

# Information on procedural elements and rights of applicants subject to a Dublin transfer to Austria

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## **About this document**

*The ‘Roadmap for improving the implementation of transfers under the Dublin III Regulation’ was endorsed in the meeting of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) of the Council of the European Union on 29 November 2022. The roadmap identified a clear need for objective and neutral information on reception and detention conditions and the asylum procedure in all the Member States, which can serve as reference in transfer decisions and that can be used in national courts when the person concerned has exercised his or her right to an effective remedy.*

*This data collection is based on Article 5 of the regulation on the European Union Agency for Asylum <sup>(1)</sup> (EUAA). Member States were requested to provide information that reflects both the relevant legal provisions and the practical implementation of these provisions. The scope of the fact sheet is limited to rules and conditions applicable to applicants for international protection as well as other persons that are subject to a transfer under the Dublin III regulation <sup>(2)</sup>.*

*The European Commission and the EUAA jointly developed the template which served as the basis for this fact sheet. The EUAA gathers and stores the fact sheets and requests Member States to update the information at least one time per year. The relevant national authorities of the Member States provide all the information contained within the fact sheet and are responsible for ensuring that it is accurate and up-to-date.*

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(1) [Regulation \(EU\) 2021/2303](#) of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021).

(2) [Regulation \(EU\) No 604/2013](#) of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (OJ L 180, 29.6.2013).

## 1. Access to material reception conditions

**1.1** What steps should an applicant complete following a Dublin transfer in order to gain access to accommodation and other material reception conditions in your Member State?

How long do these steps normally take?

When and how is the applicant provided with information on how to gain access to accommodation and other material reception conditions?

The process implemented by the Austrian authorities in most circumstances does not require applicants to proactively take any measures. Usually, a Dublin-In case will be placed in an organised accommodation upon arrival. Usually this happens on the same day.

**1.2** What material reception conditions (as per Article 2(g) Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast) (RCD) are available to applicants for international protection entitled to these in your Member State?

The reception system in Austria follows the principle of shared responsibilities, which means that the tasks are shared between the federal state and the federal provinces. Applicants for international protection, who cannot provide for themselves (financially) are taken care of within the basic care system. On federal level, there is only organized housing, while on provincial level, there is organized as well as private housing available. Material reception conditions for organized housing include inter alia food, hygiene products, other daily necessities, social services, monthly pocket money, financial support for clothing. Within private accommodation, rent subsidy and food allowance can be granted. The financial support depends on the type of accommodation as well as other individual factors, such as being a minor/adult, being single/accompanied by family members, etc.

**1.3.** How does your Member State ensure that applicants for international protection in your Member State are provided with full access to the material reception conditions as defined in Article 2(g) of RCD in line with Article 17 and 18 of RCD, and, where relevant, more favourable provisions set out in your national legislation?

The national legislation ensures the same material reception conditions for all applicants for international protection, mainly the Federal Basic Care Act 2005, the Agreement between the Federal State and the Federal Provinces on Basic Care, the Federal Act Establishing the Federal Agency for Reception and Support Services as a Private Limited Company as well as the different laws on basic care by the federal provinces.

Reception conditions include inter alia:

- Housing
- Food

- Health Insurance
- Tickets for school transport
- Tickets for transportation to the reception facility.

Applicants are entitled to material benefits in accordance with the recast Reception Conditions Directive for a period of an additional 4 months after receiving a positive decision.

Rejected applicants (negative decision) are entitled to material reception conditions provided that they cooperate with the competent authority on their departure. This specific group may be subject to an individual examination.

### **Duration and recurrence**

In organised reception centres (including food): €40/month and 10€ for leisure activities.

In private rented flats: €150/month for single person, €300/month for families.

€150/year for necessary clothing.

Reimbursement for public transportation in case of summonses and medical appointments.

€200/year per child for school materials.

**1.4.** Does your Member State apply a policy in line with Article 20.1(c) of reducing or in duly justified exceptional cases withdrawing the access to reception conditions for applicants in cases the applicant lodged a subsequent application?

Yes

If yes, what material support is provided to persons whose material reception conditions have been reduced or withdrawn in accordance with Article 20(1)(c) in your Member State to ensure a dignified standard of living and access to health care?

Emergency health care is always provided.

### **Circumstances for reducing or withdrawing material reception conditions**

Material reception conditions may be withdrawn or reduced when the asylum seeker:

- Repeatedly violates the house rules and/or his or her behaviour endangers public order and the security of other inhabitants;
- Has submitted a subsequent application;

- Has been convicted by a court for a crime on a ground that may exclude him/her from refugee status according to the Refugee Convention, Article 1F (not applied or relevant in practice); or
- Leaves the designated reception facility for longer than 3 consecutive days, which results in material reception conditions no longer being provided.

Material reception conditions can be reduced when the asylum applicant is working and has an income or items of value or receives support from a third party.

### **Type of applicable sanction measures**

Material reception conditions are withdrawn if the application is rejected or dismissed and a suspensive effect has been excluded (Article 18(1) BFA- Procedures Act, BFA-Verfahrensgesetz). If the applicant cooperates to return voluntarily, he/she is eligible for material reception conditions until the departure (dignified living standard and medical treatment). For those not entitled to reception because they do not need support, see the section on Reception Facilities and Information System.

If the asylum seeker has concealed financial resources and has, therefore, unduly benefited from material reception conditions, the asylum seeker will have to refund the financial resources received (this will be determined in a formal procedure).

### **Sanction procedures**

Since December 2020, the Federal Agency for Reception and Support Services BBU GmbH is responsible for the reduction or withdrawal of material reception conditions. Previously, the Federal Office for Immigration and Asylum BFA decided on the withdrawal or reduction of material reception conditions provisions as long as asylum applicants are in the admissibility procedure. In practice, only few procedures of reduction or withdrawal of material reception conditions have been carried out.

### **Review of the sanction decision**

There is a legal remedy in the Basic Care Act of the Federal State foreseen in case material reception conditions are withdrawn. Such decisions to withdraw or reduce Basic Care provision can be appealed at the Administrative Court and free legal assistance is provided in the law and implemented in all federal provinces.

## **1.5 What health care is an applicant for international protection entitled to in your Member State in line with Article 19 RCD?**

Applicants for international protection are covered by health insurance which is part of the material reception conditions and are eligible to the same benefits as Austrian citizens.

**1.6** What steps are taken to ensure that applicants for international protection in your Member State have full/effective access to health care, in line with Article 19 of RCD, and, where relevant, more favourable provisions set out in your national legislation?

Recipients who are entitled to material reception conditions are covered by health insurance (they are entitled to the same medical care as Austrian citizens).

Applicants whose Basic Care has been withdrawn receive emergency care and essential treatment.

Emergency care and essential treatment are always granted

**1.7** Please describe what are the support measures available/provided to persons with special reception needs in your Member State in line with Article 21 RCD (e.g. minors, unaccompanied minors)?

After lodging an asylum application, all applicants of international protection undergo a first medical screening upon arrival in a federal reception facility. This medical examination is used inter alia for identifying vulnerabilities. Within the federal reception system, there are separate facilities for people with special medical needs, for UAM, for families, for single women, for LGBTIQ people and are personal needs considered in the best possible way. Children's interests are always given the highest consideration.

**1.8** How does your Member State ensure that applicants for international protection with special reception needs in your Member State are provided with full access to the reception conditions, which cater for their special reception needs, in line with Article 21(1) of RCD, and, where relevant, more favourable provisions set out in your national legislation?

GVG-B 2005, Article 2(1) states that special attention should be given to vulnerable persons with special reception needs when an asylum seeker is registered in the Reception System (in practice, the Federal Ministry of the Interior in cooperation with the Federal Ministry of Health developed an anamnesis sheet for applicants, which is the basis for the subsequent initial medical examination). Material reception conditions shall safeguard human dignity at least.

Housing arrangements for applicants with special needs

Unaccompanied minors: Unaccompanied minors are accommodated within special reception structures, as well as families. Minors who are younger than 14 years are provided care in socio-pedagogic institutions of the federal provinces. Since 1 December 2020, the Federal Agency for Reception and Support Services BBU GmbH is responsible for the care of unaccompanied children. Unaccompanied minors have the same rights to specialised health care/psychological support as Austrian children. Guidance and care for unaccompanied minors is managed by the Youth Welfare Agency (Children and Youth Assistance).

Applicants with special needs: There places in facilities of the state (e.g. Traiskirchen) or facilities run by NGOs for applicants with disabilities and special health needs. the Special

Care Centres (Sonderbetreuungsstellen) takes care of applicants with special health needs. The Specialised Care Centre Graz Andritz offers medical care for patients with regular or special care and treatment needs (e.g. cancer patients, persons with cardiovascular diseases, epileptics, diabetics, patients in the drug replacement programme, etc.).

In order to address gender-related needs, specialised, separate buildings for single women/mothers are foreseen: "Frauenhaus" Traiskirchen with only female social workers and security staff. NGOs are also offering facilities for single women.

**1.9** How can an applicant for international protection avail themselves of a legal remedy in line with Article 26 RCD, in case they consider that their rights to material reception conditions are not being met in your Member State?

Legal advice and legal representation during the asylum procedure is provided through the Federal Agency for Reception and Support Services.

Since 1 January 2021, the newly-established Federal Agency for Reception and Support Services (BBU GmbH) is in charge of providing legal advice and legal representation. The applicant can lodge an appeal according to §9 (2) GVG Bund.

## 2. Access to the asylum procedure

**2.1** What are the procedural steps that an applicant for international protection transferred to your Member State needs to undertake in order to gain access to the asylum procedure following a Dublin transfer to your Member State?

### Supervised transfers:

After the applicant is transferred by a member state to Austria, he/she will be informed to which accommodation centre she/he needs to report to. Sometimes the person is escorted by police, in other cases the person will be handed a ticket for public transport. When arriving at the accommodation centre the person will be provided with all the items he/she needs. If further contact with the Federal Office is necessary, the applicant will be informed in writing on how to contact the Federal Office.

### Unsupervised transferes:

If a person transfers themselves to Austria, without informing the Member state, the person should report to either a police officer or the initial reception centre in Traiskirchen (Otto-Glöckel-Straße 24, 2514 Traiskirchen).

How long do these steps normally take?

Usually on the day of arrival.

Are there any different steps to take for persons whose applications would be considered as subsequent applications? (Location to register, fees, admissibility procedure etc.)

The same procedure as above applies, but the person will be automatically allocated to a specific reception centre which oversees handling subsequent applications.

How long do these steps normally take?

Usually on the day of arrival.

Where can the applicant find this information, or be provided with this information?

The applicant will be informed upon arrival.

**2.2** What are the procedural consequences in your Member State of an application for international protection being considered a subsequent application?

The application is examined and if found that there are no new elements to the claim rejected, the application is rejected as inadmissible. For further procedure see 4.6

**2.3** Does your Member State avail itself of the possibility under Article 33(2) Directive 2013/32/EU on common procedures for granting and withdrawing international protection (recast) (APD) to consider an application for international protection lodged by an applicant

transferred to your country through the Dublin procedure as inadmissible? If so, under which of the grounds listed in this Article?

No. It depends on the applicant upon arrival in Austria. If the applicant wishes to lodge another application the Federal Office assesses whether new elements are presented.



### 3. Detention and limitations to the freedom of movement of applicants

**3.1** Are there any circumstances under which your Member State an applicant for international protection could be detained on public health grounds (e.g. quarantine), under applicable provisions of national law unrelated to Article 9 RCD?

No

If yes, please describe these different types of circumstances, the legal basis for the detention, duration, conditions (incl. type of facilities), and the legal remedies available to challenge such a decision.

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**3.2** How can an applicant challenge a decision to place them in detention according to Articles 8 and 9 RCD?

Detainees have the right to appeal detention before the Federal Administrative Court within 6 weeks from the adoption of the decision.

**3.3** What are the limits set out in national law to the duration that an applicant may be placed in detention according to Article 9 RCD?

In general the duration that an applicant may be placed in detention may not exceed 6 months (Aliens Police Act, Article 80(1)(2)(2)). This period may be extended in exceptional cases under specified circumstances, but to a maximum duration of 18 months (see Aliens Police Act, Article 80(4)).

At what intervals does the judicial authority needs to review a detention decision according to Article 9(5) RCD?

If an applicant for international protection is to be held in detention for more than four months, the Federal Administrative Court must review the proportionality of the detention after the day on which the fourth month has passed and every four weeks thereafter.

**3.4** What types of less coercive (alternative) measure to detention are used in your Member State?

Article 77(3) of the Aliens Police Act enumerates 3 alternatives to detention: (a) reporting obligations; (b) the obligation to take up residence in a certain place of accommodation or (c) the deposit of a financial guarantee.

Please elaborate under which conditions these are generally used and how does your Member State ensure that these less coercive alternative measure to detention are used when they can be applied effectively as per Article 8.2 RCD?

In general, alternative measures must be applied in all cases, not only if a particular ground for detention exists, if the authorities have good reasons to believe that the object

and purpose of detention (i.e. removal) could be reached by the application of such measures. In particular children older than 14 years are to be afforded non-custodial alternatives to detention, unless certain facts justify the assumption that the objective of detention cannot be achieved with these measures (Aliens Police Act, Article 77(1)). The Aliens Police Act, Article 76(1) provides that children younger than 14 years may not be detained.

**3.5** What conditions, set out in Article 10 RCD, are provided to applicants whilst in detention (specialised detention facilities, access to open-air space, possibility to communicate with UNHCR or an organisation working on behalf of UNHCR, possibility to communicate and receive visits from family members, legal advisers or counsellors and persons representing NGOs, information on the rules of the facility)?

- Access to outdoor space is limited
- Lawyer: detainee has the right to call a lawyer, who can visit their clients during working hours in a special visitor room
- UNHCR: access without restrictions
- NGOs: prior authorisation to act as detainees legal representatives, during office hours
- Relatives, Friends: prior authorisation by the police, at least 30 minutes per week
- Television, radio, phone, and limited internet access has been provided

A Foreign younger than 16 years may be detained if the facility ensures accommodation and care that are appropriate to their age and level of development (Aliens Police Act, Article 79(2)). Detention of minors may not exceed 3 months (Aliens Police Act, Article 80(1)(2)(1)). The Aliens Police Act provides that minors and adults are to be detained separately. If detention pending deportation is also imposed on a parent or legal guardian, minor detainees are to be detained jointly with them unless their best interests require separate detention (Aliens Police Act, Article 79(3)).

- Families: According to Article 79(5), if the facility ensures family and child-appropriate accommodation, migrants detained shortly before deportation may be allowed to be accompanied by their children.
- Women and unaccompanied children are detained in separated cells.

Legal adviser: asylum seekers may be visited by the appointed legal adviser in the admissibility procedure, to assist with the appeal against the rejection of the asylum

## 4. Available legal remedies and access to legal aid

**4.1** At which stages of the asylum procedure does an applicant have the right to legal aid after having been transferred to your Member State?

For unaccompanied minors at all stages in the procedure free legal representation and counselling is provided.

For adult applicants in first instance procedure: open legal counselling is provided at all Regional Offices. This means that the applicant can ask for legal guidance if necessary during office hours. There is no legal claim for this.

For adult application in the appeals procedure: Section § 52 of the Federal Office for Immigration and Asylum Procedures Act (BFA-VG) provides that an asylum applicant in proceedings before the Federal Administrative Court (first appeal instance) shall be provided with a legal advisor free of charge

Since 1 January 2021, the Federal Agency For Reception and Support Services BBU is in charge of providing legal advice and legal representation at the Federal Office for Immigration and Asylum (BFA) pursuant to Sec. 49 of the BFA-VG Federal Law Gazette I No. 87/2012 and before the Federal Administrative Court (BVwG) pursuant to Sec. 52 BFA-VG as amended by Federal Law Gazette I no. 87/2012.

**4.2** Is the legal aid provided free of charge to applicants for international protection or does your Member State apply any form of means testing? If so how is this applied in practice?

Section § 52 of the Federal Office for Immigration and Asylum Procedures Act (BFA-VG) provides that an asylum applicant in proceedings before the Federal Administrative Court (first appeal instance) shall be provided with a legal advisor free of charge. No means testing is carried out.

**4.3** What are the deadlines within which your Member State requires that an applicant lodge an appeal with regards to decisions not to grant international protection or not to further examine the application on grounds of inadmissibility?

4 weeks.

**4.4** What are the formal requirements when lodging an appeal as referred to in question 4.3?

The appeal needs to be submitted in writing and needs to be submitted to the Federal Office. The appeal does not need to be substantiated.

**4.5** Does your Member State avail itself of the possibility under Article 9(2) APD to make an exception from the right to remain in the Member State pending the examination of the application in case of a request for extradition of the applicant to a third country? If yes, how do the competent authorities of your Member State ensure that a decision to extradite an applicant to a third country pursuant to Article 9(2) APD is taken in accordance with Article 9(3) APD, i.e.

it does not result in direct or indirect refoulement, in violation of international and Union requirements?

No

**4.6** Does your Member State avail itself of the possibility under Article 9(2) APD to make an exception from the right to remain in the Member State where a person makes subsequent applications as referred to in Article 41 APD?

Yes, in article 12a of the Austrian Asylum Act.

If yes, how do the competent authorities of your Member State ensure that a decision to return the applicant to a third country does not result in direct or indirect refoulement, in violation of international and Union requirements as per Article 41(1) APD?

If a subsequent application is filed prior than 18 days before the return, the application will be examined and decision issued. In the decision the Federal Office stipulations, if the suspensive effect is granted. Against this decision the person can file an appeal.

If a returnee makes a subsequent application within 18 days prior his/her return date, the de-facto protection from deportation does not apply. However, Federal Office is obliged to check if the person concerned shall be granted protection from deportation in case that the returnee provides credible reasons that he/she could not have filed the subsequent application at an earlier stage of the procedure or that the objective situation in the country of origin has changed decisively since his last decision.

If a returnee submits a subsequent application within 2 days prior his/her deportation date, the Federal Office is also obliged to check if the applicant is granted protection from deportation. the Federal Office only considers whether there is change of the objective situation in the country of origin.