

**QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION  
OF THE DIRECTIVE :**

**TEMPORARY PROTECTION OF 20 JULY 2001**

**IN**

**AUSTRIA**

By

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13 June 2007**

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<b>FIRST PART</b>
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**1. NORMS OF TRANSPOSITION AND JURISPRUDENCE**

**Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature**

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: *legislative* refers to a norm adopted in principle by the Parliament; *regulation* refers to a norm complementing the law and adopted in principle by the executive power; *circular or instructions* refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

*When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

Table 1

<b>This table is about:</b> <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
<b>TITLE:</b> Federal Law on the Settlement and Residence in Austria - Settlement and Residence Act – Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich (Niederlassungs- und Aufenthaltsgesetz - NAG)
<b>DATE:</b> 16.8. 2005
<b>NUMBER:</b>
<b>DATE OF ENTRY INTO FORCE:</b> 1.1. 2006
<b>PROVISIONS CONCERNED :</b> Art. 76 Art. 76 Settlement and Residence Act contains the possibility that in times of armed conflict or other circumstances threatening the safety of entire population groups, the Federal Government, in agreement with the Executive Committee of the National Council, may by government order grant temporary right of residence in the federal territory to directly affected groups of aliens who can find no protection elsewhere (displaced persons). <b>(for example if the norm also pursues other objectives than the transposition of the directive)</b>
<b>REFERENCES OF PUBLICATION</b> <b>IN THE OFFICIAL JOURNAL:</b> Federal Law Gazette I 100/2005; amended by I 157/2005, I 31/2006 and I 99/2006
<b>LEGAL NATURE</b> (please tick the correct box): <input checked="" type="checkbox"/> <b>LEGISLATIVE</b> <input type="checkbox"/> <b>REGULATION</b> <input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b>

Table 2

<b>This table is about:</b> <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
<b>TITLE:</b> Federal Law on the Granting of Asylum - Asylum Act, Bundesgesetz über die Gewährung von Asyl (Asylgesetz 2005)
<b>DATE:</b> 16.8. 2005
<b>NUMBER:</b>
<b>DATE OF ENTRY INTO FORCE:</b> 1.1. 2006
<b>PROVISIONS CONCERNED :</b> The Asylum Act applies for all persons applying for international protection, Art. 22 (5) contains a provisions on the suspension of time limits in the asylum procedure during temporary protection regimes apply. Art. 22 (5) states that if the Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, is applicable or if a government order is issued pursuant to article 76 of the Settlement and Residence Act, the computation of the time-limit for procedures in respect of the persons concerned pursuant to the present federal law shall be suspended for the duration of the temporary protection. <b>(for example if the norm also pursues other objectives than the transposition of the concerned directive)</b>
<b>REFERENCES OF PUBLICATION</b> <b>IN THE OFFICIAL JOURNAL:</b> Federal Law Gazette I 100/2005
<b>LEGAL NATURE</b> (please tick the correct box): <input checked="" type="checkbox"/> <b>LEGISLATIVE</b> <input type="checkbox"/> <b>REGULATION</b> <input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b>

Table 3

<p><b>This table is about:</b> <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted</p>
<p><b>TITLE:</b> Agreement between the Federal Government and the Governments of the Federal States</p> <p>Basic Welfare Support Agreement – Art. 15a of the Federal Constitution  Full text: Agreement between the Federal Government and the provincial governments, pursuant to Article 15a of the Federal Constitution, concerning joint measures for the temporary granting of basic welfare support to aliens in need of assistance and protection in Austria (asylum seekers, persons having entitlement to asylum, displaced persons and other persons who may not be deported for legal or practical reasons)</p> <p>Grundversorgungsvereinbarung - Art. 15a B-VG  Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über gemeinsame Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Österreich</p>
<p><b>DATE:</b></p>
<p><b>NUMBER:</b></p>
<p><b>DATE OF ENTRY INTO FORCE:</b> 1.1. 2004</p>
<p><b>PROVISIONS CONCERNED :</b>  All, Art. 2 (1) 3. and Art. 8 contain special provisions relating to large-scale influx situations.  <b>(for example if the norm also pursues other objectives than the transposition of the concerned directive)</b></p>
<p><b>REFERENCES OF PUBLICATION</b>  <b>IN THE OFFICIAL JOURNAL:</b> Federal Law Gazette I 80/2004, date of publication 15.7. 2004</p>
<p><b>LEGAL NATURE</b> (please tick the correct box):</p> <p><input type="checkbox"/> <b>LEGISLATIVE</b></p> <p><input type="checkbox"/> <b>REGULATION</b></p> <p><input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b></p>

Table 4

<p><b>This table is about:</b> <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted</p>
<p><b>TITLE:</b> Federal law concerning the Execution of Aliens Police Operations, the Issue of Documents to Aliens and the Granting of Entry Authorization - 2005 Aliens Police Act Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreisetiteln (Fremdenpolizeigesetz 2005 – FPG)</p>
<p><b>DATE:</b> 16.8. 2005</p>
<p><b>NUMBER:</b></p>
<p><b>DATE OF ENTRY INTO FORCE:</b> 1.1. 2006</p>
<p><b>PROVISIONS CONCERNED :</b> The Aliens Police Act applies to all aliens in Austria with some exceptions and provisions for special categories of aliens.  Art. 31 (1) 2. contains a provision on lawful residence for persons under temporary protection according to Art. 76 Settlement and Residence Act.  <b>(for example if the norm also pursues other objectives than the transposition of the concerned directive)</b></p>
<p><b>REFERENCES OF PUBLICATION</b>  <b>IN THE OFFICIAL JOURNAL:</b> Federal Law Gazette I 100/2005, amended by I 157/2005 and I 99/2006</p>

<b>LEGAL NATURE</b> (please tick the correct box): <input checked="" type="checkbox"/> <b>LEGISLATIVE</b> <input type="checkbox"/> <b>REGULATION</b> <input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b>
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*Table 5*

<b>This table is about:</b> <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
<b>TITLE:</b> Act on the Employment of Aliens - Aliens Employment Act
<b>DATE:</b>
<b>NUMBER:</b>
<b>DATE OF ENTRY INTO FORCE:</b> 23.4. 1975
<b>PROVISIONS CONCERNED :</b> All, Art. 4 (3) 7. especially refers to a government order based on Art. 76 Settlement and Residence Act. <b>(for example if the norm also pursues other objectives than the transposition of the concerned directive)</b>
<b>REFERENCES OF PUBLICATION</b> <b>IN THE OFFICIAL JOURNAL:</b> Federal Law Gazette 218/1975, last amendment Federal Law Gazette I 99/2006
<b>LEGAL NATURE</b> (please tick the correct box): <input checked="" type="checkbox"/> <b>LEGISLATIVE</b> <input type="checkbox"/> <b>REGULATION</b> <input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b>

**Q.1.B.**

**Please list the others norms of transposition according to their hierarchical position in your legal system\_ (first laws, to be followed by regulations; and circulars or instructions):**

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

*When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

*Table 1*

<b>TITLE:</b> Burgenland Basic Welfare Support Act  Gesetz vom 18. Mai 2006 über die vorübergehende Grundversorgung von Asylwerberinnen und Asylwerbern und sonstigen hilfs- und schutzbedürftigen Fremden (Asylwerberinnen und Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) im Burgenland (Burgenländisches Landesbetreuungsgesetz - Bgld. LBetreuG)
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<b>DATE:</b> 18.5. 2006
<b>NUMBER:</b>
<b>DATE OF ENTRY INTO FORCE:</b> 1.9. 2006
<b>PROVISIONS CONCERNED :</b> All, special references to persons under temporary protection are contained in Art. 2, Art. 8 and Art. 12. (for example if the norm also pursues other objectives than the transposition of the directive)
<b>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</b> Burgenland Law Gazette 43/2006, 11.8. 2006
<b>LEGAL NATURE</b> (indicate by ticking the correct box): <input checked="" type="checkbox"/> <b>LEGISLATIVE</b> <input type="checkbox"/> <b>REGULATION</b> <input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b>

*Table 2*

<b>TITLE:</b> Carinthia Basic Welfare Support Act Gesetz vom 4. April 2006 über Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Kärnten (Kärntner Grundversorgungsgesetz – K-GrvG)
<b>DATE:</b> 4.4. 2006
<b>NUMBER:</b>
<b>DATE OF ENTRY INTO FORCE:</b> 5.7. 2006
<b>PROVISIONS CONCERNED :</b> All, special references to persons under temporary protection are contained in Art. 2, Art. 5 and Art. 12. (for example if the norm is not devoted only to the transposition of the concerned directive)
<b>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</b> Carinthian Law Gazette 42/2006, 4.7. 2006
<b>LEGAL NATURE</b> (indicate by ticking the correct box): <input checked="" type="checkbox"/> <b>LEGISLATIVE</b> <input type="checkbox"/> <b>REGULATION</b> <input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b>

*Table 3*

<b>TITLE:</b> Styria Care Act Gesetz vom 5. Juli 2005, mit dem die Landesbetreuung von hilfs- und schutzbedürftigen Fremden geregelt wird (Steiermärkisches Betreuungsgesetz – StBetrG)
<b>DATE:</b> 5.7. 2005
<b>NUMBER:</b>
<b>DATE OF ENTRY INTO FORCE:</b> 19.10. 2005
<b>PROVISIONS CONCERNED :</b> All, special references to persons under temporary protection are contained in Art. 3, Art. 9 and Art. 15. (for example if the norm also pursues other objectives than the transposition of the directive)
<b>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:</b> Styrian Law Gazette 101/2005, 18.10.2005

<p><b>LEGAL NATURE</b> (indicate by ticking the correct box):</p> <p><input checked="" type="checkbox"/> <b>LEGISLATIVE</b></p> <p><input type="checkbox"/> <b>REGULATION</b></p> <p><input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b></p>
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*Table 4*

<p><b>TITLE:</b> Tyrol Basic Welfare Support Act Gesetz vom 15. Dezember 2005, mit dem das Tiroler Grundversorgungsgesetz erlassen wird</p>
<p><b>DATE:</b> 15.12. 2005</p>
<p><b>NUMBER:</b></p>
<p><b>DATE OF ENTRY INTO FORCE:</b> 1.3. 2006</p>
<p><b>PROVISIONS CONCERNED :</b> All, special references to persons under temporary protection are contained in Art. 4, Art. 8 and Art. 22. <b>(for example if the norm also pursues other objectives than the transposition of the directive)</b></p>
<p><b>REFERENCES OF PUBLICATION</b> <b>IN THE OFFICIAL JOURNAL:</b> Tyrolian Law Gazette 21/2006, 14.2. 2006</p>
<p><b>LEGAL NATURE</b> (indicate by ticking the correct box):</p> <p><input checked="" type="checkbox"/> <b>LEGISLATIVE</b></p> <p><input type="checkbox"/> <b>REGULATION</b></p> <p><input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b></p>

*Table 5*

<p><b>TITLE:</b> Vienna Basic Welfare Support Act Gesetz über Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Wien (Wiener Grundversorgungsgesetz – WGVG)</p>
<p><b>DATE:</b></p>
<p><b>NUMBER:</b></p>
<p><b>DATE OF ENTRY INTO FORCE:</b> 1.5. 2004</p>
<p><b>PROVISIONS CONCERNED :</b> All, a special reference to persons under temporary protection is contained in Art.1. <b>(for example if the norm also pursues other objectives than the transposition of the directive)</b></p>
<p><b>REFERENCES OF PUBLICATION</b> <b>IN THE OFFICIAL JOURNAL:</b> Vienna Law Gazette 46/2004, 13.10. 2004</p>
<p><b>LEGAL NATURE</b> (indicate by ticking the correct box):</p> <p><input checked="" type="checkbox"/> <b>LEGISLATIVE</b></p> <p><input type="checkbox"/> <b>REGULATION</b></p> <p><input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b></p>

Table 6

<b>TITLE:</b> Vorarlberg Social Aid Act Gesetz über die Sozialhilfe (Vorarlberger Sozialhilfegesetz)
<b>DATE:</b> 8.1. 1998
<b>NUMBER:</b>
<b>DATE OF ENTRY INTO FORCE:</b> (last modification entered into force on) 8.12. 2006
<b>PROVISIONS CONCERNED :</b> All, a special reference to persons under temporary protection is contained in Art. 3 (4) and Art. 7a. <b>(for example if the norm also pursues other objectives than the transposition of the directive)</b>
<b>REFERENCES OF PUBLICATION</b> <b>IN THE OFFICIAL JOURNAL:</b> Vorarlberg Law Gazette 1/1998, amended by 43/2001, 58/2001, 38/2002, 3/2006 and 51/2006
<b>LEGAL NATURE</b> (indicate by ticking the correct box): <input checked="" type="checkbox"/> <b>LEGISLATIVE</b> <input type="checkbox"/> <b>REGULATION</b> <input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b>

Table 7

<b>TITLE:</b> Lower Austrian Basic Welfare Support Act, Niederösterreichisches Grundversorgungsgesetz
<b>DATE:</b> 16.12. 2006
<b>NUMBER:</b>
<b>DATE OF ENTRY INTO FORCE:</b> 1.5. 2004
<b>PROVISIONS CONCERNED :</b> All, a special reference to persons under temporary protection is contained in Art. 4, Art. 7 (6) and Art. 26. <b>(for example if the norm also pursues other objectives than the transposition of the directive)</b>
<b>REFERENCES OF PUBLICATION</b> <b>IN THE OFFICIAL JOURNAL:</b> Lower Austrian Law Gazette 15/2007, 15.2. 2007
<b>LEGAL NATURE</b> (indicate by ticking the correct box): <input checked="" type="checkbox"/> <b>LEGISLATIVE</b> <input type="checkbox"/> <b>REGULATION</b> <input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b>

Table 8

<b>TITLE:</b> Upper Austrian Act on the Implementation of the Basic Welfare Support Agreement  Oberösterreichisches Landesgesetz über die Umsetzung der Grundversorgungsvereinbarung (OÖ. Grundversorgungsgesetz 2006)
<b>DATE:</b>
<b>NUMBER:</b>
<b>DATE OF ENTRY INTO FORCE:</b> 1.3. 2007

<p><b>PROVISIONS CONCERNED</b> : All, a special reference to persons under temporary protection is contained in Art. 6.  <b>(for example if the norm also pursues other objectives than the transposition of the directive)</b></p>
<p><b>REFERENCES OF PUBLICATION</b>  <b>IN THE OFFICIAL JOURNAL:</b> Upper Austrian Law Gazette 12/2007, 16.2. 2007</p>
<p><b>LEGAL NATURE</b> (indicate by ticking the correct box):  <input checked="" type="checkbox"/> <b>LEGISLATIVE</b>  <input type="checkbox"/> <b>REGULATION</b>  <input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b></p>

*Table 9*

<p><b>TITLE:</b> Salzburg Basic Welfare Support Act  Gesetz vom 14. März 2007 zur Sicherstellung der vorübergehenden Grundversorgung von hilfs- und schutzbedürftigen Fremden in Salzburg (Salzburger Grundversorgungsgesetz)</p>
<p><b>DATE:</b> 14.3. 2006</p>
<p><b>NUMBER:</b></p>
<p><b>DATE OF ENTRY INTO FORCE:</b> 1.1. 2007</p>
<p><b>PROVISIONS CONCERNED</b> : All, a special reference to persons under temporary protection is contained in Art. 5, Art. 6 and Art. 22.  <b>(for example if the norm also pursues other objectives than the transposition of the directive)</b></p>
<p><b>REFERENCES OF PUBLICATION</b>  <b>IN THE OFFICIAL JOURNAL:</b> Salzburg Law GazetteLaw Gazette 35/2007, 30.5. 2007</p>
<p><b>LEGAL NATURE</b> (indicate by ticking the correct box):  <input checked="" type="checkbox"/> <b>LEGISLATIVE</b>  <input type="checkbox"/> <b>REGULATION</b>  <input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b></p>

**Q.2.** This question needs to be answered only for **FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN**

**Q.2.A.** Explain which level of government is competent to adopt the norms of transposition.

*Please include your answer in the tables below*

<b>LEGISLATIVE RULES</b>
<p><b>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</b> According to Art. 10 (1) 3. Austrian Federal Constitution the Federation (central level) has powers (competence) for legislation and execution in the field of immigration, regulation and control of entry into the territory.</p>
<p><b>COMPETENCES OF THE COMPONENTS:</b> According to Art. 12 (1) 1. Federal Constitution legislation as regards principles is allocated to the Federation (central level), the issue of implementing laws and execution is competence of the nine Federal States. This goes i.a. for social welfare. Therefore the Federation and the Federal States are responsible to take care of aliens in need of support. This goes for persons legally residing in Austria and thus also for persons under temporary protection.</p>



**EXPLANATIONS IF NECESSARY:** According to Art. 15a Federal Constitution the Federation and the Federal States may conclude agreements (similar to public international law treaties). Such a treaty has been concluded concerning the reception of asylum seekers and other aliens in need of assistance and protection. This agreement was concluded to end a long debate about the question whether the Federation or the Federal States are responsible for the reception of asylum seekers. The agreement also covers persons under temporary protection. As far as there have been no such regimes since the Directive had to be transposed there is no practice. Former temporary protection regimes have been established by similar agreements between the Federation and the Federal States covering certain categories of persons (persons coming from Bosnia and Kosovo).

Basic Welfare Support Agreement (Agreement between the Federation and the Federal States concerning joint measures for the temporary granting of basic welfare support to aliens in need of assistance and protection (Federal Law Gazette I 80/2004).

Date of publication in the Federal Law Gazette: 15 July 2004

Entry into force: 1st May 2004

Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über gemeinsame Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde (Asylwerber, Asylberechtigte, Vertriebene und andere aus rechtlichen oder faktischen Gründen nicht abschiebbare Menschen) in Österreich (Grundversorgungsvereinbarung - Art. 15a B-VG)

The Federal States enacted laws to implement the obligations contained in the Agreement. These laws were adopted by the Governments of the Federal States to implement the obligations contained in the Agreement.

#### REGULATIONS

**COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:** According to Art. 18 (2) Federal Constitution every authority has got the power to issue orders (also called ordinances in inofficial translations) within its explicit sphere of competence.

**COMPETENCES OF THE COMPONENTS:** According to Art. 18 (2) Federal Constitution every authority has got the power to issue regulations (also called ordinances in inofficial translations) within its explicit sphere of competence.

**EXPLANATIONS IF NECESSARY:** According to Art. 18 (1) Federal Constitution the entire public administration has to be based on law. If an order is issued the order has to have a legal basis (on a legislative level) in Austria law.

#### CIRCULAR OR INSTRUCTIONS

**COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:** Circular or instructions may be issued by every authority. These are internal provisions with no external effect, they are binding for the subordinate level(s).

**COMPETENCES OF THE COMPONENTS:**

**EXPLANATIONS IF NECESSARY:**

**Q.2.B.** Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

**Q.3.** Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

*When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please*

*duplicate the table (see technical information at the beginning of the questionnaire).*

*Table 1*

<b>COMPETENCE CONCERNED:</b>	Competence of the Federation: immigration, regulation and control of entry into the territory
<b>CENTRAL MINISTRY OF:</b>	Ministry of the Interior
<b>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</b>	Legal Section, Section III  Departments on Asylum, Residence, Reception Conditions resp. Basic Welfare Support
<b>OTHER LEVEL OF ADMINISTRATION:</b>	Art. 76 Settlement and Residence Act contains the possibility that in times of armed conflict or other circumstances threatening the safety of entire population groups, the Federal Government, in agreement with the Executive Committee of the National Council, may by government order grant temporary right of residence in the federal territory to directly affected groups of aliens <u>who can find no protection elsewhere (displaced persons).</u>
<b>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</b>	Art. 76 Settlement and Residence Act contains a provisions allowing the Federal Government to enact a government order.

*Table 2*

<b>COMPETENCE CONCERNED:</b>	Social welfare: According to Art. 12 (1) 1. Federal Constitution legislation as regards principles is allocated to the Federation (central level), the issue of implementing laws and execution is competence of the nine Federal States.
<b>CENTRAL MINISTRY OF:</b>	Ministry of Social Affairs
<b>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</b>	
<b>OTHER LEVEL OF ADMINISTRATION:</b>	
<b>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</b>	

Table 3

<b>COMPETENCE CONCERNED:</b>	Social welfare: According to Art. 12 (1) 1. Federal Constitution legislation as regards principles is allocated to the Federation (central level), the issue of implementing laws and execution is competence of the nine Federal States.
<b>CENTRAL MINISTRY OF:</b>	
<b>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</b>	
<b>OTHER LEVEL OF ADMINISTRATION:</b>	For granting basic support in the nine Federal States the Governments in the Federal States are responsible. They have to take the decision in the first instance. Appeals are possible to the Independent Administrative Senates.
<b>IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)</b>	

**Q.4.A.** Has the central regulation foreseen by the central norm of transposition already been adopted?

YES

NO

**Q.4.B.** If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

YES

NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

*When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

Table 1

<b>MISSING TEXTS</b>
<p><i>INDICATE HERE THE MISSING TEXTS</i></p> <p>There are no provisions in Austrian legislation containing an obligation to react if the Temporary Protection Directive applies and no provisions mandating the Council to decide about the existence of a mass influx of persons with the effect of introducing temporary protection for the displaced persons to which it refers. In case the Council decides about the existence of a mass influx a government order would have to be issued, but there are no provisions containing a legal obligation to do so.</p> <p>Several norms, e.g. Art. 22 (5) Asylum Act refer to consequences if the Directive on Temporary Protection applies, but there are no corresponding provisions to enact a government order.</p> <p>The question could be raised whether a Council decision based on the Directive would be directly applicable in Austrian law with the consequence that individuals could derive rights from the decision. This is an unsolved question and a question which has not been dealt with in legal literature so far.</p>

Table 2

<b>MISSING TEXTS</b>
<p><i>INDICATE HERE THE MISSING TEXTS</i></p> <p>As a consequence to the missing text as mentioned in Table 1 there are no provisions regulation family reunification for persons under temporary protection.</p>

Table 3

<b>MISSING TEXTS</b>
<p><i>INDICATE HERE THE MISSING TEXTS</i></p> <p>There are no explicit provisions on access to education for persons under 18 years according to Art. 14 of the Directive. Access to education is granted to persons under 15, for these persons it is obligatory.</p>

## SECOND PART

### Duration and implementation of temporary protection

**Q.5.** According to article 5(1) in the Directive the existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council. According to article 5(3) the Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions in the Directive.

**Do the national norms of transposition in your Member State mandate the Council to decide about the existence of a mass influx of displaced person, with the effect of introducing temporary protection for the displaced persons to which it refers in your Member State?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation** (if the answer is “no”, how is a Council decision transposed ad hoc into national law?)

There are no provisions in Austrian legislation mandating the Council to decide about the existence of a mass influx of persons with the effect of introducing temporary protection for the displaced persons to which it refers. The Settlement and Residence Act establishes a sort of ad hoc mechanism, where the Federal Government in accordance with the Executive Committee of the National Assembly may by government order based on Art. 76 Settlement and Residence Act grant a temporary right of residence to displaced persons. In case the Council decides about the existence of a mass influx a ministerial order would have to be issued, but there are no provisions containing a legal obligation to do so. A Council decision itself does not suffice a legal basis.

According to the Austrian Constitution (Art. 23e Federal Constitution) the competent Minister of the Interior has to inform the National Council about all projects pursued within the framework of the Union (including Council decisions). There are however no obligations for the Government to enact an order based on the Settlement and Residence Act.

There would have been the possibility to include a provision in the Settlement and Residence Act which only entered into force on 1 January 2006 (or already in previous amendments of the Aliens Act) containing an obligation to react if a Council decision is adopted according to Art. 5 of the Directive. Art. 76 Settlement and Residence Act however is a partly identical provision to Art. 29 Aliens Act (in force until 31 December 2005), there have been no amendments in the text to adapt the provision to the content of the Directive.

Certain provisions (see e.g. Art. 22 (5) Asylum Act) however refer to the situation where the Temporary Protection Directive applies or a government order is enacted. Obviously the legislator saw the Directive and a Council decision as a legal basis, which in fact is not foreseen in Austrian legislation. The question could be raised whether a Council decision based on the Directive would be directly applicable in Austrian law with the consequence that individuals could derive rights from the decision. This is an unsolved question and a question which has not been dealt with in legal literature so far.

**Q.6.** According to article 6 in the Directive, temporary protection shall come to an end when the maximum duration has been reached or at any time by Council Decision on a proposal from the Commission. *See article 6 (1-2).*

**Do the national norms of transposition mandate the Council to decide when temporary protection in your Member State shall come to an end?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:** (if the answer is 'no', how is a Council decision transposed ad hoc into national law?)

As mentioned above in the answer to question Q.5. in case the Temporary Protection Directive applies and the Council decides about the existence of a mass influx first and then about the end of temporary protection a government order would have to be issued, specifying also the duration of the protection granted. The Settlement and Residence Act provides the legal basis for such an order but does not contain an obligation to issue such an order or to it in case the Council decides that the system comes to an end. The Council decision itself does not suffice as a legal basis.

**Q.7.** According to article 7, a Member States may extend temporary protection, as provided for in the Directive, to additional categories of displaced persons over and above those to whom a Council decision applies, where they are displaced for the same reasons and from the same country or region of origin. *See optional provision in article 7 (1-2).*

**Do the national norms of transposition allow your Member State to extend temporary protection to additional categories of displaced persons?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:** (If the answer is "yes", if any, what are the criteria for extending protection to additional categories of displaced persons)?

According to Art. 76 Settlement and Residence Act a temporary right of residence in the federal territory may also be granted to other affected groups of aliens. The provision as a legal basis for a government order does not contain limitations with regard to the Council decision. Other categories of persons may be included.

## **Obligations of the Member States towards persons enjoying temporary protection**

**Q.8.** Questions regarding obligations of the Member States towards persons enjoying temporary protection. *See article 8(1-3):*

**Q.8.A. Does your Member State provide persons enjoying temporary protection with a residence permit? See mandatory provision in article 8(1).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:** (if the answer is ‘no’, what are the practical Consequences for the individual?)

Persons under a temporary protection regime according to Art. 76 Settlement and Residence Act have a right of residence based directly on the government order, not on an individual residence permit. There are no provisions containing the obligation to issue such an individual residence permit. However according to Art. 76 (4) Settlement and Residence Act the right to residence has to be confirmed in the travel document. This is a confirmation of a right based on a general government order. The Minister of the Interior has to issue a ministerial order regulating the content and format of the confirmation.

Art. 31 Aliens Police Act stipulates that persons deriving their right of residence from an order based on Art. 76 Settlement and Residence Act are legally residing in Austria.

In case the person does not have such a travel document the authorities have to issue a document (identity document) for displaced persons; this document also serves as a passport. The Minister of the Interior has to issue a ministerial order regulating the content and format of this document. If the authorities do not grant a right to residence and confirm it in the travel document an appeal is possible.

In order to sum up there is a confirmed right of residence (however not based on individual residence permits) during the period of a temporary protection regime established by a government order.

**Q.8.B. Answer this question if the answer on Q.8.A is ‘yes’: Is the residence permit valid for the entire period of temporary protection? See mandatory provision in article 8(1).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:** (if the answer is ‘no’, what are the practical Consequences for the individual?)

**Q.8.C. Will documents or other equivalent evidence for the residence permit be issued? See mandatory provision in article 8(1).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:**

The right of residence has to be confirmed in the travel document. In case the person does not have such a document the authorities have to issue a travel document for displaced persons; this document also serves as a passport. The Minister of the Interior has to issue a ministerial order containing format and content of such a document. So far no such ministerial order exists. The Explanatory Remarks to the text of the Settlement and Residence Act state that an Aliens Passport would have to be issued but this does not correspond to the text of the law. The text contains the obligation to issue an identity document for displaced persons.

**Q.8.D. Will your Member State provide persons enjoying temporary protection with a document, in a language likely to be understood by them, in which the provisions relating to temporary protection, and which are relevant to them, is clearly set out? See mandatory provision in article 9.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

There are no obligations in Austrian legislation to provide such a document.

**Q.8.E. Will the personal data of the persons enjoying temporary protection (name, nationality, date and place of birth, marital status, and family relationship) be registered? See mandatory provision in article 10.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

There are no explicit provisions regulating registration of persons under temporary protection. Registration especially for persons under temporary protection might also be included in the government order based on Art. 76 Settlement and Residence Act.

The persons covered by a temporary protection regime would have to be registered as other aliens in a database called (Aliens) Information System (Informationsverbundsystem) according to the Aliens Police Act (Art. 101).

**Q.8.F. Will your Member State provide facilities for obtaining the necessary visas, including transit visas, to persons which will be admitted to the territory for the purposes of temporary protection? See mandatory provision in article 8(3).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**



There is no clear answer possible. The general requirements apply. An order based on Art. 76 Settlement and Residence Act is seen as the legal basis for an exemption from the visa obligation. The order has to specify entry and residence rights of aliens. The border control authorities do have to control if the person fulfills the criteria specified in the government order. In case the criteria are fulfilled the authorities are obliged to grant entry to the territory. In previous cases in practice the border control authorities confirmed the residence right in the travel document. There are no provisions regulating the obligation to provide visas or transit visas.

In this case entry will be free of charge.

**Q.8.G. According to the national law of your Member State: Will the visas referred to in Q.8.F, be free of charge? See mandatory provision in article 8(3).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:** (if the answer is “no”, please indicate the amount charged and indicate amounts charged for other types of visas)

See the answer to question Q.8. above. Where the authorities are obliged to grant entry to the territory, this entry is free of charge.

**Q.9. According to national law of transposition, is your Member State responsible to take back a person enjoying temporary protection on its territory if that person seeks to enter onto or remains on the territory of another Member State without authorisation during the period of temporary protection? See mandatory provision in article 11.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:**

Austria is not responsible to take a person back under the norms of transposition. Austria has concluded a number of readmission agreements containing obligations to readmit persons who illegally crossed the border or for other reasons specified in the agreements. These readmission agreements could apply in case the criteria are fulfilled.

**Q.10. Has your Member State concluded bilateral agreements with other Member States regulating the responsibility for persons enjoying temporary protection under the Directive? See optional provision in article 11, final sentence.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:** (If the answer is “yes”, please specify with which country)

There are no such agreements.

Austria has concluded only bilateral readmission agreements but these agreements do not contain provisions for persons under temporary protection. In previous situations agreements have been concluded containing provisions for the special situation.

**Q.11.** Questions regarding work and other activities during temporary protection: *See mandatory provision in article 12.*

**Q.11.A.** Are the persons enjoying temporary protection allowed to engage in:

Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- |  |  |                                    |
|--|--|------------------------------------|
| <b>Employed activities?</b>                  | <input checked="" type="checkbox"/> <b>Yes</b> | <input type="checkbox"/> <b>No</b> |
| <b>Self-employed activities?</b>             | <input checked="" type="checkbox"/> <b>Yes</b> | <input type="checkbox"/> <b>No</b> |
| <b>Educational opportunities for adults?</b> | <input checked="" type="checkbox"/> <b>Yes</b> | <input type="checkbox"/> <b>No</b> |
| <b>Vocational training?</b>                  | <input checked="" type="checkbox"/> <b>Yes</b> | <input type="checkbox"/> <b>No</b> |
| <b>Practical workplace experience?</b>       | <input type="checkbox"/> <b>Yes</b>            | <input type="checkbox"/> <b>No</b> |

**Explanation:**

In principle persons under temporary protection are allowed to work, the Aliens Employment Act applies. This Act regulates employment of third country nationals and nationals of the new EU Member States. See for more details the answer to question Q.11.B. below. Employers need a work permit according to Art. 3 (1) Aliens Employment Act. The authorities have to decide on first applications for regular work permits within six weeks (Art. 20a Aliens Employment Act).

Art. 4 (3) 7 Aliens Employment Act explicitly mentions Art. 76 Settlement and Residence Act and allows to grant work permits for persons who derive their right of residence in Austria on a government order based on Art. 76 Settlement and Residence Act. For these persons however the general conditions of the Aliens Employment Act apply with the consequence that only a certain number of work permits are issued each year (quota system) and it depends on the concrete situation if a work permit could be issued. Work permits may only be issued if the situation and development on the labour market allow it and also if there are no conflicting public or economic interests. For specific situations if there is an additional demand for workers, which cannot be covered by availabilities on the labour market additional work permits may be issued.

Ordinary work permits can be granted for one year, work permits for professions which are usually limited to a specific time of the year (seasonal work) can be limited to the time necessary (Art. 7 (1, 2) Aliens Employment Act with a maximum period of six months. In this case, another work permit cannot be issued immediately after an earlier work permit has expired.

For employment of asylum seekers administrative instructions exist. It seems to be likely that in case a temporary protection system would be established there would also be such an administrative instruction.

**Q.11.B.** According to optional provision in article 12, Member States may, for reasons of labour market policies, give priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment benefit.

**Do the national norms of transposition in your Member State give priority, or allow giving priority, to:**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**EU citizens?**  **Yes**  **No**

**Citizens of the European Economic Area?**  **Yes**  **No**

**Legally resident third-country nationals who receives unemployment benefits?**  **Yes**  **No**

### **Explanation:**

Employers who intend to employ persons under temporary protection have to apply for a work permit (or employment permit). For employing EU citizens of the EU 14, Malta and Cyprus and Citizens of the (old) European Economic Area employers do not need such a work permit. Turkish citizens who fall under the provisions of the Association Agreement and the corresponding provisions of the decisions of the Association Council need such a work permit. This work permit has to be issued ex officio (Art. 4c Aliens Employment Act). This does not go for permits for Turkish citizens who intend to work in Austria but for persons who are already integrated into the Austrian labour market.

Art. 4 (3) 7 Aliens Employment Act explicitly mentions Art. 76 Settlement and Residence Act and allows to grant work permits for persons who derive their right of residence in Austria on a government order based on Art. 76 Settlement and Residence Act. There is no reference to a Council decision or the Temporary Protection Directive.

For these persons however the general conditions of the Aliens Employment Act apply with the consequence that only a certain number of work permits are issued each year and it depends on the concrete situation if a work permit could be issued. Work permits may only be issued if the situation and development on the labour market allow it and also if there are no conflicting public or economic interests. For specific situations if there is an additional demand for workers, which cannot be covered by availabilities on the labour market additional work permits may be issued.

In case the number of work permits for the resp. year is already exhausted additional permits may be granted either if there is a ministerial order allowing an additional number of permits or for persons who already get benefits based on the Unemployment Insurance Act, in case there is a legal basis in Austrian law or if there is a public international law obligation.

Question to be answered only if persons enjoying temporary protection are allowed to work:

**Q.11.C.** According to article 12, final sentence, the general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply if persons enjoying temporary protection are allowed to work.

**If persons enjoying temporary protection are allowed to work: Will your country's general laws be applicable regarding:**

Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Remuneration?**  **Yes**  **No**

**Access to social security systems relating to employed or self-employed activities and other conditions of employment?**  **Yes**  **No**

**Explanation:**

If persons are allowed to work and the employer is granted a work permit according to the Aliens Employment Act remuneration has to be equal to other employed persons in a comparable situation. These persons have access to social security systems as comparable categories of workers. Social security comprises unemployment benefits and social aid, medical care and contributions to retirement pension insurance.

Unemployment benefits are only granted if the person has been employed 52 weeks within the last two years (if the person is employed on the basis of a contract eligible for such benefits). This goes for applications for the first time. Then only 26 weeks are required. For medical care see the answer to Q.12 below.

**Q.12.** Questions regarding the Member States obligation towards the temporary protected regarding accommodation, subsidies, medical care etc. *See article 13(1-4).*

**Q.12.A.** **Is your Member State obliged under national law to provide the persons enjoying temporary protection with suitable accommodation or means in order to obtain housing?** *See mandatory provision in article 13(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**  **No**

**Explanation :**

Austria is obliged to provide persons enjoying temporary protection with a suitable accommodation. The accommodation and housing system is basically the same as for asylum seekers whose application has been declared admissible. An agreement exists between the Federal States (Länder) and the Federation regulating the basic care for asylum seekers and other categories of persons in need of assistance and protection (Grundversorgungsvereinbarung). The Basic Welfare Support Agreement is based on Art. 15a of the Federal Constitution.

The full text is Agreement between the Federal Government and the provincial governments, pursuant to Article 15a of the Federal Constitution, concerning joint measures for the temporary granting of basic welfare support to aliens in need of assistance and protection in Austria (asylum seekers, persons having entitlement to asylum, displaced persons and other persons who may not be deported for legal or practical reasons).

On the level of the Federal States also Basic Welfare Support Acts exist containing provisions for accommodation. See also the answer to Question 12.B. below. Some acts allow restrictions (in case of temporary protection) for displaced persons. Restrictions are allowed in Burgenland (Art. 8), Carinthia (Art. 5), Styria (Art. 9), Tyrol (Art. 8), Vorarlberg (Art. 7a (2)), Lower Austria (Art. 7 (6)), Upper Austria (Art. 6).

Article numbers refer to the resp. Basic Support Acts of the Federal States as listed in Part I above. Restrictions allow to limit basic support, but the basic needs (Grundbedürfnisse) have to be satisfied. The enumerated articles allow slightly different restrictions. Accommodation however would be a basic need which has to be satisfied, if necessary.

According to the agreement persons under temporary protection would assigned to a local care facility following a decision of the coordination office. The Federal States are responsible for granting suitable accommodation. The system would be the same as it is in force for reception of asylum seekers. According to the information provided by NGOs, there are some problems with accommodation for asylum seekers, especially where Federal States refuse to take over asylum seekers assigned to them by the coordination office, or where no assignment decision is issued. See for details the report on reception conditions for asylum seekers.

In previous situations where temporary protection was granted (Bosnia and Kosovo) however the system was working quite well and coordinated cooperation between the Federation and the Federal States established suitable accommodation.

**Q.12.B. Will your Member State, according to national law, be obliged to provide the persons enjoying temporary protection with economic assistance such as social welfare and means of subsistence? See mandatory provision in article 13(2).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:**

This is also covered by the Basic Welfare Support Agreement and also by Basic Welfare Support Acts in the Federal States. The question of financing accommodation, social welfare, means of subsistence, medical care and other benefits for persons covered by a temporary protection regime is contained in the Basic Welfare Support Agreement. This Agreement covers the sharing of expenses for asylum seekers, persons under subsidiary protection and also persons under temporary protection. The Agreement neither contains rights of individuals to be granted such benefits nor obligations for the authorities concerned to provide these benefits.

The Agreement creates responsibilities of the Federal States. The Federal States enacted laws for reception conditions of asylum seekers and also of persons who are under a temporary protection regime. The Basic Welfare Support Acts in the Federal States vary slightly. In general basic welfare support is granted for persons who are in need of help. This requirement ("to be in need of help and protection" "hilfs- und schutzbedürftig", means that these persons do not have the necessary means of subsistence for themselves or for dependent relatives living in the same household. The Basic Welfare Support Acts in the Federal States cover accommodation, food, medical screening, medical care a.s.o. This is the general provision which applies for asylum seekers. In case a government order based on Art. 76 Settlement and Residence Act is enacted the support granted may be reduced. See details in the answer to Q. 12 A. above. These restrictions are not obligatory, the Acts say basic support may be reduced, but the basic needs (Grundbedürfnisse) have to be satisfied.

**Q.12.C. Do the persons enjoying temporary protection have access to emergency medical care and essential treatment of illness? See mandatory provision in article 13 (2).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:** (If the answer is “yes”, please provide details whether persons enjoying temporary protection have access to *general medical care* or if it is restricted to *emergency care and essential treatment of illness*?)

If a government order is enacted and the persons are covered by the Basic Welfare Support Agreement and the Basic Welfare Support Acts, the Federal States usually grant access to general medical care. Restrictions are possible for displaced persons as mentioned in the answer to Q.12.B. and Q.12.C. above. Persons enjoying temporary protection enjoy at least emergency medical care and essential treatment of illness.

Employed persons enjoy the same access to general medical care as all other employed persons. This medical care may vary slightly as for different working places different insurances exist. But it is in general a comprehensive medical treatment.

**Q.12.D. Will your Member State, according to national law, be obligated to provide for necessary medical or other assistance to persons enjoying temporary protection who have special needs such as unaccompanied minors, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence? See mandatory provision in article 13(4).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:** (If the answer is “yes”, please provide details about the assistance given to different groups of persons with special needs, for example psychological help for persons who have undergone torture).

There is no answer possible comprising all categories contained in the question in one answer. The Basic Welfare Support Agreement provides for special measures for unaccompanied minor applicants in its Art 7. There are no special provisions for persons who have been tortured or ill-treated or for other categories in the Agreement.

Legislation in Basic Support Acts in the Federal States generally provides for the treatment of persons with special needs. Several provisions in these Acts in the Federal States contain provisions for persons who have special needs. However as already mentioned several times above the provisions may be restricted for persons under temporary protection.

**Q.13.** Questions regarding access to education. *See article 14 (1-2):*

**Q.13.A. Do persons who are under 18 years of age and enjoying temporary protection have access to the education system under the same conditions as nationals of your Member State? See mandatory provision in article 14(1).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

### **Explanation:**

They do have access to education. Up to the age of 15 years, minors are subject to compulsory education under Art. 1 (1) of the Compulsory Education Act, and are subject to the same rules as nationals.

For minors over 15 years admission to a special school is subject to fulfilment of requirements (e.g. language skills, a certain standard of tuition – usually the requirement is the positive conclusion of tuition at a lower school, sometimes also certain minimum grades, or places available) which are laid down in § 4 (2) Act on the Organisation of Schools. The provisions applying for persons under temporary protection are the same as for nationals or for other aliens. Access can also be granted to minors under temporary protection older than 15 years, but it lies within the competence of the school to decide whom it admits for tuition. Of course, the school management is also bound by legislation, but has discretion as to the fulfilment of legal requirements.

The state school system in Austria is free of charge.

It seems likely that there would be some problems when persons are accommodated in rural areas where access to education is difficult to reach. In fact there are problems with reception of asylum seekers as provided for in the Reception Conditions Directive. As the Temporary Protection Directive is also transposed by Basic Welfare Support Acts similar problems could occur, but there is of course no practice so far.

### **Q.13.B. If the answer on Q.13.A is ‘yes’: Is access to education confined to the state education system or does it cover all kinds of educational institutions?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**

**No**

### **Explanation:**

It is confined to state education insofar as this education is free of charge and costs would not be paid for private schools. Access to private schools or other types of education would however be accessible but the persons would have to pay for it and/or fulfill the admission requirements.

### **Q.13.C. Do adults enjoying temporary protection have access to the general education system? See optional provision in article 14(2).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**

**No**

### **Explanation:**

The answer yes or no depends on the question whether the person is employed (or eventually has been employed before) in Austria. Adult persons do not have access to education if they just came to Austria. If they are staying for a longer time and if they have been employed and get unemployment benefits they have access to education or vocational training provided by the Labour Market Service (Arbeitsmarktservice AMS).

If they can pay for themselves they would have access to all types of education.

### **Q.14. Questions regarding right to family reunification. See article 15:**

**Q.14.A. Do the national norms of transposition in your Member State allow separated family members, which enjoy temporary protection in different Member States, to reunite?** *See mandatory provision in article 15(2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

The norms of transposition do not contain obligations for family reunification. The right to enter Austria in case of a mass influx situation (established by a Council decision) and the right of residence is regulated by a government order. Family reunification would have to be covered by that order. This order would serve as an entry allowance. However there is no obligation to reunite families.

Only in case a temporary protection regime applies for a longer time (no duration is mentioned) also applications for settlement permits may be filed while staying in the territory. Then the general system of the Settlement and Residence Act applies and also family reunification would be possible, but only in case all the requirements would be fulfilled.

**Q.14.B. Do the national norms of transposition in your Member State allow family members who are not yet in a Member State to reunite with a person enjoying temporary protection in your Member State?** *See mandatory provision in article 15(3).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

See the answer to the previous question.

(The norms of transposition do not contain obligations for family reunification. The right to enter Austria in case of a mass influx situation (established by a Council decision) and the right of residence is to be regulated by a government order. Family reunification would have to be covered by that order.

Only in case a temporary protection regime applies for a longer time (no duration is mentioned) also applications for settlement permits may be filed while staying in the territory. Then the general system of the Settlement and Residence Act applies and also family reunification would be possible.)

**Q.14.C. For the application of the rules regarding family reunification: Whom does your Member State consider a “family member”?** *See article 15(1)(a)(b).*

(Please indicate by ticking the correct box/boxes and **EXPLAIN YOUR ANSWER**)

**The spouse of the person enjoying temporary protection.**



- The unmarried partner in a stable relationship to the person enjoying temporary protection.**
- The minor unmarried children of the person enjoying temporary protection or of his/her spouse, without distinction as to whether they were born in or out of wedlock or adopted.**
- Other close relatives who lived as part of the family unit with the person enjoying temporary protection at the time of the events leading to the mass influx, and who were wholly or mainly dependent on him/her at the time.**

**Explanation:**

As described above the government order might include various categories of persons entitled to family reunification. There are however no explicit obligations.

Under the Settlement and Residence Act unmarried partners are not entitled to family reunification. The definition of family members is contained in Art. 2 (1) No. 9 Settlement and Residence Act and does not include unmarried partners or dependent relatives. Family reunification with regard to family members of third country nationals is therefore limited to spouses and minor unmarried children. It would only be possible to grant humanitarian residence permits for other categories of persons. As Art. 8 ECHR is constitutional law in Austria in all cases where Art. 8 ECHR would be violated reunification would have to be granted.

**Q.14.D. What means of proof is needed in your Member State to verify family membership, is for example documentary evidence needed?**

There are no provisions for temporary protection and evidence for family reunification. Applications for family reunification in general have to be supported by a number of documents including relevant certificates of marriage or certificates of adoption.

**Q.14.E. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the provisions on family reunification in the national norms of transposition? *See mandatory provision in article 15(4).***

As there are no special provisions for family reunification there is not reference to the best interest of the child.

**Q.14.F. According to article 15(5), Member States shall decide in which Member State the reunification shall take place. Please indicate which authority possesses the competency to take such decisions?**

**Name and function of the Authority:** This would have to be enacted by the government order.

**Q.14.G. If there is a formal procedure foreseen for such decisions, please describe it briefly:**

There is no formal procedure.

**Q.14.H. Are reunited family members in your Member State granted residence permits under temporary protection?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

See also the answer to question Q.14.A. If they would be covered by a government order they would derive their right of residence from that order.

**Q.14.I. Are documents or other equivalent evidence issued for persons who comes to your Member State and receives temporary protection under the provisions regarding family reunification?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

See also the answer to question Q.14.A. Only if persons derive their right from a government order, "family reunification" is possible. The right of residence would have to be confirmed in the travel document. In case the person does not have such a document the authorities have to issue a travel document for displaced persons; this document also serves as a passport. The Minister of the Interior has to issue a ministerial order containing format and content of such a document. So far no such ministerial order exists. The Explanatory Remarks to the text of the Settlement and Residence Act state that an Aliens Passport would have to be issued but this does not correspond to the text of the law.

**Q.14.J. Does the national norms of transposition in your Member State comply with the provision in article 15(8) stating that a Member State shall at the request of another Member State, provide information on a person receiving temporary protection which is needed to process a matter of family reunification? See mandatory provision in article 15(8).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

There are no norms of transposition containing an obligation to provide information in this case.

**Q.15. Questions regarding unaccompanied minors: See article 16:**

**Q.15.A. Explain how the representation of unaccompanied minors enjoying temporary protection in your Member State is arranged according to national law. See mandatory provision in article 16(1).**

The youth welfare office of the respective Federal State is responsible. Youth welfare is a competence of the Federal States. Youth Welfare Acts are generally applicable to all unaccompanied minors. These Acts grant

assistance to minors whose interests cannot be represented by their parents or other persons. Several Basic Welfare Support Acts of the Federal States explicitly refer to the Youth Welfare Acts in the Federal States, declaring them applicable as far as care is concerned or granting at least access to the data of the care information system (database) to the youth welfare offices. The youth welfare office may also take the minor under guardianship in a formal procedure. There is practice concerning asylum seekers but not minors under the Temporary Protection Directive.

**Q.15.B. Does your Member State provide for unaccompanied minors to be placed with: See mandatory provision in article 16(2).**

(Please indicate by ticking the correct box/boxes and **EXPLAIN YOUR ANSWER**)

- Adult relatives ?**
- A foster-family ?**
- In reception centres with special provisions for minors, or in other accommodation suitable for minors ?**
- With the person who looked after the child when fleeing ?**

**Explanation:**

It depends on the concrete situation where the minor would be accommodated. The decision is taken by the coordination office and by the youth welfare office in case the minor is unaccompanied.

**Q.15.C. Do the national norms of transposition in your Member State meet the requirement that the views of the child shall be taken into account when arranging placement for the minor? See mandatory provision in article 16(2).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- Yes**                       **No**

**Explanation:**

As there are no explicit provisions and no practice no answer is possible.

**Access to the asylum procedure in the context of temporary protection**

**Q.16.** Questions regarding access to the asylum procedure. *See article 3 and 17-19:*

According to mandatory provision in article 3(1) temporary protection shall not prejudice recognition of refugee status under the Geneva Convention.

**Q.16.A. Does temporary protection in any way prejudice recognition of refugee status under the Geneva Convention in your Member State?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

According to the Asylum Act asylum applications are not prejudged.

**Q.16.B. Does your Member State allow persons enjoying temporary protection to apply for asylum at any time during the period of temporary protection? See mandatory provision in article 17(1).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

There are no provisions excluding applications for asylum. There are no provisions saying that the procedure has to be suspended. According to Art. 22 (5) Asylum Act all the time limits specified in the Asylum Act are blocked as long as a temporary protection regime applies either according to the Directive and/or according to a ministerial order based on Art. 76 Settlement and Residence Act. This allows that the examination of an asylum application not processed before the end of the period of temporary protection may be completed after the end of that period as provided for by Art. 17 (2) of the Directive.

**Q.16.C. Does your Member State allow persons enjoying temporary protection to stay in the Member State during the examination of their asylum claim, even though the period of temporary protection has ended? See mandatory provision in article 17(2).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

Asylum seekers do have a right of residence during the procedure if the application is declared admissible. If the application is filed during temporary protection and is declared admissible the person would be allowed to stay. According to Art. 22 (5) Asylum Act all the time limits specified in the Asylum Act are blocked as long as a temporary protection regime applies either according to the Directive and/or according to a ministerial order based on Art. 76 Settlement and Residence Act. This allows that the examination of an asylum application not processed before the end of the period of temporary protection may be completed after the end of that period as provided for by Art. 17 (2) of the Directive.

**Q.16.D. What criteria are provided by the norms of transposition in your Member State to determine the responsibility amongst Member States for examining an asylum application submitted by a person enjoying temporary protection in another Member State? See mandatory provision in article 18.**

It depends on the stage and time where the application is lodged. If the application is lodged before temporary protection applies the Dublin II criteria are applied. If the application is filed later the person would stay in Austria and the application would be processed in Austria.

**Q.16.E. Has your Member State decided that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration? See optional provision in article 19.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:** If the answer is “yes”, please provide details concerning differences between the reception conditions for asylum seekers and persons enjoying temporary protection in your Member State which might lead to withdrawal or reduction of rights for a temporary protected who lodges an application for asylum.

Compared to asylum seekers basic support for displaced persons may be restricted to the granting of support covering basic needs. See also the answer to Q.12.B. for details.

**Q.16.F. If refugee status or, where applicable, other kind of protection is not granted to a person who is eligible for or already enjoys temporary protection is that person allowed to enjoy or continue to enjoy temporary protection in your Member State? See mandatory provision in article 19(2).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

The decision in the asylum procedure does not influence the temporary protection regime and the right of residence based on an order according to Art. 76 Settlement and Residence Act.

## **Return and measures after temporary protection has ended**

**Q.17.** Questions regarding the voluntary return of persons enjoying temporary protection:

**Q.17.A. According to mandatory provision in article 21(1) the Member States shall ensure that the provisions governing voluntary return of persons enjoying temporary protection facilitate their return with respect for human dignity. How is that reflected in the national norms of transposition in your Member State?**

There is no reference to human dignity in the Basic Support Acts containing provisions on repatriation and financial aid for repatriation.

**Q.17.B. Please explain how your Member State ensures that a decision of persons enjoying temporary protection, or whose temporary protection has ended, to return voluntarily is taken in full knowledge of the facts. See mandatory provision in article 21(1).**

In previous situations voluntary return was accompanied by information about the situation in the home region. In certain cases also a short trip was organised giving the possibility to see the local situation.

**Q.17.C. Is it possible for the temporary protected in your Member State to make exploratory visits to the home country? See optional provision in article 21(1).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:**

This is not provided by Acts in the Federal States or by the Basic Support Agreement but might be done in practice.

**Q.17.D. Please explain if and how your Member State has transposed article 21(2) stating that Member States shall, for such time as the temporary protection has not ended and on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to a voluntary return?**

There are no norms of transposition.

**Q.17.E. Is it possible, under the national norms of transposition in your Member State, for persons enjoying temporary protection to continue receive their benefits as temporary protected after the period of temporary protection has ended, if they benefit from a voluntary return programme? See optional provision in article 21.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:** (If the answer is “yes”, for how long is that possible).

There are no norms of transposition. This would depend on the concrete situation.

**Q.18.** Questions concerning enforced return of persons who have enjoyed temporary protection. *See articles 22:*

**Q.18.A. Explain if and how the laws of your Member State comply with the mandatory provision in article 22(1), obliging Member States to ensure that the enforced return of persons whose temporary protection has ended and who are not eligible for admission shall be conducted with due respect for human dignity.**

There is no reference to human dignity. The Aliens Police Act is applicable allowing expulsion if there is no right of residence.

**Q.18.B. Explain if and how the laws of your Member State comply with the mandatory provision in article 22(2) obliging Member States to consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.**

In these cases a humanitarian residence permit would have to be issued. There is however no obligation to refrain from enforced return, except there would be a violation of a non refoulement provision.

**Q.18.C. In the national law of your Member State, are there any other grounds (except for the one referred to in Q.18.B) for allowing persons who have enjoyed temporary protection to stay in your Member State?**

In case the temporary protection regime lasts longer a settlement permit could be granted and the right of residence would be prolonged for the duration and validity of that permit. This possibility could be included in a government order based on Art. 76 Settlement and Residence Act. In this case the general provisions of the Settlement and Residence Act apply.

**Q.19. Questions concerning forcible return of persons who have enjoyed temporary protection. *See article 23:***

**Q.19.A. Does the national law and practice of your Member State comply with the mandatory provision in article 23, providing that persons who have enjoyed temporary protection and who cannot, in view of their state of health reasonably be expected to travel, are not expelled as long as that situation continues? The provision exemplifies with persons who would suffer serious negative effects if their treatment was interrupted.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

There are no norms covering this scenario. A humanitarian residence permit could be issued. In fact it would be likely that the persons are not deported. It would be possible under the general norms of the Aliens Police Act to suspend the deportation for one year if it would be impossible or inadmissible according to non refoulement obligations.

**Q.19.B. Does your Member State allow families whose children attend school in a Member State, to benefit from residence conditions allowing the children concerned to complete the current school period before return? *See optional provision in article 23.***

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

There are no norms on completing current school periods.

## **Solidarity**

**Q.20.** Please describe how your Member State ensures that persons eligible for temporary protection defined in a Council Decision under article 5 and who have not arrived in the Community have expressed their will to be received on their territory? *See mandatory provision in article 25(2).*

There are no norms in Austrian law. It would possibly happen in collaboration with UNHCR and International Organisations.

**Q.21.** Questions concerning the transferral between Member States of persons enjoying temporary protection. *See article 26:*

**Q.21.A.** According to mandatory provision in article 26(1) the Member States shall cooperate with each other with regard to transferral of the residence of persons enjoying temporary protection from one Member State to another, subject to the *consent* of the persons concerned to such transferral.

**Does the national law of your Member State comply with article 26(1) regarding the *consent* of the person who are about to be transferred?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

**Explanation:**

There are no norms of transpositions.

**Q.21.B.** Do the national norms of transposition in your Member State comply with article 26(2) stating that a Member State shall communicate requests for transfers to the other Member States and notify the Commission and UNHCR?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

**Explanation:**

There are no norms of transposition.

**Q.21.C.** According to the national norms of transposition, is your Member State obliged to, at the request of another Member State, provide information as set out in Annex II of the Directive, on a person enjoying temporary protection, which is needed to process a matter of transferral? *(See mandatory provision in article 26(3)).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)



Yes  No

**Explanation:**

There are no norms of transposition.

**Q.21.D. According to the national law in your Member State, will the residence permit of a person who is transferred, from your Member State to another Member State, expire? See mandatory provision in article 26(4)**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

As the right of residence is based on a government order the right of residence does not expire if the person is transferred.

**Q.21.E. When a person, who has been enjoying temporary protection in your Member State is transferred to another Member State, will the obligations relating to temporary protection in your Member State come to an end upon the transferral? See mandatory provision in article 26(4)**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

The provisions apply only for persons staying in Austria resp. in the competent Federal State.

**Q.21.F. If a person, who previously has enjoyed temporary protection in another Member State, is transferred to your Member State, will your Member State grant temporary protection to that person? See mandatory provision in article 26(4), last sentence.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

There are no norms of transposition.

**Q.21.G. Will the ‘model pass’ set out in annex I of the Directive be used in a foreseen transferral procedure?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

This would have to be enacted by a ministerial order, so far there was no transposition.

**Q.22. What authority in your Member State is appointed as national contact point according to the mandatory provision in article 27?**

**The name and function of the authority is:**

Ministry of the Interior  
Legal Section, Section III  
Departments on Asylum, Residence, Reception Conditions resp. Basic Welfare Support  
Referat III/5/b, E-Mail: [BMI-III-5-b@bmi.gv.at](mailto:BMI-III-5-b@bmi.gv.at).

**Q.23. Questions regarding exclusion from temporary protection:**

**Q.23.A. Are there any criteria for exclusion from temporary protection in your Member State? See optional provision in article 28.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:** (If yes, specify the criteria).

Art. 76 Settlement and Residence Act itself does not include criteria for exclusion. Such criteria however might be included in an order based on Art. 76 Settlement and Residence Act.

**Q.23.B. If the answer to A. is “yes”, please indicate whether they in any way exceed the exhaustive list of criteria in article 28(1)(a) and (b).**

Yes  No

**Explanation:**

**Q.23.C. Do the national norms of transposition in your Member State meet the terms in article 28(2) stating that the grounds for exclusion shall be based solely on the personal conduct of the person concerned?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

**Q.23.D. Do the national norms of transposition in your Member State meet the terms of article 28(2) stating that exclusion decisions or measures shall be based on the principle of proportionality?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes  No

**Explanation:**

**Q.24.** Questions concerning the right to legal challenge:

**Q.24.A. Do the laws of your Member State allow a person to mount a legal challenge if he/she has been:** *See mandatory provision in article 29.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**excluded from the benefit of temporary protection**  Yes  No  
**denied family reunification**  Yes  No

**Explanation:**

The possibility to mount a legal challenge is not limited to exclusion decisions on one of the grounds referred to in Article 28 in the Directive. A legal challenge is possible against the decisions referred to below.

The rights based on Art. 76 Settlement and Residence Act might not directly be challenged. If the right of residence is denied the denial might be challenged.

Exclusion from basic support might be challenged, appeals to the Independent Administrative Senates in the Federal States are possible.

There are no provisions on family reunification for persons under temporary protection. Denial of family reunification might be challenged if an application was filed according to the Settlement and Residence Act (Art. 76 itself does not contain obligations for family reunification or possibilities to challenge). These provisions only apply if the temporary protection regime lasts for a longer period (no exact specification).

**Q.24.B. If the answer on any of the questions in Q.24.A is “yes”, please describe the applicable legal procedures for challenging the decision, in your Member State.**

See also the answer to question Q24.A. above. If the right of residence is denied the denial might be challenged. An appeal to the Directorates of Security in the Federal States is possible. Exclusion from basic support might be challenged, appeals to the Independent Administrative Senates in the Federal States are possible.

Denial of family reunification might be challenged if an application was filed according to the Settlement and Residence Act (Art. 76 itself does not contain obligations for family reunification or possibilities to challenge). These provisions only apply if the temporary protection regime lasts for a longer period (no exact specification).

**Q.25.** Questions regarding penalties applicable to infringements of the national provisions.

**Q.25.A. Are there penalties applicable to infringements of the national provisions in your Member State?** *See mandatory provision in article 30.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

**Yes**                       **No**

**Explanation:** (If yes, specify the penalties).

There are no real penalties applicable. However persons might be excluded from basic support provided by the Basic Support Acts in the Federal States for various reasons enumerated in the resp. Acts.

**Q.25.B. Explain if the penalties, according to your opinion, comply with the Directive concerning them being effective, proportionate and dissuasive?**  
*See mandatory provision in article 30.*

There is no answer possible as there has been no practice so far. Theoretically the provisions comply with the Directive.

### **Final questions**

**Q.26. Can you refer us to any study, report or research by any source on the practice of granting temporary protection in the event of a mass influx in your Member State?**

There is a comprehensive description of previous temporary protection regimes by Valentini, Peter in Tretter, Hannes, *Temporary Protection*, Vol. 1, Vienna 2000, p. 27-154 with reference to further literature.

**Q.27. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate**

There has been no public debate on the transposition at all and no real political debate. There was a certain awareness that Art. 76 Settlement and Residence Act is not a really suitable instrument of transposition. This is also referred to in legal literature (though there is only few literature on the transposition of this Directive due to the fact of the lack of practical demands so far.

However the provisions in the Basic Welfare Support Agreement and also by Basic Welfare Support Acts in the Federal States regulating the financing of accommodation, social welfare, means of subsistence, medical care and other benefits for persons covered by a temporary protection regime has a long history of political debate. The debate however focussed on asylum seekers not on displaced persons.

**Q.28. Are there any problems of legislation or practice in your Member State which relate to temporary protection and have not been covered in preceding questions?**

No.

**THIRD PART**

**IMPACT OF THE DIRECTIVE ON NATIONAL LAW**

**Q.29** Question regarding the evolution of national law: **Did the transposition of the Directive make the rules related to the protection of third country nationals in cases of a mass influx become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below**

<b>OBJECTIVE</b> <i>To enhance the protection of displaced persons in cases of a mass influx</i>		<b>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</b>	<b>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</b>
<p>Explain the situation <u>before</u> transposition</p> <p>Residence Rights based on a government order Accommodation and means of subsistence. regulated ad hoc.</p>	<p>Explain the situation <u>after</u> transposition</p> <p>Residence Rights based on a government order Accommodation and means of subsistence regulated by the Basic Welfare Support Agreement and Basic Welfare Support Acts.</p>	<p><input type="checkbox"/> <i>Less favourable than previous national rules</i></p> <p><input checked="" type="checkbox"/> <i>Status quo</i></p> <p><input type="checkbox"/> <i>More favourable than previous national rules</i></p>	<p><input checked="" type="checkbox"/> <i>Less favourable than the Directive</i></p> <p><input checked="" type="checkbox"/> <i>In line with the directive</i></p> <p><input type="checkbox"/> <i>More favourable than the directive</i></p>

**Q. 30.** **From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below**

*When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

*Table 1*

<b>OBJECTIVE</b> (to be indicated by the national rapporteur) Accommodation, means of subsistence		<b>EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW</b>	<b>EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE</b>
<p>Explain the situation before transposition</p> <p>Regulated ad hoc in previous cases (Bosnia and Kosovo)</p>	<p>Explain the situation after transposition</p> <p>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</p>	<p><input type="checkbox"/> <i>Less favourable than previous national rules</i></p> <p><input type="checkbox"/> <i>Status quo</i></p> <p><input checked="" type="checkbox"/> <i>More favourable than previous national rules</i></p>	<p><input type="checkbox"/> <i>Less favourable than the Directive</i></p> <p><input checked="" type="checkbox"/> <i>In line with the directive</i></p> <p><input type="checkbox"/> <i>More favourable than the directive</i></p>

**Q.31.A.** Question regarding the method of transposition: **Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.**

YES  NO

**Q.31.B.** **If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).**

YES  NO

**Q.31.C.** **If yes, give some of examples:**

**Q.31.D.** **If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.**

**Q.32.** Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

*When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

Table 1

<b>DECISION OF SUPREME COURTS</b>	<b><u>DATE:</u></b>	<b><u>REFERENCE OF PUBLICATIONS:</u></b>	<b><u>SUMMARY OF CONTENT:</u></b>
<b>DECISION OF APPEAL COURTS</b>	<b><u>DATE:</u></b>	<b><u>REFERENCE OF PUBLICATIONS:</u></b>	<b><u>SUMMARY OF CONTENT:</u></b>
<b>DECISION(S) IN FIRST RESORT</b>	<b><u>DATE:</u></b>	<b><u>REFERENCE OF PUBLICATIONS:</u></b>	<b><u>SUMMARY OF CONTENT:</u></b>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

**Q.33.** Are there any problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.

**There are no problems with the translation of the directive.**

**There are some problems with the translation of the directive.**

**Explanation:** (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

**Explain the difficulties that this could create:**

**ANY OTHER INTERESTING ELEMENT**

**Q.34.** Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State

*When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).*

*Table 1*

<b>OBJECTIVE OF THE PRACTICE</b>	<b>EXPLANATION</b>

**Q.35.** Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.