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**NOTE**

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From:	Presidency
To:	Delegations
No. Cion doc.:	11317/16
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (First reading)

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The third examination of the proposal was finalised during three meetings of the Asylum Working Party (29-30 January, 13-14 February and 5-6 March 2018). The fourth examination of the proposal at JHA Counsellors level was finalised during five meetings (11 April, 17 April, 23 April, 3 May and 23 May).

This document contains compromise proposals suggested by the Presidency in relation to Articles 10-24 and a new Article 57a, which covers Articles 13(7), 27(4) and 28(6).

Taking into account the ongoing examination of the Dublin Regulation, the compromise proposals should be read in conjunction with the compromise proposals made in relation to the Dublin Regulation.

Suggested modifications are indicated as follows:

- new text compared to the Commission proposal is in **bold**;
- new text compared to the previous version is in **bold underline**;
- deleted text is in ~~strike~~through.

Comments made by delegations orally and in writing, as well as explanations given by the Commission and the Presidency appear in the footnotes of the Annex.

## CHAPTER II

### BASIC PRINCIPLES AND GUARANTEES

#### SECTION II

#### PERSONAL INTERVIEWS

##### *Article 10*

##### **Admissibility interview<sup>1</sup>**

1. **Without prejudice to Article 42(3), b**Before a decision is taken by the determining authority on the inadmissibility of an application for international protection **in accordance with Article 36,** the applicant shall be given the opportunity of an **admissibility** interview ~~on the admissibility of his or her application<sup>2</sup>.~~
2. In the admissibility interview, the applicant shall be given an opportunity to ~~provide adequate reasons~~ **submit all elements explaining** as to why the inadmissibility grounds provided for in Article 36 would not be applicable to ~~his or her particular circumstances~~ **him or her**.<sup>3</sup>

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<sup>1</sup> **EL, ES, DE, IE, SE:** scrutiny reservation. **FR, IT:** reservation.

<sup>2</sup> **FR:** scrutiny reservation linked to reference to Article 36. **DE:** scrutiny reservation.

<sup>3</sup> **FR:** reservation.

- 2a. **The admissibility interview may be conducted at the same time as the interview conducted to facilitate the determination of the Member State responsible for examining an application for international protection as referred to in Article 7 of Regulation (EU) No XXX/XXX (Dublin Regulation)<sup>4</sup> where this is compatible with the organisational structures of the Member State concerned.**
- 2b. **Where the admissibility interview is conducted in the Member State responsible, that interview may be conducted at the same time as the substantive interview.**

*Article 11*

**Substantive interview<sup>5</sup>**

1. ~~Before a decision is taken by the determining authority on the merits of an application for international protection~~ **whether the applicant qualifies as a refugee or is eligible for subsidiary protection**, the applicant shall be given the opportunity of a substantive interview on his or her application<sup>6</sup>.
2. In the substantive interview, the applicant shall be given an ~~adequate~~ opportunity to present the elements needed to substantiate his or her application in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation), and he or she shall provide ~~all~~ the elements **referred to in Article 4(2) of Regulation (EU) No XXX/XXX (Qualification Regulation)** at his or her disposal as completely as possible. The applicant shall be given the opportunity to provide an explanation regarding elements which may be missing or any inconsistencies or contradictions in ~~the applicant's~~ **his or her** statements.
3. ~~A person who conducts the substantive interview of an application shall not wear a military or law enforcement uniform.~~

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<sup>4</sup> **EL, IT, CY, SI:** reservation. **LV:** include a list of authorities which may conduct the interview (valid also for (2b)).

<sup>5</sup> **EL:** scrutiny reservation.

<sup>6</sup> **DE:** unclear if other authorities can be involved.

## Article 12

### Requirements for personal interviews<sup>7</sup>

1. ~~The Subject to the conditions established in this Regulation, applicants shall be given an opportunity of a personal interview on his or her application in accordance with the conditions established in this Regulation.~~
- 1a. **Where an application for international protection is lodged in accordance with Article 30a the applicant may be given the opportunity for a personal interview provided that paragraph (5)(b) is not applicable.**
2. ~~The personal interviews shall be conducted under conditions which ensure appropriate confidentiality and which allow applicants to present the grounds for their applications in a comprehensive manner.~~
3. ~~**Without prejudice to Article 5a(2),** personal interviews shall be conducted by the personnel of the determining authority, ~~which may be assisted by the personnel of authorities of other Member States referred to in Article 5(4)(a) or experts deployed by the European Union Agency for Asylum referred to in Article 5(4)(b).~~~~
4. ~~Where simultaneous applications for international protection by a disproportionate number of third country nationals or stateless persons make it difficult in practice for the determining authority to conduct timely personal interviews of each applicant, the determining authority of other Member States referred to in Article 5(4)(a) and experts deployed by the European Union Agency for Asylum referred to in Article 5(4)(b), to conduct such interviews. A person who conducts the personal interview shall not wear a military or law enforcement uniform.~~

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<sup>7</sup> **LV:** reservation. **DE, ES, IE:** scrutiny reservation. **LV, PL:** there should be a possibility also for other national institutions, not only the determining authority, to conduct admissibility interviews.

5. The ~~personal~~ **admissibility interview or the substantive interview, as applicable**, may be omitted ~~in the following situations where the determining authority<sup>8</sup>~~ **where**:

(a) **the determining authority** is able to take a positive decision with regard to refugee status **on the basis of the evidence available**;<sup>9</sup>

**(aa) the determining authority** ~~or a decision declaring~~ **considers that** the application is **not inadmissible** on the basis of evidence available<sup>10</sup>; ~~or~~

(b) ~~is of the opinion that~~ the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control;<sup>11</sup>

**(ba) in case of a subsequent application, the preliminary examination referred to in Article 42(3) is carried out on the basis of a written statement.**

The absence of a personal interview pursuant to point (b) shall not adversely affect the decision of the determining authority. **In the absence of such an interview, That the determining** authority shall give the applicant an ~~effective~~ opportunity to submit further information **in writing**. When in doubt as to the condition of the applicant, the determining authority shall **if necessary** consult a medical professional to establish whether ~~the condition that makes the applicant~~ **is temporarily** unfit or unable to be interviewed ~~is of a temporary or~~ **whether his or her situation is of an** enduring nature.

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<sup>8</sup> **SI:** reservation on para (5).

<sup>9</sup> **ES, IT, NL:** add reference to subsidiary protection too. **COM:** the reference is only to refugees because of QR: first it is assessed if the applicant qualifies for refugee protection and then if he/she qualifies for subsidiary protection.

<sup>10</sup> **RO:** does this imply the issuance of a document from which to conclude on the admissibility of the application for international protection? **PRES:** no separate decision is needed in case of admissibility.

<sup>11</sup> **FR:** add the following: "*based on a medical certificate provided by the applicant*".

- 5a. Applicants shall be present at the personal interview and shall be required to respond in person to the questions asked. By way of derogation, the determining authority may hold the personal interview by video conference provided that the necessary arrangements for the appropriate facilities and interpretation are ensured by the competent authorities.
- 5b. An applicant shall be allowed to be assisted by a legal advisor in the personal interview, including when it is held by video conference. The absence of the legal advisor shall not prevent the determining authority from conducting the interview. Where a legal advisor participates in the personal interview, he or she shall be given the opportunity to make comments and ask questions, within the framework set by the person who conducts the interview and, at the end of the personal interview.<sup>12</sup>
6. The person conducting the interview shall be competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, age, ~~sex~~ gender, sexual orientation, gender identity and **special procedural needs** vulnerability. Personnel interviewing applicants shall also have acquired general knowledge of ~~problems~~ **factors** which could adversely affect the applicant's ability to be interviewed, such as indications that the person may have been tortured in the past.
7. The personnel interviewing applicants, including experts deployed by the European Union Agency for Asylum, shall have received ~~relevant~~ training in advance which shall include ~~the~~ **relevant** elements **from those** listed in Article 7(45) of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation); ~~including as regards international human rights law, Union asylum law, and rules on access to the international protection procedure, including for persons who could require special procedural guarantees.~~

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<sup>12</sup> **SE:** scrutiny reservation. **IT:** add "*according to a specific mandate*" at the end of the first sentence.

8. An interpreter **shall be provided for the personal interview where this is necessary** ~~who is able to ensure appropriate communication between the applicant and the person conducting the interview shall be provided for the personal interview.~~ The communication shall take place in ~~the language preferred by the applicant unless there is another~~ a language which ~~he or she~~ **the applicant** understands and in which he or she is able to communicate clearly<sup>13</sup>.
- 8a. Where requested by the applicant **and where possible**, the determining authority shall ensure that the interviewers and interpreters are of the ~~same~~ sex **that** as the applicant **prefers**, ~~provided that this is possible and the determining authority does not~~ **unless it** ~~has~~ reasons to believe **consider** that such a request **does** ~~is based on grounds which are not related to~~ difficulties on the part of the applicant to present the grounds of his or her application ~~in a comprehensive manner.~~
- 8b. **The personal interview shall be conducted under conditions which ensure appropriate privacy and confidentiality. Where the determining authority considers it necessary, it may authorise the presence of family members or other persons at the personal interviews subject to the consent of the applicant.**<sup>14</sup>
9. The absence of a personal interview, **where it is omitted pursuant to paragraph 5 or where the applicant otherwise does not attend without justification**, shall not prevent the determining authority from taking a decision on ~~an~~ **the** application for international protection.

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<sup>13</sup> **SI:** reservation, prefers the current wording.

<sup>14</sup> **SE:** scrutiny reservation.



Article 13

**Report and recording of personal interviews<sup>15</sup>**

1. The determining authority or any other authority or experts assisting it ~~or~~ **with** conducting the personal interview shall make a thorough and factual report containing all substantive elements **of the personal interview** or a transcript **of the recording** of ~~every personal~~ **such an** interview.
2. The personal interview ~~shall~~ **may** be recorded using audio or audio-visual means of recording. The applicant shall be informed in advance of such recording. **Where a recording is made, the determining authority shall ensure that the recording or the transcript of the recording is included in the applicant's file.**<sup>16</sup>
3. The applicant shall be given the opportunity to make comments or provide clarification orally or in writing with regard to any incorrect translations or misunderstandings appearing in the report ~~or in the transcript~~, at the end of the personal interview or within a specified time limit before the determining authority takes a decision. To that end, the applicant shall be informed of the entire content of the report ~~or of the substantive elements of the transcript~~, with the assistance of an interpreter, where necessary. ~~The applicant shall then be requested to confirm that the content of the report or the transcript correctly reflect the personal interview.~~
4. **The applicant shall be requested to confirm that the content of the report correctly reflects the personal interview<sup>17</sup>.** Where an applicant **he or she** refuses to confirm that the content of the report ~~or the transcript~~ correctly reflects the personal interview, the reasons for his or her refusal shall be entered in ~~the applicant's~~ **his or her** file. That refusal shall not prevent the determining authority from taking a decision on the application<sup>18</sup>.

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<sup>15</sup> **IE:** scrutiny reservation. **FR:** reservation, APD wording is preferable.

<sup>16</sup> **DE:** scrutiny reservation; it should be possible to use recording for voice recognition.

<sup>17</sup> **SE:** scrutiny reservation. **NL:** negative assessment, increase of administrative burden, possibility of abuse.

<sup>18</sup> **NL:** negative assessment.

- 4a. **The applicant does not have to be requested to make comments or to provide clarifications on the report, nor to confirm that the content of the report correctly reflects the interview where:**
- (a) the personal interview is recorded and according to national law the recording may be admitted as evidence in the appeal procedure, or**
- (b) the determining authority considers that the applicant will be granted international protection.**
5. **Without prejudice to Article 16(1), aApplicants or ~~and~~, **where applicable**, their legal advisers ~~or other counsellors~~ shall have access to the report or the transcript **of the recording and or the recording** before the determining authority takes a decision. **By way of exception, where there is both a recording and a transcript of the recording, access to the recording does not have to be provided in the administrative procedure. Access to the recording shall be provided in the appeal procedure.**<sup>19</sup>**
6. Where the application is examined in accordance with the accelerated examination procedure, the determining authority may grant access to the report or the transcript of the recording at the same time as the decision is made.<sup>20</sup>
7. ~~The responsible authorities shall store either the recording or the transcript for ten years from the date of a final decision. The recording shall be erased upon expiry of that period or where it is related to a person who has acquired citizenship of any Member State before expiry of that period as soon as the Member State becomes aware that the person concerned has acquired such citizenship.~~

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<sup>19</sup> **NL:** reservation. **DE, IE:** scrutiny reservation. **PL:** scrutiny reservation regarding the access before the decision is taken.

<sup>20</sup> **SE:** delete this para.

## SECTION III<sup>21</sup>

### **PROVISION OF INFORMATION ON LEGAL AND PROCEDURAL ASPECTS, LEGAL ASSISTANCE AND REPRESENTATION**

#### *Article 14*

#### **Right to legal assistance and representation<sup>22</sup>**

1. ~~An~~ Applicants shall have the right, **at his or her own costs**, to consult, **be assisted or represented by** a legal adviser ~~or other counsellor, admitted or permitted as such under national law~~, on matters relating to ~~their~~ **his or her** applications, ~~at all stages of the procedure~~.

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<sup>21</sup> **DE, ES, IE:** scrutiny reservation. **BE:** reservation. **DE:** how do these provisions relate to Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes? **PRES:** they have different scope.

<sup>22</sup> **IE, IT, NL:** scrutiny reservation. **EL, SI:** reservation.

2. Without prejudice to **paragraph 1** ~~the applicant's right to choose his or her own legal adviser or other counsellor at his or her own cost, an applicant may request **and is entitled to receive free information on legal and procedural aspects** legal assistance and representation in the administrative procedure and free legal assistance and representation in the appeal procedure subject to the exceptions set out in Articles 15 (3) and 15a(2), respectively at all stages of the procedure in accordance with Articles 15 to 17. The applicant shall be informed of his or her right to request free legal assistance and representation at all stages of the procedure<sup>23</sup>.~~

**2a. Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law. In such cases, this Article shall not apply.**

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<sup>23</sup> **DE, EE, MT:** scrutiny reservation. **EL, ES, SK:** reservation. **DE:** administrative burden + significant costs. There is no reference to the conditions under which an applicant may request free legal assistance and representation. Why was the reference to Art. 15 to 17 removed? **ES:** free legal assistance only may be provided to applicants without financial resources and this must be a basic and sine qua non requirement; redraft as follows (drafting similar to Article 4 (1) of the Directive 2016/1919): "*Without prejudice to paragraph 1, an applicant who lacks sufficient resources to pay for the assistance of a lawyer may request free legal assistance and representation in the administrative procedure and in the appeal [when the interest of justice so require]*". **IT:** add the following sentence at the end of para (2): "*Free legal assistance in the appeal procedure is subject to national legislation.* **EE:** the difference between information provided in line with Art 8 and enacted here is not clear. DA should not be obliged to provide information mentioned in Art 8 again here.

Article 15

**Free information on legal and procedural aspects ~~legal assistance and representation~~<sup>24</sup>**

1. ~~Member States shall, at the request of the applicant, provide free legal assistance and representation in the administrative procedure provided for in Chapter III and in the appeal procedure provided for in Chapter V.~~
2. ~~For the purposes of~~ **In the administrative procedure, Member States shall, upon the request of the applicant and following the lodging of the application, ensure that he or she is provided with the free information on legal and procedural aspects legal assistance in the light of the applicant's particular circumstances and representation, which shall, at least, include<sup>25</sup>:**
  - (a) **explanations of the procedure to be followed;** ~~the provision of information on the procedure in the light of the applicant's individual circumstances;~~
  - (b) **where an application is rejected with regard to refugee status or subsidiary protection status, the reasons for such decision and information on how to challenge it, in addition to that given in accordance to Article 35 (2) and (2a).** ~~assistance in the preparation of the application and personal interview, including and participation in the personal interview as necessary;~~
  - (c) ~~explanation of the reasons for and consequences of a decision refusing to grant international protection as well as information as to how to challenge that decision.~~

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<sup>24</sup> **DE, EE, ES, IE, MT, NL, SE, SK, SI:** scrutiny reservation. **BE, CY, :** reservation. **SE:** there should be more scope for exceptions from the right.

<sup>25</sup> **DE:** scrutiny reservation. **SK:** reservation. **FR, IT:** clarify in a recital that legal assistance free of charge may also be provided as part of the reception conditions.

3. The provision of free **information on legal and procedural aspects** ~~legal assistance and representation~~ in the administrative procedure may be excluded by Member States where<sup>26</sup>:
- (a) ~~the applicant has sufficient resources;~~
  - (b) ~~the application is considered as not having any tangible prospect of success;~~
  - (c) ~~the application is a subsequent application;~~
- (ca) where the applicant has legal assistance and representation in accordance with Article 14 (1) or (3) or the determining authority considers that the applicant will be granted international protection.**

**Article 15a**

**Free legal assistance and representation in the appeal procedure**<sup>27</sup>

- 41.** ~~For the purposes of~~ **In** the appeal procedure, **Member States shall, upon the request of the applicant, ensure that he or she is provided with** ~~the~~ free legal assistance and representation **which** shall, ~~at least,~~ include the preparation of the ~~required~~ procedural documents **required under national law**, the preparation of the appeal and, **in the event of a hearing**, participation in ~~the~~ **that** hearing before a court or tribunal ~~on behalf of the applicant.~~

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<sup>26</sup> **DE**, scrutiny reservation. **SE**: reservation. **EE**: not possible to exclude the provision of free, objective information, which has also been listed in 'General Guarantees' (Art 8)

<sup>27</sup> **RO, SE**: scrutiny reservation.

52. The provision of free legal assistance and representation in the appeal procedure may be excluded **by the Member States** where<sup>28</sup>:

- (a) **the applicant, who shall disclose his or her financial situation, the applicant is considered to have sufficient resources to afford legal assistance and representation at his or her own costs**;
- (b) ~~the appeal~~ **it is considered as that the appeal clearly does not have having any tangible prospect of success**;
- (c) the appeal or review is at a second level of appeal or higher as provided for under national law, including re-hearings or reviews of appeal.

3. Where a decision not to grant free legal assistance and representation **in the appeal procedure** is taken by an authority which is not a court or tribunal ~~because on ground that the appeal~~ **it is considered that the appeal clearly does not have any as having no tangible prospect of success, the applicant shall have the right to an effective remedy before a court or tribunal against that decision, and for that purpose he or she shall be entitled to request free legal assistance and representation**<sup>29</sup>.

## Article 16

### Scope of legal assistance and representation<sup>30</sup>

1. A legal adviser ~~or other counsellor admitted or permitted as such under national law~~, who assists or represents an applicant under the terms of national law, shall be granted access to the information in the applicant's file upon the basis of which a decision is or shall be ~~made~~ **taken**<sup>31</sup>.

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<sup>28</sup> **DE, IT:** scrutiny reservation. **DE, HR:** letter (b) should focus on sufficient prospects of success. Proposal: "*the appeal is considered as not having any sufficient prospects of success or seems abusive*". **SK:** add a new point (d) drafted as follows: "*where the applicant already has legal assistance or representation.*"

<sup>29</sup> **IT:** scrutiny reservation. **HR, PL:** delete this sub-para.

<sup>30</sup> **IE, PT, SI, SK:** scrutiny reservation.

<sup>31</sup> **SI:** if it can be an organisation, it should be specified in the text.

2. **By way of exception from paragraph 1, The determining authority may deny access to the information or to the sources in the applicant's file may be denied in accordance with national law** where the disclosure of information or sources would jeopardise national security, the security of the organisations or persons providing the information or the security of the persons to whom the information relates ~~or~~. **In such cases, access to such information or sources shall be made available to the courts or tribunals in the appeal procedure . Access to the information or to the sources in the applicants file may also be denied in accordance with the national law in case of threat to the national security,** where the **disclosure will harm the** investigative interests relating to the examination of applications for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised **or where the information or sources are classified under national law. In such cases, access to information will be subject to the national law.** ~~In those cases, the determining authority shall make access to such information or sources available to the courts or tribunals in the appeal procedure<sup>32</sup> ; and~~
- Member States shall ensure that the necessary measures are in place for that the** applicant's right of defence is **to be** respected. ~~As regards point (b), the determining authority shall, in particular, grant access to information or sources to a legal adviser or other counsellor who has first undergone a security check in accordance with national law, insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection.~~
3. The legal adviser ~~or other counsellor~~ who assists or represents an applicant shall have access to closed areas, such as detention facilities and transit zones, ~~for the purpose of consulting that applicant,~~ in accordance with Directive XXX/XXX/EU (Reception Conditions Directive)<sup>33</sup>.

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<sup>32</sup> **DE, SE:** reservation on (2). **HU:** delete last sentence of first sub-para of para (2) and second paragraph of paragraph (2).

<sup>33</sup> **IT:** replace "*advisor*" with "*representative*".



4. ~~An applicant shall be allowed to bring to a personal interview a legal adviser or other counsellor admitted or permitted as such under national law. The legal adviser or other counsellor shall be authorised to intervene during the personal interview.~~
5. ~~The determining authority may require the presence of the applicant at the personal interview, even if he or she is represented under the terms of national law by a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.~~
6. ~~Without prejudice to Article 22(5), the absence of a legal adviser or other counsellor shall not prevent the determining authority from conducting a personal interview with the applicant.~~

### *Article 17*

#### **Conditions for the provision of information on legal and procedural aspects and free legal assistance and representation<sup>34</sup>**

- 1. Free information on legal and procedural aspects in the administrative procedure may be provided by dedicated services of the Member State or by non-governmental organisations entrusted by the Member State with the task of providing such information.**
1. Free legal assistance and representation **referred to in Article 14(3) and Article 15a** shall be provided by legal advisers ~~or other counsellors~~ permitted under national law to assist or represent the applicants; ~~or non-governmental organisations accredited under national law to provide advisory services or representation.~~

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<sup>34</sup> **BE, ES, FR:** reservation. **EE, HR, IE, MT, RO, SI, SK:** scrutiny reservation.

2. Member States shall lay down specific procedural rules concerning the modalities for filing and processing requests for the provision of **free information on legal and procedural aspects and of free legal assistance and representation** in relation to applications for international protection or they shall apply the existing rules for domestic claims of a similar nature, provided that those rules do not render access **to free information on legal and procedural aspects and** to free legal assistance and representation impossible or excessively difficult.
- 2a. **Member States shall lay down specific rules concerning the exclusion of the provision of free information on legal and procedural aspects and of free legal assistance and representation in accordance with Article 15(3) and Article 15a(2), respectively.**
3. Member States may also impose monetary limits or time limits on the provision of **free information on legal and procedural aspects and of free legal assistance and representation**, provided that such limits do not arbitrarily restrict access **to free information on legal and procedural aspects and** to free legal assistance and representation. As regards fees and other costs, the treatment of applicants shall not be less favourable than the treatment generally given to their nationals in matters pertaining to legal assistance<sup>35</sup>.
4. Member States may request total or partial reimbursement of any costs made if and when the applicant's financial situation considerably improves or where the decision to make such costs was taken on the basis of false information supplied by the applicant. **For that purpose, applicants shall immediately inform the competent authorities of any significant change in their financial situation.**

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<sup>35</sup> **DE:** in the first sentence introduce "*or make the provision of free legal assistance and representation subject to a small contribution by the applicant*" after "*provision of free legal assistance and representation*" and "*or contributions*" after "*limits*".

*Article 18*

**~~The role of the United Nations High Commissioner for Refugees~~**

- 1.—~~Member States shall allow the United Nations High Commissioner for Refugees:~~
- (a) ~~to have access to applicants, including those in reception centres, detention, at the border and in transit zones;~~
  - (b) ~~to have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, subject to the consent of the applicant;~~
  - (c) ~~to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for international protection at any stage of the procedure.~~
- 2.—~~Paragraph 1 shall also apply to an organisation which is working in the territory of the Member State concerned on behalf of the United Nations High Commissioner for Refugees pursuant to an agreement with that Member State.~~

**CHAPTER II**

**BASIC PRINCIPLES AND GUARANTEES**

**SECTION IV**

**SPECIAL GUARANTEES**

**Applicants in need of special procedural guarantees<sup>36</sup>**

1. ~~The determining authority shall systematically assess whether an individual applicant is in need of special procedural guarantees. That assessment may be integrated into existing national procedures or into the assessment referred to in Article 21 of Directive XXX/XXX/EU (Reception Conditions Directive),<sup>2</sup> and need not take the form of an administrative procedure.~~

~~For the purpose of that assessment, the determining authority shall respect the general principles for the assessment of special procedural needs set out in Article 20.~~

2. Where applicants have been identified as applicants **being** in need of special procedural guarantees, they shall be provided with **the necessary** adequate<sup>37</sup> support **allowing that allows** them to benefit from the rights and comply with the obligations under this Regulation throughout the duration of the procedure for international protection.<sup>38</sup>

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<sup>36</sup> **BE, IT:** scrutiny reservation.

<sup>37</sup> **DE:** not clear what the consequences are if the support is not provided. **PRES:** then the accelerated or border procedure can not be applied or ceased to be applied.

<sup>38</sup> **BE:** reservation; the new proposed text is too detailed, the determining authority should be able to make a decision according to the individual case; add "*to the extent possible*".

3. Where ~~that adequate~~ **the necessary** support cannot be provided within the framework of the accelerated examination procedure referred to in Article 40 or the border procedure referred to in Article 41, ~~in particular where the determining authority considers that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical, sexual violence or gender based violence,~~ the determining authority shall not apply or shall cease to apply those procedures to the applicant.<sup>39</sup>
4. ~~The Commission may specify the details and specific measures for assessing and addressing the special procedural needs of applicants, including of unaccompanied minors, by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58.~~

*Article 20 19 [former Article 20]*

**General principles for the assessment of special procedural needs<sup>40</sup>**

- 1. **The competent authorities<sup>41</sup> shall assess whether an applicant is in need of special procedural guarantees. That assessment may be integrated into existing national procedures and need not take the form of an administrative procedure.**

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<sup>39</sup> **DE:** scrutiny reservation on para (3); it is not clear what happens to the procedures already concluded. **RO:** what happens if if such an applicant with special procedural needs falls under Art. 40 (1) (f) and the support cannot be granted in the case of an accelerated / border procedure? **PRES:** The text envisages rules only for cases where the procedure is not concluded and the necessary support cannot be provided. In this case the accelerated procedure will be transfer to normal procedure. Special procedural needs should be addressed otherwise this could affect the individual assessment of the case. The fact that there are reasonable grounds to consider the applicant as a danger to the national security or public order does not exclude the obligation to address the special procedural needs.

<sup>40</sup> **CZ, HU, SI, SK:** reservation. **RO, DE:** scrutiny reservation.

<sup>41</sup> **RO, SK:** scrutiny reservation on para (1). **RO:** replace with "*determining authority*" because the assessment of the need of special procedural guarantees and the identification of the relevant support should lie with the authority which responsible for handling the asylum claims.

1. **The assessment referred to in paragraph -1 shall be initiated as early as possible after an application is made by** ~~The process of identifying~~ **assessing whether an applicant presents first indications that he or she may require** ~~applicants with special procedural needs guarantees, shall be initiated by authorities responsible for receiving and registering applications as soon as an application is made and shall be continued by the determining authority once the application is lodged.~~<sup>42</sup> **The identification shall be based on visible signs, the applicant's statements or behaviour, or any relevant documents, and in the case of minors, also on statements of the parents, adult responsible or representative of the applicant.**

**The competent authorities shall include information on any such first indications in the applicant's file and they shall make this information available to the determining authority.**<sup>43</sup>

2. ~~The personnel of the authorities responsible for receiving and registering applications shall, when registering the application, indicate whether or not an applicant presents first indications of vulnerability which may require special procedural guarantees and may be inferred from physical signs or from the applicant's statements or behaviour.~~

~~The information shall be included in the applicant's file together with the description of the signs of vulnerability presented by the applicant that could require special procedural guarantees.~~

~~Member States shall ensure that the personnel of the authorities referred to in Article 5 is trained to detect first signs of vulnerability of applicants that could require special procedural guarantees and that it shall receive instructions for that purpose.~~

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<sup>42</sup> **DE, SK:** scrutiny reservation. **SK:** delete "*after an application is made*".

<sup>43</sup> **DE:** scrutiny reservation. **DE:** further clarification needed (e.g. if the information may also be included in electronic files or in a data system, that the lack of assessments must not lead to any substantive conclusions as to the asylum proceedings). **PRES:** with the new text we provide for flexibility for the MS to decide how they will communicate the information. It could be also by making a notice in the file.

3. ~~Where there are indications that applicants may have been victim of torture, rape or of another serious form of psychological, physical, sexual or gender based violence and that this could adversely affect their ability to participate effectively in the procedure, the determining authority shall refer the applicants to a doctor or a psychologist for further assessment of their psychological and physical state.~~

~~The result of that examination, shall be taken into account by the determining authority for deciding on the type of special procedural support which may be provided to the applicant.~~

~~That shall be without prejudice to the medical examination referred to in Article 23 and Article 24.~~

**The assessment referred to in paragraph -1 shall be carried out at least by the determining authority after the application is lodged, including where those needs become apparent at a later stage of the procedure, taking into account any information in the applicant's file as referred to in paragraph 1. The assessment shall be reviewed in case of any relevant changes in the applicant's circumstances.<sup>44</sup>**

- 3a. **The determining authority may, subject to his or her prior consent, refer the applicant to the appropriate medical practitioner or psychologist for psychological advice on the applicant's need for special procedural guarantees. The result of that assessment may be taken into account by the determining authority when deciding on the type of special procedural guarantees which may be provided to the applicant.<sup>45</sup>**

**Where applicable, this assessment may be integrated with the medical assessments referred to in Article 23 and Article 24.**

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<sup>44</sup> **SK:** redraft as follows: *“The full assessment of whether the applicant has special reception needs shall be carried out by the determining authority (alternatively authority responsible for reception) after the application is lodged.”*

<sup>45</sup> **RO:** reservation.

4. ~~The responsible authorities shall address the need for special procedural guarantees as set out in this Article even where that needs becomes apparent at a later stage of the procedure, without having to restart the procedure for international protection.~~
- 4a. **The relevant personnel of the competent authorities assessing the need for special procedural guarantees shall receive appropriate training to enable them to recognise that an applicant may need special procedural guarantees and to take appropriate actions to ensure that the necessary support will be provided.** <sup>46</sup>
- 4b. **The Commission may, in accordance with Article 12 of Regulation XXX/XXX [EUAA Regulation], request the European Union Agency for Asylum to develop operational standards on measures for assessing and addressing the special procedural needs of applicants.** <sup>47</sup>

#### *Article 21*

#### **Guarantees for minors**<sup>48</sup>

1. ~~The best interests of the child shall be a primary consideration for~~ **the competent authorities** ~~Member States~~ when applying this Regulation.

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<sup>46</sup> **NL, RO:** scrutiny reservation. **SK:** reservation. **HU, IE:** a reference could be made to the assistance of the EU Agency for Asylum in providing training modules. **DE:** unclear what training measures are envisaged here. **PRES:** the same as in RCD. .

<sup>47</sup> **DE, SK:** scrutiny reservation. **BE, CY, NL, RO:** reservation. **SE:** not convinced by the need of implementing acts in this regard. **NL:** relation with para (-1), which says that this assessment may be integrated into existing national procedures, is not clear

<sup>48</sup> **BE, CZ, ES, FR, IT:** reservation. **NL:** scrutiny reservation.



2. **Where the determining authority considers it is in the best interests of the child and necessary for the examination of the application for international protection, it shall organise a personal interview for a minor taking into account in particular the age and maturity of that minor. The determining authority may also organise such an interview at the request of the minor, the adult responsible or the representative of the minor. The determining authority shall provide a minor the opportunity of a personal interview including where an application is made on his or her own behalf in accordance with Article 31(6) and Article 32(1), unless this is manifestly not in the best interests of the child. In that case, the determining authority shall give reasons for the decision not to provide a minor with the opportunity of a personal interview.**<sup>49</sup>
- 2a.** ~~Any such~~**The** personal interview **of a minor** shall be conducted by a person who has the necessary **appropriate** knowledge of the rights and special needs of minors. ~~and it~~**It** shall be conducted in a child-sensitive and context-appropriate manner **that takes into consideration the age, maturity and best interests of the minor child.**<sup>50</sup>
3. ~~The relevant personnel of the determining authority\_ decision on the application of a minor shall be prepared by personnel of the determining authority who have the necessary~~ **shall receive appropriate training** knowledge of on the rights and and special needs of minors.<sup>51</sup>

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<sup>49</sup> **DE:** does this provision also apply for unaccompanied minors? **PRES:** yes. **SI:** include a specific age limit. **PRES:** this will be difficult to harmonise. MS have different national systems.

<sup>50</sup> **DE, HU, SE:** scrutiny reservation on para (2) and (2a). **FR:** reservation on para (2) and (2a).

<sup>51</sup> **SK:** reservation.

**Special guarantees for unaccompanied minors<sup>52</sup>**

- 1. The competent authorities shall ensure that unaccompanied minors are represented and assisted in such a way so as to enable them to benefit from the rights and comply with the obligations under this Regulation, Regulation (EU) No XXXX/XXXX [Dublin Regulation] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].<sup>53</sup>**
1. ~~The responsible~~ **Where an application is made by a person who claims to be a minor<sup>54</sup>, or in relation to whom there are objective grounds<sup>55</sup> to believe that he or she is a minor, the competent authorities shall, as soon as possible and not later than five working days from the moment when an unaccompanied minor makes an application, appoint a person or an organisation as a guardian. designate:**

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<sup>52</sup> **BE, ES, LU:** reservation. **DE, FR, HR, SE:** scrutiny reservation. **SE:** less detailed provisions would be preferable.

<sup>53</sup> **NL:** scrutiny reservation on the reference to Dublin and Eurodac. **DE:** clarify if the youth welfare offices are included in the competent authorities.

<sup>54</sup> **SK:** scrutiny reservation, not acceptable for a minor to make an application on his/her own. **FR:** add “*and without prejudice to situations where the applicant is found to be a minor after the application is lodged*” after “*that he or she is a minor*”.

<sup>55</sup> **EL:** the notion of “*objective grounds*” should be clarified further as it seems to indicate the is practically a certainty that someone is a minor; in Art. 24 the wording is “*relevant indications*”

- (a) a person who is suitable to assist him or her until a representative is designated;<sup>56</sup>
- (b) a representative as soon as possible but not later than fifteen working days from when the application is made.<sup>57</sup>

In case of a disproportionate number of simultaneous applications made by unaccompanied minors, the time limit for designating a representative may be extended by ten working days.<sup>58</sup>

This paragraph shall not apply where an application is made by a person who claims to be a minor but who is evidently<sup>59</sup> above the age of eighteen years.

The duties of the representative shall cease consider that the applicant is not a minor, or is no longer an unaccompanied minor.<sup>60</sup>

- 1a. Where an organisation is ~~appointed~~ **designated** as a representative, it shall designate a **natural** person ~~responsible~~ for carrying out the ~~duties~~ **tasks of a representative of a guardian**.<sup>61</sup>

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<sup>56</sup> **NL:** scrutiny reservation. **RO:** clarify what it means.

<sup>57</sup> **DE:** fifteen days is too short. **IT:** delete "*fifteen working days*". **SE:** no support for the idea of a dedicated person - administrative and financial burden; instead a representative should be appointed as soon as possible and until then MS should be obliged to ensure that the child has sufficient support to benefit from the rights and comply with the obligations under this regulation. **CZ:** delete the 15 days (consistency with RCD). **FR, LU:** replace this para with the following text: "*Where the age needs to be assessed in accordance with article 24, no representative shall be designated prior to the positive outcome of this assessment. The tasks of the person mentioned in point (a) and of the representative may be carried out by the same person.*"

<sup>58</sup> **FI:** add "*or in other exceptional situations*" after "*unaccompanied minors*".

<sup>59</sup> **FR:** replace with "clearly".

<sup>60</sup> **DE:** scrutiny reservation.

<sup>61</sup> **DE:** add "*unless the representative is designated by law*".

- 1b. The representative provided for in paragraph 1 of this Article may be the same as that provided for in Article 23 of Directive (EU) No XXXX /XXXX [Reception Conditions Directive].
- 1c. The ~~determining~~ **competent** authorities shall **immediately**:
- (a) inform the unaccompanied minor ~~immediately of the appointment of his or her guardian~~, **in a child-friendly manner and in a language he or she can reasonably be expected to understand, of the designation of the person suitable to assist him or her and of his or her representative and about how to lodge a complaint against the representative in confidence and safety.**<sup>62</sup>
  - (b) **inform the determining authority that a representative has been designated for the unaccompanied minor**<sup>63</sup>; and
  - (c) **inform the person assisting the unaccompanied minor and the representative of the relevant facts, procedural steps and time-limits pertaining to the application of the unaccompanied minor.**<sup>64</sup>

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<sup>62</sup> **IT:** difficult to understand the added value of "*and about how to lodge a complaint against any of them in confidence and safety*". **DE:** add "*or organisation*" after "*the person*" and "*unless the representative is designated by law*" in the end.

<sup>63</sup> **FR:** add "*authority in charge of registering the claim as well as the*". **DE:** add "*unless the representative is designated by law*" in the end.

<sup>64</sup> **DE:** add "*or organisation*" after "*the person*".

- 1d. The person assisting the unaccompanied minor shall carry out the following tasks:<sup>65</sup>
- (a) provide him or her with relevant information in relation to the procedures provided for in this Regulation;<sup>66</sup>
  - (b) where applicable, assist him or her in relation to the age assessment procedure referred to in Article 24;<sup>67</sup>
  - (c) where applicable, provide him or her with the relevant information and assist him or her in relation to the procedures provided for in Regulation (EU) No XXXX/XXXX [Dublin Regulation] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].<sup>68</sup>
- 1e. The representative shall meet the unaccompanied minor and shall carry out the following tasks:<sup>69</sup>
- (a) where applicable, provide him or her with relevant information in relation to the procedures provided for in this Regulation;
  - (b) where applicable, assist with the age assessment procedure referred to in Article 24;

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<sup>65</sup> SE: delete (1d). NL: merge (1d) and (1e).

<sup>66</sup> DE: scrutiny reservation.

<sup>67</sup> DE: add "*and represent*" (comment also valid for point (d) and for para (1d) (a) and (d)).  
FI: add a new point (ba) drafted as follows: "*where applicable, assist with the lodging of the application or lodges the application on hir or her behalf in accordance with Article 32*".

<sup>68</sup> DE: scrutiny reservation.

<sup>69</sup> SE: delete the first subparagraph (with points (a), (b) and (c)) of (1e). DE: scrutiny reservation on the changes introduced in points (a) - (d).

- (c) assist with the lodging of the application or lodge the application on his or her behalf in accordance with Article 32;<sup>70</sup>
- (d) where applicable, assist with and be present for the personal interview and inform about possible consequences of the personal interview and about how to prepare for that interview;<sup>71</sup>
- (e) where applicable, provide him or her with the relevant information and assist him or her in relation to the procedures provided for in Regulation (EU) No XXXX/XXXX [Dublin Regulation] and Regulation (EU) No XXXX/XXXX [Eurodac Regulation].

In the personal interview, the representative shall have an opportunity to ask questions or make comments within the framework set by the person conducting the interview.<sup>72</sup>

2. ~~The determining authority shall inform the guardian of all relevant facts, procedural steps and time limits pertaining to the unaccompanied minor.~~

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<sup>70</sup> **SK:** scrutiny reservation. **EL:** the national legislation requires the minor to be present at the moment of lodging; exceptions could be applied only in cases of *force majeure*. **FI:** add "*where applicable*".

<sup>71</sup> **FR:** scrutiny reservation on "*and be present*"; if the representative is not present, it shouldn't prevent the determining authority to perform the interview with the minor, since such interviews require specific arrangements (specialised case worker, duly trained interpreter).

<sup>72</sup> **NL,** supported by **FR, PL:** reservation; this paragraph leaves no room for the determining authority to continue the procedure if the guardian fails to be present at the interview. **CY:** scrutiny reservation.

3. ~~The guardian shall, with a view to safeguarding the best interests of the child and the general well-being of the unaccompanied minor:~~
- a) ~~represent and assist the unaccompanied minor during the procedures provided for in this Regulation and~~
  - b) ~~enable the unaccompanied minor to benefit from the rights and comply with the obligations under this Regulation.~~<sup>73</sup>
4. The ~~guardian~~ **representative** shall perform his or her ~~duties~~ **tasks** in accordance with the principle of the best interests of the child. **A representative shall have the necessary expertise knowledge of the rights and special needs of minors**, and shall not have a verified record of child-related crimes ~~or~~ **and offences, or crimes and offences that lead to serious doubts about their ability to assume a role of responsibility with regard to minors**<sup>74</sup>.
- 4a. The ~~person acting as a guardian~~ **representative** shall be changed **where necessary, in particular** only when the ~~responsible~~ **competent** authorities consider that he or she has not adequately performed his or her tasks ~~as a guardian~~. Organisations or ~~individuals~~ **natural persons** whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be ~~appointed~~ **designated** as ~~guardian~~ **representative**.

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<sup>73</sup> **SE:** this is preferable to the list of tasks currently in Art. 22 (1e).

<sup>74</sup> **PL:** add "*or pose a threat to the national security*"; current drafting is too strict, it should refer only to intentional crimes. **EL:** the representative should not have a criminal record at all. **DE:** add "*unless the representative is designated by law*" (also valid for paras (4a) and (5)).

5. The responsible **competent** authorities shall ~~not~~ place a **guardian representative** in charge of a ~~disproportionate~~ **proportionate and limited** number of unaccompanied minors at the same time, ~~which would render him or her unable to ensure that he or she is able to perform his or her tasks effectively.~~<sup>75</sup>
- 5a. Member States shall appoint **administrative or judicial authorities or other** entities ~~or persons responsible for the performance of guardians' tasks and for to supervising and monitoring at regular intervals that guardians~~ **the representative properly** performs ~~their~~ **his or her** tasks in a satisfactory manner. Those **administrative or judicial authorities or other** entities ~~or persons~~ shall review complaints lodged by unaccompanied minors against ~~their guardian~~ **his or her representative.**<sup>76</sup>
6. ~~The guardian shall inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, about how to prepare himself or herself for the personal interview. The guardian and, where applicable, a legal adviser or other counsellor as admitted or permitted as such under national law, shall be present together with the unaccompanied minor at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview. The determining authority may require the presence of the unaccompanied minor at the personal interview, even if the guardian is present.~~

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<sup>75</sup> **HU:** scrutiny reservation. **SK:** this should be regulated at national level, delete it. **NL:** scrutiny reservation on para (5). **IE:** replace "*and*" with "*or*"; preferable to delete this para as it refers more to operational matters which are outside the scope of APR.

<sup>76</sup> **IT, SI:** reservation. **DE, FR:** scrutiny reservation. **MT:** reference to UAM should be in the singular.



## SECTION V

### **MEDICAL EXAMINATIONS AND AGE ASSESSMENT**

#### *Article 23*

#### **Medical examination<sup>77</sup>**

1. Where the determining authority deems it relevant for the ~~assessment~~ **examination** of an application for international protection in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation), ~~and it may~~, subject to the applicant's consent, ~~it shall arrange for~~ **request the relevant competent authorities to organise** a medical examination of the applicant concerning signs and symptoms that might indicate past persecution or serious harm.<sup>78</sup>
- ~~2. The medical examination shall be carried out by qualified medical professionals. Member States may designate the medical professionals who may carry out such medical examinations. Those~~ **That** medical examinations shall be **free of charge** ~~paid for from public funds.~~
3. When no medical examination is carried out in accordance with paragraph 1, the determining authority shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs and symptoms that might indicate past persecution or serious harm.

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<sup>77</sup> **DE, SE, SK:** scrutiny reservation. **FR:** reservation linked to reservation on Art 20.

<sup>78</sup> **SE:** scrutiny reservation.

4. The results of the medical examination **referred in paragraph 1** shall be submitted to the determining authority as soon as possible and shall be assessed by the determining authority along with the other elements of the application.
- 4a. **The medical examination referred to in paragraph 1 shall be the least invasive possible and be performed only by medical professionals in a way that respects the individual's dignity.**<sup>79</sup>
5. An applicant's refusal to undergo a medical examination **or his or her decision to undergo a medical examination on his or her own initiative** shall not prevent the determining authority from taking a decision on the application for international protection.<sup>80</sup>

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<sup>79</sup> **CZ:** reservation.

<sup>80</sup> **SE:** delete “*or his or her decision to undergo a medical examination on his or her own initiative*”. If the applicant, in accordance with article 23(3), has been given the opportunity to at their own cost arrange for a medical examination he or she must be given a reasonable time within which to hand in a medical report. Otherwise the provision in 23(3) would not have any meaning.

**Medical examination Age assessment of unaccompanied minors<sup>81</sup>**

1. **In case of doubt concerning the applicant's age, the competent authorities shall assess whether the applicant is a minor, including on the basis of statements by the applicant or other relevant indications.<sup>82</sup>**

Medical examinations ~~may~~ **shall** be used **as a measure of last resort** to ~~determine~~ **assess** the age of ~~unaccompanied minors within the framework of the examination of an application an~~ **applicant<sup>83</sup>** where, following statements by the applicant, **the parents, adult responsible or representative** or other relevant indications ~~including a psychosocial assessment~~, there are **still** doubts as to whether or not the applicant is ~~under the age of 18~~ **a minor**.

Where the ~~result of the medical examination is not~~ **outcome of the age assessment referred to in this paragraph is not sufficiently** conclusive, ~~or includes an age range below 18 years,~~ ~~Member States~~ **the competent authorities** shall assume that the applicant is a minor **and shall accept the youngest age.**

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<sup>81</sup> **DE, RO, SE, SK:** scrutiny reservation. **BE:** reservation.

<sup>82</sup> **FR:** add "*and to determine whether the applicant is in need of a representative*" after "*doubts*". **DE:** does Art. 24 leave MS the choice if the age assessment is concluded through a legal act on its own or if it is just preliminary finding for the application of provisions concerning minors? If the age assessment is a legal act on its own it can be subject to judicial review. Otherwise the age assessment can only be subject to judicial review as part of other measures. Is there an assumption that an age assessment cannot be made before a temporary representative or a representative have been designated? Does the age assessment pose a separate administrative decision? Can age assessments be reviewed by the courts? **PRES:** Article 24 does not require an administrative decision; the applicant could as part of the appeal on a decision rejecting the application appeal also the findings concerning the age assessment; for the age assessment the minor needs to be accompanied and in the case of UAM, he or she needs to be accompanied at least by a person assisting him or her (see Article 22(1d)(b)). **RO:** does "*competent authorities*" refer to the competent authorities, under national law, to carry out that activity? **PRES:** yes.

<sup>83</sup> **SK:** previous text is preferable instead of "*measure of last resort*". **SE:** add "*only*" before "*be used*".

2. ~~The medical examination to determine the age of unaccompanied minors shall not be carried out without their consent or the consent of their guardians.~~
3. ~~Any~~ **The medical examination shall be the least invasive possible and be performed with full in a way that respects** for the individual's dignity, ~~shall be the least invasive examination and. That examination shall be carried out by qualified medical professionals allowing for the most reliable result possible.~~<sup>84</sup>
4. Where medical examinations are used to ~~determine the age of unaccompanied minors,~~ **assess the age of an applicant,** the ~~determining~~ **competent** authority shall ensure that ~~unaccompanied minors applicants,~~ **and their parents, adult responsible or their representatives,** are informed, prior to the examination of their application for international protection, and in a language that they understand or are reasonably ~~meant~~ **supposed** to understand, of the possibility that their age be ~~determined~~ assessed by medical examination. This shall include information on the method of examination and possible consequences which the result of the medical examination may have for the examination of the application, as well as on the possibility and consequences of a refusal on ~~their part of the unaccompanied minor, or of his or her guardian,~~ **their part** to undergo the medical examination.<sup>85</sup>

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<sup>84</sup> **SK:** replace "*shall be the least invasive examination*" with "*causing no physical harm*"; „*least invasive*“ should be determined either in the operative part of the proposal or in a recital. **DE:** clarify at least in a recital that genital examination is excluded.

<sup>85</sup> **FR:** add "*or of the person mentioned in point (a) of paragraph 1 of Article 22 or his or her representative*" after "*their part*". **EE:** "*expected to understand*" instead.

- 4a. A medical examination to assess the age of an applicant shall only be carried out where the applicant and the parents, the adult responsible or representative consent after having received the information provided for in paragraph 4<sup>86</sup>.
5. The refusal by ~~the unaccompanied minors or their guardians~~ the applicant, the parents, the adult responsible or representative to carry out the a medical examination to be carried out for the assessment of the applicant's age may only be considered as a rebuttable presumption that the applicant is not a minor and it shall not prevent the determining authority from taking a decision on the application for international protection. **Such refusal may only be considered as a rebuttable presumption that the applicant is not a minor.**<sup>87</sup>
6. ~~A Member State~~ **The competent authorities may shall take into account** recognise age assessments ~~decisions taken~~ **made by competent authorities in** other Member States on the basis of a medical examination carried out in accordance with this Article and based on methods which are recognised under its national law.<sup>88</sup> **The competent authorities may also take into account the fact that an applicant has previously declared to be an adult in another Member State and has accordingly been registered as such in that Member State.**

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<sup>86</sup> **DE:** scrutiny reservation. **PT:** reservation. **IE:** prefers an adapted drafting of the original COM proposal: "*shall not be carried out without their consent or the consent of their temporary representative or representative*". **FR:** add "*or, when national law so provides, the person mentioned in point (a) of paragraph 1 of Article 22 or*" after "*applicant*".

**LU:** opposes the need for the consent of the representative

<sup>87</sup> **BE:** scrutiny reservation, link with Dublin not clear. **SE:** the applicant needs to consent for a physical examination to be conducted. To link a lack of consent to a presumption against the applicant's claimed age may put into question the possibility to refuse to consent. The burden of proof to demonstrate an age lies on the applicant. A medical examination may only be initiated when the applicant has not fulfilled this burden in other ways. As such, the lack of a medical examination will never be the sole reason behind a decision to reject an applicant's claimed age. Hence, replace the last sentence with the following text: "*The decision to reject an application for international protection by an unaccompanied minor who refused to undergo a medical examination shall not be based solely on that refusal.*"

<sup>88</sup> **BE, DE, FR, SK:** scrutiny reservation. **PT:** reservation.

## Article 57a

### Data storage

1. Where an application is rejected, the competent authorities shall store the report or the recording or the transcript of the recording of the personal interview, the data referred to in Article 27 (1) and data referred to in Article 28 (4) for ten years from the date of a final decision rejecting that application. If, during that period a subsequent application is registered, the data storage period referred to in this paragraph shall start to run anew from the date on which information related to the subsequent application is added to the applicant's file.
2. Where international protection is granted, the competent authorities shall store the report or the recording or the transcript of the recording of personal interview, the data referred to in Article 27 (1) and data referred to in Article 28 (4) for twenty years from the date of the final decision granting international protection. If during that period, a procedure for withdrawing international protection is initiated, the data storage period referred to in this paragraph shall start to run anew from the date on which information on the procedure for withdrawing international protection is added to the applicant's file.
3. Upon expiry of the retention period referred to in paragraphs 1 and 2, the data in question shall automatically be erased.

[...]