

	APD	RCD Detention	RCD	Dublin III
<b>Title</b>	20 Free legal assistance and representation	9(6) Free legal assistance and representation	26(2) Free legal assistance and representation 27(5)	27(6) ... legal assistance ... free of charge
<b>Scope</b>	20(1)... It shall include, at least, the <b>preparation of the required procedural documents</b> and <b>participation in the hearing</b> before a court or tribunal <b>of first instance</b> on behalf of the applicant.	9(6) ...This shall include, at least, the <b>preparation of the required procedural documents</b> and <b>participation in the hearing</b> before the judicial authorities on behalf of the applicant.	26(2) ... This shall include, at least, the <b>preparation of the required procedural documents</b> and <b>participation in the hearing</b> before the judicial authorities on behalf of the applicant.	27(6) Legal assistance shall include at least the <b>preparation of the required procedural documents</b> and <b>representation before a court or tribunal</b> ...
	22(4)(a) MS may also ... impose <b>monetary and/or time limits</b> on the provision of legal and procedural information free of charge referred to in Article 19 and on the provision of free legal assistance and representation referred to in Article 20, provided that such limits <b>do not arbitrarily restrict access</b> to the provision of legal and procedural information and legal assistance and representation	9(8)(a) MS may also ... impose <b>monetary and/or time limits</b> on the provision of free legal assistance and representation, provided that such limits <b>do not arbitrarily restrict access</b> to legal assistance and representation;	26(4)(a) MS may also ... impose <b>monetary and/or time limits</b> on the provision of free legal assistance and representation, provided that such limits <b>do not arbitrarily restrict access</b> to legal assistance and representation;	-
	Member States may provide that the free legal assistance and representation referred to in Article 20 is granted only for appeals procedures in accordance with Chapter V before a court or tribunal of first instance and <b>not for any further appeals or reviews provided</b> for under national law, including <b>rehearings or reviews of appeals</b> .	-	-	-

Qualification	<p>21(1) The free legal assistance and representation referred to in Article 20 shall be provided by such <b>persons as admitted or permitted under national law.</b></p> <p>21(2)(b) ...granted ... only through the services provided by legal advisers or other counsellors <b>specifically designated by national law to assist and represent applicants</b></p> <p>Rec. 17 ... it is necessary that <b>professionals</b> acting in the framework of the procedures provided for in this Directive perform their activities with <b>due respect for the applicable deontological principles.</b></p> <p>Rec. 22 [at first instance] It would be disproportionate to require MS to provide such information only through the services of qualified lawyers.</p> <p>Rec. 23 ... provided by persons <b>competent</b> to provide them</p>	<p>9(6) Free legal assistance and representation shall be provided by <b>suitably qualified persons</b> as admitted or permitted under national law <b>whose interests do not conflict or could not potentially conflict with those of the applicant.</b></p> <p>9(7)(b)... granted ... only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.</p>	<p>26(2) Free legal assistance and representation shall be provided by <b>suitably qualified persons</b>, as admitted or permitted under national law, <b>whose interests do not conflict or could not potentially conflict with those of the applicant.</b></p> <p>26(3)(b) ... granted ... only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.</p>	-
Rights of representative	<p>23(1) Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, who assists or represents an applicant under the terms of national law, <b>shall enjoy access to the information in the applicant's file upon the basis of which a decision is or will be made.</b></p>	-	-	<p>5(6) The Member State shall ensure that the applicant and/or the legal advisor or other counsellor who is representing the applicant have timely access to the summary.</p>

Member States may make an **exception** where disclosure of information or sources would jeopardise **national security**, the **security of the organisations or person(s) providing the information** or the security of the **person(s) to whom the information relates** or where the **investigative interests** relating to the examination of applications for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised. In such cases, Member States shall:

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

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

<b>Access to applicant</b>	23(2) Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant has <b>access to closed areas, such as detention facilities and transit zones</b> , for the purpose of consulting that applicant, in accordance with Article 10(4) and Article 18(2)(b) and (c) of Directive 2013/33/EU.	10(4) Member States shall ensure that family members, <b>legal advisers or counsellors</b> and persons representing relevant non-governmental organisations recognised by the Member State concerned have the <b>possibility to communicate</b> with and <b>visit</b> applicants in conditions that <b>respect privacy</b> . Limits to access to the detention facility may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided that <b>access is not thereby severely restricted or rendered impossible</b> .	18(2) Without prejudice to any specific conditions of detention as provided for in Articles 10 and 11, <b>in relation to housing</b> referred to in paragraph 1(a), (b) and (c) of this Article Member States shall ensure that: ... (b) applicants have the possibility of <b>communicating</b> with relatives, <b>legal advisers or counsellors</b> , persons representing UNHCR and other relevant national, international and non-governmental organisations and bodies; (c) family members, <b>legal advisers or counsellors</b> , persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are <b>granted access in order to assist the applicants</b> . <b>Limits</b> on such access may be imposed only on grounds relating to the security of the premises and of the applicants.	
	22(2) Member States may also provide that the free legal assistance and representation referred to in Article 20 is not granted to applicants who are <b>no longer present on their territory</b> in application of Article 41(2)(c).	-	-	-
<b>Needs Test</b>	-	-	-	-

<b>Merits test</b>	Member States may provide that free legal assistance and representation not be granted where the applicant's appeal is considered by a court or tribunal or other competent authority to have <b>no tangible prospect of success.</b>	-	26(2) Member States may provide that free legal assistance and representation not be made available if the appeal or review is considered by a competent authority to have <b>no tangible prospect of success.</b>	27(6) Without arbitrarily restricting access to legal assistance, Member States may provide that free legal assistance and representation not be granted where the appeal or review is considered by the competent authority or a court or tribunal to have <b>no tangible prospect of success.</b>
<b>Means Test</b>	21(2)(a) only to those who <b>lack sufficient resources.</b>	9(7)(a) only to those who <b>lack sufficient resources</b>	26(3)(a) only to those who <b>lack sufficient resources</b>	27(6) on request free of charge where the person concerned <b>cannot afford the costs involved.</b>
<b>Procedural Safeguards</b>	21(2)(a) Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority which is not a court or tribunal, Member States shall ensure that the applicant has the <b>right to an effective remedy before a court or tribunal against that decision.</b> In the application of this paragraph, Member States shall ensure that legal assistance and representation is <b>not arbitrarily restricted</b> and that the applicant's <b>effective access to justice is not hindered.</b>	-	26(3)(a) In such a case, Member States shall ensure that legal assistance and representation is <b>not arbitrarily restricted</b> and that the applicant's <b>effective access to justice is not hindered.</b>	27(6) Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority other than a court or tribunal, Member States shall provide the <b>right to an effective remedy before a court or tribunal to challenge that decision.</b>
<b>Cost</b>	Free	free	free	free
	21(4)(b) MS may also ... provide that, as <b>regards fees and other costs</b> , the treatment of applicants shall <b>not be more favourable than the treatment generally accorded to their nationals</b> in matters pertaining to legal assistance.	9(8)(b) MS may also ... provide that, as <b>regards fees and other costs</b> , the treatment of applicants shall <b>not be more favourable than the treatment generally accorded to their nationals</b> in matters pertaining to legal assistance.	26(4)(b) MS may also ... provide that, as <b>regards fees and other costs</b> , the treatment of applicants shall <b>not be more favorable than the treatment generally accorded to their nationals</b> in matters pertaining to legal assistance.	27(6) Member States may provide that, as <b>regards fees and other costs</b> , the treatment of applicants shall <b>not be more favourable than the treatment generally accorded to their nationals</b> in matters pertaining to legal assistance.

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<b>Reimbursement</b>	21(5) Member States may demand to be <b>reimbursed</b> wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.	9(9) Member States may demand to be <b>reimbursed</b> wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.	26(5) Member States may demand to be <b>reimbursed</b> wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.	-
<b>Information</b>	11(2) Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are stated in the decision and <b>information on how to challenge a negative decision is given in writing.</b> Member States need <b>not</b> provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been <b>provided with such information at an earlier stage</b> either in writing or by electronic means accessible to the applicant. 12(1)(f) ... they shall be informed of the result of the decision by the determining authority in a language that they understand or are reasonably supposed to understand when they are not assisted or represented by a legal adviser or other counsellor. The	9(4) Detained applicants shall immediately be informed in writing, in a language which they understand or are reasonably supposed to understand, of the reasons for detention and the procedures laid down in national law for challenging the detention order, <b>as well as of the possibility to request free legal assistance and representation.</b>	5(1) Member States shall ensure that applicants are provided with information on <b>organisations or groups of persons that provide specific legal assistance</b> and organisations that might be able to help or inform them concerning the available reception conditions, including health care.	26(2) Member States shall ensure that <b>information on persons or entities that may provide legal assistance</b> to the person concerned is communicated to the person concerned together with the decision referred to in paragraph 1, when that information has not been already communicated.

	information provided shall <b>include information on how to challenge a negative decision</b> in accordance with the provisions of Article 11(2). 19(1) ... In the event of a negative decision on an application at first instance, Member States shall also, on request, provide applicants with information — in addition to that given in accordance with Article 11(2) and Article 12(1)(f) — in order to clarify the reasons for such decision and <b>explain how it can be challenged.</b>			
<b>Transposition/ Implementation</b>	21(3) Member States <b>may lay down rules</b> concerning the modalities for filing and processing requests for legal and procedural information free of charge under Article 19 and for free legal assistance and representation under Article 20.	9(10) <b>Procedures for access</b> to legal assistance and representation <b>shall be laid down</b> in national law.	26(6) <b>Procedures for access</b> to legal assistance and representation <b>shall be laid down</b> in national law.	27(6) <b>Procedures for access</b> to legal assistance <b>shall be laid down</b> in national law.
<b>Gender</b>	None, but regarding interviewer & interpreter 15(3)(a),(b): : .. wherever possible, provide an interviewer/interpreter <b>of the same sex if the applicant so requests, unless</b> the determining authority has reason to believe that such request is <b>based no grounds which are not related to difficulties</b> on the part of the applicant to present the grounds of his or her application in a comprehensive manner.			

<b>Vulnerabilities</b>	24(3) Member States shall ensure that where applicants have been identified as applicants in need of special procedural guarantees, they are <b>provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of this Directive</b> throughout the duration of the asylum procedure.		21 Member States shall <b>take into account the specific situation of vulnerable persons</b> 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.	
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