



Council of the
European Union

Brussels, 19 April 2023
(OR. en)

8035/23

ASILE 37

NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Roadmap on improving the implementation of transfers under the Dublin III Regulation

Delegations will find in Annex the abovementioned Roadmap prepared by the Commission services and agreed by Member States at the SCIFA meeting on 29 November 2022.

Roadmap

Improving the implementation of transfers under the Dublin III Regulation

Following the discussions at the Contact Committee meeting on the Dublin III Regulation¹ held on 24 June 2022, the Member States, the Commission and the European Union Agency for Asylum ('EUAA') agreed to work on a roadmap in order to improve and ensure better implementation of transfers under that Regulation in all Member States.

The contributions from the Member States revealed multiple issues over a wide range of areas that authorities face when implementing transfers. The Commission has grouped the issues and ideas received from Member States into five areas: absconding, communication between the Member States, practical obstacles when implementing transfers, resources, and legal obstacles.

The aim of this roadmap is to ensure that Member States comply with their obligations pursuant to the EU asylum *acquis*, and in particular the Dublin III Regulation, in order to ensure that Dublin transfers can take place to all Member States. Therefore, it sets out the practical steps Member States should commit to take in order to improve the implementation of transfers under the Dublin III Regulation.

This roadmap complements the existing recommendations, guidance and tools developed by the EUAA. The Member States should therefore also commit to effectively use and implement those tools.

In order to ensure the effective implementation of the roadmap, a concrete timeline is foreseen in Annex to this Annex II for the improvement of transfers under the Dublin III Regulation in all Member States. The implementation of the roadmap should be regularly discussed in the context of the Contact Committee meetings on the Dublin III Regulation.

¹ 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 ('the Dublin III Regulation')

Objective 1: Limiting absconding

Applicants absconding from the examination procedure or the Dublin procedure seems to remain one of the main reasons for the limited number of successful Dublin transfers. While the adoption of the Asylum and Migration Management Regulation², which includes important legislative changes to limit absconding, will solve many issues, in the meantime, the main challenges seem to relate to the assessment of “a significant risk of absconding” and the measures available to Member States in order to limit this risk. Other important elements are also misconceptions of what awaits the applicant after the transfer to the responsible Member State, and the lack of provision of information on the application of the Dublin III Regulation.

Action 1. Better information to applicants for international protection:

- 1.1 As a general principle, Member States should ensure that applicants are informed about the Dublin III Regulation, in particular by complying with Article 4, and provide the information leaflet set out in Annex X of the Implementing Regulation³. Part A should be provided to all applicants for international protection, regardless of whether the Dublin Regulation is applicable, and part B should be provided to applicants found in a Dublin procedure. The applicant should also be informed of the obligation to remain in the Member States responsible pending the examination of the application.
- 1.2 Member States should provide supplementary information regarding their Member State that the transferring Member State can use to prepare the applicant for the upcoming transfer, and build trust about their application for international protection receiving equal treatment in each Member State. The EUAA, in close cooperation with the Member State authorities, will facilitate the development of templates and practical tools in this respect.

² COM(2020) 610 final

³ Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, as amended by Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014.

Action 2. Better preparation of the transfer:

- 2.1 Primarily, Member States should ensure that they have sufficient resources to start organising the transfer as quickly as possible.

In the case of appeals and possible suspensive effect, Dublin cases could be prioritised. Faster procedures could be achieved by the authorities providing information on the functioning of the Dublin system and the timely provision of country specific information to the courts in order to ensure thorough, yet focused and quick revision of Dublin decisions. These actions are without prejudice to the independence of the courts. Concluding the legal review of transfer decisions in a timely manner would result in a more predictable and coherent Dublin procedure.

- 2.2 Where the conditions for detention are not met, Member States could utilise alternative measures where appropriate, such as confiscating travel documents, designating an area where the applicant needs to stay during the procedure, applied together with the obligation to report frequently to the authorities, when applicable by national law.
- 2.3 The concept of absconding as interpreted by the Court of Justice of the European Union in case C-163/17, Jawo, should be implemented in a uniform way across all Member States. The Commission should provide guidance in the compilation of relevant case law referred to in point 1.4 of Objective 5. Where necessary, the Member States should establish national guidelines on the concept of absconding to ensure equal interpretation by all relevant authorities.
- 2.4 The EUAA should facilitate the development of judicial publications on the Dublin Regulation and offer regular tailor made activities to promote the professional development of judges in this regard.

Objective 2: Improving Communication between the Member States

With only limited exceptions⁴, the use of DubliNet is mandatory for all communication between the Member States and must remain the main communication channel for all cases falling within the scope of the Dublin Regulation.

However, Member States highlighted that with the amount of messages being transmitted through the system, it is already difficult for Member States to identify and to follow up urgent or prioritized cases in a timely manner. These difficulties are exacerbated by the fact that DubliNet is currently the only communication channel the Member States use to communicate on any matter, including providing general information, such as public holidays etc. Therefore, where general information not specific for an individual case needs to be communicated, or in cases where there are issues that need to be solved immediately concerning an imminent transfer⁵, it could be useful for the Member States to have a point of contact outside DubliNet to limit generic information being sent through DubliNet. Regarding cases where immediate action is required, according to the EUAA recommendations on the technical and operational use of DubliNet, urgent cases should be marked in the subject of the message.

The rate of successful transfers relates to the continuous information exchange between the Member States. Therefore, it is of utmost importance to keep the communications channels clear and up to date.

- 1.1 The Commission should explore the possibility for setting up a way for the Member States to communicate with each other for all issues that are not mandatory to transmit through DubliNet. This could for example be done by setting up a specific email address. In order to ensure that the additional way of communication will not be overloaded, EUAA should include the specific information that could be shared through this alternative communication channel in the recommendations on Dublin transfers.

⁴ Commission Implementing Regulation Article 15(1) second subparagraph: “[...] correspondence between the departments responsible for carrying out transfers and competent departments in the requested Member State regarding the practical arrangements for transfers, time and place of arrival, particularly where the asylum seeker is under escort, may be transmitted by other means”

⁵ Excluding any personal data on the applicant, which would require the information to be sent through DubliNet.

- 1.2 If the responsible Member State needs to delay an incoming transfer, for example for logistical reasons, it should actively and timely cooperate in order to implement the transfer within the transfer time limit. Such delays should be strictly limited to situations where the transfer time limit is not approaching and the person is not detained.

Objective 3: Overcoming practical obstacles when implementing transfers

Member States reported several obstacles for the practical implementation of the transfers, such as limited choice of airports, limited number of total incoming transfers allowed per day by Member States, limited number of applicants allowed by airlines, lack of direct flights, lack of connecting flights, short arrival periods, and long notification time.

Challenges created by the COVID-19 pandemic and consequent restrictions introduced by the Member States have also had long term impact for the smooth implementation of the Dublin Regulation.

1.1 Increasing flexibility in the responsible Member State

Pursuant to Article 29 of the Regulation, the transfer shall be initiated as soon as practically possible. Pursuant to Article 8 of the Implementing Regulation, the responsible Member State has an obligation to allow the applicant's transfer to take place as quickly as possible and to ensure that no obstacles are put in his way. In addition, when deciding the location on its territory to which the applicant will be transferred, the responsible Member State must take into account geographical constraints and modes of transport available to the transferring Member State. Therefore, adequate flexibility should be shown in order to support the transferring Member States, including by removing obstacles, in particular when the transfer time limit is approaching.

The responsible Member State should, when possible, provide for flexibility and support to the transferring Member State, in particular by:

- Increasing capacity by ensuring that there are sufficient resources at border crossing points;
- Allowing for dialogue, when the transferring Member State sees the need for group transfers or the use of charter flights, and both the transferring and the responsible Member State agree to such transfers;
- Allowing for dialogue, when the transferring Member State sees the need for transfers by land and both the transferring and the responsible Member State agree to such transfers;
- Allowing longer and more flexible arrival periods, in particular taking into account the geographical location of the transferring Member State and the limited availability for direct flights for some Member States;
- Showing more flexibility and cooperation between the Member States when the time limits set out in Article 29 of the Dublin Regulation are approaching;
- Showing more flexibility and cooperation between the Member States where a transfer is delayed due to e.g. lack of capacity or logistical reasons;
- In line with the EUAA recommendations on Dublin transfers, reduce the notification time in specific situations, for example if the transfer deadline is approaching, the applicant is detained, the applicant has intentionally frustrated the implementation of the transfer, the transfer is a rescheduled transfer, or the transfer is for other reasons urgent;
- In exceptional cases, or where there are limits due to lacking personnel or capacity, consider whether it is possible to allow single transfers to other airports, transfers after the normal hours or during a weekend.

1.2 Addressing capacity limitations

As a principle, Member States should ensure sufficient human resources and therefore restrictions due to such limitations should not be applied as a rule. However, where such situations are unavoidable in the responsible Member State:

- Applicants in detention should be prioritized.
- The Dublin Unit should facilitate the organisation of transfers by communicating any restrictions and specific capacity issues in a timely manner in order to prevent that already agreed transfers are cancelled on short notice, using DubliNet and the tools provided for by EUAA (transfer arrivals time table).
- The Dublin Unit should communicate an end-date when notifying the other Member States of such limitations, if possible.
- The responsible Member States should provide alternatives, in particular those listed in point 1.1 of Objective 3, if there are long-term capacity issues at specific border crossing points.
- The responsible Member State should also show flexibility for exceptional cases, such as where the applicant is detained, vulnerable or the transfer deadline is approaching.

1.3 Creating specific exceptions for COVID-19 or other exceptional circumstances:

Dublin transfers are the result of implementation of responsibilities set out in EU law, and the responsible Member State has an obligation to allow the applicant to enter its territory. Therefore, all Member States should cooperate in order to agree at EU level, taking into account the recommendation of relevant health authorities, that COVID-related entry conditions, such as a PCR test, do not apply to Dublin returnees where national law allows for derogations or exceptions for other travelers, in order to maintain a functioning Dublin system. Exceptions could include alternatives to a PCR test, such as a vaccination certificate, a quarantine period before or after a transfer, a transfer taking place from solitary detention or a COVID-19 symptom free certificate by a medical professional. The receiving Member State should show flexibility in order to support the transferring Member State, such as exceptionally allowing the transfer of special cases or cases where the time period for transfer would soon elapse.

Even in exceptional conditions, Member States should do its utmost to maintain continuity by allocating resources that would allow the acceptance of at least a low number of incoming transfers without the need to suspend incoming operations, while gradually increasing the numbers once regular conditions are restored.

1.4 Long term planning

Events following the global pandemic such as war in Ukraine or gathering of asylum seekers at the border of Belarus clearly indicates that a coordinated and pre-discussed emergency plan is necessary for functioning of the Dublin system during any emergency circumstances.

- Member States should progressively return to pre-emergency practice and apply similar approaches towards postponed transfers and approaching time limits, full schedule or limited capacity in accordance with an agreed timeline.
- Member States that are constantly receiving influxes due to the war in Ukraine or may be impacted by future emergency situations should increase capacity as soon as possible to prevent gaps and reinforce the competent services, including the transfer units. In that way, the reception systems and asylum procedures are more likely to operate in a sufficient manner. EUAA may support increasing capacity where requested by the Member States and in accordance with the EUAA Regulation. Capacity limitations can also be addressed by utilising EU funds.

Objective 4: Ensuring sufficient resources to effectively implement Dublin transfers

The risk of absconding seems to increase the longer an applicant has to wait to be transferred to the responsible Member State. Therefore, it is crucial for the effective implementation of transfers that the transfer is prioritised and takes place as soon as practically possible, rather than at the end of the 6-month time limit.

However, Dublin transfers are subject to different internal procedures in all Member States. For different steps, many actors may be involved, in particular cases concerning arrest or detention, unaccompanied minors and other vulnerable persons, or persons with medical conditions, and the practical execution of transfers. Even if the transfer procedure is established in the Dublin Regulation, the asylum authorities are not necessarily the authority empowered by national law to put in place the measures needed to ensure the transfers.

Therefore, Member States must ensure that they have sufficient resources in place across the relevant authorities and ensure adequate coordination at national level to effectively deal with the number of applicants in the Dublin procedure and in a timely manner. The effective application of the Dublin Regulation is conditional on the quick identification of possible Dublin cases, and that applicants are informed about the Dublin procedure and the consequences of not complying with the procedure. For this purpose:

- 1.1 Member States should internally review whether there is a need for training or other restructuring to ensure quick identification of possible Dublin cases, and make full use of the EUAA training modules, so that caseworkers can further deepen their knowledge. Where necessary, the Member States should utilise EU funds to ensure that the Dublin Unit or other relevant units or authorities have sufficient staff to decrease the time between the acceptance of the request and the transfer can be carried out.
- 1.2 If necessary, adapt national legislation and internal coordination given that they are crucial measures to ensure the efficiency of the mandate stated in the Dublin Regulation and to increase the number of implemented transfers. The Member States should fully utilise the EUAA recommendations on Dublin transfers and other EUAA guidance for this purpose.
- 1.3 Member States should make all possible efforts to send requests, reply to requests, and make transfer decisions as soon as possible and without delays. Therefore, sufficient human resources should be available to ensure that transfer decisions are taken swiftly after the acceptance of the request and notified to the applicant. The capacity to arrange transfers should be adapted to the number of transfer decisions made.

- 1.4 Member States should ensure that efficient digital case management systems are in place. Member States should also provide effective access to critical IT systems to all relevant staff tasked with carrying out tasks in relation to the Dublin procedure, notably with regards to DubliNet and Eurodac.
- 1.5 A Member State that finds its asylum or reception system to be under disproportionate pressure may request operational assistance from the EUAA in accordance with the EUAA Regulation. Measures included in the operational plans may also support the Dublin procedure in a Member State. The Member States may also request support from the Commission, including financial support.

Objective 5: Increasing compliance with EU law, including court rulings

The principle of mutual trust remains one of the fundamental principles underlying the Dublin system. However, in Article 3(2) second subparagraph, the Dublin Regulation already includes a guarantee that an applicant will not be transferred to the Member State primarily designated as responsible where there are substantial grounds for believing that there are systematic flaws in the asylum procedure and reception conditions for applicants in that Member States. Therefore, the assessment of whether a transfer can take place forms part of the responsibility determination made by Dublin units.

A series of rulings from the Court of Justice of the European Union and the European Court of Human Rights following the *M.S.S.* judgment⁶ set the jurisprudence according to which a transfer cannot be carried out if the applicant risks inhuman or degrading treatment either during the transfer or after arrival in the responsible Member State. Some administrative authorities and national courts do not allow transfers to certain Member States either because they consider that there are risks of ‘chain *refoulement*’ or that the procedural safeguards, reception or detention conditions are below the Charter’s standards. Based on the above criteria, some Member States have taken the decision not to transfer applicants to certain Member States.

⁶ Judgment of the ECtHR. *M.S.S. v Belgium and Greece*, No 30696/09, 21 January 2011.

There seems to be a need for additional objective and reliable information on reception and detention conditions and the asylum procedure in specific Member States, which can serve as additional information in transfer decisions and can be used in national courts, without prejudice to the independence of the national courts. All Member States should undertake the necessary efforts to conform to requirements at EU level, including the full implementation of the EU asylum *acquis* in law and in practice, and in particular the rules set out in the Dublin Regulation, in order to ensure that Dublin transfers are correctly implemented.

Every Member State should make every possible effort to implement the measures set out in this roadmap as soon as possible and these measures are complementary to the monitoring mechanism of EUAA, once that mechanism enters into force.

- 1.1 The Commission, in cooperation with EUAA, should create a template that each Member State should fill out with reliable and up to date information that is relevant for and could be used as an additional source of information by the national authorities and courts of the transferring Member State when assessing the concrete situation in the responsible Member State. Such information could consist of, inter alia, access to the asylum procedure and procedural guarantees as required by the relevant Directives and Regulations following a transfer, access to basic care and medical services, and conditions for reception and detention, including conditions for vulnerable persons. The template should be dynamic and can be modified according to changing circumstances that could have an impact on Dublin transfers. EUAA will gather the templates filled out by the Member States and share them with the other Member States. Member States should provide updates as soon as possible if relevant changes occur. When needed, the transferring Member State should further transmit this information to their national courts.
- 1.2 Fact-finding missions could take place in only in exceptional situations, provided that there is an agreement with the Member State concerned, including on the modalities for such missions.

- 1.3 Both national authorities and EUAA should cooperate to raise awareness of the Dublin system in national courts (see Objective 1, points 2.1 and 2.4). Member States should provide the courts with comprehensive information on what awaits an applicant in the responsible Member State following a Dublin transfer, either in an individual case or on a general basis.
- 1.4 In addition to the EUAA Case law database, the Commission should provide for a compilation of relevant case law explaining further the CJEU jurisprudence in the Dublin context.
- 1.5 Where necessary or legally required in an individual case, and in addition to the information available on reception conditions and the asylum procedure, the transferring Member State may request the responsible Member State to issue individual guarantees on an ad-hoc basis (e.g. where the specific needs of the persons concerned need to be provided for upon transfer). The responsible Member State should make every effort to issue individual guarantees in a timely manner, including where responsibility was established on the basis of a tacit acceptance.

**Annex to the Roadmap to improve the implementation of transfers under the Dublin III
Regulation**

Timeline for implementing the roadmap actions

By December 2022

- **Member States** to endorse the roadmap;
- **The Commission in cooperation with the EUAA** to develop a template for Member States fiches for courts purposes (*Objective 5, action 1.1.*);
- **The Commission** to propose an alternative way for Member States to communicate with each other (*Objective 2, action 1.1.*);
- **The EUAA**
 - to develop a template for information provision to applicants (*Objective 1, action 1.2.*);
 - to amend the existing recommendations on Dublin transfer to include the specific information to be shared through the new alternative communication channel under Objective 2 action 1.1 (*Objective 2 action 1.1.*).

By March 2023

- **Member States**
 - to provide to the other Member States the necessary information to applicants and the courts in accordance with the templates developed by the Commission and EUAA as per *Objective 1, action 1.2 and Objective 5 action 1.1.*;
 - to carry out the internal review of resources, capacity, and internal organization (*Objective 4, action 1.1*) with a view to achieving *Objective 1, action 2.1* as well as the increased capacity at BCPs as per *Objective 2, action 1.1* and the increased reception and processing capacity as per *Objective 3 action 1.4.*;
 - to provide effective access to critical IT systems to all relevant staff tasked with carrying out tasks in relation to the Dublin procedure, notably with regards to DubliNet and Eurodac (*Objective 4, action 1.4.*);
- **The Commission** to provide a compilation of relevant case law on Dublin (*Objective 5 action 1.4.*).

By June 2023

- **Member States**
 - to implement the concept of absconding in a uniform way, including by establishing national guidelines if necessary (*Objective 1, action 2.3*);
 - Following the COVID-19 pandemic and the war in Ukraine, to go back to pre-emergency practices as per *Objective 3, action 1.4*;
 - to increase reception and processing capacity in order to prevent gaps and reinforce the competent services, including the transfer units (*Objective 3, action 1.4*) and in order to ensure that transfer decisions are taken swiftly after the acceptance of the request and are notified to the applicant (*Objective 4, action 1.3*).
 - to adapt legislation, if necessary,⁷ and internal coordination as well as to fully implement the EUAA recommendations on Dublin transfers, with a view to increasing the number of implemented transfers (*Objective 4, action 1.2*);
 - to ensure that efficient digital case management systems are in place (*Objective 4, action 1.4*);

On a continuous basis

With a view to limiting absconding (Objective 1)

- **Member States** to ensure applicants are informed in accordance with Article 4 of Dublin III and provide the information leaflets (*Objective 1, action 1.1*);
- **Member State** to utilize alternative measures to detention (*Objective 1, action 2.2*);

With a view to improving communication between Member States (Objective 2)

- **Member State** to actively cooperate to implement a transfer in case of delays (*Objective 2, action 1.2*);

With a view to overcoming practice obstacles when implementing transfers (Objective 3)

- **Member State** to increase flexibility regarding incoming transfer when they are the responsible Member State as per the actions foreseen in *Objective 3 action 1.1*;
- **Member States** to address restrictions and capacity issues when receiving transfers as per *Objective 3 action 1.2*;

⁷ In case adaptation of national legislation is necessary, the timeline for implementation should be December 2023.

With a view to ensuring sufficient resources to effectively implement Dublin transfers
(Objective 4)

- **Member States** should make all possible efforts to send requests, reply to requests, and make transfer decisions as soon as possible and without delays (*Objective 4, action 1.3*);
- **Member States** to consider whether their asylum or reception systems is under disproportionate pressure and, if appropriate, request operational assistance from the EUAA in accordance with the EUAA Regulation, or the Commission (*Objective 4, action 1.5*);

With a view to increasing compliance with EU law, including Court rulings
(Objective 5)

- **Member States** to agree bilaterally on whether fact-finding missions can be carried out in specific situations and the modalities for such missions (*Objective 5, action 1.2*);
- **Member States** to issue individual guarantees in a timely manner upon request by the transferring Member State, where necessary for an individual case (*Objective 5, action 1.5*).
- Member States, in cooperation with the EUAA, to raise awareness of the Dublin system in national courts and provide the courts with comprehensive information on what awaits an applicant in the responsible Member State following a Dublin transfer – as per the templates developed (*Objective 5 action 1.3*).
- **The EUAA** to develop judicial publications on Dublin and organize activities to promote the professional development of judges (and then continue on a regular basis) (*Objective 1, action 2.4*).

If Covid-related restrictions are reinstated: immediately reach an agreement to extend any exceptions applicable to specific travelers to Dublin transfer including through the identification of alternatives to PCR tests or vaccinations (*Objective 3 action 1.3*).

Monitoring and Review

By March 2023

- Delivery of actions foreseen by that date;
- Progress in the implementation of actions to be taken on a continuous basis, and in particular, significant and tangible improvement in the flexibility regarding incoming transfers (in accordance with *Objective 3 action 1.1*) and in reducing the length of the Dublin procedure (in accordance with *Objective 4 action 1.3*);
- Overall progress in the acceleration and increase of Dublin transfers.

By June 2023

- Delivery of actions foreseen by that date;
- Significant progress in the implementation of actions to be taken on a continuous basis, particularly in relation to increasing capacity and continue the steady and tangible progress in increasing flexibility in incoming transfers and in reducing the length of the Dublin procedure;
- Overall significant acceleration and increase of Dublin transfers.

By December 2023

- Delivery of actions foreseen by that date;
 - Continue the steady and tangible progress in increasing capacity (reception and processing), increasing flexibility in incoming transfers and in reducing the length of the procedure;
 - Overall significant acceleration and increase of Dublin transfers.
-