

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

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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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<sup>(1)</sup> 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).

<sup>(2)</sup> 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?

Access to accommodation and other material reception conditions for asylum-seekers at subsistence level is laid down in law in the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz - AsylbLG). It applies in particular to asylum applicants and those obliged to leave the country (such as rejected asylum seekers or holders of temporary suspension of deportation status [Duldung]). In order to be eligible for benefits under the Asylum-Seekers Benefits Act, persons must be in need of welfare assistance (no available income or property).

Access to accommodation and other material reception conditions does not require a separate application, but is granted automatically if the benefits office is aware of the beneficiary's existence and their entitlement to such benefits. Therefore, it is recommended that the persons concerned apply in person at the benefits office after a transfer to Germany.

If the person concerned has not already been registered as an asylum seeker in Germany, an asylum application and the corresponding registration according to Section 16 Asylum Act (Asylgesetz – AsylG) is required.

How long do these steps normally take?

The exact duration depends on the individual case. All steps are carried out as soon as possible. If necessary, basic needs (food, accommodation, acute medical treatment) are taken care of immediately after the appointment with the responsible benefits office and thus within hours or a few days.

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

The federal states are responsible for the reception and accommodation of and provision for asylum seekers. When and how the applicant is provided with information in the sense of the question depends on the individual procedure in place in each federal state.

General information regarding the access to accommodation and other material reception conditions is provided under the following link:

<https://www.bamf.de/EN/Themen/AsylFluechtlingschutz/AblaufAsylverfahrens/Aufnahmeeinrichtung/aufnahmeeinrichtung-node.html>

**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?

In the first 36 months of their stay, beneficiaries under the Asylum Seekers Benefits Act receive basic benefits. Those include benefits covering "necessary needs" (including food, accommodation, heating and clothing) and "necessary personal needs" (including hygiene articles or transport services). Benefits for beneficiaries accommodated in reception centres are provided in kind whenever possible.

After 36 months of mainly uninterrupted residence in the federal territory, beneficiaries under the Asylum Seekers Benefits Act are on an equal footing with German nationals as regards benefits for elderly persons and persons with reduced earning capacity, provided they have not influenced the length of their stay in a way that can be considered a misuse of law. If the latter is the case, they would continue to receive basic benefits under the Asylum Seekers Benefits 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?

The entitlement to material reception conditions is inalienable, if the conditions of the Asylum Seekers Benefits Act are met.

According to Section 47 (4) Asylum Act, the reception centre shall inform the foreigner, if possible in writing and in a language which he can reasonably be assumed to understand, of his rights and obligations under the Act on Benefits for Asylum Applicants within 15 days of the filing of an asylum application. With this information, the reception centre shall also inform the foreigner about who is able to provide legal counsel and which organizations can advise him on accommodations and medical care. The benefits themselves are granted by the benefits office to cover the needs for food, accommodation, heating, clothing, health care and household commodities and consumables as well as to cover personal needs of everyday life. The contributions are primarily granted in kind.

**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?

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

Beneficiaries under the Asylum Seekers Benefits Act receive the following health care services:

During the first 18 months of the applicants' stay in the federal territory: For the treatment of acute illnesses and pain conditions, the necessary medical and dental treatment, including the provision of medicines and dressings, as well as other services required for recovery, improvement or alleviation of illnesses or the consequences of illnesses, are provided. For the prevention and early detection of diseases, protective vaccinations and the medically required preventive examinations are provided. Dental prostheses are only provided if this cannot be postponed for medical reasons in individual cases.

Other benefits may be granted in particular if they are inalienable in an individual case to ensure subsistence or health, or if they are necessary to meet the special needs of children or are required to fulfil an obligation to cooperate under administrative law.

After 18 months of residence in Germany: persons entitled to benefits under the Asylum Seekers Benefits Act are on an equal footing with persons with statutory 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?

The entitlement to health care is inalienable, if the requirements of the Asylum Seekers Benefits Act are met.

Due to the federal structure of the Federal Republic of Germany, formal access to medical services is structured differently by the competent authorities. Beneficiaries can either receive a permanent electronic insurance card from a statutory health insurance company or a certificate of entitlement in the event of an acute need for treatment which includes a cost commitment by the competent authority. In both cases, the medical services are provided by doctors and medical facilities such as hospitals, which are available to all those with statutory health insurance in Germany.

**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)?

In Germany the accommodation of asylum seekers lies within the responsibility of the federal states. Upon arrival and registration, asylum seekers are legally obliged to reside in initial reception facilities pending the assessment of the asylum application, but only for up to 18 months at maximum or six months for families with minor children.

The federal states assess whether applicants have special reception needs. They also take into account the special reception needs of vulnerable persons by taking special measures. For instance, women who are victims of violence and their minor children are

generally accommodated together in specially protected areas within the reception facilities. Some federal states provide special reception facilities for other vulnerable persons, for example for women and families traveling alone, persons with physical disabilities, LGBTIQ or victims of human trafficking.

In accordance with legal provisions, unaccompanied minors traveling alone are accommodated outside the reception facilities in residential groups or youth centres run by the local youth welfare offices entrusted with taking them into custody.

**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 federal states assess if applicants for international protection have special needs and take these into account. Some federal states have special schemes in place to identify vulnerable persons, and operate special schemes to protect them against violence. Non-governmental organisations provide consultation or help through low-threshold psychosocial advice on site; they may refer the persons concerned to external professional services.

The national legislation sets out favourable provisions:

- Unaccompanied minors are looked after by youth welfare organisations and accommodated in special reception facilities or individually.
- Families with children are only obliged to live at the initial reception centre for up to six months.

The obligation to reside at the initial reception centre may be terminated for compelling reasons, for example, if vulnerable persons need special accommodation.

**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?

Applicants who feel that their entitlement to material reception conditions is not being met can turn to an administrative court (and submit e.g. an objection/ complaint/ urgent application).

In addition, those entitled to benefits under the Asylum Seekers Benefits Act are generally entitled to a legal advice voucher and legal aid, if they are unable to pay for legal advice themselves due to their personal and economic circumstances.

## 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?

Dublin transfers to Germany are required to be carried out in a controlled setting. Thus, the German authorities are informed in advance about the arrival of the applicant. After crossing the border, the applicant needs to report to a state authority (generally the Federal Police) which documents the arrival. In cases of first entry to Germany, the Federal Police will register the applicant and refer the applicant to the initial reception centre closely to the reference person's or family member's place of residence. In cases of re-entry to Germany (Take-back, subsequent applications), the applicant is referred to the responsible reception centre. In both cases, the applicants are handed out a train ticket and a document to locate the responsible reception centre. The applicant travels independently to the noted reception centre where he is provided with food and shelter. A personal asylum application is filed with the local branch office of the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge – BAMF) assigned to the responsible reception centre. The application is generally filed in person. A written asylum application may only be filed in special cases, for instance if the individual in question is in a hospital or has not yet reached the age of majority.

How long do these steps normally take?

The exact duration depends on the individual case. All steps are carried out as soon as possible.

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

Persons whose applications are considered subsequent applications are obliged to submit the subsequent application in person at the branch office of the Federal Office for Migration and Refugees assigned to the reception centre where they were obliged to reside during their previous asylum procedure. If an applicant submits their application at the wrong branch office, they will receive a written document that forwards them to the correct branch office. The applicant can also ask for support at the Service Centre of the Federal Office for Migration and Refugees. The subsequent application may also be filed in writing by way of exception if it can be proved that the applicant is prevented from appearing in person. In addition, the subsequent application must be submitted in writing to the central office of the Federal Office for Migration and Refugees if the branch office that would be responsible no longer exists or the foreigner was not obliged to live in a reception centre during the previous asylum procedure.

How long do these steps normally take?

The exact duration depends on the individual case. All steps are carried out as soon as possible.

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

The Federal Police will give the applicant a train ticket as well as a document to locate the responsible reception centre where the applicant will receive further information.

Besides the legally required provision of information, information is available here:

1. "Stages of the German asylum procedure. An overview of the individual procedural steps and the legal basis"

<https://www.bamf.de/SharedDocs/Anlagen/EN/AsylFluechtlingschutz/Asylverfahren/das-deutsche-asylverfahren.html;jsessionid=52811A6345EE7BFE90CD0AA887BB36EA.intranet241?nn=282388>

and

<https://www.bamf.de/EN/Themen/AsylFluechtlingschutz/AblaufAsylverfahrens/ablaufasylverfahrens-node.html>

2. "Information on the asylum procedure. Your rights and obligations"

<https://www.bamf.de/SharedDocs/Anlagen/EN/AsylFluechtlingschutz/Asylverfahren/berichtsbroschueren-asylfilm.html?nn=282656>

and

<https://www.bamf.de/SharedDocs/Videos/EN/AsylFluechtlingschutz/informationen-asylverfahren.html?nn=282656>

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

In case of a subsequent application the Federal Office for Migration and Refugees conducts a preliminary examination to assess if a new asylum procedure is initiated. According to Section 71 (1) Asylum Act a new asylum procedure is initiated if new elements or findings have arisen or have been presented by the applicant which significantly add to the likelihood of a more favourable decision; there are grounds for resuming proceedings under Section 580 of the Code of Civil Procedure.

The application will only be further examined if the applicant concerned was, through no fault of his or her own, incapable of asserting the situations in the previous procedure, in particular by exercising his or her right to an effective remedy. Insofar the requirement corresponds to its meaning under Article 40 paragraph 4 of Directive 2013/32/EU.

The applicant is to make the subsequent application in person at a branch office of the Federal Office for Migration and Refugees. If their stay is determined in accordance with Section 61 of the Residence Act, they must submit the subsequent application to the nearest branch office in the federal state of their stay. If the applicant has left Germany in

the meantime they will again be assigned to a reception centre. The applicant is to give his or her address as well as the facts and evidence to fulfil the conditions listed above. The foreigner is to provide this information in writing upon request. A hearing may be dispensed with.

**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. An application for international protection lodged by an applicant transferred to Germany through the Dublin procedure is considered as inadmissible if

- another Member State has granted international protection (Article 33 (2) lit. a) APD; Section 29 (1) No. 2 Asylum Act)
- a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35 ADP (Article 33 (2) lit. b) APD; Section 29 (1) No. 4, Section 27 Asylum Act in conjunction with Article 35 ADP)
- a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38 ADP (Article 33 (2) lit. c) APD; Section 29 (1) No. 3 Asylum Act with the meaning of Section 26a Asylum Act)
- the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU have arisen or have been presented by the applicant (Article 33 (2) lit. d) APD; Section 29 (1) No. 5 Asylum Act)

### **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?

The regulations for quarantine on public health grounds depend on the infection situation at any given point in time. Therefore, no general statement can be made.

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?

Under German law, there are fewer grounds for detention while the asylum decision is pending than would be possible under the RCD.

If detention has been ordered, the person concerned or their legal representative may appeal against the decision of the district court within one month after receiving the written notification (or within two weeks in the case of interim measures).

**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?

The time limits for the periods of detention depend on the reason for the detention. The periods range from 28 days to ensure the feasibility of the deportation if the behaviour of the applicant suggests that the applicant is about to hinder or thwart the deportation (*Ausreisegefahrensam* – *custody pending departure*) to 18 months to prepare for the deportation and to ensure that it is carried out, especially if there is a risk of absconding (*Abschiebehaft* – *custody pending departure*).

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

In Germany, the rules governing the review of detention or custody decisions are laid down in law, and thus guaranteed. For instance, under Section 62 of the Residence Act (AufenthG), custody is to be limited to the shortest possible duration.

In addition, the authority ordering custody or detention has to state detailed reasons for the duration of custody. The competent authorities must check regularly, over the full detention period, whether the reasons for custody continue to exist.

Furthermore, the person concerned is entitled to have the detention decision reviewed at any time (Section 62 of the Residence Act in conjunction with Section 426 (2) of the Act

on Procedures in Family Matters and in Matters of Non-Contentious Jurisdiction (FamFG). In addition, the detention order is to be revoked *ex officio* if the grounds upon which the detention was based cease to apply during the course of the detention period; the competent authority may also review the detention circumstances *ex officio* to end custody awaiting deportation prematurely (see Section 62 of the Residence Act in conjunction with Section 426(1) of the Act on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction). The continuation of the detention or custody must also be reviewed *ex officio* before the expiry of the six-month period, also in the absence of a request to that effect, if the period of detention or custody is extended (Sections 425 and 426 of the Non-Contentious Jurisdiction). In the absence of a court order to extend custody, the competent authority is invariably obliged to release the person concerned.

Please note that, in the overwhelming majority of cases, the period of detention awaiting deportation is well under three months.

**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 measure to detention are used when they can be applied effectively as per Article 8.2 RCD?

Alternative measures to detention are always considered for reasons of proportionality.

Such alternative measures can be:

- obligation to connect with the foreigners authority or the police on a regular basis for residence monitoring purposes (reporting requirements)
- geographic restriction of the foreigner's stay
- obligation to take up residence in a given location/accommodation
- curfews/ night-time house arrest /order to be available for deportation
- deposit
- guarantee by a trusted third party
- electronic monitoring of whereabouts

**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)?

Custody awaiting deportation is governed by Section 62a of the Residence Act, according to which custody awaiting deportation must generally take place in specific facilities.

If several members of a family are detained, they are to be accommodated separately from other detainees awaiting removal and to be guaranteed an adequate degree of privacy. (Section 62a subsection (1), sentences 3 and 4 of the Residence Act).

In the case of minors in custody awaiting deportation, the needs of persons their age are to be taken into account (Section 62a (3) of the Residence Act).

- Detainees awaiting deportation are permitted to contact legal representatives, family members and the competent consular authorities (Section 62a (2) of the Residence Act).
- Staff of relevant aid and assistance organisations are permitted to visit detainees awaiting deportation (Section 62a (4) of the Residence Act).
- Enforcing pre-deportation detention is incumbent on the federal states, which means it is mainly governed by legal provisions enacted at the level of the federal states. These provisions stipulate, for instance, that
  - there must be enough washing facilities, showers and toilets for male and female persons in custody awaiting deportation, and that these facilities must comply with modern standards.
  - persons in custody awaiting deportation can regularly have day-time visitors; visiting hours must be generous.
  - persons in custody awaiting deportation are to have access to medical care 24/7.
  - male and female detainees are to be accommodated separately from each other as a general rule; families with children are not to be taken into custody awaiting deportation. Where, in exceptional cases, families with children need to be taken into custody, it must be ensured that the facility is suitable for the family situation.
  - persons in custody awaiting deportation and ordinary offenders must always be accommodated separately from each other, even if there are no separate facilities for pre-deportation detainees.
  - particularly vulnerable persons are generally not taken into pre-deportation detention. If, in exceptional cases, particularly vulnerable persons, for instance minors, are taken into pre-deportation custody after all, their concerns must be taken into account appropriately.

## 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?

Section 12a of the Asylum Act stipulates that the federal state shall fund an independent asylum procedure counselling provided by non-governmental organisations. The asylum procedure counselling can also include legal counselling and is open to all protection seekers, from the time of registration until the unappealable final conclusion of the asylum procedure. Asylum seekers in the Dublin procedure are explicitly included. The counselling is free of charge and the participation is voluntary. Further the counselling in the asylum procedure should serve to identify special protection needs and to assert special procedural guarantees. It can include individual legal counselling within the meaning of the Legal Services Act (Rechtsdienstleistungsgesetz - RDG) on both the Dublin and the asylum procedure. The subject of the individual counselling is in particular the aim and purpose, procedure, responsibilities, rights and obligations, possibilities of action in the asylum and reception procedure as well as legal consequences of the asylum procedure. The representation in court is not covered by the legal counselling provided by the asylum procedure counselling.

In addition to the counselling programme at the federal level, which is explicitly designed for persons seeking asylum or international protection, those seeking protection may apply for general offers of legal counselling. These are organised at federal state level and may therefore differ from federal state to federal state.

Pursuant to Section 166 of the German Administrative Court Code, legal aid will be granted by the court if the applicant meets the legal requirements: Pursuant to section 114 (1) of the Code of Civil Procedure the main requirements for granting legal aid are that the applicant, due to his/her personal and economic circumstances, is unable to pay the costs of litigation or is able to pay them only in part or only as instalments and that his/her appeal has sufficient prospects of success. There is a reasonable prospect of success if the court in a summary assessment considers the legal position of the party applying for legal aid to be justifiable. The prospect of success is only to be subjected to a preliminary examination. The success of the appeal does not need to be certain.

### 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?

The counselling on asylum procedures according to Section 12a Asylum Act is generally free of charge.

If applicants appeal a decision by the Federal Office for Migration and Refugees, they may apply to the court for legal aid. The granting of legal aid depends on the applicant's personal and economic circumstances as well as on the chances that the appeal will be successful (see above 4.1).

**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?

The deadline to lodge an appeal depends on the decision taken by the Federal Office for Migration and Refugees. In the case of inadmissibility decisions and decisions as manifestly unfounded, the deadline is one week.

In all other cases the deadline to lodge an appeal against decisions of the Federal Office for Migration and Refugees is two weeks.

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

The appeal must be filed in writing or be recorded at the court registry. It must state the name of the plaintiff and of the defendant and the subject of the action and be written in German. It must also contain a specific request. The facts and evidence supporting the appeal must be stated within a period of one month after service of the Federal Office's decision.

**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?

Germany has not made use of Article 9 (2) APD.

**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?

Please also refer to 4.5.