

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

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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?

When an applicant is transferred to the Netherlands by air or by land, the Royal Netherlands Marechaussee (KMar) is the first point of contact.

The KMar will receive information from the Dublin unit concerning any previous applications for international protection in the Netherlands.

When the applicant expresses a wish to apply for international protection the KMar will refer the applicant to the appropriate location to submit the application. If it is the first time the applicant lodges a request the KMar will identify and register the applicant and also send the signed asylum request to Ter Apel. If during this process it appears the applicant wants to lodge a subsequent request the KMar will only refer the applicant to Ter Apel.

When the applicant wants to apply for international protection these three possible procedures can be followed:

If the applicant applied for international protection in the Netherlands and the request is still pending, he can report to the government body charged with reception to regain access to reception facilities. The applicant will have to travel to the application centre in Ter Apel to do that.

If the request is no longer pending and has been rejected the applicant can lodge a subsequent request for international protection at the application centre in Ter Apel.

If an individual who has not yet applied for international protection in the Netherlands is transferred and wants to apply for international protection, he or she will be required to do so at the application centre in Ter Apel as well. When this application has been lodged, they enter the national asylum procedure.

When the applicant does not want to apply for international protection and has no lawful right of residence in the Netherlands, the will Kmar consider possible grounds for detention, with the purpose to ensure that a foreign citizen remains available for eviction to their country of origin.

How long do these steps normally take?

The possible procedures do not influence the length of the steps to be taken to gain access to accommodation. In all the above cases where the applicant wants to apply for international protection in the Netherlands, except when the applicant is detained, the applicant will have to travel to the application centre in Ter Apel to gain access to accommodation. It should be possible to take this step on the same day as the transfer.

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

This information is provided by the designated authority when the applicant either applies for the national asylum procedure, the subsequent asylum procedure, or reports for reception. Hosts working at the application centre and IND staff will refer the applicant to the Central Agency for the Reception of Asylum Seekers (COA), the organization responsible for reception. COA will then decide what kind of reception facilities the applicant is entitled to. This depends amongst other on the type of asylum procedure the applicant is in.

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?

Asylum seekers (applicants for international protection) are entitled to reception. In addition to shelter, this reception consists of support and guidance, necessary means of subsistence and access to medical care. This has been laid down in (national) law.

The provisions to which asylum seekers are entitled have been defined in the Asylum Seekers and Other Categories of Aliens Provisions Regulations (Rva). They include:

- shelter
- meals or an allowance for food
- living allowance for clothing and care products
- counselling and leisure activities
- (public) transport to their lawyer and IND in connection with the asylum procedure
- access to necessary medical care
- third-party liability insurance

It is the task of the Central Agency for the Reception of Asylum Seekers (COA) to make these provisions available. This is laid down in the COA Act.

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?

See above. The provisions to which asylum seekers are entitled have been defined in the Asylum Seekers and Other Categories of Aliens Provisions Regulations (Rva). After an asylum seeker has lodged his asylum application at the Immigration and Naturalisation Service (IND), the COA provides him or her with shelter. For this purpose, the COA has reception centres throughout the country. The facilities at the different types of centres are adjusted to the different phases in the asylum process. Access to material reception conditions are currently under pressure due to shortage of shelter facilities and challenges faced in the processing of new asylum seekers. Currently, the overall pressure on the Dutch asylum system poses challenges on meeting the standards for material reception conditions as displayed in articles 17 and 18.

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?

Asylum seekers who lodge a subsequent application are no longer entitled to reception conditions if their subsequent application is rejected on grounds that the applicant has not provided sufficient information, not attended his interview(s) concerning the asylum procedure or has absconded. Contrary to the general rule, they are not entitled to await their appeal in the shelter facilities and do not have access to material conditions. Moreover, the IND services are provided with legal possibilities to decide on the subsequent application without hearing the asylum seeker, which potentially limits their duration of stay in the shelter facilities.

Asylum seekers who have exhausted all legal means and who are no longer entitled to reception in a reception centre can get shelter in the ‘freedom-restricting centre’ (vrijheidsbeperkende locatie) in Ter Apel, but only if there is a prospect of departure within 12 weeks. In no more than 12 weeks, they prepare themselves for departure from the Netherlands – under supervision of the Repatriation and Departure Service (DT&V). The guidance and support by the COA are also focused on return and a future in the country of origin. In the freedom-restricting centre, the facilities are austere and the house rules are stricter than in a regular reception centre. Residents must report 5 days a week to the COA and the aliens police (AVIM) and remain within the borders of the municipality. This makes them available for interviews and activities focusing on return. They do not receive a living allowance (for clothing and care products) like in a regular reception centre. However, they do receive an allowance for food. Children also receive a living allowance. The number of activities is limited: adults participate in the ‘Future training’ and can do volunteer work in the centre.

If families with minor children have exhausted all legal means, they move (from the freedom-restricting centre) to a ‘family centre’ (gezinslocatie) if necessary. This is when they are unable to achieve their departure within 12 weeks and have no other shelter. Children below the age of 18 remain entitled to shelter even after rejection of the asylum application, this includes their parents and siblings. The Repatriation and Departure Service (DT&V) supervises the families in their departure from the Netherlands. The guidance and support by the COA are also focused on return and a future in the country of origin.

The facilities and house rules are just as austere and strict as in the freedom-restricting centre. The idea is that the families leave the Netherlands as quickly as possible. For adults, COA offers a limited number of activities: the ‘Future training’ and volunteer work in the centre.

For children, the facilities are the same as in a regular reception centre. They go to school, there's a playground and there's a range of sports, games, arts, and music activities.

For the asylum seeker who is not eligible for shelter in a 'freedom-restricting centre' or a 'family centre', article 10 of the Aliens Law is still valid, which includes for example access to necessary health care. Shelter, allowances, etc. are not included.

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

For the first two months in the reception centre, all applicants (except children 0-18) are only entitled to necessary health care which includes emergency care and essential treatment of illnesses and of serious mental disorders. After two months all applicants in reception centres receive medical (physical and mental) health care according to health insurance agreements with the ministry of Justice and Security. The health insurance corresponds to the 'basic' health insurance for Dutch residents.

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?

See the answer at 1.5. All applicants have full access to the Dutch health system. Reception staff's task is to provide information about the health care system and to support applicants to get access to the necessary health professionals. Interpreters (by telephone) are available for medical professionals.

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)?

The COA implemented Article 21 RCD in a policy framework for the reception of persons with special reception needs. The COA pays structural attention to persons in a vulnerable situation, in terms of guidance and awareness. The role of the COA employee is to identify and assess a persons' special needs and to respond, for example to refer people to a suitable reception facility or to refer a person to an external organisation (e.g. health care).

For unaccompanied minors, there are dedicated small-scale reception centres with 24/7 guidance of a COA mentor and a guardian from Nidos (the guardianship organisation).

In addition, the COA pays specific attention to the interests and needs of (accompanied) minors. Reception facilities provide a basic programme of sports and games, art and music, resilience training and information meetings. At least one COA employee has been appointed as a 'focal point' with a coordinating role in organizing activities and information for children.

Persons with reduced mobility are identified and entitled to a facility that accommodates their specific needs.

Persons who are not sufficiently capable of functioning independently in a reception centre temporarily go to the reception centre for intensive guidance and support (e.g. people with below average intelligence or psychological and/or psychosocial problems). In this reception centre, COA staff give asylum seekers intensive guidance and support 24/7, for the purpose of return to a reception centre. Asylum seekers learn skills, enabling them to become more independent and function better in a reception centre.

The COA has appointed 'focal points' for several topics regarding persons in a vulnerable situation, such as:

- children
- victims of domestic violence and child abuse
- victims of human trafficking
- LGBTI persons
- Pregnant women.

The focal points have received additional training on these topics and have a coordinating and advising role towards colleagues. They also maintain the local network of external organisations.

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?

In order to identify special needs, persons are entitled to a medical intake, performed at the arrival centre by the professional health care agency. This takes place within the first days after arrival.

In addition, early identification of special needs is done by COA-professionals. Both at the arrival centre and after transfer to a reception facility in the Netherlands, identification of special needs is done through the guidance system during a person's stay. COA is in close contact with the residents. We use a specific methodology (the 6-domains approach) in order to identify competences, skills and vulnerabilities. This methodology addresses for example self-care and personal well-being.

The aim is to get to know the resident better, which enables us to refer a person to the appropriate accommodation facilities for their specific situation in an early stage, as well as referring a person to specialized care with the appropriate transfer of information (compliant with GDPR).

For unaccompanied minors, there are dedicated small-scale reception centres with 24/7 guidance of a COA mentor and a guardian from Nidos (the guardianship organisation).

Persons with reduced mobility are identified and entitled to a facility that accommodates their specific needs.

Persons who are not sufficiently capable of functioning independently in a reception centre temporarily go to the reception centre for intensive guidance and support (e.g. people with below average intelligence or psychological and/or psychosocial problems). In this reception centre, COA staff give asylum seekers intensive guidance and support 24/7, for the purpose of return to a reception centre. Asylum seekers learn skills, enabling them to become more independent and function better in a reception centre.

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?

An applicant can address the court when they have the opinion that the reception facilities do not meet the requirements as set out in the RCD. Recently a case was put forward by the Dutch Council for Refugees in response to the situation referred to in question 1.3.

An applicant can also appeal against decisions in which measures are taken by COA for example when the house rules are breached. Legal aid is available free of charge when the applicant does not have the financial means to pay for legal aid himself.

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?

The procedure to gain access to the asylum procedure following a Dublin transfer has already been explained in answering question 1.1, as access to reception is closely connected to access to the asylum procedure itself.

When a former application has been rejected in the Netherlands and the applicant does not want to lodge a subsequent request, the applicant will be detained and steps are taken towards returning the applicant to their country of origin, but a new subsequent application can still be lodged while detained.

How long do these steps normally take?

In principle this entire process should be possible on the day of the transfer. It might depend on the time of arrival whether the applicant is able to travel to the application centre the same 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.)

In the Netherlands it is always possible to lodge a subsequent application without paying fees. It can however occur that an applicant is detained when a previous application was rejected. If an applicant is detained, he or she can always lodge a subsequent application.

When the applicant is not detained the applicant will have to fill out a form stating the reasons for the subsequent application (new elements and findings) and report to the application centre in Ter Apel in person.

The IND will check if this application is complete. When the application is not complete the applicant will be given time to complete the application. When it is not completed the application is rejected. An accelerated procedure might be followed, in which a personal interview is omitted. This accelerated procedure can be used when the application is inadmissible due to the lack of new elements and findings.

How long do these steps normally take?

The applicant can have access to the procedure immediately but will have to lodge the application at a specific place, which will be the application centre in Ter Apel. After the application is lodged it may take some time before the different steps in the procedure are taken for instance before the applicant is interviewed or receives a decision.

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

The KMar will inform an applicant of the upcoming procedural steps and where an applicant has to report. If it is the first time the applicant lodges a request the KMar will hand out a flyer explaining these steps. Information on the different procedures is also available on the IND's website.

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

See the answer to question 2.1. A subsequent application can be processed in an accelerated procedure. This is mainly because a new interview with the applicant is not always necessary.

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 is possible to consider an application for international protection lodged after a transfer as inadmissible when:

It is a subsequent application where no new elements or findings have arisen or have been presented by the applicant (33(2)d).

When it is a first application or an application was still pending, the application might be inadmissible on the grounds 33(2) b and c.

Article 33(2)a is not applicable since the Dublin regulation is not applicable when international protection was granted. Articles 33(2)e is not applied in the Netherlands.

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 chapter 7 'Remedies' of the Dutch Aliens Act (Vreemdelingenwet 2000) an applicant may use a written objection and appeal to challenge a decision. It is also possible to claim compensation in case of an unlawful decision.

If an appeal has not been made within 28 days after the detention order, the court is notified by the authorities, in which case the applicant is deemed to have lodged an appeal. After the court declares the appeal unfounded, the applicant can always lodge another appeal.

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?

In ordinary procedures (where an applicant for international protection is already on the territory of the Netherlands) the applicant can be detained for six weeks on the grounds of article 59b (1) (a), (b) and (c) of the Dutch Aliens Act (Vreemdelingenwet 2000) in the following cases:

- To establish the identity or nationality of the third-country national.
- If detention is considered necessary to obtain information for the processing of the application, in particularly if there is a risk of withdrawal.
- If the applicant already completed the asylum procedure and received a return decision, and there are reasonable grounds for assuming that he/she submitted the applications merely to postpone or frustrate the process of return¹.

In the case that the applicant is considered a danger to national security or public order the applicant can be detained on the grounds of article 59b (1) (d) of the Dutch Aliens act. Detention can last for six months on the grounds of article 59b (1) (4) of the Dutch Aliens Act².

¹ Article 59b of the Aliens Act (Vw) 2000.

² Idem.

Detention can only be applied in the above cases if less coercive measures are not sufficient³.

When a third country national has not yet crossed the border into the Schengen area and an application for international protection is lodged, the applicant may be detained on the grounds of article 3 and article 6 (3) of the Dutch Aliens act to determine if access to the territory is granted on grounds of international protection. Detention is only possible if the application can be decided upon within four weeks and the application is deemed to be manifestly unfounded, inadmissible or the application cannot be taken into consideration because of applicability of Regulation 604/2013 (this determination can be made after the interview on the substance of the application).

In the case of applicability of Regulation 604/2013 and on the condition of the existence of a significant risk of absconding, an applicant for international protection can be detained on the grounds of article 59a of the Dutch Aliens act in accordance with the conditions of article 28 of directive 604/2013. For the period of detention allowed Article 59a of the Dutch Aliens act refers to article 28 of Regulation 604/2013.

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

According to article 96 of the Dutch Aliens act, the legitimacy of the continued detention can be challenged at any time by the third country national after the primary appeal against the detention decision has been deemed unfounded (or has been withdrawn).

In accordance with the judgment of the Court of Justice of the European Union of 8 November 2022 (C-704/20 and C-39/21, ECLI:EU:C:2022:858), where the Court iterates the necessity of a periodic review by the judicial authority, the authorities notify the judicial authority every three months after the last judicial review has taken place.

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

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 obligation to consider alternatives to detention in the context of territorial detention is established in art. 59c of the Dutch Aliens Act. The article does not specify which alternatives can be applied. Furthermore, an alternative is foreseen in the context of the Border Procedure (art. 6 Aliens Act). The alternatives identified are:

- (1) reporting requirements;
- (2) submission of a financial deposit;

³ Article 59c, of the Aliens Act (Vw) 2000.

(3) surrendering documents;

(4) freedom-restricting measure on the basis of art. 56 Aliens Act combined with residence in a Freedom Restricting Location (VBL); and

(5) freedom-restricting measure on the basis of art. 6, paragraph 1 Aliens Act: obligation to stay in a space or place designated by the officer charged with border control.

Depending on the type of immigration procedure and the location where the third-country national is apprehended, detention can be imposed by the Acting Public Prosecutor of the AVIM (National Police), the Acting Public Prosecutor or Designated Official of the KMar, or the Executing Official of the DT&V, and in some cases designated caseworkers of the IND. When imposing detention, these officials are required to assess whether a less-coercive alternative may be used instead. Alternatives should thus always be considered before imposing detention. On the other hand, the measures that may serve as alternatives to detention do not necessarily have to be considered in conjunction with detention, as they can also be used as supervisory measures or measures to prevent absconding. Furthermore, they may be imposed by officials who are not authorised to impose detention.

There are no set criteria based on which an alternative is applied; the necessity and proportionality of detention is determined based on the individual circumstances. Some factors that may be considered in the balancing of interests are the possibility of return (in return procedures) as well as the third-country national's level of cooperation with authorities.

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)?

Detained applicants are held in specialized detention facilities for immigration detention. Within the detention centres detainees are free to move around the ward during the day and – at given times – different facilities and common areas of the detention centre, including an outside area. Their rooms are equipped with phones that can be used at any time at their own expense. If there is no phone in their room, they can use a phone available in common areas. Detainees can receive visitors. Upon arrival at the detention centre, they are informed about the House Rules, including rules about receiving visits.

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?

Concerning an applicant in the regular asylum procedure; legal counsel is not yet available during their registration interview. Before the asylum procedure proceeds any further legal counsel is provided however and they have a chance to prepare for the further proceedings of their applications and upcoming interviews together with their legal counsel.

For subsequent applications legal aid is not provided in advance. The applicant can ask for legal counsel himself, this legal aid will be subsidized. When the applicant has not found a lawyer to help fill out the application form a lawyer will only be provided when the application is admissible, and an interview is planned.

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. Formally legal aid is only available free of charge when the applicant does not have the financial means to pay for legal aid himself. In practice this is not tested on a regular basis.

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?

This depends on the reason why international protection was not granted and the procedure in which this decision was made.

In most cases the deadline for an appeal is one week. For instance, when a subsequent application is inadmissible.

The deadline is four weeks if the asylum request is granted in the general asylum procedure and also if asylum is either granted or denied in the extended asylum procedure.

The deadline is also four weeks if the application is denied, and the applicant is detained.

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

The appeal has to be filed in writing and the appeal deadline (as stated in the answer to question 4.3) has to be met.

General requirements have to be met, such as the appellant's name and address, the date, signature, a description of the decision the appeals is lodged against and the grounds for appeal.

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. The applicant has the right to remain in the Member State pending the examination of the application for international protection, even in case of a request for extradition.

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?

No. If an application is lodged the applicant is entitled to shelter and is allowed to legally reside in the Netherland whilst this application is pending.

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?

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