



### **AD HOC QUERY ON 2021.66 Migrants subject to Dublin transfers**

**Requested by EMN NCP Estonia on 22 October 2021**

**Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Spain, Sweden (22 in Total)**

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## **1. Background information**

In June 2021, the Supreme Court of Estonia ruled that a TCN must be treated as an applicant for international protection in Estonia in case he or she has not submitted an asylum application in Estonia and is subject to Dublin transfer to another Member State where his or her application for international protection is pending.

Taking into account the decision by the Supreme Court of Estonia, the Ministry of the Interior would like to know what is the practice in other MSs regarding TCNs who have applied for asylum in the first MS, but have not submitted an application in your MS and are subject to Dublin transfer.

## **2. Questions**

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- 1. What is the legal status of a person who is subject to the Dublin procedure, but who has not made a new application in your MS? (e.g asylum applicant, irregular migrant)**
- 2. In case detention is used for persons subject to the Dublin procedure are the detention grounds: a) same as for asylum seekers; b) same as for irregular migrants; c) the Dublin regulation detention grounds will apply directly to them.**
- 3. Is there a difference in the legal basis for a detention ground if the final negative decision has been taken in the responsible MS or when the asylum procedure is still ongoing in the responsible MS?**
- 4. Do you accommodate persons subject to transfer under Dublin procedure in the same reception Center as applicants for international protection in your MS?**
- 5. Do you provide them the same material reception conditions as for applicants for international protection?**
- 6. Do you apply certain obligations aimed at avoiding the risk of absconding of persons subject to Dublin transfers?**

We would very much appreciate your responses by **19 November 2021**.

### **3. Responses**


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<sup>1</sup> If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

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		Wider Dissemination <sup>2</sup>	
	EMN NCP Austria	Yes	<p>1. In the absence of an application for asylum in Austria and any other residence title, this person is considered to be an irregular staying persons, so that removal from the country is to be ordered (Art. 61 para 1 subpara 2 Aliens Police Act 2005).</p> <p>2. c) Pursuant to Art. 76 para 2 subpara 3 Aliens Police Act 2005, detention pending removal may be ordered in Austria in the context of Dublin proceedings, provided that the requirements of Art. 28 para 1 and 2 Dublin Regulation are met.</p> <p>3. Such a distinction cannot be inferred from the law.</p> <p>4. Yes, see answer to Q5.</p> <p>5. Yes, when conducting consultations pursuant to the Dublin Regulation, foreigners may be accommodated in and cared for by reception centres of the province concerned in agreement with the competent authority of the province concerned (Art. 2 para 1 Federal Basic Care Act 2005).</p> <p>6. According to Art. 76 para 1 Aliens Police Act 2005, detention pending removal may only be imposed in Austria if the purpose of detention pending removal cannot be achieved by more lenient measures. More lenient measures are in particular the order to take up accommodation in premises specified by the Federal Office for Immigration and Asylum, to report at periodic intervals to a police station of the provincial police directorate or to deposit an adequate financial guarantee with the Federal Office for</p>

<sup>2</sup> A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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			Immigration and Asylum (Art. 77 para 3 Aliens Police Act 2005). These regulations apply to all cases of detention pending removal and not only to Dublin transfers.
	EMN NCP Belgium	Yes	<p>1. In the absence of an application for international protection in Belgium or any residence title, this person is considered to be an irregular staying migrant.</p> <p>2. Article 28(2) of the Dublin Convention applies: When there is a significant risk of absconding, Member States may detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.</p> <p>3. No</p> <p>4. No. Generally speaking only applicants for international protection can stay in reception centers. So persons subject to transfer under Dublin procedure who haven't applied for international protection in Belgium are not entitled to reception.</p> <p>5. No, persons subject to transfer under Dublin procedure who haven't applied for international protection are not entitled to reception.</p> <p>6. Yes, in Belgium it's possible to detain a person who is subject to the Dublin procedure if there is a rebuttable presumption of a risk of absconding. Up to now no alternatives to detention are applied.</p>
	EMN NCP Bulgaria	Yes	<p>1. Third-country nationals subject to the Dublin procedure, who at the time of transfer to the Republic of Bulgaria are with final decisions for refusal of international protection, fall under the provisions of the Law on Foreigners in the Republic of Bulgaria. For third-country nationals who at the time of</p>


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			<p>transfer are not with final decisions for refusal of international protection, the procedures for granting international protection continue to be carried out by the State Agency for Refugees with the Council of Ministers.</p> <p>When establishing that a foreigner is illegally staying in Bulgaria and there are indications that he/she has applied for international protection in another EU Member State, proceedings may be initiated under the Dublin Regulation. In this case, foreigners have the right to remain in the country until the end of the proceedings under the Dublin Regulation, and the right of an interpreter during the proceedings. Foreigners illegally staying in Bulgaria are accommodated in special homes for temporary accommodation of foreigners (detention centres). This procedure also applies for third-country nationals who are in proceedings under the Dublin Regulation and have not applied for international protection. Third-country nationals may stay in the special homes for temporary accommodation of foreigners during the proceeding until they are transferred to the competent Member State.</p> <p>In our practice, this case is extremely rare, as the established illegally staying foreigners in Bulgaria almost always apply for international protection.</p> <p>2. According to Article 45b, Paragraph 1, Point 4 of the Law on Asylum and Refugees and in accordance with Article 28 of the Dublin Regulation, an applicant for international protection may be accommodated in a closed-type centre temporarily and in the shortest possible time limit. The measure is applied when it is necessary to find out which country is responsible for examining the application for international protection and to transfer the foreigner to that competent country. There must be serious concerns that the foreigner will abscond for this provision to be applied.</p> <p>3. Third-country nationals are accommodated in detention centres on the basis of final decisions for refusing international protection, regulated by the Law on Foreigners in the Republic of Bulgaria. There is no legal ground for detention when third-countries nationals' procedure for granting protection is ongoing.</p>
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			<p>4. Third-country nationals subject to transfer under the Dublin Regulation who are in a procedure for receiving protection are accommodated in the registration and reception centres at the State Agency for Refugees with the Council of Ministers.</p> <p>5. Yes In the case of Article 67a, Paragraph 2, Item 2 of the Law on Asylum and Refugees, foreigners have the right of issuing a registration card and the right of providing translator/interpreter. With regard to the other rights and obligations of foreigners, the provisions of the Law on Foreigners in the Republic of Bulgaria are applied, and the competent authority for their implementation is the Migration Directorate within the Ministry of Interior.</p> <p>6. Please see the answer of question 2.</p>
	<p>EMN NCP Croatia</p>	<p>Yes</p>	<p>1. A person who has not made a new application in Croatia (irregular migrant whose fingerprints are taken in accordance with article 8 of Council Regulation 2725/2000) is treated under the provisions of the Foreigners Act. If the person is a foreigner under transfer (a third-country national or a stateless person who is in the process of handover to the responsible Member State of the European Economic Area for consideration of his/her application) to the responsible Member State, he will be treated under the provisions of national Act on International and Temporary Protection.</p> <p>2. If the person applied for international protection, the Dublin Regulation will apply directly to them. If the person did not apply for international protection, the detention is subjected to the grounds proscribed by the Foreigners Act, as well as Dublin Regulation and national Act on International and Temporary protection (articles 54(1) and 54(3)) detention grounds in cases when the person is in the status of a foreigner under transfer to a responsible Member State.</p> <p>3. The legal basis is the same in both cases.</p>



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			<p>4. Yes, both categories of persons are accommodated in the same Reception facilities. However, if the person did not apply for international protection in Croatia, he will not be accommodated in the Reception Center for applicants for international protection (in that case, the person is considered an irregular migrant).</p> <p>5. The person under transfer to the responsible Member State has the same rights and obligations as an applicant for international protection (article 52(5) of the Act on International and Temporary protection).</p> <p>6. Depending on the risk assessment, a person might be subject to detention according to article 28(2) of Regulation 604/2013. Less coercive measures that are taken into account before this measure are proscribed by the national Act on International and Temporary Protection, which stipulate that the movements of a foreigner under transfer may be restricted only in order to ensure the enforcement of handover to another Member State of the European Economic Area if it is assessed that risk of flight exists (article 54(3)).</p>
	<p>EMN NCP Cyprus</p>	<p>Yes</p>	<p>1. We send Dublin requests when a person applied for International Protection. So the person is legally residing in Cyprus as an asylum applicant.</p> <p>2. Same as for asylum seekers</p> <p>3. <b>No</b></p> <p>4. <b>Yes</b></p> <p>5. <b>Yes</b></p> <p>6. <b>N/A</b></p>

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	<p>EMN NCP Czech Republic</p>	<p>Yes</p>	<ol style="list-style-type: none"> <li>1. In the Czech Republic, based on a legal framework, the person who has not made an application for international protection in CZ but is subject to the Dublin procedure has a status of irregular migrant/foreigner.</li> <li>2. In case of detention, the detention grounds according to Dublin regulation are applied (i.e. letter c).</li> <li>3. There is no difference in the legal basis for a detention ground.</li> <li>4. If the person who is subject to Dublin procedure/transfer, has not asked for international protection and detention was used, this person is placed in a detention centre. Only in rare cases applicants who are subject to Dublin transfer are detained in detention centres based on legal grounds. Applicants who are also subject to Dublin transfer are usually accommodated in a reception centre.</li> <li>5. Yes, migrants under Dublin procedure are provided with almost the same material reception conditions – there are only two differences: they are not allowed to be given pocket money/financial contribution and only necessary and emergency health care is provided.</li> <li>6. Competent authority fully considers whether detention or other alternatives to detention can be applied, also risk of absconding is always examined. If a competent authority concludes that there is a risk of absconding and grounds for alternatives are not fulfilled, it is decided to use detention for a person.</li> </ol>
	<p>EMN NCP Estonia</p>	<p>Yes</p>	<ol style="list-style-type: none"> <li>1. A third-country national who has applied for international protection in another Member State, is considered as irregular migrant if he/she is apprehended in Estonia and he/she has not made an application for international protection in Estonia. The person is required to go to the Member State in which his/her application for international protection is examined. If the person poses risk for absconding, he/she may be detained on the basis of Article 28 of the Dublin Regulation.</li> </ol>




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			<p>2. In such cases the Article 28 of the Dublin regulation is applied directly along with the criteria for absconding stipulated in the Obligation to Leave and Prohibition on Entry Act.</p> <p>3. No, the person subject to Dublin procedure is detained based on Article 28 of the Dublin regulation, regardless of whether his/her application in the first Member State is pending or a final decision has been taken.</p> <p>4. No, if the person has not applied international protection in Estonia, he/she is considered as irregular migrant and he/she has no right to access reception conditions for asylum seekers. The person is accommodated in the reception center if he/she makes a new application in Estonia.</p> <p>5. No. If the person has not applied international protection in Estonia, he/she is considered as irregular migrant and he/she has no right to access reception conditions for asylum seekers. Minimum safeguards (e.g emergency health care, emergency social assistance) are provided to all irregular migrants under national law.</p> <p>6. In most cases, detention under Dublin regulation is applied with the permission of the court. In cases where the person is not detained, the surveillance measures (submission of documents or the obligation to stay at a certain place) are applied to avoid absconding and secondary movements.</p>
	<p>EMN NCP Finland</p>	<p>Yes</p>	<p>1. In case the person has not applied for asylum in Finland, he/she is not considered as an asylum seeker. Legal residence is defined by law (Aliens Act 40§) and if those conditions are not met, the person is staying illegally. A person referred to in Article 24 of Dublin Regulation is considered to be staying illegally in Finland.</p> <p>2. The detention grounds are the same in all cases, regardless of the nature of the situation. The grounds are laid down in Section 121 of the Finnish Aliens Act.</p>

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			<p>3. No. The detention grounds are the same in all cases, regardless of the nature of the situation. The grounds are laid down in Section 121 of the Finnish Aliens Act.</p> <p>4. Yes. Every person, who has applied for asylum, will be accommodated in a reception center. All applicants are treated equally and we do not have special reception centers for persons that have both applied for asylum and are subject to the Dublin procedure. If they have not applied for asylum, they will not be accommodated in a reception center.</p> <p>5. Yes, if they have applied for asylum and are accommodated in a reception center. All applicants are treated equally.</p> <p>6. Chapter 7 of the Finnish Aliens Act lists the precautionary measures that can be used to prevent the absconding of persons. These measures, too, are the same regardless of the nature of the situation. If the other measures referred to in the Chapter are not sufficient, detention may be used.</p>
	<p>EMN NCP France</p>	<p>Yes</p>	<p>1. If the fingerprints of the foreign national were not taken when an asylum application was lodged, but when they were apprehended for irregular stay on French territory, the third-country national who has already lodged an asylum application in another European country is considered to be in an irregular situation. They will then be transferred to the European country responsible for their asylum application.</p> <p>2. The grounds for detention of the Dublin Regulation apply directly to these foreign nationals. The Dublin III Regulation authorizes by its Article 28, paragraph 2, a use of detention for third-country nationals under the Dublin procedure, but only in order to guarantee transfer procedures in accordance with the Regulation if there is a "non-negligible risk of absconding" of the foreign national. This possibility was transposed into national law with Law No. 2018-187 of March 20, 2018, allowing for the proper application of the European asylum system. It allows for detention from the beginning of the phase of determining the Member State responsible for examining the asylum application, before any transfer decision. The law thus completes article L.751-9 of the French code for the entry and</p>


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			<p>residence of foreign nationals and right of asylum (CESEDA) by adding the following paragraph: "the foreign national may only be placed or kept in detention under 1° bis of I of article L. 751-2 for the time strictly necessary to determine the State responsible for examining his asylum application and, where applicable, to execute a transfer decision". House arrest is also provided for in this article L.751-2 of the CESEDA.</p> <p>3. No, the third-country national subject to the Dublin procedure is detained on the basis of Article 28 of the Dublin Regulation, regardless of whether his application in the Member State responsible is pending or a final decision has been taken. However, if it appears that the asylum application has been rejected by the Member State deemed to be responsible, or if the person concerned explicitly renounces maintaining this application, which is then closed by the Member State responsible, the Prefecture will then issue an removal order (OQTF, obligation de quitter le territoire français) to the country of origin, and the transfer to the third country will be carried out by France after an assisted return has been offered.</p> <p>4. No. When there is "significant risk of absconding", third-country nationals subjected to a Dublin procedure while not filing an asylum application, can be placed under house arrest or in detention, while the transfer or removal decision is being executed. If this risk is proven, the foreigner in the Dublin procedure is then placed in a detention center or under house arrest. However, if the foreign national in the Dublin procedure has filed an asylum application in France and the examination of the asylum application falls under the jurisdiction of another Member State, the accommodation facilities for asylum seekers will receive the asylum seekers until they are transferred. (Article L573-4 of the CESEDA). Similarly, payment of the asylum seeker's allowance ends on the date of transfer (Article L 573-5 of the CESEDA. Regarding accommodation, they can benefit from an emergency accommodation for asylum seekers (HUDA - Hébergement d'Urgence pour Demandeurs d'Asile), a regional programme of support and accommodation for asylum seekers (PRADHA - Programme régional d'Accueil et d'Hébergement des Demandeurs d'Asile) or a temporary reception asylum service (ATSA - Accueil Temporaire Service de l'Asile). A house arrest can be decided in these centres. However, they are excluded from the national scheme of reception centres for asylum seekers (CADA - centres d'accueil pour demandeurs d'asile). Such reception conditions are offered until the transfer is carried out to the responsible Member State. However, if asylum seekers abscond, particularly when they were</p>
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			<p>placed under house arrest, they can no longer benefit from the asylum seeker's allowance nor from the accommodation.</p> <p>5. If the foreign national in the Dublin procedure has not filed an asylum application in France and has been apprehended in an irregular situation, they not have the material reception conditions that foreign nationals seeking international protection benefit from.</p> <p>6. Yes, in compliance with the Dublin III Regulation transposed in Law No. 2018-187 of March 20, 2018 allowing for the proper application of the European asylum system [see Q.2].</p>
	EMN NCP Germany	Yes	<p>1. A person who has not made a new application for international protection after he/she entered Germany is considered an irregular migrant.</p> <p>2. The detention grounds mentioned in Article 28 of the Dublin regulation will apply directly to them. These grounds have priority over the national laws regarding deportation detention. The criteria for suggesting a risk of absconding are listed in the national law and are applied in connection with the European law. Furthermore, if detention is used before the launch of the Dublin procedure, the detention ground of the risk of absconding mentioned in the national law could also apply to these persons.</p> <p>3. NO. There is no difference in the legal basis for a detention ground in regards to the status of the asylum procedure in Germany.</p> <p>4. YES. After they have been identified by police or a local foreigners authority, the persons will be in the first step referred to a local foreigners authority or, if they have been at one already, directly referred to a reception center. Afterwards, they will be referred to the responsible reception center. They are accommodated in the same reception centers as applicants for international protection.</p>


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			<p>5. YES. We provide them the same material reception conditions as for applicants for international protection according to the German Asylum Seekers Benefits Act.</p> <p>6. In order to avoid the risk of absconding, Art. 28 of the Dublin regulation is applied restrained in practice. Nevertheless, sometimes the date of the transfer remains unknown to the person subject to a Dublin transfer in order to have a higher chance to encounter the person.</p>
	EMN NCP Hungary	Yes	<p>1. Person subject to Dublin procedure.</p> <p>2. The applicable detention ground may differ according to whether or not the person concerned is an asylum seeker in Hungary.</p> <p>3. No.</p> <p>4. In cases when the person concerned is an applicant for international protection and becomes subject to transfer under Dublin procedure, his/her accommodation is not necessarily changed and his/her accommodation can remain the same reception Centre as applicants for international protection.</p> <p>5. Yes.</p> <p>6. Yes, detention can be applied to avoid the risk of absconding.</p>
	EMN NCP Italy	Yes	<p>1. A person who is staying illegally in Italy but has lodged an application for international protection in another MS/other MS is not considered as an asylum seeker and does not have the same rights as an asylum seeker.</p>


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			<p>2. Asylum seekers are not subject to detention, unless they lodge an application for international protection while detained; the Dublin regulation detention grounds directly apply to the person who is detained.</p> <p>3. no</p> <p>4. YES</p> <p>5. YES</p> <p>6. The person has to remain available even if he is not staying in a reception center but in an accommodation chosen by himself, and inform the Authorities about his/her address and, if possible, even the phone number, in order to give the Authorities the possibility to reach the person when needed by sending him/her an invitation to the local police station.</p>
	<p>EMN NCP Latvia</p>	<p>Yes</p>	<p>1. A person who is subject to the Dublin procedure, but who has not made a new application in Latvia, is considered an irregular migrant.</p> <p>2. In case detention is used for persons, who are subjected to the Dublin procedure, but who have not made a new application in Latvia, the detention grounds are same as for irregular migrants and the Dublin regulation detention grounds in such cases are not applied directly.</p> <p>3. No, there is no difference in legal bases for a detention ground depending on whether the application in the responsible Member State is pending or a final decision has been taken.</p> <p>4. Persons who are subjected to Dublin procedure usually remain in the same reception Center as applicants for international protection unless they have been detained and placed into Detention center where they do not access to similar reception conditions and rights as applicants for national protection.</p>


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			<p>5. No, if the person has not applied for international protection in Latvia and is considered as irregular migrant, he/she has no right to access same reception conditions as asylum seekers. Nevertheless, minimum safeguards such as emergency health care, emergency social assistance etc. are provided to all irregular migrants in case of necessity.</p> <p>6. In case the person is not detained, certain surveillance measures are applied to avoid the risk of absconding. Such measures are, for example, submission of travel documents, obligation to stay at a certain place and obligation to inform about every new address of residence).</p>
	<p>EMN NCP Lithuania</p>	<p>Yes</p>	<p>1. The Law on the Legal Status of Aliens defines an asylum seeker as a foreigner who has submitted an application for asylum in accordance with the procedure specified by the law. When a third-country national enters Lithuania irregularly and does not submit an asylum application, his/her legal status is that of an irregular immigrant. If it comes up during the EURODAC check that the TCN has submitted an asylum application in another Member State, then it may be possible to request via DubliNet. However, in the absence of his/her asylum application in Lithuania, the foreigner retains the legal status of an irregular migrant. If the responsible member state agrees via the DubliNet to take over the TCN then the TCN can be transferred to that state; otherwise, the TCN's return/expulsion is initiated.</p> <p>2. Same as for irregular migrants</p> <p>3. No, there is no difference</p> <p>4. Foreigners who are present irregularly are detained by court ruling and accommodated in the Foreigner Registration Center of the State Border Guard Service. The Center accommodates both the irregular migrants, and the asylum seekers who have been detained, and the asylum seekers who have not been detained or are subject to measures alternative to detention. Thus, the the reception center is the same, although are placed in different buildings depending on the status.</p> <p>5. No.</p>

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			<p>6. Foreigners whose presence in Lithuania is irregular are either detained at the Foreigner Registration Center of the SBGS or assigned an alternative to detention by a court ruling.</p>
	<p>EMN NCP Luxembourg</p>	<p>Yes</p>	<p>1. A person staying in Luxembourg without a valid residence document and without lodging a new application for international protection is considered a third-country national residing illegally in the country. If the person's Eurodac results provide evidence of a previous application in another MS, a take back request will be sent. If the person is subject to a Dublin transfer to another Member State where his or her application for international protection is pending, the person is still not considered an asylum applicant in Luxembourg.</p> <p>2. In case of detention for a person who has not lodged an application for international protection but is subject to a Dublin transfer, the detention grounds are the same as for irregular migrants, established in article 120 of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law).</p> <p>3. No.</p> <p>4. No. A person who has not lodged an application for international protection but is subject to a Dublin transfer is not accommodated in a reception center/accommodation structure for asylum applicants. If a Dublin transfer is intended, the person will be held in the detention center during the organization of the transfer.</p> <p>As for applicants for international protection subject to a Dublin transfer, single men are accommodated in the SHUK (Emergency accommodation structure in Kirchberg), which serves as a semi-open return facility. Families with children, single women and vulnerable individuals are accommodated in the Reception Centers for applicants for international protection.</p>



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			<p>5. No.</p> <p>6. Within the home custody in the SHUK, a system is in place whereby the person is obligated to check themselves in and out in order to enter and leave the facility because the person is free to leave the facility during the day as it is a semi-open facility. In the event of failure to comply with the obligations imposed by the Minister or in the event of a risk of absconding, the measure of home custody in the SHUK shall be revoked and the placement in detention is ordered.</p>
	EMN NCP Malta	Yes	<p>1. We never had a case of someone who was subject to a Dublin transfer without having first filed an application for international protection in Malta.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p> <p>5. N/A</p> <p>6. N/A</p>
	EMN NCP Netherlands	Yes	<p>1. If a person is subject to the Dublin procedure but has not applied for international protection in the Netherlands, he or she does not have a legal right to stay in the Netherlands. This is the case even if the person has previously applied for international protection in another Member State.[1] NB: If a person is subject to the Dublin procedure and has applied for international protection in the Netherlands (but his or her asylum application will not be examined in the Netherlands due to his/her Dublin status), the third-country national has a legal right to stay in the Netherlands until the Dublin transfer takes place. If the person absconds before the transfer, this right to stay ceases to apply. If</p>

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			<p>the same person subsequently returns voluntarily or is encountered by the police, the legal right to stay will not be 'revived'.[2]</p> <p>[1] This information was provided by the IND (Strategy and Implementation Advice Directorate) on 10 November 2021; This specific category of third-country nationals subject to the Dublin procedure is explicitly mentioned in Article 24 of the Dublin Regulation (Regulation (EU) Nr. 604/2013 of the European Parliament and of the Council of 26 June 2013).</p> <p>[2] This information was provided by the IND (Strategy and Implementation Advice Directorate) on 10 November 2021.</p> <p>2. Detention (so-called 'vreemdelingenbewaring') can be applied to asylum seekers, irregular migrants and persons subject to the Dublin procedure (whether they have applied for international protection in the Netherlands or not). Persons who are subject to the Dublin procedure have their own legal basis for detention, under Art. 59(a) of the Alien Act (Vw) 2000 and Art. 28 of the Dublin Regulation. This applies to both persons subject to the Dublin procedure who have applied for asylum in the Netherlands, and those who have not applied for asylum in the Netherlands. Detention of persons subject to the Dublin procedure is possible if there is a significant risk of them absconding.[1]</p> <p>[1] Note that Dutch national law provides further details on when this is the case; this information was provided by the IND (Strategy and Implementation Advice Directorate) on 10 November 2021.</p> <p>3. No, the legal basis for the detention of persons subject to the Dublin procedure is the same in case a final negative decision has been taken in the responsible Member State as in case the asylum procedure is still ongoing.[1]</p> <p>[1] Art. 59(a) of the Aliens Act (Vw) 2000.</p> <p>4. As mentioned in question 1 and 2, reception centers are generally meant for persons who have a legal right to stay in the Netherlands (on the basis of the Alien Act (Vw) 2000). This is the case either when they have applied for asylum in the Netherlands, or when their asylum application has been</p>
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			<p>halted due to their Dublin status and they are awaiting their transfer to the responsible Member State (see question 1).</p> <p>Accordingly, a person falling under the Dublin Regulation who has applied for asylum in the Netherlands can be placed in the same reception center as an applicant for international protection (i.e. an asylum seeker).</p> <p>A person subject to the Dublin Regulation who has not applied for asylum in the Netherlands has no legal right to stay and therefore no right to accommodation in a reception center.[1]</p> <p>In reference to question 2, under certain circumstances persons falling under the Dublin Regulation may also be detained prior to transfer. This may also be applied to persons falling under the Dublin procedure who have not applied for asylum in the Netherlands. However, note that detention is not a form of accommodation, but rather a measure that can be applied to ensure that the Dublin transfer may take place. See also question 6 for further information.[2]</p> <p>[1] This information was provided by the IND (Strategy and Implementation Advice Directorate) on 10 November 2021.</p> <p>[2] This information was provided by the IND (Strategy and Implementation Advice Directorate) on 10 November 2021.</p> <p>5. No, see question 4.</p> <p>6. As mentioned in question 2 and 4, it is possible to place persons subject to the Dublin procedure in detention. This measure is intended to avoid the risk of absconding of such individuals and to ensure that the Dublin transfer is possible.</p> <p>Besides detention, other measures may be applied to avoid the risk of absconding of persons subject to a Dublin transfer. For example, freedom restricting measures can be applied according to, or ex., Art. 56 of the Aliens Act (Vw) 2000. In addition, reporting obligations may be imposed on persons subject to a Dublin transfer.</p> <p>In practice, if a person subject to the Dublin procedure who has not applied for international protection in the Netherlands is encountered (e.g. by the police), he or she will be placed in detention.[1]</p>
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			[1] This information was provided by the IND (Strategy and Implementation Advice Directorate) on 10 November 2021.
	EMN NCP Poland	Yes	<p>1. The foreigner who is subject to Dublin procedure but who has not made an application for international protection is not treated as an applicant in Poland.</p> <p>2. Detention grounds are different for irregular migrant and for applicant for international protection who is subject to Dublin procedure. Dublin regulation detention grounds are applicable in case there is an obvious indicator of the Dublin case i.e. Eurodac hit.</p> <p>3. There is no difference in the legal basis for a detention ground if the final negative decision has been taken in the responsible MS or when the asylum procedure is still ongoing in the responsible MS.</p> <p>4. We accommodate persons subject to transfer under Dublin procedure in the same reception Center as applicants for international protection/irregular migrants depending on their legal status.</p> <p>5. We provide them the same material reception conditions as for applicants for international protection/irregular migrants depending on their legal status.</p> <p>6. We apply art. 28 of the Dublin III Regulation with the aim to avoid the risk of absconding of persons subject to Dublin transfers. Instead of detention the Polish Border Guard can apply other methods like obligation to stay in designated place, obligation to appear in the Border Guard's post in designated periods of time, a bail or depriving a travel document. All above mentioned methods are used in case of the foreigners who stay outside of the guarded refugee centre. The Dublin transfers are carried out using convoy in cases when the foreigner is against the transfer to avoid the risk of absconding.</p>



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	<p>EMN NCP Portugal</p>	<p>Yes</p>	<ol style="list-style-type: none"> <li>1. Irregular migrant</li> <li>2. b) same as for irregular migrants</li> <li>3. No.</li> <li>4. No.</li> <li>5. No</li> <li>6. When there are reasons to believe that there are risks of absconding, persons subject to Dublin transfers can be detained in a Temporary Detention Facility, days before the date of the transfer, and under a Court order.</li> </ol>
	<p>EMN NCP Slovakia</p>	<p>Yes</p>	<ol style="list-style-type: none"> <li>1. A person who is subject to Dublin procedure but did not submit a new application for asylum in the Slovak Republic is considered to be an irregular migrant.</li> <li>2. Detention of these persons is carried out based on the relevant provisions of the Act on Residence of Foreigners which are in line with the Article 28 of Dublin Regulation.</li> <li>3. No.</li> <li>4. Based on the valid legislation and special regulations persons who submitted their application for asylum in the Slovak Republic and will be subject to transfer based on Dublin Regulation can be accommodated in the same facility as persons who did not submit their application for asylum in the Slovak Republic (Police Detention Facilities), this is however not valid vice versa.</li> <li>5. Yes, in case they are accommodated in Police Detention Facility they have the same material conditions.</li> </ol>

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			<p>6. If there is a serious risk of absconding it is possible to detain the person subject to Dublin transfer. They are however detained only in cases when to fulfil the purpose of detention it is not possible to use other less serious means (alternatives to detention).</p>
	EMN NCP Spain	Yes	<ol style="list-style-type: none"> <li>1. Irregular migrant</li> <li>2. c)</li> <li>3. NO</li> <li>4. NO</li> <li>5. NO</li> <li>6. NO</li> </ol>
	EMN NCP Sweden	Yes	<ol style="list-style-type: none"> <li>1. That person would be considered as an irregular migrant.</li> <li>2. The detention grounds in the Dublin regulation will apply directly to someone who is subject to the Dublin procedure.</li> <li>3. No, there is no difference.</li> <li>4. If the person applies for asylum in Sweden, there is no difference between persons in the Dublin procedure/other asylum procedures when it comes to the reception conditions. If the person is not applying for asylum there is no right to accommodation.</li> </ol>

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			<p>5. Yes, if they apply for asylum, if not they are not entitled to the rights that an asylum applicant has.</p> <p>6. There are no certain obligations applied.</p>
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