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# 3.2.2.4. Time limits

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As in previous years, in 2023, courts – both the CJEU and national instances – continued to deliberate on various aspects related to the calculation of time limits in the Dublin procedure.

A legislative proposal related to time limits was put forth only in Belgium, where the Council of Ministers approved a reform package on a fair and controlled migration model which would codify in national law that the Immigration Office may extend the transfer period from 6 to 12 months when the transfer cannot take place due to detention in a penal institution, and to 18 months when the person has absconded.331

The CJEU pronounced a preliminary ruling at the request of the Dutch Council of State, underlining that national courts hearing a case at second instance may adopt an interim measure which allows authorities not to take a new decision on the case pending the outcome of the appeal and suspends the transfer time limit until that outcome. However, this is only possible if the implementation of the transfer decision was already suspended at the first appeal instance, in line with the Dublin III Regulation.

In an accompanying case, the CJEU ruled that national legislation may allow the implementation of a transfer decision to be suspended when the applicant requested the review of a rejection of a residence permit on grounds of being a victim of human trafficking, but it may not provide for the suspension or the interruption of the transfer time limit (see Section 2.5). The Dutch Council of State delivered its judgment based on these rulings and confirmed that the transfer time limit had expired.

The CJEU also ruled on a preliminary ruling submitted by the Dutch Council of State in 2021 on the application of the informal 'chain rule' to determine the Member State responsible in cases when an applicant applied for international protection in more than two Member States332(see *Section 2.5*). Several Member States have been faced with diverse challenges in implementing the judgment, for example, for cases when an acceptance had already been received, with the calculation of time limits, and the need to inform other Member States of the shift of responsibility from one Member State to another due to the expiration of the transfer time limit.

The Danish Refugee Appeals Board referred a question to the CJEU for a preliminary ruling, inquiring about the start of the 6-month transfer time limit in cases when a transfer decision was referred back for reconsideration to the national authority by the appeal instance and the authority took another transfer decision after the initial 6-month period expired.

The Dutch Council of State changed its previous practice and decided that the starting point for calculating the time limit for a Dublin procedure is when the IND provides the cover letter ( *loopbrief*) during a pre-registration phase, as it indicates a wish to apply for international protection and the national authority is informed.

Court decisions related to time limits in the Dublin procedure also impacted other areas of international protection. The Dutch first instance administrative court in Roermond considered a case when the transfer time limit had expired, and the applicants were required to submit a new application for international protection and then were granted protection with effect only from the date of the subsequent application and not the first one. On appeal, the Dutch Council of State ruled that the IND should not require the applicant to submit a second application for international protection after the responsibility shift. The former application should be considered not to have been definitively closed. If the application is approved and the applicant is granted international protection, the starting date of the resulting permit should also be the date of this application.

In Germany, the Regional Administrative Court of Gelsenkirchen underlined that an applicant must still be absconding, with the authorities confirming that their whereabouts are unknown, at the time when the authorities notify another Member State about the extension of the transfer time limit. In this case, the applicant was not found in his room but was undoubtedly present in the reception facility when the notification about the extension was sent. The Regional Administrative Court of Dresden held that absconding required more than a brief, temporary absence.

The Regional Administrative Court in Giessen ruled on the impact of the expiry of the transfer time limit on the responsibility to pay the costs of the proceedings in an appeal. The applicant unsuccessfully appealed the transfer decision, but due to the fact that BAMF was solely responsible for the expiry of the time limit, it became also responsible to cover the cost of the proceedings. The court found that BAMF had the duty to oversee the implementation of the transfer, even though it was not executing it. In addition, the applicant could not have lawfully entered the Member State responsible without the involvement of German authorities.

The Finnish Supreme Administrative Court concluded that the suspensive effect of an appeal related to the deadline for a Dublin transfer is specifically linked to an appeal of a transfer decision. Thus, an individual complaint before a UN body cannot be considered as an appeal against a transfer decision and the time limit is not suspended.

- 331Council of Ministers | Conseil des Ministres | Ministerraad. (2023, March 17). *Asile et migration : ancrage légal de la politique de retour [Asylum and migration: A legal anchor for return policy]*. https://news.belgium.be/fr/asile-et-migration-ancrage-legal-de-la-politique-de-retour

  Nicole de Moor. (2023, March 9). *Nicole de Moor: “Eerste pakket hervormingen voor gecontroleerd en rechtvaardig migratiemodel” [Nicole de Moor: "First package of reforms for a controlled and fair migration model"].*

- 332European Union Agency for Asylum. (2022). *Asylum Report 2022*.

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