

# Asylum statistics and the need for protection in Europe: Updated Factsheet

## 1. Introduction

Statistics play a key role in discussions on asylum at both the EU and the national level; they are used to support a variety of arguments. The number of applications is mentioned frequently to illustrate the “migratory pressure” facing the EU or a specific Member States. Just as frequently, statistics on protection rates (the percentage of those who apply for international protection who then receive a protection status) are used to steer policy decisions. For example, protection rates deemed to be low are used to support the argument that many people reaching European countries are not in need of protection, and – therefore – that policy decisions and legal changes should focus on (increasing) returns and preventing arrivals. The legislative files that make up the Pact on Migration and Asylum currently under discussion use protection rates inter alia as one of the bases for determining who may access a regular asylum procedure as opposed to a border procedure.<sup>1</sup>

Statistics are indeed crucial to understanding the state of asylum in Europe, providing valuable evidence on implementation of the Common European Asylum System (CEAS). However, for statistics to be used in support of arguments and decisions they must be comprehensive and reliable, in both their content and their presentation. Such is not the case: many factors mean caution must be exercised when handling asylum numbers. Otherwise, statistics themselves can both directly misrepresent and be used to misrepresent the actual need for protection in Europe.

In this paper, ECRE updates its factsheet on asylum statistics<sup>2</sup> first produced in 2020, outlining the major misrepresentations and misuses of asylum statistics on protection rates, with reference to the latest annual figures on asylum to illustrate the points on which caution should be used.

## Sources of statistics

The leading actor on statistics at the EU level is Eurostat, a portal managed by the European Commission that collects data within the framework of Regulation (EC) 862/2007. The statistics are provided by 32 States’ Ministries of Interior, Justice, or immigration agencies. Under Eurostat, information on protection decisions is collected quarterly. However, mandatory reporting is currently limited to basic information with little breakdown of the data provided. In addition, definitions are sometimes unclear (see [Reporting issues](#) and [Calculation method of presented data](#)).

The European Union Asylum Agency (EUAA) also collects additional information on the Dublin Regulation and, under its Early Warning and Preparedness System, on reception, but mainly bases itself on Eurostat information, especially concerning protection rates. Similarly, the European Migration Network (EMN) complements Eurostat data with figures provided by its National Contact Points, mostly agencies under or teams of the Ministries of Interior, Migration, or Justice. Finally, Member States often publish data at the national level, albeit to various degrees of detail and regularity. When this is not carried out comprehensively, other actors such as Ombudspersons, Parliaments and civil society organisations seek to fill in the gaps. For example, ECRE contributes to gathering and disseminating asylum statistics through the Asylum Information Database (AIDA).<sup>3</sup>

## Main protection trends at the EU level

Protection rates represent the proportion of positive decisions out of all decisions in a given year, rather than showing the success rate of all applications that have been lodged.

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<sup>1</sup> See ECRE, Comments on the amended proposal for an Asylum Procedures Regulation COM(2020) 611, December 2020, available at: <https://bit.ly/3H9B5pU>

<sup>2</sup> Available at: <https://bit.ly/3PtNlnc>

<sup>3</sup> AIDA: <https://asylumineurope.org/>

First instance decisions 2017-2021						
Year	Refugee Status	Subsidiary protection	Humanitarian status	Rejections	Total decisions	Protection rate
2017	228,705	156,585	71,735	527,945	984,980	46.4%
2018	129,695	63,090	41,440	367,210	601,430	38.9%
2019	128,705	54,450	50,765	350,955	584,880	40%
2020	112,475	51,590	59,460	310,910	534,455	41.8%
2021	118,870	62,460	31,070	323,730	536,130	39.6%

Source: Eurostat, with information on 31 countries for 2017-2019, and 30 countries for 2020-2021 (information is no longer included for the UK). Data from Montenegro has yet to be integrated.

The figures indicate a relatively stable protection rate of around 40% at first instance since 2018 for the EU and associated countries. Upon closer scrutiny, however, divergences become clear: in 2021, protection rates spanned from 9% to 94.5% depending on the country, with only seven of 30 countries within a ten-point range of the overall rate.

Second instance decisions 2017-2021						
Year	Refugee Status	Subsidiary protection	Humanitarian status	Rejections	Total decisions	Protection rate
2017	49,930	31,300	15,045	197,510	293,775	32.8%
2018	43,355	38,915	36,480	199,070	317,825	37.4%
2019	41,410	30,715	28,855	211,740	312,750	32.3%
2020	21,845	22,455	25,630	167,000	236,935	29.5%
2021	26,755	19,390	26,720	138,050	210,905	34.5%

Source: Eurostat.

Decisions at second instance also yielded a rather stable protection rate of around 33%. This means that on average one-third of decisions at first instance were overturned, with protection, or occasionally “better” protection, granted at second instance. However, similarly to first instance, the differences among countries are staggering: rates range from 0% to 67.9%<sup>4</sup> and only three countries (FR, LV, NO, but it should be noted that LV only made 65 decisions at second instance in 2021) are within a ten-point range of the overall protection rate.

In contrast, the type of protection granted varies more significantly from year to year, rather than from country to country.

Share of the different types of protection at first instance 2017-2021			
Year	Refugee Status	Subsidiary protection	Humanitarian status
2017	50%	34.3%	15.7%
2018	55.4%	26.9%	15.7%
2019	55%	23.3%	21.7%
2020	50.3%	23.1%	26.6%
2021	56%	29.4%	14.6%

Source: Eurostat.

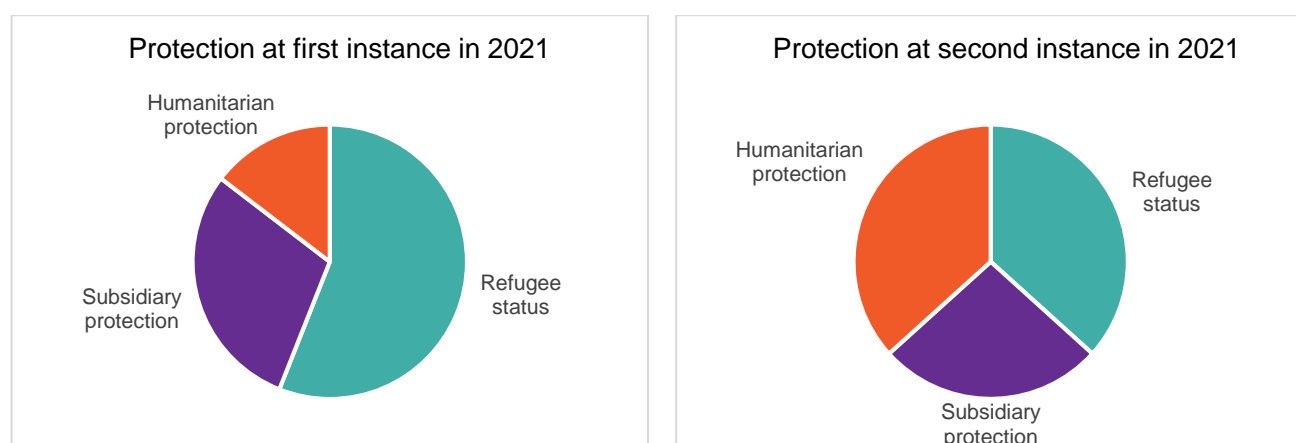
<sup>4</sup> The protection rate for Ireland was taken out given the extremely wide discrepancy between the data provided to Eurostat (930 positive second instance decisions) and to the Irish Parliament (591), placing its protection rate either at 98.9% or 63.2%.

While the share of refugee status granted remained stable in recent years, bigger fluctuations were registered for humanitarian protection.

Share of the different types of protection at second instance 2017-2021			
Year	Refugee Status	Subsidiary protection	Humanitarian protection
2017	51.9%	32.5%	15.6%
2018	36.5%	32.8%	30.7%
2019	41%	30.4%	28.6%
2020	31.2%	32.1%	36.7%
2021	36.7%	26.6%	36.7%

Source: Eurostat.

Furthermore, the patterns are different between first and second instance, with the types of protection granted more evenly distributed at second instance. Of course, this also reflects the fact that caseloads at first and second instance vary significantly, because second instance authorities only receive applications from persons who have already been rejected or, exceptionally, who were only granted subsidiary or humanitarian protection and wish to receive “better” protection.



## 2. Issues related to the presentation of statistics on protection

### 2.1 Reporting: discrepancies between Eurostat and national statistics

Reports are only as strong as their weakest data point; any presentation or use of data can only be reliable if the data itself is accurate at the outset. Unfortunately, there are sometimes discrepancies between data reported to Eurostat and data published or reported at the national level, either publicly or as provided on request.<sup>5</sup> Several States report numbers with a more than 10% variation to Eurostat and nationally. For example:

- ❖ Switzerland systematically reports overall fewer first instance decisions and fewer rejection decisions to Eurostat than it communicates in national publications (over 10% difference).
- ❖ On first instance rejection decisions, for six<sup>6</sup> of fifteen countries where the information is available numbers reported to Eurostat are at least 10% lower than those published nationally, with Greece in particular regularly reporting much lower numbers to Eurostat than published at the national level.

<sup>5</sup> As is the case for data reported on ECRE's AIDA database.

<sup>6</sup> CH, DE, GR, IT, MT, PT.

- ❖ From 2018 to 2021, Germany systematically reported over 10% fewer overall decisions to Eurostat than it reported to parliament and publicly.<sup>7</sup> It also reported to Eurostat far more positive second instance decisions (over 48% more in 2021) and far fewer negative second instance decisions.
- ❖ As for first instance, negative second instance decisions is the area where most countries report different numbers, with either lower or higher numbers reported in Eurostat than published nationally for nine of twelve countries for which information is available for 2021.

These examples show that, despite Eurostat’s assessment of the data accuracy as “high”,<sup>8</sup> there are discrepancies, both for specific countries and across the board, and regarding rejection decisions in particular.

These discrepancies can be partially explained by the fact that the authority providing data to the various compilers (Eurostat, EMN, AIDA) is not always the same. This can have a significant impact – even at national level interior ministries and asylum authorities may provide different numbers, as illustrated by the case of France, 2017 to 2020 (in 2021 the same figure was reported by OFPRA and the Ministry of the Interior):

Discrepancies in national numbers of first instance decisions in France			
Year	Number reported by the asylum authority (OFPRA)	Number reported by the Ministry of Interior	Difference
2017	115,094	89,288	25,806
2018	122,000	93,598	28,402
2019	120,634	95,400	25,234
2020	89,774	70,175	19,599
2021	139,810	139,810	0

Sources: OFPRA, *Rapports d’activité*, available at: <https://bit.ly/rapports-ofpra>; Ministry of Interior, *Chiffres clés* (consolidated June reports), available at: <https://bit.ly/chiffres-clefs>. In its publications, the Ministry of Interior states that its numbers come from OFPRA. The discrepancy cannot be explained by methodological differences, as both count decisions rather than persons (NB one decision may include multiple persons).

Various issues originate from diverging practices as to the methodology and definition of the data sets in question. A simple confusion – and thus a reporting divergence – that would affect protection rates is reporting the number of decisions rather than the number of persons affected by a decision (one decision might cover a family of any number). The Eurostat Regulation and guidelines clearly indicate that all statistics, with the exception of withdrawn applications, refer to persons, meaning family members must be counted individually, irrespective of national administrative procedures.<sup>9</sup>

Data on second instance decisions can vary depending on whether the authorities report only decisions where the court itself decides on the need for protection or whether they also include decisions that send a case back to the first instance authority for reassessment. Under Eurostat, “final decisions” means decisions on protection claims that are no longer subject to remedy as foreseen under the Asylum Procedures Directives (APD). As pointed out by the Eurostat guidelines, such decisions may still be eligible to remedy under national law,

<sup>7</sup> For 2021: Federal Government, Response to parliamentary question, 20/2309, 17 June 2022, available at: <https://bit.ly/3H5dYNp>; for 2020: BAMF, Asylum in Numbers 2020, 2021, available at: <https://bit.ly/3uCCyOh>; for 2019: Federal Government, Response to parliamentary question, 20/18498, 2 April 2020, available at: <https://bit.ly/3B6ouA1>; for 2018: Federal Government, Response to parliamentary question, 19/8701, 25 March 2019, available at: <https://bit.ly/3ukSYdQ>.

<sup>8</sup> Eurostat, Decisions on applications and resettlement (migr\_asydec), last updated 19 July 2021, available at: <https://bit.ly/3UrKgVC>.

<sup>9</sup> Article 4(1)(a) Regulation 862/2007; Eurostat guidelines to asylum templates 2021, was available at: <https://bit.ly/3uhQKf5> (accessed 20 October 2022, not available 2 December 2022), 5.

particularly remedies concerning procedural matters rather than substantive questions, and thus the “final remedy” under Eurostat may not be the final remedy under national law, which may generate different reports.

Lastly, there are differences in the definition of rejection decisions that states use. States should report all rejection decisions, including inadmissibility decisions, with the exception of those involving Dublin procedures. However, at national level, some report in-merit and inadmissibility decisions separately, while some report only in-merit rejection decisions. The definition used is not always explicit in the reporting.

## 2.2 Methodology and choice of data to be presented

Methodological choices as to how the protection rates are calculated and presented have an important impact on the figures. There are a number of distortions that often characterise the presentation of data.

### *Lack of reference to second instance decisions*

The first – and major – limitation is that cited protection rates often only include first instance decisions, with second instance decision-making ignored. Thus, the protection rate at first instance is used even though it represents only a partial picture. On average, 33% of first instance decisions are overturned, with protection status granted at second instance (or occasionally a higher protection status granted). Protection rates at second instance are high, up to 67.9%,<sup>10</sup> including in countries with significant caseloads. For example, in 2021, Dutch second instance authorities granted protection in 56% of their 3,610 decisions; in Italy, 63% of 18,780 second instance decisions granted protection; and in Austria, second instance authorities overturned 67.9% of first instance decisions, for the 9,285 second instance decisions taken in 2021. It is not accurate to present protection rates without including second instance decisions – as for any area of law, the legal process is not complete until all remedies have been exhausted. If the protection rate is supposed to measure the percentage of asylum applications which conclude with a decision to award protection, then second instance decisions need to be integrated.

There are methodological challenges: it is not possible to calculate overall protection rates for a given year by combining first and second instance decisions, given that different caseloads are being assessed. Due to the length of appeals, it is rare that appealed decisions will be decided in the same year as the first instance decision. Nonetheless, when protection rates only refer to first instance decisions, this needs at least to be made clear.

### *Inclusion of inadmissibility decisions*

The inclusion of inadmissibility decisions in “rejections” is also a distorting factor. Protection rates are often calculated by using the total number of rejection decisions, regardless of the ground for rejection. This figure cannot accurately represent the need for protection in Europe, as many people entitled to protection may be faced with an inadmissibility decision: beneficiaries of international protection in another Member State, persons considered to have a sufficient link with a safe third country, and so on. Thus, the rejection decision does not mean that they do not have protection needs (it may indicate that the country concerned is not responsible for their protection, but this is a different issue).

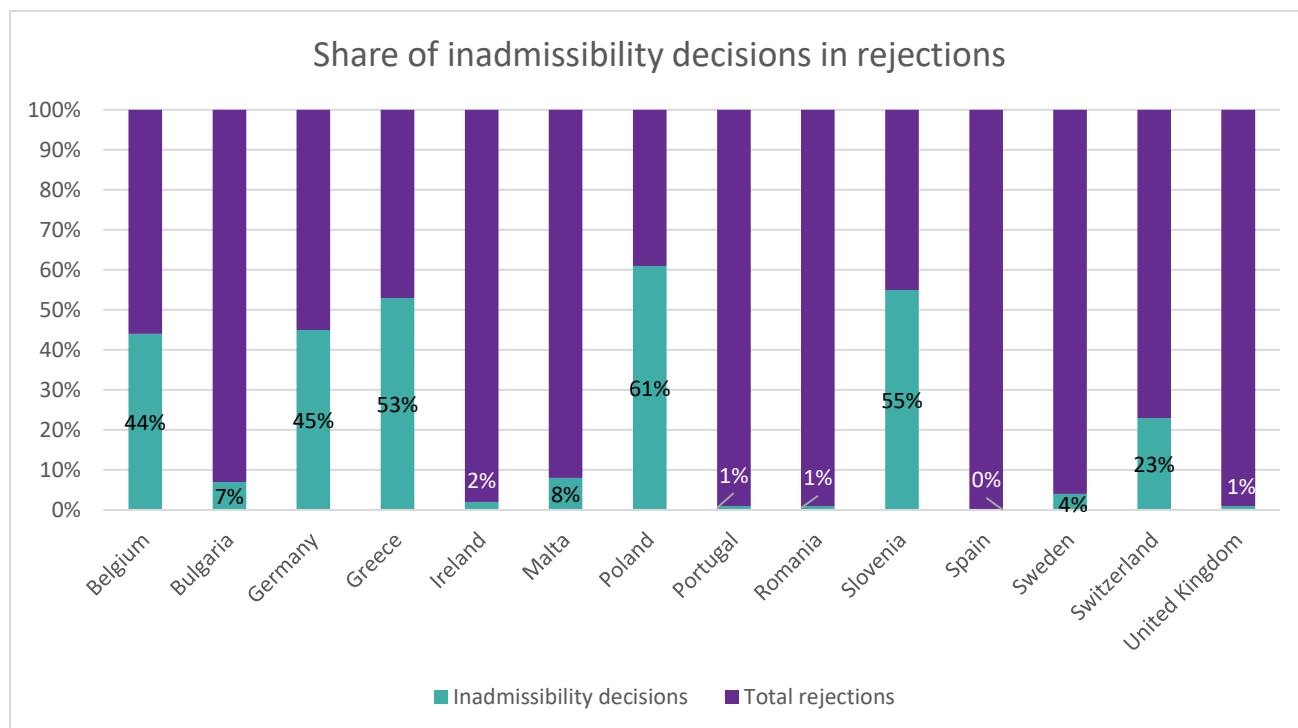
- ❖ Belgium issues many inadmissibility decisions, often in cases of subsequent applications or for beneficiaries of protection in other Member States. Of the 11,817 people denied international protection in 2021, only 6,041 received in-merit rejections.<sup>11</sup> Thus, the protection rate jumps from 43% (all rejections included) to 58.3% when it is based solely on in-merit rejections, which paints a more accurate picture of protection needs.

<sup>10</sup> The protection rate for Ireland was taken out given the extremely wide discrepancy between the data provided to Eurostat (930 positive second instance decisions) and to the Irish Parliament (591), placing its protection rate either at 98.9% or 63.2%.

<sup>11</sup> AIDA, Country Report Belgium 2021 Update, 2022, available at: <https://bit.ly/3VN6imO>, 10.

- ❖ Greece issues many inadmissibility decisions on the basis of its assertion that Türkiye is a safe third country. The policy is often applied in the case of Syrian applicants, despite Syrians having a global protection rate across the 30 countries reported by Eurostat of 85.8% in 2019 and 85.2% in 2020. In Greece, the protection rate for Syrian applicants was 99.4% in 2019 and 91.6% in 2020<sup>12</sup> when inadmissibility decisions are excluded.

The Eurostat Regulation could enable EU countries to differentiate among rejections decisions (Articles 4(2)(a) and 4(3)(b)), but it does not currently do so. These nuances are not clearly mentioned when protection rates are presented, which would also be advisable. The European Commission announced its intention to launch a pilot project to disaggregate rejection decisions by type, including inadmissibility grounds.<sup>13</sup> It confirmed that it had started collecting this data but that it would not be released in Eurostat in the short term because it is a pilot project. An update is to be provided on all pilot studies by 13 July 2024.



Source: AIDA.

In some countries, the inclusion of inadmissibility decisions leads to serious distortions of the protection rate because over half of all rejections are inadmissibility decisions, for example Poland (inadmissibility decisions are 61% of total rejections), Slovenia (55%), and Greece (53%).

It should also be noted that Eurostat does not include in the protection statistics those benefiting from safe pathways to protection such as resettlement. While beneficiaries of protection relocated between EU countries are not included to avoid double counting, the same reasoning cannot be applied to individuals accessing the EU from outside directly through safe routes, who largely benefit from some form of either international or national protection. Excluding them drives down the data on positive decisions and thus protection rates.

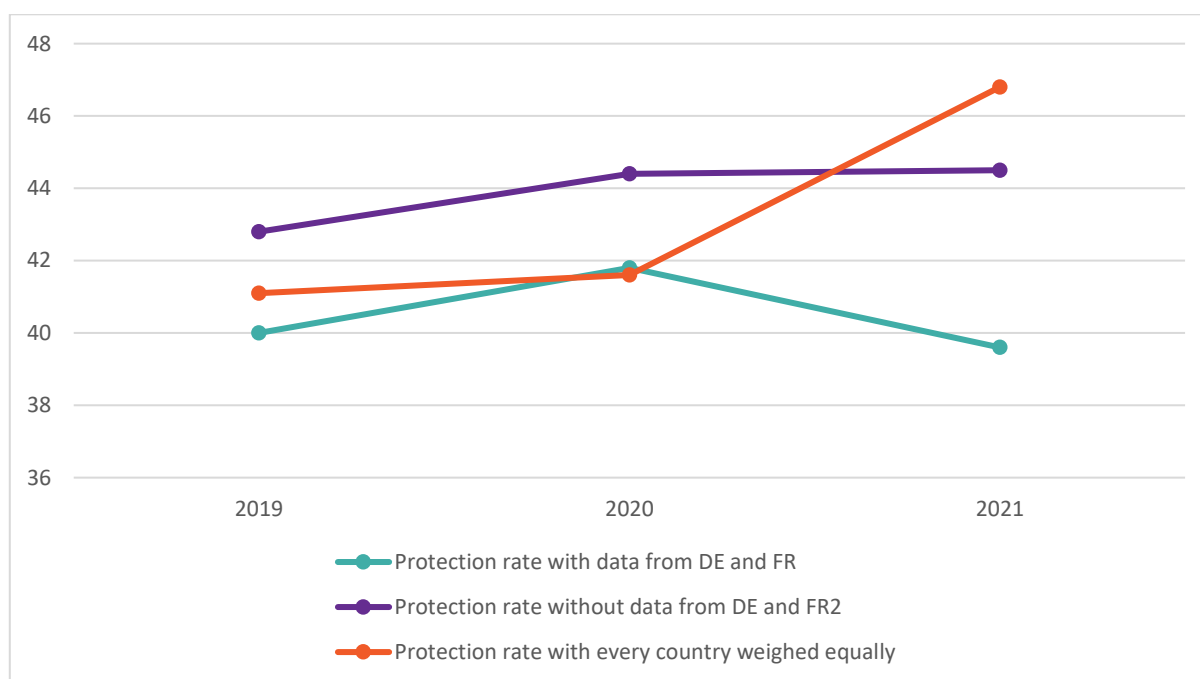
## 2.3 Other factors that affect overall EU+ protection rates

### Countries with few asylum applications

<sup>12</sup> AIDA, Country Report Greece 2020 Update, 2021, available at: <https://bit.ly/3XXHRoB>, 8; AIDA, Country Report Greece 2019 Update, 2020, available at: <https://bit.ly/3iEt9CX>, 8.

<sup>13</sup> European Commission, Commission staff working document on the progress made regarding the pilot studies referred to in article 9a of Regulation (EC) No 862/2007 on Community statistics on migration and international protection, 15 July 2022, available at: <https://bit.ly/3VPHYup>.

Percentages for countries with few decisions must be read with particular caution. This is all the more so because Eurostat rounds up data. This is close to insignificant for large caseloads such as that of Germany or France, but may significantly distort the data of countries with smaller asylum systems. In addition, certain countries may disproportionality influence EU-wide statistics. In 2021, three countries accounted for just under two-thirds of all first instance decisions (FR, DE, ES). At second instance, decisions from Germany represented 38% of all decisions and from France 22%. An EU-wide protection rate is thus not always representative of the average position of all states on protection, but may preponderantly illustrate the approach of just a few. This applies to the general protection rates as well as to protection rates by nationality. As illustrated below, the three countries bring the protection rate down.



Source: Eurostat.

Access to the asylum procedure might also have an indirect effect on protection rates. The scale and normalisation of policies aimed at preventing arrivals have only increased over the years, including reintroduction of internal border controls, the EU-Turkey deal, formal and informal readmission deals, pushbacks at the maritime and land borders, and limiting Search and Rescue in the Mediterranean.

- ❖ In 2021, recognition rates in Greece were higher than in the previous year. At the same time, it should be noted that the number of people reaching the country decreased by 31.7% in 2021, as numerous reports warned about pushback practices at the border with Türkiye and in the Aegean Sea.<sup>14</sup>
- ❖ The “jump” of the Hungarian protection rate from 7% in 2019 to 27% in 2020 and then 58% in 2021 cannot be relied upon for meaningful evaluation of asylum in Hungary because, during the same period, Hungary drastically limited access to its asylum procedure through the “Embassy procedure” (instituted 26 May 2020), meaning that only 60 decisions were taken in 2021 compared to around 710 in 2019.<sup>15</sup>
- ❖ The Polish protection rate increased drastically from 2020 to 2021 from 16% to 59.65% (AIDA). However, in 2021, the Polish authorities took drastic measures to hinder access to the territory and to the asylum procedure, first at the border with Belarus and then via legislative changes to simplify expulsions and restrict access to asylum for persons intercepted in the border area.<sup>16</sup>

<sup>14</sup> See, among many others: UN Special Rapporteur on the human rights of migrants, Human rights violations at international borders: trends, prevention and accountability, April 2022, available at: <https://bit.ly/3F0qnPX>; OLAF (report leaked by Der Spiegel International), Final Report, October 2022, available at: <https://bit.ly/3Hc0bom>; Aegean Boat Report, Aegean Boat Report Data Studio, last updated 5 December 2022, available at: <https://bit.ly/3uqmy1u>.

<sup>15</sup> AIDA, Country Report Hungary 2021 Update, 2022, available at: <https://bit.ly/3wFoHYE>, 21.

<sup>16</sup> AIDA, Country Report Poland 2021 Update, 2022, available at: <https://bit.ly/3Klv3SP>.

## Suspension of examinations

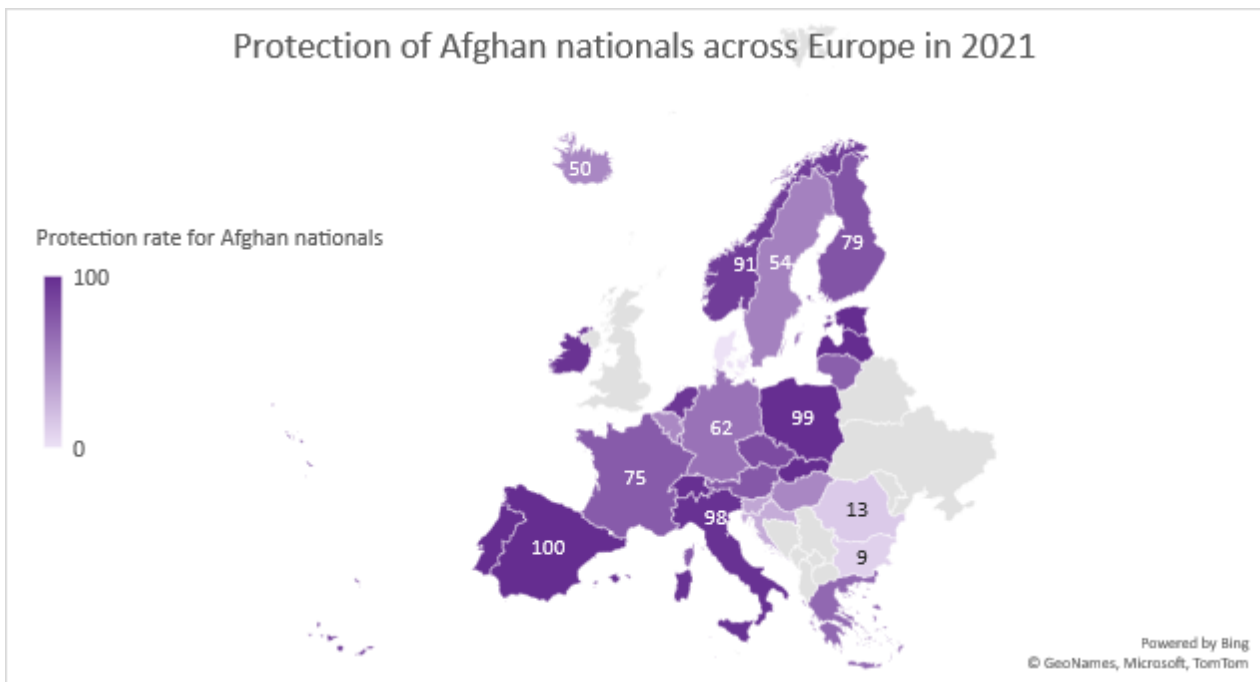
Protection rates are influenced by state decisions to suspend the examination of certain caseloads. An example is the decision taken by several countries in 2021 to officially suspend examining applications from Afghan nationals.<sup>17</sup> Norway suspended all decisions from July 2021 to January 2022; Belgium suspended the issuance of negative decisions from August 2021 to March 2022; and Luxemburg limited its decision-making to positive decisions, inadmissibility decisions, and Dublin decisions until December 2021.

### 3. Issues emerging from analysis of statistics on protection

#### 3.1 Lack of harmonisation and poor decision-making

The need for protection in Europe is not well represented by protection rates, not only due to the aforementioned issues, but also in some cases due to poor decision-making. National protection rates vary widely from one EU country to another, from very low to very high values. Such variations have persisted for many years. Depending on where they apply, the same asylum seeker may be granted any of the three protection types, rejected for merit reasons, or have their case rejected for inadmissibility reasons.

For instance, whilst the overall protection rate for Afghan nationals in 2021 was 72%, it ranged in individual countries from 0% to 100% (13% to 98% when only considering countries with at least 1,000 decisions).



Source: Eurostat.

<sup>17</sup> EUAA, *Asylum Report 2022*, available at: <https://bit.ly/3VMrpWt>, 150.



Protection of Afghan nationals at first instance – 2019 to 2022			
Year	Protection rate < 50%	50% ≤ Protection rate < 75%	Protection rate ≥ 75%
2019	NL, BE, SE, DE	AT, FR, UK, GR	IT, CH
2020	BG, RO, BE, SE, NL, DE	FR, GR, AT	IT, CH
2021	BG, RO, BE	SE, DE, GR	FR, AT, NL, IT, CH, PL
2022	BE	SE, FR	GR, AT, DE, IT, CH, ES, NL

Source: Eurostat. Countries are listed only when they took at least 500 decisions for the given year. It should be noted that the 2022 provisional data concerns only 3 quarters and is very likely boosted by the processing of the applications from the persons evacuated in the 2<sup>nd</sup> half of 2021.

The issue was the same for Iraqi nationals, for whom the overall protection rate stood at 37%, but ranged from 0 to 100% (0% to 86% when only considering countries with at least 500 decisions).



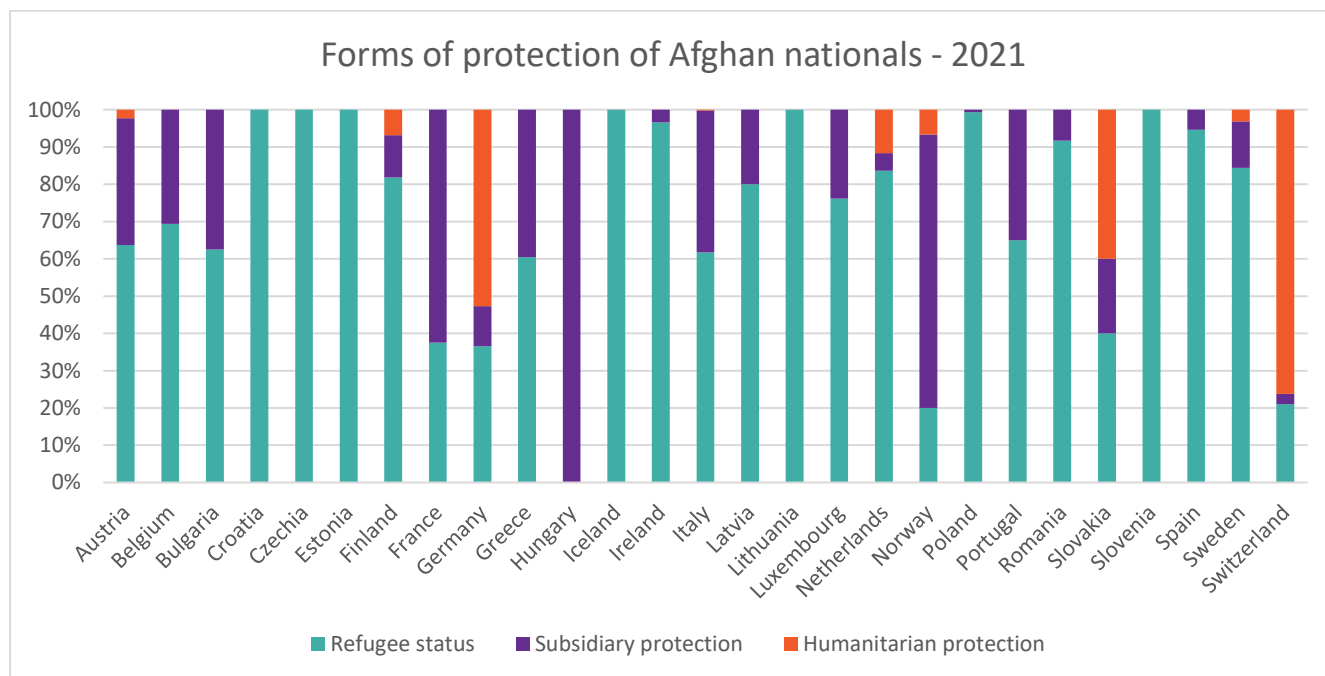
Source: Eurostat.

Protection of Iraqi nationals at first instance – 2019 to 2022			
Year	Protection rate < 25%	25% ≤ Protection rate < 50%	Protection rate ≥ 50%
2019	NL, SE, FI	BE, UK, DE, AT	FR, GR, IT
2020	SE, BE	FI, DE, FR	GR, IT
2021	LT, BE, SE	FI, DE, FR	AT, GR, IT
2022	/	DE, FI	GR

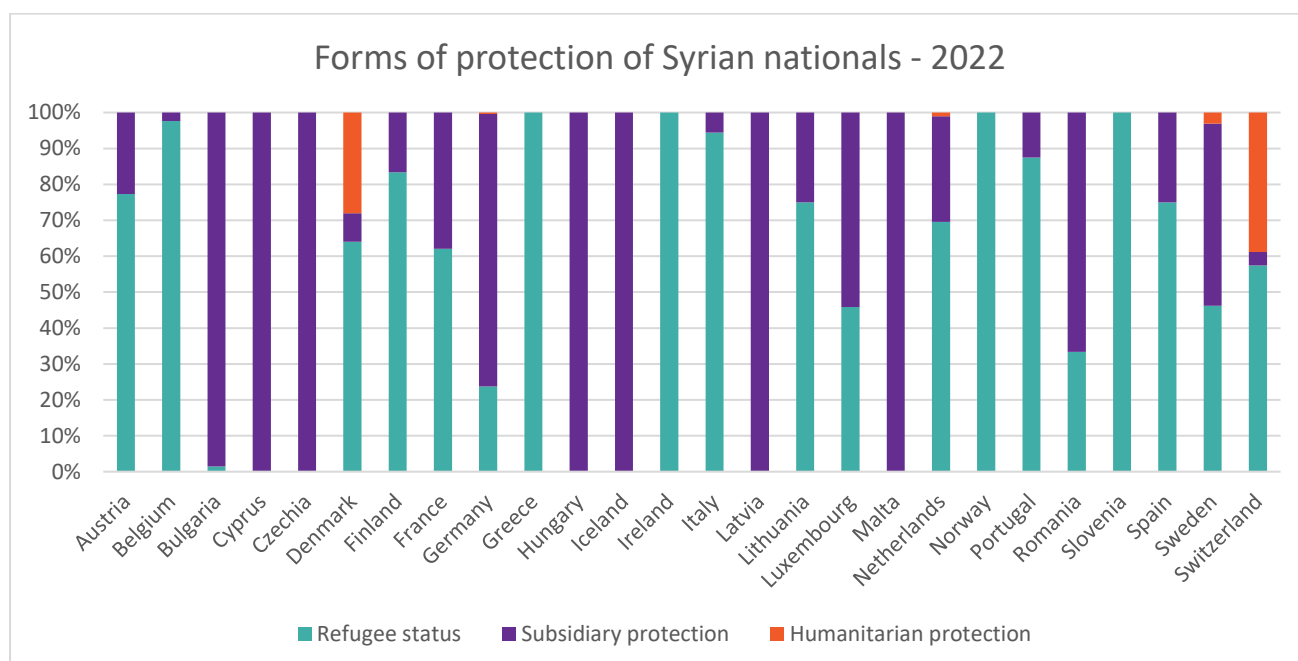
Source: Eurostat. Countries are listed only when they took at least 500 decisions for the given year.

### 3.2 Differences in the form of protection recognised

Even for those granted protection, the type of protection granted diverges from country to country. Although the argument is made that the differences in caseloads account for the differences in protection status awarded, the evidence has not been provided to demonstrate that objective factors related to the nature of the cases explains the difference. The divergences are significant, while in many respects the caseloads are similar.



Source: Eurostat.



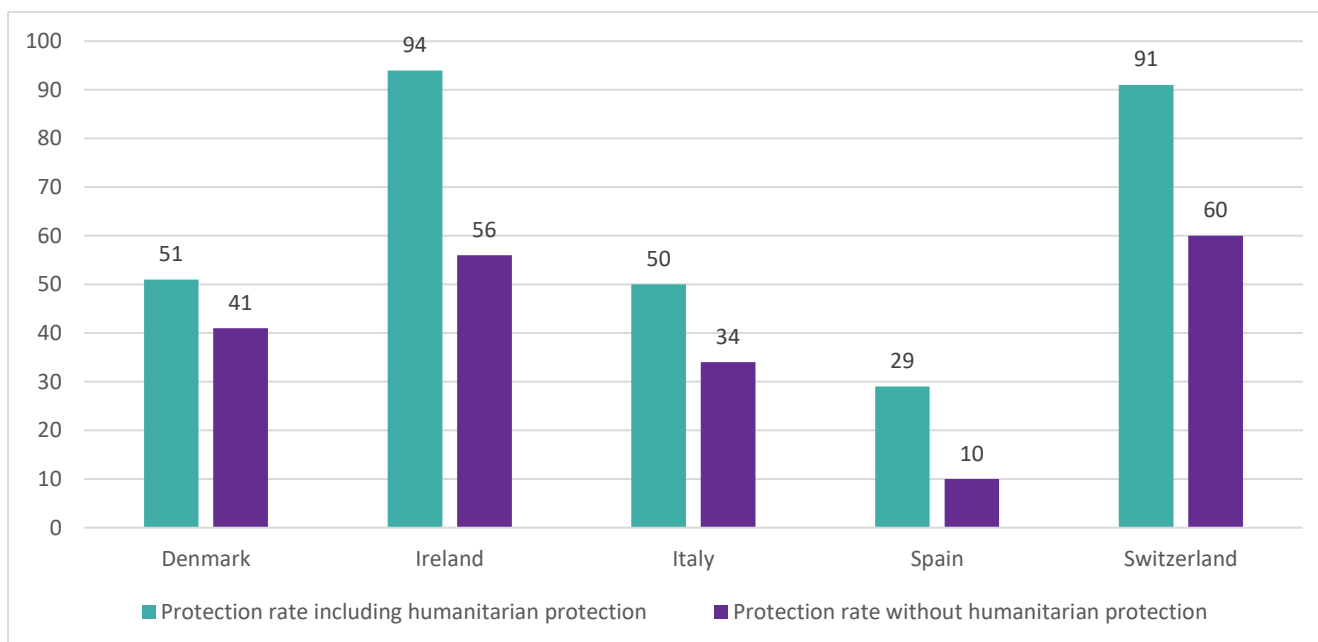
Source: Eurostat.

The type of protection issued has serious implications for the person's rights, status, and long-term prospects in the country of asylum due to the fact that the content of protection for each status may vary on significant points. For example, the right to family reunification is not always foreseen for beneficiaries of subsidiary and humanitarian protection or it may only be granted only under less favourable conditions; the duration of residence permits is usually shorter for beneficiaries of subsidiary and humanitarian protection as compared to

refugee status, meaning that these statuses are susceptible to re-evaluation more often and more precarious. Related insecurities may be generated for such beneficiaries in addition to hindering integration.

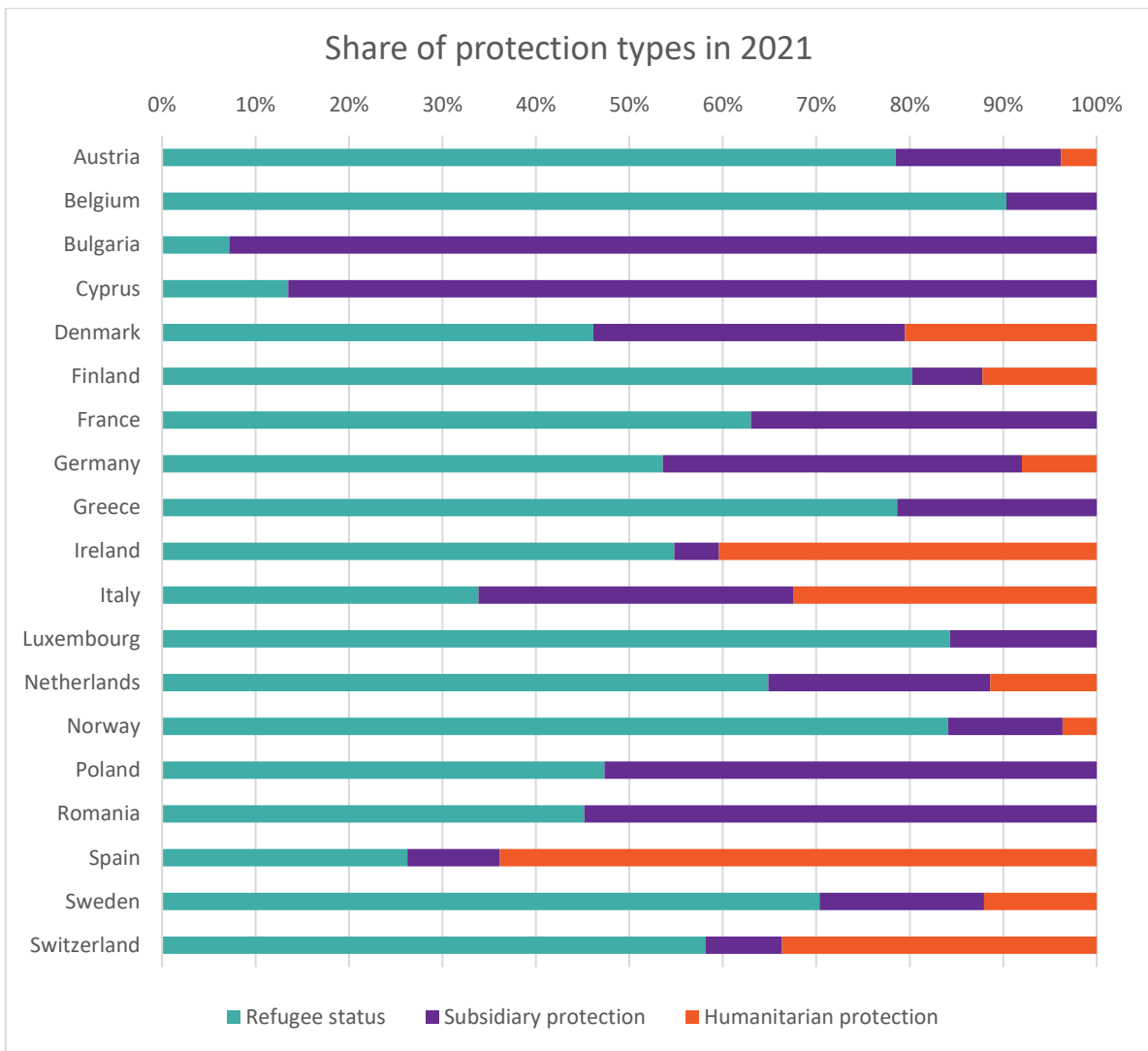
On the use of national forms of protection, it should be noted that humanitarian protection is not harmonised at the EU level, thus it does not exist in all Member States and where it does exist it might not be reported under Eurostat if it is granted under a procedure separate from the asylum procedure. Currently, 24 out of the 32 countries reporting to Eurostat report numbers on humanitarian protection.<sup>18</sup>

Including humanitarian protection can have a big impact on the protection rate. As such, comparison between states becomes more complicated.



Source: Eurostat.

<sup>18</sup> CZ, DK, DE, ET, IE, GR, ES, HR, IT, CY, LT, HU, MT, NL, AT, PL, RO, SI, FI, SE, MO, LI, NO, CH. It should be noted that some report 0 protections over several years, making it unclear whether they actually have humanitarian protection in law but did not grant it or if they mistakenly still report 0 despite not having humanitarian protection.



Source: Eurostat. To limit variations due to small numbers, only countries with at least 500 positive decisions are listed.

### 3.3 Factors related to variations in protection rates

Such discrepancies in protection rates have generated concern. In some cases, the EUAA<sup>19</sup> and national authorities<sup>20</sup> have argued that the differences are due to the different profiles of applicants, i.e. applicants from the same country of origin that apply in one EU+ country have very different profiles compared to the applicants from the same country of origin lodging their applications in a different EU+ country. Factors might include people being from specific ethnic minorities, a higher number of unaccompanied minors, people from different regions within the same country (meaning that different security situation is faced) and so on, etc. Although it would be the case that these factors would play a role in decision making, there is no conclusive evidence that there are very different profiles for applicants from one EU+ country to another, at least not sufficient to explain the differences in the protection rate or in the granting of particular statuses.

<sup>19</sup> For example, EASO, *Asylum Report 2021*, available at: <https://bit.ly/3gRXAoL>, 206.

<sup>20</sup> German Federal Government, Response to parliamentary question, 20/2309, 17 June 2022, available at: <https://bit.ly/3H5dYNp>, 12.

### *Lack of harmonisation*

The Qualification Directive leaves States considerable discretion in decision making. The European Commission and the Council<sup>21</sup> have recognised that there is a lack of convergence in decision making, partly due to a lack of harmonisation of decision-making policies and practices. For instance, states disagree on the safeness of countries of origin: of nineteen EU Member States examined, the fourteen that have national lists of safe countries of origin<sup>22</sup> have designated 53 different countries as “safe”. As a consequence, nationals of those countries that apply for asylum are automatically channelled into accelerated procedures. While there is consensus on some countries, such as Albania (on all 15 lists), Bosnia and Herzegovina, Kosovo and Serbia (on all but Greece’s), many are designated as safe by just a few or even just one state, such as Bangladesh (on the lists of Cyprus, Greece, Slovenia) or Pakistan (Cyprus, Greece).

Such discrepancies are partially explained by the fact that many States, when drawing up such lists, take into account their statistics on applications (i.e. if there is an increase in numbers of applications from a particular country that might lead to a country being classed as safe rather than changes in the country itself), although other factors come into play. The same problem arises for the assessment of safe third countries and first countries of asylum, although such concepts are used by fewer Member States.

States also disagree more generally on the interpretation of country of origin information (COI): in 2020, while Denmark was expanding the zones it considered to be safe in Syria and Norway proclaimed protection would no longer be automatic, Sweden maintained protection by default for Syrians.<sup>23</sup> Similarly, in response to the Taliban takeover, states took different approaches in the immediate aftermath,<sup>24</sup> and then determined they had sufficient COI to restart processing applications at different points in time. Such disagreements on COI persist despite harmonisation attempts by the EUAA, for example, although it has provided COI and country guidance on Nigeria, detailing the many risks Nigerian citizens face, Nigeria is still on the safe countries of origin list of Cyprus. In some cases, states also do not interpret crucial legal concepts in the same way, including membership of a particular social group, cessation clauses, the level of “indiscriminate violence” which triggers eligibility for subsidiary protection, and the internal protection alternative.

The European Commission sought to improve harmonisation with the proposals for reform of the CEAS, including by rendering obligatory some of the currently optional rules, such as the examination of the internal protection alternative. In that case, it is unlikely to be a major source of divergence, given that 24 of 27 Member States use this option under the current legislation.<sup>25</sup> (Additionally, as ECRE as noted, obligatory use of the IPA would constitute a harmonisation at low protection standards, by consolidating in EU law concepts that are foreign to International Refugee Law). The proposals would also render mandatory the duty of the applicant to substantiate the application, the examination of certain grounds for withdrawal, and the taking into account of the guidance of the EUAA. A welcome clarification would be that persons cannot be expected to behave “discreetly” or abstain from behaviours that are inherent to their identity in order to avoid persecution.

### *Quality of asylum determination procedures*

The poor quality of status determination procedures may also undermine the accurate assessment of protection needs in Europe. Challenges arising in first instance processes include limited use of procedural safeguards, poor evidential assessment, lack of training of officials in charge of the determination, and a general lack of access to interpreters and legal assistance/aid. Poor decision making at first instance is partly illustrated by the high number of decisions overturned upon appeal, as referred to above – 33% on average over the last 5 years across the EU+. In at least four countries (NL, AT, IT, BG), over half first instance decisions are overturned.

<sup>21</sup> Council of the EU, Council conclusions on convergence in asylum decision practices, April 2016, available at: <https://bit.ly/3UrTqkY>; European Commission, Proposal for the Qualification Directive, July 2016, available at: <https://bit.ly/3B49iDk>.

<sup>22</sup> AT, BE, HR, CY, FR, DE, GR, HU, IE, IT, MT, NL, SI, SE.

<sup>23</sup> EASO, *Asylum Report 2021*, available at: <https://bit.ly/3gRXAoL>, 117.

<sup>24</sup> ECRE, *Afghans seeking protection in Europe*, December 2021, available at: <https://bit.ly/3Vtp2rN>.

<sup>25</sup> MPI Europe, *Cracked Foundation, Uncertain Future*, March 2018, available at: <https://bit.ly/3iygyku>, 19.

Having to go to second instance for a proper assessment increases the cost of the procedure and delays access to protection, thus increasing uncertainty for the applicant, and generating administrative burdens for the state.

Second instance decision making is not without problems in many states and thus does not always serve to remedy poor decision making at first instance. Although the APD foresees the right to an effective remedy (Article 46), it does not prescribe harmonised standards for second instance decision making. As a result, only some second instance proceedings re-examine cases both in fact and in law, whereas others simply re-examine in law, a poor guarantee. In addition, not all second instance bodies adjudicate cases on the merits, some are constrained to, at best, sending the case back to the first instance authority for review. The remedy is not always automatically suspensive, which puts some applicants at risk of removal. Finally, some courts used accelerated procedures with fewer guarantees for certain applicants and applicants cannot always access legal assistance and aid. Such procedural divergences even happen within the same country: a study published in 2021 highlighted major differences between Italian courts charged with first instance decision making when it comes to procedural guarantees (the hearing, interview, etc) and rules on interpretation.

Such differences are then one of the factors leading to the widely different protection rates at second instance (ranging from 8% to 76%). As with first instance, appeal procedures were negatively affected by Covid19 measures such as the expansion of remote or hybrid hearings, adjudication based only on written submissions, and longer delays. These flaws in decision making may mean that rejections are provided in cases where people are in need of protection – i.e. that protection needs are not identified due to flaws in procedure and practice.

#### 4. Recommendations

The **European Commission** should:

- ❖ Ensure greater accuracy of the data collected and published by Eurostat, including through random sampling and comparison with nationally reported statistics.
- ❖ Ensure correct understanding and application of Eurostat's reporting definitions and methodologies, including through sampling and comparing with nationally reported statistics.
- ❖ Provide detailed information by country as to the forms of humanitarian protection reported under Eurostat.
- ❖ Continue to collect and then publish the data on grounds for rejection and grounds for inadmissibility.
- ❖ Specify and explain where data may not be accurate because of the national system's particularities.
- ❖ Focus on the quality of decision making in the EU rather than developing new proposals which do not address these fundamental and well-documented flaws in the system.

**Member States** should:

- ❖ Adhere strictly to Eurostat definitions and indicate to the Commission whenever a specificity in their asylum system makes reporting comparable data more difficult.
- ❖ Ensure the accuracy of their statistics, notably through reliance on and cooperation with their asylum authorities.
- ❖ Report detailed data at the national level, including on elements such as inadmissibility, with clear definitions and methodology.
- ❖ Ensure rapid access to fair asylum procedures for all to put an end to the asylum lottery.

In general, authorities and actors presenting statistics should include detailed information about their methodology (the rejections included, the instance of decision making, etc.) to avoid the use of misleading information. Protection rates should not be based solely on first instance decisions but must take into account protection decisions at second instance, in order to more accurately reflect the protection needs of those applying for asylum in Europe.