

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

TEMPORARY PROTECTION OF 20 JULY 2001

IN
(Member State):
Malta

By
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[last amended 26 August 2007]

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

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FIRST PART

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

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005
DATE: 2005

NUMBER: Legal Notice 131 of 2005
DATE OF ENTRY INTO FORCE: 6 May 2005
PROVISIONS CONCERNED : ALL (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Government Gazette of Malta No. 17,764 (6 May 2005)
LEGAL NATURE (please tick the correct box): <input type="checkbox"/> LEGISLATIVE <input checked="" type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

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

TITLE: Refugees Act, 2001
DATE: 1 October 2001
NUMBER: Act XX of 2000
DATE OF ENTRY INTO FORCE: 1 October 2001
PROVISIONS CONCERNED : Article 19 (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Chapter 420 of the Laws of Malta
LEGAL NATURE (indicate by ticking the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

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

LEGISLATIVE RULES
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

REGULATIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

CIRCULAR OR INSTRUCTIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
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

COMPETENCE CONCERNED:	Extension of duration of temporary protection
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commissioner - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 5(2) & Regulation 8
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF	

THE AUTHORITY (for instance if it is independent of the competent minister)	
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Table 2

COMPETENCE CONCERNED:	Declaration of existence of a mass influx of displaced persons
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commissioner - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 6(1)
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 3

COMPETENCE CONCERNED:	Termination of temporary protection
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commissioner - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 7
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 4

COMPETENCE CONCERNED:	Registration of personal data
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)

DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commissioner - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 11 & Second Schedule
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 5

COMPETENCE CONCERNED:	Imposition of conditions on access to the education system
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commissioner - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 15(2)
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 6

COMPETENCE CONCERNED:	Determination of family members
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commissioner - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 16(2) & Second Schedule
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 7

COMPETENCE CONCERNED:	Allowing family reunification where the sponsor enjoys temporary protection
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commissioner - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 16(3) & Second Schedule
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 8

COMPETENCE CONCERNED:	Provision of information on a person receiving temporary protection to another Member State
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Government of Malta - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 16(7) & Second Schedule
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 9

COMPETENCE CONCERNED:	Ensure the necessary representation of unaccompanied minors
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commissioner - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 17(1)
OTHER LEVEL OF ADMINISTRATION:	

IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	
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Table 10

COMPETENCE CONCERNED:	Recommendations for ensuring the representation of unaccompanied minors
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Principal Immigration Officer - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 17(1)
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 11

COMPETENCE CONCERNED:	Placement of unaccompanied minors
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commissioner - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 17(3)
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 12

COMPETENCE CONCERNED:	Concurrence/non-concurrence of temporary protection and asylum
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commissioner - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 20(1)
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 13

COMPETENCE CONCERNED:	Obligation of information for voluntary return
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commission - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 22(1)
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 14

COMPETENCE CONCERNED:	Consideration of compelling humanitarian reasons in cases of forced return
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commissioner - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 23(2)
OTHER LEVEL OF ADMINISTRATION:	

IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	
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Table 15

COMPETENCE CONCERNED:	Taking the necessary measures to ensure the residence of persons enjoying temporary protection
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Principal Immigration Officer - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 24(1)
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 16

COMPETENCE CONCERNED:	Allowing families with minors attending school the benefit of residence conditions allowing the children to complete the current school period
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Principal Immigration Officer - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 24(2)
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 17

COMPETENCE CONCERNED:	Ensuring that persons eligible for temporary protection not yet in Malta have expressed their will to be received onto Malta's territory
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CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Government of Malta in cooperation with international organisations - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 25(1)
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 18

COMPETENCE CONCERNED:	Demanding the Council of the European Union to take appropriate action in case of a sudden and massive influx exceeding Malta's reception capacity
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Government of Malta - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 25(2)
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 19

COMPETENCE CONCERNED:	Cooperation with other Member States for the transferral of the residence of persons enjoying temporary protection from one Member State to another
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Government of Malta - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 26(1)
OTHER LEVEL OF ADMINISTRATION:	

IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	
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Table 20

COMPETENCE CONCERNED:	Communication to other Member States and notification to the Commission of the EU and UNHCR of requests for transfers and to any requesting Member State of its capacity for receiving transferees
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Government of Malta - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 26(2)
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 21

COMPETENCE CONCERNED:	Exclusion from temporary protection
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Commissioner - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 27(1)
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 22

COMPETENCE CONCERNED:	Appeal for a decision refusing the benefit of temporary protection
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CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Appeals Board - Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005: Regulation 28
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 23

COMPETENCE CONCERNED:	Power to make regulations under the Refugees Act
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Minister responsible for immigration - Refugees Act, 2001: Article 19
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 24

COMPETENCE CONCERNED:	Power to regulate appeals under the Refugees Act
CENTRAL MINISTRY OF:	Ministry of Justice and Home Affairs (MJHA)
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Refugee Appeals Board and Minister responsible for immigration - Refugees Act, 2001: Article 19(1)(b)
OTHER LEVEL OF ADMINISTRATION:	

IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	
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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

MISSING TEXTS
<i>INDICATE HERE THE MISSING TEXTS</i>

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?)

It is not specifically a mandate, however the effects are similar.

In the Maltese Regulations, the Refugee Commissioner decides about the existence of a mass influx of displaced persons, with the effect of introducing temporary protection for the displaced persons, following a Council Decision.

In the Maltese legislation there is no specific reference to a request being made to the Council to decide about the existence of such a mass influx.

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?)

It is not specifically a mandate, however the effects are similar.

In the Maltese Regulations, the Refugee Commissioner decides to end temporary protection following a Council Decision.

In the Maltese legislation there is no specific reference to a request being made to the Council to decide about the termination of temporary protection.

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)?

No specific criteria are mentioned apart from what is already mentioned in the Directive Art. 7 (i.e. where they are displaced for the same reasons and from the same country or region of origin).
The Refugee Commissioner has the discretion to extend this temporary protection coverage.

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?)

Faithful transposition.

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:

Documents or other equivalent evidence shall be issued by the competent authorities.

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:

Faithful transposition.

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:

Faithful transposition.

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:

Maltese legislation appears, at least prima facie, to implement it more strongly. The Directive mentions "The Member States shall, if necessary, provide persons..." whereas the Regulation reads "Persons admitted for the purposes of temporary protection shall be provided..." where the condition "if necessary" is omitted.

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)

The option allowed in the Directive is maintained in the Regulations, and there is the possibility of issuing visas free of charge or having their cost reduced to a minimum.

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:

Faithful transposition.

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)

It has not been possible to obtain this information to date.

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**)

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

Explanation:

Faithful transposition.

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? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Citizens of the European Economic Area? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Legally resident third-country nationals who receives unemployment benefits? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Explanation:

Maltese legislation has repeated the words of the Directive in transposing this Article, mainly "Provided that for reasons of labour market policies, priority may be given 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."

No further practical information about the implementation of this right is given in the regulations, which gives rise to a degree of flexibility in its application.

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:

Faithful transposition.

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 :

Faithful transposition.

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:

Faithful transposition.

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?*)

Faithful transposition: the Maltese legislation echoes the Directive and reads "the assistance necessary for medical care shall include at least emergency care and essential treatment of illness." Therefore the minimum standards are met but there is room for added provision of medical services.

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).

Faithful transposition: the Maltese legislation echoes the Directive and provides the same assistance as envisaged by the Directive.

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:

Yes, but qualified as a right of access to the state education system. In Malta there are two other main forms of education alternatives: private schools and Church schools. Naturally, nationals of Malta have the option to attend any of these schools, given the satisfaction of conditions of admittance, although some fees and charges may be applicable here.

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:

Access to education is confined to the state education system.

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:

Yes, but subject to such conditions as may be imposed by the Refugee Commissioner.

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:

There is the option of family members re-uniting in Malta if the separated family members are enjoying temporary protection in other countries of the European Union.

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:

This option is available where the Refugee Commissioner is satisfied that the family members fall under the description of Subregulation (1)(a) of Regulation 16.

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:

Faithful transposition.

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

According to the Refugee Commissioner, if the eventuality arises, the Office of the Refugee Commissioner would take into consideration all the evidence the applicant would be in a position to produce in support of his/her claim, according to his/her particular circumstances at the time concerned.

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).

This Directive has as yet never been put into practise.

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: It has not been possible to obtain this information to date.

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

It has not been possible to obtain this information to date.

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:

Regulation 16(6)(a) stipulates that "Reunited family members shall be granted residence permits under temporary protection, and documents or other equivalent evidence shall be issued for that purpose."

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:

It has not been possible to obtain this information to date.

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:

Maltese legislation fully transposes this provision and reflects the same wording of the Directive.

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 Directive does not specify further, and as yet it has never been put into practise.

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:

Regulation 17(2)(a)-(d) gives these options for the placement of unaccompanied minors during the period of temporary protection.

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 with the Directive, the Regulations allow for the minors to give their views regarding their placement in accordance with their age and maturity (Regulation 17(3)).

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:

Regulation 4(1) states that "Temporary protection shall not prejudice the recognition of refugee status under the Act and the Geneva Convention".

Regulation 4(4) however states that "These regulations shall not apply to persons who have been accepted under temporary protection schemes prior to the entry into force of these regulations".

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:

Faithful transposition in Regulation 18(1).

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:

Regulation 18(2) states that "The examination of any asylum application not processed before the end of the period of temporary protection shall be completed after the end of that period".

Therefore, to complete the examination of an asylum application after the end of the period of temporary protection, one legitimately expects that persons are allowed to stay in Malta during such completion.

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.

Regulation 19 determines that "The criteria and mechanisms to be applied for deciding whether Malta or any other Member State shall be responsible for considering an asylum application shall be in accordance with European Union legislation as in force from time to time. In particular, the Member State responsible for examining an asylum application, submitted by a person enjoying temporary protection, shall be the Member State which has accepted that person's transfer onto its territory."

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.

It is in the discretion of the Refugee Commissioner to decide whether or not temporary protection may be enjoyed concurrently with the status of asylum seekers.

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:

Where refugee or other status is not applicable, that person shall enjoy or shall continue to enjoy temporary protection for the remainder of the period of protection.

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?

Maltese Regulations read that "The Persons enjoying temporary protection or whose temporary protection has ended shall have the right to voluntarily return to their country of origin, in a manner that fully respects human dignity." This is a faithful transposition of the Directive, however, there is no reference of how this can be done in practise.

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).

The Directive has as yet never been put into practise.

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:

No reference is made to this right in the Regulations.

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?

Maltese legislation has repeated the words of the Directive in transposing this Article, mainly "For such time as the temporary protection has not ended, and on the basis of the circumstances prevailing in the country of origin, favourable consideration shall be given to requests for return to a host Member State, whether Malta or another Member State, from persons who have enjoyed temporary protection and exercised their right to a voluntary return." No further practical information about the implementation of this right is given in the regulations, which gives rise to a degree of flexibility in its application.

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).

Yes, until the date of return.

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.

Maltese legislation has repeated the words of the Directive in transposing this Article, mainly "The forced return of persons whose temporary protection has ended and who are not eligible for admission shall be conducted with due respect for human dignity." No further practical information about the implementation of this right is given in the regulations, which gives rise to a degree of flexibility in its application.

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.

Maltese legislation has repeated the words of the Directive in transposing this Article, mainly in Regulation 23(2): "In cases of forced return, the Commissioner shall consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases." No further practical information about the implementation of this right is given in the regulations, which gives rise to a degree of flexibility in its application.

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?

The regulations do not propose any further grounds apart from those under Regulation 23(2).

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:

From a legal point of view, the Regulations in Regulation 24, comply with the Directive. However, from a practical point of view, to my knowledge there are no known cases. This may well be the case since the Regulations have only recently been transposed.

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:

It is at the discretion of the Principal Immigration Officer whether to allow families, whose children are minors and attend school to benefit from residence conditions allowing the children concerned to complete the current school period.

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).*

The Directive has as yet never been put into practice and it has not been possible to obtain further information.

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:

The Maltese Regulations specifically mention that the consent of the person about to be transferred is required, reflecting the text of the Directive.

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:

Faithful 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:

In relation to Article 26(3) of the Directive, there is no transposition. The situation is however partially satisfied when a request for information is made in the case of the transfer of a person in the context of family reunification, as contemplated by Article 15 of the Directive and reflected by Regulation 16(7) of the Maltese Regulations.

There is no specific provision in the case of Directive Article 26(3), but I believe there is some overlap with Article 15, in which case there has been a specific transposition. It could be the case that this is a legislative omission.

I am convinced that the spirit of the Regulations remains the same as that of the Directive, particularly because following this Subregulation, there is then reference in Subregulation 26(4) to the model pass set out in the First Schedule which is to be used for transfers, between Member States, of persons enjoying temporary protection.

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:

The Maltese Regulations specifically mention that once the person is transferred to another Member State, the residence permit expires and Malta's obligations in relation to that person's temporary protection shall cease.

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 Maltese Regulations specifically mention that once the person is transferred to another Member State, Malta's obligations in relation to that person's temporary protection shall cease.

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 is no specific transposition of this sentence in the Directive. In my opinion, once the Regulations are speaking of an agreement between Member States to transfer a person enjoying temporary protection, it is assumed that if the transfer of such a person is accepted, the receiving State would be granting temporary protection. Otherwise, this transfer would not have been accepted in the first place. Although in a technical sense this sentence is omitted from the Maltese Regulations, I do not see any danger of its effects not being applied in practice, as there could not be any other possible approach if the other provisions that have been transposed were to be applied.

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:

The same words of the Directive are used in the Maltese Regulations, and the 'Model Pass' is replicated as well.

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: It has not been possible to obtain this information to date.

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).

Regulation 27 of the Maltese legislation reflects perfectly Article 28 of the Directive and the same criteria are reproduced i.e. there are serious reasons for considering that:

- (i) that person has committed a crime against peace, a war crime, or a crime against humanity;
- (ii) that person has committed a serious nonpolitical crime outside Malta prior to his or her admission into Malta as a person enjoying temporary protection;
- (iii) that person has been guilty of acts contrary to the purposes and principles of the United Nations;

(iv) that person as a danger to the security of Malta as a host country or, having been convicted by a final judgment of a particularly serious crime, that person is a danger to the community of Malta as a host country.

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:

The list of criteria is replicated in the Maltese legislation. There are no more (or less) criteria.

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:

This criterion is also replicated in the Maltese Regulations from the Directive with no variance.

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:

This criterion is also replicated in the Maltese Regulations from the Directive with no variance.

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:

Both instances are mentioned in the Maltese Regulations, reflecting the text of the Directive.

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.

In both cases, the person aggrieved can appeal to the Refugee Appeals Board established under Article 5 of the Refugees Act, hereby reproduced:

"(1) The Refugee Appeals Board shall consist of a chairperson and two other members who shall be appointed by the Prime Minister from amongst persons of known integrity who appear to him to be qualified by reason of having had experience of, and shown capacity in, matters deemed appropriate for the purpose:

Provided that at least one of the members of the Board shall be a person who has practised as an advocate in Malta for a period or periods amounting, in the aggregate, to not less than seven years.

(2) The members of the Board shall hold office for a period of three years, and shall be eligible for reappointment.

(3) The Minister may also appoint a substitute chairperson and substitute members of the Board to sit on the Board whenever the chairperson or members or any one of them is for some valid reason unable temporarily to attend and participate in the sittings of the Board:

Provided that, as far as practicable, the same chairperson and the same members shall hear and conclude the same case.

(4) (a) There shall be such number of Chambers of the Refugee Appeals Board as the Minister may prescribe.

(b) Where there is more than one chamber of the Board, cases shall be assigned to the various chambers in accordance with such rules as the Minister may prescribe.

(c) Each chamber of the Board shall be composed of a chairperson and two other members as provided in subarticles (1) to (3), which together with all the other provisions of this Act other than this subarticle shall apply with respect to each chamber as if reference therein to the Board were a reference to a chamber of the Board."

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).

No such mention is made in the Regulations.

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.

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?

N/A

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

N/A

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?

N/A

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**

OBJECTIVE <i>To enhance the protection of displaced persons in cases of a mass influx</i>		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
<p>Explain the situation <u>before</u> transposition</p> <p>There was no obligation to receive these persons unless they physically end up in our territory - we are then bound by our international obligations under the Geneva Convention. As an island that is geographically placed between Europe and Africa in the middle of the Mediterranean, we experience several problems with considerable numbers of irregular immigrants landing on our shores.</p>	<p>Explain the situation <u>after</u> transposition</p> <p>The norms deriving from the Directive in question have never been applied in practise. Should the case arise, the mechanism to deal with a mass influx of displaced people is there.</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. 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

OBJECTIVE (to be indicated by the national rapporteur)		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
General			
<p>Explain the situation before transposition</p> <p>The norms are completely new for Maltese legislation. Hence, they all present a change to the previous state of affairs.</p>	<p>Explain the situation after transposition</p> <p>Introduction of new norms.</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:**

N/A

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.**

The majority of the norms have been copied into the national legislation, however, it is difficult to assess its implementation since it has never been put into use.

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

DECISION OF SUPREME COURTS	DATE: N/A	REFERENCE OF PUBLICATIONS: N/A	SUMMARY OF CONTENT: N/A
DECISION OF APPEAL COURTS	DATE:	REFERENCE OF PUBLICATIONS:	SUMMARY OF CONTENT:
DECISION(S) IN FIRST RESORT	DATE:	REFERENCE OF PUBLICATIONS:	SUMMARY OF CONTENT:

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).

N/A

Explain the difficulties that this could create:

N/A

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

OBJECTIVE OF THE PRACTICE	EXPLANATION
None.	Since the norms have never been put into practise, one cannot mention any innovative practise from the part of the State.

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.

N/A.