Study on the Feasibility and legal and practical implications of establishing a mechanism for the joint processing of asylum applications on the territory of the EU

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Prepared by **Helene Urth, Mathilde Heegaard Bausager, Hanna-Maija Kuhn, Joanne Van Selm**
Checked by **Solon Ardittis**
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List of abbreviations

AMF	Asylum and Migration Fund
CCME	Churches' Commission for Migrants in Europe
CEAS	Common European Asylum System
CIREA	Centre for Information, Discussion and Exchange on Asylum
COI	Country of Origin Information
EASO	European Asylum Support Office
ECHR	European Convention of Human Rights
ECRE	European Council on Refugees and Exiles
EU	The European Union
Frontex	The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU
IO	International organisation
IOM	International Organisation for Migration
JRS Europe	Jesuit Refugee Service Europe
MEP	Member of European Parliament
MS	Member State of the European Union
NGO	Non-governmental organisation
RSD	Refugee status determination
TFEU	Treaty on the Functioning of the European Union
UNHCR	The Office of the United Nations High Commissioner for Refugees

Executive summary

Purpose of the study

The study on the feasibility and practical implications of establishing a mechanism for joint processing of asylum claims within the European Union was launched in the context of the Hague Programme, the subsequent Stockholm Programme and the Commission Policy Plan on Asylum (adopted on 17 June 2008). Joint processing was envisioned as a possible solidarity mechanism to help Member States cope with some of the challenges they may be faced with in asylum matters.

The purpose of the study is to provide a basis for further discussions and informed decisions about the possible further development of an EU mechanism for joint processing of asylum claims. Joint processing of asylum claims inside or outside the territory of the EU has been the subject of administrative, political and academic discussion at various points over the last fifteen years; however, without the establishment of a definition of what exactly the term "joint processing" entails. Thus, it should be stressed that, as much as the purpose of the study is to assess the *legal*, *political*, and *financial* implications of joint processing, it is first and foremost a *feasibility* study, testing the idea of joint processing, and what it could and should entail, among stakeholders.

For analysis purposes, four potential options for a mechanism for joint processing of asylum claims were developed in the context of this study. However, the objective of the study is not to produce a final report with firm conclusions on the best possible design of a mechanism for joint processing of asylum claims within the EU. Rather, the objective is to stimulate discussion of a selection of the most feasible elements from each proposed option, on the basis of which a more refined version of the mechanism could be constructed. It may also very well be that the best solution lies in a combination of the proposed options, or in something that goes beyond what the preliminary options proposed.

Methodology

This feasibility study was conducted by collecting both primary and secondary data.

The primary data was collected through:

- two workshops with key stakeholders;
- case studies in nine Member States, entailing the administration of a standard questionnaire through face-to-face interviews with government officials, NGOs and UNHCR local representatives;
- telephone or face-to-face interviews with the remaining Member States (i.e. at least one representative of the national authorities; in many countries a state expert was selected to represent the position of the Member State), UNHCR local representatives and NGOs, and EU level stakeholders, including one Member of the European Parliament (MEP);
- questionnaires on financial data from the Member States.

All the interviewees were promised anonymity in order to allow them to speak more freely without fear of being held accountable for their statements, and to avoid unwillingness to participate in interviews for that same reason. Therefore, the different Member States and organisations interviewed are not quoted or referenced for specific statements and positions in the report.

The secondary data consisted of detailed reviews of existing literature in the form of 41 articles related to asylum processing, key policy and legal documents, and statistics from Eurostat for the financial assessment of joint processing.

On the basis of the literature review and discussions with EASO, UNHCR, national and NGO experts at the first workshop, four potential options for joint processing were developed and used as a common structure for the interviews at national and EU level. The outline of the options was shared with the respondents prior to the interviews. This methodological choice had the disadvantage that the respondents' views were to some extent shaped by the proposed options and as a result so were the discussions about the concept of joint processing. The advantage of this approach, however, was that the options provided a more concrete basis for discussing an otherwise very intangible and broadly interpreted concept.

In the analysis of the qualitative data, the positions presented as those of the Member States are based on the interviews with the government officials. The perspectives of the national UNCHR representatives, the national NGOs and the EU level stakeholders are used to qualify and put a perspective on views presented by the Member States' representatives, as well as to gather more arguments in favour or against certain aspects of joint processing.

While the political analysis builds primarily on the interview statements, the legal and financial analyses are also supported by secondary data (e.g. legal documents and statistics). In general, the findings are based on a triangulation of several different sources such as different types of respondents (government representatives, NGOs, international organisations, etc.) and supporting documents.

Problem definition and possible solutions

Past discussions on joint processing of asylum seekers have, from a policy perspective, been motivated by three factors: (access to) protection; efficiency in processing asylum claims; and improving control at the border. Policy and political discussion of joint processing has now moved away from the focus on location (inside or outside EU territory); and the focal point seems now to be on whether joint processing would actually be a useful contributing element to the CEAS, and how it would work.

Already in the initial phases of the study it became clear that one of the challenges would be dealing with the lack of consensus on what is actually meant by the term 'joint processing'. The Commission has decided on a broad definition of the term for the purpose of this study:

An arrangement under which the processing of asylum applications is jointly conducted by two or more Member States, or by the European Asylum Support Office (EASO), with the potential participation of the UNHCR, within the territory of the EU, and which includes the definition of clear responsibilities during the asylum procedure and possibly also for dealing with the person whose application was jointly processed immediately after a decision on his/her case was taken.

Although this definition formed the starting point for this study, there is an obvious need to arrive at a common understanding of the concept, as well as to consider the process for its development and ultimate implementation in the event that Member States decide that what they ultimately collectively understand as 'joint processing' is a practice that they wish to achieve.

It became clear that there were a number of central questions, which needed to be answered, before more in-depth discussions of the idea of 'joint processing' could be initiated:

- What is joint processing?
- Why undertake joint processing?
- What exactly does or could the 'joint' aspect entail?
- Which parts of 'processing' would be jointly conducted?
- Who could undertake which element in the asylum procedure?
- Where should or could joint processing take place?
- How would joint processing work in practice?
- What level of responsibility for outcomes would be attached to participation in joint processing?

Four potential options for an EU mechanism for joint processing of asylum claims, providing four different answers (or combinations of answers) to the above questions were developed on the basis of consultations with experts. These options were then used as a basis for discussions with national level stakeholders in the collection of Member States' and NGO's views on the idea of joint processing.

The options were developed in the context of on-going discussions regarding the amendment of the Dublin Regulation and the inclusion of the so-called Early Warning Mechanism. Three options (A-C) were thus designed to match this new situation in which the Dublin system will include mechanisms for monitoring, preventing and managing potential crisis situations in Member States' asylum systems.

Option A takes as a starting point the crisis management phase of the Early Warning Mechanism. The key feature of Option A is that it is very much in line with the Dublin regulation, in that it respects the established division of responsibilities between Member States. In an Option A scenario, the mechanism for joint processing is employed in a situation where a Member State's asylum system is struggling to cope with the inflow of asylum seekers. In such a scenario, according to Option A, "joint processing teams" would be set up on an ad hoc basis, consisting of officials from the existing EASO Asylum Intervention Pool, who will support the State in crisis either on the ground or by means of remote working. Participation in the EASO Asylum Intervention Pool is mandatory (as it is now), but participation in support processing missions is voluntary, as is the request for support from the Member State in crisis. The supporting officials are given the responsibility for preparing the dossier and making recommendations on cases on the basis of the EU acquis but, importantly, the final decision is made by the Member State responsible for the application (as defined by the Dublin Regulation) in accordance with the EU acquis and its national variations. Since the decision-making power remains with the Member State responsible for the application, the Member State is also responsible for any ensuing appeal cases. Returns and removal operations also remain in the competence of the same Member State. As regards funding matters, expenses ensuing from the use of this form of joint processing are to be financed through funding of EASO and support from the Asylum and Migration Fund (AMF).

Option B is very much like Option A, in all matters but two: it additionally proposes a 'one way side-stepping' of the Dublin Regulation and the setting up of a common EU system for return and distribution. The option proposes 'side-stepping' the Dublin Regulation 'one way' in the sense that, in exchange for the processing support received by other Member States, the Member State in "crisis" assumes responsibility for all asylum cases lodged in that Member States plus those that should have been lodged in that State according to the geographical determination factor of the Dublin

system. That is to say, the Member State in "crisis" receives Dublin transfers from all other countries but does not make transfers itself. In exchange, a common EU system for distribution, return and removal is established. For distribution of the recognised refugees, the Member States participating in the support processing team pre-determine a number/quota of the recognised beneficiaries of international protection, whom they will accept into their country. After the processing, the Member States are to relocate the equivalent numbers of persons from among the cases for which their own officials have provided recommendations for recognition. In the event of a number of recognised beneficiaries exceeding the quota, the rest of the group are to remain in the MS where the joint processing takes place. Returns and removals are also dealt with jointly, coordinated by EASO and Frontex in cooperation.

Option C proposes that joint processing is invoked already in the preventive phase of the Early Warning Mechanism with an objective of freeing up resources within a Member State under pressure to allow it to build up the necessary capacity to cope with the pressure and fulfil the requirements of the drafted preventive action plan. Apart from that, the main difference between this option and Option A is that Option C proposes to essentially turn the EASO Asylum Intervention Pool (or parts of it) into a more institutionalised, or stable, "joint processing pool".

Finally, **Option D** proposes a completely harmonised, EU-based approach for joint processing of (essentially all) asylum applications within the EU. Here, the mandate of EASO is to be extended to allow it to essentially act as an EU agency for asylum issues. Based on a further developed EU acquis, EU officials will process and decide on all asylum applications at centralised (EU) joint processing centres. Returns and removals are to be carried out in cooperation between the agency and Frontex, while distribution of the recognised refugees is facilitated by a distribution 'key'.

Political implications

The collected responses on the political views on joint processing varied significantly both across Member States and across actors, and indeed within Member States. Part of the mixed picture might come down to definitional issues, and the relative newness of thinking about joint processing within the EU as a real policy option. Thus, in assessing the political implications of joint processing, this study distinguishes between support for joint processing in general, and for each of the four specific options which were presented to the interviewees.

In general, a clear majority of all interviewees for this study, including government officials in sixteen Member States, is in favour of 'joint processing'. One important and interesting point that emerges from the general comments on joint processing (and later the options), made by multiple interviewees, is that having been shown four different models that could be called 'joint processing' according to the definition given by the tender specifications for this study, they actually perceived only Option D to be 'real joint processing' whereas options A, B and C seemed more like methods for assisting or supporting Member States which were facing particular challenges either in terms of arrivals of third country nationals or in terms of their own systems, or both. This point lead the research team to one finding that permeates the rest of this report, namely that there is a distinction between what will henceforth be referred to as 'supported processing', covering options A, B and C, and 'joint processing', which could be a scenario similar to Option D. Another way of putting this could be that 'supported processing' involves Member States, and an ultimate decision on each asylum claim by a Member State (most likely the one in which the individual applies for asylum, and which is responsible for the claim) whereas 'joint processing' involves an EU level model and decision-making.

Due to the varied definitions and conceptualizations of the approach, the general outcome in terms of option preferences is very mixed. Nonetheless, the collected responses indicate that, regardless of how favourable many government officials as well as NGOs were to 'real' joint processing and a full-scale EU system (Option D), there is widespread scepticism as to whether this model could gain sufficient political support in the short or medium term.

The interviews suggest that in the foreseeable future Option A is the most feasible and likely approach, with some potential adaptations, which could be drawn from some of the favoured elements of options B and C. Specifically, the idea of joint returns (Option B), and that of employing supported processing already at the crisis prevention phase (Option C) were looked upon favourably by several respondents and proposed as supplements to option A. However, the 'one-way side-stepping' of Dublin and the re-location elements in option B and the mandatory aspect of Option C were the reasons why these two options were ranked below Option A in terms of preference by the majority of the respondents representing the Member States. In the longer term, many actors might prefer to see more complete joint processing, along the lines of Option D. However, confidence in the political will to move to a level of harmonisation necessary for such a common approach, including the adaptations required to the understandings and practice of state sovereignty, is low, and for some Member States there is, at present, no interest in moving to this level.

Legal and practical implications

On the basis of initial discussions with experts in the field, it was decided to keep options A, B and C focused on providing support for the preparation and recommendation on cases, leaving the actual final decision-making (at first or second instance) up to the individual Member State. Involving other Member States' officials in the decision-making would create legal issues and pose questions on, amongst else, legal competence and jurisdiction.

These legal concerns were confirmed by the interviewed stakeholders. In terms of national legal implications of joint/supported processing, the main concern expressed by Member States is that in general, irrespective of which option was preferred, national legislation tends to specify that it is the national authorities who are charged with the handling or preparation of the asylum case. However, while many Member States specifically mentioned that amendments to existing national law would be needed for the implementation of joint – or even supported – processing, they found that such legislative amendments could be introduced relatively easily and that this issue would not be something that would prevent them from taking part in joint/supported processing.

Moreover, the interviews showed that there is a valid legal concern with respect to whether EASO experts or non-national experts would be sufficiently knowledgeable of the national legislation and requirements in the Member State in which the processing takes place; the implication being that lack of knowledge of national legal requirements of a dossier to be used in the first or second instance decision could potentially influence the outcome of an asylum claim or prolong the process. However, given that national asylum legislation must be in line with EU law and the core principles in assessing a claim for asylum therefore would remain the same across the EU, this concern could be overcome fairly easily through practical means such as providing training on the specificities of national law, as also suggested by some Member States.

The involvement of officials from different Member States in the processing also raised some practical concerns with respect to the specific rights of the persons whose claim for asylum is jointly processed, namely the need for translation of documents and the potential use of interpretation between the case workers. It was seen as essential that the final decision would have to be made in the language of the Member State handling the application irrespective of the language in which parts of the processing had been conducted, as this would also be necessary for second instance decisions.

Other legal issues related to the feasibility of a joint/supported processing scheme relate to the questions of mutual recognition and appeal procedures. On both matters, there seems to be sufficient legal basis in either EU or national law to accommodate any necessary legal changes.

Based on these and other option-related legal considerations, Option A is deemed to be the most feasible one, as it does not require any changes to the existing EU legislation in the area of asylum policy, other than those already foreseen by the current proposal for amendments to the Dublin Regulation. A number of issues of mainly practical, financial and political character, however, remain. Overcoming the issue of translation, in particular with respect to appeal cases, seems to be the most pertinent concern and some kind of alignment of the case handling and the recommendations would be recommended to minimize any inaccuracies or mistakes.

Compared to Option A, Option B was found to be significantly less feasible, as it would require a number of legislative changes to the current EU asylum acquis, in order to accommodate the proposed policy arrangements. Amendments to the Dublin Regulation are necessary due to the implications of the foreseen "one-way side-stepping" of the Regulation – first, with regard to the issue of family transfers (the consent of the applicant will be needed), and second, with regard to the application of the sovereignty clause currently provided for in Article 3(2) of the Regulation. Particularly relevant for the feasibility of this option are also the legal issues raised by the questions of discriminatory treatment, ensuring that detention of applicants is not unlawful, making suitable legal and practical arrangements for relocation and mutual recognition, as well as for returns and removals.

From a legal perspective, Option C was found to be unfeasible in the short term. This option would necessitate amendments to the current proposal for an Early Warning System, so that it includes prescriptions for a mandatory support processing element as part of the preventive action plan. Option C would also require amendments to the EASO Regulation with respect to establishing a more permanent expert pool for the specific use of supported processing.

Option D is the most ambitious one, in that it requires a complete overhaul of the current CEAS. While there is certainly a legal basis for establishing an EU-level asylum processing scheme, an alternative means of introducing the option would be through the establishment of an Enhanced Cooperation mechanism between nine or more Member States that wish to cooperate on the issue. In either case, several legislative steps would be required, including amending the founding regulation of EASO in order to award EASO decision-making powers and creating a specialised court under the Court of Justice of the European Union to hear the appeals against the administrative decisions issued by EASO.

Financial implications

The financial implications analysis aims to give a basic indicative assessment of the costs of joint (Option D) or supported (options A, B, or C) processing compared to the

costs of a purely national procedure, in terms of overall potential financial costs as well as per individual asylum application.

It was anticipated that financial data would be scarce and not easy to come by, and indeed limited quantitative data was made available only by seven Member States. Providing a precise assessment of the monetary costs of joint (Option D) or supported (A, B, C) processing proved to be unfeasible, due to the lack of available data on the costs of the national procedures for processing (many countries do not monitor this), the incomparability of the little data that was made available (because of differences between national procedures) and due to the fact that the options as outlined are not detailed enough to allow for extrapolations. Nevertheless, based on the available information some indications as to the expected costs and benefits of the proposed options were formulated.

Option D, which was considered by many interviewees to represent *real* joint processing, could potentially provide effectiveness and efficiency gains and thus reduced costs on the aggregate level. The benefits are expected to stem from the creation of economies of scale and reduced costs due to the elimination of the Dublin system. However, putting a monetary value on these benefits, at least at this stage, is next to impossible, and there is no solid basis for objectively assessing the costs of an EU level set-up either. What is known is that there are going to be significant "establishment costs" involved in the creation of EU processing centres, not to mention the expected costs of the required overhaul of the EU asylum acquis as well as national legislation. For this reason, the Option D scenario is considered to be too significant and costly a leap forward from the present stage of the CEAS and is thus challenging from a financial perspective.

Given the current political and economic situation, the interviewees who provided an opinion on the financial feasibility of a mechanism for joint/supported processing pointed out that the most feasible is a scenario which is EU-financed and can be implemented without increases in the Member States' support to the EASO budget. Given the available options, option A is really the only one which can live up to this objective. Even with support from the EU funds for the actual relocation of the recognised refugees, Option B would still entail some costs for accommodation, integration, etc. for those Member States participating in the processing support. Option C would most likely require an increased budget for the EASO, and this was ruled out as unfeasible by some of the respondents.

In view of this, the most feasible option from a financial perspective is Option A. Option A will probably not provide large efficiency gains due to the additional costs of translation and "reshaping" of documents, travel costs and other expenses for the EASO experts. On the other hand, it is expected that support for the processing from other Member States, despite practical implications, will result in a faster procedure for many asylum seekers, and thereby reduce some of the (significant) reception and accommodation costs.

Another factor to take into consideration is that, in crisis situations where the Dublin system has de facto been suspended, there is also a significant financial benefit for the other/supporting Member States in the fact that removing the backlog and reopening for Dublin transfers means reduced costs of accommodation for the "Dubliners" in the other Member States.

Other sources of potential benefits are the efficiency gains from establishing collaboration around country of origin information and sharing interpreters between the countries via e.g. remote working. In addition, there are the non-monetary

benefits to be considered - helping out a fellow Member State in crisis, raising the standards of a potentially suffering asylum processing system and as such ensuring certain minimum standards in asylum processing within the EU.

Conclusions and recommendations

In considering taking the idea of joint processing in the EU further, an important finding of this study was that a majority of the respondents, regardless of their option preference, were in principle in favour of the idea of joint processing, even if there was no common understanding of the term. The combination of the fundamental questions and thinking on potential definitions led, through interviews and workshops, to the suggestion of a potential distinction between the concepts of 'supported' and 'joint' processing, whereby the definitions could be phrased in the following way:

Supported processing: *an arrangement under which the processing (preparation of the dossier and a recommendation) of asylum applications is conducted jointly by officials of two or more Member States, under the coordination of the European Asylum Office (EASO), in support of another Member State in crisis or with a view to preventing a crisis, as defined in the latest proposal for an amendments of the Dublin Regulation (Article 33).*

Joint processing: *an arrangement under which all asylum claims within the EU are processed jointly by an EU authority assuming responsibility for both preparation and decision on all cases, as well as subsequent distribution of recognised beneficiaries of international protection and return of those not in need of protection.*

Of the four proposed options, A was found to be the only which ticks all boxes in terms of feasibility. Option B, in comparison, is deemed almost unfeasible on all accounts, at least in the short- to medium-term. Similarly, Option C is deemed legally feasible in the medium to long term (requiring some changes to the proposal for an amendment of the Dublin Regulation, Article 33, and the EASO Regulation) but potentially unfeasible on the other two parameters. Option D was from the beginning included mainly to be tested as a potential long-term vision for the idea of joint processing; the option was expected and confirmed to be the least feasible of the four options.

Given this outcome, a revised version of the most feasible option – A – was developed to include elements inspired by the other options and recommended by interviewees, namely an extended scope including the preventive phase of the Early Warning mechanism and the potential establishment of a mechanism for joint returns.

That said, the study also concludes with a recommendation to further test the idea of supported processing, especially with a view to establishing the practical implications of collaboration on processing and the magnitude of the issues (also in monetary terms), which have been raised in this study. A pilot project could be carried out, as a way of testing the idea and gaining more knowledge of the practical implications of supported processing (such as the translation and interpretation issues raised), and how the design of an EU mechanism could and should be developed if the idea is taken further. A pilot project could help establish both how to overcome or work around the practical obstacles to joint processing; whether it could (as proposed) be an effective solidarity-tool to help reduce backlogs and stabilise challenged asylum systems; and whether developing a mechanism for joint processing could be a way towards increased harmonisation and trust, before further concrete steps towards joint processing are undertaken.

1. Introduction

The present report constitutes the final report for the *"Study on the feasibility and legal and practical implications of establishing a mechanism for the joint processing of asylum applications on the territory of the European Union"* in the context of the framework contract for evaluation and evaluation related services signed on the 26 June 2011, contract HOME/2011/EVAL1/01.

The purpose of the study is to provide a basis for further discussions and informed decisions about the possible establishment of a mechanism to support the joint processing of asylum claims within the European Union (EU).

The study was launched in the context of the Hague Programme, the subsequent Stockholm Programme and the Commission Policy Plan on Asylum (adopted on 17 June 2008), which call for an assessment of the potential for joint processing of asylum claims within the EU. This was envisioned as a possible solidarity mechanism to help Member States cope with some of the challenges they may be faced with in asylum matters.[1]

Joint processing of asylum claims inside or outside the territory of the EU has been the subject of administrative, political and academic discussion at various points over the last fifteen years; however, without the establishment of a definition of what exactly the term "joint processing" entails. For the purpose of this study, the Commission has defined joint processing as "*an arrangement under which the processing of asylum applications is jointly conducted by two or more Member States, or by the European Asylum Office (EASO), with the potential participation of the United Nations High Commissioner for Refugees (UNHCR), within the territory of the EU, and which includes the definition of clear responsibilities during the asylum procedure and possibly also for dealing with the person whose application was jointly processed immediately after a decision on his/her case was taken*"[2].

The overall purpose of exploring the concept of joint processing further (and thus also of launching this study) is to assess the feasibility of using joint processing as an instrument to:

- "alleviate the burden of Member States facing disproportionate and specific pressure on their asylum systems;
- Pool resources and reduce costs;
- Support the harmonisation and convergence of asylum decisions at EU level; and/or
- Increase the level of mutual trust between the asylum authorities."[3]

The above definition is rather long and not very specific as are the listed objectives. This goes to show that this study has been launched at the very early stages of exploring the concept of joint processing of asylum claims within the EU. Hence, it should be stressed that, as much as the purpose of the study, as specified in the tender specifications, is to assess the *legal*, *political*, and *financial* implications of joint

[1] European Commission: Tender specifications attached to the invitation to tender, Invitation to tender No. HOME/2011/ERFX/FW/04 concerning *Study on the feasibility and legal and practical implications of establishing a mechanism for the joint processing of asylum applications on the territory of the EU*; Brussels, 29 September 2011.
[2] Ibid.
[3] Ibid.

processing, it is first and foremost a *feasibility* study, testing the idea of joint processing, and what it could and should entail, among stakeholders.

For analysis purposes, four potential options for a mechanism for joint processing of asylum claims were developed in the context of this study (how and why is elaborated in the Methodology chapter below). However, the objective of this study is not to produce a final report with firm conclusions on the best possible design of a mechanism for joint processing of asylum claims within the EU. Rather, the objective is to stimulate discussion of a selection of the most feasible elements from each proposed option, on the basis of which a more refined version of the mechanism could be constructed. It may also very well be that the best solution lies in a combination of the proposed options, or in something that goes beyond what the preliminary options propose.

Moreover, the results of the study should give an indication of whether and how joint processing of asylum claims within the EU might serve one of the four purposes listed above and as such feed into the longer-term development of the solidarity and responsibility-sharing agenda at EU level, and of the Common European Asylum System (CEAS).

The next chapter of this report presents the methodology applied in the study and especially in the data collection and analysis, which is a prerequisite for understanding the analysis and conclusions presented later on. Chapter 3 provides an introduction to the policy background for the idea of joint processing within the EU, which develops into a type of problem definition for the study. This is followed by a presentation of the four options developed in the context of the study (chapter 4), which then leads to the analysis of the feasibility and implications of joint processing and the four options – presented in three parts: a political (chapter 5), legal (chapter 6) and financial analysis (chapter 7). Finally, chapter 8 presents the conclusions and recommendations of the study through a comparison of the options across the three perspectives, a revision of the most feasible option and a discussion of alternatives to joint processing and next steps.

2. Methodology

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

The study has collected both primary and secondary data.

Primary data has included:

- One workshop with nine key stakeholders in the beginning of the study, where different schemes for joint processing as well as a discussion paper was discussed.
- Case studies in nine Member States (Belgium, Cyprus, France, Germany, Malta, the Netherlands, Sweden, Poland and the UK) where government representatives, international organisations (UNHCR), NGOs and other stakeholders were interviewed. In total 27 interviews were conducted as part of the case studies.
- Telephone interviews were carried out in the remaining 17 Member States with government representatives, UNHCR local representatives and NGOs. In total 51 telephone interviews were conducted.
- Questionnaires on financial data from the Member States (data was received from 7 Member States)
- Interviews with EU level stakeholders (MEPs, EASO, UNHCR, ECRE, CCME and JRS Europe).
- A second workshop with eight experts, in which the preliminary findings of the case studies and telephone interviews were presented and discussed.

A list of all interviews and participants of the workshop can be found in Annex A. All the interviewees have been promised anonymity, and there is thus no mention of names or Member States in the analysis. This approach was chosen to allow the interviewees to speak more freely without fear of being held accountable for statements afterwards, and to avoid unwillingness to participate in interviews for that same reason. For the analysis, it was considered less important to be able to say who specifically said what than to be able to get answers from all Member States and to establish where the majority stand on this topic, and moreover the main reasons for their stances.

Secondary data has included:

- A detailed review of existing literature. The database search returned a selection of 178 articles, which were sorted according to their relevance for the study. 74 articles were looked at more closely, and a detailed review was finally conducted of 41 articles relating to asylum processing.
- A detailed review of key policy documents to describe the political background of asylum processing.
- A detailed review of key legal documents, to answer the questions relating to the legal feasibility of asylum processing.
- Statistics from Eurostat in order to assess the financial implications of joint processing.

The reviews of relevant articles and policy documents fed into a discussion paper which served as a basis for the discussion at the first workshop with experts. The first workshop focused mainly on the legal feasibility of joint processing and the input gathered was used to develop the four potential options for joint processing, around which the interviews were structured (the interview guide is attached in Annex B).

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

- MS which currently experience high pressure on their asylum systems.
- MS which previously expressed interest in joint processing and which are expected to have strong (positive or negative) opinions on this.
- MS which have relatively few refugees compared to population size, high GDPs and which are thus expected to have concerns about a joint processing model possibly leading them to become a destination for more refugees.

Respondents (both for the case studies and the phone interviews) were identified using a snowballing approach where respondents were initially asked to help identify new respondents. The UNHCR and ECRE have also been helpful in providing lists of their national representatives and member organisations.

Prior to the interviews (face-to-face or telephone) the respondents received the four options on joint processing for preparation. During the interview, they were first asked about their general view on the overall idea of joint processing of asylum claims within the EU. They were then asked to indicate their preferred option(s) out of the four presented to them and to answer the subsequent questions on political, legal, financial and practical implications then mainly revolved around the preferred option.

This method was chosen to make the interviews as focused and comparable as possible. As mentioned in the introduction, the concept of joint processing has been previously discussed, and most of the respondents were familiar with the idea, even if this had never been defined in detail. The four options hence served as scenarios of what joint processing might entail.

The downside of presenting the options for joint processing prior to the interview, is that the interviewee's immediate thoughts on the term joint processing cannot be collected, as their view of joint processing is already influenced by the scenarios presented to them. Although the first part of the interview guide focused on the general idea of the concept, not restricting the interviewees to focus on the options, it often proved difficult for them to think of the concept more freely, having already pondered on the options. Meanwhile, the selected method of presenting the options beforehand made it possible for the interviewees to prepare and discuss the topic with colleagues beforehand, and for the study team to collect comparable opinions on some of the same issues and elements. Finally, the interviewees were also given the opportunity to propose changes to their preferred option(s) so as to bring their own ideas and alternatives to the table.

In the analysis of the qualitative data, the positions presented as those of the Member States are based on the interviews with the government officials, which in most countries meant only one interview. Conducting one interview with a government official in each Member State and using that as the single official government perspective on joint processing is no doubt sub-optimal. However, this has been more a practical result than a preferred solution, since in most countries all interview enquiries have tended to be passed on and directed to one same person who was either *the* political expert on the topic or the one selected to represent the view of the Member State. As a result, the government officials interviewed were either high-ranking representatives of the government themselves or the government stance on the topic was internally discussed so that one official could communicate the Member State's position.

In the analyses, the perspectives of the national UNCHR representatives, the national NGOs and the EU level stakeholders are used to qualify and put a perspective on views

presented by the Member States' representatives, as well as to gather more arguments in favour or against certain aspects of joint processing.

While the political analysis builds primarily on the interview statements, the legal and financial analyses are also supported by secondary data (e.g. legal documents and statistics). For the financial assessment it was expected that data would be scarce, and input was therefore collected by several means, using both the interviews to ask about the potential financial implications of the options and urging the Member States to fill in a questionnaire on the costs of the current national asylum processing procedures. The latter proved difficult for many Member States and the final result was thus quite meagre. The reasons for and implications of this for the analysis are described in more detail in the introduction to the analysis of the financial implications in chapter 7.

In general, the findings are based on a triangulation of several different sources such as different types of respondent (government representatives, NGOs, international organisations, etc.) and supporting documents.

3. Policy background and Problem definition

Joint processing of asylum seekers by two or more Member States, or by the Union as a whole, inside or outside the territory of the EU, has been the subject of administrative, political and academic discussion at various points over the last fifteen years. The discussion has, from a policy perspective, been motivated by three factors: (access to) protection; efficiency in processing asylum claims; and improving control at the border.

This study addresses the feasibility of joint processing within the territory of the European Union. In approaching this question it is useful to address some fundamental aspects. Many of these elements are only in the early stages of consideration by the actors involved in asylum policy, as thinking on joint processing moves from the broadly theoretical to the possibly practical.

Part of the issue to be set out under 'problem definition' is in fact the problem of definition: **What is joint processing?** Different actors seem to mean different things by the term 'joint processing' and there is a need to arrive at a common understanding of the concept, as well as to consider the process for its development and ultimate implementation, should Member States decide that what they ultimately collectively understand as 'joint processing' is a practice that they wish to achieve.

As mentioned in the introduction to this report, the Commission has decided on a broad definition of the term for the purpose of this study, which was presented in the tender specifications:

An arrangement under which the processing of asylum applications is jointly conducted by two or more Member States, or by the European Asylum Support Office (EASO), with the potential participation of the UNHCR, within the territory of the EU, and which includes the definition of clear responsibilities during the asylum procedure and possibly also for dealing with the person whose application was jointly processed immediately after a decision on his/her case was taken.

Although this definition formed the starting point for this study, it became clear in the early stages of the research that different people, writers, policy-makers and thinkers, have different understandings of joint processing, and those understandings need to be teased out to come to any conclusions on this subject. One underlying issue in analysing thinking on joint processing is the further basic question: **Why would Member States carry out joint processing?** Three motivating factors have been cited already: access to protection; efficiency in processing asylum claims; and improving control at the border. Are all three of these factors consistently present in thinking on joint processing? Are they all necessary, and are they all valid? Could there be additional, situation-specific reasons for undertaking joint processing?

Other questions which arise, and which will be handled in this section include:

- Under which **circumstances** might they do so? Should situations be defined as potentially requiring or being appropriate to joint processing, and should or could there be a short-term focus on very circumscribed situations for joint processing, potentially leading to broader joint processing in the longer-term?
- What exactly does or could the '**joint**' aspect entail?
  - Which parts of '**processing**' would be jointly conducted? Is it only the actual decision, or also the procedure leading to that decision, including the

compilation of an individual's dossier, seeking of evidence, process of advice, appeal, etc.?

- How do the joint and processing link – **who** could undertake which element in the asylum procedure to develop a system that responds to the needs of states, the Union and protection seekers?
- **Where** should or could joint processing take place, and how would decisions on location link both to the '**who'** and '**why'** elements, and to what comes after a decision has been taken?
- **How** would joint processing work in practice?
- What level of **responsibility for outcomes** should be attached to participation in joint processing in terms of staff taking decisions, the location in which the decision is taken, the laws and regulations employed and the connections and desires of the protection seekers involved?

These questions will be addressed through the introduction to the most relevant literature and political developments and discussions presented in this section of the report. The same questions were all broached in the discussion paper (to be found in annex E) and during the first expert workshop for this project, leading to the development of the proposed options.

3.1 Setting the scene

Having posed some of the essential underlying questions about joint processing, it is important to step back and address developments and discussions on the subject to date. In doing so, it is also useful to consider that 'joint processing' has more often been left open to interpretation than clearly defined.

3.1.1 EU political developments and debates: from extra-territorial to intra-territorial processing

The Tampere European Council of 1999 set out a plan for the then fifteen Member States to develop a Common European Asylum System (CEAS).[4] By the time of the Hague Programme in 2004, the EU had expanded to twenty-five Member States, and the building blocks foreseen in 1999 were almost all in place. These involved four directives on the qualification for refugee and subsidiary protection statuses;[5] the procedures by which status would be granted;[6] the reception conditions for asylum seekers in EU Member States;[7] and the possibility for temporary protection in cases of mass influx,[8] as well as a regulation determining the state responsible for assessing an asylum claim, building on the Dublin Convention.[9]

[4] European Council Conclusions, 4-5 November 2004.
[5] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.
[6] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.
[7] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
[8] 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.
[9] Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

With the intention of further developing the CEAS, the Hague Programme foresaw the creation of 'appropriate structures involving the national asylum services of Member States with a view to facilitating practical and collaborative cooperation'.[10] The European Council requested the Commission to 'present a study on the appropriateness as well as the legal and political implications of joint processing of asylum applications within the Union', as well as a separate study on joint processing by EU Member States outside the Union territory.[11] The Stockholm Programme of 2009 reiterates the request for the finalizing of a study on joint processing.[12]

The 2004 context of the request for a study on joint processing inside the EU territory involved an emerging internal EU structure of cooperation, to which joint processing could be a natural extension, and a discussion involving some EU Member States and UNHCR regarding new methods of managing asylum flows towards the European Union territory, which will be discussed below.

One example of the environment of cooperation was Eurasil, a network of asylum practitioners from EU Member States established by the Commission in 2002, following the dissolution of its predecessor group, CIREA (Centre for Information, Discussion and Exchange on Asylum). Eurasil participants represented Member States' authorities responsible for the adjudication of asylum applications (in first instances and also from the appeal bodies). External experts from UNHCR, other international or non-governmental organisations and experts on key issues sometimes attended meetings. Eurasil served as a forum for the exchange of Country of Origin Information (COI) and best practices among EU Member States, asylum adjudicators and the European Commission. With the establishment of the European Asylum Support Office, which has Country of Origin Information among its mandated fields, Eurasil's responsibilities have been handed over.

A further example of the cooperation and integration is the package of directives and the Dublin II Regulation. All of these measures are ultimately intended to mean that as far as the status, decision and content of protection are concerned, it should not make any difference in which EU Member State a person lodges an asylum claim. Meanwhile, the Dublin system offers a means for the transferral of asylum seekers who do not respect the requirement to lodge a claim in the first state entered (with certain limited exceptions). Once status is attained, there is the potential for the transfer of that status within the criteria established for secondary movement within the EU. These systems provide a context to some of the potential aspects of a joint-processing approach.

Prior to the development of the Hague Programme, the UK government had stimulated discussion of alternative methods of handling the flow of asylum seekers to the European Union. Several Member States engaged in discussion of potential models, including collective processing of asylum seekers in transit centres outside the Union territory. Many EU Member States were opposed to such centres, as noted by the UK's House of Lord's European Union Committee reviewing the discussion in 2004.[13]

[10] The Hague Programme: Strengthening Freedom, Security and Justice in the European Union (2005/C 53/01).
[11] European Council: The Hague Programme: Strengthening Freedom, Security and Justice in the EU (4-5 November 2004).
[12] European Council: the Stockholm Programme — An Open and Secure Europe Serving and Protecting Citizens (2010/C 115/01)
[13] House of Lords, *European Union – Eleventh Report* 2004, http://www.publications.parliament.uk/pa/ld200304/ldselect/ldeucom/74/7402.htm

Responding to the challenge, UNHCR issued a model known as the 'three prongs', [14] including an EU-prong setting out the possibility of joint processing of asylum claims within the EU. Under this 2003 UNHCR proposal, asylum seekers would be transferred to a collective reception centre, processed by a consortium of national asylum officials according to EU procedures, and those whose claim proved successful would be fairly distributed across the Member States, while the return of those who were rejected would be a shared EU responsibility. A revised paper on the EU-prong refined the categories of asylum seekers to be subject to EU processing and made other adjustments in the light of on-going and intense discussion at the time.[15] This UNHCR document is rare in addressing joint processing within the EU territory: academic and NGO literature has focused almost exclusively on joint processing outside the EU as will be discussed below.

The political discussions triggered by the UK, which reached no solid conclusions across the EU as a whole, or among the group of interested states, formed the backdrop to the initial request for an enquiry into the feasibility of joint processing.

By 2012, when this study got underway, the context had changed. There are twenty-seven Member States. The European Asylum Support Office is in place, located in Malta, and started operations in 2011, with an initial focus on support to Greece and on Country of Origin Information.[16] The 2008 Policy Plan on Asylum[17] has set out a vision for further harmonisation, practical cooperation and solidarity. Total numbers of asylum seekers making protection claims in the EU have remained relatively stable (276 675 in 2004 [25 states] compared with 302 030 in 2011 [27 states]).[18] Joint operations under Frontex have taken place in the Mediterranean and in Greece; some relocations of refugees have occurred from Malta to several fellow EU Member States within the framework of the EUREMA pilot project; questions have arisen in connection with the Dublin Regulation, particularly, but not exclusively, as regards returns to Greece. Southern Member States have faced increased arrivals of mixed flows in the South in particular in connection to the Arab Spring. Several Member States have become resettlement countries for refugees, or have increased their resettlement quotas.

Furthermore, other studies have been conducted on related areas. For example, the Commission study on relocation has reported that some Member States currently prioritize the avoidance of asylum shopping – but also that they believe this will better be achieved through improved asylum procedures and decision-making across Member States than by joint processing.[19] Notably, in signalling the changed context, the relocation study reported the UK as holding this view. The relocation study also put forward options for a mechanism of relocating refugees and/or asylum seekers between EU Member States: the two main options referenced joint processing, although the remit of the study did not allow full investigation of such a mechanism or its implications. Some Member States interviewed for that study were clear in their

[14] UNHCR, Working Paper on 'UNHCR's Three-pronged Approach', 2003 http://www.unhcr.org/refworld/docid/3efc4b834.html

[15] UN High Commissioner for Refugees, *UNHCR Working Paper: A Revised "EU Prong" Proposal*, 22 December 2003, available at: http://www.unhcr.org/refworld/docid/400e85b84.html [accessed 19 October 2011]

[16] ECRE Interview with Rob Visser, EASO Executive Director, September 2011, http://www.ecre.org/media/news/latest-news/breaking.html#ecre-interview-with-robert-visser

[17] European Commission, (2008), COM (2008) 360 final - Policy plan on asylum – an integrated approach to protection across the EU

[18] Eurostat: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en; AND http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyctz&lang=en

[19] Ramboll Management Consulting and Eurasylum Limited, *Study on the Feasibility of Establishing a Mechanism for the Relocation of Beneficiaries of International Protection*, JLX/2009/ERFX/PR/1005, European Commission, Directorate-General Home Affairs Final Report, July 2010.

opposition to joint processing: one specifically suggested that relocation should be for asylum seekers only, not for refugees, to avoid the issue of joint processing. Others did suggest joint processing as an alternative to relocation, although of course it would still involve the transfer of the individuals who proved to be refugees.[20]

Policy and political discussion of joint processing has moved away from the question of location (within the EU territory or extra-territorial) over time. The focal point now, prior to any decision on whether joint processing would actually be a useful contributing element to the CEAS, is how it would work: what does 'joint' mean and refer to (the process, the decision, the outcome, the protection?) and which 'process'? Would there be centralized joint processing centres or a single EU determining authority with decentralized units in each Member State? Would there need to be a single asylum procedure? Would joint processing involve mutual recognition of asylum decisions made by national authorities? And are there in fact gradations in what has, to date, been collectively termed 'joint processing'? Would bi-lateral arrangements be the same as pan-EU arrangements? Would measures that entail a decision by only the 'responsible' Member State, regardless of contributions to that decision be 'joint processing' in the same way that an EU level decision making process on individual asylum applications would be? Would external support to developing a dossier be joint processing in the same way as having an EU agency decide on a claim would be? Are there steps in the approach that need different labels?

3.1.2 International literature and debates: burden-sharing or raising standards?

Before returning to the policy issues, it is useful to consider the way in which joint processing has been discussed in the non-policy world. The most instructive point here might be that concern in the academic and NGO worlds has primarily focused on the notion of joint processing outside the EU territory, i.e. an activity which is explicitly not part of the current study. Indeed, the literature on joint processing outside the EU has been rather more concerned with the **external nature** of the activity than with either the act of processing or the fact that it could be a joint action. The UNHCR suggestion of a three-pronged approach was the subject of some academic thinking, although the EU prong seems to have been largely ignored.[21] Those who did refer to it in literature at the time noted it only as an improvement over the UK's proposals,[22] or as a possible (if contested on human rights grounds) means to combat abuse of the asylum system,[23] or as apparently more EU- than refugee-friendly.[24]

The academic literature therefore tells us little to nothing that can be applied to a study on the feasibility of joint processing within the EU territory.

[20] Ibid; p.76.
[21] A. Betts, (2004*): The International Relations of the "New" Extraterritorial Approaches to Refugee Protection: Explaining the Policy Initiatives of the UK Government and UNHCR*; Reconciling Individual Rights and State Interests, Vol. 22, No. 1 2004; C. Phuong, 'The concept of 'effective protection' in the context of irregular
secondary movements and protection in regions of origin', Global Commission on International Migration Working Paper 26, April 2005 http://www.gcim.org/attachements/GMP%20No%2026.pdf.
[22] A. Hurwitz, *The Collective Responsibility of States to Protect Refugees*, Oxford: OUP, 2009 p.80.
[23] J. van der Klaauw, 'Irregular Migration and Asylum Seeking: Forced Marriage or reason for Divorce?' in B. Bogusz, R. Cholewinski, A. Cygan and E. Szyszczak (eds.), *Irregular Migration and Human Rights: Theoretical, European and International Perspectives*, Leiden: Martinus Nijhoff 2005 p.125.
[24] J van Selm, 'The Europeanization of refugee policy' in S. Kneebone and F. Rawlings-Sanaei (eds.), *The New Regionalism and Asylum Seekers: Challenges Ahead* Berghan Books 2007 pp. 94-95.

Where joint processing is presented in the literature, it is most often as one of several solidarity mechanisms, and frequently coupled with relocation.[25] UNHCR considers that "it is precisely in relation to the processing of applications in the EU that considerable steps could be taken to reduce the burden more generally, and to ensure a more equitable sharing of the responsibility of processing asylum claims".[26] However, UNHCR also sees some limitations to this, as joint processing would in their view imply joint decision making, which may be politically unfeasible. Moreover, they pose several questions that are also relevant to be discussed in the context of our study: [27]

"What would be the legal basis? Which procedural standards would apply – those of the Member State on whose territory the operation takes place? How would asylum officials be made familiar with the national rules and decision making practice of other Member States? Would Member States be prepared to agree on European processing standards? How could language barriers be overcome?"

Thielemann (2006) sees joint processing as a burden-sharing initiative which has the prospect of efficiency gains, where sharing the burden of processing can lead to economies of scale. These types of cost reductions are particularly interesting for "those with above average burdens (or those who can successfully negotiate sufficient side-payments in other issue areas that can make it worth their while to accept an increase in their refugee-related costs)".

At the same time, a Eurasylum study for the European Parliament noted (based on interviews) that some would consider the development of joint processing as undermining the belief that each Member State should take responsibility for its own actions in the field of asylum.[28] As such, the issue of joint processing is fundamentally embroiled in the questions of subsidiarity and whether the greater 'good' for the benefit of all will come from collective EU action and solidarity or from each Member State proving to be strong alone thereby creating a strong Union.

NGOs have discussed, and written about, their concerns with the prospects for joint processing. Several EU level representations of church groups concerned with migrants, commenting on the European Commission's Green Paper on the Future CEAS noted that in their opinion, any joint processing should involve all Member States, not allowing any to have reason not to fulfil their human rights and protection obligations, and should not be linked to processing centres. Positively, they suggest that there would be the potential for joint processing to raise and equalize standards.[29]

Other European bodies have also considered the issue of processing asylum claims in transit centres, whether inside or outside the EU territory. The Parliamentary Assembly of the Council of Europe, in a 2007 report, raised a series of pertinent questions, including many regarding jurisdiction and responsibility for centres and

[25] Matrix Insight Ltd et al (2010): *Study - What system of burden-sharing between Member States for the reception of asylum seekers?*; European Parliament, Directorate General for Internal Policies.
[26] UNHCR (2003a): *UNHCR Working Paper – UNHCR's Three-Pronged Proposal*; UNHCR
[27] UNHCR (2007): *Response to the European Commission's Green Paper on the Future Common European Asylum System*; UNHCR.
[28] Eurasylum (2011): *The implementation of Article 80 TFEU on the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States in the field of border checks, asylum and immigration*; European Parliament. pp 18-19 and 95 and 105.
[29] Caritas Europa, CCME, COMECE, ICMC, JRS, QCMA, Background Document : Workshop "Hope for Justice: Protecting Refugees in Europe in the 21st Century" 13th CEC Assembly, *Comments on the European Commission's Green Paper on the future Common European Asylum System COM (2007) 301 final*, 2009.

individuals, and made a series of recommendations on the subject.[30] The background report again focuses significant attention on such centres being outside the EU, and referring to international examples (the US and Guantanamo; Australia and Nauru) where there are no joint processing issues, but national processing in an extra-territorial setting, which is not the subject of this study. The Parliamentary Assembly report does, however, also discuss joint processing to some degree, talking of 'shared responsibility' in which the state to which a successful applicant would be transferred, the state where the centre is located and a body such as UNHCR share the decision making function in asylum adjudication.[31]

3.2 Addressing the fundamental questions

Bearing this context in mind, the questions posed in the introduction to this chapter will now be considered in more detail.

3.2.1 What is joint processing?

In spite of the definition set out in the tender specifications for this study, there is no common understanding of the term 'joint processing'. On a somewhat superficial level people might assume it means having a single asylum adjudication service for the whole EU, or perhaps having the 26[32] Member States pool their asylum adjudication resources to undertake the processing of asylum claims, but then on what basis and on which state's behalf? The questions below, and the discussion of them here, will dig more deeply into these issues, but even at the initial stages it is clear that there would be fundamental difficulties with either of these understandings: If there would be a single asylum adjudication service for the EU, who would it be responsible to? Which Member State would offer protection, residence and a future to those individuals deemed to qualify as refugees or persons in need of protection? Which language would the officials speak in dealing with asylum seekers or each other? Would translation be required for every interaction? Where would they work? What would the costs be? Would the costs and difficulties of translation and location (and relocation of successful applicants) be prohibitive and make joint processing less efficient? Could these problems be over-come in the interests of common action?

As noted above, one outcome of deeper thinking on joint processing could be the realization that there are alternative versions that might have fallen under this umbrella term to date, but could usefully be separated out and considered in their own right.

3.2.2 Why undertake joint processing?

There could be a range of reasons for undertaking joint processing: to **increase protection capacity** – ensuring all people in need of protection have an opportunity to find it; to **develop and enhance the administrative capacity** to deal with asylum seekers and with irregular migration in mixed flows – particularly where national systems are challenged by the sheer number of applications, or by qualitative issues; to **enhance efficiency** in asylum procedures; and to **improve the sense of 'control'** at borders, but also in the public mind when there is a focus on entry as a problem in a given location, or by a particular means, such as (attempted) arrivals by sea.

[30] Parliamentary Assembly of the Council of Europe, *Assessment of transit and processing centres as a response to mixed flows of migrants and asylum seekers,* Doc. 11304, 15 June 2007
[31] Ibid. p.13.
[32] Excluding Denmark.

Calls for joint processing most frequently are heard when apparent **challenges** arise. These are often a question of the relationship between the number and location of asylum seeker arrivals and the capacity of the state which has to deal with those arrivals to handle the quantity with appropriate quality of procedures and outcomes to live up to EU obligations (through directives and regulations) as well as international obligations, and to inspire trust in fellow Member States and EU citizens broadly speaking.

The **objectives** of joint processing then could be efficiency and effectiveness. They could also be the securing of minimum standards – or a demonstration of solidarity and burden-sharing where numbers are high, or the manner of arrival particularly challenging. Simply acting together, on the basis of harmonised approaches, demonstrating unity and combined control over the asylum question could also be an objective of joint processing.

In essence, the question has to be **what would be the added benefit of jointly conducting processing of asylum seekers**, rather than continuing national procedures only? Linked to this is the question of who would benefit: Member States would surely seek added value for themselves, but protection seekers should also see benefits, or at least no negative consequences. Further, one could ask, would there be added benefits to supporting Member States in their own asylum processing – benefits accruing to the Member State being supported, the supporting states, the EU as a whole and asylum seekers/people in need of protection? Under which circumstances might joint processing be employed?

Although joint processing could be used, eventually, for all asylum claims, it is a mechanism which, if put into practice, will most likely see its origins in relatively isolated instances. Some of the circumstances which could give rise to policy and practical problems that may be resolved through the use of joint processing would be:

a) A **significant influx** of a nature that would stretch existing asylum processing capacity in one or more Member States, but that was neither so large that the Temporary Protection Directive would be implemented, nor so clearly emanating from a single flight motive that temporary protection might be the most obvious solution.
b) When a **national asylum system was undergoing stresses** either related to various inflows or to factors such as management or funding which could be relieved by (short-term) assistance. Joint processing might then go hand in hand with remedial measures to 'fix' the root cause of the national asylum system problem to the benefit of the Union as a whole.
c) Where **relocation** is necessary in terms of physical capacity for the long-term protection of people found to be refugees, so that initial processing does not rest with the state from which relocation takes place, but is a joint operation from the start.
d) In cases of **interception at sea**, where people who might seek asylum are still on the high seas and have not yet arrived in a given EU Member State territory, nor had the opportunity to land and either make a claim or undertake an onward/secondary movement before making an asylum claim in any Member State.
e) **Supplementary to the Dublin Regulation**, whereby rather than transferring a significant number of asylum applicants, the asylum decision making bodies of the two countries involved in Dublin claims jointly process the claims, including determining in which Member State any protection should ultimately be received and whether there is a shared responsibility or if not then which

Member State is responsible for removal/return. A decision to undertake joint processing in this type of situation could be subject to an EU-wide pre-determined key in numerical or proportional terms, or could be a matter of a bi-lateral decision between the two Member States involved. From the financial perspective, a balance could be made between the cost of transfer and the cost of joint processing.

3.2.3 What exactly does or could the 'joint' aspect entail?

The notion of 'joint' has no obvious single meaning in this context. Besides the issues which will arise in a later section of who would be involved in joint processing, there are questions of how authorities would interact, collaborate, act in unison, and eventually make final decisions – essentially be 'joint'.

a) Is the 'joint' a matter of entities other than the national authorities of Member State X being involved in asylum processing on the territory of Member State X? In other words the asylum adjudication authorities of Member State Y taking on the decision making power for asylum claims made in Member State X whether the outcome is asylum in Member State X, Y or elsewhere (but might indeed be linked to either location or the nationality of the asylum decision making officer/body)? In such a scenario one would have to ask whether the territory of X and the asylum authorities of Y make for a joint process/procedure.

b) Or is the 'joint' a matter of pooling forces and sharing responsibility for processing, i.e. of disregarding nationality and all being similarly EU authorities processing asylum claims on EU territory according to the same laws, with no issues of jurisdiction arising, because it is all one joint EU? If that would be the case, the nationality of asylum case decision makers and the location of the procedure within the EU would be irrelevant to the ultimate protection location of the individual recognised as being a refugee or in need of protection.

How 'joint' is defined will be essential for determining the 'who', 'where', 'how' and outcome locations of such joint processing. There could also be multiple definitions – for example, each of the circumstances set out above as possible contexts of joint processing could entail slightly different definitions of the 'joint'.

3.2.4 Which parts of 'processing' would be jointly conducted?

The word 'processing' can be assumed to refer to engagement in an asylum procedure, at some point in the timeframe between an asylum application being lodged and a decision on that asylum claim being made, or for the entirety of that process (i.e. the application is lodged with a 'joint' authority, potentially). However, there is also the question of whether 'processing' applies to both the establishing of the dossier and the decision on the case or just to one element of this.

3.2.5 Who could undertake which element in the asylum procedure?

The answer to this question would be intrinsically linked to the definition of 'joint' in this context as noted above. However, there could also be a progression in answers both to what 'joint' means and to who the joint processors might be. Two or more Member States could be sufficient for action in joint processing, or it could be decided that it is all or nothing. Potentially all Member States would need to decide that joint processing should be undertaken, but that not all of them need necessarily be involved in it.

There could also be (decision making or non-decision making) roles for EASO, and (non-decision making) roles for UNHCR, or even NGOs.

3.2.6 Where should or could joint processing take place?

Several options could be envisaged concerning the location for the processing of the asylum claim:

a) In the Member State where the asylum seeker lodged the application, or the Member State responsible according to the Dublin Regulation, with processing conducted by a team from two or more Member States, or by a single EU authority.
b) Using remote working methods (e.g. video-conferences), whereby case workers processing the application would be located in their own state, but the asylum seeker would be located in the Member State where he/she lodged the application, bringing cost-efficiencies.

Setting up centralised joint processing centres to which asylum seekers would be relocated after entry by air or across a land border, similar to the UNHCR-EU Prong proposals. A different model could be used for asylum seekers intercepted or rescued at sea, particularly in international waters, whereby claims could be processed in a joint processing centre, which could even be a vessel moored at the closest port, but perhaps designated as 'EU territory' for the purpose of the processing.

3.2.7 How would joint processing work in practice?

This category of questioning involves issues such as whether participation in joint processing would be voluntary or compulsory for both the Member States and asylum seekers, as well as whether the 'joint' element involves the actual asylum decision, or rather the collection of material for the asylum dossier on the basis of which the decision will be taken by national authorities.

3.2.8 What level of responsibility for outcomes is attached to participation in joint processing?

Mutual recognition would be a particularly pertinent point to the outcomes of joint processing. This would most particularly be the case if the form of joint processing were to involve either staff of a supporting Member State taking a decision based on their own Member State's procedures and legislation for an individual who would subsequently be protected in, or removed from, the Member State where the claim is lodged. It could also be relevant in situations in which multiple Member States process claims according to their own procedures, regulations and legislation, but then pool the successful and rejected claimants so that individuals could be relocated to any of the participating Member States (or indeed any Member State, as states not involved in joint processing could still be involved in relocation). If joint processing were to be based on a single uniform procedure, leading to a uniform status, recognised in all Member States, then the issue of 'mutual recognition' would be built in to the system.[33]

[33] Hailbronner, K. (2008): *Towards a Common European Asylum System – Assessment and Proposals – Elements to be implemented for the Establishment of an Efficient and Coherent System.* Briefing note; European Parliament, Directorate-General for Internal Policies.

Beyond this, there is the issue of managing the outcomes: would there need to be specific programmes for those rejected through joint processing? Would those programmes need to be jointly managed too, by the same Member States?

As to relocation of successful asylum seekers: in the scenario of joint processing carried out in a centralised, purpose-built reception location, persons recognised as being in need of international protection would need to be settled somewhere in the EU following the granting of their status. There would need to be a decision on whether the 'distribution' of persons found to be in need of protection covered only those Member States participating in joint processing (if that would be carried out on a voluntary basis for the Member States) or all Member States. Options for determining their place of settlement could include:

a) Leaving the decision to the individual/family, potentially providing an initial relocation 'package' to provide for transportation, initial housing etc.
b) Determining the Member States to which they would be relocated according to the Dublin Regulation, or similar, criteria, or a simple predetermined quota with or without priority allocation of cases according to potential integration criteria such as language, cultural affinity, family location, technical skills etc. [34]
c) Relocating the beneficiaries of international protection to the Member State which determined their status.
d) Expecting the people granted protection status to remain in the state in which the reception facility is located.

Clearly, d) would involve a particular burden on the state in question, which could be unfair unless there were to be a joint processing facility in every Member State and some distribution at the application stage which took numbers into account (both of new cases and reflected past years' positive decisions). The other options would need to be mindful of issues such as long-term residence status, family unity and matters pertaining to the transfer of protection status.

In a scenario under which joint processing is a matter of solidarity or support to a Member State facing a particular need, the location for protection purposes of successful claimants could be either the Member State where the asylum application was made; the Member State that made the specific decision; or relocation according to a quota and/or criteria among either Member States participating in the joint processing or all Member States, or those Member States which agree to participate in a relocation scheme whether they also contribute to joint processing or not.

3.3 Summary

The policy area of 'joint processing' is one that has, as yet, seen little consensus: there is no broadly agreed definition, and each of the elements – who, how, what, where – remain unanswered. This study will reflect on each of these elements.

Fundamentally, however, the major point might be that understanding **why** there is a desire to conduct something currently labelled (however precisely or imprecisely) 'joint processing' is the key to determining whether it should be done, and what it should look like.

[34] UNHCR (2003b) proposes that all persons found to be in need of international protection would be distributed fairly amongst Member States, according to a pre-determined key that would take into account effective links, including family, educational, or cultural ties.

While motivating factors to date in calls for joint processing in the EU have focused on protection needs; border control concerns and their aftermath, including harmonisation of policy and implementation (reducing disparities in recognition rates), solidarity and burden-sharing; and cost efficiency, the prevalent influences at the time of any decision to move forward in this policy area will shape the model, and the way it is implemented. In order to test the current stimuli for considering joint processing as well as attitudes towards the various forms this approach could take, four 'options' were prepared for interview discussion, and these, the policy and politically focused reactions to them, the legal situation surrounding them and the financial impact of the current situation and how it could be altered by the development of a joint processing model will be the subjects of the next four chapters.

4. Presentation of the options

For the purpose of this study, four potential options for what an EU mechanism for joint processing of asylum claims could look like were set out for presentation to interviewees, as explained in chapter 2 on methodology above. The four different options are delineated in more detail below (see Table 1). The options were developed on the basis of the initial desk research (on which the discussion paper built) and discussions with experts in the first workshop. As such, the options were very much founded on an initial assessment of what kinds of set-ups could be legally feasible, with the purpose of testing the political and financial feasibility in the subsequent interviews at Member State level, using the options as basis for discussion. Before presenting the options, the sections below will briefly present some of the main reasoning that lies behind the four options and the main elements from which they are composed.

4.1 The overall objective of establishing an EU mechanism for joint processing

As outlined in the problem definition in chapter 3, discussions on the establishment of an EU mechanism for joint processing of asylum applications were originally focused on strengthening the principle of solidarity within the EU and compensating for/mitigating the relatively large burdens and responsibility placed on some Member States' asylum systems, due to their geographic locations at the Union's external borders.

In the light of the past 10 years' development in the establishment of the common European asylum system (CEAS), in view of recent incidents of extraordinary pressure on some Member States' asylum systems, and in the context of the economic crisis, the focus, however, appears to have turned more towards supporting Member States under pressure and to prevent new crises and system backlogs. In the current political climate, the objective of a potential EU mechanism for joint processing seems to be more one of increasing efficiency and improving the quality or standards of asylum procedures to secure the protection of human rights (particularly in Member States under pressure).

The main issue, in relation to establishing a mechanism for joint processing of asylum claims, appears to be lack of trust among the Member States – in the efficiency and effectiveness of other Member States' systems and in their capacity to make proper judgments in asylum cases; a problem, which is claimed only to be deteriorating with the economic crisis. Part of the answer to this lack of trust perhaps lies in the proposal for the establishment of a "Mechanism for Early Warning, Preparedness and Crisis Management within the Dublin system",[35] on which an agreement was reached on 4 April 2012.[36]

[35] The latest proposal for a recast of the Return Directive is laid down in doc. 15605/12, of 14 December 2012. The Early warning mechanism is to be found in Article 33 of the proposal.

[36] Note from the Presidency to the Permanent Representatives Committee / Council (Justice and Home Affairs on 7-8 June 2012) on *the Implementation of the Common Framework for genuine and practical solidarity towards Member States facing particular pressures due to mixed migration flows - Political discussion with a particular focus on the support to Greece in areas of borders, asylum and migration management*; Brussels 29 May 2012 (http://register.consilium.europa.eu/pdf/en/12/st10/st10465.en12.pdf)

4.2 Introducing the proposed options

In view of the picture of the current political climate within the EU presented above, the draft options for an EU mechanism for joint processing, which are presented below, take departure in the assumption that the proposed Early Warning Mechanism will in the foreseeable future be integrated into the Dublin system. The establishment of a monitoring system seems to be what is politically feasible now, and the proposed options are conceived of as building on this reality.

The first three options, A, B and C, have been constructed around the (soon to be) Early Warning Mechanism. The proposed monitoring system in the mechanism includes a *preventive* and a *crisis management* phase. The proposed options A and B take starting point in the crisis management phase of the Early Warning Mechanism, with the main difference between these two options being that Option A proposes to adhere to the Dublin Regulation and its division of responsibility, while Option B proposes to sidestep Dublin (one-way), in so-called crisis management situations. Moreover, Option B proposes that a mechanism for joint processing of asylum claims is coupled with a common system for returns and removals and with distribution of recognised persons, as it is precisely in situations of "crisis" that distribution could be most needed.

Option C proposes that joint processing is invoked already in the preventive phase of the Early Warning monitoring mechanism with an objective of freeing up resources within a Member State under pressure to allow it to build up the necessary capacity to cope with the pressure and fulfil the requirements of the drafted preventive action plan. Apart from that, the main difference between this option and Option A is that Option C proposes to essentially turn the EASO Asylum Intervention Pool (or parts of it) into a more institutionalised, or stable, "joint processing pool".

Finally, Option D can be regarded as the more extreme (some might call it ideal or even idealist) response to the lack of trust and willingness to help each other out between the Member States: a completely harmonised, EU-based approach for joint processing of (essentially all) asylum applications within the EU. It is the assumption that this option is not politically feasible at this point in time, but it is nevertheless relevant to test its feasibility and assess what it might take to eventually make this option feasible.

All of the proposed options involve EASO, in some role or another. This is based on a view that it makes good sense to build on what already exists and the work that is already being done to facilitate cooperation and support on asylum matters, through this EU body. It is assessed as relevant and feasible – though perhaps only in the longer term – to strengthen the role of EASO and, in time, broaden its mandate to allow this EU body to play a central role in any EU mechanism for joint processing of asylum applications.

The idea of assigning UNHCR a role in an EU mechanism for joint processing of asylum applications, originally proposed in the tender specifications for the study, has not been directly worked into the draft options presented below. The thought behind this is that the UNHCR will always have an important role to play as the so-called guardians of the Convention; and, as such, this body should be allowed to maintain an objective position of monitoring and quality assurance and not be directly involved in the processing within the EU. Both the UNHCR and other international and national organisations have relevant and important roles to play in relation to different

elements of the proposed options.[37] Meanwhile, the proposed options do not take a stance on how, when and to what extent NGOs and international organisations could or should be involved. Rather, the options focus on the division of responsibility between and the degree of commitment from the EU Member States and institutions.

4.3 The proposed options

Table 1 below presents the four proposed options for a mechanism for joint processing of asylum claims. The options are presented in a table in order to allow for a comparison of the options and an overview of the main similarities and differences between them in relation to the pivotal questions on who, when, where, how, etc. that went into designing them.

As mentioned above, the proposed options take their starting point in the question of *when* joint processing would be brought into play. One particular and important issue in relation to this question is the case of interception at sea. On the one hand, it could in principle be a horizontal case, worked into all three options (it would inescapably be part of Option D, in which all claims are processed jointly). On the other hand, it can also be regarded as a particular issue which requires a common EU stance and procedures in all instances, regardless of whether the Member State essentially responsible for the intercepted vessel and its passengers is in a situation of "crisis" or "crisis prevention", as defined by the Early Warning Mechanism. Consequently, it was decided to leave the question of integration of cases of interception at sea open for the interviewees to assess the feasibility of considering interception at sea as a particular case or as an integral element of one or all of the options.

[37] It has for example been proposed that UNHCR could support EASO by providing training or advise them in the establishment of adequate procedures and standards (c.f. Interview with MEP, Jean Lambert).

Table 1: Options for a potential mechanism for joint processing of asylum claims

Options	A. Joint processing in crisis management	B. Joint processing in crisis management (coupled with joint return and relocation)	C. Joint processing in crisis prevention	D. Joint processing – full scale, EU-based (long term)
When	This option is tied up with the *crisis management* aspect of the "Mechanism for early warning, preparedness and crisis management within the Dublin system". That the mechanism for joint processing is constructed in a crisis management perspective means that it can be employed in a situation where a MS's system cannot cope, due to e.g. An extraordinary inflow of asylum seekers Other (e.g. political/economic) circumstances putting a strain on the system In connection with RABIT operations In this option, the proposed mechanism for joint processing can be one of the elements in the "crisis management action plan"	This option is tied up with the *crisis management* aspect of the "Mechanism for early warning, preparedness and crisis management within the Dublin system". That the mechanism for joint processing is constructed in a crisis management perspective means that it can be employed in a situation where a MS's system cannot cope, due to e.g. An extraordinary inflow of asylum seekers Other (e.g. political/economic) circumstances putting a strain on the system In connection with RABIT operations In this option, the proposed mechanism for joint processing can be one of the elements in the "crisis management action plan"	This option is tied up with the *preventive aspect* in the "Mechanism for early warning, preparedness and crisis management within the Dublin system". Simply put, the envisaged mechanism for Early Warning has two options for crisis prevention: MS under particular pressure can ask the Commission and EASO for support Through its monitoring activities, EASO detects potential crisis in a MS and reports to the Council As the proposal for an Early Warning mechanism suggested when these options were drafted, EASO or the Council will not necessarily have a mandate to intervene in Member States, unless they request it, but only to monitor the situation. Part of this option	All asylum cases on EU territory are dealt with jointly (essentially an EU-based system).

	drawn up for the concerned Member State[38].	drawn up for the concerned Member State[39].	could therefore be to include an element of compulsory support (in the form of joint processing) "prescribed" by the EU for a Member State under pressure, if EASO in its monitoring finds that intervention is necessary already at the preventive stage. Assistance in the form of joint processing would in this option have an aspect of "immediate relief" and an objective of assisting the MS in need by taking over a portion of its asylum cases for a time limited period, allowing the MS (and requesting from it) to build up the needed capacity to handle all the cases henceforth.	
Who	Taking starting point in the (existing) EASO Asylum Intervention Pool, "Joint Processing Teams" would be set up on an ad hoc basis, consisting of (relevant) officials from the Pool.	Taking starting point in the (existing) EASO Asylum Intervention Pool, "Joint Processing Teams" would be set up on an ad hoc basis, consisting of (relevant) officials from the Pool.	A standing, pre-trained joint processing capacity employed/coordinated by EASO, along the lines of the existing Interpreters' Pool, who are selected from the Asylum Intervention Pool[40] but form part of EASO's	EASO, with an increased mandate, acting (essentially) as an EU agency for asylum issues.

[38] Cf. p. 8 of the note from the Presidency to the SCIFA.
[39] Cf. p. 8 of the note from the Presidency to the SCIFA.
[40] Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office; Article 15.

			permanent support staff[41].	
Processing where?	In the MS responsible for the asylum application (as defined by the Dublin Regulation). Possibly through the means of remote working (feasibility to be tested in interviews).	In the MS in "crisis" (i.e. the Dublin Regulation is sidestepped "one way", meaning that in exchange for the assistance for processing, the MS in "crisis" assumes responsibility for all asylum cases lodged in the country as well as those lodged on other MSs for which the MS in crisis is responsible according to the Dublin system. So the MS in "crisis" receives Dublin transfers from the other countries but does not make transfers itself. Possibly through the means of remote working (feasibility to be tested in interviews).	In the MS responsible for the asylum application (as defined by the Dublin Regulation). Possibly through the means of remote working (feasibility to be tested in interviews).	Centralised (EU) joint processing centres.
Voluntary vs. compulsory (for MS)	Participation in the EASO Asylum Intervention Pool is mandatory (as it is now), but participation in joint processing missions is voluntary and can be re-assessed in each individual situation. For the MS in a "crisis"	Participation in the EASO Asylum Intervention Pool is mandatory (as it is now), but participation in joint processing missions is voluntary and can be re-assessed in each individual situation. For the MS in a "crisis"	Participation in the EASO joint processing capacity would be mandatory; the officials would essentially be employed by EASO in similar fashion as the Interpreters' Pool. For the MS in need of intervention (crisis	Not relevant, as processing will be carried out by an EU agency.

[41] EASO Work Programme 2012; September 2011; p. 11

	situation, assistance from the "EASO joint processing pool" is voluntary. In drafting the crisis management action plan, the Commission and the MS decide together whether JP should be one of the elements included in the plan.	situation, assistance from the "EASO joint processing pool" is voluntary. In drafting the crisis management action plan, the Commission and the MS decide together whether JP should be one of the elements included in the plan.	prevention), assistance from the "EASO joint processing pool" is mandatory (employed on the basis of EASO assessment) but time limited (until MS's own capacity is sufficiently strengthened).	
Who to select/how to profile	Depending on the specific situation, it can be assistance with all asylum cases in the country in "crisis", or it can be that the joint processing team assists with a particular type of cases (e.g. a specific influx), while the MS's officials deal with the more regular cases.	Depending on the specific situation, it can be assistance with all asylum cases in the country in "crisis", or it can be that the joint processing team assists with a particular type of cases (e.g. a specific influx), while the MS's officials deal with the more regular cases.	Depending on the specific situation, it can be assistance with all asylum cases in the country in "crisis", or it can be that the joint processing team assists with a particular type of cases (e.g. a specific influx), while the MS's officials deal with the more regular cases. The objective is to free up some resources for the MS to engage in capacity-building.	All cases.
Who makes decision	Supporting officials (from the EASO pool) prepare the dossier and make recommendations on cases. The final decision is made by the MS responsible for the application (as defined by Dublin)	Supporting officials (from the EASO pool) prepare the dossier and make recommendations on cases. The final decision is made by MS in crisis (where the joint processing takes place).	Supporting officials (from the EASO pool) prepare the dossier and make recommendations on cases. The final decision is made by MS responsible for the application (as defined by Dublin).	EU officials from EU agency.
Procedure	EU acquis (Procedures	EU acquis (Procedures	EU acquis (Procedures	Common procedure

for handling claims	Directive) + national variations The officials (from the EASO team) assisting the MS in "crisis" in preparing the case and making a recommendation for the decision, will do this on the basis of the EU acquis. The decision will be made solely by the MS responsible for the application on the basis of the EU acquis and the country's national variations. As the "joint" element of the processing only applies to the preparation phase, until a recommendation is made, a potential appeal case after the first decision will be dealt with by the MS responsible for the application.	Directive) + national variations The officials (from the EASO team) assisting the MS in "crisis" in preparing the case and making a recommendation for the decision, will do this on the basis of the EU acquis. The decision will be made solely by the MS where the joint processing takes place (the MS in "crisis") on the basis of the EU acquis and the country's national variations. As the "joint" element of the processing only applies to the preparation phase, until a recommendation is made, a potential appeal case after the first decision will be dealt with by the MS by which the decision was made.	Directive) + national variations The officials (from the EASO team) assisting the MS in need of crisis prevention in preparing the case and making a recommendation for the decision, will do this on the basis of the EU acquis. The decision will be made solely by the MS responsible for the application on the basis of the EU acquis and the country's national variations. As the "joint" element of the processing only applies to the preparation phase, until a recommendation is made, a potential appeal case after the first decision will be dealt with by the MS responsible for the application.	employed for all processing (essentially all asylum claims are processed at EU level, by EU officials). This would potentially imply that appeals would also have to be dealt with at EU level.
Legislation	Recommendation made on the basis of the EU acquis (to the extent possible). The final decision made (by MS in which the application was lodged) on the basis of	Recommendation made on the basis of the EU acquis (to the extent possible). The final decision made (by MS in "crisis", in which the joint processing takes place)	Recommendation made on the basis of the EU acquis (to the extent possible). The final decision made (by MS in which the application was lodged) on the basis of	Common European Asylum System in place; EU ratification of international conventions; decisions made by EU officials on the basis of EU acquis.

	the EU acquis + national variations	on the basis of the EU acquis + national variations	the EU acquis + national variations	
Mutual recognition	Not relevant; only relevant in case of distribution	Yes, relevant in relation to distribution of recognised refugees: the MSs participating in the JP through contribution of experts to the EASO pool would recognise those decisions, which have been made (by the MS in "crisis", in which asylum claim was lodged) on the basis of their own (EASO) experts' recommendations.	Not relevant, only relevant in relation to distribution	Recognition of decision made by EU body/agency
Returns and removals	To be dealt with by the MS responsible for handling the application (as defined by Dublin). Meanwhile, joint return/removal operations (cooperation between the MS and with Frontex) may in time become the norm, as foreseen e.g. in relation to the establishment of the Asylum and Migration Fund, which provides funding for such operations[42].	Establishment of a common EU system for return and removal (in collaboration between EASO and Frontex).	In principle, returns and removals will be dealt with by the MS responsible for handling the application (as defined by Dublin). However, joint return/removal operations (cooperation between the MS and with Frontex) may in time become the norm, as foreseen e.g. in relation to the establishment of the Asylum and Migration Fund, which provides funding for such operations[43].	Common EU programme; actual return and removal carried out in cooperation between the "EU asylum agency" and Frontex.
Distribution	Not necessarily	Yes. Prior to processing, the	Not necessarily	EU system for

[42] Proposal for a Regulation of the European parliament and of the Council establishing the Asylum and Migration Fund; COM(2011) 751 final; Brussels, 15.11.2011.
[43] Ibid.

of recognised refugees		participating MSs would all determine a number/quota of the recognised beneficiaries of international protection, whom they will accept into their country. After the processing, the MSs will relocate the equivalent numbers of persons from among the cases for which their own officials have provided recommendations for recognition. In the event of a number of recognised beneficiaries exceeding the quota, the rest of the group will remain in the MS where the joint processing takes place.		distribution of recognised refugees, according to a distribution key.
Funding	Financed through funding of EASO, and from the Asylum and Migration Fund (provides funding for joint return/removal operations and can potentially provide emergency funding[44]).	Financed through funding of EASO, and from the Asylum and Migration Fund (provides funding for joint return/removal operations and can potentially provide emergency funding[45]).	Financed through funding of EASO (increased budget), and from the Asylum and Migration Fund (provides funding for joint return/removal operations and can potentially provide emergency funding[46]).	Financed through funding of EU agency

[44] C.f. Proposal for a Regulation of the European parliament and of the Council establishing the Asylum and Migration Fund; COM(2011) 751 final; Brussels, 15.11.2011. And Conclusions from JHA Council meeting, 8 March 2012.
[45] Ibid.
[46] Ibid.

5. Political implications

This chapter will address the perceptions of joint processing generally and the four options in particular as elicited in interviews with governmental, non-governmental and inter-governmental actors in twenty six member states, as described in the methodology section above. The chapter will sketch an impression of the breadth of support for joint processing in general, and for each of the options formulated and presented by the study team in consultation with the European Commission, as set out in Chapter 4.

It will be seen that there is a very mixed view of joint processing both across Member States and across actors, and indeed within Member States. Part of the mixed picture might come down to definitional issues, and the relative newness of thinking about joint processing within the EU as a real policy option. The mixed view might also be, in part at least, a result of the methodology of the study. All interviewees were asked to make choices between the four options: it is possible that some felt there was a need to point to one, even if it was not preferred but 'least bad'.[47] That may be the reason for the broad range of adaptations suggested for each option.

In view of this, it should also be pointed out that this chapter will attempt to establish the political *feasibility* per se, since this is not a stable concept. Political views and positions are known to change over time and as a result of changing circumstances. Though many of the respondents from government authorities were selected to represent and give the opinion of their Member State, it is likely that these positions may change with changing governments, economic situation, etc.

Rather than establishing the political feasibility, this chapter thus presents the views of the Member States on the idea of joint processing and the concerns and implications raised from a political perspective in the interviews. In spite of these caveats, the information elicited should be useful for future consideration of joint processing generally, and refining of the terms and approaches used.

5.1 The political implications of joint processing as a principle, or a concept

A clear majority of all interviewees for this study, including government officials in sixteen Member States, is in favour of 'joint processing'. However, none of these respondents are positive in an unqualified way, and they might well all have different understandings of what 'joint processing' actually means.

Qualifications on support for joint processing include that it has to be part of a broader responsibility sharing scheme, and requires harmonisation and a common system (particularly on standards and procedures). However, some suggest that in fact joint processing could be a step towards CEAS, not a result of it. Other reservations expressed even by those who are in favour of joint processing, at least in the longer term, include the lack of political will; tensions, in incentive terms, with the Dublin approach, as 'joint processing' could be seen as relieving certain Member States of their responsibilities to handle asylum claims and play their role in the international protection system and CEAS; and that it will be a long process.

[47] This point was made clearly in discussion at the second workshop held in connection with this study.

Seven respondents remained neutral on the subject – two governments and five UNHCR officials. Much of the neutrality – or seeing both sides – was a matter of the lack of a definition and specifics. This reflects an issue already raised in the problem setting chapter: although joint processing is a widely used term, it has not been clearly defined, and yet defining it requires a model for the implementation of the approach.

One important and interesting point that emerges from the general comments on joint processing (and later the options), made by multiple interviewees, is that having been shown four different models that could be called 'joint processing' according to the definition given by the tender specifications for this study, they actually perceived only Option D to be 'real joint processing' whereas options A, B and C seemed more like methods for assisting or supporting Member States which were facing particular challenges either in terms of arrivals or in terms of their own systems, or both. This point lead the research team to one finding that permeates the rest of this report, namely that there is a distinction between what we will henceforth refer to as '**supported processing**' and 'joint processing': Another way of putting this could be that 'supported processing' involves Member States, and an ultimate decision on each asylum claim by a Member State (most likely the one in which the individual applies for asylum, and which is responsible for the claim) whereas 'joint processing' involves an EU level model and decision-making.

Eight respondents, mostly government officials, had strong reservations about joint processing (in general). The main reasons for this was that, in their view, joint processing might imply a denial of Member States' own responsibilities towards asylum seekers – so joint processing could adversely affect the overall protection system, and that more could be done instead to support those states with capacity and capability problems through practical cooperation and support than through joint processing. (This could again imply an absence of mutual understanding of the term 'joint processing' in that one person's 'joint processing' is another's "practical support" dependent on the model and the words attached to it.) The absence of harmonisation was also noted by those who expressed reservations about joint processing, and it was suggested that joint processing might not solve problems in areas such as reception, return and relocation (although that would surely, again, depend to some degree on the definition and the model).

Only three member states saw the range of actors (government, NGO and IO [where present]) offering a similar point of view on the benefits of joint processing. This might suggest that debates on the subject are further along in those countries, or that relations between the sectors are strong – or it could just be coincidence.

Similarly pointing towards varied definitions and conceptualizations of the approach, the general outcome in terms of option preferences is very mixed. Three of the preliminary conclusions that can be drawn are that:

- **regardless of how favourable officials are about joint processing and the fullest option presented (D) there is widespread scepticism as to the EU's Member States moving closely enough towards a Common European Asylum System for this model to be either feasible or achievable.**
- **Dependent on the understanding of 'joint processing' steps could be taken towards full joint processing (in the sense of Option D) that assist in building the Common European Asylum System. It might not ultimately be important or necessary for those steps of 'supported**

processing', to lead to 'joint processing', as long as they do contribute to a more harmonised CEAS.

- **There is no consensus either across type of organization (ministry, NGO, International Organization) or (even) between ministries within single Member States, or within the international organizations interviewed, UNHCR and IOM.**

This chapter will discuss the outcome of interview questions on the most feasible and/or preferred option of joint processing and then take the discussion of the political feasibility of each of the options (A, B, C and D) in turn as these emerged through both the interviews and the two workshops held for this project. Finally, the most politically feasible outcome, and its implications, will be described. This chapter will refer to the interviews conducted, and draw out messages that were repeated across open interviews, as well as pertinent points that only one interviewee may have made, but that could be useful in further consideration of the subject.

5.2 The most feasible and/or preferred option

When asked to state their preferences amongst the four options, government respondents gave mixed answers: twelve preferred Option A; five indicated Option B; six indicated Option C; two indicated Option D and the officials of two Member State governments indicated that they had no preferred option at all. Officials from one Member State declined the invitation to be interviewed. In two Member States there were interviews with officials from two different government ministries or agencies.

In terms of least favoured, and/or least feasible options, two Member States expressed reservations about all four options. Another nineteen indicated that D was the one they viewed as least feasible and/or as their least preferred option (the two factors being addressed in one question and seeming to be interchangeable for some), while seven more indicated opposition to Option B, two to Option A, and one to Option C.

Of those member states whose representatives interviewed made suggestions as to a second preferred option, six referred to Option C, including one governmental asylum seeker reception agency in one Member State, one to B and none to A.

As such, option A is the preferred option of government officials interviewed. Option C with six first places and five seconds/mentions **could also gain traction – or at least be gradually introduced alongside elements of the current situation reflected in Option A.**

In the case of Option D, which could be described as the option closest to 'full' joint processing, in the sense of a full EU level approach to processing asylum claims, both those who favoured it and those who opposed it referred to the fact that it would only be possible with significant changes in the broad approach to asylum policy across the EU, shifts in harmonisation and responsibility to the EU level, and a commensurate loss of sovereignty (real or perceived). These changes were seen as desirable by some (those who favoured Option D) and undesirable or completely unlikely by those who said this option would be impossible to envisage. One Member State representative found option D to be the most desirable but the least feasible, with an eye to common European developments on asylum and experience to date.

Non-governmental organizations, IOM and UNHCR, where interviewed, generally gave a different picture from that of member state government officials, as did, in one case, those responsible for implementation (e.g. immigration services and reception). In the one state where both ministry and immigration service staff were interviewed, Options A and C had the ministry preference, while the immigration service preferred to see Option D in the future. The other immigration service interviewed, however, preferred Option A.

Among IO and NGO actors based in the Member States, the preference comes down to Option D with seventeen representatives of these organizations seeing this as the preferred way forward. Only one posits Option D as specifically the least preferable, however, thirteen organizations offering an opinion on the least feasible option state clearly that that would be Option D. Options B and, to a lesser extent C come out as alternatives to the option of full joint processing for several organizations, however option A, is preferred by only four. Eight of the nine organizations that expressed an opinion specifically on their least preferred option (not necessarily least feasible) pointed to Option A.

Civil society actors thus seem to view a minimal approach to joint action on processing asylum claims to be untenable, and undesirable, but while they consider that the optimal solution (presumably for asylum seekers and refugees, and possibly also for administrations and efficiency) would be Option D, the NGOs and International Organizations seem to view the likelihood of Member States moving in that direction as very slim, certainly in the near future.

In sum: **the interviews suggest that in the foreseeable future option A is the most feasible and likely approach, with some adaptations. Some of these adaptations might be drawn from Option C, leading to the introduction of something more reflective of that option in the medium-term. In the longer term, many actors might prefer to see more complete joint processing, looking something like Option D, however, confidence in the political will to move to a level of harmonisation necessary for such a common approach, including the adaptations required to understandings of and the practice of state sovereignty is low, and for some Member States there is, at present, limited interest in moving to this level.**

5.3 Political implications of Option A

Option A was viewed as most feasible and/or favoured by the broadest range of governmental officials interviewed. The major benefits of this option as viewed through the comments given by some, but not all, interviewees are that it is presented as being voluntary[48] in nature, and as being a relatively small step.[49] This latter point saw various phrasings in the open interview setting (it builds on what we have; requires the fewest changes to what exists; is the least ambitious; is in line with current practice) but the main direction of these comments is that minimal changes to the current system are most likely more feasible, at this point in time, than a grand project to alter the way asylum processing is conducted, no matter how desirable the latter might be from a broader perspective.

[48] Seven Member States
[49] Five Member States and one EU agency

Additional benefits suggested by respondents included that the final decision would be taken by a Member State on the basis of law in that Member State,[50] as opposed to the more EU oriented approach of other options. In addition, option A maintains Dublin,[51] consolidates EASO,[52] and requires no mutual recognition.[53] It was also suggested that the fact that Option A deals with crisis situations[54] rather than broader processing is an advantage in seeing it be developed into a useful approach.

Nonetheless several adaptations were also suggested, in particular adding certain aspects of Option C, notably the preventive element;[55] and the common return mechanism proposed in Option B.[56] The suggestion of remote working was not viewed favourably by one Member State, and using the recommendations made by supporting officials was perceived to be a difficulty too. In addition it was suggested that the conduct of appeals would be hampered if an asylum decision had been made by an official from another Member State,[57] and there could be the adaption of including assistance at the appeals stage.[58] One government official suggested that only significant influx should be the trigger, not other factors (political, economy) that might be impacting a Member State's asylum system. The fact that Option A took the current Dublin system as a starting point was criticized by one Member State which sees a need to revise Dublin.

Other suggested adaptations included giving Member States incentives to send experts to participate in EASO pools, and making the approach (including elements taken from Option C) voluntary in the preventive phase and mandatory in the crisis phase.[59] In addition it could include voluntary, ad hoc, relocation.[60]

Arguments against Option A came primarily from NGOs and UNHCR staff interviewed. The major criticism from these actors reflected the major benefit viewed by government officials: it is the least ambitious option, not adding much that is new,[61] or simply strengthening Dublin to some degree.[62] Similarly, NGOs criticized the fact that it would be employed only in crisis situations, which could be too late,[63] and it was suggested that more detail would be needed on what constituted the trigger – 'crisis' is too open to interpretation.[64]

One NGO criticized the fact that national variations being accepted still would mean that existing differences in processing quality and recognition rates will not be changed as a result of this joint endeavour. A governmental agency suggested there is not enough EU in this option, one NGO suggested that measured against the objectives of the CEAS this option would fall far short, and one IO staff member criticized the option for the absence of relocation.

A further NGO feared that the dichotomy between case preparation/hearing and decision-making could lead to erroneous decisions in options A, B and C.

[50] Four Member States
[51] Four Member States
[52] Five Member States
[53] One Member State
[54] Three Member States
[55] Four Member States
[56] Two Member States
[57] One Member State
[58] One Member State
[59] One Member State
[60] One Member State
[61] Two NGOs and one IO
[62] One Member State
[63] Two NGOs
[64] One IO

In sum: Option A is viewed as feasible, in the sense that it requires few if any changes to the current situation. For that reason there seems to be some, but qualified, support and suggestions of preference for this option among the Member State representatives interviewed, although for some Member State officials as for several of the NGO and IO interviewees, Option A might be feasible, but that does not necessarily make it preferable.

5.4 Political implications of Option B

Option B seems to offer limited prospects, coming in third out of four as the 'preferred option' and second out of four as the 'least feasible'. Nonetheless, the option as a whole and elements of it received some favourable commentary, as well as revealing areas in which there currently seems to be little political interest.

Those who saw benefits to Option B, either as the preferred option or as an option with desirable elements, noted in particular that it deals with the questions of joint return and relocation of asylum seekers, or, put slightly differently, with outcomes of the procedures[65] and with distribution issues,[66] which could be useful in crisis situations such as those in which this model (and Option A) would be used.[67] Two Member States would have preferred to see an adapted Option B which would keep the returns element but exclude relocation, as the relocations aspect was seen to make it particularly challenging, especially, according to another Member State which opposed Option B, if that involves quotas. There was no agreement here, however: one NGO wanted to exclude the return aspect specifically. In any case any relocations or redistribution would require a numerical 'quota' system; it was suggested, involving a key approach including aspects such as family unity and prior connections to any particular Member State. Such a system would, one IO representative indicated, need to be separate and distinct from the Dublin system. However, the redistribution key would also, one Member State official pointed out, need to cover both people receiving Convention status and those granted subsidiary protection.

One NGO respondent indicated that in their opinion relocation is against rights of refugees, or, according to one IO representative, it is at least a problem if it is not voluntary and anyway, one Member State noted that the option does not seem logical from a state perspective, as there would be no incentive to relocate, particularly when also providing asylum decision making support. Similarly another Member State suggested that there is no point in linking removals and relocation, and in any case, one cannot talk of redistribution at a stage before Option D according to both a Member State official and one NGO.

Option B was indeed favoured by some (one Member State, two NGOs and three IO representatives) for the fact that it would be a stepping stone towards the model some see as being the ultimate or 'real' joint processing of Option D, while others (one Member State, two NGOs, and three IO officials) were in favour of this approach because it would sidestep Dublin. This latter is a clear point of contention as two Member States felt the option would need adapting to maintain Dublin, and an NGO noted the need to keep families out of the joint processing but together (as a Dublin category), while three Member States were opposed to the option precisely because it was seen as a sidestepping of Dublin, which they would prefer not to be touched. The

[65] Three Member States and one NGO
[66] One IO
[67] One Member State

fact that it is only proposed to be side-stepped one-way, can according to both a fourth Member State and an NGO seem like punishing the state in crisis, which would potentially have to take responsibility for a much larger amount of cases than if Dublin was maintained or side-stepped completely.

Option B was also interesting to one Member State official and an NGO because, like Option A, it is strictly related to crisis management in a specific Member State. Yet, it was suggested by another Member State, that Option B brings something extra, over and above the minor steps of Option A, without going too far from the current system. What is more, in separate points each made by different interviewees, it involves EASO,[68] could be efficient for asylum seekers, by not leaving them in limbo,[69] enhances solidarity[70] by including officials from more than one Member State and giving them an opportunity to exchange best practices,[71] spreading the workload[72]and enhancing trust,[73] and while voluntary,[74] and based on good will – it could be a good first step to more harmonisation.[75]

Further suggested adaptations to Option B included the borrowing from Option C of both the prevention component[76]and the 'who' element, using the Dublin criteria to determine which Member State takes a decision.[77] The exclusion of mutual recognition,[78] giving increased weight to EASO,[79] adding monitoring for the quality of decisions[80] and adapting the design of the processing approach according to the specific crisis[81] were all suggestions offered for making modifications to Option B.

One government official critical towards Option B gave as a main reason the fact that it would not send the signal that all Member States need to shoulder their responsibilities, given that it would alter the system put in place by the Dublin Regulation to – exactly – clarify responsibility for asylum seekers.

In sum, option B received relatively little support as either the preferred or the most feasible option tabled. However, some aspects of it received qualified support, both as a stepping stone towards Option D and as something that does more than Option A, without going to the extent of the changes required for either Option C or Option D. The linkages to outcome, relocation and/or removals, made this option attractive to some, but unappealing for others, demonstrating that there is some work to be done on conceptualizing joint processing not only in and of itself, but also in its connections to the broader CEAS.

5.5 Political implications of Option C

One Member State suggested that Option C had the EU as a whole, with all of its Member States included, as central in the model, in contrast to option B which was

[68] One Member State
[69] One Member State
[70] One Member State
[71] One Member State
[72] One NGO
[73] One Member State, one IO
[74] Two Member States
[75] One NGO
[76] One IO
[77] One Member State
[78] One Member State
[79] One Member State
[80] One IO
[81] One IO

focused on the asylum seeker, and would benefit the individual by not leaving them in limbo. In Option C, in contrast, the Union's well-being would be the subject of the activities: the prevention of crises in asylum systems, and the strengthening of harmonisation being clear goals of this model.

Three aspects of Option C emerge as making it the second choice (after Option A) from the interviews, and a choice that could find traction across the actors (Member States, NGOs and IOs). These are its feasibility, in terms of requiring relatively few changes to the current system;[82] the preventive aspect, being used in a crisis prevention mode; and thirdly the idea of compulsory support, although that point is contested, and makes the option precisely unattractive for certain Member States.

Interest in the preventive aspect comes from ten Member State officials, six NGOs and two IO interviewees. However, two NGOs insert a word of caution, suggesting that the idea of prevention is attractive, but they are pessimistic as to whether it could actually be put into practice as suggested.

On the compulsory nature of involvement in this option one Member State, and two NGO interviewees find this interesting, useful and/or appropriate, whereas four Member States say otherwise, one NGO indicates Member States, or at least its own Member State, would be unlikely to take this path, and one IO staff member suggests no Member States would do so. The Member State which showed interest in compulsion suggested that the compulsory element should rather be in the crisis stage than in the prevention phase. Meanwhile two of those Member States which did not favour the compulsory nature of the option, as well as one IO interviewee, suggested that Member States would not welcome help that was forced on them, help they had not requested.

The nature of EASO's role in this option also drew much interest and comments. As an instrument or tool for monitoring, one Member State noted that EASO could have an important role – very important as there would need to be a good overview of what is happening in all Member States in order to fulfil the prevention role. That the joint processing or support would thus be institutionalised was noted as important[83] although there were warnings for the levels of bureaucracy that this could entail,[84] and the fact that all Member States must be represented,[85] and that the agency could find it difficult to step up in this way in the short-term.[86] One NGO noted that it would be essential to have an EU body acknowledging a crisis was developing, as no Member State would actually reflect on itself in this way. One Member State noted that with different standards for processing across the EU, EASO would have an important role to play in exchanging experts, and offering interpreters. However, it would be important that EASO's role would be to provide a recommendation, not to actually take asylum decisions,[87] although even then one Member State official wondered how these dossiers would hold up in appeals, and suspected there would be problems. However, another Member State preferred Option C, over Option A, precisely because the strengthening of EASO would mean going one step further, away from what already exists and towards more support and ultimately real joint processing.

However, one Member State, while liking elements of Option C, did not indicate it as its preference precisely because it would give too much power to EASO, elevating the

[82] Specifically mentioned by one IO, but implicit in many other comments/rankings
[83] Four Member States, One NGO
[84] One Member State
[85] One Member State
[86] Two Member States
[87] Two Member States

agency to full capacity, and giving it too many resources in terms of staffing and finances. Two more Member States suggested that diverting resources to EASO might not be efficient, as the staff and finances could then not be used domestically, and at some point that might actually contribute to a crisis. Indeed, another Member State noted that crises should happen infrequently, so a standing 'intervention' pool should not be necessary, and would be inefficient. Rather better use of the current intervention pool would be preferable.[88]

In sum, Option C could be seen as moving the issue of joint processing further along than Option A, however, it is not without controversy and disagreement, particularly on the issues of compulsory involvement and the role of EASO. Nonetheless, the 'preventive' element was quite attractive, in its theory at least, to a number of respondents.

5.6 Political implications of Option D

Option D would currently appear to be the least feasible of the options presented, while for some, particularly NGO respondents being simultaneously the most preferred option[89] and/or the only option presented that could bear the name of 'joint processing':[90] why talk of joint processing at all if this is not the ultimate vision.[91] While Option D is the fit in terms of the theoretical basis for joint processing,[92] it was recognised by almost all interviewees that it is not likely to happen in the near future, due, as one Member State official put it, to the lack of political will and mutual trust across the Union. Yet, according to one Member State, it would be the only option that would yield results commensurate to the resources invested.

Described by more than one interviewee as the ultimate goal,[93] with other options potentially being steps in support or assistance in processing along the way to this final model,[94] Option D seems certainly not to be feasible in the short- to medium-term. One interviewee noted that it is a completely different way of thinking from the other options, and presents challenges; ones which it could be useful to face.[95] Some interviewees also noted that the option was not fully fleshed out in the descriptions provided:[96] perhaps an indication of how the broad sketch touched chords in terms of what might be of interest as a fuller manifestation of the CEAS, or a significant step towards creating a fuller CEAS (given that joint processing is seen variably as a step towards a common system and the outcome of the completion of a common system).

The matter of sovereignty came up more with this option than with the three other options.[97] Multiple government officials described how their Member State needs to decide who may remain on their territory, in part as an issue of security and control.[98] Part of the rationale given for this by one Member State official was the accountability of the decision makers: under a national system they are nationally accountable. (One issue then is whether joint processing such as in Option D would need to include explicit accountability to the EU and to Member States in general?) Linked to that

[88] One Member State
[89] One Member State, one IO and two NGOs
[90] Two Member States, one NGO and four IOs
[91] Two IOs
[92] One IO and one NGO
[93] One Member State, one EU agency and one IO
[94] One IO
[95] One IO
[96] Two Member States, two NGOs, one IO
[97] Six Member States, one NGO, two IOs
[98] One Member State

would be the question of where those people taking asylum decisions are located: workshop participants pointed out that there could be a central EU authority taking the decisions, but that authority could have branch offices in all Member States, whose staff may or may not be nationals of that country, it should not matter: their asylum decision would be an EU decision not a national one. After the asylum decision is taken, the individuals could also move around the Union territory, either through relocation, or simply by moving at their own discretion, although this would surely have to be regulated in some way similar to the transfer of protection status, or to free movement regulations with rules relating to income/means, etc.

The suggestion was offered that a completely harmonised EU approach to or system of joint processing would itself form a significant 'pull factor', with irregular migration then being drawn through countries with less well-developed border, migration and asylum systems.[99] (It would seem again that a definitional point could be raised here, as 'full' joint processing to many people would precisely mean that there could no longer be a less well-developed asylum system anywhere in the EU, as there would be only one asylum system, operated jointly and fully across the EU.)

For those Member States with an opt-out in any areas of migration and asylum, collaboration in joint processing to the degree described in Option D would be inconsistent.[100] Another way of putting this might be that whereas the developing Common European Asylum System allows for national variations within the scope of harmonisation, joint processing to this extent would remove those possibilities:[101] this would be real harmonisation.[102] At the same time, even those Member States that fully cooperate in the CEAS, with no opt-outs, might find little incentive to collaborate with such joint processing if they have well-developed asylum systems, whereas others do not, before embarking on this approach:[103] those Member States look first for legislative harmonisation, and leave practical cooperation on the level envisaged in Option D aside at least until that is achieved.[104] That is understood, and the opinion is shared, in Member States that might be considered not so advanced – or challenged – in their asylum systems,[105] although at least one Member State official suggested that for those which have thus far not fully developed their asylum system, joint processing according to this type of model could be an easy way out. One International Organization interviewee saw this differently: that the systems currently existing in the north-western European countries, which are generally stronger asylum systems, would prevail in designing a centralized joint processing system, leaving other Member States at a disadvantage.

Another view on the harmonisation issue was that even if the asylum arena became more harmonised, associated issues such as the welfare state and integration matters would remain disparate, which would mean that joint processing in this total sense would be untenable.[106] If the rights and entitlements open to refugees and people with subsidiary protection remain different across the Union's Member States, even if there are minimum standards, then there would still be a potential desire to move, relocate, or apply in the first instance in one Member State rather than another, making the fact of joint approaches to asylum processing moot. (On the other hand, one could see this

[99] One Member State
[100] One Member State
[101] One Member State
[102] One Member State
[103] Two Member States
[104] Two Member States, two NGOs
[105] One Member State
[106] One Member State

as another step towards more complete harmonisation on various policy issues across the EU.)

In addition some other factors suggested as challenges under this option included, for example, the fact that organizational, administrative and reception issues would be complicated - politically, technically (e.g. on language issues)[107] and on a budgetary level.[108] This type of model would create more bureaucracy, and even slow processing times, feared one Member State official and two NGOs. Reception could be in central locations,[109] as suggested in the option, but might also be better dealt with as simply an issue of where people are when the asylum application is lodged, so as to avoid isolation,[110] and promote family unity.[111] As had been raised for other options, the issue of appeals, and how they could be conducted was raised – the assumption being that they would be made difficult if a joint EU approach was taken to first decisions whereas appeal would be presumed to be heard in national jurisdictions, courts, etc.[112] One interviewee suggested that just as this option could include branches of an EU-level asylum adjudication body in the Member States, so it could include branches of the European Court of Justice in the Member States, which could hear appeals.[113] One Member State official suggested this system could only come into effect in a fully federal Europe, and even then it would be complicated.

Furthermore, as one government expert pointed out, the fact that mixed migration flows lead to some individuals first requesting asylum and then later finding an alternative legal means to remain in the country in which their claim has been processed and rejected could be further complicated if there were to be joint processing of this type rather than a national procedure, since other forms of immigration would remain nationally regulated.

Among those supporting Option D as the preferred option, reasons included that it is the optimal response to concerns regarding the quality of decisions, discrepancies in recognition rates and the treatment of asylum seekers.[114] However, one NGO suggested that this model would precisely be counter to the rights of asylum seekers, unlike Option B. For certain Member States the elements of joint removals[115] and/or relocation[116] were of most interest – but also covered under Option B. One Member State noted that the model of removals and relocation described in Option B might not actually work in that option, but only with full harmonisation as in Option D. One NGO interviewee suggested that this option should be accompanied not by relocation, but by free movement for applicants, as their case would be dealt with by a centralized authority.

Option D was seen as the potential answer to problems with the CEAS, and the resolution to questions surrounding the Dublin system and its implementation: the ultimate harmonisation option,[117] bringing a balanced package in relation to admission, (re-)location and removal.[118]

[107] One IO
[108] One Member State, One IO
[109] One NGO
[110] Two IOs
[111] One Member State
[112] One Member State
[113] One IO
[114] Four NGOs and one IO
[115] One Member State
[116] One Member State
[117] One NGO and one IO
[118] Indicated during the 2nd Workshop

5.7 Conclusions on the political implications

In the sense of a ranking of options among those officials and organizations interviewed, Option A comes out as the most feasible option in the short-term, with some adaptations, followed by Option C. Option B is seen as a sub-optimal alternative, and Option D as unlikely, if, in fact, the 'ideal' vision of joint processing for those who would like to see it happen, and something of a 'nightmare scenario' for those opposed to it.

This research leads to the suggestion that what were cast as options A, B and C are, in fact, forms of supported processing, not of joint processing. That conclusion in itself could be useful in moving the discussions forward, by separating out models. Support could clearly be seen as solidarity-based: driven by a need to uphold the Union's progress towards a CEAS, as well as to support national systems, have all those national asylum systems functioning well for the benefit of all Member States and of the people seeking protection. A system of real joint processing, meanwhile, could be separated out as an ultimate, potentially efficiency-oriented, outcome of the CEAS, or a, relatively late, step on the way to completing the CEAS.

If supported processing were to be developed as a model, it could include training and professionalisation, evaluations of existing asylum systems and policies, information sharing and the communication of best practices, all issues brought out in interviews as either alternatives to full joint processing or as elements that should be included. Supported processing could also lead to greater harmonisation and greater trust: both required elements for a Common European Asylum System and for ultimate joint processing if that remains a practical goal.

Practical issues such as the role of reception conditions in joint processing models; the challenges posed by language; the possibilities but also challenges posed by the notion of remote working; ensuring family unity; enabling appeals and the possibilities for pilot projects were also cross-option issues that emerged in interviews. These issues will be returned to in discussing the legal and practical implications of the options.

Language is a particular concern. At the case preparation stage, even in supported processing, using a language other than that of the Member State taking the decision could lead to practical, political and legal issues. Similarly, at the Appeal stage, having the initial case materials in another language could prove problematic, even if it was deemed acceptable at the first-decision instance. Translation of all documents in the dossier could be very costly.

Nonetheless, from the point of view of political will, at this point in time, a basis could be found for developing a model of supported processing in the short- to medium-term, and continuing to examine the possibility of joint processing as a longer-term method for enhancing the Common European Asylum System, dependent on assessments of subsidiarity as the CEAS develops. Having said that, disagreement prevails on almost every aspect of this subject, as can be seen in the opposing 'positive' and 'negative' indications in the summary table that concludes this chapter.

Table 2: Overview of political implications of the four options

Type	Supported processing			Joint processing
	Option A	**Option B**	**Option C**	**Option D**
'ranking' of preference	1	3	2	4
Aspects that received positive comments	• Voluntary • Small step – not much change from the current system • Maintains primacy of responsible Member State • Maintains Dublin • Consolidates EASO • Crisis only	• Deals with joint return and relocation of asylum seekers/outcomes and distribution • Stepping stone towards 'real' joint processing • Requires relatively few changes but more than A • Maintains responsibility of the Member State	• Brings the EU as a whole into focus • Preventive aspect • Requires relatively few changes, but more than A • Benefits the individual – not left in limbo • Compulsory aspect • Stronger role for EASO • Upholds Dublin	• Ideal, ultimate goal – but not feasible yet • Return/relocation/distribution • Resolves questions around the Dublin system
Issues and concerns raised by respondents	• Least ambitious • Crisis is too late • Not really strengthening CEAS	• Relocation – complicated • Return – complicated • Side-steps Dublin • Implies Member States do not need to shoulder their responsibilities	• Compulsory aspect – cannot force MS to accept support • Stronger role for EASO • Denies Dublin and Member State responsibilities • Too much bureaucracy	• Challenges sovereignty • Locus of accountability • Pull factor • Inconsistent with opt outs for some Member States • Removes scope for national variations in CEAS • Counter to asylum seekers' rights
Major suggested adaptations from the original, preliminary option	• Include preventive aspect of Option C • Include the common return mechanism of Option B	• Include preventive component of Option C	• Invert the compulsory and voluntary moments from A (crisis) to C (preventive)	• Think about how it works in times of crisis as well as just generally

Cross-cutting challenges	Language; Appeals; Reception Conditions; Family Unity; Remote Working; Pilot Projects	
	Ensure includes training; professionalization; evaluation; sharing of best practices and know-how;	Trust; harmonisation

6. Legal and practical implications

In chapter 3, the problem of defining the term 'joint processing' was discussed and in chapter 5 the discussion led to the conclusion that while different actors seem to mean different things by this term, in some cases what is actually meant with the term 'joint processing' might be better labelled 'supported processing'.

One could therefore distinguish, on the one hand, between supported processing, where the processing and more importantly decision-making remains at the level of Member States, and on the other hand, actual joint processing, which moves these to the EU level. In relation to the options devised, options A, B and C would fall under supported processing, whereas Option D would be joint processing in its ultimate form.

In light of this, the analysis of the legal and practical implications of options A, B and C will be conducted under one heading, starting with Option A in analysing its compatibility with relevant legal instruments; continuing with Option B and then C, whereby any additional questions arising from these options will be taken into consideration. Option D is, as mentioned above, an entirely different, more long-term option, which will therefore be analysed separately.

Here it is important to highlight that while some of the ensuing issues are clearly of either legal or practical character, there is a significant overlap in a number of instances. More importantly, a legal problem does not necessarily require a legal solution - in several cases the solutions to legal issues are purely practical (and of course political) in nature.

Before engaging in the legal analysis, it should also be mentioned that, though there could be lengthy and interesting discussions about potential issues related to supported processing in the appeal phase, this will only play a minor role in the legal analysis, since the developed options A, B and C propose to keep appeals as a national issue and responsibility without any joint efforts for this phase built into the options' designs. Only the section on Option D, which represents the 'full-scale' joint processing, naturally also has to dig into potential solutions and legal issues in dealing with appeals in an EU joint processing mechanism (see section 6.4).

On the basis of the discussions at the first workshop of this project, it was clear that any options for joint processing which would seem feasible in the short to medium term would nevertheless have to circumvent solutions that would require too drastic changes to the legal basis (EU and/or national). For this reason it was decided to focus the three options (A, B and C) on providing support for the preparation and recommendation on cases, and to leave the actual final decision-making (at first or second instance) to the individual Member State. Involving other Member States' officials in the decision-making would open up legal issues and questions such as: on the basis of which country's legislation would the decision be made, and which Member State would then be legally responsible for the case and decision and for defending it in a potential appeal? As long as there is no common legal basis for taking asylum decisions, cooperation on this would be challenging and practically unfeasible.

Moving to the appeal phase, the legal issues of joint processing are even more substantial. While the procedures for first instance decisions to some extent differ among Member States, they do even more so in the appeal phase. In some countries, appeals are handled by an administrative body, in others it is a quasi-judicial body,

while in others again it is a court decision. These national procedures and requirements are established by law, which would have to be amended if other Member States were to be involved in the process. For instance, in France, the appeal phase involves magistrates, who have a special status by law. Hence, joint processing in the appeal phase would require more substantive amendments to national law, and this was assessed as unfeasible in the short to medium term.

For these reasons, it was decided to develop a set of options for the data collection (for three out of four options at least), which circumvent the issues related to appeals, in order to already from the starting point get closer to solutions that could potentially be (at least legally) feasible, also in the short to medium term. The following analysis presents and discusses those legal and practical issues that were, nevertheless, brought up in the study and interviews with stakeholders concerning the proposed options.

6.1 National legal and practical implications of joint processing

In this first section we look at some of the legal and practical implications identified from the interviews at national level. Member States have generally answered with regard to the overall concept of joint or supported processing and its legal feasibility and not specifically in relation to one option, and therefore we will not distinguish between the options as such. Additionally, some of the questions posed relate to general legal issues such as mutual recognition or rights of asylum seekers.

On a general level, the main benefits identified by the Member States with respect to the practical implications of joint processing, irrespective of which option was preferred, was that joint processing was seen as potentially speeding up the asylum process and raising the overall quality of the asylum decisions.

In terms of national legal implications with respect to implementing joint processing, the main concern expressed by Member States is that in general, irrespective of which option was preferred, national legislation tends to specify that it is the national authorities who are charged with the handling or preparation of the asylum case or, as was the case in one Member State, the interview with the asylum seekers would need to be conducted in the official language(s) of the country. Thus, 11 Member States specifically mention that amendments to existing national law would be needed for the implementation of joint – or even supported – processing. Generally, these Member States found that such legislative amendments could be introduced relatively easily and that this issue would not be something that would prevent them from taking part in joint processing.

In ten Member States, amendments would not be needed, although one Member State specified that this would be the case only as long as participation by the Member State was voluntary. Another Member State mentioned that if the rights of the asylum seeker would deteriorate as a result of joint processing compared to the national system, then amendments would be needed.

In the interviews, two of the Member State representatives preferred Option D, but they also found that introducing this option would require some legislative changes at national level. One Member State considered it unlikely that supported processing would be considered constitutional and therefore preferred to move to the level of EU processing conceived by Option D, while the other Member State found that

implementation of Option D would require an overhaul of the national legislation in the field of asylum.

To illustrate more specifically some of the Member States´ contemplations with respect to supported processing and EU processing, two different cases are presented below. The first case, which represents the vast majority of the Member States, illustrates the legal feasibility of Option A. The second case illustrates why one Member State generally did not find supported processing (be it A, B or C) legally feasible and how this problem could possibly be overcome.

Box 1: Case 1 illustrating the legal feasibility

With respect to Option A´s feasibility in a national legal context, this Member State respondent found that this was generally unproblematic. The only issue which raised some legal concern was the recognition of decisions taken following a recommendation made by an expert from the EASO pool of experts. The Member State found that it was important that the recommendation made by the expert was in line with the current national asylum practices or jurisprudence. According to the Member State, to overcome this challenge adequate training of the experts in the EASO pool would be necessary, including training in the functioning of the asylum system in the Member State which was receiving the support. The training is expected to help uphold a sufficient level of consistency in the decisions made by the Member State which receives support, and ensure that the recommendations given by the expert from the pool were seen as trustworthy and eventually followed and therefore viewed as a help. This consistency was seen as very important in generating overall trust in asylum decisions, irrespective of who de facto had taken the decision.

As also foreseen by Option A, all decisions based on a recommendation from a non-national expert, would, in accordance with national legal requirements, have to be taken by the national asylum authorities in the Member State. Based on the Member State's previous experiences with relocation of recognised refugees, this has not proven to cause any problems in the past and was seen merely as a matter of form.

Box 2: Case 2 illustrating the legal infeasibility

The legal feasibility of supported processing in this Member State was questioned with regard to the implications of such a measure for the question of state sovereignty. The system was characterized as fairly bureaucratic and it was reported that the involvement of supporting non-national officials (e.g. EASO experts, NGO representatives) in the processing of asylum applications (including the registration phase and the interviewing process) was not possible under current legislation as these assignments were reserved specifically for civil servants or staff of the national police. It was reported that involvement of non-national experts in the processing of asylum applications (as envisaged under options A, B, and C) would have to be backed by amendments to the existing legislation, but interviewees assessed that the supreme administrative court (in charge of ensuring the constitutionality of legal provisions) would likely take issue with it as it was likely to be interpreted as affecting the state's sovereignty.

Despite that the concerned Member State has recently adopted a law which provides

for a new asylum service, and it can thus be expected that these legal concerns would persist since acts related to public authority can only be performed by civil servants or members of national law enforcement bodies.

For the same Member State it was reported that one preferable aspect of Option D would be the use of EU legislation which could have primacy over the national rules, provided that no issue of compatibility with the constitution were to be raised, as the jurisprudence of the supreme administration court and the supreme penal court on when the EU law prevails has, in the past, created some controversy and also confusion. In addition, Option D was expected to ensure a uniform application of the EU asylum acquis.

Still, a question of legal competence for non-national experts was raised by interviewees. In the Member State in question there were concerns as to whether it would at all be feasible to efficiently inform non-national case-workers of the specifics of the national legal practices.

As evidenced by the above examples, and also raised by other Member States[119] there is a valid legal concern with respect to whether EASO experts or non-national experts would be sufficiently knowledgeable of the national legislation and requirements in the Member State in which the processing takes place; the implication being that lack of knowledge of national legal requirements of a dossier to be used in the first or second instance decision could potentially influence the outcome of an asylum claim or prolong the process. One example given, was that in one Member State the asylum decision was normally 10-12 pages long, whereas in others it was maybe only 2-3 pages, and this could be seen as an illustration of the fact that the national administrative law practices and procedures differ when it comes to what information is required in an asylum decision. However, given that national asylum legislation must be in line with EU law and the core principles in assessing a claim for asylum therefore would remain the same across the EU, this concern could be overcome fairly easily through practical means such as providing training on the specificities of national law, as was also emphasised by some Member States.

Member States were also asked whether, from a national perspective, they foresaw any particular problems in relation to the specific rights of the persons whose claim for asylum are jointly processed. The vast majority of countries[120] did not see any legal problems in this respect, but interestingly, a Member State who considered itself fairly inexperienced with handling asylum claims considered that joint processing might in fact be favourable for the applicant due to other Member States' or EASO's high levels of experience in asylum. On an opposing note, a more experienced Member State expressed concern that joint processing might lead to a depreciation of the social rights of asylum seekers in the country. That being said, supported processing is seen by the majority of Member States to potentially have significant benefits in terms of the added value of harmonisation. Even in the absence of a harmonised legal approach on the EU level, a harmonisation in legal practice can certainly be fostered through the availability of supported processing schemes and ultimately lead to improved standards and a levelled playing field. By allowing experts to gain experience in other Member States' legal and administrative practices through their cooperation in processing asylum claims, a 'best practice' effect can be expected to emerge, which can lead to the adoption of the most efficient practices. Moreover, on a

[119] Two Member States
[120] All except one Member State

practical level, supported or joint processing can lead to improvement of procedures. In terms of utilizing technology (e.g. video conferencing) in the application admission and processing, some Member States saw great value in this, whereas others were not so convinced of the usefulness of such practical innovations. Again, sharing experience can lead to popularisation of the most efficient practices and ultimately harmonisation of the application of the asylum acquis across participating Member States.

On a practical note with respect to the specific rights of the persons whose claim for asylum are jointly processed, two Member States voiced concerns about the need for translation of documents and potential use of interpretation between officials from different Member States involved in the processing. It was seen as essential that the final decision would have to be made in the language of the Member State irrespective of whether parts of the processing had been conducted in another language; this would also facilitate second instance decisions.

The issue of mutual recognition was specifically raised in the interviews with the Member States. This is mainly relevant for Option B (and D) in which joint processing would be accompanied by a mechanism for distribution (see also section 6.2.2 about the legal obstacles to mutual recognition at EU level). Nine Member States found that mutual recognition of decisions on asylum or transfer of protection of beneficiaries of international protection was not possible at this point in time in their countries. The reasons mentioned were both of a legal and practical nature. One Member State representative mentioned that it would have to re-examine all the cases as decisions had to be taken by a national civil servant; another said that they had not ratified any international law in this regard. Two of the Member States representatives however indicated that this to some extent was viewed as a political problem rather than an actual legal one. Representative of three Member States indicated for example that recognising decisions taken by another Member State would be possible although difficult and would require pragmatic solutions such as an additional *pro forma* review of the asylum application.[121] Five Member States clearly indicated that mutual recognition was not a problem and that it was feasible.

While some countries have decided to conduct relocation on a bilateral level, other Member States[122] are participating in the EUREMA project which provides a good example of how mutual recognition is dealt with legally and practically at national level.

Box 3: Mutual recognition in the EUREMA project

The so-called EUREMA project started back in 2008 as a pilot project and has recently been extended to a second round expected to last until mid-2013. It is partly financed by the European Commission and organised as a Ministerial pledging conference for relocation of migrants from Malta and resettlement of migrants from North Africa.

Based on a pre-screening and preparation process conducted in Malta with the help of UNHCR beneficiaries of international protection are selected. Following selection missions in Malta and interviews, Member States accept the candidates. IOM is responsible for organising cultural orientation courses in Malta, undertaking necessary pre-travel medical examinations and organising travel arrangements, and the project provides financial support to the host Member States to support integration programmes for up to one year. This may cover accommodation expenses, language training and other aspects to ensure successful integration.

[121] Two Member States
[122] The EUREMA II countries are: Bulgaria, Hungary, Lithuania, Poland, Portugal, Romania and Slovakia

France who participated in the EUREMA I project reports that the national law of France allows for the transfer of refugee status and the national jurisprudence acknowledges the right of a person to have a refugee status granted by another Member State, provided the person is duly granted an authorisation to stay on the territory of France. Hence France foresaw no legal problems with respect to following an asylum decision from another Member State despite slight differences in asylum procedures or decision practices. Nonetheless, while France would not need to fully reassess the asylum application before granting refugee status, it would still have to ensure that the applicant has not committed a crime and does not represent a serious threat to public order, public safety or security of the State.

While EU law currently does not provide for mutual recognition of refugee status or subsidiary protection status, it would by no means be incompatible with the EU asylum acquis to move into the direction of more or less automatic recognition of such status if it has already been granted by another Member State in accordance with the prevailing CEAS standards. To the contrary, this would seem to be a logical development in the light of Article 78(2) TFEU which stipulates that the adoption of measures on a uniform status of asylum is valid throughout the Union, as well as a uniform status of subsidiary protection for third country nationals who, without obtaining European asylum, are in need of international protection. The recently adopted Directive 2011/51 (amending Directive 2003/109) on long-term resident status extends its scope to beneficiaries of international protection, which can be seen as a step in the same direction. Similarly, the 1980 European Agreement on Transfer of Responsibility for Refugees (CETS No. 107), to which reference is made in Article 3(3)(c) of the amended Directive 2003/109 (although not all EU Member States are parties to this Agreement), reflects the principle that Member States may, under certain conditions, provide protection to refugees, as long as such status has been recognised by another State member of the Council of Europe.

In this respect it is worth mentioning that a general legal challenge exists with respect to the various Protocols adopted for Ireland, United Kingdom and Denmark in relation to the existing EU acquis. These Member States are either not part of or only part to some of the EU acquis. This situation introduces a fundamental problem relevant for Options A-C, as applying EU standards in the preparation of the asylum case would be more difficult for experts from these countries, although not impossible if training and instructions are provided.

Another legal or practical matter to be taken into consideration when discussing the feasibility of supported processing is the issue of appeal procedures. At the level of national law, the appeal procedures will not necessarily cause separate legal problems in the context of supported processing, since this mechanism – as further described below in connection with options A-C – is based on the assumption that the decisions on asylum applications at the first instance level will be taken by national authorities of the respective Member States notwithstanding the fact that the case preparation is, in full or in part, carried out by processing teams set up by EASO.

Formally speaking, therefore, appeal procedures will not differ from those applied in normal circumstances where the full examination of asylum applications is carried out by Member States' national authorities. In so far as legal problems should arise at the national level that would rather be caused by possible legal obstacles to the involvement of non-national experts as part of the examination teams, as already mentioned above. In addition, the preparation of asylum decisions by non-national

officials may cause practical problems at the appeal stage in terms of language and the resulting need for translation of documents that have been produced as part of the case preparation. Some Member States reported that due to specific and even stricter administrative procedural requirements in the appeal phase, supported processing seemed less feasible. However, due to the study´s chosen methodology focusing on specific options and the fact that the options are designed to circumvent the appeal phase, an estimate of the magnitude of this problem is not possible and it thus remains impossible to estimate what effort would be required to surmount this obstacle.

The table below picks up the key legal ramifications at national level, as identified by the Member States, relevant for supported processing, and provides an indication of the magnitude of the legal obstacles and how they could be overcome either through legal, political or practical means.

Table 3: Sum-up of the legal implications at national level

Identified national legal ramifications concerning supported processing	Feasibility assessment
National legislation specifies that it is the national authorities who are charged with the handling or preparation of the asylum case. Based on this, 11 Member States would have to introduce amendments to the existing law.	These legislative amendments could, according to the Member States, be introduced relatively easily, although one Member State found that such a piece of legislation would be deemed unconstitutional. Overall, this remains a matter of political support for the required amendments.
The interviews with asylum seekers and the dossiers are by law required to be in the national language of the Member State	Although burdensome, this could be overcome through practical means, such as interpretation and/or translation.
The level of EASO experts or non-national experts´ competences with respect to national administrative law practices and procedures and their capability to make recommendations on this basis.	National asylum legislations are in line with EU law and the core principles in assessing a claim for asylum are similar across the EU, and thus this legal concern could be overcome through practical means such as training
Mutual recognition (mainly relevant for Options B and D) of decisions on asylum or transfer of protection of beneficiaries of international protection was not possible in 9 Member States, at this point in time.	To overcome this problem, legislative changes would be required, either in the Member States or via EU law. However, it was suggested by several Member States that pragmatic solutions, i.e. *pro forma* reviews in the receiving Member State, could be applied, and thus this remains to a large extent a matter of political support. EU law currently does not provide for mutual recognition of refugee status or of subsidiary protection status, but it is by no means incompatible with the EU asylum acquis.
The Protocols adopted for Ireland,	Despite the fact that these Member States

United Kingdom and Denmark in relation to the existing EU acquis introduce a problem relevant for Options A-C, as applying EU standards in the preparation of the asylum case would be more difficult for experts from these countries.	are either not part or only part to some of the EU acquis, this legal issue could relatively easily be overcome through practical means, such as providing sufficient training.

In the next section we discuss in more detail the practical and legal implications of the specific options at EU level.

6.2 EU legal and practical implications of supported processing[123]

The reasons for undertaking joint processing are, as outlined in the problem definition chapter, manifold: the objective may be to increase protection capacity, to develop and enhance the administrative capacity and to enhance overall efficiency in asylum procedures with a view to increasing solidarity among the Member States and eventually developing the CEAS.

These overall objectives fall within the remit of the legislative measures of the TFEU in the field of border controls, asylum and immigration, and within the overall objective of the CEAS. As it is underlined by Article 80 of the TFEU any policy in this field should be governed by the overarching principle of solidarity and fair sharing of responsibility between the Member States[124].

More specifically, Article 78(2) TFEU provides EU legislative competence for the adoption of measures on a uniform status of asylum valid throughout the Union, as well as a uniform status of subsidiary protection for third country nationals who, without obtaining European asylum, are in need of international protection. This might possibly be considered as the legal basis for measures establishing the necessary EU rules on supported processing of applications for international protection.

It would thus be fair to say that even if no specific legal framework for joint processing currently exists, joint processing as a principle or as defined in the above, is in line with the objectives of the TFEU. Supported processing does, however, as we have seen in the analysis above, contain a number of mainly practical obstacles but also more political challenges, which when considered in detail require further legal scrutiny. Such legal scrutiny should, in turn, include further clarification of the extent to which supported processing would require amendments to secondary legislation, and whether the adoption of such amendments would raise any legal issues as regards the legislative competences provided for in the TFEU.

[123] The analysis has been carried out without consideration for the Protocols on the position of UK and Ireland, and Denmark

[124] See Eurasylum's study: The implementation of Article 80 of the Treaty on the Functioning of the European Union (TFEU) on the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States in the field of border checks, asylum and immigration', Brussels: European Parliament (Directorate-General for Internal Policies), April 2011 http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=35591

6.2.1 Option A

Starting point: Early warning mechanism and the Dublin Regulation

Option A takes as its starting point the Early Warning mechanism which has been proposed by the Council[125] as part of the on-going revision of the Dublin Regulation.[126] The legal basis for this mechanism as defined in Article 33 of the current proposal for amending the Dublin Regulation will not be questioned as such. Considering that Article 33 is silent with respect to the type of measures that could be envisaged as part of the preventive or crisis management action plans, this analysis will rather look into the legal feasibility of these action plans if they were to contain joint (or *supported*) processing of asylum claims in one of the forms presented in the options.

That being said, the legal status of the action plans as such is of some interest, particularly in light of the possibility of using mandatory measures as part of the joint processing of asylum claims (as proposed in Option C). Following an invitation from the Commission, the preventive action plan is to be drawn up in line with the Commission's (and EASO's) recommendations (Article 33(1)). Likewise, setting a crisis action plan in motion is to be based on the Commission's (and EASO's) recommendations (Article 33(2)(c)), but in this case the Member State concerned is obliged to elaborate the crisis action plan (article 33(3)(a)). Article 33 is silent when it comes to the content of the plans, most likely in order to cover any given situation that may occur. Article 33 however clearly states that in case of prevention it is up to the Member State and its discretion to elaborate the plan (Article 33(1)), although it may request assistance from other Member States, the EASO, agencies, etc. In the event of a crisis, the action plan is to be drawn up in cooperation between the Member State, the Commission and EASO (Article 33(3)(a)). Based on this, it seems that although the action plans are binding measures within the remit of the Dublin Regulation, the actual content of the plans remains negotiable between the parties. Thus, joint processing of asylum claims could be one of the elements included in the plan. This common decision method, however, indicates that if the Commission or EASO is recommending a specific measure such as joint processing of asylum claims, the Member State[127] in question would be under considerable pressure to accept this.

With respect to Option A, as elaborated above, for the Member State in a crisis situation, within the meaning of Article 33, assistance from the "EASO joint processing pool" is voluntary. In drafting the crisis action plan, the Commission and the Member States therefore would decide together whether joint processing of asylum claims should be one of the elements included in the plan. The scope of the support, whether it be assistance with all asylum cases or a joint processing team assisting with only a particular type of cases (e.g. a specific influx), is left open in Option A, and it is thus fully in line with the principles in Article 33.

[125] The most recent document is Council document 13 December 2012, ASILE 129doc. 15605/12. Retrieved from http://register.consilium.europa.eu/pdf/en/12/st15/st15605.en12.pdf

[126] 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 third-country national or a stateless person, COM (2008) 820 final, 3 December 2008

[127] Provided that no major national legal obstacles exist, which will make joint processing practically impossible

Where does processing take place?

Option A stipulates that the asylum decision is taken by the Member State responsible for the asylum claim according to the Dublin Regulation.[128] The option upholds the Dublin procedures, and thus the sovereignty clause in Article 3(2) and the humanitarian clause in Article 15 are fully applicable. The Member State which is responsible according to the Dublin Regulation will also be responsible under the supported processing scheme in which the national authorities will be assisted by EASO processing teams in examining asylum applications. It will consequently be for the Member State in whose territory the asylum applicant or a relative of an asylum applicant is present to decide on the application of the sovereignty clause and the humanitarian clause, respectively. Here, it is important to note that the operation of these provisions may be affected by the crisis situation as well, unless particular efforts are made to prevent such an effect. A Member State in crisis may thus be inclined towards restrictive application of Articles 3(2) and 15 of the Dublin Regulation, and other Member States may arguably be barred from requesting such a Member State to examine the asylum application according to Article 15 of the Regulation.

In this respect, it should be mentioned that the preconditions for transfers under the Dublin Regulation may sometimes be jeopardized for legal reasons, ultimately by national courts, the European Court of Human Rights or the EU Court of Justice, if the asylum system in the responsible Member State is in a state of serious crisis.[129] This would, however, be an additional incentive for the other Member States to support capacity building in the Member State in crisis, and for the Member States in crisis to in fact accept supported processing or other measures recommended by the Commission or EASO following Article 33.

Who takes the decision?

Option A calls for the joint processing of asylum claims to be conducted by members of the EASO Asylum Intervention Pool participating in, what was referred to in Table * as a "joint processing team". The team would be set up on an ad hoc basis and consist of national experts who match profiles defined by EASO. Thus Option A requires that:

1. EASO defines relevant profiles for national experts to take part in joint processing teams (cf. Article 15(2)),
2. Member States make experts available (Article 16); and
3. the procedure for deployment is put in motion (Article 17).[130]

Option A therefore requires that the Member State in which joint processing is to take place requests EASO for the deployment of an asylum support team, or a so-called joint processing team (in line with Article 13), which underlines the voluntary aspect of joint processing as part of the prevention action plan (cf. the above section on the Early Warning Mechanism).

[128] Council Regulation No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

[129] See the Judgment of 21 December 2011 in Joined Cases C- 411/10 and C-493/10 N.S. and M.E. and Others from the EU Court of Justice which stipulates that a Member State may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of inhuman or degrading treatment. See also Judgment of 21 January 2011 from the European Court of Human Rights in the case M.S.S. v. Belgium and Greece.

[130] Regulation No 439/2010 of 19 May 2010 establishing a European Asylum Support Office

The current mandate of EASO is limited to supporting the Member States on practical cooperation on asylum, supporting Member States under particular pressure, and contributing to the implementation of the CEAS. The EASO does not have any powers to take decisions on individual applications for international protection (Article 2(6)), and it could therefore be argued that they also would not be able to take decisions as members of joint processing teams. This being said, the experts of EASO will only support the application process and make a recommendation for a decision on the asylum case as the actual decision will be taken by officials of the Member State responsible for the asylum application under the Dublin Regulation (as regulated by the Asylum Procedures Directive). Based on this clear division of tasks between EASO experts and Member States officials, a violation of Article 2(6) is unlikely.

Moreover, in case a decision on an asylum application is appealed, the Member State responsible for the claim will also have to settle the appeal case. As such this does not pose any legal obstacles, inasmuch as the appeal procedures will be similar to those applicable in normal circumstances where the full examination of asylum applications is carried out by the Member State's national authorities. However, a number of additional practical issues will need to be solved at the appeal stage, in particular due to the need for translation of documents that have been produced as part of the case preparation carried out by non-national officials within the EASO processing team.

As a related, yet formally separate matter, it should be mentioned that the objective of joint or supported processing of asylum applications may in some instances be further advanced by adapting the national asylum appeal system to the specific circumstances that may have caused the setting up of EASO support to a Member State. Thus, the composition of the population of asylum applicants in a given Member State in crisis, or of the specific caseload subject to joint processing, may be such as to allow for special appeal procedures for manifestly unfounded applications if such procedures have not already been introduced by that Member State in accordance with recognised standards of EU and international law.

The role of the Joint Processing Team would be limited to preparing the case and providing a recommendation for its outcome in accordance with the EU Qualification Directive[131], the 1951 Refugee Convention and the European Convention on Human Rights (ECHR). The application of the law is likely to vary between the Member States according to specific national standards (cf. Article 3 and the various option provisions of the Qualification Directive). Therefore the Joint Processing Team expert should only apply EU and international law, based on which a recommendation for a decision will be provided. This approach should cause no formal or practical problems in preparing the asylum cases, since the members of the EASO processing team will have to prepare the decisions on applications for asylum on the assumption that neither more favourable standards according to Article 3 of the Qualification Directive nor more restrictive standards under optional provisions should be applied to the individual cases. In this respect, in order for joint processing to function in practice and become an actual mitigating instrument, it may be worthwhile to consider working towards limiting the scope of national variations to a minimum (or harmonising standards further), since such variations may result in significant additional processing by the national case workers taking the decision. Ideally, it might be raised as part of the negotiations between the Executive Director of EASO and the requesting Member State on the operating plan and the modalities for establishing supported processing that the Member State should under these specific circumstances refrain from applying

[131] Directive 2011/95/EU 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.

certain optional provisions of the Qualification Directive, thereby keeping its national law more in line with the CEAS standards. Agreeing on such alignment of national recognition criteria to the general standards in the Qualification Directive would undoubtedly make EASO support to the national authorities of the Member State more efficient, since it would become unnecessary for the latter to carry out additional casework on the basis of national asylum provisions. In any event, it could potentially contribute to improving the quality of asylum decisions, and the efficiency of asylum procedures in general, if it was to be made clear to which extent national law actually differs from CEAS standards and how this adds to the examination procedure carried out by the national authorities. In the end, it would be up to the national case worker (or decision-maker) whether or not to follow the recommendation made by the EASO processing team. While some differences between the CEAS standards and national law - due to national case law and the national interpretation of the directive lying within the margin of manoeuvre available in the transposition process - may in practice be inevitable, the variation ought to be limited as far as possible in order to maximise the impact of the EASO support. Clearly, the identification or clarification of national differences would enhance the feasibility of supported processing by highlighting the points at which the case preparation must take the national variations into account.

However, a significant practical issue remains to be solved. Translation of the case material and the recommendation provided by the Support Processing Team expert (if made in another language than the one of the Member State taking the decision, e.g. in English or in the language of the EASO expert) is important for the quality of the decision, but is potentially burdensome and costly. It could be argued, that in some Member States it would not be problematic if case material and the recommendation were in a language commonly used in that Member State, and the lack of translation would also have to be balanced against the benefit of getting support to overcome, for example, a major backlog of asylum cases. Another matter would have to be considered into this equation, namely that the language issue would put considerable constraint on the members of the Support Processing Team who would not only have to be asylum experts, but also language proficient (i.e. to be able to collaborate with officials from other countries and perhaps to draw up the recommendation in one of the common EU languages).

Moreover, in the situation of appeal, the translation issue becomes even more pertinent. Even if it may, in some instances, be feasible for a first instance decision to be taken without translation, it is likely that courts or quasi-judicial bodies would require that the majority of the case material be translated into the national language. Appeals of asylum decisions are widely used,[132] thus the issue of cost-effectiveness and translation remains problematic and pertinent, in particular in view of the fact that joint processing in option A is linked to Article 33 of the current proposal for amendments to the Dublin Regulation, which sets out to assist Member States whose asylum system is under severe constrains.

In addition, the issues of transparency and accountability in the joint processing procedure should be considered. The Member State that takes the asylum decision will be formally accountable for the decision, but in order to be cost-effective the Member State would have to rely heavily on the recommendation made by the Support Processing Team, meaning that a significant level of trust would be required. In doing so, some kind of alignment – as also discussed above in the context of national

[132] In 2011, 365 600 decisions on asylum applications were made in the EU27, of which 237 400 were first instance decisions and 128 200 (approximately 35%) were final decisions on appeal (source: Eurostat, http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-19062012-BP/EN/3-19062012-BP-EN.PDF)

variations of the definition of beneficiaries of international protection – of the case handling and the recommendations would be needed in order to minimize any inaccuracies or mistakes.

In terms of being able to assess the trustworthiness and credibility during the asylum interview the use of remote working, which is already widely used, is deemed somewhat controversial but also a fact of modern life[133]. In this respect, an interesting element could be to draw upon existing experience with remote working, in particular video conferencing of interviews with refugees who are candidates for resettlement[134], with a view to using remote working tools to enhance the compliance of the examination procedure with international and EU standards on asylum procedures (e.g. improving quality of interpretation, alignment of procedures, avoiding or limiting border procedures). In this regard it should be noted that video conferencing of interviews seems to be fully compatible with the Asylum Procedures Directive, cf. in particular Articles 12-14 on personal interviews and Articles 15 and 16 on the right to legal assistance and representation. In line with this assumption, video conferencing in the context of asylum interviews is expressly foreseen by Article 15(2) of the EASO Regulation. In addition, the possibility of recording the applicant's oral statements in accordance with Article 11(2)(f) of the Directive could be seen as an advantage in terms of facilitating the assessment of evidence and the quality of such assessment.

As part of EASO's duties in supporting practical cooperation on asylum, the agency could play an instrumental role in ensuring alignment and harmonisation of international and EU standards both in terms of procedures and qualification of the status of asylum seekers, mainly through training for the Support Processing Team. As part of developing this aspect, it would be relevant to draw on the experiences of UNHCR and others who have been working systematically with the use of structured and objective credibility assessments in the EU asylum procedures, thus contributing to a harmonisation of the approach[135], and who have developed manuals on how to ensure quality at each step of the asylum procedure, quality audit mechanisms, check-lists, peer-training for decision-makers, codes of conduct for interpreters, etc.[136]

In conclusion, there do not seem to be any legal barriers to fully separating the case preparation, including the asylum interview, from the actual decision-making; indeed, this actually reflects the system already employed in some Member States' asylum procedures. While it should be recalled, as a potential barrier in national law, that in some Member States it is not legally feasible under the current legislation to hand over the responsibility for asylum interviews to non-national officials, the involvement of such deployed experts in the examination of asylum cases within the framework of supported processing does not appear to raise any problems under EU law. The Asylum Procedures Directive, cf. Articles 4 and 8, lays down certain requirements for the responsible authorities and for the examination of applications. However, the Directive does not require any specific nationality or administrative position of the officials participating in the examination of asylum applications, as long as they act on behalf of such authorities in accordance with the aforementioned requirements, and those authorities are exercising jurisdiction of the Member State responsible for the examination of the case. Furthermore, it should be noted that Chapter 3 (cf. in

[133] UNHCR expressed through interviews that remote working had many flaws but was also something we would have to work with in the future

[134] UNHCR has specific experience with the use of video conference for asylum interviews in their resettlement work

[135] The on-going CREDO project (September 2011-February 2013) undertaken by the Hungarian Helsinki Committee in cooperation with UNHCR, IARLJ and Asylum Aid, supported by the European Refugee Fund

[136] UN High Commissioner for Refugees, Building In Quality: A Manual on Building a High Quality Asylum System, September 2011, available at: http://www.unhcr.org/refworld/docid/4e85b36d2.html

particular Articles 21 and 22) of the EASO Regulation stipulates the modalities for the deployment of officials as members of asylum support teams to other Member States based on the principle that such deployed officials will be operating on conditions similar to those of the officials of the host Member State.

If supported processing of asylum applications is to become a widely used mitigating instrument, it may be necessary to formalise supported processing or aspects of it through a separate instrument of EU law.

Supported processing for particular types of cases?

In the problem definition chapter it was discussed under which circumstances joint processing might be employed. Significant caseloads, interception at sea, pursuant to implementation of the Temporary Protection directive were some of the different modes of use mentioned. However, the starting point is likely to be so-called mixed flows. Mixed flows are defined by IOM as "complex population movements including refugees, asylum-seekers, economic migrants and other migrants". In essence, mixed flows concern irregular movements, frequently involving transit migration, where persons move without the requisite documentation, crossing borders and arriving at their destination in an unauthorized manner.[137]

Insofar as supported processing of asylum claims is likely to be applied for caseloads that represent mixed migration flows, including bona fide refugees and persons otherwise in need of international protection along with a significant proportion of persons that should rather be considered as economic migrants, it would be relevant to consider providing for accelerated procedures for the examination of those cases that could be considered as manifestly unfounded. While it will often be possible to identify certain types or subcategories of applications lodged by third-country nationals within such mixed flows as presumably well-founded, it is also likely that other subcategories should be presumed to be unfounded or even manifestly unfounded within the meaning of EU asylum law.[138] It would therefore contribute significantly to the impact of supported processing of such caseloads if the relevant procedural standards allow for acceleration of the examination of the latter subcategories of cases.

Conclusion on Option A

From a legal point of view Option A is deemed feasible. A number of issues of mainly practical and financial nature however remain.

Below we have listed the identified legal or practical implications at EU level and when possible provided an indicative assessment of the magnitude of the legal or practical obstacle and how they could possibly be overcome either through legal, political or practical means.

[137] IOM (2009), Irregular Migration and Mixed Flows: IOM's Approach; retrieved from http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/98/MC_INF_297.pdf

[138] Cf. art. 28 of the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in the Member States for granting and withdrawing refugee status

Table 4: Sum-up of the conclusions on the legal feasibility of Option A

Identified legal and practical implications concerning Option A	Feasibility assessment
Use of the crisis prevention or management action plans in Article 33 of the current proposal for amendments to the Dublin Regulation.	Using joint processing of asylum claims as part of the action plans is fully in line with the principles mentioned in Article 33.
Currently, EASO does not have a mandate to take decisions on individual applications for international protection.	The asylum decision (first and second instance) will be taken by officials of the Member State, therefore no obstacles identified.
The role of the Joint Processing Team would be limited to preparation of the case and providing a recommendation for its outcome in accordance with the EU Qualification Directive,[139] the 1951 Refugee Convention and the European Convention on Human Rights (ECHR).	To maximise the cost-effectiveness of supported processing, variations of the application of national law should be restricted to the extent possible, so that Member States can rely on the compliance of the recommendation with the legal and administrative practices.
Separation of the case preparation, including the asylum interview, from the actual decision-making.	There do not seem to be any legal barriers to fully separate case preparation, this actually reflects the system already employed in some Member States' asylum procedures.
Translation of the case material and the recommendation.	Translation of the case material and the recommendation provided by the Joint Processing Team expert would be needed in the majority of cases. In the event of appeal, the translation issue becomes even more pertinent as courts or juridical bodies would require that the majority of the case material be translated into the national language.
Possible use of remote working (e.g. videoconferencing).	Although remote working is deemed somewhat controversial in terms of its implications for the assessment of trustworthiness and credibility during the asylum interview, it is already used in several countries and is fully in line with the EU acquis.

[139] Directive 2011/95/EU 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.

6.2.2 Option B

Side-stepping the Dublin Regulation "one-way"

Option B differs from Option A on a couple of important accounts. A major difference is that this option proposes that the Dublin Regulation[140] is sidestepped "one-way", meaning that in exchange for the assistance for processing, the Member State receiving the processing support assumes responsibility for all asylum cases. In other words, the Member State in which the joint processing takes place will receive Dublin transfers from the other countries, and these will then be processed through the supported processing scheme. However, it will refrain from making any transfers, including transfers based on family reunion considerations. Hence, the Member States in which the supported processing takes place will not undertake any determination of responsibility, but rather immediately apply the sovereignty clause in Article 3(2) which allows Member States to examine an asylum application and thus take responsibility for assessing it in substance even if the Dublin criteria would otherwise assign this responsibility to another Member State. Although side stepping Dublin "one-way" might appear less attractive because it would put more responsibility on the Member State in crisis, the idea is that it might enable the procedure to be faster and that there would be an efficiency gain in not moving people around, as the assessment and subsequent transfers in the Dublin procedure often are rather lengthy. Making use of the sovereignty clause in Article 3(2) as an immediate first action by Member States as indicated above may require the adoption of a new EU legal instrument, or perhaps an amendment of the Dublin Regulation. An amendment of the Dublin regulation may be preferable since it would imply a legal obligation for the Member State to apply Article 3(2) of the Regulation. In any event, the instrument should probably be directly applicable since it would affect the position of individuals towards the Member State.

It follows from the Dublin Regulation[141] (Article 3(2)) that a Member State may choose to resume full responsibility for any third-country national applying for asylum within their territory, by way of derogation from the criteria set out in Chapter III of the Regulation. At the same time, Article 3(2) does not contain as such any limitations as to circumstances in which it could be applicable. Insofar as supported processing would only apply to a limited number of applications and as supported processing (as defined by Option A-C) still requires that the actual decision is taken by a single Member State, it seems legally feasible for the purpose of joint processing to systematically "side-step" the Dublin Regulation. If a Member State decides to refrain from using the responsibility criteria by not invoking the Dublin Regulation towards a group of asylum seekers, i.e. because they would fall under a supported processing scheme, it would require that they are informed in writing about such a decision (cf. Article 3(4)). Moreover, nothing in the Dublin Regulation indicates that other Member States cannot continue to make use of the transfer provisions while a Member State decides to "side-step" the Dublin Regulation. However, such transfer may be prevented for legal reasons due to other parts of EU law.[142]

[140] Council Regulation No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

[141] Ibid.

[142] See CJEU Judgment of 21 December 2011 in Joined Cases C- 411/10 and C-493/10 N.S. and M.E. and Others, stipulating that a Member State may not transfer an asylum seeker to the 'Member State responsible' within the meaning of Regulation No 343/2003 where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of inhuman or degrading treatment.

Even if there are no legal obstacles in the Dublin Regulation for a "one-way" side-stepping by one Member State, it is also relevant to consider whether the individual asylum seeker is legally entitled to have his or her asylum application examined in the Member State designated by the Dublin Regulation. In particular, suspension of transfers to other Member States based on family links according to Articles 6-8 of the Regulation may raise issues of conformity with the Regulation as well as other parts of EU law. While the Dublin Regulation does not formally contain any entitlements as such for the asylum seeker to have the application examined by a specific Member State, the optional provisions of the Regulation have to be applied in a manner consistent with the requirements flowing from the EU Charter of Fundamental Rights,[143] including Article 7 of the Charter which protects the right to respect for family life and Article 24 on the protection of the rights of the child. These protection obligations would probably require the application of Article 3(2) of the Dublin Regulation in Option B to be modified so as to either allow for the transfer of asylum applicants to another Member State on the basis of an individual assessment of their family links to that State – taking Articles 6-8 of the Regulation as a starting point, yet not necessarily resulting in transfer according to the general criteria laid down in these Articles – or make the suspension of transfer to the Member State normally responsible contingent on the consent of the asylum applicant in question. These issues should also preferably be settled in an EU legal instrument providing for the implementation of Option B, possibly via an amendment to the Dublin Regulation.

For this reason Option B would require the adoption of a new EU legal instrument, or perhaps an amendment of the Dublin Regulation – the latter might be preferable since it would imply a legal obligation for the Member State to apply Article 3(2) of the Regulation. In any event, the instrument should probably be directly applicable since it would affect the position of individuals towards the Member State.

Discriminatory treatment

In addition to the legal issues concerning the protection of family life and protection of the rights of the child in connection with possible suspension of transfers to other Member States in accordance with Article 3(2) of the Dublin Regulation, a question may arise as to whether supported processing of asylum applications and suspension of transfers will entail differentiation among asylum seekers on parameters such as standards of treatment, protection status, or rights to family reunification, to an extent that it might be considered as discriminatory treatment in violation of ECHR Article 14 in conjunction with Article 8 or other relevant ECHR provisions, or in violation of Protocol No. 12 to the ECHR, Article 21 of the EU Charter of Fundamental Rights or other prohibitions of discrimination in human rights law. The question of discrimination must be considered against the background of the individual interests affected by the suspension of Dublin transfers and the general interests justifying the operation of supported processing of asylum applications.

If transfers of asylum applicants with family links to other Member States are suspended as suggested by Option B, there will *de facto* be a difference in treatment between "ordinary" national procedures and the joint processing procedure. Preservation of family unity and the processing together of asylum applications of members of one family by a single Member State are fundamental principles in the Dublin Regulation (cf. recital 6 and 7 of the preamble) and the criteria of family unity (Article 6- 8) are high ranking criteria among the responsibility criteria.[144] In addition,

[143] Ibid.

[144] In practice, the Member States have been widely criticized for not making sufficiently use of the criteria and de facto bringing families together

the humanitarian clause in Article 15 allows Member States to bring together family members provided that the applicants consent to it. Moreover, in the proposal for the recast of the Dublin Regulation[145] the right to family life has been enhanced by widening the definition of family members and strengthening the various provisions in relation to family members with the expected effect that the number of family transfers under the Dublin procedure is likely to increase.

Thus, there is no doubt that the interests affected by the suspension of Dublin transfers are significant. On the other hand, provided that the abovementioned measures are taken to protect family life and the rights of the child – i.e. suspension is made contingent on either consent or an individual assessment of the protected interests at stake – it could be argued that relevant safeguards have been established in order to balance the impact of the suspension on individuals.

In more general terms, the application of internationally agreed criteria and mechanisms for the allocation of responsibility for examining asylum applications such as those laid down in the Dublin Regulation, as well as modifications of the Regulation for the purpose of establishing supported processing of asylum cases in Member States in accordance with Option B or other models of joint processing, cannot as such be considered to cause discrimination in the sense of prohibited differentiation among asylum applicants. Even if it is accepted that third-country nationals applying for asylum in different Member States are, in principle, in a similar situation, and the aforementioned prohibitions of discrimination are therefore applicable, the differentiation of treatment based on which a Member State is responsible for the examination of their case must generally be considered as justified by the aims that are pursued by such responsibility criteria. Importantly, however, the proportionality of such allocation criteria and mechanisms and the resulting differential treatment must be ensured, first and foremost by way of effective harmonisation of protection standards across Member States.

In terms of discriminatory differences in standards of reception conditions, asylum procedures, or the prospect of obtaining international protection, it is less likely that joint or supported processing would lead to differential treatment as defined by Article 14 of ECHR. Provided that the Member States through their transposition and implementation of the Reception Conditions Directive,[146] the Asylum Procedures Directive[147] and the Qualification Directive[148] apply the same minimum standards, all asylum claims will be treated in accordance with EU and international standards. Thus, the supported processing procedure will in practice not be significantly dissimilar to the "ordinary" national asylum procedure.

When it comes to the difference in standards of treatment e.g. access to residence permits, access to travel documents, labour market, education, social welfare, etc., minimum standards exist under the Qualification Directive as well as the Family Reunification Directive[149] and the Long-term Residence Directive.[150] However,

[145] 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 third-country national or a stateless person, COM (2008) 820 final, 3 December 2008

[146] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers

[147] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in the Member States for granting and withdrawing refugee status

[148] Directive 2011/95/EU 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

[149] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

differential treatment concerns are still relevant insofar as asylum applicants are granted international protection or subsidiary protection and the question of relocation comes into play.

Detention of applicants under joint processing

An issue, which may arise mainly in relation to Option B, is the question of securing the applicant's presence on the territory of the Member State where the processing takes place, while awaiting the decision. If a Member State systematically refrains from applying the determination of responsibility criteria or the humanitarian criteria in the Dublin Regulation, or if supported processing is to be used for a specifically large inflow of asylum applicants or a crowd intercepted at sea, there seems to be a larger risk for absconding, which may urge the Member States to ensure the applicant's presence on their territory through for example detention.

While voluntary participation in the supported processing scheme will undoubtedly be the most effective way of guaranteeing their presence and avoiding excessive use of detention the relevant question here would be whether or not the Member States may systematically detain the applicants for applying for asylum under the joint processing scheme. Freedom from arbitrary detention is a fundamental human right and the use of detention is, in many instances, contrary to the norms and principles of international law, including the ECHR (Article 5(1)). The Procedures Directive[151] Article 18 clearly states that a Member State cannot hold a person in detention for the sole reason of him/her seeking asylum.[152] Detention would in other words require that each case is examined on its individual merits and thus systematic detention of larger groups of person would not be in accordance with international human rights norms.

Whereas it seems clear that, systematic detention of asylum seekers under a joint processing scheme is unlawful, it also seems to be a less relevant problem, in particular in light of the need for obtaining the asylum applicants' consent to take part in joint processing, as argued above under the section on side-stepping the Dublin Regulation "one-way".

In order to speed up the asylum process Member States may nevertheless have a legitimate need to at least ensure that those asylum seekers whose application will be handled jointly by Member States take residence in a specific location. According to the Reception Conditions Directive[153] a Member State is allowed to decide the residence of the asylum seeker when necessary for a swift processing of asylum claims (cf. Article 7(2)), although on an individual basis they may be granted temporary permission to leave the place.

Relocation and mutual recognition

Option B presupposes that, prior to joint processing, the participating Member States would between them determine a number/quota of the recognised beneficiaries of international protection, whom they will accept into their country. The Member States will relocate the equivalent numbers of persons from among the cases for which their

[150] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

[151] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in the Member States for granting and withdrawing refugee status

[152] See also UNHCRs Guidelines on Application Criteria and Standards relating to the Detention of Asylum-Seekers, February 1999

[153] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers

own officials (participating in the EASO pool) have recommended for a recognition status. In the event of the number of recognised beneficiaries exceeding the quota, the remaining will stay in the Member State where the joint processing takes place. The rationale is that the Member State is already familiar with the case and that this would facilitate mutual recognition of the decision. However, there may be a risk that this could provide incentives for lower recognition rates thus contributing to a false asylum practice.

Since Member States participating in joint processing of asylum claims are applying EU and international protection standards and also the national variations thereof, it would be possible that a number of asylum seekers under the joint processing scheme are provided with secondary protection in accordance with national law (cf. Article 3 in the Qualification Directive). However, Option B only mentions relocation of beneficiaries of international and subsidiary protection.

Mutual recognition lies implicitly within Option B, which requires that Member States, when having to relocate or distribute the jointly processed beneficiaries of international protection, would have to accept each other's asylum decisions.

The main problem is that the vast majority of Member States are currently not in a position to or do not want to recognise each other's asylum decisions, fearing the creation of pull-factors[154] (see also section 6.1). The establishment of a legal instrument for the transfer of protection status in all Member States to enable the relocation of beneficiaries of international protection seems to be possible.[155] It should be noted in this respect, that long-term residence status has been extended to refugees and beneficiaries of international protection[156], and thus free movement is now allowed within certain limitations, and this could perhaps be considered a first step towards mutual recognition.

Apart from full harmonisation, a possible pragmatic solution to this question would be to start a new asylum procedure in the Member State participating in supported processing until a formal scheme for transfer of protection has been put in place. The procedure would be a *pro forma* or a special "light" asylum procedure with the sole purpose of providing the persons with a legal status in that Member State. The risk is of course that the advantages of joint processing are squandered or reduced, and to minimize this risk, Member States should clarify under which circumstances national considerations, such as "interest of national security", could lead to a rejection of asylum on the basis of the provisions of the Qualification Directive. The fact that the Member States involved in the joint processing scheme have made recommendations on the beneficiaries they will accept in the end might indeed facilitate the acceptance of decisions of other Member States rather than create incentives or disincentives to provide a certain protection status.

With respect to the transfer of protection status it should be noted that a European Agreement on Transfer of Responsibility for Refugees (Council of Europe) entered into

[154] Mainly due to lack of trust, but also because some Member States fear that it may lead to immediate freedom of movement within the EU (full harmonisation).See also Feasibility Study on Relocation of Beneficiaries of International Protection, 2010, Ramboll Management/Eurasylum.

[155] It should be noted that the Stockholm Programme mentions the need for creating a framework for the transfer of protection of beneficiaries of international protection when exercising their acquires residence rights under EU law and that the Commission has scheduled for 2014 a Communication on a framework for the transfer of protection of beneficiaries of international protection and mutual recognition of asylum decisions cf. the Action Plan Implementing the Stockholm Programme, COM(2010)171

[156] Council Directive 2011/51 of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection

force in 1980. Not all EU Member States are parties to the convention.[157] The agreement however deals with the possibility for transferring refugee protection status (according to the 1951 Geneva Convention or the 1967 Protocol) from one state to another. According to Article 2, responsibility shall be considered transferred "on the expiry of a period of two years of actual and continuous stay in the second State with the agreement of its authorities or *earlier if the second State has permitted the refugee to remain in its territory either on a permanent basis* […]*".* Thus parties to the convention will be obliged to transfer protection by providing leave to remain on their territories in the form of a residence permit for refugees granted status by other countries.

Given that the challenge of mutual recognition of decisions is solved either through legal or practical means, the question of the legal feasibility of relocation from the beneficiaries of international protection's point of view needs to be taken into account. As already mentioned above (see p. 66 on discriminatory treatment), the issue of discrimination in relation to the treatment of beneficiaries of international protection is relevant and for that reason alone it may be necessary to seek the consent of the refugee before relocation to another Member State.

Finally, it is also worth mentioning that EASO has a specific duty (cf. Article 5 of the EASO Regulation[158]) to support relocation of beneficiaries of international protection and shall promote, facilitate and coordinate exchange of information and other activities related to relocation within the EU.

Return and removals

Following the supported processing of asylum claims a number of asylum claims will be rejected. Some will appeal the decision, others will accept the return order and leave the country, some may qualify for specific programmes for voluntary return, but a considerable number of those who have been through the joint processing scheme are likely to be returned by force. Option B suggests establishing a common EU system or programme for return and removal in collaboration between EASO and Frontex specifically for those who have failed to obtain asylum though the joint processing procedure.

According to the EASO Regulation,[159] the Support Office shall provide and/or coordinate the provision of operation support to Member States subject to particular pressure on their asylum and reception systems (cf. Article 1), but there is no specific legal basis for coordination of return of failed asylum seekers. However, the Frontex Regulation[160] on the other hand stipulates clearly in Article 2(1)(f) that the agency shall provide Member States with the necessary support, including, upon request, coordination or organisation of joint return operations. According to Article 9, Frontex shall provide the necessary assistance, and at the request of the Member States ensure the coordination or the organisation of joint return operations of the Member States, including through the chartering of aircrafts for the purpose of such operations. These joint operations shall be financed or co-financed with grants from Frontex's budget or through other financial means available for return management.

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

[158] Regulation No 439/2010 of 19 May 2010 establishing a European Asylum Support Office

[159] Ibid.

[160] Council Regulation No 1168/2011 of 25 October 2011 amending Council Regulation No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

Provided that the Return Directive,[161] Code of Conducts developed by Frontex and the Charter of Fundamental Rights are fully respected, a joint processing scheme entailing a return component such as the proposed Option B, is legally feasible within the current legislative framework.

When discussing return or removal of failed asylum seekers, it is important to keep in mind that some of these third-country nationals may not be returnable, either for practical reasons (e.g. it is impossible to obtain travel documents), or for legal reasons due to protection against refoulement under human rights law, e.g. due to war crimes (cf. Article 12 and 17 in the Qualification Directive), notwithstanding their exclusion from international protection. The latter situations will however depend on Member States' application of the exclusion provision in the Qualifications Directive and the 1951 Geneva Convention. These non-returnable third-country nationals would have to remain in the Member State in which joint processing took place.

Conclusion on Option B

From a legal point of view Option B is not deemed to be feasible under current legislation. A number of legal issues as well as practical and financial issues remain to be resolved.

Below we have listed the identified legal or practical implications at EU level and when possible provided an indication of the magnitude of the legal or practical obstacle and how they could possibly be overcome either through legal, political or practical means.

Table 5: Sum-up of conclusions on legal feasibility of Option B

Identified legal and practical implications concerning Option B	Feasibility assessment
Option B proposes to sidestep the Dublin Regulation principles "one-way" meaning that in exchange for the assistance for processing, the Member State receiving the processing support assumes responsibility for all asylum cases.	To ensure the legal feasibility of Option B in terms of side-stepping the Dublin Regulation legal changes will be needed, unless Member States continue to carry out family transfers, which would partly undermine the purpose of side stepping one-way in the first place. Alternatively, Member States would have to seek the asylum seekers' consent to not be united with their family, and such an action will require an amendment to the Dublin Regulation which does not currently provide for such an obligation to Member States. Amendments of the Dublin Regulation would be preferable as the legal instrument should probably be directly applicable since it will affect the position of individuals towards the Member State.
The Dublin Regulation obliges the Member State providing processing	The obligation for the Member State providing processing support to apply the

[161] 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 348/98.

support to apply the sovereignty clause (Article 3(2)) of the Regulation in order to be able to actually "side-step" the Dublin Regulation.	sovereignty clause (Article 3(2)) of the Regulation in order to be able to actually "side-step" Dublin would require legal changes. Again, the need for direct applicability favours implementation via an amendment of the Dublin Regulation.
Supported processing of asylum applications and suspension of transfers might entail differentiation among asylum seekers on parameters such as standards of treatment, protection status, or rights to family reunification, to an extent that it might be considered as discriminatory treatment in violation of ECHR Article 14 in conjunction with Article 8.	Provided that the Member States apply the EU minimum standards for treatment of asylum seekers, supported processing will per se not constitute any discriminatory treatment of asylum seekers within the provisions of the ECHR.
Ensuring that the supported processing arrangements proposed by Option B do not lead to the unlawful detention of asylum seekers.	In order to speed up the asylum process Member States may nevertheless have a legitimate need to at least ensure that those asylum seekers whose application will be handled jointly by Member States take residence in a specific location and this would be fully in line with the Reception Conditions Directive. Systematic detention of asylum seekers under a joint processing scheme is unlawful. The problem is not particularly pertinent in light of the need to obtain the asylum applicants' consent to take part in joint processing as argued above under the section on side-stepping the Dublin Regulation "one-way".
Option B presupposes that, prior to joint processing, the participating Member States would between them determine a number/quota of the recognised beneficiaries of international protection, whom they will accept into their country.	Relocation of beneficiaries of international protection remains a national legal matter. It is deemed practically feasible and would require the consent of the person in question. EU law currently does not provide for mutual recognition of refugee status, however it is by no means incompatible with the EU asylum acquis.

Extending supported processing to joint removals or returns.	Provided that the Return Directive[162], Code of Conducts developed by Frontex and the Charter of Fundamental Rights are fully respected, a joint processing scheme entailing a return component such as the proposed Option B, is legally feasible within the current legislative framework. Return or removal of failed asylum seekers through joint efforts between EASO and Frontex is legally feasible.

6.3.3 Option C

Option C proposes that joint processing is invoked already in the "preventive phase" of the Early Warning mechanism (cf. Article 33 of the proposal for amendments to the Dublin Regulation[163]) with a view to freeing up resources in a Member State under pressure and allowing it to build up the necessary capacity to cope with the pressure and fulfilling the requirements of the drafted preventive action plan. Apart from that, the main difference between Options A and C is that Option C proposes to essentially turn the EASO Asylum Intervention Pool (or parts of it) into a more institutionalised, or stable, "Joint Processing Pool".

As mentioned already in the section on the Early Warning Mechanism above, the preventive action plan is to be drawn up following the Commission's and EASO's recommendations (Cf. Article 33(1)). It is stated that in case of prevention, it is up to the Member State and its discretion to elaborate the plan, but assistance from other Member States, EASO, agencies, etc., can be called upon to do so. The actual content of the plan remains negotiable between the parties, thus there are no legal obstacles as such to making joint processing part of the preventive action plan.

As opposed to options A and B, Option C proposes that for the Member State in need of intervention (crisis prevention), assistance from the "EASO joint processing pool" is mandatory (employed on the basis of EASO assessment). According to the current proposal for an Early Warning Mechanism,[164] EASO and the Commission will not necessarily have a mandate to intervene in Member States unless they request it. The implementation of Option C would therefore require the inclusion of an element of compulsory support (in the form of joint processing) "prescribed" by the EU for a Member State under pressure, if EASO in its monitoring finds that intervention is necessary already at the preventive stage. Due to the mandatory aspect of this option, the impact assessment accompanying the legislative proposal would need to consider, in particular, the principles of subsidiarity (necessity and value added test) and proportionality.

As already touched upon in the above paragraphs, establishing a "Joint Processing Pool" would require an amendment to the EASO Regulation. According to the current Regulation, Member States shall contribute to the pool (Article 15) but the selection of the number and the profiles of the experts as well as the duration of their deployment

[162] 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 348/39.
[163] The most recent document is Council Document of 16 March 2012, ASILE 47 doc. 7683/12
[164] Cf. Article 31 of the proposal to amend the Dublin Regulation, COM (2008) 820 final

should be at the discretion of the Member States (cf. Article 16). Thus, participation in the Asylum Intervention Pool is currently based on voluntary contributions and the required profiles as published by EASO. Establishing a "Joint Processing Pool" would therefore most likely require the introduction of a separate Article for this specific purpose.

Conclusion on Option C

From a legal point of view Option C is not feasible under the current legislation.

Below we have listed the identified legal or practical implications at EU level and the required changes needed.

Table 6: Sum-up of legal feasibility of Option C

Identified legal and practical implications concerning Option C	Feasibility assessment
According to the current proposal for an Early Warning Mechanism,[165] EASO and the Commission will not necessarily have a mandate to intervene in Member States unless they request it.	The implementation of Option C would therefore require the inclusion of an element of compulsory support (in the form of joint processing) "prescribed" by the EU for a Member State under pressure.
Establishment of an expert pool for the use of joint processing.	Amendments to the EASO Regulation with respect to establishing an expert pool for the specific use of joint processing would be needed, and the feasibility of such an amendment will largely depend on the political interest in doing so.

6.3 Legal implications of joint processing

6.3.1 General legal considerations for Option D

Option D is entirely different from the other options and has previously been described as the "long-term perspective" or "real" joint processing. This option is found to be the ultimate goal of the CEAS by some Member States, but at the same time it is also recognised as the most unfeasible scenario of the four options for joint processing.

Option D clearly requires an overhaul of the CEAS. A number of pertinent issues are to be discussed in this respect. First and foremost, it would be important to go back to the TFEU to confirm the legal basis for such wide-ranging changes as joint processing at EU level would imply.

The EU's right to act is comprised of two main elements: the first is the EU's mandate to take action, which involves having a treaty provision or objective as the basis of any EU action (the principle of conferral). The second element relates to the principles

[165] Cf. Article 31 of the proposal to amend the Dublin Regulation, COM (2008) 820 final

of subsidiarity and proportionality which will apply in areas where the EU is not given exclusive competence. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.[166] Arguably, the legal basis for implementing Option D exists in the current form of the Treaties as follows.

By establishing[167] and detailing[168] the CEAS, the Treaty on the Functioning of the European Union provides an adequate legal basis for future implementation of Option D. Article 78(2) mentions *inter alia* that the European Parliament and the Council shall, in accordance with ordinary legislative procedure adopt measures to ensure:

a. ”a uniform status of asylum for nationals of third countries, valid throughout the Union;
b. a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
c. a common system of temporary protection for displaced persons in the event of a massive inflow;
d. common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status".

This article, read together with Articles 78(1)[169] and Article 80[170] represents an adequate legal basis and opens up the possibility for implementation of Option D.

There are two major potential means of introducing Option D in the EU Member States: one would involve legislation applicable to all EU Member States as introduced by a Regulation or a Directive and in accordance with the principles of subsidiarity and proportionality. If this would prove to be politically unfeasible, another possibility would be to involve the use of the provisions set for the mechanism for enhanced cooperation.[171]

6.3.2 Solution 1: Horizontal legislation applicable for all EU Member States

The main legal challenge to implementing Option D for all Member States[172] would be in ensuring that the principles of subsidiarity and proportionality[173] are satisfied.

[166] Article 5 (2) Consolidated Version of the Treaty on the European Union - Official Journal of the European Union C 83/13 30.3.2010
[167] Article 67 Treaty on the Functioning of the European Union (TFEU), OJ C 83/74 of 30.3.2010, [The union] shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals
[168] Article 78 TFEU.
[169] The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement.
[170] Art. 80 TFEU: 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.
[171] Article 20, Title IV, Consolidated Version of the Treaty on European Union O.J. C 83/28 of 30.3.2010 and Articles 326 – 334, Title III, TFEU OJ C 83/189 of 30.03.2010
[172] With due regards to the Member States which have opted out of measures affecting the CEAS according to their specific protocols (IE, DK, UK)
[173] Draft European legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft European legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality[...]

Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.[174]

In the context of the proposed Option D, the subsidiarity principle would be satisfied if it can be shown that the intended policy objectives cannot be achieved by any single EU Member State and must therefore be addressed at EU level. In order to verify whether the action at EU level is in accordance with the principle of subsidiarity, it should pass the necessity (the objectives of the proposed action cannot be sufficiently achieved by the individual Member States) and the EU value added (EU action will ensure that the objectives are better achieved) tests.

Given the evidence that the existing national legal and administrative practices lead to divergent outcomes and in light of the collected opinions of experts and stakeholders, it can indeed be argued that further centralised EU action as devised under Option D is necessary in order to achieve the objective of attaining a common policy on asylum, subsidiary protection and temporary protection, as laid down by Article 78(1) TFEU.

Such a measure would also have to satisfy the principle of proportionality, under which the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.[175] In discussing the proportionality of the actions needed for the implementation of Option D, it should be established whether:

- the measure is suitable to achieve the desired end;
- the measure is necessary to achieve the desired end;
- the measure imposes a burden on the individual that was excessive in relation to the objective sought to be achieved (proportionality *stricto sensu*).

In light of this, it will have to be assessed whether joint EU processing is a suitable way of addressing the observed problems, whether the level of harmonisation it involves is necessary to address these problems, and whether it will impact the rights of asylum seekers in a way disproportionate to the goals it sets out to achieve. While an in-depth legal analysis of these questions is not possible in the context of the current study, Member States as well as the outcome of the discussions in the workshops were generally of the same opinion; that Option D would be a desirable solution in the longer term and that this solution would address the problems currently faced by a number of Member States with particular pressures on their asylum systems and that it would lead to a more uniform status across the EU. Based on these preliminary deliberations the measure proposed under Option D should indeed pass the proportionality test.

In any case, the adherence of Option D to the principles of subsidiarity and proportionality would have to be further explored in an impact assessment study. The assessment would strongly need to substantiate the existence of the problem[176] and prove the need for EU actions as proposed by Option D.

[174] Article 5 (3) - Consolidated Version of the Treaty on the European Union - Official Journal of the European Union C 83/13 30.3.2010

[175] Article 5 (3) - Consolidated Version of the Treaty on the European Union - Official Journal of the European Union C 83/13 30.3.2010

[176] Lack of uniform status for asylum and subsidiary protection, inability of Member States to cope with massive influxes, etc.

6.3.3 Solution 2: Enhanced cooperation

Although Option D has been found to be the least politically feasible one due to the strong opposition that some Member States have expressed, the benefits of this option should not be understated as such. The Member States that share an interest to move forward with this option can be allowed to do so and the EU institutions and legal framework can facilitate their commitment. An example set by a number of participating Member States could incentivise other Member States to take part in the mechanism once it becomes operational and proves its benefits.

The Member States that are interested in pursuing joint EU processing, as envisioned by Option D, can make use of the existing legal and institutional framework of the EU by using the provisions of the TFEU on establishing a mechanism of Enhanced Cooperation.[177] It may be undertaken only as a last resort, when it has been established within the Council that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole.[178]

The general arrangements for enhanced cooperation are laid down by the Treaty on European Union (Title IV).[179] In principle, at least nine states must be involved in enhanced cooperation, but it remains open to any state that wishes to participate. Any acts that are adopted within the framework of such cooperation are binding only on the participating Member States and do not constitute a part of the acquis for the non-participating Member States. The procedure needs to be initiated by the participating Member States,[180] and the Commission should submit the proposal to the Council for adoption.[181]

Some inspiration for the implementation of Option D via the Enhanced Cooperation mechanism can be taken from the existing procedures of this type in the fields of divorce law[182] and patents.[183] The latter, in particular, can be analysed in more detail as it features a number of provisions which are similar in nature to the one which would be necessary for the implementation of Option D in the field of asylum law (see also section 6.4.3 below). The experience of the Member States which are parties to the enhanced cooperation procedure in patent law can also be looked into in order to discuss the political feasibility of a similar arrangement in the context of asylum policy.

It should be noted that while an Enhanced Cooperation procedure represents an improvement from the current situation in that it would, in effect, contribute to the attainment of a uniform CEAS in the case of the participating Member States and could potentially expand to incorporate an increasing number of Member States, it will not resolve the issue of fragmentation of the asylum status throughout the Union.

[177] Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties

[178] i.e. if horizontal legislation applicable to all Member States proves to be politically unfeasible.

[179] Article 20, Consolidated version of the treaty on the European Union OJ C 83/28 of 30.3.2010

[180] Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by the Treaties, with the exception of fields of exclusive competence and the common foreign and security policy, shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council to that effect

[181] Article 329 TFEU (ex Articles 27(a) to 27), 40 to 40(b) and 43 to 45 TEU and ex Articles 11 and 11(a) TEC).

[182] 'enhanced cooperation' to facilitate the divorce procedures for bi-national couples in the EU

[183] European Commission, 2011, Proposal for a Regulation of the European Parliament and the of the Council implementing enhanced cooperation in the area of the creation of unitary patent protection, COM(2011) 215 final, from 13.4.2011, retrieved from: http://ec.europa.eu/internal_market/indprop/docs/patent/com2011-215-final_en.pdf

6.4 Specific legal considerations for Option D

Irrespective of the solution chosen, an EU-level joint processing as envisioned by Option D would require a new legislative procedure, and the existing legal instruments would have to be examined in order to ensure that there would be full compliance with this new instrument. The following sections aim to identify the issues associated with joint processing, as proposed under Option D, which require particular attention, and to analyse them with respect to the option's legal feasibility. Solution 1, which involves horizontal EU-level arrangement applicable to all Member States, will be taken as the baseline scenario and qualification to it will be provided for the scenario of enhanced cooperation as envisaged under Solution 2.

6.4.1 Choice of legal instruments

The choice of the legal instrument, which will implement the option, is to be guided, first and foremost, by the nature of the objectives that are intended to be achieved. Regulations are directly applicable and binding upon all Member States in their entirety. Since they do not need to be transposed into national law and are enforced immediately once adopted by the legislative body, regulations can be relied upon by individuals straight away with respect to the rights and obligations they confer.

Directives, on the other hand, aim to harmonise the national laws in a certain area and as such are binding in terms of the end to be achieved, while leaving some choice as to the form and method of implementation to the Member States. Hence, directives provide for a transposition period during which a Member State can introduce the necessary adjustments to its legal system, and it is only in rare cases, where a specific provision of a directive is found to be directly effective, that an individual can rely on the directive before its transposition period has elapsed.

In light of the particular format of asylum policy proposed by Option D, a regulation will hence be the appropriate choice of legal instrument, regardless of whether the solution is implemented via an enhanced cooperation procedure or horizontal EU-wide legislation.[184]

6.4.2 Decision making body

A new joint processing procedure as envisioned under Option D would require the formal delegation of the **administrative decision making power** in asylum applications to **EASO**, which would function as an EU asylum agency. Currently, EASO does not have such a decision-making power,[185] thus a new mandate granting the agency an explicit competence to act in individual cases would have to be expressly provided for in the legislative proposal amending its founding regulation.

[184] In discussing the choice of legal measures it should be noted that asylum policy is a domain in which legislation needs to be passed through the qualified majority voting procedure in the Council of Ministers – see Article 78(2) TFEU.

[185] The Support Office should have no direct or indirect powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection. Paragraph 14, Preamble of Regulation (EU) No 439/2010 of 19 May 2010 establishing a European Asylum Support Office, O.J. L132/11 of 29.05.2010

On a more practical level, an arrangement under which EASO is put in charge of handling all asylum cases would require that local or regional branches are set up around Europe in order to receive and process the asylum applications.

This scenario would certainly be more feasible in a scheme involving all Member States compared to the enhanced cooperation procedure. In case of the latter, only some of the Member States would need to delegate decision making powers to a centralised agency, hence it might be necessary to find an alternative solution which does not involve EASO.

6.4.3 Appeal procedure and jurisdiction

A major legal obstacle to Option D would be dealing with the question of appeal procedures. The right to an effective remedy before a court or tribunal in asylum procedures is guaranteed by the Procedures Directive[186] as well as the Charter of Fundamental Rights of the European Union,[187]

In a scenario where asylum applications are handled by EASO, appropriate arrangements would have to be made in order to guarantee access to appeal procedures. One solution would be to establish a specialised court[188] in the framework of the Court of Justice of the European Union in accordance with Article 257 TFEU.[189] In the set-up proposed by Option D, the judicial panel would be responsible for hearing and handling the appeals against the administrative decisions issued by EASO. The decisions of the specialised court are, based on treaty provisions, subject to appeal on matter of law (and in fact if the establishing regulation allows it[190]) before the General Court, which would add a third layer of judicial control.

An alternative arrangement would be to give the specialised court the authority to decide on cases at first instance as well as to handle the appeal procedures. This can be of particular use if it is found that granting decision making power to EASO officials is not feasible. The mandate of EASO would then be to conduct the preparatory work and issue non-binding opinions for the specialised court that would be the de facto decision-making body.

Both of the proposed arrangements are theoretically feasible, but some practical considerations need to be taken into account, particularly in relation to their implementation as part of an enhanced cooperation mechanism. The recent experience with the establishment of a juridical body to hear appeals as part of the enhanced cooperation procedure in the field of EU patents has shown that there are a number of obstacles of both legal and political nature. While the initial aim of the Member States participating in the procedure was to set up a European and Community Patent Court under the umbrella of the Court of Justice of the European Union, political negotiations[191] lead to its establishment as an institution outside the institutional and judicial framework of the European Union, albeit with the prerogative

[186] Art. 39
[187] Art. 47
[188] Such as the 'EU Civil Service Tribunal' which has been set up as a judicial panel to hear disputes involving the European Union Civil Service. 2004/752/EC, Euratom: Council Decision of 2 November 2004 establishing the European Union Civil Service Tribunal
[189] The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish specialised courts attached to the General Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas
[190] To be used if the specialized court would hear appeal cases as a court of first instance
[191] Nikolaj Nielsen (29 June 2012). "EU breaks 30-year deadlock on EU patent". Euobserver.com; retrieved from http://euobserver.com/19/116819

to both interpret and apply EU law. While the matter is still under discussion, the Court of Justice has already stated that such an arrangement is incompatible with the provisions of EU law.[192]

One alternative solution which was found to be legally unfeasible is to have appeals handled by an administrative, rather than a judicial body. In light of the opinion of the Court of Justice of the European Union on the proposal for a Unified Patent Court, such an arrangement would not be in line with EU law, as it would give power to administrative officials to interpret and apply EU law without means to refer questions of interpretation to the Court of Justice. Similar to the EU Patent arrangement, if a decision of the administrative body were to be in breach of European Union law this could not give rise to infringement proceedings or liability on the part of one or more Member States, which is likely to be deemed unacceptable by the Court of Justice.

6.4.4 Language of the specialised court

Unless the regulation establishing the specialised court provides otherwise, the provisions of the Treaties relating to the Court of Justice of the European Union and the provisions of the Statute of the Court of Justice of the European Union shall apply to the specialised courts. Title I of the Statute and Article 64 thereof shall in any case apply to the specialised courts.[193] According to the rules of procedure of the General Court[194] the language[195] of the case shall be chosen by the applicant.

If the specialised court is to be set up under the enhanced cooperation mechanism, the language of the court would be one of the languages of the Member States participating in the mechanism, or if an alternative agreements is reached – one of selected few languages. In the current set up of the Patent Court, the official languages are only English, German and French, but the language issue was the whole reason the legislation had to be introduced in this particular form, as Italy and Spain did not agree to such a language arrangement and effectively prevented the adoption of the provisions at EU level.[196]

6.4.5 Free legal assistance

To ensure effective access to justice, legal aid can be granted for proceedings before the specialised court. Currently access to free legal aid is not guaranteed by the Asylum Procedures Directive, however, the latest Commission proposal for a recast[197] does provide for the right to free legal assistance for applicants for international protection in procedures at first instance.

In discussing the issue of free legal aid in the context of Option D, inspiration can be taken from the provisions setting up the Civil Service Tribunal, which lay down the following rules:

[192] Court of Justice of the European Union (2011), Opinion 1/09 of 8 March 2011, Press Release No 17/11; retrieved from: //curia.europa.eu/jcms/upload/docs/application/pdf/2011-03/cp110017en.pdf
[193] By virtue of the sixth paragraph of Article 257 TFEU
[194] Chapter 5, Languages (Articles 35 to 37) last published on 24 May 2011 (OJ L 162 of 22.6.2011, p. 18),
[195] For Solution A "The language of a case shall be Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish or Swedish."
[196] See Nikolaj Nielsen, Ibid.
[197] European Commission, 2009, Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast), COM(2009) 554 final, from 21.10.2009

- Legal aid shall cover costs involved in legal assistance and representation by a lawyer in proceedings before the Tribunal.
- Any person who, because of his financial situation is wholly or partially unable to meet the costs referred to above shall be entitled to legal aid.
- The financial situation shall be assessed taking into account objective factors such as income, capital and family situation.
- Legal aid shall be refused if the action in respect of which the application is made appears to be manifestly inadmissible and manifestly unfounded.

6.4.6 Location

As described above, the feasible set-up of such a system implies the existence of several offices of EASO in a number of locations, associated with common reception and processing centres, while the specialised court would have a stable seat, to be decided based on practical considerations and prescribed in the founding legal act. While it is not uncommon practice for appeal courts to be physically dislocated from the location of the parties, this issue could raise further practical considerations and could be criticised for not providing sufficient effective access to justice.[198]

Some inspiration can again be taken from the arrangements made for setting up the Unified Patent Court as part of the enhanced cooperation mechanism between EU Member States. According to the latest Council Conclusions,[199] the court is to have a central seat in Paris, with thematic 'clusters' in Munich and London and branches in all member states that wish to set up a division.

Similarly, the specialised court for asylum cases can be organised so as to have a central seat and national branches. Here, it can also be discussed whether it would be appropriate to have national branches handle first instance cases and transfer the appeal procedure to the central seat; or given the significant number of appeal cases, whether they should still be treated at the national level, with the central seat having more of a coordination function and the responsibility for referral of questions to the General Court of the Court of Justice of the European Union.

6.4.7 Conclusions on Option D

The legal basis for the establishment of Option D theoretically exists within the relevant articles of the TFEU, provided that the principles of subsidiarity and proportionality are respected and the need of EU level intervention is adequately proven.

Like-minded Member States that wish to use the community legal and administrative institutions to push through the implementation of Option D between themselves, without prejudice to the interests of the non-participating Member States should be able to do so using the provisions of the Treaties on Enhanced Cooperation.

[198] Cf. Council Directive 2005/85/EC on minimum standards on proce3dures in Member Stastes for granting and withdrawing refeugee status Article 39

[199] European Counci, 2012, Cover note from the General Secretariat of the Council to Delegations, EUCO 76/12, from 29 June 2012, retrieved from: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131388.pdf

In order for EASO to be able to take decisions on individual cases, its founding regulation would need to be amended to give it such a mandate, as the current regulation explicitly prohibits such an action by EASO.

In order to comply with the requirement to provide the fundamental right of remedy and appeal, a specialised court could be created under Article 257 TFEU with a specific mandate in this field and would function under the Court of Justice of the European Union, whereby the General Court would be able to review its decisions on matters of law or fact.

Besides the legal implications related to enhanced cooperation, changing the EASO mandate, and establishing a specialised court, a number of practical issues inherent in an asylum system also come into play. In 2011 alone, 365 600 decisions on asylum applications were made in the EU27, of which 237 400 were first instance decisions and 128 200 (approximately 35%) were final decisions on appeal.[200] Even if the number of applications (303 105 in 2011 according to the latest Eurostat data) and appeals are likely in decrease given a new system where asylum shopping is no longer possible, it is still a very high number of applications which must be handled through the appeal procedure. Taking into account that all legal and human rights safeguards must be upheld during such procedures, there are several issues such as the need for local or regional branches of the courts, translation and interpretation costs taking into account the official language(s) of the court, location of reception centres, transport of asylum seekers to the court, detention, etc. (see also section 7.2.1 of Chapter 7 on financial implications). The major financial implications of practical issues highlight the fact that Option D is an entirely different approach to asylum policy and would require a major leap forward not only in terms of a need for a complete overhaul of the existing legislation of the CEAS, but perhaps also in setting new standards and rethinking some of the basic assumptions of the European Union asylum policy.

Last but not least, it should be underlined that there is a certain speculative element in the legal feasibility analysis of joint EU processing, as developed under Option D, which is inevitable given the limited amount of available information to build it upon and the lack of a concrete legislative proposal to look into. While certain inspiration for its proposed features has been taken from the recent examples of EU legislative activities such as those in the area of EU patents or EU civil service judicature, it should be kept in mind that these policy areas are inherently very different. Whereas legislation on EU patents aims first and foremost to increase efficiency in view of the ensuing economic benefits, asylum policy has much more complex objectives, in that it directly affects individuals seeking protection and thus cannot be guided simply by economic efficiency concerns. Should a legislative process for the introduction of joint processing be initiated, it is very likely to result in prolonged and complex negotiations trying to balance the different objectives involved. The legal feasibility of Option D should not, therefore, be discussed in isolation of its political and financial implications.

[200] Matrix Insight Ltd et al (2011): *Comparative study on Best Practices in the Field of Forced Return Monitoring:* European Commission, Directorate General for Justice, Freedom and Security.

Table 7: Overview of legal implications of the four options

Type	Supported Processing			Joint Processing
	Option A	**Option B**	**Option C**	**Option D**
Legal Feasibility	• Option A is deemed to be legally feasible and no legal changes are required • No legal barriers to separating the case preparation phase from the decision making phase.	• Option B is not legally feasible under current legislation • The Option would require significant amendments to the Dublin regulation in order to accommodate the proposed arrangements with respect to family transfers (the consent of the applicant to not be united with his or her family will be needed), and the application of the sovereignty clause.	• Option C is not legally feasible under current legislation. • Amendments to the Dublin Regulation and the EASO Regulation will be necessary.	• The Treaty provides the theoretical legal basis, as long as the principles of subsidiarity and proportionality are respected. • The option can be implemented either via horizontal legislation applicable for all EU Member States or via the Enhanced Cooperation Mechanism.
Necessary legal amendments and practical implications for implementation	• Early Warning mechanism which has been proposed by the Council[201] as part of the on-going revision of the Dublin Regulation[202] is a necessary first step towards the implementation of Option A	• Like Option A, it is legally based on the Early Warning mechanism. • It requires changes to the Dublin Regulation on two accounts: firstly, to provide for an obligation to seek the consent of the applicant, and secondly, to oblige the Member State to apply the sovereignty clause.	• Changes to the proposal for the amendment of the Dublin regulation and the Early Warning mechanism (Article 33), introducing a mandatory joint processing element in the preventive action plan.	• A complete overhaul of all CEAS legislation[203]. • Amendments to the founding regulation of EASO to give it decision-making mandate. • A specialized court, under the structure of the ECJ: Appeal procedures and access

[201] The most recent document is Council document 16 March 2012, ASILE 47 doc. 7683/12

[202] 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 third-country national or a stateless person, COM (2008) 820 final, 3 December 2008

[203] For example Article 3 of the Dublin Regulation

		• Other legal and practical issues that need to be addressed include ensuring uniform standards of treatment, making sure that detention of applicants is not unlawful, making suitable arrangements for relocation and mutual recognition, as well as for returns and removals.	• Amendments to the EASO Regulation with respect to establishing an expert pool for the specific use of joint processing.	to appropriate legal remedy need to be in accordance with the ECHR and EU law. • Practical issues to be considered are the location of the specialised court and the official language(s) of the court.
Cross-cutting issues	• Overcoming the translation issue in particular with respect to appeal cases • In some Member States it is not legally feasible under the current legislation to handover the responsibility for the asylum interview to a different party			

7. Financial implications

In addition to the political and legal implications, the financial implications are an important element in the assessment of the feasibility of establishing an EU mechanism for joint processing of asylum claims.

As specified in the terms of reference, the analysis of the financial implications is to give a basic indicative assessment of the costs of joint processing per asylum application compared with the costs of a purely national procedure. Also the financial implications should give an estimate of the overall potential financial cost of joint processing under each specific scenario considered compared with normal non-joint processing and it should contain an identification of the most appropriate way to finance joint processing. Moreover, the terms state that any possibilities to use remote working from a different MS and the impact of such practice on both costs and quality of decisions should be considered. The following sections cover the issues requested in the terms of reference to the best extent possible in view of the relatively limited availability of data.

As already pointed out in the consortium's proposal for this study, data for the basis of the financial assessment is scarce and not easy to come by. Many Member States were, as expected, reluctant to provide the information needed on the current costs of national processing procedures, in some instances due to the risk that such estimates should be used for political purposes, in others due to the fact that the production of such estimates can be a very time consuming exercise for the Member States. The analysis of the financial implications therefore relies on the limited quantitative data made available by some Member States, supported by qualitative assessments from the interviews.

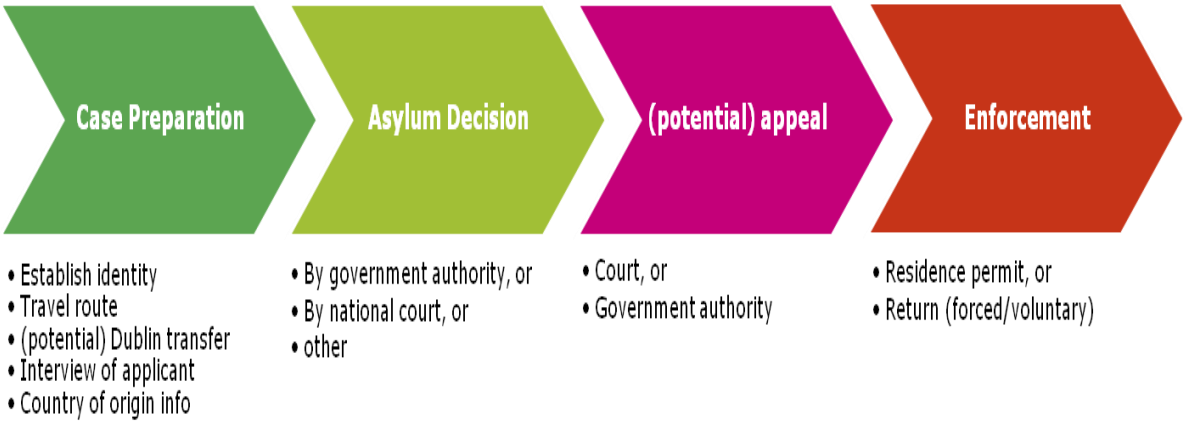
This chapter first presents an assessment of the costs of processing per asylum claim in a national set-up. This part of the analysis builds on information from only seven Member States, and the data is, as we shall see below, in many respects quite difficult to compare. For this reason, it would not be methodologically sound to do extrapolations of these numbers for a quantitative assessment of the costs of joint processing. Moreover, as outlined in the above chapters, joint processing is at this point in time still a relatively vaguely defined concept. To do a proper cost calculation, it would therefore first require a more specific definition and a more detailed design of the mechanism. As several of the interviewees have noted, even the options presented to them in connection with this study were still too undefined and the concept of joint processing in general too fluffy for them to give a proper assessment of the financial costs and benefits. To qualify the assessment of the costs of joint processing as compared with a national procedure, it has therefore been integrated into the costs and benefits analysis of the different options where it is supported by qualitative statements from the interviews.

For the purpose of focusing the analysis, the previously proposed distinction is maintained between *joint* processing – similar to what is outlined in Option D – and what has been termed *supported* processing in Options A, B, C and may be regarded as steps along the way to actual joint processing. As unfathomable as it is at this point in time, representing more of a distant vision than a feasible option in the current political climate of the EU, Option D was still considered by many interviewees to represent *real* joint processing. The costs and benefits analysis thus begins with Option D, which is taken to represent *joint* processing and therefore used as a basis for comparison (to the extent possible) with costs of national processing set-ups. This

is then followed by the costs and benefits assessment of the *supported* processing options (A, B and C), which are quite different from Option D but in several aspects similar to each other, at least from a financial perspective.

7.1 Costs of processing asylum claims

There are many different activities involved in the reception and handling of asylum seekers in the EU. To be clear on what we are focusing on in terms of assessing the costs of processing asylum claims (nationally or jointly) the figure below has been developed to illustrate the consortium's understanding of the main elements of an asylum processing procedure.



As the brief of the study is to focus on the *processing* of asylum applications, so does the figure and the cost assessment. Meanwhile, there are of course other surrounding or indirect costs related to handling asylum seekers and their claims, such as the costs of reception and accommodation of the asylum seekers while awaiting the decision (this is taken to include expenses related to both reception/accommodation centres and private housing, financially supported by the public authorities, in those Member States where asylum seekers are allowed to live outside the reception centres). Of the four options, however, only D proposes to also deal with reception jointly, and the analysis therefore focuses on the core elements of processing asylum claims. Meanwhile, some data on reception costs has been collected and will be presented with the other available numbers below.

The financial data was collected by means of a questionnaire, which was structured around the outline of a processing procedure as presented in the figure and which asked the Member States to provide as detailed information as possible on the costs of the different phases and the different steps included in them (the questionnaire can be found in annex C). The intention was to collect financial data from all Member States, but as mentioned above, this was, as expected, not possible. In the end, the Member States where we conducted face-to-face interviews and where more close relations were established proved more willing to help. Six of these countries provided the requested data, while only one phone-interview country contributed a filled-in questionnaire.

An initial glance at the responses to the financial questionnaire showed varying levels of detail and comparability. As it was anticipated that some countries would not be able to provide monetary assessments of the costs of the individual steps, the

questionnaire in those cases asked for some indications of e.g. the number of persons involved, the time spent, etc. This was the case for two of the countries which could not provide estimates in monetary terms, but which instead gave estimates of the time spent on the separate elements of the processing. Another country was able to provide an assessment of the costs on an overall level by calculating the average salaries paid to case handlers. Two countries filled in most of the elements in the templates provided and gave cost assessments in most cases. One Member State provided information from a previously published report and another gave information from an internal survey trying to establish the costs in the asylum handling authority.

Some of the Member States that handed over financial data requested that the information is used confidentially and not publicly shared; the reason being that data was to a large extent based on estimates made by the government rather than actual monitoring data. Consequently, the information used and presented below is anonymised. The fact that Member States are not mentioned explicitly does not affect the assessment of the costs of processing in a national set-up or the analysis of the financial implications of joint processing.

7.1.1 Constraints and caveats

The data received from the Member States being very scattered and heterogeneous makes it difficult to make valid, general statements about the actual costs of a national processing procedure – let alone establish an assessment of and comparison with the costs of joint processing. The lack of comparability is, as mentioned above, in part related to the fact that not all Member States monitor the costs of asylum processing and not all do so to the same level of detail. For example, while one Member State was able to report on the exact time spent on establishing the travel route of the asylum seeker another was only able to report on the total costs of the preparation phase without further specifications. Meanwhile, a more fundamental issue is that all the Member States have different asylum procedures, which makes it challenging to compare the separate elements. For example, in some Member States, the same caseworker conducts the interview, prepares the case and provides a concept decision, while in others these steps are divided between different employees or even different authorities.

Another fundamental difference between the Member States, which influences the comparability of the costs, is the type of asylum applications they receive. If a Member State receives many asylum seekers with similar backgrounds, it is comparatively simpler, faster and thus cheaper to process an application, as the case workers can rely on experience and build up language and country of origin expertise. If a Member State on the other hand has applications from a variety of countries, the time and money allocated to each case increases. Moreover, there can be large differences between the costs of one case compared with another within the same system, since the asylum seeker's "path" through the asylum process heavily affects the aggregate costs of the application. The UKgovernment for example estimated that the costs of handling an application ranges from EUR 747 for a single adult who is not detained to EUR 28 900 in the case of a single adult who has to be removed after the final decision has been made on an appeal.[204]

These constraints were accommodated by applying the following principles. First, we separated the countries that provided assessments in monetary terms from those that

[204] National Audit Office (2009): Management of Asylum Applications by the UK Border Agencies; London: The Stationary Office

made an assessment in terms of working-hours per year. We will not compare these data as such, because we cannot convert the working-hours per year into financial costs (due to lack of information about the salary of the employees, costs of office space, etc.). Secondly, when we considered the data from a certain country not to be comparable with the data of another Member State, we only included the data that we could compare. Therefore the analysis of the separate phases of the asylum system will include different Member States. In the financial assessment, descriptions of the indicators on which the costs are based are included in the footnotes.

7.1.2 Costs of processing in the current national procedures

The costs per asylum claim ranges from EUR 1 477[205] to EUR 30 755.[206] The cost per application in the Member States that are placed in between the extremes were assessed at EUR 26 874[207] and EUR 24 066[208] respectively. These numbers cover the whole procedure, including return and reception.

The total number of staff involved in the whole procedure varies between the Member States and so does the number of applications per employee per year - from 24.7 applications per employee per year[209] to 50.1 applications per employee per year.[210] This refers to the total asylum staff; it is however not clear if supporting staff is also included.

Phase 1: Case preparation

The preparation phase includes the first steps that have to be taken after the application is lodged. It has only been possible to make a valid assessment of this separate phase in terms of working-hours per year.

In one Member State, examining a case (i.e. interviewing the asylum seeker, considering and dealing with Dublin transfers, COI and preparation of the case) takes 105 600 man-hours a year, which is half of the caseworkers' total working hours. Based on calculations using the number of cases lodged in 2011,[211] this amounts to 11.3 man-hours per case. The exact time spent on each aspect of the preparation phase is unknown.

In another Member State, caseworkers spend approximately 10 hours on each case when the country of origin is known and the administrative preparation time for the interview is excluded.[212] The case workers spend more time on writing the assessment (4-5 hours) than on interviewing the asylum seeker (2.5 hours). The scheduling of the interview is in this Member State done by administrative staff (1 hour). Establishing

[205] One Member State - based on the mean budgeted cost for the annual operation of its Asylum Service (when fully operable - with 5 Regional Asylum Offices) / number of asylum applications 2011 (Eurostat).
[206] One Member State - based on costs of asylum procedure reported by its Immigration Service (including: interview, research, decision and overhead) + budget for return and repatriation + costs for asylum shelter by COA / number of asylum applications 2011 (Eurostat).
[207] One Member State - based on total cost of whole asylum system 2011-12, including cost of asylum support.
[208] One Member State decision and preparation + legal assistance + return + reception (including: staff costs) + appeal / number of asylum applications 2011 (Eurostat).
[209] One Member State: including all officers across the country working for the asylum agency
[210] One Member State - including: case officers, assistants, decision makers, head of units and experts
[211] Based on statistics Eurostat 2011. The indicator 'asylum applications' refers to all persons who apply on an individual basis for asylum or similar protection, irrespective of whether they lodge their application on arrival at the border, or from inside the country, and irrespective of whether they entered the country legally or illegally.
[212] Based on assessment of government officials of time spent on an individual case.

the travel route takes only half an hour. On the other hand, in case the country of origin is unknown, the caseworkers in this Member State spend most of their time on establishing a COI file. Establishing a file for a known country of origin takes the same amount of time as conducting the interview (2.5 hours). However, establishing COI for an unfamiliar country appears to be the most time-consuming step in the entire preparation phase (up to 16 hours) and hence the most expensive in monetary terms.

A third country indicated that the costs of personnel for interviewing one asylum seeker are estimated at EUR 405.[213] In this Member State, 220 officers and 60 supporting staff work on conducting the interviews, which consists of two parts: one registration interview, where the identity and travel route are being checked, and one full asylum interview. It is not clear whether officers as well as supporting staff are involved in both interviews. In that country, the interviews are the part of the preparation phase to which most employees are devoted. Comparatively, 22 employees work with Dublin transfers and 48 persons are devoted to establishing COI.

Phase 2: Asylum decision

Due to differences between the asylum systems, the time spent on the decision making phase differs. In one of the Member States, the decisions are exclusively taken by the Head of the Asylum Service. It takes him an average of 30 minutes to issue a decision for each case. Due to this short time investment in decision-making, it is assumed that the case workers have to spend more time on extensively preparing the case. When, as in other countries, the case workers prepare the application as well as write the decision themselves, the time investment in decision-making is significantly higher. In one Member State, they spend approximately half of the time on preparation and half of the time on decision making (11.3 hours per phase per case). So the amount of time, and thus money, spent on decision making depends very much on the specificities of the national asylum systems' set-up.

Phase 1 and 2: Preparation and asylum decision combined

Some countries were not able to separate the preparation and decision making phase in their assessment of the financial costs. The costs in these Member States varied from EUR 2 384 to 3 602 per case[214] per year.

As mentioned above, there are also internal differences between the costs of the procedures, as one Member States for instance applies two different types of procedures to different types of applications: a clear distinction is made between a 'normal' preparation and asylum decision phase (60% of all cases), where the cost is EUR 5 200 per asylum applicant, and an 'extended' preparation and asylum decision phase (40% of all cases), where the cost is EUR 8 000 per asylum applicant.

In most Member States, it seems that caseworkers are involved in the preparation as well as the asylum decision phase. Caseworkers have to process 314,[215] 88.2,[216] 77.6[217] or 17.3[218] cases per employee per year. The comparatively high number of cases to be processed in the first Member State is probably due to the very

[213] The assessment is based on 222 officers (costs of personnel 50 000 € per person annually) + 60 support staff working on the interviews (costs of personnel 35 000€ per person) / number of applications 2011 (Eurostat).
[214] Eurostat 2011, indicator: asylum application.
[215] One Member State
[216] One Member State - number of applications 2011 (Eurostat) / 300 caseworkers in total
[217] One Member State - number of applications 2011 (Eurostat) / 120 caseworkers in total
[218] One Member State number of applications 2011 (Eurostat) / 837 caseworkers (equals 679 full-time employees)

homogenous group of asylum seekers that the country receives. The relatively low number of cases per employee in the latter Member State can be explained by a service objective for the authority to process each application (in the "normal" procedure) within 8 days, in order to avoid an extended procedure, which is also more costly.

Due to the lack of detail in the information provided, it is not possible to assess which steps of the preparation and decision phase (taken together) are the most costly - within a Member State's procedure or comparatively with others.

Phase 3: Appeal

In 2011, 365 600 decisions on asylum applications were made in the EU27, of which 237 400 were first instance decisions and 128 200 (approximately 35%) were final decisions on appeal.[219]

In those Member States that provided financial data for this study, the overall costs of the appeal phase were EUR 63 424 984 in 2007-08 in one Member State, and slightly more in another: EUR 63 740 000 in 2011. Even though the total costs in the appeal phase are approximately similar for these two countries, the number of appeal cases handled for these amounts could very well be different. At this stage, it is however not possible to assess the costs per individual case[220] on appeal, because the study estimating the costs of appeal in the first country does not provide information on how many cases were included in the study period 2007-08 on which the cost estimation was made. Moreover, we cannot directly compare the data from 2007-2008 from the one country with the data from 2011 from the other. Making a rough calculation based on the overall costs of the appeal phase in the other country shows that the cost per case in 2011 was EUR 4 825.[221] Approximately 33% of the final decisions in that country were made on appeal.

For those Member States that assessed the costs in terms of time, one of them estimated that the members of the appeal committee and supporting staff spend approximately 239 man-hours per case in the appeal phase.[222] This particular Member State had only 6.7 % of the final decisions made in the appeal phase. The man-hours spent on appeal (149 600 man-hours/year) is quite extensive compared with the estimated 211 200 man-hours/year spent on examining a case and writing a decision in the regular procedure in the same Member State. This goes to show that the appeal phase is quite time consuming and thus costly for the Member States.

In the other Member State, the Reviewing Authorities of Asylum cases processed 2 400 – 3 000 cases per year, depending on the complexity of the cases. The Member State had over 3 000[223] final decisions made after an appeal,[224] which suggests that the authorities in this Member State receive more appeal cases than they can process in one year.

[219] Matrix Insight Ltd et al (2011): *Comparative study on Best Practices in the Field of Forced Return Monitoring:* European Commission, Directorate General for Justice, Freedom and Security.
[220] Eurostat recently published information on decisions made after appeal, but this does not include how long the case lasted,
[221] One Member State - total of EUR 63 740 000 spent on appeal/number of appeals (Eurostat)
[222] One Member State - (100,320 man-hours for members appeal committee + 49 280 administrative workers) / number of cases in 2011 (Eurostat)
[223] One Member State - total 3,175 cases (54.7%)
[224] Eurostat (2012), News Release: 96/2012 June 19 2012

Even though precise and comparable calculations of the time and/or money spent per case cannot be made, this assessment of the appeal phase indicates that Member States spend a comparatively large amount of time and money on appeals.

Phase 4: Enforcement

From the three countries where information was provided on the enforcement phase, the data showed that the costs per case of forced return[225] were estimated to be EUR 1 844,[226] EUR 1 798[227] and EUR 5 504[228] per return.[229] The difference between the first two Member States compared to the latter could be related to the fact that in the Member State with the highest cost more than half of the persons that are returned are accompanied by government security personnel.[230] In one of the other Member States, the escort of the returnee is outsourced to a security company.[231] This could be a potential explanation for the lower costs.

The costs for voluntary return are generally lower than the costs for forced return but also quite different between and within the countries (depending on the case, with an estimated EUR 2 040 per return in one Member State[232] and between EUR 128 and EUR 4 370 for a single adult in another).

Other costs

In terms of other costs involved in the national asylum procedure, all of the countries that provided data were able to make an assessment of the costs for reception. It appears that this information is more readily available than information on other types of cost in asylum processing; most likely because most countries have a designated (sometimes non-governmental) agency/organization taking care of reception, which makes their budget and costs clearly defined.[233]

The annual costs for reception per asylum seeker range between EUR 6 743[234] and EUR 23 000.[235] The main problem with the estimation of the reception costs is the lack of details in the information provided by some Member states, making it impossible to establish exactly which elements the assessed costs include and whether the Member

[225] Matrix Insight Ltd et al (2011): *Comparative study on Best Practices in the Field of Forced Return Monitoring:* European Commission, Directorate General for Justice, Freedom and Security.
[226] One Member State - total EUR 43 630 960: estimated in 2007-2008
[227] One Member State - total EUR 21 000 000: annual budget of the Return and Repatriation Service
[228] One Member State - total EUR 20 832 000: costs for the prison and probation service in 2011
[229] A difference between the calculation of these numbers in these countries, is that the first MS includes the costs for enforcement, detention and return whereas the second MS includes only the costs for detention in their calculation of the costs for forced return. In last mentioned country the budget for the Repatriation and Return Service is mentioned, but this agency is only responsible for forced return and not for detention.
[230] Matrix Insight Ltd et al (2011): *Comparative study on Best Practices in the Field of Forced Return Monitoring:* European Commission, Directorate General for Justice, Freedom and Security.
[231] Ibid.
[232] One Member State - based on budget for voluntary return
[233] One Member State - based on data, including personal costs, working costs of collective centers, reception costs asylum seekers (catering, transport, etc.) and funds transferred to NGOs and local authorities for reception of asylum seekers; One Member State - based on budget of the government, including costs for accommodation, health care, education, employment of teachers and legal support; One Member State - based on data provided by commercial partners – unit cost data are confidential; One Member State - based on total costs in the reception centre, including daily allowance; One Member State - based on costs of staying in asylum centre run by Asylum Reception Office; One Member State - based on costs Migration Board for Reception, including staff costs. The main problem with the estimation and comparison of the reception costs is to know which elements are included. For two of the Member State the data clearly state that the personnel costs are included, but it is not clear if this is also the case for the other countries.
[234] One Member State
[235] One Member State

States all include the same elements. Some Member States' data for instance clearly state that the personnel costs are included,[236] but it is not clear if this is also the case for all the other countries.

7.1.3 Summary and comparison

An overview of the different costs outlined in the above is provided in the table below.

Table 8: Cost per asylum application (where nothing else is marked)/per year (where marked "total") in EUR, divided by phases

	Country A	Country B	Country C	Country D	Country E	Country F	Country G
Whole procedure			€ 26 874		€ 1 477	€ 30 755	€ 24 066
Phase 1: preparation phase	Interview € 405 (salary costs per interview)			10 hours per case (COI is known)	11.3 hours per case		
Phase 2: asylum decision				0.5 hour per case	11.3 hours per case		
Phase 1 and 2 combined			€ 2 384			€ 5 200 – 8 000	€ 3 602
Phase 3: appeal			€ 63 424 984 (total appeal phase)		239 hours per case		€ 63 740 000 (total appeal phase)
Phase 4: enforcement – forced returns			€ 1 844			€ 1 798	€ 5 550
Phase 5: enforcement – voluntary return	€ 2 659	€ 54					
Other: reception		€ 6 743				€ 23 000	€ 18 381

In most of the Member States the accommodation (i.e. "reception") of the asylum seekers is the most expensive part of the asylum procedure. It ranges from EUR 6 743 per application to EUR 23 000. However, in terms of comparing the costs of the national procedures with the costs of the proposed options for joint processing the costs of reception conditions are not the most relevant, since only the fully fledged joint processing system, Option D, proposes the establishment of EU-run reception centres. Nevertheless, the costs of accommodation/reception do become relevant when considering the potential efficiency gains offered by joint/supported processing. As will be discussed more below, a potential benefit of joint processing is shorter processing times per applications, which may result in reduced reception costs.

[236] Two Member States

When looking beyond the reception costs, it appears that the appeal phase is one of the most expensive and most time consuming phases of the processing procedure: in one Member State it takes a member of the appeal committee 239 hours to work on one case, whereas a case worker spends 22.6 hours on preparing and deciding on a case in the first instance decision. In relation to joint processing, it could therefore be beneficial to pool resources together in relation to the appeal phase. This would contribute to efficiency and/or to relieving the burden of a member state in crisis. On the other hand, three of the options on the table now (A, B and C) do not include the appeal phase as one of the joint elements, since it was established that it would not be legally feasible (at this point in time) to take EU processing beyond the preparation phase, and therefore neither the decision nor the appeal stages are included in the first three options.

Within the preparation phase, the obtainment of COI in case the country is unknown, appears to be highly time consuming and thus one of the most costly elements in preparing the dossier for a decision. There could thus be potential gains from establishing collaboration around this element.

The assessment of the costs of the return phase showed that the costs for voluntary return are remarkably lower than for forced return in those Member States that provided this information. When developing a system for joint processing, which could potentially (as in Option B) include an element of joint return, it is thus important – from a financial perspective – to maintain a focus on encouraging voluntary return, since it is less costly than forced return.

Another important finding of the above assessment of the costs of the national asylum processing procedures is that the Member States' systems, despite some EU harmonisation in the area, are quite different and difficult to compare. This is an important point in terms of establishing both the practical and financial implications of the different options for joint (or *supported*) processing, which shall be explored more in-depth in the sections below, which also bring the interview statements and assessments into play.

7.2 The options

For the purpose of making an assessment of the financial implications of the different options, the interviewees were asked to give their views on the potential advantages and disadvantages, from a financial perspective, of joint EU processing - in general or as outlined in their preferred option. Though several interviewees remarked that the sketches of the options were still too undefined and the concept of joint processing in general too fluffy for them to give a proper assessment, most respondents were able to provide some reflections on the main costs and benefits of joint processing as compared to the current national set-ups. On the other hand, many of the statements were of such an overall nature that they applied to most of the options, which was not necessarily a problem given that many elements of the options A, B and C are quite similar in financial terms.

The options and the cost and benefit assessments for each of them will be treated separately below – starting with Option D as representing the "real" *joint* processing. In the following assessment of the options for supported processing, many of the points for Option A will also pertain to options B and C and will hence not be repeated. The assessments of Options B and C will rather focus on those main elements which separate them from Options A and D, namely the joint return and distribution aspects of Option B and the idea of a more stable, institutionalized asylum processing unit within EASO in Option C.

7.2.1 Costs and benefits of joint processing: assessments for Option D

In terms of the scenario that Option D presents for "real" joint processing, the vision is that pooling asylum cases, information and expertise in centrally governed, EU coordinated joint processing centres would provide effectiveness and efficiency gains and thus reduced costs on an aggregate level.

These were also the main **benefits** pointed out by those interviewees supporting Option D. More specifically they mentioned:

- **Economies of scale** from pooling expertise and particular types of cases providing lower overhead costs;[237]
- **Reduced costs because of the obliteration of the Dublin system** and all the initial assessments of the claims and transfer costs induced by the process[238].

In relation to the first point, it is for example the idea of avoiding duplication of COI and the collection of other information and the development of expertise in all Member States, which would benefit from efforts being coordinated and resources pooled and divided according to where they are most needed. As mentioned in the assessment of the costs of the national procedure, obtaining COI can take as much time as interviewing the asylum seekers. Furthermore, in case the country of origin is unknown obtaining the right information can take eight times as long as when the country of origin is known. Moreover, it was mentioned that a more efficient joint processing scheme would provide faster procedures compared with many existing national set-ups, which would imply reduced costs for reception and detention facilities.[239] What the above comparison between the countries showed was that there are large differences between the costs of processing in the different Member States – not only due to differences in salary costs but also, to some extent, due to the different profiles of the asylum seekers in the countries. In one of the Member States, for instance, where the costs per asylum case are comparatively low, the group of asylum seekers is also relatively homogenous, providing for a short average processing time, since the staff are specialised in certain types of cases and speak the required languages, rendering translation and interpretation superfluous. This indicates the potential cost reductions related to gathering expertise, which could be one of the benefits of joint processing in its most elaborated form, where asylum cases are pooled.

Putting a monetary value on these benefits is next to impossible, at least at this stage. Considering how difficult it is to establish the costs of the processing procedures in the national set-ups, as described above, there is no solid basis for assessing the costs of an EU level set-up. Especially given the fact that the potential efficiency gains could vary a lot depending on the details of the set-up, e.g. whether there are only a few strategically located processing centres or whether there are 26 – one in each Member State – as proposed by one of the participants at the expert workshop, as a potential way to address the distribution issue.

As for the specific benefit of the reduced – or eliminated – Dublin system costs, the monetisation exercise is also difficult, although slightly more tangible since it can rely on an assessment of current costs. However, an assessment of the costs of the Dublin system has previously been attempted (e.g. in a 2007 Commission staff working

[237] Two Member States, one IO
[238] One NGO and one IO
[239] Three Member States

document[240]) but proved difficult to complete due to lack of available data. Only one of the Member States which provided financial data for this study gave information on the overall cost of their Dublin unit, stating that their budget for 2012-13 was EUR 3 589 959. This only makes up approximately 0.5% of the total cost of the asylum system in that country (including costs of asylum support) but is still a significant amount of money. The 2007 Commission staff working document concluded, on the basis of the little data available, that the costs varied a lot between Member States[241]. Thus it cannot be assumed that the costs of the Dublin system would be the same in other countries as in the one that provided the information for this study. The Commission study for example showed that in Ireland (a somewhat smaller country than the one mentioned above) in 2005, the annual cost of the operation of the Dublin unit was EUR 250 000, which is a significantly smaller amount (although it is not known whether this figure encompasses all costs for transfers, etc., or only staff costs). Using the average of these two countries (EUR 1 919 979.5) and multiplying it by 26 (the number of Member States that would potentially be involved in a joint processing system), would suggest that the total cost of maintaining a Dublin unit in the 26 Member States would amount to close to EUR 50 million. These costs would be obliterated under the Option D scenario.

Among those interviewees who expressed their views on the financial implications of Option D, one doubted whether such a set-up would imply any economic advantages for the Member States. The assessment of the potential reduction in costs for the Dublin system argues against this notion. However, setting up a full scale EU joint processing system is of course not costless.

While a full scale EU joint processing mechanism would mean the end of Dublin transfers, there might still be a **cost** to consider in relation to transfers or relocation of asylum seekers from one Member State to another. Given that the details of Option D are still quite open and undefined, it is of course all guesswork; but if the set-up would build only on a number of processing centres, there would naturally be a cost related to moving the asylum seekers from the EU external borders (or other locations where they might be intercepted) to the processing facilities.

Implementing Option D would of course also entail substantial **establishment costs**. As one interviewee noted, setting up an EU agency responsible for all asylum seekers within the EU is bound to be very costly. Not only will there be costs related to setting up processing centres (building the centres, employing the necessary staff, etc.), it will also be necessary – and costly – to replicate all the structures around the asylum processing, which currently exist at Member State level, such as reception and detention facilities, legal assistance, establishment of an appeal system, etc. It is not possible to make a more specific estimate of the size of these establishment costs at this point in time, since it will greatly depend on the chosen design for an EU-level set-up. The cost of establishing an EU-level appeal system would for instance depend on such variables as: i) the number of seats, i.e. whether (a) tribunal(s) are set up only in central locations or rather with one branch in each Member State; ii) the provision of legal aid to asylum seekers and whether this is provided by NGOs or publicly supplied and financed; iii) the working language of the court (a common EU language or the national languages of the Member States) and thus the variable needs for translation of documents, interpretation for the benefit of the asylum seekers, etc.

[240] European Commission: *Commission staff working document accompanying document to the Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system - Annex to the communication on the evaluation of the Dublin system*; COM(2007) 299 final

[241] European Commission: *Commission staff working document accompanying document to the Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system - Annex to the communication on the evaluation of the Dublin system*; COM(2007) 299 final

These are all important variables which will incur significant – however different - costs to the establishment and the running of an EU-level appeal tribunal, depending on the selected set-up.

Moreover, there would also be substantial costs involved in the complete overhaul of the national and EU legal systems, which the legal analysis of this study established as a necessary step in the potential establishment of a full-scale EU joint processing system, with joint decision-making, appeal, etc.

Of course having such structures at EU level would mean that they would no longer have to be maintained in all the individual Member States, and there would naturally be some savings from discontinuance of the national operations, which could feed into the establishment of the EU structures. It is difficult to assess whether the outcome of the equation would be a round zero if the money saved from the national set-ups was subtracted from the costs of the EU level joint processing set-up. Probably not, since the establishment costs would have to be added to the – also substantial – costs of running an EU scale joint processing operation (staff costs of processing, costs for medical care and other support for asylum seekers in reception facilities, etc.). However, as one interviewee pointed out,[242] the increased costs in the short run would be acceptable and outweighed by the expected lower costs in the long run.

The potential benefits from the economies of scale anticipated in scenario D do, however, seem quite intangible, since a full scale EU level joint processing set-up is currently only a distant vision. In the meantime, it has been suggested that the other proposed options (particularly the preferred Option A) could be regarded as the first stage(s) in an incremental development towards (perhaps, in time) "real", EU level joint processing. Looking closer at the more short term options, though, these do not offer similar benefits from economies of scale, since there are simply too many political, legal and practical obstacles at this point in time, as the interviews with Member States have made clear. The main argument for moving ahead with something similar to e.g. Option A would therefore not be one of efficiency. We shall explore this thought further in the sections below.

In the Option D scenario, the joint processing scheme would be financed through the budget provided for the EU asylum agency. The set-up would thus be entirely EU financed, but of course the EU finances essentially come from the Member States. Option D would therefore imply costs for all Member States, as everyone would contribute to the financing, but it would also imply benefits for all Member States, as the EU agency would take over all processing and provide benefits from the economies of scale. Depending on the distribution key behind the financing of the agency, though, there may be differences in the countries' net benefits of handing over the asylum processing to an EU agency, especially for those countries with relatively small numbers of asylum seekers and fewer expenses for handling claims in the national set-up. This is, however, quite speculative at this point in time, and a potential future financial set-up for an EU asylum agency should of course take such concerns into account.

Table 9: Overview of the main drivers for costs and savings in the Option D scenario

Main cost drivers	Main drivers of savings
• Establishment of EU processing centres	• Increased efficiency from economies of scale
• Legal overhaul	• Elimination of the Dublin system

[242] One Member State

• Running the EU processing centres	• Elimination of the national asylum processing systems
• Establishment and running costs of an EU system for appeal	• Elimination of national asylum appeal systems

The table above provides an overview of the main drivers of potential costs and savings related to the establishment of an EU joint processing mechanism as prescribed in the Option D scenario. The table, however, does not indicate the relative sizes of the costs and savings. This is, as previously mentioned, not possible to estimate at this point in time, given the low level of details provided in the scenario. It should, however, be stressed that, though there are potential efficiency gains to be achieved, which might make it worthwhile (financially) in the long run, the cost of the required legal overhaul in itself, not to mention the costs of establishing the EU processing centres and the frameworks surrounding them (e.g. legal aid, reception facilities, etc.), would be tremendous. Option D, therefore, cannot be considered financially feasible – at least not in the short to medium term. It is too costly to take such a big leap forward at once. Hence, also from a financial perspective, would it be advisable to take a more incremental approach, beginning with smaller steps, which can perhaps in time bring the EU close enough to the Option D scenario to make it financially feasible and achievable.

7.2.2 Financial implications of Option A

According to many interviewees, Option A is not very different from the present situation and EASO's existing assistance in what may be termed an asylum "crisis" situation. On the other hand, the interviews and the expert workshop have established that what Option A proposes is actually a step forward into a new kind of assistance, since the EASO teams are not currently involved in the actual processing of asylum claims. As such, there are naturally some expected costs and benefits associated with this new step.

Option A involves three main "actors", which are relevant for assessing the benefits and costs from an EU perspective: the Member State in "crisis" (receiving assistance), the other Member States (providing assistance through their officials' participation in the EASO teams) and the EU (the EASO and the Commission). The costs and benefits of the scenario are distributed differently between the three.

To begin with the **benefits**, these are mainly on the side of the Member State receiving the support for processing. The point is to take a load off the Member State in crisis and have EASO teams do some of the work that the Member States' own officials would otherwise have had to do. This also implies a reduced cost on the side of the receiving Member State in terms of the money (mainly salary costs) they would otherwise have spent on processing those applications. Meanwhile, it was also suggested by interviewees[243] that the benefits of saving on processing would not be large for the receiving Member State, as the most expensive aspects of dealing with asylum seekers are the accommodation before the decision and the return after a denial. And under the scenario of Option A, these elements would still be the responsibility of the Member State in crisis. This said, accommodation costs could be substantially reduced if joint processing significantly shortens the overall procedure.

For the other Member States than the one receiving the support, there are also several potential benefits. The most prominent would mainly be the possibility to continue or reinstate Dublin transfers if a backlog of asylum claims in the country in

[243] One IO

crisis is avoided or resolved by means of the support for processing. As one interviewee mentioned, with reference to the current situation in Greece, there is a de facto suspension of the Dublin system from the ECHR due to the "crisis" situation, which means that the other Member States have to accommodate the asylum seekers and process themselves some of those cases that they would normally have transferred through the Dublin system. As the interviewee suggested, the costs of the increased capacity needed for setting up reception facilities and processing this extra caseload are quite substantial.[244] Thus, there would be a concrete monetary benefit for the other Member States from sustaining the Dublin system by providing support for another Member State in a crisis situation.

In a crisis situation where a backlog of asylum claims has built up in a given country, there is also a risk that long processing times will induce asylum seekers to move on to other countries. To avoid such an "overflow" could be another potential benefit for the other Member States from providing their support to the asylum processing in the country in crisis. Moreover, there could be potential benefits for the countries contributing experts to the EASO pool in terms of sharing knowledge and gaining experience in working with officials from other Member States.

This latter aspect could also be a potential benefit for the EU in the longer run, as Member States' officials learning from and sharing knowledge with each other could potentially lead to more cooperation and harmonisation. On a less speculative note, the most immediate benefit for the EU would be the possibility to ensure that the processing of asylum claims lives up to EU standards, even in a crisis situation in one Member State. The potential benefits for the asylum seekers themselves would also be obvious: a solid and (relatively) fast(er) processing procedure.

This, in turn, would also imply additional benefits for the Member State receiving the support, as there would be potential savings on reception costs to be achieved due to the reduced processing time. If the asylum claims can be processed faster, bringing down the backlog, the time that the asylum seekers spend in the reception centres and hence the costs of accommodating them there would be reduced.

On the other hand, the supported processing as outlined in Option A only reduces the processing time for the first instance decision. Due to legal concerns and challenges, as described in the previous chapter, the appeal process remains a national responsibility of the Member State in crisis. The numbers of asylum claims that go to appeal vary among the countries, with 6.7 % of the final decisions made in second instance in one country and 33% in another out of those Member States providing financial data for the study. In yet another Member State, it was mentioned in interviews that up to 80% of the asylum decisions are appealed. In countries with high numbers of appeals, there is a risk that the backlog in the asylum system, which the processing support for the first instance decisions will help remove, will simply be pushed forward to the appeal phase, to some degree. This implies that in some Member States – those with larger percentages of cases going into appeal – the potential benefit of reduced processing time in the first instance, as a result of supported processing, would be relatively smaller. Insofar as the asylum seekers remain in the reception facilities while awaiting the appeal decision, the costs of accommodation will remain high in these Member States, as the appeal process is often more lengthy than the first instance processing: 22.6 man-hours per case for

[244] The costs of reception conditions alone were assessed at €20 000 per asylum seeker and the country giving the example has so far processed 2000 cases that would normally have been transferred through the Dublin system.

the first instance decision versus 239 man-hours per case in the appeal phase in one Member State, as outlined in the above.

However, in those Member States with relatively low numbers of cases in appeal, the positive effect on the cost of accommodation from removing the backlog in the first instance processing will of course be more significant.

Turning to the potential **costs** of a set-up similar to the one proposed in Option A, the main elements of concern (in comparison with the counterfactual of national processing) mentioned by the interviewees were:

- **Expenses for the EASO intervention teams**: travel costs related to sending experts from the different Member States participating in the EASO processing teams to the MS in crisis; per diem costs of the officials while on mission with EASO, etc.[245] In connection with this study, the idea has been raised whether the processing support from the other Member States (or parts of it perhaps) could be done via **remote working** – potentially as a way of saving on some of these costs and on the time spent by the supporting EASO experts. When asked about their thoughts on this, the majority of the Member States were positive towards the idea[246] – although with some reservations. Several Member States already have experience of using remote working and video conferencing for parts of the national asylum processing, e.g. in using interpreters for the interview when there are no specialists in a specific language nearby. On the other hand, experience from the use of remote working seems to be mixed and several of the NGO and IO respondents[247] were critical in pointing out that getting the necessary information from the applicant and establishing the truth about his/her situation is easier done on a basis of trust which often requires physical presence and face-to-face contact to establish. For similar reasons, some of the government representatives[248] also qualified their positive answer with the notions that the interview and perhaps specific types of cases (e.g. unaccompanied minors) should not be handled via remote working. With these reservations in mind, one Member State representative did find that if only other parts of the processing and not the interview can be done via remote working, then the value and potential savings are perhaps limited.
- Another interviewee from an asylum office remarked that the costs of sending the supporting officials to the country where the joint processing takes place is perhaps necessary and worthwhile if the objective is to build trust between the Member States to induce increased collaboration; the idea being that trust is more easily established through direct than through remote contact.
- **Translation costs**: when discussing the options and the idea of joint processing in general, one of the main practical implications mentioned by many interviewees as well as the experts participating in the workshops was the language issue. Would the experts participating in the EASO processing teams be able to draw up the dossier and recommendation in English? And if they are, would a translation of the documents into the national language of the Member State, in which the processing is taking place, still be required, if not for the first instance decision then most likely for a potential appeal? As one of the interviewed government representatives pointed out, such translations of the documents would imply substantial additional costs in a joint processing procedure compared to a national set-up where everything is done in the national language.

[245] Three Member States
[246] Thirteen Member States; only one interviewed government representative was directly opposed to the idea
[247] Two NGOs and one IO
[248] Eight Member States

- **"Reshaping" recommendations to meet national standards**: Along the same lines as the issue raised about document translations, several interviewees questioned whether it would actually be possible (from a legal point of view) in all Member States for the national officials making the decision on the asylum claim to do this on the basis of a recommendation produced by an official from another country, according to the EU acquis. It was inferred that, in practice and in some (if not all) Member States there would be a need for a national official of the deciding Member State to "rework" the documents according to national standards and variations from the common EU standards. As two of the interviewed government representatives argued, such "double work" on the dossier would entail additional costs in a "supported processing" procedure compared to the national procedures.

The language issue and the requirement for translation (and possibly some "reshaping") of documents was brought up by many of the experts (in interviews and workshops) as the main practical implication to move further with joint processing in the EU. The costs that this would imply are furthermore recurring across all the proposed options – except perhaps Option D. For the scenario presented in D, most of the work could and would probably be carried out in a common working language of the EU asylum agency.

The division of the costs between the main actors (the supported Member State, the supporting Member States and the EU) naturally depends on the **financial set-up**. The outline for Option A was not clear on this but suggested that an EU joint processing mechanism along these lines might get financial support from the EU funds (more specifically the Asylum and Migration Fund[249]) and through the funding of EASO.

As the legal analysis showed, there are no legal implications to EASO contributing to supported processing and in essence extending the role of the asylum support teams to include processing support – as long as the EASO officials are not involved in the actual decision-making but only in preparation and recommendation. The EASO regulation stipulates that when Member States make their experts available to EASO support teams, the EASO shall cover a number of costs related to the experts' participation in the mission: travel to and from the home and host Member States, vaccinations, insurance, health care, daily subsistence allowance including accommodation, technical equipment, and experts' fees.[250] As such, most of the costs related to sending asylum processing support teams to Member States in a crisis situation can be covered by the EASO budget. At least it is legally feasible. Meanwhile, it would of course involve a re-prioritization of funds from some of EASO's other activities to the processing support missions, unless the EASO budget is increased. Whether a budget increase would be an option is, however, more of a political feasibility issue than a financial one.

To avoid putting any financial pressure on the Member State receiving the support to cover other costs than those directly related to the EASO processing teams (e.g. translation costs and unexpected costs), additional financing of the asylum processing

[249] The proposal for the Regulation establishing the Asylum and Migration Fund states that part of the funds should be centrally managed by the Commission to fund "Union action, emergency assistance, European Migration Network, technical assistance and the implementation of specific operational tasks by union agencies", with the objective of comprehensively covering different aspects of the common Union asylum policy (source: Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund; COM(2011) 751 final; Brussels, 15.11.2011; p. 2, 5). The terms "emergency assistance" and "implementation of specific operational tasks" could cover the scenario for processing support from EASO in crisis situations presented in option A.

[250] Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office; Art. 23.

support missions could potentially be supported by the Asylum and Migration Fund. The proposal for the Regulation establishing the Asylum and Migration Fund states that part of the funds should be centrally managed by the Commission to fund "Union action, emergency assistance, European Migration Network, technical assistance and the implementation of specific operational tasks by union agencies", with the objective of comprehensively covering different aspects of the common Union asylum policy.[251] The terms "emergency assistance" and "implementation of specific operational tasks" could cover the scenario for processing support from EASO in crisis situations presented in Option A.

The interviewees from the Member States were also asked about their opinion on the most feasible or preferable kind of financial set-up for a mechanism for joint processing along the lines of what Option A proposes. Although there was not complete consensus between the respondents on the best way of financing joint processing, all those Member State representatives who expressed an opinion on the financing of Option A considered that a purely or mainly EU-financed set-up would be recommendable.[252] Considering that one of the main obstacles to implementing EU joint processing is the lack of political will, one respondent suggested that making joint processing missions completely EU financed could be used to attract or motivate the Member States to contribute their experts to the EASO pool, if national finances were not affected. Two Member States preferred specifically to finance the joint processing through the EASO budget – although without increasing the budget, as one Member State noted, since an increase in the EASO budget would probably not gain traction in the current political and financial climate. A couple of interviewees expressed support for the idea of making use of the EU funds, i.e. the Asylum and Migration Fund, but also expressed uncertainty about how and whether it would work in practice if there would be a requirement for co-financing (unfeasible from the Member State's point of view) and/or if the application system proved too bureaucratic and time consuming. Only one Member State mentioned the idea that the Member State receiving the support would also have to supply some finances, however not directly to the costs of the EASO processing teams but rather for investments in improving the national capacity while receiving the support.

In view of this, the Member State receiving the support is considered a net benefiter of joint processing as outlined in Option A, with no additional costs compared to a national procedure but rather saving on the cases processed by the EASO team financed by the EU. For those Member States supplying national experts to the EASO processing team, there is a potential cost related to releasing the officials from their duties in national authorities, which will then have to be taken on by someone else, for a period of time. If all costs of the actual joint processing mission are covered by the EU, as proposed by the interviewees, then there will be direct costs involved for the supporting Member States. Thus, all the main costs induced by the joint processing, as outlined above, will be borne by the EU.

Since it is not possible to put a monetary value on the costs and benefits assessed in the above, it is also difficult to assess whether Option A would provide a net-cost or a net-benefit, on an overall level. While there will surely be some efficiency gains to be achieved from supported processing – from reduced processing time and thus reduced costs of accommodating asylum seekers awaiting their (first instance) decision – the net-benefits are perhaps not as large as first anticipated. Considering the practical implications (translation of documents, etc.) and the fact that the final decision as well

[251] Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund; COM(2011) 751 final; Brussels, 15.11.2011; p. 2, 5.
[252] Four Member States

as potential appeals are still the responsibility of the Member State being supported, there are still several elements of the processing outside the control and responsibility of the support teams which can drag out the procedure and the stay and consequently the cost of reception facilities.

Table 10: Overview of the main drivers for costs and savings in the Option A scenario, on an overall level

Main cost drivers	Main drivers of savings
• Expenses related to the asylum intervention teams	• Reduced processing time in first instance decisions (removal of a potential system backlog)
• Potential document translation costs	• Reduced costs for accommodation during first instance processing
• Potential costs of "reshaping" recommendations	

To get any closer to an assessment of the relative sizes of the cost of the additional translation needed and the benefit of the reduced processing time would require testing the idea and set-up in practice (in a small scale perhaps) and to measure the time cut off the asylum seekers' stay in reception facilities, the time (and money) spent on translation, etc. in a supported processing set-up compared with a national one. This time will in any case depend on the specific situation where joint processing is used, notably on the degree to which such support would prevent the build-up of a large backlog significantly delaying the procedure.

7.2.3 Financial implications of Option B

Option B is quite similar to Option A in terms of its outset (the crisis phase of the early warning mechanism) and proposal for how the joint processing would practically be carried out. As such, the above costs and benefits assessment for Option A also applies to Option B, albeit with two additional elements:

- The idea of side-stepping the Dublin system one-way; and
- The joint return and distribution mechanisms proposed.

The first element is not the most important one in a financial feasibility perspective. As the proposal is to suspend Dublin transfers out of the country receiving the support, the main financial implication would be a shift in responsibility putting a larger burden and portion of the processing costs on the Member State in crisis and the supporting EASO team who would have more cases to deal with compared with the scenario in Option A. Moreover, there could be potential savings from not carrying out the Dublin procedure for determining the member state responsible and the resulting Dublin transfers, which is a quite costly procedure as we have seen above. However, since this has to remain quite speculative and as the previous chapters have already indicated that side-stepping Dublin one-way is probably not feasible politically, this will not be dealt with in more detail here.

The idea of conducting joint return operations for those asylum seekers who are not granted protection under a joint processing scheme seems to have some support among the interviewees (as outlined in the analysis of the political implications), and some efforts have already been made in this area with Frontex coordinating and carrying out some returns to third countries from various Member States. Of the few interviewees who expressed an opinion on the financial feasibility of Option B, one mentioned joint returns as a way of potentially reducing some of the costs in

comparison with national processing set-ups, where each Member State is responsible for the return of their failed asylum seekers. As with Option A, the interviewees[253] generally found that as long as participation in the joint processing is voluntary, the financing of Option B should mainly be covered by the EU to incite the Member States to contribute. Considering the experience that the agency already has with this type of task, it would be relevant to have Frontex carry out the joint returns and perhaps the costs could be covered by the agency's budget.

The feasibility of relocation of refugees within the EU has been assessed in a previous Commission study.[254] The study also tried to assess the costs of relocation, and while it proved very difficult, an indicative assessment on the basis of the EUREMA project was used. The range of costs of relocating a person during EUREMA was estimated to be EUR 4,000-13,000 – not including the costs related to integration of the refugees in the recipient Member State after the relocation.[255] There are thus substantial costs related to a potential relocation of the recognised refugees from a joint processing mission; and while the costs of the relocation itself could and should perhaps (considering the arguments for EU financing above) be covered by the EU (e.g. through the Asylum and Migration Fund), the integration costs would most likely have to be borne by the recipient Member States. This would however take some of the burden off the Member State receiving the support for processing, and as such it would be a question of switching these costs from the Member State in crisis onto others. The relocation element would thus imply a net-cost on the Commission and the supporting Member States, but a net-benefit for the supported Member State.

Table 11: Overview of the main drivers for costs and savings in the Option B scenario, on an overall level

Main cost drivers	Main drivers of savings
• Expenses related to the asylum intervention teams	• Reduced processing time in first instance decisions (removal of a potential system backlog)
• Potential document translation costs	• Reduced costs for accommodation during first instance processing
• Potential costs of "reshaping" recommendations	• Potential reduced costs for Dublin assessments and transfers, when Dublin is side-stepped one way.
• Costs of re-distribution of recognised refugees	• Potential efficiency gains from joint returns

Whether the costs are proportional to the benefits and thus acceptable would depend as much on a political assessment of the level of solidarity between the Member States.

7.2.4 Financial implications of Option C

The most important differences between Options A and C – in a financial perspective – are that C takes its starting point in the preventive phase of the Early Warning mechanism and that it proposes a more permanent set-up of an EASO joint processing team compared with the ad hoc-approach of Option A.

[253] One Member State and one IO

[254] Ramboll Management Consulting and Eurasylum Limited, *Study on the Feasibility of Establishing a Mechanism for the Relocation of Beneficiaries of International Protection*, JLX/2009/ERFX/PR/1005, European Commission, Directorate-General Home Affairs Final Report, July 2010.

[255] Ibid.

The fact that it proposes intervention before a crisis breaks out was viewed by interviewees[256] as a cost-efficient element of Option C; the argument being that remedy in a crisis situation is complicated and expensive and it would thus be financially prudent to invest in crisis prevention rather than crisis management.

On the contrary, the idea of establishing a permanent joint processing team within EASO was mentioned as an element that would add to the aggregate costs as compared with maintaining a national set-up or compared with the ad hoc organisation of Options A and B[257]. Training and salary expenses on a permanent basis would imply increased costs. These expenses would be carried by the EASO budget, which would, as a couple of interviewees noted[258], perhaps need to be increased. Whether it is feasible to gain political support for an EASO budget increase is questionable, since the EASO budget has been reduced over the past years, as one interviewee mentioned.[259] An increase in the EASO budget could imply increased costs for the Member States (unless the means could be found by re-shuffling some of the existing EU budget), and from what has been seen above that does not seem feasible at this point in time.

On an overall level, Option C offers the same benefits as Option A, i.e. reduced processing time and hence reduced reception costs. Moreover, it offers potential savings from the crisis prevention element, which is however difficult to quantify. On the other hand, the more permanent EASO team proposed by Option C has been assessed to make this option more costly than the set-up proposed by Option A.

Table 12: Overview of the main drivers for costs and savings in the Option C scenario, on an overall level

Main cost drivers	Main drivers of savings
• Expenses related to the establishment of a permanent asylum intervention team (increase in EASO budget)	• Reduced processing time in first instance decisions (removal of a potential system backlog)
• Potential document translation costs	• Reduced costs for accommodation during first instance processing
• Potential costs of "reshaping" recommendations	• Potential savings from crisis prevention (compared with the costs of crisis management)

Whether the more permanent set-up of an EASO team is worth the cost, and hence whether Option C would offer a net-benefit, would depend on how often the team would potentially be employed, i.e. how many crises there would be to prevent. Since the notion of joint – or supported - processing in itself is still rather untested, it is perhaps too costly at this point in time to set up a more permanent solution (at least as a first step) before the idea and its implications have been tested more in practice.

7.3 Conclusions on financial implications

The table below summarises the main costs and benefits of joint (or "supported") processing in the scenarios of the four different options as compared with processing

[256] Two Member States and one NGO
[257] One Member State and one NGO
[258] One Member State and one NGO
[259] One Member State

in national procedures. The table thus highlights those costs and benefits that are added to the equation by the options' scenarios. As such the table gives a simplified but quicker overview of the main points presented above. The overview is built on the assumption that the costs are (mainly) borne by the EU, which the analysis showed to be the most feasible financial set-up.

Table 13: Overview of the overall costs and benefits of the options

	Supported processing			Joint processing
	Option A	**Option B**	**Option C**	**Option D**
Costs	• Expenses for the EASO intervention teams; • Translation costs; • "Reshaping" costs.	• Expenses for the EASO intervention teams; • Translation costs; • "Reshaping" costs; • Cost of relocation.	• Expenses for the establishment of a permanent EASO asylum intervention team; • Translation costs; • "Reshaping" costs;	• EU agency establishment costs; • Costs of legal overhaul.
Bene-fits	• Reduced processing time in first instance decisions (removal of a potential system backlog); • Reduced costs for accommodation during first instance processing.	• Reduced processing time in first instance decisions (removal of a potential system backlog); • Reduced costs for accommodation during first instance processing; • Potential reduced costs for Dublin assessments and transfers, when Dublin is side-stepped one way; • Potential efficiency gains from joint returns.	• Reduced processing time in first instance decisions (removal of a potential system backlog); • Reduced costs for accommodation during first instance processing • Potential cost-efficiency from crisis prevention (compared with crisis management).	• Economies of scale; • Eliminating Dublin system expenses; • Elimination of the national asylum processing systems.

As has been outlined above, an actual assessment of the monetary costs of joint (Option D) or supported (A, B, C) processing cannot be made due to the lack of available data on the costs of the national procedures for processing (many countries do not monitor this), the incomparability of the little data that was made available (because of differences between national procedures) and due to the fact that the options as outlined are not detailed enough to allow for extrapolations.

Looking at the summary in the table above, Option D has the least points on both the costs and the benefits sides. This is of course due to the aforementioned fact that the option is not sufficiently fleshed out to go into a more detailed assessment of the costs of setting up the scenario it prescribed. Meanwhile, though the single point on "establishment costs" for Option D obviously implies some more substantial costs than any of the several points listed under the costs of the other options, it is also worth noting that D is the only option for which "economies of scale" are mentioned. It is the only scenario which is expected to provide real efficiency gains. While the other options for *supported* processing mainly offer smaller efficiency gains (e.g. from pooling expertise and knowledge in collecting COI and reducing the processing time and hence the accommodation costs, as suggested in the above), they also add some elements of practical implications, such as the expected need for translations of documents, which are assessed as costly.

While Option D may generate the largest benefits, it would, on the other hand, also imply some considerable investments – in the establishment of EU processing centres not to mention the costs of the required legal overhaul - which are neither financially nor politically feasible at this moment in time or in the near future. Among those interviewees who provided an opinion on the most feasible financing of a mechanism for joint processing, there was general agreement that the most feasible is a scenario which is EU-financed and can be implemented without increases in the Member States' support to the EASO budget. Thus, looking at the three options for so-called *supported* processing, which are the ones that, as opposed to Option D, seem more reachable within a shorter time frame, option A is really the only one which can live up to this objective. Even with support from the EU funds for the actual relocation of the recognised refugees, Option B would still entail some costs for accommodation, integration, etc., for those Member States participating in the processing support. Option C would most likely require an increased budget for the EASO, and this was ruled out as unfeasible by some of the respondents.

In view of this, the most feasible option from a financial perspective is Option A. Option A will probably not provide large efficiency gains. In fact there is a chance that in certain situations it will imply net costs due to the need for - and additional costs of - translation and "reshaping" of documents, travel costs and other expenses for the EASO experts, etc. On the other hand, it is expected that support for the processing from other Member States, despite practical implications, will result in a faster procedure for many asylum seekers, thus reducing the time spent in reception facilities while awaiting the first instance decision and thereby some of the (significant) costs related to reception and accommodation of asylum seekers (cf. above). The limited financial data provided by Member States for the study showed that the costs of reception facilities vary greatly between the Member States. A very rough calculation on the basis of the three numbers provided (EUR 6 743, EUR 18 381 and EUR 23 000 per asylum seeker per year) gives an average of EUR 16 041 per asylum seeker per year. This comes down to a cost of EUR 44 per asylum seeker per day. Hence, with a very rough and imprecise estimate, it can be assumed that for every day that the supported processing can help cut off the time an asylum seeker spends in a reception facility, around EUR 44 can be saved. This then has to be weighed against the additional costs of translation of documents before the first instance decision is taken, for which we cannot provide any monetary estimates at this point in time.

Another factor to take into consideration is that, in crisis situations where the Dublin system has de facto been suspended, there is also a significant potential benefit for the other/supporting Member States in the fact that removing the backlog and reopening for Dublin transfers means reduced costs of accommodation for the

"Dubliners" in the other Member States. As mentioned under the assessment of Option A, one of the interviewed Member States assessed that the current situation in Greece has resulted in additional costs of app. 20 000 Euro per person for reception facilities alone for those asylum seekers, who cannot be transferred due to the de facto suspension of Dublin. With a rough estimate made by the interviewee, this so far accounts for app. 2000 asylum seekers, adding up to a total cost of EUR 40 000 000. These numbers should of course be taken lightly and not taken to represent the costs of all Member States; however, this indicates that there is a significant financial incentive for the other Member States to support the one in crisis to remove a potential backlog.

In the Option A scenario, there could also be smaller potential efficiency gains from establishing collaboration around COI and sharing interpreters between the countries via remote working for example. As outlined in the above, one of the countries providing financial data estimated that preparing the dossier for an unfamiliar country of origin can take up to 16 man-hours compared with only 2.5 man-hours for a known country of origin. This indicates the potential efficiency benefits and reductions in processing time to be gained from pooling expertise and knowledge of different countries of origin in connection with supported processing.

However, such initiatives as sharing COI and interpreters could also be established without joint processing. In this regard, the main benefits to be gained from joint – or *supported* – processing as outlined in Option A could be regarded as non-monetary benefits: helping out a fellow Member State in crisis, raising the standards of a potentially suffering asylum processing system and as such ensuring certain minimum standards in asylum processing within the EU.

From a financial perspective, it is also important to underline the potential benefits of exploring possible ways of supporting other Member States in the appeal phase, which have not been incorporated in the options A, B and C designed for this study. The above analysis has shown that the appeal phase has been assessed as the lengthier compared with the first instance processing and decision-making. This corresponds with the information provided by the one Member State that supplied guesstimates on the costs of both the first instance and the second instance processing, which indicated a cost of EUR 3 602 per asylum case in first instance compared with EUR 4 825 per case in the appeal process. In terms of effectively removing a potential backlog in a Member State's asylum system and not only moving it forward to the appeal phase, it could be beneficial to explore, what the interviewed Member State representatives could not come up with when asked in the context of this study: possible ways of practically supporting the appeal process without stepping into legally sensitive areas, e.g. sharing interpreters and translators via remote working, or other more creative ideas.

As the above analysis has shown, there are however still many uncertainties and unknown or undecided factors involved in relation to the actual and practical set-up of a joint or supported processing mechanism. As such, it could be beneficial to test some of the ideas and gain some experience from a pilot project built around some of the ideas in Option A – perhaps in combination with some of the favoured elements from the other options. This idea will be developed further in the conclusions and recommendations.

8. Conclusions and recommendations

A number of findings have been noted and conclusions have been reached through the three core chapters of this report on the political, legal and financial feasibility of establishing an EU mechanism for joint processing of asylum claims. These findings and conclusions will be gathered, and linked, in this final chapter. In addition, the four options will be reviewed in the light of the assessments of their potential feasibility. The adaptations and adjustments suggested through interviews and the workshops for this study have been useful, but insufficiently coherent or detailed to enable a thorough reworking and development of all the options. Nonetheless, it is appropriate to both discuss the relevance of joint processing and potential alternatives, as well as to offer some suggestions for the future path of policy considerations in this field.

8.1 Comparison of options

The table below summarises the main findings from the analyses on the feasibility of the four options – from a political, legal and financial perspective.

Table 14: Overview of the main findings on feasibility of the four options

	Option A	Option B	Option C	Option D
Political feasibility	Is assessed as - currently - politically feasible, mainly because it: • Is voluntary • Maintains Dublin • Is invoked in crisis situation. Proposed adaptations: • Include preventive aspect of Option C • Include the common return mechanism of Option B.	Is assessed as politically challenging - in the short- to medium-term - mainly because it proposes: • Relocation of recognised beneficiaries of international protection • Side-stepping Dublin (one-way).	Is assessed as politically challenging - in the short- to medium-term - because it: • Is compulsory • The set-up envisioned for the EASO joint processing teams.	Is assessed as politically difficult (at least in the short- to medium-term) because it: • Challenges MS' sovereignty • Removes scope for national variations in CEAS.
Legal feasibility	Is legally feasible and requires only minor legal changes to be made: • Early Warning mechanism of Dublin Regulation (Article 33 of the proposal to amend it) to be put in place • Changes of national legislation in some countries to allow other officials than those from the national asylum authorities to do interviewing.	Is legally *un*feasible under current legislation - significant amendments to the Dublin regulation would be required in order to accommodate the proposed arrangements with respect to: • family transfers (the consent of the applicant to not be united with his or her family will be needed), • the application of the sovereignty clause. Otherwise, it requires only minor legal changes to be made: • Early Warning mechanism of Dublin Regulation (Article 33 of the proposal to amend it) to be put in place (same as A)	Is assessed as legally *un*feasible - in the short term - since it would require some legal changes to be made: • Early Warning mechanism of Dublin Regulation (Article 33 of the proposal to amend it) to be put in place (as in A and B), plus introducing a mandatory joint processing element in the preventive action plan. • Minor amendments to the EASO Regulation for the establishment of "Joint processing pool".	Is legally feasible only in the long term. The Treaty provides the theoretical legal basis, as long as the principles of subsidiarity and proportionality are respected, but requires a complete overhaul of all CEAS legislation. • The option can be implemented either via horizontal legislation applicable for all EU Member States or via the Enhanced Cooperation Mechanism. Some of the major legislative actions needed to accommodate it are: • Amendments to the founding regulation of EASO to give it decision-making mandate

		• Changes to some national legislation for relocation.		• The establishment of a specialized court, under the structure of the ECJ.
Financial feasibility	Is financially feasible since it can be funded through EU means, i.e. the EASO budget and the Asylum and Migration Fund. It is expected to imply benefits in terms of: • Savings on reception costs due to reduced processing time But also additional costs: • Travel and per diem expenses for the EASO JP teams • (Potential) Translation of dossier and recommendation. The relative sizes of the benefits compared with the costs remain to be assessed in more detail.	Is financially *un*feasible - in the short- to medium-term - because it implies: • Investments for the supporting MSs for integration of relocated refugees. Could potentially become financially feasible if costs of integration measures could be supported by EU funds. Otherwise, it implies the same overall benefits and costs as Option A, plus the cost of relocation.	Is financially *un*feasible - in the short- to medium-term - because it implies: • increased budget for EASO, which is not likely to gain support from MSs in a time of economic crisis. Otherwise, it implies the same overall benefits and costs as Option A, plus the costs of establishing a permanent version of an EASO asylum processing team (training, salaries, etc.)	Is financially *un*feasible (at least in the short to medium term) because it implies major investments in: • EU agency establishment costs • Legal overhaul. Could potentially create net benefits (in the long run) in terms of: • Economies of scale.

As the table overview shows, Option A is the only one of the four which ticks all boxes in terms of feasibility. Option B, in comparison, is deemed unfeasible, or less feasible, on all accounts - at least in the short- to medium-term. This option can, however, be made both legally and financially feasible, if the idea of side-stepping Dublin one-way is changed so as not to concern family unification transfers, and if EU financing for integration of relocated refugees can be established. From a political point of view, increasing the option's appeal, in the short term, would require changing two of the three elements, which fundamentally separate it from option A: the idea of side-stepping Dublin one-way and the relocation aspect. What remains is the element of joint returns, which received mixed reviews but which, if separated from relocation, was mainly regarded as positive and by some proposed as a potential element for improvement of Option A.

Option C is deemed legally feasible in the medium to long term (requiring some changes to the proposal for an amendment of the Dublin Regulation, Article 33, and the EASO Regulation) but unfeasible on the other two parameters (at least in the short- to medium-term). It is uncertain how much more the establishment costs of a permanent "joint processing pool" in Option C will cost compared with the costs of the ad hoc, temporary teams proposed in Options A and B. In the longer run, there might not be large differences, but as Option C would have to be financed through the EASO budget, this would require a budget increase and this was considered by interviewees to be (financially and politically) unfeasible, at this point in time.

Option D was from the beginning included mainly to be tested as a potential long-term vision for the idea of joint processing and was thus expected to be the least feasible of the four options. The views and statements collected through interviews and workshops, and the analysis, only confirm this expectation: Option D is politically unfeasible, at this stage, as it would require a transfer of decision-making competences in asylum matters from the Member State to the EU level, and the Member States are not ready to give up their sovereignty in this area. Option D could be legally feasible (in the longer run), although it would require a complete overhaul of both EU (CEAS) and national legislation and an impact assessment to establish a case for the principles of subsidiarity and proportionality. From a financial perspective, Option D is also unfeasible in the shorter run, as it would require major establishment costs, not to mention the costs of the legal overhaul, which would only gain traction with substantive political support for the idea. In the longer run, however, Option D could offer financial benefits in the form of real efficiency gains from potential economies of scale, whereas the other options for supported processing only offer smaller efficiency gains from reduced processing times and only in the first instance processing. As such, Option D could be attractive from a financial perspective. Moreover, Option D was by several interviewees pointed out as the one portraying "real" joint processing and by many mentioned as a desirable future objective for the development of the CEAS. However, some of the Member States also expressed the opposite opinion.

8.2 Revision of the options

As concluded above, Option A is the most feasible of the four options. Option D apart – which presents an entirely different scenario – the other three options are in many aspects quite similar, except on a few points, which have proven to be crucial in terms of the options' feasibility. Thus, two elements that would require adaptation in Option B to make it politically feasible (side-stepping Dublin and relocation) are two of the three elements making it different from Option A. Similarly, two of the main

separating factors between Options C and A – the mandatory aspect and the permanent form of the EASO joint processing pool – are the main elements that make Option C politically challenging. This leaves two elements in options B and C which are different from Option A and which are considered (somewhat) feasible: the joint returns and the preventive aspect.

In view of this, it does not make sense to revise all the options to outline new, more feasible designs. Rather, a revised version of the most feasible option – A – is presented below, including those elements inspired by the other options and recommended by interviewees.

It should be noted that the interviewees have not had the opportunity to comment on the revised version of Option A presented in the figure below (changes are highlighted in blue writing), since the views gathered from them have only covered specific components of the different options rather than a full assessment of how the options should be revised.

Figure 1: The most feasible option - revised

When?	Preventive and crisis management phases of the Early warning mechanism
Who?	EASO Asylum Intervention Pool; Joint Processing teams set up on an ad hoc basis
Processing where?	In MS responsible for the asylum application (as defined by the Dublin Regulation)
Voluntary vs compulsory	Voluntary – both in the MS assisting and the MS in crisis
Which cases?	Unspecified – all asylum cases or particular types of cases. Decided on an ad hoc basis depending on need (e.g. ”crisis type”)
Who makes decision?	The MS responsible for the application takes the final decision
Procedure for handling claims	• Official of the EASO team prepare the dossier and recommendation on the basis of the EU acquis; •Potentially translation of the dossier and recommendation; •The MS in crisis makes final decision on the basis of EU acquis and national variations.
Legislation	• Recommendation made on the basis of EU acquis • Decision on the basis of EU acquis and national variations
Mutual recognition?	Not relevant (no relocation)
Returns and removals	(Potentially) mechanism for joint returns
Relocations	No
Funding	Finance by EU means through the EASO budget and with support from the Asylum and Migration Fund

The study can thus conclude that it found greatest interest in Option A, in essence a small build up on the current situation in terms of support for processing. However, it is difficult to quantify this support and to suggest with any level of certainty that this would be the path to be recommended. Another question also is, whether the Option A set-up would help realise the objective, which joint processing was set out to achieve in the first place? Revisiting the question of "why" raised in the problem definition chapter, it is however apparent that the objective for a joint processing mechanism is perhaps not completely clear. As chapter three outlined, the idea has been widely discussed and with different purposes in mind over the years: protection needs; border control concerns and their aftermath, including harmonisation of policy and implementation (reducing disparities in recognition rates), solidarity and burden-sharing; and cost efficiency.

As the financial feasibility assessment established, Option A (as well as B and C for that matter) is perhaps not the way to go if the objective is only to achieve cost efficiency. Although the assessment has had to build on qualitative considerations, since there is no experience of joint processing to draw on, interviewees and workshop participants made it clear that the practical obstacles to joint processing, due to the low degree of harmonisation between Member States' asylum procedures, will most likely induce increased costs of the procedure. To achieve an overall saving, this increase in costs would need to be balanced out by gains to be achieved from faster processing and hence reduced costs for reception facilities. There is potentially also something to be gained from joining forces on establishing and sharing COI and interpreters (e.g. through remote working), but there is at the same time a risk that the travel and other expenses for the EASO teams and the costs of potential translations of dossiers and recommendations will up-weigh if not outweigh these gains.

A critical question raised regarding the benefits of Option A, is whether the potential benefit of helping reduce or remove a backlog in an asylum system through support for the processing in first instance is limited, since the option does not offer any support for the appeal phase, and a part of the backlog is in practice then only moved forward to the second instance decision. This still remains to be tested in practice in order to provide a more firm conclusion; however, it is the assessment on the basis of this study that, though the support is limited to the processing at first instance, it will still have some positive impacts that are worth considering, even though the net benefits may not be as large as initially envisioned for the concept of joint processing. Moreover, the size and significance of the positive impact are likely to vary depending on the country receiving the support, considering that the Member States have different histories in terms of the percentages of cases which are normally appealed.

The Option A scenario for a joint processing mechanism could potentially also help achieve some of the other objectives mentioned, such as general border control concerns in a crisis situation and securing asylum seekers' rights to have their protection needs assessed along acceptable RSD (Refugee Status Determination) standards. Moreover, it is regarded by some as not only a way of raising standards and ensuring that a minimum level is maintained for asylum processing in a country in crisis, but also as a potential way of creating leverage for the standards in asylum processing across the Union. However, the question of "why" remains an important one to ponder and decide on if the idea of joint processing and a design for a mechanism are to be developed further.

8.3 Revisiting the definition of joint processing

In considering taking the idea of joint processing in the EU further, it should be noted that another finding of this study was that a majority of the respondents, regardless of their option preference, were in principle in favour of joint processing.[260] However, the study also found that there was little consensus on what joint processing is – and indeed some participants noted a reluctance to be drawn on their overall approach to the issue, because of the lack of definition. The combination of the fundamental questions and thinking on potential definitions led, through interviews and workshops, to the suggestion of a potential distinction between the concept of 'supported processing', in which the decision-making authority remains at Member State level, while Member States support each other – e.g. through EASO – in preparing and reaching a decision; and, 'joint processing' in which all processing, responsibility and decision-making powers are conferred to a centralized EU authority. Revisiting the definition set out by the Commission for the purpose of this study, this could be rephrased in the following way:

Supported processing: *an arrangement under which the processing (preparation of the dossier and a recommendation) of asylum applications is conducted jointly by officials from two or more Member States, under the coordination of the European Asylum Office (EASO), in support of another Member State in crisis or with a view to preventing a crisis, as defined in the Dublin Regulation (Article 33).*

Joint processing: *an arrangement under which all asylum claims within the EU are processed jointly by an EU authority assuming responsibility for both preparation and decision on all cases, as well as subsequent distribution of recognised beneficiaries of international protection and return of those not in need of protection.*

If the ultimate goal is the scenario defined as *joint processing*, there is, as this study has established, a long way to go. But the so-called *supported processing* (perhaps in the form of the revised Option A above) could contribute to an incremental approach which may, in time, lead to increased trust between the Member States, increased harmonisation and additional steps towards the long-term objectives foreseen by Option D.

Alternatives to joint processing?

Returning to the essential question of "why" – what is the objective of doing joint (or supported) processing, one might also ask, whether joint processing and particularly Option A is necessarily the best instrument to achieve the objective (whatever it is decided it is).

In spite of the positive answers to questions about the general attitude to joint processing, and bearing in mind that there were some negative responses too, one could also move in the direction hinted at by multiple interviewees – namely to question whether joint processing would be a step on the way to a CEAS, and a measure to increase harmonisation, or whether joint processing would actually only be possible if there were greater harmonisation and a real CEAS already in place (in which case joint processing might also flow as an automatic consequence).

[260] The finding must be qualified by the awareness that the methodology used may both have drawn participants in the direction of suggesting interest/approval for the concept in general as well as drawing them to suggest they 'preferred' a model based on one of our four options, as the alternative, i.e. a totally negative opinion, might have appeared unconstructive.

In terms of efficiency (if that is the goal), a "supported processing" mechanism does, as we have seen above, perhaps not offer as much as the vision may have been for a "real" EU joint processing mechanism; this is due to the practical implications brought on by the fact that the Member States' asylum procedures are still very different from one another, are conducted in different languages, etc. And in terms of solidarity and sharing the responsibility for large caseloads (regardless of the reason behind them), some interviewees and workshop participants suggested that Option A would also not offer much. As the Member State receiving the support is still responsible for reception/accommodation, taking the decision, handling appeals as well as the outcomes of the decisions, it is essentially only a minor part of the load that the other Member States (or the EASO team) would help lift. Even so, it is maintained that supported processing could help reduce or remove a backlog in a Member State's asylum system – or perhaps help avoid the creation of a backlog in connection with other crisis prevention attempts. Moreover, and as mentioned above, it could help ensure the maintenance of certain standards in the asylum system, for the benefit of the asylum seekers as well.

In terms of dealing with some of the outcomes, namely the returns (especially the forced ones, which are relatively more expensive), there could be significant benefits in doing this jointly. However, joint returns are already being carried out to some extent by Frontex and taking this work further towards establishing an actual practice could also be done independently of a potential mechanism for supported processing. The same would hold true for efforts to establish collaboration and sharing of country of origin information and interpretation expertise (via remote working), which was suggested by some interviewees to be important benefits of supported processing.

As such, one might therefore consider seriously the position of those opposed to the overall idea of joint processing, who consider that other measures for building capacity in the countries in need of support (along the lines of what EASO is already doing) and establishing/increasing collaboration in other ways could prove to be more appropriate in working towards the desired objective(s).

In considering the added value of joint or supported processing and weighing it against possible alternatives, it is also worth mentioning the aspect of timing. Due among other things to the on-going debt crisis and to increased suspicion and lack of trust between Member States the "solidarity card" might not be the right one to play at the moment.

The absence of consensus on defining joint processing might also suggest that this concept is currently just a thought, or possibly a cry for help, but that it might not necessarily offer a realistic approach to asylum processing in the EU. It could be argued that 'support', on the other hand, could boost trust and harmonisation, and, rather than being a step towards joint processing, could also be a mechanism that demonstrates that there is no need for joint processing as such, and that all Member States should be able to sustain their obligations with occasional support in achieving effective and efficient processing. Thus, supported processing could, despite its limitations, be regarded as an element adding to the "solidarity tool box" of the EU; a tool to help reduce asylum system backlogs and stabilise systems (i.e. prevent backlogs from being created), and as such also a part of a support framework for the Dublin system, which can help avoid it being de facto suspended in "crisis" situations.

That said, it could probably be worth testing the idea of supported processing further, especially with a view to establishing the practical implications of collaboration on processing and the magnitude of the issues, which have been raised in this study. Also, the unsubstantiated suggestion that having Member States' officials processing

together could potentially help build trust, further collaboration and harmonisation could be worth testing before the idea of joint processing is either discarded or taken further.

Testing the idea further could also help provide for an assessment of the principles of proportionality and subsidiarity. The latter can be considered to be covered by the considerations also included in the TFEU (Article 78(3)) that in an emergency situation or in case of a sudden inflow of third country nationals, the EU institutions are in the best position and best equipped to pool efforts and support from all the other Member States. What Option A offers in terms of supported processing goes well in line with this. This also indicates that the objectives of this new "solidarity tool" are similar to those established in the Treaty and in the Hague programme of developing the CEAS, common procedures for the asylum processing[261] and "appropriate structures involving the national asylum services of Member States with a view to facilitating practical and collaborative cooperation".[262] Whether the supported processing actually has the potential to contribute significantly to reaching those goals however requires some more in-depth development and testing of the proposed set-up to monitor and assess the proportionality of the additional costs as compared with benefits and savings to be gained.

8.4 Next steps

A pilot project could be a way of testing the idea and gaining more knowledge of the practical implications of supported processing and how the design of an EU mechanism could and should be developed if the idea is taken further. Before establishing a project to pilot the concept, it is however important to first consider how it should be designed to serve the purpose of testing the potential benefits of supported processing.

8.4.1 Joint Processing piloted in an 'isolated' context

The 'interception/rescue at sea' model has been much discussed – also in the context of this study – and would be an obvious case of isolating a context. Joint (or supported) processing could be conducted onboard vessel(s).[263] Vessels could potentially be moored by a Member State, but designated as 'EU territory' for the period of use for processing. Those accepted as being in need of protection would be assigned to a specific Member State, using ranking criteria including family, etc.

One measure to avoid a pull factor would be that since they are on board a ship, those who would be refused protection could be more easily returned/removed, and the media reports of such incidents would deter those who are not seeking asylum from making a similar journey.

Workshop participants suggested that people requesting asylum after interception or rescue at sea might be headed, in any case, for the EU rather than a specific Member State, so voluntarism in relocation on the part of the individual would not be a

[261] TFEU, art. 78(2d)
[262] The Hague Programme: Strengthening Freedom, Security and Justice in the European Union (2005/C 53/01).
[263] There is a precedent in the Caribbean in a case of Haitians' applications for asylum processed aboard a US navy vessel moored in Jamaica in 1994 - see UNHCR (1997), The State of The World's Refugees 1997: A Humanitarian Agenda, Chapter 5 '*The Asylum Dilemma'* .

problem, necessarily. In addition, if the 'distribution' starts from a ship, rather than a Member State's actual territory, it might not be strictly considered 'relocation'.

The disadvantages of this model for a pilot project would include the potential range of languages and the need for a model for appeals. It could also be challenging to provide all the applicable reception rights to applicants onboard a vessel. Advantages might include the fact that Member States with responsibilities to rescue under the Law of the Sea would be more inclined to do so if they had support in dealing with the outcomes, i.e. with protection claims, and longer-term protection where those claims are founded.

There is a need for EU action on the issue of rescues at sea and on establishing a joint responsibility, especially for those rescued in international waters. As such, it would be beneficial to test the value of joint (or supported) processing in this context. On the other hand, this would not be testing Option A, essentially, as that scenario takes a different starting point and aims to remedy a crisis.

8.4.2 Joint Processing piloted for a specified caseload

Another possible pilot would consist of taking a caseload coming from one location (thus limiting the languages for interpretation) and conducting joint processing in the mode of the revised Option A.

A valid question in this connection would be: if this is a mass influx situation then why not use the temporary protection directive? If the situation were one in which the temporary protection directive would be implemented one could also consider establishing a joint processing mechanism to ensue from implementation of the Temporary Protection directive, meaning that the temporary protection would be invoked for one year (to begin with – with the possibility to extend twice to a maximum of three years), as foreseen in the directive, and then if after that time asylum claims were to be processed, that processing would be conducted jointly.

The Temporary Protection Directive offers short-term protection without an asylum procedure for a one-to-three year period. Thus, even if a model of Joint Processing to follow Temporary Protection were to be agreed in principle, in practice the moment of implementation of the Temporary Protection Directive would signal the start of a one-to-three year build up towards implementation of an associated agreement on joint processing. As such, there would be some time during which concrete practical measures could be set in place, staff recruited, attention paid to language and translation needs, etc. Also, redistribution would not be a post-joint processing issue as it would already have happened with the initial Temporary Protection.

8.4.3 Shadow processing to build trust/increase harmonization

Besides piloting the idea and concept, another way to move forward could be to gradually build up the capacity and knowledge of EASO experts to, in time, assist in processing, while perhaps working towards increased harmonisation and ensuring standards through so-called "shadow processing".

Rather than looking at joint processing as such in the short-term, this would consist of having EASO coordinated multi-Member State teams 'shadow' Member State processing. The Member State would conduct the actual decision-making, at all levels

and stages, but the dossier would be shared with the EASO shadow team, which would advise on what the decision would be based on the EU acquis. Although the EASO shadow outcome might not be used to alter specific decisions in practice (at least in the early days) the MS and the EASO shadow team would have to discuss all cases where a different conclusion was reached, and the EASO reasoning would need to be taken into account to adapt national legislation, procedures and practices.

In the medium- to long-term this could either lead to closer harmonisation of national legislation and practice, or to trust in the EASO teams and their inclusion in national decision making. In addition, if there were cases of (sudden) need for more practical assistance (e.g. if there were increased numbers in that MS, or a problem with capacity/system), the Member States and EASO teams would have established contact and trust for the EASO team to be more closely involved in supported and/or joint processing.

8.4.4 Harmonisation or parallel procedures?

Many of the respondents have pointed to the different processing procedures across the EU and therefore to the challenges posed by joint processing, i.e.: according to which Member State's procedures should the preparation and recommendation be made – the supporting or the supported? Would a dossier prepared according to one Member State's procedures/standards offer a sufficient basis for a decision to be made according to another Member State's law (let alone for an appeal decision in court)? Are there perhaps legal obstacles in some Member States to using dossiers/recommendations prepared by officials from other Member States?

Against this background, and before designing a realistic joint/supported processing mechanism further, the following questions must be answered:

- Is there a need to develop an EU processing model that would be used for all cases processed "jointly" but that would effectively run parallel to the national systems and standards? Or,
- Is what is needed rather to achieve full harmonisation of Member States' procedures and standards first, so that asylum decisions made in one Member State could not be challenged by another Member State, thus removing the practical obstacles to joint processing and increasing the prospects of mutual trust and mutual recognition of national asylum decisions?

Perhaps a pilot project could help establish both how to overcome or work around the practical obstacles to joint processing, and whether developing a mechanism for joint processing could be a way towards increased harmonisation and trust, or whether increased harmonisation and trust rather need to come before further concrete steps towards joint processing.

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ANNEX A

LIST OF INTERVIEWEES

Member State	Name	Organisation
AT	Anny Knapp	Asylkoordination
	Mr. Deremy	Ministry of the Interior Austria
BE	Christophe Jansen	International Relations Counsel for refugees and asylum seekers, Ministry of interior
	Vinciane Masurelle	Assisted Voluntary Return Department, Federal Agency for the Reception of Asylum Seekers – FEDASIL
	Jessica Bloomeart	Ciré - Coordination et Initiatives pour Réfugiés et Étrangers
BG	Daniele Siniobradska	State Agency for Refugees
	Petya Karayaneva	UNHCR
	Iliana Savova	Helsinki Foundation
CY	Mr Makis Polydorou	Asylum Service of Cyprus
	Ms Kakia Demetriou	Asylum Service of Cyprus
	Ms Olga Komiti	UNHCR
CZ	Dr. Martin Rozumek	OPU
EL	Maria Stavroupoulou	Asylum Office Greece
	Petros Mastakas	UNHCR
	Spyros Koulocheris	Refugee Council
ES	Ellen Lebedeva	Status Determination Bureau Police and Border Guard Board
DE	Kerstin Becker	Ministry of the Interior
	Roland Bank	UNHCR
	Friederike Foltz	UNHCR
	Karl Kopp	ProAsyl
	Dr. Maier-Borst	Minister of State for Migration, Refugees and Integration
FI	Sanna Sutter	Ministry of the Interior
	Katja Fokin	Refugee Advice Centre
	Lena-Kasja Åberg	Red Cross
FR	Brigitte Frenais Chamaillard	Asylum Service – Ministry of the Interior
	Muriel Thoumeloul	Asylum Service – Ministry of the Interior
	Sophie Deknuydt	Asylum Service – Ministry of the Interior
	Maurizio Busatti	IOM
	Pierre Henry	France Terre d'Asile
	Matthieu Tardis	France Terre d'Asile
	Elodie Soulard	France Terre d'Asile
HU	Istvan Ordog	Directorate of Refugee Affairs

	Agnes Ambrus	UNHCR
	Gabor Giulai	Helsinki Committee
IE	Patrick McHale	Immigration and Naturalisation Service
	Sophie Maggenis	UNHCR
	Sue Conlon	Refugee Council
IT	Daniela Di Capua	Servizio Centrale – Ministry of the Interior
	Umberto Campini	National Commission
	Maurizio Guaitoli	National Commission
LT	Gintaras Valiulis	Ministry of the Interior
LU	Serge Thill	Ministry of the Interior
	Nonna Seovitch	Caritas
	Marie Christine Wirion	Caritas
LV	Kasper Abolins	Ministry of the Interior
	Dace Zvarte	Ministry of the Interior - Asylum Affairs Unit
	Svetlana Djackova	Latvian Centre for Human Rights
MT	Mario Guido Friggieri	Ministry for Home and Parliamentary Affairs
	Joseph St. John	Ministry for Home and Parliamentary Affairs
	Jon Hoisaeter	UNHCR
	Neil Falzon	Aditus
NL	Jasper Hoogendoorn	Ministry of the Interior
	Mieke Verzijverden	The Immigration Service (IND)
	Karina Franssen	Dutch Refugee Council
	Myrthe Wijnkoop	Dutch Refugee Council
	Laura Carpier	IOM
	Martin Andreas Wyss	IOM
PL	Karolina Marcjanik	Office for Foreigners
	Maria Pamula	UNHCR
	Karolina Rusilowicz	Helsinki Foundation for Human Rights
	Anna Luboinska-Rutkiewicz	Refugee Council
PT	Christina Barateiro	Asylum Office
	Laurens Jolles	UNHCR
	Katharina Lumpp	UNHCR
RO	Mircea Babau	Romanian Office of Immigration
	Andreea Mocanu	Romanian National Council for Refugees
SE	Carin Bratt	Ministry of Justice - Division for Migration and Asylum Policy
	Maria Lindgren-Saltanova	Ministry of Justice - Division for Migration and Asylum Policy
	Karolina Lindholm Billing	UNHCR
SK	Nina Secikova	Ministry of the Interior
	Ms. Stevulová	Human Rights League

SI	Natasa Potocnik	Ministry of the Interior
	Nadia Jbour	UNHCR
ES	Joaquin Tamara	Ministry of the Interior
	Maricela Daniel	UNHCR
	Martha Garcia	UNHCR
UK	Neil Parkin	UK Border Agency
	Lynne Spiers	UK Border Agency
	Roland Schilling	UNHCR
	Alan Deve	UNHCR
	Judith Dennis	The Refugee Council
Other stakeholders interviewed		
	Rob Visser	EASO
	Madeline Garlick	UNHCR Brussels
	Jean Lambert	MEP
	Torsten Moritz	CCME (Churches Commission for Migrants in Europe)
	Stefan Kessler	JRS Europe (The Jesuit Refugee Service)
	Kris Pollet	ECRE
Participants at the stakeholder workshop 15.3.2012 in Brussels		
	Claus Folden	EASO
	Madeline Garlick	UNHCR
	Jean-Louis De Brouwer	European Commission, DG EMPL
	Jens Vedsted-Hansen	Aarhus University
	Kris Pollet	ECRE
	Christine Sidenius	Advisor Greens/EFA in the EP
	Jasper Hoogendoorn	Ministry of the Interior – the Netherlands
	Adalbert Jahnz	Observer from the European Commission, DG HOME
	Ioana Pătraşcu	Observer from the European Commission, DG HOME
	Joanne van Selm	Eurasylum, member of the consortium for the study
	Solon Ardittis	Eurasylum, member of the consortium for the study
	Helene Urth	Rambøll, member of the consortium for the study
	Hanna-Maija Kuhn	Rambøll, member of the consortium for the study
Participants at the stakeholder workshop 22.6.2012 in Brussels		
	Michele Cavinato	UNHCR
	Emilie Wiinblad	UNHCR
	Jens Vedsted-Hansen	Aarhus University
	Kris Pollet	ECRE
	Christine Sidenius	Advisor Greens/EFA in the EP
	Jasper Hoogendoorn	Ministry of the Interior – the Netherlands

	Adalbert Jahnz	Observer from the European Commission, DG HOME
	Ioana Pătraşcu	Observer from the European Commission, DG HOME
	Helene Urth	Rambøll, member of the consortium for the study
	Mathilde Jeppesen	Rambøll, member of the consortium for the study

ANNEX B

INTERVIEW GUIDE

Face to face interviews and phone interviews

Study context and objective:
The European Commission's Directorate-General for Home Affairs has commissioned Ramboll Management Consulting and Eurasylum Ltd to conduct a study *on the feasibility and legal and practical implications of establishing a mechanism for the joint processing of asylum applications on the territory of the EU*. The results of the study will feed into the Commission's further deliberations on developing burden sharing mechanisms in the field of asylum.

The objective of this study is not to produce a final report with firm conclusions on the best possible design of a mechanism for joint processing of asylum claims within the EU. At this stage, the objective is rather to end up with a selection of the most feasible elements from each proposed option from which a more final version of the mechanism can be constructed. It may very well be that the best solution lies in a combination of the proposed options, or in something that goes beyond what the preliminary options propose.

The purpose of the interview is to:
- Get your overall view of the idea of doing joint processing of asylum claims within the EU in general
- Hear about your (potential) experiences with joint/assisted processing of asylum applications (if any)
- Hear your initial reactions on the feasibility of the four preliminary options for a mechanism for joint processing of asylum applications in a European context [refer to the e-mail with description of the four options, which has been sent to the interviewee prior to the meeting].

And
- Your view on the financial implications of joint processing of asylum applications within the EU compared with the cost of all countries processing individually [refer to the questionnaire on cost assessment, which has been sent to some interviewees with a request to fill it in prior to the meeting].

Clarify with the interviewee before starting the interview:

The interview is for our use only (notes will not be disclosed to anyone but the study team), you will not be directly quoted and the report will **not** relate country specific information (such as "these MS … prefer this and that option" only "12 MS prefer this option…"). Your name will, however, be included on a list of interviewees in the final report.

Before we begin, it is also important to emphasise that the four options have been developed by Ramboll and Eurasylum with input from the Commission and experts. It is **not** a proposal from the Commission.

Reflections on the general political feasibility of joint processing and the need for a common mechanism within the EU

Questions	*Response*
1. Do you generally think that joint processing of asylum claims is a good idea? (If "no", go to question 3)	
2. If "yes":	
a. Why do you like the idea?	
b. What are the main challenges to joint processing?	
c. Is it necessary to establish a common EU mechanism to handle this challenge? (Or alternatively should it be left to the MS to organise this bilaterally?)	
d. When (in which situations) do you think that joint processing would provide an effective solution? I.e. large inflows, crisis in MS, specific caseloads (e.g. minors)	
e. Could joint processing be relevant in relation to the specific situation where asylum seekers are intercepted at sea? (i.e. boat refugees)	
3. If "no":	
a. Why don't you think joint processing is a good idea?	
b. What are the main challenges to joint processing?	

On previous experience with joint/assisted processing (if any)

Questions	*Response*
4. Do you have any experience with joint/assisted processing,	

involving two or more Member States and/or the EASO[264]? **(if no, go to question 6)**	
5. If yes:	
a. Please describe the situation and the reasons that lead to the decision to do joint/assisted processing.	
b. How did the processing happen in practice?	
c. What were in your view the advantages/disadvantages of the joint/assisted processing?	

On the four proposed options

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

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

Questions	***Response***
6. Which of the four options would you prefer and why? (It is also a possibility to combine elements from the different options.)	
a. Which are the main elements that make you prefer this option and why?	
b. If you take the chosen option as the outset, but can choose some (e.g. 5) changes or additions to it, what would they then be? And why?	
c. How does it address the challenges identified in the	

[264] We know of at least one instance, where the EASO asylum support team assisted with a system backlog in Luxembourg in connection with a large inflow of Romas. There may be other examples as well, e.g. of bilateral cooperation.

beginning of the interview? [Ref. To the interviewee's initial thoughts on challenges related to joint processing]	
7. Which of the options do you least prefer/find least feasible?	
a. What are the main elements of this option that make it the least feasible or your least preferred option? **[It would in particular be interesting to know whether mutual recognition of asylum decisions and/or the idea of having joint processing centers (cf. option D) are perceived as great obstacles]**	
b. What would it take to make this option feasible (changes to the option or to the political and/or legal situation; longer term perspective)?	

Legal implications [based on the chosen option]

Questions	***Response***
8. Is there anything in your current national legislation that hinders the implementation of this option?	
a. What would need to be changed for the option to be possible to adopt?	
9. From a national perspective, do you foresee any particular problems in relation to the specific rights of the persons whose claim for asylum is jointly processed?	
a. What would need to be changed to accommodate these problems?	
10. Mutual recognition of asylum decisions has been highly	

debated in the EU. Is mutual recognition or transfer of protection status legally possible in your country? If yes, under which circumstances? **[This question relates not only to the chosen option, but is general]**	

Financial implications [based on the chosen option]

Questions	*Response*
11. Do you think there could be economic advantages or disadvantages of joint processing (e.g. economies of scale)?	
a. Which elements do you think would be *less* costly in the preferred option, compared with you current national procedure? And why? [For respondents who have been asked to fill in the questionnaire, use this for comparing costs]	
b. Which elements do think would be *more* costly in the preferred option, compared with you current national procedure? And why? [For respondents who have been asked to fill in the questionnaire, use this for comparing costs]	
12. In your view, how should the mechanism [the chosen option or in general] be financed to make it most effective?	
a. Which costs should the EU respectively the MS cover?	

Other implications [based on the chosen option]

Questions	*Response*
13. Could (parts of) the processing, in your view, be carried out via remote working (e.g. video conferences, emailing, phones)?	
a. Why/why not (what would the implications be, advantages, disadvantages)?	
14. Do you foresee any implications with regards to the protection of human rights in relation to the [chosen] option?	

General questions

Questions	*Response*
15. Do you see a role for the UNHCR and/or NGOs to play in some or all of the proposed options?	
a. In relation to which element(s) of the option(s)?	
b. Would the organization(s) play the same role across the different options?	
16. Do you see anything in the appeal phase of the asylum procedure where there could be potential benefits of a joint/common procedure? [Try to keep the question open. If the respondent can't think of anything, an example could be collaboration on free legal aid.]	

ANNEX C

FINANCIAL QUESTIONNAIRE

Introduction to the questionnaire

The figure below gives an example of a typical procedure for processing asylum applications, and the main phases and elements it entails. In the table, which follows the figure, we ask you to assess the costs of these phases and elements in your national asylum processing procedure. In the table, we have broken down the main phases in different elements, and we kindly ask you to – to the extent possible – assess the cost of the individual elements under the main phases.

However, as we are aware that there are many differences between the national asylum procedures within the EU, we inserted a column for comments in the table. In this column, we ask you to provide all the details and specificities about your national procedure, which you find relevant and necessary for us to understand your answers and reflections on the cost assessment.

Please provide information on the cost per asylum seeker of each element, to the extent possible. If such data does not exist, please provide information on the total cost for each phase (e.g. preparation) of the procedure (alternatively for the entire asylum processing procedure if it cannot be broken down according to phases). If you do not have information on the monetary cost of the different elements, please try to provide an assessment of the costs measured in other terms, such as number of persons typically involved in the different elements of a processing procedure or the time (working hours/man days/weeks/months) spent on or allocated for each element/phase of the processing.

Finally, we ask you to try and assess for each element, whether it would be more or less costly if this part of the processing was done in cooperation with other EU Member States through some sort of EU mechanism for joint processing of asylum applications. You will also get a chance to discuss this part further during the interview.

- Establish identity
- Travel route
- (potential) Dublin transfer
- Interview of applicant
- Country of origin info

- By government authority, or
- By national court, or
- other

- Court, or
- Government authority

- Residence permit, or
- Return (forced/voluntary)

Questionnaire: costs of processing asylum claims

	Examples of cost components	**Cost of national procedure** *[Please indicate the cost of each element/phase in monetary terms (e.g. EUR). If not possible, please indicate number of persons/hours/man days/weeks allocated]*	**Comments** *[Please write here any important details/specificities about your national system; and potential explanations for why costs cannot be broken down in elements]*	**Costs compared with EU mechanism for joint processing** *[Please indicate if you think the element will be more/less costly if done jointly and perhaps why]*
Preparation phase	Total cost:			
• Interview asylum seeker	- Number of case handlers normally involved in interviews - Number of days/hours allocated			
• Establish identity (documentation)	- Number of case handlers normally involved in - Number of hours/days allocated			
• Establish travel route (relevant for Dublin transfer)	- Number of case handlers normally involved in - Number of hours/days allocated			
• Dublin transfer (when relevant)	- Staff costs of Dublin processing centres (in some MS) - Costs of handling transfer requests			

	- Costs of carrying out transfers			
• Country of origin information	- Number of case handlers normally involved in			
• Prepare case for decision	- Number of case handlers normally involved in - Number of hours/days allocated			
• Other?				
Decision phase		Total cost:		
• Case workers' decision making (if done by authority)	- Number of case handlers normally involved in decision making - Number of working hours per case worker			
• Court procedure (if decision made by court)	- Cost of/time allocated for preparation of procedure - Cost of court procedure (alternatively no. of persons involved, average no. of hours/days for a proceeding)			
• Other?				

Appeal phase		Total cost:		
• Case workers' decision making (if done by authority)	- Number of case handlers normally involved in decision making - Number of working hours per case worker			
• Court procedure	- Cost of/time allocated for preparation of procedure - Cost of court procedure (alternatively no. of persons involved, average no. of hours/days for a proceeding)			
• Other?				
Enforcement phase		Total cost:		
• Residence permit granted	- Costs related to e.g. temporary housing after asylum granted			
• Return	- Cost of forced return procedure (if done by MS alone) - Cost of voluntary return			
• Other?				

Other costs				
• Reception conditions (while awaiting decision and integration / return)	- Housing costs - Costs of daily allowances - Cost of health care - Cost of education - Cost of legal assistance			

Please provide the most recent information available on number of asylum applications processed in your country (e.g. in 2011)	*[number of asylum applications processed; year]*

ANNEX D

FINANCIAL DATA FROM THE MEMBER STATES

	TYPE OF EXPENSE (YEAR 2011)																						
	Total costs	**Preparation phase**	Interview asylum seeker	Establish identify	Establish travel route	Dublin transfer	Country of origin information	Prepare case for decision	Other?	**Decision phase**	Case workers' decision making	Court procedure	Other?	**Appeal phase**	Case workers' decision making	Court procedure	Other	**Enforcement phase**	Residence permit granted	**Return**	Other?	**Other costs**	Reception conditions	Entity
Country A		x																		x			x	EUR
			x		x	x	x	x			X	x												Employees
Country B																				x			x	EUR
	x																							Employees
Country C		x	X			x			x	x				x				x					x	EUR
			x	x	x		x	x			X												x	Employees
Country D						x			x														x	EUR
			x	x	x	x	x	x	x		X				x									Employees
Country E	x																							EUR
			x	x	x	x	x	x			X				x									Employees
Country F	x																			x			x	EUR
		x																						Employees
Country G		x								x			x	x				x	x	x		x	x	EUR
											X													Employees