

Practical Guide: Access to the Asylum Procedure



**Europe Direct is a service to help you find answers
to your questions about the European Union.**

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators,
phone boxes or hotels may charge you).

More information on the European Union is available on the internet (<http://europa.eu>).

Designed by EWORX

Luxembourg: Publications Office of the European Union, 2016

Practical Guide:

EN	BZ-04-15-715-EN-N	ISBN 978-92-9243-679-7	doi:10.2847/34427
----	-------------------	------------------------	-------------------

© European Union, 2016

Reproduction is authorised provided the source is acknowledged.

Printed in Luxembourg

PRINTED ON ELEMENTAL CHLORINE-FREE BLEACHED PAPER (ECF)

Practical Guide: Access to the Asylum Procedure

Introduction

As you are often the first point of contact for third country nationals reaching your country, and in many cases also the EU as whole, you play a crucial role in facilitating effective access to international protection. This can be achieved by proactively identifying those who may be in need of protection, providing them with relevant information on the right to apply for asylum, referring them to appropriate procedures and other assistance and procedural guarantees provided to such persons.

This guide provides information on the core obligations of first-contact officials and the rights of persons who may be in need of international protection in the first-contact situation. It will steer you through the process of identification of persons who may wish to apply for protection and the provision of relevant procedural guarantees and support.

The guide is divided into the following four parts:

- **The enhanced role of first-contact officials in access to the asylum procedure:** comprising an introduction to the context of mixed migration flows and overview of relevant legal background, including on fundamental rights;
- **How to be prepared in order to recognise a potential applicant for international protection:** outlining the necessary preconditions regarding the behaviour and mindset of the first-contact officials in order to be able to identify persons who may wish to apply for international protection;
- **Indications that someone may wish to apply for international protection:** providing guidance on which elements to take into account in order to better identify a person who may wish to apply for international protection;
- **What to do next:** providing guidance for situations when a person who may wish to apply for international protection is identified and what to do if an application has been made. It also addresses the situations when a person who may have protection needs does not want to apply for international protection.

Be aware that the EU asylum *acquis* stipulates that officials who first come into contact with persons seeking international protection, in particular officials carrying out the surveillance of land or maritime borders or conducting border checks, should receive relevant information and necessary training on how to recognise and deal with applications for international protection.

Contents

Introduction	5
The enhanced role of first-contact officials in access to the asylum procedure	1
Key role of first-contact officials	1
Fundamental rights	2
Non-refoulement	3
Access to the asylum procedure	3
How to be prepared in order to recognise a potential applicant for international protection	6
Be proactive	6
Are you proactive or reactive?	6
Observe	7
Pay attention to vulnerabilities	7
Unaccompanied or separated children	8
Be open-minded	8
Be respectful	8
Do not discriminate	9
Be non-judgmental	9
Be an active listener	9
Use an appropriate and sensitive communication style	10
Working with the interpreter	11
Pay attention to your body language	11
Be aware of your personal circumstances	12

Indications that someone may wish to apply for international protection	12
Who may wish to make an application?	12
Persons with multiple special needs	13
Non-exhaustive list of indications	13
Who the person is and where she/he comes from	14
What the person says	15
What can you observe (appearance and behaviour)	15
What to do next	17
Provide the information	17
Recognise making of the application for international protection	17
What to do next if a person applies for international protection	18
What to do next if a person who may have protection needs does not want to apply for international protection	19
Main messages on the access to the asylum procedure	21
Annex — Legal references	23

The enhanced role of first-contact officials in access to the asylum procedure

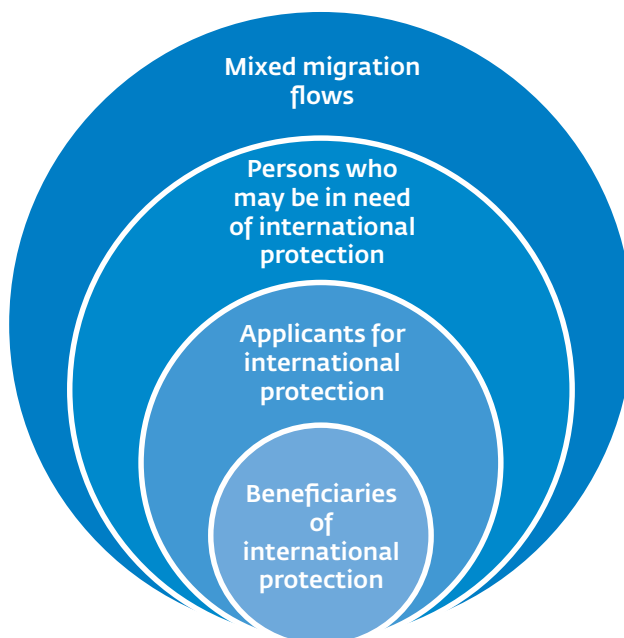
Key role of first-contact officials

The growing scope and complexity of migration movements creates a challenging environment at the external borders of the EU. Persons with different motives and objectives move alongside each other within **mixed migration flows** using the same routes and means of transport. Such journeys may be long, hard and life-threatening, often organised in an irregular manner. Hidden in trucks, small containers or crammed on unseaworthy boats, people often travel in harsh and unsafe conditions, exposed to danger, hunger, exploitation and abuse by smugglers and traffickers. During the journey they may lose family members or relatives. There are countless reports of persons being exploited, mistreated, raped and forced into prostitution or criminality.



Being often the first point of contact for third country nationals reaching your country, and in many cases the EU as a whole, you have a crucial role in timely identification of those persons, addressing their basic needs, guaranteeing their fundamental rights, providing them with information and directing them to adequate procedures and to the competent authorities.

Alongside people whose reasons for travelling are not protection-related are those who have **protection needs** that require immediate action. These may include persons in need of international protection as well as victims of human trafficking, torture, rape or other serious forms of violence, separated or unaccompanied children, women at risk and other vulnerable persons.

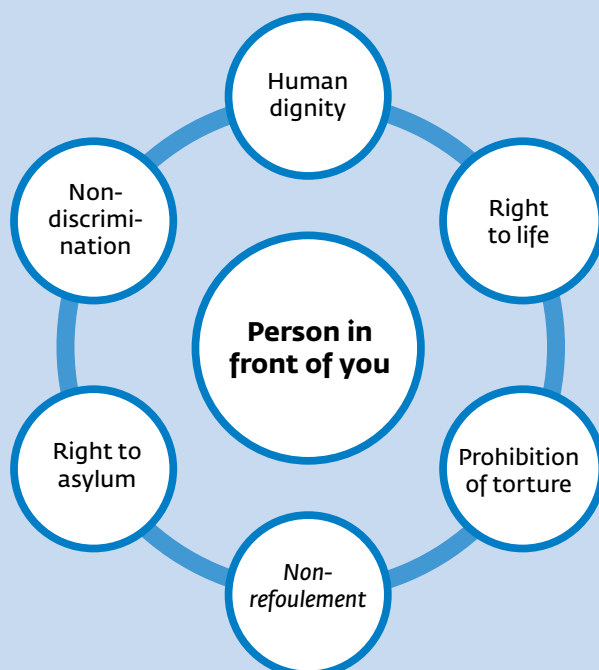


Fundamental rights

Any measure taken at border crossing points and in detention facilities should be proportionate to the objectives pursued, non-discriminatory and should **fully respect key fundamental rights**, such as:

- **Human dignity** that stipulates that a human being has an innate right to be valued, respected, and to receive ethical treatment.
- **Right to life** prohibiting the death penalty or execution and stipulating a duty to take preventive measures in situations where there is a real and immediate risk to the life of an individual.
- **Prohibition of torture** that stipulates that no one can be subjected to torture or to inhuman or degrading treatment or punishment.
- **Principle of non-refoulement** referring to the obligation of states to refrain from expelling or returning a person in any manner whatsoever to a situation where she/he may face persecution and/or torture, inhuman or degrading treatment or punishment.
- **Right to asylum** that gives everyone the right to seek and to enjoy in other countries protection from persecution. Member States shall ensure that each person, whether adult or child, has the right to make an application for international protection on his or her own behalf or through his or her relative or representative.
- **Non-discrimination** that prohibits any unfair treatment or arbitrary action or distinction based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

Every person is entitled to these rights regardless whether she/he has explicitly applied for international protection or not.



Member States must ensure that the authorities respect the **confidentiality principle**, as defined in national law and imposed by EU law, in relation to any information they obtain during their work. Information regarding the fact that a person has applied for international protection cannot be disclosed to the authorities of the person's country of origin.

Non-refoulement

Non-refoulement refers to the obligation of Member States to refrain from expelling or returning any individual in any manner to the frontiers of territories or to any place where they may face persecution as well as inhumane or degrading treatment or punishment, including torture, even if they are in an irregular migratory situation. In the asylum context, the principle of *non-refoulement* entails a requirement to grant individuals seeking international protection access to the territory and to fair and efficient asylum procedures to determine if the person should be granted protection or not.

Who is bound? The *non-refoulement* obligation is binding on all organs of a state as well as any other person or entity acting on its behalf, including first-contact officials.

What does it include? The prohibition of *refoulement* to a danger of persecution under international refugee law is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer or 'renditions', and non-admission at the border. This includes also indirect *refoulement*, which is the return of a person to a third country where the risk of *refoulement* exists. A reliable assessment as to the risk of indirect *refoulement* must be undertaken in each individual case, prior to removal to a third country. No asylum seeker should be returned to a third country for determination of the claim without sufficient guarantees in each individual case. These guarantees include that the person will be readmitted to that country, will enjoy effective protection against *refoulement*, will have the possibility to seek and enjoy asylum and will be treated in accordance with accepted international standards.

Access to the asylum procedure

In order to ensure that the principle of *non-refoulement* is respected and for the right to asylum to be effective, every person who may be in need of international protection must be ensured **access to the asylum procedure**.



Remember that in most scenarios people will have the chance to express their need for protection and their special needs for the first time to you.

Many persons who may be in need of international protection do not know their rights and obligations and do not actively seek asylum in the country in which they arrive. As a first point of contact for persons present at the borders, you have a vital role in facilitating access to international protection by proactively identifying persons who may wish to apply for international protection,

providing them with relevant information on the right to apply for asylum and referring them to appropriate procedures.

Measures taken at the border crossing points and in detention facilities mark one of the primary moments where the special needs of vulnerable persons may be declared or detected. As a first-contact official, you also have the responsibility **to identify the special needs of vulnerable persons** and **refer them for further assessment and/or support** to national authorities.

In order to better identify the special needs of vulnerable persons you may use the EASO practical tool on the identification of persons with special needs (IPSN) available at: <https://ipsn.easo.europa.eu>

Your role in ensuring access to the asylum procedure, stipulated in Article 3a of the Schengen Borders Code ⁽¹⁾, has been further enhanced by the EU asylum *acquis*, especially by the recast Asylum Procedures Directive (APD), applicable as of 20 July 2015 ⁽²⁾. The recast APD introduces, among others, two key provisions that have a direct effect on your daily work:



Article 8 APD recast requires you to **provide information about the possibility to apply for international protection** when there are **indications that a person held in detention facilities or present at external border crossing points may wish to do so**. In practice it means that you have to be proactive in identifying such a person, inform him/her about the right to apply for asylum and advise him/her on how to make the application.



Article 6 APD recast requires you to **refer** a person who has expressed an intention to apply for international protection (i.e. who **made an application for international protection**) to the asylum procedure by informing him/her as to where and how the application for international protection may be lodged.

The APD recast also describes **three separate steps of the access to procedure**, clearly distinguishing between **making, registering and lodging an application for international protection** and their position in respect to the asylum procedure.



Be aware that people may express an intention to apply for international protection in a variety of ways. Any expression of fear of persecution or serious harm if refused entry, expressed verbally or in writing, qualifies as such a request. It is not necessary to use the exact word 'asylum' or 'refugee'. If you are in doubt, you should assume that a protection request has been made.

Making an application for international protection means the act of expressing, in any way and to any authority, one's wish to obtain international protection. Anyone who has expressed his/her intention to apply for international protection is considered to be an applicant with all the rights and obligations attached to this status.

After an application for international protection has been made, it must be **registered** by the competent authorities within the given timeframe — no later than three working days if the application has been made to an authority responsible for registering it or no later than six working

days in case the application has been made to other authorities, such as the police, border guards, immigration authorities and/or personnel of detention facilities. Under exceptional circumstances, when a large number of simultaneous applications make it very difficult in practice to respect the given time limits, it can be extended to 10 working days.

(1) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

(2) 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), further referred as recast APD.

Lodging an application for international protection means for the applicant to provide information/documents to complete the file created at the time of registering the application. Lodging of the application triggers the start of the first-instance examination. Member States may set rules on how and where lodging is to take place.

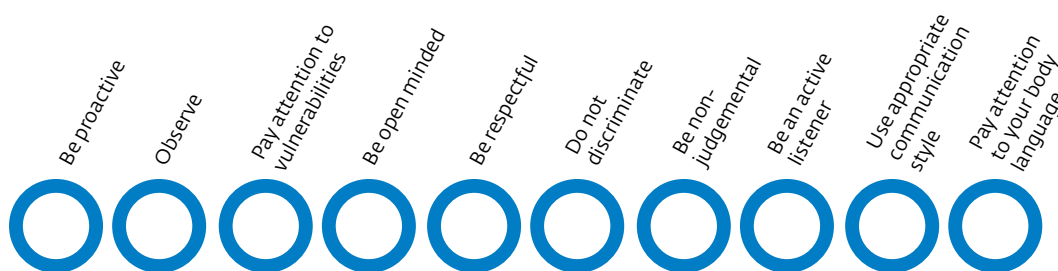


Be aware that your task is to identify persons who may wish to apply for international protection, provide them with information and refer them to the appropriate authority. You cannot deny anyone access to the asylum procedure. Prompt and efficient referral to the competent authorities is key to ensuring the right to asylum is guaranteed in practice. It is not your responsibility to assess whether the person in front of you has protection-related needs and whether she/he can be granted international protection or not.

How to be prepared in order to recognise a potential applicant for international protection

Persons in need of protection are likely to approach a person in uniform and to establish contact with him/her. However, many of them may have been ill-treated by officials in their country of origin or in other countries during their journey. Therefore, in many cases, they will not approach you directly and it is your role to create an atmosphere of trust and proactively identify a person who may wish to apply for international protection and refer those who can be understood to be seeking protection.

This section provides guidance on how to be prepared in order to fulfil your obligations to identify those possibly in need of protection, admit them to EU territory, provide them with information and refer them to the national asylum procedure.



Be proactive

Being proactive means focusing your efforts on elements you can control or which you can influence. A proactive approach will help you to fulfil your duties.

Border guards and first-contact officials have a **responsibility to be proactive in ensuring effective access to the asylum procedure**. They have a duty to identify persons who may wish to apply for international protection, inform them about the right to apply for asylum and provide them with the information on how to make an application. They also have to inform persons who made an application for international protection on how to lodge their application.

Are you proactive or reactive?

A **proactive person** uses proactive language (I can, I will, I prefer, etc.) and focuses efforts on his/her area of influence, on things she/he can control and influence.

A **reactive person** uses reactive language (I can't, I have to, if only, etc.) and focuses his/her efforts on the area of concern, on things over which they have little or no control.

Observe

Observation is not the same as just 'looking at things'. It is an active reception of information that helps you to assess people and circumstances quicker and more precisely. It requires you to keep your eyes and ears open, to obtain as much information as possible and remember it.

- **Pay close attention to everything around you.** Force yourself to notice as much as you can, from the routine to the unusual and try to remember it. Focus on differences, distinctions, unusual situations and circumstances. Awareness of your impressions is a key part of being a good observer.
- **Look for indications** that a person may wish to apply for international protection.
- **Pay close attention to body language** — facial expressions, gestures, eye contact, postures and the tone of voice — of the persons you observe. The ability to understand and use body language can help to connect with other people and to identify their needs. However, keep in mind that the meaning of body language and non-verbal signals can be different across countries and cultures. Therefore it is important to avoid misinterpretation and to refrain from hasty interpretation.

Pay attention to vulnerabilities

Be aware that the person in front of you may be vulnerable and have special needs that require particular attention and immediate action. It is your task to identify the special needs of vulnerable persons and refer them for further assessment and/or support.

Border crossings and detention facilities are one of the primary locations where the special needs of vulnerable persons may be declared or detected. **However, be aware that they may not be immediately visible and may only manifest at later stages.**

Make sure that any measure taken at border crossing points or in detention facilities does not affect the specific protection afforded under international law to persons in need of international protection and to vulnerable persons, such as women and girls at risk, including pregnant women; children, including unaccompanied and separated children; victims of trafficking in human beings; persons who have been subjected to torture, rape or other serious forms of violence; and persons with disabilities.

- **Record vulnerability** and special needs as soon as possible in accordance with national practice and communicate this information to the relevant stakeholders in order to provide the necessary guarantees and support.
- Make sure you are aware of your **national referral mechanisms and procedures** and have at hand the contact information of responsible institutions according to national practice, including specialised child protection services, UNHCR and other organisations providing legal advice or other counselling to applicants.
- **Adjust your approach, language and communication style** according to the needs of the person. Your ability to build trust and communicate with the person is essential, both to be able to identify possible indications of vulnerability and to gather accurate information.
- If needed, **ensure necessary medical and/or other adequate assistance** according to national legislation and practice.

Unaccompanied or separated children

In line with the relevant international and European legal standards and legislation, **a child is any human being below the age of 18 years** unless, under the law applicable to the child, the age of majority is attained earlier. Even if you are not sure if the person who claims to be a child really is one, he/she still must be referred to the responsible authority for age assessment pursuant to national legislation and practice and in accordance with EU law.

Children are inherently vulnerable and it is very important to be particularly sensitive to their special needs, especially in cases where they are unaccompanied or separated. Unaccompanied and separated children should be identified and referred to the responsible authorities as quickly as possible according to national legislation and practice. In accordance with EU law, specific guarantees should be ensured in the case of unaccompanied children, in particular the appointment as soon as possible of a representative. Make sure that you are aware of the national referral procedures and have the contact details of specialised child protection services and other responsible stakeholders at hand.

Always remain observant and pay attention to possible indications of trafficking. Is there anything unusual about the situation you see? Is the child quiet, detached/distant, incoherent, scared, upset? Is a person waiting for the child or is the child looking at another adult? At any time, if there is a reasonable suspicion that the child may be at risk of trafficking, or is otherwise in need of protection, the referral mechanism and initial investigation applies immediately according to the national legislation and practice.

Remember to communicate in a child-friendly manner, taking into account the age and maturity of the child. Keep him/her informed of what is happening and what is going to happen. Ensure access to basic services.

The best interests of the child must be a primary consideration in all actions and decisions concerning the child. As a general rule, children should not be separated from their accompanying parents or relatives, unless there is reasonable suspicion that it is not in their best interests to stay with them. In such case, specialised child protection services should be informed immediately according to the national legislation and practice.

The principle of non-refoulement must be applied. If the return applies, the safeguards for children stipulated in the Article 10 of the Return Directive must be observed.

Be open-minded

Categorising people you have just met and using the usual methods to deal with repeated tasks is a normal reaction and a process most of us use. It is, however, important to be aware of it and always stay open-minded, regardless of our previous personal and professional experience. Be aware that anyone can have protection needs, no matter how she/he looks or acts.

Be open-minded. Being open-minded means being flexible and adaptive to new and different experiences, procedures and challenges. Open-minded persons have less prejudice and are more likely to change their opinions when presented with new facts.

Be respectful

You work in a complex and challenging environment. On a daily basis you face stressful situations and encounter people who are scared, traumatised or mistrust the authorities as well as others who lie, cheat and exhibit aggressive behaviour.

Yet, as often the first point of contact for third-country nationals reaching the EU, you are representing your country as well as the EU. You should be professional, ethical and behave at all times in a manner that reflects well on you and the authority you represent.

Remember to always be respectful. Everybody has to be treated with respect. At all times respect human dignity and be sensitive to cultural diversity and differences.

Be respectful in order to build trust and to be respected. Think about it ... To earn respect you must show respect in the first place. Disrespect creates tension that could turn to conflict.

Do not discriminate

Nobody is allowed to discriminate against another person. **Discriminatory behaviour, unfair treatment or any other discriminatory practices are contrary to fundamental rights.**

In order to avoid discrimination and demonstrate sensitivity, it is important to communicate in a language that the person understands and in a way that makes them feel safe and secure. If needed, adjust your approach, language and communication according to the gender, age, physical and mental state and/or education level of the person in front of you.

Be non-judgmental

Do not prejudge other people for their actions, behaviour and/or appearance. Instead of judging a person for what she/he has done or how she/he looks, make an effort to find out more about him/her and his/her background. A different procedure will follow at a different place, conducted by other officials who will assess the person's protection needs and right to international protection.

Do not pass judgment through verbal and non-verbal communication. If you find yourself being judgmental, stop yourself and remind yourself to observe.

Be an active listener

Be a good listener. Active listening is one of the key components of communication skills. When you truly listen, you show a sincere interest in what is being said instead of just hearing it. In this way you show respect for the person you communicate with, which consequently influences both the quality and the quantity of the information you will be able to obtain.

- **Listen with genuine interest** and with the intention to understand. You may use brief and direct summaries, repeating main parts of the narrative in the applicant's own words to demonstrate active listening and understanding. You may also use reflective statements to reassure the person that you are listening.
- **Encourage the person to speak.** Use encouraging phrases such as, 'Tell me more about that' or 'What happened then?' This invites the applicant to continue talking and contributes to maintaining and expanding the narrative.
- **Ask questions to show interest.** But remember that the most accurate and useful information is given in a free narrative response. If you interrupt too often to ask additional questions, it might also erode the person's motivation or confidence, and reduce the likelihood of a complete account.
- **Make sure that the person in front of you understands** what you have said. It is your responsibility to be understood. Use the opportunity to clarify understanding, for example by asking the person to repeat important parts of the information you provided in his/her own words.

Use an appropriate and sensitive communication style

Differences in language, culture and experience may create barriers in communication. Many other factors, such as age, gender, stress, physical and mental health as well as environmental circumstances can influence the person's ability to express himself/herself. The need to communicate via interpreters also increases the risk of misunderstandings.

It is therefore important to be aware of the factors that could distort the communication process and to adjust your communication style and language accordingly. This will help to reduce feelings of anxiety and stress and secure both the quality and quantity of the information obtained.

- **Be sensitive to personal situation**, if already known, and adapt your communication style accordingly.
- **Use appropriate language that the person is able to understand**. Always try to communicate as precisely, simply and clearly as possible.
- **Give information to the person about what is expected from him/her**, including minor details that you often take for granted, such as who you are, where you are going, why you are closing the door to the interview room, etc., and about the process itself. You should not assume that everybody understands things the same way as you do.
- **Ensure confidentiality**. Explain that anything that is said will remain confidential, unless the information needs to be shared with other governmental bodies.
- **Let the person speak freely**. Encourage the person to provide an account of an event or situation in his/her own words, at his/her own pace and without interruptions.
- **Ask appropriate questions in an appropriate manner**. Open questions show you have the person in focus. Start the discussion with easy questions.
- **Give everyone a chance to speak**. Make sure that nobody intervenes and/or answers questions on behalf of the person apart from when acting in his/her best interests.

Working with the interpreter

The EU asylum *acquis* obliges Member States to make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure where there are indications that persons held in detention facilities or present at border crossing points may wish to apply for international protection. Often there is a need to use the interpreter to bridge the language gap between the person and the official concerned. Working with the interpreter, however, requires you to adjust the way you communicate with the person concerned and/or how you lead the discussion. Here are few points to keep in mind when using the services of an interpreter:

- Pay attention to the selection of the interpreter. If possible, an interpreter of the same sex should be allocated if the applicant so requests;
- Inform the interpreter about his/her responsibility and role during the interview;
- Verify that the person concerned understands the interpreter and vice versa;
- Address the person concerned directly (in the first person) and not through the interpreter using third-person phrasing;
- Try to speak slowly and clearly and pause frequently to allow him/her to interpret short segments, especially if detailed or complicated explanations are given.

These principles are even more important when phone interpreter services are used.

Pay attention to your body language

Body language is a kind of non-verbal communication, where thoughts, intentions, or feelings are expressed by physical behaviours, such as facial expressions, body posture, gestures, the tone of the voice or use of the space. The ability to understand and use non-verbal communication is a powerful communication tool.

- **Be aware of your non-verbal communication.** Your body language is an important tool to develop trust and to establish and maintain rapport.
- **Choose appropriate gestures and postures.** Adopt open body language (avoid crossing your arms; avoid a closed posture, etc.). Use adequate tone of the voice and appropriate facial expressions to create a secure and open environment. Mirroring the applicant's body language can sometimes establish an atmosphere of understanding.
- **Respect one's personal space** and make appropriate **eye contact**. Respect if an applicant does not wish to make direct eye contact with you.
- **Be aware of the cultural and gender-based differences in non-verbal communication.** The meaning of body language and non-verbal signals varies from culture to culture and these differences can cause misunderstandings. Refrain from hasty interpretation of the body language of the person in front of you.



Be aware of your personal circumstances

Every first-contact official needs to perform his/her tasks under demanding circumstances, frequently encountering people from different cultures, different social backgrounds and with different life experiences. This interesting but extremely demanding working environment may sometimes lead to routine stress, frustration or even symptoms of secondary trauma, such as intrusive thoughts, chronic fatigue, sadness, anger, poor concentration, detachment, emotional exhaustion, fearfulness, shame, physical illness, absenteeism.

Our private life can sometimes be a source of stress and problems that may impact on your attitude to professional tasks and ability to cope with stress at work.

You need to be aware of these factors and make a constant effort to minimise their impact. If needed, don't hesitate to ask your colleagues or supervisors for support or to seek professional counselling.

Indications that someone may wish to apply for international protection

Many persons who may be in need of international protection do not actively apply for asylum in the country in which they arrive. Many of them may not know their rights and obligations or may choose not to ask for protection because of their specific situation or because of being misinformed by others, including smugglers, about their rights and their options. It is unrealistic to expect them to have knowledge of the complex asylum and Dublin procedures, full trust in authorities to directly raise their fear at borders or in detention, or to know the right words and expressions that could grant them access to the procedure.

Being a first point of contact for persons at the borders, it is your duty to identify when a person is expressing the intention to apply for protection, and to proactively identify and inform them when there are indications that they may wish to apply for asylum.

Remember that in most scenarios people will have for the first time the chance to express their need for protection to you. Therefore you are the first, critical step to ensuring protection for persons in need. An incorrect identification at the borders and failure to pass on the asylum request to the competent authority may have serious consequences for the person in need of international protection. The person may be returned to a country where his/her life or freedom is threatened or faces persecution, death, cruel and inhuman degrading treatment or other serious human rights violations.

This section provides some helpful tips and guidance to assist first-contact officials in identifying persons who may wish to apply and to ensure that no possible indications are overlooked.

Who may wish to make an application?

→ **Be aware that you must not deny anyone access to the asylum procedure.**
Everyone has the right to seek asylum.

→ **Always remember that anyone can be a refugee.**

Anyone can have protection needs, no matter how she/he looks or acts. Within the mixed migration flows, persons with different motives and objectives travel alongside each other, often using the same routes and means of transport. Therefore refugees and persons whose reasons for travelling are not protection-related may look and behave in the same way.

Remember that your task is to identify a person who may wish to apply for international protection, provide them with information and refer them to the appropriate authority. It is not your responsibility to assess whether the person in front of you has protection-related needs and whether she/he will be granted international protection or not. Different procedures will follow at a different place, conducted by competent officials, to assess the person's protection needs and determine if they qualify for international protection.

→ **Yes, anyone can be a refugee** regardless of his/her country of origin, ethnicity and/or appearance.

Anyone can be a refugee regardless of whether she/he:

- **entered the Member State or is present on its territory irregularly**, using false or fraudulent documents or without any documentation at all, including if she/he is prohibited to enter because of past irregular migratory situation;
- **is a victim of trafficking in human beings**. A victim of trafficking may have protection needs outside of the issue of trafficking. She/he may also apply for international protection when escaping the trafficking situation; or the asylum procedure itself may be used by the traffickers as a means of facilitating the presence of the person in the host country;
- **is an unaccompanied child**. The EU asylum *acquis* provides for specific guarantees to ensure that the unaccompanied child can benefit from the rights and comply with his/her obligations in the asylum context. Since the child is inherently vulnerable, it is very important to be particularly sensitive to any additional indicators of special needs and always act in the best interests of the child.

Persons with multiple protection needs

Remember, that apart from the need for international protection, some persons may have other protection needs that require urgent attention. For example, a person may be both a victim of trafficking and a refugee, or both an unaccompanied child and a refugee. Identification of these multiple needs and referral to appropriate procedures, especially in the immediate post-arrival phase, can be very challenging.

However, categorising different groups of arrivals should not detract from the development of measures to protect the human rights of all persons without differentiation, including the right for asylum. Thus, for example, in the case of victims of trafficking and unaccompanied children, adequate protection mechanisms need to be activated as soon as possible. However, their right to asylum has to be guaranteed as well and the required steps within the asylum context have to be conducted simultaneously.

Non-exhaustive list of indications



Be aware that the list of indications provided below is only indicative and does not, in any case, include all possible indications and their variations. Rather than a precise formula, it should be viewed as advice on which factors to focus on when assessing the possibility that someone may wish to apply for international protection.

Indications that a person may wish to apply for international protection may be revealed in different ways. You may observe them, become aware of them through direct contact with the person or with other persons, deduce them from the documents the person presents and/or come across them under other circumstances. In order to detect the indications quicker and more precisely, pay particular attention to the following elements:

Who the person is and where she/he comes from

Country of origin

Your general knowledge about the up-to-date situation in the person's country of origin, including general political circumstances, security situation as well as respect for fundamental rights is an important source of indications for the accurate identification of persons who may wish to apply for international protection. For example a country embroiled in (civil) war or armed conflict or a country governed by a dictatorial regime is likely to be a source country of refugees. However, be aware that no country can be considered generally safe for all its citizens, therefore even those coming from a safe country of origin may have individual protection needs.

Ethnicity, religion, nationality

Apart from the general context of the country of origin, particular attention should be paid if the person belongs to (national, ethnical and/or religious) minorities as they often tend to be targets of persecution or violence. However, it does not mean that persons from the majority may not have protection needs.

General circumstances of arrival

The context of large-scale arrivals of big groups and individuals or a family may create different expectations regarding the profile of people and their protection needs. However, it is important to keep in mind that refugees do not exclusively travel one way or the other.

Age

Children are inherently vulnerable and it is very important to be particularly sensitive to their protection needs, especially when they are unaccompanied or separated. Every officer dealing with a child should act in his/her best interests, be able to communicate with him/her in a child-friendly manner and take into account his/her possible additional special needs.

Special protective measures should be considered when there are indications of child-smuggling and/or child-trafficking. For further information, consult the *Frontex Vega Children Handbook* ⁽³⁾.

Gender

Women and girls in the migration context may find themselves in a particularly vulnerable position due to their experience in the country of origin, during their journey and because of social or cultural differences in the host country. Therefore, particular attention should be paid to their possible protection and/or additional special needs. It does not mean, of course, that all women have the same degree of vulnerability.

Particular support should be given so that women and girls can speak with you privately, and that nobody intervenes and/or answers questions on their behalf. Information should also be provided directly to them so they are not deprived of vital information and the ability to take independent decisions, including to request international protection or other assistance.

If possible, the presence of a female first-contact official and interpreter should be ensured. Women should not be urged to talk about incidents or crimes related to sexual violence. If appropriate, considering their age, women should be sensitively asked if they are pregnant and, if needed, be informed of available assistance.

(3) http://frontex.europa.eu/assets/Publications/Training/VEGA_Children_Handbook.pdf

Family status

It is important to take into consideration the family status of a person. Certain categories, such as unaccompanied or separated children, single women or single parents with children may be in a particularly vulnerable position and may have protection as well as additional special needs.

What the person says

A person's statements are the key and often the only indication of whether she/he may wish to apply for international protection or they could constitute the making of an application itself. Particularly if the person expresses, in any way, fear or anxiety of persecution or serious harm if refused entry, it should be considered such an indication. Some of the key words, expressions or messages that may signal that a person may wish to apply for international protection include:

- **Fear:** for example if the person is afraid to return to his/her home country; fears persecution; is afraid of being imprisoned in his/her home country; is afraid of being killed if she/he is returned home.
- **Death:** for example if the person is afraid of being killed upon return.
- **Persecution:** for example if the person says she/he was persecuted in his/her home country or is in fear of being persecuted upon return.
- **Torture:** for example if the persons say that she/he or his/her family members were tortured or if she/he reveals scars or other injuries possibly resulting from torture.
- **War:** for example if the person says there is a (civil) war or armed conflict occurring in his/her home country; she/he is afraid of being killed in war, etc.
- **Return:** for example if the person says she/he cannot return to his/her home country; is afraid to return; has nowhere to return; is afraid of being persecuted, imprisoned, tortured or killed if she/he is returned home.
- **UNHCR (UN) or lawyer:** for example if the person asks for the UN or UNHCR office; wants to see UNHCR; wants to see a lawyer, etc.

What you can observe (appearance and behaviour)



Keep in mind that oral statements of the applicant are very often received in a language that is not the applicant's first language and/or through an interpreter. This language barrier may have an impact on mutual understanding and cause apparent inconsistencies or discrepancies in the person's statements.

Approaching/avoiding the officer

Nearly everywhere in the world an officer can be identified by their uniform. The uniform conveys power and authority and may have a powerful psychological impact on those who see it. Persons who may wish to apply for international protection are likely to approach a uniformed person and establish contact with them. However, be aware that people may also come from countries where a uniform generates mistrust or even fear. People often avoid those in uniform due to fear of the consequences of illegal entry, possession of forged or false documents or not having documents at all. In these cases you should be able to interpret such signals in order to appropriately react or provide assistance.

Fear

Fear generates high levels of stress which may manifest itself in many ways, both physically and emotionally. Strong fear may completely immobilise a person and cause passivity and apathy. Alternatively, it may cause hyperactivity, aggressiveness and/or peculiar behaviour. Be aware that anyone can have protection needs, no matter how she/he acts.

Note that fear and stress can make it difficult for the person in front of you to understand your questions and stay focused. Therefore it is important to create an atmosphere of safety and security by providing information and giving explanations.

Interactions between people

Nearly all groups are based on interdependence, whether the group is large or small, formally structured or loose, focused on one activity or another. Relationships of a different nature can be established within a group, both positive relationships of mutual trust and support, as well as unhealthy ones of dependency, submission, control and abuse. That is why it is very important to pay attention to the interaction between members of a group and look for unhealthy and problematic signs. Give everyone a chance to speak with you individually, including children and women. Make sure that nobody intervenes and/or answers questions on their behalf, except when acting in their best interests.

Appearance (injuries, scars, clothing, belongings, etc.)

Visible wounds, injuries or scars may be a strong indication of protection needs. Other external signs, such as type and appearance of his/her clothing, adequacy of luggage and other belongings the person carries with him/her may indicate a wish to apply for international protection. But be aware that anyone can have protection needs, no matter how she/he looks.

Body language

Pay attention to the body language of a person, such as his/her facial expressions, body posture, gestures, the tone of voice, etc. The ability to understand and use non-verbal communication is a powerful communication tool and can be an important indication that a person may wish to apply for international protection. However, be aware of the cultural and gender-based differences in non-verbal communication. The meaning and use of body language and non-verbal signals varies from culture to culture and these differences can cause misunderstandings. Therefore, refrain from hasty interpretation.



Remember that your judgement at the point of entry has crucial and critical importance. Consult your superior whenever you have any doubts about the intentions of the person in front of you. An incorrect decision, e.g. refusal of entry, can have serious consequences for the person in front of you. Therefore, always think carefully before you act.

What to do next

Provide the information

It is your duty to ensure that a person who may wish to apply for international protection is informed about the possibility to do so and advised how to do so. This is how access to the asylum procedure can be effective in practice.

The main purpose of providing information is to ensure that persons who may be in need of international protection have effective access to the asylum procedure and are able to make well-informed decisions about whether to apply for international protection. Therefore, information needs to be provided in a timely manner and should be as complete as possible, given the circumstances.

Inform the person about the possibility to apply for international protection. It is your task to provide basic information about international protection and the asylum procedure to persons who may wish to apply. The information and the level of details provided may vary according to the circumstances, but should include, at least, information about:

- the basic rights and obligations of the person;
- what is international protection;
- who is considered to be a refugee or a beneficiary of subsidiary protection;
- how the application for international protection can be made and lodged.

Make sure you are aware of the information to be provided based on national practice and have at hand the contact information about responsible authorities, including specialised child protection services and other stakeholders, such as interpreters, NGOs, UNHCR and any other organisation providing legal advice or other assistance. If applicable, make sure you have extra copies of any information leaflets and brochures in the relevant languages.

It is necessary to communicate in a language understood by the person which may require the presence of an interpreter. Communication should be adapted to the person's special needs and circumstances, including gender sensitivity and/or a child-friendly approach.

Recognise the making of an application for international protection



Be aware that people may express an intention to apply for international protection in a variety of ways. Any expression of the fear of persecution or of serious harm if refused entry, expressed either verbally or in writing, qualifies as such a request. It is not necessary to use the exact word 'asylum' or 'refugee'.

Under EU asylum law, a person is considered to make an application for international protection when they express, in whatever way and form, the wish to apply or if she/he can be understood to be seeking international protection.

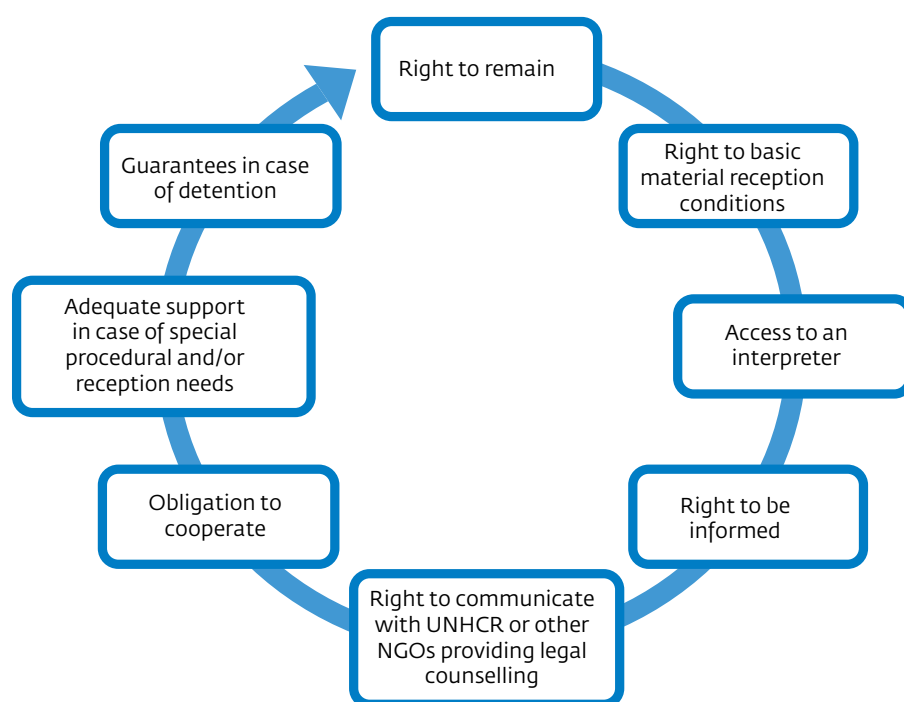
As a first-contact official you will often be the first representative of your country with whom third country nationals reaching the EU meet, and to whom they have for the first time the chance to express their wish to apply for asylum.

You will need to recognise when a person has expressed the wish to apply, provide them with relevant information and refer them to the competent authority in charge of the asylum procedure.

Remember that your task is to recognise that a person has expressed the wish to apply for international protection, provide him/her with information and refer him/her to the appropriate authority. **It is not your responsibility to assess whether the person in front of you actually has protection-related needs** and whether she/he should be granted international protection or not. A different procedure will follow elsewhere, conducted by other officials, to assess the person's protection needs and right to international protection.

What to do next if a person applies for international protection

Anyone who has expressed the intention to apply for international protection (i.e. who made the application) is considered to be an **applicant for international protection** with all the rights and obligations attached to this status. As a first-contact official you are responsible for helping to ensure these rights, for example by referring the applicants to the relevant authorities and organisations.



Register the application, if applicable, or refer the application to the authorities competent for registration

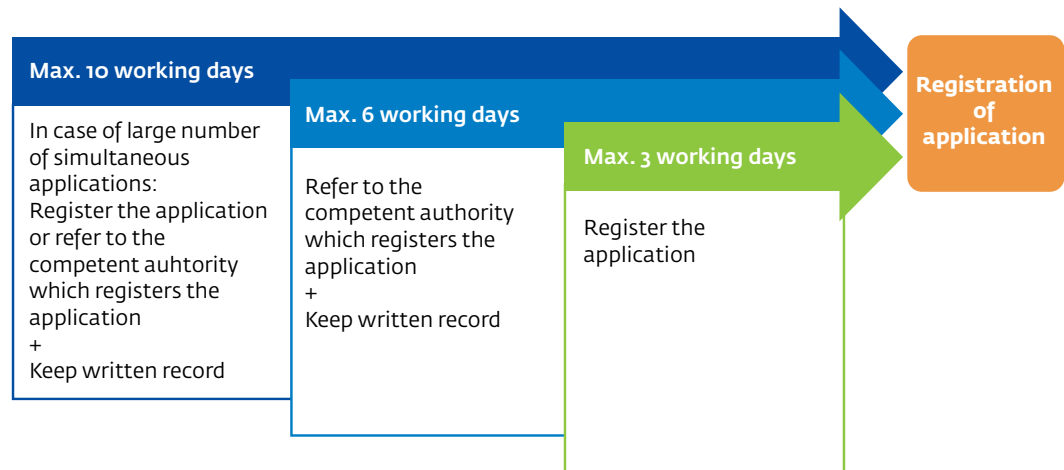
If a person expresses the wish to apply for asylum to you, then he/she has 'made' an application and becomes an applicant for international protection. After an application has been made, it must be registered by the competent authority. The objective of the registration process is to make the rights and obligations resulting from making the application more effective. Therefore, the registration should be completed as soon as possible, within the time limits prescribed by EU law.



Remember that an applicant for asylum must not be penalised on account of his/her irregular entry or presence, provided they present themselves without delay to the authorities.

If you belong to an authority with the competence to register the application, you are required to register it within three working days.

If you work for an authority that is not competent to register, you should refer the application **to the competent authority so that it is registered** no later than six working days after the application was made. It is recommended to keep a written record, in accordance with your national procedures, that you have received the application.



Inform the applicant where and how the application may be lodged

As an officer of the authority that is likely to receive applications for international protection you have a duty to inform the applicant where and how to lodge the applications. Information should be provided about:

- what is lodging, including the consequences if the applicant does not lodge his/her application;
- which authority is responsible for the asylum procedure;
- what they need to do in order to lodge the application;
- where they should go to lodge the application;
- how they can get there.

Identify the applicant's special needs and refer him/her to the appropriate procedure

Do this without delay. For applicants with multiple needs, consider which referral mechanisms need to be activated and in which order so you can respond to all special needs of the applicant. Thus, for example, in case of victims of trafficking or unaccompanied children, adequate protection mechanisms may need to be activated in parallel to the asylum procedure.

What to do next if a person who may have protection needs does not want to apply for international protection

You may encounter situations where a person who might have protection needs decides not to apply for asylum. It is his/her right of choice and nobody can force him/her to do so. However, remember that in such cases you still have to fulfil some obligation placed upon you under international and EU law, such as:

Ensure principle of *non-refoulement*

Nobody can be returned to a country where she/he is at risk of torture, inhuman or degrading treatment or punishment. The *non-refoulement* principle applies also to persons who are at the border or on the high seas. It entails a requirement to grant the person access to the territory. Any returns should follow established procedures (readmission, return process, etc.), including the required legal safeguards and guarantees. Collective expulsions are forbidden.

Inform the person about the possibility to apply for international protection

You have a duty to provide basic information about international protection. Remember that a key purpose of providing this information is to ensure that the person concerned is able to make well-informed decisions about whether to apply or not.

Provision of information may need to be adapted to the circumstances, and include especially the rights to which applicants are entitled (e.g. right to remain) and the obligations of asylum seekers under EU and national law as well as the consequences of not applying for international protection.

Consider contacting UNHCR, NGOs and/or other organisations based on national legislation and practice that may be able to provide more specialised counselling and assistance.

When in doubt, consult your superior

Consult your superior whenever you have any doubts about the intentions of the person in front of you, especially if his/her return to country of origin or transit would constitute a possible breach of international law.

Follow your national operating procedures for further follow-up

Access to the Asylum Procedure

- ▶ Every human being shall be valued and respected
- ▶ Emergency healthcare and basic needs should always be addressed first

1

Anyone can be a refugee

Anyone can have protection needs, regardless of their country of origin, ethnicity, appearance or behaviour.

2

Everyone is entitled to protection against *refoulement*

No one can be expelled or returned to a situation where he/she would face a risk of persecution, the death penalty, torture or other inhuman or degrading treatment or punishment. This rule also applies to non-admission at the border and to any form of forcible removal.

3

Vulnerable persons must be identified and adequately supported

Measures taken at border crossing points and in detention facilities are crucial moment, where the special needs of vulnerable persons, including children and victims of trafficking in human beings, may be declared or detected.

4

Best interests of the child take precedence in all actions concerning children

In assessing the best interests of the child, due account, on a case-by-case basis, must be taken regarding factors such as safety and security, family reunification possibilities, the child's wellbeing and the views of the child in accordance with his/her age and maturity.

5

Anyone who may wish to apply for international protection must be informed about their right to do so

Information on this right to asylum must be provided to all persons who may be in need of international protection to ensure that they have effective access to the asylum procedure.

6

Everyone has the right to apply for international protection

No one can be denied access to the asylum procedure, even if that person did not fulfil all the entry conditions.

7

Any sign or expression of fear can be understood as a request for international protection

People may express an intention to apply for international protection in a variety of ways. Any expression of fear of persecution or serious harm if refused entry — verbally or in writing — qualifies as such a request. It is not necessary to use the word 'asylum' or 'refugee'.

8

Applicants for international protection must not be penalised due to their illegal entry or presence

Those who present themselves without delay to the authorities must not be penalised as a result of their illegal entry or presence.

9

Each application must be registered or referred for registration to the responsible authority

After an application has been made it must be registered by the responsible authority. The registration should be completed as soon as possible, within the time limits prescribed by law.

10

The principle of *non-refoulement* must be ensured, even when a person does not apply for asylum

Any returns should follow established procedures, including the required legal safeguards and guarantees. Nobody can be returned to a country where he/she is at risk of torture, inhuman or degrading treatment or punishment, even if he/she is in an irregular migratory situation.

Annex — Legal references

Human dignity

European Union's law	
Charter of Fundamental Rights of the EU	<p>Article 1</p> <p>Human dignity</p> <p>Human dignity is inviolable. It must be respected and protected.</p>

Right to life

European Union law	
Charter of Fundamental Rights of the EU	<p>Article 2</p> <p>Right to life</p> <p>1. Everyone has the right to life.</p> <p>2. No one shall be condemned to the death penalty, or executed.</p>

Prohibition of torture

International law	
European Convention on Human Rights	<p>Article 3</p> <p>Prohibition of torture</p> <p>No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</p>
European Union law	
Charter of Fundamental Rights of the EU	<p>Article 4</p> <p>Prohibition of torture and inhuman or degrading treatment or punishment</p> <p>No one shall be subjected to torture or to inhuman or degrading treatment or punishment.</p>

Prohibition of *refoulement*

International law	
Geneva Convention	<p>Article 33(1)</p> <p>Prohibition of expulsion or return ('<i>refoulement</i>')</p> <p>No Contracting State shall expel or return ('<i>refouler</i>') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.</p>
European Union law	
Charter of Fundamental Rights of the EU	<p>Article 19(2)</p> <p>Protection in the event of removal, expulsion or extradition</p> <p>No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.</p>
Schengen Borders Code	<p>Article 3</p> <p>Scope</p> <p>This Regulation shall apply to any person crossing the internal or external borders of Member States, without prejudice to:</p> <p>(...)</p> <p>(b) the rights of refugees and persons requesting international protection, in particular as regards <i>non-refoulement</i>.</p> <p>Article 3a</p> <p>Fundamental Rights</p> <p>When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter of Fundamental Rights; relevant international law, including the Geneva Convention; obligations related to access to international protection, in particular the principle of <i>non-refoulement</i>; and fundamental rights. (...)</p> <p>Article 13(1)</p> <p>Refusal of entry</p> <p>A third-country national who does not fulfil all the entry conditions laid down in Article 5(1) and does not belong to the categories of persons referred to in Article 5(4) shall be refused entry to the territories of the Member States. This shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas.</p>
Regulation 656/2014 relating to external sea border surveillance in the context of Frontex operations	<p>Article 4(1)</p> <p>Protection of fundamental rights and the principle of <i>non-refoulement</i></p> <p>No person shall, in contravention of the principle of <i>non-refoulement</i>, be disembarked in, forced to enter, conducted to or otherwise handed over to the authorities of a country where, inter alia, there is a serious risk that he or she would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another country in contravention of the principle of <i>non-refoulement</i>.</p>

Return Directive 2008/115/EC	<p>Article 4(4)</p> <p>With regard to third-country nationals excluded from the scope of this Directive in accordance with Article 2(2)(a), Member States shall [...]:</p> <p>(b) respect the principle of <i>non-refoulement</i>.</p> <p>Article 5</p> <p>When implementing this Directive, Member States shall [...] and respect the principle of non-refoulement.</p>
VIS Regulation (EC) No 767/2008	<p>Article 31(3)</p> <p>Transfer of data to third countries</p> <p>Such transfers of personal data to third countries or international organisations shall not prejudice the rights of refugees and persons requesting international protection, in particular as regards <i>non-refoulement</i>.</p>
EU Eurosur Regulation, (EU) No 1052/2013	<p>Article 2(4)</p> <p>Member States and the Agency shall comply with fundamental rights, in particular the principles of <i>non-refoulement</i> and respect for human dignity and data protection requirements, when applying this Regulation.</p>

Right to asylum

European Union law	
Charter of Fundamental Rights of the EU	<p>Article 18</p> <p>Right to asylum</p> <p>The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.</p>
APD recast(')	<p>Article 7(1)</p> <p>Applications made on behalf of dependants or minors</p> <ol style="list-style-type: none"> 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. 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. <p>(...)</p> <ol style="list-style-type: none"> 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.

Non-discrimination

International law	
European Convention on Human Rights	<p>Article 14</p> <p>Prohibition of discrimination</p> <p>The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.</p>
Geneva Convention	<p>Article 3</p> <p>Non-discrimination</p> <p>The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.</p>
European Union law	
Charter of Fundamental Rights of the EU	<p>Article 21(1)</p> <p>Non-discrimination</p> <p>Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.</p>

Non-penalisation

International law	
Geneva Convention	<p>Article 31(1)</p> <p>Refugees unlawfully in the country of refugee</p> <p>1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.</p>
European Union law	
Schengen Border Code	<p>Article 13(1)</p> <p>Refusal of entry</p> <p>A third-country national who does not fulfil all the entry conditions laid down in Article 5(1) and does not belong to the categories of persons referred to in Article 5(4) shall be refused entry to the territories of the Member States. This shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas.</p>

Access to the asylum procedure

European Union law

<p>APD recast (*)</p>	<p>Recital 25</p> <p>In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, (...)</p> <p>Recital 26</p> <p>With a view to ensuring effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular officials carrying out the surveillance of land or maritime borders or conducting border checks, should receive relevant information and necessary training on how to recognise and deal with applications for international protection, inter alia, taking due account of relevant guidelines developed by EASO. They should be able to provide third-country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and who make an application for international protection, with relevant information as to where and how applications for international protection may be lodged. Where those persons are present in the territorial waters of a Member State, they should be disembarked on land and have their applications examined in accordance with this Directive.</p> <p>Recital 28</p> <p>In order to facilitate access to the examination procedure at border crossing points and in detention facilities, information should be made available on the possibility to apply for international protection. Basic communication necessary to enable the competent authorities to understand if persons declare their wish to apply for international protection should be ensured through interpretation arrangements.</p> <p>Article 8(1)</p> <p>Information and counselling in detention facilities and at border crossing points</p> <p>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.</p>
<p>Schengen Border Code</p>	<p>Article 3a</p> <p>Fundamental Rights</p> <p>When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter of Fundamental Rights; relevant international law, including the Geneva Convention; obligations related to access to international protection, in particular the principle of <i>non-refoulement</i>; and fundamental rights. (...)</p>

Making and registering the application for international protection

European Union law

APD recast(*)

Recital 27

Given that third-country nationals and stateless persons who have expressed their wish to apply for international protection are applicants for international protection, they should comply with the obligations, and benefit from the rights, under this Directive and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. To that end, Member States should register the fact that those persons are applicants for international protection as soon as possible.

Article 2(c)

Definitions

'Applicant' means a third-country national or stateless person who has made an application for international protection in respect of which a final decision has not yet been taken.

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.

(...)

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.

Vulnerable persons

European Union law

APD recast(*)

Recital 29

Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape other serious forms of psychological, physical or sexual violence. Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection.

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.

RCD recast ⁽²⁾	<p>Article 21</p> <p>Provisions For Vulnerable Persons</p> <p>General principle</p> <p>Member States shall take into account the specific situation of 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.</p>
Regulation 656/2014 relating to external sea border surveillance in the context of Frontex operations	<p>Article 4(4)</p> <p>Throughout a sea operation, the participating units shall address the special needs of children, including unaccompanied minors, victims of trafficking in human beings, persons in need of urgent medical assistance, disabled persons, persons in need of international protection and other persons in a particularly vulnerable situation.</p>

(1) 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), further referred as recast APD.

(2) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

HOW TO OBTAIN EU PUBLICATIONS

Free publications:

- one copy: via EU Bookshop (<http://bookshop.europa.eu>);
- more than one copy or posters/maps: from the European Union's representations (http://ec.europa.eu/represent_en.htm); from the delegations in non-EU countries (http://eeas.europa.eu/delegations/index_en.htm); by contacting the Europe Direct service (http://europa.eu/europedirect/index_en.htm) or calling 00 800 6 7 8 9 10 11 (freephone number from anywhere in the EU) (*).

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

Priced publications:

- via EU Bookshop (<http://bookshop.europa.eu>).

Priced subscriptions:

- via one of the sales agents of the Publications Office of the European Union (http://publications.europa.eu/others/agents/index_en.htm).

