Dublin procedure - Malta

Overview

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Relevant EU legislation

Malta is bound by the Dublin III Regulation. Rules set out in the Dublin Regulation are referenced in the following legislation:

Chapter 420 of the Laws of Malta, International Protection Act, as amended by Act XXXV of 2023.

Subsidiary Legislation 420.06, Reception of Asylum Seekers Regulations, as amended by Legal Notice 87 of 2024.

Subsidiary Legislation 420.07, Procedural Standards for Granting and Withdrawing International Protection Regulations, as amended by Legal Notice 104 of 2024.

National legislation

Rules set out in the Dublin Regulation are referenced in the following legislation:

Chapter 420 of the Laws of Malta, International Protection Act, as amended by Act XXXV of 2023.

Subsidiary Legislation 420.06, Reception of Asylum Seekers Regulations, as amended by Legal Notice 87 of 2024.

Subsidiary Legislation 420.07, Procedural Standards for Granting and Withdrawing International Protection Regulations, as amended by Legal Notice 104 of 2024.

Competent authority and stakeholders

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Entity responsible for the Dublin procedure (the application of the criteria and mechanisms for determining the Member State responsible): International Protection Agency.

Place in the institutional framework:

- Centralised.
- The Dublin Unit is within the International Protection Agency, which is under the responsibility of the Ministry for Home Affairs, Security and Employment.
- The unit is part of the main asylum authority.

Competencies of the entity:

Yes	Conducting the Dublin interview (specifically for the Dublin procedure, as part of the registration interview or handling the form to be completed during registration)
Yes	Organising Dublin transfers
Yes	Notifying the transfer decision
No	Accompanying/escorting applicants during a Dublin transfer
Yes	Sending and replying to take charge and take back requests to/from other Member States
No	Receiving applicants transferred under the Dublin procedure (meeting applicants at the airport/border crossing)
Yes	Sending and replying to information requests to/from other Member States
Handing over the common leaflet on the Dublin procedure	Registration Unit, International Protection Agency | Aġenzija għall-Protezzjoni Internazzjonali

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Conducting the Dublin interview (specifically for the Dublin procedure, as part of the registration interview or handing the form to be completed during registration)	Dublin Unit, International Protection Agency | Aġenzija għall-Protezzjoni Internazzjonali
Referral of cases to the Dublin unit	Dublin Unit, International Protection Agency | Aġenzija għall-Protezzjoni Internazzjonali
Sending and replying to a take charge or take back request	Dublin Unit, International Protection Agency | Aġenzija għall-Protezzjoni Internazzjonali
Sending and replying to information requests to/from another Member State	Dublin Unit, International Protection Agency | Aġenzija għall-Protezzjoni Internazzjonali
Notification of the transfer decision	Dublin Unit, International Protection Agency | Aġenzija għall-Protezzjoni Internazzjonali
Free legal assistance during the appeal of a transfer decision	Legal aid lawyers provided by the Ministry responsible for asylum and migration, civil society organisations (Aditus and Jesuit Refugee Services Malta)
Representation of the asylum authority in an appeal against a transfer decision	Legal Unit, International Protection Agency | Aġenzija għall-Protezzjoni Internazzjonali
Organising the transfer to the responsible Member State	Dublin Unit, International Protection Agency | Aġenzija għall-Protezzjoni Internazzjonali Immigration Section, Malta Police Force | Immigrazzjoni, Il-Korp tal-Pulizija

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Providing information on the transfer modalities to the applicant	Dublin Unit, International Protection Agency | Aġenzija għall-Protezzjoni Internazzjonali
Accompanying/escorting applicants during a Dublin transfer when necessary	Immigration Section, Malta Police Force | Immigrazzjoni, Il-Korp tal-Pulizija
Receiving applicants transferred under the Dublin procedure (meeting applicants at the airport/border crossing)	Immigration Section, Malta Police Force | Immigrazzjoni, Il-Korp tal-Pulizija
Court/authority responsible for deciding on an appeal against a transfer decision	International Protection Appeals Tribunal (IPAT)

Provision of information on the Dublin procedure

General information on the asylum procedures is provided through a document that is given to each person by the immigration authorities upon their arrival (in the case of persons arriving in an irregular manner). Persons who present themselves directly to the International Protection Agency (IPA) offices to make an application are provided information by the IPA.

With respect to the Dublin procedure, information is provided by the IPA upon the lodging of the application for international protection. Such information is provided in a language that the applicant understands, either in written format or orally, or both, and refers to the fact that the applicant might be transferred to another Member State according to the rules set out by the Dublin III Regulation.

The IPA provides applicants, for whom a Dublin transfer is considered, a document explaining the Dublin procedure and informing that the assessment of their application is on hold until a decision on a possible Dublin transfer is taken. This document comprises of a standard information leaflet. However, individualised information is provided according to need.

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Right to legal counselling

In terms of Article 4(1)(a)(v) of Subsidiary Legislation 420.07 the applicant is informed of their right to consult UNHCR or any other national organisation providing legal advice and to have legal assistance during all the phases of the asylum procedure. Furthermore, Article 10(4) of the same legislation states that a legal adviser shall be allowed to assist the applicant in accordance with procedures laid down by the International Protection Agency and, where entitled to, free legal aid shall be provided to the applicant.

Article 12(1) of the same legislation states that an applicant shall be allowed to consult, at their own expense, in an effective manner, a legal adviser in relation to their application for international protection at all stages of the procedure. However, in the case of an appeal, free legal assistance shall be granted under the same conditions applicable to Maltese nationals.

According to the same article, free legal assistance provided under the same conditions applicable to Maltese nationals shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant. Such legal assistance and representation shall not be arbitrarily restricted thus hindering the applicant's effective access to justice.

Civil society organisations Aditus and the Jesuit Refugee Service Malta (JRS Malta) provide free legal assistance to applicants at all stages of the asylum procedure (including at first instance and Dublin procedures). Such services are not state-funded and are provided upon the fulfilment of specific criteria which are internal to the organisations providing the service.

Personal interview to determine the Member State responsible

Organisation of the interview: In order to facilitate the process of determining the Member State responsible, and provided that Article 5(2) of the Dublin Regulation does not apply, applicants who may be subjects of a Dublin procedure are interviewed by the Dublin Unit to verify the information provided when lodging their application. During the interview, applicants are advised to provide further

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information and supporting documentation, if available, in order to enable the Dublin Unit to determine the Member State responsible for examining their application for international protection. Such information needs to be submitted within a timeframe established by the Dublin Unit, which generally does not exceed a number of working days but exceptions are allowed in certain cases. The interview is transcribed.

Persons present during interview: Personal interviews take place at the Dublin Unit premises in Hamrun. Interviews are carried out by IPA officers dedicated to working within the Dublin Unit. Applicants may be assisted by a lawyer.

Notification of the transfer decision

If Malta is found to be the Member State responsible, no formal decision is taken and the application for international protection is processed accordingly by the IPA.

If another Member State is determined to be the responsible state for examining the application, a Dublin request is sent to the relevant Member state.

If the corresponding Member State notifies the Dublin Unit that the applicant is a beneficiary of international protection, a decision is issued to the applicant stating that the application for international protection is inadmissible.

If the corresponding Member State is determined as the responsible member state to examine the asylum application, the Dublin Unit issues the Dublin transfer decision The decision also includes information on the possibility to appeal.

If the applicant does not appeal the Dublin transfer decision, the transfer is expected to be implemented within 6 months from the date of acceptance of the request by the other Member state. Until the transfer is implemented the applicant is provided with access to reception conditions. Where the applicant cooperates and accepts to be transferred, practical transfer arrangements are initiated immediately after the Dublin transfer decision has been communicated to the applicant.

Remedies

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Competent authority/court	International Protection Appeals Tribunal (IPAT)
Deadline for a review/appeal	The time limit to submit an appeal is 15 days from the notification on the applicant of the decision of the International Protection Agency (IPA), Article 7(2) of the International Protection Act. The legal basis for appeals against transfer decisions is found in Article 7(1) of the International Protection Act, which states that the International Protection Tribunal (IPAT) shall have the power to hear and determine appeals against decisions of the International Protection Agency (IPA) including appeals from decisions for the transfer of a third country national from Malta to another Member State in accordance with the Dublin III Regulation.
Deadline for decision on the review/appeal	According to Article 7(7) of the International Protection Act, the IPAT shall ensure that each case is concluded within 3 months of the lodging of the appeals application. In cases involving complex issues of fact or law, this time limit may be prolonged by an additional 3 months. This time limit may only be further extended where exceptional circumstances make it impossible for the IPAT to decide on the appeal within a period of 6 months.
Suspensive effect of the review/appeal	Yes In terms of Article 16(2) of Subsidiary Legislation 420.07 an applicant should not be removed from Malta and should be allowed to enter and remain in Malta before a final decision is rendered on the application, except when a subsequent application is found to be inadmissible or the person surrenders or is extradited on a European Arrest Warrant, to a third country or to an international criminal court or tribunal.

Transfer arrangements

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After the Dublin transfer decision is notified to the applicant, the individual may be detained pending transfer to the Member State responsible. According to Article 6(1)(f) of Subsidiary Legislation 420.06, the detention of an applicant may be ordered in accordance with Article 28 of the Dublin III Regulation.

The transfer is implemented by the IPA with the assistance of the Immigration Section within the Malta Police Force. The different types of transfer are:

- On the asylum seeker's initiative
- Departure under control
- Under escort

If the applicant assents to the transfer, this is carried out without the presence of police escorts. The transfer is only carried out under escort if the asylum seeker demonstrates an unwillingness to be transferred.

Applicants are informed in person about the transfer and the date when it will take place. If the time for arranging a transfer has expired and a transfer has not taken place, applications are channeled through the normal procedure and assessed by the International Protection Agency.

In cases of applicants with special medical needs, a doctor assesses the applicant to ascertain their fitness to travel.

Guarantees for minors

Assessment in the best interest of the child: Assessments are carried out by social workers at the Agency for the Welfare of Asylum Seekers (AWAS). The best interest of the child principle is taken into account during the entire procedure and explicitly assessed in the transfer decision.

Legal representation for unaccompanied minors: Appointing a legal representative for UAMs is mandatory in Malta. For the purposes of the asylum procedure, including matters related to the Dublin Regulation, legal representatives from AWAS are appointed in terms of Article 18(1)(a) of Subsidiary Legislation 420.07.

Family tracing: AWAS also assists unaccompanied minors with family tracing services, either on its own initiative or with the support of the Malta Red Cross family tracing service.

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