



**ECRE Comments on the Commission Proposal  
amending the Migration Statistics Regulation  
COM(2018) 307**

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## Summary of views

ECRE makes the following observations and recommendations to the co-legislators on the Commission proposal amending the Migration Statistics Regulation No 862/2007:

1. **Disaggregation of withdrawn applications:** The existing obligation on Member States to report data on withdrawn asylum applications should specify the type of withdrawal, namely explicit or implicit withdrawal.
2. **Disaggregation of rejection decisions:** The existing obligation on Member States to report data on first instance and final decisions rejecting asylum applications should be clarified to encompass a disaggregation of figures by: rejection on the merits, rejection on inadmissibility by ground; and rejection as manifestly unfounded by ground.
3. **Disaggregation of withdrawal decisions:** The existing obligation on Member States to report data on decisions withdrawing international protection should be fleshed out to distinguish between cessation decisions and revocation decisions, which have different basis in the EU *acquis*.
4. **Collection of additional data:** Duties to collect and supply additional data should be incorporated in the Regulation with a view to enabling the EU to adequately respond to evolving needs in the area of asylum and migration. These should at least cover the use of (1) **accelerated and border procedures**, (2) **age assessment** of unaccompanied children, (3) **detention** of asylum seekers and detention for the purpose of removal, and (4) **family reunification** with beneficiaries of international protection.
5. **Frequency of Dublin and return statistics:** Dublin and return statistics should be collected and supplied to Eurostat on a monthly basis to ensure consistency with the proposal's objective of "sub-annual frequency data on asylum and managed migration".

## Introduction

The proposal for a Regulation amending the Regulation (EC) No 862/2007 (“the Migration Statistics Regulation”)<sup>1</sup> was published on 16 May 2018,<sup>2</sup> as part of a package of immigration-related legislative initiatives put forward by the European Commission for the implementation of the European Agenda on Migration. The proposal comes amid delicate negotiations between the Council and the European Parliament on the seven legislative proposals reforming the Common European Asylum System (CEAS), tabled by the Commission two years ago.

The proposal deals mainly with data on international protection,<sup>3</sup> return,<sup>4</sup> and residence permits,<sup>5</sup> aiming to respond to a “real need” to improve statistics in order to provide an adequate evidence base to debate policies on asylum and migration management.<sup>6</sup> ECRE welcomes the launch of a reform of the Migration Statistics Regulation, as it offers a valuable opportunity to address significant gaps in the existing legal framework with regard to statistical data collection on the CEAS. As stated elsewhere by ECRE:

“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.”<sup>7</sup>

However, as per its Explanatory Memorandum, the proposal brings “very precise improvements” to the Migration Statistics Regulation, thereby pointing to a minimalist approach to reform.<sup>8</sup> It also specifies that the additional statistics proposed are “already generally available in the national authorities’ administrative sources” and would thus entail no substantial administrative burden for Member States.<sup>9</sup> However, existing data collection processes involving national authorities in the context of European Asylum Support Office (EASO) activities or civil society under the Asylum Information Database (AIDA), have been able to provide figures supplied by authorities on a range of crucial elements of the CEAS beyond those contained in the Regulation.

Accordingly, to ensure a meaningful reform in line with the Commission’s objective towards better and evidence-based policy-making, the proposal’s restrictive reading of Member States’ statistical obligations is not helpful. ECRE highlights that the choice of legislative reform approach, consisting of an amendment of the original Regulation rather than the recast technique seen in other proposals relating to the CEAS,<sup>10</sup> allows co-legislators to introduce modifications in areas beyond those envisioned by the proposal.

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<sup>1</sup> Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection, OJ 2007 L199/23.

<sup>2</sup> European Commission, *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistics on migration and international protection*, COM(2018) 307, 16 May 2018.

<sup>3</sup> Article 4 Migration Statistics Regulation.

<sup>4</sup> Article 7 Migration Statistics Regulation.

<sup>5</sup> Article 6 Migration Statistics Regulation.

<sup>6</sup> Explanatory Memorandum, 2.

<sup>7</sup> ECRE, *Making asylum numbers count: ECRE’s analysis of gaps and needs for reform in data collection on the Common European Asylum System*, Policy Note 10, January 2018, available at: <https://bit.ly/2CYMB6R>, 4.

<sup>8</sup> Explanatory Memorandum, 2.

<sup>9</sup> Explanatory Memorandum, 6.

<sup>10</sup> See e.g. European Commission, *Proposal for a [Dublin IV Regulation]*, COM(2016) 270, 4 May 2016; *Proposal for a [recast Reception Conditions Directive]*, COM(2016) 465, 13 July 2016.

In that light, ECRE's Comments address suggestions for improvement in the proposal as regards the scope of asylum statistics to be collected by Member States under the Migration Statistics Regulation, as well as the regularity of collection of certain statistical data. The focus of the Comments is on the provisions relating to international protection as well as those on return. A full list of proposed amendments can be found in Annex for ease of reference.

## Analysis of key provisions

### 1. Disaggregation of data

The proposal brings about a number of improvements relating to disaggregation of data provided by Member States as part of their existing obligations. The primary focus of additional disaggregation categories is placed on unaccompanied children.<sup>11</sup> The Commission proposes a disaggregation by unaccompanied children for the following data already collected:

- (i) data on applicants, persons with a pending asylum procedure, withdrawn applications and first-time applicants under **Article 1(1)(b)**;
- (ii) data on first instance decisions granting, rejecting or withdrawing international protection under **Article 1(1)(c)**; and
- (iii) data on final decisions granting, rejecting or withdrawing international protection, and authorisation decisions in the context of resettlement, to include unaccompanied children under **Article 1(1)(e)**.

Furthermore, **Article 1(1)(e)** proposes disaggregation of data on authorisation decisions in the context of resettlement by country of residence and type of asylum decision, while **Article 1(3)(a)** proposes that data on persons in fact returned also be disaggregated by the type of return and assistance received, and by destination country.

#### *Withdrawn asylum applications*

Article 4(1)(c) of the Migration Statistics Regulation requires Member States to provide statistics on withdrawn applications. However, these figures do not distinguish between the different types of withdrawal of asylum claims foreseen in the EU *acquis*, namely explicit or implicit withdrawal.<sup>12</sup> Disaggregating information based on the type of withdrawal is needed given the increasing importance placed by the EU on implicit withdrawal as a tool to respond to asylum seekers' secondary movements as part of the CEAS reform. The latest Council discussions on the reform of the Dublin Regulation and the forthcoming Asylum Procedures Regulation, for instance, suggest that implicit withdrawal could be ordered under different circumstances and entail severe consequences for applicants.<sup>13</sup>

For this reason, ECRE makes the following recommendation:

**Article 1(1)(-aa): In paragraph 1, point (c) is replaced by the following:**

<sup>11</sup> See to that effect European Commission, *The protection of children in migration*, COM(2017) 211, 12 April 2017, 15.

<sup>12</sup> Articles 27 and 28 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) ("recast Asylum Procedures Directive"), OJ 2013 L180/60 refer to explicit withdrawal and implicit withdrawal or abandonment respectively.

<sup>13</sup> Council of the European Union, *Reform of the Common European Asylum System: Building blocks within different legislative files of the CEAS Reform*, 8816/18, 14 May 2018.

'(c) applications for international protection having been withdrawn during the reference period, **disaggregated by type of withdrawal.**'

### *Decisions on asylum applications*

At the same time, there is a need to clarify the existing provisions of Articles 4(2)(a) and 4(3)(b) of the Migration Statistics Regulation in order to respond to persisting data gaps with regard to the disaggregation of negative asylum decisions. The current wording of the Regulation refers to “decisions rejecting applications for international protection, such as decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures.” Due to this formulation, Member States supply figures on negative decisions without distinguishing (i) between decisions on the merits and decisions on admissibility, or (ii) between decisions taken in the regular procedure and decisions under the accelerated procedure. According to Eurostat Technical Guidelines, this means that admissibility-related decisions such as those taken based on the “safe third country” concept are reported as rejection decisions.<sup>14</sup>

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 recognition 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 highly likely entitled to international protection but their claims were rejected on grounds of inadmissibility.<sup>15</sup>

Given Member States’ increasing resort to admissibility procedures, as well as proposals to encourage their use in the future,<sup>16</sup> asylum statistics supplied to Eurostat should clearly discern decisions rejecting asylum applications on the merits from those dismissing applications as inadmissible. They should also clarify how many rejections of applications, including rejections of claims as manifestly unfounded, are ordered in the regular procedure and how many in the accelerated procedure.

It is worth highlighting that a number of asylum authorities already disaggregate figures on that basis. Statistics distinguishing rejections on the merits from rejection for reasons of inadmissibility can be found in countries such as **France, Greece, Belgium, Switzerland, Finland, Norway** and the **United Kingdom**.<sup>17</sup> Of those, **Greece** and **Finland** also provide a breakdown of inadmissibility decisions by ground of inadmissibility. Others (**Germany, Spain, Croatia, Malta, Poland** and **Romania**) have been able to provide them upon request.<sup>18</sup>

<sup>14</sup> Eurostat, *Technical Guidelines for the data collection under Art. 4.1-4.3 of Regulation 862/2007 – Statistics on asylum*, February 2016, available at: <http://bit.ly/2kdGjFp>, 29.

<sup>15</sup> ECRE, *Making asylum numbers count*, January 2018, 2.

<sup>16</sup> European Commission, *Proposal for [an Asylum Procedures Regulation]*, COM(2016) 467, 13 July 2016. See ECRE, *Comments on the Commission proposal for an Asylum Procedures Regulation*, November 2016, available at: <http://bit.ly/2ui3Rw1>, 51 et seq.

<sup>17</sup> French Office for the Protection of Refugees and Stateless Persons, *2017 Activity report*, available in French at: <http://bit.ly/2IB0b3T>; Greek Asylum Service, *Statistical data*, available at: <http://bit.ly/2w8qwPW>; Belgian Commissioner General for Refugees and Stateless Persons, *Chiffres*, available in French at: <http://bit.ly/2GEO8wS>; Swiss State Secretariat for Migration, *Statistiques en matière d’asile*, available in French at: <http://bit.ly/2j05MnE>; Finnish Immigration Service, *Statistics*, available at: <http://bit.ly/2s2LQSZ>; Norwegian Immigration Directorate, *Statistics on immigration*, available at: <http://bit.ly/2pASZHZ>; UK Home Office, *Immigration statistics quarterly release*, available at: <http://bit.ly/1PbFIEW>.

<sup>18</sup> AIDA, *Country Reports, 2017 Update*, available at: <http://www.asylumineurope.org/reports>.

As regards the disaggregation of negative decisions by manifestly unfounded applications, **Belgium, Finland** and the **United Kingdom** are examples of countries providing such statistics, while **Bulgaria, Spain, Croatia, Hungary, Poland, Romania, Slovenia** and **Switzerland** have supply them upon request,

Based on the above observations, ECRE makes the following recommendations:

**Article 1(1)(ba): In paragraph 2, point (a) is replaced by the following:**

‘(a) persons covered by first instance decisions rejecting applications for international protection **taken by administrative or judicial bodies during the reference period, [deleted text] disaggregated as follows:**

**(i) decisions considering applications as inadmissible [deleted text], further disaggregated by ground of inadmissibility;**

**(ii) decisions rejecting applications as unfounded [deleted text];**

**(iii) decisions rejecting applications as manifestly unfounded in the regular procedure;**

**(iv) decisions rejecting applications as manifestly unfounded in the accelerated procedure, further disaggregated by ground for acceleration.’**

**Article 1(1)(da): In paragraph 3, point (b) is replaced by the following:**

‘(b) persons covered by final decisions rejecting applications for international protection **taken by administrative or judicial bodies in appeal or review during the reference period, [deleted text] disaggregated as follows:**

**(i) decisions considering applications as inadmissible [deleted text], further disaggregated by ground for inadmissibility;**

**(ii) decisions rejecting applications as unfounded [deleted text];**

**(iii) decisions rejecting applications as manifestly unfounded in the regular procedure;**

**(iv) decisions rejecting applications as manifestly unfounded in the accelerated procedure, further disaggregated by ground for acceleration.’**

### *Decisions withdrawing international protection*

Articles 4(2)(b)-(c) and 4(3)(c)-(d) of the Migration Statistics Regulation refer to decisions “granting or withdrawing” refugee status and subsidiary protection respectively. Under current practice, Member States only provide statistics on the number of statuses withdrawn without distinguishing between cessation<sup>19</sup> and revocation of status.<sup>20</sup> This means that it is not possible to discern from Eurostat data whether an international protection status is withdrawn on the basis that protection needs no longer exist or for reasons related to the conduct of the individual e.g. security risk or fraudulent information.

Given the increasing attention placed on the review of international protection status in the proposal for a Qualification Regulation,<sup>21</sup> it is necessary for asylum statistics to be disaggregated by the different legal bases for withdrawing protection. Such a modification should not add particular administrative burden on authorities, as several countries (**France, Belgium, Spain, Poland, Slovenia, Romania, Malta, Bulgaria, Croatia, Switzerland**) already collect disaggregated figures on cessation and revocation.<sup>22</sup>

ECRE makes the following recommendation:

<sup>19</sup> Articles 11 and 16 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (“recast Qualification Directive”), OJ 2011 L337/9.

<sup>20</sup> Articles 12 and 17 recast Qualification Directive.

<sup>21</sup> European Commission, *Proposal for [a Qualification Regulation]*, COM(2016) 466, 13 July 2016.

<sup>22</sup> AIDA, Country Reports, 2017 Update, available at: <http://www.asylumineurope.org/reports>.

**Article 1(1)(bb):** *In paragraph 2, the terms ‘or withdrawing’ in points (b) and (c) are replaced by ‘ceasing or withdrawing’.*

**Article 1(1)(db):** *In paragraph 3, the terms ‘or withdrawing’ in points (c) and (d) are replaced by ‘ceasing or withdrawing’.*

### *Duration of asylum procedures*

Finally, the reform should also contribute to shedding light on the duration of asylum procedures by disaggregating figures of pending asylum applications by the length of time for which they have been under consideration. Such an amendment would enable an adequate monitoring of states’ compliance with their general duty to decide on asylum applications within six months.<sup>23</sup> While there are examples of more detailed data collection on this topic, not least in **Sweden** where the average duration of the procedure is disaggregated by nationality, a breakdown of pending applications by duration up to six months, more than six months, more than one year and more than two years should be feasible and reasonable.

ECRE therefore makes the following recommendation:

**Article 1(1)(-a):** *In paragraph 1, point (b) is replaced by the following:*

‘(b) persons who are the subject of applications for international protection under consideration by the responsible national authority at the end of the reference period, **disaggregated as follows:**

**(i) applications pending for less than six months;**

**(ii) applications pending for six months or more;**

**(iii) applications pending for twelve months or more**

**(iv) applications pending for twenty four months or more;’**

### *Long-term residence of beneficiaries of international protection*

The inclusion of beneficiaries of international protection in the scope of the Long-Term Residents Directive in 2011 constituted a promising improvement in refugee status and subsidiary protection holders’ mobility rights across the EU.<sup>24</sup> Yet, it remains impossible to consistently monitor due to the absence of statistics on the number of beneficiaries obtaining long-term resident status after five years of uninterrupted residence in Member States. This data gap is all the more critical given the Commission’s intention to narrow the possibility to access long-term resident status through an amendment of the Long-Term Residents Directive in the proposal for a Qualification Regulation.

The proposal takes meaningful steps towards contributing to a better understanding of the added value of long-term resident status in the mobility of beneficiaries of international protection and the prevention of irregular secondary movements. **Article 1(2)(a)** amends Article 6(1)(b) of the Migration Statistics Regulation to specify that statistics on long-term residents at the end of the reporting period should be disaggregated *inter alia* by “type of long-term status”.

ECRE nevertheless believes that the aforementioned provision should be clarified to refer to long-term residents who are beneficiaries of international protection.

<sup>23</sup> Article 31(3) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (“recast Asylum Procedures Directive”), OJ 2013 L180/60.

<sup>24</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (“Long-Term Residents Directive”), OJ 2003 L16/44, as amended by Directive 2011/51/EU of 11 May 2011, OJ 2011 L132/1.



## 2. Additional data

Contrary to its approach to disaggregation related to unaccompanied children, the proposal remains regrettably narrow in terms of new categories of data to be collected by Member States. Beyond the obligation to provide data on first-time applicants under **Article 1(1)(a)**, which codifies existing Eurostat practice, it only adds re-examination requests in the context of the Dublin Regulation, criteria on which they are based, and decisions thereon under **Article 1(1)(f)-(h)**.

The Commission's minimalist approach fits uneasily with the objective to respond to new needs for statistics, which **Recital 4** acknowledges as "fundamental for the study, definition and evaluation of a wide range of policies, particularly as regards responses to the arrival of persons seeking protection in Europe."

ECRE, among other actors, has in fact identified several areas of the CEAS which should urgently come within the scope of Member States' legal obligations under the Migration Statistics Regulation to allow for a better, more in-depth evaluation of the implementation of asylum policies on the ground.<sup>25</sup>

The obligation to collect and provide statistics on the following priority areas should be incorporated by co-legislators in the reform of the Regulation:

**Special procedures:** While accelerated and border procedures are a crucial element of the EU asylum *acquis*,<sup>26</sup> their exact use in practice remains obscure. While the Migration Statistics Regulation already makes reference to accelerated procedures, the interpretation of the current provisions in practice has led to a data gap, as outlined above. The reform should therefore clearly spell out duties on national authorities to provide statistics on the number of asylum seekers channelled in accelerated and border procedures, to allow for an evidence-based assessment of the usefulness of these procedures in the CEAS. Such a change would not require substantial administrative resources, as Member States already provide such statistics to EASO as part of its Early Warning and Preparedness (EPS) system.<sup>27</sup> A number of countries (**France, United Kingdom, Sweden, Belgium, Finland**) publish this information in their national reports, while **Spain, Bulgaria, Poland, Hungary, Romania, Slovenia, Croatia** and **Switzerland** also provide this information to civil society organisations upon request.<sup>28</sup>

**Age assessment:** While it takes commendable steps towards a better understanding of the situation of unaccompanied children seeking asylum, the proposal leaves out the crucial process of determination of who falls within the category of unaccompanied children in asylum procedures. Age assessment is also governed by the EU asylum *acquis*,<sup>29</sup> and involves complex and often problematic practices studied regularly by EASO, the Fundamental Rights Agency (FRA), the Council of Europe and NGOs.<sup>30</sup> The collection of data on age assessment procedures and their countries should not require heavy administrative resources, as several countries such as **Sweden, Austria, the United**

<sup>25</sup> ECRE, *Making asylum numbers count*, January 2018, 4.

<sup>26</sup> Articles 31(8) and 43 recast Asylum Procedures Directive.

<sup>27</sup> EASO, *Annual Report on the situation of asylum in the EU 2016*, July 2017, available at: <http://bit.ly/2tPq48p>, 98-99.

<sup>28</sup> AIDA, Country Reports, available at: <http://www.asylumineurope.org>.

<sup>29</sup> Article 25(5) recast Asylum Procedures Directive.

<sup>30</sup> See e.g. EASO, *Practical guide on age assessment*, March 2018, available at: <http://bit.ly/2D6GTfp>; FRA, *Age assessment and fingerprinting of children in asylum procedures*, April 2018, available at: <http://bit.ly/2s2rOIX>; Council of Europe, *Age assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration*, September 2017, available at: <http://bit.ly/2LlyolZ>; ECRE, *The concept of vulnerability in European asylum procedures*, September 2017, available at: <http://bit.ly/2EzAv2D>.

**Kingdom, Hungary, Malta, Romania, Croatia, Slovenia, Cyprus and Greece**, have been able to supply statistics upon request.<sup>31</sup>

**Detention:** The lack of accurate statistical data on the detention of asylum seekers remains a crucial gap in the CEAS and return policy, not least due to the absence of any legal obligation on states to collect and release figures on the number of asylum seekers or migrants facing removal detained at any given time. The need for statistics on detention is pressing, given the extremely harmful effects of deprivation of liberty on the one hand, and the unequivocal duty of states to ensure that it is pursued as a measure of last resort under the EU *acquis*.<sup>32</sup> Monitoring of the use of detention vis-à-vis children should also form an explicit aim of the reform of the Regulation, to consistently put into practice the commitments set out in the Commission's 2017 Communication on the protection of children in migration. Yet, to date, only a few countries (e.g. **United Kingdom, Hungary**) publish detention figures on a regular basis,<sup>33</sup> while countries such as **Austria** and **Sweden** provide limited data in their annual reports.<sup>34</sup> It should be noted, however, that authorities in several Member States (**Greece, Bulgaria, Romania, Slovenia, Poland, Cyprus**) provide civil society organisations with these figures upon request.<sup>35</sup>

**Family reunification:** Family reunification has a leading role in Member States' asylum policies, as illustrated by recent reforms in numerous countries (**Germany, Sweden, Ireland, Finland, Denmark, Austria**) aimed at restricting the exercise of this right for beneficiaries of international protection in response to large-scale arrivals.<sup>36</sup> However, the current framework provides no information on the number of applications for family reunification with a beneficiary of international protection or on the outcome of those applications, even though some Member States publish such data (**Sweden, Netherlands, Spain**)<sup>37</sup> or are able to provide it upon request (**Switzerland, Greece, Bulgaria, Romania, Slovenia**).<sup>38</sup>

Accordingly, ECRE makes the following recommendations:

**Article 1(1)(a):** in paragraph 1, the following points (d), (e), (f), (g), (i), (j), (k) and (l) are [deleted text] added:

'(d) persons having submitted an application for international protection or having been included in such an application as a family member during the reference period and applying for international protection for the first time;

<sup>31</sup> ECRE, *Rights of refugee children: Overview of developments in 2017*, May 2018, available at: <http://bit.ly/2GFdj24>.

<sup>32</sup> Article 8 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) ("recast Reception Conditions Directive"), OJ 2013 L180/96; Article 15 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 the return of illegally staying third-country nationals, OJ 2008 L348/98.

<sup>33</sup> UK Home Office, *Immigration statistics quarterly release*, available at: <http://bit.ly/1PbFIEW>; Hungarian Immigration and Asylum Office, *Statistics*, available at: <http://bit.ly/1RTbymd>.

<sup>34</sup> See e.g. Austrian Federal Agency for Immigration and Asylum, 'BFA: Trendumkehr, Halbierung offener Verfahren und Plus bei Rückkehr', 11 January 2018, available in German at: <http://bit.ly/2FnCV4G>; Swedish Migration Agency, *Annual Report 2017*.

<sup>35</sup> See e.g. AIDA, *Boundaries of Liberty: Asylum and de facto detention in Europe*, March 2018, available at: <http://bit.ly/2Epi5Qh>, Annex I.

<sup>36</sup> AIDA, *Refugee rights subsiding? Europe's two-tier protection regime and its effect on the rights of beneficiaries*, March 2017, available at: <http://bit.ly/2ofhDAm>, 16.

<sup>37</sup> Swedish Migration Agency, *Annual Report 2017*; Dutch Immigration and Naturalisation Service (IND), *Asieltrends*, available in Dutch at: <http://bit.ly/2jPWOVX>; Spanish Office of Asylum and Refuge (OAR), *Asilo en cifras*, available in Spanish at: <http://bit.ly/1H99vm1>.

<sup>38</sup> AIDA, *Country Reports, 2017 Update*, available at: <http://www.asylumineurope.org/reports>.

*(e) persons having submitted an application for international protection or having been included in such an application as a family member and having their application processed under the accelerated procedure during the reference period;*

*(f) persons having submitted an application for international protection or having been included in such an application as a family member and having their application processed under the border procedure during the reference period;*

*(g) persons having submitted an application for international protection or having been included in such an application as a family member and who are subject to an administrative or judicial decision or act ordering their detention pursuant to Article 8 of [recast Reception Conditions Directive] during the reference period;*

*(h) persons having submitted an application for international protection or having been included in such an application as a family member during the reference period and who are in detention pursuant to Article 8 of [recast Reception Conditions Directive] at the end of the reference period;*

*(i) persons having submitted an application for international protection and who have undergone an age assessment during the reference period;*

*(j) persons having submitted an application for international protection and covered by an age assessment concluding that the applicant is a minor during the reference period;*

*(k) persons having submitted an application for international protection and covered by an age assessment concluding that the applicant is an adult during the reference period;*

*(l) persons having submitted an application for family reunification with a beneficiary of international protection during the reference period.'*

**Article 1(1)(bc):** *In paragraph 2, the following points (f) and (g) added:*

*'(f) persons covered by first instance decisions rejecting applications for family reunification with a beneficiary of international protection;*

*(g) persons covered by first instance decisions approving family reunification with a beneficiary of international protection.'*

**Article 1(3)(-a):** *In paragraph 1, the following points (aa) and (ab) added:*

*'(aa) the number of third-country nationals who are subject to an administrative or judicial decision or act ordering their detention pursuant to Article 15 of Directive 2008/115/EC during the reference period;*

*(ab) the number of third-country nationals who are subject to an administrative or judicial decision or act ordering their detention pursuant to Article 15 of Directive 2008/115/EC at the end of the reference period;'*

### 3. Frequency of data

**Article 1(3)(b)** of the proposal introduces an obligation to provide data on returns and obligations to leave the territory on a quarterly basis, contrary to the duty to provide annual statistics under the provision currently in force.<sup>39</sup> The proposal justifies this amendment on the basis that the “annual data on returns of third-country nationals collected by Eurostat are not sufficiently frequent for close monitoring of developments in the area of return policy.”<sup>40</sup> More generally, **Recital 3** states: “To support the Union in responding effectively to the challenges posed by migration, there is a need for sub-annual frequency data on asylum and managed migration.”

However, to ensure effective monitoring of Member States’ often rapidly evolving practice in the area of return, the provision of statistics should be carried out on a monthly basis.

At the same time, bearing in mind the objective set out in **Recital 3**, the silence of the proposal on the periodicity of Dublin statistics raises serious concerns. The Dublin system is one of the primordial components of the CEAS, consistently described as its “cornerstone”,<sup>41</sup> yet also one of its most complex and rapidly changing areas. To date, meaningful contribution to the debate on responsibility for asylum applications in Europe through timely statistics has remained impossible due both to the limited reach of Member States’ data collection obligations and to poor implementation.<sup>42</sup> The reform of the Migration Statistics Regulation should therefore be taken as an opportunity to ensure more systematic provision of Dublin statistics at European level.

The importance of frequent Dublin statistics is equally evident by analogy to the Commission’s reasoning on return statistics. If annual figures on returns of persons to countries outside the Union are deemed insufficient for a proper understanding of policy challenges, figures on transfers of asylum seekers within the Union should be subject to no less rigorous monitoring. Opting for more periodic collection and provision of Dublin statistics would also ensure the reform remains faithful to its objective of “sub-annual frequency data on asylum and managed migration” as per **Recital 3**.

Bearing in mind the proposal’s concern not to “significantly increase the burden on the various national authorities”,<sup>43</sup> ECRE notes that several countries already publish Dublin statistics proactively in their national statistical reports. Data are made available on a quarterly basis in **Germany**, the **United Kingdom** and **Croatia**,<sup>44</sup> on a monthly basis in **Switzerland** and **Greece**,<sup>45</sup> and even on a weekly basis in **Poland**.<sup>46</sup> These examples illustrate that more frequent provision of Dublin statistics is feasible from an administrative point of view.

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<sup>39</sup> Article 7(2) Migration Statistics Regulation.

<sup>40</sup> Explanatory Memorandum, 5.

<sup>41</sup> See e.g. European Commission, *Proposal for [a Dublin IV Regulation]*, COM(2016) 270, 4 May 2016, Explanatory Memorandum, 4.

<sup>42</sup> ECRE, *The Dublin system in the first half of 2017: Key figures from selected European countries*, August 2017, available at: <http://bit.ly/2wyxCg6>; *The Dublin system in 2017: Overview of developments from selected European countries*, March 2018, available at: <http://bit.ly/2uWOM9Q>.

<sup>43</sup> Explanatory Memorandum, 6.

<sup>44</sup> UK Home Office, *Immigration statistics quarterly release*, available at: <http://bit.ly/1PbFIEW>; Croatian Ministry of Interior, *Statistika - Tražitelji međunarodne zaštite*, available in Croatian at: <http://bit.ly/2vLFicp>. In Germany’s case, statistics are made available following parliamentary questions on a quarterly basis: German Federal Government, Reply to parliamentary question by Die Linke / The Left, 18/11262, 21 February 2017, available in German at: <http://bit.ly/2pnQQOG>; Reply to parliamentary question by Die Linke / The Left, 18/11985, 1 June 2017, available in German at: <http://bit.ly/2rOv6ht>.

<sup>45</sup> Swiss State Secretariat for Migration, *Statistiques en matière d’asile*, available in French at: <http://bit.ly/2j05MnE>; Greek Asylum Service, *Statistical data*, available at: <http://bit.ly/2w8qwPW>.

<sup>46</sup> Polish Office for Foreigners, *Meldunek tygodniowy*, available in Polish at: <http://bit.ly/2l6FUCB>.

Finally, to ensure consistency with the disaggregation of data in other provisions of the Regulation, as discussed above, return statistics should also be disaggregated by age, gender and unaccompanied children.

ECRE proposes the following amendments:

**Article 1(1)(i):** In paragraph 4, the last subparagraph is replaced by the following:

'These statistics shall relate to reference periods of ***[deleted text] one calendar month*** and shall be supplied to the Commission (Eurostat) within ***[deleted text] two*** months of the end of the reference ***[deleted text] period***. The first reference ***[deleted text] month*** shall be ***January 2020***.'

**Article 1(3)(b):** Paragraph 2 is replaced by the following:

'2. The statistics referred to in paragraph 1 ***shall be disaggregated by age and sex of the person concerned, and by unaccompanied minors. They*** shall relate to reference periods of ***[deleted text] one*** calendar ***[deleted text] month*** and shall be supplied to the Commission (Eurostat) within two months of the end of the reference period. The first reference ***[deleted text] month*** shall be January ***[deleted text] 2020***.'

## Conclusion

The proposal for an amendment to the Migration Statistics Regulation offers a real opportunity for reflection and thorough analysis of statistical gaps in the EU legal framework. In line with its consistent recommendations for better data collection on the CEAS, ECRE therefore urges co-legislators to engage in an ambitious and in-depth reform of the Regulation so as to set the necessary foundations for a clear, detailed understanding and evidence-based debate of Member States' responses to the plight of people seeking international protection.

## Annex – List of proposed amendments

### Article 1

Regulation (EC) No 862/2007 is amended as follows:

(1) Article 4 is amended as follows:

**(-a) In paragraph 1, point (b) is replaced by the following:**

‘(b) persons who are the subject of applications for international protection under consideration by the responsible national authority at the end of the reference period, **disaggregated as follows:**

**(i) applications pending for less than six months;**

**(ii) applications pending for six months or more;**

**(iii) applications pending for twelve months or more**

**(iv) applications pending for twenty four months or more;’**

**(-aa) In paragraph 1, point (c) is replaced by the following:**

‘(c) applications for international protection having been withdrawn during the reference period, **disaggregated by type of withdrawal.**’

(a) in paragraph 1, the following points (d), **(e), (f), (g), (i), (j), (k) and (l) are [deleted text]** added:

‘(d) persons having submitted an application for international protection or having been included in such an application as a family member during the reference period and applying for international protection for the first time;

**(e) persons having submitted an application for international protection or having been included in such an application as a family member and having their application processed under the accelerated procedure during the reference period;**

**(f) persons having submitted an application for international protection or having been included in such an application as a family member and having their application processed under the border procedure during the reference period;**

**(g) persons having submitted an application for international protection or having been included in such an application as a family member and who are subject to an administrative or judicial decision or act ordering their detention pursuant to Article 8 of [recast Reception Conditions Directive] during the reference period;**

**(h) persons having submitted an application for international protection or having been included in such an application as a family member during the reference period and who are in detention pursuant to Article 8 of [recast Reception Conditions Directive] at the end of the reference period;**

**(i) persons having submitted an application for international protection and who have undergone an age assessment during the reference period;**

**(j) persons having submitted an application for international protection and covered by an age assessment concluding that the applicant is a minor during the reference period;**

**(k) persons having submitted an application for international protection and covered by an age assessment concluding that the applicant is an adult during the reference period;**

**(l) persons having submitted an application for family reunification with a beneficiary of international protection during the reference period.'**

**(ba) In paragraph 2, point (a) is replaced by the following:**

**'(a) persons covered by first instance decisions rejecting applications for international protection *taken by administrative or judicial bodies during the reference period*, [deleted text] disaggregated as follows:**

**(i) decisions considering applications as inadmissible [deleted text], further disaggregated by ground of inadmissibility;**

**(ii) decisions rejecting applications as unfounded [deleted text];**

**(iii) decisions rejecting applications as manifestly unfounded in the regular procedure**

**(iv) decisions rejecting applications as manifestly unfounded in the accelerated procedure, further disaggregated by ground for acceleration.'**

**(bb) In paragraph 2, the terms 'or withdrawing' in points (b) and (c) are replaced by 'ceasing or withdrawing'.**

**(bc) In paragraph 2, the following points (f) and (g) added:**

**'(f) persons covered by first instance decisions rejecting applications for family reunification with a beneficiary of international protection;**

**(g) persons covered by first instance decisions approving family reunification with a beneficiary of international protection.'**

**(da) In paragraph 3, point (b) is replaced by the following:**

**'(b) persons covered by final decisions rejecting applications for international protection *taken by administrative or judicial bodies in appeal or review during the reference period*, [deleted text] disaggregated as follows:**

**(i) decisions considering applications as inadmissible [deleted text], further disaggregated by ground for inadmissibility;**

**(ii) decisions rejecting applications as unfounded [deleted text];**

**(iii) decisions rejecting applications as manifestly unfounded in the regular procedure,**

**(iv) decisions rejecting applications as manifestly unfounded in the accelerated procedure, further disaggregated by ground for acceleration.'**

**(db) In paragraph 3, the terms 'or withdrawing' in points (c) and (d) are replaced by 'ceasing or withdrawing'.**

**(i) In paragraph 4, the last subparagraph is replaced by the following:**

**'These statistics shall relate to reference periods of [deleted text] *one calendar month* and shall be supplied to the Commission (Eurostat) within [deleted text] *two* months of the end of the reference [deleted text] *period*. The first reference [deleted text] *month* shall be *January 2020*.'**

[...]

(3) Article 7 is amended as follows:

***(-a) In paragraph 1, the following points (aa) and (ab) is added:***

***'(aa) the number of third-country nationals who are subject to an administrative or judicial decision or act ordering their detention pursuant to Article 15 of Directive 2008/115/EC;***

***(ab) the number of third-country nationals who are subject to an administrative or judicial decision or act ordering their detention pursuant to Article 15 of Directive 2008/115/EC at the end of the reference period;'***

(b) Paragraph 2 is replaced by the following:

***'2. The statistics referred to in paragraph 1 shall be disaggregated by age and sex of the person concerned, and by unaccompanied minors. They shall relate to reference periods of [deleted text] one calendar [deleted text] month and shall be supplied to the Commission (Eurostat) within two months of the end of the reference period. The first reference [deleted text] month shall be January [deleted text] 2020.'***