

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

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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 ⁽¹⁾ (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 ⁽²⁾.

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.

(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?

Upon arrival in Belgium, in case the applicant has to file a new application for international protection, the border police provides the transferee with a personal invitation letter to present himself to the Immigration Office (IO) in Brussels at 8.30 the next working day to make and lodge his application for international protection in Belgium. After the registration of the application for international protection by the IO, Fedasil (dispatch service) will process the application for reception at the arrival centre in Brussels (Klein Kasteeltje/Petit Chateau).

In case the applicant is transferred to Belgium in the context of a still ongoing application for international protection, he won't be invited to the Immigration Office, but will receive the message from the border police that he can go directly to Fedasil (dispatch service) in the arrival centre to request a reception place.

In the arrival centre the applicant will be subject to a social and medical observation and his right to material assistance will be checked. In case of confirmation of this right to material aid he will receive a temporary reception place in the arrival centre. Later on, a longer term and adapted place will be attributed in one of the Belgian asylum centres. This stay in the arrival centre will approximately last one week (in normal circumstances).

When an adequate place, responding to the specific needs of the applicant, becomes available, Fedasil will designate the applicant to this "mandatory place of inscription" via the so called "code 207". Fedasil will try to take into account as much as possible, and in view of the number of places available, the suitability of this place to the needs and specific situation of the applicant (disabilities, families with children,...).

Once a place has been designated, the applicant remains free to go to the place or not to benefit from reception conditions. Alternatively, the person can refuse the place designated (to stay in Belgium on his own with friends for example). In the latter case he will only receive from Fedasil the medical assistance.

An applicant who launched an application for international protection will benefit from material assistance during his whole procedure (which can last between 6 and 21 months).

It is important to note that since the beginning of 2022, Belgium is confronted with a lack of sufficient reception places in reception centres to handle the surge of influx of asylum seekers. Therefore the following procedure is to be followed:

After the registration of the application for international protection by the Immigration Office, or when the applicant is transferred to Belgium in the context of a still ongoing application for international protection, Fedasil will process the application for reception in accordance with the regulations. However, Fedasil cannot guarantee immediate individual reception places at the moment due to the great pressure on the Belgian reception system. Currently, priority is given to unaccompanied minors and families with

children and women. In case there is no place available, the person will be invited to register himself on a waiting list and will be subject to a later invitation to the registration centre.

In normal circumstances (outside saturation of reception network as above mentioned)

The information is provided upon arrival at the Fedasil desk. Fedasil gives an information brochure about the applicants' rights and obligations as described in the Reception Act (or in the Organic Law on the Public Centres of Social Welfare) if possible in a language the applicant understands, including also the contacts of the competent authorities and the contacts of associations providing medical, social and legal assistance.

Relevant information is available online <https://www.fedasilinfo.be/> in 14 languages.

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 Law Article 2(6) defines material aid, as the aid granted by Fedasil or its partner organisation within a reception centre, comprising of accommodation, meals, clothing, medical, social and psychological support, the provision of daily allowance, including access to legal aid, access to services (i.e. interpretation and training) and access to a voluntary return programme.

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?

Belgium provides the material aid as defined in the RCD and articles 14-35 of the Reception Law only in the designated centres. As already mentioned an applicant is free to not make use of his designated place, but will in that case forgo his right to any material aid except medical aid.

Material help in Belgium consists of adequate housing in a collective or adapted place, adequate food, clothing and sanitary conditions and social, legal, psychological and medical counselling. In the centres the applicant can enjoy the services of a translator and if he chooses to, can follow certain trainings or get paid to do certain chores. He will as well enjoy a certain weekly allowance.

Due to the actual severe influx of applicants, Belgium is no longer capable to provide immediate material aid to all applicants. For the moment there is a waiting list for access to a place in the asylum centres.

Fedasil doesn't limit its access to medical aid to residents of their centres. Applicants who don't enjoy material aid, still have access to medical aid. Furthermore for the moment there are initiatives in place fully or partially subsidized by the Belgian State or one of the regions. Those include non-exhaustively: The humanitarian Hub, managed and financed

by the Brussels Region, where applicants can receive medical and psychological aid, clothing, hygienic products, reception of women without housing, douches and sanitary, and free public transport tickets if there is a situation of precarity. There is also a Refugee Medical Point, managed by doctors without borders, which offers similar services, also partially financed by the government. The day care centre of the red cross provides food, resting places, sanitary, and safety. Vluchtelingenwerk Vlaanderen offers food as well and access to free legal aid.

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?

Article 4 of the Reception Act states material reception conditions can be reduced or withdrawn when the applicant presents a subsequent application, until the application is considered admissible.

Applicants excluded from material reception conditions sustain access to health care.

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

Asylum seekers, while their asylum application is still in process, are always entitled to medical and psychological support offered by Fedasil to guarantee their human dignity, even if they are not staying in the reception network.

The Reception Act, Articles 23-29 regulates the medical care provided to applicants. Applicants have access to health care as listed by the National Institute for Health and Disability Insurance (INAMI/RIZIV). The Royal Decree of 9 April 2009 on Medical Assistance allows for divergence in some cases: while some listed interventions might not be delivered for applicants, other non-listed interventions are included.

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?

Fedasil manages medical coverage for asylum applicants who reside in or outside of reception centres. Medical care is delivered by Fedasil or its reception partners, such as the Croix Rouge de Belgique / Rode Kruis Vlaanderen (based on a convention established by Fedasil as described in the Reception Law, Article 62). The organisation of health care

and which authority pays for it depend on the reception facility in which the asylum applicant is accommodated.

Applicants excluded from material reception conditions sustain access to health care: they have to ask for a commitment of repayment from Fedasil before going to the doctor or they have to send Fedasil a certificate of emergency care, when it is impossible to ask for a prior permission.

Fedasil provides actively information concerning the right to and the procedure for the access to adequate healthcare. This by maintaining an information site (www.fedasilinfo.be) where applicants in need can find information and the right application forms. Furthermore the reception of our main seat in Brussels is open to giving information and has brochures and forms at the applicants disposal.

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)?

All applicants are screened upon during the registration procedure in the arrival centre. The procedure is spread over several days to enable an improved screening of special needs of applicants. Fedasil takes into account special reception needs and vulnerabilities when allocating reception places.

There are special structures (typically within collective reception centres) for families with children and persons with physical disabilities. Some places are reserved for single women within collective reception centres and Local Reception Initiatives (LRI).

There is a special reception trajectory for unaccompanied minors who spend 2-4 weeks in an Orientation and Observation Centre before they are assigned to a facility adapted to their reception needs.

There are special reception facilities for minor single mothers (Fedasil centre in Rixensart), minors who have not made an application for international protection (Fedasil centre in Sugny), and time-out arrangements for minors with behavioural issues (Fedasil centres in Saint-Trond and Sugny, partner run facilities in Bruxelles, Liege, Courtrai).

There are adapted facilities for persons with medical conditions or with physical or mental disabilities within collective reception centres, as well as adapted LRIs ('medical places').

Victims of human trafficking, torture or other forms of violence: Victims of trafficking are accommodated and supported by special organisations (such as Pag-Asa, Payoke and Surya) and these places are not managed by Fedasil. Applicants with such vulnerabilities can choose if they wish to enjoy material aid in one of the Fedasil centres or if they prefer to stay in one of the mentioned centres.

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?

Article 11 (3) of the Reception Act notes that Fedasil needs to assign a reception centre which is adapted to the profile of the applicant, within the limit of the available places: family status and composition, health, knowledge of one of the official languages of the country. It pays particular attention to the situation of vulnerable applicants. Fedasil takes into account the occupancy rate of the reception centres and the balanced distribution among municipalities for assigning applicants to LRIs.

Fedasil has also the possibility by law to enter in a convention with a medical or other specific institute or organisation who can have places that are more adapted to the specific needs of an applicant. Fedasil makes use of conventions with certain partners to provide more adapted places for persons with specific needs.

Fedasil makes individual conventions, so linked to a specific person. This means that if a person needs to be placed in a specialized institution, a convention will be signed with the institution, but only for this specific person. This way of working is used for persons with severe disabilities and no family members who can take care of them, for elderly people when no one can care for them and for unaccompanied persons with a very severe illness in need of medical care several times a day.

There is one exception: Fedasil is having a convention with one psychiatric hospital where there are 3 beds “reserved” for adult applicants for international protection at all times. These beds are constantly used as there is much demand. Unfortunately we are not able to extend the number of beds or to put in place a similar agreement with other institutions.

Every applicant has the right after a six months stay to apply for a place other than his original designated place, better suited for his needs. Fedasil can grant another place based on this application taking into account the availability of the places and the specific reason for said application.

When there is no suitable place in the network, Fedasil can opt to suppress the obligation to enjoy material aid in one of his places and can transition the applicant to the main welfare system of Belgium, where he can enjoy an allowance to pay for private housing out of the asylum network.

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?

Article 33 of the Reception Act clarifies that Fedasil or its partner organisation is responsible to guarantee effective access to first- and second-line legal aid,– including also legal assistance concerning the available reception conditions.

Article 46 of the reception act gives the possibility to file an appeal internally (before the director of the specific centre or the director-general of Fedasil) against the living conditions or an in his opinion unlawfully application of the internal centre rules.

Article 47 of the reception act stipulates the possibility to have an appeal before the competent tribunals in Belgium in case they consider the sanctions they receive in the centre as unlawful or arbitrary.

Against every decision concerning their right to material aid or the extent of it there is always a possible appeal to make.

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?

An applicant for international protection who is transferred to Belgium in the context of the Dublin transfer, will be received at the border (airport or land border crossing point) by the border police. The border police provides the transferee with a personal invitation letter to present himself to the Immigration Office (IO) in Brussels at 8.30 the next working day to make and lodge his application for international protection in Belgium. When the applicant presents himself at the appointment, he has immediate access to the procedure.

How long do these steps normally take?

Max 1 working day.

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

No.

How long do these steps normally take?

Not applicable.

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

The information is provided by the border police upon arrival.

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

As proof of lodging a subsequent application the applicant will receive a document “annex 26 quinquies” instead of “annex 26” in case of a first application.

A brief interview at the IO (DVZ/OE) will only deal with the new elements presented by the applicant, then the file is transferred to the Commissioner-General for Refugees and Stateless Persons (CGRS) (determining authority). The CGRS first and foremost assesses if new elements or facts that make the granting of a protection status more likely, are available or being presented by the applicant. The CGRS can take either an admissibility or inadmissibility decision. In principle, these decisions are taken within ten working days after the file has been received from the Immigration Office. A personal interview may be omitted, when the CGRS considers a decision can be reached based on the complete examination of the file transferred by the Immigration Office.

After an admissibility decision is taken, the subsequent application is processed on its substance. When doing this, the CGRS has the possibility to use the accelerated procedure.

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?

Yes, an application can be considered inadmissible based on all the grounds listed in Art 33(2) Directive 2013/32/EU. (Art 57/6, §3 Aliens Act)

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?

Detained applicants receive the detention decision in writing, including its reasons and the possibility to lodge appeal. The appeal can be lodged at any time with the Council Chamber of the Court of First Instance at the initiative of the applicant (or his/her lawyer). After the first appeal, a new appeal can be lodged every month. A higher appeal against the decision to liberate the applicant or maintain the detention can be lodged at the Indictment Chamber of the Court of Appeals.

The law provides for access to free legal assistance for the judicial review of the detention decision. Free legal assistance is provided for in the Judicial Code under the same conditions as for other asylum-related procedures.

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?

Pending a decision the Belgian law provides a maximum of two-month detention period for applicants for international protection within the Belgian territory, which can be prolonged up to six months when protection of public order or national security so requires.

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

The applicant can lodge an appeal against the detention with the Council Chamber of the Court of First Instance every month. An appeal can be lodged against the decision of the Council Chamber before the Indictment Chamber of the Court of Appeal.

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

Belgium does not make use of alternatives to detention

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?

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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)?

There are six dedicated immigration detention centres. Applicants have access to open-air spaces. In some centres they are allowed outdoor access during the day whenever they want. In other centres this is strictly regulated. A minimum of two hours exercise outside is provided.

Applicants are entitled to visits from their direct relatives and family members for at least one hour a day if they can provide a proof of their relation. Residents are able to phone outside and send and receive letters freely and confidentially. They also have access to the Internet.

Lawyers have access to their client in detention, along with representatives from UNHCR, Children's Rights Commissioner, the national Centre for Equal Rights and supranational human rights institutions. NGOs need to get authorisation from the Immigration Office.

Information leaflets, documentation about the procedures and the detention centres are provided in different languages.

More information can be found online: [Living conditions in closed centres: stay, rights and obligations of occupants | IBZ. https://dofi.ibz.be/en/themes/irregular-stay/detention/living-conditions-closed-centres-stay-rights-and-obligations](https://dofi.ibz.be/en/themes/irregular-stay/detention/living-conditions-closed-centres-stay-rights-and-obligations)

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?

An applicant has right to legal aid from the moment of making a request for international protection.

Article 33 of the Reception Act clarifies that Fedasil or its partner organisation is responsible to guarantee effective access to first- and second-line legal aid,– including also legal assistance concerning the available reception conditions by giving adequate information. In Belgium everybody who doesn't have the financial means to pay for a lawyer in case of litigation, can enjoy one for free under the "pro deo" system. Fedasil will provide information to the applicant about access, criteria and use of this system.

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?

Free first-line legal assistance is available for everyone (and not only applicants) and it usually involves legal advice, but not legal representation.

Second-line legal assistance is provided by local Legal Aid Offices organised around the local bar associations. In principle only applicants with insufficient financial resources are entitled to free legal aid, but there is a presumption that applicants are without sufficient means. When entitled to a pro-deo lawyer, free and unlimited legal assistance and representation is provided in all appeal instances and applicants' are exempted from translation fees and costs. Pro-deo lawyers provide legal advice and counselling, prepare the appeal, represent applicants before the appeal instance.

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?

The applicant can submit an appeal within 30 calendar days after notification of the decision taken by the CGRS. If the applicant is detained, in case the application is declared inadmissible or in case the CGRS had accelerated the procedure and the CGRS has taken a decision within 15 calendar days, the appeal has to be lodged within 10 calendar days. When an applicant is detained and has filed a subsequent application which is declared inadmissible during his detention, a time limit of 5 calendar days applies.

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

An appeal must be introduced to the Council for Alien Law Litigation (RvV/CCE). The appeal can be submitted by the applicant or by the lawyer. The applicant and/or the lawyer must sign the appeal.

The appeal should be written in the language of the asylum procedure (either in French or Dutch). The appeal must mention: the applicants name ; nationality ; the reference of the file with the defendant, as mentioned in the contested decision; residential address; chosen address in Belgium; indication of the decision against which the appeal is lodged; a statement of the facts and the grounds invoked in support of the appeal; the choice of language for the hearing in court; the signature of the applicant or his/her lawyer; the request to benefit from the pro deo and the documents which show this right.

The original request must be accompanied by four copies and a copy of the contested decision. In case of digital transmission via J-BOX, these 4 copies are not necessary.

Attachments must be listed in an accurate inventory and numbered in accordance with the inventory.

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.

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?

According to art 57/6/2, §3 of the Aliens Act, a removal order may be enforced upon submission of the request and during the examination of admissibility against the applicant: who makes a second subsequent request or more , and who, prior to the presentation of his previous request and since then, is continuously in a specific place as referred to in articles 74/8 or 74/9 (detention) when, the Commissioner-General for Refugees and Stateless Persons has found, in the context of the previous request, that a measure of removal or return will not result in a violation of the principle of non-refoulement.