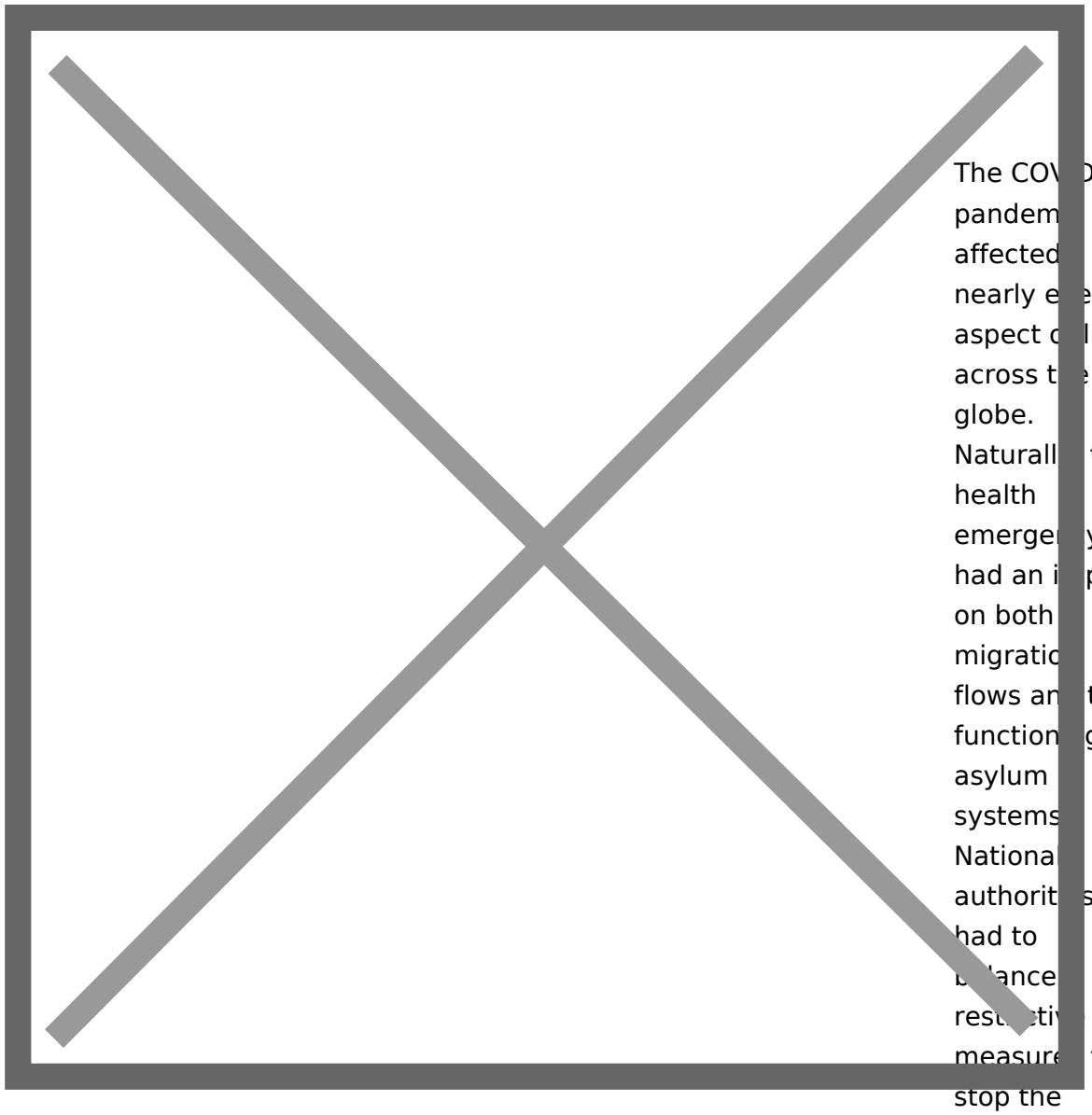
Please cite as: EUAA, '2.2 Responding to the new reality of the COVID-19 pandemic' in *EASO Asylum Report 2021*, Ιανουάριος 2022.

2.2 Responding to the new reality of the COVID-19 pandemic



The COVID-19 pandemic affected nearly every aspect of life across the globe. Naturally, the health emergency had an impact on both migratory flows and the functioning of asylum systems. National authorities had to balance restrictive measures to stop the spread of the virus and respecting the right to asylum for people in need of protection.

Following the World Health Organization (WHO) announcement of the COVID-19 pandemic on 12 March 2020,[153] all EU+ countries declared either a state of emergency or some form of extraordinary situation under national law and authorities implemented specific measures to safeguard public health and safety.[154] At the initial stage of the pandemic, the reintroduction of internal border controls was deemed

necessary by a number of countries to prevent the spread of COVID-19 across the Schengen area. External borders were also closed for non-essential travel. In March 2020, the European Commission issued a communication to this end, calling for a temporary restriction on non-essential travel to the EU, exempting persons in need of international protection and those who must be admitted to the territory of Member States for other humanitarian reasons.[154] The communication also underlined that any restrictions in the field of asylum, return and resettlement must be proportional, implemented in a non-discriminatory way and take into account the principle of *non-refoulement* and obligations under international law.

In line with requirements of social distancing and preventative measures, restrictions were placed on accessing facilities for the registration and lodging of an application for international protection, as well as conducting personal interviews. Services were initially suspended in some countries for a brief period of time but resumed once the necessary arrangements were in place to adjust to the new circumstances and safety requirements (for example by rearranging waiting rooms, minimising the number of people waiting, installing plexiglass in interview rooms, extending applicable deadlines and time limits, and creating special registration centres).[156] Measures were also introduced in collective reception facilities to ensure social distancing and hygienic conditions, with the use of protective equipment (e.g. masks), improved sanitation and disinfections. Information campaigns were key in increasing awareness about the spread of COVID-19, and a number of services, such as educational activities and counselling, were moved online to minimise physical contact.[157]

In second instance processes, measures were put in place in line with the general adaptations in public administrations, consisting of brief access restrictions at the initial stage of the pandemic until the reorganisation of services and adaptation of working arrangements. The reduced availability of flights and restrictive entry measures introduced by third countries disrupted both voluntary and forced return procedures.[158]

Emergency clauses, associated measures and possible derogations in asylum, reception and return procedures, which were justified on the basis of public health, may have had an impact, albeit temporary, on the observance of fundamental rights and freedoms. Stakeholders stressed that the measures must be temporary, proportionate and applied only when necessary.[159] Fully acknowledging the difficulties faced by Member States when implementing relevant EU rules during the pandemic, the European Commission issued a communication to provide guidance on ensuring the continuity of asylum and return procedures and resettlement.[160] UNHCR also issued a set of key legal considerations on access to territory for persons in need of international protection in the context of the COVID-19 response,[161] as well as a set of practical recommendations and good practices to address protection concerns.[162] Despite efforts made by EU+ countries to prevent the spread of COVID-19 among applicants, it was nevertheless reported that at times the conditions in reception facilities were not adequate due to overcrowding, long lines for basic services, intermittent access to tap water, a lack of personal protective equipment and hygiene products, and insufficient medical services.[163], [164], [165] In addition, restrictions in accessing reception facilities may have deprived some applicants of services provided by civil society organisations, such as legal counselling.[166], [167]

In an effort to continue to provide services while adhering to the new measures, EU+ countries digitalised many steps of the asylum procedure by developing and implementing new electronic

systems. Technology was used, for example, for online registration of applications, remote interviewing and the provision of information and interpretation services, notification of decisions and information on the status of a case.[168] Many of these solutions may remain on a more permanent basis to increase the efficiency of asylum systems, while others may be used as methodological blueprints in case EU+ countries are called to address similar challenges in the future. At the EU level, the pandemic provided the opportunity for EU agencies to make optimal use of digital capacities and expertise to continue their operational activities.[169]

The European Commission presented a White Paper on Artificial Intelligence (AI) at the beginning of 2020 and ran a consultation process between February and June 2020 on the document.[170] This process led to the proposal of a first-ever legal framework on AI[171] and a new Coordinated Plan with Member States aiming to guarantee the safety and fundamental rights of people and businesses, while strengthening AI uptake, investment and innovation across the EU.[172] These are complemented with new rules on machinery products to adapt safety rules and increase users' trust. [173] The new rules follow a risk-based approach, within which AI systems used in migration, asylum and border control management were identified as high-risk systems. This means that they will be subject to strict obligations before they can be put on the market.[174]

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