

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

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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?

The person is given a ticket and indications how to reach his destination. In cases of special needs (like medical treatment needed), the necessary measures and means of transport are decided on a case-by-case basis:

Take charge cases: Following the transfer, the person is invited to go to one of the federal reception centres (FAC) to file an asylum application in order to have access to accommodation and other material reception conditions.

Tack Back cases (Art. 18.1.b or 18.1.c of the Dublin III regulation): Following the transfer, the applicant is invited to present himself to the FAC or the migration authorities office of his canton of attribution in order resume the asylum procedure and to gain access to an accommodation and other material reception conditions.

Tack Back cases (Art. 18.1.d DR III): According to Art. 111 of the Swiss Asylum Act (AsylA), applicants have the right to file a written “Multiple application” (= subsequent application) (Art. 111c) or an “application for re-examination” (Art 111b) with a statement of the grounds.

Applications or repeat applications that state the same grounds shall be dismissed without a formal decision being taken. If the application is being processed, the person has the right to access accommodation. If the applicant has no more right to a new asylum procedure and is subject to a removal decision, he/she still has a right to receive emergency aid (=minimal cantonal benefits for persons in need and unable to provide for themselves), which includes accommodation.

How long do these steps normally take?

As soon as the applicant follows these instructions.

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

When the person arrives in Switzerland, the authorities registering his/her arrival inform her/him about where she/he should go (FAC or canton). Distances are short in Switzerland, so a person can usually reach the FAC or canton on the same day. If not, a night at the airport or in the closest CFA can be arranged.

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?

It depends on the residence status. Art. 80 of AsylA regulates the support benefits of asylum seekers. All persons in Switzerland, also persons with a rejected asylum

application, are entitled to emergency assistance, including inter alia a bed, meals and emergency medical care.

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?

According to Art. 102h AsyIA, from the beginning of the procedure, each asylum seeker is assigned a legal representative, unless the applicant explicitly waives this right. As a result, it is guaranteed that applicants for international protection are provided with full access to the material reception 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?

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?

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

According to national law, all applicants are subject to compulsory health insurance and have access to basic medical care.

(Meaning of “basic medical care” according to the Swiss Federal Law on Compulsory Health care: all services performed by a doctor which serve to diagnose or treat an illness and its sequelae and are, therefore, covered by compulsory health insurance).

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?

Upon entry into a FAC, all applicants for international protection receive medical entry information in their native or second language. The information is provided through a standardized tool and covers the following topics: - access to health care, contact persons at the centre, functioning of the Swiss health care system (confidentiality, independence), - symptoms and risks of relevant (sexually) transmitted diseases, - prevention measures and distribution of condoms, - access to vaccinations as a preventive measure, - other relevant health issues for which consultation with staff or nurse is recommended (pre-existing conditions, regular medication, pregnancy, clarification of vaccination status).

Following the admission information, an initial consultation with the centre's internal medical specialist is recommended. A medical record is opened at this time. The state of health and the vaccination status are systematically recorded and documented by means of an electronic questionnaire. The nurse decides whether further steps are necessary.

Throughout the duration of the stay in the FAC, the nurse is available as the first contact for health-related questions. She/He coordinates access to the centre doctor, basic vaccinations and other actors as needed.

When the applicant is transferred to a cantonal accommodation, relevant information from the medical dossier is forwarded to the subsequently responsible health care unit. The applicant continues to be subject to compulsory health insurance and continues to receive the same benefits as other persons residing in Switzerland.

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)?

Minors: In addition to the Convention on the Rights of the Child, Swiss national and cantonal legislation creates an even more comprehensive framework for the protection of minors.

Minors are accommodated with their relatives. Unaccompanied minors are accommodated in separate structures inside FAC and the primary objective is to ensure their protection as well as age-appropriate supervision.

Each of the federal reception centres has a regular classroom, with a regular teacher who follows the regular educational programme (adapted to alien children) and in which minors have to participate if they are still in age. For older minors, there are obligatory language courses available. Federal reception facilities have also dedicated spaces and playgrounds for minors. There's also specialized personal available for unaccompanied minors, who have also legal representation and a legal guardian. When the applicants are transferred to a cantonal accommodation, minors and unaccompanied minors have to attend obligatory school (eventually in special classrooms, but usually in normal classrooms).

Vulnerable persons with special needs

Early identification of special needs is essential to ensure coordinated and effective care. This is the only way to guarantee fair access to the asylum procedure and to ensure a correct examination of the asylum application. In addition to provisions under international and European law, legal norms at national level also regulate the treatment of persons with special needs. There are, therefore, a multitude of different procedures depending on the specific situations (human trafficking, gender-related persecution, victim of torture, medical situation, ...) . In general, if the vulnerable applicant has a member of the family living legally in Switzerland and capable of hosting him/her, it's possible to allow the applicant to live with his family member instead of the FAC.

If the applicant is a **potential victim of human trafficking or a victim of gender-related persecution**, he/she is entitled to a same-sex audience during hearings on his grounds for asylum. In some cases, such persons can be accommodated in specialized structures for victims of human trafficking. Moreover, medical care can be provided, if necessary, according to the practice set out in point 1.5 and 1.6.

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?

A national plan concerning accommodation in FAC (BAKU in German, PLEX in French), defines the rules to be observed when accommodating in federal asylum centres.

When the applicant arrives in a FAC, he or she is informed about the asylum procedure in Switzerland as well as about life in the reception centre such as rules, occupancy programmes, health and safety regulations, contacts in the event of questions or problems. Moreover, there is always a reference person to whom applicants can turn to report problems or needs.

According to Art. 102h AsyIA, from the beginning of the asylum procedure, each asylum seeker is assigned a legal representative, unless the applicant explicitly waives this right. Therefore, the legal representative can inform the Authority about any additional/special needs or requirements that may not have identified yet.

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?

It is possible to appeal against being assigned to a specific canton but only with the argument that the principle of family unity has been violated. After a canton has been assigned, cantonal law is applicable for housing, assistance etc. and might provide the possibility to appeal, or access to an ombudsperson.

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?

Take charge cases: Following the transfer, the person is invited to go to one FAC to file an asylum application.

Tack Back cases (art. 18.1.b of the Dublin III regulation DR / 18.1.c DR): Following the transfer, the applicant is invited to present himself to the FAC or the migration authorities office of his canton of attribution in order to resume the asylum procedure. In fact, according to Art. 55a AsylA, if Switzerland is responsible for assessing an asylum application on the basis of Dublin III regulation, the asylum proceedings shall be resumed even if the asylum application had previously been dismissed.

Tack Back cases according to Art. 18.1.d: According to Art. 111 of the Swiss Asylum Act (AsylA), applicants have the right to file a written “Multiple application” (= subsequent application) (Art. 111c) or an “application for re-examination” (Art 111b) with a statement of the grounds. Applications or repeat applications that state the same grounds shall be dismissed without a formal decision being taken. If the application is being processed, the person has the right to access accommodation.

How long do these steps normally take?

As soon as the applicant follows these instructions.

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

Asylum decisions are in the sole competence of the State Secretariat. When the subsequent asylum application is processed by the State Secretariat for migration SEM, the person has the right to access accommodation in his canton of attribution.

According to Art. 111d AsylA, the payment of a fee is foreseen if the subsequent application is rejected or dismissed.

How long do these steps normally take?

As soon as the applicant follows these instructions.

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

Upon arrival from federal and cantonal authorities. Information is available in the form of leaflets, on the internet, via asylum app or questions can be asked.

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

The subsequent application must be filed in a written form with a statement of the grounds. Applications that state the same grounds of the first asylum application shall be dismissed without a formal decision being taken.

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?

According to art. 31 AsylA, Switzerland shall normally **dismiss** an application for asylum if the asylum seeker:

- a. can return to a safe third country under Article 6a paragraph 2 letter b in which he or she was previously resident;
- b. can travel to a third country that is responsible under an international agreement for conducting the asylum and removal procedures;
- c. can return to a third country in which he or she was previously resident;
- d. can continue to a third country for which he or she holds a visa and in which he or she can seek protection;
- e. can continue to a third country in which persons with whom he or she has a close relationship or dependants live;
- f. can be removed to their native country or country of origin under Article 31b.

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?

According to the Federal Act on Foreign Nationals and Integration FNIA, there are guidelines on how persons in the asylum procedure can defend themselves against detention. The person must be informed of the reason for detaining him/her, a formal decision is handed out and after -at the latest- 96 hours a judge examines on the basis of an oral hearing, if the detention is lawful. The detention ordered is usually also reviewed by a judicial body (Art. 75 ff. FNIA).

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?

According to Art. 79 FNIA, detention in preparation for departure, detention pending deportation and coercive detention must not together exceed the maximum term of detention of six months. The maximum term of detention may be extended with the consent of the cantonal judicial authority for a specific period. The maximum extension in alien's cases is 12 months. For Dublin cases, the maximum is 3 months.

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

According to Art. 80 FNIA, the lawfulness and appropriateness of the detention must be reviewed by a judicial authority within 96 hours at the latest. A distinction is also made as to what kind of detention is involved. There is the possibility to detain while preparing a returns decision or to secure the removal after such a decision. This includes the possibility to detain because of disruptive behaviour.

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

According to Art. 74 FNIA, regulates alternative measures to detention. This includes the interdiction the leave a defined area/canton, interdiction to be present in a certain

area/city/canton, or the obligation to present him/herself regularly at the office of the migration authority.

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?

The detention conditions are in the competence and responsibility of the 26 cantons, the federal authorities are not involved.

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)?

The detention conditions are in the competence and responsibility of the 26 cantons, the federal authorities are not involved.

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?

According to Art. 102h AsyIA, from the beginning of the asylum procedure, each asylum seeker is assigned a legal representative, unless the applicant explicitly waives this right. As a result, for take charge cases or take back cases (art. 18.1.b) legal aid is available. No free legal aid is directly available when a person is transferred under the Dublin III regulation according to Art. 18.1. c or d.

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 free of charge in the procedure to examine the first asylum application and a possible appeal against a negative decision.

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?

An appeal against a negative decision must be submitted to the Federal administrative Court within thirty days after notification of the negative decision by SEM. An appeal against the dismissal of a case must be submitted to the Federal administrative Court within five working days. (Art. 108 AsyIA: Time limits for appeals).

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

The appeal must contain the subject matter and the reasons for the request, as well as any evidence and the signature of the appellant or his representative (Art. 52 Federal Act on Administrative Procedure APA). It must be accompanied by the appealed decision and written in one of the official languages (Art. 33a AAP).

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?

There are various legal bases in this matter in Switzerland, including the Federal Act of 1 October 2010 on the Coordination of Asylum and Extradition Proceedings (AS 2011 925). In general, when the applicant is the subject of a request for extradition, the SEM takes the file relating to the extradition procedure into consideration when treating the asylum application. The SEM acts with particular diligence where the applicant is detained for the purpose of extradition.

Among the key principles on which this procedure is based:

- Non-extradition where there is a threat of (political) persecution or death penalty
- Non-extradition in case of threat of re-extradition (according to the non-refoulement principle)

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?

According to Art. 111c AsylA, multiple applications or repeat applications that state the same grounds shall be dismissed without a formal decision being taken. In these circumstances, the execution of the removal decision is not suspended.

The submission of an application for re-examination according to Art. 111b does not delay enforcement. The authority responsible for processing may suspend enforcement on request if there is a specific danger to the applicant in his or her native country or country of origin.

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?

Switzerland may make such an exception only where the determining authority considers that a return decision will not lead to direct or indirect refoulement.

Examining the question of refoulment is in the competence of the State Secretariat/the Administrative Appeals Court when asylum procedures are concerned. This means that other authorities (for example cantonal detention authorities) do not have a competence to evaluate the possibility of refoulment. In alien's law cases the cantonal authorities may ask the State Secretariat for an examination and detailed report on the individual case or propose a temporary admission (which can be denied by the State Secretariat with a formal decision that can be appealed).