

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 (recast)

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES

Article 6

Access to the procedure

1 When a person makes an application for international protection to an authority competent under national law for registering such applications, the registration shall take place no later than three working days after the application is made.

If the application for international protection is made to other authorities which are likely to receive such applications, but not competent for the registration under national law, Member States shall ensure that the registration shall take place no later than six working days after the application is made.

Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how applications for international protection may be lodged.

2 Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Where the applicant does not lodge his or her application, Member States may apply Article 28 accordingly.

3 Without prejudice to paragraph 2, Member States may require that applications for international protection be lodged in person and/or at a designated place.

4 Notwithstanding paragraph 3, an application for international protection shall be deemed to have been lodged once a form submitted by the applicant or, where provided for in national law, an official report, has reached the competent authorities of the Member State concerned.

5 Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it very difficult in practice to respect the time limit laid down in paragraph 1, Member States may provide for that time limit to be extended to 10 working days.

Article 7

Applications made on behalf of dependants or minors

1 Member States shall ensure that each adult with legal capacity has the right to make an application for international protection on his or her own behalf.

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2 Member States may provide that an application may be made by an applicant on behalf of his or her dependants. In such cases, Member States shall ensure that dependent adults consent to the lodging of the application on their behalf, failing which they shall have an opportunity to make an application on their own behalf.

Consent shall be requested at the time the application is lodged or, at the latest, when the personal interview with the dependent adult is conducted. Before consent is requested, each dependent adult shall be informed in private of the relevant procedural consequences of the lodging of the application on his or her behalf and of his or her right to make a separate application for international protection.

3 Member States shall ensure that a minor has the right to make an application for international protection either on his or her own behalf, if he or she has the legal capacity to act in procedures according to the law of the Member State concerned, or through his or her parents or other adult family members, or an adult responsible for him or her, whether by law or by the practice of the Member State concerned, or through a representative.

4 Member States shall ensure that the appropriate bodies referred to in Article 10 of 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⁽¹⁾ have the right to lodge an application for international protection on behalf of an unaccompanied minor if, on the basis of an individual assessment of his or her personal situation, those bodies are of the opinion that the minor may have protection needs pursuant to Directive 2011/95/EU.

5 Member States may determine in national legislation:

- a the cases in which a minor can make an application on his or her own behalf;
- b the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 25(1)(a);
- c the cases in which the lodging of an application for international protection is deemed to constitute also the lodging of an application for international protection for any unmarried minor.

Article 8

Information and counselling 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, Member States shall provide them with information on the possibility to do so. In those detention facilities and crossing points, Member States shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.

2 Member States shall ensure that organisations and persons providing advice and counselling to applicants have effective access to applicants present at border crossing points, including transit zones, at external borders. Member States may provide for rules covering the presence of such organisations and persons in those crossing points and in particular that access is subject to an agreement with the competent authorities of the Member States. Limits on such access may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the crossing points concerned, provided that access is not thereby severely restricted or rendered impossible.

Article 9

Right to remain in the Member State pending the examination of the application

1 Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. That right to remain shall not constitute an entitlement to a residence permit.

2 Member States may make an exception only where a person makes a subsequent application referred to in Article 41 or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant⁽²⁾ or otherwise, or to a third country or to international criminal courts or tribunals.

3 A Member State may extradite an applicant to a third country pursuant to paragraph 2 only where the competent authorities are satisfied that an extradition decision will not result in direct or indirect *refoulement* in violation of the international and Union obligations of that Member State.

Article 10

Requirements for the examination of applications

1 Member States shall ensure that applications for international protection are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.

2 When examining applications for international protection, the determining authority shall first determine whether the applicants qualify as refugees and, if not, determine whether the applicants are eligible for subsidiary protection.

3 Member States shall ensure that decisions by the determining authority on applications for international protection are taken after an appropriate examination. To that end, Member States shall ensure that:

- a applications are examined and decisions are taken individually, objectively and impartially;
- b precise and up-to-date information is obtained from various sources, such as EASO and UNHCR and relevant international human rights organisations, as to the general situation prevailing in the countries of origin of applicants and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;
- c the personnel examining applications and taking decisions know the relevant standards applicable in the field of asylum and refugee law;
- d the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues.

4 The authorities referred to in Chapter V shall, through the determining authority or the applicant or otherwise, have access to the general information referred to in paragraph 3(b), necessary for the fulfilment of their task.

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5 Member States shall provide for rules concerning the translation of documents relevant for the examination of applications.

Article 11

Requirements for a decision by the determining authority

1 Member States shall ensure that decisions on applications for international protection are given in writing.

2 Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with such information at an earlier stage either in writing or by electronic means accessible to the applicant.

3 For the purposes of Article 7(2), and whenever the application is based on the same grounds, Member States may take a single decision, covering all dependants, 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, sexual orientation, gender identity and/or age-based persecution. In such cases, a separate decision shall be issued to the person concerned.

Article 12

Guarantees for applicants

1 With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants enjoy the following guarantees:

- a they shall be informed in a language which they understand or are reasonably supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive 2011/95/EU, as well as of the consequences of an explicit or implicit withdrawal of the application. That information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 13;
- b they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to provide those services at least when the applicant is to be interviewed as referred to in Articles 14 to 17 and 34 and appropriate communication cannot be ensured without such services. In that case and in other cases where the competent authorities call upon the applicant, those services shall be paid for out of public funds;
- c they shall not be denied the opportunity to communicate with UNHCR or with any other organisation providing legal advice or other counselling to applicants in accordance with the law of the Member State concerned;
- d they and, if applicable, their legal advisers or other counsellors in accordance with Article 23(1), shall have access to the information referred to in Article 10(3)(b) and

- to the information provided by the experts referred to in Article 10(3)(d), where the determining authority has taken that information into consideration for the purpose of taking a decision on their application;
- e they shall be given notice in reasonable time of the decision by the determining authority on their application. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him or her instead of to the applicant;
 - f they shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 11(2).
- 2 With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants enjoy guarantees equivalent to the ones referred to in paragraph 1(b) to (e).

Article 13

Obligations of the applicants

- 1 Member States shall impose upon applicants the obligation to cooperate with the competent authorities with a view to establishing their identity and other elements referred to in Article 4(2) of Directive 2011/95/EU. Member States may impose upon applicants other obligations to cooperate with the competent authorities insofar as such obligations are necessary for the processing of the application.
- 2 In particular, Member States may provide that:
- a applicants are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;
 - b applicants have to hand over documents in their possession relevant to the examination of the application, such as their passports;
 - c applicants are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he or she indicated accordingly;
 - d the competent authorities may search the applicant and the items which he or she is carrying. Without prejudice to any search carried out for security reasons, a search of the applicant's person under this Directive 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;
 - e the competent authorities may take a photograph of the applicant; and
 - f the competent authorities may record the applicant's oral statements, provided he or she has previously been informed thereof.

Article 14

Personal interview

- 1 Before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview on his or her application for international protection with a person competent under national law to conduct such an interview. Personal interviews on the

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substance of the application for international protection shall be conducted by the personnel of the determining authority. This subparagraph shall be without prejudice to Article 42(2)(b).

Where simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it impossible in practice for the determining authority to conduct timely interviews on the substance of each application, Member States may provide that the personnel of another authority be temporarily involved in conducting such interviews. In such cases, the personnel of that other authority shall receive in advance the relevant training which shall include the elements listed in Article 6(4)(a) to (e) of Regulation (EU) No 439/2010. Persons conducting personal interviews of applicants pursuant to this Directive shall also have acquired general knowledge of problems which could adversely affect an applicant's ability to be interviewed, such as indications that the applicant may have been tortured in the past.

Where a person has lodged an application for international protection on behalf of his or her dependants, each dependent adult shall be given the opportunity of a personal interview.

Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview.

- 2 The personal interview on the substance of the application may be omitted where:
 - a the determining authority is able to take a positive decision with regard to refugee status on the basis of evidence available; or
 - b 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. When in doubt, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature.

Where a personal interview is not conducted pursuant to point (b) or, where applicable, with the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

3 The absence of a personal interview in accordance with this Article shall not prevent the determining authority from taking a decision on an application for international protection.

4 The absence of a personal interview pursuant to paragraph 2(b) shall not adversely affect the decision of the determining authority.

5 Irrespective of Article 28(1), Member States, when deciding on an application for international protection, may take into account the fact that the applicant failed to appear for the personal interview, unless he or she had good reasons for the failure to appear.

Article 15

Requirements for a personal interview

1 A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present.

2 A personal interview shall take place under conditions which ensure appropriate confidentiality.

3 Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner. To that end, Member States shall:

- a ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability;
- b wherever possible, provide for the interview with the applicant to be conducted by a person of the same sex if the applicant so requests, unless the determining authority has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;
- c select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview. The 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. Wherever possible, Member States shall provide an interpreter of the same sex if the applicant so requests, unless the determining authority has reasons to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the grounds of his or her application in a comprehensive manner;
- d ensure that the person who conducts the interview on the substance of an application for international protection does not wear a military or law enforcement uniform;
- e ensure that interviews with minors are conducted in a child-appropriate manner.

4 Member States may provide for rules concerning the presence of third parties at a personal interview.

Article 16

Content of a personal interview

When conducting a personal interview on the substance of an application for international protection, the determining authority shall ensure that the applicant is given an adequate opportunity to present elements needed to substantiate the application in accordance with Article 4 of Directive 2011/95/EU as completely as possible. This shall include the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in the applicant's statements.

Article 17

Report and recording of personal interviews

1 Member States shall ensure that either a thorough and factual report containing all substantive elements or a transcript is made of every personal interview.

2 Member States may provide for audio or audiovisual recording of the personal interview. Where such a recording is made, Member States shall ensure that the recording or a transcript thereof is available in connection with the applicant's file.

3 Member States shall ensure that the applicant has the opportunity to make comments and/or provide clarification orally and/or in writing with regard to any mistranslations or misconceptions appearing in the report or in the transcript, at the end of the personal interview or within a specified time limit before the determining authority takes a decision. To that end,

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Member States shall ensure that the applicant is fully informed of the content of the report or of the substantive elements of the transcript, with the assistance of an interpreter if necessary. Member States shall then request the applicant to confirm that the content of the report or the transcript correctly reflects the interview.

When the personal interview is recorded in accordance with paragraph 2 and the recording is admissible as evidence in the appeals procedures referred to in Chapter V, Member States need not request the applicant to confirm that the content of the report or the transcript correctly reflects the interview. Without prejudice to Article 16, where Member States provide for both a transcript and a recording of the personal interview, Member States need not allow the applicant to make comments on and/or provide clarification of the transcript.

4 Where an applicant refuses to confirm that the content of the report or the transcript correctly reflects the personal interview, the reasons for his or her refusal shall be entered in the applicant's file.

Such refusal shall not prevent the determining authority from taking a decision on the application.

5 Applicants and their legal advisers or other counsellors, as defined in Article 23, shall have access to the report or the transcript and, where applicable, the recording, before the determining authority takes a decision.

Where Member States provide for both a transcript and a recording of the personal interview, Member States need not provide access to the recording in the procedures at first instance referred to in Chapter III. In such cases, they shall nevertheless provide access to the recording in the appeals procedures referred to in Chapter V.

Without prejudice to paragraph 3 of this Article, where the application is examined in accordance with Article 31(8), Member States may provide that access to the report or the transcript, and where applicable, the recording, is granted at the same time as the decision is made.

Article 18

Medical examination

1 Where the determining authority deems it relevant for the assessment of an application for international protection in accordance with Article 4 of Directive 2011/95/EU, Member States shall, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm. Alternatively, Member States may provide that the applicant arranges for such a medical examination.

The medical examinations referred to in the first subparagraph shall be carried out by qualified medical professionals and the result thereof shall be submitted to the determining authority as soon as possible. Member States may designate the medical professionals who may carry out such medical examinations. An applicant's refusal to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

Medical examinations carried out in accordance with this paragraph shall be paid for out of public funds.

2 When no medical examination is carried out in accordance with paragraph 1, Member States shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs that might indicate past persecution or serious harm.

3 The results of the medical examinations referred to in paragraphs 1 and 2 shall be assessed by the determining authority along with the other elements of the application.

Article 19

Provision of legal and procedural information free of charge in procedures at first instance

1 In the procedures at first instance provided for in Chapter III, Member States shall ensure that, on request, applicants are provided with legal and procedural information free of charge, including, at least, information on the procedure in the light of the applicant's particular circumstances. In the event of a negative decision on an application at first instance, Member States shall also, on request, provide applicants with information — in addition to that given in accordance with Article 11(2) and Article 12(1)(f) — in order to clarify the reasons for such decision and explain how it can be challenged.

2 The provision of legal and procedural information free of charge shall be subject to the conditions laid down in Article 21.

Article 20

Free legal assistance and representation in appeals procedures

1 Member States shall ensure that free legal assistance and representation is granted on request in the appeals procedures provided for in Chapter V. It shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant.

2 Member States may also provide free legal assistance and/or representation in the procedures at first instance provided for in Chapter III. In such cases, Article 19 shall not apply.

3 Member States may provide that free legal assistance and representation not be granted where the applicant's appeal is considered by a court or tribunal or other competent authority to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority which is not a court or tribunal, Member States shall ensure that the applicant has the right to an effective remedy before a court or tribunal against that decision.

In the application of this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

4 Free legal assistance and representation shall be subject to the conditions laid down in Article 21.

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Article 21

Conditions for the provision of legal and procedural information free of charge and free legal assistance and representation

1 Member States may provide that the legal and procedural information free of charge referred to in Article 19 is provided by non-governmental organisations, or by professionals from government authorities or from specialised services of the State.

The free legal assistance and representation referred to in Article 20 shall be provided by such persons as admitted or permitted under national law.

2 Member States may provide that legal and procedural information free of charge referred to in Article 19 and free legal assistance and representation referred to in Article 20 are granted:

- a only to those who lack sufficient resources; and/or
- b only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that the free legal assistance and representation referred to in Article 20 is granted only for appeals procedures in accordance with Chapter V before a court or tribunal of first instance and not for any further appeals or reviews provided for under national law, including rehearings or reviews of appeals.

Member States may also provide that the free legal assistance and representation referred to in Article 20 is not granted to applicants who are no longer present on their territory in application of Article 41(2)(c).

3 Member States may lay down rules concerning the modalities for filing and processing requests for legal and procedural information free of charge under Article 19 and for free legal assistance and representation under Article 20.

4 Member States may also:

- a impose monetary and/or time limits on the provision of legal and procedural information free of charge referred to in Article 19 and on the provision of free legal assistance and representation referred to in Article 20, provided that such limits do not arbitrarily restrict access to the provision of legal and procedural information and legal assistance and representation;
- b provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

5 Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

Article 22

Right to legal assistance and representation at all stages of the procedure

1 Applicants shall be given the opportunity to consult, at their own cost, in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on

matters relating to their applications for international protection, at all stages of the procedure, including following a negative decision.

2 Member States may allow non-governmental organisations to provide legal assistance and/or representation to applicants in the procedures provided for in Chapter III and Chapter V in accordance with national law.

Article 23

Scope of legal assistance and representation

1 Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, who assists or represents an applicant under the terms of national law, shall enjoy access to the information in the applicant's file upon the basis of which a decision is or will be made.

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) 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. In such cases, Member States shall:

- a make access to such information or sources available to the authorities referred to in Chapter V; and
- b establish in national law procedures guaranteeing that the applicant's rights of defence are respected.

In respect of point (b), Member States may, in particular, grant access to such information or sources to a legal adviser or other counsellor who has undergone a security check, insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection.

2 Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant, in accordance with Article 10(4) and Article 18(2) (b) and (c) of Directive 2013/33/EU.

3 Member States shall allow an applicant to bring to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.

Member States may stipulate that the legal adviser or other counsellor may only intervene at the end of the personal interview.

4 Without prejudice to this Article or to Article 25(1)(b), Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure.

Member States may require the presence of the applicant at the personal interview, even if he or she is represented under the terms of national law by a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.

Without prejudice to Article 25(1)(b), the absence of a legal adviser or other counsellor shall not prevent the competent authority from conducting a personal interview with the applicant.

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Article 24

Applicants in need of special procedural guarantees

1 Member States shall assess within a reasonable period of time after an application for international protection is made whether the applicant is an applicant in need of special procedural guarantees.

2 The assessment referred to in paragraph 1 may be integrated into existing national procedures and/or into the assessment referred to in Article 22 of Directive 2013/33/EU and need not take the form of an administrative procedure.

3 Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Directive throughout the duration of the asylum procedure.

Where such adequate support cannot be provided within the framework of the procedures referred to in Article 31(8) and Article 43, in particular where Member States consider that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence, Member States shall not apply, or shall cease to apply, Article 31(8) and Article 43. Where Member States apply Article 46(6) to applicants to whom Article 31(8) and Article 43 cannot be applied pursuant to this subparagraph, Member States shall provide at least the guarantees provided for in Article 46(7).

4 Member States shall ensure that the need for special procedural guarantees is also addressed, in accordance with this Directive, where such a need becomes apparent at a later stage of the procedure, without necessarily restarting the procedure.

Article 25

Guarantees for unaccompanied minors

1 With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 14 to 17, Member States shall:

- a take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of a representative. 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 expertise to that end. The person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives. The representative may also be the representative referred to in Directive 2013/33/EU;
- b ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself or herself for the personal interview. Member States shall ensure that a representative and/or a legal adviser or other counsellor admitted or permitted as such under national law are present at that interview and have

an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview.

Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present.

2 Member States may refrain from appointing a representative where the unaccompanied minor will in all likelihood reach the age of 18 before a decision at first instance is taken.

3 Member States shall ensure that:

- a if an unaccompanied minor has a personal interview on his or her application for international protection as referred to in Articles 14 to 17 and 34, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;
- b an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

4 Unaccompanied minors and their representatives shall be provided, free of charge, with legal and procedural information as referred to in Article 19 also in the procedures for the withdrawal of international protection provided for in Chapter IV.

5 Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.

Any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.

Where medical examinations are used, Member States shall ensure that:

- a unaccompanied minors are informed prior to the examination of their application for international protection, and in a language that they understand or are reasonably supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for international protection, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;
- b unaccompanied minors and/or their representatives consent to a medical examination being carried out to determine the age of the minors concerned; and
- c the decision to reject an application for international protection by an unaccompanied minor who refused to undergo a medical examination shall not be based solely on that refusal.

The fact that an unaccompanied minor has refused to undergo a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

6 The best interests of the child shall be a primary consideration for Member States when implementing this Directive.

Where Member States, in the course of the asylum procedure, identify a person as an unaccompanied minor, they may:

- a apply or continue to apply Article 31(8) only if:

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- (i) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of this Directive; or
 - (ii) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with Article 40(5); or
 - (iii) the applicant may for serious reasons be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law;
- b apply or continue to apply Article 43, in accordance with Articles 8 to 11 of Directive 2013/33/EU, only if:
- (i) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of this Directive; or
 - (ii) the applicant has introduced a subsequent application; or
 - (iii) the applicant may for serious reasons be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law; or
 - (iv) there are reasonable grounds to consider that a country which is not a Member State is a safe third country for the applicant, pursuant to Article 38; or
 - (v) the applicant has misled the authorities by presenting false documents; or
 - (vi) in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her identity or nationality.
- Member States may apply points (v) and (vi) only in individual cases where there are serious grounds for considering that the applicant is attempting to conceal relevant elements which would likely lead to a negative decision and provided that the applicant has been given full opportunity, taking into account the special procedural needs of unaccompanied minors, to show good cause for the actions referred to in points (v) and (vi), including by consulting with his or her representative;
- c consider the application to be inadmissible in accordance with Article 33(2)(c) if a country which is not a Member State is considered as a safe third country for the applicant pursuant to Article 38, provided that to do so is in the minor's best interests;
 - d apply the procedure referred to in Article 20(3) where the minor's representative has legal qualifications in accordance with national law.

Without prejudice to Article 41, in applying Article 46(6) to unaccompanied minors, Member States shall provide at least the guarantees provided for in Article 46(7) in all cases.

Article 26

Detention

1 Member States shall not hold a person in detention for the sole reason that he or she is an applicant. The grounds for and conditions of detention and the guarantees available to detained applicants shall be in accordance with Directive 2013/33/EU.

2 Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review in accordance with Directive 2013/33/EU.

Article 27

Procedure in the event of withdrawal of the application

1 Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant explicitly withdraws his or her application for international protection, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or to reject the application.

2 Member States may also decide that the determining authority may decide to discontinue the examination without taking a decision. In that case, Member States shall ensure that the determining authority enters a notice in the applicant's file.

Article 28

Procedure in the event of implicit withdrawal or abandonment of the application

1 When there is reasonable cause to consider that an applicant has implicitly withdrawn or abandoned his or her application, Member States shall ensure that the determining authority takes a decision either to discontinue the examination or, provided that the determining authority considers the application to be unfounded on the basis of an adequate examination of its substance in line with Article 4 of Directive 2011/95/EU, to reject the application.

Member States may assume that the applicant has implicitly withdrawn or abandoned his or her application for international protection in particular when it is ascertained that:

- a he or she has failed to respond to requests to provide information essential to his or her application in terms of Article 4 of Directive 2011/95/EU or has not appeared for a personal interview as provided for in Articles 14 to 17 of this Directive, unless the applicant demonstrates within a reasonable time that his or her failure was due to circumstances beyond his or her control;
- b he or she has absconded or left without authorisation the place where he or she lived or was held, without contacting the competent authority within a reasonable time, or he or she has not within a reasonable time complied with reporting duties or other obligations to communicate, unless the applicant demonstrates that this was due to circumstances beyond his or her control.

For the purposes of implementing these provisions, Member States may lay down time limits or guidelines.

2 Member States shall ensure that an applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his or her case be reopened or to make a new application which shall not be subject to the procedure referred to in Articles 40 and 41.

Member States may provide for a time limit of at least nine months after which the applicant's case can no longer be reopened or the new application may be treated as a subsequent application and subject to the procedure referred to in Articles 40 and 41. Member States may provide that the applicant's case may be reopened only once.

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Member States shall ensure that such a person is not removed contrary to the principle of *nonrefoulement*.

Member States may allow the determining authority to resume the examination at the stage where it was discontinued.

3 This Article shall be without prejudice to Regulation (EU) No 604/2013.

Article 29

The role of UNHCR

- 1 Member States shall allow UNHCR:
- a to have access to applicants, including those in detention, at the border and in the transit zones;
 - b to have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, provided that the applicant agrees thereto;
 - c to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for international protection at any stage of the procedure.

2 Paragraph 1 shall also apply to an organisation which is working in the territory of the Member State concerned on behalf of UNHCR pursuant to an agreement with that Member State.

Article 30

Collection of information on individual cases

For the purposes of examining individual cases, Member States shall not:

- (a) disclose information regarding individual applications for international protection, or the fact that an application has been made, to the alleged actor(s) of persecution or serious harm;
- (b) obtain any information from the alleged actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.

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- (1) [OJ L 348, 24.12.2008, p. 98.](#)
- (2) 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.](#))