship** through either EU nationals or third-country nationals with legal status in the EU
- Applicants **without a pre-existing link** with a particular Member State will be relocated through a **corrective allocation system**. The corrective allocation mechanism will

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Policy Option 4.

<sup>171</sup> Forced rather than voluntary returns has an estimated cost of EUR 272-401 million (see Section 4.II.3). We calculated 30 percent of this cost to be the potential savings generated.

<sup>172</sup> For calculations of these estimates, see Annex 2.III.2.

<sup>173</sup> This was estimated as the sum of the following: EUR 1.6 billion + 355 million – 0.8 million.

consider the GDP and population as key to calculate the 'fair share', to ensure 'that larger and wealthier countries will have a larger share than smaller and less wealthy countries'.

- Where applications are relocated through a corrective allocation system, they should nonetheless have **a choice of Member States with 'lowest number of applications'**: The European Parliament has proposed that applicants could be given the option to choose between the four Member States which have received the lowest number of applicants in relation to their estimated 'fair share'. Since these 'lowest amount' Member States will fluctuate as applicants register into the system, it will not be possible for an applicant to know which four Member States will be available to choose from when deciding to seek protection in Europe'. As such, the choice given should not create a pull-factor toward specific Member States<sup>174</sup>. The Regulation could go further than this and grant the asylum-seeker the choice from all Member States with the exception of the ten Member States with the highest number of applications, rather than just four Member States.

The proposed allocative system could help to address the current gaps in terms of solidarity and fair sharing of responsibility among Member States (*Gap/Barrier 3*). Assessing an asylum-seeker's genuine links and preferences at an early stage could increase the likelihood of co-operation in the procedure and may reduce absconding and legal challenges (Fillipo, 2016). Moreover, it may not create significant additional resources under the pre-Dublin phase, as a preliminary assessment is already required. Secondary movements may decline and Member States may have to resort less to punitive measures to manage them (*Gap/Barrier 4*). For, asylum-seekers, this option would help ensure that family and social connections are taken into account, as well as the match in their labour market skills and the specific opportunities for those skills in the country leading to an increased potential for integration into the labour market. Not taking into account wider links can have a high financial impact on the host EU state in terms of integration (including language courses, difficulties to access employment, social exclusion).

Under this policy option it is expected that take-back transfers would be eliminated leaving only take-charge requests. The elimination of this type of transfer could lead to lower reception costs for Member States. We estimate this savings to be on the order of EUR 257 to 403 million. The level of appeals may also be expected to decline for the remaining take-charge transfers that are approved. Further savings may be generated in terms of reduced usage of detention and an increasing rate at which approved transfers are carried out. These potential benefits were not calculated as the extent of change is more challenging to predict, but they can be assumed to be positive.

In the long run, restrictions to free movement of beneficiaries of international protection throughout the EU could be further lifted, upon condition that a truly CEAS is built and harmonization among Member States (particularly in terms of recognition rates) is achieved. This would imply ensuring mutual recognition of positive asylum decisions; at the moment, mutual recognition only applies to negative asylum decisions (*Gap/Barrier 8*). The mutual recognition of positive asylum decisions would provide beneficiaries of international protection not only with the right to move within the EU, but also with the right to work in other Member States, granted under the Qualification Directive. Providing beneficiaries of international protection with freedom of movement within the EU would gradually diminish the impact of the Dublin

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<sup>174</sup> European Parliament - Committee on Civil Liberties, Justice and Home Affairs, 6 November 2017, [Report 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 \(recast\)](#), Explanatory Statement.

Regulation. One study found that the choice of the country of residence led to an **increased likelihood (9 percent) of finding employment** among refugees (Tanay & Peschner, 2016). We use this figure to assume that mutual recognition could increase the probability of employment from 37 to 46 percent. Following the methodology for assessing the impacts of the employment gap in Section 4.II.4, we estimate this additional tax revenue to be on the order of EUR 169 to 223 million<sup>175</sup>.

**Table 19: Assessment of Policy Option 4**

Individual benefits / fundamental rights
This option would positively impact the individual's right to private and family life. In addition, the potential to find employment that matches one's skills would increase under this option, particularly in the case of mutual recognition of asylum decisions. The consent implied in this decision-making between asylum-seekers and the EU may also lead to a lower utilization of detention, thus also protecting the individual's right to freedom and to prohibition from torture, inhumane or degrading treatment.
Economic benefits
The analysis estimated four types of economic benefits. First, the option would likely eliminate the occurrence of take-back requests resulting in a savings of EUR 257-403 million per year. Fewer appeals to transfer requests would also be expected as would the use of detention. Assuming that the rate of appeals declines by 75 percent, an additional savings of EUR 66-80 million per year could be gained <sup>176</sup> . Thirdly, the consideration of individual preferences may decrease the level of secondary movements and the risk of falling into the shadow economy. Assuming that the policy option reduces secondary movements by 75 percent could result in a savings of EUR 489 to 587 million <sup>177</sup> . Lastly, economic output may also increase in the medium- to long-term due with improved employment outcomes due to better matches between individual preferences and the labour market. We estimate that the increased likelihood of finding employment could lead to an increase in tax generation of EUR 168-222 million per year.
Costs
The costs for this option would focus on setting up an algorithm that produces a list of the four Member States based on a formula of 'fair sharing' and the most up-to-date information on asylum inflows in the Member States. Several formulas for 'fair sharing' already exist (Weiss, et al., 2016). The algorithm could be linked to mechanisms currently in place to gather asylum statistics in the EU. Relaying this information to asylum-seekers would be a new activity that would have minimal cost implications as it could be absorbed into the procedures already in place.
Cost of Non-Europe
The CoNE is estimated to be at least EUR 980 million to EUR 1.3 billion per year <sup>178</sup> .

## 5. Policy Option 5: Foster access to employment and integration

Asylum-seekers and beneficiaries of international protection face significant obstacles to their socio-economic integration in host countries (*Gap/Barrier 7*), with consequences at individual and EU level (lost human capital and GDP growth, high rates of unemployment, risks of poverty and discrimination, etc.). **Integration services can enhance employability and can help account for the "imperfect human capital transferability" of refugees and asylum-seekers**

<sup>175</sup> See Annex 2.III.3.3 for more information.

<sup>176</sup> Ibid.

<sup>177</sup> EUR 652-783 million multiplied by 75 percent. For more information, please see Section 4.II.1.

<sup>178</sup> This figure was calculated as the sum of the following economic benefits: EUR 257-403 million, EUR 66-80 million, EUR 489-587 million and EUR 168-222 million.

(Basilio, et al., 2017).

This option puts forward a **combination of actions to address demand- and supply-side drivers** of socio-economic exclusion and discrimination:

- Eliminate restrictions to accessing the labour market that are currently in place in some Member States (e.g. labour market test);
- Offer integration programmes and tailored services in key areas (e.g. language skills, entrepreneurship) to asylum-seekers starting as soon as possible after the arrival in the EU;
- Launch communication and anti-discrimination campaigns to educate the public and alter any negative perceptions about asylum-seekers/refugees, policy actions and long-term strategies.

EU funds allocated to migration, asylum and border management (AMIF and ISF) could further support relevant actions as could an increased integration of asylum-related issues in the priorities of the European Structural Investment Funds (ESIF) and other instruments (e.g. the Fund for European Aid to the Most Deprived - FEAD). The European Social Fund (ESF) is already used and could be further used to promote the socio-economic integration of asylum-seekers and beneficiaries of international protection. The European Regional Development Fund (ERDF) could support investments in infrastructure in several sectors (e.g. healthcare services, education and childcare infrastructures, social housing) and support business creation (Ionescu, n.d.).

Studies suggest that **integrating refugees in the labour market has strong economic benefits** (Legrain, 2016; Aiyar, et al., 2016; OECD and European Commission, 2016). In fact, refugees who are in employment not only contribute to economic growth and public finances, but are also able to sustain themselves without relying on social benefits or assistance. However, the **evidence for the effectiveness of specific measures in the EU is sparse** - a recent study of labour market integration support measures across nine European countries found a general lack of systematic follow-up or impact evaluations of integration measures for recent asylum-seekers and beneficiaries of international protection (Martín, I. Et al., 2016., p.8). Nevertheless, the same study concludes that '(...) the challenges, policy trade-offs and choices involved in the labour market integration of refugees and asylum-seekers are relatively similar across countries' and that therefore there is 'real scope for mutual learning, cooperation and even Europe-wide solutions'.

Two examples of best practices for integration measures in the Member States are presented in Box 11 along with an assessment of the costs and benefits. One is a demand-side good practice to incentive employers while the other is a supply-side good practice to enhance the skills and employability of individuals.

**Box 11: Illustrative examples of integration practices (demand- and supply-side measures)**

Illustrative example of a demand-side measure:

***Simulation of a subsidy to firms to offer training to refugees (Germany)***

**Overview:** The Employment and Social Development Review (ESDE) 2016 presents a simulation of the projected economic and labour market benefits of a subsidy to companies to offer training to refugees in Germany.

**Costs:** The model assumes an annual investment of EUR 800 million (0.025 percent of GDP). This translates to about EUR 889 per person per year.

**Benefits:** 4.75 percent higher growth rate in employment in the low-education segment of the labour market between 2018 and 2030. Increased productivity of workers and profitability of firms.

**Individual benefits:** 11.7 percent higher growth rate in wages between 2018 and 2030. Improved labour market prospects.

Illustrative example of a supply-side measure

***Fast-track initiative – Snabbspår (Sweden)***

**Overview:** Since 2015, Sweden has put in place a national program to identify migrants with skills that can be used in shortage occupations. Subsequently, the program aims at enhancing these migrants' skills (including language and vocational training, often combined with work placement) and eventually placing them in a fitting occupation (fast track and employment matching). The program is coordinated by the Swedish PES which convenes relevant trade unions, employer organisations and government agencies. The program is run through (industry-specific) tripartite talks.

**Costs:** An estimated 2,832 beneficiaries started the Fast Track Program in 2016. Based on this figure and the 2016 budget, we estimated the average annual cost per person to be EUR 13,594.

**Benefits:** Between 33 percent and 52 percent of individuals who participated in the Fast Track initiative were employed 13-15 months subsequently; 29 percent of those who need to obtain qualifications gained employment within 13-15 months.

Source: Tanay & Peschner 2016, p.131 (Germany); and Author calculations based on European Commission, 2017 e. (Sweden).

Among supply side measures, evidence suggests that **knowledge of the host country language** is one of the key determinants of integration into the labour market (OECD and European Commission, 2016). Research that strong knowledge of the host language may be more important than educational qualifications in the search for employment (OECD and European Commission, 2016). The type of language course is also important with research suggesting that occupation-related language classes were more effective than general language classes (Martín, 2016; UNHCR, 2013; Brücker, et al., 2016). In France, the provision of 100 hours of language training was estimated to increase the employment rate of beneficiaries of international protection from 15 to 27 percent (Lochmann et al., 2018). Figures from Germany show that annual per-person cost of general language and integration courses can be estimated at around EUR 2,800 EUR (Hentze & Schäfer, 2016)<sup>179</sup> while the annual per-person cost for occupational language classes can be estimated at EUR 2,283 (Federal Office for Migration and Refugees, 2016)<sup>180</sup>.

We estimate the potential benefits of knowing the host country's language, which can be improved through the provision of language courses to beneficiaries of international protection. To make this estimation we draw on findings from an econometric analysis of the Labour Force Survey (OECD and EU Commission, 2017). As highlighted in Chapter 4, beneficiaries of international protection have a 34 percent lower likelihood of employment than the native population. The same analysis finds that the **likelihood of employment increases to 51 percent with knowledge of the host country's language**. Following the methodology developed earlier in Chapter 4, we estimate the additional tax revenue gains as compared with the status quo to be on the order of EUR 815 to 875 million<sup>181</sup>. Achieving these full benefits may hinge on the effectiveness of language courses and the participation of refugees in them. They would also be offset by the costs of providing the language courses.

<sup>179</sup> The costs per person were estimated by the authors using the baseline figures from the report: EUR 5 billion/year of total costs for language and integration courses; Estimated average number of refugees of 1.5 million in 2016 and 2.2 million in 2017; Cost per person and year: = 5 billion/ (3.7 million/2).

<sup>180</sup> The costs were estimated by the authors using the following figures from the report: budget of EUR 400 million in 2017 for 175,000 participants.

<sup>181</sup> For more information on the calculation, please refer to Annex 2.III.4.

Kancs and Lecca, 2018 provide an overall estimation of the **net benefits of integration services for beneficiaries of international protection** using a general equilibrium modelling approach. The model takes into account the demographic composition of this group, the costs of social support, language and professional integration services as well as the potential gains in terms of labour market outcomes relative to natives. The study finds that the labour market integration of beneficiaries of international protection is positive and increases over time – in the short-run (up to 2020) GDP may increase up to 0.23 percent while in the long-run (from 2020 to 2060) it may increase to 1.6 percent. The net present value estimates suggest that the annual net benefits generated over the long-term for the full integration scenario are roughly EUR 7.7 billion while for the advanced integration scenario the annual net benefits are roughly EUR 3.9 billion<sup>182</sup>.

These findings alongside the estimation of the returns to improved language skills have two main implications. First, **integration services can enhance the labour market potential of beneficiaries of international protection, however the costs are not trivial**. In the near-term the net benefits of providing these services may be negative since costs are incurred immediately and the benefits of the services to translate into improved labour market outcomes. Second, the provision of multiple services to enhance both professional and language skills may be more effective than services to promote language skills alone. This policy option calls for more evidence on the effectiveness of integration services in the EU and the sharing of best practices across the EU Member States.

**Table 20: Assessment of Policy Option 5**

Individual benefits / fundamental rights
Individuals would benefit from an increased integration into the labour market and the protection of their rights to work and non-discrimination. As a result, individuals would experience greater overall integration into host countries and improved mental health. About half of asylum applicants receive a positive decision and remain in the EU <sup>183</sup> . These individuals would be the primary beneficiaries of this policy option.
Economic benefits
Host countries would benefit from higher entrepreneurship, tax revenue, lower healthcare expenditures and economic growth. A study projects that the provision of integration services could increase the EU's GDP in the short- and long-term primarily through the pathway of employment and the bolstering of the working age population (Kancs & Lecca, 2017) <sup>184</sup> . In a separate calculation, we estimated that the provision of language services to increase knowledge of the host country's language could generate additional tax revenue of up to EUR 815 to 875 million per year <sup>185</sup> . Lastly, improved integration services could reduce the use of emergency healthcare, reducing overall healthcare costs by an estimated EUR 197-351 million.
Costs
The costs of an integration programme include the costs of developing appropriate materials, staff

<sup>182</sup> These estimates are derived from figures presented in Kancs and Lecca, 2017. Figure 5 presents the net present value of the three scenarios – status quo, advanced integration scenario and full integration scenario. The advanced integration scenario assumes a doubling of integration service costs while the full integration scenario considers an increase in program costs in order to achieve parity in labour market outcomes with natives. We estimate that the net present value in year 50 for the full integration scenario was EUR 385 billion while for the advanced integration scenario was EUR 195 billion. We divided these figures by 50 to obtain an annual estimate that would be more consistent with other findings in the study.

<sup>183</sup> The shares were estimated to be 56 and 76 percent in 2016 and 2017 respectively.

<sup>184</sup> EU GDP was estimated to be EUR 15.3 trillion in 2017.

<sup>185</sup> For more information on the calculation, please refer to Annex 2.III.4.

time to deliver the materials effectively and also other costs to increase attendance rates such as provision of childcare and communications outreach. The illustrative examples presented in Box 11 suggest that the costs per individual may be on the order of EUR 1,000 to 10,000.

### Cost of Non-Europe

The CoNE for fostering the integration of beneficiaries of international protection into EU society was derived from Kancs and Lecca, 2017. The advanced integration scenario suggests that the annual net benefits (the increase in GDP net of the fiscal costs for accommodation, integration services and other social support) in the long-term (2020 to 2060) would be EUR 3.9 billion. The evidence suggests that the CoNE is greatest for improving knowledge of the host country's language.

## 6. Policy Option 6: Development cooperation with third countries

a) **EU Funds should be used to boost development support to and cooperation with third countries**, including development/trade tools. Rather than focus disproportionately on border management projects, these actions should be focused on addressing the drivers of forced displacement, including through projects aimed at education, health, infrastructure, innovation, good governance and women's empowerment, and tackling security threats. This policy option is in contrast to the status quo where EU and MS funding for development and poverty objectives are diverted to border and migration management, an increasingly common trend in the last decade (European Parliament – LIBE Committee, 2015). Betts & Collier, 2017 also note that some Member States such as Sweden have reduced their budget for development cooperation to offset the costs of migrants arriving through irregular means.

Development cooperation should be conflict sensitive and **must be accompanied by accountability mechanisms** to ensure proper project selection and spending, including by:

- Conduct **ex ante** and **ongoing assessments** of the impact of projects on fundamental rights, particularly of migration management projects;
- Civil society should be fully engaged on the selection of projects and oversight;
- The European Commission should carry out a 'fitness check' under the EU Better Regulation framework, to assess the EU trust funds and Funding Facility for Turkey;
- The European Parliament could be given a right of information and right of scrutiny in the EU Trust Fund decision-making procedures in the EU Trust Fund Operational Committees on financing actions;<sup>186</sup>
- The Commission could set up a **specialised EU Trust Fund office** to ensure consistent governance and management (including results-monitoring frameworks).<sup>187</sup>

This element of the policy option can help to counter potential corruption and the improper use of funds in third countries while increasing the effectiveness of EU and MS aid to third countries<sup>188</sup>. Adequate resources should also be allocated to promote safe and legal channels for those who need protection, and legal migration for others.

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<sup>186</sup> Oversight and Management of the EU Trust Funds Democratic Accountability Challenges and Promising Practices, Policy Department for Budgetary Affairs Directorate General for Internal Policies of the Union, [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603821/IPOL\\_STU\(2018\)603821\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/603821/IPOL_STU(2018)603821_EN.pdf).

<sup>187</sup> Ibid.

<sup>188</sup> The linkage between accountability and effectiveness was highlighted in the EU Common Position for the Fourth High Level Forum on Aid Effectiveness held in Busan, Korea in 2011.

**b) Safety of return operations:** return operations must ensure that returnees are not exposed to persecution or serious harm. In this view, periodic evaluations of human rights standards and risks of violation in third countries concerned should be envisaged, with official aid provided to assist vulnerable people, including increasing the capacity and resources of local associations <sup>189</sup>.

**Table 21: Assessment of Policy Option 6**

Individual benefits / fundamental rights
<p>In a long-term perspective, this option (<b>point a</b>) would promote a better use of EU <b>external</b> migration policy to address the root causes of refugee crises and provide alternative solutions to persons in need of international protection. In this view, this option would avoid, at least to some extent, that asylum-seekers embark on dangerous journeys to reach the EU and it would limit the action of smugglers.</p> <p>Regarding the safety of return operations (<b>point b</b>), the option would reinforce the protection of human rights in countries of return, by setting up a monitoring system and, thus, reducing the risks that returned migrants are exposed to persecution and serious harm.</p>
Economic benefits
<p>Economic benefits would be mainly related to the possible reduction of persons in need due to the increased effectiveness of development aid in tackling the principal drivers of need (e.g. lack of opportunity and hunger) <sup>190</sup>.</p>
Costs
<p>Regarding <b>point a</b>, there are already numerous EU funds that support actions in third countries, including actions to strengthen refugee protection systems, border management, development cooperation. The policy option would promote a more effective use of current funds and instruments and counter the diversion of funds as is evident in the status quo. In addition, it would require the mobilization of additional resources to support the proposed EU Trust Fund office.</p> <p>Regarding <b>point b</b>, costs would arise for the EU, due to new activities in terms of monitoring and evaluation. However, these costs are expected to be low, and comparable to costs already borne in relation to, for example, the compilation of COI reports.</p>
Cost of Non-Europe
<p>Benefits are difficult to quantify, as many other factors affecting refugee movements come into play and concrete effects are likely to materialise only in a long-term perspective. However, costs are deemed to be low, as this option would mainly imply the re-orientation and increased effectiveness of the current EU funding in the field of development cooperation. In the long-run, the balance between costs and benefits is expected to be positive.</p>

## 7. Policy Option 7: EU accession to the ECHR

Even though the EU is not a signatory to the ECHR, EU law has developed despite the silence of the Treaties regarding human rights by integrating it through the case law of the CJEU as general principles of law<sup>191</sup> before the adoption of the EU CFR. The Charter reflects the set of rights established by the ECHR, with many Articles reproducing the ECHR with only slight amendments in wording. Some Articles are drafted more broadly than the ECHR, for example in relation to non-discrimination: Article 21 of the CFR on non-discrimination goes further than the equivalent Article 14 ECHR as it covers discrimination based on nationality. In particular, the right to asylum is guaranteed by article 18 of the EU CFR while it is not by the ECHR.

<sup>189</sup> European Parliament, 25 October 2016, [Resolution on human rights and migration in third countries](#), TA(2016)0404, para. 84.

<sup>190</sup> In the status quo, irregular migration to the EU ranges from 709 thousand – 1.3 million individuals per year.

<sup>191</sup> See article 6 §3 TFEU that has codified this case law of the CJEU into the Treaties.

The consequences of EU accession to the ECHR mainly pertain to a better judicial protection of human rights. If it were to become a party to the ECHR, norms adopted by the EU would become subject to review by the ECtHR, a jurisdiction which is external to the EU and not only by the CJEU. In particular, as the ECtHR has already observed<sup>192</sup> that an applicant standing to bring claims has difficulty accessing the CJEU due to the requirement of direct and individual concern by article 263 TFEU, it would acquire the possibility to bring a case against the EU before the ECtHR. Moreover, even if conflicts between the two courts have been rare, the CJEU would have to expressly accept guidance from the ECtHR and follow its jurisprudence (Kokott and Sobotta, 2015; Wennerström, 2015). In the context of the fundamental rights concerns arising from the EU CEAS policies discussed in Section 3.V, this additional scrutiny by the ECtHR and greater coherence required between the two courts would enhance judicial protection for applicants for international protection. The famous ruling of the ECtHR in the case *MSS* prohibiting Dublin transfers in violation of article 3 ECHR shows that the case law of the ECtHR paved the way for the development of the CJEU in its ruling *NS*. More especially, the ruling in *Tarakhel* shows that a court specialised in human rights like Strasbourg can be more demanding than the CJEU especially concerned by the functioning of the internal market or of the area of freedom of security and justice on the basis of the principle of mutual recognition above the protection of human rights.

The TFEU (Article 6(2)) establishes an obligation for the EU to accede to the ECtHR, without specifying a deadline for accession. Protocol No 8 to the Treaty of Lisbon sets out conditions for the accession. On 10 June 2013, the Council of Europe, in collaboration with the EU, issued the "Draft revised agreement on the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms"<sup>193</sup>. This received a negative opinion from the CJEU (CJEU Opinion 2/13) expressing concerns that accession would jeopardize the characteristics and the autonomy of EU.

The draft Accession Agreement is being re-negotiated. On 12 October 2017 the Council confirmed its commitment to the EU accession to the ECHR and invited the Commission to complete its analysis of legal issues raised by the CJEU<sup>194</sup>.

The table below presents the assessment of the costs and benefits of this option. The benefits of this option are related to fundamental rights; thus, the economic benefits are not outlined.

**Table 22: Assessment of Policy Option 7**

Individual benefits / fundamental rights
Accession to the ECHR would provide an additional external scrutiny mechanism by the ECtHR to monitor compliance with fundamental rights by the EU. Accession would also enhance consistency between the jurisprudence of the CJEU and ECHR.
It would also improve judicial protection for an applicant to bring a case to court without having to fulfil the requirements of the CJEU.
This additional scrutiny and coherence would promote access to justice for applicants at European level for beneficiaries of international protection, contributing to offset the issues in terms of non-compliance with fundamental rights highlighted in Section 3.V.

<sup>192</sup> ECHR, case [Bosporus Hava Yollari Turizm Ve Tikaret Anonim Sirketi v Ireland](#) (Application n. 45036/98), 30 June 2005., paras. 162 and 165.

<sup>193</sup> Council of Europe, 10 June 2013, 'Draft revised agreement on the accession of the European Union to the Convention for the Protection of Human Rights and Fundamental Freedoms', 47+1(2013)008rev2.

<sup>194</sup> Council of the European Union, 28 July 2017, [Council conclusions on the application of the EU Charter of Fundamental Rights in 2016](#).

**Costs**

The expected costs of implementing this option are minimal, given that the ECHR is already part of EU law. Subsequent compliance checking of EU legislation by the ECtHR would impose an additional cost with the appointment of an EU judge among the members of the ECtHR.

**Cost of Non-Europe**

The net benefits reflecting the CoNE are expected to be positive and are a function of the increased protection of asylum-seekers and coherence achieved between the ECtHR and CJEU.

## 6. CONCLUSIONS

This study set out to investigate the Cost of non-Europe in the area of asylum. To do so, it identified 9 key gaps and barriers in EU legislation and action related to the Common European Asylum System as well as a horizontal gap/barrier on the non-compliance with fundamental rights. The study proposes seven policy options that have potential to address some of these gaps and barriers to some degree.

The study offers three main conclusions for policymakers in the EU and the Member States:

- Shortcomings in the CEAS infringe on the fundamental rights of asylum-seekers and reflect a non-compliance with international and EU law. In addition, these shortcomings lead to a wide range of adverse impacts. This study highlights the wide range of impacts and characterises their magnitude.
- There are a range of policy options available to policymakers at the EU and Member State levels. These options include legislation action as well as better implementation of existing legislation. Each option can be expected to generate benefits that exceed the costs of implementation.
- Each policy option addresses at least one gap or barrier identified in the status quo by addressing the underlying drivers. These drivers are the poor management of the arrival of asylum-seekers to the EU, the poor accounting of individual needs and preferences and the limited predictability of asylum procedures.

The study draws on an extensive range of studies and statistics about asylum in the EU. However, there were notable gaps, for example, an understanding of what costs Member States incur to provide reception to asylum-seekers and to undertake other activities such as development cooperation and border control. The estimates related to returns and integration are also limited by the unavailability of specific and recent data on asylum-seekers. Information is also particularly lacking on the costs related to mental health, which can have a long-term impact on the well-being of asylum-seekers and their productivity. Despite these challenges, the study findings suggest that the cost of non-Europe is significant and that the EU can take further action that will generate benefits to individuals and society.

## ANNEX 1 – RIGHTS PROTECTED AT INTERNATIONAL AND EU LEVEL

**Table 23: Fundamental rights guaranteed in international and EU law**

<b>Fundamental rights</b>	<b>International obligations</b>	<b>EU legislation protecting these rights</b>
<b>Right to asylum and non-refoulement</b>	<ul style="list-style-type: none"> <li>Articles 2 and 33 Geneva Convention</li> <li>Article 22 CRC</li> </ul>	<ul style="list-style-type: none"> <li>Articles 18 and 19 CFR</li> <li>Article 21 Qualification Directive</li> <li>Articles 28(2), 38(1) and 39(4) Asylum Procedures Directive</li> <li>Articles 4, 5 and 9 of the Return Directive.</li> </ul>
<b>Right to liberty and security</b>	<ul style="list-style-type: none"> <li>Article 5 ECHR</li> <li>Article 9 ICCPR</li> <li>Article 37 CRC</li> </ul>	<ul style="list-style-type: none"> <li>Article 6 CFR</li> <li>Article 33 Qualification Directive</li> <li>Article 8 and 9 Reception Conditions Directive</li> </ul>
<b>Prohibition from torture, inhumane or degrading treatment</b>	<ul style="list-style-type: none"> <li>Articles 3 and 4 ECHR</li> <li>Article 7 ICCPR</li> <li>Article 19 CRC</li> <li>Article 2 CAT</li> </ul>	<ul style="list-style-type: none"> <li>Article 4 CFR</li> </ul>
<b>Rights of the child</b>	<ul style="list-style-type: none"> <li>Article 10 ICESCR</li> <li>Article 24 ICCPR</li> <li>Convention on the Rights of the Child</li> </ul>	<ul style="list-style-type: none"> <li>Article 24 CFR</li> <li>Articles 20(5) and 31 Qualification Directive</li> <li>Article 25 Asylum Procedures Directive</li> <li>Articles 23 and 24 Reception Conditions Directive</li> <li>Articles 6 and 8 Dublin III Regulation</li> </ul>
<b>Right to respect for private &amp; family life</b>	<ul style="list-style-type: none"> <li>Article 8 ECHR</li> <li>Article 10 ICESCR</li> <li>Articles 17 and 23 ICCPR</li> <li>Articles 10 and 16 CRC</li> </ul>	<ul style="list-style-type: none"> <li>Article 7 CFR</li> <li>Article 23 Qualifications Directive</li> <li>Article 12 Reception Conditions Directive</li> <li>Articles 9 and 10 Dublin III Regulation</li> </ul>
<b>Right to education</b>	<ul style="list-style-type: none"> <li>Article 22 Geneva Convention</li> <li>Article 2 First Protocol to ECHR</li> <li>Article 13 ICESCR</li> <li>Article 28 CRC</li> </ul>	<ul style="list-style-type: none"> <li>Article 18 CFR</li> <li>Article 27 Qualification Directive</li> <li>Articles 14 and 16 Reception Conditions Directive</li> </ul>
<b>Right to work</b>	<ul style="list-style-type: none"> <li>Articles 17, 18 and 19 Geneva Convention</li> <li>Article 6 ICESCR</li> </ul>	<ul style="list-style-type: none"> <li>Article 15 CFR</li> <li>Article 26 Qualification Directive</li> <li>Article 15 Reception Conditions Directive</li> </ul>
<b>Right to access</b>	<ul style="list-style-type: none"> <li>Article 24 Geneva</li> </ul>	<ul style="list-style-type: none"> <li>Article 35 CFR</li> </ul>

Fundamental rights	International obligations	EU legislation protecting these rights
healthcare	<ul style="list-style-type: none"> <li>Convention</li> <li>Articles 9 and 12 ICESCR</li> <li>Articles 24-26 CRC</li> </ul>	<ul style="list-style-type: none"> <li>Article 30 Qualification Directive</li> <li>Articles 17 and 19 Reception Conditions Directive</li> </ul>
Right to non-discrimination	<ul style="list-style-type: none"> <li>Article 3 Geneva Convention</li> <li>Article 14 ECHR</li> <li>Article 2(2) ICESCR</li> <li>Articles 24 and 26 ICCPR</li> <li>Article 2 CRC</li> </ul>	<ul style="list-style-type: none"> <li>Article 21 CFR</li> <li>Article 32(2) Qualification Directive (specifically for accommodation)</li> </ul>

## ANNEX 2 – CALCULATIONS OF IMPACTS

This annex has three sections. Section I presents the database of indicators that provided a basis for many of the calculations of the impacts of the gaps/barriers. Data from 2016 was collected when possible. Estimates of costs were inflated if needed using the harmonised consumer price index. Section II presents detailed calculations related to the gaps and barriers by stage in the asylum journey. Section III presents detailed calculations related to the policy options.

### I. Database of indicators

**Eurostat:** Eurostat offers a compilation of annual asylum statistics from the Member States, some of which are presented in Annex 1<sup>195</sup>. For the assessment of the impacts, the key indicators were the *number of asylum applications*, the share of asylum applicants who are minors (less than 18 years of age), *outgoing and ingoing Dublin requests for transfers*, *actual physical transfers*, *first and final decisions*, *protection status* (if application was positive), *ordered to leave*, *forced returns* and *voluntary returns*. Based on the number of first and final decisions, we estimated the recognition and appeals rate.

**EU-LISA:** Eurodac annual statistics provided information for the calculations on *multiple applications*. Specifically, we drew on reported hits of Category 1 individuals in another Member State. Category 1 individuals are those at least 14 years of age who have lodged an application for asylum in a Member State.

**European Migration Network (EMN) Survey:** Estimates for the *cost of organised reception* was based on findings from a survey conducted by EMN. The average daily cost was estimated to be EUR 34/day. Our approach to reach this estimate is described below.

A survey of members was conducted in 2017 to collect information regarding the *costs and length of reception for asylum-seekers*. Information was gathered from 17 Member States<sup>196</sup>. The survey did not collect information in a standardized format and thus the responses are not structured in the same way nor provide the same information. To make the data comparable, a series of simple calculations were undertaken. Moreover, two national reports that were indicated in the replies were consulted for estimate the reception costs in Ireland (Reception and Integration Agency, 2016) and Italy (Golini et al., 2015). For instance, when the reception cost was

<sup>195</sup> Eurostat asylum statistics: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics).

<sup>196</sup> These countries are: Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Hungary, Ireland, Italy, Latvia, Netherlands, Poland, Slovak Republic, Sweden and United Kingdom.

estimated per month or per year, the figure was divided by 30 or 365 respectively in order to obtain the daily figure. Although the replies provided by each Member State differ in terms of level of details, the figures were combined together to get – to the best extent possible – an estimate that could be comparable across Member States. For instance, the reception costs of reception centres were differentiated from those of independent accommodation. When costs of different reception centres were specified, the average cost of these different centres was considered. Where specified, the different reception costs for adults and unaccompanied minors were also taken into account. Moreover, the reception costs for each Member State were standardised using price level indices (Eurostat, 2017), which takes as benchmark the EU average price level. Equation 1 below shows the formula applied to standardise reception costs across EU Member States.

Equation 1:

$$\text{Standardised reception cost}_i = (\text{Reception cost}_i * 100) / \text{Price level index}_{i2016}$$

Where:

- $i$  = one of the 17 EU Member States that replied to the EMN query;
- $\text{Reception cost}_i$  = reception cost indicated by country  $i$ ;
- $\text{Price level index}_{i2016}$  = price level index of country  $i$  during the year 2016.

In one case, the costs reported by Member States in local currencies – other than EUR – were converted into EUR using annual exchange rates (Eurostat).

The result was a standardised cost of EUR 34/day per asylum-seeker. We validated this estimate through comparison with findings from two other studies – an OECD study (OECD, 2017 a) and (Ramboll and Eurasyllum, 2013). According to the OECD (2017), the estimated cost for processing and accommodating asylum-seekers in the EU is EUR 10,000 per application during the first year of stay. Dividing this figure by 365, we obtained the estimate of EUR 27/day per asylum-seeker. Ramboll and Eurasyllum (2013) estimated, on the basis of administrative data collected directly from EU Member States, that the annual reception cost may vary between EUR 6,743 and 23,000. These figures correspond to an estimated daily cost of reception of EUR 18.5 to 63/day per asylum-seeker<sup>197</sup>. The estimates from these two studies were considered comparable to our estimate of EUR 34/day. Thus, we considered our estimate robust and proceeded to use it in the calculations related to gaps/barriers (Section II).

The same approach was also taken to estimate the cost of reception for unaccompanied and separated minors. The relevant information to make this calculation was only available for three Member States – Finland, Italy and Sweden. The average cost of reception was found to be EUR 154/day per each unaccompanied or separated minor.

**Other cost estimates:** Estimates for the EU average cost of *transfers*, *returns* and *appeals* were obtained from (ICF, 2015) and are presented in Table 24.

**Table 24: Cost estimates from ICF, 2015**

Activity	Average cost in EU (EUR)
Transfer	EUR 259
Judicial review of an appeal to a transfer	EUR 870

<sup>197</sup> Annual estimates were divided by 365 days to obtain daily estimates per asylum-seeker. EUR 6,743/365 = EUR 18.5 while EUR 23,000/365 = EUR 63

request	
Return for rejected asylum-seeker	EUR 2000

Estimates for the average cost of an asylum application and appeal was obtained from (Matrix and ICMPD, 2013). The calculation for the average cost of an asylum application is shown in Table 30. A standardised estimate for the EU cost of detention was determined based on figures by Member State presented in De Bruycker et al, 2015. The standardised figure of EUR 135 was obtained using the approach described above for organised reception.

## II. Calculations related to gaps/barriers

### 1. Irregular migration

We estimate the number of individuals at risk for irregular migration due to Gap/Barriers 1, 4, and 9. These figures are presented in Table 9. The text below explains how these estimates were obtained.

Gap/Barrier 1: The estimates are based on the number of asylum applications made in that year (*migr\_asy*). Another study (van Ballegooij and Navarra, 2018) found that 97 percent of asylum applicants arrived via irregular means. We apply this parameter to reach an overall figure of estimated irregular migrants.

Gap/Barrier 4: These estimates are based on Eurostat figures for the number of outgoing requests for Dublin transfers (*migr\_dubro*), the number of outgoing Dublin transfer requests approved by the receiving Member State (*migr\_dubduni*), and the number of these Dublin transfers carried out (*migr\_dubtransf*)<sup>198</sup>. The table below provides the figures for these variables in 2016 and 2017. Individuals for whom a Dublin transfer request was not approved by the receiving Member State would become the responsibility of the origin Member State and be able to lodge an asylum application there. However, individuals whose request for Dublin transfer was approved, but was not actually transferred would become an irregular migrant.

The estimated number of irregular migrants because of this gap was 63,692 (82,098-18,406) in 2016 and 83,177 (104,641-21,464) in 2017.

**Table 25: Dublin transfers overview**

	Eurostat variable name	2016	2017
Number of outgoing requests for Dublin transfers	<i>migr_dubro</i>	152,825	157,574
Number of outgoing Dublin transfer requests approved by the receiving Member State	<i>migr_dubduni</i>	82,098	104,641
Number of approved Dublin transfers carried out	<i>migr_dubtransf</i>	18,406	21,464

Gap/Barrier 9: These estimates are based on Eurostat figures for asylum application decisions (*migr\_asydctzy*), the total number of orders to leave the EU (*migr\_eiord*) and the total number of returns following the order *migr\_eirtn*). The latter two variables are not specific to asylum-

<sup>198</sup> A Dublin transfer is registered twice as an incoming request (from Country B to Country A) or as an outgoing request (from Country A to Country B). Thus, we focus only on outgoing requests.

seekers, but reflect orders to leave the EU for all categories of irregular migrants. We assume the return rates based on these orders are comparable for asylum-seekers. The table below provides the figures for these variables in 2016 and 2017.

The estimated number of irregular migrants was 316,678 ((100 percent-51 percent)\*640,160) in 2016 and 256,874 ((100 percent-41 percent) \* 435,380) in 2017.

**Table 26: Ineffective returns overview**

	<b>Eurostat variable name</b>	<b>2016</b>	<b>2017</b>
Number of negative decisions on asylum applications – first and final	<i>migr_asydctzy</i>	640,160	435,380
Overall number of orders to leave	<i>migr_eiord</i>	493,785	516,115
Overall number of returns following order to leave the EU	<i>migr_eirtn</i>	250,015	213,505
Share of orders executed	<i>migr_eiord and migr_eirtn</i>	51 percent	41 percent

Table 27 summarizes the level of irregular migration for the different gaps and barriers.

**Table 27: Overview of findings for irregular migration**

<b>Source of irregular migration</b>	<b>Est. number of individuals (2016 figures)</b>	<b>Est. number of individuals (2017 figures)</b>	<b>Individual impact</b>	<b>Economic impact<sup>3</sup></b>
Irregular arrivals to EU ( <i>Gap/Barrier 1</i> )	0.97*1,269,910 <sup>1</sup>	0.97*708,585 <sup>1</sup>	Risk of death, exploitation and violence  Exorbitant fees to smugglers	Surveillance and border management  Search and rescue missions  Third country agreements
Lack of solidarity ( <i>Gap/Barrier 3</i> )	295,171 <sup>2</sup>	245,931 <sup>2</sup>	Exploitative labour practices	Lost tax revenue
Dublin transfers that were approved but not carried out ( <i>Gap/Barrier 4</i> )	63,692 <sup>3</sup>	83,177 <sup>3</sup>		
Rejected claims and failure to leave EU ( <i>Gap/Barrier 9</i> )	316,678 <sup>4</sup>	256,874 <sup>4</sup>		

<sup>1</sup> Annual estimates of asylum applicants to the EU multiplied by 97%; <sup>2</sup> Category I foreign hits from EU-LISA 2017 and 2018 reports. Estimated based on the total number of outgoing transfer requests, accepted outgoing transfer decisions and transfers made; <sup>3</sup> Estimated based on analysis of Dublin transfer statistics from Eurostat; <sup>4</sup> Estimated based on the number of rejected claims for asylum and the overall figures for orders to return.

This section explains the annual costs of human trafficking in the EU that may be ascribed to gaps and barriers in the EU's asylum policy (range: EUR 12.3-25.6 billion; average: EUR 18.9 billion). The cost reflects two components – the first is the cost to the victims and the second is the profits to criminal networks. The two components are reflected in both the lower and upper bounds.

The lower bound was calculated as follows.

Lower bound, component 1: The estimated number of persons trafficked in the EU (10,998) was obtained from Eurostat. The latest available figure was 10,998 persons from 2012 (Eurostat, 2015). This figure was multiplied by the estimated cost per trafficked person (Levi et al, 2013) of EUR 263,193. The figure was converted from GBP to euros and inflated to the 2016 price level to reach EUR 4.9 billion.

Lower bound, component 2: The second component was estimated from an ILO study on the estimated profits from the exploitation of forced labour in developed economies including the EU (ILO, 2014). The study estimated the profits due to trafficking to be EUR 46.9 billion for the EU and developed economies. The estimated overall profits were USD 46.9 billion. An estimated 30% were ascribed to criminal networks in the EU. The resulting figure was then converted into euros and inflated to the 2017 price level to reach EUR 12.7 billion.

The sum of the two components was then multiplied by the adjustment factor of 70% to reach the lower bound of EUR 12.3 billion.

Lower bound estimate (Trafficking) =  $0.7 * (\text{EUR } 4.9 \text{ billion} + \text{EUR } 12.7 \text{ billion}) =$   
EUR 12,301,386,580

The upper bound was estimated as follows.

Upper bound, component 1: Another study estimated the costs of physical and sexual abuse suffered by trafficked women in the UK. The estimated costs were £1 billion in 2003 (Dubourg and Pritchard, 2008). This figure was converted to euros and inflated to the 2016 price level for an estimated EUR 1.69 billion<sup>199</sup>. Eurostat, 2015 reports a population ratio of trafficked persons of 3.6 per 100,000 among women and 2.8 per 100,000 among men. Assuming that the costs for trafficked men are equivalent to women, the costs were inflated to reflect all trafficked persons in the UK. These costs were EUR 3 billion. Trafficked victims in the UK represented about 20% of the total in the EU – Eurostat reported 2,145 victims in the UK and 10,998 in the EU in 2012 (see Eurostat, 2015, p.13). The costs were further inflated by this factor to reach an estimate of EUR 15.4 billion for the EU.

Upper bound, component 2: The second component relied on the ILO, 2014 study. In this case, it assumed that about 50% of the profits in developed economies could be ascribed to the EU (a total of USD 23.5 billion). This figure was converted into euros and updated to the 2017 price level.

The total cost of trafficking was estimated to be the sum of the two figures – the cost to victims and the profits to networks – multiplied by the adjustment factor (as not all trafficking may be ascribed to gaps and barriers in EU asylum policy):

Upper bound estimate (Trafficking) =  $0.7 * (\text{EUR } 15.4 \text{ billion} + \text{EUR } 21.1 \text{ billion}) =$   
EUR 25,556,724,242

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<sup>199</sup> The level of inflation over the 2003-2017 period was estimated to be 50.26% and the GBP to euro exchange rate was 1.1259 in December 2017.

## 2. Procedural inefficiencies

### 2.1. Gap/Barrier 3 – Unnecessary transfers

#### Estimation of fiscal cost to Member States for carrying out transfers that do not alter the distribution of asylum-seekers across the Member States

We reviewed a cross-tabulation of the number of outgoing approved transfers (*migr\_dubtrasf*) in 2016 by sending and receiving Member States. In the review we identified instances where some individuals were transferred from Member State A to Member State B, and an additional number of individuals were transferred from Member State B to Member State A. Rather than carrying out all these transfers, the minimum number could be 'cancelled out' from the number of transfers carried out by Member State A and Member State B. In total 1,524 instances of duplicate transfers were identified. Removing these duplicates would reduce the number of transfers carried out by sending and receiving Member States. The removal of duplicate transfers would reduce the overall number of transfers from 18,406 to 15,358 (18,406 – 2\*1,524). We assume that 20 percent of the 3,048 transfers could not be eliminated due to the unique background of the asylum-seekers in question.

The fiscal burden associated with the reduction of 2,438 transfers (80%\*2\*1,524) was estimated by considering the cost of the Dublin transfer and the accommodation of individuals awaiting a Dublin transfer. These costs could have been avoided had the duplications been identified subsequent to the approval of the Dublin request. The carrying out of a Dublin transfer has been estimated to cost EUR 259 (ICF, 2015). The time limit for carrying out a transfer is 6 months. The costs of reception were estimated to be EUR 34/day per asylum-seeker (see Annex 3.1 - Database of indicators).

The costs were thus estimated with the following equation:

$$2,438*[259+(34*30*6)] = \text{EUR } 15,552,002$$

### 2.2. Gap/Barrier 4 – Unclear criteria and rules

#### Estimation of fiscal cost to Member States for hold individuals for whom a transfer request was made but not approved

We reviewed the number of outgoing transfer requests that were made and not approved (see Table 29). These figures were estimated to be 70,727 in 2016 (152,825-82,098) and 52,933 in 2017 (157,574-104,641). In this calculation we assumed that these individuals would not have been held for the waiting period if clear criteria and rules were in place. The calculation assumes that the response of the recipient country is correct while errors are made on the part of the sending country. In reality however, errors may be made on both sides.

Taking a more simplistic approach, the fiscal cost was estimated as the cost of reception for holding these individuals during the waiting periods stimulated by the Dublin III Regulation. In practice, these waiting periods may be longer (ICF, 2015).

As the waiting period for replying to a request for a Dublin transfer vary by the type of request (take-charge or take-back), we estimated the reception cost separately for each as follows:

Reception cost for take-charge request: EUR 34/day\*30\*4 = EUR 4,080

Reception cost for take-back request: EUR 34/day\*30\*3 = EUR 3,060

We then investigated the share of outgoing Dublin transfer requests that fell into each of these categories using statistics from Eurostat (*migr\_dubdedaco*). This figure was applied this to the number of Dublin transfer requests that were rejected, the Dublin time limits and the

corresponding reception cost to obtain the fiscal cost (see Table 28).

**Table 28: Dublin III Regulation -time limits for transfers**

	Take charge request	Take back request
Submit request for Dublin transfer	Two months from Eurodac hit	Two months from Eurodac hit
Reply to request for Dublin transfer	Two months	One month
Total time	Four months	Three months

**Table 29: Dublin transfers not approved - Parameters for estimation**

	2016	2017
Number of transfer requests made	152,825	157,574
Number of transfers not approved	70,727	52,933
Share of outgoing transfers that are take-charge requests ( <i>migr_dubdedaco</i> )	27 percent	44 percent
Est. number of take-charge requests not approved	19,294	23,295
Est. number of take-back requests not approved	51,433	29,638
Fiscal cost	EUR 236,104,218 (EUR 4,080*19,294 + EUR 3,060*51,433)	EUR 185,735,939 (EUR 4,080*23,295 + EUR 3,060*29,638)

### 2.3. Gap/Barrier 4 – Approved transfers that are not carried out

#### Estimation of fiscal cost to Member States for providing reception for these individuals

Section 1 estimates the number of approved transfers that were not carried out to be 63,692 in 2016 (82,098-18,406) and 83,177 in 2017 (104,641-21,464) (see Table 25). To these figures we multiple the average daily cost of reception (EUR 34), the period of 12 months and divide the figure by half.

$$2016: 63,692 * 34 * 12 * 30 * 0.5 = \text{EUR } 389,795,040$$

$$2017: 83,177 * 34 * 12 * 30 * 0.5 = \text{EUR } 509,043,240$$

### 2.4. Gap/Barrier 4 - Use of appeals in transfers

#### Estimation of fiscal cost to Member States of delays due to appeals

We assume that appeals may be lodged following the approval of a transfer request. Table 25 presents the figures available for Eurostat for the number of approved transfer requests. We assume that an appeal was lodged for 54 percent of these requests based on findings from ICF, 2015 and considered an alternate scenario where the appeal rate was 10 percent. ICF, 2015 estimated the cost of an appeal to a transfer request to be EUR 870 per applicant. This figure does not include the cost of legal aid or legal assistance. We then estimated the judicial cost of appeals as follows:

Judicial costs of appeals = 82,098 \* (0.54-0.10) \* 870 = EUR 36,845,582 in 2016

Judicial costs of appeals = 104,641 \* (0.54-0.10) \* 870 = EUR 40,056,575 in 2017

An appeal would also extend the amount of time a Member State has to provide reception to the individual. We could not obtain estimates for the average length of an appeal to a transfer. However, we noted that the Proposal for the Dublin IV Regulation includes a time limit of 15 days for appeals to transfer requests. We assume that in practice these appeals take one month on average. We multiply this delay by the average cost of organised reception centres EUR 34/day<sup>200</sup>.

Cost of delay due to appeals = Number of approved transfers \* 0.44 \* 1 month \* EUR 34/day \* 30 days/month = EUR 36,845,582 in 2016 and EUR 46,962,881 in 2017

The total costs associated with appeals was then estimated to be EUR 73,691,164 in 2016 (36,845,582 +36,845,582) and EUR 87,019,456 in 2017 (40,056,575 +46,962,881).

## **2.5. Gap/Barrier 6 – Use of detention during transfers**

### Estimation of fiscal cost to Member States for use of detention rather than organised reception

Information from several sources was used to produce this estimate. We assumed that detention was only used in cases where Dublin transfers (take-charge or take-back) had been approved and would be carried out. Table 25 indicates that there were 82,098 such transfers in 2016 and 104,641 in 2017. We assumed that detention was used in 6.4 percent of transfer requests and that the average detention period was 2 weeks (14 days) based on a study conducted by ICF, 2015. The cost of detention per individual in the EU was assumed to be an average of EUR 135/day (De Bruycker et al, 2015) while the average cost of organised reception in the EU was assumed to be an average of EUR 34/day (see Section I for more information). The calculation was thus made as follows:

6.4 percent \*82,098 \* (135-34)\*(14 days) = EUR 7,429,541 in 2016

6.4 percent \*104,641 \* (135-34)\*(14 days) = EUR 9,469,592 in 2017

## **2.6. Gap/Barrier 5 and 6 - Multiple applications**

EU-LISA, 2017 (Eurodac Statistics) provides statistics on the number of foreign hits in EU Member States in 2016. Foreign hits refer to the entering of an asylum-seeker's fingerprints in another Member State, and which we refer to as multiple applications here. The individual may have entered the EU irregularly to that country and subsequently moved to another Member State through a secondary movement. According to Dublin rules, the second country should transfer the asylum-seeker to the first country to lodge the asylum application, but in practice this may not happen. It is also possible that some of these individuals lodged asylum applications in both Member States. In 2016, there were an estimated 295,171 individuals who were registered in Eurodac in two different Member States. In 2017, the figure was 245,931. The share of asylum-

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<sup>200</sup> The calculation for this figure is presented in Section I of this annex.

seekers with a foreign hit who who lodged an asylum application in both Member States is not known. We assume that about 15 to 30 percent of all individuals with a foreign hit lodged applications in two Member States while the majority would have only been fingerprinted in the first Member State. The figure of 15 percent was used as a lower bound estimate while the figure of 30 percent was used as an upper bound estimate.

We then investigated the cost of processing an asylum application. Estimates were obtained from HOME, 2013. The study developed estimates for four countries that were not identified (see Table 30). The estimates reveal substantial cross-country differences.

**Table 30: Cost of processing an asylum application**

	Cost, 2013 (EUR)	Cost, 2016 (EUR)
Estimate 1	2,384	2,403
Estimate 2	3,602	3,630
Estimate 3	5,200	5,241
Estimate 4	8,000	8,063
Average	4,797	4,834

Source: DG HOME, 2013. These estimates were inflated to 2016 values using the consumer price index.

We used the average value of EUR 4,834 for our calculations, which are presented below:

Lower bound (15 percent):

2016: EUR 4,834 \* 15 percent \* 295,171 = EUR 214,028,492

2017: EUR 4,834 \* 15 percent \* 245,931 = EUR 178,324,568

Upper bound (30 percent):

2016: EUR 4,834 \* 30 percent \* 295,171 = EUR 428,056,984

2017: EUR 4,834 \* 30 percent \* 245,931 = EUR 356,649,136

Among these four figures, we used the lowest as the lower bound and the largest as the upper bound.

## 2.7. Gap/Barrier 5 - Cost of appeals to asylum decisions

Eurostat asylum statistics provide information on the number of final decisions on asylum applications, which represent the number of appeals made at the first instance. There were 221,020 appeals in 2016 and 281,545 appeals in 2017. It is interesting to note that while the number of asylum applications went down in 2017, the rate of appeals more than doubled from 18 percent (221,020/1,260,910) to 40 percent (281,545/708,585).

We consider a scenario where the rate of appeal was 10 percent in both years. The number of appeals in the scenario would be 126,091 (0.1\*1,260,910) in 2016 and 70,859 in 2017 (0.1\*708,585). The difference would be 94,929 in 2016 and 210,686 in 2017.

Information could not be obtained from existing literature on the costs of appeals to asylum applications. We estimated it by scaling up the reported average cost in the EU for a judicial review of an appeal to a transfer request, which is EUR 750 (ICF, 2015). In making this extrapolation we assume that the costs of the two procedures are the same per unit of time – the costs would primarily be the human resources to review a case. The difference would be the length of the procedure. For information on the lengths of the two procedures we use as a benchmark the time limits indicated in the Proposal for the Dublin IV Regulation and the

proposed Asylum Procedures Regulation. Thus, the scale-up factor was defined as the ratio of the time limit for an appeal of an asylum decision to the time limit for an appeal to a transfer request. According to the Proposal for the Dublin IV Regulation, the time limit for an appeal to a transfer request is 15 days. The timeline for an appeal to an asylum decision is 6 months in the proposed Asylum Procedures Regulation. Using this information, we defined a scale-up factor of 12 (6 months divided by 15 days). The estimated cost for an appeal to an asylum decision was thus estimated to be EUR 9,000 (12 \* EUR 750). In addition to this cost of the appeal procedure itself would be the cost of providing reception during the appeal. The average daily cost of reception centres (EUR 34) multiplied over 6 months was added to the sum. The estimation of the daily cost of reception centres is described in Section I of this Annex.

2016 cost =  $94,929 * 9,000 + 94,929 * (34 * 30 * 6) = \text{EUR } 1,435,326,480$

2017 cost =  $210,686 * 9,000 + 210,686 * (34 * 30 * 6) = \text{EUR } 3,185,572,320$

## 2.8. Gap/Barrier 9 - Forced returns instead of voluntary returns

In 2016, there were a total of 302,618 asylum-seekers with rejection at 1<sup>st</sup> and final decisions in the EU. Some of these individuals may return to the source country via forced or voluntary means while the remainder stay as irregular migrants in the EU. Actual statistics for these outcomes are not available from Eurostat. However, they can be estimated based on other variables from Eurostat regarding overall orders to leave and returns following orders to leave. The variables and the estimation are presented in Table 31.

**Table 31: Key variables for estimation of the number of voluntary and forced returns**

Eurostat variable name		2016	2017
<b>All irregular migrants</b>			
Total orders to leave	<i>migr_eiord</i>	493,785	516,115
Total returned following order to leave	<i>migr_eirtn</i>	250,015	213,505
Share that returned	<i>migr_eiord</i> <i>migr_eirtn</i>	51 percent (250,015/493,785)	41 percent (213,505/516,115)
<b>Subset of irregular migrants with information on forced or voluntary return</b>			
Total returned following order to leave	<i>migr_eirtn</i>	81,020	93,425
Share with voluntary return	<i>migr_eirt_vol</i>	57 percent 46,100/81,020	57 percent 53,160/93,425
Share with forced return	<i>migr_eirt_vol</i>	43 percent 34,655/81,020	42 percent 39,565/93,425
<b>Estimations for asylum-seekers</b>			
Negative decisions on asylum applications – first and final	<i>migr_asydctzy</i>	640,160	435,380
Est. number of rejected asylum-seekers who return voluntarily		186,095 (640,160*0.51*0.57)	126,565 (435,380*0.51*0.57)
Est. number of rejected asylum-seekers who are forcibly returned		140,387 (640,160*0.51*(1-0.57))	95,479 (435,380*0.51*(1-0.57))

The cost of voluntary return was estimated based on information from the Assisted Voluntary Return and Reintegration (AVRR) Program managed by IOM. The Assisted Voluntary Return and Reintegration 2016 Key Highlights indicated that in that year, The report notes that 98,403 individuals received assistance. The budget line for the AVRR programme in the 2018 Program and Budget was EUR 55,062,100. The budget was divided by the number of beneficiaries to receive an estimated figure of EUR 560 per voluntary return. The cost of each forced return was estimated to be EUR 2000 based on ICF, 2015. In addition we assumed that each forced return also includes a two week period (14 days) of detention, as assumed in ICF, 2015, and is used in the place of organised reception. The cost of detention in the EU was estimated to be EUR 135/day as compared with EUR 34/day for organised reception. The total cost of a forced return plus detention was estimated to be EUR 3,414 (EUR 2000 + 14\*(EUR 135-EUR 34)).

These figures were used to estimate two scenarios – one being the status quo and the other being the absence of forced return. The difference in these two figures provided us with an estimate of the additional fiscal burden.

Scenario 1 - Status quo = Both forced and voluntary return are used.

$$\text{Scenario 1 (2016)} = 186,095 * \text{EUR } 560 + 140,387 * \text{EUR } 3,414 = \text{EUR } 583,494,445$$

$$\text{Scenario 1 (2017)} = 126,565 * \text{EUR } 560 + 95,479 * \text{EUR } 3,414 = \text{EUR } 396,841,120$$

Scenario 2 – all voluntary return= only voluntary return is used. The number of overall returns of rejected asylum-seekers does not increase.

$$\text{Scenario 2 (2016)} = (186,095 + 140,387) * \text{EUR } 560 = \text{EUR } 182,829,696$$

$$\text{Scenario 2 (2017)} = (126,565 + 95,479) * \text{EUR } 560 = \text{EUR } 124,344,528$$

$$\text{Difference (2016)} = \text{Scenario 1} - \text{Scenario 2} = \text{EUR } 400,664,749$$

$$\text{Difference (2017)} = \text{Scenario 1} - \text{Scenario 2} = \text{EUR } 272,496,592$$

### 3. Employment and integration

#### 3.1. Gap/Barrier 3 – Dublin does not ensure solidarity and fair-sharing

The assessment of lost tax revenue for this gap/barrier focuses on asylum-seekers who engage in secondary movements to another Member State than the one which has responsibility to examine the application for asylum. Estimates for this population were developed in Section II.1 of this Annex. These estimates were 295,171 in 2016 and 245,931 in 2017.

We consider two scenarios. In the first scenario 70 percent individuals are employed in the shadow economy, generating no tax revenue for Member States. In the second scenario, these same individuals are instead employed in the formal economy – 30 percent in part-time work and 70 percent in full-time work. Based on the analysis for other gaps/barriers related to this impact, we assume the tax revenue generated for part-time work was EUR 2,230 and for full-time work was EUR 4,459.

The calculations were as follows:

$$2016: 30\% * 70\% * 295,171 * 2,230 + 70\% * 70\% * 295,171 * 4,459 = \text{EUR } 783,150,649$$

$$2017: 30\% * 70\% * 295,171 * 2,230 + 70\% * 70\% * 295,171 * 4,459 = \text{EUR } 652,506,589$$

The 2017 estimate served as the lower bound while the 2016 estimate served as the upper bound for the range.

#### 3.2. Gap/Barriers 5, 7 and 8 – Integration and lost tax revenue

We assessed the employment and income gap between beneficiaries of international protection

and the native population through several scenarios. The key assumptions in the calculation are presented in the table below.

**Table 32: Key assumptions for calculations of lost tax revenue**

	EU citizens	Beneficiaries of international protection
Employment rate	71%	34% lower
Income level	Average EU wage = EUR 21,480*	Minimum wage = EUR 10,837
Temporary or part-time work	30%	44%
Full-time work	70%	56%
Tax revenue (full-time)	EUR 6,444**	EUR 4,459
Tax revenue (part-time)***	EUR 3,222	EUR 2,230

\*Average monthly wage of EUR 1790 multiplied by 12.

\*\* The average tax rate for single persons without children earning at the average wage is 30%.

\*\*\* We assume wages and tax revenue for part-time workers is half that of full-time workers.

The calculations were made for the sample of asylum-seekers who received a positive decision on their application. There were 710,635 positive decisions in 2016 and 538,235 in 2017. These figures represent more than half (56% and 76% in 2016 and 2017 respectively) of the total number of asylum applications in 2016 and 2017.

*Scenario 1: Beneficiaries of international protection had a 34 percent lower likelihood of employment than natives and were employed in the minimum wage positions*

The estimated number of employed individuals was 263,646 ((71%-34%) \*710,635) in 2016 and 199,685 ((71%-34%) \*538,235) in 2017. The table below presents the calculations drawing from the parameters in Table 32.

**Table 33: Scenario 1 calculations – employment and integration**

	2016	2017
Number employed	263,646	129,930
Part-time	116,004	57,169
Full-time	147,642	72,761
Tax revenue	917,022,620	694,552,998
Part-time	258,689,048	195,931,104
Full-time	658,333,572	498,621,894

*Scenario 2: Beneficiaries of international protection had the same employment rate as natives and were employed in the minimum wage positions*

In this scenario we assume that persons of international protection have the same employment rate (71%) as natives as well as the same rate of full- and part-time work.

**Table 34: Scenario 2 calculations – employment and integration**

	2016	2017
Number employed	505,261	382,685
Part-time	151,578	114,806
Full-time	353,683	267,880
Tax revenue	1,915,092,607	1,450,491,278
Part-time	338,019,933	256,016,322
Full-time	1,577,072,673	1,194,474,956

*Scenario 3: Beneficiaries of international protection had the same employment rate as natives and the same wage level*

In this scenario we assume that persons of international protection have the same employment rate (71%), rate of full-time work conditional on employment, and wage level as natives.

**Table 35: Scenario 3 calculations – employment and integration**

	2016	2017
Number employed	505,261	382,685
Part-time	151,578	114,806
Full-time	353,683	267,880
Tax revenue	2,767,519,258	2,096,119,285
Part-time	488,385,751	369,903,403
Full-time	2,279,133,507	1,726,215,881

#### 4. Living conditions and health

A key impact of gap/barrier 1 is the loss of life in the journey of asylum seekers to the EU. We estimate this loss in monetary terms using a value-of-statistical-life approach as described in greater detail below.

The base value of a statistical life year was taken to be USD 9.6 million in the United States in 2017 (Viscusi and Masterman, 2017). It is similar to the value used in another Cost of non-Europe study which is based on McCollister et al, 2010<sup>201</sup>. This value was adjusted to the level of GDP in the EU and also to the average GDP in the three main source countries of asylum-seekers to the EU: Afghanistan, Syria and Iraq. This average was a weighted average based on the population size of the three countries. The adjustment was made based on a conversion rate where the GDP of the relevant geographic area was divided by the GDP of the United States. This conversion rate

<sup>201</sup> The tangible and intangible costs of homicide in that study was estimated to be USD 8,982,907 in 2008.

was then applied to the VSL from the United States. The two estimated figures for the EU and source countries are italicised. This approach to adjusting the value of life using GDP levels was also used in another Cost of non-Europe study (van Ballegooij and Bakowski, 2018).

	GDP	Conversion rate	VSL
USA	USD 19.39 trillion	n.a	USD 9.6 million (EUR 8.5 million)
EU	USD 17.3 trillion	0.892	<i>EUR 7.6 million</i>
Source countries	USD 38.4 billion	0.0001978	<i>EUR 17,903</i>

These VSL figures were then applied to the number of missing or dead migrants in 2016 and 2017. We assume that 72% of deaths were experienced by asylum-seekers while the remainder were economic migrants. We assume that all of these asylum-seekers who died would have otherwise lodged an application for asylum in the EU and would be comparable to the overall population of asylum-seekers in terms of their potential to receive positive recognition. We apply the recognition rate to the sample to estimate the number who could have received positive recognition and stayed in the EU as a refugee. The VSL for the EU was applied to this group. For the remainder, we applied the VSL for the weighted average of the source countries.

The table below summarises the key parameters.

Year	Number of dead or missing – all	Number of dead or missing – est asylum-seekers*	Recognition rate**
2016	5,205	3,748	53%
2017	3,069	2,210	55%

\*Applied adjustment factor of 72%. \*\*Estimated using Eurostat data. The numerator was the total number of positive decisions in that year divided by the total number of decisions (both positive and negative).

The total cost was estimated as follows:

$$2016: 0.53 * 3,748 * \text{EUR } 7.6 \text{ million} + (1 - 0.53) * 3,748 * \text{EUR } 17,903 = \text{EUR } 14,983,388,227$$

$$2017: 0.55 * 2,210 * \text{EUR } 7.6 \text{ million} + (1 - 0.55) * 2,210 * \text{EUR } 17,903 = \text{EUR } 9,282,008,331$$

The 2017 value served as the lower bound while the 2016 value was an upper bound. This range represents the likely impact considering the annual fluctuations in the underlying figures of dead or missing migrants.

### III. Calculations related to policy options

#### 1. Policy Option 2 – Increased mandate for EASO

With regards to transfers, we make the following assumptions:

- In the status quo, transfers that have no impact on the distribution of asylum-seekers in the EU imply a cost of EUR 19 million. Under the policy option we assume that such transfers are eliminated as well as the cost.

- In the status quo, there is a low rate of Dublin transfers approved (34-46 percent) = EUR 186-236 million. Under the policy option we assume that the number of transfer requests decreases by half and the approval rate doubles. As a result the costs decline by 50 percent.
- Lastly, in the status quo, there is a high rate of appeal to approved Dublin requests (54 percent) = EUR 84-107 million. Under the policy option we assume that the appeal rate decreases by 50 percent. As a result the costs decline by 50 percent.

Cost savings = EUR 19 million + 0.5 \* EUR 186-236 million + 0.5 \* EUR 84-107 million = EUR 154-245 million

## 2. Policy Option 3 – Suggested additional activities for a European Union Agency for Asylum

In terms of the benefits, we assume a reduction in the rate of appeals to asylum decisions. In the status quo, appeals had an estimated cost of EUR 3.3 – 3.9 billion. We assume the rate of appeals would decline by 50 percent. In 2016 there were 221,020 appeals and in 2017 there were 281,545. Assuming these decline by half, the costs also decline by half:

2016 cost =  $0.5 * 221,020 * 9,000 + 0.5 * 221,020 * (34 * 30 * 6)$  = EUR 1,670,911,200

2017 cost =  $0.5 * 281,585 * 9,000 + 0.5 * 221,020 * (34 * 30 * 6)$  = EUR 1,943,273,700

With respect to the costs, some of the activities suggested in the option build upon but go slightly beyond the scope of the proposal COM (2016) 271: 1) guidelines established by the Agency should be binding; 2) the Agency's COI should be assessed through a peer review mechanism; 3) monitoring should additionally cover detention practices and legal assistance and incorporate opinions from civil society and UNHCR. The additional costs of these activities were estimated based on two cost categories mentioned in the proposal:

- **Cost category 1:** operational appropriations (point 3.2.2 of the proposal) – only costs of outputs under which the proposed activities of the option would likely fall were considered:
  - 1) binding guidelines → output: operational standards and best practices on asylum
  - 2) COI peer review → output: country of origin information and common analysis
  - 3) additional monitoring → output: communication, information exchange.
- **Cost category 2:** appropriations of an administrative nature (proposal point 3.2.3), namely total staff costs. An annual average cost was calculated (costs 2017-2020/4).

Based on the total costs for these outputs as put forward in the Proposal (point 3.2.2), an annual average cost was calculated based, of which the estimated costs for additional activities were calculated as between 2 percent and 5 percent. Table 36 presents the calculation for the costs for category 1 while Table 37 shows the calculation for the costs for category 2.

**Table 36: Cost category 1 – operational appropriations**

	Total cost (2017-2020) (EUR)	Average annual cost (EUR)
Output: country of origin information and common analysis	19,786,053	4,946,513

Output: Operational standards and best practices on asylum	3,297,675	824,419
Output: Communication, information exchange	3,297,675	824,419
<b>Total</b>	<b>26,381,403</b>	<b>6,595,351</b>

Source: Proposal COM (2016) 271 final, point 3.2.2

**Table 37: Cost category 2 – appropriations of an administrative nature**

	2017	2018	2019	2020	Annual average cost (EUR)
<b>Total (EUR)</b>	19,720,000	29,536,000	40,069,000	52,038,000	35,340,750

Source: Proposal COM (2016) 271 final, point 3.2.3

The additional activities suggested in option 3 were calculated as 2-5 percent of the sum of the costs from categories 1 and 2.

**Table 38: Calculation of annual cost of policy option**

	Estimated cost (EUR)
Cost category 1 (EUR)	6,595,351
Cost category 2 (EUR)	35,340,750
Total (EUR)	41,936,101
...of which 2 percent	838,722
...of which 5 percent	2,096,805

Source: Proposal COM (2016) 271 final

### 3. Policy Option 4 – Take individual preferences into account

The assessment of this policy option has three parts.

One part builds from the assessment of lost tax revenue for the status quo. In that assessment, it was assumed that the employment rate among beneficiaries of international protection was 34 percent lower than EU citizens, which was 71 percent (see Table 32). Under the policy option, the employment rate would be 9 percent higher – 46 percent rather than 37 percent.

Lost tax revenue in the status quo was assessed in Scenario 1. The lost tax revenue was EUR 597 million in 2016 and EUR 452 million in 2017.

We define a Scenario 4 for the policy option which considers the higher employment rate of 46 percent. The estimates are presented below. The difference in the lost tax revenue between Scenarios 1 and 4 was EUR 222,458,317 in 2016 and EUR 168,489,946 in 2017. These figures can be understood as estimated economic benefits of the policy option.

**Table 39: Scenario 4 calculations – employment and integration**

	2016	2017
Positive decisions	710,635	538,235
Number employed	327,603	248,126
Part-time	144,145	109,176
Full-time	183,458	138,951
Tax revenue	1,139,480,937	863,042,942
Part-time	321,443,804	243,461,560
Full-time	818,037,133	619,581,384

Impacts may also be observed in terms of Dublin transfers. First, take-charge requests to be eliminated in increased recognition of individual preferences. In 2016 there were 131,538 take-back requests while in 2017 there were 83,865 such requests. With the elimination of these requests we could expect a savings in the reception cost.

In Chapter 4, an assessment of Gap/Barrier 4 for procedural inefficiencies estimated the reception cost for a take-back request to be EUR 3,060 (see Annex 2.II.2.2). We estimate the overall cost savings on this ground alone for each of the two years considered.

2016:  $131,538 * 3060 = \text{EUR } 402,506,280$

2017:  $83,865 * 3060 = \text{EUR } 256,626,900$

Other savings may be generated for take-charge requests, for example, an increased rate at which approved transfers are carried. The level of increase could not be defined given the multiple contributors to this outcome, and thus it was not quantified.

**Table 40: Dublin transfers not approved - Parameters for estimation**

	2016	2017
Number of transfer requests made	152,825	157,574
Share that are outgo		
Number of transfers not approved	70,727	52,933
Share of outgoing transfers that are take-charge requests ( <i>migr_dubdedaco</i> )	27 percent	44 percent
Est. number of take-charge requests not approved	19,294	23,295
Est. number of take-back requests not approved	51,433	29,638

Fiscal cost	EUR 236,104,218 (EUR 4,080*19,294 + EUR 3,060*51,433)	EUR 185,735,939 (EUR 4,080*23,295 + EUR 3,060*29,638)
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With regards to appeals, they may only be lodged with respect to approved take-charge requests. Drawing from information in Annex 2.II.2.4, the remaining cost for take-charge requests would be:

$$2016: 152,825 * 27 \text{ percent} - 19,294 = 21,969$$

$$2016: 157,574 * 44 \text{ percent} - 23,295 = 46,038$$

We assume that appeals are launched for 54 percent of these requests alone rather than all approved transfers.

The reduction in judicial costs and reception during the appeals process for the elimination of take-back requests alone would be:

$$2016: (82,098 - 21,969) * 0.54 * 870 + (82,098 - 21,969) * 0.54 * 34 * 30 = \text{EUR } 30,292,990$$

$$2017: (104,641 - 46,038) * 0.54 * 870 + (104,641 - 46,038) * 0.54 * 34 * 30 = \text{EUR } 29,524,191$$

The level of appeals may also decline. Assuming a 75 percent decline, the level of costs would be: EUR 7,573,248 in 2016 and EUR 7,381,048 in 2017.

The driver in this reduction would be due to the reduction in appeals launched, which was estimated as follows:

$$2016: (82,098 - 21,969) * 0.54 * (1 - 0.75) = 15,032$$

$$2017: (104,641 - 46,038) * 0.54 * (1 - 0.75) = 14,651$$

The estimated cost savings from the status quo was EUR 66,117,916 in 2016 (73,691,164 - 7,573,248) and EUR 79,638,408 in 2017 (87,019,456 - 7,381,048).

## ANNEX 3 – REFERENCES

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[Directive 2011/95/EU](#) of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337, 20.12.2011, OJ L 337, 20.12.2011

[Directive 2013/33/EU](#) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013 - hereafter 'Reception Conditions Directive'.

[Regulation \(EU\) No 604/2013](#) of the European Parliament and of the Council of 26 June 2013 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), OJ L 180, 29.6.2013 – hereafter 'Dublin Regulation'.

[Regulation \(EU\) No 603/2013](#) of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 (recast), OJ L 180, 29.6.2013 – hereafter 'Eurodac Regulation'.

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This study focuses on EU action and cooperation in the area of asylum. Despite EU Member States having committed themselves to offering protection to those who have to leave their home country to seek safety from persecution or serious harm, it argues that there are still significant structural weaknesses and shortcomings in the design and implementation of the Common European Asylum System (CEAS), and related measures. Beyond the tragic loss of lives, this study estimates both the individual impact in terms of fundamental rights protection as well as the economic costs of those gaps and barriers. Furthermore, it identifies seven policy options for further EU action in the field, together with an estimation of their potential costs and benefits.

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PDF ISBN 978-92-846-3345-6 | doi:10.2861/760528 | QA-04-18-820-EN-N