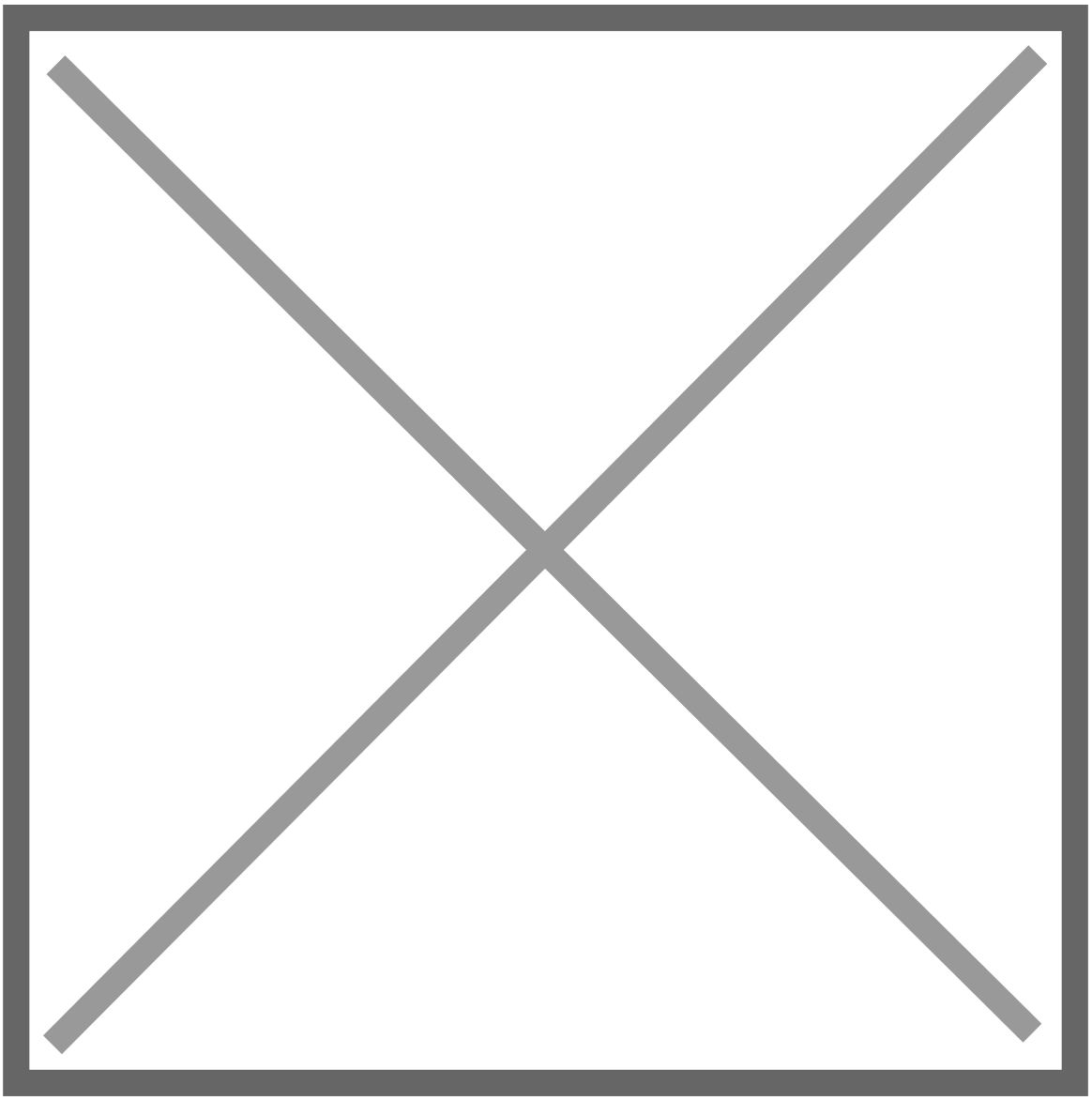
Please cite as: EUAA, 'Section 4.10 Legal assistance and representation' in *EASO Asylum Report 2021*, January 2022.

Section 4.10 Legal assistance and representation

Legal assistance is fundamental to inform applicants of their rights and obligations during the asylum process. A legal representative can ensure that the applicant fully comprehends the process and fully complies with the relevant obligations. The provision of legal aid in the early stages of the asylum procedure increases the efficiency of the entire process by allowing case officers to assess a complete and accurate file, reducing the burden on decision-makers, reducing the rate of appeals and safeguarding the right to non-refoulement. EU legislation also requires Member States to make free legal assistance and representation available on request and under certain conditions during appeal procedures.[796]

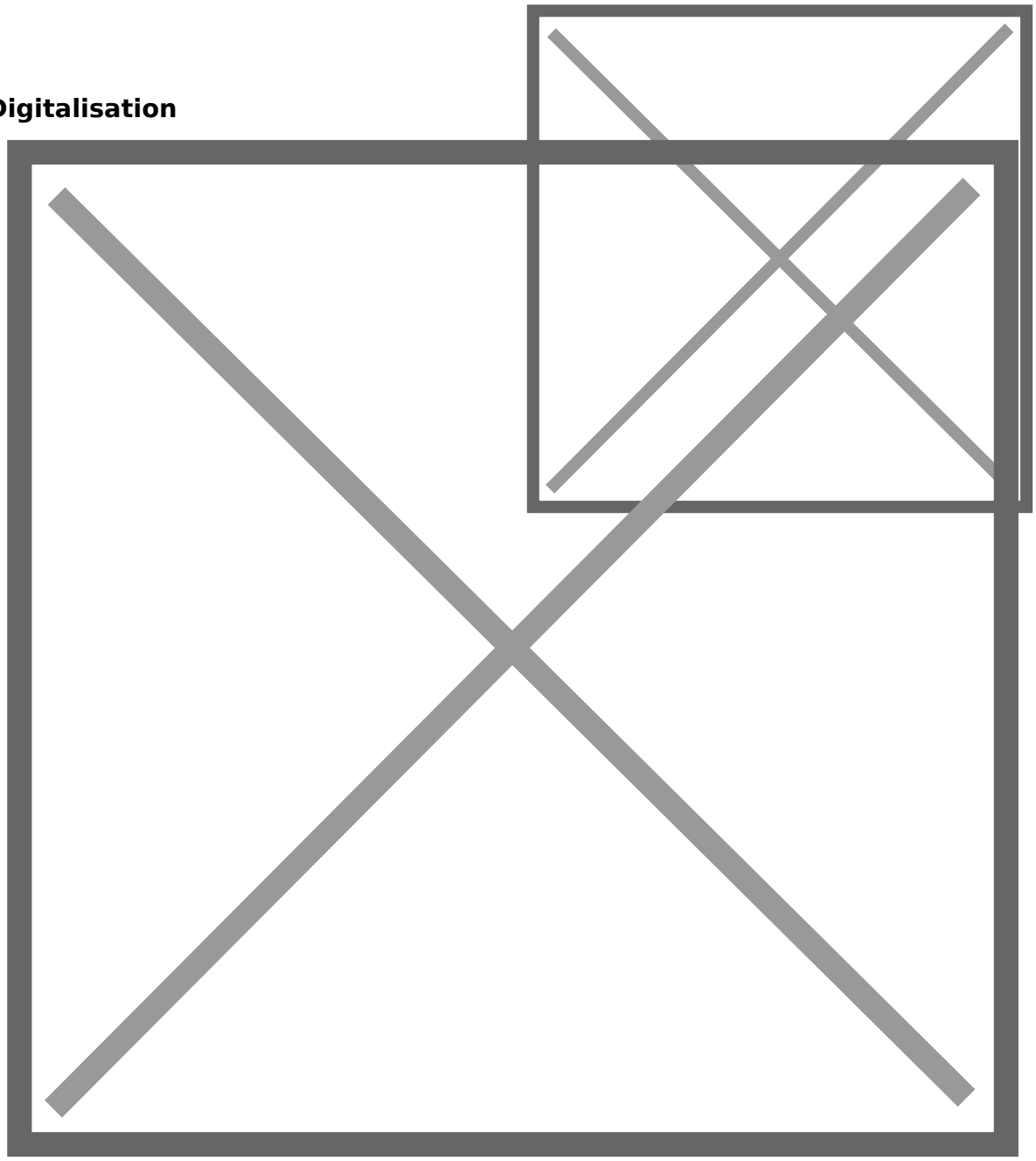
COVID-19



All EU+ countries adopted new practices to ensure a safe environment for legal representatives during the COVID-19 pandemic. In line with health measures (including social distancing, the wearing of masks and disinfection), countries organised information sessions on legal aid, either individually or in small groups, and many countries replaced face-to-face interaction with phone or video consultations. During the personal interview, legal assistance was provided with a reduced number of participants in the room or by having the legal representative attend from a separate room.

Due to delays from lockdowns and disruptions from postal services, negative decisions were often delivered at a later stage (see Section 4.4). In addition, as a direct result of restrictive measures, civil society organisations reported on the lack of access to legal assistance and representation at the borders and in detention and reception facilities in several countries. UNHCR[797] recommended adaptive measures to ensure access to legal assistance and representation and to maintain procedural fairness.

Digitalisation



By nature, legal assistance relies on a personal connection and trust developed through physical presence, so the pandemic did not spur digitalisation in legal aid in first instance applications. For second instance procedures, however, courts were pushed to use digital communication tools to allow hearings to take place and provide access to an appeal.

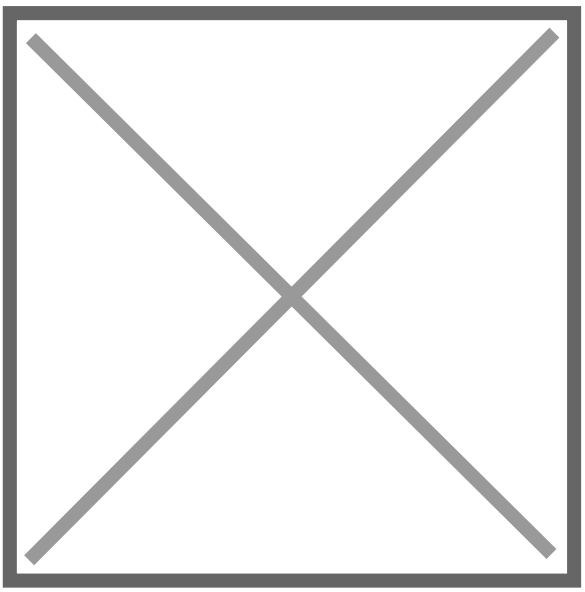
Legal representatives initially worked remotely during the first wave of the pandemic, and subsequently working methods were adjusted throughout 2020 to guarantee access to and continuity of services. Despite efforts to adhere to legal safeguards during videoconferencing, some challenges were experienced with communication and nuances online.

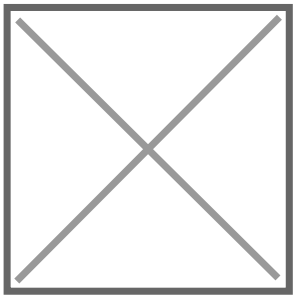
Preference was given, when possible, to face-to-face counselling, in line with guidelines from health authorities. Face-to-face contact between the lawyer and asylum applicant remained of particular importance to build confidence and provide assistance in preparing the application, during the interview and later with any subsequent appeal.

The European Commission's new Pact on Migration and Asylum,[798] which was published in September 2020, builds on its 2016 proposal for a regulation establishing a common procedure for international protection.[799] The 2016 proposal reiterates extensive procedural guarantees which safeguard the rights of asylum applicants, including free legal assistance and representation throughout all stages of the procedure (Article 15(1)).

However, Member States can limit this right exceptionally and decide not to provide free legal assistance and representation when the applicant has sufficient resources and the application or appeal are considered not to have tangible prospects of success (Articles 15(3a), (3b), (5a) and (5b)). Member States may also decide to exclude free legal assistance and representation for subsequent applications (Article 15(3c)), and at the appeal stage, this can also be done for the second level of appeal or higher (Article 15(5c)).

In essence, the new pact places more guarantees for legal assistance throughout the asylum procedure. While welcoming the proposal, civil society organisations criticised the limitations when an appeal has no prospects of success. ECRE considered that asylum applicants may risk being deprived of legal assistance, in particular in cases where there is a presumption that the application might be rejected as manifestly unfounded and when applying the safe country concept.[800] UNHCR also emphasised the need to ensure legal aid and access to a lawyer and NGOs, particularly at the border, in detention and in reception facilities.[801]





[796] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast). https://eur-lex.europa.eu/eli/dir/2013/33/oj/eng, Articles 20 and 21

[797] United Nations High Commissioner for Refugees. (April 2020). *Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic*. https://www.unhcr.org/cy/wp-content/uploads/sites/41/2020/04/Practical-Recommendations-and-Good-Practice-to-Address-Protection-Concerns-in-the-COVID-19-Context-April-2020.pdf

[798] Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM/2020/611 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:611:FIN; European Commission. (2020, September 23). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum COM/2020/609 final*. https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601287338054&uri=COM:2020:609:FIN

[799] Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM/2020/611 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:611:FIN

[800] European Council on Refugees and Exiles. (December 2020). *ECRE Comments on the amended Proposal for an Asylum Procedures*

Regulation, COM (2020) 611. https://www.ecre.org/wp-content/uploads/2020/12/ECRE-Comments-COM-2020-611-2-December-2020.pdf

[801] United Nations High Commissioner for Refugees. (2020, October 15). *Practical considerations for fair and fast border procedures and solidarity in the European Union*. https://www.refworld.org/docid/5f8838974.html

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