



Access to the Asylum Procedure

What you need to know



Information

Identification

Protection

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1 What is international protection?

People in need of international protection do not have basic human rights and physical security guaranteed in their home countries and they have been forced to escape from the risk of persecution, inhuman or degrading treatment or other serious human rights violations. Therefore, the international community needs to step in and fulfil its obligation under international and EU law to grant international protection to those who lack protection in their home countries.

The EU asylum *acquis* provides for two forms of international protection: refugee status and subsidiary protection status. Based on the principle of a uniform status for refugees or for persons eligible for subsidiary protection, beneficiaries of subsidiary protection status should be granted the same rights and benefits as those enjoyed by refugees and should be subject to the same conditions of eligibility. In addition, your state may also provide for other forms of protection, based on humanitarian grounds.

Access to safety and adequate asylum procedure is an essential element to ensure that persons in need of international protection enjoy the rights to which they are entitled. As a first-contact official, you play a crucial role in ensuring access to protection for persons in need.

2 What is non-refoulement and who does it apply to?

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**, the death penalty, torture or other inhuman or degrading treatment or punishment, 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 shall be granted international protection or not.

The prohibition of *refoulement* 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.** 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.



See Section “Key role of first-contact officials” of the Practical Guide.

3 Who shall be granted international protection in the EU?

EU asylum *acquis* provides for two forms of international protection: refugee status and subsidiary protection status. In addition, your state may also provide for other forms of protection, based on humanitarian grounds.

- A **refugee** is a person who was forced to flee the country of nationality, or in the case of stateless persons the country of former habitual residence, because of a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, and is unable or, owing to such fear, unwilling to return to it.
- **Subsidiary protection** is granted to people who do not qualify as refugees, but are still in need of international protection. Across the EU, subsidiary protection is provided to those facing a real risk of serious harm if returned to their country. **Serious harm** consists of:
 - the death penalty or execution
 - torture, inhuman or degrading treatment or punishment
 - serious and individual threat by reason of indiscriminate violence in situations of international or internal armed conflict.

As a first-contact official, your responsibilities include the proper identification and referral of persons who may be in need of international protection as well as other persons with special needs, including children and victims of human trafficking. Sometimes people

may have multiple needs and multiple referrals may be necessary.

Remember that when you come into contact with persons who may be in need of international protection, you are representing not only your country, but also the EU as a whole.

What is the Common European Asylum System?

The Common European Asylum System (CEAS) is a common system based on the full and inclusive application of the Geneva Convention. It aims to ensure fair and human treatment of applicants for international protection, to harmonise asylum systems and to reduce the differences between Member States on the basis of binding legislation, as well as to strengthen practical cooperation between national asylum administrations and the external dimension of asylum.

The CEAS is composed of the following legal instruments, setting out common high standards and stronger cooperation to ensure that applicants for international protection are treated equally in a fair and efficient system — wherever they apply for international protection:

The recast **Asylum Procedures Directive** that aims at fair, quick and good quality asylum decisions.

The recast **Reception Conditions Directive** that ensures that there are humane material reception conditions for asylum seekers across the EU and that the fundamental rights of the concerned persons are fully respected.

The recast **Qualification Directive** that clarifies the grounds for granting international protection. Its provisions also foresee a series of rights and integration measures for beneficiaries of international protection.

The recast **Dublin Regulation** clarifying the process of establishing the Member State responsible for examining the application.

The recast **Eurodac Regulation** improving the functioning of the EU asylum fingerprint database.

4 What is the difference between a migrant and a person in need of international protection?

“Migrant” is a wide-ranging term that covers persons who leave one country or region to settle in another. Some migrants voluntarily decide to move for a variety of reasons, most of them for reasons that are not protection-related, for instance because of family ties or due to economic hardship. **Persons in need of international protection, however, are forced to flee to save their lives or preserve their freedom.** They have no protection in their country of origin; in fact it is often their own government that is threatening to persecute them. If other countries do not let them in, and do not offer protection, they may be leaving them exposed to death, persecution or other serious human rights violations.

Modern migratory patterns are often mixed. Within mixed migration flows, those who are in need of protection and those whose reasons are not protection-related travel alongside each other, making use of the same routes and means of transport. Such journeys may be long, hard and dangerous, often organised in an irregular manner. Identifying those who may wish to apply for international protection under those circumstances is a challenging but extremely important task.

5 Is it my duty to decide whether a person is in need of international protection?

No. It is not your responsibility to assess whether a person is in need of international protection or if his/her account is credible. A different procedure will follow at a different place, conducted by officials of the asylum determination authority, to assess the application and determine, in accordance with EU and international law, if the person qualifies for international protection or not.

Your duty is to identify persons that may wish to apply for international protection, provide them with information on the possibility to do so and refer to the competent authority those who expressed the wish to apply.



See Section *“Key role of first-contact officials”* of the Practical Guide.

6 What rights do persons who may be in need of international protection have when I come into contact with them?

Persons who may be in need of international protection are entitled to certain rights regardless of whether they have explicitly applied for international protection or not. In many instances, it will be your duty to ensure that these rights are guaranteed.

As such, the principle of **non-refoulement** applies to all persons regardless of whether their status has or has not been formally determined. Member States have the obligation to refrain from returning individuals 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.

Other rights include **effective access to asylum procedure**, the **right to information** in a language he/she can understand about the possibility to apply, including access to an **interpreter**, and the **opportunity to communicate with UNHCR or other organisations** providing legal advice or counselling to applicants.

Remember that all persons must be treated with full **respect for human dignity** and in accordance with fundamental and human rights, including provision of emergency healthcare and meeting basic needs. Vulnerable persons, including children and victims of trafficking in human beings, must be identified and referred to appropriate procedures.



See Section “*Key role of first-contact officials*” of the Practical Guide.

7 What is my responsibility towards vulnerable persons?

Vulnerable persons include especially children, unaccompanied children, disabled people, elderly people, pregnant women, single parents with children, victims of human trafficking, persons with serious illness or mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

Border-crossing points and detention facilities are among the primary locations where the special needs of vulnerable persons may be declared or detected. As a frontline official, you have the responsibility **to identify the special needs of vulnerable persons and refer them for further assessment and/or support** to national authorities and other stakeholders, such as NGOs and UNHCR, which are specialised and mandated to respond to their needs in accordance with national legislation and practice. Make sure you are aware of the national referral procedures and have the relevant contact details at hand.

Emergency health considerations and basic needs should always be addressed immediately and should take priority over migratory concerns. Family unity should be preserved to the extent possible and children should not be separated from their parents or relatives.



See Section *“Pay attention to vulnerabilities”* of the Practical Guide.

8

What is my responsibility towards a child or a person who claims to be a child?

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, majority is attained earlier. Even if you are not sure if the person who claims so is really a child, he/she still must be referred to the responsible authority for age assessment in accordance with national legislation and practice.

Children are inherently vulnerable and it is very important to be particularly sensitive to their special needs, especially in the case 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 and in line with the guarantees provided by EU law. Make sure 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 must apply 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. In such case, specialised child protection services should be informed immediately according to the national legislation and practice.

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



See Section "Unaccompanied or separated children" of the Practical Guide.

For further information, consult the Frontex Vega Children Handbook¹⁾.

¹ http://frontex.europa.eu/assets/Publications/Training/VEGA_Children_Handbook.pdf

9 Could a victim of human trafficking also be in need of international protection?

If there are reasons to believe that a person may be a victim of human trafficking, he/she should be referred to the responsible authorities and services according to national legislation and practice for relevant assistance and support. Make sure you are aware of the national referral procedures for victims of human trafficking and have the relevant contact details at hand.

However, **in some cases, victims of human trafficking may also be in need of international protection and shall be given access to the asylum procedure.** In any case, all victims of human trafficking should be properly informed of their right to seek asylum.

Be aware that the trafficker may still be around. It is important that everyone has the opportunity to speak with you on their own behalf, freely and in private. Make sure that nobody intervenes and/or answers questions on behalf of other person apart from when acting in his/her best interests. Particular attention to possible indications of trafficking should be given in case of unaccompanied or separated children.

In the case of women and girls, the presence of a female first-contact official should be ensured, if possible. Women and girls should not be urged to talk about incidents or crimes related to sexual

exploitation or violence. If appropriate, considering their age, women should be sensitively asked if they might be pregnant and, if needed, be informed about available assistance.



See Section "Persons with multiple protection needs" of the Practical Guide.

10 Who can apply for international protection?

Everyone has the right to apply for international protection.

The right to asylum is recognised in the Geneva Convention, the Charter of Fundamental Rights of the EU, and other international and European legal instruments. However, this does not mean that every person who applies for international protection will receive it. In every asylum system, some applications will be rejected and some accepted, but all of them must be assessed in accordance with European and international law.

Access to safety and adequate procedures is an essential element of the effective enjoyment of the right to asylum. As a first-contact official, you have a crucial role in identifying those who may wish to apply for international protection and ensuring their access to asylum procedure.



See Section “*Who may wish to make an application?*” of the Practical Guide.

11 Can a person with fraudulent documents or without documents at all also apply for international protection?

Yes. Everybody has the right to apply for international protection regardless of whether he/she entered the Member State or is present on its territory illegally, using false or fraudulent documents or without any documentation at all.

Most persons in need of international protection are confronted with life-threatening situations of violence, which rarely give them the opportunity to gather the requisite documentation to be granted access to the EU through legal channels.

In accordance with the Geneva Convention and the Schengen Border Code, applicants for international protection cannot be penalised on account of their illegal entry or presence, provided they present themselves without delay to the authorities. Even during the investigation of false and fraudulent documents, the person may apply for international protection. In this case, the police investigation shall be stopped and the asylum procedure shall be initiated.



See Section “*Who may wish to make an application?*” of the Practical Guide.

12 How do I recognise 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 options.

Therefore it is important to observe and **pay attention to indications that a person 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, ascertain 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:**

1. **Who the person is** (age; gender; family status; ethnicity, religion and nationality)
2. **Where the person comes from** (country of origin; general circumstances of arrival)

3. What the person says/fears:

- Being killed or executed
- Persecution
- Torture
- War
- Return

4. What the person wants:

- Help
- Protection
- To see a representative of UN/UNHCR/a lawyer

5. What can you observe (appearance and behaviour):

- Approaching/avoiding the officer
- Fear, stress or unusual silence
- Unusual behaviour and/or attitude
- Appearance (injuries, scars, clothing, belongings, etc.)

Provision of information is a key element in ensuring effective access to the asylum procedure. As a first-contact official, your role is to make sure that people who may wish to apply for international protection are able to do so. Therefore you need to proactively provide them with information on the right to apply for asylum, including on the rights and obligations it triggers.



See Section “*Non-exhaustive list of indications*” of the Practical Guide.

13

When and how should I provide information to people who may wish to apply for international protection?

As a first-contact official, your role is to make sure that people who may wish to apply for international protection are able to do so. Therefore you need to proactively provide them with information on the right to apply for asylum, including on the rights and obligations it triggers. 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.

In general, information on the possibility to apply for international protection must be provided in detention facilities and at border-crossing points, including transit zones, at external borders. However, it can be understood as a good practice that such information is provided also at the moment where people trying to circumvent the border-crossing points are stopped by the authorities responsible for border surveillance.

Make sure that you are aware of the information to be provided based on national legislation and practice and in accordance with EU law. The information should be provided in a **timely manner** and should be as complete as possible. It is necessary to communicate in a **language understood by the**

person. If needed, interpretation should be ensured. **Language and communication should be adapted to the gender, age, physical and mental state and/or education level of the person in front of you.** In the case of women and girls, the presence of a female first-contact official and female interpreter should be ensured, if possible.



See Section “*Non-exhaustive list of indications*” of the Practical Guide.

14 When does someone become an applicant for international protection?

A person becomes an applicant for international protection when he/she has made an application. Under the EU asylum *acquis*, a person is considered to make an application **when he/she expresses, in whatever form and to any authority, the wish to apply for international protection**, or when he/she can be understood to be seeking international protection. It is not necessary to use the exact word 'asylum' or 'refugee'. Applicants for international protection shall be granted all the rights and obligations attached to this status.

As a first-contact official, you are often the first representative of your country with whom a person who may be in need of international protection comes into contact. In many cases, such persons will have, for the first time, the chance to express the wish to apply for international protection to you.

Remember that many persons who may be in need of international protection fear persecution from officials in their own country or have been ill-treated by officials in other countries during their journey. In many cases they may not approach you directly or actively apply for asylum. **First-contact officials play a key role in creating an atmosphere of trust and 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.**



See Section "*What to do next if a person applies for international protection*" of the Practical Guide.

15 How do I recognise that a person is asking for 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 come into contact and to whom they have for the first time the chance to express their wish to apply for asylum.

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 either verbally or in writing, qualifies as such a request.** It is not necessary to use the exact word 'asylum' or 'refugee'.

Some of the key words, expressions or messages that may signal that a person may wish to apply for international protection include **fear of being killed, persecution, torture, war** and/or **fear of being returned**. The person may also ask for **help, protection** or may want to see the **UN, UNHCR office** or a **lawyer**, etc.

Any person who has expressed the wish to apply for international protection becomes an applicant with all the rights and obligations attached to this status and must be referred to the responsible authorities for further assessment. 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.



See Section “Recognise making of the application for international protection” of the Practical Guide.

16 What should I do if a person has expressed the wish to apply for international protection to me?

As soon as a person has expressed the wish to apply for international protection, **he/she becomes an applicant and must be referred to the responsible authorities** for further assessment. As an officer of the authority, which is likely to receive applications for international protection, you have the duty to inform the applicant as to where and how the application should be lodged.

Applicants for international protection are entitled to certain rights and guarantees attached to this status, including the right to remain, the right to basic material reception conditions, adequate support in case of special procedural and/or reception needs, the right to receive more detailed information on the asylum procedure in the language they understand and guarantees in case of detention. As a first-contact official, you are responsible for helping to ensure these rights are maintained, for example by referring the applicants to the relevant authorities and organisations.

After an application has been made, it must be registered.

- **If you work for an authority with the competence to register the application, you are required to do so** within three working days.

- **If you work for another authority, 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 that you have received the application, in accordance with your national legislation and practice.

Remember that applicants for international protection must not be penalised on account of their illegal entry or presence, provided they present themselves without delay to the authorities.



See Section *“What to do next if a person applies for international protection”* of the Practical Guide.

17 What should I do if there are indications that someone may be in need of protection, but he/she has not expressed the wish to apply?

Many persons who may be in need of international protection do not actively apply for asylum. For example, they may not know of the right or the procedures to do so, may be victims of trafficking or may suffer trauma related to persecution or the difficult journey. In addition, persons in need of international protection often lack information about their rights and obligations, have relatives in other Member States whom they hope to join, or have been misinformed by others, including smugglers, about their options. It is unrealistic to expect them to have complex knowledge of the 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.

Provision of information is a key element in ensuring 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 or not.

Remember that it is part of your obligation to ensure that no person, even if they have not applied for international protection, is returned to a place where they may face persecution, inhumane or degrading treatment or punishment, including

torture, even if they are in an irregular migratory situation. Any returns should follow established procedures, including the required legal safeguards and guarantees.

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



See Section *“What to do next if a person who may have protection needs does not want to apply for international protection”* of the Practical Guide.

18 What if a person applied for asylum, but I suspect he/she is only trying to abuse the system?

Any person who has expressed the wish to apply for international protection becomes an applicant with all the rights and obligations attached to this status and must be referred to the responsible authorities for further assessment.

Remember that it is not your task to assess whether a person is in need of international protection or if his/her account is credible. It is the responsibility of the asylum authority. In every asylum system some applications will be rejected and some accepted, but all of them must be assessed in accordance with European and international law.

Nevertheless, you may wish to consult your superior or to inform the responsible authority about the reasons for your doubts.



See Section “*Who may wish to make an application?*” of the Practical Guide.

19 What happens if I fail to identify a person wishing to apply for international protection?

An incorrect identification and failure to refer the person to the competent authorities may have serious consequences for the person. **He/she may be returned to a country where his/her life or freedom would be threatened or where he/she would face persecution, death, cruel and inhuman degrading treatment or other serious human rights violations.**

As a first-contact official you have a crucial role in ensuring access to protection for persons in need. Consult your superior whenever you have any doubts about the intentions of the person in front of you.

20

Sometimes I feel exhausted or even feel angry at the persons I have to deal with on a daily basis. Is this normal?

Every first-contact official needs to perform his/her tasks under demanding circumstances, frequently encountering people from different cultures, a different social background and with different life experiences. This interesting, but extremely demanding working environment can have an impact on your psychological well-being. In the discharge of your duties, you may experience varied emotions, ranging from compassion, through indifference, to rejection of the individuals you deal with every day. This in turn can affect the effectiveness and quality of your work, and your ability to take appropriate decisions and actions.

It is important to be aware of those factors as well as of your personal circumstances 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.



See Section "*Be aware of your personal circumstances*" of the Practical Guide.

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.

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The electronic version of the tool can be found on the EASO and Frontex webpages together with other practical tools for first-contact officials on access to the asylum procedure:

<http://easo.europa.eu/accesstoprocedure>

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