



Council of the  
European Union

Brussels, 9 February 2017  
(OR. en)

5939/17

LIMITE

ASILE 5

**NOTE**

---

From: Presidency  
To: Delegations  
Subject: Theme: 'Guarantees for those with special needs'

---

In the framework of the theme "Guarantees for those with special needs", delegations will find attached modifications suggested by the Presidency in relation to:

- Articles 19, 20, 21, 22, 24 and 32 of the Asylum Procedures Regulation;
- Articles 11, 17a (3), 20, 21, 22, 23 and 24 of the Reception Conditions Directive;
- Articles 22 (4) and (5) and 36 of the Qualifications Regulations; and
- Article 8 of the Dublin Regulation.

The changes in the text are marked as follows: added text is marked in **bold** and underline and deleted text from the original Commission proposal is marked in **bold** and single ~~striethrough~~.

Comments made by delegations on the Commission proposal text, orally and in writing, appear in the footnotes of the Annex.

Asylum Procedures Regulation:

Article ~~19~~20 [former Article 19]

**Applicants in need of special procedural guarantees<sup>1</sup>**

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

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

---

<sup>1</sup> **CZ:** reservation on the article. **BE, SI:** scrutiny reservation on the article **NL:** too detailed if the aim is to spot only the first signs; this already happens in practice; lack of clarity as to who does what; not everybody is qualified to spot such signs (comments also valid for Art. 20). **SE:** both articles 19 and 20 are too complicated.

2. **Throughout the duration of the procedure for international protection, ~~W~~where** applicants have been identified as **applicants being** in need of special procedural guarantees, they shall be provided with adequate<sup>2</sup> support allowing them to benefit from the rights and comply with the obligations under this Regulation, **in particular through the provision of sufficient time to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application, throughout the duration of the procedure for international protection.**
3. Where that adequate support cannot be provided within the framework of the accelerated examination procedure referred to in Article 40 or the border procedure referred to in Article 41, ~~in particular where the determining authority considers that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical, sexual violence or gender-based violence,~~ the determining authority shall not apply, or shall cease to apply those procedures to the applicant.<sup>3</sup>

---

<sup>2</sup> **AT:** a neutral term, as „adequate“ could have unforeseen dynamics; the CLS should clarify it; change as follows: "...support necessary to allow them to...". **COM:** these Articles only set the framework, further clarifications should be made via implementing acts. **DE:** not clear what the consequences are if the support is not provided.

<sup>3</sup> **AT:** redraft as follows: "*Where that adequate support cannot be provided within the framework of the accelerated examination procedure referred to in Article 40 or the border procedure referred to in Article 41, in cases where the determining authority considers that the applicant is in need of special procedural guarantees, it shall not apply or cease to apply those procedures to the applicant.*" As an alternative the whole enumeration could stay, but after "violence" it should be added "*notably victims of trafficking of human beings*". **CZ:** this para could lead to abuses. **DE:** scrutiny reservation on para (3); it should include the victims of trafficking and info to be provided to applicants on any possible changes to the procedure; it is not clear what happens to the procedures already concluded. **IT:** not clear which procedures are referred to in the last line. **NL:** drop the list because it doesn't include all categories (e.g. victims of trafficking). **SE:** it should include victims of trafficking. **COM:** victims of trafficking were not included because they cannot be spotted through first signs.

4. The Commission may specify the details and specific measures for assessing and addressing the special procedural needs of applicants, including of unaccompanied minors, by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 58.<sup>4</sup>

---

<sup>4</sup> **DE, ES, SE:** scrutiny reservation on para (4). **AT:** delete para (4), details should be regulated by MS. **DE:** it is not clear what "details and specific measures" means. **NL:** "implementing acts" - going too far; proportionality is also important; maybe EASO could intervene instead of COM. **SI:** implementing acts could lead to a larger framework than what we agree upon in the Regulation. **COM:** certain procedures were not included in APD and they were to be further identified by MS; this is not possible for APR, hence we need implementing acts; EASO acts are of a non-binding nature. **BG:** more info needed on implementing acts; it is not clear if those measures will be compulsory or will have the nature of minimum standards. **SE:** it is not clear what "specific measures" means, persons with disabilities should be taken into account. **COM:** implementing acts would be part of secondary legislation and dealt with under comitology (binding as secondary legislation).

~~General principles for the a~~Assessment of special procedural needs<sup>5</sup>

**1a. The [competent authority] shall assess whether an applicant is in need of special procedural guarantees. That assessment may be integrated into existing national procedures or into the assessment referred to in Article 21 of Directive XXX/XXX/EU (Reception Conditions Directive), and need not take the form of an administrative procedure.**

1. The process of ~~identifying~~ assessing whether an applicant presents first indications that he or she may require applicants with special procedural ~~needs~~ guarantees shall be initiated by [authorities responsible for receiving and registering applications] as early as possible after an application soon as an application is made, ~~and shall be continued by the determining authority once the application is lodged.~~<sup>6</sup>

---

<sup>5</sup> **BE, CZ, SI:** reservation on the article. **DE:** scrutiny reservation on the article. **AT:** for legal clarity this article should be deleted, as proposed RCD regulates same issues with similar wording in Art. 21 where it is most fitting. Otherwise the Legal Service should assess whether the same issues should be regulated by a Regulation and a Directive simultaneously. If Art. 20 stays in, then in para (3), after "*gender based violence*", it should be added "*notably victims of trafficking of human beings*"; also "*deciding*" should be replaced with "*assessing*". **IT:** the task of identifying the first signs of vulnerability might prove impossible to accomplish for certain authorities like the crew of a coast guard boat. **NL:** too detailed, no added value compared to 19, delete it. **SI:** no added value, not much difference between 20 and 23, a single article on medical examination should be enough. **COM:** Art 20 is based on the way Articles 5 is drafted; those authorities should only take note that they spotted certain vulnerabilities and indicate this; they don't need to assess them. **BE:** link 19 (1) - 20 (1) not clear despite explanations. **FI:** current drafting leaves room for incorrect interpretation; the idea was to raise awareness for all authorities working with applicants which should keep an open ear and take measures if necessary; the text should be shorter and more clear, details should be given in the preamble instead. **SE:** not clear which authorities the article refers to, training is important.

<sup>6</sup> **CZ, IE:** scrutiny reservation on para (1). **ES:** reservation on para (1). **CZ:** identification should be linked to lodging. **IT:** "*as soon as possible*" instead of "*as soon as the application is made*". **HU:** 20 (1) should be read in conjunction with 20 (5); it should be stated clearly that at any given moment during the procedure special needs should be identified. **BE:** police should not register and look for vulnerabilities (also valid for para (2)).

**2a. For that purpose, [those authorities] shall verify whether the applicant presents first indications of vulnerability based on physical signs or the applicant's statements or behaviour. When registering the application, [those authorities] shall include that information in the applicant's file together with a description of those first indications.**

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

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

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

3. Once the application is lodged, the determining authority shall carry out the assessment of whether an applicant is in need of special procedural guarantees, taking into account any information included in the applicant's file as referred to in paragraph 2a.

3a. The determining authority may, following his or her consent, refer the applicant to a medical practitioner for further assessment of his or her psychological and physical state. The result of that medical assessment may be taken into account by the determining authority when deciding on the type of special procedural guarantees which may be provided to the applicant.~~Where there are indications that applicants may have been victim of torture, rape or of another serious form of psychological, physical, sexual or gender-based violence and that this could adversely affect their ability to participate effectively in the procedure, the determining authority shall refer the applicants to a doctor or a psychologist for further assessment of their psychological and physical state. The result of that examination, shall be taken into account by the determining authority for deciding on the type of special procedural support which may be provided to the applicant.~~

Where applicable, ~~That this~~ examination ~~shall be without prejudice to~~ may be integrated with the medical examination referred to in Article 23 and Article 24.<sup>7</sup>

4. The ~~responsible~~ **[competent authorities]** shall address the need for special procedural guarantees as set out in this Article even where that need becomes apparent at a later stage of the procedure, without having to restart the procedure for international protection.<sup>8</sup>

**4a. The personnel of the [competent authorities] shall receive appropriate training to assess whether applicants may require special procedural guarantees.**

#### Article 21

#### Guarantees for minors<sup>9</sup>

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

---

<sup>7</sup> **ES, SE:** scrutiny reservation on para (3). **DE:** reservation on para (3). **CZ, FR:** it is not clear what is the difference between 20 (3) and 23; the medical examinations should be streamlined. **COM:** 20 (3) refers to the first indications and the need to address them. The other articles on medical examination concern the substance. Because we speak of first indications it is important to do this when the application is made. **DE:** you need special training to spot the first signs, it is not possible for the registering authorities to do that; victims of trafficking should be included. **COM:** training of authorities can be supported by EASO. **SE:** para (3) is unclear. **ES:** doubts about the medical examination. **IE:** not clear if the consent of the applicant is required.

<sup>8</sup> **IT:** "*without having to restart the procedure for international protection*" is superfluous. **COM:** the sentence is not superfluous, it answers DE question (what happens with procedures concluded without spotting vulnerabilities?); no suspensive effects because it is not an assessment on substance. **SE:** scrutiny reservation, not clear if it cover courts. **COM:** yes, it covers courts.

<sup>9</sup> **CZ, ES, LU:** reservation on the article. **LU:** increase of administrative burden, not drawing a distinction between minors is problematic.

2. The determining authority shall provide a minor the opportunity of a personal interview, including where an application is made on his or her own behalf in accordance with Article 31(6) and Article 32(1), unless this is manifestly not in the best interests of the child, or it is clear that it will not lead to any tangible results in view of the minor's age or maturity<sup>10</sup>. In that case, the determining authority shall give reasons for the decision not to provide a minor with the opportunity of a personal interview.

Any such personal interview shall be conducted by a person who has the **necessary appropriate** knowledge of the rights and special needs of minors, ~~and it~~ **This** shall be conducted in a child-sensitive ~~and context-appropriate~~ manner that takes into consideration the age, maturity and best interests of the minor.<sup>11</sup>

---

<sup>10</sup> **EL:** we propose that the following phrase is added: "...or the minor is at such an early age that the interview would serve no purpose."

<sup>11</sup> **DE, SE:** scrutiny reservation on para (2). **BE, FR, IE, IT:** reservation on para (2) **EE:** suggests to add clarification to the concept of deciding on the provision of the personal interview for the minor. The criteria of the age and maturity level should be mentioned as one of the main indications, when deciding whether the personal interview is in the best interests of the child. The concept would also benefit from the specific age limit starting of which it can generally be assumed to be in the best interests of the child to provide the opportunity of the personal interview. In our opinion the appropriate age could be 10 years. **Reasoning:** when it comes to the specific procedures of the specific cases, and considering that the form of the act is regulation, more clarity helps to avoid additional challenges on practice. The concept of the best interests of the child requires a holistic approach but it is too wide for deciding upon the possibility of the meaningful interview. **BE:** "necessary" to be replaced by "appropriate". **CZ:** unclear what "opportunity" means. **SE:** not clear how it can be sure that an interview is in the interest of the child; it should be clearly stated if the guardian needs to be present or not and the interview should be adapted according to the age of the child. **FR:** age and best interest of a minor must be taken into account, an individual interview for an 8 years old might not be a good idea. **IT:** not in line with the Convention on the rights of the child; problematic with regards to the maturity of the child. **LV:** should be flexible and act in the best interest of the child (age, etc). **DE:** "may" instead of "shall", delete "unless this is manifestly not in the best interests of the child"; guarantees should focus on unaccompanied minors, the other cases should go under family asylum. **COM:** for the interview it is necessary to take into consideration the age, maturity, etc and it needs to be compatible with national legislation. **FI:** more precision is necessary regarding the age for the interview. **LU:** not clear who decides on the interest of the child. **EL:** it should be clearly stated that an interview should not take place when the child is very young. **PL:** the interview creates additional stress for the minor, the evidence they give is not reliable and there is additional administrative burden.

3. The decision on the application of a minor shall be prepared by personnel of the determining authority who have the ~~necessary~~ appropriate knowledge of the rights and special needs of minors.<sup>12</sup>

Article 22

Special guarantees for unaccompanied minors<sup>13</sup>

- 1a. The competent authorities shall as soon as possible from the moment when an unaccompanied minor makes an application for international protection, and within twenty-four hours at the latest, assign a person to assist and if necessary represent the unaccompanied minor. The duties of this person shall include; at least, meeting with the unaccompanied minor and providing him or her with the necessary information in relation to the procedures provided for in this Regulation. This person shall have the necessary knowledge of the rights and special needs of minors and shall not have a verified criminal record, with particular regard to child-related crimes or offences.**

---

<sup>12</sup> **EE:** More clarity is needed concerning the wording “*shall be prepared*”. We propose the text to be amended as follows: “*The decision on the application of a minor shall be ~~prepared~~ made by personnel of the determining authority, who have the necessary knowledge of the rights and special needs of minors.*” **Reasoning:** current wording is suggesting that personnel preparing and making the decisions should be separate. We support the concept that the personnel of the determining authority handling the cases of children should be adequately prepared and can seek additional expert opinions upon the need, but it is possible for the same person to process the case from the beginning to the end, inclusive of decision making. **EL:** we take note of the explanations provided by the COM at the last meeting of the WP, but we insist that there should be a more appropriate wording reflecting the obligation of adequate training and expertise. The present wording seems to imply an obligation of specialized category of personnel (which was actually a “*may provision*” in the APD). **RO:** it is not clear if “*knowledge*” refers to what the decision officer knows in practice, or is it about qualifications. **IT:** reservation, it seems to suggest that special personnel should be in charge of the drafting of the decision. **HU:** not clear what “*prepare*” means. **COM:** 21 (3) is taken from RCD where it concerned unaccompanied minors and APR extends this; special needs knowledge will be needed among the staff. **EL:** “*may*” provision in RCD. **COM:** 21 (3) extends an obligation, does not create a new one.

<sup>13</sup> **BE, CZ, ES, LU:** reservation on the article. **FR, IE, SE:** scrutiny reservation on the article. **SE:** replace “*guardian*” with “*representative*” throughout the article.

**This is without prejudice to the possibility of assigning the same person as referred to in Article 23 of the [Reception Conditions Directive] or Article 8 of the [Dublin Regulation].**

**The competent authorities shall place this person in charge of an adequate and limited number of unaccompanied minors at the same time to ensure that he or she is able to perform his or her duty effectively.**

**The duty of this person shall cease upon the appointment of a guardian pursuant to paragraph 1. This is without prejudice to the possibility of this person being appointed as guardian.**

1. The **responsible competent** authorities shall, as soon as possible **from when an unaccompanied minor makes an application**, and ~~not later than within five fifteen~~ working days **at the latest, and in any event before the lodging of an application**, ~~from the moment when an unaccompanied minor makes an application~~, appoint a person or an organisation as a guardian.<sup>14</sup>

---

<sup>14</sup> **AT:** reservation on para (1); 5 days too short; if timeframe is specified, it should be regulated in accordance to Art. 23 par. 1 of proposed RCD where same wording is used for “guardian”; according to submitted Austrian comments on Reception Directive, in APR “representative” should be used instead of “guardian”, starting from Art. 4 par. 2 lit f (in RD “guardian”); it should be avoided that in every case a formal age assessment procedure would have to take place. Thus, we propose to add “as soon as possible... or undoubtedly certain.” Hence the following drafting is proposed: “1. The responsible authorities shall appoint a person or an organisation as a representative as soon as possible provided that the minority of the applicant is determined or undoubtedly certain.” **EE:** reservation on the notion of appointing the guardian within the 5 working days. **Reasoning:** we cannot support the change in the regulation concerning the timeframe of appointment of guardians for minors. 5 working days does not provide needed flexibility considering the differences in the MS current systems. **EL:** not clear what happens if the unaccompanied minor is about to become an adult but the asylum procedure is not concluded yet. Not clear if there is an option for the determining authorities not to appoint a guardian as it was in Art 25 para 2 of the APD. Reservation with regard to the time limit of 5 days. We understand the spirit of this provision, but in practice it is very difficult for such a time limit to be met. **RO:** when the appointment of a legal representative - guardian for this category of minors is the subject of a court action, the five days term might be difficult to meet, given that the deadlines set by the court are subject to specific procedures. Considering however the utility of a clear deadline for initiating this procedure, we consider it appropriate that the establishment of this term takes into account the period in which concrete steps are taken with the competent authorities for appointing the legal representative/guardian. The time in which they can respond to such requests must be one of the most urgent considering the legislation and specific procedures of each country and the best interests of the child, which underpins these new proposals. It should be noted that in Romania, the assistance of the minor in all proceedings relating to his case, is provided immediately by the General Directorate of Social Assistance and Child Protection in accordance with national law, while the measure of special protection and the appointment of a guardian/legal representative is made by the court in accordance with applicable law. **BG:** replace “guardian” with “representative”, 5 days is too short, the deadline should start from lodging. **BE:** “responsible authorities” is problematic in the light of Art 5 and 5 days is too short as sometimes the age needs to be checked, a provisional guardian could be appointed. **SE:** deadline too short, add “under national law” after “responsible authorities”. **ES, FI, HU, IE, LV:** 5 days is too short. **COM:** it is a guardian because it has broader range of obligations not only legal representation; the appointment should be done asap because he/she should assist the minor with the lodging; short deadline because the procedure needs to start asap. **IT:** 5 days is very short, should be at least 15 days as in RCD (consistency). **DE:** 5 days too short, “guardian” not ok as a term; not clear what happens if you exceed the

---

deadline; temporary representatives could be appointed. **LU:** 5 days too short, prefer "*representative*". **COM:** the responsible authorities are the authorities responsible under national law not in Art 5, can be the judicial authorities. The consequences of not appointing a guardian will appear at lodging stage too. If a person turns 18 the appointed guardian should be annulled.

**This is without prejudice to the possibility to appoint the same guardian as designated pursuant to Article 23 of the [Reception Conditions Directive].**

Where an organisation is appointed as **a representative guardian**, it shall designate a person responsible for carrying out the duties **of a guardian outlined in paragraph (1b)**.<sup>15</sup>

**1b.** The **determining competent** authority shall:

a) inform the unaccompanied minor immediately of the appointment of his or her guardian;<sup>16</sup> **and**

b) **inform the determining authority that a guardian has been appointed to assist an unaccompanied minor.**

**The guardian shall, with a view to safeguarding the best interests of the child and the general well-being of the unaccompanied minor;**<sup>17</sup>

a) **represent and assist the unaccompanied minor during the procedures provided for in this Regulation; and**

b) **enable the unaccompanied minor to benefit from the rights and comply with the obligations under this Regulation.**

---

<sup>15</sup> **AT:** replace "guardian" with "representative"; the article presupposes that „representative“ and „guardian“ are deployed by one organization. This is unnecessary.

<sup>16</sup> **AT:** replace "guardian" with "representative". **NL:** "authority" instead of "determining authority". **FR:** other authorities should be allowed to inform the minor. **IT:** "responsible" instead of "determining" authority. **LU:** too much administrative burden, the guardian should inform.

<sup>17</sup> **AT:** replace "guardian" with "representative"; only a „representative“ can „represent“ in procedures. It is an unnecessary requirement that he has to be a „guardian“ simultaneously. **DE:** scrutiny reservation on para (1a).

2. The determining authority shall inform the guardian of all relevant facts, procedural steps and time-limits pertaining to the unaccompanied minor.<sup>18</sup>
- ~~3. The guardian shall, with a view to safeguarding the best interests of the child and the general well-being of the unaccompanied minor:~~
- ~~a) represent and assist the unaccompanied minor during the procedures provided for in this Regulation and~~
- ~~b) enable the unaccompanied minor to benefit from the rights and comply with the obligations under this Regulation.~~
- 3a. The guardian shall inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, about how to prepare himself or herself for that interview. The guardian and, where applicable, a legal adviser or other counsellor as admitted or permitted under national law, shall be present together with the unaccompanied minor at that interview and shall have an opportunity to ask questions or make comments, within the framework set by the person conducting the interview.**
4. The guardian shall perform his or her duties in accordance with the principle of the best interests of the child, shall have the necessary expertise, and shall not have a verified **criminal** record, **with particular regard to** ~~of~~ child-related crimes or offences.<sup>19</sup>

---

<sup>18</sup> **AT:** replace "guardian" with "representative". **NL:** scrutiny reservation on para (2), prefer "representative". **BE:** should not be the determining authorities given the reservation on Art 5.

<sup>19</sup> **AT:** replace "guardian" with "representative". **EL:** the appointed guardian should not have a verified record of all crimes, not only child-related ones. **SE:** these checks should be carried out nationally in the record of crimes/offences.

- 4a.** The person acting as guardian shall be changed **only** when the **responsible competent** authorities consider that he or she has not adequately performed his or her tasks **as a guardian**. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be appointed as guardian.<sup>20</sup>
5. The **responsible competent** authorities shall **not** place a guardian in charge of an **disproportionate adequate and limited** number of unaccompanied minors at the same time, **which would render him or her un- to ensure that he or she is** able to perform his or her tasks effectively.<sup>21</sup>
- 5a.** Member States shall appoint entities or persons responsible for the performance of guardians' tasks and for supervising and monitoring **at regular intervals** that guardians perform their tasks in a satisfactory manner. Those entities or persons shall review complaints lodged by unaccompanied minors against their guardian.<sup>22</sup> **To this end, unaccompanied minors shall be given information, in a child-friendly manner and in a language they can reasonably be expected to understand, about who those entities or persons are and how to report complaints against their guardians in confidence and safety.**

---

<sup>20</sup> **AT:** replace "guardian" with "representative"; delete "only" and "as a guardian" ("tasks as a guardian") or use the drafting of Art. 23 para (1) RCD which uses for „guardian“ “only when necessary”. **RO:** not clear who are the responsible authorities. We believe that there may be other objective reasons that can lead to the need to replace the person who acts as guardian (e.g. designated person enters parental leave/sick leave, etc.) Thus, we propose completing the second thesis as follows: „The person acting as guardian shall be changed only when the responsible authorities consider that he or she has not adequately performed his or her tasks as a guardian or when other objective reasons occur.” **NL:** scrutiny reservation on para (4) **SE:** redraft as follows: "The person acting as ~~guardian~~ *representative* shall be changed only when necessary. ~~the responsible authorities consider that he or she has not adequately performed his or her tasks as a guardian.~~" **DE:** reservation on the second subparagraph of para (2), other reasons should be included too.

<sup>21</sup> **AT:** replace "guardian" with "representative"; "disproportionate number" is vague. **NL:** scrutiny reservation on para (5). **IE:** "disproportionate" is too vague. **COM:** "disproportionate" will depend on a number of factors, difficult to define *in abstracto*. "Responsible authorities" is a wider term than Art 5, it could include courts (comment valid for paras (1), (4) and (5)). **FR:** possible confusion between responsible and determining authorities. **DE:** scrutiny reservation on the first subparagraph.

<sup>22</sup> **SI:** reservation on para (5), problems with the second sub-paragraph. **IT:** reservation on para (5) on supervising and monitoring which fall within the remit of the judicial authorities. **PL:** delete "regular intervals", administrative burden.

6. ~~The guardian shall inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, about how to prepare himself or herself for the personal interview. The guardian and, where applicable, a legal adviser or other counsellor as admitted or permitted as such under national law, shall be present together with the unaccompanied minor at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview. The determining authority may require the presence of the unaccompanied minor at the personal interview, even if the guardian is present.~~

**Medical examination of unaccompanied minors<sup>23</sup>**

1. Medical examinations may be used to ~~determine~~ assess the age of unaccompanied minors within the framework of the examination of an application where, following statements by the applicant or other relevant indications ~~including a psychosocial assessment<sup>24</sup>~~, there are doubts as to whether or not the applicant is under the age of 18. Where the result of the medical examination is not conclusive, or includes an age-range below 18 years, Member States shall assume that the applicant is a minor.<sup>25</sup>

---

<sup>23</sup> **BE:** scrutiny reservation on the article. **FI:** the title should be "medical assessment of the age"

<sup>24</sup> **AT:** delete "including a psychosocial assessment" or, second best alternative, include „possibly“ after “including”. **CY:** reservation; not clear what does the provision of “psychosocial assessment” include. Potentially, this will add to the administrative and financial burden of the MS. Moreover, it is a time-consuming procedure which will have an impact on the deadlines foreseen by the new proposal for the Dublin Regulation. **EE:** amend the text as follows: “Medical examinations may be used to determine the age of unaccompanied minors within the framework of the examination of an application where, following statements by the applicant or other relevant indications ~~including a psychosocial assessment~~, **when** there are doubts as to whether or not the applicant is under the age of 18.” **Reasoning:** notion of “other relevant indications” is flexible and inclusive enough to cover all relevant indications, like opinion of the social worker or other child development specialist. Psychosocial assessment lacks scientific grounds for an age assessment and should be therefore not indicated as an example as it would cause confusion in practice. **SE:** against “psychosocial assessment”, no scientific backup for that, prefers 25 (5) RCD. **DE:** not clear what “psychosocial assessment” means and if a legal remedy is possible; genital exam should be excluded in a recital. **CZ:** delete "following statements by the applicant or other relevant indications including a psychosocial assessment". **CY:** reservation on para (1) because of the psychosocial assessment, not clear this could entail; it creates administrative and financial burden and it has an impact on deadlines (cf Dublin). **FI:** "psychosocial assessment" should be defined.

<sup>25</sup> **SE, NL:** "assess" instead of "determine". **NL:** "may" instead of "shall" in the last sentence. **SE:** replace the last sentence with the following: "If the determining authority, after an assessment of all available evidence, including the medical examination, still has reasonable doubt concerning the applicant's age, the determining authority shall assume that the applicant is a minor." **COM:** if a person declares him/herself a minor, the assumption is that he/she is a minor until proven otherwise.

2. The medical examination to **determine assess** the age of unaccompanied minors shall not be carried out without their consent or the consent of their guardians<sup>26</sup>.
3. Any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination<sup>27</sup> and shall be carried out by qualified medical professionals allowing for the most reliable result possible. **Upon request by the unaccompanied minor, the guardian shall be present during the medical examination.**
4. Where medical examinations are used to **determine assess** the age of unaccompanied minors, the **determining competent** authority shall ensure that **unaccompanied minors they** are informed, prior to the examination of their application for international protection, and in a language that they understand or are reasonably meant to understand, of the possibility that their age be determined<sup>28</sup> by medical examination. This shall include information on the method of examination and possible consequences which the result of the medical examination may have for the examination of the application, as well as on the possibility and consequences of a refusal on the part of the unaccompanied minor, or of his or her guardian<sup>29</sup>, to undergo the medical examination.

---

<sup>26</sup> **AT:** delete "*or the consent of their guardians*" because minors whose age is uncertain are most likely old enough to decide about their physical integrity. **EE:** amend the text as follows: "*The medical examination to determine the age of unaccompanied minors shall not be carried out without their consent ~~or~~ and the consent of their guardians.*" **Reasoning:** A child must give an informed consent to undergo age assessment. Legal consent is given by the (legal) guardian. Therefore both consents are needed. **SE:** it should be decided nationally if the guardian or the child should give consent. **CZ:** both the minor and the guardian should approve, replace "*or*" with "*and*". **HU:** not clear what happens if the minor and the guardian do not agree on consent. **FR:** doubts on consent of minor and guardian; the guardian is appointed after it was decided the person is a minor so after the medical exam. **PT:** reservation on this para. **SE:** should be "and/or the consent of their guardians".

<sup>27</sup> **AT:** replace "*shall be the least invasive examination*" with "*causing no physical harm*"; „*least invasive*“ should be determined either with proposal or in recital.

<sup>28</sup> **SE:** redraft as follows: "may be determined assessed".

<sup>29</sup> **AT:** delete "*or of his or her guardian*". **FR:** not only determining authorities, in France the judicial authorities decide.

5. The refusal by the unaccompanied minors or their guardians<sup>30</sup> to carry out the medical examination may only be considered as a rebuttable presumption that the applicant is not a minor and it shall not prevent the determining authority from taking a decision on the application for international protection.<sup>31</sup>

---

<sup>30</sup> **AT:** delete "or their guardian".

<sup>31</sup> **EE:** amend the wording as follows: "*The medically or otherwise justified refusal by the unaccompanied minors ~~or~~ and their guardians to carry out the medical examination may only be considered as a rebuttable presumption that the applicant is not a minor and it shall not prevent the determining authority from taking a decision on the application for international protection. Unjustified refusal can be considered as failure to cooperate with the determined authorities.*" **Proposal 2:** to add an unjustified refusal to undergo age assessment as not cooperating with the authorities, to the Article 7 para (2). **Reasoning:** we wish that upon the requirement of the authority the undergoing of an age assessment should be mandatory as the age of the person can be an important factor of establishing identity and can give rise to providing higher level of guarantees. In case the person refuses to participate in an age assessment without giving reasonable justification, it should be possible to consider such refusal as not cooperation with the authorities. **RO:** we propose completing this paragraph stating that in the event of a rejection decision, this decision does not rely solely on that refusal. (Cf. art. 25 par. 5 letter c of Directive 32): „*The refusal by the unaccompanied minors or their guardians to carry out the medical examination may only be considered as a rebuttable presumption that the applicant is not a minor and it shall not prevent the determining authority from taking a decision on the application for international protection, noting that, in case of a rejection decision, it shall not be based solely on that refusal.*" **SE:** redraft as follows: "*The refusal by the unaccompanied minors or his or her ~~their~~ guardians to undergo ~~carry out the a~~ medical examination shall ~~may only be~~ considered as a rebuttable presumption that the applicant is not a minor and it shall not prevent the determining authority from taking a decision on the application for international protection. The decision to reject an application for international protection by an unaccompanied minor who has refused to undergo a medical examination shall not be based solely on that refusal."*

6. ~~A Member State~~ The competent authorities shall<sup>32</sup> recognise age assessment decisions taken by competent authorities in other Member States on the basis of a medical examination carried out in accordance with this Article and based on methods which are recognised under its national law.<sup>33</sup>

Article 32

**Applications of unaccompanied minors<sup>34</sup>**

---

<sup>32</sup> **AT:** "may" instead of "shall"; as European (medical) standards on age assessment are missing, "may" is appropriate.

<sup>33</sup> **CY, DE, FR, NL:** scrutiny reservation on this para. **PT:** reservation on this para. **EE:** Proposal to amend the wording as follows: "A Member State shall recognize age assessment decisions taken by other Member States on the basis of a medical examination carried out in accordance with this Article and when based on methods which are recognized under its national law." Reasoning: It could create legal and practical challenges to automatically recognize age assessments taken by other MS as the methods used might not be the same. If the methods used are exactly the same, the recognition is possible. Before each such recognition decision, the age assessment document stating also the methods used, must be available for the MS. It should still be possible to change the assessment or make a new one, when new indications arise. **SE:** redraft as follows: "~~A Member State shall recognise age assessment decisions taken by other Member States on the basis of a M~~medical examinations carried out in other Member States in accordance with this Article and based on methods which are recognised under its national law may be taken into account by the determining authority." **BE:** not sure there is enough mutual confidence to have this mutual recognition."

<sup>34</sup> **RO:** same comments as for Art. 22. **SE:** delete Art. 32; all adults shall make and lodge their applications on their own. The proposed system may send a signal contrary to the Swedish view of partners and spouses as being independent and equal. It also risks that, in particular women's, individual protection needs are missed. It is also vital for security reasons that every applicant personally makes and lodges his or her application. The proposal is also difficult to read together with the obligation to submit all elements at the time of lodging. In addition, the long and complicated procedures prescribed in this article are contrary to the purpose of streamlining the procedures and would lead to additional administrative and financial burden. SE therefore proposes deleting most of the article and focusing on the applications on behalf of children and, in accordance with national rules, on behalf of adults without legal capacity.

1. An unaccompanied minor shall lodge an application in his or her own name if he or she has the legal capacity to act in procedures according to the national law of the Member State concerned, or his or her guardian shall lodge it on his or her behalf. The guardian shall assist and properly inform the unaccompanied minor of how and where an application is to be lodged.
2. In the case of an unaccompanied minor, the ten working-day period for the lodging the application provided for in Article 28(1) shall only start to run from the moment a guardian of the unaccompanied minor is appointed and has met with him or her. Where his or her guardian does not lodge an application on behalf of the unaccompanied minor within those ten working days, the determining authority shall lodge an application on behalf of the unaccompanied minor if, on the basis of an individual assessment of his or her personal situation, it is of the opinion that the minor may need international protection.<sup>35</sup>
3. The bodies referred to in Article 10 of Directive 2008/115/EC shall 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 need international protection.

---

<sup>35</sup> **RO:** it is not the determining authority the one who should lodge the application on behalf of the minor, but steps should be taken for the responsible authority to appoint a guardian in the shortest time.

## Reception Conditions Directive:

### Article 11

#### **Detention ~~of vulnerable persons and~~ of applicants with special reception needs**

1. The health, including mental health, of applicants in detention who ~~are vulnerable persons~~ ⇒ have special reception needs ⇐ shall be of primary concern to national authorities.<sup>36</sup>

Where ~~vulnerable persons~~ ⇒ applicants with special reception needs ⇐ are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.<sup>37</sup>

---

↓ 2013/33/EU

2. Minors<sup>38</sup> shall be detained only as a measure of last resort and after it having been established that other less coercive alternative measures cannot be applied effectively. Such detention shall be for the shortest period of time and all efforts shall be made to release the detained minors and place them in accommodation suitable for minors.

---

<sup>36</sup> ES: scrutiny reservation.

<sup>37</sup> ES: scrutiny reservation.

<sup>38</sup> PL: special attention should be paid to precisely formulate the principle of detention of minors, understood as any persons under the age of 18, so as not to lead to situations where detaining families with children will not be permitted. This provision creates a real risk of having to separate the minor from parents or guardians. PL does not except such solutions.

---

↓ 2013/33/EU (adapted)

⇒ new

The ~~minor's~~ best interests ☒ of the child ☒, as ~~prescribed~~☒ referred to ☒ in Article ~~22~~  
22(2), shall be a primary consideration for Member States.

Where minors are detained, ⇒ ~~their right to education must be secured~~<sup>39</sup> ~~and~~ ⇐ they shall  
have **the right to education, without prejudice to Article 17a, and** the possibility to engage  
in leisure activities, including play and recreational activities appropriate to their age.

---

↓ 2013/33/EU

3. Unaccompanied minors shall be detained only in exceptional circumstances. All efforts shall  
be made to release the detained unaccompanied minor as soon as possible.

Unaccompanied minors shall never be detained in prison accommodation.

---

↓ 2013/33/EU (adapted)

⇒ new

As far as possible, unaccompanied minors shall be provided with accommodation in  
institutions provided with personnel ~~and facilities which~~ ☒ who ☒ take into account the  
⇒ **rights and** ⇐ needs of persons of their age ☒ and facilities ☒ ⇒ **adapted to**  
**unaccompanied minors** ⇐ .

---

<sup>39</sup> **BE:** clarify "must be secured". **BG:** it is necessary to explore at the national level the  
practical possibilities for securing the right to education of detained minors. **FR:** scrutiny  
reservation: how will work the right to education for minors in practice given the short  
period?

Where unaccompanied minors are detained, Member States shall ensure that they are accommodated separately from adults.

4. Detained families shall be provided with separate accommodation guaranteeing adequate privacy.
5. Where female applicants are detained, Member States shall ensure that they are accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto.

Exceptions to the first subparagraph may also apply to the use of common spaces designed for recreational or social activities, including the provision of meals.

6. In duly justified cases and for a reasonable period that shall be as short as possible Member States may derogate from the third subparagraph of paragraph 2, paragraph 4 and the first subparagraph of paragraph 5, when the applicant is detained at a border post or in a transit zone, with the exception of the cases referred to in Article ~~43~~ 41 of ~~Directive 2013/32/EU~~ Regulation (EU) No XXX/XXX [Procedures Regulation].

Article 17a

**Reception conditions in a Member State other than the one in which the applicant is required to be present**<sup>40</sup>

[...]

3. Pending the transfer under Regulation (EU) No XXX/XXX [Dublin Regulation] of a minor to the Member State responsible, Member States shall provide him or her with access to suitable educational activities, which may include access to national education systems.<sup>41</sup>

Article ~~21~~ 20

⊗ Applicants with special reception needs ⊗ ~~General principle~~

Member States shall take into account the specific situation of ⇒ applicants with special reception needs ⇐ ~~vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation~~ in the national law implementing this Directive.

---

<sup>40</sup> **CZ, DE, IE, HU, NL, PL, FI:** scrutiny reservation. **CZ:** this article is outside chapter III; clarify the link with Art. 17 and 19. **HU:** does not support the principle of a single Member State responsible, as set out in the relevant provisions of the Dublin-proposal, Chapter III. **NL:** welcomes the COM's intention but there are differences between this article and the Dublin provisions which need to be clarified. **PT:** reservation; this article singles out a group of people which still require protection; should be part of Chapter III.

<sup>41</sup> **BE, DE, IE, FR:** clarify "suitable educational activities". **IT:** "suitable educational activities" seems to suggest that we would need to organise something new, parallel to the national education system, which would be burdensome. **SE:** the right to education is a fundamental right. Minors shall therefore have the right to education on same conditions as nationals. Therefore, replace "suitable educational activities" by "*national education*". **COM:** "suitable educational activities" are not "under similar conditions" referred to in Art. 14.

Assessment of ~~the~~ special reception needs of ~~vulnerable persons~~<sup>42</sup>

1. In order to effectively implement Article ~~21~~ 20, Member States shall ⇒ **systematically**<sup>43</sup> ⇐, **as early as possible after an application for international protection is made**, assess whether the applicant ~~is an applicant with~~ **is in need of** special reception needs. Member States shall also indicate the nature of such needs.

That assessment shall be initiated ⇒ **as early as possible** ⇐ ~~within a reasonable period of time after an application for~~ **by the authority with which the application for** international protection is made and may be integrated into existing national procedures ⇒ **or into the assessment referred to in Article [19] of Regulation (EU) No XXX/XXX [Procedures Regulation]** ⇐. Member States shall ensure that those special reception needs are also addressed, in accordance with ~~the provisions of~~ this Directive, if they become apparent at a later stage in the asylum procedure.<sup>44</sup>

---

<sup>42</sup> **DE, ES:** scrutiny reservation.

<sup>43</sup> **CZ:** suggests to add "throughout the procedure". **DE, LV, HU, PL, PT:** clarify "systematically assess". **LU:** assessment should be done once a month, throughout the procedure. **FI:** assessment should be a non-stop process. **COM:** "systematically" does not refer to a timeframe but to a well-established procedure. Assessment should be initiated as soon as possible.

<sup>44</sup> **BG:** reservation regarding the changes to paragraph 1 through which it is envisaged that the assessment of the special reception needs of applicants shall be initiated as early as possible after an application for international protection is made. This would lead to practical difficulties and is not appropriate, since BG has the practice of identifying applicants after the lodging of an application for protection and during their registration. Suggests that the lodging of an application before the determining authority be the reference moment for carrying out the vulnerability assessment in the context of benefiting from the rights and complying with the obligations of applicants provided for in the RCD.

Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

2. For the purposes of paragraph 1, Member States shall ensure that the personnel of the authorities<sup>45</sup> referred to in Article 26 **that are involved in the assessment of special reception needs in accordance with this Article:**
- (a) are trained and continues to be trained to detect first signs that an applicant requires special receptions conditions and to address those needs when identified;<sup>46</sup>
  - (b) include information concerning the applicant's special reception needs in the applicant's file **held by the competent authorities**<sup>47</sup>, together with the indication of the signs referred to in point (a) as well as recommendations as to the type of support that may be needed by the applicant; **and**

<sup>45</sup> **ES, FR, LU, AT:** scrutiny reservation on the training of personnel which should be focussed on the persons in direct contact with the applicant. **IT:** reservation because in Italy, the personnel who works in this field is not all employed by the competent authority; therefore the wording must be broaden in order to cover personnel from different organisations. **PT:** clarify "personnel" and who will have this obligation. **COM:** the intention is to focus on the personnel involved in para 1.

<sup>46</sup> **EL:** scrutiny reservation on the requirement to train constantly the personnel of all authorities involved, in order to be able to detect first signs that an applicant needs special reception conditions. Clarify what kind of training is envisaged.

<sup>47</sup> **BE, CZ:** clarify "applicant file". **COM:** it concerns the file on reception conditions.

- (c) **following their consent**, refer applicants to **the appropriate medical practitioner a doctor or a psychologist** for further assessment of their psychological and physical state where there are indications that applicants may have been victim of torture, rape or of another serious form of psychological, physical or sexual violence and that this could affect the reception needs of the applicant; **and**<sup>48</sup>
- (d) **The competent authorities shall** take into account the result of ~~the~~ examination **referred to in point (c)** when deciding on the type of special reception support which may be provided to the applicant.<sup>49</sup>
- 

↓ 2013/33/EU

⇒ new

~~3.2.~~ The assessment referred to in paragraph 1 need not take the form of an administrative procedure.

~~4.3.~~ Only ~~vulnerable persons in accordance with Article 21~~ ⇒ applicants with special reception needs ⇐ may ~~be considered to have special reception needs and thus~~ benefit from the specific support provided in accordance with this Directive.

---

↓ 2013/33/EU

~~5.4.~~ The assessment provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to ~~Directive 2011/95/EU~~ Regulation (EU) No XXX/XXX [Qualification Regulation].

---

<sup>48</sup> **CZ:** scrutiny reservation; rephrase "refer applicants to a doctor". **FI:** introduce flexibility in the text to take account of MSs systems.

<sup>49</sup> **CZ:** to add that the result of the examination must be communicated to the applicant. **HU:** scrutiny reservation on para 2: the harmony between the relevant hungarian legislation and the proposed modification needs further investigation.

### **Minors**

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.
2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:
  - (a) family reunification possibilities;
  - (b) the minor's well-being and social development, taking into particular consideration the minor's background;
  - (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
  - (d) the views of the minor in accordance with his or her age and maturity.
3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres referred to in Article ~~18~~ 17(1)(a) and (b) and to open-air activities.
4. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

5. Member States shall ensure that minor children of applicants or applicants who are minors are lodged with their parents, ~~their unmarried minor siblings~~ or with the adult responsible for them ☒ and their unmarried minor siblings ☒ whether by law or by the practice of the Member State concerned, provided it is in the best interests of the minors concerned.
- ~~46.~~ Those working ⇒ with minors, including **the guardian and the person referred to in Article 23 (1)** ~~with unaccompanied minors,~~ ⇒ shall not have a verified **criminal record with particular regard to** ~~of~~ child-related crimes or offenses and ⇐ shall ~~have had and shall continue to~~ receive ☒ continuous and ☒ appropriate training concerning ⇒ the rights and ⇐ ~~their~~ needs ⇒ of unaccompanied minors, including **those relating to concerning** any applicable child safeguarding standards ⇐ , and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

---

↓ 2013/33/EU (adapted)

⇒ new

Article ~~24~~ 23

**Unaccompanied minors<sup>50</sup>**

1. Member States shall, as soon as possible ⇒ ~~and no later than five working days~~ from the moment when an unaccompanied minor makes an application for international protection ⇐<sup>51</sup> **and within twenty-four hours at the latest, assign a person to take care of the unaccompanied minor.**

**This is without prejudice to the possibility of assigning the same person as indicated in Article 22 of the [Asylum Procedures Regulation] or Article 8 of the [Dublin Regulation].**

**This person ⇒ ~~and~~ shall not have a verified criminal record, with particular regard to of child-related crimes or offences ⇐, and his or her duties shall at least include:**

- a) to meet the unaccompanied minor;**

---

<sup>50</sup> **BG, ES, PL, AT, SE:** scrutiny reservation on Art. 23.

<sup>51</sup> **BE:** not everybody who claims to be an unaccompanied minor is an unaccompanied minor. In a significant number of cases an age assessment is conducted and a significant percentage turn out to be majors. It should be mentioned that in case of doubt about the minority, this applies only after the result of the age assessment. Simply keeping "as soon as possible" seems preferable. **BE, EE, IE, EL, LV, RO, FI:** this 5-day deadline is too short. **FR:** reservation on the 5 days deadline; should be "as soon as possible". **IT, LU:** suggests 15 days deadline instead. **AT:** the time limit of five working days is far too short. AT insists on maintaining the current rule that obliges the Host MS "to take measures to ensure that a representative represents and assists an unaccompanied minor as soon as possible". Delete "and no later ... protection". **SE:** clarify this 5-day deadline. **COM:** need to ensure the security and well-being of the minor and that he/she does not abscond; therefore, need to appoint a guardian as soon as possible; according to studies, COM proposes 5 working days from the making of the application.

- b) to further explain where necessary the information to be provided in accordance with Article 5;**
- c) to liaise with the authorities responsible for reception conditions to ensure immediate access for the unaccompanied minor to material reception conditions and health care where needed;**
- d) to assist, and if necessary represent, in case of restrictions referred to in Articles 7 or 19; and**
- e) to assist, and if necessary represent, in case of detention.**

**Member States shall place this person in charge of an adequate and limited number of unaccompanied minors at the same time to ensure that he or she is able to perform his or her duties effectively.**

**The duties of this person shall cease upon the appointment of a guardian pursuant to paragraph 1a. This is without prejudice to the possibility of this person being appointed as guardian.**

**1a. Member States shall, as soon as possible from the moment when an unaccompanied minor makes an application for international protection and within fifteen working days at the latest, appoint a person or an organisation as guardian.**

⊗ Where an organisation is appointed as guardian, it shall designate a person responsible for carrying out the duties of guardian in respect of the unaccompanied minor, in accordance with this Directive. ⊗

**This is without prejudice to the possibility of a Member State to appoint the same ⇒ ~~The guardian appointed in accordance with as designated pursuant to~~ Article 22 (1) of the [Asylum Procedure Regulation] ~~may perform those tasks.~~ ⇐<sup>52</sup>.**

---

<sup>52</sup> AT: delete this sentence. The obligation to designate a person responsible for carrying out the duties of guardian after having appointed an organization as guardian does not respect the differences between the systems of guardianship within the EU. The competence of the MSs concerning the system of guardianship should remain unaffected.

**The competent authority shall:**

- a) **inform** ~~the~~ unaccompanied minor **shall be informed** immediately of the appointment of **the his or her**  guardian  ~~representative~~, **and**
- b) **inform the authority responsible for providing reception conditions that a guardian has been appointed.**

The  guardian  ~~representative~~ shall, **with a view to safeguarding the best interests of the child and the general well-being of the unaccompanied minor:**

- a) ~~take measures to ensure that a~~  guardian  ~~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;<sup>53</sup>
- b) perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article ~~22~~ 23(2), ~~and shall; and~~
- c) have the necessary expertise to that end.

---

<sup>53</sup> **CZ:** clarify the terminology; here should be "guardian". **EE:** reservation on expanding this concept of guardian. **FR, LU:** reservation on the term "guardian"; should be "representative" in all proposals. **HU:** need to clarify the term "guardian". **AT,** supported by **DE:** the responsibilities of a legal representative should not get merged with those of a guardian. Both responsibilities concern different matters with different aspects – the responsibility of a legal guardian implies social aspects whereas the competence of a legal representative is focused on procedural issues. In accordance with the APR proposal, AT proposes a strict distinction between the competences of a legal representative and those of a guardian: the legal representative should be included in the APR whereas the legal guardian should be incorporated into the RCD. In addition it is necessary to clarify in a separate paragraph that procedural matters concerning the reception of applicants fall exclusively into the competence of the legal representative (with reference to Art. 22 APR). Delete "The guardian appointed in accordance with Article [22] of Regulation (EU) No XXX/XXX [Procedures Regulation] may perform those tasks.". **FI:** what is important to define is the function of the guardian/representative. **COM:** no intention to change the nature of those tasks.

~~In order to ensure the minor's well-being and social development referred to in Article 22 23(2)(b), the~~ The person acting as  guardian  representative shall be changed when the competent authorities consider that he or she has not adequately performed his or her tasks 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~~ ⇒ appointed as guardians ⇐ representatives.<sup>54</sup>

54

**BG:** reservation regarding the envisaged time limit of 5 working days for appointing a guardian. The different legislative frameworks and practices in the individual MSs should be taken into account as well as the meaning which the concepts have in the different national legal systems. It is appropriate for the two concepts to be alternatively written: a representative or a guardian, so that MSs can assess, in accordance with their own system, how to guarantee a timely appointment and an effective procedure. For the purposes of the procedure for granting international protection, an unaccompanied minor should be assigned with a representative who is to carry out his/her representative functions during the procedure until the appointment of a guardian. A hypothesis could also be envisaged whereby the representative (could be a social worker), already during the procedure, is to undertake actions for the appointment of a guardian before protection is granted. This approach would contribute to a more optimized procedure. The time limit of 5 working days is too short. The term should also start as of the day of the lodging of the application, and not from the day of its making. The State Agency for Refugees is the only national authority that can register and examine the applications for international protection in BG, and it shall communicate the necessity to appoint a legal representative from another competent institution if need be. Therefore it is important to clarify at which particular moment the legal representative is to be present. The practice in BG is to identify candidates after they lodge an application and during their registration. After the registration the Agency requires the cooperation of other institutions to appoint a representative. If the representative is appointed after the making of the application, and not after its lodging, it would change the functional obligations and would create additional administrative burden. We need some time to research the possibilities to establish guarantees that a legal representative would not be placed in charge of a disproportionate number of unaccompanied minors at the same time. In the BG context, the practical implementation of this measure would necessarily require the provision of significant additional financial and human resources. We are currently anticipating the opinion of the relevant competent authorities. **EE:** reservation on the changes of the regulation on legal guardians which do not take account of differences of appointing legal guardians in MSs. Considering, that according to the Estonia's regulations, the role of the legal guardian rests with the local municipality, where the child is, so it is inevitable, that bigger burden will fall on those local municipalities, where unaccompanied children are accommodated. As a last resort, we can make a compromise with the more flexible deadline than 5 days. **HU:** scrutiny reserve on para 1 regarding the definition of 'guardian'. The APR and also the QR contain the definition of guardian. Harmonizing these definitions is crucial.

~~Regular assessments shall be made by the appropriate authorities, including as regards the availability of the necessary means for representing the unaccompanied minor.~~

---

↓ new

Member States shall ~~ensure that place~~ a guardian ~~is not placed~~ in charge of ~~an~~ ~~disproportionate adequate and limited~~ number<sup>55</sup> of unaccompanied minors at the same time ~~to ensure~~ that ~~he or she is able would render him or her unable~~ to perform his or her tasks effectively.<sup>56</sup> Member States shall appoint entities or persons responsible for ~~the performance of guardians' tasks and for supervising and~~ monitoring at regular intervals that guardians perform their tasks in a satisfactory manner. Those entities or persons shall ~~also have the competence to~~ review complaints lodged by unaccompanied minors against their guardian. To this end, unaccompanied minors shall be given information, in a child-friendly manner and in a language they can reasonably be expected to understand, about who those entities or persons are and how to report complaints against their guardians in confidence and safety.

---

<sup>55</sup> **BE, DE, IE, FI, UK:** scrutiny reservation on "disproportionate number". **COM:** it is up to the MS to make an assessment.

<sup>56</sup> **AT:** delete this sentence. The systems of guardianship concerning unaccompanied minors within the EU are highly differentiated. Therefore the ensuring of a functioning system that respects the best interests of a child should remain in the competence of the MSs.

2. Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed:
- (a) with adult relatives;
  - (b) with a foster family;
  - (c) in accommodation centres with special provisions for minors;
  - (d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult applicants, if it is in their best interests, as prescribed in Article ~~22~~ ~~23~~(2).

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.<sup>57</sup>

---

<sup>57</sup> **ES:** para 2 deals with "separated children" (maybe accompanied by a relative, who is not the guardian or representative). Therefore, the authorities, before taking the decision to allocate him/her with an adult relative, should check the real family ties and must take into account the minor's opinion, all that to preserve interest of the minor and to prevent human trafficking.

3. Member States shall start tracing the members of the unaccompanied minor's family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting his or her best interests. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.<sup>58</sup>

↓ 2013/33/EU

⇒ new

Article ~~25~~ 24

### Victims of torture and violence

1. Member States shall ensure that persons who have been subjected to ⇒ gender-based harm, ⇐ **human trafficking**, torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.<sup>59</sup>

---

<sup>58</sup> **EL:** how is this obligation implemented in view of the non-exclusion of the unaccompanied minors from the pre-Dublin Check? Under Art. 3 of the Dublin Proposal and Art.36 of the APR the MS are obliged to reject an application as inadmissible if a third country can be considered as a safe third country for the unaccompanied minor. **IT:** no change in this paragraph but, in QR, "provided in the best interest of the minor".

<sup>59</sup> **DE:** include victims of trafficking. **ES:** reservation on para 1.

## Qualification Regulation:

### Article 22

#### *General rules*<sup>60</sup>

1. [...]
2. [...]
3. [...]
4. ~~When applying the provisions of this Chapter, the specific situation of p~~ **Persons with who have** special needs, **determined on the basis of an individual evaluation of their situation**, such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence **are entitled to have their specific situation shall be taken into account in the application of the provisions of this Chapter provided an individual evaluation of their situation establishes that they have special needs.**<sup>61</sup>
5. When applying the provisions of this Chapter that involve minors the best interests of the child shall be a primary consideration to the competent authorities.

---

<sup>60</sup> **BG, SE:** scrutiny reserve on the whole article, especially for social security issues.

<sup>61</sup> **CZ:** redundant.

Article 36

*Unaccompanied minors*<sup>62</sup>

1. As soon as possible after international protection is granted and within **five fifteen** working days at the latest, ~~as outlined in Article 22(1) of Regulation EU no xxx/xxx [Procedures regulation]~~, competent authorities shall take the necessary measures to **ensure the representation of unaccompanied minors by a appoint a person or an organisation as a legal guardian or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or court order.**<sup>63</sup>

---

<sup>62</sup> **AT, FI, IE, RO:** scrutiny reservation.

<sup>63</sup> **AT, BG, DE, FR, HU, IT, LU, LV, PL, SE:** reservation: the five-day time-limit is too short. **EL, ES:** scrutiny reservation. **EL:** deadline could be problematic. **ES:** there is a contradiction regarding the consequences. **EE:** reservation on the changes to the regulation on legal guardians, which are not taking account of differences of appointing legal guardians in MS. Considering, that according to the Estonia's regulations, the role of the legal guardian rests with the local municipality, where the child is, so it is inevitable, that bigger burden will fall on those local municipalities, where unaccompanied children are accommodated. As a last resort, we can make a compromise with the more flexible deadline than 5 days. **CZ, FR:** clarify "*competent authorities*". **COM:** any competent authority defined by the MS. **CZ:** clarify whether the guardian assigned under APR can remain guardian under QR. **COM:** yes. **HU:** clarify what is included in necessary measures. **DE:** due to the requirement of involving a family court alone, it is impossible to appoint a guardian on a final basis within five days. The obligation to appoint a guardian "*without delay*" would take all requirements adequately into account. **IT, LU:** the time limit should be extended to 15 days. **BG:** suggests to be prescribed one month maximum term since the decision for protection entries into force. We believe that for the purpose of the procedure for international protection the unaccompanied child should have a representative, appointed to carry out their representative functions, until the appointment of a guardian. It could be provided that the representative may, during the ongoing procedure, take action to appoint a guardian. In this way a guardian could be appointed before a decision on substance is taken. There should be a clearly defined powers to relevant staff during the different stages and in this connection it is appropriate a representative (could be a social worker) to be promptly appointed in the beginning of the procedure and during the procedure to take responsibility for the action to appoint a guardian. **LU:** reservation on the term "*guardian*". **DE:** in favour of keeping the term "*legal representative*" or of deleting the phrase "*where necessary*". **AT:** we distinguish between "*legal representative*" and "*guardian*". **SE:** clarify why the wording used for the role of the "*guardian*" is different from that in the Directive.

Where an organisation is appointed as guardian, it shall as soon as possible designate a person responsible for carrying out the duties of guardian in respect of the unaccompanied minor, in accordance with this Regulation.

**Until the appointment of a guardian in accordance with this paragraph, the guardian referred to in Article 22 of the [Asylum Procedures Regulation] or in Article 23 of the [Reception Conditions Directive] shall remain responsible for the unaccompanied minor.**

2. The ~~appointed~~ guardian shall:

a) ~~have the duty of ensuring~~ **ensure** that the minor can access all rights stemming from this Regulation;

b) **assist the unaccompanied minor in case of withdrawal of the status; and**

c) **where, appropriate, assist in family tracing as provided for in paragraph 5.**

**The guardian shall have the necessary expertise, shall receive continuous and appropriate training concerning the rights and needs of unaccompanied minors, including those relating to any applicable child safeguarding standards, and shall not have a verified criminal record, with particular regard to child-related crimes or offences.**

**2a. The person acting as guardian shall be changed when the competent authorities consider that he or she has not adequately performed his or her tasks. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be appointed as guardian.**

**2b. The competent authorities shall place a guardian in charge of an adequate and limited number of unaccompanied minors at the same time to ensure that he or she is able to perform his or her tasks effectively.**

The **appropriate competent** authorities shall regularly assess the performance of the appointed guardian. **To this end the competent authorities shall appoint entities or persons responsible for the assessment of the performance of the guardian's tasks and for supervising and monitoring that guardians perform their tasks in a satisfactory manner. Those entities or persons shall review complaints lodged by unaccompanied minors against their guardian.**

**Unaccompanied minors shall be given information, in a child-friendly manner and in a language they can reasonably be expected to understand, about who those entities or persons are and how to report complaints against their guardians in confidence and safety.**

3. **While taking into account the best interest of the child, u**Unaccompanied minors shall be placed in one of the following ways:<sup>64</sup>
- a) with **an** adult relative;
  - b) with a foster family;
  - c) in centres specialised in accommodation for minors;
  - d) in other accommodation suitable for minors.

The views of the minor shall be taken into account in accordance with his or her age and degree of maturity.

4. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

---

<sup>64</sup> **DE:** clarify whether the list is in order of priority. **COM:** the list is current acquis, not necessarily in order of priority (tbc).

5. If an unaccompanied minor is granted international protection and the tracing of his or her family members has not already started, competent authorities shall start tracing them as soon as possible after the granting of international protection, ~~whilst protecting the~~ **provided that it is in** the minor's best interests. If tracing has already started, it shall be continued where appropriate. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis.<sup>65</sup>
6. ~~The persons and organisations working with unaccompanied minors shall receive continuous appropriate training concerning the rights and needs of minors and child safeguarding standards will be respected as referred to in Art 22 of Regulation EU No xxx/xxx[Procedures regulation].~~

---

<sup>65</sup> **IT + ES:** the words “*whilst protecting the minor's best interests*” should be replaced by “*provided that it is in the minor's best interest*”. This latter drafting is more clearly linked to the previous BID (best interest determination) which should underpin the family tracing process. **COM:** the best interest of the minor is already foreseen in the acquis; to reflect whether to specify further.

## Dublin Regulation:

### Article ~~6~~ 8

#### Guarantees for minors<sup>66</sup>

1. The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.
2.  Each  Member States  where an unaccompanied minor is **obliged to be present**  shall ensure that a **representative guardian** represents and/or assists ~~an~~  the  unaccompanied minor with respect to ~~an~~  the relevant  procedures provided for in this Regulation. The **representative guardian** shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such **representative guardian** shall have access to the content of the relevant documents in the applicant's file including the specific leaflet for unaccompanied minors.<sup>67</sup>

This paragraph shall be without prejudice to the relevant provisions in Article ~~25~~XX of **Directive 2013/32/EU Regulation (EU) XXX/XXX [Asylum Procedures Regulation]**.

---

<sup>66</sup> **CY**: scrutiny reservation. **NL**: reservation. NL reads this provision as a response to the Tarakhel judgment (ECtHR - Tarakhel v. Switzerland, Application no. 29217/12). In that specific case the Court was concerned that there was no guarantee of adequate accommodation for families seeking asylum in Italy. So Switzerland could not send the family to Italy unless they obtained sufficient assurances on this point. NL wishes to stress, however, that the Tarakhel judgment deals with an exceptional situation, because there were substantial grounds for believing that there were systemic flaws in the reception of minors in Italy. The judgment must be regarded as an exception to the general rule. The current proposal would effectively make the exception the rule, and render the principle of mutual- and interstate trust null and void. **EL**: Do these guarantees apply equally at the pre-Dublin check and in the context of the procedure of determination of the responsible MS? **COM**: As paragraph 1 provides, best interest of the child shall be a primary consideration with respect to *all* procedures provided for in this Regulation. The new provision of para 4 would however only apply in case of transfers.

<sup>67</sup> **DE, ES**: scrutiny reservation. **AT, ES, HU, IT**: concerns over the compatibility of the provision with the ECJ judgement.

3. In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:
- a) family reunification possibilities;
  - b) the minor's well-being and social development;
  - c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
  - d) the views of the minor, in accordance with his or her age and maturity.
- 

↓ new

4. Before transferring an unaccompanied minor ~~to the Member State responsible or, where applicable, to the Member State of allocation~~, the transferring Member State shall make sure to notify ~~make sure that~~ the Member State responsible or the Member State of allocation of the transfer of the unaccompanied minor and of its obligations as set out in ~~takes the measures referred to in~~ Articles 14 and 24 of Directive (EU) XXX/XXX [Reception Conditions Directive] Directive 2013/33/EU and Article 225 of Regulation (EU) XXX/XXX [Asylum Procedures Regulation] Directive 2013/32/EU. Any decision to transfer an unaccompanied minor shall be preceded by an assessment of his or her best interests. The assessment shall be done by staff who have the appropriate knowledge of the rights and special needs of minors and shall be based on the factors listed in paragraph 3. ~~The assessment shall be done swiftly by staff with the qualifications and expertise to ensure that the best interests of the minor are taken into consideration.~~ <sup>68</sup>

---

<sup>68</sup> CZ, EL, IE, LV, SE, SK, UK: find the new obligation to make sure that MS responsible will ensure all necessary conditions for admission of UAM as unfounded burden which would make the practical cooperation between MS more time-consuming and less effective. DE: scrutiny reservation. CY: propose the collaboration of the guardians/representatives upon transfer procedures so as to ensure a swift continuation of the guarantees for minors after the transfer to the responsible MS. EL: these are the general obligations of all the MS. It is up to the COM to observe the correct implementation of these obligations. The MS are not in the position to perform this kind of control.

**4a. In order to ensure that the best interest of the unaccompanied minor are guaranteed at all times, within twenty-four hours from the transfer, the Member State responsible, or where applicable, the Member State of allocation, shall assign a person to meet the unaccompanied minor and to at least provide him or her with the necessary information in relation to the procedures provided for in this Regulation. This person shall not have a verified criminal record, with particular regard to child-related crimes or offences.**

**This is without prejudice to the possibility of assigning the same person as indicated in Article 23 of the [Reception Conditions Directive] or Article 22 of the [Asylum Procedures Regulation].**

**4b. The competent authorities shall place this person in charge of an adequate and limited number of unaccompanied minors at the same time to ensure that he or she is able to perform his or her duty effectively.**

**The duty of this person shall cease upon the appointment of a guardian in the Member State responsible or where applicable the Member State of allocation. This is without prejudice to the possibility of this person being appointed as guardian.**

↓ 604/2013 (adapted)

⇒ new

**45.** For the purpose of applying Article ~~8~~ 10, the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, ~~siblings~~ or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

To that end, that Member State may call for the assistance of international or other relevant organisations, and may facilitate the minor's access to the tracing services of such organisations.

The staff of the competent authorities referred to in Article ~~35~~ 47 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.

~~56~~. With a view to facilitating the appropriate action to identify the family members, ~~siblings~~ or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph ~~4~~ 5 of this Article, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article ~~44~~ 56(2).

---