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Many applications for international protection are made at the border of a country or in a transit zone before an applicant gains entry into the territory. In well-defined circumstances under the recast Asylum Procedures Directive, a Member State can handle the application directly in such a location, either to assess its admissibility or to fully determine the case on the merits of the application.

In 2021, several countries introduced new practices, legislative provisions or proposed amendments to further simplify the procedure, adapt the time limits or digitalise the processing of these cases.

In the Netherlands, legal provisions came into force in June 2021 to replace the initial interview with an application interview during a border procedure. The change was introduced to avoid duplication in the asylum procedure, as the applicant was asked questions about identity, nationality and travel route in both interviews. With this change, an applicant in a border procedure is asked information about the identity, nationality and travel route and the reasons for applying for asylum.472

Slovenia adopted the Act amending the International Protection Act and introduced Article 43, which allows the competent authority to decide on the admissibility of an application at the border or in a transit area if a person expresses an intent to apply for international protection. The new provision also amends the time limit for a decision in the border procedure from 2 weeks to 3 weeks. In addition, vulnerable persons with special needs related to physical or mental health are prioritised in the border procedure, while they are provided with adequate assistance.473

In Greece, the implementation of Article 90(3) and (5) of Law No 4636/2019 on the exceptional border procedure that applies to third-country nationals in Reception and Identification Centres in Lesvos, Chios, Samos, Leros and Kos was extended until 31 December 2021 by Joint Ministerial Decision No 15996 (Gov. Gaz. B' 5948/31.12.2020).474

In Lithuania, amendments introduced in December 2021 to the Law on the Legal Status of Aliens state that, at the end of the 6-month border procedure, all third-country nationals are provided

with a certificate confirming their status. However, the right to accommodation and freedom of movement of each migrant would be decided on an individual basis, with the latter depending on the risk of absconding or the existence of a national threat. Furthermore, the right to work would be acquired 12 months after the date of registration in the Lithuanian Migration Information System (MIGRIS).475 Before the adoption, UNHCR published legal observations on the proposed amendments, raising concern about detention safeguards in border procedures. 476

In October 2021, the Finnish government submitted a legislative proposal to the parliament, the 'Smart Border' package, which includes amendments to the Entry/Exit System (EES) and the European Travel Information and Authorisation System (ETIAS). The amendments will bring new technological means of processing at the border and concern specifically the Aliens Act and other relevant legislative provisions (the Act on the Processing of Personal Data by the Border Guard, the Border Guard Act, the Act on the Processing of Personal Data by the Police, the Act on the Processing of Personal Data by Customs, the Act on the Enforcement of Fines, and the Act on the Use of Air Carriers' Passenger Name Record Data in the Prevention of Terrorist Offences and Serious Crime).477

National courts also assessed legislative provisions and changes to the border procedure, as well as the detention of asylum applicants at the border, to determine whether they are in line with fundamental rights of asylum applicants.

In Belgium, the Constitutional Court confirmed that the amended Belgian legislation, namely the Act of 21 November 2017 which amended the Residence Act and the Reception Act, Articles 57/6/4 and 74/5 on detention at the border was in line with the Belgian Constitution. An applicant can be detained at the border for the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) to initiate an admissibility procedure. The detained applicant may lodge an appeal before the council chamber of the territorial criminal court, thus being guaranteed the right to access a court. The decision on admissibility of the application for international protection must be taken within 4 weeks. The starting point is the date on which the application was submitted.

In the Netherlands, the Council of State ruled that the State Secretary must treat an asylum application lodged at the border with sufficient diligence and must examine if detention is as short as possible. In one particular case, the council held that the State Secretary did not show if it had investigated other alternatives to detention to continue the processing of an asylum application despite the imposed quarantine measure. Following this judgment, the State Secretary examined the possibilities that are available to ensure that the processing of asylum cases was not delayed by COVID-19 quarantine measures in the detention centre.

In April 2021, the Spanish Ombudsperson published suggestions to the Ministry of the Interior after visiting the room for asylum applicants at Madrid-Barajas Adolfo Suárez Airport (T1). The Ombudsperson welcomed the reforms that had been done and noted further changes to meet the basic needs of applicants, such as access to luggage, natural light and health services.478

Civil society organisations undertook research projects to explore new ways to facilitate access to protection at the border with flexibility and sustainability. Of relevance for the influx of

displaced persons from Ukraine, the Migration Policy Institute and Migration Policy Institute Europe examined case studies in the project “Beyond Territorial Asylum: Making Protection Work in a Bordered World” to identify lessons learned in border protection. In 2021, the project looked at effective practices in registration, screening, quick access to a temporary stay or status, and addressing immediate humanitarian needs in border zones.479

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