

# **RIGHTS OF WOMEN AND GIRLS IN THE ASYLUM PROCEDURE**

**ECRE'S ANALYSIS OF THE MAIN  
CHALLENGES TO WOMEN AND GIRLS'  
ACCESS TO A FAIR ASYLUM PROCEDURE  
AND IMPLEMENTATION CONSIDERATIONS  
FOR THE ASYLUM PROCEDURES  
REGULATION**

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# INTRODUCTION

The purpose of this paper is to analyse how the Asylum Procedures Regulation (referred to as the APR) impacts the rights and specific needs of women and girls. The paper will concentrate on legislative changes and current issues that hinder women and girls from accessing fair asylum procedures. The aim is to provide an evidence-based approach and recommendations to Member States and relevant organisations regarding the implementation of the APR.

To accomplish this, the Policy Paper highlights the challenges faced by women and girls under the current legislation, the Asylum Procedures Directive (referred to as the APD) which relate to personal interviews; legal counselling, assistance, representation and the right to an effective remedy; special procedural guarantees; the concept of safe countries; and special procedures. The analysis is based on the country reports from the Asylum Information Database (AIDA), managed by ECRE, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the Committee on the Elimination of Discrimination Against Women (CEDAW), the Council of Europe Group of Experts on Action against Trafficking (GRETA), NGO shadow reports, other relevant reports, and case law. Each section will summarise the relevant provisions and illustrate the impact through country examples which will also highlight whether the current issue arises due to the provision itself or rather due to poor implementation.

The policy paper will then analyse the amendments brought by the APR to these provisions and their implications for the rights of women and girls. It will also examine the APR's compatibility with the existing EU acquis, as well as with relevant international law and case law concerning the rights of women and girls in asylum-seeking and refugee situations. Each section will end with a set of recommendations for implementation. Where relevant, best practice examples will be provided.

The broader effects of the APR on asylum seekers are discussed in detail in the ECRE comments on the APR.<sup>1</sup> This paper will specifically focus on how the APR affects women and girls seeking asylum. Since the focus is on a specific group, the provisions analysed are selected because of how they relate to women and girls.

## MAIN CHALLENGES TO WOMEN AND GIRLS' ACCESS TO FAIR ASYLUM PROCEDURES AND THE AMENDMENTS IN THE APR

### CHAPTER I: BASIC PRINCIPLES AND GUARANTEES

#### Personal Interviews

##### *Right to a personal interview and interviews in the presence of family members*

#### **Current challenges faced by women and girls under the APD**

Article 14 of the APD states that before making a decision, applicants must have the opportunity of a personal interview conducted by a competent authority. Interviewers shall also have acquired general knowledge of problems that could adversely affect an applicant's capacities in the interview, such as past torture. Where a person has lodged an application for international protection on behalf of their dependents, each dependent adult shall be allowed to have a personal interview. Regarding interviews with children, the same article leaves it to the discretion of Member States to decide whether a child should be given the opportunity of a personal interview.

On the other hand, Article 14 states that the personal interview may be omitted in some circumstances. These situations are as follows: the determining authority can make a favourable decision about refugee status based on the evidence available; and if the applicant is unfit or unable to be interviewed owing to enduring circumstances. When in doubt, a medical professional should be consulted to confirm the nature of the condition.

1. ECRE\_Comments\_Asyllum-Procedures-Regulation.pdf, [https://ecre.org/wp-content/uploads/2024/11/ECRE\\_Comments\\_Asyllum-Procedures-Regulation.pdf](https://ecre.org/wp-content/uploads/2024/11/ECRE_Comments_Asyllum-Procedures-Regulation.pdf)

Article 15 of the APD stipulates that a personal interview shall occur without family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.

Despite the APD's explicit provisions that personal interviews can be conducted regardless of whether the individual is a dependent adult or a child, shortcomings in practical implementation create issues with women's access to personal interviews and their ability to have interviews without the presence of family members.

While some Member States (MS) (BE<sup>2</sup>, EL<sup>3</sup>, CY<sup>4</sup>, NL<sup>5</sup>, NO<sup>6</sup>, MD<sup>7</sup>) have established legal and procedural frameworks that allow women to be interviewed personally and without the presence of family members, other countries may conduct a superficial and potentially biased assessment of a woman's claim when her husband's reasons dominate the application process.<sup>8</sup> While individual assessments of family members' international protection claims are possible upon request, the reliance on such requests may fail to identify gender-based violence (GBV) survivors, particularly when collective family applications are processed without personnel trained in early identification of signs of GBV.<sup>9</sup>

### **Amendments in the APR (Articles 12, 13 and 14)**

Like the APD, Article 12 of the APR mandates that applicants be given the opportunity of a personal interview on the substance of their application before making a decision. Article 13(11) outlines specific cases where an interview may be omitted in the asylum process. In favour of the applicant, like in the APD, the interview may be omitted if a positive decision is possible based on available evidence (Article 13(11)(a)). Additionally, this applies when the determining authority "considers that the application is not inadmissible based on the evidence available". In addition, as in the APD, an interview may be omitted if the applicant is unable to participate due to circumstances beyond their control, in which case it should be rescheduled (Article 13(11)(c)). However, new conditions have been added that allow omission against the applicant's interests: i. in case of a subsequent application, the preliminary examination referred to in Article 55(4) is carried out based on a written statement, iii. the determining authority considers the application inadmissible pursuant to Article 38(1) (c)", which states that an MS other than the MS examining the application has granted the applicant international protection. In the first clause, the interview may be omitted if no new elements are introduced in the subsequent application, according to a narrow interpretation of what constitutes "new" elements. The second clause indicates that inadmissibility decisions can be made without a personal interview when another MS has already granted the applicant international protection.

In addition, although the APD (Article 15(1)) explicitly states that family members should not be present during interviews, this specific reference has been removed from the APR, which now contains a more general provision. The reference is only included in Recital (21), which states that "applicants should be given an effective opportunity to be interviewed separately from their spouse, partner or other family members".

### *Implementation considerations*

Article 13 of the APR grants EUMS the authority to deem an application inadmissible without conducting a personal interview. This may be contrary to the right to be heard established in Article 41 of the Charter and the need to provide an opportunity for women to have a personal interview and to raise independent needs for protection as described in the explanatory note of Article 60 of the Istanbul Convention. This legal gap will potentially lead to precarious situations, particularly for women and girls. ECRE believes that assessing the admissibility of asylum applications from women and girls who have experienced various forms of violence without conducting personal interviews would violate their right to a fair assessment of their claims. This omission, especially in situations of hidden vulnerable situations, may place them at risk of being returned to what are deemed generally safe countries of origin or safe third countries but where they could face inhumane treatment.

2. GREVIO Baseline Evaluation Report Belgium, September 2020, p.64, <https://rm.coe.int/grevio-report-on-belgium/16809f9a2c>
3. GREVIO Baseline Evaluation Report Greece, November 2023, p.75, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad469d>
4. GREVIO Baseline Evaluation Report Cyprus, October 2022, p.81, <https://bit.ly/3UQYmSV>
5. GREVIO Baseline Evaluation Report Netherlands, January 2020, p.65, <https://rm.coe.int/grevio-report-on-netherlands/1680997253>
6. GREVIO Baseline Evaluation Report Norway, November 2022, p.74, <https://rm.coe.int/grevio-inf-2022-30-report-norway-eng-pour-publication/1680a923f8>
7. GREVIO Baseline Evaluation Report Moldova, November 2023, p.71, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad46a1>
8. GREVIO Baseline Evaluation Report Romania, June 2022, p. 84, <https://rm.coe.int/final-report-on-romania/1680a6e439>
9. GREVIO Baseline Evaluation Report Luxembourg, May 2023, p. 57, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680abe1bb>

While not specific to the case of women, the Court of Justice of the European Union (CJEU) has ruled on instances where personal interviews have been omitted. For instance, the *Addis* C-517/17 case<sup>10</sup> addressed the interpretation of the APD regarding the failure to conduct a personal interview prior to an inadmissibility decision concerning an asylum seeker. The CJEU stressed the importance of conducting interviews to assess individual vulnerability. The court mandated that decisions lacking these interviews should be annulled unless fundamental guarantees exist, including the opportunity for an in-person hearing. Furthermore, in the *Addis* case and two other judgments (*Ibrahim and Others*, C 297/17, C 318/17, C 319/17 and C 438/17<sup>11</sup>, *Hamed and Omar*, C 540/17 and C 541/17<sup>12</sup>), the Court reiterated that inadmissibility decisions cannot solely rely on the presence of protection in another MS if there is a risk of inhuman treatment or extreme material poverty. Additionally, MS must consider objective and reliable evidence concerning risks in other states granting international protection.

Regarding the interviews without the presence of family members, the previous specific reference that family members must not be present has been deleted. This lack of necessary detail in the legislation could pose practical risks for asylum-seeking women and girls being interviewed with their husbands or male family members who may be the source or sources of their complaints and claims.<sup>13</sup>

## Recommendations

- » EUMS should conduct personal interviews with applicants before declaring an application inadmissible in line with Article 41 of the Charter and Article 60 of the Istanbul Convention. Even in the circumstances indicated, omission of personal interviews is not obligatory. Before they choose to omit a personal interview, the authorities should assess whether the outcomes of the choice not to conduct a personal interview, especially from a gender-sensitive perspective, could result in gender-based persecution.
- » EUMS should provide women and girls with the opportunity to be interviewed separately from family members and provide childcare and care for dependents during interviews to ensure a fair chance to make an asylum claim in accordance with the EU acquis<sup>14</sup> and international law.<sup>15</sup>

## Provision of information on the right to apply for international protection

### Current challenges faced by women and girls under the APD

Article 8 of the APD mandates EUMS to provide information on the possibility of making an application for international protection and on interpretation services for asylum seekers in detention facilities and at border crossing points and ensures access for organisations and persons providing advice and counselling.

However, since this article lacks necessary safeguards that address the unique challenges faced by women and girls, and MS often do not implement it in a gender-sensitive manner, in practice, women and girls face challenges in accessing the information. Evaluation reports indicate that women and girls are often unaware that various forms of GBV can be considered grounds for asylum and that they can apply independently of their partners due to a lack of information from authorities (CY<sup>16</sup>, DE<sup>17</sup>, NL<sup>18</sup>). Additionally, complex and frequently changing procedures, along with reliance on basic informational materials and the absence of specific guidance on GBV, hinder many women from understanding and asserting their rights during the asylum process (for

10. EDAL, CJEU: Judgment on the consequences of a failure to conduct a personal interview prior to an inadmissibility decision, <https://www.asylumlawdatabase.eu/en/content/cjeu-judgment-consequences-failure-conduct-personal-interview-prior-inadmissibility-decision>
11. EDAL, CJEU - Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17 *Ibrahim*, 19 March 2019, <https://www.asylumlawdatabase.eu/en/content/cjeu-joined-cases-c%E2%80%9129717-c%E2%80%9131817-c%E2%80%9131917-and-c%E2%80%9143817-ibrahim-19-march-2019>
12. Cases C-540/17 and C-541/17, *Hamed and Omar* <https://curia.europa.eu/juris/document/document.jsf?text=&docid=228673&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=12611640>
13. CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, p.6, <file:///C:/Users/%C3%87aglaKaya/Downloads/54620fb54.pdf>
14. EP resolution on the situation of women refugees and asylum seekers, 8 March 2016, [https://www.europarl.europa.eu/doceo/document/TA-8-2016-0073\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0073_EN.html)
15. Article 60 of the Istanbul Convention and CEDAW General Recommendation No.32
16. GREVIO Baseline Evaluation Report Cyprus, October 2022, p.82, <https://bit.ly/3UQYmSV>
17. GREVIO Baseline Evaluation Report Germany, June 2022, p.96-97, <https://bit.ly/3KearfN>
18. GREVIO Baseline Evaluation Report Netherlands, January 2020, p.65, <https://rm.coe.int/grevio-report-on-netherlands/1680997253>

example EL<sup>19</sup>). In some cases, NGOs provide only basic information on asylum procedures to those rescued at sea, leaving many women unaware of their rights and the possibility of claiming asylum based on experiences of GBV (MT).<sup>20</sup>

### Good practices

*In Belgium, the Office of the Commissioner General for Refugees and Stateless Persons (CGRA) has produced a brochure called “Women, Girls and Asylum in Belgium” for women and girls who apply for asylum in Belgium about their right to asylum and asylum procedures. However, although the CGRA has produced a brochure specifically for women and girls seeking international protection, it is not available in the registration waiting rooms at the Petit Château arrival centre.<sup>21</sup>*

### Amendments in the APR

Similarly to the APD, Article 8 of the APR lacks any provision for sharing gender-sensitive information about the right to apply for international protection. Also taken from the APD, Article 8 of the APR stipulates that information must be provided “in a language which they understand or are reasonably supposed to understand.”

Positively, Article 8 introduces the provision that administrative procedure information must be presented physically or electronically and, if necessary, orally through leaflets developed by the EUAA in collaboration with the Commission and MS. It also indicates that these leaflets should be child-friendly and tailored to the needs of applicants in vulnerable situations, such as children or persons with disabilities.

#### Implementation considerations

The lack of specific requirements regarding information tailored to women and girls in the APR will perpetuate existing issues. The “reasonably supposed to understand” clause implies a shift away from ensuring that applicants fully and accurately comprehend the information, leaving it to the discretion of EUMS to assess understanding. These inadequacies in the legislation pose risks, especially for women and girls who have experienced gender-based persecution, concerning their access to information and their right to apply for international protection.

While providing informative leaflets by the EUAA is positive, they should cater to a wider range of user groups. Inclusive leaflets addressing the needs of diverse individuals with an age, gender, and diversity-sensitive approach are necessary, rather than solely focusing on the requirements of specific groups like children and disabled persons explicitly mentioned in the provision.

### Recommendations

- » EUMS should clearly explain that GBV can be a ground for asylum and that women can apply independently of their partners.
- » EUMS should ensure that information is provided in a language that applicants can fully and clearly understand, surpassing the “reasonably supposed to understand” standard and further ensure that interpretation services and informal materials are available. This higher standard holds particular significance for women and girls who have faced gender-based persecution.
- » The EUAA should develop informative leaflets that consider take into account age, gender, and wider diversity, considering the unique needs of various groups. Specifically, these leaflets should be comprehensive and incorporate of gender-sensitive perspectives, offering insights into gender-sensitive asylum procedures that are accessible to women and girls from diverse backgrounds. It is imperative to adopt a participatory approach in preparing these leaflets, involving consultations with a broad spectrum of asylum seekers and refugee groups to ensure their comprehensibility, user-friendliness, and inclusivity. This endeavour can employ methodologies such as focus group discussions or surveys, ensuring diversity among participants, including women, men, boys, girls, LGBTIQ+ individuals, the elderly, and individuals with disabilities, with an intersectional

19. End FGM European Network, GREECE – Country Sheet, Asylum Laws, Policies and Practices in European Countries: What is the impact on FGM-affected women and girls?, p.2, [https://www.endfgm.eu/editor/0/GREECE\\_Country\\_Sheet\\_Asylum\\_paper.pdf](https://www.endfgm.eu/editor/0/GREECE_Country_Sheet_Asylum_paper.pdf)

20. GREVIO Baseline Evaluation Report Malta, November 2020, p.68, <https://bit.ly/3wQr3at>

21. Office of the Commissioner General for Refugees and Stateless Persons, Brochure on Women and Girls and Asylum in Belgium, [https://www.cgra.be/sites/default/files/brochures/asiel\\_asile\\_-\\_gender\\_genre\\_-\\_women\\_young\\_girls\\_and\\_asylum\\_in\\_belgium\\_-\\_eng\\_0.pdf](https://www.cgra.be/sites/default/files/brochures/asiel_asile_-_gender_genre_-_women_young_girls_and_asylum_in_belgium_-_eng_0.pdf)



perspective. Additionally, the EUAA should produce informative materials through multiple channels (physical leaflets, electronic media, oral communication) to reach a broader audience, ensuring that women and girls can access the necessary information in various circumstances.

### *Privacy and confidentiality in the personal interviews*

#### **Current challenges faced by women and girls under the APD**

Article 15 of the APD states that the interview shall take place under conditions which ensure appropriate confidentiality.

Privacy and confidentiality are important for women and girls to feel comfortable discussing their difficult experiences. However, examples from various countries demonstrate that challenges arise due to the lack of implementation of provisions to avoid overcrowding and a related lack of privacy in registration offices and reception centres. This may hinder women and girls from disclosing experiences of sexual and gender-based violence, which is essential for assessing international protection eligibility (IE.<sup>22</sup>, EL<sup>23</sup>, ES<sup>24</sup>). Inadequate facilities and the simultaneous interviewing of multiple individuals/families compromise confidentiality, thus impeding the disclosure of sensitive and traumatic experiences (PL<sup>25</sup>). This lack of privacy poses significant risks, including exposure to repeated violence and obstructed access to necessary protections (IT<sup>26</sup>).

#### **Amendments in the APR (Article 13)**

Article 13 of the APR introduces a slight enhancement to the provision regarding the confidentiality of interviews. It specifies that, in addition to confidentiality, Member States must ensure appropriate privacy during personal interviews, allowing applicants to fully articulate the grounds for their applications.

#### *Implementation considerations*

While the APD also mandates confidentiality in interviews, practical challenges have arisen in overcrowded spaces and those lacking private areas, where women may need help to divulge sensitive or traumatic reasons for fleeing their countries, thus jeopardising their access to international protection. As these are questions of implementation, the problem will continue in practice unless it is properly monitored, and measures are taken.

#### **Recommendation**

- » EUMS should conduct individual interviews in a gender-sensitive manner, prioritising privacy and confidentiality, as outlined in Article 60 of the Istanbul Convention.
- » The EUAA should also ensure privacy and confidentiality, particularly for women and girls, and take necessary steps to monitor the situation as part of their monitoring mechanism.

### *Competence of interviewers and interpreters and training*

#### **Current challenges faced by women and girls under the APD**

Article 15 of the APD requires that interviewers be competent in considering the applicant's cultural origin, gender, sexual orientation, gender identity, or vulnerability and that interpreters facilitate effective communication in the applicant's preferred language. Article 4 mandates training for personnel of the determining authority on international human rights, handling applications from children and vulnerable persons with specific needs, interview techniques, and the use of expert reports and information on countries of origin. Article 5 emphasises the necessity of training for the authorities likely to receive international protection applications, such as police, border guards, immigration authorities, and detention facility personnel, to ensure they can instruct applicants properly.

22. GREVIO Baseline Evaluation Report Ireland, November 2023, p.97, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad3feb>

23. GREVIO Baseline Evaluation Report Greece, November 2023, p.75, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad469d>

24. GREVIO Baseline Evaluation Report Spain, November 2020, p.77, <https://rm.coe.int/grevio-s-report-on-spain/1680a08a9f>

25. GREVIO Baseline Evaluation Report Poland, September 2021, p.83, <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>

26. GREVIO Baseline Evaluation Report Italy, January 2020, p.86, <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>

However, the APD does not specify training provisions for interpreters and does not provide explicit requirements for training in gender-related issues, gender-sensitive interview techniques or in recognising gender-based persecution.

In practice, challenges derive from legal and implementation gaps. These include inconsistent training for interpreters on trauma, stigma, shame and gender-based violence (IE<sup>27</sup>, RS<sup>28</sup>), unprofessional conduct by interpreters (EL<sup>29</sup>), and inadequate awareness and lack of mandatory training on GBV and gender-based discrimination for staff (BE<sup>30</sup>, EE<sup>31</sup>, FR<sup>32</sup>, LU<sup>33</sup>). There may be a lack of specialised units for assessing claims related to sexual and gender-based violence (NO<sup>34</sup>). High staff turnover, unsustainable employment practices (CY<sup>35</sup>), and insufficient training for police (ES<sup>36</sup>), legal aid lawyers (MT<sup>37</sup>) and judges (IS<sup>38</sup>, RO<sup>39</sup>) further complicate the process. These gaps lead to difficulties in early detection, secondary victimisation, and hinder disclosure of GBV by asylum seekers. Additionally, the lack of gender-sensitive interviewing techniques (RO<sup>40</sup>), training or guidelines on how to apply the Geneva Convention in a gender-sensitive manner (NL<sup>41</sup>) and inadequate recording practices (PL<sup>42</sup>) negatively impact the credibility and appeals of applicants. Concerns have also been raised about the impact of training on staff and the need to monitor and evaluate its effectiveness (HR<sup>43</sup>, CH<sup>44</sup>).

### Good practices

*In Ireland, applications that involve violence against women are typically referred to more experienced case workers. Additionally, mandatory training is provided by the International Protection Office (IPO) and the UNHCR for caseworkers and panel members, which covers gender-sensitive interpretation of persecution and serious harm, as well as gender-sensitive interviewing techniques. Moreover, the Dublin Rape Crisis Centre provides, annually, specialist training to IPO panel members and caseworkers on interview techniques in cases involving gender-based violence and trauma. Additionally, the UNHCR conducts regular audits of international protection determinations, including IPO decisions and IPAT decisions, and provides feedback and training to relevant staff as needed.<sup>45</sup>*

*In Iceland, the Directorate of Immigration has responded to challenges identified in the report on “Rising to the Challenge: Improving the Asylum Procedure in Iceland prepared by UNHCR in coordination with the Icelandic Directorate of Migration”<sup>46</sup> by developing guidelines for asylum claims made by LGBTI individuals and for interviewing suspected victims of human trafficking. Officers undergo training in gender-sensitive interviewing and the impact of gender-based violence on case handling and outcomes,*

27. GREVIO Baseline Evaluation Report Ireland, November 2023, p.95, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad3feb>
28. GREVIO Baseline Evaluation Report Serbia, January 2020, p.65, <https://rm.coe.int/grevio-report-on-serbia/16809987e3>
29. GREVIO Baseline Evaluation Report Greece, November 2023, p.76, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad469d>
30. GREVIO Baseline Evaluation Report Belgium, September 2020, p.63, <https://rm.coe.int/grevio-report-on-belgium/16809f9a2c>
31. GREVIO Baseline Evaluation Report Estonia, November 2022, p.80, <https://rm.coe.int/grevio-inf-2022-32-eng-final-report-on-estonia-publication/1680a8fcc2>
32. AIDA Country Report France, 2023, p.97, [https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-FR\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-FR_2023-Update.pdf)
33. GREVIO Baseline Evaluation Report Luxembourg, May 2023, p. 57, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680abe1bb>
34. GREVIO Baseline Evaluation Report Norway, November 2022, p. 74, <https://rm.coe.int/grevio-inf-2022-30-report-norway-eng-pour-publication/1680a923f8>
35. GREVIO Baseline Evaluation Report Cyprus, October 2022, p.82, <https://bit.ly/3UQYmSV>
36. GREVIO Baseline Evaluation Report Spain, November 2020, p.77, <https://rm.coe.int/grevio-s-report-on-spain/1680a08a9f>
37. GREVIO Baseline Evaluation Report Malta, November 2020, p.69, <https://rm.coe.int/grevio-inf-2020-17-malta-final-report-web/1680a06bd2>
38. GREVIO Baseline Evaluation Report Iceland, November 2022, p.74, <https://rm.coe.int/grevio-inf-2022-26-eng-final-report-on-iceland/1680a8efae>
39. GREVIO Baseline Evaluation Report Romania, June 2022, p. 84, <https://rm.coe.int/final-report-on-romania/1680a6e439>
40. GREVIO Baseline Evaluation Report Romania, June 2022, p. 83, <https://rm.coe.int/final-report-on-romania/1680a6e439>
41. GREVIO Baseline Evaluation Report Netherlands, January 2020, p.64, <https://rm.coe.int/grevio-report-on-netherlands/1680997253>
42. GREVIO Baseline Evaluation Report Poland, September 2021, p.84, <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>
43. GREVIO Baseline Evaluation Report Croatia, May 2023, p.82, <https://rm.coe.int/baseline-evaluation-report-on-croatia/1680ac76c9>
44. GREVIO Baseline Evaluation Report Switzerland, November 2022, p.73, <https://rm.coe.int/grevio-inf-2022-27-eng-final-draft-report-on-switzerland-publication/1680a8fc73>
45. GREVIO Baseline Evaluation Report Ireland, November 2023, p.95, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad3feb>
46. UNHCR Report on Rising to the Challenge: Improving the Asylum Procedure in Iceland, April 2016, <https://www.refworld.org/reference/countryrep/unhcr/2016/en/110681>



either through completing the EASO module themselves or via individuals who have completed it<sup>47</sup>.

In **France**, asylum officers at OFPRA receive initial and ongoing training on vulnerabilities and gender, including sessions with external speakers. Thematic groups within OFPRA focus on specific issues such as gender-based violence, children, and trafficking, with officers attending external training sessions to further enhance their knowledge and skills. Interpreters also undergo training by thematic groups on principles like neutrality, impartiality, and linguistic proficiency for handling all types of vulnerabilities.<sup>48</sup>

In **Italy (Bari)**, RSD officers at the Territorial Commission for the Recognition of International Protection, which is the competent authorities to examine asylum applications and take first-instance decisions, have undergone comprehensive training on gender-related issues in asylum claims, focusing on conducting a gender-sensitive RSD procedure and identifying concealed violence that asylum seekers may not immediately disclose during interviews. Additionally, interpreters within the territorial commission have also received training on gender sensitivity during interviews.<sup>49</sup>

In **Slovenia**, in the absence of a dedicated unit for handling applications from persons in vulnerable situations, staff of the International Protection Procedures division of the Migration Directorate receive specialised training from the EUAA in three modules: interviewing vulnerable groups, interviewing children, and addressing issues of gender identity and sexual orientation.<sup>50</sup>

In **Luxembourg**, since 2017, the National Reception Centre has collaborated with the Group for the Abolition of Female Genital Mutilation, and staff working with women and girls in reception are required to undergo training on this applicant profile.<sup>51</sup>

## Amendments in the APR (Articles 8, 13, 21, 23,24 and 35)

Article 8 of the APR expands the scope of training required for personnel of competent authorities. Beyond the training content mandated by the APD, new training contents were added: i.

issues related to the determination of whether an applicant qualifies for international protection and the rights of beneficiaries of international protection; ii. issues related to the processing of applications for international protection; iii. evidence assessment; iv. issues related to children, in particular unaccompanied children, as regards the best interests of the child assessment, specific procedural safeguards such as respect of the child's right to be heard and other child protection aspects, age assessment techniques; v. issues related to applicants in need of special procedural guarantees, applicants with special reception needs and other persons in a vulnerable situation, with particular attention to victims of torture, to victims of human trafficking and to related gender-sensitive issues.

Article 35 stipulates that the personnel responsible for examining applications and making decisions should have access to expert advice on specific issues, such as medical, cultural, religious, mental health, child-related, and gender issues, whenever necessary.

Unlike the APD, the APR explicitly emphasises the importance of prioritising trained interpreters and cultural mediators for interviews. Article 13 of the APR mandates that EUMS should give preference to interpreters and cultural mediators who have undergone training in interpreting and cultural mediation. Additionally, EUMS must ensure that these interpreters and cultural mediators are familiar with the fundamental concepts and terminology pertinent to assessing applications for international protection, which can be achieved through a standardised leaflet or guide.

### *Training requirements for identifying and addressing the necessity for special procedural guarantees*

Article 21 of the APR specifies that relevant personnel of competent authorities, along with doctors and psychologists who evaluate the need for special procedural guarantees, must receive training. This training is intended to equip them with the skills to detect signs of vulnerability in applicants who may require special procedural guarantees and to address these needs once identified.

47. GREVIO Baseline Evaluation Report Iceland, November 2022, p.74, <https://rm.coe.int/grevio-inf-2022-26-eng-final-report-on-iceland/1680a8efae>

48. End FGM European Network, France – Country sheet asylum laws, policies and practices in European Countries: What is the impact on FGM-affected women and girls?, p.2, [https://www.endfgm.eu/editor/0/FRANCE\\_Country\\_Sheet\\_Asylum\\_paper\\_1.pdf](https://www.endfgm.eu/editor/0/FRANCE_Country_Sheet_Asylum_paper_1.pdf)

49. GREVIO Baseline Evaluation Report Italy, January 2020, p.85, <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>

50. AIDA Country Report Slovenia, 2023, p.20, [https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-SI\\_2023-Update-final.pdf](https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-SI_2023-Update-final.pdf)

51. EUAA, Protecting women and girls in the asylum procedure, July 2023, p.6, [https://euaa.europa.eu/sites/default/files/publications/2023-07/AR2023\\_factsheet16\\_women\\_girls\\_in\\_asylum\\_EN.pdf](https://euaa.europa.eu/sites/default/files/publications/2023-07/AR2023_factsheet16_women_girls_in_asylum_EN.pdf)

## Special guarantees for children

Article 23 specifies that decisions on a child's application must be made by personnel of the determining authority who shall have the necessary knowledge and have received appropriate training on the rights and special needs of children. Article 24 requires that the person appointed as the child's representative must have adequate qualifications, training, and expertise and must also receive regular training.

### Recommendations

- » EUMS should implement the new provisions and ensure mandatory and comprehensive training for all relevant staff on gender-specific issues. It should encompass training on forms of violence such as GBV, female genital mutilation, trafficking, forced marriage, and torture, trauma and on identifying survivors of such violence.

## Same-sex interviewers and interpreters

### Current challenges faced by women and girls under the APD

Article 15 of the APD stipulates that a same-sex interviewer and interpreter should be provided upon request whenever possible unless there are unrelated reasons preventing this.

For women and girls, having same-sex interviewers and interpreters is essential for facilitating the disclosure of traumatic experiences and building trust. However, the flawed legislation that includes the "whenever possible" clause often restricts the consistent provision of same-gender interviewers and interpreters, even when such requests are made. Country evaluation reports also confirm this problem in practice. Reports reveal that while female asylum applicants are entitled to request interviewers and interpreters of the same sex, this provision is frequently unmet due to shortages of female caseworkers and interpreters (DE<sup>52</sup>, EL<sup>53</sup>, EE<sup>54</sup>, ES<sup>55</sup>, FR<sup>56</sup>, IT<sup>57</sup>, MT<sup>58</sup>, RO<sup>59</sup>, RS<sup>60</sup>, SI<sup>61</sup>) or insufficient information sharing about this option (BE<sup>62</sup>, IS<sup>63</sup>, MD<sup>64</sup>). As a result, many women are interviewed by male officials or interpreters despite their requests or the need for gender-specific handling of sensitive cases involving gendered persecution or sexual violence.

### Good Practices

*In Norway<sup>65</sup> and Netherlands<sup>66</sup> women need to be offered the choice of a female interviewer and interpreter.*

*In Ireland, female applicants are interviewed by female caseworkers, subject to availability. If the questionnaire raises the issue of violence against women, the International Protection Office (IPO) tries to assign a female interviewer and interpreter. Furthermore, if there are concerns that the interviewee may be a victim of violence against women during the interview, the interviewer will normally provide the*

52. AIDA Country Report Germany, 2022, p.38, [https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-DE\\_2022update.pdf](https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-DE_2022update.pdf)
53. GREVIO Baseline Evaluation Report Greece, November 2023, p.75, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad469d>
54. GREVIO Baseline Evaluation Report Estonia, November 2022, p.67, <https://rm.coe.int/grevio-inf-2022-32-eng-final-report-on-estonia-publication/1680a8fcc2>
55. AIDA Country Report Spain, 2022, p.57, [https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-ES\\_2022update\\_final.pdf](https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-ES_2022update_final.pdf)
56. AIDA Country Report France, 2023, p.50, [https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-FR\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-FR_2023-Update.pdf)
57. GREVIO Baseline Evaluation Report Italy, January 2020, p.85, <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>
58. GREVIO Baseline Evaluation Report Malta, November 2020, p.68, <https://bit.ly/3wQr3at>
59. GREVIO Baseline Evaluation Report Romania, June 2022, p. 83, <https://rm.coe.int/final-report-on-romania/1680a6e439>
60. GREVIO Baseline Evaluation Report Serbia, January 2020, p.65, <https://rm.coe.int/grevio-report-on-serbia/16809987e3>
61. AIDA Country Report Slovenia, 2023, p.39, [https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-SI\\_2023-Update-final.pdf](https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-SI_2023-Update-final.pdf)
62. AIDA Country Report Cyprus, 2023, p.39, [https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-CY\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-CY_2023-Update.pdf)
63. GREVIO Baseline Evaluation Report Iceland, November 2022, p.74, <https://rm.coe.int/grevio-inf-2022-26-eng-final-report-on-iceland/1680a8efae>
64. GREVIO Baseline Evaluation Report Republic of Moldova, November 2023, p.71, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad46a1>
65. GREVIO Baseline Evaluation Report Norway, November 2022, p.74, <https://rm.coe.int/grevio-inf-2022-30-report-norway-eng-pour-publication/1680a923f8>
66. GREVIO Baseline Evaluation Report Netherlands, January 2020, p.65, <https://rm.coe.int/grevio-report-on-netherlands/1680997253>

*interviewee with the option to postpone the interview and arrange for a female interviewer*<sup>67</sup>.

*In France, a protection officer and an interpreter of the same sex may be appointed on a case-by-case basis to conduct the interview, even if not explicitly requested, if it is believed that this will facilitate the disclosure of the asylum seeker's history based on the information in the file.*<sup>68</sup>

### **Amendments in the APR (Article 13)**

Regarding access to same-sex interviewers and interpreters, the APR retains the provision from the APD with the limitation “where possible” and does not introduce any changes. Article 13 of the APR stipulates that, upon the applicant’s request and where feasible, interviewers and interpreters of the same sex preferred by the applicant shall be provided unless unrelated grounds prevent this.

#### *Implementation considerations*

For women and girls in particular, being interviewed by an interpreter and interviewer of the same sex can help them express experiences they might be reluctant to share with a male interviewer or interpreter, thus significantly affecting the asylum process outcomes. However, the restriction in the APR with the retention of the “where possible” clause, similar to the APD, and the absence of an explicit requirement to provide information on this right, will, in practice, again prevent these groups from accessing same-sex interpreters and interviewers.

Article 60 of the explanatory note of the Istanbul Convention entails the obligation to develop gender-sensitive asylum procedures, which include the possibility for the applicant to express a preference for the sex of their interviewer and interpreter, which the State Parties will accommodate where it is reasonable to do so.

Certain national case law also rules that same-sex interpreters and interviewers should be provided during asylum interviews and appeal procedures. In FI, a Somali woman’s asylum application was rejected after an interview conducted by male personnel. The Supreme Administrative Court (*A. (Somalia) v Finnish Immigration Service*) annulled this decision, ruling that she should have been interviewed by an officer and interpreter of the same sex, given her vulnerable situation and the sensitivity of her claims.<sup>69</sup>

In Belgium, The Council of State determined that the provision in Article 15 of the APD, which allows an applicant for international protection to be interviewed by a person of the same sex and assisted by an interpreter of the same sex, does not extend to appeal procedures. However, these guarantees must be upheld during the appeal if the applicant was not afforded this opportunity during the initial interview with the determining authority.<sup>70</sup>

### **Recommendation**

- » EUMS should define the formulation of “where possible” more clearly to minimise the risks of broad interpretation and then ensure consistent application across different cases.
- » EUMS should explicitly inform applicants of their right to request same-sex interviewers and interpreters at the earliest possible stage in the asylum process, including during appeal procedures.

## **Legal counselling, assistance, representation and right to an effective remedy**

### *Legal counselling, assistance, and representation*

#### **Current challenges faced by women and girls under the APD**

Article 19 of the APD requires EUMS to provide applicants with free legal and procedural information tailored to their circumstances during first-instance procedures. This includes explanations of negative decisions and

67. GREVIO Baseline Evaluation Report Ireland, November 2023, p.95, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad3feb>

68. GREVIO Baseline Evaluation Report France, November 2019, p.77, <https://rm.coe.int/grevio-inf-2019-16/168098c61a>

69. *A. (Somalia) v Finnish Immigration Service*, EUAA Case law, <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1178>

70. EUAA Case Law Database, *Applicant v Commissioner General for Refugees and Stateless Persons (CGRS)*, <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=3895>

guidance on how to challenge them. Article 20 mandates that EUMS offer free legal assistance and representation upon request for appeals, covering document preparation and representation in hearings. However, this provision allows MS to limit free legal assistance if a court, tribunal, or other competent authority deems the appeal lacking tangible prospects of success. This conditional assistance in the legislation imposes an additional burden of proof on applicants, making it particularly challenging for applicants to access free legal assistance and representation. This difficulty may be compounded for women who have experienced various forms of violence, as they may struggle to disclose their experiences, and the authorities evaluating their cases might lack adequate training on gender-specific issues. Additionally, Article 19 allows EUMS to choose whether to provide free legal assistance and/or representation during first-instance procedures. The fact that the legislation does not impose an obligation in this regard leads to the fact that these services are often not provided in practice.

Article 21 states that free legal and procedural information may be provided by non-governmental organisations, professionals from government authorities, or specialised state services. On the other hand, free legal assistance and representation should be provided by such persons as admitted or permitted under national law. Article 22 grants EUMS some discretion in offering free legal assistance and representation, allowing them to permit non-governmental organisations to provide these services to applicants.

Under Article 21, EUMS may impose monetary and/or time limits on the provision of free legal and procedural information, as well as on free legal assistance and representation. The fact that the legislation leaves it to the discretion of countries also poses problems in practice.

The legal restrictions posed under the APD, along with the discretion left to individual countries, create significant challenges for women in accessing free legal assistance and representation in practice.

Women and girls seeking asylum face numerous challenges due to legal and implementation gaps, including inadequate legal representation and support, particularly in cases of gender-based persecution. Staffing shortages, time constraints, and pressure to meet targets often lead to lower-quality determinations and high rejection rates (EL<sup>71</sup>, NL<sup>72</sup>, NO<sup>73</sup>). Legal aid is frequently unavailable at the initial stages (CY<sup>74</sup>, MT<sup>75</sup>, NO<sup>76</sup>), and decisions are often issued in languages not understood by applicants (CY<sup>77</sup>), complicating the appeal process. Moreover, there may be a lack of awareness and training among caseworkers (EE<sup>78</sup>) and legal advisors (CH<sup>79</sup>) regarding GBV, and judges (IS<sup>80</sup>) handling asylum appeals often lack specific training on these issues. Limited access to competent legal representation and inconsistent NGO access to asylum and reception centres to provide information and legal counselling (RS<sup>81</sup>) further hinder their ability to present their cases and secure protection effectively.

### Good practices

*In **Moldova**, legal aid and representation are available through a trilateral agreement between an NGO partner, UNHCR, and the National Legal Aid Council for women to exercise the right of appeal in case of negative asylum decisions.<sup>82</sup>*

71. GREVIO Baseline Evaluation Report Greece, November 2023, p.75, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad469d>
72. GREVIO Baseline Evaluation Report Netherlands, January 2020, p.62, <https://rm.coe.int/grevio-report-on-netherlands/1680997253>
73. GREVIO Baseline Evaluation Report Norway, November 2022, p.75, <https://rm.coe.int/grevio-inf-2022-30-report-norway-eng-pour-publication/1680a923f8>
74. GREVIO Baseline Evaluation Report Cyprus, November 2022, p.82, <https://rm.coe.int/grevio-inf-2022-29-cyprus-report-for-publication-eng-for-publication/1680a91c5b>
75. GREVIO Baseline Evaluation Report Malta, November 2020, p.68-69, <https://rm.coe.int/grevio-inf-2020-17-malta-final-report-web/1680a06bd2>
76. GREVIO Baseline Evaluation Report Norway, November 2022, p.75, <https://rm.coe.int/grevio-inf-2022-30-report-norway-eng-pour-publication/1680a923f8>
77. GREVIO Baseline Evaluation Report Cyprus, November 2022, p.82, <https://rm.coe.int/grevio-inf-2022-29-cyprus-report-for-publication-eng-for-publication/1680a91c5b>
78. GREVIO Baseline Evaluation Report Estonia, November 2022, p.67, <https://rm.coe.int/grevio-inf-2022-32-eng-final-report-on-estonia-publication/1680a8fcc2>
79. GREVIO Baseline Evaluation Report Switzerland, November 2022, p.74, <https://rm.coe.int/grevio-inf-2022-27-eng-final-draft-report-on-switzerland-publication/1680a8fc73>
80. GREVIO Baseline Evaluation Report Iceland, November 2022, p.74, <https://rm.coe.int/grevio-inf-2022-26-eng-final-report-on-iceland/1680a8efae>
81. GREVIO Baseline Evaluation Report Serbia, January 2020, p.64, <https://rm.coe.int/grevio-report-on-serbia/16809987e3>
82. GREVIO Baseline Evaluation Report Republic of Moldova, November 2023, p.72, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad46a1>

## Amendments in the APR (Articles 15, 16, 17, and 19)

Despite some improvements in legal counselling, assistance, and representation, the APR did not address the existing legal issues described above.

Regarding the positive improvements, Article 16 introduces the obligation to provide, at the request of the applicant, free legal counselling, including guidance on the procedures and assistance with lodging the application, throughout the first instance procedure. In addition, for the purpose of implementing this article, EUMS may request the assistance of the EUAA, and financial support may be provided to EUMS through Union funds. However, it also details certain circumstances in which free legal counselling in administrative procedures should not be provided. These circumstances are listed as i. making a first subsequent application to delay or prevent the execution of an extradition decision; ii. creating a second or subsequent application or already being assisted by a legal adviser.

In addition, the APR retains the articles that create problems in the APD and introduces new problematic articles.

Regarding access to free legal assistance and representation in administrative procedures, the APR maintains the discretionary approach of the APD. As for the APD, EUMS may offer free legal assistance and representation in the first instance procedure, but it is not rendered obligatory, as the Commission's amendment in this direction was rejected.

Regarding access to free legal assistance and representation in the appeal procedure, the APR maintains the obligation for EUMS to provide this right, as per the APD. However, it also retains the conditions under which this right can be excluded and introduces new exclusion criteria. Article 17 specifies that free legal assistance and representation in appeals may be excluded if it is deemed that the appeal lacks tangible prospects of success or is abusive, which is the case as well for those at a second level or higher, including re-hearings or reviews.

Article 19 of the APR retains the monetary and time limits that EUMS may impose on the provision of free legal counselling, assistance, and representation, as per the APD. Particularly, the time limits set by EUMS in practice inhibit the thorough evaluation of complex situations and the circumstances of applicants in vulnerable situations. These time limits may prevent female applicants from fully disclosing information crucial to their applications.

### *Implementation considerations*

Allowing the provision of free legal assistance and representation in the administrative (first instance) procedure to remain at the discretion of EUMS will continue to limit the provision of this support. Evidence from various countries indicates that during the implementation of the APD, many EUMS chose not to implement this provision, posing significant risks, include some specific to women and girls. Therefore, ECRE believes that relying solely on the APR's discretionary "may" clause is insufficient to address these issues effectively.

Given the current challenges in accessing free legal assistance and representation during the appeal process, the exclusion criteria in the legislation based on lacking tangible prospects of success pose significant risks for applicants. This is particularly true concerning the burden of proof and women's disclosure of their experiences, with the level of difficulty varying across different countries. Without addressing these issues, the challenges will persist. Furthermore, the introduction of new clauses in the APR - such as excluding appeals deemed abusive or those at a second level or higher, including re-hearings or reviews - will further hinder women and girls' access to free legal assistance and representation.

Given the challenges faced by NGOs working on asylum and migration in obtaining registration necessary to operate in certain countries, problems in the provision of assistance may persist. For example, in Greece, the adoption of the Joint Ministerial Decision in 2020 introduced new, onerous accreditation rules,<sup>83</sup> and in Türkiye, accreditation powers were utilised to favour NGOs aligned with the state's ideology<sup>84</sup>. It is essential for EUMS to adopt inclusive practices and provide accreditation, particularly to women's associations.

83. Amnesty International Public Statement, Greece: Regulation of NGOs Working on Migration and Asylum Threatens Civic Space, p1, <https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR2528212020ENGLISH.pdf>

84. Ulas Sunata, Assessing the Civil Society's Role in Refugee Integration in Turkey: NGO-R as a New Typology, P.6, <https://shorturl.at/aoVX3>



## Recommendations

- » EUMS should provide access to free legal assistance and representative in the administrative procedure despite the lack of obligation to do so.
- » In the appeal procedure, EUMS should ensure equitable access to legal assistance without imposing exclusions.
- » Regarding the monetary and time limits that EUMS may impose on free legal counselling and assistance, EUMS should reassess these limits to ensure they do not undermine the effectiveness of legal aid and representation with a gender-sensitive perspective, taking into account the time that women may need for disclosing the information related to their case.
- » To ensure adequate access to legal counselling, assistance and representation for asylum seekers, EUMS should adopt inclusive registration processes for non-governmental organisations (NGOs), facilitate a transparent and non-burdensome process, and support registration of a variety of organisations, including women's rights NGOs.

## Special Procedural Guarantees

### Special Procedural Guarantees

#### Current challenges faced by women and girls under the APD

Article 2(d) defines “applicant in need of special procedural guarantees” as one whose ability to benefit from the rights and comply with the obligations provided for in the APD is limited due to individual circumstances.

Recital 29 of the APD provides a non-exhaustive list of characteristics indicating an applicant in need of special procedural guarantees which may be “due, among other things, to their 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”.

According to Article 31 EUMS may prioritise an examination of an application for international protection in, particular where the applicant is vulnerable, within the meaning of Article 22 of Directive 2013/33/EU, or needs special procedural guarantees, particularly unaccompanied children.

Article 24 of the APD mandates that EUMS assess applicants requiring special procedural guarantees within a reasonable timeframe after they apply for international protection and provide adequate support throughout the asylum procedure. However, the APD lacks clear guidelines on how the assessment should be conducted, its duration, who should perform it, and the scope of adequate support.

Article 24(3) stipulates that the accelerated and border procedures outlined in Articles 31(8) and 43 cannot be applied to applicants needing special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical, or sexual violence if they are not provided with adequate support. Article 24(3) also mandates that if Article 46(6)<sup>85</sup> is applied to these groups, Article 46(7) offers additional protections, including necessary interpretation, legal assistance, and at least one week to prepare and submit their arguments to the court or tribunal to remain in the country.

Article 10 of the APD also states that the personnel examining applications and making decisions can consult with experts on specific matters, including medical, cultural, religious, child-related, or gender issues, whenever needed.

In practice, the assessment and provision of necessary support to women asylum seekers across various European countries are subject to notable deficiencies and inconsistencies due to inadequate legislation (lack of necessary details on the framework of the assessment of the special procedural guarantees) and

85. Article 46(6) In the case of a decision: considering an application to be manifestly unfounded in accordance with Article 32(2) or unfounded after examination in accordance with Article 31(8), except for cases where these decisions are based on the circumstances referred to in Article 31(8)(h);

(b) considering an application to be inadmissible pursuant to Article 33(2)(a), (b) or (d);

(c) rejecting the reopening of the applicant's case after it has been discontinued according to Article 28; or

(d) not to examine or not to examine fully the application pursuant to Article 39,

a court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State, either upon the applicant's request or acting ex officio, if such a decision results in ending the applicant's right to remain in the Member State and where in such cases the right to remain in the Member State pending the outcome of the remedy is not provided for in national law.



implementation gaps. Reports reveal that asylum-seeking women and girls face numerous challenges, including the lack of systematic vulnerability assessments and formal screening procedures (CY<sup>86</sup>, DE<sup>87</sup>, EE<sup>88</sup>, EL<sup>89</sup>, IE<sup>90</sup>, IT<sup>91</sup>, MD<sup>92</sup>, MT<sup>93</sup>, NO<sup>94</sup>, PL<sup>95</sup>, PT<sup>96</sup>, RO<sup>97</sup>, SI<sup>98</sup>) which hinder the early detection and support for survivors of gender-based violence. Judicial reluctance to acknowledge risks of further female genital mutilation and inconsistent treatment of medical certificates may further complicate their cases (BE<sup>99</sup>). The absence of independent women's rights organisations in reception centres results in unidentified harm and difficulties in raising awareness of the rights of women and girls (HR<sup>100</sup>). Inadequate staff training and awareness may impede the identification and support of women and girls in vulnerable (LU<sup>101</sup>), while inconsistent evaluation of medical reports and burdensome proof requirements (CY<sup>102</sup>, DE<sup>103</sup>) exacerbate the struggles faced by women and girls. Insufficient standard operating procedures and referral systems (ES<sup>104</sup>, RO<sup>105</sup>), along with a lack of training for officials on the identification of vulnerabilities (RS<sup>106</sup>, SI<sup>107</sup>), delay and deter many from pursuing women and girls' claims, ultimately impacting their ability to receive necessary protections and support.

## Good practices

*In Belgium, the CGRS (Office of the Commissioner General for Refugees and Stateless Persons) has established two specialised units to support protection officers dealing with such cases: i.a "Gender Unit" addressing gender-related asylum applications, including claims based on sexual orientation, gender identity or sexual characteristics (LGBTI), fear of undergoing Female Genital Mutilation (FGM), honour crimes, forced marriages, domestic violence, sexual violence by trained staff following the EUAA module on Gender, Gender Identity & Sexual Orientation and ii. a "Minors Unit" ensuring a harmonised approach for unaccompanied children, with officers trained in interviewing children.<sup>108</sup>*

*In Spain, some positive developments reported regarding the identification of vulnerabilities include the OAR (Communication with the Asylum and Refugee Office) now recognising Female Genital Mutilation as an indicator of gender persecution, improved assessment of LGBTQI+ cases, particularly for Sub-Saharan asylum applicants, and increased recognition of international protection for Moroccan women victims of gender-based violence.<sup>109</sup>*

86. AIDA Country Report Cyprus, 2023, p.68, [https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-CY\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-CY_2023-Update.pdf)
87. GREVIO Baseline Evaluation Report Germany, June 2022, p.97-98, <https://rm.coe.int/report-on-germany-for-publication/1680a86937>
88. GREVIO Baseline Evaluation Report Estonia, November 2022, p.67, <https://rm.coe.int/grevio-inf-2022-32-eng-final-report-on-estonia-publication/1680a8fcc2>
89. GREVIO Baseline Evaluation Report Greece, October 2023, p.78, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad469d>
90. GREVIO Baseline Evaluation Report Ireland, October 2023, p.94-95, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad3feb>
91. GREVIO Baseline Evaluation Report Italy, January 2020, p.86, <https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>
92. GREVIO Baseline Evaluation Report Moldova, October 2023, p.71, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad46a1>
93. GREVIO Baseline Evaluation Report Malta, November 2020, p.68-69, <https://rm.coe.int/grevio-inf-2020-17-malta-final-report-web/1680a06bd2>
94. GREVIO Baseline Evaluation Report Norway, October 2022, p.74, <https://rm.coe.int/grevio-inf-2022-30-report-norway-eng-pour-publication/1680a923f8>
95. GREVIO Baseline Evaluation Report Poland, June 2021, p.83, <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>
96. AIDA Country Report Portugal 2022, p.78, [https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-PT\\_2022-Update.pdf](https://asylumineurope.org/wp-content/uploads/2023/05/AIDA-PT_2022-Update.pdf)
97. GREVIO Baseline Evaluation Report Romania, March 2022, p.83, <https://rm.coe.int/final-report-on-romania/1680a6e439>
98. AIDA Country Report Slovenia, 2023, p. 25, [https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-SI\\_2023-Update-final.pdf](https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-SI_2023-Update-final.pdf)
99. NANSEN Note 2021-2, Mutilations génitales féminines, p.30, [https://nansen-refugee.be/wp-content/uploads/2022/06/210826-NANSEN-Note-2021-1-FGM\\_FR-def.pdf](https://nansen-refugee.be/wp-content/uploads/2022/06/210826-NANSEN-Note-2021-1-FGM_FR-def.pdf)
100. GREVIO Baseline Evaluation Report Croatia, September 2023, p.83, <https://rm.coe.int/baseline-evaluation-report-on-croatia/1680ac76c9>
101. GREVIO Baseline Evaluation Report Luxembourg, May 2023, p.57, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680abe1bb>
102. AIDA Country Report Cyprus, 2023, p.68, [https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-CY\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-CY_2023-Update.pdf)
103. GREVIO Baseline Evaluation Report Germany, June 2022, p.97-98, <https://rm.coe.int/report-on-germany-for-publication/1680a86937>
104. GREVIO Baseline Evaluation Report Spain, October 2020, p.77, <https://rm.coe.int/grevio-s-report-on-spain/1680a08a9f>
105. GREVIO Baseline Evaluation Report Romania, March 2022, p.83, <https://rm.coe.int/final-report-on-romania/1680a6e439>
106. GREVIO Baseline Evaluation Report Serbia, January 2020, p.64, <https://rm.coe.int/grevio-report-on-serbia/16809987e3>
107. AIDA Country Report Slovenia, 2023, p. 25, [https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-SI\\_2023-Update-final.pdf](https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-SI_2023-Update-final.pdf)
108. AIDA Country Report Belgium, 2023, p. 80, [https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-BE\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-BE_2023-Update.pdf)
109. AIDA Country Report Spain, 2022, p.74, [https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-ES\\_2022update\\_final.pdf](https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-ES_2022update_final.pdf)

## Amendments in the APR

Article 3(14) of the APR defines “applicant in need of special procedural guarantees” in a similar way to APD, adding only a reference to “specific vulnerabilities” having an impact on the “ability to benefit from the rights and comply with the obligations due to individual circumstances”.

Like the APD, Recital (17) of the APR retains a non-exhaustive list of characteristics that indicate that an applicant is in need of special procedural guarantees, adding a new feature - when these are the result of gender-based violence.<sup>110</sup>

However, in a change to the APD, the APR provides a shorter list of examples of vulnerable applicants. Accordingly, the examples given are victims of torture or traumatised applicants (Recital (15)) and children, persons with disabilities, the elderly people (Recital (61)). However, the inclusion of specific vulnerabilities as an example of special procedural needs (Article 3(14)) shows that a clearer distinction has been established between these two terms and that special procedural needs are more inclusive.

Article 20 of the APR introduces some general and mostly positive changes regarding special procedural guarantees. It mandates that competent authorities must provide interpreter assistance where necessary to assess whether an applicant is in need of special procedural guarantees. Additionally, it sets a time limit for this assessment, stating that it must be initiated no later than 30 days after the application for international protection is submitted, which is also positive since making this assessment without delay in a more specific and predictable period of time will help to prevent new victimisation that may occur.

Article 20 also introduces new provisions on what the assessment should identify. The assessment should determine whether an applicant presents first indications of needing special procedural guarantees based on visible signs, the applicant’s statements, or any relevant documents. For this purpose, Article 20 allows competent authorities to refer applicants to medical practitioners, psychologists, or other professionals for advice on the applicant’s need for special procedural guarantees - particularly in cases involving indications of torture, rape, or serious psychological, physical, sexual, or gender-based violence- the discretionary “may” clause means countries can choose whether to make such referrals.

In another positive change, Article 20 of the APR states that relevant staff of competent authorities, as well as any medical practitioners, psychologists, or other professionals advising on special procedural guarantees, must receive training. This training is intended to enable them to detect signs of vulnerability in applicants who might need special procedural guarantees and to address these needs once identified.

### *Implementation considerations*

The APR outlines that identifying special procedural needs will be based on “visible signs, the applicant’s statements or behaviour, or any relevant documents.” This approach promotes a comprehensive view of the applicant’s situation rather than depending solely on self-reported information. For women who have experienced trauma – such as gender-based violence, rape, or trafficking - behavioural cues or physical indicators might initially signal a need for extra support. However, this reliance on visible signs can be problematic, as trauma is not always externally evident, and some women may be reluctant to disclose such experiences openly due to stigma, cultural barriers, or fear of re-traumatisation.

The regulation allows authorities to refer applicants to medical or psychological professionals to assess special procedural needs, prioritising cases involving signs of torture, rape, or GBV . This could significantly benefit women who need mental health or medical support due to trauma, helping address issues that may hinder their participation in the asylum process. However, its effectiveness depends on certain factors such as informed consent, as some women might feel pressured to agree without fully understanding the implications; and access to gender-sensitive, trauma-informed professionals who are equipped to address the specific needs of women who have experienced violence.

Although there is a provision for relevant staff to receive training, the lack of necessary detailed information on the content of this training in the legislation may create the risk that, in practice, training is not provided to meet the specific needs of women and girls.

<sup>110</sup>. Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious physical or mental illness or disorders, including when these are a consequence of torture, rape or other serious forms of psychological, physical, sexual or gender-based violence. It is necessary to assess whether any individual applicant is in need of special procedural guarantees.

## Recommendations

- » EUMS should mandate detailed, standardised training for staff, focusing specifically on recognising signs of trauma and understanding the unique challenges faced by women and girls. Training should include modules on GBV, cultural sensitivity, and trauma-informed care to ensure staff are well-prepared to meet women applicants' specific needs. ECRE also recommends that EUMS develop gender guidelines and tools, and ensure the availability of female staff to assess the vulnerable situations of women and girls upon request.
- » To address the limitations of visible signs, EUMS should use a combination of direct interviews, private consultations, and trusted third-party testimonies to identify applicants requiring special procedural guarantees. This would help capture cases where trauma is not outwardly apparent, reducing the likelihood of overlooking vulnerable applicants.
- » EUMS should mandate a clear, step-by-step consent process for referring applicants to medical or psychological support. Women applicants must receive information in accessible language and format to ensure full understanding of their rights and the implications of giving consent.
- » EUMS should establish formal collaborations with medical practitioners, psychologists, and other relevant specialists to facilitate timely and expert assessments of applicants and address their specific needs, particularly those who are exposed to GBV, FGM, human trafficking, trauma and torture. This could involve creating multidisciplinary teams that work together to identify and address the needs of vulnerable applicants.

### Guarantees for children

#### Current challenges faced by women and girls under the APD

The APD does not provide a specific article for the guarantees for children, but instead, Article 25 addresses guarantees for unaccompanied children. However, some provisions introduce regulations on children. In this context, Article 25(6) mandates that the best interests of the child shall be a primary consideration for EUMS when implementing the APD. Article 14(1) states that EUMS may determine in national legislation the cases in which a child shall be given the opportunity of a personal interview. Article 15(3), point (e) EUMS shall ensure that interviews with children are conducted in a child-appropriate manner.

While countries have the discretion to conduct personal interviews with children, the lack of more explicit provisions regarding the rights of accompanied children to personal interviews can result in their protection needs being overlooked. These needs should be addressed regardless of whether the child is applying independently or as a dependent in the asylum procedure. Sometimes, the child's interests may differ from or conflict with those of the parents, making it crucial to consider the child's perspective in such cases.<sup>111</sup> It is also important for interviewers to be aware that children might be reluctant to share certain information in the presence of their parents, such as experiences of GBV, gender identity issues, and sexual orientation. These factors can also serve as grounds for international protection.<sup>112</sup> Therefore, it would have been important to have clearer provisions ensuring the right to personal interviews separate from family members when it is in the child's best interest.

Additionally, considering the requirements in Article 4 that authorities possess appropriate knowledge or receive necessary training to fulfil their obligations when implementing the APD and the requirement in Article 25 for interviewers to understand the specific needs of unaccompanied children, it is crucial in practice to respond to the training needs of authorities and interviewers, including training on gender-specific issues, in relation to the specific needs of children, including accompanied ones.

#### Amendments in the APR

Unlike the APD, Article 22 of the APR includes provisions for all children, not just those unaccompanied. It specifies that the best interests of the child must be a primary consideration for competent authorities when applying the APR. Additionally, it mandates that if a child makes the application, the child must be given the opportunity of a personal interview. The person conducting the interview must have the necessary knowledge of the rights and special needs of children and must interview in a child-sensitive and context-appropriate manner, considering the child's age and maturity.

111. EASO Report on Asylum Procedures for Children, p.48, <https://euaa.europa.eu/sites/default/files/EASO-Report-asylum-procedures-for-children-EN.pdf>

112. Ibid.

Additionally, Article 22 positively stipulates that for children who are accompanied, interviews should be conducted in the presence of a responsible adult, whether required by the law or practice of the Member State and, if appointed, a legal adviser. EUMS may also include a person with relevant skills and expertise in the interview if deemed necessary and in the child's best interests. In exceptional cases, the determining authority may interview the child without the adult present, but only if it is clearly in the child's best interests and if it can be ensured that the child is supported by a qualified individual to safeguard their welfare. Moreover, the article mandates that decision-making staff involved in a child's application must have the necessary knowledge and appropriate training on the rights and special needs of children.

### Recommendation

EUMS should adopt a gender-sensitive approach in personal interviews with girls and in decisions on their applications. Interviewers should be of the same sex as the child if requested. Moreover, both interviewers and decision-makers should receive training on gender-specific needs and gender-related persecution, particularly on issues such as FGM and GBV, which girl asylum-seekers may face. Additionally, guidelines and tools should be developed to address these issues.

### Special guarantees for unaccompanied children

#### Current challenges faced by women and girls under the APD

Article 25 of the APD provides some guarantees for unaccompanied children. According to this, EUMS should take measures as soon as possible to ensure that a representative to represent and assist unaccompanied children. In case of a personal interview with an unaccompanied child on his/her application for international protection, the interviewer should have the necessary knowledge of the special needs of children. The person who prepares the decision as per the interview has also the necessary understanding of the special needs of children. The best interest of the child shall be the primary consideration while implementing the APD.

Although there is a legal provision on appointing a representative, the absence of clear guidelines on the timeframe for appointment and who should take care of the child until the appointment of the representative creates practical problems. Additionally, the lack of clear requirements regarding the representative's qualifications, training, and expertise, as well as the maximum number of children they can be in charge of, further complicates the situation.

This inadequate legislation particularly impact girls. Specifically, delays in appointing representatives hinder the timely identification of girls in vulnerable situations, leading in some cases to their re-victimisation. Country reports show that, in particular, children disappear before their interviews due to the lack of timely, early and effective identification, lack of outreach work,<sup>113</sup> delays in appointing representatives promptly, inadequate resourcing of the guardianship system, and lack of appropriately trained supervisors<sup>114</sup>, especially for girls, all of which heightens the risk of falling victim to human trafficking and various forms of violence.<sup>115</sup>

Analysis of implementation in EUMS shows various practical challenges. These include the high number of children for whom the representatives are responsible at the same time, the fact that a single representative is responsible for all children and there is no other person to fulfil his/her duty in case he/she is on medical leave or vacation, and delays in the appointment of representatives due to the low number of representatives, which prevent the correct follow-up of children's processes and the provision of guidance to children (BG<sup>116</sup>, BE<sup>117</sup> CY<sup>118</sup>, DE<sup>119</sup> NL<sup>120</sup>, RO<sup>121</sup>). In FR<sup>122</sup>, if no guardian is appointed, a Public Prosecutor should appoint an ad

113. GRETA Evaluation Report Slovenia, June 2023, p.6, <https://rm.coe.int/greta-evaluation-report-on-slovenia-3rd-evaluation-round-greta-2023-05/1680ab958b>

114. GRETA Evaluation Report France, February 2022, p.77, <https://rm.coe.int/evaluation-report-france-third-evaluation-round/1680a5b6cb>

115. GRETA Evaluation Report Sweden, October 2023, p.46, <https://rm.coe.int/greta-evaluation-report-on-sweden-third-evaluation-round-thematic-focu/1680acf80b>

116. EUAA, Asylum Report 2023, <https://euaa.europa.eu/asylum-report-2023/562-legal-representation-asylum-seeking-children>

117. AIDA Belgium Country Report, 2023 <https://asylumineurope.org/reports/country/belgium/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>

118. AIDA Cyprus Country Report, 2023, <https://asylumineurope.org/reports/country/cyprus/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>

119. AIDA Germany Country Report, 2023, <https://asylumineurope.org/reports/country/germany/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>

120. EUAA Survey, Input by civil society organisations to the Asylum Report 2023, Dutch Nidos Foundation, [https://euaa.europa.eu/sites/default/files/2023-02/stichting\\_nidos.pdf](https://euaa.europa.eu/sites/default/files/2023-02/stichting_nidos.pdf)

121. AIDA Romania Country Report, 2023, <https://asylumineurope.org/reports/country/romania/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>

122. AIDA France Country Report, 2023, <https://asylumineurope.org/reports/country/france/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>



hoc administrator for only administrative and judicial procedures related to the asylum claim, but not to ensure the child's welfare as a guardian would. However, the appointment process can take 1 to 3 months, and in some areas, the lack of administrators forces children to wait until they turn 18 to file their asylum application. In IT<sup>123</sup>, the concept of voluntary guardians has been established to overcome existing deficiencies and lack of professionalism. However, even this system did not help overcome existing problems due to the significant gaps that emerged between the number of volunteer guardians and the number of children present, the lack of specific training for the children, and delays in the appointment.

It is also reported that in practice, there is a lack of training for representatives to be able to properly deal with complex cases (HR<sup>124</sup>, DE<sup>125</sup>, FR<sup>126</sup>). Due to this lack of training and knowledge on legal or asylum issues, the representatives are not always able to contribute substantially during or after the interviews.<sup>127</sup>

In some cases, despite the APD's requirement to consider the best interests of the child in implementing the directive, this principle is often neglected. Legal guardians appointed may refrain from consenting to appeal against a negative asylum decision (AT<sup>128</sup>) or the lack of information provision to children about their guardian and how to contact her/him (HR<sup>129</sup>, PL<sup>130</sup>) may limit their protection. In HR<sup>131</sup>, children over 16 years old who are married are not appointed a representative, as it is assumed they can "perform procedural acts" on their own behalf in international protection procedures. However, this can be especially challenging for girls subjected to forced or child marriage, as their specific protection needs risk being overlooked.

### Amendments in the APR

Article 23 of the APR introduces new provisions that go beyond those in Article 25 of the APD. It requires EUMS to designate a person with the necessary skills and expertise to temporarily assist in safeguarding the child's best interests and general welfare and, where appropriate, to act as a representative until an official representative is appointed. This designated person may also be authorised by the EUMS to assist the unaccompanied child with the registration and lodging of the application or to lodge the application on behalf of the child until an official representative is appointed.

Additionally, unlike the APD, the APR sets a specific time limit for appointing a representative to support and represent the child, which must be done within 15 working days from the date the application is made. If there is a disproportionate number of applications by unaccompanied children or in other exceptional circumstances, this time limit can be extended by 10 working days.

Article 23(5) also introduces the right for an unaccompanied child to file a complaint against their representative or designated person. Although the article does not specify how this complaint mechanism should operate, it mandates that competent authorities inform unaccompanied children about the process for lodging a complaint confidentially and safely.

Article 23(9) stipulates that representatives must have the necessary qualifications and expertise and must receive regular training to effectively perform their duties.

In contrast to the APD, Article 23(10) of the APR imposes limits on the maximum number of unaccompanied children that a representative or designated person can be in charge of at the same time while also mandating EUMS to supervise their work. Under normal circumstances, competent authorities are required to assign a representative or designated person to no more than 30 unaccompanied children at once. However, in cases of a disproportionate number of applicants or other exceptional circumstances, this limit can be increased to

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123. AIDA Italy Country Report, 2023, <https://asylumineurope.org/reports/country/italy/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>

124. AIDA Croatia Country Report, 2023, <https://asylumineurope.org/reports/country/croatia/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>

125. AIDA Germany Country Report, 2023, <https://asylumineurope.org/reports/country/germany/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>

126. AIDA France Country Report, 2023, <https://asylumineurope.org/reports/country/france/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>

127. AIDA Cyprus Country Report, 2023, <https://asylumineurope.org/reports/country/cyprus/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>

128. AIDA Austria Country Report, 2023, <https://asylumineurope.org/reports/country/austria/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>

129. AIDA Croatia Country Report, 2023, <https://asylumineurope.org/reports/country/croatia/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>

130. AIDA Poland Country Report, 2023, <https://asylumineurope.org/reports/country/poland/asylum-procedure/guarantees-vulnerable-groups-asylum-seekers/legal-representation-unaccompanied-children/>

131. AIDA Croatia Country Report, 2023, <https://asylumineurope.org/reports/country/croatia/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>

a maximum of 50 unaccompanied children. Nevertheless, the article lacks clarity regarding what constitutes exceptional circumstances or a disproportionate number.

Additionally, EUMS must ensure that administrative or judicial authorities or other entities are responsible for regularly supervising the performance of representatives and designated persons. This supervision includes regular checks on their criminal records to identify any conflicts with their roles. These authorities should also address complaints from unaccompanied children against appointed representatives or designated persons.

On the other hand, while Article 25 of the APD permits EUMS to refrain from appointing a representative if an unaccompanied child is likely to turn 18 before a first instance decision, Article 23 of the APR stipulates that if the competent authority determines beyond doubt that an applicant claiming to be a child is actually over 18, they are not obligated to appoint a representative.

### Implementation considerations

While the APR introduces positive provisions for unaccompanied children, there are concerns about the implementation of these measures. Specifically, ensuring adequate capacity with the new amendments is a concern, as many countries already face issues such as a shortage of representatives and insufficient training for them.

### Recommendations

- » EUMS should define “exceptional circumstances” and “a disproportionate number of applicants” to ensure consistent application of these terms and establish a transparent process for requesting and granting extensions to the representative appointment.
- » EUMS should develop clear and accessible procedures for unaccompanied children to file complaints against their representatives or designated persons. EUMS should also ensure these mechanisms are confidential, safe, and well-communicated to children. Appointment of same-gender representatives upon request should be provided.
- » EUMS should provide comprehensive and regular training programs for representatives and designated persons, with specific modules on the rights, needs, and protection of girls, including training on gender-based violence, forced or child marriage, and other issues that disproportionately affect girls.
- » EUMS should establish a complaint mechanism that is sensitive to the needs of children and gender, ensuring safety and clarity. EUMS should develop guidelines on the complaint mechanism’s functioning in collaboration with child protection experts. These guidelines should be presented to children in an easily understandable manner.

### *Age assessment for children*

#### **Current challenges faced by women and girls under the mandate of the APD**

The APD does not provide a separate article for the age assessment of children whose age is in doubt; however, Article 25 (5) allows EUMS to use medical examinations to determine the age of unaccompanied children.

The same article also states that medical examinations must respect individual dignity, be minimally invasive, and be conducted by qualified professionals for reliable results. Member States must ensure that unaccompanied children are informed about age-determining medical examination in a language they understand or are “reasonably supposed to understand”, have consent from the children or their representatives, and that refusal to undergo the exam does not solely determine the rejection of their protection application.

In practice, children encounter numerous challenges during age assessment procedures due to legal gaps in the APD. These include the misleading use of medical examinations instead of a multidisciplinary age assessment approach, inadequate training of staff, vague language requirements (e.g. the formulation “reasonably supposed to understand”) for informing children, and lack of specific guarantees for unaccompanied girls’ needs. Implementation gaps also contribute to these issues, as some APD provisions, such as respecting individual dignity, ensuring minimally invasive procedures, and using qualified professionals, are not consistently upheld.

Reports underline these challenges which stem both from legal and implementation gaps, including inaccuracies



due to reliance on physical appearance and non-scientific methods, which often misrepresent their true age.<sup>132</sup> These procedures can exacerbate existing trauma and stress, compounded by inconsistent standards across regions, lack of documentation, and cultural and language barriers leading to misinterpretations. Incorrect age assessments can result in children being placed in adult facilities, depriving them of appropriate protection and support services.<sup>133</sup> Lengthy and complex procedures delay access to necessary protections, while invasive examinations violate privacy and dignity, risking re-victimisation. Bias and prejudice among officials may further undermine the fairness of the process.

The method of age assessment, especially those involving nudity or the examination, observation, or measurement of genitals or intimate areas, can be particularly traumatic for children who have experienced abuse either as part of persecution in their country of origin or during their migration.<sup>134</sup> In this context, the Committee on the Rights of the Child (CRC) decision highlights the inappropriateness of practices like nudity or genital examinations during age assessment for children. In the 2021 decision, the CRC reviewed *R.Y.S. v Spain*<sup>135</sup>, involving a Cameroonian child subjected to invasive age determination tests, including a genital examination, despite showing signs of physical and sexual abuse. The Committee concluded that such examinations, involving nudity or genital examination, infringe on a child's dignity, privacy, and bodily integrity and should not be used for age assessment. The process, conducted without informed consent or a legal representative, violated her rights under the CRC.

### Amendments in the APR

Article 25 of the APR introduces new provisions with a dedicated article on age assessment. While Article 25(5) of the APD permits EUMS to conduct a medical examination to determine the age of applicants if doubts arise following general statements or relevant indications, Article 25(1) of the APR states that EUMS may conduct a multi-disciplinary age assessment, including a psychosocial assessment by qualified professionals, instead of a medical examination in similar circumstances. This multi-disciplinary approach to age assessment in the APR represents a positive advancement, particularly considering the potential misleading consequences associated with relying solely on medical examinations.

Article 25(2) of the APR states that where there are still doubts as to the age of an applicant following the multi-disciplinary assessment, medical examinations may be used as a measure of last resort to determine the applicant's age. This provision provides an implicit statement, open to interpretation, that even if the applicant is found to be a child according to the age assessment, a medical examination may be carried out if there are doubts. However, the subsequent sentence in the same provision clarifies this ambiguity by stating, "*where the result of the age assessment referred to in this paragraph is not conclusive with regard to the applicant's age or includes an age range below 18 years, Member States shall assume that the applicant is a minor.*" Therefore, it should be understood that a medical examination should only be pursued if the age assessment indicates that the applicant's age range exceeds 18 years, but doubts remain about their status as a child. Additionally, Article 25(3) mandates that the results from both the medical examination and the multi-disciplinary assessment must be evaluated collectively.

### Recommendations

- » EUMS should prioritise multi-disciplinary age assessments and conduct them in a safe, child and gender-sensitive manner with due respect for human dignity. They should pay special attention to vulnerabilities, such as those experienced by victims of sexual violence (which can retrigger feelings of violated consent), pregnant girls, and children suffering from PTSD.<sup>136</sup> No method involving nudity or the examination, observation, or measurement of genitalia or intimate parts should be used for age assessment purposes<sup>137</sup>. Children should also have the option to undergo examinations conducted by an individual of the same sex.

132. ECRE, Legal note on Age Assessment, 2022, <https://ecre.org/wp-content/uploads/2023/01/Legal-Note-13-FINAL.pdf>

133. Incorrect age assessments can result in children being placed in adult facilities, depriving them of appropriate protection and support services, Kamena Dorling Maddie Harris, Kama Petruczenko 22/01/2024, <https://www.helenbamber.org/resources/reportsbriefings/forced-adulthood-home-offices-incorrect-determination-age-and-how-leaves>

134. EASO Practical Guide on Age Assessment, p.38, <https://euaa.europa.eu/sites/default/files/easo-practical-guide-on-age-assesment-v3-2018.pdf>

135. EDAL, CRC: Committee finds violations concerning, inter alia, medical examinations in the course of age determination procedure, 4 February 2021, <https://www.asylumlawdatabase.eu/en/content/crc-committee-finds-violations-concerning-inter-alia-medical-examinations-course-age>

136. CoE, Age Assessment for Children in Migration: A Human Rights Based Approach, <https://rm.coe.int/ageassessmentchildrenmigration/168099529f>

137. EASO Practical Guide on Age Assessment, p.14, <https://euaa.europa.eu/sites/default/files/easo-practical-guide-on-age-assesment-v3-2018.pdf>

- » EUAA should ensure proper training for officials to minimise bias and provide adequate support services to mitigate trauma and protect the rights of asylum-seeking girls.

## CHAPTER II: THE CONCEPT OF SAFE COUNTRIES

### Concepts of safe country of origin and safe third country

#### Current challenges faced by women and girls under the APD

##### » The concept of safe country of origin

According to Article 36 of the APD, a third country can be designated as a safe country of origin for a specific applicant, following an individual examination of the application, only if the applicant holds the nationality of that country or was previously habitually resident there as a stateless person. Additionally, the applicant must not have any compelling reasons to believe that the country is not safe for them personally, taking into account their circumstances and eligibility for international protection under the Qualification Directive (Directive 2011/95/EU).

Article 37 of the APD leaves the designation of a safe country of origin to EUMS by allowing them to retain or introduce legislation for the national designation of safe countries of origin to assess international protection applications. EUMS must regularly review the conditions in these designated countries, using information from various sources, including data from other EUMS, EASO, UNHCR, the Council of Europe, and other relevant international organisations. Additionally, EUMS are required to notify the Commission about the countries designated as safe countries of origin under this regulation.

While some countries provide lists of safe countries of origin, others do not apply this provision due to the absence of such lists. For instance, Bulgaria, Lithuania, Portugal, and Romania have not adopted lists. In Finland, although there is no list, the safe country of origin concept is applied on a case-by-case basis. Latvia lacks legal provisions for establishing a national list of safe countries of origin, and Poland's legal framework does not define the concept of a safe country of origin.<sup>138</sup> In Spain, the concept of a "safe country of origin" is based on the criteria for "safe third countries" in Article 20(1)(d) of the Asylum Act. While the National High Court concluded in 2016 that Morocco and Algeria qualify as "safe countries of origin" based on their classification as "safe third countries.", the concept is rarely used in practice.<sup>139</sup>

Certain EUMS define exceptions for specific geographical areas or profiles of asylum seekers within a country of origin. For instance, in the Netherlands, some specific groups, such as women and or LBGQTQI+ individuals or some specific areas, such as the union territory of Jammu and Kashmir in India, are excluded from the safe country of origin designation.<sup>140</sup> Norway provides exceptions for girls under the age of 18 from Ghana and Tanzania, single women from India, and applicants who have faced forced marriage in Ghana and Tanzania.<sup>141</sup> In Spain, although Morocco is designated as a safe country of origin, in recent years Moroccan nationals in specific cases are granted protection by Spain, such as when political grounds (i.e. those coming from the Rif region), LBGQTQI+, and GBV grounds of persecution apply.<sup>142</sup> A recent judgment of the CJEU rules out the designation of countries as safe countries of origin with exceptions for parts of the territory, finding that the country's territory must as a whole be designated as safe or not.<sup>143</sup>

Although the APD mandates regular reviews of the conditions in countries designated as safe countries of origin, some countries reportedly fail to conduct these reviews properly. Issues arise from the lack of assessment of gender-specific concerns, such as GBV in the country of origin, outdated country of origin information, and inadequate cooperation with international institutions, independent organisations, and associations that report on the challenges faced by women and girls.

Country reports show that women seeking asylum face challenges when reporting allegations of violence, especially if they come from countries deemed "safe" due to the lack of safeguards in the legislation for women

138. EUAA, Applying the Concept of Safe Countries in the Asylum Procedure, December 2022, p.6, [https://euaa.europa.eu/sites/default/files/publications/2022-12/2022\\_safe\\_country\\_concept\\_asylum\\_procedure\\_EN.pdf](https://euaa.europa.eu/sites/default/files/publications/2022-12/2022_safe_country_concept_asylum_procedure_EN.pdf)

139. AIDA Country Report Spain, 2024, p.92-93, [https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-ES\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-ES_2023-Update.pdf)

140. AIDA Country Report Netherlands, 2023, p.103, [https://asylumineurope.org/wp-content/uploads/2024/04/AIDA-NL\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/04/AIDA-NL_2023-Update.pdf)

141. EUAA, Applying the Concept of Safe Countries in the Asylum Procedure, p.9, [https://euaa.europa.eu/sites/default/files/publications/2022-12/2022\\_safe\\_country\\_concept\\_asylum\\_procedure\\_EN.pdf](https://euaa.europa.eu/sites/default/files/publications/2022-12/2022_safe_country_concept_asylum_procedure_EN.pdf)

142. AIDA Country Report Spain, 2022, p.89, [https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-ES\\_2022update\\_final.pdf](https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-ES_2022update_final.pdf)

143. Judgment of the Court (Grand Chamber) of 4 October 2024, Case C-406/2, CV v Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62022CJ0406>

and girls. Their claims, including those involving domestic violence and honour crimes, are often rejected based on the assumption that their home countries can provide adequate protection, sometimes due to their ratification of the Istanbul Convention, without specific proof or reference to GREVIO's evaluation reports in individual cases.<sup>144</sup> This raises concerns about the adequacy of protection measures and the handling of GBV cases in the asylum process. Additionally, countries where practices such as female genital mutilation are prevalent are still considered generally to be "safe" (e.g. Gambia, Ghana and Senegal are considered safe country of origin in EL<sup>145</sup>), further complicating the protection and support for affected women and girls.

Case law in which the national courts found the rejection of a woman's application on the safe country grounds unlawful can be useful and instructive even if they are not binding on other member states:

- » In the Czech Republic, the Regional Court of Brno ruled the rejection of a women's application unlawful due to insufficient and outdated COI, highlighting human rights violations, violence against women and risk of refoulement and contradicting India's designation as a safe country of origin.<sup>146</sup>
- » In Ireland, a Georgian national's application for international protection, citing fear of domestic violence, was initially rejected due to credibility issues and Georgia being deemed a safe country. The High Court overturned the decision to uphold the rejection without a hearing, ordering reconsideration due to improperly assessed credibility concerns.<sup>147</sup>
- » In the Netherlands, an Armenian national's credible claim of rape and police threats was rejected by the State Secretary, who deemed Armenia a safe country of origin. On appeal, the Court of The Hague overturned the decision, finding the assessment insufficient and ordering a re-examination to further investigate her protection needs.<sup>148</sup>

### » The concept of safe third country

Article 38 of the APD outlines the procedures that EUMS must follow when processing asylum applications and determining if a third country can be considered a "safe third country" to which people can be sent or returned. This article lists the principles for deeming a third country safe, including the ability to request refugee status and receive protection in accordance with the Geneva Convention. Notably, the mere ability to request refugee status is deemed sufficient rather than guaranteeing access to a fair and efficient asylum procedure.<sup>149</sup>

Additionally, the provision in Article 38 regarding receiving protection and claiming refugee status in line with the Geneva Convention has led to varying interpretations about whether the third country must have ratified the Geneva Convention without geographical limitations. Some academics<sup>150</sup> argue that this provision should only apply to countries that have ratified and fully implemented the Refugee Convention without any limitations.<sup>151</sup>

Article 38 also stipulates that EUMS must have rules in place regarding the reasonable connection between the applicant and the third country, a methodology for determining the safety of the country for a particular applicant or specific country on a case-by-case basis, and provisions allowing applicants to challenge the

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144. GREVIO Baseline Evaluation Report Switzerland, October 2022, p.74, <https://rm.coe.int/grevio-inf-2022-27-eng-final-draft-report-on-switzerland-publication/1680a8fc73>

145. End FGM European Network, GREECE – Country Sheet, Asylum Laws, Policies and Practices in European Countries: What is the impact on FGM-affected women and girls?, p.1, [https://www.endfgm.eu/editor/0/GREECE\\_Country\\_Sheet\\_Asylum\\_paper.pdf](https://www.endfgm.eu/editor/0/GREECE_Country_Sheet_Asylum_paper.pdf)

146. EUAA Case law database, B.P.S. v Czech Ministry of the Interior (Ministerstvo vnitra), <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2302>

147. EUAA Case law database, T.B. v International Protection Appeals Tribunal & Anor, <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2553>

148. EUAA Case law database, Applicant v State Secretary for Justice and Security (Staatssecretaris van Justitie en Veiligheid), <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2912>

149. Statewatch Analysis Why Turkey is Not a "Safe Country", p.7, <https://www.statewatch.org/media/documents/analyses/no-283-why-turkey-is-not-a-safe-country.pdf>

150. Steve Peers and Emanuela Roman, The EU, Turkey and the Refugee Crisis: What could possibly go wrong?, <https://eulawanalysis.blogspot.com/2016/02/the-eu-turkey-and-refugee-crisis-what.html>

151. Statewatch Analysis Why Turkey is Not a "Safe Country", p.8, <https://www.statewatch.org/media/documents/analyses/no-283-why-turkey-is-not-a-safe-country.pdf>

application of the safe third country concept.<sup>152</sup>

The APD does not establish a common list of safe third countries, leaving this decision to the discretion of individual countries. EUMS should keep the Commission regularly informed about the countries they designate as safe third countries. Similar to the safe country of origin designation, some EUMS specify exceptions for particular geographical areas or profiles of asylum seekers. For example, the Netherlands exempts Dalit women and girls from India, while Norway exempts girls under 18 from Ghana and Tanzania, single women from India, and applicants who have faced forced marriage in Ghana and Tanzania.

However, in practice, the safe third-country concept is often applied automatically and without individual assessment in many countries, contrary to the case-by-case approach envisaged by the APD. In addition, the safe third country concept is not based on international refugee law and the legislation does not provide specific safeguards for the applicants, particularly for women and girls. These legal and implementation gap poses a significant risk to women and girls in vulnerable situations, especially those that are not immediately visible.

For example, in EL, the Joint Ministerial Decision (JMD) designating Turkey as a “safe third country” has led to a surge in inadmissibility decisions for asylum seekers from Syria, Afghanistan, Somalia, Pakistan and Bangladesh. GREVIO has raised concerns about the risks this poses to women and girls who are survivors or at risk of sexual and gender-based persecution, as they are often denied access to asylum procedures in Greece. The JMD lacks a regular review mechanism for the “safe” status of countries and does not account for significant human rights changes, such as Türkiye’s withdrawal from the Istanbul Convention. Consequently, many women and girls are left in precarious situations in Greece, unable to access reception facilities or support, while being at risk of GBV and human trafficking, exacerbated by the suspension of returns to Türkiye since 2020.<sup>153</sup>

On October 4, 2024, the CJEU ruled in *Elliniko Symvoulío gia tous Prosfyges* (C-134/23)<sup>154</sup>, addressing whether Türkiye could be classified as a “safe third country” for asylum seekers from Syria, Afghanistan, Pakistan, Bangladesh, and Somalia under the APD. Despite Türkiye’s suspension of readmissions since 2020, the Court concluded that a Member State could still designate Türkiye as generally safe for certain applicants. It clarified that, while readmission is essential for safe third-country designation, a temporary suspension does not automatically invalidate it. However, if readmission to Türkiye is impossible, in an individual case, the EUMS cannot issue an inadmissibility decision and it must grant access to its asylum procedure, ensuring individual examination of applications within stipulated time limits. This interpretation reinforces applicants’ right to seek asylum under Article 18 of the EU Charter of Fundamental Rights.

Overall, a challenge noted is that there are no policies or guidelines that provide exceptions for groups of women from “safe third countries” where GBV is prevalent. As a result, the evaluation of their circumstances relies on the knowledge and discretion of individual welfare officers and their understanding of the context and distinctions between treatment of men and women in the country deemed safe.<sup>155</sup>

The ECtHR considers the majority of removal decisions to a third country under Articles 2 (right to life) and 3 (prohibition of torture). This is to determine whether the individual will have access to an adequate asylum procedure in the receiving third country or whether they will instead be subjected to treatment that contravenes Article 3. This includes risks related to conditions of detention or living conditions for asylum-seekers in the receiving third country which must also be assessed by the expelling state.<sup>156</sup> Although there is no specific

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152. Article 38 (2) of the APD: The application of the safe third country concept shall be subject to rules laid down in national law, including:

- (a) rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country;
- (b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;
- (c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him or her and the third country in accordance with point (a).

153. GREVIO Baseline Evaluation Report Greece, October 2023, p.73-74, <https://rm.coe.int/grevio-s-baseline-evaluation-report-on-legislative-and-other-measures-/1680ad469d>

154. Judgment of the CJEU of 4 October 2024, *Elliniko Symvoulío gia tous Prosfyges* (C-134/23), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62023CJ0134>

155. GREVIO Baseline Evaluation Report Belgium, June 2020, p.65, <https://rm.coe.int/grevio-report-on-belgium/16809f9a2c>

156. ECtHR Guide on the case-law of the European Convention on Human Rights on Immigration, 31 August 2023, p.32, [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_immigration\\_eng-pdf](https://ks.echr.coe.int/documents/d/echr-ks/guide_immigration_eng-pdf)

case example of the problems experienced by women and girls, in *Ilias and Ahmed v. Hungary*<sup>157</sup>, 2019, the ECtHR clarified the procedural obligations of a state when considering the removal of asylum seekers to a third country, emphasising the duty to assess whether the asylum procedure in the receiving country provides adequate protection against refoulement. The state must thoroughly evaluate the asylum system of the third country and provide the asylum seeker with an opportunity to challenge the designation of that country as safe. Additionally, the court stated that European Union law does not mandate the declaration of a third country as safe or the avoidance of assessing asylum requests on their merits based on the safe third country concept, making EU Member States fully accountable under the Convention for such removals.

## **Amendments in the APR**

### **» Safe Country of Origin (Article 61)**

As for the APD, under Article 61 of the APR, “a third country may only be designated as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is no persecution as defined in Article 9 of the Qualification Regulation and no real risk of serious harm as defined in Article 15 of that Regulation”.

In contrast to the APD, the APR explicitly states that the definition of a safe country of origin may include exceptions for certain parts of a country’s territory or for clearly identifiable categories of persons.

Similarly to the APD, the APR also states that the assessment of a country’s status as a safe country of origin should take into account various sources of information, including data from EUMS, the EUAA, UNHCR and other relevant international organisations.

Additionally, it introduces new factors to be considered, such as the country’s legal framework, adherence to human rights treaties like the ECHR, the International Covenant on Civil and Political Rights, or the United Nations Convention against Torture, provisions for protection against deportation to third countries, and the existence of effective remedies for rights violations.

### **» Safe Third Country (Article 59)**

According to Article 59(1) of the APR on the concept of the safe third country, it is no longer required for the applicant to have the possibility to request refugee status and receive protection in accordance with the Geneva Convention. The APR introduces the concept of “effective protection”, which can be met in two ways. Either a state has ratified and respects the Convention or the set of four conditions listed in Article 57 are met, see below.<sup>158</sup>

Furthermore, while there was debate over whether Article 38 of the APD could be construed as necessitating a third country to ratify the Geneva Convention without geographical restrictions, Article 57 of the APR addressed this interpretation by outlining the minimum criteria that countries ratifying the Geneva Convention with such limitations must meet. According to this, in the cases where the Geneva Convention does not apply at all or where geographical limitations made by the third country, effective protection is met by the following criteria: i. the persons are allowed to remain on the territory of the third country, ii. access to means of subsistence sufficient to maintain an adequate standard of living with regard to the overall situation of that hosting third country, iii. access to healthcare and essential treatment for illnesses under the conditions generally provided for in that third country, iv. access to education under the conditions generally provided.

Article 59(2) introduces a new provision allowing a country to be classified as safe “with exceptions for specific

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157. EDAL, ECtHR - *Ilias and Ahmed v. Hungary*, Application No. 47287/15, 21 November 2019, <https://www.asylumlawdatabase.eu/en/content/ecthr-ili-as-and-ahmed-v-hungary-application-no-4728715-21-november-2019-0>

158. Article 57 of the APR: 1. A third country that has ratified and respects the Geneva Convention within the limits of the derogations or limitations made by that third country, as permitted under that Convention, shall be considered to ensure effective protection. In the case of geographical limitations made by the third country, the existence of protection for persons who fall outside of the scope of the Geneva Convention shall be assessed in accordance with the criteria set out in paragraph 2.

2. In cases other than that referred to in paragraph 1, the third country shall be considered to ensure effective protection only where the following criteria are met as a minimum:

- (a) the persons referred to in paragraph 1 are allowed to remain on the territory of the third country in question,
- (b) the persons referred to in paragraph 1 have access to means of subsistence sufficient to maintain an adequate standard of living with regard to the overall situation of that hosting third country,
- (c) the persons referred to in paragraph 1 have access to healthcare and essential treatment for illnesses under the conditions generally provided for in that third country;
- (d) the persons referred to in paragraph 1 have access to education under the conditions generally provided for in that third country; and
- (e) effective protection remains available until a durable solution can be found.



parts of its territory or clearly identifiable categories of persons.” This measure aims to expand the application of the concept of safety by allowing for a country to be deemed safe even if there are regions or groups that lack safety. This means, for instance, that conflict in one area or repression against a particular group should not prevent the country from being classified as safe.<sup>159</sup>

Article 59(5) states that the safe third country concept can only be applied if two conditions are met: (a) the applicant fails to demonstrate, through an individual assessment, why the safe third country designation should not apply to them, and (b) there is a reasonable connection between the applicant and the third country that justifies their return there. This reasonableness of the connection is explained in the Recital (48) as follows: “The connection between the applicant and the safe third country could be considered established in particular where members of the applicant’s family are present in that country or where the applicant has settled or stayed in that country.”

Moreover, Article 59(6) of the APR introduces additional safeguards concerning the application of the safe third-country principle to children. According to this provision, a third country can only be considered safe for an unaccompanied child if it aligns with the child’s best interests and if EUMS authorities have received assurances from the third country’s authorities that the child will receive immediate and effective protection as outlined in Article 57.

Article 59(7) of the APR, along with EU agreements with third countries pursuant to Article 218 TFEU would provide a legal basis for designating these third countries as safe third countries even without reference to effective protection. If the EU and a third country have reached an international agreement under Article 218 TFEU which purports to ensure that people admitted will be protected according to international standards and the principle of non-refoulement, the conditions for safe third country status under this article may be considered to be met, with exceptions outlined in paragraphs 5 and 6.

#### » Designation of safe country of origin or safe third country (Article 62)

Unlike the APD, Article 62 of the APR does not leave the designation of safe countries of origin and safe third countries solely to the discretion of countries. It mandates that third countries be designated as safe third countries at the Union level by the Commission, with assistance from the EUAA, adhering to the conditions outlined in Articles 57 to 59. In this process, the Commission must rely on relevant and available sources of information from institutions like the EUAA, the European External Action Service, UNHCR, the Council of Europe, and other relevant international organisations while designating a country as a safe third country and reviewing the situations in there.

Nevertheless, Article 64 also allows EUMS to retain or introduce legislation that allows for the national designation of safe third countries or safe countries of origin other than those designated at the Union level for the purpose of examining applications for international protection. However, if a third country’s designation as safe is suspended at the Union level, EUMS cannot designate it as safe at the national level. If a EUMS believes that a suspended third country meets the safety conditions again, it can notify the Commission with substantiated assessments. Subsequently, the Commission reviews the situation and may raise objections within a two-year timeframe. If conditions are met, the Commission can propose reinstating the country as safe at the Union level. EUMS must inform the Commission and the EUAA of national designations and annually report on other safe third countries applied to specific applicants.

Concerning the implementation of the safe third-country concept, the APR has refined the provisions for challenging its application compared to the APD. The APR specifies that the safe third country concept can only be applied if the applicant fails to present counterarguments. Moreover, the APR maintains the requirement from the APD that the applicant must have a reasonable connection with the safe third country.

#### *Implementation considerations*

Safe country concepts are controversial since they are not based on international refugee law and they shift protection responsibilities to third countries, undermining global solidarity for refugees. Moreover, they are based on a flawed interpretation of the 1951 Refugee Convention, which emphasises that the primary responsibility for providing protection lies with the state where asylum is sought and that states should consider the asylum seeker’s intentions regarding their desired country of refuge.<sup>160</sup>

#### » For the safe country of origin concept

159. ECRE\_Comments\_Asylum-Procedures-Regulation.pdf, [https://ecre.org/wp-content/uploads/2024/06/ECRE\\_Comments\\_Asylum-Procedures-Regulation.pdf](https://ecre.org/wp-content/uploads/2024/06/ECRE_Comments_Asylum-Procedures-Regulation.pdf)

160. ECRE comments on APR: [https://ecre.org/wp-content/uploads/2024/11/ECRE\\_Comments\\_Asylum-Procedures-Regulation.pdf](https://ecre.org/wp-content/uploads/2024/11/ECRE_Comments_Asylum-Procedures-Regulation.pdf)



Failing to gather information on the specific situations of women and girls when evaluating a country's status as a safe country of origin increases the practical risk of returning these groups to countries where they may face inhumane treatment. Likewise, while adding a country's adherence to human rights treaties as new factors is beneficial, the omission of treaties like CEDAW or the Istanbul Convention poses a risk of neglecting the specific issues and needs of these groups in practice.

#### » For the safe third-country concept

Article 57 sets a low threshold for a country to be considered as offering effective protection, and undermines the Refugee Convention by suggesting that effective protection could be provided outside its scope. Examples from practice show that just because a country is a signatory to the Convention or has the right to remain in the territory without refugee status does not mean that women and girls can effectively access protection. For example, in Hungary, inadmissibility decisions have been issued based on Serbia being deemed a safe third country, even for applicants in vulnerable situations such as transgender persons, disabled individuals, and single women survivors of sexual and gender-based violence.<sup>161</sup>

By designating a country as safe despite unsafe regions or groups, women and girls may be exposed to heightened risks of gender-based violence, including domestic violence and sexual assault, especially in areas where conflict or repression is prevalent. It may also overlook the specific vulnerabilities of minority communities, including women and girls from these groups, who may face systemic discrimination or targeted violence. This could lead to insufficient protection for those who require asylum due to persecution based on gender or ethnicity.

Regarding the connection criterion, ECRE believes that a meaningful link to a third country is essential and should be evaluated on a case-by-case basis, considering the applicant's specific vulnerabilities. However, simply passing through a country does not qualify as a meaningful link. As highlighted by UNHCR, transit is typically accidental and does not indicate a significant connection to that country.<sup>162</sup> Again, the risks of transfer to countries that are not safe due to using a restricted definition of meaningful link or due its removal, may have disproportionate impact on women and girls.

Although including a safeguard for designating a country as safe for a child based on the child's best interests is a positive step, it remains unclear how and by whom this process will be evaluated, what criteria will define the child's best interests, or the definition of a safe third country providing immediate and effective protection. There is a risk that the specific protection needs of girls may be overlooked in these determinations (see the challenges under the APD).

Regarding the EU agreements with third countries, simply having an agreement to uphold international protection standards does not guarantee a country's safety in reality, including for women and girls. Only expert assessments can determine a country's actual safety for individuals or groups. Designating a country as a "safe third country" may pose additional risks for asylum-seeking women and girls, including inadequate protection against GBV, inconsistent gender-sensitive asylum procedures, and lack of safe accommodation and support services. These countries may also fail to ensure effective non-refoulement protections, perpetuate cultural and legal discrimination, and require women to rely on male guardianship, limiting their autonomy. Furthermore, such countries often do not recognise certain forms of gender-based persecution, lack effective monitoring of agreements, and may have delayed asylum processes with limited appeal rights, exposing women and girls to additional vulnerabilities and risks.

## Recommendations

### » Provision of effective protection by Safe Third Country

ECRE believes that it is essential to clarify and evaluate the effective protection criteria outlined in the APR, particularly regarding access to means of subsistence, healthcare, and education. Therefore, the Commission should ensure that this evaluation guarantees that these criteria are not interpreted merely as theoretical access but encompass tangible and meaningful support for individuals with a gender

161. AIDA Hungary Country Report, 2023, <https://asylumineurope.org/reports/country/hungary/asylum-procedure/the-safe-country-concepts/safe-third-country/>

162. ECRE\_Comments\_Asylum-Procedures-Regulation.pdf, [https://ecre.org/wp-content/uploads/2024/06/ECRE\\_Comments\\_Asylum-Procedures-Regulation.pdf](https://ecre.org/wp-content/uploads/2024/06/ECRE_Comments_Asylum-Procedures-Regulation.pdf)

perspective.

» Designation of safe country of origin and safe third countries

The designation of safe third countries, both at the Union and national levels, should be transparent and subject to evaluation. The Commission and the EUMS should gather comprehensive information from reputable institutions and international organisations when designating a country as safe, with particular attention to gender-specific issues. When defining safety and when applying the concepts in individual cases, policy-makers should assess gender equality, women's rights, access to justice for women, socio-economic rights for women, and security risks in these countries during the designation process. In addition, policy-makers should consult human rights institutions, ombudspersons, and independent monitoring committees such as GREVIO and CEDAW, as well as seek input from women's associations. Additionally, they should also consider whether the country has ratified the Istanbul Convention as a criterion for determining a safe third country for women and girls.

» Application of Safe Third Country Concept to Children

EUMS should establish a clear and transparent framework detailing how and by whom the best interests of the child will be assessed in determining the safety of a third country.

EUMS should develop specific criteria for evaluating the best interests of the child, including considerations for immediate and effective protection, with particular attention to the unique protection needs of girls. EUMS should also provide regular training for those involved in the assessment process to ensure they are aware of and sensitive to the specific protection needs of girls.

EUMS should implement a robust monitoring and review mechanism to ensure that the best interests of the child are consistently prioritised and that the specific needs of girls are not overlooked in these determinations. The Commission and Member States should collaborate closely with international independent monitoring mechanisms and children's rights associations concerning the children involved in these processes.

» Safe Third Country Agreements

EUMS should not consider a country as a safe third country based on agreements.

## CHAPTER III: SPECIAL PROCEDURES

### *Accelerated and border procedures*

#### **Current challenges faced by women and girls under the APD**

The APD regulates border procedures in Article 43. This article allows for the examination of the admissibility of an application under Article 33 or the substance of the application in certain circumstances<sup>163</sup> specified in Article 31 (8) in a border procedure.

In addition to outlining the conditions for the application of border procedures, the APD also includes provisions regarding the duration and location of these procedures. EUMS are required to ensure timely decisions within four weeks for applications processed at the border or transit zones. If this timeline is not met, applicants should be granted entry into the territory of the EUMS for their application to be processed in accordance with other provisions of the Directive. If there is a situation where a significant number of third-country nationals or stateless individuals are filing international protection applications at the border or transit zone, rendering it practically unfeasible to apply the provisions, these procedures may also be implemented when these individuals are accommodated at locations in proximity to the border or transit zone.

The APD lacks provisions for exempting certain groups, such as applicants requiring special procedural guarantees, from border procedures. However, Article 24(3) stipulates that if adequate support cannot be provided within the procedures outlined in Article 31(8) and Article 43, particularly when EUMS acknowledge the necessity for special procedural protections due to severe experiences like torture, rape, or other forms of psychological, physical, or sexual violence, EUMS shall refrain from applying, or shall cease to apply border procedures.

In order to implement these provisions in border and transit areas, EUMS need to establish an effective identification and monitoring mechanism and train staff to identify applicants in need of special procedural guarantees. However, the APD does not include provisions on these elements. Furthermore, even if such a mechanism were in place, practical implementation would be challenging given the short four-week assessment period.

In practice, the reports assessing practice show that the accelerated and/or border examination procedure hinder women and girls from having their specific protection needs addressed and limits their access to procedural guarantees, including legal aid. Rapid processing of asylum applications of women and girls who are subject to border and/or accelerated procedures may limit their ability to disclose violence and collate

163. 31 (8). Member States may provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be accelerated and/or conducted at the border or in transit zones in accordance with Article 43 if:

- (a) the applicant, in submitting his or her application and presenting the facts, has only raised issues that are not relevant to the examination of whether he or she qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU; or
- (b) the applicant is from a safe country of origin within the meaning of this Directive; or
- (c) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision; or
- (d) it is likely that, in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality; or
- (e) the applicant has made clearly inconsistent and contradictory, clearly false or obviously improbable representations which contradict sufficiently verified country-of- origin information, thus making his or her claim clearly unconvincing in relation to whether he or she qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU; or
- (f) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or
- (g) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his or her removal; or
- (h) the applicant entered the territory of the Member State unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented himself or herself to the authorities or not made an application for international protection as soon as possible, given the circumstances of his or her entry; or
- (i) the applicant refuses to comply with an obligation to have his or her fingerprints taken in accordance with Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (1); or
- (j) the applicant may, for serious reasons, be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.

evidence (BE<sup>164</sup>, DE<sup>165</sup>, NO<sup>166</sup>, PL<sup>167</sup>). The lack of gender-sensitive guidelines and reliance on individual officers' discretion exacerbates these issues.<sup>168</sup> In hotspot areas like EL<sup>169</sup>, asylum authorities often assume sufficient support is available, even if it is not the case. In some cases, some applicants in vulnerable situations, including unaccompanied children and pregnant women, are also subjected to fast-track border procedures, lacking sufficient time to present their claims and remaining in transit zones despite reported vulnerable situations.<sup>170</sup> There are also obstacles at international airports where asylum claims, even from pregnant women or those with small children, are not registered by border police, and NGOs are denied access.<sup>171</sup> Additionally, inconsistencies in assessing individual circumstances and procedural guarantees, particularly at borders, further impede access to necessary protections and fair treatment in the asylum process.<sup>172</sup>

### Good practices

*In France, CEDAW reported that applications initially registered under an accelerated procedure may be reclassified under the normal procedure if more time is needed, especially for groups in vulnerable situations like women facing violence and trafficking or who fear persecution, particularly in view of the difficulties they may have in recounting their experiences. The French Office for the Protection of Refugees and Stateless Persons updated its training program for officers on the legal framework and the consequences of this procedure for asylum seekers in 2020 to ensure proper application of its reclassification powers, aiming for thorough consideration of asylum cases.*<sup>173</sup>

*In Spain, although the Asylum Act does not exempt individuals with special needs from the Border Procedure, in practice, the OAR makes exceptions for applicants such as pregnant women, individuals requiring medical assistance, and presumed trafficking victims, allowing them entry into the territory.*<sup>174</sup>

## Amendments in the APR

### » Mandatory accelerated examination procedure (Article 42)

While, according to the APD, the accelerated examination procedure is optional, Article 42 of the APR makes the accelerated examination procedure mandatory in certain circumstances. The existing circumstances for acceleration remain and circumstances are added. Accordingly, mandatory acceleration applies for applicants from a third country for which the protection rate is 20 per cent or below, unless there has been a significant change in conditions in the third country or if the applicant is not representative of the low protection rate.

The APR stipulates that the determining authority may proceed with the examination of the merits under the ordinary procedure if it considers that the examination of the application involves questions of fact or law that are too complex to be examined under the accelerated examination procedure.

Article 42 of the APR broadens the circumstances under which the accelerated procedure may be applied for unaccompanied children. In addition to the conditions outlined in the APD, such as coming from a safe country of origin, inadmissible subsequent application, or the applicant posing a danger to national security and public order, the APR introduces two additional conditions: i. misleading the authorities by providing false information or documents or withholding relevant information or documents; and ii. belonging to a nationality with a recognition rate of 20 % or less unless the determining authority considers that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or that the applicant cannot be considered representative because he or she increases the risk of children being subjected to an accelerated examination procedure by introducing conditions of protection needs.

164. GREVIO Baseline Evaluation Report Belgium, September 2020, p.65, <https://rm.coe.int/grevio-report-on-belgium/16809f9a2c>

165. GREVIO Baseline Evaluation Report Germany, October 2022, p.98, <https://rm.coe.int/report-on-germany-for-publication/1680a86937>

166. GREVIO Baseline Evaluation Report Norway, November 2022, p.74, <https://rm.coe.int/grevio-inf-2022-30-report-norway-eng-pour-publication/1680a923f8>

167. GREVIO Baseline Evaluation Report Poland, June 2021, p.83, <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>

168. GREVIO Baseline Evaluation Report Belgium, September 2020, p.65, <https://rm.coe.int/grevio-report-on-belgium/16809f9a2c>

169. RSA Comments on the amended Commission proposal for an Asylum Procedures Regulation, October 2020, p.7, [https://rsaegan.org/wp-content/uploads/2020/10/RSA\\_Comments\\_APR.pdf](https://rsaegan.org/wp-content/uploads/2020/10/RSA_Comments_APR.pdf)

170. AIDA Country Report France, 2023, p.98, [https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-FR\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/05/AIDA-FR_2023-Update.pdf)

171. Shadow Report of women's NGOs, members of the National Coalition "Life without violence" to GREVIO, April 2023, p.43, <https://rm.coe.int/shadow-report-of-women-s-ngos-members-of-the-national-coalition-life-w/1680ab0d35>

172. GREVIO Baseline Evaluation Report Croatia, May 2023, p.82, <https://rm.coe.int/baseline-evaluation-report-on-croatia/1680ac76c9>

173. CEDAW Ninth periodic report submitted by France under Article 18 of the Convention, due in 2020, p.8, UN Treaty Body Database

174. AIDA Country Report Spain, 2022, p.84, [https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-ES\\_2022update\\_final.pdf](https://asylumineurope.org/wp-content/uploads/2023/04/AIDA-ES_2022update_final.pdf)

Article 42 mandates EUMS to use the guidance note supplied by the EUAA on the country of origin as a reference for applying the accelerated procedure to nationalities, including unaccompanied children, with a recognition rate of 20% or less. This guidance note indicates whether a significant change has occurred in the third country since the publication of relevant Eurostat data.

### Implementation considerations

The accelerated examination procedure has been reported to prevent women and girls in particular from disclosing the violence they have experienced and gathering evidence. Without an assessment of gender-related difference, the application of the 20% protection rule will not recognise the specific situation of women and girls. For example, it would require women and girls from Pakistan, where the recognition rate is 12% in 2023<sup>175</sup>, to go through the accelerated procedure. However, the latest national report on the status of women in Pakistan shows that a deeply patriarchal society, coupled with regressive social norms and entrenched gender stereotypes, fuels discrimination and violence against women and girls. Additionally, Pakistan performs poorly in global rankings, placing 145 of 146 countries in the 2022 Global Gender Gap Report, just above Afghanistan.<sup>176</sup> The report also underlines that after experiencing any form of violence, survivors often find that services for seeking redress, support, and justice are either inaccessible or insufficient.<sup>177</sup>

While it is commendable that MS are mandated to refer to the EUAA's guidance notes regarding significant developments in the country of origin, it is crucial that these notes encompass information pertinent to the situation of women and girls.

#### Recommendations

- » When determining the groups subject to the accelerated procedure, EUMS should give due weight to the provision stating that this 20% benchmark cannot be applied if “the applicant belongs to a category of persons for whom a proportion of 20% or lower is not considered representative of their protection needs”. They should ensure that trained personnel thoroughly assess applications from women and girls applicants to ascertain whether they have been, or are at risk of being, subjected to various forms of GBV . In cases of doubt, the accelerated examination procedure should not be applied.
- » The EUAA should actively seek input from women’s organisations, relevant case law, international agencies, ombudspersons, national independent human rights institutions, and international independent monitoring bodies such as GREVIO, CEDAW, and GRETA concerning the situation of women in countries where the protection rate is below 20%.

#### » Border Procedure

Unlike the APD, the APR provides more detailed provisions on the circumstances under which the border procedure will be applied, the decisions that will be taken in the procedure, the cases in which the procedure will be applied in a mandatory manner, and those who will be exempted from the procedure. It also mandates the establishment of a monitoring mechanism to ensure the border procedure aligns with the APR and to implement corrective measures when necessary. However, there are aspects of the APR that either overlook the difficulties encountered by women and girls or potentially introduce new risks.

#### » When and to whom?

Article 43 of the APR permits Member States to conduct, following screening according to the Screening Regulation, a border procedure to examine applications made by third-country nationals or stateless persons who do not meet the conditions for entry to a Member State’s territory. The border procedure may take place:

- (a) following an application made at an external border crossing point or in a transit zone;
- (b) following apprehension in connection with an unauthorised crossing of the external border;
- (c) following disembarkation in the territory of a Member State after a search and rescue operation;
- (d) following relocation

175. EUAA, latest trends, <https://euaa.europa.eu/latest-asylum-trends-asylum>

176. UN Women, National Report on the Status of Women in Pakistan, 2023, p.5, [https://pakistan.unwomen.org/sites/default/files/2023-07/summary\\_-\\_nrs-w-inl\\_final.pdf](https://pakistan.unwomen.org/sites/default/files/2023-07/summary_-_nrs-w-inl_final.pdf)

177. UN Women, National Report on the Status of Women in Pakistan, 2023, p.19, [https://pakistan.unwomen.org/sites/default/files/2023-07/summary\\_-\\_nrs-w-inl\\_final.pdf](https://pakistan.unwomen.org/sites/default/files/2023-07/summary_-_nrs-w-inl_final.pdf)



## » Decisions that can be taken at the border procedure

According to Article 44 of the APR, two types of decisions can be taken in the border procedure: i. decisions on the admissibility of the application, and ii. decisions on the merits of an application in certain circumstances. The APR introduces new circumstances where EUMS may apply a border procedure to assess the merits of an application: i. applicants from a third country for which the protection rate is 20 per cent or below and ii. unaccompanied children who are considered to be a danger to the national security and public order of the Member State.

As has already been underlined that although the APD also leaves the application of the border procedure to the discretion of countries, it is often applied in practice, which has a significant negative impact on access to asylum, particularly for women and girls. Thus, adding new criteria and making them mandatory would likely perpetuate the same problems and risks.

## » Mandatory application of the asylum border procedure

Unlike the APD, Article 45 of the APR introduces situations in which the application of the asylum border procedure is mandatory for EUMS. These situations are listed as follows: i. the applicant is considered to have intentionally misled the authorities by presenting false information or documents or by withholding relevant information or documents, ii. the applicant is considered to be a danger to the national security or public order of the Member States or the applicant had been forcibly expelled for serious reasons of national security or public order under national law, and iii. applicants from a third country for which the protection rate is 20 per cent or below, unless there has been a significant change in conditions in the third country or if the applicant's category warrants a different assessment for their protection needs, considering factors like differences between first instance and final decisions.

## » Exceptions to the asylum border procedure

Article 53 of the APR introduces a new circumstance where the asylum border procedure is not applicable exceptionally to unaccompanied children. According to this article, the border procedure for unaccompanied children is only allowed where there is reasonable ground to consider the applicant a danger to the national security or public order of the Member States or the applicant had been forcibly expelled for serious reasons of national security or public order under national law.

The same article also imposes restrictions on the application of the border procedure to people in vulnerable situations. Similarly to Article 24 of the APD, Article 53 of the APR stipulates that the border procedure should not be applied or should cease to apply in cases where the necessary support cannot be provided to applicants in need of special procedural guarantees. In addition to this exception, the APR introduces new additional situations in which the border procedure cannot be applied:

- i. *“The necessary support cannot be provided to applicants with special reception needs<sup>178</sup>, including minors, in accordance with Chapter IV (articles 24 to 28) of the Reception Conditions Directive (recast), at the locations referred to in article 54, including locations at or in proximity to the external border or transit zones as a general rule or in other designated locations within its territory;*
- ii. *there are relevant medical reasons for not applying the border procedure, including mental health reasons;*
- iii. *the guarantees and conditions for detention laid down in articles 10 to 13 of the Reception Conditions Directive (recast)<sup>179</sup> are not met or no longer, and the border procedure cannot be applied to the applicant without the use of detention”*

## » Locations of the border procedure: The question of the fiction of non-entry

Regarding the locations for carrying out the asylum border procedure, Article 54 stipulates that EUMS shall require the applicants to reside at or in proximity to the external border or transit zones as a general rule or in other designated locations within its territory. Moreover, Article 43 maintains the fiction of non-entry by stating

178. Article 24 of the Recast Reception Conditions Directive, the categories that are more likely to have special reception need are listed as follows:

(a) minors; (b) unaccompanied minors; (c) persons with disabilities; (d) elderly persons; (e) pregnant women; (f) lesbian, gay, bisexual, trans and intersex persons; (g) single parents with minor children; (h) victims of trafficking in human beings; (i) persons with serious illnesses; (j) persons with mental disorders including post-traumatic stress disorder; (k) persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, for example victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive.

179. Directive laying down standards for the reception of applicants for international protection (recast), P.69-83, [https://www.europarl.europa.eu/doceo/document/A-8-2017-0186-AM-146-146\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/A-8-2017-0186-AM-146-146_EN.pdf)



that applicants subject to the border procedure shall not be authorised to enter the territory of a Member State.

As a limited but additional safeguard, Article 54 also requires EUMS to ensure that families with children reside in reception facilities appropriate to their needs after assessing the best interests of the child and shall ensure a standard of living adequate for the child's physical, mental, spiritual, moral and social development, in full respect of the requirements of Chapter IV (Articles 24 to 28) of the recast RCD .

Nevertheless, the requirement to reside at a particular place for families with children shall not be regarded as authorisation to enter into and stay on the territory of a Member State. Furthermore, the entry into the territory of a Member State of persons who are transferred for the purposes of such a procedure to a competent court or the decision-making body of a court of first instance or who are transferred for the purpose of receiving medical treatment does not in itself constitute entry into the territory. Thus, the fiction of non-entry does not disappear.

In addition, unlike for families with children, Article 54 lacks explicit requirements for appropriate reception facilities for applicants with special needs. However, Article 53 states that applicants with special reception needs, including children, should be provided with the necessary support in accordance with Chapter IV (articles 24 to 28) of the recast RCD . It also indicates that applicants in need of special procedural guarantees should also be provided with necessary support. It requires that the border procedure should not be applied and should be ceased if this assistance is not provided.

#### » **Monitoring border procedures**

Article 43(4) and Article 45(4) introduce two monitoring mechanisms for the border procedure.

Article 43(4) states that without prejudice and complementary to the monitoring mechanism laid down in Article 14 of EUAA Regulation<sup>180</sup>, each Member State shall provide for monitoring of fundamental rights mechanism in relation to the border procedure that meets the criteria set out in Article 10 of the Screening Regulation. Accordingly, in line with Article 10 of the Screening Regulation, the mechanism to be established should monitor the border procedure in compliance with Union law and international law, including the Charter, and ensure that substantiated allegations of non-respect for fundamental rights are effectively addressed, where necessary, by conducting investigations into such allegations and monitoring the progress of such investigations. Furthermore, in order to guarantee the independence of the independent monitoring mechanism, National Ombudspersons and national human rights institutions, including national preventive mechanisms established under the OPCAT, shall participate in the operation of the independent monitoring mechanism and may be appointed to carry out all or part of the tasks of the independent monitoring mechanism. The independent monitoring mechanism may also involve relevant international and non-governmental organisations and public bodies independent from the authorities. EUMS shall also equip the independent monitoring with appropriate financial means. The independent monitoring mechanism shall carry out its tasks on the basis of on-the-spot checks and random and unannounced checks. EUMS shall provide the independent monitoring mechanism with access to all relevant locations, including reception and detention facilities, individuals and documents, insofar as such access is necessary to allow the independent monitoring mechanism to fulfil the obligations set out in this article.

Article 45(4) of the APR also provides for separate specific monitoring in relation to obligations concerning families with children, although not as rigorous as the monitoring mechanism to be established in relation to the border procedure. According to this article, if the Commission, based on monitoring under Articles 14 and 15 of Regulation (EU) 2021/2303, has grounds to consider that a EUMS is not meeting the Article 54(2) requirements, it should promptly recommend suspending the border procedure for families with children under Article 53(2)(b). This recommendation will be made public. The EUMS must seriously consider the recommendation, address any identified issues to comply with Article 54(2), and inform the Commission of the measures taken to implement the recommendation.

### Implementation considerations

#### *Mandatory application of the asylum border procedure*

Considering that some countries already apply optional border procedures in practice and the risks identified, the obligation imposed by the APR on the mandatory application of this procedure will cause a regression in

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180. Regulation (EU) 2021/2303

terms of access to the right to asylum in countries that do not currently apply border procedures<sup>181</sup> or that exclude or provide additional safeguards for some groups<sup>182</sup> in this procedure. In particular, as mentioned above, the application of the 20% protection rate criterion poses a great risk for women and girls who have been subjected to GBV, and their access to the right to asylum will be hampered.

### *Exceptions to the asylum border procedure*

While ECRE welcomes the new exceptions, it is concerned about whether the identification of those with special reception needs, those in need of special procedural guarantees and those who have health problems can be done effectively in practice due to the lack of legal provisions on effective identification. While the application of the border procedure specifically to these groups already puts their access to asylum at risk, it is crucial that EUMS provide all necessary support, as the final agreed text does not exclude these groups from the border procedure. Particularly in hot spot areas,<sup>183</sup> where authorities claim that all necessary support has been provided, there is a risk that this procedure will continue to be applied despite the lack of adequate support for applicants with special reception needs or applicants in need of special procedural guarantees in practice. This risk is particularly acute for women and girls who are survivors of violence, such as GBV, human trafficking and torture.

Furthermore, detention can be used if the grounds and guarantees in Articles 10 to 13 of the recast RCD apply. Both children<sup>184</sup> and applicants with special reception needs can be detained in the application of these articles. Use of detention increases the risk of re-traumatisation for women and girls in vulnerable situations, making it more difficult for them to access asylum. However, it should be recalled that Article 13 of the recast RCD stipulates that detention of children should be applied as a measure of last resort and where the detention of applicants with special reception needs would put their physical and mental health at serious risk, those applicants shall not be detained.

### *Fiction of non-entry*

While it is positive that Chapter IV (Articles 24 to 28) of the rRCD should be applied to families with children and applicants with special reception needs, including children in cases where the fiction of non-entry applies, there is a risk that special reception conditions that address the unique needs of women and girls are not provided. For example, single-sex rooms, specialised facilities, separate bathroom and toilet facilities, female staff, adequate lighting for common areas etc. may be overlooked due to lack of specific references in the legislation. The lack of a clear provision for accommodation that is aligned with the needs of women and girls risks exposing these groups to different forms of violence in practice.

The APR also requires necessary support to be provided to applicants in need of special procedural guarantees, in line with Article 21 of the APR. However, it does not set out the types of support that may be required.

### *Monitoring border procedures*

It is of the utmost importance that the scope of the monitoring mechanism is broad, that its independence and accountability are ensured, and that it is accessible for applicants.<sup>185</sup> It is also of critical importance that this mechanism works in partnership with existing NHRIs and ombudspersons to learn from the positive practices of NHRIs. While the inclusion of a provision for the establishment of such a mechanism in the APR is a positive step, some points remain unclear and incomplete.

181. According to the EUAA Report on Border Procedures for Asylum Applications in EU+ Countries, 2020, p.21-48, <https://euaa.europa.eu/sites/default/files/publications/Border-procedures-asylum-applications-2020.pdf>, the countries that do not apply border procedure are BG, CY, DK, EE, FI, HU, MT, NO, PL, SK and SE

182. i. "In Belgium, families with children are placed in so-called open housing units, which are more adapted to their specific needs but are legally still considered border detention centre" (AIDA Belgium, <https://asylumineurope.org/reports/country/belgium/asylum-procedure/procedures/border-procedure-border-and-transit-zones/>); ii. "In Netherlands, the following groups are exempted from the border procedure; they follow the general asylum procedure without being subjected to detentive measures: a. Unaccompanied children, b. Families with children where there are no counter-indications such as a criminal record or family ties not found real or credible, c. Persons for whose individual circumstances border detention is disproportionately burdensome; d. Persons who are in need of special procedural guarantees on account of torture, rape or other serious forms of psychological, physical and sexual violence, for whom adequate support cannot be ensured; iii. In Portugal,

183. RSA Comments on the amended Commission proposal for an Asylum Procedures Regulation, October 2020, p.7, [https://rsaegean.org/wp-content/uploads/2020/10/RSA\\_Comments\\_APR.pdf](https://rsaegean.org/wp-content/uploads/2020/10/RSA_Comments_APR.pdf)

184. Article 13 of the recast RCD, minors shall, as a rule, not be detained and shall be placed in a suitable accommodation. However, in exceptional circumstances, minors may be detained (a) in the case of accompanied minors, where the minor's parent or primary caregiver is detained; or (b) in the case of unaccompanied minors, where detention safeguards the minor.

185. Joint Statement: Turning rhetoric into reality: New monitoring mechanism at European borders should ensure fundamental rights and accountability <https://ecre.org/turning-rhetoric-into-reality-new-monitoring-mechanism-at-european-borders-should-ensure-fundamental-rights-and-accountability/>

Firstly, the participation of NHRIs and ombudspersons in the operation is a positive development for the independence of the mechanism, but it is not sufficient on its own. This is because not all Member States have A status in the accreditation system, which indicates that they are fully compliant with the Paris Principles setting out the basic criteria that NHRIs must meet.<sup>186</sup> Therefore, in addition to NHRIs and ombudspersons, this monitoring mechanism should include relevant international and non-governmental organisations and public bodies independent from the authorities, but such inclusion is left to the discretion of the countries and is not mandatory.

Secondly, there is no provision for accessibility including that the mechanism should be well-known and easily accessible for applicants. Specifically, it should be easily accessible for women and girls in vulnerable situations. This can be ensured through i. provision of gender-sensitive information on the monitoring mechanism, ii. safe reporting channels including anonymous options, to enable women and girls to raise concerns without the risk of retaliation or stigma. These could include specialised hotlines, mobile apps, or in-person reporting centres staffed by female personnel, iii. training for border authorities, asylum personnel, and monitoring teams on gender sensitivity and the unique needs of women and girls, particularly survivors of gender-based violence, iv. collaboration with NGOs, women's groups, and civil society organisations specialising in women's rights and protection, ensuring they can serve as intermediaries or advocates for women and girls navigating the asylum process, v. involving women and girls in the design and evaluation of the monitoring mechanism to ensure that their unique challenges are addressed, and that the system is responsive to their needs.

Thirdly, to ensure accountability, the provision lacks measures to provide public reports and information on the progress of the process. This absence can hinder the ability to monitor the effectiveness of the mechanism in practice and risks undermining the transparency of the process.

With regards to families with children ECRE welcomes the provision requiring monitoring of reception conditions of the families with children in line with the best interest of the child. However, ECRE is concerned about the limitation of this monitoring mechanism only to these groups instead of a broader scope for those with special reception needs, especially when considering the problems experienced by women and girls in vulnerable situations in emergency reception centres.

## Recommendations

### » **Mandatory application of the asylum border procedure**

When identifying the groups subject to the border procedure, EUMS should carefully consider the provision that the 20% benchmark cannot be applied if there has been a significant change in conditions in the third country or if the applicant's category warrants a different assessment for their protection needs. Therefore, EUMS should ensure that trained personnel conduct thorough assessments of applications from women and girls to determine if they have experienced, or are at risk of, various forms of gender-based violence. In cases of uncertainty, the asylum border procedure should not be used.

### » **Exceptions to the asylum border procedure**

EUMS should ensure that individuals identified with special needs receive appropriate support and procedural guarantees, even within the border procedure framework. The monitoring of fundamental rights mechanism on the border procedure under Article 43 (4) of the APR should effectively monitor whether the existing conditions where the border procedures are applied are in line with both the EU Acquis and international law, particularly those are related to women and children as CEDAW and the Istanbul Convention, the Convention of the Rights of the Child.

### » **Fiction of non-entry**

EUMS should assess regularly the facilities where the border procedure is taking place to ensure that special reception conditions explicitly address the unique needs of women and girls and provide clear guidelines for necessary support to applicants requiring special procedural guarantees.

EUMS should provide necessary support to applicants in need of special procedural guarantees including legal assistance, psychological and medical support, appropriate accommodation and privacy and information provision in a gender-sensitive manner to ensure fair and effective participation in the asylum process.

### » **Monitoring border procedures**

EUMS should follow the guidance of the FRA on setting up or designating national independent

<sup>186</sup>. <https://fra.europa.eu/en/publication/2024/nhri-accreditation-status-and-mandates-update-2024?page=1#read-online>

mechanisms.<sup>187</sup>

The Commission should regularly assess the independence of the monitoring mechanism.

EUMS should respect the integrity of ombudsperson so that the institutions function properly

EUMS should take a gender-sensitive perspective into account when establishing and operating this monitoring mechanism. In order to achieve this, this mechanism should include international independent monitoring bodies such as GREVIO and CEDAW, which carry out gender-specific monitoring, as well as other international monitoring bodies with an intersectional approach, such as the GRETA Committee on human trafficking, the Committee on the Rights of the Child (CRC), the Committee for the Prevention of Torture (CPT) or the Committee on the Rights of Persons with Disabilities (CRPD), as well as women and children organisations on the ground.

Applicants, particularly women and girls in vulnerable situations, should be informed about their rights and existing NHRI mechanisms and how to make a complaint.

The methodology and indicators used by the monitoring mechanism on the basis of on-the-spot checks and random and unannounced checks should be gender-sensitive. It is important to ask gender-specific questions during monitoring, to talk to women and men applicants and, where possible, to girls and boys separately, to conduct separate focus group discussions where possible, to meet with NGOs and to collect gender-disaggregated data.

EUMS should monitor the progress of the investigation and hold the relevant mechanism accountable to potentially affected individuals and provide public reports and information on how the process is progressing are not included in the provision.

The monitoring mechanism to be established should also work in coordination and without any duplication with other existing monitoring/coordination mechanisms, such as UN treaty bodies and Council of Europe monitoring mechanisms, as well as the mechanism to be established such as EUAA monitoring mechanism and national anti-trafficking coordinators (NACs) to be established under the recast Anti-trafficking Directive<sup>188</sup> with an intersectional approach.

187. Fundamental Rights Agency, Monitoring fundamental rights during screening and the asylum border procedure – A guide on national independent mechanisms, [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2024-independent-border-monitoring-mechanisms\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2024-independent-border-monitoring-mechanisms_en.pdf)

188. Article 19 of the recast Anti-trafficking Directive, [https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/LIBE/DV/2024/02-15/THB-SignedCouncilLettertoEPandannex\\_EN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2024/02-15/THB-SignedCouncilLettertoEPandannex_EN.pdf)



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**ecre**

European Council  
on Refugees and Exiles

**European Council on Refugees and Exiles**

Avenue des Arts 7/8

Brussels 1210

Belgium

T.+32 232 900 40

[ecre@ecre.org](mailto:ecre@ecre.org)

[www.ecre.org](http://www.ecre.org)