

MAKING ASYLUM NUMBERS COUNT

ECRE'S ANALYSIS OF GAPS AND NEEDS FOR REFORM IN DATA COLLECTION ON THE COMMON EUROPEAN ASYLUM SYSTEM

I. INTRODUCTION

Numbers have great power in policy-making. When Europol reported that 10,000 children had disappeared in Europe last year, European Union (EU) institutions, governments, parliamentarians and civil society were mobilised in unprecedented speed and worked to develop a volume of legislative and policy initiatives over the past two years. When Germany referred to 1.1 million refugees on its territory, a succession of national reforms and EU-level actions – including deals with third countries to contain refugees outside Europe – were hastily pursued. The reform of the Common European Asylum System (CEAS) proposed by the European Commission in 2016 came as a response to “large-scale uncontrolled arrivals”, which led to the self-inflicted “migration and refugee crisis”.

Beyond the political use and misuse of numbers, the EU needs accurate statistics in order to assess implementation of asylum law by the EU Member States, as well as to provide the evidence to support efforts to address non-compliance and violations of EU and international law. For states themselves, regular and sustainable provision of publicly available asylum data has multiple advantages. It promotes transparency and clarity on authorities’ performance and needs both internally and externally, pre-empts spontaneous information requests and ultimately reduces workload for administrations. Asylum statistics are used inter alia in the allocation of EU funds so accuracy is required to ensure that funding reflects needs. Overall, it is imperative to return to some semblance of an evidence-based approach to national and European asylum policy.

Despite the importance of statistics in policy-making, the EU does little to ensure accurate and systematic collection of data on its Member States' asylum systems. Problems identified include an overly narrow legal framework and an absence of compliance with it, and parallel and often competing data collection by EU bodies, international organisations and national authorities, giving rise to gap-filling by civil society and others.

Given forthcoming rollout of reforms of EU asylum policy and the political damage caused by ongoing flagrant lack of compliance, the need for accurate, detailed information on implementation of asylum policy must be addressed; the political focus on the Common European Asylum System (CEAS) and the assessment of the Migration Statistics Regulation provide an opportunity. Here ECRE provides its assessment and recommendations.

II. ANALYSIS

THE MIGRATION STATISTICS REGULATION: LACK OF AMBITION AND “TEETH”

Regulation (EC) No 862/2007 (hereafter the “Migration Statistics Regulation” or “the Regulation”), the instrument setting out Member States' obligations to provide statistics on asylum and migration, was adopted ten years ago in a very different EU policy context. A modest, first-phase minimum harmonisation of asylum standards had been concluded only two years before, while there was less procedural complexity across European asylum systems, and less political and financial investment in Europe's response to the plight of refugees. Unsurprisingly, Article 4 of the Regulation only outlines basic obligations on Member States to submit information to the European Commission's statistical office (“Eurostat”). These cover asylum applications lodged, pending or withdrawn, decisions on applications, and the operation of the Dublin system allocating responsibility for asylum claims across the EU.

The narrow scope of the Regulation means crucial elements of the CEAS are not covered, including legal assistance, processing times, reception, detention and asylum seekers belonging to vulnerable groups. Even some of the elements expressly set out in the Regulation are omitted in statistical data collection in practice due to a restrictive interpretation of states' obligations in the explanatory Eurostat Technical Guidelines. For example, although Articles 4(2)(a) and 4(3)(b) imply that reporting on asylum decisions should encompass “decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures”, Eurostat only requires Member States to disaggregate figures by the type of status granted (“Geneva Convention status”, “Subsidiary protection”, “Humanitarian protection” and “Temporary protection) or “Rejected”. Its Technical Guidelines clarify that decisions dismissing an application based on the “safe third country” concept should be reported as rejection decisions. This approach conflates substantive decisions rejecting an international protection application with decisions dismissing a claim as inadmissible, for example due to the existence of a “safe third country”. It distorts asylum authorities' decision-making record and recognition rates: this was starkly illustrated in 2016, where Eurostat reported a success rate of 55.3% for applications by Syrian nationals in Greece counting “safe third country” decisions together with substantive decisions, sharply contrasting the Greek Asylum Service 99.1% rate based on substantive decisions only. Eurostat figures thus conflated different types of negative decisions of the Asylum Service, ignoring the fact that a large number were cases where the persons were entitled to international protection but their claims were rejected on grounds of inadmissibility. To ensure accuracy, more detailed information provision is required on the different procedures used by Member States and their exact outcome for the individual applicant.

In addition, there are gaps in the implementation of the Migration Statistics Regulation, mostly illustrated in the area of Dublin statistics. Eurostat data thereon have been incomplete every year since 2010, and systematically released late. The European Commission's monitoring and enforcement powers have not been used to address persistent non-compliance. The 2015 Migration Statistics Regulation implementation report noted “a considerable improvement of the punctuality of data provisions” compared to its 2012 predecessor and attributed remaining gaps to “isolated, non-recurring cases”. The Commission sent only one asylum-related non-compliance letter to a Member State in 2014, even though Dublin figures for that year are still missing from at least eight countries (Czech Republic, Spain, Cyprus, Lithuania, Austria, Portugal, Finland and Norway) to this day. The need for timely and effective provision of asylum statistics is, however, undisputed in

the current context following the European Agenda on Migration and the political priority afforded to asylum policy. The impact of persisting data gaps at a time when the CEAS reform is debated in an aura of “high politics” should be addressed in the Commission’s next implementation report due by August 2018.

THE WEB OF ACTORS IN ASYLUM DATA COLLECTION: CONSISTENCY AND OVERLAP

Asylum data collection has increasingly attracted different EU agencies and fora beyond Eurostat, often with overlapping mandates in evidence. The actors involved include the following:

- § The European Asylum Support Office (EASO) collects monthly statistics from Member States on the areas covered by the Migration Statistics Regulation as well as reception of asylum seekers under its Early warning and Preparedness System (EPS). Negotiations between the European Parliament and the Council on its transformation into an EU Asylum Agency have included additional topics such as vulnerable groups and staff capacity in its monitoring mandate, thereby likely resulting in more extensive statistical data collection in the future. EASO is also developing an Information and Documentation System (IDS) to serve as a database of quantitative and qualitative information on national asylum systems. Among other publications, EASO releases monthly Latest Asylum Trends with figures on asylum applications, decisions and pending cases, and an Annual Report on the Situation of Asylum in the European Union with an overview of statistics on and developments in the CEAS.
- § The European Migration Network (EMN) publishes an Annual Report on Migration and Asylum also covering relevant developments and basic statistics on asylum applications and decisions, provided by Member State representatives acting as EMN Contact Points.
- § The Fundamental Rights Agency (FRA) publishes “Regular overviews of migration-related fundamental rights concerns” since 2015. These reports are currently issued on a monthly basis for 14 Member States and draw upon information and statistics provided by national authorities, the UN High Commissioner for Refugees (UNHCR) and civil society organisations.

The different EU providers of statistical information often collect data on the same topics without seemingly interacting, as illustrated for instance by the lack of reference to FRA materials in the latest EASO and EMN annual reports. In an effort to deal with the lack of access to data, the European Commission’s Joint Research Centre launched last year a Knowledge Centre on Migration and Demography (KCMD) to compile existing data sets in a single portal. It remains unclear, however, whether this move in fact simplifies or proliferates information sources, as it does not squarely address the problem of competing data collection. It appears, on the other hand, that multiple EU data collection processes have an impact on Member States’ administrative capacity to compile and provide statistics to different actors who may or may not use similar criteria. In a recent EMN query, Member States highlighted overlaps between their reporting obligations to Eurostat and EASO, which set different criteria for the same pieces of information.

Parallel to the work of EU institutions and agencies, as well as data collection by international organisations such as UNHCR, most Member States’ asylum authorities publish national statistical reports, albeit subject to widely varying degrees of detail and regularity. These may range from extensive monthly figures on asylum applications, decisions, beneficiaries of protection, procedures and transfers under the Dublin system in Switzerland, to succinct and often outdated annual reports in Spain or Portugal. Other bodies such as Ombudspersons, parliaments and civil society organisations also aim to fill gaps in the collection and provision of data on the functioning of asylum systems across the continent. In many cases, tools such as the Asylum Information Database (AIDA) have collected and published information from national authorities on areas such as the Dublin system, detention of asylum seekers, reception, age assessment and the treatment of vulnerable groups, more rapidly than the designated actors at EU level.

Civil society currently plays a necessary role in the provision and publication of asylum information, in absence of an adequate and efficient EU approach to data collection. Yet any effort to fill gaps in official data provision is dependent on the capacity and goodwill of administrations to respond to (more) ad hoc information requests beyond the information submitted as part of their EU legal obligations, and therefore a precarious solution. Non-governmental organisations, like other actors, encounter obstacles due to variance in data collection on specific tenets of the CEAS by asylum administrations: some countries omit statistics on vulnerable groups, others on detention, others on accelerated procedures and so forth.

GOOD STATISTICAL PRACTICE AND OPPORTUNITIES FOR REFORM

The limitations of the EU legal framework on statistics and fragmentation of its data collection processes may be mitigated to some extent by proactive action on the part of Member States. Good statistical practice is found in countries such as Sweden, where the Migration Agency punctually releases information that is wider in scope than the obligations under the Migration Statistics Regulation by publishing data on average application processing times for different nationalities or on the number of persons accommodated in its reception system, or Greece, where the Asylum Service publishes its replies to information requests from state bodies and non-governmental organisations.

The EU approach to data collection and provision requires reform to meet “the evolving needs of the users while taking into account the capacity of the data providers”, as put by the 2015 Migration Statistics Regulation implementation report. The plans for ever-deeper harmonisation and elaboration of asylum legislation across the Union, not least through the proposed codification of admissibility procedures, accelerated procedures and safe country concepts as mandatory features of asylum systems, closer attention to the special needs of vulnerable persons, and an EU legal framework for refugee resettlement, necessitate better data. Already in its abovementioned 2015 report, the Commission explored the possibility of future amendments to add new categories of data and specific disaggregation rules, and indicated in its Communication on the Protection of Children in Migration the intent to launch consultations by the end of 2017 on possible improvements to the Regulation vis-à-vis child-specific data.

These pronouncements need to be followed by a plan for in-depth reform of the asylum data provisions of the Migration Statistics Regulation. Beyond addressing numerous gaps in information provision, an adequate and well-monitored statistical framework could ensure coherence in the work of different EU actors by reducing overlaps and enabling them to delineate respective scopes and research priorities.

III. RECOMMENDATIONS

Against the backdrop of increasing need for accurate, detailed data on the CEAS and reflections on possible revision of the EU framework on asylum statistics, ECRE makes the following recommendations:

- » The European Commission should thoroughly assess gaps, delays and other obstacles to the provision of asylum statistics in the context of the Migration Statistics Regulation implementation report due by August 2018. Close consultation should be held with all actors involved in asylum data collection, including civil society organisations.
- » In keeping with its commitments and against the backdrop of evolving needs in the area of asylum statistics, the European Commission should propose a reform of the Migration Statistics Regulation and launch a consultation to that effect, with a view to expanding and further elaborating Member States’ obligations on the provision of statistics.
- » Pending expanded obligations under a reformed Migration Statistics Regulation, Member States should proactively and regularly publish detailed statistical information on the operation of their asylum systems, covering at least the following: asylum applicants and decisions on asylum applications on merits and inadmissibility; including a breakdown per nationality; asylum applications by vulnerable groups; procedures initiated and transfers carried out under the Dublin Regulation; the capacity and occupancy of their reception systems; and asylum seekers placed in detention. Statistical reports should be issued on a monthly basis, building on positive experience from several administrations.
- » Relevant EU entities collecting data beyond the limited scope of the Migration Statistics Regulation, such as EASO and FRA, should delineate respective areas of information collection to avoid duplication of efforts and excessive workload on national administrations. There should be a clear understanding of who leads the collection of statistics on the different aspects of the CEAS, bearing in mind the agencies’ respective areas of expertise.
- » Civil society organisations should maintain engagement in sound analysis and interpretation of official data, which are central to civil society’s role in supporting evidence-based policy-making. Insofar as needs are identified, they should continue to invest in filling gaps in asylum statistics to encourage more active and comprehensive collection from official actors.