

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

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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?

After a Dublin transfer to Luxembourg, every applicant is received at the “Centre de Primo Accueil” (CPA, First Reception Centre) or directly at the Ministry. Applicants are invited to register their application for international protection with the Ministry of Home Affairs (General Department of immigration).

How long do these steps normally take?

Accommodation is provided right away but procedures relating to material reception conditions generally take a few days.

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

Upon arrival to the first reception centre, the ONA (Office National de l’Accueil) informs the applicant that he will be transferred to dedicated reception centres.

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?

Every applicant is granted by the ONA the following in-kind benefits:

- Financial allowance on a monthly basis;
- Meals are provided three times a day at the Reception Centre;
- A Personal hygiene kit is provided on a monthly basis;
- Assistance for the purchase of infant food products on a monthly basis;
- Clothing assistance on a biannual basis;
- Support for school materials on annual basis;
- Supplementary food aid for pregnant women on a monthly basis.

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 ONA is in charge of ensuring that all applicants have full access to the material reception conditions. Upon arrival at the first reception centre, applicants are asked to sign a document setting out the material conditions, internal rules, ... Upon receipt of the signed document, the administrative file is created in the “Aid management software” and the applicant receives an appointment at the reception desk of the ONA. This allows the applicant to receive the in-kind benefits mentioned above.

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?

No

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?

N/A

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

Basic and emergency health care is provided to all third country nationals expressing their willingness to apply for international protection. The expenses related to medical care are covered by the Ministry of Health up to the lodging of the application for international protection.

All applicants are automatically affiliated by the ONA to the National Health Insurance scheme (CNS) the day their application of international protection has been lodged. In accordance with Luxembourgish social security law, all applicants will undergo a three-month trial period during which medical expenses are not yet covered by the CNS. Monthly contributions to the CNS are paid by the ONA.

During the three-month period, applicants in need of urgent medical attention can freely access all emergency services provided by the major hospitals. In order to be provided non-urgent medical care during the first three months after the application for international protection has been registered, applicants have to consult with a team of doctors and other medical professionals delegated by the Ministry of Health in a dedicated medical health centre in Luxembourg City. Here, basic health care is provided, and if necessary, applicants are redirected to specialized care. During the three-month period, all expenses for emergency, basic and specialized health care are directly and integrally covered by the ONA.

After the initial three-month period, applicants who are not subject to a transfer under the Dublin III regulation, have full access to the Luxembourgish health system while being fully affiliated to the CNS. Applicants can choose freely between general practitioners and specialized care in the same way Luxembourgish nationals can. Applicants must pay for medical expenses before requesting reimbursement by the CNS in the same way Luxembourgish nationals do. The ONA grants a renewable advance payment of 100€ per person for meeting medical expenses.

Applicants pending a Dublin transfer are not automatically affiliated to the CNS. During their stay (and up until a potential change in their asylum procedure), applicants pending a Dublin transfer have full access to all the services provided in the dedicated medical health centre in Luxembourg City. If necessary, they can be redirected to specialized care

provided outside the medical health centre. All medical expenses for applicants pending Dublin transfer are covered by the ONA.

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 ONA informs the applicants on how the insurance system in Luxembourg works in a language that they understand.

Furthermore, the applicants are registered for an information session during which they receive all the relevant information about the health system in Luxembourg. Following this session, the applicant receives assistance specifically to pay for doctor bills and medication. Depending on the nature of the procedure, access to the CNS and its services is guaranteed in different ways (see above under 1.5 for further details).

Applicants who are not subject to a transfer under the Dublin III regulation have full access to the national health system and its services. The measures in place are more favourable than measures outlined in Article 19 of the RCD.

Applicants pending Dublin transfer have a more restricted access to the national health system but can be redirected towards all available services if the necessity has been assessed by the Ministry of Health. Measures for applicants pending Dublin transfer are therefore in line with Article 19 of the RCD.

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)?

Special reception needs are assessed by ONA's staff and its partners (Partner NGOs, General Department of immigration and Ministry of Health) starting on arrival.

Information on specific reception needs is shared among stakeholders (ONA, partner NGOs, General Department of immigration and Ministry of Health) with the consent of the newly arrived person in order to guarantee that the specific situation of vulnerable persons (e.g. minors, unaccompanied minors, disabled people, elderly people, pregnant women, persons with serious illnesses, persons with mental disorders) is taken into account when lodging the application for international protection and allocating a temporary housing facility.

While all applicants pending Dublin transfer are in general housed in dedicated reception centres, a more adapted temporary housing facility can be allocated in order to meet special reception needs (e.g. accessible housing facility for disabled persons).

In addition, specialized care is organized for all applicants irrespective their procedure (e.g. specialized healthcare for persons with serious illnesses, support for persons with disabilities). Persons with mental illnesses or mental health concerns can benefit from supervision and care provided by multidisciplinary teams in the first reception centre. In

case needed and deemed necessary, access to psychological aid or psychotherapy is guaranteed by partner NGOs, the Ministry of Health and/or the national health system in a broader sense.

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 applicant will benefit of all the material reception conditions in accordance with article 11, that go beyond the basic needs. The ONA is in charge of ensuring that the applicant receives all the material reception conditions.

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?

All applicants requiring legal assistance in the Grand-Duchy have access to lawyers and may contact the Luxembourg Bar Association. The applicant is informed right away about his right to legal aid, which is provided free of charge throughout the asylum procedure. If the applicant believes that their material rights are not being met, they may appeal to the administrative court.

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?

How long do these steps normally take?

After a Dublin transfer to Luxembourg, the police will take the applicants either directly to the offices of the General Department of immigration or to the first reception centre ("Centre de Primo Accueil") where they can stay until their appointment at the General Department of immigration is arranged.

In most cases, the appointment at the General Department of immigration will take place the following day but it may take a few days depending on the availability of interpreters. There, the applicant will get information about the procedure and can lodge an application.

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

How long do these steps normally take?

Same procedure.

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

Once the applicant arrives on Luxembourgish territory, he or she can find all relevant information on the following website: www.info-dpi.lu. Applicants also receive an information leaflet at the time of their registration and may get information, in presence of an interpreter, on national procedures from the General Department of immigration at any time. Both the website and the information leaflets are available in several languages.

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

A faster procedure is in place for a subsequent application for international protection. In fact, subsequent applications are usually examined within a few days. The interview takes place a few days after the subsequent application is lodged.

If an application for international protection is considered a subsequent application, this subsequent application may be declared inadmissible if the applicant does not present any new elements or facts to determine whether he fulfils the conditions to qualify for international protection. The decision is usually notified within a few days.

In case of new elements or facts, a normal procedure takes place.

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?

An application for international protection lodged by an applicant transferred to Luxembourg through the Dublin procedure may be declared inadmissible:

1. if there is a **first country of asylum**, i.e. the applicant has been granted refugee status in another country and can still avail himself of said country's protection;
2. if there exists a **safe third country** where the applicant could have settled, where he does not fear for his life or his freedom because of his race, religion, nationality, membership of a particular social group or due to his political opinions and where there is no risk of serious harm;
3. if the application is not the applicant's **first application** in Luxembourg and he does not present any **new elements or facts** to determine whether he fulfils the conditions to qualify for international protection;
4. if the applicant lodged his application after he has given his consent for his case to be processed as part of an **application for international protection introduced in his name**.

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?

An applicant for international protection may appeal the decision to place him/her in detention before the Administrative Tribunal. Appeals have to be formally lodged by a court lawyer within three months of the notification 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?

A decision to place an applicant in detention can be taken for a maximum of three months. This decision can be prolonged each time by three months, subject to the conditions defined in national law, without the total time of detention surpassing 12 months.

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

In Luxembourg, a detention decision is reviewed at the request of the applicant concerned. Each time the detention decision is prolonged, the applicant can appeal this decision within three months of the notification of the decision.

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

Home custody: The SHUK (Structure d'hébergement d'urgence au Kirchberg) is a semi-open facility used to accommodate applicants to be transferred to the member states applying the Dublin regulation.

- Regular reporting to the authorities in combination with a deposit of identity documents.
- A deposit of €5.000, to be paid by the applicant for international protection or a third person to the 'Caisse de consignation'.

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

The SHUK is mainly used for applicants subject to a transfer under the Dublin regulation but can also be used for third country nationals in irregular stay. Within the home custody in the SHUK, a system is in place whereby the person is obligated to check himself in and out in order to enter and leave the facility because the person is free to leave the facility during the day, as it is a semi-open facility. In the event of failure to comply with the obligations imposed by the Minister, the measure of home custody in the SHUK can be revoked and a placement in detention can be ordered.

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)?

Detainees have free access to a secured outdoor space attached to their respective unit during daytime, except during mealtime. The outdoor space of the family unit has a playground for children. Detainees can exit their rooms during daytime and can spend time in the kitchen/common room, where they can prepare themselves food, and they can access the recreational outdoor areas within their unit. They can take up sports and access the premises equipped with gear for physical exercise.

Detainees may receive visitors without supervision 7 days a week from 8h00 to 12h00 and from 13h00 to 18h00. The detainee may not receive more than three adults per visit and minors have to be accompanied by an adult.

There are several representatives of organisations active in the field of guidance and support of detainees, which are approved by the Minister in charge of Immigration, who have access to the Centre within the limits and under the conditions prescribed by the Director. The authorisation is granted for an unlimited term and can be granted to an unlimited number of representatives per association. Lawyers can also visit the detainees every day of the week, between 8h00 and 20h00.

Detainees have the right to legal aid. If they do not have the resources, the costs for the lawyer will be covered for them. When arriving at the Detention Centre, each detainee receives a list with lawyers who specialise in immigration and detention matters and who are willing to take on clients. The detainees are of course also free to contact lawyers whose names are not provided on the list. In addition to the list of persons that are entitled to provide legal assistance, upon arrival, the detainees receive a list with NGOs active in Luxembourg in the field of migration. Detainees have the right to inform a person of their choice of their arrival at the Centre.

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?

The applicant is informed right away about his right to legal aid, which is provided free of charge throughout 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?

Legal aid is provided free of charge to applicants throughout 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?

First appeal instance (Administrative Tribunal)

15 days for:

- Appeals against a decision taken within the **accelerated procedure** considering an application to be manifestly unfounded (However, in case of an accelerated procedure, the judge may refer the case to a second panel of the Administrative Tribunal for a ruling, if s/he decides that an appeal is not manifestly unfounded. Indeed, in this case, the judges will issue a decision that will be subject to appeal.
- Appeals against inadmissibility decisions.

1 month for:

1. Appeals against decisions considering an application to be unfounded in relation to international protection (refugee status, subsidiary protection).
2. Appeals against the withdrawal of the application for international protection.

Second appeal instance (Administrative Court)

1 month

- No appeal possible against decisions taken within the accelerated procedure and against inadmissibility decisions.

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

In first instance, decisions may be appealed against before the Administrative Tribunal and have to formally be lodged by a court lawyer.

In second instance, decisions may be appealed against before the Administrative Court and have to formally be lodged by a court lawyer.

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, if the Public Prosecutor's Office informs the Refugee department about a decision for extradition of an applicant to a third country, Luxembourg avails itself the possibility to make an exception from the right to remain on the territory. The consequences of the implementation of the extradition of the applicant are analysed on a case-by-case basis. The assessment is based on various grounds, such as the nature of the crime committed, the stage of the asylum procedure in Luxembourg and the country of destination.

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?

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?

Yes, in case of a subsequent application, Luxembourg avails itself of the possibility to make an exception from the right to remain on the territory. An assessment is made on a case-by-case analysis. According to the national law, a second application lodged in order to frustrate the return of the applicant, or a subsequent application lodged after a previous application has been declared inadmissible or unfounded and the applicant does not expose new compelling reasons, may be declared inadmissible. The appeal against an inadmissibility decision does not have an automatic suspensive effect. The principle of non-refoulement is constantly checked and applied during the return procedure.