



Asylum statistics in Europe: Factsheet

Context

Statistics on asylum matters have become a central part of political debate in Europe in recent years. In particular, statistics on protection rates or recognition rates, the percentage of people who are recognised or declared to be entitled to international protection, are often used in arguments about reasons for migration and appropriate policy responses. A common argument is to present protection rates as “low” or to argue that a majority of those arriving in Europe are not entitled to protection, and that therefore policy responses should focus on repatriation and prevention of arrivals.

ECRE has analysed the collection and use of asylum statistics and has also contributed the gathering and dissemination of asylum statistics through its Asylum Information Database (AIDA).

Here, ECRE sounds a note of caution on common presentation of statistics

Sources of statistics: Eurostat and EASO

Eurostat’s mission is to provide high quality statistics. Eurostat’s statistics on asylum and migration provide statistical information on third-country nationals (non-EU citizens including stateless persons) applying for international protection (asylum seekers) and entering, residing and working in the European Union Member States and Schengen Associated countries. The statistics available from Eurostat are collected from the EU and from EFTA Ministries of Interior and related immigration agencies.

In its annual report on the situation of asylum in Europe, the European Asylum Support Office (EASO) derives statistical data primarily from Eurostat. The report is a reference document, which aims to provide a comprehensive overview of asylum matters, covering legislation, policy and practice, both at EU level and in national asylum systems. Both sources are thus considered as key references in the field of asylum. However, the figures as presented in the database and documents should be read with caution, as their conceptualisation can lead to misrepresentation of the actual situation. This factsheet provides a short overview of four of the limitations of asylum statistics, and the related risk of underrepresenting the number of people who have obtained and are in need of protection in Europe. It makes suggestions as to how to improve the use of statistics in each case.

Limitation One: The focus on first-instance decision-making

According to [Eurostat](#) statistics on asylum decision-making at first instance, the 32 European Union (EU) and Schengen Associated countries decided on cases in recent years as follows:

Decisions at first instance 2017-2019						
Year	Refugee status	Subsidiary protection	Humanitarian status	“Rejected”	Total decisions	Recognition rate
2017	228,705	156,590	71,735	527,950	984,980	46.3%

2018	129,690	63,105	41,435	367,210	601,440	38.9%
2019	128,710	54,460	50,765	350,875	584,805	40%

Source: Eurostat

These figures indicate that nearly 40% of asylum applications were successful at first instance in both 2018 and 2019, compared to 46% in 2017. The figures should be read with caution however. First instance rates are not a reliable indicator of protection needs or even of asylum decision-making, given that a significant number of negative decisions are successfully challenged on appeal. According to Eurostat, 96,095 appeals decided in 2017 (33.2% of the total) were positive; compared to 118,640 positive appeals in 2018 (37.6% of the total) and 102,520 positive appeals in 2019 (32.3%).

Decisions at second instance 2017-2019						
Year	Refugee status	Subsidiary protection	Humanitarian status	“Rejected”	Total decisions	Recognition rate
2017	49,890	31,250	14,955	192,725	288,815	33.2 %
2018	43,380	38,880	36,380	196,235	314,875	37.6 %
2019	42,630	30,885	29,005	214,135	316,650	32.3 %

Source: Eurostat. In the Eurostat database these figures are presented under the term ‘final decision’.¹

Thus, in many of these cases a first-instance refusal of international protection was overturned at appeal stage and substituted by a granting of status. This indicates that a majority of those arriving in Europe are actually granted international protection. Unfortunately, it is not possible to calculate an accurate cumulative figure as, in any given year, the figures for first instance and second instance decisions refer to different caseloads due to the time it takes for appeals and reviews to be completed. Nevertheless, the fact that in over 30% of the appeals, a protection status is being recognised or granted, clearly indicates that the protection rate is higher than often presented. As a side point, this also indicates that improving the quality of decision making should remain a priority. Better decision making at first instance would reduce the need to use and rely on second instance decision-making. Unfortunately, rather than focusing on improvements in decision-making, policy makers tend to propose legislative reform that erodes the right to an effective remedy.

For some countries (such as Belgium,² or Greece³) the protection rate after legal remedies (when all possibilities of appeal have been exhausted) does not significantly increase compared to the first instance protection rate. Reasons differ widely: from the quality of first instance decision-making to the (non-)effectiveness of legal remedies, and the (lack of) quality of legal assistance, especially at second instance. In other countries, the protection rate is considerably higher after appeals.⁴ For example, more

¹ Final decision is defined as: decision taken by administrative or judicial bodies in appeal or in review and which are no longer subject to remedy. The true ‘final instance’ may be, according to the national legislation and administrative procedures, a decision of the highest national court. However, it is not intended that asylum statistics should cover rare or exceptional cases determined by the highest courts. Thus, the statistics related to the final decisions should refer to what is effectively a final decision in the vast majority of all cases: i.e. that all normal routes of appeal have been exhausted.

² In 2019, only 7 % of the decisions appealed at second instance resulted in the granting of international protection.

³ In 2019, only 5 % of the decisions appealed at second instance resulted in the granting of international protection..

⁴ See: Myria, Annual report 2019, *Protection internationale au niveau européen (UE + Suisse et Norvège)*, which made the same exercise for 2018, <https://bit.ly/3dUuILh> , p.53.

than half of the final decisions of 2019 on appeal led to an international protection status (refugee status or subsidiary protection) in the United Kingdom.

ECRE's Recommendation

In any area of law, legal processes are not complete until effective remedies have been exhausted. Thus, in asylum statistics, it would be more accurate to use figures after the completion of legal processes, rather than focusing on first instance decisions. This could involve presenting the cumulative protection rate after first instance and second or final instance decisions.

Limitation Two: Running together in-merit and admissibility decisions

According to [Eurostat technical guidelines](#), “rejection” decisions in the Eurostat database includes both in-merit negative decisions and inadmissibility decisions (“Dublin” decisions are not included). Inadmissibility decisions are refusals of international protection based on grounds such as “safe third country” concepts, or subsequent applications without new elements, in which the authorities stop short of examining whether or not an individual qualifies for international protection. These grounds have been differently transposed across the continent and are used to varying degrees in national practice.

In light of this, statistics can distort asylum authorities’ decision-making record and recognition rates:

- ❖ In Belgium, the [Office of the Commissioner General for Refugees and Stateless persons](#) (CGRS) reported that in 2019, in 36.9% of its decisions (first instance), the CGRS considered that the applicant was in need of protection. The protection rate decreased further in 2019 compared to the previous years. The CGRS clarified this decrease mainly due to a rise in decisions declaring inadmissible a subsequent application or an application from an applicant with a protection status in another EU member state. Leaving aside these two categories, the CGRS reported that the protection rate still amounts to 50.5%, meaning that there are still many applicants who need protection.
- ❖ In Greece, national statistics for 2019 show a first instance recognition rate of 55.9% as it only concerns in-merit decisions, whereas Eurostat figures show for 2019, a 53 % rate because inadmissibility decisions are also included.
- ❖ The distortion in recognition rates between national statistics and Eurostat is also visible when looking at specific nationalities in a given country. In Sweden for example, the recognition rate at first instance for Syria is 97% according to national statistics, compared to 82.3% according to Eurostat. Similarly, the recognition rate at first instance for Afghanistan is 45% according to national statistics compared to 37.7% according to Eurostat.

ECRE's Recommendation

To ensure accuracy, ECRE recommends calculating recognition rates on the basis of decisions on the merits of asylum claims and [encourages](#) Member States to clearly distinguish decisions on the merits from admissibility decisions in their practice.

Limitation Three: The “asylum lottery”: poor decision-making

Low recognition rates do not automatically point to the conclusion that an individual or particular group is not in need of international protection. Decision-making across Europe continues to be an “asylum lottery”: a person’s chances of obtaining protection vary dramatically depending on the country examining their claim. Some countries’ decision-making is marred by gaps in quality which expose individuals to risks of *refoulement*. These risks are increasingly acknowledged by fellow Member States’ [judicial authorities](#) and by the [European Commission](#).

According to Eurostat, first instance recognition rates for Afghans in 2019 ranged from 93.8% in Italy to 4.1% in Bulgaria. In between lies a spectrum covering the Netherlands (24.6%), Belgium (32.2%), Sweden (37.7%), Germany (44.4%) and Greece (72.5%). For Iraqis recognition rates varied from 66.8% in France and 67.5% in Greece to 8.3% in Denmark, 17.2% in Sweden and 21.6% in Finland.

Thus, among those receiving negative decisions, there are likely to be people who do have protection needs but whose protection needs were not recognised due to flaws in decision-making (which may be exacerbated by the lack of respect for procedural guarantees which ECRE has also documented). Of course, it may also be the case that people receive positive decisions when they do not in fact need international protection due to the same or different weaknesses in decision-making. Given the political and legal context in Europe, and the factors influencing decision-making, this seems less likely.

ECRE's Recommendation

The “asylum lottery” is one of the flaws in the implementation of the Common European Asylum System. Flawed decision-making undermines the fundamental rights of those seeking protection, not least through contributing to *refoulement* but it also a factor beyond onward movement within the EU+. It is best addressed through supporting compliance with the provisions of the CEAS rather than embarking on legislative reform. The European Commission and EASO can ensure that Member States allocate adequate resources to decision-making, training legal professionals and ensuring judicial independence. While the asylum lottery persists, asylum statistics should be used with caution and disaggregated by Member State whenever possible.

Limitation Four: The debate on form of protection

With the exception of certain countries, most EU Member States primarily granted refugee status in recent years. Nevertheless, the increase in the use of other forms of protection should also be acknowledged and in particular the fact that Member States continue to grant different statuses to similar cases.

While many Member States primarily recognised refugee status to Afghans in 2019, the overall number for the 32 EU and Schengen Associated countries showed that more Afghans received subsidiary protection (9,165) and not refugee status (7,905). This seems mainly due to the fact that in those countries where there are a significant number of Afghan applicants (e.g. DE, FR, GR), authorities more often grant subsidiary protection, and not refugee status. The dominant form of protection for Syrians also continues to vary significantly across the EU. The Qualification Directive (recast) established the primacy of refugee status as subsidiary protection status may only be granted once a person does not qualify for refugee status. By introducing a subsidiary form of protection, the EU-legislator did not intend to offer the possibility of choosing between one form of international protection or the other. Complementarity of subsidiary protection status has also been emphasised in the CJEU case-law.⁵

When subsidiary protection was introduced, it was assumed that this status was of a temporary nature. As a result, the Directive allows Member States the discretion to grant them a lower level of rights in certain respects. However, practical experience acquired so far has shown that this initial assumption was not accurate. The Commission itself has acknowledged that “it is thus necessary to remove any limitations of the rights of beneficiaries of subsidiary protection which can no longer be considered as necessary and objectively justified.”⁶

⁵ EASO, Qualification for international protection (Directive 2011/95/EU): A Judicial Analysis, December 2016, p. 96, available at: <https://bit.ly/3fsklJC>.

⁶ European Commission, Proposal for a [recast Qualification Directive] – Explanatory Memorandum, COM(2009) 551, 21 October 2009, 8.

Eurostat also includes data on the humanitarian protection status. The use of the humanitarian protection status can offer a solution for those people in need of protection but not falling under the classical concepts of refugee status and subsidiary protection. The humanitarian protection in itself should, however, not be used as a substitute for refugee status or subsidiary protection, but must be regarded as additionality. The particular case of Spain could be highlighted in this regard as more than 35,000 Venezuelans were granted humanitarian protection in 2019, while only 50 people were recognised as refugees, and 0 Venezuelan applicants received subsidiary protection. The humanitarian protection status had not been used in 2018 nor in 2017. As a result, according to Eurostat, the recognition rate in Spain significantly increased from 24.3% in 2018 to 66.2% in 2019.

ECRE's recommendation

The use of the humanitarian protection status can offer a solution for those people in need of protection but not falling under the classical concepts of refugee status and subsidiary protection. The humanitarian protection in itself should, however, not be used as a substitute for refugee status or subsidiary protection, but must be regarded as additionality. The form of protection has been of paramount importance insofar as it determines the scope of the rights of beneficiaries of protection. Member States should grant similar rights to refugees and subsidiary protection holders *inter alia* regarding the duration of residence permits, the access to citizenship, family reunification and social benefits. Holders of humanitarian protection should benefit similar rights as well.