



**EUROPEAN UNION**

**THE EUROPEAN PARLIAMENT**

**THE COUNCIL**

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**Brussels, 26 April 2024  
(OR. en)**

**2016/0224/A(COD)**

**PE-CONS 16/24**

**ASILE 27  
JAI 231  
MIGR 58  
FRONT 40  
CODEC 394**

**LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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**Subject: 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**

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**REGULATION (EU) 2024/...**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of ...

**establishing a common procedure for international protection in the Union  
and repealing Directive 2013/32/EU**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2), point (d), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinions of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinions of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

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<sup>1</sup> OJ C 75, 10.3.2017, p. 97 and OJ C 155, 30.4.2021, p. 64.

<sup>2</sup> OJ C 207, 30.6.2017, p. 67 and OJ C 175, 7.5.2021, p. 32.

<sup>3</sup> Position of the European Parliament of 10 April 2024 (not yet published in the Official Journal) and decision of the Council of ...

Whereas:

- (1) The objective of this Regulation is to streamline, simplify and harmonise the procedural arrangements of the Member States by establishing a common procedure for international protection in the Union. To meet that objective, a number of substantive changes are made to Directive 2013/32/EU of the European Parliament and of the Council<sup>4</sup> and that Directive should be repealed and replaced by a Regulation. References to the repealed Directive should be construed as references to this Regulation.
- (2) A common policy on asylum based on the full and inclusive application of the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (the ‘Geneva Convention’), is a constituent part of the European Union’s objective of establishing progressively an area of freedom, security and justice open to third-country nationals and stateless persons who seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

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<sup>4</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

- (3) The Common European Asylum System (CEAS) is based on common standards for asylum procedures, recognition and protection offered at Union level and reception conditions and establishes a system for determining the Member State responsible for examining an application for international protection. Notwithstanding the progress that has been made in the development of the CEAS, there are still notable disparities between the Member States as regards the procedures used, the recognition rates, the type of protection granted, the level of material reception conditions and benefits given to applicants and beneficiaries of international protection. Those disparities are important drivers of secondary movements and undermine the objective of ensuring that in the CEAS all applicants are equally treated wherever they apply for international protection in the Union.

- (4) In its communication of 6 April 2016 ‘Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe’, the Commission set out priority areas where the CEAS should be structurally improved, namely the establishment of a sustainable and fair system for determining the Member State responsible for examining an application for international protection, the reinforcement of the Eurodac system, the achievement of greater convergence in the asylum system, the prevention of secondary movements within the Union and an enhanced mandate for the European Union Agency for Asylum established by Regulation (EU) 2021/2303 of the European Parliament and of the Council<sup>5</sup> (the ‘Asylum Agency’). That communication is in line with calls by the European Council on 18-19 February 2016 to make progress towards reforming the Union’s existing framework so as to ensure a humane, fair and efficient asylum policy. That communication also proposes a way forward in line with the holistic approach to migration set out by the European Parliament in its resolution of 12 April 2016 on the ‘The situation in the Mediterranean and the need for a holistic EU approach to migration’.

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<sup>5</sup> Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1).

- (5) For a well-functioning CEAS, substantial progress should be made regarding the convergence of national asylum systems. The current disparate asylum procedures in all Member States should be replaced with a common procedure for granting and withdrawing international protection applicable across all Member States pursuant to Regulation (EU) .../... of the European Parliament and of the Council<sup>6+</sup>, ensuring the timeliness and effectiveness of the procedure. Applications for international protection made by third-country nationals and stateless persons should be examined in a procedure which is governed by the same rules, regardless of the Member State where the application is lodged to ensure equity in the treatment of applications for international protection, clarity and legal certainty for the individual applicant.
- (6) This harmonisation and convergence of national asylum systems should be achieved without preventing Member States from introducing or retaining more favourable provisions where provided for by this Regulation.

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<sup>6</sup> Regulation (EU) .../... of the European Parliament and of the Council of ... on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, ..., ELI: ...).

<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

- (7) A common procedure for granting and withdrawing international protection should limit the secondary movements of applicants for international protection between Member States, where such movements would be caused by differences in legal frameworks, by streamlining procedures and by clarifying the rights and obligations of applicants as well as the consequences of non-compliance with those obligations, and create equivalent conditions for the application of Regulation (EU) .../...<sup>+</sup> in Member States.
- (8) This Regulation should apply to all applications for international protection made in the territory of the Member States, including those made at the external border, on the territorial sea or in the transit zones of Member States, and to the withdrawal of international protection. Persons seeking international protection who are present on the territorial sea of a Member State should be disembarked on land and have their applications examined in accordance with this Regulation.
- (9) This Regulation should apply to applications for international protection in a procedure where it is examined whether the applicants qualify as beneficiaries of international protection in accordance with Regulation (EU) .../...<sup>+</sup>. In addition to the international protection, the Member States may also grant other national humanitarian statuses under their national law to those who do not qualify for the refugee status or subsidiary protection status. In order to streamline the procedures in Member States, the Member States should have the possibility to apply this Regulation also to applications for any kind of such other protection.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (10) With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party.
- (11) It should be possible to mobilise the resources of the Asylum, Migration and Integration Fund, as established by the Regulation (EU) 2021/1147 of the European Parliament and of the Council<sup>7</sup>, and other relevant Union funds (the ‘Funds’) to provide support for Member States’ efforts in applying this Regulation, in line with the rules governing the use of the relevant Funds and without prejudice to other priorities supported by the Funds. In this context, Member States should be able to make use of the allocations under their respective programmes, including the amounts made available following the mid-term review. In particular, actions undertaken by Member States for putting in place adequate capacity for carrying out the border procedure can be supported financially by the Funds made available under the 2021-2027 multiannual financial framework. It should be possible to make additional support under the thematic facilities available, in particular to those Member States which might need to increase their capacities at the external borders or are faced with specific pressures on or needs concerning their asylum and reception systems and their external borders.

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<sup>7</sup> Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021, p. 1).



- (12) The Asylum Agency should provide Member States with the necessary operational and technical assistance in the application of this Regulation, in particular by providing experts to assist national authorities to receive and register applications for international protection and to assist the determining authority in the performance of its tasks including as regards the examination of applications for international protection and by providing updated information and analysis on third countries, including country of origin information and guidance on the situation in specific countries of origin. When applying this Regulation, Member States should take into account operational standards, indicators, guidelines and best practices developed by the Asylum Agency.
- (13) In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to the procedure, the opportunity to cooperate fully and properly communicate with the competent authorities so as, in particular, to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure.

- (14) The applicant should be provided with an effective opportunity to present all elements available to him or her which substantiate the application or are relevant for the procedures in accordance with this Regulation to the competent authorities. For this reason, the applicant should, subject to limited exceptions, enjoy the right to be heard through a personal interview on the admissibility or on the merits of his or her application, as appropriate. If the applicant is unfit to attend his or her personal interview, the authorities could ask for a medical certification to be provided by the applicant. For the right to a personal interview to be effective, the applicant should be assisted by an interpreter where necessary to ensure appropriate communication and be given the opportunity to provide his or her explanations concerning his or her application in a comprehensive manner. The applicant should be given sufficient time to prepare and consult with his or her legal adviser or other counsellor admitted or permitted as such under national law to provide legal advice (the ‘legal adviser’) or a person entrusted with providing legal counselling. During the interview, the applicant should be allowed to be assisted by the legal adviser. The personal interview should be conducted under conditions which ensure appropriate privacy and confidentiality and by adequately trained and competent staff, including where necessary, experts deployed by the Asylum Agency or staff from authorities of other Member States. Where the interview on the merits is omitted with a view to ensuring swift access to international protection, this should be without prejudice to the obligation to examine whether the applicant fulfils the conditions set out in Regulation (EU) .../...<sup>+</sup> to be granted refugee status before examining whether the applicant fulfils the conditions to be granted subsidiary protection. Given that the personal interview is an essential part of the examination of the application, the interview should be recorded and the applicants, their representatives and their legal advisers should be given access to the report or transcripts of that interview as soon as possible after it takes place and in any case in due time before the determining authority takes a decision.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (15) The personal interview is an essential part of an effective and fair asylum procedure. In order to ensure an optimal environment for communication, in-person interviews should be given preference, with the conduct of remote interviews by video conference remaining the exception. Apart from public health considerations, there may be legitimate grounds for the determining authority to have recourse to remote interviews by video conference, for example where vulnerabilities preclude the possibility of travel of an asylum applicant or make it difficult due to health or family reasons, to conduct interviews with applicants in detention, in overseas territories or in situations where the remote participation of an interpreter with specialised interpretation skills is required. In the event of remote interviewing, the determining authority should be required to apply all procedural safeguards as when in-person interviews are held, ensuring privacy and confidentiality, and giving due consideration to data protection. The suitability of the use of the remote interviewing by video conference should be assessed individually before the interview, as remote interviews may not be suitable for all asylum applicants due to their young age, the existence of visual or hearing impairments, or the state of their mental health, with particular regard to certain vulnerable groups, such as victims of torture or traumatised applicants. The best interests of the child should be a primary consideration. Special concern should be given to potential technological difficulties which may have disruptive effects on the interview, result in an incomplete or unintelligible record of the interview or affect the storage and retrieval of the recording.

- (16) It is in the interests of both Member States and applicants that applicants receive at a very early stage comprehensive information on the procedure to be followed and on their rights and obligations. In addition, it is essential to ensure a correct recognition of international protection needs already at the stage of the administrative procedure by providing good quality information and legal support which leads to more efficient and better quality decision-making. For that purpose, access to legal counselling, assistance and representation should be an integral part of the common procedure for international protection. Applicants should, as soon as possible after an application for international protection has been registered, upon their request, be provided with free legal counselling during the administrative procedure. Furthermore, to ensure the effective protection of the applicant's rights, particularly the right of defence and the principle of fairness, applicants should, upon their request and subject to conditions set out in this Regulation be provided with free legal assistance and representation in the appeal procedure. It should also be possible for Member States to provide for free legal assistance and representation during the administrative procedure in accordance with national law.
- (17) 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.

- (18) The relevant staff of the competent authorities of Member States as well as the medical practitioner or psychologist assessing the need for special procedural guarantees should be adequately trained to detect signs of vulnerability of applicants who may need special procedural guarantees and address those needs when identified.
- (19) This Regulation is without prejudice to the possibility for the Commission, in accordance with Article 13 of Regulation (EU) 2021/2303, to request the Asylum Agency to develop operational standards, indicators, guidelines and best practices related to the implementation of Union law on asylum.
- (20) Applicants who are identified as being in need of special procedural guarantees should be provided with adequate support in order to create the conditions necessary for the genuine and effective access to procedures. Where it is not possible to provide adequate support in the framework of an accelerated examination procedure or of a border procedure, an applicant in need of special procedural guarantees should be exempted from those procedures.

- (21) With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak freely about their past experiences, including in cases involving persecution based on gender, gender identity or sexual orientation. For this purpose, applicants should be given an effective opportunity to be interviewed separately from their spouse, partner or other family members. Where requested by the applicant and possible, the interviewers and interpreters should be of the sex that the applicant prefers. The complexity of gender-related claims should be properly taken into account in all procedures.
- (22) Where it is necessary and duly justified for the examination of an application for international protection, the competent authorities should be able to require that the applicant be searched or that his or her items be searched. Those items may include electronic devices such as laptops, tablet computers or mobile phones. Any such search should be carried out in a way that respects fundamental rights and the principle of proportionality.

- (23) The best interests of the child should be a primary consideration of Member States when applying this Regulation, in accordance with Article 24 of the Charter of Fundamental Rights of the European Union (the ‘Charter’) and the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the minor’s well-being and social development, including his or her background. In view of Article 12 of the United Nations Convention on the Rights of the Child concerning the child’s right to be heard, the determining authority should provide a minor with the possibility of a personal interview, unless this is not in the best interests of the child. The determining authority should organise a personal interview for a minor taking into account in particular his or her age and maturity.
- (24) Without prejudice to the competence of Member States on the acquisition of nationality and the fact that, under international law, it is for each Member State, having due regard to Union law, to lay down the conditions for the acquisition and loss of nationality, in applying this Regulation, Member States should respect their international obligations towards stateless persons, in accordance with international human rights law instruments, including where applicable under the Convention relating to the Status of Stateless Persons, adopted in New York on 28 September 1954. Where appropriate, Member States should endeavour to identify stateless persons and strengthen their protection, thus allowing stateless persons to enjoy core fundamental rights and reducing the risk of discrimination or unequal treatment.

- (25) Where, following a thorough assessment by the competent national authorities, it is concluded that the applicant constitutes a danger to national security or public order, especially in relation to serious crimes or terrorism, a Member State should have the possibility to make an exception to the right of the applicant to remain on its territory during the administrative procedure, provided that applying such an exception does not result in the applicant being removed to a third country in violation of the principle of non-refoulement.
- (26) The common procedure streamlines the time limits for an individual to accede to the procedure and for the examination of the application by the determining authority. Since a disproportionate number of applications made within the same period of time may risk delaying access to the procedure and the examination of the applications, a measure of flexibility to exceptionally extend those time limits may at times be needed. However, to ensure an effective process, extending those time limits should be a measure of last resort considering that Member States should regularly review their needs to maintain an efficient asylum system, including by preparing contingency plans where necessary, and considering that the Asylum Agency should provide Member States with the necessary operational and technical assistance. Where Member States foresee that they would not be able to meet the set time limits, they should request assistance from the Asylum Agency. Where no such request is made, and because of the disproportionate pressure the asylum system in a Member State becomes ineffective for the functioning of the CEAS, the Asylum Agency should be able, on the basis of a Council implementing act following a proposal by the Commission, to take measures in support of that Member State.



(27) Access to the common procedure should be based on a three-step approach consisting of the making, registering and lodging of an application. Making an application is the first step that triggers the application of this Regulation. A third-country national or stateless person is considered to have made an application when expressing a wish to receive international protection from a Member State. Where the application is received by an authority which is not responsible for registering applications, Member States should, in accordance with their internal procedures and organisation, apply this Regulation so that the effective access to the procedure can be ensured. It should be possible to express the wish to receive international protection from a Member State in any form, and the individual applicant need not necessarily use specific words such as ‘international protection’, ‘asylum’ or ‘subsidiary protection’. The defining element should be the expression by the third-country national or the stateless person of a fear of persecution or serious harm upon return to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence. Where there is doubt as to whether a certain declaration may be construed as an application for international protection, the third-country national or stateless person should be expressly asked whether he or she wishes to receive international protection. The applicant should benefit from the rights under this Regulation and Directive (EU) .../... of the European Parliament and of the Council<sup>8+</sup> as soon as he or she makes an application.

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<sup>8</sup> Directive (EU) .../... of the European Parliament and of the Council of ... laying down standards for the reception of applicants for international protection (OJ L, ..., ELI: ...).

<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.

- (28) An application should be registered promptly after it is made. At that stage, the competent authorities responsible for registering applications or experts deployed by the Asylum Agency assisting them with that task should register the application together with the personal details of the applicant. Those authorities or experts should inform the applicant of his or her rights and obligations, as well as the consequences for the applicant in the event of non-compliance with those obligations. Organisations working with the competent authorities and assisting them should also be able to provide this information. The applicant should be given a document indicating that an application has been made and registered. The time limit for lodging an application starts to run from the moment an application is registered.
- (29) The lodging of the application is the act that formalises the application for international protection. The applicant should be given the necessary information as to how and where to lodge his or her application and he or she should be given an effective opportunity to do so. At this stage he or she is required to submit as soon as possible all the elements and documents at his or her disposal needed to substantiate and complete the application, unless otherwise provided for in this Regulation. The time limit for the administrative procedure starts to run from the moment an application is lodged. Shortly after the application is lodged, the applicant should be given a document which includes his or her status as an applicant.
- (30) It is particularly important to ensure that minors are provided with information in a child-friendly manner.

- (31) The applicant should be informed properly of his or her rights and obligations in a timely manner and in a language that he or she understands or is reasonably supposed to understand, in writing and if necessary orally. Having regard to the fact that where, for instance, the applicant refuses to cooperate with the national authorities by, in particular, not providing the elements necessary for the examination of the application or by not providing his or her fingerprints or facial image, the application is rejected or declared as implicitly withdrawn, it is necessary that the applicant has been informed of the consequences for not complying with those obligations.
- (32) To be able to fulfil their obligations, the staff of the authorities applying this Regulation should have the appropriate knowledge and should receive training in the field of international protection, including with the support of the Asylum Agency. They should also be given the appropriate means, including sufficient competent staff, and guidance to effectively perform their tasks. For that purpose, each Member State should regularly assess the needs of the determining authority and the other competent authorities to ensure that they are always in a position to deal with applications for international protection in an effective manner, particularly where there is a disproportionate number of applications within the same period of time.

- (33) For the purposes of effective access to the examination procedure at border crossing points and in detention facilities, information should be made available on the possibility to make an application for international protection. Basic communication necessary to enable the competent authorities to understand if persons declare their wish to make an application for international protection should be ensured through interpretation arrangements.
- (34) This Regulation should provide for the possibility that applicants lodge an application on behalf of adults requiring assistance to exercise legal capacity, and of minors where under national law they do not have the legal capacity to lodge an application in their own name. The joint examination of those applications should be allowed.

(35) To ensure that unaccompanied minors have effective access to the procedure and are able to benefit from the rights and comply with the obligations under this Regulation, Regulation (EU) .../...<sup>9+</sup>, Directive (EU) .../...<sup>++</sup> and Regulation (EU) .../...<sup>10+++</sup> of the European Parliament and of the Council, they should be appointed a representative, including where the applicant is found to be an unaccompanied minor at any moment during the asylum procedure. The representative should assist and guide the minor through the procedure with a view to safeguarding the best interests of the child and should, in particular, assist with the lodging of the application and the personal interview. Where necessary, the representative should lodge the application on behalf of the minor. A person should be designated to assist unaccompanied minors until a representative is appointed, including, where applicable, in relation to the age-assessment procedure and the procedures provided for under Regulation (EU) .../...<sup>++++</sup> and Regulation (EU) .../...<sup>++++</sup>.

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<sup>9</sup> Regulation (EU) .../... of the European Parliament and of the Council of ... on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, ..., ELI: ...).

<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

<sup>++</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

<sup>10</sup> Regulation (EU) .../... of the European Parliament and of the Council of ... on the establishment of ‘Eurodac’ for the comparison of biometric data in order to effectively apply Regulations (EU) .../... and (EU) .../... of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ L, ..., ELI: ...).

<sup>+++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

<sup>++++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

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In order to provide effective support to the unaccompanied minors, representatives or a person suitable to provisionally act as a representative should be placed in charge of a proportionate and limited number of unaccompanied minors, and under normal circumstances of no more than 30 unaccompanied minors, at the same time.

Member States should appoint administrative or judicial authorities or other entities responsible for the supervision on a regular basis of such representatives in the performance of their tasks. An unaccompanied minor should have the right to lodge an application in his or her own name if he or she has legal capacity in accordance with national law. In order to safeguard the rights and procedural guarantees of an unaccompanied minor who does not have legal capacity in accordance with national law, the application should be lodged by the representative as soon as possible taking into account the best interests of the child. The fact that an unaccompanied minor lodges an application in his or her own name should not preclude him or her from being assigned a representative.

- (36) In order to ensure that the processing of applications for international protection are carried out with due regard to the rights of the child, specific child-sensitive procedural safeguards and special reception conditions are to be provided to minors. Where, following statements by an applicant, there are grounds for doubting as to whether or not an applicant is a minor, it should be possible for the determining authority to carry out an age assessment of the person concerned. Doubts regarding the age of an applicant may arise when the applicant claims to be a minor but also when they claim to be an adult. Given the particular vulnerability of unaccompanied minors, who are likely to lack identification or other documents, it is particularly critical to ensure strong safeguards to ensure that such applicants are not subject to incorrect or unreasonable age-assessment procedures.

(37) In all cases, age assessments should be carried out in a manner that gives primary consideration to the best interests of the child throughout the procedure. An age assessment should be carried out in two steps. A first step should comprise a multi-disciplinary assessment, which could include a psycho-social assessment and other non-medical methods, such as an interview, visual assessment based on physical appearance or assessment of documentation. Such an assessment should be carried out by professionals with expertise in age estimation and child development, such as social workers, psychologists or paediatricians, in order to assess various factors, such as physical, psychological, developmental, environmental and cultural factors. If the result of the multidisciplinary age assessment is inconclusive, it should be possible, as a second step, for the determining authority to request a medical examination, as a measure of last resort, and with full respect for the individual's dignity. Where different procedures may be followed, a medical examination should prioritise the least invasive procedures before proceeding to more invasive ones taking into account guidance from the Asylum Agency where relevant. If, following the age assessment, the results remain inconclusive, the determining authority should assume that the applicant is a minor.



- (38) In order to guarantee the rights of the applicants, decisions on all applications for international protection should be taken on the basis of the facts, objectively, impartially and on an individual basis after a thorough examination which takes into account all the elements provided by the applicant and the individual circumstances of the applicant. To ensure a rigorous examination of an application, the determining authority should take into account relevant, precise and up-to-date information relating to the situation prevailing in the country of origin of the applicant at the time of taking a decision on the application. That information may be obtained from the Asylum Agency and other sources such as the United Nations High Commissioner for Refugees. The determining authority should, where available, also take into account the common analysis on the situation in specific countries of origin and the guidance notes developed by the Asylum Agency. Any postponement of concluding the procedure should fully comply with the obligations of the Member States under Regulation (EU) .../...<sup>+</sup> and with the right to good administration, without prejudice to the efficiency and fairness of the procedure under this Regulation.
- (39) In order to guarantee the rights of the applicant, a decision concerning his or her application should be given in writing. Where the decision does not grant international protection, the applicant should be given reasons in fact and in law, information on the consequences of the decision and the modalities for challenging it.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (40) In order to increase the efficiency of procedures and to reduce the risk of absconding and the likelihood of unauthorised movements, there should be no procedural gaps between the issuance of a negative decision on an application for international protection and of a return decision. A return decision should immediately be issued to applicants whose applications are rejected. Without prejudice to the right to an effective remedy, the return decision should either be part of the negative decision on an application for international protection or, if it is a separate act, be issued at the same time and together with the negative decision or without undue delay thereafter.
- (41) In the case of an extradition, surrender or transfer from an international criminal court or tribunal to a third country or another Member State, the relevant competent authority could take into account elements considered upon deciding on the extradition, surrender or transfer which may be relevant for an assessment of the risk of direct or indirect refoulement.
- (42) It is necessary that decisions on applications for international protection be taken by authorities whose staff have appropriate knowledge and have received adequate training, including the relevant training of the Asylum Agency, in the relevant standards applicable in the field of asylum and refugee law, and that they perform their activities with due respect for the applicable ethical principles. That should apply to the staff of authorities from other Member States and experts deployed by the Asylum Agency to assist the determining authority of a Member State in the examination of applications for international protection.

- (43) Without prejudice to carrying out an adequate and complete examination of an application for international protection, it is in the interests of both Member States and applicants for a decision to be taken as soon as possible. Maximum time limits for the duration of the administrative procedure should be established to streamline the procedure for international protection. In this way, applicants should be able to receive a decision on their application within the least amount of time possible in all Member States thereby ensuring a speedy and efficient procedure.
- (44) In order to shorten the overall duration of the procedure in certain cases, Member States should have the flexibility, in accordance with their national needs, to prioritise the examination of any application by examining it before other, previously made applications. The prioritisation of examination of applications should be done without derogating from normally applicable procedures, in particular the admissibility procedure or the accelerated examination procedure, time limits, principles and guarantees. The requirement, under this Regulation, to examine certain applications in accordance with the accelerated or the border procedure should therefore be without prejudice to the flexibility of Member States to decide whether or not to prioritise such applications. In certain circumstances, in particular when families with minors are subject to the border procedure, Member States should prioritise the examination of their application.

(45) Member States should have the possibility to reject an application as inadmissible for instance when a country which is not a Member State is considered to be a first country of asylum or a safe third country for the applicant or when an international court or tribunal has provided safe relocation to the applicant to a Member State or third country or when it is made only after seven working days from the date on which the applicant receives the return decision provided that he or she had been informed about the consequences of not making an application within that time limit and that no new relevant elements have arisen. Given that the CEAS is based on mutual trust and a presumption of compliance with fundamental rights, including the rights based on the Geneva Convention and on the European Convention of Human Rights, the fact that another Member State has already granted international protection is, as a rule, a reason for rejecting an application by the same applicant as inadmissible. Therefore, Member States should have the possibility to reject an application as inadmissible where an applicant has already been granted international protection in another Member State. In addition, an application should be considered to be inadmissible when it is a subsequent application without new relevant elements.

- (46) For the application of the concepts of first country of asylum and safe third country, it is essential that the third country in relation to which the concepts are applied is a party to and complies with the Geneva Convention, unless that third country otherwise provides for effective protection in law and in practice in accordance with basic human rights standards such as access to means of subsistence sufficient to maintain an adequate standard of living with regard to the overall situation of that hosting third country, access to healthcare and essential treatment of illnesses and to education under the conditions generally provided for in that third country. Such effective protection should remain available until a durable solution can be found. It should be possible to designate a third country as safe third country with exceptions for specific parts of its territory or clearly identifiable categories of persons.
- (47) Member States should have the possibility to apply the concept of first country of asylum as a ground for inadmissibility where the applicant enjoyed effective protection and can still avail himself or herself of that protection in a third country, where his or her life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion, where he or she is neither subject to persecution nor faces a real risk of serious harm as defined in Regulation (EU) .../...<sup>+</sup> and where the applicant is protected against refoulement and against removal in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (48) Member States should have the possibility to apply the concept of safe third country as a ground for inadmissibility where the possibility exists for the applicant to request and, if the conditions are fulfilled, to receive effective protection in a third country, where his or her life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion, where he or she is neither subject to persecution nor faces a real risk of serious harm as defined in Regulation (EU) .../...<sup>+</sup> and where he or she is protected against refoulement and against removal in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law. Nonetheless, the determining authorities of the Member States should retain the right to assess the merits of an application even if the conditions for regarding it as inadmissible are met, in particular when they are compelled to do so pursuant to their national obligations. A Member State should be able to apply the concept of safe third country only where there is a connection between the applicant and the third country on the basis of which it would be reasonable for the applicant to go to that country. 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.
- (49) The presumption of safety regarding third countries with which agreements of the kind referred to in this Regulation have been concluded does not apply in the event that such agreements are suspended in accordance with Article 218(9) of the Treaty on the Functioning of the European Union (TFEU).

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (50) The concepts of first country of asylum and safe third country should not be applied in respect of an applicant who applies and is entitled to benefit, in the Member State that examines the application, from the rights set out in Council Directive 2003/86/EC<sup>11</sup> or Directive 2004/38/EC of the European Parliament and of the Council<sup>12</sup> as family member of a third-country national or of a Union citizen.
- (51) When assessing whether the criteria for effective protection as set out in this Regulation are met by a third country, access to means of subsistence sufficient to maintain an adequate standard of living should be understood as including access to food, clothing, housing or shelter and the right to engage in gainful employment, for example through access to the labour market, under conditions not less favourable than those for non-nationals of the third country generally in the same circumstances.
- (52) In order for Member States to be able to reject an application as inadmissible on the basis of the concepts of first country of asylum or safe third country, an individual assessment of the particular circumstances of the applicant should be carried out, including of any elements submitted by the applicant explaining why those concepts would not be applicable to him or her. Where the applicant is an unaccompanied minor, the competent authority should take into account the best interests of the child, in particular concerning the availability of sustainable appropriate care and custodial arrangements.

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<sup>11</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

<sup>12</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

- (53) An application should not be rejected as inadmissible on the basis of the concepts of first country of asylum or safe third country where it is already clear at the stage of the admissibility examination that the third country concerned will not admit or readmit the applicant. Furthermore, if the applicant is eventually not admitted or readmitted to the third country after the application has been rejected as inadmissible, the applicant should again have access to the procedure for international protection in accordance with this Regulation.
- (54) An application for international protection should be examined on its merits to determine whether an applicant qualifies for international protection in accordance with Regulation (EU) .../...<sup>+</sup>. There need not be an examination on the merits where an application is rejected as inadmissible in accordance with this Regulation, where another Member State is responsible in accordance with Regulation (EU) .../...<sup>++</sup> or where an application is declared as implicitly or explicitly withdrawn.
- (55) The examination of an application should be accelerated and completed within a maximum of three months in a limited number of cases including where an applicant comes from a safe country of origin or an applicant is making an application merely to delay or frustrate the enforcement of a removal decision, or where there are serious national security or public order concerns. Member States should be able to apply an accelerated examination procedure to unaccompanied minors only within the limited circumstances set out in this Regulation.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).



(56) In the interest of swift and fair procedures for all applicants, whilst also ensuring that the stay of applicants who do not qualify for international protection in the Union is not unduly prolonged, including those who are nationals of third countries exempt from the requirement to be in a possession of a visa pursuant to Regulation (EU) 2018/1806, Member States should accelerate the examination of applications of applicants who are nationals or, in the case of stateless persons, formerly habitual residents of a third country for which the share of decisions granting international protection is 20% or lower of the total number of decisions for that third country, taking into account, inter alia, the significant differences between first instance and final decisions. Where a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data and taking into account the guidance note pursuant to Article 11 of Regulation (EU) 2021/2303, or where the applicant belongs to a specific category of persons for whom the low recognition rate cannot be considered to be representative of their protection needs due to a specific persecution ground, examination of the application should not be accelerated. Cases where a third country may be considered to be a safe country of origin or a safe third country for the applicant within the meaning of this Regulation should remain applicable as a separate ground for respectively the accelerated examination procedure or the admissibility procedure.

(57) Many applications for international protection are made at the external border or in a transit zone of a Member State, including by persons apprehended in connection with an irregular crossing of the external border, that is to say at the very time of the irregular crossing of the external border or near that external border after it has been crossed, or by persons disembarked following a search and rescue operation. In order to conduct identification, security and health screening at the external border and to direct the third-country nationals and stateless persons concerned to the relevant procedures, a screening is necessary. After the screening, third-country nationals and stateless persons should be channelled to the appropriate asylum or return procedure, or refused entry. A pre-entry phase consisting of screening and border procedures for asylum and return should therefore be established. There should be seamless and efficient links between all stages of the relevant procedures for all irregular arrivals.

(58) The purpose of the border procedure for asylum and return should be to quickly assess in principle at the external borders whether applications are unfounded or inadmissible and to swiftly return those with no right to stay, in a manner that fully respects the principle of non-refoulement, while ensuring that those with well-founded claims are channelled into the regular procedure and provided quick access to international protection. Member States should therefore be able to require applicants for international protection to reside at or in proximity of the external border or in a transit zone as a general rule, or in other designated locations within their territory, in order to assess the admissibility of applications. In well-defined circumstances, Member States should be able to provide for the examination of the merits of an application and, in the event of rejection of the application, for the return of the third-country nationals and stateless persons concerned. In order to carry out the asylum border procedure, and the return border procedure established by Regulation of the European Parliament and of the Council (EU) .../...<sup>13+</sup>, Member States should take the measures necessary to establish an adequate capacity, in terms of reception and human resources, particularly qualified and well-trained staff, required to examine at any given moment an identified number of applications and to enforce return decisions.

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<sup>13</sup> Regulation (EU) .../... of the European Parliament and of the Council of ... establishing a return border procedure, and amending Regulation (EU) 2021/1148 (OJ L, ..., ELI: ...).

<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

(59) In order to ensure uniform conditions for the implementation of this Regulation as regards to the calculation of the numbers corresponding to the adequate capacity of each Member State and the maximum number of applications a Member State is required to examine in the border procedure per year, implementing powers should be conferred on the Commission. The adequate capacity of a Member State should be established through a formula based on aggregating irregular border crossings, as reported by Member States to the European Border and Coast Guard Agency established by Regulation (EU) 2019/1896 of the European Parliament and of the Council<sup>14</sup> ('Frontex'), which also includes arrivals following search and rescue operations, and refusals of entry at the external border, as per Eurostat data, calculated over a three-year period. When the implementing act is adopted in accordance with this Regulation, its adoption should be aligned with the adoption of the European Annual Asylum and Migration Report under Regulation (EU) .../...<sup>+</sup>, which assesses the situation along all migratory routes and in all Member States. As an additional element of stability and predictability, the maximum number of applications a Member State should be required to examine in the border procedure per year should be set, amounting to four times that Member State's adequate capacity. The extent of the obligation of the Member State to set up the adequate capacity should take appropriate account of Member States' concerns regarding national security and public order. Only applications subject to the border procedure should be calculated towards reaching the adequate capacity.

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<sup>14</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (60) Member States should assess applications in a border procedure where the applicant is a danger to national security or public order, where the applicant, after having been provided with the full opportunity to show good cause, is considered to have intentionally misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his or her identity or nationality that could have had a negative impact on the decision and where it is likely that the application is unfounded because the applicant is of a nationality for whom the proportion of decisions granting international protection is 20% or lower of the total number of decisions for that third country. In order to ensure uniform conditions for the implementation of Article 50, third paragraph, of this Regulation, implementing powers should be conferred on the Commission. In other cases, such as when the applicant is from a safe country of origin or a safe third country, the use of the border procedure should be optional for the Member States.
- (61) Pursuant to Chapter IV of Directive (EU) .../...<sup>+</sup>, Member States providing reception facilities for carrying out the asylum border procedure are under an obligation to take into account the special situation and needs of vulnerable persons, including minors, persons with a disability and elderly people. Consequently, such persons should only be admitted to a border procedure in the event that the conditions of reception within that procedure comply with the requirements set out in Chapter IV of that Directive. Furthermore, in the event that reception conditions available as part of a border procedure cease to comply with the requirements and standards laid down in Chapter IV of that Directive, the border procedure should cease to apply to the persons concerned.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

- (62) There may also be circumstances where, irrespective of the facilities available, the specific situation or special needs of applicants would in any event preclude them from being admitted or from remaining in a border procedure. In this context, a border procedure should not be applied, or should cease to apply, where necessary support cannot be provided to applicants in need of special procedural guarantees or where justified on health grounds, including reasons pertaining to a person's mental health. Equally, having regard to the importance of the rights of the child and the need to take into account the best interests of the child, unaccompanied minors should not, as a rule, be subject to the border procedure unless there are reasonable grounds to consider the minor represents a danger to the national security or public order of the Member State or the applicant had been forcibly expelled for serious reasons of national security or public order under national law.
- (63) A border procedure should also not be applied, or should cease to apply, where it results in the detention of applicants in circumstances where the conditions for detaining persons and the guarantees applicable to detention as laid down in Directive (EU) .../...<sup>+</sup> are not met.
- (64) Given that the purpose of the border procedure is, inter alia, to allow for the expeditious assessment of applications that are likely to be inadmissible or unfounded, with a view to enabling the swift return of those with no right to stay, that procedure should not be applied or should cease to apply where the determining authority considers that the grounds for rejecting an application as inadmissible or for applying the accelerated examination procedure are not applicable or no longer applicable.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

- (65) When applying the border procedure for the examination of an application for international protection, Member States should ensure that the necessary arrangements are made to accommodate the applicants at or in proximity of the external border or transit zones as a general rule, in accordance with Directive (EU) .../...<sup>+</sup>. Member States may examine the applications at a different location at the external border than that where the asylum application is made by transferring applicants to a specific location at or in proximity of the external border of the Member State concerned, or in other designated locations within its territory where appropriate facilities exist. Member States should retain discretion in deciding at which specific locations such facilities should be set up. However, Member States should seek to limit the need for transferring applicants for this purpose, and therefore aim at setting up such facilities with sufficient capacity at border crossing points, or sections of the external border, where the majority of the number of applications for international protection are made, also taking into account the length of the external border and the number of border crossing points or transit zones. They should notify the Commission of the specific locations at which the border procedures will be carried out.
- (66) Given that certain facilities might be at locations with difficult accessibility, Member States should ensure adequate access for staff working in such facilities.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

(67) The best interests of the child should be a primary consideration for Member States when applying the provisions of this Regulation that possibly affect minors. In this context, and given the special reception needs of minors, where the border procedure is applied and the number of applicants at a given moment exceeds the number which corresponds to the adequate capacity of a Member State, that Member State should not give priority to minors and their family members when determining whom to subject to a border procedure, unless they are considered, on serious grounds, to pose a danger to the national security and public order of a Member State. Where they are subject to the border procedure, the examination of applications of minors and their family members should be given priority. Reception facilities for minors and their family members should be suited to their needs, in full respect of Directive (EU) .../...<sup>+</sup>. Given that protecting children is of primary importance, where the information obtained through the monitoring done pursuant to Regulation (EU) 2021/2303 indicates failure by a Member State to comply with the reception requirements for minors and their family members, the Commission should recommend that the application of the border procedure to families with minors be suspended, and the Member State concerned should inform the Commission of the measures taken to address any shortcomings contained in the recommendation of the Commission. The recommendation should be made public.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).



(68) The duration of the border procedure for the examination of applications for international protection should be as short as possible while at the same time guaranteeing a complete and fair examination of the claims. It should in any event not exceed 12 weeks, including the determination of the Member State responsible. Member States should be able to extend this deadline to 16 weeks where the person is transferred pursuant to Regulation (EU) .../...<sup>+</sup>. This deadline should be understood as a stand-alone deadline for the asylum border procedure, from the registration of the application until the applicant does not have the right to remain and is not allowed to remain. Within this period, Member States are entitled to set the deadline in national law both for the administrative and for the various subsequent procedural steps, but should set them in a way so as to ensure that the examination procedure is concluded and that subsequently, if relevant, the decision on the request to remain and, if applicable, the decision on appeal are issued within 12 weeks or, if applicable, 16 weeks. After that period, if the Member State nevertheless failed to take the relevant decisions, the applicant should be authorised to enter the territory of the Member State, subject to limited exceptions, in order for the appropriate procedure to continue. Entry into the territory is not authorised where the applicant has no right to remain, where he or she has not requested to be allowed to remain for the purposes of an appeal procedure, or where a court or tribunal has decided that he or she should not be allowed to remain pending the outcome of an appeal procedure. In such cases, to ensure continuity between the asylum procedure and the return procedure, the return procedure is also carried out in the context of a border return procedure provided for in Regulation (EU) .../...<sup>++</sup> for a period not exceeding 12 weeks.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B(COD)).

(69) While the border procedure for the examination of an application for international protection can be applied without recourse to detention, Member States should nevertheless be able to apply the grounds for detention during the border procedure in accordance with the provisions of the Directive (EU) .../...<sup>+</sup> in order to decide on the right of the applicant to enter the territory. If detention is used during such procedure, the provisions on detention of that Directive should apply, including the guarantees for detained applicants, conditions of detention, judicial control, and the fact that an individual assessment of each case is necessary. As a rule, minors should not be detained. Only in exceptional circumstances, as a measure of last resort and after it has been established that other less coercive alternative measures cannot be applied effectively, inter alia non-custodial community-based placements, and after detention is assessed to be in their best interests in accordance with the Directive (EU) .../...<sup>+</sup>, should it be possible to detain minors.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

(70) When an application is rejected in the context of the border procedure, the applicant, third-country national or stateless person concerned should be immediately subject to a return decision or, where the relevant conditions set out in Regulation (EU) 2016/399 of the European Parliament and of the Council<sup>15</sup> are met, to a refusal of entry. To guarantee the equal treatment of all third-country nationals and stateless persons whose application has been rejected in the context of the border procedure, where a Member State has decided not to apply the provisions of Directive 2008/115/EC of the European Parliament and of the Council<sup>16</sup> pursuant to the relevant derogation set out therein to third-country nationals and stateless persons and does not issue a return decision to the third-country national concerned, the treatment and level of protection of the applicant, third-country national or stateless person concerned should be in accordance with the provision of Directive 2008/115/EC on more favourable provisions with regard to third-country nationals excluded from the scope of that Directive and be equivalent to those applicable to persons subject to a return decision.

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<sup>15</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77 23.3.2016, p. 1).

<sup>16</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348 24.12.2008, p. 98).

- (71) The border procedure should be carried out in full compliance with the Charter and Union law. Each Member State should in that context provide for a monitoring of fundamental rights mechanism in relation to the border procedure that meets the criteria set out in Regulation (EU) .../... of the European Parliament and of the Council<sup>17+</sup>.
- (72) Within their respective mandates, Union agencies, and in particular the Asylum Agency, should be able to provide support to the Member States and the Commission, at their request, with a view to ensuring the proper implementation and functioning of this Regulation, including the provisions of this Regulation related to the accelerated and border procedures. Union agencies, and in particular the Asylum Agency, can propose specific support to a Member State.
- (73) It should be possible for a Member State to which an applicant is transferred in accordance with Regulation (EU) .../...<sup>++</sup> to examine the application in a border procedure provided that the applicant has not yet been authorised to enter the territory of the Member States concerned and the conditions for the application of such a procedure are met in the Member State from which the applicant was transferred and by the Member State to which the applicant was transferred.

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<sup>17</sup> Regulation (EU) .../... of the European Parliament and of the Council of ... introducing the screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 (OJ L, ..., ELI: ...).

<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)) and insert the number, date, title and OJ reference of that Regulation in the footnote.

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (74) The notion of public order can, inter alia, cover a conviction for having committed a serious crime.
- (75) As long as an applicant can show good cause, the lack of documents on entry or the use of forged documents should not per se entail an automatic recourse to an accelerated examination procedure or a border procedure.
- (76) Where an applicant does not comply with certain obligations arising from this Regulation, Regulation (EU) .../...<sup>+</sup> or Directive (EU) .../...<sup>++</sup>, the application should not be further examined and it should in principle be rejected or declared as implicitly withdrawn, and any new application in the Member States by the same applicant after that decision should be considered to be a subsequent application. Where a person made a subsequent application in another Member State and is transferred to the Member State responsible pursuant to Regulation (EU) .../...<sup>+</sup>, the responsible Member State should not be obliged to examine the application made in the other Member State.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

- (77) Where an applicant makes a subsequent application without presenting new elements which significantly increase his or her likelihood of qualifying as a beneficiary of international protection or which relate to the reasons for which the previous application was rejected as inadmissible, that subsequent application should not be subject to a new full examination procedure. In those cases, following a preliminary examination, applications should be rejected as inadmissible in accordance with the *res judicata* principle. The preliminary examination should be carried out on the basis of written submissions or a personal interview. The personal interview may, in particular, be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to new elements. In the case of subsequent applications, exceptions may be made to the individual's right to remain on the territory of a Member State.
- (78) An applicant who lodges a subsequent application at the last minute merely in order to delay or frustrate his or her removal should not be authorised to remain pending the finalisation of the decision declaring the application inadmissible in cases where it is immediately clear to the determining authority that no new elements have been presented and there is no risk of refoulement. The determining authority should issue a decision under national law confirming that these criteria are fulfilled in order for the applicant not to be authorised to remain.

- (79) A key consideration as to whether an application for international protection is well-founded is the safety of the applicant in his or her country of origin. Having regard to the fact that Regulation (EU) .../...<sup>+</sup> aims to achieve a high level of convergence on the qualification of third-country nationals and stateless persons as beneficiaries of international protection, this Regulation establishes common criteria for designating third countries as safe countries of origin, in view of the need to strengthen the application of the safe country of origin concept as an essential tool to support the swift examination of applications that are likely to be unfounded.
- (80) It should be possible to designate a third country as safe country of origin with exceptions for specific parts of its territory or clearly identifiable categories of persons. In addition, the fact that a third country is included in a list of safe countries of origin cannot establish an absolute guarantee of safety for nationals of that country, even for those who do not belong to a category of persons for which such an exception is made, and therefore does not dispense with the need to conduct an appropriate individual examination of the application for international protection. By its very nature, the assessment underlying the designation can only take into account the general, civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in that country. For this reason, it should be possible to apply the concept of a safe country of origin only where the applicant cannot provide elements justifying why the concept of safe country of origin is not applicable to him or her, in the framework of an individual assessment.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (81) The designation of safe countries of origin and safe third countries at Union level should address some of the existing divergences between Member States' national lists of safe countries. While Member States should retain the right to apply or introduce legislation that allows for the national designation of third countries other than those designated as safe third countries or safe countries of origin at Union level, such common designation or list should ensure that the concepts are applied by all Member States in a uniform manner in relation to applicants whose countries of origin are designated or for whom there is a safe third country. This should facilitate convergence in the application of procedures and thereby also deter secondary movements of applicants for international protection.



(82) The Commission, assisted by the Asylum Agency, should review the situation in third countries designated as safe third countries or safe countries of origin at Union level. Where there is a significant change for the worse in the situation of such a third country and following a substantiated assessment, the Commission should be able to suspend the designation of that third country as safe third country or safe country of origin at Union level for a limited period of time by means of a delegated act. The Commission should also be able to extend the suspension of the designation of a third country as a safe third country or a safe country of origin at Union level for a period of six months, with a possibility to renew that extension once. In order to address significant changes for the worse in a third country designated as a safe third country or safe country of origin at Union level, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of suspending the designation of that third country as safe third country or safe country of origin at Union level for a period of six months where the Commission considers, on the basis of a substantiated assessment, that the conditions set by this Regulation are no longer met, and to extend the suspension of the designation of a third country as a safe third country or a safe country of origin at Union level for a period of six months, with a possibility to renew that extension once. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making<sup>18</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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<sup>18</sup> OJ L 123, 12.5.2016, p. 1.

- (83) The Commission should continuously review the situation in that third country taking into account *inter alia* information provided by the Member States and the Asylum Agency regarding subsequent changes in the situation of that third country. Moreover, in this case, the Commission should propose an amendment in accordance with the ordinary legislative procedure to remove that third country's designation as a safe country at Union level within 3 months of the adoption of delegated act suspending that third country. For the purposes of the substantiated assessment, the Commission should take into consideration a range of sources of information at its disposal, in particular its annual progress reports for third countries designated as candidate countries by the European Council, regular reports from the European External Action Service and the information from Member States, the Asylum Agency, the United Nations High Commissioner for Refugees, the Council of Europe and other relevant international organisations.
- (84) When the period of validity of the delegated act and its extensions expires, without a new delegated act being adopted, the designation of the third country as safe third country or safe country of origin at Union level should no longer be suspended. This should be without prejudice to any proposed amendment for the removal of the third country from the designation.

- (85) The Commission, with the assistance of the Asylum Agency, should review the situation in third countries that have been removed from the designation as safe countries of origin or safe third countries at Union level, including where a Member State notifies the Commission that it considers, on the basis of a substantiated assessment, that, following changes in the situation of that third country, it fulfils again the conditions set out in this Regulation for being designated as safe. In such a case, Member States could only designate that third country as a safe country of origin or a safe third country at the national level as long as the Commission does not raise objections to that designation within a period of two years after the date of removal from the designation of that third country as safe third country or safe country of origin at Union level. Where the Commission considers that these conditions are fulfilled, it may propose an amendment to the designation of safe third countries or safe countries of origin at Union level so as to add the third country.
- (86) With respect to the withdrawal of refugee or subsidiary protection status, Member States should ensure that persons benefiting from international protection are duly informed of a possible reconsideration of their status and that they are given the opportunity to submit their point of view, within a reasonable time, by means of a written statement and in a personal interview, before the authorities can take a reasoned decision to withdraw their status.

- (87) Decisions taken on an application for international protection rejecting it as inadmissible, as unfounded or manifestly unfounded in relation to refugee or subsidiary protection status, or as implicitly withdrawn, as well as decisions to withdraw refugee or subsidiary protection status should be subject to an effective remedy before a court or tribunal in compliance with all requirements and conditions laid down in Article 47 of the Charter. To ensure the effectiveness of the procedure, the applicant should lodge his or her appeal within a set time limit. For the applicant to be able to meet those time limits and with a view to ensuring effective access to judicial review, he or she should be entitled to free legal assistance and representation. This should be without prejudice to the possibility for applicants or beneficiaries of international protection to benefit from other remedies of general application provided for at national level which are not specific to the procedure for granting or withdrawing international protection.
- (88) In some Member States, legal procedural provisions require there to be a second level of appeal beyond that which is required in accordance with this Regulation. In the light of the principles of proportionality and subsidiarity, and having due regard to the procedural autonomy of the Member States, as well as the objectives of this Regulation, it is appropriate to provide for a flexible definition of what constitutes a final decision by means of referring to national law, it being understood that Member States should as a minimum provide for the remedies laid down in Chapter V of this Regulation before a decision becomes final in accordance with national law. Where a subsequent application has been made before the decision on a previous application becomes final, it should be considered to be a further representation and examined in the framework of the ongoing administrative or appeal procedure as appropriate.

- (89) The notion of court or tribunal is a concept governed by Union law, as interpreted by the Court of Justice of the European Union. That notion, among other elements, can only mean an authority acting as a third party in relation to the authority which adopted the decision forming the subject-matter of the proceedings. That authority should perform judicial functions and it is not decisive whether that authority is recognised as a court or tribunal under national law. This regulation should not affect Member States' competence to organise their national court system and determine the number of instances of appeal. Where national law provides for the possibility to lodge further appeals against a first appeal or subsequent appeals decision, the procedure and the suspensive effect of such appeals should be regulated in national law, in accordance with Union law and international obligations.
- (90) For the purposes of the appeal procedure, Member States could provide that hearings before a court or tribunal of first instance could be held via video conference, provided that the necessary arrangements are in place.
- (91) For an applicant to be able to exercise his or her right to an effective remedy against a decision rejecting an application for international protection, all effects of the return decision should be automatically suspended for as long as the applicant has the right to remain or has been allowed to remain on the territory of a Member State.

- (92) Applicants should, in principle, have the right to remain on the territory of a Member State until the time limit for lodging an appeal before a court or tribunal of first instance expires, and, where such a right is exercised within the set time limit, pending the outcome of the appeal. It is only in the limited cases set out in this Regulation, where applications are likely to be unfounded, and without prejudice to the principle of non-refoulement, that the applicant should not have an automatic right to remain for the purposes of the appeal.
- (93) In cases where the applicant has no automatic right to remain for the purposes of the appeal, a court or tribunal should still be able to allow the applicant to remain on the territory of the Member State pending the outcome of the appeal, upon the applicant's request or acting of its own motion. In such cases, applicants should have a right to remain until the time limit for requesting a court or tribunal to be allowed to remain has expired and, where the applicant has presented such a request within the set time-limit, pending the decision of the competent court or tribunal. In order to discourage abusive or last minute subsequent applications, Member States should be able to provide in national law that applicants should have no right to remain during that period in the case of rejected subsequent applications, with a view to preventing further unfounded subsequent applications. In the context of the procedure for determining whether or not the applicant should be allowed to remain pending the appeal, the applicant's rights of defence should be adequately guaranteed by providing him or her with the necessary interpretation and legal assistance. Furthermore, the competent court or tribunal should be able to examine the decision refusing to grant international protection in terms of facts and points of law.

- (94) In order to ensure effective returns, applicants should not have a right to remain on the Member State's territory at the stage of a second or further level of appeal before a court or tribunal against a negative decision on the application for international protection, without prejudice to the possibility for a court or tribunal to allow the applicant to remain.
- (95) To ensure the consistency of the legal review carried out by a court or tribunal on a decision rejecting an application for international protection and the accompanying return decision, and with a view to accelerating the examination of the case and reducing the burden on the competent judicial authorities, such decisions should, if taken as part of the related decision on the application for international protection or decision to withdraw international protection, be subject to common proceedings before the same court or tribunal.
- (96) In order to ensure fairness and objectivity in the management of applications and effectiveness in the common procedure for international protection, time limits should be set for the administrative procedure.
- (97) In accordance with Article 72 TFEU, this Regulation does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

- (98) Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>19</sup> applies to the processing of personal data by the Member States carried out in application of this Regulation.
- (99) Any processing of personal data by the Asylum Agency within the framework of this Regulation should be conducted in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>20</sup>, as well as Regulation (EU) 2021/2303 and it should, in particular, respect the principles of necessity and proportionality.
- (100) Any personal data collected upon registration or lodging of an application for international protection and during the personal interview should be considered to be part of the applicant's file and it should be kept for a sufficient number of years since third-country nationals or stateless persons who request international protection in one Member State may try to request international protection in another Member State or may submit further subsequent applications in the same or another Member State for years to come. Given that most third-country nationals or stateless persons who have stayed in the Union for several years will have obtained a settled status or even citizenship of a Member State after a period of ten years from when they are granted international protection, that period should be considered a necessary period for the storage of personal details, including fingerprints and facial images.

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<sup>19</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>20</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).



- (101) This Regulation does not deal with procedures between Member States governed by Regulation (EU) .../...<sup>+</sup>, including as regards appeals in the context of those procedures.
- (102) This Regulation should apply to applicants to whom Regulation (EU) .../...<sup>+</sup> applies, in addition and without prejudice to the provisions of that Regulation.
- (103) With a view to ensuring the consistent implementation of this Regulation by the time of its entry into application, implementation plans at Union and national levels that identify gaps and operational steps for each Member States should be developed and implemented.
- (104) The application of this Regulation should be evaluated at regular intervals.
- (105) Since the objective of this Regulation, namely to establish a common procedure for granting and withdrawing international protection, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (106) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (107) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (108) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter. In particular, this Regulation seeks to ensure full respect for human dignity and to promote the application of Articles 1, 4, 8, 18, 19, 21, 23, 24, and 47 of the Charter,

HAVE ADOPTED THIS REGULATION:

# Chapter I

## General provisions

### *Article 1*

#### *Subject matter*

This Regulation establishes a common procedure for granting and withdrawing international protection pursuant to Regulation (EU) .../...<sup>+</sup>.

### *Article 2*

#### *Scope*

1. This Regulation applies to all applications for international protection made in the territory of the Member States, including at the external border, on the territorial sea or in the transit zones of the Member States, and to the withdrawal of international protection.
2. This Regulation does not apply to applications for international protection and to requests for diplomatic or territorial asylum submitted to representations of Member States.
3. Member States may decide to apply this Regulation to applications for protection to which Regulation (EU) .../...<sup>+</sup> does not apply.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

*Article 3*  
*Definitions*

For the purposes of this Regulation, the following definitions apply:

- (1) ‘refugee’ means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person who, being outside of the country of former habitual residence for the same reasons as mentioned, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 of Regulation (EU) .../...<sup>+</sup> does not apply;
- (2) ‘person eligible for subsidiary protection’ means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that that person, if returned to his or her country of origin or, in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 of Regulation (EU) .../...<sup>+</sup>, and to whom Article 17(1) and (2) of that Regulation does not apply, and is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country;
- (3) ‘refugee status’ means the recognition by a Member State of a third-country national or a stateless person as a refugee in accordance with Regulation (EU) .../...<sup>+</sup>;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (4) ‘subsidiary protection status’ means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection in accordance with Regulation (EU) .../...<sup>+</sup>;
- (5) ‘international protection’ means refugee status or subsidiary protection status;
- (6) ‘minor’ means a third-country national or stateless person below the age of 18 years;
- (7) ‘unaccompanied minor’ means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her, whether by law or practice of the Member State concerned, and for as long as that minor is not effectively taken into the care of such an adult, including a minor who is left unaccompanied after he or she has entered the territory of the Member States;
- (8) ‘final decision’ means a decision on whether or not a third-country national or stateless person is granted refugee status or subsidiary protection status pursuant to Regulation (EU) .../...<sup>+</sup>, including a decision rejecting the application as inadmissible or a decision rejecting an application as implicitly or explicitly withdrawn, which is no longer subject to a remedy under the framework of Chapter V of this Regulation or has become final in accordance with national law, irrespective of whether the applicant has the right to remain in accordance with this Regulation;
- (9) ‘examination of an application for international protection’ means an examination of the admissibility or the merits of an application for international protection in accordance with this Regulation and Regulation (EU) .../...<sup>+</sup>;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (10) ‘biometric data’ means biometric data as defined in Article 2, point (s), of Regulation (EU) .../...<sup>+</sup>;
- (11) ‘adequate capacity’ means the capacity required at any given moment to carry out the asylum border procedure, and the return border procedure established pursuant to Regulation (EU) .../...<sup>++</sup> or, where applicable, an equivalent return border procedure established under national law;
- (12) ‘application for international protection’ or ‘application’ means a request for protection from a Member State made by a third-country national or a stateless person who can be understood to be seeking refugee status or subsidiary protection status;
- (13) ‘applicant’ means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;
- (14) ‘applicant in need of special procedural guarantees’ means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Regulation is limited due to individual circumstances, such as specific vulnerabilities;
- (15) ‘stateless person’ means a person who is not considered to be a national by any State under the operation of its law;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 17/24 (2016/0224B(COD)).

- (16) ‘determining authority’ means any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection and competent to take decisions under the administrative procedure;
- (17) ‘withdrawal of international protection’ means a decision by a determining authority or a competent court or tribunal to revoke or end, including by refusing to renew, international protection, in accordance with Regulation (EU) .../...<sup>+</sup>;
- (18) ‘remain in the Member State’ means to remain on the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined;
- (19) ‘subsequent application’ means a further application for international protection made in any Member State after a final decision has been taken on a previous application, including cases in which the application has been rejected as explicitly or implicitly withdrawn;
- (20) ‘Member State responsible’ means the Member State responsible for the examination of an application in accordance with Regulation (EU) .../...<sup>++</sup>.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

*Article 4*  
*Competent authorities*

1. Each Member State shall designate in accordance with national law a determining authority to carry out the tasks conferred on it pursuant to this Regulation and Regulation (EU) .../...<sup>+</sup>, in particular:
  - (a) receiving and examining applications for international protection;
  - (b) taking decisions on applications for international protection;
  - (c) taking decisions on the withdrawal of international protection.

The determining authority shall be the only authority, during the administrative procedure, with the power to decide on the admissibility and the merits of an application for international protection.

2. Without prejudice to paragraph 1, Member States shall entrust other relevant national authorities with the task of receiving applications for international protection as well as informing applicants as to where and how to lodge an application in accordance with Article 28. Those other national authorities shall, at least, include the police, immigration authorities, border guards and the authorities responsible for detention facilities or reception facilities.
3. Each Member State shall designate a competent authority to register applications for international protection. Member States may entrust the determining authority or other relevant authorities with the task of registering applications for international protection.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).



4. Where an application is received by an authority without the power to register it, that authority shall promptly inform the authority responsible for registering applications and that application shall be registered in accordance with Article 27. The authority responsible for receiving the application shall also inform the applicant for international protection which authority is responsible for registering the application.
5. For the purposes of paragraphs 2 and 3, by ... [the date of application of this Regulation], each Member State shall notify the Commission of the authorities it has designated to carry out the tasks referred to in those paragraphs, specifying the tasks assigned to them. Any changes in the identification of these authorities shall be notified to the Commission immediately.
6. Member States may provide that an authority other than the determining authority is to be responsible for the procedure for determining the Member State responsible in accordance with Regulation (EU) .../...<sup>+</sup>.
7. Each Member State shall provide the determining authority and the other competent authorities designated pursuant to this Article with appropriate means, including sufficient competent staff to carry out their tasks under this Regulation.
8. Member States shall ensure that the staff of the competent authorities applying this Regulation have the appropriate knowledge and have received training, including the relevant training under Article 8 of Regulation (EU) 2021/2303, and guidance to fulfil their obligations when applying this Regulation.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

## *Article 5*

### *Assistance to competent authorities*

Without prejudice to Article 4(7) and (8), at the request of the Member State, competent authorities identified under Article 4 may, for the purpose of receiving and registering applications for international protection and of facilitating the examination of applications, including with regard to the personal interview, be assisted by:

- (a) experts deployed by the European Union Agency for Asylum (the ‘Asylum Agency’) in accordance with Regulation (EU) 2021/2303, and
- (b) the competent authorities of another Member State that have been entrusted by that Member State with the task of receiving, registering or examining applications for international protection.

Competent authorities designated pursuant to Article 4 may assist the authorities of another Member State only for the tasks with which they have been entrusted by their Member State.

The competence to decide on individual applications for international protection shall remain solely with the determining authority of the Member State responsible.

*Article 6*

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

1. Member States shall allow the United Nations High Commissioner for Refugees to:
  - (a) have access to applicants, including those in reception centres, in detention, at the border and in transit zones;
  - (b) 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) present its views, in the exercise of its supervisory responsibilities under Article 35 of the Convention of 28 July 1951 Relating to the Status of Refugees, as supplemented by the New York Protocol of 31 January 1967 (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 on 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.

*Article 7*  
*Confidentiality principle*

1. The authorities applying this Regulation shall be bound by the principle of confidentiality in relation to any personal information they acquire in the performance of their duties, including any exchange of information in accordance with Union or national law which is relevant for the application of this Regulation between authorities of the Member States.
2. Throughout the procedure for international protection and after a final decision on the application has been taken, the authorities shall not:
  - (a) disclose information regarding the individual application for international protection or the fact that an application has been made, to the alleged actors of persecution or serious harm;
  - (b) obtain any information from the alleged actors of persecution or serious harm in a manner that would result in such actors being informed of the fact that an application has been made by the applicant in question.

## **Chapter II**

### **Basic principles and guarantees**

#### **SECTION I**

#### **RIGHTS AND OBLIGATIONS OF APPLICANTS**

##### *Article 8*

##### *General guarantees for applicants*

1. During the administrative procedure referred to in Chapter III applicants shall enjoy the guarantees set out in paragraphs 2 to 6 of this Article.
2. The determining authority or, where applicable, other competent authorities or organisations tasked by Member States for that purpose shall inform applicants, in a language which they understand or are reasonably supposed to understand, of the following:
  - (a) the right to lodge an individual application;
  - (b) the time limits and stages of the procedure to be followed;
  - (c) their rights and obligations during the procedure, including those under Regulation (EU) .../...<sup>+</sup>, and the consequences of not complying with those obligations, in particular as regards the explicit or implicit withdrawal of an application;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (d) the right to free legal counselling for the lodging of the individual application and to legal assistance and representation at all stages of the procedure pursuant to Section III of this Chapter and in accordance with Articles 15, 16, 17, 18 and 19;
- (e) the means by which they can fulfil the obligation to submit the elements as referred to in Article 4 of Regulation (EU) .../...<sup>+</sup>;
- (f) the decision of the determining authority in accordance with Article 36.

All the information referred to in this paragraph shall be provided as soon as possible to enable applicants to exercise the rights guaranteed in this Regulation and to enable them to adequately comply with the obligations set out in Article 9. The information referred to in the first subparagraph, points (a) to (e), of this paragraph shall be provided to the applicant at the latest when the application for international protection is registered. That information shall be provided by means of the leaflet referred to in paragraph 7, either physically or electronically, and, if necessary, orally. Information shall be provided to minors in a child-friendly manner and with the involvement of the representative or the person referred to in Article 23(2), point (a), of this Regulation.

The applicant shall be given the opportunity to confirm that he or she has received the information. Such confirmation shall be documented in the applicant's file. If the applicant refuses to confirm that he or she has received the information, a note of that fact shall be entered in his or her file.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

3. During the administrative procedure, applicants shall be provided with the services of an interpreter for the purpose of registering and lodging an application and, where applicable, for the personal interview, whenever appropriate communication cannot be otherwise ensured. The interpretation services shall be paid for from public funds.
4. The competent authorities shall provide applicants as soon as possible and before the deadline for lodging an application in accordance with Article 28(1), with the opportunity to communicate with the United Nations High Commissioner for Refugees or with any other organisation providing legal advice or other counselling to applicants in accordance with national law.
5. The determining authority shall ensure that applicants and, where applicable, their representatives or legal advisers or other counsellors admitted or permitted as such under national law to provide legal advice ('legal advisers') have access to the information referred to in Article 34(2), points (b) and (c), that is required for the examination of applications and to the information provided by the experts referred to in Article 34(3), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application.
6. The determining authority shall give applicants notice in writing as soon as possible of the decision taken on their application. Where a representative or legal adviser legally represents the applicant, the determining authority may give notice of the decision to that representative or legal adviser instead of to the applicant.

7. The Asylum Agency shall, in close cooperation with the Commission and each Member State, draw up leaflets containing the information required by this Article. Those leaflets shall be drawn up in such a manner so as to enable Member States to complete them with additional information specific to the Member State concerned and shall take into account the specificities of vulnerable applicants such as minors or disabled persons.

### *Article 9*

#### *Obligations of applicants*

1. The applicant shall make his or her application in the Member State provided for in Article 17(1) and (2) of Regulation (EU) .../...<sup>+</sup>.
2. The applicant shall fully cooperate with the competent authorities referred to in Article 4 in matters covered by this Regulation, in particular by
  - (a) providing the data referred to in Article 27(1), points (a),(b) and (d);
  - (b) providing an explanation where he or she is not in possession of an identity or travel document;
  - (c) providing information on any changes as regards his or her place of residence, address, telephone number or email address;
  - (d) providing biometric data;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).



- (e) lodging his or her application in accordance with Article 28 and remaining available throughout the procedure;
- (f) handing over as soon as possible documents in his or her possession relevant to the examination of the application;
- (g) attending the personal interview, without prejudice to Article 13;
- (h) remaining on the territory of the Member State where he or she is required to be present, in accordance with Article 17(4) of Regulation (EU) .../...<sup>+</sup>.

Where the competent authorities decide to retain any document as referred to in point (f) of the first subparagraph, they shall ensure that the applicant immediately receives copies of the originals. In the event of a transfer pursuant to Article 46 of Regulation (EU) .../...<sup>+</sup>, competent authorities shall hand back such documents to the applicant at the time of the transfer.

3. The applicant shall accept any communication from the competent authorities at the most recent place of residence or address, by the telephone number or email address indicated by himself or herself to the competent authorities, in particular when he or she lodges an application in accordance with Article 28.

Member States shall establish in national law the method of communication and the moment that the communication is considered to have been received by the applicant.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

4. The applicant shall comply with obligations to report to the competent authorities at a specified time or at reasonable intervals or to remain in a designated geographical area on its territory in accordance with Directive (EU) .../...<sup>+</sup>, as imposed by the Member State in which he or she is required to be present in accordance with Regulation (EU) .../...<sup>++</sup>.
5. Without prejudice to any search carried out for security reasons, where it is necessary and duly justified for the examination of an application, the competent authorities may require that the applicant be searched or that his or her items be searched in accordance with national law. The competent authority shall provide the applicant with the reasons for the search and include them in the applicant's file. Any search of the applicant's person under this Regulation shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity.

#### *Article 10*

##### *Right to remain during the administrative procedure*

1. Applicants shall have the right to remain on the territory of the Member State in which they are required to be present in accordance with Article 17(4) of Regulation (EU) .../...<sup>++</sup> until the determining authority has taken a decision on the application in the administrative procedure provided for in Chapter III.
2. The right to remain shall not constitute an entitlement to a residence permit and it shall not give the applicant the right to travel to the territory of other Member States without a travel document as provided for in Article 6(3) of Directive (EU) .../...<sup>+</sup>.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

3. The applicant shall not have the right to remain on the territory of the Member State concerned during the administrative procedure where the person is subject to a surrender to another Member State pursuant to obligations in accordance with a European arrest warrant issued in accordance with Council Framework Decision 2002/584/JHA<sup>21</sup>.
4. Member States may provide for an exception to the applicant's right to remain on their territory during the administrative procedure where that applicant:
  - (a) makes a subsequent application in accordance with Article 55 and the conditions laid down in Article 56 have been fulfilled;
  - (b) is or will be extradited, surrendered or transferred to another Member State, a third country, the International Criminal Court or another international court or tribunal for the purpose of conducting a criminal prosecution or for the execution of a custodial sentence or a detention order;
  - (c) is a danger to public order or national security, without prejudice to Article 12 and 17 of the Regulation (EU) .../...<sup>+</sup>, provided that applying such an exception does not result in the applicant being removed to a third country in violation of the principle of non-refoulement.

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<sup>21</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

5. A Member State may extradite, surrender or transfer an applicant to a third country or an international court or tribunal as referred to in paragraph 4, point (b), only where the competent authority considers that such a decision to extradite, surrender or transfer will not result in direct or indirect refoulement in breach of the obligations of that Member State under international and Union law.

## **SECTION II**

### **PERSONAL INTERVIEWS**

#### *Article 11*

#### *Admissibility interview*

1. Without prejudice to Article 38(1) and Article 55(4), before a decision is taken by the determining authority on the inadmissibility of an application in accordance with Article 38, the applicant shall be given the opportunity of a personal interview on admissibility (the ‘admissibility interview’).
2. In the admissibility interview, the applicant shall be given an opportunity to provide reasons as to why the inadmissibility grounds provided for in Article 38 would not be applicable to him or her.

## *Article 12*

### *Substantive interview*

1. Before a decision is taken by the determining authority on the merits of an application for international protection, the applicant shall be given the opportunity of a personal interview on the substance of his or her application (the ‘substantive interview’). The substantive interview may be conducted at the same time as the admissibility interview provided the applicant has been informed of such a possibility in advance and has been able to consult with his or her legal adviser in accordance with Article 15 or with a person entrusted with providing legal counselling in accordance with Article 16.
2. In the substantive interview, the applicant shall be given the opportunity to present the elements needed to substantiate his or her application in accordance with Regulation (EU) .../...<sup>+</sup>, and he or she shall provide the elements referred to in Article 4(2) of that Regulation as completely as possible. The applicant shall be given the opportunity to provide an explanation regarding elements which might be missing or any inconsistencies or contradictions in his or her statements.

## *Article 13*

### *Requirements for personal interviews*

1. Personal interviews as provided for in Articles 11 and 12 shall be conducted in accordance with the conditions established in this Regulation.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

2. Where an application for international protection is lodged in accordance with Article 31, the adult responsible referred to in that provision shall be given the opportunity of a personal interview pursuant to Articles 11 and 12. The applicant shall also be given the opportunity to participate in that interview provided that paragraph 11, point (c), of this Article does not apply.
3. The personal interviews shall be conducted under conditions which ensure appropriate privacy and confidentiality and which allow applicants to present the grounds for their applications in a comprehensive manner.
4. The presence of the applicant's legal adviser at the personal interview, where the applicant has decided to avail himself or herself of legal assistance in accordance with Section III of this Chapter shall be ensured.
5. An interpreter who is able to ensure appropriate communication between the applicant and the person conducting the interview shall be provided for the personal interviews.

The presence of a cultural mediator may be provided during the personal interviews.

Member States shall give preference to interpreters and cultural mediators that have received training, such as training referred to in Article 8(4), point (m), of Regulation (EU) 2021/2303.

Member States shall ensure that interpreters and cultural mediators are made aware of the key concepts and terminology relevant to the assessment of applications for international protection, for example through a standard leaflet or a guide. Communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly.

6. Personal interviews shall be conducted by the staff of the determining authority.

Where there is a disproportionate number of third-country nationals or stateless persons who make an application within the same period of time, making it unfeasible to conduct timely personal interviews of each applicant, the determining authority may be assisted temporarily by the staff of other authorities of that Member State who shall receive in advance the relevant training which shall include the elements listed in Article 8 of Regulation (EU) 2021/2303 to conduct such interviews or by the Asylum Agency in accordance with Article 5.

7. The person conducting the interview shall:

- (a) be competent to take account of the personal and general circumstances surrounding the application, including the situation prevailing in the applicant's country of origin, and the applicant's cultural origin, age, gender, gender identity, sexual orientation, vulnerability and special procedural needs;
- (b) not wear a military or law enforcement uniform.

8. Staff interviewing applicants, including experts deployed by the Asylum Agency, shall have:
- (a) acquired general knowledge of 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 or a victim of trafficking in human beings;
  - (b) received, in advance, training that includes relevant elements from those listed in Article 8(4) of Regulation (EU) 2021/2303.
9. Where requested by the applicant and where possible, the determining authority shall ensure that the interviewers and interpreters are of the sex that the applicant prefers, unless it has reasons to consider that such a request does not relate to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner.
10. By way of derogation, the determining authority may hold the personal interview by video conference where duly justified by the circumstances.

In such a case, the determining authority shall ensure the necessary arrangements for the appropriate facilities, procedural and technical standards, legal assistance and interpretation taking into account guidance from the Asylum Agency.



11. The admissibility interview or the substantive interview, as applicable, may be omitted where:
- (a) the determining authority is able to take a positive decision with regard to the refugee status or the subsidiary protection status on the basis of the evidence available, provided that the subsidiary protection status offers the same rights and benefits as refugee status under Union and national law;
  - (b) the determining authority considers that the application is not inadmissible on the basis of the evidence available;
  - (c) the determining authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control;
  - (d) in the case of a subsequent application, the preliminary examination referred to in Article 55(4) is carried out on the basis of a written statement;
  - (e) the determining authority considers the application inadmissible pursuant to Article 38(1), point (c).

The omission of a personal interview pursuant to point (c) of the first subparagraph shall not adversely affect the decision of the determining authority. Where the personal interview is omitted pursuant to that point, the determining authority shall give the applicant an effective opportunity to submit further information in writing.

When in doubt as to the fitness or ability of the applicant to be interviewed, the determining authority shall consult a medical professional to establish whether the applicant is temporarily unfit or unable to be interviewed or whether his or her situation is of an enduring nature. Where, following consultation of that medical professional, it is clear that the condition making the applicant unfit or unable to be interviewed is of a temporary nature, the determining authority shall postpone the personal interview until such time as the applicant is fit or able to be interviewed.

Where the applicant is unable to attend the personal interview owing to specific circumstances beyond his or her control, the determining authority shall reschedule the personal interview

12. Applicants shall be present at the personal interview and shall be required to respond in person to the questions asked.
13. An applicant shall be allowed to be assisted by a legal adviser in the personal interview, including when it is held by video conference.

The absence of the legal adviser shall not prevent the determining authority from conducting the interview.

Member States may stipulate in national law that, where a legal adviser participates in the personal interview, the legal adviser may only intervene at the end of the personal interview.

14. Without prejudice to Articles 11(1) and 12(1) and provided that sufficient efforts have been made to ensure that the applicant has been afforded the opportunity of a personal interview, the absence of a personal interview shall not prevent the determining authority from taking a decision on the application for international protection.

*Article 14*

*Report and recording of personal interviews*

1. The determining authority or any other authority or experts assisting it in accordance with Article 5 and Article 13(6) with conducting the personal interviews shall make a thorough and factual report containing all the main elements of the personal interview, or a transcript of the interview or a transcript of the recording of such an interview, to be included in the applicant's file.
2. The personal interviews shall be recorded using audio means of recording. The applicant shall be informed in advance of the fact that such a recording is being made and the purpose thereof. Particular attention shall be paid to the requirements of applicants in need of special procedural guarantees. The determining authority shall include the recording in the applicant's file.

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 or other factual mistakes appearing in the report, the transcript of the interview or the transcript of the recording, 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, of the transcript of the interview or of the transcript of the recording, with the assistance of an interpreter, where necessary.
4. The applicant shall be requested to confirm that the content of the report or the transcript of the interview correctly reflects the personal interview. Where the applicant refuses to confirm the content, the reasons for that refusal shall be entered in the applicant's file. That refusal shall not prevent the determining authority from taking a decision on the application. Where there is doubt as to the statements made by the applicant during the personal interview, the audio recording shall prevail.
5. The applicant does not have to be requested to make comments or to provide clarifications on the report or the transcript of the interview, nor to confirm that the content of the report or the transcript of the interview correctly reflects the interview where:
  - (a) under national law, the recording or a transcript thereof may be admitted as evidence in the appeal procedure, or
  - (b) it is clear to the determining authority that the applicant will be granted refugee status or subsidiary protection status provided that the subsidiary protection status offers the same rights and benefits as refugee status under Union and national law.

6. Applicants and, where they have been appointed, their representatives and their legal advisers shall have access to the report or transcripts referred to in paragraph 1 as soon as possible after the interview and in any case in due time before the determining authority takes a decision,.

Access to the recording shall also be provided in the appeal procedure.

### **SECTION III**

#### **PROVISION OF LEGAL COUNSELLING AND LEGAL ASSISTANCE AND REPRESENTATION**

##### *Article 15*

##### *Right to legal counselling and legal assistance and representation*

1. Applicants shall have the right to consult, in an effective manner, a legal adviser or other counsellor on matters relating to their applications at all stages of the procedure.
2. Without prejudice to 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 free legal counselling in the administrative procedure provided for in Chapter III, in accordance with Article 16, and free legal assistance and representation in the appeal procedure provided for in Chapter V, in accordance with Article 17.

The applicant shall be informed as soon as possible and at the latest when registering the application in accordance with Article 27 of his or her right to request free legal counselling or free legal assistance and representation.

3. Member States may provide for free legal assistance and representation in the administrative procedure in accordance with national law.
4. Member States may organise the provision of legal counselling and legal assistance and representation in accordance with their national systems.

*Article 16*

*Free legal counselling in the administrative procedure*

1. Member States shall, at the request of the applicant, provide free legal counselling in the administrative procedure provided for in Chapter III.

For the purposes of the first subparagraph, effective access to free legal counselling may be assured by entrusting a person with the provision of legal counselling in the administrative stage of the procedure to several applicants at the same time.

2. For the purposes of the administrative procedure, free legal counselling shall include the provision of:
  - (a) guidance on and an explanation of the administrative procedure including information on rights and obligations during that procedure;
  - (b) assistance on the lodging of the application and guidance on:
    - (i) the different procedures under which the application may be examined and the reasons for the application of those procedures,

- (ii) the rules related to the admissibility of an application,
- (iii) legal issues arising in the course of the procedure, including information on how to challenge a decision rejecting an application in accordance with Articles 67, 68 and 69.

3. Without prejudice to paragraph 1, the provision of free legal counselling in the administrative procedure may be excluded where:

- (a) the application is a first subsequent application considered to have been lodged merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State;
- (b) the application is a second or further subsequent application;
- (c) the applicant is already assisted and represented by a legal adviser.

4. For the purpose of implementing this Article, Member States may request the assistance of the Asylum Agency. In addition, financial support may be provided through Union funds to the Member States, in accordance with the legal acts governing such funds.

*Article 17*

*Free legal assistance and representation in the appeal procedure*

1. In the appeal procedure, Member States shall, at the request of the applicant, ensure that he or she is provided with free legal assistance and representation. Such free legal assistance and representation shall include the preparation of the procedural documents required under national law, the preparation of the appeal and, in the event of a hearing, participation in that hearing before a court or tribunal.
2. The provision of free legal assistance and representation in the appeal procedure may be excluded by the Member States where:
  - (a) the applicant, who shall disclose his or her financial situation, is considered to have sufficient resources to afford legal assistance and representation at his or her own cost;
  - (b) it is considered that the appeal has no tangible prospect of success or is abusive;
  - (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;
  - (d) the applicant is already assisted or represented by a legal adviser.



3. Where a decision not to grant free legal assistance and representation is taken by an authority which is not a court or tribunal on the grounds that the appeal is considered to have no tangible prospect of success or to be abusive, the applicant shall have the right to an effective remedy before a court or tribunal against that decision. For that purpose, the applicant shall be entitled to request free legal assistance and representation.

### *Article 18*

#### *Scope of legal counselling and legal assistance and representation*

1. A legal adviser who legally represents an applicant under the terms of national law shall be granted access to the information in the applicant's file on the basis of which a decision is or shall be taken.
2. 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 where 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 those cases, the determining authority shall:
  - (a) make access to such information or sources available to the courts or tribunals in the appeal procedure; and

(b) ensure that the applicant's right of defence is respected.

As regards point (b) of the first subparagraph, Member States shall grant access to information or sources to a legal adviser who legally represents the applicant and who has undergone a security check, in so far as the information is relevant for examining the application or for taking a decision to withdraw international protection.

3. The applicant's legal adviser or the person entrusted with providing legal counselling, who counsels, assists or represents an applicant shall have access to closed areas, such as detention facilities and transit zones, for the purpose of counselling, assisting or representing that applicant, in accordance with Directive (EU) .../...<sup>+</sup>.

### *Article 19*

#### *Conditions for the provision of free legal counselling, assistance and representation*

1. Free legal counselling, assistance and representation shall be provided by legal advisers or other counsellors, admitted or permitted under national law to counsel, assist or represent the applicants or by non-governmental organisations accredited under national law to provide legal services or representation to applicants.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

2. Member States shall lay down specific procedural rules concerning the arrangements for filing and processing requests for the provision of free legal counselling, 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 are not more restrictive or do not render access to free legal counselling or free legal assistance and representation impossible or excessively difficult.
3. Member States shall lay down specific rules concerning the exclusion of the provision of free legal counselling, assistance and representation in accordance with Article 16(3) and Article 17(2), respectively.
4. Member States may also impose monetary limits or time limits on the provision of free legal counselling, assistance and representation, provided that such limits are not arbitrary and do not unduly restrict access to free legal counselling, 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.
5. Member States may request from the applicant the total or partial reimbursement of the costs incurred in relation to the provision of legal assistance and representation where the applicant's financial situation considerably improves in the course of the procedure or where the decision to provide free legal assistance and representation 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.

## SECTION IV

### SPECIAL GUARANTEES

#### *Article 20*

#### *Assessment of the need for special procedural guarantees*

1. The competent authorities shall individually assess whether the applicant is in need of special procedural guarantees, with the assistance of an interpreter, where needed. That assessment may be integrated into existing national procedures or into the assessment referred to in Article 25 of Directive (EU) .../...<sup>+</sup> and need not take the form of an administrative procedure. Where required by national law, the assessment may be made available, and the results of the assessment may be transmitted, to the determining authority, subject to the applicant's consent.
  
2. The assessment referred to in paragraph 1 shall be initiated as early as possible after an application is made by identifying whether an applicant presents first indications that he or she might require special procedural guarantees. That identification shall be based on visible signs, the applicant's statements or behaviour, or any relevant documents. In the case of minors, statements of the parents, of the adult responsible for him or her whether by the law or practice of the Member State concerned or of the representative of the applicant shall also be taken into account. The competent authorities shall, when registering the application, include information on any such first indications in the applicant's file, and they shall make that information available to the determining authority.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

3. The assessment referred to in paragraph 1 shall be continued after the application is lodged, taking into account any information in the applicant's file.

The assessment referred to in paragraph 1 shall be concluded as soon as possible and, in any event, within 30 days. It shall be reviewed in the event of any relevant changes in the applicant's circumstances or where the need for special procedural guarantees becomes apparent after the assessment has been completed.

4. The competent authority may refer the applicant, subject to his or her prior consent, to the appropriate medical practitioner or psychologist or to another professional for advice on the applicant's need for special procedural guarantees, prioritising cases where there are indications that applicants might have been victims of torture, rape or another serious form of psychological, physical, sexual or gender-based violence and that that could adversely affect their ability to participate effectively in the procedure. Where the applicant consents to be referred in accordance with this subparagraph, such consent shall be deemed to include consent to the transmission of the results of the referral to the competent authority.

The advice provided pursuant to the first subparagraph shall be taken into account by the determining authority when deciding on the type of special procedural guarantees which can be provided to the applicant.

Where applicable and without prejudice to the medical examination, the assessment referred to in paragraph 1 may be integrated with the medical examinations referred to in Articles 24 and 25.

5. The relevant staff of the competent authorities and any medical practitioner, psychologist or other professional giving advice on the need for special procedural guarantees shall receive training to enable them to detect signs of vulnerability on the part of an applicant who might need special procedural guarantees and address those needs when identified.

### *Article 21*

#### *Applicants in need of special procedural guarantees*

1. Where applicants have been identified as being in need of special procedural guarantees, they shall be provided with the necessary support allowing them to benefit from the rights and comply with the obligations under this Regulation throughout the duration of the procedure for international protection.
2. Where the determining authority, including on the basis of the assessment of another relevant national authority, considers that the necessary support referred to in paragraph 1 of this Article cannot be provided within the framework of the accelerated examination procedure referred to in Article 42 or the border procedure referred to in Article 43, paying particular attention to victims 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.

*Article 22*  
*Guarantees for minors*

1. The best interests of the child shall be a primary consideration for the competent authorities when applying this Regulation.
2. The determining authority shall assess the best interests of the child in accordance with Article 26 of Directive (EU) .../...<sup>+</sup>.
3. The determining authority shall give a minor the opportunity of a personal interview, including where an application is made on his or her own behalf in accordance with Article 32 and Article 33(1), unless this is not in the best interests of the child. In that case, the determining authority shall give reasons for the decision not to give a minor the opportunity of a personal interview.

The personal interview of a minor shall be conducted by a person who has the necessary knowledge of the rights and special needs of minors. It shall be conducted in a child-sensitive and context-appropriate manner, taking into consideration the age and maturity of the child.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

4. Where a minor is accompanied, the personal interview shall be conducted in the presence of an adult responsible for him or her whether by the law or practice of the Member State concerned and, where one has been appointed, of a legal adviser. Member States may also, where necessary and when it is in the best interests of the child, conduct the personal interview with that minor in the presence of a person with necessary skills and expertise. On justified grounds and only where it is in the best interests of the child, the determining authority may interview the minor without the presence of an adult responsible, provided that it ensures that the minor is assisted during the interview by a person with necessary skills and expertise in order to safeguard his or her best interests.
5. The decision on the application of a minor shall be prepared by the relevant staff of the determining authority. Those relevant staff shall have the necessary knowledge and have received the appropriate training on the rights and special needs of minors.

### *Article 23*

#### *Special guarantees for unaccompanied minors*

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) .../...<sup>+</sup>, Directive (EU) .../...<sup>++</sup> and Regulation (EU) .../...<sup>+++</sup>.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

<sup>+++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).



2. Where an application is made by a person who claims to be a minor, or in relation to whom there are objective grounds to believe that he or she is a minor, who is unaccompanied, the competent authorities shall:

- (a) designate as soon as possible and in any case in a timely manner for the purposes of paragraph 6 and, where applicable, paragraph 7, a person with the necessary skills and expertise to provisionally assist the minor in order to safeguard his or her best interests and general well-being which enables the minor to benefit from the rights under this Regulation and, where applicable, act as a representative until a representative has been appointed;
- (b) appoint a representative as soon as possible and no later than 15 working days from the date on which the application is made.

The representative and the person referred to in the first subparagraph, point (a), of this paragraph may be the same as that provided for in Article 27 of Directive (EU) .../...<sup>+</sup>. He or she shall meet with the unaccompanied minor and take into account the minor's own views about his or her needs in accordance with the age and maturity of the minor.

Where the competent authority has concluded that an applicant who claims to be a minor is without any doubt above the age of 18 years, it need not appoint a representative in accordance with this paragraph.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

The duties of the representative or the person referred to in the first subparagraph, point (a), of this paragraph shall cease where the competent authorities, following the age assessment referred to in Article 25(1), do not assume that the applicant is a minor or consider that the applicant is not a minor or where the applicant is no longer an unaccompanied minor.

3. In the event of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations, the time limit for appointing a representative as referred to in paragraph 2, first subparagraph, point (b), may be extended by ten working days, without prejudice to paragraph 2, third subparagraph.
4. Where an organisation is designated under paragraph 2, it shall appoint a natural person to carry out the tasks referred to in this Article in respect of the unaccompanied minor.
5. The competent authority shall immediately inform:
  - (a) the unaccompanied minor, in a child-friendly manner and in a language he or she can understand, of the designation of the person referred to in paragraph 2, first subparagraph, point (a), and of his or her representative and about how to lodge a complaint against the person referred to in paragraph 2, first subparagraph, point (a) or (b), in confidence and safety.
  - (b) the determining authority and the competent authority for registering the application, where applicable, that a representative has been appointed for the unaccompanied minor; and

- (c) the person referred to in paragraph 2, first subparagraph, point (a), and the representative of the relevant facts, procedural steps and time limits pertaining to the application of the unaccompanied minor.

The representative and the person referred to in paragraph 2, first subparagraph, point (a), shall have access to the content of the relevant documents in the minor's file including the specific information material for unaccompanied minors.

- 6. The person referred to in paragraph 2, first subparagraph, point (a), shall meet with the unaccompanied minor and carry out, inter alia, the following tasks, where appropriate together with the legal adviser:
  - (a) provide the unaccompanied minor with relevant information in relation to the procedures provided for in this Regulation;
  - (b) where applicable, assist the unaccompanied minor in relation to the age-assessment procedure referred to in Article 25;
  - (c) where applicable, provide the unaccompanied minor with the relevant information and assist him or her in relation to the procedures provided for in Regulations (EU) .../...<sup>+</sup> and (EU) .../...<sup>++</sup>.
- 7. For as long as a representative has not been appointed, Member States may authorise the person referred to in paragraph 2, first subparagraph, point (a), to assist the minor with the registration and lodging of the application or lodge the application on behalf of the minor in accordance with Article 33.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

8. The representative shall meet with the unaccompanied minor and shall carry out, inter alia, the following tasks, where appropriate together with the legal adviser:
- (a) where applicable, provide the unaccompanied minor 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 25;
  - (c) where applicable, assist with the registration of the application;
  - (d) where applicable, assist with the lodging of the application or lodge the application on behalf of the unaccompanied minor in accordance with Article 33;
  - (e) where applicable, assist with the preparation of and be present for the personal interview and inform the unaccompanied minor about the purpose and possible consequences of the personal interview and about how to prepare for that interview;
  - (f) where applicable, provide the unaccompanied minor with the relevant information and assist the unaccompanied minor in relation to the procedures provided for in Regulations (EU) .../...<sup>+</sup> and (EU) .../...<sup>++</sup>.

In the personal interview, the representative and the legal adviser shall have an opportunity to ask questions or make comments within the framework set by the person conducting the interview.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

The determining authority may require that the unaccompanied minor be present at the personal interview, even if the representative or legal adviser is present.

9. The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary qualifications, training and expertise. Representatives shall receive regular training for the performance of their tasks and shall not have a criminal record, in particular as regards any child-related crimes or offences.

The representative shall be changed only if the competent authorities consider that the tasks of that representative or person have not been performed adequately. Organisations or natural persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be appointed as representative.

10. The competent authorities shall place a natural person acting as representative or a person suitable to provisionally act as a representative in charge of a proportionate and limited number of unaccompanied minors, and under normal circumstances, of no more than 30 unaccompanied minors at the same time, in order to ensure that he or she is able to perform his or her tasks effectively.

In the event of a disproportionate number of applications made by unaccompanied minors or in other exceptional situations, the number of unaccompanied minors per representative may be increased up to a maximum of 50 unaccompanied minors.

Member States shall ensure that there are administrative or judicial authorities or other entities responsible to supervise, on a regular basis, the proper performance of tasks by the representatives and persons designated under paragraph 2, first subparagraph, point (a), including by reviewing the criminal records of those appointed representatives and designated persons at regular intervals in order to identify potential incompatibilities with their role. Those administrative or judicial authorities or other entities shall review complaints lodged by unaccompanied minors against appointed representatives or persons designated under paragraph 2, first subparagraph, point (a).

## **SECTION V**

### **MEDICAL EXAMINATION AND AGE ASSESSMENT**

#### *Article 24*

##### *Medical examination*

1. Where the determining authority deems it relevant for the examination of an application for international protection, it shall, subject to the applicant's consent, request a medical examination of the applicant concerning signs and symptoms that might indicate past persecution or serious harm and be informed of results thereof.
2. In the case of a minor, the medical examination shall only be carried out where the parent, the adult responsible for him or her whether by the law or practice of the Member State concerned, the representative or the person referred to in Article 23(2), point (a), and, where provided for by national law, the applicant, consent.

The medical examination shall be free of charge for the applicant and be paid for from public funds.

Where applicable, the health and vulnerability checks referred to in Article 12 of Regulation (EU) .../...<sup>+</sup> may be taken into account for the medical examination referred to in this Article.

3. Where 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.
4. The results of the medical examinations referred to in paragraphs 1 or 3 shall be submitted to the determining authority and to the applicant as soon as possible and shall be assessed by the determining authority along with the other elements of the application.
5. The medical examination shall be the least invasive possible and be performed only by qualified medical professionals. It shall be performed in a way that respects the individual's dignity.
6. An applicant's refusal to undergo a medical examination or a decision to undergo a medical examination on his or her own initiative, where such an examination does not take place within a suitable timeframe taking into account the availability of appointments for medical examinations in the Member State responsible, shall not prevent the determining authority from taking a decision on the application for international protection.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

*Article 25*  
*Age assessment of minors*

1. Where, as a result of statements by the applicant, available documentary evidence or other relevant indications, there are doubts as to whether or not an applicant is a minor, the determining authority may undertake a multi-disciplinary assessment, including a psychosocial assessment, which shall be carried out by qualified professionals, to determine the applicant's age within the framework of the examination of an application. The assessment of the age shall not be based solely on the applicant's physical appearance or behaviour. For the purposes of the age assessment, documents that are available shall be considered genuine, unless there is evidence to the contrary, and statements by minors shall be taken into consideration.
2. 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 within the framework of the examination of an application. 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.
3. Any medical examination carried out for the purposes set out in paragraph 2 shall be the least invasive possible and be performed with full respect for the individual's dignity. They shall be carried out by medical professionals with experience and expertise in age estimation.



Where this paragraph applies, the results from the medical examination and the multi-disciplinary assessment shall be analysed together, thereby allowing for the most reliable result possible.

4. Where medical examinations are used to assess the age of an applicant, the competent authority shall ensure that applicants, their parents, the adult responsible for him or her whether by the law or practice of the Member State concerned, their representatives or the person referred to in Article 23(2), point (a), are informed, prior to the examination of their application for international protection, and in a language that they understand and in a child-friendly and age appropriate manner, of the possibility that their age might be assessed by means of a medical examination. That shall include information on the method of examination, on possible consequences which the result of the medical examination might have for the examination of the application, and on the possibility and consequences of a refusal on the part of the applicant to undergo the medical examination. All documents relating to the medical examination shall be included in the applicant's file.
5. A medical examination to assess the age of applicants shall only be carried out where the applicants, their parents, the adult responsible referred to in paragraph 4 of this Article, their representative or the person referred to in Article 23(2), point (a), consent after having received the information provided for in paragraph 4 of this Article.

6. The refusal by the applicants, their parents, the adult responsible referred to in paragraph 4 of this Article, their representative or the person referred to in Article 23(2), point (a), to have a medical examination carried out for the purposes of the age assessment shall not prevent the determining authority from taking a decision on the application for international protection. Such refusal may only be considered to be a rebuttable presumption that the applicant is not a minor.
7. A Member State may recognise age-assessment decisions taken by other Member States where the age assessments were carried out in compliance with Union law.

## **Chapter III**

### **Administrative procedure**

#### **SECTION I**

#### **ACCESS TO THE PROCEDURE**

##### *Article 26*

##### *Making an application for international protection*

1. An application for international protection shall be considered to have been made when a third-country national or stateless person, including an unaccompanied minor, expresses in person to a competent authority as referred to in Article 4(1) and (2) a wish to receive international protection from a Member State.

Where officials from the competent authority have doubts as to whether a certain declaration is to be construed as an application for international protection, they shall ask the person expressly whether he or she wishes to receive international protection.

2. The authorities responsible for the reception facilities in accordance with the Directive (EU) .../...<sup>+</sup> shall, where relevant, be informed that an application has been made. For third-country nationals subject to the screening referred to in Article 5(1) of Regulation (EU) .../...<sup>++</sup>, Member States may choose to apply this paragraph after the screening has ended.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

*Article 27*

*Registering applications for international protection*

1. Without prejudice to the obligations to collect and transmit data in accordance with Article 15(1) Regulation (EU) .../...<sup>+</sup>, the authorities competent for registering applications, the authorities of another Member State referred to in Article 5(1), point (b) of this Regulation or the experts deployed by the Asylum Agency which assist them with that task shall register an application promptly and, in any event, no later than five days from when it is made. For that purpose, they shall register the following information, which may come from the screening form referred to in Article 17 of the Regulation (EU) .../...<sup>++</sup>:
- (a) the applicant's name, date and place of birth, gender, nationalities or the fact that the applicant is stateless, family members as defined in Article 2, point (8), of Regulation (EU) .../...<sup>+++</sup> and, in the case of minors, siblings or relatives as defined in Article 2, point (9), of that Regulation present in a Member State, where applicable, and other personal details of the applicant relevant for the procedure for international protection and for the determination of the Member State responsible;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 15/24 (2016/0132(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

<sup>+++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (b) where available, the type, number and period of validity of any identity or travel document of the applicant and the country that issued that document and other documents provided by the applicant which the competent authority deems relevant for the purposes of identifying him or her, for the procedure for international protection and for the determination of the Member State responsible
- (c) the date of the application, the place where the application was made and the authority to which the application was made;
- (d) the applicant's location or the applicant's place of residence or address and, where available, a telephone number and an e-mail address where the applicant can be reached.

Where the data referred to in points (a) and (b) of the first subparagraph have already been obtained by the Member States before the application is made, they shall not to be requested again.

2. Where an individual claims not to have a nationality, that fact shall be clearly registered pending the determination of whether the individual is stateless.

3. Where an application is made to an authority entrusted with the task of receiving applications for international protection which is not responsible for registering applications, that authority shall promptly and at the latest within three working days from when the application was made inform the authority responsible for registering applications. The authority responsible for registering applications shall register the application as soon as possible and no later than five days from when it has received the information.
4. Where the information is collected by the determining authority or by another authority assisting it for the purpose of examining the application, additional data necessary for the examination of the application may also be collected at the time of registration.
5. Where there is a disproportionate number of third-country nationals or stateless persons who make an application within the same period of time, making it unfeasible to register applications within the deadlines provided for in paragraphs 1 and 3, the application shall be registered no later than 15 days from when it was made.
6. Without prejudice to the right of the applicant to present new elements in support of the application, in the case of a subsequent application, where the information referred to in paragraph 1, points (a), (b) and (d), and paragraph 2 is already available to the competent authority, it may not have to collect such data.
7. For third-country nationals subject to the screening referred to in Article 5(1) of Regulation (EU) .../...<sup>+</sup>, paragraphs 1 to 6 of this Article shall apply only after the screening has ended.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

*Article 28*

*Lodging an application for international protection*

1. The applicant shall lodge the application with the competent authority of the Member State where the application is made as soon as possible and no later than 21 days from when the application is registered, unless paragraph 6 of this Article applies, provided that he or she is given an effective opportunity to do so in accordance with this Article. Where the application is not lodged with the determining authority, the competent authority shall promptly inform the determining authority that an application has been lodged.
2. Following a transfer in accordance with Article 46 of Regulation (EU) .../...<sup>+</sup>, the applicant shall lodge the application with the competent authorities of the Member State responsible as soon as possible and no later than 21 days from when the applicant identifies himself or herself to the competent authorities of the Member State responsible.
3. The application shall be lodged in person at a designated date and place and, where communicated, time. The competent authorities shall communicate that date and place to the applicant. The competent authorities may communicate a time to the applicant.

Member States may provide in national law that an application is deemed to be lodged in person when the competent authority verifies that the applicant is physically present on the territory of the Member State at the time of registration or lodging of an application.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

4. By way of derogation from paragraph 3, Member States may provide in national law for the possibility for the applicant to lodge an application by means of a form, including where he or she is unable to appear in person owing to enduring serious circumstances beyond his or her control, such as imprisonment or long-term hospitalisation. The application shall be considered to have been lodged provided that the applicant submits the form within the time limit set out in paragraph 1 and provided that the competent authority concludes that the conditions under this paragraph have been met. In such cases, the time limit for the examination of the application shall start to run from the date on which the competent authority receives the form.
5. For the purposes of the first subparagraph of paragraph 3, where a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it unfeasible to give each applicant an appointment within the time limit set in paragraph 1, the applicant shall be given an appointment to lodge his or her application at a date no later than two months from when the application is registered.
6. When lodging an application, applicants are required to submit as soon as possible all the elements and documents at their disposal referred to in Article 4(2) of Regulation (EU) .../...<sup>+</sup> needed for substantiating their application. After the lodging of their application, in particular at their personal interview, applicants shall be allowed to submit any additional elements relevant for its examination, until a decision under the administrative procedure is taken on their application.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).



Member States may set a deadline within that timeframe for submitting those additional elements with which the applicant shall endeavour to comply.

7. Member States may organise the access to the procedure in such a way that making, registering or lodging take place at the same time. In such cases, Member States shall ensure that all applicants enjoy the guarantees provided for in Article 8(2) to (6). Where making, registering or lodging take place at the same time, applicants shall be allowed to submit all the elements and documents at their disposal referred to in Article 4(2) of Regulation (EU) .../...<sup>+</sup> needed for substantiating their application during their personal interview.

In addition, applicants shall be allowed to submit any additional elements relevant for the examination of their application, until a decision under the administrative procedure is taken on their application. Member States may set a deadline within that timeframe for submitting those additional elements with which the applicant shall endeavour to comply.

#### *Article 29*

##### *Documents provided to the applicant*

1. The competent authorities of the Member State where an application for international protection is made shall, upon registration of the application, provide the applicant with a document in his or her own name indicating that an application has been made and registered. That document shall be valid until the document referred to in paragraph 4 has been issued.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

Following a transfer in accordance with Article 46 of Regulation (EU) .../...<sup>+</sup>, the competent authorities of the Member State responsible shall, when the applicant identifies himself or herself to them, provide the applicant with a document in his or her name indicating that an application has been made and registered and that the person has been transferred. That document shall remain valid until the document referred to in paragraph 4 has been issued.

2. The document referred to in paragraph 1 does not have to be provided if it is possible to issue the document referred to in paragraph 4 by the time of registration.
3. The document referred to in paragraph 1 shall be withdrawn when the document referred to in paragraph 4 is issued.
4. The competent authorities of the Member State where the application is lodged in accordance with Article 28(1) and (2) shall, as soon as possible after the lodging of the application, issue a document including at least the following elements, to be updated as necessary:
  - (a) the applicant's name, date and place of birth, gender and nationalities or, if applicable, an indication of statelessness, a facial image of the applicant and the applicant's signature;
  - (b) the issuing authority, date and place of issue and period of validity of the document;
  - (c) the status of the individual as an applicant;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (d) a statement that the applicant has the right to remain on the territory of that Member State for the purpose of having the application examined and an indication of whether the applicant is free to move within all or part of the territory of that Member State;
- (e) a statement that the document is not a travel document and that the applicant is not allowed to travel without authorisation to other Member States.

5. It shall not be necessary to issue any of the documents referred to in this Article where and for as long as the applicant is in detention or imprisonment.

Upon release from detention or imprisonment, the applicant shall be provided with the document referred to in paragraph 1 or 4. Where the applicant is provided with the document referred to in paragraph 1 upon release, the applicant shall receive the document referred to in paragraph 4 as soon as possible.

6. In the case of accompanied minors, the documents referred to in this Article issued to one of the parents of the applicant or the adult responsible for him or her whether by the law or practice of the Member State concerned may also cover the minor, if appropriate.
7. The documents referred to in this Article need not be proof of identity but shall be considered to be sufficient means for applicants to identify themselves to national authorities and to access their rights for the duration of the procedure for international protection.

8. The documents referred to in paragraphs 1 and 4 shall state the date of registration of the application.
9. The document referred to in paragraph 4 shall be valid for up to 12 months or until the applicant is transferred to another Member State in accordance with Regulation (EU) .../...<sup>+</sup>. Where that document is issued by the Member State responsible, the validity of the document shall be renewed so as to cover the period during which the applicant has a right to remain on its territory. The period of validity of the document does not constitute a right to remain where that right was terminated or suspended in accordance with this Regulation.

### *Article 30*

#### *Access to the procedure in detention facilities and at border crossing points*

1. Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, the competent authorities under Article 4 shall provide them with information on the possibility to do so.
2. Where an applicant makes an application in a detention facility, in prison or at a border crossing point, including transit zones, at external borders, the competent authorities under Article 4 shall make arrangements for interpretation services to the extent necessary to facilitate access to the procedure for international protection.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

3. Organisations and persons permitted under national law to provide advice and counselling shall have effective access to applicants held in detention facilities or present at border crossing points, including transit zones, at external borders. Such access may be subject to a prior agreement with the competent authorities.

Member States may impose limits on access as referred to in the first subparagraph, by virtue of national law, where they are objectively necessary for the security, public order or administrative management of a border crossing point, including transit zones, or detention facility, provided that access is not severely restricted or rendered impossible.

#### *Article 31*

##### *Applications on behalf of adults requiring assistance to exercise legal capacity*

1. In the case of an adult requiring assistance to exercise legal capacity in accordance with national law (the ‘dependent adult’), an adult responsible for him or her whether by law or by practice of the Member State concerned may make and lodge an application on the behalf of the dependent adult.
2. The dependent adult shall be present for the lodging of the application, except where there are justified reasons for which he or she is unable or unfit to be present or, where such a possibility is provided for in national law, the application is lodged by means of a form.

*Article 32*

*Applications on behalf of accompanied minors*

1. An accompanied minor shall have the right to lodge an application in his or her own name where he or she has legal capacity in accordance with the national law of the Member State concerned. Where the accompanied minor does not have legal capacity in accordance with the national law of the Member State concerned, a parent or another adult, such as a legal caregiver or child protection services, responsible for the minor, whether by the law or practice of the Member State concerned, shall lodge the application on the minor's behalf.
2. In the case of an accompanied minor who does not have legal capacity in accordance with the national law of the Member State concerned and who is present at the moment the parent or another adult responsible for him or her whether by the law or practice of the Member State concerned makes or lodges the application for international protection on the territory of the same Member State, in particular if such minor does not have any other legal means of staying on the territory of that same Member State, the making and lodging of an application by a parent or another adult responsible for him or her whether by the law or practice of the Member State concerned shall also be considered to be the making and lodging of an application for international protection on behalf of the minor.

Member States may decide to apply the first subparagraph also in the case of an accompanied minor who is born or who is present during the administrative procedure.

3. Where the parent or adult responsible for the accompanied minor referred to in paragraph 2 lodges the application on behalf of the minor, the minor shall be present for the lodging of the application, except where there are justified reasons for which the minor is unable or unfit to be present or, where such a possibility is provided for in national law, the application on behalf of the minor is lodged by means of a form.

### *Article 33*

#### *Applications of unaccompanied minors*

1. An unaccompanied minor shall have the right to lodge an application in his or her own name if he or she has legal capacity in accordance with the national law of the Member State concerned. To that effect, the unaccompanied minor shall be informed of the age of legal capacity in the Member State responsible for examining his or her application for international protection. Where the unaccompanied minor does not have legal capacity in accordance with the national law of the Member State concerned a representative or a person as referred to in Article 23(2), point (a), shall lodge the application on his or her behalf.

The first subparagraph of this paragraph shall apply without prejudice to unaccompanied minors' right to legal counselling and to legal assistance and representation in accordance with Articles 15 and 16.

2. In the case of an unaccompanied minor who does not have legal capacity in accordance with the national law of the Member State concerned, the application shall be lodged within the time limit set out in Article 28(1), taking into account the best interests of the child.

3. Where the representative of an unaccompanied minor or a person as referred to in Article 23(2), point (a), lodges the application on behalf of the minor, the minor shall be present for the lodging of the application, except where there are justified reasons for which the minor is unable or unfit to be present or, where such a possibility is provided for in national law, the application is lodged by means of a form.

## **SECTION II**

### **EXAMINATION PROCEDURE**

#### *Article 34*

#### *Examination of applications*

1. The determining authority shall examine and take decisions on applications for international protection in accordance with the basic principles and guarantees set out in Chapter II.
2. The determining authority shall take decisions on applications for international protection after an appropriate examination as to the admissibility or merits of an application. The determining authority shall examine applications objectively, impartially and on an individual basis. For the purpose of examining an application, the determining authority shall take the following into account:
  - (a) the relevant statements and documentation presented by the applicant in accordance with Article 4(1) and (2) of Regulation (EU) .../...<sup>+</sup>;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).



- (b) relevant, precise and up-to-date information relating to the situation prevailing in the country of origin of the applicant at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied, obtained from relevant and available national, Union and international sources, including children's rights organisations and, where available, the common analysis on the situation in specific countries of origin and the guidance notes referred to in Article 11 of Regulation (EU) 2021/2303;
- (c) where applying the concepts of first country of asylum or safe third country, relevant, precise and up-to-date information relating to the situation prevailing in the third country being considered as a first country of asylum or a safe third country at the time of taking a decision on the application, including information and analysis on safe third countries referred to in Article 12 of Regulation (EU) 2021/2303;
- (d) the individual position and personal circumstances of the applicant, including factors such as the applicant's background, age, gender, gender identity and sexual orientation, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
- (e) whether the activities that the applicant was engaged in since leaving the country of origin were carried out by the applicant for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm, as referred to in Article 5 of Regulation (EU) .../...<sup>+</sup>, if returned to that country;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (f) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship;
- (g) provided that the State or agents of the State are not the actors of persecution or serious harm, whether the internal protection alternative referred to in Article 8 of Regulation (EU) .../...<sup>+</sup> applies.

3. The staff examining applications and taking decisions shall have the appropriate knowledge and shall have received training, including the relevant training under Article 8 of Regulation (EU) 2021/2303, in the relevant standards applicable in the field of asylum and refugee law. They shall have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, mental health, and child-related or gender issues. Where necessary, they may submit queries to the Asylum Agency in accordance with Article 10(2), point (b), of Regulation (EU) 2021/2303.

4. Documents assessed by the determining authority as relevant for the examination of applications shall be translated, where necessary, for such examination.

The translation of those relevant documents or parts thereof may be provided by other entities and paid for from public funds in accordance with the national law of the Member State concerned. The applicant may, at his or her own cost, ensure the translation of other documents. For subsequent applications, the applicant may be made responsible for the translation of documents.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

5. The determining authority may prioritise the examination of an application for international protection in particular where:
- (a) it considers that the application is likely to be well-founded;
  - (b) the applicant has special reception needs within the meaning of Article 24 of Directive (EU) .../...<sup>+</sup> or is in need of special procedural guarantees as referred to in Articles 20 to 23 of this Regulation, in particular where he or she is an unaccompanied minor;
  - (c) there are reasonable grounds to consider the applicant as a danger to the national security or public order of the Member State;
  - (d) the application is a subsequent application;
  - (e) the applicant has been subject to a decision in accordance with Article 23(2), point (e), of Directive (EU) .../...<sup>+</sup>, has been involved in causing public nuisance or has engaged in criminal behaviour.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

*Article 35*

*Duration of the examination procedure*

1. The examination to determine whether an application is inadmissible in accordance with Article 38 (1), points (a), (b), (c) and (d), and Article 38(2) shall be concluded as soon as possible and no later than two months from the date on which the application is lodged.

In the case referred to in Article 38(1), point (e), the determining authority shall conclude the examination within ten working days.

The application shall not be deemed to be admissible solely by reason of the fact that no decision on inadmissibility is taken within the time limits set out in this paragraph and in paragraph 2.

2. The determining authority may extend the time limits provided for in the first subparagraph of paragraph 1 by no more than two months where:
  - (a) a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it unfeasible to conclude the admissibility procedure within the set time limits;
  - (b) complex issues of fact or law are involved;
  - (c) the delay can be attributed clearly and solely to the failure of the applicant to comply with his or her obligations under Article 9.

3. The determining authority shall conclude the accelerated examination procedure as soon as possible and no later than three months from the date on which the application is lodged.
4. The determining authority shall ensure that an examination procedure on the merits, provided that it is not an accelerated examination procedure, is concluded as soon as possible and no later than six months from the date on which the application is lodged, without prejudice to an adequate and complete examination.
5. The determining authority may extend the time limit of six months referred to in paragraph 4 by a period of not more than six months where:
  - (a) a disproportionate number of third-country nationals or stateless persons make an application for international protection within the same period of time, making it unfeasible to conclude the procedure within the six-month time limit;
  - (b) complex issues of fact or law are involved;
  - (c) the delay can be attributed clearly and solely to the failure of the applicant to comply with his or her obligations under Article 9.
6. Where an applicant is subject to a transfer procedure as laid down in Article 46 of Regulation (EU) .../...<sup>+</sup>, the time limit referred to in paragraph 4 of this Article shall start to run from the date on which the application is lodged in accordance with Article 28(2).

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

7. The determining authority may postpone concluding the examination procedure where it cannot reasonably be expected to decide within the time limits laid down in paragraph 4 due to an uncertain situation in the country of origin which is expected to be temporary. In such cases, the determining authority shall:

- (a) conduct reviews of the situation in that country of origin at least every four months;
- (b) where available, take into account reviews of the situation in that country of origin carried out by the Asylum Agency;
- (c) inform the applicants concerned, in a language which they understand or are reasonably supposed to understand and as soon as possible, of the reasons for the postponement.

The Member State shall inform the Commission and the Asylum Agency as soon as possible of the postponement of procedures for that country of origin. In any event, the determining authority shall conclude the examination procedure within 21 months from the lodging of an application.

8. Member States shall lay down time limits for the conclusion of the examination procedure in cases where a court or tribunal annuls the decision of the determining authority and refers the case back. Those time limits shall be shorter than the time limits set out in this Article.

**SECTION III**  
**DECISIONS ON APPLICATIONS**

*Article 36*

*Decisions on applications*

1. A decision on an application for international protection shall be given in writing and it shall be notified to the applicant as soon as possible in accordance with the national law of the Member State concerned. Where a representative or legal adviser legally represents the applicant, the competent authority may notify the decision to him or her instead of the applicant.
2. Where an application is rejected as inadmissible, as unfounded or as manifestly unfounded with regard to refugee status or subsidiary protection status, as explicitly withdrawn or as implicitly withdrawn, the reasons in fact and in law for the rejection shall be stated in the decision.
3. The applicant shall be informed, in writing, of the result of the decision and of how to challenge a decision rejecting an application as inadmissible, as unfounded or as manifestly unfounded with regard to refugee status or subsidiary protection status, or as implicitly withdrawn. That information may be provided as part of the decision on an application for international protection. Where the applicant is not assisted by a legal adviser, that information shall be provided in a language that the applicant understands or is reasonably supposed to understand.

4. Where the applicant is assisted by a legal adviser who legally represents the applicant, the information referred to in paragraph 3 may be provided solely to that legal adviser without being translated into a language which the applicant understands or is reasonably supposed to understand. In such a case, the fact of whether or not international protection is granted shall be communicated, in writing, for information to the applicant in a language which he or she understands or is reasonably supposed to understand, together with general information on how to challenge the decision.
5. In the case of applications on behalf of minors or dependent adults and where the applications are all based on the exact same grounds as the application of the adult responsible for that minor or dependent adult, the determining authority may, following an individual assessment for each applicant, take a single decision covering all applicants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise his or her interests, in particular in cases involving gender-based violence, trafficking in human beings, and persecution based on gender, sexual orientation, gender identity or age. In such cases, a separate decision shall be issued and notified to the person concerned in accordance with paragraph 1.



*Article 37*

*Rejection of an application and issuance of a return decision*

Where an application is rejected as inadmissible, unfounded or manifestly unfounded with regard to both refugee status and subsidiary protection status, or as implicitly or explicitly withdrawn, Member States shall issue a return decision that respects Directive 2008/115/EC and that is in accordance with the principle of non-refoulement. Where a return decision or another decision imposing the obligation to return has already been issued prior to the making of an application for international protection, the return decision under this Article is not required. The return decision shall be issued as part of the decision rejecting the application for international protection or in a separate act. Where the return decision is issued as a separate act, it shall be issued at the same time and together with the decision rejecting the application for international protection or without undue delay thereafter.

*Article 38*

*Decision on the admissibility of the application*

1. The determining authority may assess the admissibility of an application, in accordance with the basic principles and guarantees provided for in Chapter II, and may be authorised under national law to reject an application as inadmissible where any of the following grounds applies:
  - (a) a country which is not a Member State is considered to be a first country of asylum for the applicant pursuant to Article 58, unless it is clear that the applicant will not be admitted or readmitted to that country;

- (b) a country which is not a Member State is considered to be a safe third country for the applicant pursuant to Article 59, unless it is clear that the applicant will not be admitted or readmitted to that country;
- (c) a Member State other than the Member State examining the application has granted the applicant international protection;
- (d) an international criminal court or tribunal has provided safe relocation for the applicant to a Member State or third country, or is unequivocally undertaking actions to that extent, unless new relevant circumstances have arisen which have not been taken into account by the court or tribunal or where there was no legal possibility to raise circumstances relevant to internationally recognised human rights standards before that international criminal court or tribunal;
- (e) the applicant concerned was issued with a return decision in accordance with Article 6 of Directive 2008/115/EC and made his or her application only after seven working days from the date on which the applicant received that return decision, provided that he or she had been informed of the consequences of not making an application within that time limit and that no new relevant elements have arisen since the end of that period.

2. The determining authority shall reject an application as inadmissible where the application is a subsequent application where no new relevant elements as referred to in Article 55(3) and (5) relating to the examination of whether the applicant qualifies as a beneficiary of international protection in accordance with Regulation (EU) .../...<sup>+</sup> or relating to the inadmissibility ground previously applied, have arisen or have been presented by the applicant.

*Article 39*

*Decision on the merits of an application*

1. An application shall not be examined on the merits where:
  - (a) another Member State is responsible in accordance with Regulation (EU) .../...<sup>++</sup>;
  - (b) an application is rejected as inadmissible in accordance with Article 38 or;
  - (c) an application is explicitly or implicitly withdrawn, without prejudice to Article 40(2) and Article 41(5).
2. When examining an application on the merits, the determining authority shall take a decision on whether the applicant qualifies as a refugee and, if not, it shall determine whether the applicant is eligible for subsidiary protection in accordance with Regulation (EU) .../...<sup>+</sup>.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

3. The determining authority shall reject an application as unfounded where it has established that the applicant does not qualify for international protection pursuant to Regulation (EU) .../...<sup>+</sup>.
4. The determining authority may be authorised under national law to declare an unfounded application to be manifestly unfounded if, at the time of the conclusion of examination, any of the circumstances referred to in Article 42(1) and (3) apply.

#### *Article 40*

##### *Explicit withdrawal of applications*

1. An applicant may, of his or her own motion and at any time during the procedure, withdraw his or her application. The application shall be withdrawn in writing by the applicant in person or delivered by his or her legal adviser legally representing the applicant in accordance with national law.
2. The competent authorities shall, at the time of the withdrawal of the application, inform the applicant in accordance with Article 8(2), point (c), of all procedural consequences of such a withdrawal in a language he or she understands or is reasonably supposed to understand.
3. Where the explicit withdrawal takes place before a competent authority other than the determining authority, that authority shall inform the determining authority of such withdrawal. The determining authority shall adopt a decision declaring that the application has been explicitly withdrawn. That decision shall be final and shall not be subject to an appeal as referred to in Chapter V of this Regulation.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

4. Where, at the stage that the application is explicitly withdrawn by the applicant, the determining authority has already found that the applicant does not qualify for international protection pursuant to Regulation (EU) .../...<sup>+</sup>, it may still take a decision to reject the application as unfounded or manifestly unfounded.

*Article 41*

*Implicit withdrawal of applications*

1. An application shall be declared as implicitly withdrawn where:
- (a) the applicant, without good cause, has not lodged his or her application in accordance with Article 28, despite having had an effective opportunity to do so;
  - (b) the applicant refuses to cooperate by not providing the information referred to in Article 27(1), points (a) and (b), or by not providing his or her biometric data;
  - (c) the applicant refuses to provide his or her address, where he or she has one, unless housing is provided by the competent authorities;
  - (d) the applicant has, without justified cause, not attended a personal interview although he or she was required to do so pursuant to Article 13 or, without justified cause, refused to respond to questions during the interview to the extent that the outcome of the interview was not sufficient to take a decision on the merits of the application;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (e) the applicant has repeatedly not complied with reporting duties imposed on him or her in accordance with Article 9(4) or does not remain available to the competent administrative or judicial authorities, unless he or she can demonstrate that that failure to remain available was owing to specific circumstances beyond his or her control;
- (f) the applicant has lodged the application in a Member State other than the Member State provided for in Article 17(1) and (2) of Regulation (EU) .../...<sup>+</sup> and does not remain present in that Member State pending the determination of the Member State responsible or the implementation of the transfer procedure, where applicable.

2. Where the authority that assesses whether the application is implicitly withdrawn is a competent authority other than the determining authority and where that authority considers that the application must be considered as such, that authority shall inform the determining authority accordingly. The determining authority shall adopt a decision declaring that the application has been implicitly withdrawn.
3. When the applicant is present, the competent authority shall, at the time of the withdrawal, inform the applicant in accordance with Article 8(2), point (c), of all procedural consequences of such a withdrawal in a language he or she understands or is reasonably supposed to understand.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

4. The competent authority may suspend the procedure in order to give the applicant the possibility to justify or rectify omissions or actions as set out in paragraph 1 before a decision declaring the application as implicitly withdrawn is made.
5. An application may be rejected as unfounded or as manifestly unfounded where the determining authority has, at the stage that the application is implicitly withdrawn, already found that the applicant does not qualify for international protection pursuant to Regulation (EU) .../...<sup>+</sup>.

## SECTION IV

### SPECIAL PROCEDURES

#### *Article 42*

#### *Accelerated examination procedure*

1. Without prejudice to Article 21(2), the determining authority shall, in accordance with the basic principles and guarantees provided for in Chapter II, accelerate the examination on the merits of an application for international protection where:
  - (a) the applicant, in lodging 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 in accordance with Regulation (EU) .../...<sup>+</sup>;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (b) the applicant has made clearly inconsistent or contradictory or clearly false or obviously improbable representations or representations which contradict relevant and available country of origin information, thus making his or her claim clearly unconvincing as to whether he or she qualifies as a beneficiary of international protection in accordance with Regulation (EU) .../...<sup>+</sup>;
- (c) the applicant, after having been provided with the full opportunity to show good cause, is considered to have intentionally misled the authorities by presenting false information or documents or by withholding relevant information or documents, particularly with respect to his or her identity or nationality, that could have had a negative impact on the decision or there are clear grounds to consider that the applicant has, in bad faith, destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality;
- (d) the applicant makes an application merely to delay, frustrate or prevent the enforcement of a decision for his or her removal from the territory of a Member State;
- (e) a third country may be considered to be a safe country of origin for the applicant within the meaning of this Regulation;
- (f) there are reasonable grounds 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;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).



- (g) the application is a subsequent application which is not inadmissible;
- (h) the applicant entered the territory of a Member State unlawfully or prolonged his or her stay unlawfully and, without good reason, has either not presented himself or herself to the competent authorities or has not made an application for international protection as soon as possible, given the circumstances of his or her entry;
- (i) the applicant entered the territory of a Member State lawfully and, without good reason, has not made an application for international protection as soon as possible, given the grounds of his or her application; this point is without prejudice to the need of international protection arising sur place; or
- (j) the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20 % or lower, unless the determining authority assesses that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or that the applicant belongs to a category of persons for whom the proportion of 20 % or lower cannot be considered to be representative for their protection needs, taking into account, inter alia, the significant differences between first instance and final decisions.

Where the Asylum Agency has provided a guidance note on a country of origin in accordance with Article 11 of Regulation (EU) 2021/2303 showing that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data, Member States shall use that guidance note as a reference for the application of the first subparagraph, point (j), of this paragraph.

2. Where the determining authority considers that the examination of the application involves issues of fact or law that are too complex to be examined under an accelerated examination procedure, it may continue the examination on the merits in accordance with Article 35(4) and Article 39. In that case, the applicant concerned shall be informed of the change in the procedure.
3. The accelerated examination procedure may be applied to unaccompanied minors only where:
  - (a) the applicant comes from a third country that may be considered to be a safe country of origin within the meaning of this Regulation;
  - (b) there are reasonable grounds to consider the applicant as a danger to the national security or public order of the Member State or the applicant had been forcibly expelled for serious reasons of national security or public order under national law;
  - (c) the application is a subsequent application which is not inadmissible;

- (d) the applicant, after having been provided with the full opportunity to show good cause, is considered to have intentionally misled the authorities by presenting false information or documents or by withholding relevant information or documents, particularly with respect to his or her identity or nationality, that could have had a negative impact on the decision or there are clear grounds to consider that the applicant has, in bad faith, destroyed or disposed of an identity or travel document in order to prevent the establishment of his or her identity or nationality; or
- (e) the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions granting international protection by the determining authority is, according to the latest available yearly Union-wide average Eurostat data, 20 % or lower, unless the determining authority assesses a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data or that the applicant belongs to a category of persons for whom the proportion of 20 % or lower cannot be considered to be representative for their protection needs, taking into account, inter alia, significant differences between first instance and final decisions.

Where the Asylum Agency has provided a guidance note on a country of origin in accordance with Article 11 of Regulation (EU) 2021/2303 showing that a significant change has occurred in the third country concerned since the publication of the relevant Eurostat data, Member States shall use that guidance note as a reference for the application of the first subparagraph, point (e), of this paragraph.

*Article 43*

*Conditions for applying the asylum border procedure*

1. Following the screening carried out in accordance with Regulation (EU) .../...<sup>+</sup>, where applicable and provided that the applicant has not yet been authorised to enter Member States' territory, a Member State may, in accordance with the basic principles and guarantees of Chapter II, examine an application in a border procedure where that application has been made by a third-country national or stateless person who does not fulfil the conditions for entry to the territory of a Member State as set out in Article 6 of Regulation (EU) 2016/399. 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 in accordance with Article 67(11) of Regulation (EU) .../...<sup>++</sup>.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 20/24 (2020/0278(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

2. Applicants subject to the border procedure shall not be authorised to enter the territory of a Member State, without prejudice to Article 51(2) and Article 53(2). Any measure taken by Member States to prevent unauthorised entry to their territory shall be in accordance with Directive (EU) .../...<sup>+</sup>.
3. By way of derogation from Article 51(2), first subparagraph, last sentence, the applicant shall not be authorised to enter the Member State's territory where:
  - (a) the applicant has no right to remain on the territory of a Member State in accordance with Article 10(4), point (a) or (c);
  - (b) the applicant has no right to remain on the territory of a Member State in accordance with Article 68 and has not requested to be allowed to remain for the purposes of an appeal procedure within the applicable time limit;
  - (c) the applicant has no right to remain on the territory of a Member State in accordance with Article 68 and a court or tribunal has decided that the applicant is not to be allowed to remain pending the outcome of an appeal procedure.

In the cases referred to in the first subparagraph of this paragraph, where the applicant has been subject to a return decision issued in accordance with the Directive 2008/115/EC or has been refused entry in accordance with Article 14 of Regulation (EU) 2016/399, Article 4 of Regulation (EU) .../...<sup>++</sup> shall apply.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B (COD)).

4. Without prejudice and complementary to the monitoring mechanism laid down in Article 14 of Regulation (EU) 2021/2303, each Member State shall provide for a monitoring of fundamental rights mechanism in relation to the border procedure that meets the criteria set out in Article 10 of Regulation (EU) .../...<sup>+</sup>.

*Article 44*

*Decisions in the framework of the asylum border procedure*

1. Where a border procedure is applied, decisions may be taken on the following:
- (a) the inadmissibility of an application in accordance with Article 38;
  - (b) the merits of an application where any of the circumstances referred to in Article 42(1), points (a) to (g) and (j), and Article 42(3), point (b), apply.
2. Where the number of applicants exceeds the number referred to in Article 47(1) and for the purpose of determining whom to subject to a border procedure pursuant to Article 42(1), point (c), (f) or (j), or Article 42(3), point (b), priority shall be given to the following categories of applications:
- (a) applications of certain third-country nationals or, in the case of stateless persons, of former habitual residents in a third country who, in the event of a negative decision, have a higher prospect of being returned, as applicable, to their country of origin, to their country of former habitual residence, to a safe third country or to a first country of asylum, within the meaning of this Regulation;

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 20/24 (2020/0278(COD)).

- (b) applications of certain third-country nationals or, in the case of stateless persons, of former habitual residents in a third country who are considered, on serious grounds, to pose a danger to the national security or public order of a Member State;
  - (c) without prejudice to point (b), applications of certain third-country nationals or, in the case of stateless persons, of former habitual residents in a third country who are not minors and their family members.
3. Where the border procedure is applied to minors and their family members, priority shall be given to the examination of their applications.

Member States may also give priority to the examination of applications of certain third-country nationals or, in the case of stateless persons, of former habitual residents in a third country who, in the event of a negative decision, have a higher prospect of being returned, as applicable, to their country of origin, to their country of former habitual residence, to a safe third country or to a first country of asylum, within the meaning of this Regulation.

#### *Article 45*

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

1. A Member State shall examine an application in a border procedure in the cases referred to in Article 43(1) where any of the circumstances referred to in Article 42(1), point (c), (f) or (j), apply.

2. Where the circumstances referred to in Article 42(1), point (f), apply and without prejudice to Article 54, Member States shall take appropriate measures to maintain as far as possible family unity in the border procedure.
3. For the purposes of paragraph 2, in order to maintain family unity, ‘members of that applicant’s family’ shall be understood as meaning, in so far as the family already existed before the applicant arrived on the territory of the Member States, the following members of the applicant’s family who are present on the territory of the same Member State in relation to the application for international protection:
  - (a) the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples as equivalent to married couples;
  - (b) the minor children of couples as referred to in point (a) or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;
  - (c) where the applicant is a minor and unmarried, the father, mother or another adult responsible for the applicant, whether by the law or practice of the Member State in which the adult is present;
  - (d) where the applicant is a minor and unmarried, the sibling or siblings of the applicant, provided they are unmarried and minors.



For the purposes of points (b), (c) and (d) of the first subparagraph, on the basis of an individual assessment, a minor shall be considered unmarried if his or her marriage could not be contracted in accordance with the national law of the Member State concerned, in particular having regard to the legal age of marriage.

4. Where, on the basis of information obtained in the framework of monitoring carried out pursuant to Articles 14 and 15 of Regulation (EU) 2021/2303, the Commission has grounds to consider that a Member State is not complying with the requirements laid down in Article 54(2), it shall recommend, without delay, the suspension of the application of the border procedure to families with minors pursuant to Article 53(2), point (b). The Commission shall make that recommendation public.

The Member State concerned shall take utmost account of the Commission's recommendation with respect to its obligations under Article 53(2), point (b), and with a view to addressing any shortcomings identified to ensure full compliance with the requirements of Article 54(2). The Member State concerned shall inform the Commission of the measures taken to give effect to the recommendation.

#### *Article 46*

##### *The adequate capacity at Union level*

The adequate capacity at Union level shall be considered to be 30 000.

*Article 47*

*The adequate capacity of a Member State*

1. The Commission shall, by means of implementing acts, calculate the number that corresponds to the adequate capacity of each Member State by using the formula laid down in paragraph 4.

Without prejudice to paragraph 3, the Commission shall also, by means of implementing acts, set the maximum number of applications a Member State is required to examine in the border procedure per year. That maximum number shall be two times the number obtained by using the formula laid down in paragraph 4 from ... [the date of application of this Regulation], three times the number obtained by using the formula laid down in paragraph 4 from ... [one year after the date of application of this Regulation] and four times the number obtained by using the formula laid down in paragraph 4 from ... [two years after the date of application of this Regulation].

2. Where a Member State's adequate capacity as referred to in the first subparagraph of paragraph 1 is reached, that Member State shall no longer be required to carry out border procedures in the cases referred to in Article 43(1) where the circumstances referred to in Article 42(1), point (j), apply.

3. Where a Member State has examined the maximum number of applications referred to in the second subparagraph of paragraph 1, that Member State shall no longer be required to carry out border procedures in the cases referred to in Article 43(1) where the circumstances referred to in Article 42(1), point (c) or (j), apply. The Member State shall nevertheless continue to examine in the border procedure applications of third-country nationals to whom the circumstances referred to in Article 42(1), point (f), and Article 42(3), point (b), apply.
4. The number referred to in the first subparagraph of paragraph 1 shall be calculated by multiplying the number set out in Article 46 by the sum of irregular crossings of the external border, arrivals following search and rescue operations and refusals of entry at the external border in the Member State concerned during the previous three years and dividing the result thereby obtained by the sum of irregular crossings of the external border, arrivals following search and rescue operations and refusals of entry at the external border in the Union as a whole during the same period according to the latest available Frontex and Eurostat data.
5. The first such implementing act as referred to in paragraph 1 shall be adopted by the Commission on ... [two months from the date of entry into force of this Regulation] and on 15 October every three years thereafter.

Following the adoption by the Commission of an implementing act as referred to in paragraph 1, each Member State shall ensure, within six months of the adoption of the second and all subsequent such implementing acts, that it has the adequate capacity set out in that implementing act in place. For the purposes of the first such implementing act, Member States shall ensure they have the adequate capacity set out in that implementing act in place before ... [the date of application of this Regulation].

#### *Article 48*

##### *Measure applicable where the adequate capacity of a Member State is reached*

1. When the number of applicants that are subject to the asylum border procedure in a Member State at any given moment, in combination with the number of persons subject to a return border procedure established pursuant to Regulation (EU) .../...<sup>+</sup> or, where applicable, an equivalent return border procedure established under national law, is equal to or exceeds the number set out in respect of that Member State in the Commission implementing act referred to in Article 47(1), first subparagraph, that Member State may notify the Commission of the fact.
2. Where a Member State notifies the Commission in accordance with paragraph 1, by way of derogation from Article 45(1), that Member State is not required to examine in a border procedure applications made by applicants as referred to in Article 42(1), point (j), at the moment when the number of applicants that are subject to the border procedure in that Member State is equal to or exceeds the number referred to in Article 47(1), first subparagraph.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B (COD)).

3. The measure provided for in paragraph 2 shall be applied on an inflow-outflow basis and the Member State concerned shall be required to continue examining in a border procedure applications made by applicants as referred to in Article 42(1), point (j), as soon as the number of applicants that are subject to the border procedure in that Member State at any given moment is lower than the number referred to in Article 47(1), first subparagraph.
4. The measure provided for in paragraph 2 may be applied by a Member State for the remainder of the same calendar year starting from the day following the date of the notification under paragraph 1.

#### *Article 49*

##### *Notification by a Member State where the adequate capacity is reached*

1. The notification referred to in Article 48 shall contain the following information:
  - (a) the number of applicants that are subject to the asylum border procedure, a return border procedure established pursuant to Regulation (EU) .../...<sup>+</sup> or, where applicable, an equivalent return border procedure established under national law in the Member State concerned at the time of the notification;
  - (b) the measure referred to in Article 48 that the Member State concerned intends to apply or to continue applying;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B (COD)).

- (c) a substantiated reasoning in support of the intention of the Member State concerned, describing how resorting to the measure in question could help in addressing the situation and, where applicable, other measures that the Member State concerned has adopted or envisages adopting at national level to alleviate the situation, including those referred to in Article 6(3) of Regulation (EU) .../...<sup>+</sup>.
2. Member States may notify the Commission in accordance with Article 48 of this Regulation as part of the notification referred to in Articles 58 and 59 of Regulation (EU) .../...<sup>+</sup>, where applicable.
  3. Where a Member State notifies the Commission in accordance with Article 48, the Member State concerned shall inform other Member States accordingly.
  4. A Member State applying the measure referred to in Article 48 shall inform the Commission on a monthly basis about the following elements:
    - (a) the number of applicants that are subject to the border procedure in that Member State at that time;
    - (b) the inflow-outflow evolution of the number of persons that are subject to border procedures for each week that month;
    - (c) the number of staff responsible for examining applications in the border procedure;
    - (d) the average duration of the examination during the administrative stage of the procedure; and

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

- (e) the average duration of the examination by a court or tribunal of a request to be allowed to remain pending the appeal.

The Commission shall monitor the application of the measure referred to in Article 48 of this Regulation and to that effect review the information provided by Member States. The Commission shall, within the report referred to in Article 9 of Regulation (EU) .../...<sup>+</sup>, provide an assessment of the application of the measure referred to in Article 48 of this Regulation in every Member State.

#### *Article 50*

##### *Notification by a Member State where the annual maximum number of applications is reached*

Where the number of applications that have been examined in the border procedure in a Member State within one calendar year is equal to or exceeds the maximum number of applications set out in respect of that Member State in the implementing act referred to in Article 47(1), that Member State may notify the Commission accordingly.

Where the Member State has notified the Commission in accordance with the first paragraph of this Article, the Commission shall promptly examine the information provided by the Member State concerned in order to verify that the Member State concerned has examined in the border procedure since the beginning of the calendar year a number of applications that is equal to or exceeds the number set out in respect of that Member State in the implementing act referred to in Article 47(1).

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

On completion of the verification, the Commission shall authorise, by means of an implementing act, the Member State concerned to not examine in the border procedure applications made by applicants as referred to in Article 42(1), points (c) and (j).

Such an authorisation shall not exempt the Member State from the obligation to examine in the border procedure applications made by applicants as referred to in Article 42(1), point (f), and Article 42(5), point (b).

### *Article 51*

#### *Deadlines*

1. By way of derogation from Article 28 of this Regulation, applications subject to a border procedure shall be lodged no later than five days from registration for the first time or, following a transfer pursuant to Article 67(11) of Regulation (EU) .../...<sup>+</sup>, five days from when the applicant arrives in the Member State of relocation following such a transfer provided that the applicant is given an effective opportunity to do so. Failure to comply with the deadline of five days shall not affect the continued application of the border procedure.
2. The border procedure shall be as short as possible while at the same time enabling a complete and fair examination of the claims. Without prejudice to the third subparagraph of this paragraph, the maximum duration of the border procedure shall be 12 weeks from when the application is registered until the applicant no longer has a right to remain and is not allowed to remain. Following that period, the applicant shall be authorised to enter the Member State's territory except where Article 4 of Regulation (EU) .../...<sup>++</sup> applies.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

<sup>++</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 17/24 (2016/0224B (COD)).



Member States shall lay down provisions on the duration of the examination procedure, by way of derogation from Article 35, of the examination by a court or tribunal of a request to remain lodged in accordance with Article 68(4) and (5) and, where applicable, of the appeal procedure. The duration laid down shall ensure that all those procedural steps are finalised within 12 weeks from when the application is registered.

The 12-week period may be extended to 16 weeks if the Member State to which the person is transferred pursuant to Article 67(11)] of Regulation EU .../...<sup>+</sup> is applying the border procedure.

#### *Article 52*

##### *Determination of Member State responsible and relocation*

1. Where the conditions for the border procedure apply, Member States shall decide to carry out the procedure for determining the Member State responsible for examining the application as laid down in Regulation (EU) .../...<sup>+</sup> at the locations at which the border procedure will be carried out, without prejudice to the deadlines established in Article 51(2) of this Regulation.
2. Where the conditions for applying the border procedure are met in the Member State from which the applicant is transferred, a border procedure may be applied by the Member State to which the applicant is transferred in accordance with Article 67(11) of Regulation (EU) .../...<sup>+</sup>, without prejudice to the deadlines established in Article 51(2) of this Regulation.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 21/24 (2020/0279(COD)).

*Article 53*

*Exceptions to the asylum border procedure*

1. The border procedure shall be applied to unaccompanied minors only in the circumstances referred to in Article 42(3), point (b). Where there is doubt as to the applicant's age, the competent authorities shall promptly carry out an age assessment in accordance with Article 25.
2. Member States shall not apply or shall cease to apply the border procedure at any stage of the procedure where:
  - (a) the determining authority considers that the grounds for rejecting an application as inadmissible or for applying the accelerated examination procedure are not applicable or no longer applicable;
  - (b) the necessary support cannot be provided to applicants with special reception needs, including minors, in accordance with Chapter IV of Directive (EU) .../...<sup>+</sup>, at the locations referred to in Article 54;
  - (c) the necessary support cannot be provided to applicants in need of special procedural guarantees at the locations referred to in Article 54;
  - (d) there are relevant medical reasons for not applying the border procedure, including mental health reasons;

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

- (e) the guarantees and conditions for detention laid down in Articles 10 to 13 of Directive (EU) .../...<sup>+</sup> are not met or no longer met and the border procedure cannot be applied to the applicant without the use of detention.

In the cases set out in the first subparagraph of this paragraph, the competent authority shall authorise the applicant to enter the territory of the Member State and apply the appropriate procedure provided for in Chapter III.

#### *Article 54*

##### *Locations for carrying out the asylum border procedure*

1. During the examination of applications subject to a border procedure, a Member State shall require, pursuant to Article 9 of Directive (EU) .../...<sup>+</sup> and without prejudice to Article 10 thereof, 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, fully taking into account the specific geographical circumstances of that Member State.
2. Without prejudice to Article 47, Member States shall ensure that families with minors 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 minor's physical, mental, spiritual, moral and social development, in full respect of the requirements of Chapter IV of Directive (EU) .../...<sup>+</sup>.

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<sup>+</sup> OJ: Please insert in the text the number of the Directive contained in document PE-CONS 69/23 (2016/0222(COD)).

3. Each Member State shall notify the Commission, by ... [two months before the date of the application of this Regulation], the locations at which the border procedure will be carried out, including when applying Article 45. Member States shall ensure that the capacity of those locations is sufficient to examine the applications covered by Article 45. Any changes in the identification of the locations at which the border procedure is carried out shall be notified to the Commission within two months of the changes having taken place.
4. The requirement to reside at a particular place in accordance with paragraphs 1, 2 and 3 shall not be regarded as authorisation to enter into and stay on the territory of a Member State.
5. Where an applicant subject to the border procedure needs to be transferred to the determining authority or to a competent court or tribunal of first instance for the purposes of such a procedure, or transferred for the purpose of receiving medical treatment, such travel shall not in itself constitute an entry into the territory of a Member State.

#### *Article 55*

##### *Subsequent applications*

1. An application made where a final decision on a previous application by the same applicant has not yet been taken shall be considered to be a further representation and not a new application.

That further representation shall be examined in the Member State responsible in the framework of the ongoing examination in the administrative procedure or in the framework of any ongoing appeal procedure in so far as the competent court or tribunal may take into account the elements underlying the further representation.

2. Any further application made in any Member State after a final decision has been taken on a previous application by the same applicant shall be considered to be a subsequent application and shall be examined by the Member State responsible.
3. A subsequent application shall be subject to a preliminary examination in which the determining authority shall establish whether new elements have arisen or have been presented by the applicant and which:
  - (a) significantly increase the likelihood of the applicant to qualify as a beneficiary of international protection in accordance with Regulation (EU) .../...<sup>+</sup>; or
  - (b) relate to an inadmissibility ground previously applied, where the previous application was rejected as inadmissible.
4. The preliminary examination shall be carried out on the basis of written submissions or a personal interview in accordance with the basic principles and guarantees provided for in Chapter II. In particular, the personal interview may be dispensed with in those instances where, from the written submissions, it is clear that the application does not give rise to new elements as referred to in paragraph 3.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

5. The elements presented by the applicant shall be considered to be new only where the applicant was unable, through no fault on his or her own part, to present those elements in the context of the earlier application. Any elements which could have been presented earlier by the applicant need not be taken into account unless they significantly increase the likelihood of the application not being inadmissible or of the applicant qualifying for international protection or if a previous application was rejected as implicitly withdrawn in accordance with Article 41 without an examination on the merits.
6. Where new elements as referred to in paragraph 3 have been presented by the applicant or have arisen, the application shall be further examined on its merits, unless the application may be considered to be inadmissible on the basis of another ground provided for in Article 38(1).
7. Where no new elements as referred to in paragraph 3 have been presented by the applicant or have arisen, the application shall be rejected as inadmissible pursuant to Article 38(2).

#### *Article 56*

##### *Exception from the right to remain in subsequent applications*

Without prejudice to the principle of non-refoulement, Member States may provide for an exception to the right to remain on their territory and derogate from Article 68(5), point (d), where:

- (a) a first subsequent application has been lodged, merely in order to delay or frustrate the enforcement of a decision which would result in the applicant's imminent removal from that Member State and is not further examined pursuant to Article 55(7); or

- (b) a second or further subsequent application is made in any Member State following a final decision rejecting a previous subsequent application as inadmissible or unfounded or manifestly unfounded.

## SECTION V

### SAFE COUNTRY CONCEPTS

#### *Article 57*

#### *The notion of effective protection*

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.

*Article 58*

*The concept of first country of asylum*

1. A third country may only be considered to be a first country of asylum for an applicant where in that country:
  - (a) the applicant enjoyed effective protection in accordance with the Geneva Convention, as referred to in Article 57(1), or enjoyed effective protection as referred to in Article 57(2), before travelling to the Union, and he or she can still avail himself or herself of that protection;
  - (b) the applicant's life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
  - (c) the applicant faces no real risk of serious harm as defined in Article 15 of Regulation (EU) .../...<sup>+</sup>;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).



- (d) the applicant is protected against refoulement in accordance with the Geneva Convention and against removal in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law.
2. The concept of first country of asylum may only be applied provided that the applicant cannot provide elements justifying why the concept of first country of asylum is not applicable to him or her, in the framework of an individual assessment.
  3. A third country may only be considered to be a first country of asylum for an unaccompanied minor where it is not contrary to his or her best interests and where the authorities of Member States have first received from the authorities of the third country in question the assurance that the unaccompanied minor will be taken in charge by those authorities and that he or she will immediately benefit from effective protection as defined in Article 57.
  4. Where an application is rejected as inadmissible as a result of the application of the concept of first country of asylum, the determining authority shall:
    - (a) inform the applicant in accordance with Article 36; and
    - (b) provide him or her with a document informing the authorities of the third country in question, in the language of that country, that the application has not been examined in substance as a consequence of the application of the concept of first country of asylum.

5. Where the third country in question does not readmit the applicant to its territory or does not reply within a time limit set by the competent authority, the applicant shall have access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and in Section I of Chapter III.

*Article 59*

*The concept of safe third country*

1. A third country may only be designated as a safe third country where in that country:
- (a) non-nationals' life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
  - (b) non-nationals face no real risk of serious harm as defined in Article 15 of Regulation (EU) .../...<sup>+</sup>;
  - (c) non-nationals are protected against refoulement in accordance with the Geneva Convention and against removal in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment as laid down in international law;
  - (d) the possibility exists to request and, where conditions are fulfilled, receive effective protection as defined in Article 57.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

2. The designation of a third country as a safe third country both at Union and national level may be made with exceptions for specific parts of its territory or clearly identifiable categories of persons.
3. The assessment of whether a third country may be designated as a safe third country in accordance with this Regulation shall be based on a range of relevant and available sources of information, including information from Member States, the Asylum Agency, the European External Action Service, the United Nations High Commissioner for Refugees, the Council of Europe and other relevant international organisations.
4. The concept of safe third country may be applied:
  - (a) where a third country has been designated as safe third country at Union or national level in accordance with Article 60 or 64; or
  - (b) in relation to a specific applicant where the country has not been designated as safe third country at Union or national level, provided that the conditions set out in paragraph 1 are met with regard to that applicant.
5. The concept of safe third country may only be applied provided that:
  - (a) the applicant cannot provide elements justifying why the concept of safe third country is not applicable to him or her, in the framework of an individual assessment;
  - (b) there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for him or her to go to that country.

6. A third country may only be considered to be a safe third country for an unaccompanied minor where it is not contrary to his or her best interests and where the authorities of Member States have first received from the authorities of the third country in question the assurance that the unaccompanied minor will be taken in charge by those authorities and that he or she will immediately have access to effective protection as defined in Article 57.
7. Where the Union and a third country have jointly come to an agreement pursuant to Article 218 TFEU that migrants admitted under that agreement will be protected in accordance with the relevant international standards and in full respect of the principle of non-refoulement, the conditions of this Article regarding safe third-country status may be presumed fulfilled without prejudice to paragraphs 5 and 6.
8. Where an application is rejected as inadmissible as a result of the application of the concept of safe third country, the determining authority shall:
  - (a) inform the applicant in accordance with Article 36; and
  - (b) provide him or her with a document informing the authorities of the third country in question, in the language of that country, that the application has not been examined in substance as a consequence of the application of the concept of safe third country.
9. Where the third country in question does not admit or readmit the applicant to its territory, the applicant shall have access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and in Section I of Chapter III.

*Article 60*

*Designation of safe third countries at Union level*

1. Third countries shall be designated as safe third countries at Union level in accordance with the conditions laid down in Article 59(1).
2. The Commission shall review the situation in third countries that are designated as safe third countries with the assistance of the Asylum Agency and on the basis of the other sources of information referred to in Article 59(3).
3. The Asylum Agency shall, at the request of the Commission, provide it with information and analysis on specific third countries which could be considered for designation as safe third countries at Union level. The Commission shall promptly consider any request from a Member State to assess whether a third country could be designated as a safe third country at Union level.
4. The Commission is empowered to adopt delegated acts in accordance with Article 74 concerning the suspension of the designation of a third country as a safe third country at Union level subject to the conditions as set out in Article 63.

*Article 61*

*The concept of safe country of origin*

1. A third country may only be designated as a safe country of origin in accordance with this Regulation 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 Regulation (EU) .../...<sup>+</sup> and no real risk of serious harm as defined in Article 15 of that Regulation.
2. The designation of a third country as a safe country of origin both at Union and national level may be made with exceptions for specific parts of its territory or clearly identifiable categories of persons.
3. The assessment of whether a third country is a safe country of origin in accordance with this Regulation shall be based on a range of relevant and available sources of information, including information from Member States, the Asylum Agency, the European External Action Service, the United Nations High Commissioner for Refugees, and other relevant international organisations, and shall take into account where available the common analysis of the country of origin information referred to in Article 11 of Regulation (EU) 2021/2303.
4. In making the assessment referred to in paragraph 3, account shall be taken, inter alia, of the extent to which protection is provided against persecution or serious harm by:
  - (a) the relevant laws and regulations of the country and the manner in which they are applied;

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

- (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant for Civil and Political Rights or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;
- (c) the absence of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country;
- (d) the provision for a system of effective remedies against violations of those rights and freedoms.

5. The concept of a safe country of origin may only be applied provided that:

- (a) the applicant has the nationality of that country or he or she is a stateless person and was formerly habitually resident in that country;
- (b) the applicant does not belong to a category of persons for which an exception was made when designating the third country as a safe country of origin;

- (c) the applicant cannot provide elements justifying why the concept of safe country of origin is not applicable to him or her, in the framework of an individual assessment.

*Article 62*

*Designation of safe countries of origin at Union level*

1. Third countries shall be designated as safe countries of origin at Union level, in accordance with the conditions laid down in Article 61.
2. The Commission shall review the situation in third countries that are designated as safe countries of origin, with the assistance of the Asylum Agency and on the basis of the other sources of information referred to in Article 61(3).
3. The Asylum Agency shall, at the request of the Commission, provide it with information and analysis on specific third countries which could be considered for designation as safe countries of origin at Union level. The Commission shall promptly consider any request from a Member State to assess whether a third country could be designated as safe country of origin at Union level.
4. The Commission is empowered to adopt delegated acts in accordance with Article 74 concerning the suspension of the designation of a third country as a safe country of origin at Union level subject to the conditions as set out in Article 63.



*Article 63*

*Suspension and removal of the designation of a third country as a safe third country  
or as a safe country of origin at Union level*

1. In the event of significant changes in the situation of a third country which is designated as a safe third country or as a safe country of origin at Union level, the Commission shall conduct a substantiated assessment of the fulfilment by that third country of the conditions set out in Article 59 or 61 and, where the Commission considers that those conditions are no longer met, it shall adopt a delegated act in accordance with Article 74 to suspend the designation of that third country as a safe third country or as a safe country of origin at Union level for a period of six months.
2. The Commission shall continuously review the situation in the third country referred to in paragraph 1 taking into account, inter alia, information provided by the Member States and the Asylum Agency regarding subsequent changes in the situation of that third country.
3. Where the Commission has adopted a delegated act in accordance with paragraph 1 suspending the designation of a third country as a safe third country or as a safe country of origin at Union level, it shall, within three months of the date of adoption of that delegated act, submit a proposal, in accordance with the ordinary legislative procedure, for amending this Regulation to remove that third country's designation as a safe third country or of safe country of origin at Union level.

4. Where the Commission has not submitted a proposal as referred to in paragraph 3 within three months of the adoption of the delegated act as referred to in paragraph 1, the delegated act suspending the third country from its designation as a safe third country or as a safe country of origin at Union level shall cease to have effect. Where the Commission submits such a proposal within three months of the adoption of the delegated act as referred to in paragraph 1, the Commission shall be empowered, on the basis of a substantiated assessment, to extend the validity of that delegated act for a period of six months, with a possibility to renew that extension once.
5. Without prejudice to paragraph 4, where the proposal submitted by the Commission to remove the designation of a third country as a safe third country or a safe country of origin at Union level is not adopted within 15 months from when the proposal was submitted by the Commission, the suspension of the designation of the third country as a safe third country or as a safe country of origin at Union level shall cease to have effect.

#### *Article 64*

##### *Designation of third countries as safe third country or safe country of origin at national level*

1. Member States may retain or introduce legislation that allows for the national designation of safe third countries or safe countries of origin other than those designated at Union level for the purpose of examining applications for international protection.
2. Where the designation of a third country as a safe third country or as a safe country of origin at Union level has been suspended pursuant to Article 63(1), Member States shall not designate that country as a safe third country or a safe country of origin at national level.

3. Where the designation of a third country as a safe third country or as a safe country of origin at Union level has been suspended in accordance with the ordinary legislative procedure, a Member State may notify the Commission that it considers that, following changes in the situation of that country, it again fulfils the conditions set out in Article 59(1) and Article 61.

The notification shall include a substantiated assessment of the fulfilment by that country of the conditions set out in Article 59(1) and Article 61, including an explanation of the specific changes in the situation of the third country which make that country fulfil those conditions again.

Following the notification, the Commission shall request the Asylum Agency to provide it with information and analysis on the situation in the third country.

The notifying Member State may only designate that third country as a safe third country or as a safe country of origin at national level provided that the Commission does not object to that designation.

The Commission's right of objection shall be limited to a period of two years after the date on which that third country's designation as a safe third country or a safe country of origin at Union level has been removed. Any objection by the Commission shall be issued within a period of three months after the date of each notification by the Member State and after due review of the situation in that third country, having regard to the conditions set out in Articles 59(1) and 61 of this Regulation.

Where it considers that those conditions are fulfilled, the Commission may submit a proposal, in accordance with the ordinary legislative procedure, for amending this Regulation to designate that third country as a safe third country or as a safe country of origin at Union level.

4. Member States shall notify the Commission and the Asylum Agency of the third countries that are designated as safe third countries or safe countries of origin at national level by ... [the date of application of this Regulation] and immediately after each designation or change to designations. Member States shall inform the Commission and the Asylum Agency once a year of the other safe third countries to which the concept is applied in relation to specific applicants as referred to in Article 59(4), point (b).

## **Chapter IV**

### **Procedures for the withdrawal of international protection**

#### *Article 65*

#### *Withdrawal of international protection*

The determining authority or, where provided for by national law, a competent court or tribunal shall start the examination to withdraw international protection from a third-country national or stateless person when new elements or findings arise indicating that there are reasons to reconsider whether he or she qualifies for international protection, in particular in the instances referred to in Articles 14 and 19 of Regulation (EU) .../...<sup>+</sup>.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

*Article 66*

*Procedural rules for withdrawal of international protection*

1. Where the determining authority or, where provided for by national law, a competent court or tribunal starts the examination to withdraw international protection from a third-country national or a stateless person, the person concerned shall enjoy the following guarantees:
  - (a) he or she shall be informed in writing that his or her qualification as a beneficiary of international protection is being reconsidered and the reasons for such reconsideration;
  - (b) he or she shall be informed of the obligation to cooperate with the determining authority and other competent authorities, in particular of the fact that he or she shall be required to make a written statement and appear for a personal interview or a hearing and answer questions;
  - (c) he or she shall be informed of the consequences of not cooperating with the determining authority and other competent authorities and that failure to submit the written statement and to attend the personal interview or the hearing without due justification shall not prevent the determining authority or the competent court or tribunal from taking a decision to withdraw international protection; and

- (d) he or she shall be given the opportunity to submit reasons as to why his or her international protection should not be withdrawn by means of a written statement within reasonable time from the date on which he or she receives the information referred to in point (a) and in a personal interview or hearing at a date set by the determining authority or, where provided for by national law, the competent court or tribunal.
2. For the purposes of paragraph 1, the determining authority or the competent court or tribunal:
- (a) shall obtain relevant, precise and up-to-date information from relevant and available national, Union and international sources and, where available, take into account the common analysis on the situation in a specific country of origin and the guidance notes referred to in Article 11 of Regulation (EU) 2021/2303; and
- (b) shall not obtain any information from the alleged actors of persecution or serious harm in a manner that would result in such actors being informed of the fact that the person concerned is a beneficiary of international protection whose status is under reconsideration.
3. The decision to withdraw international protection shall be given in writing as soon as possible. The reasons in fact and in law for the withdrawal shall be stated in the decision and information on the manner on how to challenge the decision and on the relevant time limits shall be given in writing.

4. Where the determining authority or, where provided for by national law, a competent court or tribunal has taken the decision to withdraw international protection, Articles 6, 17, 18 and 19 shall apply *mutatis mutandis*.
5. Where the third-country national or stateless person does not cooperate by not submitting a written statement, by not attending the personal interview or the hearing, or by not answering questions without due justification, the absence of the written statement or the personal interview or hearing shall not prevent the determining authority or the competent court or tribunal from taking a decision to withdraw international protection. Such a refusal to cooperate may only be considered to be a rebuttable presumption that the third-country national or stateless person no longer wishes to benefit from international protection.
6. The procedure set out in this Article shall not apply where the third-country national or stateless person:
  - (a) unequivocally renounces his or her recognition as beneficiary of international protection
  - (b) has become a national of a Member State; or
  - (c) has subsequently been granted international protection in another Member State.

Member States shall conclude the cases covered by this paragraph in accordance with their national law. That conclusion need not take the form of a decision but shall be recorded at least in the applicant's file together with the indication of the legal ground for that conclusion.

## **Chapter V**

### **Appeal procedure**

#### *Article 67*

#### *The right to an effective remedy*

1. Applicants and persons subject to withdrawal of international protection shall have the right to an effective remedy before a court or tribunal, in accordance with the basic principles and guarantees provided for in Chapter II that relate to the appeal procedure, against the following:
  - (a) a decision rejecting an application as inadmissible;
  - (b) a decision rejecting an application as unfounded or manifestly unfounded in relation to both refugee and subsidiary protection status;
  - (c) a decision rejecting an application as implicitly withdrawn;
  - (d) a decision withdrawing international protection;
  - (e) a return decision issued in accordance with Article 37 of this Regulation.

By way of derogation from the first subparagraph, point (d), of this paragraph, Member States may provide in their national law that the cases referred to in Article 66(6) are not to be subject to an appeal.



Where a return decision is taken as a part of a related decision as referred to in points (a), (b), (c) or (d) of the first subparagraph, the return decision shall be appealed jointly with that related decision, before the same court or tribunal, within the same judicial proceedings and the same time limits. Where a return decision is issued as a separate act pursuant to Article 37, it may be appealed in separate judicial proceedings. The time limits for those separate judicial proceedings shall not exceed the time limits referred to in paragraph 7 of this Article.

2. Without prejudice to paragraph 1, persons recognised as eligible for subsidiary protection shall have the right to an effective remedy against a decision considering their application unfounded in relation to refugee status.
3. An effective remedy as referred to in paragraph 1 shall provide for a full and *ex nunc* examination of both facts and points of law, at least before a court or tribunal of first instance, including, where applicable, an examination of the international protection needs pursuant to Regulation (EU) .../...<sup>+</sup>.
4. Applicants, persons subject to withdrawal of international protection and persons recognised as eligible for subsidiary protection shall be provided with interpretation for the purpose of a hearing before the competent court or tribunal, where such a hearing takes place and appropriate communication cannot otherwise be ensured.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

5. Where the court or tribunal considers it necessary, it shall ensure the translation of relevant documents that have not already been translated in accordance with Article 34(4).

Alternatively, translations of those relevant documents may be provided by other entities and paid for from public funds in accordance with national law.

An applicant, a person subject to withdrawal of international protection and a person recognised as eligible for subsidiary protection may, at his or her own cost, ensure the translation of other documents.

6. Where the documents are not submitted in due time, as determined by the court or tribunal, in the event that the translation is to be provided by the applicant, or where documents are not submitted in time for the court or tribunal to ensure that they are translated in the event that the translation is ensured by the court or tribunal, the court or tribunal may refuse to take those documents into account.

7. Member States shall lay down the following time limits in their national law for applicants, persons subject to withdrawal of international protection and persons recognised as eligible for subsidiary protection to lodge appeals against the decisions referred to in paragraph 1:

(a) between a minimum of five days and a maximum of ten days in the case of a decision rejecting an application as inadmissible, as implicitly withdrawn, as unfounded or as manifestly unfounded if at the time of the decision any of the circumstances referred to in Article 42(1) or (3) apply;

(b) between a minimum of two weeks and a maximum of one month in all other cases.

8. The time limits referred to in paragraph 7 shall start to run from the date on which the decision of the determining authority or, in the case of withdrawal of international protection and where provided for by national law, of the competent court or tribunal is notified to the applicant, the person subject to withdrawal of international protection, the person recognised as eligible for subsidiary protection or to his or her representative or legal adviser legally representing the applicant. The procedure for notification shall be laid down in national law.

*Article 68*

*Suspensive effect of appeal*

1. The effects of a return decision shall be automatically suspended for as long as an applicant or a person subject to withdrawal of international protection has a right to remain or is allowed to remain in accordance with this Article.
2. Applicants and persons subject to withdrawal of international protection shall have the right to remain on the territory of the Member States until the time limit within which they can exercise their right to an effective remedy before a court or tribunal of first instance has expired and, where such a right has been exercised within the time limit, pending the outcome of the remedy.

3. Without prejudice to the principle of non-refoulement, the applicant and the person subject to withdrawal of international protection shall not have the right to remain pursuant to paragraph 2 where the competent authority has taken one of the following decisions:
- (a) a decision which rejects an application as unfounded or manifestly unfounded if at the time of the decision:
    - (i) the applicant is subject to an accelerated examination pursuant to Article 42(1) or (3);
    - (ii) the applicant is subject to the border procedure, except where the applicant is an unaccompanied minor;
  - (b) a decision which rejects an application as inadmissible pursuant to Article 38(1), point (a), (d) or (e), or Article 38(2), except where the applicant is an unaccompanied minor subject to the border procedure;
  - (c) a decision which rejects an application as implicitly withdrawn;
  - (d) a decision which rejects a subsequent application as unfounded or manifestly unfounded; or
  - (e) a decision to withdraw international protection in accordance with Article 14(1), point (b), (d) or (e), or Article 19(1), point (b), of Regulation (EU) .../...<sup>+</sup>.

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<sup>+</sup> OJ: Please insert in the text the number of the Regulation contained in document PE-CONS 70/23 (2016/0223(COD)).

4. In the cases referred to in paragraph 3, a court or tribunal shall have the power to decide, following an examination of both facts and points of law, whether or not the applicant or the person subject to withdrawal of international protection should be allowed to remain on the territory of the Member States pending the outcome of the remedy, upon the request of the applicant or of the person subject to withdrawal of international protection. The competent court or tribunal shall under national law have the power to decide on this matter *ex officio*.
5. For the purposes of paragraph 4, the following conditions shall apply where relevant in the light of any *ex officio* decisions:
  - (a) the applicant or the person subject to withdrawal of international protection shall have a time limit of at least five days from the date on which the decision is notified to him or her to request to be allowed to remain on the territory pending the outcome of the remedy;
  - (b) the applicant or the person subject to withdrawal of international protection shall be provided with interpretation in the event of a hearing before the competent court or tribunal, where appropriate communication cannot otherwise be ensured;
  - (c) the applicant or the person subject to withdrawal of international protection shall be provided, upon request, with free legal assistance and representation in accordance with Article 17;

- (d) the applicant or the person subject to withdrawal of international protection shall not be removed from the territory of the Member State responsible:
    - (i) until the time limit for requesting a court or tribunal to be allowed to remain has expired;
    - (ii) where the applicant or the person subject to withdrawal of international protection has requested to be allowed to remain within the set time limit, pending the decision of the court or tribunal on whether or not the applicant or the person subject to withdrawal of international protection shall be allowed to remain on the territory;
  - (e) the applicant or the person subject to withdrawal of international protection shall be duly informed in a timely manner of her or his rights under this paragraph.
6. In cases of subsequent applications, by way of derogation from paragraph 5, point (d), Member States may provide in national law that the applicant shall not have a right to remain, without prejudice to the respect of the principle of non-refoulement, if the appeal is considered to have been lodged merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant's imminent removal from the Member State.

7. An applicant or a person subject to withdrawal of international protection who lodges a further appeal against a first or subsequent appeal decision shall not have a right to remain on the territory of the Member State, without prejudice to the possibility for a court or tribunal to allow the applicant or the person subject to withdrawal of international protection to remain upon the request of the applicant or of the person subject to withdrawal of international protection or acting *ex officio* in cases where the principle of non-refoulement is invoked.

*Article 69*

*Duration of the first level of appeal*

Without prejudice to an adequate and complete examination of an appeal, Member States shall lay down in their national law reasonable time limits for the court or tribunal to examine decisions in accordance with Article 67(1).

## **Chapter VI**

### **Final provisions**

*Article 70*

*Challenge by public authorities*

This Regulation does not affect the possibility for public authorities to challenge administrative or judicial decisions as provided for in national legislation.

*Article 71*  
*Cooperation*

1. Each Member State shall appoint a national contact point in relation to the matters covered by this Regulation and send its address to the Commission. The Commission shall send that information to the other Member States.
2. Member States shall, in liaison with the Commission, take all appropriate measures to establish direct cooperation and an exchange of information between their competent authorities, as well as between those competent authorities and the Asylum Agency.
3. When resorting to the measures referred to in Article 13(6), Article 27(5), Article 28(5) and Article 35(2) and (5), Member States shall inform the Commission and the Asylum Agency as soon as the reasons for applying those exceptional measures have ceased to exist and at least on an annual basis. That information shall, where possible, include data on the percentage of the applications for which derogations were applied to the total number of applications processed during that period.



*Article 72*

*Data storage*

1. Member States shall store the data referred to in Articles 14, 27 and 28 for ten years from the date of a final decision on the application for international protection. The data shall be erased upon expiry of that period or where they are 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.
2. All data shall be stored in compliance with the Regulation (EU) 2016/679, including the principle of purpose and storage limitation.

*Article 73*

*Calculation of time limits*

Unless otherwise provided, any period of time prescribed in this Regulation shall be calculated as follows:

- (a) a period expressed in days, weeks or months shall be calculated from the time an event occurs or an action takes place; the day on which that event occurs or that action takes place shall not itself be counted as falling within the period in question;

- (b) a period expressed in weeks or months shall end with the expiry of whichever day in the last week or month is the same day of the week, or falls on the same date of the month, respectively as the day on which the event or action from which the period is to be calculated occurred or took place; where, in a period expressed in months, the day on which it should expire does not occur in the last month of the period, the period shall end at midnight of the last day of that last month;
- (c) time limits shall include Saturdays, Sundays and official holidays in the Member State concerned; where a time limit ends on a Saturday, Sunday or official holiday, the next working day shall be counted as the last day of the time limit.

#### *Article 74*

##### *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in to in Articles 60, 62 and 63 shall be conferred on the Commission for a period of five years from ... [ date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power no later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension no later than three months before the end of each period.

3. The delegation of power referred to in Articles 60, 62 and 63 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>22</sup>.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act pursuant to Articles 60, 62 or 63 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

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<sup>22</sup> OJ L 123, 12.5.2016, p. 1.

*Article 75*  
*Transitional measures*

By ... [three months after the entry into force of this Regulation], the Commission, in close cooperation with the Member States and relevant Union bodies, offices and agencies, shall present a common implementation plan to the Council to ensure that Member States are adequately prepared to implement this Regulation by ... [the first day of the twenty-fifth month following the entry into force of this Regulation], assessing any gaps identified and operational steps required, and shall inform the European Parliament thereof.

Based on the common implementation plan referred to in the first paragraph, by ... [six months after entry into force of this Regulation] each Member State shall, with the support of the Commission and relevant Union bodies, offices and agencies, establish a national implementation plan setting the actions and the timeline for their implementation. Each Member State shall complete the implementation of its plan by .... [the first day of the twenty-fifth month following the entry into force of this Regulation].

For the purpose of implementing this Article, Member States may use the support of the relevant Union bodies, offices and agencies and the Union Funds may provide financial support to the Member States, in accordance with the legal acts governing those bodies, offices and agencies and Funds.

The Commission shall closely monitor the implementation of the national implementation plans.

*Article 76*  
*Financial support*

Actions undertaken by Member States for putting in place free legal counselling and adequate capacity for carrying out the border procedure in accordance with this Regulation shall be eligible for financial support from the funds made available under the 2021-2027 multiannual financial framework.

*Article 77*  
*Monitoring and evaluation*

By ... [two years from the date of application of this Regulation] and every five years thereafter, the Commission shall report to the European Parliament and to the Council on the application of this Regulation in the Member States and shall, where appropriate, propose any amendments.

Member States shall, at the request of the Commission, send it the necessary information for drawing up its report no later than nine months before that time limit expires.

By ... [three years from the date of entry into force of this Regulation] and every three years thereafter, the Commission shall assess whether the numbers set out in Article 46 and in Article 47(1), second subparagraph, and the exceptions to the asylum border procedure continue to be adequate in view of the overall migratory situation in the Union and shall, where appropriate, propose any targeted amendments.

By ... [one year from the date of entry into force of this Regulation], the Commission shall review the concept of safe third country and shall, where appropriate, propose any targeted amendments.

#### *Article 78*

##### *Repeal*

1. Directive 2013/32/EU is repealed with effect from the date referred to in Article 79(2), without prejudice to Article 79(3).
2. References to the repealed Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in the Annex.
3. To the extent that Council Directive 2005/85/EC<sup>23</sup> continued to be binding upon Member States not bound by Directive 2013/32/EU, Directive 2005/85/EC is repealed with effect from the date on which those Member States are bound by this Regulation. References to the repealed Directive shall be construed as references to this Regulation.

#### *Article 79*

##### *Entry into force and application*

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. This Regulation shall apply from ... [two years from the date of entry into force of this Regulation].

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<sup>23</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005, p. 13).

3. This Regulation shall apply to the procedure for granting international protection in relation to applications lodged as from ... [the date of application of this Regulation]. Applications for international protection lodged before that date shall be governed by Directive 2013/32/EU. This Regulation shall apply to the procedure for withdrawing international protection where the examination to withdraw international protection started as from ... [the date of application of this Regulation]. Where the examination to withdraw international protection started before ... [the date of application of this Regulation], the procedure for withdrawing international protection shall be governed by Directive 2013/32/EU.
4. For Member States not bound by Directive 2013/32/EU, references thereto in paragraph 3 of this Article shall be construed as references to Directive 2005/85/EC.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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## ANNEX

### Correlation table

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