Dublin procedure - Belgium

Overview

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Relevant EU legislation

Belgium is bound by the Dublin III Regulation and has included the provisions relating to the Dublin procedure in Law of 15 December 1980 on the entry, residence, establishment and removal of foreign nationals, Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Aliens Act. (Articles 51/5 and 51/5/1).

National Legislation

The provisions of the Dublin III Regulation were directly applicable in Belgium since 20 July 2013 (see Art. 49 of the Dublin III Regulation). They have been included in the Law of 15 December 1980 through subsequent amendments:

1. Law 21 November 2017 (Article 3)
2. Law 8 May 2019 (Article 2)
3. Law 12 May 2024 (Article 3)

Competent authorities and stakeholders

Entity responsible for the Dublin procedure (the application of the criteria and mechanisms for determining the Member State responsible): Immigration Office | Office des étrangers | Dienst Vreemdelingenzaken

Place in the institutional framework:

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• Centralised in Brussels.

• The Dublin Cell is part of the Asylum Department at the Immigration Office, a federal organisation under the authority of Home Affairs, Federal Public Services.

• The Immigration Office is not the determining 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)
No	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

Stakeholders involved in the procedure:

Handing over the common leaflet on the Dublin procedure	Immigration Office | Office des étrangers | Dienst Vreemdelingenzaken

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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)	Interview Unit, Immigration Office | Unité d'interview, Office des étrangers | Interview Eenheid, Dienst Vreemdelingenzaken Dublin Cell, Immigration Office | Cellule Dublin, Office des étrangers | Cel Dublin, Dienst Vreemdelingenzaken
Referral of cases to the Dublin unit	Interview Unit, Immigration Office | Unité d'interview, Office des étrangers | Interview Eenheid, Dienst Vreemdelingenzaken
Sending and replying to a take charge or take back request	Dublin Cell, Immigration Office | Cellule Dublin, Office des étrangers | Cel Dublin, Dienst Vreemdelingenzaken
Sending and replying to information requests to/from another Member State	Dublin Cell, Immigration Office | Cellule Dublin, Office des étrangers | Cel Dublin, Dienst Vreemdelingenzaken
Notification of the transfer decision	Dublin Cell, Immigration Office | Cellule Dublin, Office des étrangers | Cel Dublin, Dienst Vreemdelingenzaken
Free legal assistance during the appeal of a transfer decision	Pro bono lawyer appointed by the local bureau for legal aid.
Representation of the asylum authority in an appeal against a transfer decision	Immigration Office | Office des étrangers | Dienst Vreemdelingenzaken

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Organising the transfer to the responsible Member State	Outgoing transfers: Transfer Units, Immigration Office | Unités de Transfert, Office des étrangers | Transfer Units, Dienst Vreemdelingenzakend and Federal Police | Police Fédérale | Federale Politie Incoming transfers: Dublin Cell, Immigration Office | Cellule Dublin, Office des étrangers | Cel Dublin, Dienst Vreemdelingenzaken and Federal Police | Police Fédérale | Federale Politie
Providing information on the transfer modalities to the applicant	Immigration Office | Office des étrangers | Dienst Vreemdelingenzaken
Accompanying/escorting applicants during a Dublin transfer when necessary	Federal Police | Police Fédérale | Federale Politie
Receiving applicants transferred under the Dublin procedure (meeting applicants at the airport/border crossing)	Federal Police | Police Fédérale | Federale Politie (border police)
Court/authority responsible for deciding on an appeal against a transfer decision	Council for Alien Law Litigation (CALL) | Conseil du Contentieux des Etrangers (CCE) | Raad voor Vreemdelingenbetwistingen (RVV)

Provision of information on the Dublin procedure

Information about the Dublin procedure is provided by officials of the Belgian Immigration Office at the moment of making the application for international protection.

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Based on the common leaflets developed by the European Commission, a first brochure Dublin-A-Anglais.pdf (ibz.be) is provided to inform asylum applicants about the fact that before assessing their asylum application one country needs to be determined as the responsible country for the assessment. The leaflet contains by the end contact details of other organisations regarding the asylum procedure in Belgium. A second brochure Brochure-B_Anglais.pdf (ibz.be) answers the most common questions about the Dublin procedure and it is issued during the interview when there are indications that Belgium is not the responsible Member State.

These brochures do not contain specific information about the handling of the Dublin procedure in Belgium.

In practice, these common information leaflets on the Dublin procedure have been distributed since January 2016, and it is complemented with specific national information. Information is generally both provided orally and in writing.

Right to legal counselling on the Dublin procedure

The Royal Decree of 18 December 2003 establishing the conditions for second line legal assistance and legal aid fully or partially free of charge – Royal Decree on Legal Aid does not provide specific provisions on legal assistance provided by lawyer for the Dublin procedure. Thus, the general rules for legal assistance apply as provided by the Judicial Code and the Royal Decree on Legal Aid for access to a “pro-deo” lawyer. However, since assistance by a lawyer is not foreseen by law during the Dublin interview, the general category of administrative procedures will not be applied by the commission for legal assistance. During the Dublin procedure “legal representation” is possible through a written intervention by the lawyer.

Personal interview for determining the Member State responsible

The Dublin procedure in Belgium is not part of the formal admissibility procedure. It is a preliminary procedure to decide whether the file must be transferred to CGRS.

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After the application has been lodged, the Immigration Office will hear the applicant. If there are indications that Belgium is not the Member State responsible, a questionnaire will be completed with the applicant in order to gather all relevant information to start a Dublin investigation. The applicant also has the opportunity to explain why a transfer to the Member State that may be responsible would not be appropriate. The applicant must attend when convened for the interview.

The Immigration Office uses the standard form to draft a written summary of the interview and no audio or audio-visual records are taken. A copy of the summary can be obtained at any stage of the procedure through the service ‘Publicity of administration’ of the Immigration Office, in the same way as for all administrative cases. The service has a 30-day deadline to reply.

The interview is conducted by an officer from the International Protection Department of the Immigration Office.

If requested by the applicant during registering/lodging the application, an interpreter will be present during the interview. However, the presence of a lawyer is not foreseen during the interview.

Notification of the transfer decision

The Immigration Office takes the decision on responsibility.

If another Member State is responsible to take back or take charge of the applicant, a transfer decision will be taken. This decision is individually motivated and is notified to the applicant.

If afterwards Belgium would become responsible, the application will be further processed in Belgium and the file will be transferred to the determining authority (CGRS).

Since the beginning of 2020 Belgium is obliged, due to rulings of the Council of Alien Law Litigation (CALL), to take an individually motivated decision with the possibility of to extend the transfer time limit in cases where the applicant have absconded.

Remedies

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Competent authority/court	When Belgium is not responsible, the Immigration Office takes a transfer decision, which can be appealed before the Council for Alien Law Litigation (CALL)
Deadline for review/appeal	Within 30 days (Aliens Law, Article 39/57) Extreme urgency procedure: 10 days when the applicant is in detention based on Aliens Law, Article 74/8 and 74/9 or is made available to the government. 5 days when the applicant is in detention on the basis of Aliens Law, Article 74/8 and 74/9, or is made available to the government, and from a second decision on refoulement or return.
Deadline for decision on the review/appeal	3 months (Aliens Law, Articles 39/81 and 39/76). In the urgency procedure: within 48 hours of receiving the appeal, and exceptionally within 72 hours. The time limit to decide is extended to 5 days if the actual transfer is scheduled for a date exceeding 8 days (Aliens Law, Article 39/82).
Suspensive effect of the review/appeal	The appeal against the transfer decision is a non-suspensive annulment procedure. However, a request for suspensive effect can be introduced simultaneously with the appeal. The CALL has 30 days to decide on the suspensive effect. An appeal can be introduced under the extreme urgency procedure before the CALL within 10 calendar days in case of imminent enforcement (5 calendar days in case of imminent enforcement of a subsequent return decision). This appeal is suspensive until a judgment is issued. The CALL needs to decide within 48 hours, when there is less than 8 days to expulsion, or within 5 days, when there are more than 8 days to expulsion.

Transfer arrangements

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Outgoing transfers are organised by the (Voluntary) Return Unit of the Immigration Office and the Police, while incoming transfers are arranged by the Dublin Unit of the Immigration Office and the Police.

If the authorities consider that there is a significant risk of absconding, and where no other less coercive measures can be effectively applied, the applicant may be detained for the purposes of effectively carrying out the transfer to the member state responsible. Such detention must not exceed six weeks.

According to the ECRE AIDA Report on Belgium – 2024 update, the average time between the acceptance of the Dublin request and the execution of the transfer is 79 calendar days in 2024. It is to be noted however that the Immigration Office has no official statistics relating to applicants returning or going to the responsible Member State without the intervention of the competent authorities or on Dublin transfer decisions that are not executed in practice.

Belgium becomes responsible for the asylum application after 6 months, when there are no indications that the applicant has absconded. The Immigration Office investigates this fact regularly during this period, for example checking if the applicant has left the reception centre without informing the office of a new address. The transfer time limit can be extended in the following cases (Aliens Law, Article 51/5/1 (4):

- The person has not gone to the reception structure assigned or have left the assigned reception structure and have not informed the Immigration Office in writing of the address of effective residence in Belgium within three working days. In this case, Fedasil will notify the Immigration Office.
- On the basis of one or more residence checks, it is established that the person does not reside at the address of effective residence which was communicated to the Immigration Office.
- The person has not presented themselves at the interviews scheduled for the ICAM programme within the framework of a transfer procedure and has not given a valid reason in writing within three working days.
- The person did not cooperate with the transfer.
- The person failed to comply with the imposed less coercive measure of detention.
- The person has left the place of detention without the required authorisation and did not communicate in writing to the Immigration Office an address of effective residence in Belgium within three working days.

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Once the maximum time limit under the Dublin III Regulation for executing the transfer has passed, Belgium's responsibility for examining the asylum application is accepted when the persons concerned present themselves to the Immigration Office again.

Guarantees for minors in the Dublin procedure

The assessment of the best interests of the child is always individualised, based on Article 6(1), (3) of the Dublin III Regulation.

When family members, siblings, relatives are present in another Member State or in other Member States, several factors are considered in an individualised manner to establish the best interest of the child and to determine the responsible Member State. In line with the CJEU judgement of 6 June 2013 in case C-648/11, Belgium takes responsibility of the application of an unaccompanied child within its territory when there are no legally present family members, siblings, relatives in another Member State.

An unaccompanied child who becomes adult during the Dublin procedure continues to be treated as a minor within the Dublin procedure. However, the person will be treated as an adult during the examination procedure.

Legal guardian: The guardian appointed for the international protection procedure – and the Dublin procedure is part of this. The guardian needs to be present at the Dublin interview and the guardian is involved in the assessment of the best interests of the child.

Detection of potential family reunification cases: The Belgian migration authorities rely on other actors in the process of family tracing. There is no specific family tracing mechanism in the Dubin context.

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