

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

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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?

With reference to the present procedure, member states liaise with each other to confirm the transfer/s details from one country to another. Once the person arrives at the receiving member state, Dublin Unit and Immigration police usually liaise with the Agency for the Welfare of Asylum Seekers (AWAS) should the person request or require accommodation and other services including reception conditions. Depending on the case; person/s may either call at AWAS Head office by themselves, assisted by the police transport or AWAS transport or in some cases; in which the person arrives in Malta after office hours; person/s is/are provided with accommodation on upon arrival. In cases where the person calls at AWAS Head office immediately after the initial registration, the person is assigned to a reception facility and transport is provided to the assigned facility.

How long do these steps normally take?

Depending on the nature of the case but not longer than one (1) working day.

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

Usually, this takes place upon the day of arrival at the receiving member state. Information is provided to the person through an information session and facility orientation in a language the person understands and translated corresponding documents are provided for the person to read respectively. The person is given time to process the information, and should the person have any other questions during the information session or else during the stay; staff on duty provide relevant information.

**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?

Housing, food and clothing provided in kind, financial allowances in form of a cheque and other material aid depending on the person's needs.

**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 Agency is obliged to ensure quality of service by means of a manual of standard operating procedures as well as other checking processes to cover for such conditions.

**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?

In practice, only financial allowance is marginally reduced and no other material reception conditions. However, specific and sensible considerations which include advice from multi-disciplinary teams are applied prior to any decisions to withdraw, replace or reduce material reception conditions to ensure a dignified standard of living as well as access to health care amongst others.

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

Free access to national mainstream health care.

**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?

The national health care system has integrated processes which allow for provision of services to applicants for international protection. AWAS acts as a facilitator to ensure that the necessary care and services are provided to resident beneficiaries within our facilities as well as other persons from the community who consult the agency for support and assistance. The Agency as well as the health authorities work in very close collaboration to ascertain that the require services are provided to the persons in need.

**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)?

Support measures include however not limited to; specific accommodation and reception facilities, material reception conditions, 24/7 Support services within the facilities, representatives, and care orders for UMAS, social work and psychosocial services for all vulnerable groups and other beneficiaries and information Provision.

**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?

The agency has a manual of procedures which includes specific conditions covering for vulnerable groups. The employees including the team of professional workers are trained to cater for specific groups of persons.

**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?

The applicant has the right to appeal any decision in such regard. The applicant may lodge a complaint within the Agency itself through different processes, request assistance from an external legal support service for his/her choice and trust such as NGOs which are generally free of charge or lodge an appeal with the Immigration Appeals Board with the possibility of free legal aid from the State.

## 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?

Following a Dublin transfer, the person can file an application in person at the International Protection Agency (IPA). The Immigration personnel at the Airport inform the persons verbally and if required with the help of an interpreter, about the possibility to go in person at the IPA to commence or continue with their application in Malta. In case the person has never lodged an application in Malta before, the address of the Agency is also provided. An appointment is not required.

How long do these steps normally take?

A time-frame cannot be envisaged since it depends on the time when an applicant visits the Agency.

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

Applicants first need to lodge a subsequent application with the IPA, then if the subsequent application is determined to be Malta's responsibility, a preliminary examination is conducted to determine if the application is admissible or not in accordance with the applicable legal provisions. If the subsequent application is deemed admissible, it will be further examined on its merits in accordance with the law.

How long do these steps normally take?

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

When an applicant approaches the IPA to file a subsequent application, s/he is informed of this procedure at Front Desk. Applicants are also able to submit queries by email to the IPA.

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

A preliminary examination is always prioritized and is generally concluded within a couple of weeks from when the subsequent application has been lodged. In case the subsequent application is deemed admissible, it will be processed under an accelerated procedure in accordance with Article 31(8)(f) of the APD.

**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. In the national legislation there is a shall provision which can be applicable according to the specific case, irrespective if it is a Dublin transferee. This can mainly happen if the applicant makes a subsequent application and no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection have arisen or have been 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?

Yes.

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.

Anyone can be detained on public health grounds, including applicants for international protection who are transferred under the Dublin III Regulation. The duration is stipulated accordingly by the Superintendent of Public Health together with the conditions required in accordance with the legislation of public health.

Prevention of Disease (CAP.36) states that where the Superintendent has reason to suspect that a person may spread disease he may, by order, restrict the movements of such person or suspend him from attending to his work for a period not exceeding four weeks, which period may be extended up to ten weeks for the purpose of finalising such microbiological tests as may be necessary.

Generally, persons pending medical clearance are accommodated at the Hal-Far Initial Reception Centre (HIRC). The general condition of such centre is homogenous to the other local detention centres which are regulated by the Subsidiary Legislation 217.19

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

All decisions to detain a person issued according to Article 8 are automatically subject to a judicial review which should be carried out in 7 working days. In extraordinary circumstances this can be extended to 14 days. Moreover, the applicant may challenge the detention decision at any time in front of an independent immigration appeal board.

**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?

The maximum period of detention is 9 months.

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

2 months.

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

1. Regular reporting, 2. Reside at an assigned address, 3. deposit or surrender documents.

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?

These conditions are used when there is a risk of absconding and applied on a case-by-case basis.

**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)?

DSA clients have daily access to a secure outdoor area for a minimum of at least one hour. All the centres are well lit with natural lights and good ventilation through large apertures. The size of the living quarters are in line with the relevant guidelines and legislation.

UNHCR has access to asylum seekers residing in detention centres. Group meetings, one to one sessions and telephone calls can and are being done as per the request. Each division in every detention facility in Malta has access to a secure outdoor area and residents have the possibility to go out if they want to.

Apart from counsellors, the Detention Service also has the service of a full-time medical team including a psychiatrist to offer the holistic healthcare services as needed.

Family members, legal advisors and NGO members have the possibility to contact the residents by means of telephone at every time of the day. With regards for one-to-one visits these are also held in the Detention Centres but only after prior notification by writing to the Detention Services Agency.



## 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?

Applicants have the right to legal aid throughout all the stages of the asylum procedure.

**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 legal assistance and representation is available at appeals stage, and no means testing is applied.

**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?

With regards to appeals from decisions not to grant international protection, the deadline for filing an appeal is fifteen (15) days counting from the notification on the applicant of the decision of the International Protection Agency.

In the case of decisions not to further examine the application on grounds of inadmissibility, the law provides for a review of the first-instance decision by the Chairperson of the International Protection Appeals Tribunal, which must be concluded within three (3) working days from when the Tribunal is served with the decision.

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

An appeal shall be filed through a formal appeal application, which is to be served on the International Protection Agency.

The Tribunal shall then require applicants to make written submissions within not more than fifteen (15) days following the submission of the appeal application. The submission shall be made without prejudice to the presentation of additional evidence, particularly documentation that could not have been available when the submission was made, in the course of the proceedings. The International Protection Agency shall have an equal time-limit to file its responsive submissions.

**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?

Yes it does avail itself of the possibility mentioned.

The exception referred to in this Regulation may only be made so long as the International Protection Agency or the International Protection Appeals Tribunal do not indicate, by means of a notice in writing, that the return decision in respect of the person in question would constitute direct or indirect refoulement. In this procedure, if an extradition is envisaged, consultation is not mandatory.

**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, it does avail itself of the possibility mentioned.

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?

The exception referred to in this Regulation may only be made so long as the International Protection Agency or the International Protection Appeals Tribunal do not indicate, by means of a notice in writing, that the return decision in respect of the person in question would constitute direct or indirect refoulement. The referral to the International Protection Agency or the International Protection Appeals Tribunal is always mandatory in such case, by law.