

Digitalisation of asylum procedures: risks and benefits

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Glossary

Acquis	Accumulated legislation and jurisprudence constituting the body of European Union law.
Asylum Procedures Regulation	European Commission proposal for a Regulation establishing a common procedure for international protection in the Union and repealing the recast Asylum Procedures Directive, tabled on 13 July 2016.
Asylum seeker(s) or applicant(s)	Person(s) seeking international protection, whether recognition as a refugee, subsidiary protection beneficiary or other protection status on humanitarian grounds.
Beneficiary of international protection	Person granted refugee status or subsidiary protection in accordance with Directive 2011/95/EU .
Caseworker	Personnel of the determining authority responsible for examining and assessing an application for international protection and competent to take a decision at first instance in such a case.
Lodging an asylum application	Term relevant to Directive 2013/32/EU and some countries: Formal submission of an application for international protection, which marks the start of its examination.
Making an asylum application	Expression of the intention to seek asylum. This can be done either orally or in writing before a public authority.
Need of special procedural guarantees	As defined in Recital 29 Directive 2013/32/EU , this may be due to age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence
Pact on Asylum and Migration	In September 2020, the European Commission (the Commission) presented a New Pact on Migration and Asylum (the Pact). It aims to develop a comprehensive approach to external borders, asylum and return, the Schengen area of free movement, and external policies.
(recast) Reception Conditions Directive	Directive 2013/33/EU laying down standards for the reception of asylum seekers.
(recast) Asylum Procedures Directive	Directive 2013/32/EU on common procedures for granting and withdrawing international protection
(recast) Qualification Directive	Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and the content of the protection granted.
Registration of an asylum application	Recording of a person's asylum application, certifying his or her status. According to the recast Asylum Procedures Directive and practice in some countries, registration is a distinct step from "lodging".
Vulnerable person	As defined in Article 21 Directive 2013/33/EU , includes minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

List of abbreviations

AIDA	Asylum Information Database
ASGI	Association for Legal Studies on Immigration Associazione per gli Studi Giuridici sull'Immigrazione
BAMF	Federal Office for Migration and Refugees Bundesamt für Migration und Flüchtlinge (Germany)
BFA	Federal Agency for Immigration and Asylum Bundesamt für Fremdenwesen und Asyl (Austria)
BVwG	Federal Administrative Court Bundesverwaltungsgericht (Austria)
CALL	Council of Alien Law Litigation Conseil du contentieux des étrangers Raad voor Vreemdelingenbetwistingen (Belgium)
CEAS	Common European Asylum System
CGRS	Office of the Commissioner General for Refugees and Stateless Persons Commissariat général aux réfugiés et aux apatrides Commissariaat-generaal voor Vluchtelingen en Staatlozen (Belgium)
CNDA	National Court of Asylum National Court of Asylum Cour nationale du droit d'asile (France)
DGMM	Directorate General for Migration Management Göç İdaresi Genel Müdürlüğü (Turkey)
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRE	European Council on Refugees and Exiles
EU	European Union
Fedasil	Federal Agency for the Reception of Asylum Seekers (Belgium)
GCR	Greek Council for Refugees Ελληνικό Συμβούλιο για τους Πρόσφυγες (Greece)
GUDA	Single desk for asylum seekers Guichet unique pour demandeur d'asile (France)
HHC	Hungarian Helsinki Committee
ICJ	International Commission of Jurists
IPA	International Protection Agency (Malta)
IPAT	International Protection Appeals Tribunal (Ireland)
IPO	International Protection Office (Ireland)
IND	Immigration and Naturalisation Service Immigratie en Naturalisatiedienst (Netherlands)
JRS	Jesuit Refugee Service
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
NCHR	National Commission for Human Rights Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου (Greece)
OFII	French Office for Immigration and Integration Office français de l'immigration et de l'intégration
OFPRA	Office for the Protection of Refugees and Stateless Persons Office Français de Protection des Réfugiés et Apatrides (France)
PADA	Plateforme d'accueil de demandeurs d'asile (France)
RAO	Regional Asylum Office Περιφερειακό Γραφείο Ασύλου (Greece)
RSD	Refugee Status Determination

RIC	Registration and Identification Centers (Greece)
RIS	Reception and Identification Service Υπηρεσία Υποδοχής και Ταυτοποίησης (Greece)
SEF	Immigration and Borders Service Serviço de Estrangeiros e Fronteiras (Portugal)
SEM	State Secretariat for Migration Secrétariat d'Etat aux migrations (Switzerland)
UNHCR	United Nations High Commissioner for Refugees

Introduction

The outbreak of the COVID-19 pandemic in 2020 has led to an increase in the use of digital tools in the asylum procedure. While the use of such technologies was imposed as an urgent need to limit human contact, these tools might be here to stay and thus pose a new reality to asylum.

New technologies may play a crucial role in ensuring that national asylum systems continue to operate and function. They are also perceived as a way to modernise and improve the efficiency of asylum systems. In recent years, different authorities have launched pilot projects or resorted to digital tools with the aim of expediting applications for international protection, managing a higher caseload of applications, and supporting the swift provision of certain services. Several European countries have thus confirmed their interest and willingness to further invest in new technological solutions.

Except for EU-wide information systems such as Eurodac, Eurostat or eu-LISA,¹ which are regulated in EU secondary legislation, the EU asylum *acquis* does not provide for clear rules on the use of digital tools in the asylum procedure. This leaves Member States discretion and flexibility as regards their application in national asylum processes. The loophole is also visible in other European and international instruments as well as in the recent legislative reforms initiated by the European Commission (EC) on the Common European Asylum Systems (CEAS) in 2016 and in 2020 which fail to provide urgently needed guidance on the use of these tools. This creates legal uncertainty and raises complex legal questions on the interplay between refugee protection, data protection and digitalisation.

In practice, the use of digital tools and remote working methods is widely disparate and remains the exception in Europe. They are mainly considered as an alternative, substitute or temporary solution to problems with administrative capacity in limited circumstances. Nevertheless, digital tools may have far-reaching consequences on the right to asylum. For applicants for international protection, digital tools may be difficult to navigate and can have an adverse effect on the quality of the refugee status determination procedure. Some tools are not adequate nor suitable to their individual circumstances and are not able to respond to their specific needs. They may further create additional obstacles to the access to asylum due to IT illiteracy, the complexity of digital connectivity or the lack of adequate equipment, and raise broader concerns about data protection and privacy rights. For national authorities, digital tools entail significant human and financial costs. They require important IT infrastructure and regular maintenance to ensure that the equipment is adequate and adapted to the individual circumstances of the applicant, as well as proper training of caseworkers and relevant staff to avoid technical issues.

This comparative report provides an overview of the use of digital tools and remote working methods in 23 European countries based on ECRE's Asylum Information Database (AIDA), as well as other relevant publications from ECRE, the European Asylum Support Office (EASO), the European Migration Network (EMN) and the United Nations High Commissioner for Refugees (UNHCR). It questions the risks and benefits of the use of digital tools in asylum processes and highlights several fundamental guarantees and procedural safeguards which must continue to apply to ensure that they do not infringe the existing CEAS framework. The report strictly focuses on the use of digital tools in asylum processes from a procedural perspective and analyses their potential impact on the right to asylum. It does not cover the use of e-evidence for assessing asylum claims nor the use of artificial intelligence and large-scale IT databases in the broader context of migration and border management.

¹ An analysis of the use of these databases is not part of this paper. For an overview on the different databases and their interoperability see: ECRE Working Paper, written by Dr Niovi Vavoula: *Transforming Eurodac from 2016 to the New Pact: From the Dublin System's Sidekick to a Database in Support of EU Policies on Asylum, Resettlement and Irregular Migration*, January 2021, available at: <https://bit.ly/320SfUb>.

The report is divided in three Chapters which follow the chronological steps of the asylum procedure:

- **Chapter I** describes the use of digital tools at registration stage, in particular the establishment of so-called “pre-registration” and “self-registration” systems.
- **Chapter II** focuses specifically on the use of remote interviewing methods at first instance through online tools and videoconferencing. It provides additional information on other technologies employed at first instance, in particular in relation to information provision.
- **Chapter III** presents the sporadic use of digital tools at second instance, in particular electronic submission of documents and remote hearing methods at appeal stage.

All chapters also include a specific section on the impact of COVID-19 as it broadened the use of a wide range of technologies and remote working methods at different stages of the asylum procedure. A final part draws conclusions and makes targeted recommendations for practice and legislative reform.

Chapter I – The use of digital tools at registration stage

The first phase of the asylum procedure entails three steps: making, registering and lodging the application. In some Member States these are distinct steps, while in other countries they coincide. Registration is the procedural step, following the making of the application, whereby authorities record the person's intention to seek protection together with his or her personal details and other relevant information. Article 6 of the recast Asylum Procedures Directive (APD) provides basic principles and guarantees on the access to the procedure, including the obligation for Member States to ensure that "a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible".² This means that applicants for international protection should have prompt effective access to the asylum procedure and that administrative arrangements set up by Member States to register the application, including through digital tools, do not make it impossible or excessively difficult for applicants to lodge their asylum claim.

The obligation of Member States to secure swift access to the procedure is also derived from the right to good administration, i.e. the right of any person to have his or her affairs handled impartially and within a reasonable period of time,³ the principle of *non-refoulement*,⁴ and the right to asylum.⁵ Member States must thus ensure compliance with the right to good administration and to asylum, and the *non-refoulement* principle when adopting new technologies or administrative arrangements that may affect the applicants' access to the asylum procedure. If the process is unworkable or not accessible, individuals might not be able to exercise their right to asylum, or may not be able to fulfil their duty to formally lodge their applications for international protection.

In many countries, however, applicants for international protection are hindered from accessing the procedure and need to wait several weeks before being able to make their application. Delays in the registration of applications have been reported in countries including **Greece, Belgium, Italy, Spain or France**. Against this backdrop, Member States have tried to adopt new solutions to make asylum procedures more efficient. Increasing the number of staff in asylum authorities, for example, is considered by certain Member States as a way to improve the efficiency of national asylum systems and to optimise available resources.⁶ Other Member States have demonstrated their willingness to invest in digitalisation and innovation of their national systems with the aim of making asylum procedures more efficient.

The absence of binding provisions or procedural guarantees on the use of digital tools in asylum procedures gives Member States flexibility as regards the methods used to register an application for international protection. This has resulted in the establishment of "pre-registration systems" or "self-registration systems", which do not have a legal basis and do not exist in the current EU asylum *acquis*.

The design of registration systems through the use of digital tools may have significant consequences on the applicants' access to rights guaranteed by international and EU law, in particular the right to material reception conditions. The enjoyment of this right is contingent on asylum seeker status and the

² Article 6(2) recast Asylum procedures Directive.

³ Article 41 EU Charter.

⁴ Article 33 Geneva Convention Relating to the Status of Refugees. The non-refoulement principle the principle prohibits states from returning individuals in any manner whatsoever to countries where they will face treatment of such nature and ensures that all claims alleging such risks will be thoroughly assessed by states.

⁵ Article 18 EU Charter. The Charter established that the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union.

⁶ ECRE/AIDA, *Asylum authorities: An overview of internal structures and available resources*, November 2021, available at: <https://bit.ly/3pkyLDF>.

proof thereof depends on the prompt completion of registration and access to official documentation.⁷ In case the registration procedure is carried out remotely or through digital tools, there should thus be a clear way of registering the date of ‘making’, ‘registering’ and ‘lodging’ to establish procedural deadlines in line with the recast Asylum Procedures Directive,⁸ and to ensure a swift access to reception.

Pre-registration systems

Some countries have introduced online or telephone appointment systems to respond to delays in registration and to manage increasing numbers of asylum seekers. These tools are also sometimes referred to as “pre-registration systems” or “appointment systems”, whereby appointments are given to applicants for the actual registration and/or lodging. The aim is to organise the actual making or lodging of the application in a more structured way.

In the **United Kingdom**, asylum seekers present on the territory are required to telephone the Asylum Intake Unit (AIU) of the Home Office and give some basic personal details over the phone, but not details of their asylum claim. They are then given an appointment to attend and lodge their claim.⁹ Applicants for international protection are unable to access financial support or government-provided accommodation while they await an appointment to attend and lodge their claim. In exceptional circumstances – destitution or extreme vulnerability – the Home Office can accept walk-in applications or offer a same or next-day appointment. In practice, it is hard to prove that the applicant is destitute or sufficiently vulnerable and applicants are advised that they may need to advocate for their need to be seen without an appointment.¹⁰

In **France**, the French Office of Immigration and Integration (OFII) has operated a telephone appointment system in Paris and the Île-de-France region since May 2018, whereby applicants obtain a text-message appointment to appear before the assigned local competent orientation platform, which in turn books them an appointment with the Single desk for asylum seekers (GUDA) to register their application.¹¹ The OFII reported that over 200,500 calls were answered and 151,400 appointments were granted during the first 600 days of operation of the telephone appointment system.¹² However, figures made available by the Prefecture of the Île-de-France revealed that nearly 90% of the calls made to the OFII telephone service until the end of 2018 were unsuccessful.¹³ More recent figures demonstrated that the telephone platform was only operative a couple of hours in the morning and that the number of appointments being granted per day gradually decreased in 2020.¹⁴ As a result, the access to the procedure reached one month on average during that year. Moreover, despite initial announcements of free-of-charge access, calls to the telephone platform are charged 0,15 to 0,19 € per minute by phone operators, which may create a barrier for asylum seekers. Several French courts have urged the authorities to take appropriate measures to address the delays in accessing the procedure,¹⁵ including

⁷ Article 2(b) and (c) recast Asylum Procedures Directive.

⁸ Article 6 of the Asylum Procedures Directive.

⁹ AIDA, *Access to protection in Europe - The registration of asylum applications*, November 2018, available at: <https://bit.ly/3jLF933>, p.17.

¹⁰ Right to Remain, *Toolkit - A guide to the UK immigration and asylum system* (information for people making an asylum claim), available at: <https://bit.ly/2tnulfd>.

¹¹ OFII, *Une plateforme téléphonique pour les demandeurs d'asile en Île-de-France*, 2 May 2018, available in French at: <https://bit.ly/3rNpGUY>.

¹² OFII on Twitter, 14 December 2020, available in French at: <https://bit.ly/2YleJnT>.

¹³ ECRE, *France: nearly 90% of calls to Paris phone registration platform missed*, 19 April 2019, available at: <https://bit.ly/3Cr0yG9>; La Cimade, *La loterie de l'accès à la procédure d'asile en Ile-de-France*, 12 April 2019, available in French at: <https://bit.ly/2LDUjcU>.

¹⁴ La Cimade, *Asile en Ile de France: comment contourner (légalement) la plateforme de l'OFII?*, 9 February 2021, available in French at: <https://bit.ly/3pexgTD>.

¹⁵ French Council of State, Decision 410347, 31 July 2019, available in French at: <https://bit.ly/38jVdRH>.

through the deployment of additional staff to reinforce the capacity of the telephone platform,¹⁶ or through the increase of daily appointments up to 100 per day,¹⁷ so as to avoid “virtual queues” of asylum seekers.¹⁸

In **Greece**, a system for granting appointments for registration of asylum applications through Skype was put in place in 2014.¹⁹ This means that in practice, prospective applicants have to contact the Greek Asylum Service through Skype to express the intention to make their asylum claim and book a registration appointment. The Skype line is available in 17 languages, 29 hours per week, for access to the Asylum Service on the mainland and on the Eastern Aegean Islands for some specific languages. A detailed schedule indicating specific time slots to book an appointment in the required language is available on the Asylum Service’s website.²⁰ Several stakeholders have expressed concerns regarding the inefficiency of the Skype appointment system throughout the years, including the Greek Ombudsperson in 2017,²¹ the UN Committee Against Torture in 2019,²² and more recently the Greek National Commission for Human Rights (NCHR) in 2020.²³ They pointed to the difficulties in accessing the Skype-based appointment system, in particular due to limited capacity and availability of interpretation and applicants’ limited access to the internet.²⁴ The Greek authorities were called upon to reinforce the capacity of the Asylum Service to register and substantively assess all individual applications for asylum or international protection.

In **Italy**, although no official digitalised system for pre-registration is in place, applicants are often requested to send an email to obtain an appointment at the competent Questura in order to make their application.²⁵ The Questura of Naples introduced an online registration system that was available only once a week. In one of its Decisions, the Civil Court of Naples ordered the authorities to proceed with the registration of the asylum application and considered that the impossibility for the applicant to book an appointment online to register his application for international protection exposed him to a situation of irregularity and put him at risk of expulsion.²⁶ In 2020, the Questura cancelled its online registration system but did not replace it with an alternative way of seeking asylum, and applications for international protection could only be registered and lodged through lawyers.²⁷ As of today, asylum seekers have to rely on lawyers to make their application.²⁸

¹⁶ Administrative Court of Paris, Order 1902037, 13 February 2019, available in French at: <https://goo.gl/Fv4vG4>.

¹⁷ Administrative Court of Paris, Order 1924867/9, 25 November 2019, available in French at: <https://bit.ly/3ajddxq>.

¹⁸ In December 2020, 16 migrants supported by 12 NGOs have asked the Administrative Court to note that the telephone platform is, for many, inaccessible and constitutes an obstacle to access to asylum applications. See: ACAT and others, *Exilés en errance en Ile-de-France, l'impossible enregistrement des demandes d'asile*, Press release, 10 December 2020, available in French at: <https://bit.ly/2LbFpdP>.

¹⁹ AIDA, *Country Report Greece*, 2020 Update, June 2021, available at: <https://bit.ly/3sQywjf>, p. 54.

²⁰ Hellenic Republic, Ministry of Migration and Asylum, *Applications for International Protection via Skype*, available at: <https://bit.ly/3EBUagx>.

²¹ See e.g. Greek Ombudsman, *Special Report: Migration flows and refugee protection*, April 2017.

²² UN Committee Against Torture, Concluding Observations on the seventh periodic report of Greece, 3 September 2019, CAT/C/GRC/CO/7, available at: <https://bit.ly/39Sp8la>.

²³ Greek National Commission for Human Rights (NCHR), available in Greek at: <https://bit.ly/3aLsA3m>, p.57.

²⁴ Asylum Service, Registration Schedule from 22 June 2020, available at: <https://bit.ly/2R8qR15>, Asylum Service, Registration Schedule from 10 August 2020 Asylum Service, available only in Greek at: <https://bit.ly/3t2ubrR>, Asylum Service, Registration Schedule from 2 November 2020, available only in Greek at: <https://bit.ly/3t8Xp8l>. As of the end of October 2021, information on the Skype registration procedure was available in 16 additional languages. See: Asylum Service, Skype Schedule, available at: <https://bit.ly/3rNANNR>.

²⁵ Information provided by ASGI, December 2021.

²⁶ Civil Court of Naples, Order of 29 July 2019, available in Italian at: <https://cutt.ly/Hyv9Bkf>.

²⁷ AIDA, *Country Report Italy*, 2020 Update, June 2021, available at: <https://bit.ly/31HGL87>, p. 42.

²⁸ Information provided by ASGI, December 2021.

Although the above administrative arrangements were introduced with the aim of facilitating the registration process, and in particular to avoid delays or queuing at registration centres, available evidence suggest that these objectives have not been met. Instead, these practices raise questions of compliance with the EU requirement that access to the procedure must be effectively ensured as soon as possible.²⁹ Online and phone pre-registration systems seem to have added an administrative layer rendering the access to the asylum procedure more difficult. Moreover, they may also be counter-productive as they entail more coordination within or between authorities, more IT infrastructure and resources, and inevitably more time for both asylum seekers and officials to comprehend and to navigate the relevant digital procedures. ECRE has demonstrated in other research that a single-step registration process ensures simplicity in the process and in documentation, as well as prompt access to the procedure.³⁰

Self-registration systems

Some countries have introduced self-registration systems with the aim of facilitating the registration process and reducing the face-to-face time expended by registration officers and interpreters. This may render the overall process more cost-efficient insofar as it allows for registration of multiple applications for international protection simultaneously with minimal assistance. It may further enhance the applicant's responsibility and ownership over the information provided, which may foster trust in the procedure. According to the European Asylum Support Office (EASO), "evaluations have shown that the quality of the information provided through self-registration is not less than when conducting the registration face-to-face".³¹

In **Greece**, the **Netherlands** and **Norway**, for example, self-registration terminals or booths have been placed within the premises of administrations or reception centres for applicants to self-register.³² They are based on a website and asylum applicants are given information before using the system.

In the **Netherlands**, the self-registration platforms have been in place since 2015-2016. An employee from the IND opens the digital application form, installs the correct language, and guides the asylum seeker (in person) if they have any questions. The self-registration platform is available in 17 languages and collects data on region of birth, spouse or civil partner, children, parents, school attendance, academic studies and criminal records.³³ The persons who self-register are considered as asylum seekers and fall within the scope of the Reception Conditions and Asylum Procedures Directives.³⁴

In **Norway**, the self-registration system was established in 2018 and is available for those that are capable of using it - applicants who are illiterate or who do not speak one of the 16 available languages are exempt and may use the normal procedure.³⁵

In **Greece**, self-registration platforms have been introduced more recently, in June 2020.³⁶ The possibility to self-register is only granted to individuals whose intention to apply (βούληση) has already been officially registered. This is the case of persons whose application is already pre-registered either

²⁹ Article 6(2) recast Asylum procedures Directive.

³⁰ ECRE/AIDA, *Access to protection in Europe the registration of asylum applications*, 2018 available at: <https://bit.ly/3jLF933>, p.30.

³¹ EASO, *Practical recommendations on conducting remote/online registration (lodging)*, June 2021, available at: <https://bit.ly/3vP7nPq>, p.14.

³² European Migration Network, *Accurate, timely, interoperable? Data management in the asylum procedure, EMN Study* June 2021, available at: <https://bit.ly/3rT1j8J>, p. 23.

³³ Ibid.

³⁴ Information provided by the Dutch Council for Refugees, December 2021.

³⁵ European Migration Network, *Accurate, timely, interoperable? Data management in the asylum procedure, EMN Study* June 2021, available at: <https://bit.ly/3rT1j8J>, p. 23.

³⁶ Asylum Service, *Electronic self-registration*, available at: <https://bit.ly/332MF0K>. Login instructions available at: <https://bit.ly/2S64ABu>.

by the Reception and Identification Service (RIS) when they entered Greece, or by the Hellenic Police during an administrative detention period, or by the Asylum Service via Skype if the application has not been fully registered yet. The self-registration platform is available only in Greek and English.³⁷

There are no available statistics in the above countries on the number of applications for international protection that have been registered through the self-registration systems and it is therefore difficult to assess their efficiency. Nevertheless, it is worth noting that in the case of the **Netherlands**, applicants may choose between the self-registration procedure and an application in writing. This is a fundamental safeguard, which ensures that self-registration does not replace the registration process in itself but aims to complement it. Moreover, self-registration is assisted by an IND employee who provides guidance when necessary. Applicants should always be granted an opportunity to submit documents relevant for the registration both electronically and, if needed, physically to the authorities.

The provision of detailed information on the use of these platforms and adequate assistance while self-registrations are carried out is crucial to ensure effective access to the asylum procedure. Nonetheless, in **Greece**, the Greek Council for Refugees (GCR) has reported that applicants are not informed about the next steps following self-registration, i.e. no information is provided as to whether an appointment for the receipt of the asylum seeker card or for the interview before the Asylum Service has to be set up. GCR is aware of cases of people who were self-registered and then had to organise a new appointment for the “full registration” before the Asylum Service “due to technical issues of the electronic self-registration”, as reported by the competent Regional Asylum Office (RAO).³⁸ The fact that the platform is only available in two languages also raises questions as regards the effectiveness of the tool and requires the presence of an interpreter as well as of a supervisor to monitor the registrations.

Access to the asylum procedure and registration during COVID-19

COVID-19 had a significant impact on national asylum systems across Europe due to restrictive measures imposed to contain the spread of the coronavirus, which also affected people on the move and their access to asylum procedures. This resulted in a significant drop in applications for international protection, mainly due to travel restrictions and the closure of borders.³⁹ Eurostat statistics indicate that a total of 471,300 individuals applied for international protection in the European Union (EU) Member States in 2020, down by 32.6 % compared with 2019.⁴⁰

At national level, different stages of the asylum procedure were suspended or postponed for several weeks between March and summer 2020. In some countries this included closing registration offices, meaning that applicants were not able to make their application for international protection for several days or weeks and had limited access to services. This was reported in **Belgium, Cyprus, France, Greece, Hungary, Italy, the Netherlands, Serbia and Slovenia**.⁴¹ Some countries specified that registration of applications was in general suspended or only allowed for exceptional cases and/or for vulnerable persons.⁴² In **Greece** for example, the operation of Regional Asylum Offices (RAOs) in the

³⁷ Greek Ministry of Migration and Asylum, *Electronic Self-Registration*, available in English and Greek at: <https://bit.ly/3DSiavw>.

³⁸ AIDA, Country Report Greece - 2020 Update, June 2021, available at: <https://bit.ly/3sQywj7>, p.55.

³⁹ European Commission, *Member States' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 and 28 et seq. of the Schengen Borders Code*, available at: <https://bit.ly/3vbWiWv>.

⁴⁰ Eurostat, *Asylum Statistics*, 2020, available at: <https://bit.ly/3ivaEyJ>.

⁴¹ AIDA, *Country reports*, available at: <https://bit.ly/3rNBpmw>; ECRE, *Information Sheet 28 May 2020: Covid-19 Measures Related to Asylum and Migration Across Europe*, available at: <https://bit.ly/3IMPtZD>; see also, AIDA, *Asylum adjourned – the situation of applicants for international protection in 2020*, July 2021, available at: <https://bit.ly/3dyHYB6>.

⁴² European Commission, *Communication from the Commission Covid-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement*, Brussels, 16 April 2020 C(2020) 2516 final, available at: <https://bit.ly/31iZbO>, p.4.

Attica region were suspended from 6 October to 16 October 2020, and new measures against COVID-19 were adopted in November 2020. During this period, full registration of asylum applications was not conducted except for vulnerable applicants.⁴³ On the contrary, other countries continued to operate to the greatest extent possible and to register applications for international protection in person such as **Austria, Romania, Sweden and Switzerland**, and some managed to tackle backlogs.

In this context, COVID-19 accelerated the use of technology and digital solutions to perform tasks remotely or online in order to ensure a continuity of service provision. Asylum authorities had to adapt to the abrupt shift to working from home and introduced measures at very short notice which affected the access of applicants to the asylum procedure. In order to address these challenges, the European Commission issued on 16 April 2020 guidance on the implementation of rules and relevant EU provisions in asylum procedures during COVID-19.⁴⁴ Overall, it recommended Member States resort to remote working methods, such as the possibility for applicants to make their application either through postal mail, or preferably online, to address the limitations of in-person activities. However, the guidance also underlined that these measures should be reasonable, proportionate and non-discriminatory. It also recalled the fundamental principles that must continue to apply, so that access to the asylum procedure continues to the greatest extent possible during the COVID-19 pandemic.

Thus, while Member States were allowed to apply the extension of the time limit for the registration of applications to ten working days,⁴⁵ delays in the registration of applications should not affect the rights of the applicants pursuant to the Reception Conditions Directive, which apply as from the making of an application. This highlights again the importance for applicants to be granted proof and evidence of the fact that they have effectively made and lodged their asylum application. In **Malta** for example, asylum-seekers who arrived regularly and who expressed their wish to apply for international protection when the offices of the International Protection Agency (IPA) were closed due to COVID-19 were requested to send an email with some basic information (e.g. name, nationality, date of birth, date of arrival etc.). They were later contacted and given an appointment to formally register their application. The email confirmation by the IPA could be used as a proof of an asylum-seeker status.⁴⁶ Persons rescued at sea were instead taken to detention centres, and registration was carried out by the IPA before they were released. In **Germany**, applications for international protection were accepted for a temporary period in writing during the first months of the pandemic. Application forms could be filled in in initial reception centres and sent to the German Federal Office for Migration and Refugees (BAMF). During the second phase of the pandemic, German authorities resumed registration and relevant services in person.⁴⁷

In **Belgium**, however, access to registration was hindered for several weeks during the pandemic. On 17 March 2020, the Belgian Immigration Office closed its registration offices, which re-opened on 3 April 2020 with a new online registration system. Applicants for international protection had to fill in an online registration form, available only in French and Dutch, after which they were invited on a later date to officially make and lodge their asylum claim. As a result, asylum seekers had no access to the reception system for several weeks, as national law foresees access only once the application for international protection is officially made. In addition, since the dispatching service of the Federal Agency for the Reception of Asylum Seekers (Fedasil) in the arrival centre was closed from 17 March 2020 onwards,

⁴³ Greek Ministry of asylum and migration, Temporary suspension of operation of Asylum Service offices, available at: <https://bit.ly/3eSbzWj>; Greek Ministry of asylum and migration, New measures for the protection of public health (Saturday 11 Nov 2020 until Monday 30 Nov 2020), available at: <https://bit.ly/3vApJIS>; See also: AIDA, *Country Report Greece*, 2020 Update, June 2021, available at: <https://bit.ly/3sQywtj>, p.58.

⁴⁴ European Commission, *Communication from the Commission Covid-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement*, C(2020) 2516 final, 16 April 2020, available at: <https://bit.ly/31liZbO>.

⁴⁵ Article 6(5) of the recast Asylum Procedures Directive.

⁴⁶ Information provided by the Maltese International Protection Agency (IPA), June 2020.

⁴⁷ ECRE, *Information Sheet 28 May 2020: Covid-19 Measures Related to Asylum and Migration Across Europe*, available at: <https://bit.ly/3lMPtZD>; ECRE, *Information Sheet 7 December 2020: Covid-19 Measures Related to Asylum and Migration Across Europe*, available at: <https://bit.ly/3dDxnop>, p.3.

applicants who needed to re-integrate into the reception system (e.g. because they had left their reception place or after having received an admissibility decision on their subsequent application) had no access to the reception system either. Following a collective action lodged by civil society organisations, the Brussels Court of First Instance condemned the Belgian State and ordered the immediate suspension of the online registration system.⁴⁸ Registration in person was resumed on 3 November 2020 and applicants were able to access the reception system accordingly.

Several observations can be made about the Belgian online registration system. First, it highlights the need to provide adequate support at all times to applicants in making their application for international protection.⁴⁹ The fact that the online tool was only available in two languages, and required a smartphone with a camera option in order to fill out the registration form, created additional obstacles. In its guidance, the European Commission emphasised that applicants should have easy access to the correct form to be filled-in online, and further underlined the importance of informing both staff and applicants, as well as the wider public, of temporary changes and arrangements to the asylum procedure, e.g. through public websites of asylum authorities or through civil society organisations that may assist applicants.

Second, the time lapse between the online registration and the official appointment with the Immigration Office was several weeks and even months in some cases. During this time people were not formally recognised as asylum seekers and therefore did not have access to asylum or reception. This raised serious questions of compliance with EU law and put applicants at risk of human rights violations, including destitution and homelessness.

Third, the Belgian practice shows that, even though they may in certain circumstances provide additional tool for registration or lodging purposes, new online tools can never substitute administrative capacity. Without in-person support, there is a risk that digital tools will increase backlogs and prolong delays, rather than speeding up access to protection and improving the registration process.⁵⁰

⁴⁸ Brussels Court of First Instance, Decision 2020/105/C, 5 October 2020, available in French at: <http://bit.ly/3bpjgCU>.

⁴⁹ See also: UNHCR, *Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic*, April 2020 available at: <https://bit.ly/31Lhslz>, p.3.

⁵⁰ See also: AIDA, *Access to protection in Europe - The registration of asylum applications*, November 2018, available at: <https://bit.ly/3jLF933>, p.18.

Chapter II – The use of digital tools at first instance

The first instance procedure refers to the administrative process during which the determining authority, i.e. any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection, examines the application and takes the first decision on a case. Before a decision is taken by the determining authority, applicants have the right to a personal interview.⁵¹

The requirement of a personal interview is a fundamental guarantee in the process because it enables the applicant to put forward their opinions regarding the application and substantiate the grounds for their applications.⁵² Additionally, it allows the determining authority to assess, in full knowledge of all the facts, relevant factors, evidence and personal circumstances of the case.⁵³ EU law establishes detailed rules to be applied to ensure the quality of the interview. This includes *inter alia* the requirement to ensure appropriate confidentiality, to consider the personal and general circumstances surrounding the application, and to ensure interpretation into the language preferred by the applicant.⁵⁴ Training requirements for caseworkers and other staff in determining authorities is also laid down in EU law as a crucial component of a fair asylum procedure.⁵⁵

The quality of the personal interview depends on a range of preconditions and administrative arrangements the availability and set-up of which are crucial to ensuring that it is conducted in an efficient and effective manner. Nonetheless, the EU asylum *acquis* do not include provisions on the modality or the structure of the interview. Member States thus have discretion as to the nature of the interview, which may be organised in person, remotely and through digital tools. Nonetheless, guarantees must be applied to ensure that the modality is in line with CEAS standards. First, there should be a clear individual and case-by-base assessment of the feasibility of conducting the interview remotely, both from a technical point of view and from a security and integrity perspective. In cases where the remote interview may negatively affect the quality of the interview or create additional difficulties for applicants to substantiate evidence, it should be avoided. In addition, staff involved in remote interviewing, including interpreters and legal advisors, must be trained accordingly and have the appropriate skills and experience to use remote interviewing methods and relevant tools.

Another fundamental aspect of remote interviewing relates to confidentiality and the need to ensure a secure communication, so that the interview is conducted in a safe, confidential and suitable environment. UNHCR underlined the need “to opt for platforms and tools that comply best with privacy standards, carrying out rapid data protection assessments for a particular tool, establishing SOPs for remote interviews addressing recording, transfer and storage of data, or minimising transmitting of individual data through such platforms”.⁵⁶ Where caseworkers work from home, for example in the context of COVID-19, the use of private equipment should be avoided. It is important that national authorities invest time and resources to put in place technologically suitable tools, which will also help to avoid technical issues in the future.

Applicants should also be provided detailed information regarding the remote modality of the interview and national authorities should seek their explicit and informed consent to ensure they agree to the process as well as to the potential privacy risks.⁵⁷ This would bring the process in line with the

⁵¹ Article 14(1) recast Asylum Procedures Directive.

⁵² Article 15(3) recast Asylum Procedures Directive.

⁵³ Article 4 recast Qualification Directive; Article 16 recast Asylum Procedure Directive.

⁵⁴ Article 15 recast Asylum Procedures Directive.

⁵⁵ Article 4(3) recast Asylum Procedures Directive; Article 29 recast reception Conditions Directive; Article 37 recast Qualifications Directive; Article 35(3) Dublin III Regulation.

⁵⁶ See also: UNHCR, *Key Procedural Considerations on the Remote Participation of Asylum Seekers in the Refugee Status Determination Interview*, May 2020, available at: <https://bit.ly/3rLgT6b>, pp. 2-3.

⁵⁷ See also: UNHCR, *Remote Interviewing: Practical Considerations for States in Europe*, 9 June 2020, available at: <https://bit.ly/3oA94hB>.

procedural guarantees laid down in the recast Asylum Procedure Directive, including the right to information. EASO also noted in this regard that allowing applicants to choose whether to take part in a remote interview or not is generally to be considered a good practice.⁵⁸

While the use of remote interviewing methods at first instance remains limited, certain trends can be identified across Europe. Remote interviewing methods have mostly been used in designated locations, for specific categories of applicants for international protection, or when several actors are involved in the asylum procedure.

Interviews at first instance conducted through video conferencing as of December 2021		
Frequently	For specific or exceptional cases	Rarely or never
GR, HU, NL, PL, SE, UK	AT, BE, BG, CY, ES, FR, IE, MT, RO	DE, HR, IT, PT, SI, CH, SR, TR

Source: AIDA.

Use of remote interview methods in designated locations

The use of remote interview methods in certain designated locations may allow acceleration of the process and avoid unnecessary travel for applicants from and to asylum authorities. Some European countries including **Belgium, France, Germany, Spain, Hungary, and Poland** have been using remote interviewing in certain locations, such as in detention, at border points or transit zones, and in some cases in remote accommodation centres.

In **Spain**, video conferencing is used in exceptional cases for applications for international protection lodged from the enclaves of Melilla or Ceuta.⁵⁹ There is no information available, however, as to how this has worked in practice.

In **Hungary**, videoconferencing has been used primarily in the transit zones up until May 2020, when case officers from the Budapest office were assigned to carry out interviews remotely. This led to various issues, especially regarding the poor quality of the connection, which affected the communication between the applicants and the relevant authorities. Issues related to data protection were also noted, as it was possible to hear simultaneous interviews of other applicants. Applicants also faced difficulties in disclosing certain information, such as personal stories and traumas.⁶⁰ Videoconferencing is still applied in some cases in open reception facilities such as in Vámoszabadi, or in cases in which the asylum seeker, their lawyer and the translator are present at the Immigration Office in Budapest, while the case officer carries out the interview from a transit zone.⁶¹

In **France**, videoconferencing and phones are often used in interviews during the border procedure. Roissy Charles De Gaulle airport, where the majority of border procedures take place in France, is the only waiting zone where the OFPRA Border Unit interviews the asylum seeker in person. The interviews in Orly, Marseille and Lyon are conducted by videoconference and interviews in all other border procedures are done by phone.⁶² Several stakeholders reported that when videoconferencing is used it almost always runs into technical problems, as a result of which the interview is then carried out by phone.⁶³ The use of phones is also reported as very problematic in practice. This includes technical

⁵⁸ EASO, *Practical Recommendations on conducting personal interview remotely*, May 2020, available at: <https://bit.ly/3y4ZmqC>, p.12.

⁵⁹ AIDA, *Country Report Spain*, 2020 Update, March 2021, available at: <https://bit.ly/3DARDII>, p. 47.

⁶⁰ AIDA, *Country Report Hungary*, 2020 Update, April 2021, available at: <https://bit.ly/3DvnXWI>, p. 32-33.

⁶¹ Information provided by the Hungarian Helsinki Committee (HHC), January 2022.

⁶² Information provided by the French asylum Office (OFPRA), 21 September 2020.

⁶³ Information provided by OFPRA, 24 April 2018; Information provided by Anafé, 17 September 2020.

problems and difficulties to follow the interview; important quality gaps resulting from simultaneous telephone interpretation and the fact that where a third party is present the phone has to be shared between the applicant and the NGO and/or legal representative.⁶⁴ This led the Administrative Court of Marseille to invoke procedural irregularities and annul decisions refusing admission to the territory for the purpose of seeking asylum where the interview with OFPRA had been conducted by phone rather than videoconference.⁶⁵

Another important concern raised in practice relates to issues of confidentiality. Remote interviews are sometimes carried out in unsuitable rooms where other persons may be present or where there is a disruptive background noise. In Orly airport, for example, the interview is held in a common room where other people are held and where other police staff maybe present. Moreover, the interview room is not soundproof and is placed next to an office of the border police, as a result of which background noise from police officers may disrupt the interview. Remote interviews further create difficulties in sharing and submitting documentary evidence. There have been cases where asylum applicants were not able to share evidence they had in their possession, or only partially on video when videoconference is used. There are no other tools such as fax or scanners available to submit these documents.

In contrast, in **Germany**, where the Federal Office for Migration and Refugees (BAMF) is responsible for the personal interview for the purpose of processing the asylum application in the airport procedure, interviews are always conducted in person, without the use of videoconferencing or other remote communication media. The BAMF has a permanent presence at Frankfurt Airport where most airport procedures are conducted, but not at Munich Airport. In the latter cases, the BAMF travels to the transit zone from Munich for the purpose of carrying out interviews.⁶⁶

The examples above demonstrate that remote interviewing methods in the context of border procedures may raise concerns. This is inherently linked to the nature of border procedures, which involve short time limits and detention, thereby limiting the opportunities for applicants to prepare and substantiate the asylum application.⁶⁷ Contact with the outside world is also rendered more difficult because applicants have limited access to their phone and to NGOs or legal assistance. Remote interviewing should thus be avoided when it negatively affects the asylum applicant's ability to substantiate their asylum account, and authorities should travel to the relevant border point or transit zones for the purpose of carrying out interviews, as is the case in Germany.

Other specific locations where interviews have been conducted remotely by certain national authorities are detention centres. These locations already involve significant restrictions on asylum seekers' rights, in particular regarding their access to legal assistance and relevant support organisations. This is fundamentally linked to the nature of detention and the obstacles when applying for asylum from detention, which call for more protective measures and safeguards.

In **Belgium**, the Commissioner-General for Refugees and Stateless Persons (CGRS) started conducting interviews by videoconference in some of the closed detention centres in 2016. In 2019, this practice was extended to all six detention centres, and a total of 475 people were interviewed by videoconference while in detention. The practice was criticised by several lawyers.⁶⁸ In January 2021, the Belgian Council of Alien Law Litigation (CALL) annulled a decision by the CGRS in the case of an asylum seeker residing in a closed centre, on the grounds that the competent authority is not entitled

⁶⁴ Information provided by Anafé, 17 September 2020.

⁶⁵ See e.g. French Administrative Court of Marseille, Decision No 1704059, 7 June 2017; No 1704319, 16 June 2017. Contrast with Decision No 1706792, 3 October 2017, where the Court found no procedural irregularities.

⁶⁶ ECRE/AIDA, *Airport procedures in Germany Gaps in quality and compliance with guarantees*, April 2019, available at: <https://bit.ly/3wyW26g>.

⁶⁷ EPRS, *Asylum procedures at the border*, November 2020, available at: <https://bit.ly/3ktU1DQ>.

⁶⁸ Myria, *Contact meeting*, 21 September 2016, available at: <http://bit.ly/2kxOqOG>, para 25.

to alter the modalities of the personal interview regulated in the law. Any changes to the interview modalities need to be adopted by Royal Decree or law, in order to ensure compliance with the necessary democratic safeguards.⁶⁹

In the **United Kingdom**, the possibility to conduct asylum interviews using videoconferencing has been applied in particular in bail hearing centres, often far removed from the detention centre. While this avoids long journeys for the detainee, the lack of personal contact with the judge, and problems in quality of sound and visual transmission are also experienced as obstacles to an effective hearing. Detainees in prisons may have video links cut off before the end of the bail hearing if it continues over 60 minutes. Technical problems may compound the difficulty of speaking through an interpreter.⁷⁰

Poland also started using videoconferencing for interviews in detention centres in 2019. NGOs found this practice problematic in terms of interpretation and particularly for vulnerable applicants when the presence of psychologist is required.⁷¹

In **France**, videoconference interviews may also be used for applicants in detention. The OFPRA established a list of approved premises where it may carry out an interview through an audio-visual communication procedure.⁷² This includes 22 administrative detention centres, six waiting zones and over 150 other detention facilities (i.e. “*maisons d’arrêt*” and “*centres pénitentiaire*”). In 2020, 2.9% of all interviews by the OFPRA were conducted by video conferencing, compared to 2.3% in 2019, 2.2% in 2018 and 3.1% in 2017.⁷³

Beyond the personal interview, physical presence in the context of the review of the lawfulness of detention is also crucial to ensure that the judiciary is able to effectively fulfil its role in preventing torture and other ill-treatment. As demonstrated by the International Commission of Jurists (ICJ), various human rights bodies and courts have recognised the importance of physical presence at the mandatory automatic hearing at the outset of arrest or detention. It argues that “the judge is likely to be less able to detect any indicia of abuse if the review is based solely on documents or conducted by telephone or videoconference hearing. Perhaps most importantly, physical appearance before a judge creates a temporary break in the absolute or near-absolute control that detaining authorities often otherwise exercise over a person deprived of liberty”.⁷⁴

Videoconferences for asylum interviews have also been used in remote accommodation centres. **Norway** has been conducting interviews remotely via Skype since 2017 for asylum applicants in remote reception centres.⁷⁵ **Ireland** has also sometimes carried out remote interviews since 2019 in certain locations due to the remoteness of applicants’ accommodation. **Sweden** provides for the possibility of conducting a remote interview as well in such situations to avoid the need for the applicant to travel.⁷⁶ There is limited information available on the effectiveness of the use of remote methods in these countries as they are only used on an *ad hoc* basis.

⁶⁹ Belgian Council of Alien Law Litigation (CALL), Judgment no. 247 396, 14 January 2021.

⁷⁰ UNHCR, *Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic*, 9 April 2020, <https://bit.ly/31Lhslz>, p. 8; Adeline Trude, *The Liberty Deficit*, Bail for Immigration Detainees, 2012, available at: <http://bit.ly/1L2oUai>; Bail Observation Project, Second report, 2013.

⁷¹ AIDA, *Country Report Poland*, 2020 Update, April 2021, available at: <https://bit.ly/3GhYDW2>, p. 23.

⁷² OFPRA, Decision of 23 December 2020, available in French at: <https://bit.ly/2OtwKVp>.

⁷³ OFPRA, *Rapports d’activité 2020*, available in French at: <https://bit.ly/3GrWGGE>.

⁷⁴ ICJ, *Videoconferencing, Courts and COVID-19 Recommendations Based on International Standards*, November 2020, available at: <https://bit.ly/3oEPvoy>, pp. 10-13.

⁷⁵ UNHCR, *Remote Interviewing: Practical Considerations for States in Europe*, 9 June 2020, available at: <https://bit.ly/3oA94hB>, p.1.

⁷⁶ UNHCR, *Remote Interviewing: Practical Considerations for States in Europe*, 9 June 2020, available at: <https://bit.ly/3oA94hB>, pp.1-2.

Use of remote interview methods due to the involvement of a variety of actors

Various actors may be involved in the asylum procedure, such as NGOs, lawyers and interpreters. Remote working methods have been introduced in certain circumstances to facilitate or accelerate access to these service providers. EU law sets out a series of guarantees and safeguards which continue to apply regardless of whether these services are provided remotely or in person. They contribute to ensuring a fair asylum procedure and are a key component of the right to asylum.⁷⁷

In practice, remote interpretation services have been provided by either phone or videoconference in **Germany, Bulgaria, France** and **Greece**. They are mostly used due to the lack of availability of interpreters or the rarity of a certain language.

In **Germany**, the Federal Office for Migration and Refugees (BAMF) installed its first video interpreter hubs in March 2016, and has been expanding them continuously. A system with video interpreter hubs is used in connected requesting branch offices. The interpreters are connected from the hubs directly to the interviews being held in the requesting branch offices via video transmission. Transmission is via a secure internal network, and is carried out exclusively from the premises of the BAMF.⁷⁸

In **Bulgaria**, remote interpretation during registration and eligibility interviews is used in Pastrogor, Harmanli and Banya, in particular in the reception centres outside the capital Sofia, where interpreters are harder to find and employ. In these cases, interviews are conducted with the assistance of the interpreters who work in Ovcha Kupel, Vrazhdebna and Voenna Rampa, the reception centres in Sofia. According to the Bulgarian Helsinki Committee's experience, this creates additional difficulties for the applicants to make their statements, as video communication is often disrupted or unclear due to connection problems.⁷⁹

Similar issues have been reported in **France**, mainly in the context of the initial interview in the border procedure, which is carried out by the Border Police. In Beauvais, for example, in the absence of professional interpretation services, the Border Police has resorted to interpretation by fellow police officers, air carrier personnel or even passengers in some cases.⁸⁰ As for the interviews with the OFPRA, they must be carried out in the presence of an interpreter, unless the interview can be carried out in French. In practice, interpretation in interviews is available for 40 languages and is readily available through the Inter Service Migrants (ISM) by phone or videoconference.⁸¹

According to French organisations assisting asylum seekers, remote interview and interpretation prove particularly challenging for the individual as they are often interrupted; there were also issues related to confidentiality of the setting from which the interpreter was providing the service. The use of phones is also reported as very problematic in practice, including technical problems and difficulties following the interview; significant quality gaps resulting from simultaneous telephone interpretation; and the fact that where a third party is present the phone has to be shared between the applicant and the NGO and/or legal representative.⁸²

In **Slovenia**, interpreting can be conducted through video conferencing, but a specific legal provision establishes that secure data transfer has to be guaranteed.⁸³ In practice, it is used only for the

⁷⁷ Article 12 of the recast Asylum Procedure Directive; Article 18 of the EU Charter of Fundamental Rights; Article 47 of the Charter.

⁷⁸ BAMF, *Digitalisation of the asylum procedure*, 2020 available at: <https://bit.ly/3pFFITU>.

⁷⁹ AIDA, *Country Report Bulgaria*, 2020 Update, February 2021, available at: <https://bit.ly/3Gu1rQ0>, p. 24.

⁸⁰ ECRE/AIDA, *Access to asylum and detention at France's borders*, June 2018, available at: <https://bit.ly/3ybBZLX>, p. 20.

⁸¹ OFPRA, Annual reports.

⁸² EPRS, *Asylum procedures at the border*, November 2020, available at: <https://bit.ly/3ktU1DQ>.

⁸³ Article 6(13) International Protection Act.

interpretation into languages for which an interpreter cannot be provided in Slovenia and has only been done in a few cases so far.⁸⁴

In **Spain**, the use of remote interpretation increased in 2020, mainly due to the COVID-19 outbreak, and seems to have had overall positive outcomes. However, isolated cases where asylum seekers faced difficulties in accessing computers or the internet were also reported.⁸⁵

While remote interpretation may, in certain circumstances, help applicants to access basic information, respond to emergencies and facilitate the access to rare language interpretation, its use during the personal interview raises concerns. The practices documented above show that simultaneous interpretation may negatively affect the communication between the applicant and the person who conducts the interview, and *a fortiori* the examination process. UNHCR's guidance on refugee status determination also cautions about the limitations inherent in remote participation of interpreters in interviews and their potentially adverse effect on the quality of the interview.⁸⁶ It is also important that, where an interpreter cannot be physically present, they work from a space free from interruption, noise and the presence of others, in full respect of the principle of confidentiality. The informed consent of the applicant to remote interpretation should further be sought to ensure that he/she agrees with the modality.

Another service which may be provided remotely in the context of personal interviews is legal assistance, but this largely remains the exception. In **Greece**, for example, the Asylum Service operates a system of remote legal assistance at second instance in the Regional Asylum Offices (RAOs) of Leros, Samos, Chios and Lesbos. However, in a significant number of cases taken over by lawyers on the mainland, communication with the applicants before drafting the appeals was not possible. As a result, appeals took into consideration only the material already included in the file and asylum seekers could not submit additional elements or new evidence related to their case.⁸⁷ In the **United Kingdom**, it was reported that in video conferencing cases the lawyer was only allowed 10 minutes to speak with their client before the interview. Quality legal assistance is key to ensure asylum applicants understand their rights and obligations. It is therefore crucial for applicants and lawyers to have face-to-face contact; it increases the trust and confidence of both parties in the asylum process, and may improve the quality of the asylum decision.

Use of remote interview methods in the case of vulnerable groups

Vulnerable groups are categories of asylum seekers in need of special procedural guarantees in order to realise their rights and to comply with certain obligations. Otherwise, their vulnerable situation may make it difficult to access their rights vulnerability may derive inter alia from age, sex, sexual orientation, disability, serious illness, mental disorders, and torture, rape or other serious forms of psychological, physical or sexual violence.⁸⁸ Groups considered vulnerable include children, unaccompanied children, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.⁸⁹

Once identified as vulnerable, applicants thus enjoy specific rights and safeguards in the asylum process under EU law. This includes, for example, being exempted from certain procedures such as

⁸⁴ Article 37(7) International Protection Act.

⁸⁵ AIDA, *Country Report Spain*, 2020 Update, March 2021, available at: <https://bit.ly/3DARDII>, p. 47.

⁸⁶ UNHCR, *Remote Interviewing: Practical Considerations for States in Europe*, 9 June 2020, available at: <https://bit.ly/3oA94hB>, pp.1-2.

⁸⁷ AIDA, *Country Report Greece*, 2020 Update, June 2021, available at: <https://bit.ly/3sQywjt>, p.106.

⁸⁸ Article 2(d) and Recital 29 of recast Asylum Procedures Directive.

⁸⁹ Article 21 recast Reception Conditions Directive.

accelerated or border procedure where adequate support cannot be provided. Similarly, in cases in which special procedural needs make a personal interview by videoconferencing not suitable for the applicant, it should be avoided. Vulnerable groups require more protective measures and additional assistance and support to ensure that they have the necessary conditions to bring forward a claim for protection. Their specific needs should be a primary factor to assess whether a remote interview or hearing is appropriate in the individual case.⁹⁰

In the **Netherlands**, for example, unaccompanied minors and asylum seekers with medical problems are excluded from videoconference interviews.⁹¹

In **Sweden**, face-to-face interview are conducted where the prevalence of a specific need, such as hearing or visual impairment, or other circumstance, renders the conduct of an interview via video difficult.⁹²

In its guidance on Asylum Interviews, the Home Office in the **United Kingdom** noted that, in some exceptional cases (e.g. in which the applicant is affected by any sight or hearing impairment, mental health issues, learning disabilities, in the case of children or other vulnerable applicants), conducting an interview via videoconferencing may not be appropriate, stressing the importance of carrying out a case-by-case assessment to evaluate the appropriateness of this method.⁹³

A remote personal interview could, however, be beneficial for certain vulnerable applicants, especially for those affected by specific physical impairments or whose personal circumstances might limit their possibility of commuting to distant locations.⁹⁴ **France** or **Sweden**, for example, have conducted remote interviews for applicants in a vulnerable situation, notably where such vulnerabilities precluded the possibility of travel or made it difficult, e.g. due to health or family reasons.⁹⁵ Nevertheless, even for these limited cases, it is important to carry out a case-by-case assessment and to obtain the informed consent of the applicant in order to guarantee that the remote interview suitable for addressing individual needs.

Use of remote interview methods during COVID-19

While the vast majority of substantive personal interviews continue to be conducted in person, European countries increasingly resorted to videoconferencing and new technological solutions to conduct personal interviews remotely during COVID-19. This included adjusting or scaling up the existing remote interviewing modalities in some countries, while in others this option was used or considered for the first time. These new methods were mainly introduced with the aim to ensure the continuity of asylum procedures during the pandemic, as well as to avoid a backlog of pending cases and lengthy waiting periods for applicants. In **Austria** for example, the Federal Agency for Immigration and Asylum (BFA) in Burgenland held remote interviews to alleviate the caseload from the BFA in Vienna and Vorarlberg.⁹⁶

⁹⁰ See also: UNHCR, *Key Procedural Considerations on the Remote Participation of Asylum Seekers in the Refugee Status Determination Interview*, May 2020, available at: <https://bit.ly/3rLgT6b>, 4; EASO, *Practical Recommendations on conducting personal interview remotely*, May 2020, available at: <https://bit.ly/3y4ZmqC>, p. 13.

⁹¹ IND, *Procesbeschrijving Telehoren*, 14 July 2020, available in Dutch at: <https://bit.ly/3c36IIH>.

⁹² UNHCR, *Key Procedural Considerations on the Remote Participation of Asylum-Seekers in the Refugee Status Determination Interview*, May 2020, available at: <https://bit.ly/3rLgT6b>, p. 4.

⁹³ UK Home Office, *Asylum Policy Instruction Asylum Interviews*, 2019, available at: <https://bit.ly/36dLJps>, p. 14.

⁹⁴ EASO, *Practical Recommendations on conducting personal interview remotely*, May 2020, available at: <https://bit.ly/3y4ZmqC>, p.16.

⁹⁵ UNHCR, *Remote Interviewing: Practical Considerations for States in Europe*, 9 June 2020, available at: <https://bit.ly/3oA94hB>, p.1-2.

⁹⁶ Information provided by the RD Burgenland. See AIDA, *Country report on Austria*, 2020 Update, April 2021, available at: <https://bit.ly/3oCVs5l>, p. 29.

As a response to these new challenges, different institutions and organisations published guidelines on remote interviewing methods. In April 2021, the European Commission provided practical advice and identified tools that can be used to carry out remote personal interviews. In May 2021, EASO published recommendations on the organisation of remote personal interviews based on good practices from across the EU+ States and existing EASO guidance.⁹⁷ In June 2021, UNHCR also published practical considerations for states in Europe on remote interviewing, drawing on its own experience.⁹⁸ These publications illustrate the gap in EU law and demonstrate that there is a need for guidance and clarity as to what is possible within the *acquis*. All guidance underlines the exceptional and temporary nature of certain methods introduced during COVID-19 and emphasises that being physically present when conducting a personal interview remains the preferred practice.

At national level, some countries also issued specific guidance on the use of remote tools in the asylum procedure during COVID-19. In **Italy**, the National Asylum Commission issued a circular on 20 April 2020 providing detailed procedural instructions to ensure confidentiality and data protection while conducting remote interviews.⁹⁹ The circular notes in particular the importance of using a videoconferencing system that is able to guarantee a high level of security and confidentiality of data, and which should be gradually deployed to all Territorial Eligibility Commissions.¹⁰⁰ The Home Office in the **United Kingdom** also revised its Guidance on Asylum Interviews to reflect the need to provide specific safeguards for asylum interviews conducted via video conferencing.¹⁰¹ This includes individual assessment of the appropriateness of a remote interview in cases of vulnerable applicants; carrying out remote interviews from quiet and private areas; and providing detailed information on the process at the start of the interview, so that the claimant is fully aware of the next steps and how the technology works.

In practice, the following videoconferencing tools were reported during the pandemic:

In **Poland**, both the applicant and the interviewer were required to be present at the Office for Foreigners (OFF), but the interview was carried out via videoconferencing using separate rooms. According to the Office for Foreigners, there were no requests for face-to-face interviews.¹⁰²

Similarly, in the **United Kingdom** asylum seekers were invited to the usual Home Office premises but the interviewing officers may have been working from home or in a different office. Some face-to-face interviews resumed in 2021.¹⁰³ Case-workers carrying out remote interviews have a single point of contact in case safeguarding issues arise, e.g. when an asylum-seeker is distressed, or when issues arise regarding legal representatives or interpreters. Prior to the videoconference interview, asylum-

⁹⁷ EASO, *Practical recommendations on conducting the personal interview remotely*, May 2020, available at: <https://bit.ly/3y4ZmqC>.

⁹⁸ UNHCR, *Remote Interviewing: Practical Considerations for States in Europe*, 9 June 2020, available at: <https://bit.ly/3oA94hB>.

⁹⁹ Territorial Commissions in Italy did not carry out remote first instance interviews during the first phase of the pandemic. Videoconferencing tools were instead recommended for the discussion of cases in which the applicant had previously been interviewed, for subsequent applications and for cases of applicants excluded from the personal interview, either because sufficient grounds exist for accepting the application for recognition of the refugee status or due to the medically certified the inability or impossibility of taking part to a personal interview.

¹⁰⁰ Ministero dell'Interno - Dip. LCI - Commissione nazionale per il diritto d'asilo - AOO ASILO - 0011 - Protocollo 0003161 20/04/2020, available in Italian at : <https://bit.ly/3oDFibP>.

¹⁰¹ UK Home Office, Asylum Policy Instruction *Asylum Interviews*, 2019, available at: <https://bit.ly/36dLJps>.

¹⁰² Information provided by the Polish Office for Foreigners, 26 January 2021.

¹⁰³ Home Office, *The resumption of substantive asylum interviews*, August 2020, available at: <https://bit.ly/3cfexVf>.

seekers needed to submit required documents by email or mail. In-person submission was possible when such interviews take place on Home Office premises.¹⁰⁴

In **Sweden**, the Migration Agency increased the use of videoconferencing and introduced protective equipment in interview rooms.¹⁰⁵ 4,005 of 8,837 asylum interviews were conducted by videoconference in 2020.¹⁰⁶ Up until March 2021, video interviews continued to be extensively used by the Agency with approximately 70-80% conducted by video.¹⁰⁷ The Migration Agency stated that online interviews were conducted with the necessary guarantees to allow for respect of legal safeguards.¹⁰⁸ The legal representative and interpreter of the applicant could choose to attend the meeting physically in the same room as the applicant or via phone. Unaccompanied children have their legal representative and their guardian present in the room with them.¹⁰⁹

In **Romania**, all regional centres were equipped to conduct videoconferencing interviews in 2020, without particular issues being reported.¹¹⁰

In the **Netherlands**, written and remote interviews were first introduced in April 2020 specifically for nationals of Syria, Turkey and Yemen, as they were considered likely to be granted international protection.¹¹¹ They were then extended to other cases with the objective of ensuring the continuity of the asylum procedure and processing the largest number of applications possible.¹¹² The interviews took place via a secure link for video conferencing. Applicants mostly connected from their respective reception centres, while the case workers of the IND were at the office and interpreters were working from home.¹¹³ Lawyers were also allowed to use the facilities of the IND.¹¹⁴

No major issues were reported in these countries regarding the use of remote interviewing methods, with the exception of **Sweden**, where remote interpretation proved to be challenging in some cases¹¹⁵ and of two cases in the **Netherlands**. In the first, the asylum seeker argued that he was put at a procedural disadvantage because of the use of a videoconference interview,¹¹⁶ while in the second, the applicant stated that the Secretary of State did not take into account his medical situation during his interview via videoconference.¹¹⁷ Where procedural safeguards are available and adequate equipment is set up, the use of remote interviewing methods may thus provide an alternative, temporary and complementary solution to ensure continuity of the asylum procedure, in particular in situations in which it would otherwise be suspended or postponed, as was the case in the **Netherlands**. It may help avoid

¹⁰⁴ UNHCR, *Key Procedural Considerations on the Remote Participation of Asylum-Seekers in the Refugee Status Determination Interview*, May 2020, available at: <https://bit.ly/3rLgT6b>, 1-4.

¹⁰⁵ Swedish Migration Agency, *Annual report of 2020*, 38, Dnr: 1.3.2-2021-1600

¹⁰⁶ Information provided by the Swedish Migration Agency.

¹⁰⁷ AIDA, *Country Report Sweden*, 2020 Update, April 2021, available at: <https://bit.ly/3DC3Ar2>, p. 25.

¹⁰⁸ FRA, *Migration: Key Fundamental Rights Concerns*, November 2020, available at: <https://bit.ly/2YThMtx>, p. 23.

¹⁰⁹ UNHCR, *Key Procedural Considerations on the Remote Participation of Asylum-Seekers in the Refugee Status Determination Interview*, May 2020, available at: <https://bit.ly/3rLgT6b>, p.7.

¹¹⁰ AIDA, *Country Report Romania*, 2020 Update, April 2021, available at: <https://bit.ly/3oCNZTF>, p.38.

¹¹¹ Ministry of Justice and Security, *Kamerbrief over voortgang afdoen vertraagde zaken IND [Parliamentary brief on the progress of treating the backlog cases of IND]*, 7 January 2021, <https://bit.ly/3y93dmq>.

¹¹² Immigration and Naturalisation Service (IND), *Asylum procedures resumed via interviews by videoconference*, 1 May 2020, <https://bit.ly/3dBLDhu>.

¹¹³ EASO, *EASO Asylum Report 2021, Annual Report of the Situation of Asylum in the European Union*, June 2021, available at: <https://bit.ly/3oBAuUg>, 119; UNHCR, *Key Procedural Considerations on the Remote Participation of Asylum-Seekers in the Refugee Status Determination Interview*, May 2020, available at: <https://bit.ly/3rLgT6b>, p.11.

¹¹⁴ Immigration and Naturalisation Service (IND), *Procesbeschrijving Telehoren*, 14 July 2020, available in Dutch at: <https://bit.ly/3c36IIH>.

¹¹⁵ Information provided by lawyers from the Swedish Refugee Law Center on March 2021.

¹¹⁶ AIDA, *Country Report Netherlands*, 2020 Update, March 2021, available at: <https://bit.ly/3rPVMJq>, p.11.

¹¹⁷ Regional Court of Den Haag, Decision No NL21.19215, 10 January 2022.

lengthy procedures and could be used in particular in well-founded cases where prioritisation may lead to decisions being issued more quickly.

In other countries, however, the use of remote interviewing appears to have generated concerns, mainly regarding confidentiality breaches and a lack of procedural guarantees:

In **Austria**, several concerns were raised regarding the lack of standards for regulation of new remote tools. Lawyers reported an increase of videoconferencing by the BFA and the Federal Administrative Court (BVwG) during 2020 and that, in most cases, the onus on arranging the necessary technical equipment fell on the applicant and their legal representative.¹¹⁸

In **Cyprus**, there were cases in which the asylum seeker complained that other staff entered the room while the interview was taking place online, which was distracting and raised confidentiality concerns.¹¹⁹

In **Greece**, interviews are carried out remotely via videoconference in the Regional Asylum Office premises in Pagani, Lesvos. The Ministry of Migration and Asylum described the premises as “excellent” and compliant with “all the necessary requirements for COVID-19”. In contrast, lawyers and civil society organisations had concerns, including notifications sent at very short notice, technical issues during the interviews, facilities not ensuring confidentiality, a lack of measures against COVID-19, and a lack of access to transcripts of interviews for applicants without a lawyer.¹²⁰

In **Ireland**, following the implementation of measures to restrict the spread of COVID-19, the International Protection Office (IPO) began to pilot remote video conferencing interviews. 90 interviews had been carried out remotely by April 2021,¹²¹ with applicants required to attend a designated centre in Cork in order to conduct their interview via secure web conferencing software, while interviewers worked from the IPO offices in Dublin. This process led to some difficulties, especially with regard to legal representatives’ attendance at client interviews. Attendance was usually facilitated remotely. Legal representatives were required to dial in to proceedings by telephone. This made it difficult to hear properly, while the reading back of interview transcripts was sometimes rushed.¹²²

In **Switzerland**, remote interviews were exceptionally introduced during the pandemic, whereby the applicant and the case manager – as well as other relevant staff such as the interpreter, note taker or legal representative – were sitting in different rooms in the same building. It should be noted, however, that the Secretariat for Migration (SEM) had previously carried out a pilot project in Zurich in 2018 to test the use of interpretation via Skype for Business. Due to technical problems and a lack of data protection regulation, the SEM rejected the use of video conferencing until further notice.¹²³

The practices above show the limits of remote interviewing methods and raise questions of compliance with the EU requirement that the personal interview shall take place under conditions which ensure appropriate confidentiality and which allow applicants to present the grounds for their applications in a comprehensive manner.¹²⁴ National authorities have a legal duty and responsibility to make available a

¹¹⁸ AIDA, *Country Report Austria*, 2020 Update, April 2021, available at: <https://bit.ly/3oCVs5l>, p.29.

¹¹⁹ AIDA, *Country Report Cyprus*, 2020 Update, April 2021, available at: <https://bit.ly/3rPW6hN>, p.33

¹²⁰ Refugee Support Aegean, *The conduct of (remote) asylum interviews on Lesvos*, 8 December 2020, available at: <https://bit.ly/3DF05Ab>; Refugee Support Aegean, *Report of Legal Organizations on the quality of remote asylum interviews at RAO Lesvos and the conditions they are conducted under, which pose a health risk to asylum seekers and employees*, 8 December 2020, available at: <https://bit.ly/3oFrnlH>; FRA, *Migration: Key fundamental rights concerns*, Bulletin 2021, February 2021, available at: <https://bit.ly/3dChq21>, p.13.

¹²¹ Information provided by the Irish International Protection Office, April 2021.

¹²² AIDA, *Country Report Ireland*, 2020 Update, April 2021, available at: <https://bit.ly/3GtAU5f>, p.33.

¹²³ See also: UNHCR, *Remote Interviewing: Practical Considerations for States in Europe*, 9 June 2020, available at: <https://bit.ly/3oA94hB>, p.5.

¹²⁴ Article 15(2) and (3) recast Asylum Procedures Directive.

suitable room that provides for privacy and precludes interruptions, as well as to conduct a case-by-case assessment to evaluate the suitability of remote interviews. The applicant's informed consent to the remote modality of the interview is also key, especially for building trust in the system and compliance with the right to information.

It is also worth noting that remote interviewing methods were rarely or never used in some countries during the pandemic. Video conferencing was reportedly rarely used in **Spain** and **France**, while in **Germany** asylum interviews resumed in person in the second part of 2020.¹²⁵ In other countries including **Portugal**, **Slovenia** and **Croatia**, videoconferencing was not used at all during the pandemic, meaning that interviews were exclusively carried out in person.¹²⁶ In addition, from May 2020, personal interviews gradually resumed in person with strict preventive measures that guaranteed social distancing in countries including **Austria**, **Belgium**, **Bulgaria**, **Germany**, **Poland**, **Romania**. Exceptions were the **Netherlands** and **Sweden** which maintained the use of remote personal interviews via videoconference.¹²⁷ This shows that in-person interviews remain the preferred practice.

Audio-visual recording

Beyond remote interviewing methods, technologies and digital tools have been used for different purposes at first instance. Several countries including **Austria**, **France**, **Sweden** and the **United Kingdom** provide for audio or audio-visual recording of the personal interview in accordance with Article 17 of the recast Asylum Procedures Directive. Practice suggests that this may be a useful tool for ensuring that the account of the applicant has been correctly represented in the final report or transcript, and that mistranslations or misconceptions can be corrected at a later stage based on the recording. Member States have a legal obligation to provide the opportunity to applicants to make comments and/or provide clarification orally and/or in writing after the interview has been recorded.¹²⁸ The audio or visual record can also be used as evidence at appeal stage. In **Italy**, L 46/2017 allowed judges to omit a hearing on appeal based on the recording of the personal interview. This was criticised for bringing unjustified restrictions to the right to be heard and the right to an effective remedy. The Italian Cassation Court clarified in 2018 that in such cases the oral hearing is mandatory and cannot be omitted.¹²⁹ In practice, however, first-instance interviews in Italy are still never audio- or video-recorded due to a lack of necessary equipment and technical specifications.¹³⁰

Use of remote methods for information provision

Digital tools are also widely used in the context of information provision. Article 11(2)(b) of the recast Asylum Procedures Directive foresees that electronic means can be employed to provide information

¹²⁵ AIDA, *Country Report Spain*, 2020 Update, March 2021, available at: <https://bit.ly/3DARDII>; ECRE, *Information Sheet 7 December 2020: Covid-19 Measures Related to Asylum and Migration Across Europe*, available at: <https://bit.ly/3dDxnop>, p.3.

¹²⁶ AIDA, *Country Report Portugal*, 2020 Update, March 2021, available at: <https://bit.ly/3BbBHF8>, 35; AIDA, *Country Report Slovenia*, 2020 Update, March 2021, available at: <https://bit.ly/307JTti>, 27; AIDA, *Country Report Croatia*, 2020 Update, May 2021, available at: <https://bit.ly/3EDInOH>, 33.

¹²⁷ EASO, *COVID-19 emergency measures in asylum and reception systems*, Issue No. 2, 15 July 2020, available at: <https://bit.ly/3y8lbEA>, p.10.

¹²⁸ Article 17(3) recast Asylum Procedures Directive.

¹²⁹ Italian Court of Cassation, 1st Section, Decision 28424/2018, 27 June 2018, available in Italian at: <https://bit.ly/2G6XwuS>; Decision 17717/2018, 5 July 2018, available in Italian at: <https://bit.ly/2GfMYeb>. See also: EDAL, Italy – Supreme Court of Cassation, 27th June 2018, no. 28424, available at: <https://bit.ly/36vKlAn>.

¹³⁰ AIDA, *Country Report Italy*, 2020 Update, June 2021, available at: <https://bit.ly/31HGL87>, p.53.

to the applicant, provided that the information remains accessible.¹³¹ In recent years, Member States have used multiple channels of for provision of information:

Remote information provision tools			
Web platform	Animated/YouTube videos	Hotline	App
AT, BE, BG, CH, CY, DE, GR, RO, SE, TR, UK	AT, BE, BG, CH, FR, DE, ES, GR, IE, PL, SE, SI, UK	BG, IE, IT, TR	AT

Source: AIDA, *Country Reports*, available at: <https://bit.ly/3rNBpmw>; EASO, *EASO Asylum Report 2021, Annual Report of the Situation of Asylum in the European Union* June 2021, available at: <https://bit.ly/3oBAuUg>; UNHCR, *Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic*, April 2020 available at: <https://bit.ly/31Lhslz>.

The table demonstrates that the majority of countries have opted for web platforms and/or for videos to provide information on the asylum procedure to applicants. In **Belgium**, for example, the national reception authority Fedasil launched a website in 2019 available in 12 languages, 8 of which included an audio version, that covers information on the asylum procedure, accommodation, living in Belgium, returns, work, unaccompanied minors, health, and education. In 2021, **Belgium** also launched another website providing information on the asylum procedure in nine languages, including through audio-support.¹³² In **Sweden**, videos on the asylum procedure are available in 7 to 12 languages, including in sign language, and directly accessible on the website of the Migration Agency's website.¹³³ In **Switzerland**, the State Secretary for Migration (SEM) created a dedicated YouTube channel where it hosts different videos for asylum seekers.¹³⁴

Other countries use phone platforms and hotlines to provide information to asylum applicants. The Directorate General for Migration Management (DGMM) in **Turkey** operates a hotline service for foreigners, reachable in Turkish, English, Russian and Arabic at any time of the day. In 2019, a total of 490,630 calls were made to the hotline, with a total of 8,342,955 contacts in the past four years.¹³⁵

Some countries have opted for hybrid forms of information provision: in the **United Kingdom**, for example, information on the asylum process is provided in initial accommodation centres both in person and through a video presentation;¹³⁶ while in **Switzerland** applicants for international protection are provided information on the asylum procedure through a short film, followed by questions with counsellors.¹³⁷

Beyond national authorities, NGOs and support organisations have also invested in new technologies to provide information. Most NGOs have information on the asylum procedure and relevant contact information on their websites. In **Bulgaria**, for example, UNHCR funded the development of an online tool with information about the key institutions, procedures and rights before, during and after the status determination in several languages since 2014.¹³⁸ The Jesuit Refugee Service (JRS) in **Romania**

¹³¹ The Article recites "Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with such information at an earlier stage either in writing or by electronic means accessible to the applicant".

¹³² AIDA, *Country Report Belgium*, 2020 Update, April 2021, available at: <https://bit.ly/3oFbFGU>, p.77.

¹³³ Migration Agency, *Alla filmer på alla språk*, available at: <https://bit.ly/2W4Axay>.

¹³⁴ AIDA, *Country Report Switzerland*, 2020 Update, May 2021, available at: <https://bit.ly/3DdqKVs>, p.76.

¹³⁵ AIDA, *Country Report Turkey*, 2020 Update, May 2021, available at: <https://bit.ly/3DyaGgd>, p.68-69.

¹³⁶ Migrant Help advice and Guidance, available at: <https://bit.ly/2GaXCC2>.

¹³⁷ EASO, *EASO Asylum Report 2020: Annual Report of the Situation of Asylum in the European Union*, July 2020, <https://bit.ly/30cGzxc>, p.128.

¹³⁸ AIDA, *Country Report Bulgaria*, 2020 Update, February 2021, available at: <https://bit.ly/3Gu1rQ0>, pp. 47-48.

developed a platform on the asylum procedure in Romania, with general and specific information on seeking asylum and the different procedures (e.g. Dublin, border procedure, etc.).¹³⁹

Another visible trend is the use of digital tools to target and tailor information specifically to vulnerable applicants, in particular children. In **Bulgaria**, several animated videos have been produced by UNHCR to provide information on the daily routine of asylum-seeking children and the importance of school attendance.¹⁴⁰ In **Spain**, the Ombudsman published a child-friendly video in collaboration with UNHCR and Save the Children in order to inform unaccompanied and separated children about their right to asylum.¹⁴¹ The **Swedish** Migration Agency also produced material such as audio recording for children explaining the asylum procedure in seven different languages.¹⁴² **Norway** also created a website providing information on the asylum process to asylum-seeking children in a language they understand. The website includes input from children who have already been through the asylum process.¹⁴³

During COVID-19, the use of remote information tools further increased. The European Commission noted in this regard that specific measures should be taken for applicants to be informed in a language that they understand, while information regarding obligations and cooperation with the authorities should always be provided.¹⁴⁴ In practice, many countries such as **Austria, Belgium, Bulgaria, France, Germany, Greece, Ireland, Norway, Poland** and **Slovenia** resorted to e-mails, audio-visual/digital platforms, webpages of national authorities, or YouTube videos to provide information on COVID-19 and its impact on the asylum procedure.¹⁴⁵ Some countries developed dedicated hotlines and built on existing websites to ensure that information was available in several languages. In **Bulgaria**, both a dedicated hotline operating in six languages and a Facebook page were made available for asylum applicants.¹⁴⁶ In **Italy**, a national hotline number was made available in 36 languages and a multi-lingual information portal “JUMA” aimed at providing refugees and asylum-seekers information on COVID-19 in 15 different languages.¹⁴⁷ Similarly, the **Irish** authorities set up a specific helpline for asylum-seekers living in accommodation centres, and provided the translated version of a number of guidance documents to better target asylum-seekers and refugees. **Austria** launched an innovative app, which enables refugees and asylum-seekers to access real-time and updated news from the authorities, and translates TV content with sub-titles in different languages, allowing non-German speakers to follow Austrian TV.¹⁴⁸

The use of digital tools for the provision of information may thus be useful in practice, provided that it is accessible, clear and complemented either by oral and/or written information, or followed by the possibility for the applicant to ask questions. It may also reach a wider audience and can easily and quickly be disseminated among refugee communities. Online platforms and videos also ensure consistency and objectivity of the information being provided, as some information may otherwise be omitted in person or via phone depending on the competence of the staff in question and their

¹³⁹ Asylum Procedure Platform, available at: <https://bit.ly/3d2dZQK>; See also: AIDA, *Country Report Romania*, 2020 Update, April 2021, available at: <https://bit.ly/3oCNZTF>, p. 89.

¹⁴⁰ AIDA, *Country Report Bulgaria*, 2020 Update, February 2021, available at: <https://bit.ly/3Gu1rQ0>, 47.

¹⁴¹ UNHCR, *Niños y niñas no acompañados y la protección del asilo*, November 2019, available in Spanish at: <https://cutt.ly/PrqhnDM>.

¹⁴² Migration Agency, *For Children*, available at: <http://bit.ly/1Feg3vm>.

¹⁴³ EASO, *EASO Asylum Report 2020: Annual Report of the Situation of Asylum in the European Union*, July 2020, <https://bit.ly/30cGzxc>, p.124.

¹⁴⁴ European Commission, *Communication from the Commission Covid-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement*, 16 April 2020 C(2020) 2516 final, available at: <https://bit.ly/31liZbO>, p.5.

¹⁴⁵ EASO, *Covid-10 emergency measures in asylum and reception systems*, Public Issue-3, December 2020, available at: <https://bit.ly/3y8lbEA>, p.14.

¹⁴⁶ UNHCR, *Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic*, 9 April 2020, available at: <https://bit.ly/31Lhslz>, pp.13-14.

¹⁴⁷ Ibid.

¹⁴⁸ UNHCR, *Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic*, 9 April 2020, available at: <https://bit.ly/31Lhslz>, pp.13-14.

judgement as to whether information is relevant in the individual case. Providing tailored information to asylum-seeking children through audio or visual tools can also be considered good practice. Nonetheless, it is recommended that applicants are asked whether the information has been understood, and that additional written and oral information is provided. This may also include asking applicants to repeat in their own words some of the information.

Conversely, digital tools may negatively affect the right to information in certain circumstances. In **Slovenia**, for example, individuals who express an intention to apply for international protection are shown a seven-minute video describing the procedural steps and the obligations of asylum seekers in the procedure before lodging their application. The video does not contain any explanation of the reasons for asylum nor information on the NGOs working in the field of international protection.¹⁴⁹ According to the Slovenian Legal Centre for the Protection of Human Rights and the Environment (PIC), this new way of providing information via a video is one of the main factors which led to a decline in the recognition rate for refugee status in 2020.¹⁵⁰ Moreover, some countries including the **United Kingdom** and **Belgium** have used social media or online tools to spread deterrence campaigns, discouraging asylum applicants for international protection to come to Europe or providing incorrect information on certain aspects of the asylum procedure. This raises the question of misinformation and fake news on media platforms which goes beyond the scope of this report, but which should be taken into consideration when assessing the use of digital tools in asylum procedures.

Providing information through digital tools also pre-supposes that applicants for international protection have access to them. However, many applicants may not have the necessary equipment nor the required IT literacy to navigate new technologies. In **Cyprus** and **Germany**, various actors highlighted issues connected to the lack of accessible and translated information about COVID-19 measures for asylum applicants and migrants.¹⁵¹ In **Greece**, the Ministry of Migration and Asylum launched a new platform in 2020 and created a Viber community with the objective to regularly update applicants on changes in the asylum procedure. However, many applicants faced issues in adapting to this new information channel due to technological illiteracy and a lack of internet in reception centres, which was exacerbated by the fact that the Asylum Office did not respond to requests that were submitted through the online system.¹⁵²

¹⁴⁹ AIDA, *Country Report Slovenia*, 2020 Update, March 2021, available at: <https://bit.ly/307JTti>, p.24.

¹⁵⁰ Ibid. p.26.

¹⁵¹ FRA, *Migration: Key fundamental rights Concerns*, Quarterly Bulletin 2, 27 May 2020, available at: <https://bit.ly/3pELLma>, p.5.

¹⁵² Ministry of Migration and Asylum, available at: <https://bit.ly/3dxL9cr>; See also: AIDA, *Country Report Greece*, 2020 Update, June 2021, available at: <https://bit.ly/3sQywjf>, pp.148-149; GCR & OXFAM Bulletin, December 2020, available at: <https://bit.ly/3d7UkRn>.

Chapter III – The use of digital tools at second instance

The right to an effective remedy before a court or tribunal against a decision taken on an application for international protection and the right to a fair hearing are fundamental rights enshrined in EU law.¹⁵³ A remedy must be effective in law as well as in practice, which means that administrative arrangements at second instance put in place by national authorities, including the use of digital tools, must not hinder access to or effectiveness of the right to appeal. Applicants for international protection must be guaranteed sufficient time to file an appeal and access to effective legal aid and interpretation.

Similarly to the first instance procedure, the use of digital tools at second instance is not regulated in EU law, which also raises concerns on legal uncertainty and compliance with European standards. Even if the asylum *acquis* do not confer a right to be physically present for the hearing, there should be a case-by-case assessment by a qualified judge as to whether the imposition of videoconferencing in the circumstances is permitted under national law and whether it is appropriate, proportionate and necessary. Additional safeguards and particular attention should further be provided for vulnerable applicants.

The European Court of Human Rights (ECtHR) has held that participation by videoconferencing may generally be acceptable in criminal and civil cases, so long as certain conditions and safeguards are in place, in particular regarding confidentiality and secure communication with lawyers.¹⁵⁴ It found violations of the European Convention on Human Rights (ECHR) where courts did not appear to have conducted an adequate substantive analysis, with published reasons, on whether physical presence was necessary to ensure the fairness of the particular hearing, on what options existed other than exclusion when physical presence was not strictly required, and what compensatory measures would be needed to counter-balance any prejudice to the party.¹⁵⁵

Existing academic research shows that issues may arise from the use of remote methods in appeals, in particular that appellants may become disengaged from the procedure, less confident in disclosing information, and that trust among the parties can be negatively affected.¹⁵⁶ In practice, the use of digital tools in judicial proceedings remains largely exceptional. Looking beyond asylum and immigration cases, individual parties and their lawyers usually appear physically in person before the Court in criminal and civil cases.

Nevertheless, in some European countries, courts introduced digital tools with the aim to improve and modernise the judicial process, for example through the remote submission of certain documents, or to ensure the continuity of their activities, in particular during COVID-19. In response to the challenges that may arise from the use of these new tools, recommendations were formulated by the International

¹⁵³ Article 46 recast Asylum Procedure Directive; Article 47(2) Charter of Fundamental Rights of the European Union. See also: ECRE/ELENA, *Legal Note on Access to Legal Aid in Europe*, 2017, available at: <https://bit.ly/3EDKHOT>.

¹⁵⁴ ECtHR, *Saknovskiy v Russia*, 2 November 2020, available at <http://hudoc.echr.coe.int/eng?i=001-101568>, paras 94 to 98; ECtHR, *Marcello Viola v Italy*, 5 October 2006, available at: <https://bit.ly/3EFOqfI>, paras 64 to 72; and Golubev v Russia, 9 November 2006, available at: <https://bit.ly/31KaRrB>, 14; ECtHR, *Yevdokimov v Russia*, 16 May 2016, available at: <https://bit.ly/3ELBuLq>, paras 40 to 43.

¹⁵⁵ ECtHR, *Yevdokimov v Russia*, 16 May 2016, available at: <https://bit.ly/3ELBuLq>, paras 22-26, 33-53; Vladimir Vasilyev v Russia, 10 January 2012, available at: <https://bit.ly/3oyXcMN>, paras 75-90.

¹⁵⁶ See *inter alia*: I. Eagly, *Remote adjudication in immigration*, Northwestern University Law Review, vol. 109, no 4, 2015, available at: <https://bit.ly/3oAEvse>, p.933; M. Burton, *Justice on the line? A comparison of telephone and face-to-face advice in social welfare legal aid*, Journal of Social Welfare and Family Law, vol 40, no 2, 2018, available at: <https://bit.ly/33fVBmX>, pp.195-215; M. Federman, *On the media effects of immigration and refugee board hearings via videoconference*, Journal of Refugee Studies, vol 19, no 4, December 2006, available at: <https://bit.ly/3oE4PSa>, p.433; A. Wallace – E. Rowden, *Remote judging: the impact of video links on the image and the role of the judge*, International Journal of Law in Context, vol 14, no 4, December 2018, available at: <https://bit.ly/30agIG1>, p.504.

Commission of Jurists (ICJ) on the use of videoconferencing and similar technologies in court proceedings,¹⁵⁷ and EASO also provided guidance on remote hearings.¹⁵⁸

Remote hearings and the use of digital tools at appeal stage

Digitalisation is considered to be a way to modernise the judicial system and to adapt judicial proceedings to new technologies. There is a visible effort from certain ministries of justice and courts to invest in new tools and resources which may improve and facilitate the functionality of their activities.

In the asylum field, this has translated mainly into the possibility for applicants to submit appeals, briefs and other documents via remote tools, in particular by email. This already exists in **France** and **Finland**, while **Sweden** has established a secure portal through which relevant documents can be submitted and where applicants' files are kept in hard copy.¹⁵⁹ **Hungary** has also established a general platform on which documents can be submitted electronically to public authorities and to Courts.¹⁶⁰ In **Germany**, the BAMF has introduced electronic communication with the administrative courts. Files and documents from all the branch offices can now be sent to the administrative courts electronically, by legally-compliant means and encrypted, via the "Electronic Court and Administration Mailbox" EGVP. The administrative courts can in turn address file requests to a central office of the BAMF in Nuremberg. An average of approximately 1,800 files and documents are sent by electronic means every day. According to the BAMF: "the rapid dispatch of files requested, on the same day in most cases, enables administrative court judges to recognise a clear time benefit when it comes to processing cases".¹⁶¹ In **Switzerland**, the Federal Administrative Court has also announced that it will gradually digitalise the functioning of the court, with the aim of simplifying access to justice and optimising efficiency and effectiveness of court proceedings by 2025.¹⁶²

Beyond electronic submissions and communication, some countries introduced online tools and videoconferencing to carry out hearings remotely during the appeal procedure.

In the **United Kingdom**, a case management review process seeks to speed up the judicial review process with triage after the appellant and their representative have submitted a skeleton argument to the Court. Depending on the initial evaluation, either a decision is taken without the need for a hearing, a remote hearing via Skype takes place, or the case is adjourned until a face-to-face hearing can take place.¹⁶³

In **France**, remote interviews at second instance before the National Court of Asylum (CNDA) were carried out in 153 cases in 2018, 223 cases in 2019 and 104 cases in 2020.¹⁶⁴ The CNDA considered that videoconferencing may be used without the consent of the applicant to ensure "a proper administration of justice".¹⁶⁵ While it was initially used mainly for appeals lodged in France's overseas territories, a CNDA decision provided that videoconferencing would also be established in the premises of the Administrative Court of Appeal of Lyon and Nancy for appeals lodged after 1 January 2019.¹⁶⁶

¹⁵⁷ ICJ, *Videoconferencing, Courts and COVID-19 Recommendations Based on International Standards*, November 2020, available at: <https://bit.ly/3oEPvoy>.

¹⁵⁸ EASO, *COVID-19 emergency measures in asylum and reception systems*, Issue No. 2, 15 July 2020, available at: <https://bit.ly/3y8lbEA>, p.6.

¹⁵⁹ EASO, *EASO Asylum Report 2020: Annual Report of the Situation of Asylum in the European Union*, July 2020, <https://bit.ly/30cGzxc>, p.164.

¹⁶⁰ Information provided by the Hungarian Helsinki Committee (HHC).

¹⁶¹ BAMF, *Digitalisation of the asylum procedure*, 2020 available at: <https://bit.ly/3pFFITU>.

¹⁶² Federal Administrative Court, *Annual reports 2020*, <https://bit.ly/31H4BB8>.

¹⁶³ UNHCR, *Remote Interviewing: Practical Considerations for States in Europe*, 9 June 2020, available at: <https://bit.ly/3oA94hB>, p.8.

¹⁶⁴ French CNDA, *Annual reports on 2018, 2019 and 2020*, available in French at: <https://bit.ly/3DuDMNs>.

¹⁶⁵ CNDA, *2018 Activity report*, p.20.

¹⁶⁶ Article R.733-13 French Code on Entry and Residence of Foreigners and on Asylum (Ceseda).

Following significant criticism from NGOs relating to the lack of minimum guarantees in law, the lack of access to the hearing for the public, and technical issues that arose in practice, the use of remote hearings at the CNDA was temporarily suspended.¹⁶⁷ In 2019, a mediator was appointed to find a solution that would suit both the CNDA and the lawyers, and in 2020 a new agreement was reached providing for the explicit consent of the applicant as a prerequisite for the use of videoconferencing and for holding decentralised mobile hearings in Lyon and Nancy.¹⁶⁸

The practice described above highlights the importance of seeking the informed consent of the applicant for international protection on the use of videoconferencing at appeal stage. This safeguard was introduced in **France** as a consequence of a mediation process between Courts and lawyers. Where appropriate safeguards and resources are in place to ensure that the remote hearing is suitable for – and accepted by – the applicant, they may provide for a useful alternative to promptly carry out the appeal proceeding. As confirmed by the ICJ: “whenever all the parties give their free and fully informed consent to the use of video-conferencing in any given judicial proceedings, its use in such circumstances would appear not to give rise to concerns under international human rights law and rule of law standards.”¹⁶⁹

Remote methods at appeal stage during COVID-19

Digitalisation and the use of remote methods at second instance was also accelerated during COVID-19. The main objective in this emergency context was no longer to improve and modernise judicial proceedings, but rather to adapt to COVID measures while ensuring the continuity of judicial activities. Ensuring that judicial institutions can continue to function effectively at all times is essential to the right to an effective remedy and is fundamental given the precarious situation of applicants for international protection.

In a resolution of July 2020, the UN Human Rights Council encouraged “States to make available to judiciaries current information and communications technology and innovative online solutions, enabling digital connectivity, to help to ensure access to justice and respect for the right to a fair trial and other procedural rights, including in extraordinary situations, such as the COVID-19 pandemic and other crisis situations, and to ensure that judicial and any other relevant national authorities are able to elaborate the necessary procedural framework and technical solutions to this end”.¹⁷⁰ COVID-19 demonstrated how certain types of technologies can play a critical role in ensuring the continued functioning of judicial proceedings in asylum litigation and beyond.

In various countries, courts competent for asylum matters suspended their activities for several weeks amid the pandemic, as was reported in **Austria, Spain, Croatia, Poland and Turkey**.¹⁷¹ **Slovenian** courts, on the contrary, continued their activities throughout the year.¹⁷² Access to appeal proceedings, and more broadly access to justice, is a fundamental pillar of national asylum systems which cannot

¹⁶⁷ Syndicat des Avocats de France, *La justice par visioconférence: des audiences illégales au sein même des centres de rétention*, 18 January 2018, available in French at: <http://bit.ly/2Dyo5di>; Forum réfugiés – Cosi, *Vidéo-audience à la CNDA: une mise en œuvre qui suscite l'inquiétude*, 1 February 2019, available in French at: <https://goo.gl/n78xcp>; AIDA, *Country report France*, 2019 Update, April 2020, available at: <https://bit.ly/3pFCXwr>, p.17.

¹⁶⁸ Forum réfugiés-Cosi, *Cour national du droit d'asile: un accord sur la vidéo-audience qui préserve la qualité de l'instruction*, Press release, available in French at: <https://bit.ly/3aQnkuu>.

¹⁶⁹ ICJ, *Videoconferencing, Courts and COVID-19 Recommendations Based on International Standards*, November 2020, available at: <https://bit.ly/3oEPvoy>, p.4.

¹⁷⁰ Resolution 44/9 (16 July 2020), “Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers”, <https://bit.ly/3pDhgx2>, paras 17- 18.

¹⁷¹ EASO, *Covid-10 emergency measures in asylum and reception systems*, Public Issue-3, December 2020, available at: <https://bit.ly/3y8lbEA>, p.26.

¹⁷² AIDA, *Country Report Slovenia*, 2020 Update, April 2021, available at: <https://bit.ly/307JTti>, p.28.

and should never be suspended or limited. States thus started to adopt flexible means for filing appeals and relevant measures to ensure judicial services continued to operate.

Several judicial authorities established electronic tools for the remote submission of appeals and the delivery of relevant communication and decisions. In **Ireland**, for example, the International Protection Appeals Tribunal (IPAT) continued to accept new appeals, correspondence and submissions. However, in line with COVID-19 public health advice, it was recommended that all correspondence and communication with the Tribunal be made by email, where possible.¹⁷³ In **France**, decisions of the CNDA, which are usually posted on the walls of the court buildings in Paris, were published on its website during COVID-19 through an anonymised list of decisions, thus enabling all applicants to be informed of decisions, including those who do not live in Paris.¹⁷⁴ **Belgium** also allowed purely written procedures in some appeal cases through the Special Powers decree of 5 May 2020: parties who did not agree with the ordonnance taken in application of Article 39/73 Aliens Act could no longer ask to be heard but could instead introduce an additional “pleading note” within 15 days of reception of the ordonnance.¹⁷⁵ This pleading note was taken into consideration when making the final judgement, which was delivered without hearing the parties during an oral hearing.¹⁷⁶

In other countries, adapting to COVID-19 rules meant carrying out hearings at second instance remotely:

In **Ireland**, new legislation allowed for certain hearings at the IPAT to be held remotely by means of electronic communications technology, for the cases it was considered suitable.¹⁷⁷ The Tribunal also announced on 1 March 2021 that onsite Tribunal hearings would not take place, and that hearings would proceed online at the appointed time and date.¹⁷⁸

In the **United Kingdom**, remote hearings and written procedures were extended during the COVID-19 pandemic to cover substantive appeals before the Immigration and Asylum Chamber of the First-Tier and Upper Tribunal.¹⁷⁹ Some concerns emerged from this practice, especially regarding the lack of adequate financial and human resources.¹⁸⁰ As of November 2021, some hearings in tribunals continue to take place via remote means, by either telephone or video.¹⁸¹

In **Romania**, some regional Courts also introduced the possibility of organising hearings remotely through videoconference systems as a response to the pandemic. In these cases, where feasible, the applicant, legal representative and interpreter participated from the same room, arranged by the General Inspectorate for Immigration with due regard for confidentiality, while the judge and clerk remained at the Court.¹⁸²

¹⁷³ AIDA, *Country Report Ireland*, 2020 Update, April 2021, available at: <https://bit.ly/3GtAU5f>, p.36.

¹⁷⁴ AIDA, *Country Report France*, 2020 Update, March 2021, available at: <https://bit.ly/32XSZK9>, p.35.

¹⁷⁵ AIDA, *Country Report Belgium*, 2020 Update, April 2021, available at: <https://bit.ly/3oFbFGU>, p.37.

¹⁷⁶ Special Powers Decree Nr. 19 of 5 May 2020 regarding the extension of the judicial delays before the CALL and the written treatment of cases: <https://bit.ly/3se5M2Q>.

¹⁷⁷ S.I. No. 715/2020 - Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 31) (International Protection Appeals Tribunal) (Designation) Order 2020, available at: <https://bit.ly/3GqlxcG>.

¹⁷⁸ AIDA, *Country Report Ireland*, 2020 Update, April 2021, available at: <https://bit.ly/3GtAU5f>, p.36.

¹⁷⁹ Courts and Tribunals Judiciary, Pilot Practice Direction: Contingency Arrangements in the First-Tier Tribunal and the Upper Tribunal, 19 March 2020, available at: <https://bit.ly/3DFTp4u>. See also: First-Tier Tribunal, First-Tier Tribunal (Immigration And Asylum) Chamber Hearings, 23 March 2020, available at: <https://bit.ly/3Gqb4PC>; Upper Tribunal Immigration And Asylum Chamber, Presidential Guidance Note No 1 2020: Arrangements During the Covid-19 Pandemic, 23 March 2020, available at: <https://bit.ly/3pYMbUL>.

¹⁸⁰ Public Law Project, *Online Immigration Appeals: A Case Study of the First-tier Tribunal*, August 2020, available at: <https://bit.ly/3lyXafV>.

¹⁸¹ UK Government, Immigration and asylum daily court lists, Last updated 24 November 2021, available at: <https://bit.ly/3lNQuAR>.

¹⁸² UNHCR, *Key Procedural Considerations on the Remote Participation of Asylum-Seekers in the Refugee Status Determination Interview*, May 2020, available at: <https://bit.ly/3rLgT6b>, p.7.

In **Italy**, two protocols regulating the use of remote hearings in civil and criminal cases were approved during COVID-19, providing guidance on the implementation of the rules contained in Law Decree No. 18/2020.¹⁸³ The protocols indicated the way in which adjournments, and civil and criminal hearings could be carried out by means of remote connections, and encouraged the transmission of urgent documents by electronic means. As regards civil hearings, the procedures for inviting and convening the parties had to be carried out either by videoconference or through written procedures. It was further established that hearings might be conducted remotely through Skype for Business or Teams.¹⁸⁴ Lawyers and judges raised concerns about maintaining remote hearing after the COVID-19 emergency. In particular, with respect to international protection cases, they highlighted how the presence of the party at the hearing is crucial to establish good communication and trust between the judge and the applicant.¹⁸⁵

There is little information available yet about the effectiveness of the tools described above and it is thus difficult to evaluate their impact on applicants' rights. It appears that they may help to mitigate the negative effects of health emergency regimes and address immediate concerns related to access to appeals, provided that key legal safeguards are in place. In contrast, where they may negatively affect access to certain rights, such as the right to legal aid, to interpretation and more generally to an effective remedy, and where they add obstacles to the applicant's possibility to substantiate evidence at appeal stage, they should be avoided. Instead, the appeal procedure could be suspended for the shortest period possible only until the appropriate measures have been taken to ensure the right to an effective remedy. Technical support, appropriate IT infrastructure, and the training of judges and lawyers on how to conduct hearings remotely is also fundamental in this context.

¹⁸³ Consiglio Nazionale Forense presso il Ministero della Giustizia, *Relazione introduttiva ai protocolli*, available in Italian at: <https://bit.ly/3pMUUJA>; Law Decree 17 March 2020, n. 18, available in Italian at: <https://bit.ly/3GkdteG>.

¹⁸⁴ See also: Consiglio Nazionale Forense, *Proposta di Protocollo per udienze civili tramite collegamento da remoto* – art. 83 lett. f) D.L. 18/2020, available in Italian at: <https://bit.ly/31AmDFh>.

¹⁸⁵ Altalex, *Udienze online anche dopo l'emergenza: cosa ne pensano gli avvocati*, 17 February 2021, available in Italian at: <https://bit.ly/3dPKkvP>.

Concluding remarks

The report identifies a number of challenges in the use of digital tools across the different stages of the asylum procedure. It sheds light in particular on the current limitations of technical infrastructure and equipment; lack of human resources and training of relevant staff; and technological illiteracy/difficulty in navigating new technologies. It further raises important questions regarding confidentiality, data protection, and privacy rights. These constraints may have a significant impact on the quality and the fairness of the asylum procedure. The use of digital tools not specifically designed for refugee status determination may undermine the right to asylum where they create additional and unnecessary obstacles which prevent asylum seekers from effectively exercising their rights.

The report also acknowledges the potential benefits of digital tools in limited and well-defined circumstances, and demonstrates that the COVID-19 pandemic paved the way for their increased use in the future. Digital tools can help to mitigate the negative effect of restrictive measures by providing continued access to the asylum procedure and relevant services, thereby ensuring the continuity and functioning of asylum systems.

Based on the above findings, the following conclusions and recommendations can be drawn:

1. Establish a clear legal framework for the use of digital tools

The disparity in the use of digital tools and the different modalities of refugee status determination are highly illustrative of the gap in the EU asylum *acquis* and in national law in this area. The COVID-19 pandemic further showed how quickly new working methods may be adopted and implemented at national level. It is thus crucial to establish binding rules and legal standards regulating and limiting the use of digital tools in asylum procedures. This will contribute to legal clarity and will facilitate effective judicial oversight over their proportionality, necessity, appropriateness and fundamental rights compliance. European bodies such as the European Commission, EASO and the Fundamental Rights Agency (FRA) should further provide clear guidance to Member States on the use of digital tools in asylum procedures beyond remote interviewing methods.

2. Ensure adequate technical infrastructure and sufficient resources

In many circumstances, the use of digital tools is counterproductive and seems to pose severe problems in terms of technical issues, inadequate equipment, and likely effect on the quality of the procedure, in particular the ability of the parties to communicate clearly and effectively. National authorities have an obligation and responsibility to make available sufficient human and other resources, technological equipment and practical arrangements that are suitable and adapted for asylum seekers. This also includes the need to ensure that they comply with data protection, confidentiality and privacy standards, such that the asylum procedure is conducted in a safe, confidential and suitable environment. Where digital tools are applied, technical support must be provided to applicants for international protection. The establishment of specialised trainings on digital tools for determining authorities, judicial authorities and relevant staff is also key to the development of a fair and efficient asylum procedure, and instrumental in achieving better quality of decisions.

3. Carry out an individual assessment of the appropriateness of the tool

The use of digital tools in asylum procedures should remain the exception and can never be a substitute for adequate administrative capacity. Even in exceptional circumstances such as those of the COVID-19 pandemic, tools should only be used if so provided for by law, in compliance with the principles of non-discrimination and proportionality, and in light of the specific characteristics of the individual case. There are circumstances in which digital tools should be avoided, such as in the context of border

procedures, in detention, or for vulnerable applicants with special needs. As a general rule, there should be a mandatory case-by-case assessment as to whether the use of digital tools is allowed and appropriate, so that any issues that affect the person's ability to participate effectively can be identified and procedural adjustments put in place.

4. Seek the duly informed and explicit consent of applicants for international protection

Applicants for international protection must be provided detailed information and legal advice on the use of digital tools in the asylum procedure, and national authorities should seek their free and informed consent to ensure they agree to the process and are aware of the potential privacy risks. This would bring the process in line with the procedural guarantees laid down in the asylum *acquis* and help to foster trust and confidence in the system. Asylum seekers may feel more "heard" in face-to-face conversations during in-person encounters, thereby allowing them to present the grounds for their applications in a comprehensive manner. They should always be granted the choice between remote and in-person service provision and have the opportunity to submit documents relevant for the procedure both electronically and physically.

THE ASYLUM INFORMATION DATABASE (AIDA)

The [Asylum Information Database \(AIDA\)](#) is a database managed by the European Council on Refugees and Exiles (ECRE), containing information on asylum procedures, reception conditions, detention and content of international protection across 23 countries. This includes 19 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Romania, Sweden, Slovenia) and 4 non-EU countries (Switzerland, Serbia, Turkey, United Kingdom).

- **Country reports**

AIDA contains national reports documenting asylum procedures, reception conditions, detention and content of international protection in 23 countries.

- **Comparative reports**

AIDA comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. Annual reports were published in 2013, 2014 and 2015. From 2016 onwards, AIDA comparative reports are published in the form of thematic updates, focusing on the individual themes covered by the database. Thematic reports have been published on reception (March 2016), asylum procedures (September 2016), content of protection (March 2017), vulnerability (September 2017), detention (March 2018), access to the territory and registration (October 2018), reception (May 2019) and asylum authorities (October 2019).

- **Fact-finding visits**

AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in Greece, Hungary, Austria, Croatia, France, Belgium and Germany.

- **Legal briefings**

Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. These short papers identify and analyse key issues in EU asylum law and policy and identify potential protection gaps in the asylum *acquis*. Legal briefings so far cover: (1) Dublin detention; (2) asylum statistics; (3) safe countries of origin; (4) procedural rights in detention; (5) age assessment of unaccompanied children; (6) residence permits for beneficiaries of international protection; (7) the length of asylum procedures; (8) travel documents for beneficiaries of international protection; (9) accelerated procedures; (10) the expansion of detention; (11) relocation; and (12) withdrawal of reception conditions.

- **Statistical updates**

AIDA releases short publications with key figures and analysis on the operation of the Dublin system across selected European countries. Updates have been published for 2016, the first half of 2017, 2017, the first half of 2018, 2018, the first half of 2019, 2019 and the first half of 2020, and 2020.

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