

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

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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?

According to the Management Procedure of the Ministry of Inclusion, Social Security and Migrations (MISSM), any person transferred to Spain under Regulation 604/13 (“Dublin Regulation”) may be entitled to reception conditions, even if they previously left the country and the reception system. After completion of the transfer to Spain, the State assumes responsibility, in terms of guaranteeing a decent standard of living in the case of lack of economic resources, provided that the rest of the necessary requirements for access to the reception system are fulfilled, in accordance with article 3 of Real Decreto 220/2022, published at the Spanish Official Journal 76 on 30/03/2022:

- 1) To be an applicant for International Protection in Spain
- 2) Lack of economic resources.

In accordance with the protocol signed with the Spanish Red Cross (CRE), those who meet the requirements and wish to access the system will be referred to the resources within the initial assessment and referral phase managed by the Red Cross.

How long do these steps normally take?

In application of the Protocol, after verification of the requirements for access to the System by the MISSM, persons wishing to access the Reception System will have direct access from the airport to the reception resources.

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

At the time of arrival in Spain by airport, the person is informed of his/her rights as an applicant for International Protection, where applicable, or the procedural steps to apply.

**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?

With regard to the material reception conditions listed in Article 2 of Directive 2013/33/EU, applicants for international protection are entitled to all of them and access within the reception system. Material reception conditions include accommodation, food and clothing, provided in kind or in the form of financial or voucher allowances, or a combination of the three, and an allowance for daily expenses.

**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?

Material reception conditions are guaranteed for persons seeking international protection through access to the reception system. Regulated under Royal Decree 220/2022, which approves the rules governing the reception system for international protection, the system is established as a set of resources, actions and services provided through the corresponding itinerary to the beneficiaries in order to ensure the satisfaction of their basic needs in conditions of dignity. The three-phase itinerary will last 18 months as a maximum, only renewable in specific vulnerability cases.

**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?

Upon notification of the decision rejecting the application for international protection, the material reception conditions are withdrawn. However, for those persons who submit subsequent applications as defined in Article 2(q) of Directive 2013/32/EU, they may re-access the system if they meet the access requirements, or remain in the system, provided that they have not met the maximum duration of the eighteen-month itinerary, pursuant to Article 11.7 of Royal Decree 220/2022.

**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 in Spain have access to universal 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 legal status of an applicant for international protection gives access to universal health care on equal terms to other citizens with legal residence in Spain.

**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)?

With the request for access to the foster care system, special foster care needs are assessed in order to respond in the most appropriate way to the needs of each person.

With this objective, the shelter system has shelter resources for vulnerable groups where, in addition to the material conditions of shelter, the specific needs that a person may present are covered, through specialized and qualified personnel, greater psychological care or greater security measures in some cases. Vulnerable groups within the shelter system are: women victims of gender violence, victims of human trafficking, young people, people with mental health disorders and/or dual pathology and people with psychiatric needs.

**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?

As a general rule, any special reception need is detected, evaluated and addressed in the initial evaluation phase of the itinerary. In case of minors, upon request for access to the foster care system, special foster care needs are assessed in order to respond in the most appropriate way to the needs of each person. In this way, the SGPPI (Subdirección General de Programas de Protección Internacional under the Secretary of State for Migration within the Ministry for Integration, social Security and Migration) proposes the most appropriate shelter itinerary and resource for each person in accordance with their specific needs.

**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?

They have the right to lodge a formal complaint in case of insufficient or inadequate material reception conditions. They have the right to access to the legal system and legal aid in the same conditions any other person in Spain.

## 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?

He/she has to undertake the same procedural steps as any other applicant present in the national territory.

How long do these steps normally take?

Timelines are established in the Spanish Asylum Law. As a general rule, the applicant must apply within one month after the transfer date to Spain and the administrative procedure should be completed within six months.

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?

Non applicable.

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

Info provision on the procedure can be found on the following link: <https://www.interior.gob.es/opencms/es/servicios-al-ciudadano/tramites-y-gestion/es/oficina-de-asilo-y-refugio/>

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

It will be disregarded.

**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, it could be considered inadmissible under paragraphs a, b, c and d as stated in article 20 of the Spanish Asylum Law 12/09.

### 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, they can be put in quarantine as any other person, irrespective of his consideration as an applicant for international protection, due to public health protection needs.

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.

A medical decision to deprive a person from freedom of movement on public health grounds will be taken only by a doctor for medical treatment in a hospital or medical centre and must be authorized in any case by an administrative Court under article 8.6 Law 29/98. It will be limited to the necessary time to eliminate the risk for public health and legal remedies are those currently existing in the administrative jurisdiction.

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

Detention appeals are those currently existing in the administrative jurisdiction and would be communicated in written in the Detention order issued by the Court.

**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?

Administrative detention will be limited to the time strictly necessary for completing the related administrative file, and must not exceed of 60 days in any case.

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

No provisions for review intervals are currently in place within the 60-day limit. Review can take place at any time by the Court on its own or if the person detained alleges a reason to do so.

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

Detention is the last resort should the person does not agree to a voluntary transfer. Any other less coercive measure is offered to the person subject to a transfer procedure before opting for 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?

Less coercive measures to complete a transfer are subject to the willingness of the applicant, after consultation.

**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)?

Detention facilities only limit the freedom of movement. Any other rights are enjoyed whilst in detention.

## 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?

They have the right to legal aid in the same conditions as any other person in Spain, irrespective of the stage of the 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?

Legal aid will be free of charge in the same conditions as any other person in Spain irrespective of the stage of the procedure.

**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?

Deadline for administrative appeal is one month after notification of the decision. Judicial appeal deadline is two months after notification of the decision or after decision on the administrative appeal.

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

Administrative and/or judicial appeal will be addressed in written respectively to the Asylum Office or administrative Court concerned, containing all personal and procedure data necessary to solve the appeal and including the possibility to ask for a provisional suspension of the decision. For judicial appeals, a legal representative is required.

**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?

As a general rule, any extradition procedure is suspended upon application for International Protection in Spain pursuant to article 18.1.d Asylum and Subsidiary Protection Law 09/12.

**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?

As a general rule, Spain do not avail itself of the possibility under Article 9(2) APD and do not return an applicant for international protection until a decision on the subsequent application is issued.



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?

Non Applicable.