

# 'Wrong number?'

## The Use and Misuse of Asylum Data in the European Union

**Minos Mouzourakis**

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### Abstract

The Common European Asylum System (CEAS) is a policy area particularly evocative of the 'politics of numbers'. The European Union has at its disposal a wide array of sources providing detailed information about its member states' asylum systems' capacities and pressures. This paper discusses the content of asylum data and the evolving interaction between its different sources, ranging from the United Nations High Commissioner for Refugees to the European Commission's EUROSTAT and DG HOME, the European Asylum Support Office (EASO), FRONTEX, the European Migration Network (EMN) and national databases. However, the way in which such data are often misused, or even omitted, in political debate exerts a strong impact on the soundness of policy decisions in the CEAS. Drawing on debates over the contested phenomenon of 'asylum shopping' and the exemption of victims of torture and unaccompanied minors from accelerated and border procedures in the recast Asylum Procedures Directive, this briefing paper argues that solid data-based evidence is often absent from political negotiations on CEAS measures affecting refugees and asylum seekers.

This paper draws upon the findings of the Study on "New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International Protection", conducted by Professor Elspeth Guild, Dr Cathryn Costello, Madeline Garlick, Dr Violeta Moreno-Lax and Minos Mouzourakis for the European Parliament in October 2014. Both through desk research and through a series of surveys and interviews, the researchers gathered input from national asylum authorities, UNHCR, EASO and Members of the European Parliament on the way in which policy-makers use asylum data. The full-length study is available for downloading at [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509989/IPOL\\_STU\(2014\)509989\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509989/IPOL_STU(2014)509989_EN.pdf).

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### **Key Findings**

- ❖ Different agencies and institutions often produce diverging results when calculating asylum demand in the Union, although coordination efforts between EUROSTAT and European Asylum Support Office are expected to render EUROSTAT data more reliable in the future.
- ❖ Member states have often failed to submit data to EUROSTAT to disaggregate statistics by sex or age, or given different Dublin statistics to EUROSTAT than those held in national databases, contrary to their obligations under Regulation 862/2007.
- ❖ The Dublin system, hailed as the 'cornerstone' of the Common European Asylum System in the EU's policy discourse, in reality regulates the allocation of no more than 3% of asylum seekers.
- ❖ Available statistical information on the number of seekers subject to Dublin procedures would reflect 'asylum shopping' as a much smaller-scale problem in reality than that put forward by member states. For instance, less than 10% of the asylum applications lodged in the EU in 2012 could be taken as an attempt of 'forum shopping'.
- ❖ The exemption of unaccompanied minors and victims of torture from accelerated and border procedures under the recast asylum procedures Directive would not have brought about high financial costs or 'pull factors', given that unaccompanied minors amount to less than 2% of the total number of claims in several member states.

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\* Minos Mouzourakis is MSc graduate in Refugee and Forced Migration Studies from the Refugee Studies Centre, Oxford University. The briefing has been drafted under the supervision of Prof. Elspeth Guild and Dr Sergio Carrera (CEPS).

## 1. Introduction: Asylum and the ‘politics of numbers’

How much can we really claim to know about refugees in Europe? For European states, as for any other country, refugee protection touches at the core of critical questions of membership and belonging, as it delimitates a society’s duties with regard to the admission of non-members.<sup>1</sup> States formulate more protective or restrictive policies with regard to refugees and asylum seekers on the basis of their perceived capacity to offer residence and the rights attached thereto to non-nationals, and to the number of non-nationals claiming protection. Questions of ‘capacity’ and ‘pressure’, concepts carrying both inherent normative weight and inevitable ambiguity, are therefore unsurprisingly weaved into asylum discourse.

Assessing a state’s asylum capacity and pressure, however, requires some tangible form of criteria or reference point. The quantifying function offered by numbers hence appears to form the basis of any asylum policy affecting the rights of protection seekers in the host state. Numbers profess to reveal how many people are at a country’s doorstep, how many are genuine protection claimants worthy of admission and how many can in fact be admitted.

To what extent should we, or do we in fact, trust numbers, however? The use of asylum data in policy debates poses both normative and factual questions. Like any other ‘numbers game’, the use of asylum data is often a politically charged enterprise. Policy-makers may make selective use of available statistics to highlight specific interests or rely on the raw projection of a numerical figure to crystallise unchecked assumptions about a given problem. As Andreas and Greenhill explain:

Statistics – both good and bad – are often uncritically accepted and reproduced because they are assumed to have been generated by experts who possess specialized knowledge and who know what they are doing.<sup>2</sup>

The ‘politics of numbers’ could therefore be understood as the calculated use or misuse of statistics to achieve a particular political end. From the perspective of receiving countries in the asylum context, states often tend to highlight the numbers of asylum seekers in domestic debates to gain support for restrictive measures. The use of data has often been criticised as selective in the ‘numbers game’, however. Receiving states project numbers of asylum applications to demonstrate high demand, for instance, without always pointing out what proportion of those seeking protection are granted international protection status.<sup>3</sup>

The Common European Asylum System (CEAS) is a policy area particularly evocative of the ‘politics of numbers’. The European Union (EU) and its member states have long been preoccupied with problems of asylum pressure, no less related to – often assumed – conduct of protection seekers, and has developed a strong discourse around preventing attractive protection regimes from creating ‘pull factors’ for migratory influx towards certain countries and around “maintaining the integrity of [member states’] asylum system by preventing abuse.”<sup>4</sup>

The EU has at its disposal a wide array of sources providing detailed information documenting its member states’ asylum capacities and pressures, presented in section 2. As will be discussed in section 3 below, however, the way in which such data is often misused, or even omitted, in political debate bears strong impact on the soundness of restrictive policy decisions on the part of the Union. This briefing paper will draw on examples from the contested phenomenon of ‘asylum shopping’ and the exemption of unaccompanied minors and victims of torture from accelerated and border procedures in the recast Asylum Procedures Directive

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<sup>1</sup> M. Gibney (2004), *The Ethics and Politics of Asylum*, Cambridge: Cambridge University Press.

<sup>2</sup> P. Andreas and K. Greenhill (2010), *Sex, Drugs and Body Counts: The Politics of Numbers in Global Crime and Conflict*, Ithaca, NY: Cornell University Press, 2-3.

<sup>3</sup> J. Crisp (1999), “Who has counted the refugees?” UNHCR and the politics of numbers”, *UNHCR Working Paper Series* No 12, 11-12; O. Bakewell (1999), “Can we ever rely on refugee statistics?”, *Radical Statistics* 72, 7.

<sup>4</sup> European Commission (2008), Policy Plan on Asylum, COM(2008) 360, 17 June, 11.

(APD),<sup>5</sup> to illustrate how data is often misused by policy-makers in CEAS debates. Section 4 summarises the paper’s conclusions and sketches out a number of policy recommendations.

## 2. Gathering Numbers

### 2.1 What is asylum data?

Asylum ‘numbers’ point to a wide range of information in the context of the CEAS. In their most generic – and most frequently used – form, statistics indicate the number of applications for international protection lodged in the EU member states. These figures allow for rough projections on how asylum ‘pressure’ increases or decreases throughout the Union; a glance at recent data, for instance, would illustrate a sharp increase in applications from approximately 330,000 in 2012 to 435,000 in 2013.<sup>6</sup> An oversimplified reading of statistics should be resisted, however. A more careful look at the EU’s data reports would reveal a number of important nuances within the overarching number of asylum applications. It would highlight distinctions between new asylum applications, subsequent claims (which appear as ‘new’ applications but are made regarding applicants already engaged in the asylum process) and pending applications. Statistical information about member states’ backlogs of pending applications in turn quantifies their asylum systems’ capacity by indicating how rapidly and efficiently EU countries cope with pending asylum claims.

Asylum data also includes information on asylum seekers’ countries of origin and countries of destination so as to give *indicia* of migratory patterns and trends. Recognition rates yield important conclusions as to how member states understand their protection responsibilities under the CEAS and as to the extent to which the EU’s asylum systems are harmonised in practice. By way of example, numbers revealed alarming discrepancies in the recognition of Syrian refugees in 2012, with recognition rates ranging from 89% in Germany to 0% in Cyprus.<sup>7</sup>

Moreover, asylum data in the EU provide more detailed knowledge on the workings of mechanisms peculiar to the CEAS such as the Dublin system allocating asylum responsibility between member states.<sup>8</sup> In the aim of ensuring rapid processing of applications and preventing multiple applications and ‘asylum shopping’, a concept examined in greater detail below, the Dublin system designates a single member state as responsible for processing an asylum application according to a hierarchy of criteria, ranging from family unity to issuance of entry/residence documents, irregular entry, visa-waived entry or first asylum application.<sup>9</sup> Member states are therefore responsible to take back asylum applicants for whom they are deemed responsible under the Dublin Regulation.

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<sup>5</sup> 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) (Asylum Procedures Directive) [2013] OJ L180/60.

<sup>6</sup> EUROSTAT (2013), Asylum applications and first instance decisions on asylum applications: 2012, KS-QA-13-005-EN-N, 4; EUROSTAT (2014), Asylum applications and first instance decisions on asylum applications: 2013, KS-QA-14-003-EN-N, 4; EASO (2014), Annual Report on the Situation of Asylum in the European Union 2013, Valletta, July, 109. For an overview of asylum demand in the EU throughout the development of the CEAS, see E. Guild et al. (2014), “New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International Protection”, European Parliament, Pol. Dep C: Justice, Freedom and Security, PE589.909, October, 27ff.

<sup>7</sup> EASO (2013), Annual Report on the Situation of Asylum in the European Union 2012, Valletta (<http://easo.europa.eu/wp-content/uploads/EASO-Annual-Report-Final.pdf>), 28.

<sup>8</sup> The Dublin system comprises Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast) (Dublin III Regulation) [2013] OJ L180/31 and Regulation (EU) No 603/2013 of the European Parliament and of the Council on the establishment of ‘Eurodac’ [...] (recast) (EURODAC Regulation) [2013] OJ L180/1.

<sup>9</sup> Articles 8-14 and 3(2) Dublin III Regulation.

‘Dublin data’ refer to requests between member states for the transfer of asylum seekers and actual transfers thereof. Such statistics are a particularly useful marker of the efficiency of the Dublin Regulation in rapidly and efficiently allocating responsibility for claims across the EU.

Before the second half of 2014, statistics on requests and transfers under the Dublin Regulation were not made publicly available by EUROSTAT. Knowledge about the operation of the Dublin system was only inferred by annual EURODAC reports produced by the Commission since 2004 and later taken over by the EU information systems agency for justice and home affairs (EU-LISA). The first reappearance of holistic Dublin data in official EU sources was recently made in the European Asylum Support Office (EASO)’s Annual Report on the Situation of Asylum in the European Union 2013. These numbers yield interesting observations for the distribution of claims under the Dublin system. EASO reported that, out of an annual average of 35,000 outgoing requests during the period 2008-12, only about 8,500 (25% of outgoing requests) actually resulted in transfers.<sup>10</sup> Accordingly:

[A]lthough the proportion of outgoing requests was on average about 12% of the number of registered asylum applicants, Dublin transfers were made in the case of only about 3% of those making an asylum claim in the EU.<sup>11</sup>

Data therefore enable one to critically evaluate the appropriateness of the Dublin system as an asylum distribution mechanism in this case, as it indicates that **what is hailed as the ‘cornerstone’<sup>12</sup> of the CEAS in the EU’s policy discourse in reality regulates the allocation of no more than 3% of asylum seekers** throughout the Union.

## 2.2 Sources of asylum data and their interaction

Data about member states’ asylum systems’ capacity and pressure are collected and produced by a variety of sources which carry different weights of authority for EU policy-makers. Firstly, the United Nations High Commissioner for Refugees (UNHCR) has produced statistical annexes since 1994 as part of its mandate to improve knowledge about refugees. As of 2000, it also produces reports on asylum trends, which cover European and North American countries more thoroughly.

Secondly, following the ‘communitarisation’ of asylum and migration competence by the Amsterdam Treaty 1997, EU institutions and agencies have provided more targeted information about asylum demands in the EU. In a concerted effort to harmonise statistical practice across the Union,<sup>13</sup> the European Parliament and Council adopted common rules on the collection of migration and asylum statistics through Regulation 862/2007.<sup>14</sup>

Under the Regulation, EUROSTAT, the European Commission’s Directorate-General (DG) for statistics, collects asylum data from member states regarding the number of asylum applications, positive and negative decisions, unaccompanied minors, as well as Dublin requests and transfers.<sup>15</sup> EUROSTAT has produced statistical reports on the basis of monthly, quarterly and annual asylum data since 2008.<sup>16</sup>

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<sup>10</sup> EASO (2014), *op. cit.*, 30.

<sup>11</sup> *Ibid.*

<sup>12</sup> European Council (2010), *The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens*, OJ C115/32, Official Journal of the European Union, Luxembourg, 6.2.

<sup>13</sup> In 2003, the Commission presented an Action Plan containing a series of actions and discussing the prospects of a legislative framework for Community statistics. European Commission (2003), *Action Plan for the collection and analysis of Community statistics in the field of migration*, COM(2003) 179, 15 April.

<sup>14</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 repealing Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers [2007] OJ L199/23.

<sup>15</sup> Article 4 Regulation 862/2007.

<sup>16</sup> European Commission (2012), *Report on the implementation of Regulation (EC) 862/2007 on Community statistics on migration and international protection*, COM(2012) 528, 20 September, 4.

As of 2012, EASO also gives detailed information about asylum demand and protection rates in its Annual Report on the Situation of Asylum in the European Union. FRONTEX, the agency managing the EU member states’ external borders, also publishes asylum data, albeit less detailed, in its Annual Risk Analyses as of 2010. The European Migration Network (EMN), set up in 2008 by the EMN Decision,<sup>17</sup> has also undertaken the collection of asylum data within the annual reports produced by national contact points,<sup>18</sup> in order to “help in the development of [EU] activities related to migratory statistics”<sup>19</sup>. The EMN has so far produced statistical reports on migration and asylum covering the period 2001-09.

A final EU source of knowledge on asylum capacity and pressure may be found in the European Commission’s Annual Reports on Immigration and Asylum, produced by DG Home Affairs (HOME) since 2010. These reports include general information on policy developments in the area of migration and asylum, and provide statistical overview of asylum demand, recognition rates and resettlement.<sup>20</sup>

These sources tend to be the main point of reference for asylum decision-makers, as the EU adopts a somewhat introspective approach to the data sources it deems reliable. As Guild et al. found in their recent study on “New Approaches, Alternative Avenues and Means to Asylum Procedures for Persons Seeking International Protection”, which gathered input from national asylum authorities and EU institutions on the extent to which they consider and use asylum data in their day-to-day work,

[N]ational asylum authorities tend to make regular use of EUROSTAT, UNHCR, EASO and FRONTEX data when preparing their positions on the CEAS, while particular emphasis is placed on the use of EASO and EUROSTAT-generated data for that purpose.<sup>21</sup>

Yet, the numbers reported by ‘official’ EU sources of information are not always coherent. **Different agencies and institutions often produce diverging results when calculating asylum demand in the Union.** By way of example, EASO, EUROSTAT and FRONTEX gave different overall numbers of new asylum applications for 2013: EASO found 377,895,<sup>22</sup> EUROSTAT found 341,390,<sup>23</sup> and FRONTEX found 353,991.<sup>24</sup> While the slight discrepancies between data may be attributable to minor methodological differences, these deviations should alert us to the difficulties encountered by the Union’s web of sources in producing accurate and coherent asylum statistics.

Nevertheless, recent significant steps towards statistical convergence between EU actors are worth noting. EASO has been able to improve a number of elements in EUROSTAT’s definition system for asylum statistics, as Dublin transfers are no longer registered as rejection decisions, and a follow up is carried out on family reunification data in order for EUROSTAT to change its definitions and guidelines for member states.<sup>25</sup> **These efforts are anticipated to render EUROSTAT data more accurate and reliable in the future.**

Thirdly, member states collect statistics from their national databases, which, however, do not always reflect the same picture of asylum trends as the figures submitted to EUROSTAT. The Commission noted in the 2012 Implementation Report of Regulation 862/2007, for instance, that **member states have often failed to submit data or failed to disaggregate statistics by sex or age,**<sup>26</sup> notwithstanding its general observation that

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<sup>17</sup> Council Decision of 14 May 2008 establishing a European Migration Network (2008/381/EC) (EMN Decision) [2008] OJ L131/7.

<sup>18</sup> Article 9(1) EMN Decision.

<sup>19</sup> Article 2(c) EMN Decision.

<sup>20</sup> See, for example, European Commission (2010), First Annual Report on Immigration and Asylum (2009), COM(2010) 214, 6 May 2010, 11-12.

<sup>21</sup> Guild et al., *op. cit.*, 37-38.

<sup>22</sup> EASO (2014), *op. cit.*, 110. Note, however, that Austria has not provided data on new asylum applicants for that year.

<sup>23</sup> EUROSTAT (2013), *op. cit.*, 10. Note, however, that no data on new asylum applicants was provided by Cyprus, Hungary, Austria and Poland for that year.

<sup>24</sup> FRONTEX (2014), Annual Risk Analysis 2014, May, Warsaw, 76.

<sup>25</sup> Guild et al., *op. cit.*, 38.

<sup>26</sup> European Commission (2012), *op. cit.*, 8-9.

statistical practice has improved across the EU. Further, in its 2013 report on the Dublin system, the European Council on Refugees and Exiles (ECRE) noted that **several member states did not provide detailed Dublin data to EUROSTAT**, and found **discrepancies between data fed to EUROSTAT and national statistics for the member states that did**.<sup>27</sup> Here too, EASO has undertaken the task of reviewing statistical practice across member states, with a view to reducing disparities in the way asylum authorities collect and submit data to EUROSTAT.<sup>28</sup>

Closer cooperation between EU agencies and institutions is therefore likely to reduce discrepancies between the various sources of asylum data available to policy-makers, so as to assist the Union's most trusted sources – EUROSTAT more particularly – in 'getting the numbers right'. These efforts should inform the Commission's plans to consider an implementing Regulation for the purposes of improving the quality of data gathered under Regulation 862/2007.<sup>29</sup>

### 3. Using Numbers: The Role of Data in the CEAS

Even where reliable data sources are apt to produce the 'right' numbers, the extent, if any, to which these will be properly read and analysed by policy-makers may open up further risks of misconception and error. As discussed above, the use of data cannot be construed as an apolitical process, detached from the political interests and objectives of those invoking it in support of or against an asylum policy. For the actors in a multilevel governance CEAS, those interests may be varied. On one hand, EU agencies such as FRONTEX and EASO, gaining credibility and legitimacy in the pursuit of their respective mandates may be conceived as instrumental to becoming autonomous entities in the area of home affairs.<sup>30</sup> Member states, for their part, may seek to highlight intense pressure or limited capacity to host refugees in order to restrict seekers' access to protection or secure EU support in financial or other form.

According to their responses to the study by Guild et al., member states have claimed to rely on statistics in the course of the CEAS legislative negotiations, as well as bilateral and multilateral meetings concerning funding and burden-sharing.<sup>31</sup> Yet, respondents seem to have left open a number of questions around how EU policy-makers actually use asylum data: what data have been used in legislative debates, for instance, concerning which legislative instruments and to what particular end?

On one hand, in many cases, political debates on refugee protection in Europe may be grounded in superficial readings of asylum figures,<sup>32</sup> which could exacerbate assumptions about asylum demand or the conduct of asylum seekers rather than closely following factual evidence.

On the other hand, despite member states' and EU institutions' contentions, **an appropriate use of asylum data is often absent from political debates on key measures of the CEAS**. While a full *exposé* of political discussions would be impossible to document, this briefing paper can only sketch out a number of illustrative examples of misuse of data from recent negotiations at EU level. The evidence base of the alleged problem of 'asylum shopping' and the provisions regarding unaccompanied minors and victims of torture in the recast APD will be examined more closely.

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<sup>27</sup> ECRE (2013), Dublin II Regulation: Lives on Hold, February, Brussels, 21.

<sup>28</sup> EASO (2014), op. cit., 50-51.

<sup>29</sup> European Commission (2012), op. cit., 13.

<sup>30</sup> For a discussion of the aims of EU home affairs agencies, see S. Carrera, L. Den Hertog, J. and Parkin (2013), "The Peculiar Nature of EU Home Affairs Agencies in Migration Control: Beyond Accountability versus Autonomy?", *European Journal of Migration and Law* 15(4): 337-358.

<sup>31</sup> Guild et al., op. cit., 38.

<sup>32</sup> Ibid., 38.

### 3.1 The evidence base of ‘asylum shopping’

Misuse or omission of asylum numbers is particularly concerning when relied upon by policy-makers to back assumptions about the motives behind asylum seekers’ claims in the EU. This is reflected in the problem of ‘asylum shopping’ or ‘forum shopping’, a highly opaque, yet very frequently used term in policy discourse in the CEAS. In its 2008 Policy Plan on Asylum, for instance, the Commission hailed the Dublin system of allocation of responsibility for processing claims as a necessary means to combat ‘asylum shopping’,<sup>33</sup> without defining the nature or content of the problem identified. Even the Court of Justice of the EU (CJEU) has taken the concept as an uncontested fact in an obscure passage in *NS v Secretary of State for the Home Department* and *Abdullahi v Bundesasylamt*:

[T]he European Union legislature adopted [the Dublin Regulation] in order to rationalise the treatment of asylum claims and to avoid blockages in the system as a result of the obligation on State authorities to examine multiple claims by the same applicant, and in order to increase legal certainty with regard to the determination of the State responsible for examining the asylum claim and thus to avoid forum shopping.<sup>34</sup>

Member states tend to take the phenomenon of ‘asylum shopping’ at face value in order to frame the asylum problem as one of negative redistribution on the assumption that asylum seekers target the countries offering higher protection.<sup>35</sup> Protective measures towards refugees and asylum seekers are thus seen by governments as tantamount to ‘pull factors’ for migratory pressures. Beyond motivating the EU’s choice of the Dublin system as a distribution mechanism,<sup>36</sup> concerns around ‘asylum shopping’ also lie behind several member states’ reluctance to endorse mutual recognition of positive asylum decisions and to enable refugees and beneficiaries of subsidiary protection to freely move within the EU,<sup>37</sup> despite the Commission’s call for such a move in its 2014 Communication on An Open and Secure Europe: Making it Happen.<sup>38</sup>

Yet a clear definition of ‘asylum shopping’ has not been established to date. The concept is therefore open to different interpretations, as “an asylum seeker could be ‘shopping’ for a number of different things in the Union”;<sup>39</sup> be it higher protection rates in a member state, higher welfare support, or even a defective asylum system allowing her to prolong her stay in another member state.

Two further objections need be raised against the ‘asylum shopping’ problem. Firstly, the very notion of ‘asylum shopping’ implies that the motives behind an asylum seeker’s decision to apply for international protection in an EU country other than that of first arrival are the product of an inherently economic rational choice. An applicant would thus be driven to apply in a member state offering higher material reception conditions and welfare support. Yet there is a wide array of legitimate reasons for which one person may prefer a specific country: the existence of family members, support communities and diasporas or language affinity

<sup>33</sup> European Commission (2008), op. cit., 7.

<sup>34</sup> Joined Cases C-411/10 and C-493/10 *NS v Secretary of State for the Home Department / ME v Refugee Applications Commissioner* [2012] 2 CMLR 9, para 79; Case C-394/12 *Abdullahi v Bundesasylamt* [2013] ECR I-0000, 10 December 2013, para 53.

<sup>35</sup> Lavenex refers to claims of an ‘*Europe passoire*’ allowing asylum seekers to move from one member state to another in search of better protection opportunities. See S. Lavenex (2001), “The Europeanization of Refugee Policies: Normative and Institutional Challenges”, *Journal of Common Market Studies* 39(5): 851-874, 862.

<sup>36</sup> *NS*, op. cit., para 79; *Abdullahi*, op. cit., para 53.

<sup>37</sup> Guild et al., op. cit., Annex III, 116. Note that refugees and beneficiaries of subsidiary protection only benefit from rights to free movement if they obtain long-term resident status under 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) [2004] OJ L16/44, as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection [2011] OJ L132/1.

<sup>38</sup> European Commission (2014), An Open and Secure Europe: Making it Happen, COM(2014) 154, 11 March, 7.

<sup>39</sup> M. Mouzourakis (2014), “‘We Need to Talk about Dublin’: Responsibility under the Dublin System as a Blockage to Asylum Burden-Sharing in the European Union”, *RSC Working Paper Series* (forthcoming), 18.

are indicative examples.<sup>40</sup> More important, as far as family ties are concerned, it must be recalled that asylum seekers are encouraged to join their family members and relatives by the Dublin Regulation, which places family unity at the top of its hierarchy of responsibility criteria.<sup>41</sup> Accordingly, a blanket assumption that all forms of ‘asylum shopping’ are abusive towards member states’ asylum systems would be ill-founded.

Secondly, the ‘asylum shopping’ claim seems rather grounded in assumptions about the conduct of asylum seekers than in factual evidence. There certainly are indications of asylum seekers’ agency in choosing their country of destination in the Union. For example, in a 2013 interview-based study of protection seekers’ experiences of the Dublin system, the Jesuit Refugee Service (JRS) found that people “continue travelling to a variety of EU countries based on where they think they can get the best protection or where they think the best reception conditions are”.<sup>42</sup> Yet the term ‘asylum shopping’ seems to go so far as depicting the asylum seeker as an expert in comparative European asylum legislation.<sup>43</sup> Quite to the contrary, **available statistical information on the number of seekers subject to Dublin procedures would reflect ‘asylum shopping’ as a much smaller-scale problem in reality than that put forward by member states.** In 2012, for instance, an average of 35,000 requests for Dublin transfers were made across the Union, according to EASO-generated data.<sup>44</sup> Against the overall backdrop of 335,000 claims for the same year,<sup>45</sup> and bearing in mind that a fraction of these Dublin requests concerned family unity (a ‘legitimate’ form of ‘asylum shopping’, as discussed above), **less than 10% of the asylum applications lodged in the EU in 2012 could be taken as an attempt of ‘forum shopping’.** Even in that case, the link between these applicants’ presence in a member state other than that of first entry or first asylum and ‘shopping’ motives would largely remain an assumed one. As Crawley explains,

[T]here is no statistically significant relationship between the level of social and welfare benefits and asylum applications and little evidence for the claim that there is widespread and systematic ‘asylum shopping’ to exploit differences in host countries’ welfare provisions.<sup>46</sup>

The weight accorded to the ‘asylum shopping’ problem both by the EU’s political institutions and court therefore seems based on a dubious omission of numbers.

### 3.2 Guarantees for unaccompanied minors and victims of torture in the recast APD

Another example of questionable use of asylum data may be drawn from a main moot point in the negotiations on the recast APD. The Commission had proposed an exemption of unaccompanied minors from accelerated and border procedures,<sup>47</sup> and an exemption of victims of torture and other serious forms of violence from

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<sup>40</sup> Mouzourakis op. cit., 19; R. Gonzalez-Settlage (2012), “Indirect Refoulement: Challenging Canada’s Participation in the Canada-United States Safe Third Country Agreement”, *Wisconsin International Law Journal* 30(1): 142-189, 150-151.

<sup>41</sup> Articles 8-11 Dublin III Regulation.

<sup>42</sup> JRS (2013), “Protection Interrupted: The Dublin Regulation’s Impact on Asylum Seekers’ Protection”, June, Brussels, 25.

<sup>43</sup> M. Collyer (2004), “The Dublin Regulation, Influences on Asylum Destinations and the Exception of Algerians in the UK”, *Journal of Refugee Studies* 17(4): 375-400.

<sup>44</sup> EASO (n 6), 30.

<sup>45</sup> Ibid, 109.

<sup>46</sup> H. Crawley (2010), “Chance or choice? Understanding why asylum seekers come to the UK”, Refugee Council, January 2010, p. 17, citing E. Thielemann (2003), “Does Policy Matter? On Governments’ Attempts to Control Unwanted Migration”, IIS Discussion Paper No. 9, 32 and E. Neumayer (2004), “Asylum Destination Choice: What Makes Some Western European Countries More Attractive than Others?”, *European Union Politics* 5(2): 155-180.

<sup>47</sup> Articles 31(8) and 43 APD.

accelerated procedures in its 2009 APD Proposal<sup>48</sup> and 2011 APD Proposal,<sup>49</sup> bearing in mind that this would entail greater financial costs for procedures and reception.<sup>50</sup>

The vulnerability of victims of torture and unaccompanied minors in the asylum process has been widely accepted both by political institutions and courts interpreting the CEAS. Both the recast Reception Conditions Directive (RCD)<sup>51</sup> and APD generally acknowledge these categories as vulnerable applicants with special reception and procedural needs.<sup>52</sup> Similarly, the CJEU has recognised the need to safeguard unaccompanied minors from complex procedures in *MA v Secretary of State for the Home Department*, dealing with Dublin transfers.<sup>53</sup> Moreover, the Council of Europe’s Parliamentary Assembly (PACE) has equally called for an exemption of unaccompanied minors and victims of torture from accelerated procedures “due to their vulnerability and the complexity of their cases”.<sup>54</sup> In that light, the case in favour of a general exemption of such categories of asylum applicants from accelerated and border procedures should seem in line with the broader spirit of the recast process, as it would safeguard unaccompanied minors and victims of torture from the risks of expeditious asylum procedures,<sup>55</sup> which foresee reduced procedural guarantees and often lead to detention.

Yet, a number of member states in the Council, including Austria, Germany, France, Slovenia and Portugal, rejected a general derogation from accelerated and border procedures, despite the Commission’s explanation that “these procedures put an applicant in a disadvantageous position and can have serious consequences such as non suspensive effect”.<sup>56</sup> Despite the Commission and Parliament’s insistence, the general exemption was deleted from the final text of the recast Directive.<sup>57</sup>

Member states invoked a number of reasons for resisting such a derogation. On one hand, streamlining all claims of unaccompanied minors and victims of torture into the ordinary procedure was seen as a source of high financial costs for national asylum systems, as the Commission had anticipated in the APD Impact Assessment. On the other hand, some member states may have feared that a legislative exemption from

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<sup>48</sup> European Commission (2009), Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast) (2009 APD Proposal), COM(2009) 554, 21 October 2009, Articles 21(6) and 20(3).

<sup>49</sup> European Commission (2011), Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) (2011 APD Proposal), COM(2011) 319, 1 June 2011, Articles 25(6) and 24(2).

<sup>50</sup> European Commission (2009), Staff Working Document accompanying the Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (APD Impact Assessment), SEC(2009) 1376, 21 October 2009, 32.

<sup>51</sup> 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) (Reception Conditions Directive) [2013] OJ L180/96.

<sup>52</sup> Article 22 RCD; Articles 24 and 25 APD.

<sup>53</sup> Case C-648/11 *MA v Secretary of State for the Home Department* [2013] ECR I-0000, 6 June 2013, para 55.

<sup>54</sup> PACE (2005), Resolution 1471 (2005) Accelerated asylum procedures in Council of Europe member states, 8.11.

<sup>55</sup> It is worth recalling that the European Court of Human Rights (ECtHR) has found accelerated procedures in violation of the right to an effective remedy in *IM v France* App No 9152/09 (ECHR, 8 February 2012) and *AC v Spain* App No 6528/11 (ECHR, 24 April 2014).

<sup>56</sup> Council of the European Union (2011), Asylum Working Party – Outcome of Proceedings 28 June, 5 and 20 July and 27 September 2011, 12579/11 ASILE 60 CODEC 1171, 3 October 2011 81; Council of the European Union (2011), Asylum Working Party – Outcome of Proceedings, 6 December 2011, 17831/11 ASILE 127 CODEC 2245, 13 December 2011, 81.

<sup>57</sup> The provisions on victims of torture and unaccompanied minors in Articles 24 and 25 APD were among the final outstanding issues between Council and Parliament in the Directive’s negotiations. See Council of the European Union (2013), Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) [First reading] – Preparation of the eighth informal trilogue, 7434/13 ASILE 9 CODEC 561, 15 March 2013, 2.

accelerated and border procedures would create a ‘pull factor’ by attracting large numbers of unmeritorious claimants to exploit the new procedural framework for abusive purposes.

The arguments around ‘pull factors’ and abuse risks are by their very nature distanced from statistical evidence. Yet, it would be hard to corroborate even member states’ resource-related objections in light of available asylum data on unaccompanied minors. According to EASO-generated data, the proportion of unaccompanied minors per asylum applicants in 2012 was 8.1% in Sweden (3,575 out of 43,855), 7.89% in Austria (1,375 out of 17,415), 2.7% in Germany (2,095 out of 77,485), and 0.79% in France (490 out of 61,440). Percentages were even lower in 2013: 7.09% in Sweden (3,850 out of 54,270), 5.34% in Austria (935 out of 17,500), 1.96% in Germany (2,485 out of 126,705), and 0.55% in France (365 out of 66,265).<sup>58</sup>

‘Talking numbers’ therefore enables one to critically identify potential holes in arguments for policy restrictionism in the recast APD: **how high are the financial implications of avoiding accelerated and border procedures for what amounts to less than 2% of the total number of claims** in some countries? To the extent that it claims to rely on factual evidence of ‘pull factors’ and significantly higher costs, the Council’s firm position against the exemption of unaccompanied minors could only be seen as one of ‘wrong numbers’.

#### 4. Conclusions and Recommendations

The CEAS constitutes an arena that is highly illustrative of the ‘politics of numbers’. The Union benefits from a wide variety of asylum data sources, ranging from reports of external actors such as the UNHCR to internal EU statistics provided by EUROSTAT, EASO, FRONTEX, EMN, DG HOME and member states. These sources of information paint a detailed picture of asylum demand and capacity in the EU by providing numbers on asylum applicants, countries of origin and destination, recognition rates and the operation of the Dublin system distributing responsibility between member states. Recently, EASO and EUROSTAT have made welcome efforts to improve statistical practice and reduce discrepancies between different EU and national sources of data, in order to render asylum numbers more accurate and reliable in the future. However, the broad availability of numbers does not necessarily translate into sounder evidence-led decision-making in the CEAS. Very often, EU institutions, courts and member states misuse or omit data when identifying problems such as high financial costs and ‘pull factors’ attached to protective measures for vulnerable applicants. Furthermore, ambiguous concepts such as ‘asylum shopping’ are amply used in the EU’s asylum discourse to assume motives behind asylum seekers’ choice of destination country without solid statistical support.

On the basis of the issues discussed above, the following recommendations are made:

- ❖ Significant improvements have been marked in the harmonisation of different sources of asylum data, namely through EUROSTAT-EASO cooperation. To ensure greater consistency between sources, EUROSTAT, EASO and FRONTEX should work closer with a view to eliminating disparities in the data they produce in their respective annual reports.
- ❖ Member states should take concrete steps to fulfil their commitment to providing EUROSTAT with accurate asylum statistics under Regulation 862/2007 so as to contribute to better monitoring of the full and effective transposition of the CEAS across the Union.
- ❖ The Commission and EASO should review statistical practice across the EU member states to identify and eliminate discrepancies between data gathered by member states in their national databases and data submitted to EUROSTAT.
- ❖ The Commission should be encouraged to provide more detailed and evidence-based explanations to its legislative proposals in their accompanying Impact Assessments, as well as to its non-legislative Communications relating to measures taken in the context of the CEAS such as mutual recognition of positive asylum decisions.

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<sup>58</sup> EASO (2014), op. cit., 109, 113.

- ❖ Member states should make better and more systematic use of available asylum data when preparing their negotiating positions on the CEAS. To that end, closer coordination between asylum authorities that handle asylum data in capitals and permanent representations in Brussels could prove useful.
- ❖ When drafting policy documents and delivering rulings on the CEAS, EU institutions, including the CJEU, should refrain from the systematic and unquestioned use of concepts such as ‘asylum shopping’ (or ‘forum shopping’) and ‘pull factors’, the content of which tends to be assumed rather than assessed against factual evidence.

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