

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

**TEMPORARY PROTECTION OF 20 JULY 2001**

**IN**

**The Netherlands**

**By**

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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

<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> Act of 16 December 2004 to amend the Aliens Act 2000 in order to implement Council Directive 2001/55/EC of 20 July 2001 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 of it (PbEG L212)</p>
<p><b>DATE:</b> 16 December 2004</p>
<p><b>NUMBER:</b> Stb. 2004, 691</p>
<p><b>DATE OF ENTRY INTO FORCE:</b> 15 February 2005 (pursuant to the Decision of 3 February 2005 containing the date of entry into force of the Act of 16 December 2004, Stb. 2004, 691, to amend the Aliens Act 2000 in order to implement Council Directive 2001/55/EC of 20 July 2001 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 of it (PbEG L212))</p>
<p><b>PROVISIONS CONCERNED :</b> all (for example if the norm also pursues other objectives than the transposition of the directive)</p>
<p><b>REFERENCES OF PUBLICATION</b> <b>IN THE OFFICIAL JOURNAL:</b> Bulletin of Acts, Orders and Decrees 2004, no. 691 (Staatsblad 2004, 691)</p>
<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></p>

**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

<p><b>TITLE:</b> Decision of 12 January 2005 to amend the Aliens Decree 2000 in order to implement Council Directive 2001/55/EC of 20 July 2001 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 of it (PbEG L212)</p>
<p><b>DATE:</b> 12 January 2005</p>
<p><b>NUMBER:</b> Stb. 2005, 25</p>
<p><b>DATE OF ENTRY INTO FORCE:</b> 15 February 2005</p>

<p><b>PROVISIONS CONCERNED</b> : all (for example if the norm also pursues other objectives than the transposition of the directive)</p>
<p><b>REFERENCES OF PUBLICATION</b> <b>IN THE OFFICIAL JOURNAL:</b> Bulletin of Acts, Orders and Decrees 2005, no. 25 (Staatsblad 2005, 25)</p>
<p><b>LEGAL NATURE</b> (indicate by ticking the correct box):</p> <p><input type="checkbox"/> <b>LEGISLATIVE</b></p> <p><input checked="" type="checkbox"/> <b>REGULATION</b></p> <p><input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b></p>

*Table 2*

<p><b>TITLE:</b> Regulation of 24 February 2005 issued by the Minister for Alien Affairs and Integration to amend the Aliens Regulation 2000</p>
<p><b>DATE:</b> 24 February 2005</p>
<p><b>NUMBER:</b> INDUIT05-684 (AUB), 32nd amendment</p>
<p><b>DATE OF ENTRY INTO FORCE:</b> 18 March 2005</p>
<p><b>PROVISIONS CONCERNED</b> : all (for example if the norm is not devoted only to the transposition of the concerned directive)</p>
<p><b>REFERENCES OF PUBLICATION</b> <b>IN THE OFFICIAL JOURNAL:</b> Government Gazette of 16 March 2005, no. 53, p. 17.</p>
<p><b>LEGAL NATURE</b> (indicate by ticking the correct box):</p> <p><input type="checkbox"/> <b>LEGISLATIVE</b></p> <p><input checked="" type="checkbox"/> <b>REGULATION</b></p> <p><input type="checkbox"/> <b>CIRCULAR OR INSTRUCTIONS</b></p>

*Table 3*

<p><b>TITLE:</b> Regulation on the provisions for asylum seekers and other categories of aliens 2005 (Rva 2005) as amended by a decision of the Minister for Alien Affairs and Integration of 7 September 2007 and a decision of the Minister of Justice of 23 January 2007.</p>
<p><b>DATE:</b> 26 January 2005 (Rva 2005), 7 September 2006 (amendment I), 23 January 2007 (amendment II)</p>
<p><b>NUMBER:</b> 5332253/05/DVB (Rva 2005), 5441048/06/DVB (amendment I), 5459684/06/DVB (amendment II)</p>
<p><b>DATE OF ENTRY INTO FORCE:</b> 5 February 2005, 13 September (amendment I), 31 January 2007 (amendment II)</p>
<p><b>PROVISIONS CONCERNED</b> : articles 3, 4 and 7 specifically refer to temporary protection, but also the articles relating to provisions during reception (9-18) and the duties during reception (19-22) are relevant in this context. (for example if the norm also pursues other objectives than the transposition of the directive)</p>
<p><b>REFERENCES OF PUBLICATION</b> <b>IN THE OFFICIAL JOURNAL:</b> Government Gazette of 3 February 2005, no. 24, p. 17 (Rva 2005), Government Gazette of 12 September 2006, no. 177, p. 7 (amendment I) and Government Gazette of 30 January 2007, no. 21, p. 36 (amendment II)</p>
<p><b>LEGAL NATURE</b> (indicate by ticking the correct box):</p> <p><input type="checkbox"/> <b>LEGISLATIVE</b></p> <p><input checked="" type="checkbox"/> <b>REGULATION</b></p> <p><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>
<b>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</b>
<b>COMPETENCES OF THE COMPONENTS:</b>
<b>EXPLANATIONS IF NECESSARY:</b>

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

<b>CIRCULAR OR INSTRUCTIONS</b>
<b>COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:</b>
<b>COMPETENCES OF THE COMPONENTS:</b>
<b>EXPLANATIONS IF NECESSARY:</b>

**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>	individual decisions relating to provision of residence permit, information, registration, responsibility to take back a person on its territory, work (regarding the residence permit for the purpose of (self-) employment), accommodation, social assistance and health care, family reunification, access to asylum procedure, return and measures after TP has ended, solidarity and exclusion
<b>CENTRAL MINISTRY OF:</b>	Ministry of Justice

<b>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</b>	The Immigration and Naturalization Service (Immigratie- en Naturalisatiedienst)(IND) takes most of the abovementioned decisions on behalf of the State Secretary of Justice who, since 22 February 2007, is responsible for the immigration and asylum portfolio. <sup>15</sup> The Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang asielzoekers)(COA) is the main actor in charge of reception conditions (accommodation, social assistance). The regional Community Health Services (gemeentelijke gezondheidsdiensten)(GGD), more specifically the foundations for Community Health Services for Asylum Applicants (Medische Opvang van Asielzoekers)(MOA), are responsible for health care.
<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>	The governmental agency of the COA is a so-called autonomous administrative body ('zelfstandig bestuursorgaan'), working under the (political) responsibility of the State Secretary of Justice. Its budget is provided by the Ministry of Justice. The foundations for Community Health Services for Asylum Applicants (MOA) are funded by the COA.

*Table 2*

<b>COMPETENCE CONCERNED:</b>	provision of (transit)visas
<b>CENTRAL MINISTRY OF:</b>	Ministry of Foreign Affairs
<b>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</b>	Dutch Embassy or Consulate in the country of origin
<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>	decisions relating to education
<b>CENTRAL MINISTRY OF:</b>	Ministry of Education, Culture and Science
<b>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</b>	individual educational institutions

<sup>15</sup> From 22 July 2002 until 22 February 2007, the Minister for Alien Affairs and Integration was the competent Minister. Since 22 February 2007 however, the Alien Affairs and Integration portfolio no longer exists.

<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 4*

<b>COMPETENCE CONCERNED:</b>	decisions relating to work permits
<b>CENTRAL MINISTRY OF:</b>	Ministry of Social Affairs and Employment
<b>DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:</b>	Central Organization for Work and Income (Centrale Organisatie voor Werk en Inkomen)(CWI)
<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>	

**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>
<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?)

The fact that a regime of temporary protection has to be installed by a Council Decision is expressed in the opening words of Article 3.1a (1) Aliens Decree 2000.

**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?)

The fact that it is the Council to decide when temporary protection shall come to an end also appears from the opening words of Article 3.1a (1) Aliens Decree 2000.

**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 Article 3.1a (1)(e) Aliens Decree 2000 temporary protection can be extended to aliens who belong to a category of persons designated by or pursuant to a statutory regulation by the Minister where they are displaced for the same reasons and from the same country or region of origin as the persons to whom the Council Decision provided for in Article 5 of the Temporary Protection Directive (TPD) applies and where they do not already enjoy protection in another Member State of the EU/EEA.

This possibility is utilized in subsections b, c and d of Article 3.1a (1) Aliens Decree 2000. These subsections which refer to family reunification are wider in scope than is strictly required by Article 15 of the TPD. According to Article 15 (2) and (3) of the TPD family members can also qualify for temporary protection, but only if they are in need of temporary protection themselves. Subsections b, c and d of Article 3.1a (1) Aliens Decree 2000 do not call for this requirement. According to these subsections family members (spouse, unmarried partner, unmarried minor children, other close relatives who lived together as part of the family unit at the time of the events leading to the mass influx and who were wholly or mainly dependent on the sponsor, and leaving them behind would constitute extreme hardship) can qualify for temporary protection even when they do not belong to the specific groups of persons who need temporary protection as defined in the Council decision. The Advisory Committee on Aliens Affairs (Adviescommissie voor Vreemdelingenzaken)(ACVZ) gives in its 'advice on the amendment of the Aliens Decree in order to implement Directive 2001/55/EC' of 27 April 2004 the (hypothetical) example of a situation of violence during which only men are hunted for and women and children are left alone. If the Council would restrict the scope of its decision only to these men, this would lead to the consequence that the women and children of these men who do not belong to the specific group of persons to be defined in the council decision, but who nevertheless lived together with them and travelled together with them to the Netherlands, would, without any further regulation, be excluded from temporary protection. This could result in the return of those women and children to their country or region of return after having received a negative decision on their asylum application, while the man in question could still enjoy temporary protection. In order to prevent the family members from entering into court proceedings in order to stay with the man, the Minister decided to broaden the scope of the group of family members who will qualify for temporary protection.

**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?)

The temporary protection beneficiary will be provided with a so-called W-document which is the same document as asylum seekers receive during the asylum procedure. This document does not only evidence the fact that the person will not be expelled during the procedure, but it also mentions his/her identity and nationality (Article 9 (1) Aliens Act 2000 in conjunction with Article 4.21 (1) (c) of the Aliens Decree 2000 in conjunction with Article 3.3 (1) (a) and (2) of the Aliens Regulation 2000). It is however not a valid travel document (section C12/3.4 of the Aliens Circular 2000).

It is highly questionable whether this so-called Dutch W-document constitutes a residence permit within the meaning of Article 2 (g) of the TPD. The Article itself defines a 'residence permit' in the broadest sense as 'any permit or authorization issued by the Member State taking the form provided for in that State's legislation, allowing a third country national or a stateless person to reside on its territory'. According to the Explanatory Memorandum to the original Commission Proposal (which defines 'residence permit' in the exact same way) however a residence permit must be a clear authorization to reside and not merely a document tolerating the holder's presence on the country's territory which is true for the W-document. Another argument in favour of the proposition that a residence permit within the meaning of the TPD has to be more than just an identity document for asylum seekers can be found in article 6 of the Reception Conditions Directive (RCD). According to this provision member states have to ensure that the asylum seeker is provided with a document certifying his or her status as an asylum seeker or testifying that he or she is allowed to stay in the territory of the member state while his or her application is pending or being examined. It is clear that the Dutch W-document satisfies this requirement. If the Council would have aimed at a similar provision in the TPD it would have used the term 'document'. Furthermore, a reference to article 24 of the Qualification Directive (QD) can be made. According to this article beneficiaries of the refugee or subsidiary protection status have to be issued residence permits as soon as possible after their status has been granted. Because of the fact that 'residence permit' in this Directive is defined in the exact same way as in the TPD and the fact that in the Netherlands refugees and subsidiarily protected persons do have a right to a full residence permit the claim that a W-document can also be considered as a residence permit is untenable. Finally, both in the Dublin Regulation (DR) and the the Family Reunification Directive (FRD) of which the latter refers to Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third country nationals, a residence autorisation which is issued during the (asylum)procedure is not regarded as a 'residence permit'.

**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?)

The W-document for asylum seekers will be issued for only one year. Although it is in principle the Immigration and Naturalization Service (IND) which is responsible for issuing a new document in case of expiration, in practice this automatic extension unfortunately does not occur in a standard way which means that the asylum seeker himself has to apply for extension of his W-document. This can imply a waiting period of up to 6 to 8 weeks. It is not sure whether the W-document the temporary protection beneficiary will be provided with will also be valid for one year.

**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:**

See answer Q8A.

**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 is neither a statutory provision nor an instruction in the Aliens Circular saying explicitly that beneficiaries of temporary protection will be provided with a document in a language likely to be understood by them, in which the provisions relating to temporary protection are clearly set out. However, the Explanatory Memorandum to the Act of 16 December 2004 to amend the Aliens Act 2000 in order to implement the TPD states that the temporary protection beneficiary has to be provided with such a document also in order to prevent him or her from entering into court proceedings against the fact that a decision on the asylum application has not been taken on time (p. 7). With regard to asylum seekers, Article 2 (3) and (4) of the Regulation on the provisions for asylum seekers and other categories of aliens 2005 (Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005)(Rva 2005) contains a rather general provision stipulating that the asylum seeker must be informed in writing about the rights and obligations in terms of reception conditions and on legal assistance and reception facilities.

**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:**

According to the Explanatory Memorandum to the Act of 16 December 2004 to amend the Aliens Act 2000 in order to implement the TPD (p. 9) and the Explanatory Memorandum to the Decision of 12 January 2005 to amend the Aliens Decree 2000 in order to implement the TPD (p. 5) these personal data will be registered upon lodging an application for asylum (Article 37 (a) Aliens Act 2000, Article 3.108 Aliens Decree 2000 and Article 3.38 Aliens Regulation 2000) and otherwise during the first interview (Article 37 (b) and (c) Aliens Act 2000, Article 3.110 Aliens Decree 2000, Article 3.44 Aliens Regulation 2000).

**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:**

Pursuant to Article 3 (3) Aliens Act 2000 entry into the Netherlands shall not, save in accordance with a special direction issued by the Minister, be refused to an alien indicating that he wishes to apply for asylum. According to the Explanatory Memorandum to the Act of 16 December 2004 to amend the Aliens Act 2000 in order to implement the TPD (p. 8), this Article will also be applicable to temporary protection beneficiaries, because they can only benefit from temporary protection in the Netherlands by lodging an asylum claim. With this, the Explanatory Memorandum states, the entry into the Netherlands is sufficiently facilitated and the additional formalities and costs are restricted as far as possible.

However, the special direction mentioned in Article 3 (3) Aliens Act 2000 is usually issued with regard to asylum seekers. So, as a general rule, asylum seekers who arrive in the Netherlands through Schiphol Airport (Amsterdam) or one of the seaports (at the border of the Schengen area) and who are not in the possession of valid travel documents will be refused entry and will be required to stay in a space or place designated by a border control officer (Article 6 of the Aliens Act). When the alien declares that he or she wants to file an asylum application he or she will be transferred to the application centre (AC) at Schiphol Airport which is a closed centre secured against unauthorized departure. During the stay at AC Schiphol the authorities will try to establish the identity and nationality of the alien concerned in order to decide whether the alien belongs to the category of persons who can qualify for temporary protection. If nationality and identity cannot be established and the asylum seeker will not be able to benefit from temporary protection the asylum claim will be dealt with in the normal way, preferably within the accelerated 48 hours asylum determination procedure. The question arises as to whether in this case the entry is sufficiently facilitated.

In case the temporary protection beneficiary will be transferred from one Member State to the other (e.g. because of family reunification or because of reasons of solidarity) Article 3(1)(a) Aliens Act 2000 in conjunction with Article 2.3 (3) Aliens Decree 2000 in conjunction with Article 2.3 Aliens Regulation 2000 provide that entry into the Netherlands will not be refused if the temporary protection beneficiary is in the possession of a *laisser-passez* as defined in Annex 1 to the TPD.

In case of persons who are still outside the EU but who are to be admitted to the Netherlands for the purposes of temporary protection (e.g. in case of an evacuation programme or for family reunification reasons ex Article 15 (3) of the TPD) there are no special facilities for obtaining the necessary visas, including transit visas. Most likely, once the decision has been made to admit these persons to the Netherlands visa will be provided without many formalities.

**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)

There are no special statutory provisions relating to (the costs of) visa in case of temporary protection.

**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:**

This duty to take back a person enjoying temporary protection in the Netherlands if he or she remains on, or, seeks to enter without authorisation onto, the territory of another Member State has not been transposed in national legislation. However, according to the Explanatory Memorandum to the Act of 16 December 2004 to amend the Aliens Act 2000 in order to implement the TPD (p. 9), this duty follows from the Schengen and Dublin Agreements.

**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)

Not as far as I am aware.

**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?  Yes  No

Self-employed activities?  Yes  No

Educational opportunities for adults?  Yes  No

Vocational training?  Yes  No

Practical workplace experience?  Yes  No

### **Explanation:**

In order to take up work as an employed person, the temporary protection beneficiary needs a work permit. A person will be eligible for this work permit when there are no EU / EEA citizens or legally resident third-country nationals who receive unemployment benefits to whom priority can be given. He or she then has to apply for an ordinary residence permit for the purpose of employment. If the temporary protection beneficiary wants to engage in a self-employed activity, he has to apply for an ordinary residence permit for the purpose of self-employment. As a general rule this application will be denied if the alien is not in the possession of an authorization for temporary stay (MVV) which has to be applied for at the Dutch Embassy or Consulate in the country of origin. By a Decision of 12 January 2005 to amend the Aliens Decree 2000 in order to implement the TPD, an exemption from this MVV-requirement has been introduced with regard to temporary protection beneficiaries who will be eligible for the residence permit for the purpose of (self-) employment.

However, when there are aliens to whom priority can be given the work permit and consequently the ordinary residence permit for the purpose of employment will be denied. What will be left then is the limited form of access to the labour market an asylum seeker is entitled to: a maximum of twelve weeks per year after a period of six months during which the asylum seeker is fully excluded from the labour market. The employer has to get a work permit for this employment too, but does not have to show that he has first actively sought suitable candidates in the Netherlands or in the EU/EEA for at least five weeks.

Asylum seekers have access to vocational training and modern apprenticeships. If, during this vocational training period, they want to do a work placement, they can - under certain conditions - be exempted from the work permit obligation (Article 1g of the Decision to implement the Aliens Employment Act (Wet Arbeid Vreemdelingen) (Wav), Bulletin of Acts, Orders and Decrees (Stb.) 2007, 191). One of the conditions is that the employer has to dispose of a work placement agreement with the asylum seeker and the educational institution. In-service education will not be considered as vocational training. By analogy the same rules apply to temporary protection beneficiaries.

Asylum seekers are not entitled to a study grant or a contribution in study costs by the government, but they may apply to be exempted from school fees or for support from the University Assistance Fund (UAF). The UAF is a private foundation (NGO) and has limited resources. Again the same rules apply to temporary protection beneficiaries.

**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:**

According to Article 3.31 Aliens Decree 2000 the temporary protection beneficiary who has been issued a work permit pursuant to the Aliens Employment Act (Wet Arbeid Vreemdelingen) (Wav) will have to apply for an

ordinary residence permit for the purpose of employment (as defined in Article 14 Aliens Act 2000) in order to take up work as an employed person. A person will be eligible for the work permit when there are no EU / EEA citizens or legally resident third-country nationals who receive unemployment benefits to whom priority can be given. When there are aliens to whom priority can be given the work permit and consequently the ordinary residence permit for the purpose of employment will be denied (article 8 (1)(a) of the Aliens Employment Act).

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:**

When a person enjoying temporary protection is allowed to work, all the relevant national labour legislation will be applicable to him, like the Minimum Wage Act (regarding remuneration), the Health Insurance Act, Sickness Benefits Act, Work and Income according to Labour Capacity Act (the WIA Act) and the Unemployment Benefits Act (regarding employee insurance schemes) and the Working Conditions Act (regarding employment protection).

Pursuant to the Equal Treatment Act 1994 (Algemene Wet Gelijke Behandeling) people should be treated equally irrespective of among other things their nationality. Paragraph 3 of this Act (sections 4-6a) contains special provisions in the field of employment and professions. According to section 5 of the Act it is unlawful to discriminate in or with regard to: a) advertisements for job vacancies and procedures leading to the filling of vacancies; b) job placement; c) the commencement or termination of an employment relationship; d) the appointment and dismissal of civil servants; e) terms and conditions of employment; f) permitting staff to receive education or training during or prior to employment; g) promotion and h) working conditions. Section 6 mentions that it is unlawful to discriminate with regard to the conditions for and access to the professions and opportunities to pursue such professions or for development within them.

**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 :**

Persons granted temporary protection receive the same benefits as asylum seekers with regard to housing, social assistance and health care.

Section 11 (2) (b) of the Aliens Act 2000 mentions that the alien who is lawfully resident in the Netherlands awaiting a final decision on his/her asylum application (as is the temporary protection beneficiary) may claim facilities and benefits if these are granted by or pursuant to the Act on the Central Agency for the Reception of Asylum Seekers (Wet Centraal Orgaan Opvang Asielzoekers)(Wet COA). The Wet COA contains rules concerning the establishment of the COA, an autonomous administrative body ('zelfstandig bestuursorgaan') entrusted with the material and immaterial reception of asylum seekers. It does not contain any provision with respect to the content of the material and immaterial reception of asylum seekers. It only holds rules about the organization of the COA. Pursuant to article 12 of the Wet COA, the Minister for Alien Affairs and Integration (at present: State Secretary of Justice) is competent to take further regulatory measures regarding the provisions for asylum seekers. She has used this competence by formulating the Regulation on the provisions for asylum seekers and other categories of aliens 2005 (Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005)(Rva 2005).

According to Article 3(1) in conjunction with Article 3(3)(i) Rva 2005 temporary protection beneficiaries will be accommodated in public reception centres run by the Central Agency for the Reception of Asylum Seekers once it has been established (in an application centre) that the persons concerned can benefit from the temporary protection regime. However, the question can be asked whether a possible stay of up to three years in such a reception centre with very little privacy meets the requirements of 'suitable' accommodation in the sense of Article 13 (1) of the Directive. The Dutch Minister for Alien Affairs and Integration answered this question affirmatively during the parliamentary debate on the issue in view of the exceptional circumstances that have led to the instalment of the temporary protection regime.<sup>16</sup> This might be a valid argument in the short run, but will this argument be equally valid as the period a temporary protection beneficiary will be legally resident in the country will proceed?

In January 2005, after the transposition of the TPD in the Netherlands took place, a new reception model was implemented according to which the stage of the asylum procedure determines in which type of reception centre the asylum seeker will be staying. The model distinguishes three phases of reception: orientation (before the first decision), integration (after positive decision) and return (after first negative decision). According to this model the asylum seeker who has not yet received a decision (which by analogy will also apply to the temporary protection beneficiary) will be housed in a so-called centre for orientation and integration. There are however only a few of these orientation and integration centres (5) across the Netherlands. Besides this, because of the considerable decline of the number of asylum applications in the last five years the Central Agency for the Reception of Asylum Seekers has been reducing the number of accommodation centres drastically. It thus remains highly doubtful whether the existing capacity will be sufficient in case of a mass influx. In the past distribution of asylum seekers at times of a sudden mass influx (e.g. during the Kosovo crisis in 1999) occurred on an ad-hoc basis. It even proved necessary to use emergency accommodation in the form of tent camps.

**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**

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<sup>16</sup> TK 2003-2004, 29 031, no. 5, p. 9.



### **Explanation:**

Persons granted temporary protection receive the same benefits as asylum seekers with regard to social assistance. This means that temporary protection beneficiaries like asylum seekers are entitled to weekly allowances consisting of a food allowance and pocket money (which is meant for the purchase of clothing and other personal expenses).<sup>17</sup> Especially the level of the food allowance has been subject of intensive, parliamentary debate in recent years. At the beginning of 2007, the Minister of Justice eventually raised the level of the total weekly allowance to € 52,61 for adults, € 33,75 for children between 0 and 11, € 40,41 for children between 12 and 17 and € 49,33 for unaccompanied minors. Besides, a single parent bonus of € 27,14 will be provided.<sup>18</sup> An asylum seeker (and by analogy a temporary protection beneficiary) can also be refunded for extraordinary costs (e.g. travelling expenses, school costs, medical costs, (legal) dues, etc.).<sup>19</sup> Finally, a third-party insurance will be taken out on behalf of the asylum seeker.<sup>20</sup>

**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*?)

Persons granted temporary protection receive the same benefits as asylum seekers with regard to medical care. This means that temporary protection beneficiaries (like asylum seekers) who stay in a reception centre for orientation and integration are covered for medical expenses pursuant to a health insurance which is taken out by the Central Agency for the Reception of Asylum Seekers. Coverage is comparable to the standard package of the new Health Insurance Act (*Zorgverzekeringswet*) which entered into force on 1 January 2006 and the General Act Special Medical Expenses (*Algemene Wet Bijzondere Ziektekosten*)(AWBZ) with the exception of IVF-treatment and gender alteration surgery. Besides, the standard package only covers emergency dental care. Also the costs for e.g. contraceptives are not compensated for. Access to health care is thus ensured at a nearly equal level provided to nationals covered by these insurances.

**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**

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<sup>17</sup> Article 14 of the Rva 2005.

<sup>18</sup> Decision of 23 January 2007 by the Minister of Justice to amend the Rva 2005, Government Gazette 30 January 2007, no. 21, p. 36.

<sup>19</sup> Article 17 of the Rva 2005.

<sup>20</sup> Article 9(1)(f) in conjunction with article 16(2) of the Rva 2005.

**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).

Also at this point the relevant rules regarding asylum seekers apply. Article 9 (4) of the Rva 2005 only states in general terms, without distinction between the different categories of persons, that more vulnerable persons with special needs have the right to special support or counselling. According to the Explanatory Memorandum to the Rva 2005 one has to think of unaccompanied minors and asylum seekers who have serious psychosocial problems.

Specialised health care is available when there is an indication. The special needs are identified by the Community Health Services for Asylum Seekers (MOA) and a doctor at arrival at a reception centre or during office hours in the reception centres. There is specialised mental and somatic health care for persons who have been tortured, raped or victims of serious physical or psychological violence. The Dutch Council for Refugees however indicates that when these people need more private living conditions this can often constitute a problem. According to the COA, its employees are trained to deal with traumas asylum seekers face.

The MOA or general practitioner can refer asylum seekers to the Riagg, the institute that provides mental health care in the Netherlands. Especially in the big cities these centres are often specialised in migrant or refugee problems. There are also a few medical institutes that are specialised in the treatment of psychiatric problems of asylum seekers / refugees. In the Netherlands there is also a knowledge institute, Pharos in Utrecht, which provides specialist medical knowledge and training for the (mental) health care of asylum seekers / refugees. According to the UNHCR, in practice, psychological aid is often not provided by the specialized organizations during the asylum procedure as it is difficult (and sometimes contra-protective) to treat psychological disorders, including trauma, during this uncertain period.

Asylum seekers with behavioural and/or serious (mental) health problems are taken care of in special reception facilities run by third parties (article 7(2) of the Wet COA). There are for example special reception facilities for asylum seekers who due to their unacceptable behaviour cannot stay in a normal reception facility (so-called AMOG centres) and for asylum seekers who have mental problems ('Abri' and 'de Vonk').

Also unaccompanied minors are accommodated in special centres (see answer Q15B).

**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:**

The 1969 Compulsory Education Law (Leerplichtwet) applies to all children on Dutch territory and thus also to minor temporary protection beneficiaries. All children between the age of 5 and 16 residing in the Netherlands have to be enrolled in a school by their parents or legal guardian. These children have to attend daytime classes. All children aged 16 and 17 have a partial obligation to education. They have to be enrolled in an educational institution but it does not have to be a full-time course. The 1969 Compulsory Education Law thus ensures access to schooling for children of temporarily protected persons.

**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:**

Like children of asylum seekers, children of persons enjoying temporary protection can attend regular primary and secondary schools. In principle the parent(s) or legal guardian of the minor asylum seeker can choose the school of their liking, but only public schools have an obligation to admit children of asylum seekers. In some cases a primary school forms part of a reception centre and offers specialised education.

**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:**

See answer Q11A. Temporary protection beneficiaries, like asylum seekers, have access to all forms of education (vocational training and modern apprenticeships) with the exception of in-service education. However, they are not entitled to a study grant or a contribution in study costs by the government, but they may apply to be exempted from school fees or for support from the University Assistance Fund (UAF). The UAF is a private foundation (NGO) and has limited resources.

**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:**

Article 3.1a (1) Aliens Decree 2000 stipulates that an alien who applies for asylum will not be removed from the country if that alien (in short):

- a) belongs to the specific group designated in the Council Decision;
- b) is the spouse or unmarried partner of the person under a);
- c) is the minor unmarried child of the person under a) or b);
- d) is a close relative of the person mentioned under a);
- e) ...

Thus, in order for a family member to benefit from the TP regime it is compulsory that he or she files an asylum claim in the Netherlands. Because of the fact that an asylum claim can only be filed on Dutch territory, the filing of that claim indicates that these family members wish to be reunited. This, however, according to the Dutch government, does not indicate that temporary protection will be provided in the Netherlands in all cases. At this point, the government refers to the applicability of Article 15 of the Dublin Regulation (humanitarian clause)(see

the Explanatory Memorandum to the Decision of 12 January 2005 to amend the Aliens Decree 2000 in order to implement the TPD (p. 6)). According to this humanitarian clause the Netherlands, even where the Netherlands is not responsible under the criteria set out in this Regulation, may bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations. The persons concerned must consent. It is however questionable whether regarding the transposition of Article 15(2) of the TPD, the Netherlands can simply refer to the applicability of the Dublin Regulation. All the more because the humanitarian clause in the Dublin Regulation (Article 15(1)) is a so-called 'may'-provision, while Article 15(2) of the TPD is a mandatory provision. According to C3/2.3.6.3 of the Aliens Circular, the humanitarian clause of Article 15(1) of the Dublin Regulation will only be used by the Minister in exceptional cases. Moreover, the object and purpose of the Dublin Regulation (system for determining the Member State responsible for the examination of an asylum application) is completely different from the object and purpose of Article 15 (2) of the TPD according to which family members belonging to the closer family who enjoy temporary protection in different Member States under certain conditions have a right to be reunited.

**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:**

As mentioned above (answer to Q14A), in order for a family member (whether in an EU Member State or still in the country of origin) to benefit from the TP regime, it is compulsory that he or she files an asylum claim in the Netherlands. This means that a family member who is not yet in the Netherlands has to physically come to the Netherlands first and apply for asylum here. Article 15(3) of the TPD has thus not been transposed in national legislation. The Explanatory Memorandum to the Decision of 12 January 2005 to amend the Aliens Decree 2000 in order to implement the TPD only mentions Article 15(3) of the TPD by referring to an advice of the (Dutch) Advisory Committee on Aliens Affairs. Transposition of provisions of an EU Directive however requires rules of law capable of creating a situation which is sufficiently precise, clear and transparent to allow individuals to know the full extent of their rights and rely on them before the national courts (ECJ Case 162/99, Commission of the European Communities v. Italian Republic, European Court reports 2001, I-00541, recital 22 of the judgment).

**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:**

Article 3.1a (1) subsections b - d of the Aliens Decree 2000 refer in conformity with the TPD to the members of the closer family (spouse of the sponsor or his/her unmarried partner in a stable relationship as well as the minor unmarried children of the sponsor or of his/her spouse born in or out of wedlock) as well as to the members of the wider family (other close relatives who lived together as part of the family unit at the time of the events leading to the mass influx and who were wholly or mainly dependent on the sponsor, and leaving them behind would constitute extreme hardship).

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

This has not been explicitly laid down in national legislation. In the Netherlands, family members of persons who enjoy refugee or subsidiary protection status who want to qualify for an asylum residence permit themselves (Article 29 (1)(e) or (f) Aliens Act 2000) have to submit documents that evidence the family membership (section C12/6 Aliens Circular). In case the applicant is unable to show the necessary documents proving the family membership, the Alien Circular stipulates that the applicant must show that the fact that he cannot submit the documents can not be ascribed to him. If the applicant fails to show that the lack of documents can not be ascribed to him, the application for family reunification can be turned down. In case the applicant is able to show that the lacking of documentary evidence can not be ascribed to him, he or she can revert to the possibility of a DNA-investigation. A DNA-investigation will only take place to establish the relationship between parent and child and only after it has been determined that it is impossible to provide documentary evidence. It is unclear whether these rules are also applicable to family members of temporarily protected persons.

**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).***

There is no transposition of this provision in Dutch legislation. The Explanatory Memorandum to the Decision of 12 January 2005 to amend the Aliens Decree 2000 in order to implement the TPD (p.7) only states that 'the best interest of the child' will be taken into account regarding the decision in which Member State family reunification shall take place.

**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:** State Secretary of Justice

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

The same procedure as is applied in the framework of the Dublin Regulation will be applied. In case it is decided that family reunification will take place in another Member State than the Netherlands, the temporary protection beneficiary concerned will be transferred to that other Member State and his lawful residence in the Netherlands will come to an end (Article 3.1a (2)(c) Aliens Decree 2000).

**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:**

These family members will also be provided with a W-document (identity document for asylum seekers) which evidences the fact that the person will not be expelled during the procedure (Article 3.1a (1) Aliens Decree 2000. See answer Q 8 for more details.

**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 answer Q.14.H in conjunction with answer Q8.

**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:**

This provision is not explicitly laid down in Article 3.1a Aliens Decree 2000.

**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).**

Guardianship of all unaccompanied minors who arrive in the Netherlands is awarded to the guardianship foundation Nidos. This Nidos Foundation is responsible for guarding the interests of the unaccompanied minors and for their upbringing and development. The Nidos Foundation is subsidized by the Ministry of Justice.

**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 accomodation suitable for minors ?**
- With the person who looked after the child when fleeing ?**

**Explanation:**

The reception of unaccompanied minors is provided by the Nidos Foundation and by the COA.

Provided that this will be in the interests of the child, the COA has to take care of the fact that the minor child of an asylum seeker or the asylum seeker who is a minor will be accommodated with his or her parent or with an adult family member (Article 11(4) of Rva 2005).

For unaccompanied minors aged 0-12, Nidos has contracted foster parents. Unaccompanied minors who are not placed with a foster family (> age 12) will be accommodated by the COA in children's communal units (Kinderwoongroepen (KWG) of Kinderwooneenheden (KWE)) or in special 'AMA campuses' (Leek, Drachten, Baexem, Oisterwijk and Middelburg). Since the beginning of 2006, as a result of the disappearance of unaccompanied minors from reception facilities, several security measures have been implemented at these AMA campuses, like 24-hour protection and supervision, implementation of keycards and camera surveillance (TK 2005-2006, 27 062, nr. 49, 20 April 2006).

Within the different facilities, the reception conditions of each unaccompanied minor will be either directed at return or at integration, depending on the prospect of the unaccompanied minor and the stage of his or her (asylum) procedure (TK 2005-2006, 27 062, nr. 48, 13 December 2005).

However, in order to make sure that as much as possible homogeneous groups (orientation or return) will be accommodated in the different reception facilities, the new system implies that within a few weeks after the unaccompanied minor has filed an application, the COA (in consultation with the IND and the Nidos) will decide on the basis of the perspective of the unaccompanied minor whether he will be sent to a reception facility directed at orientation or to a reception centre directed at return.

**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:**

Apart from Article 11 (4) of the Rva 2005 which mentions the interests of the child (see answer Q15B), there is no explicit requirement that the views of the child must be taken into account.

## **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:**

In order to benefit from the temporary protection regime the alien **has to** (= **obligation**) file an asylum application. According to Article 43a Aliens Act 2000 the decision on this asylum application has to be taken somewhere between the date of the application and six months after temporary protection has ended. When taking a decision the immigration authorities examine whether the alien qualifies for an asylum residence permit pursuant to Article 29 Aliens Act 2000.

According to Article 29 of the Aliens Act 2000 people who apply for asylum in the Netherlands can be awarded a temporary asylum residence permit on one of the following six grounds:

- a. on the basis of the 1951 Geneva Convention relating to the Status of Refugees;
- b. on the basis of article 3 of the European Convention on Human Rights (ECHR);
- c. for compelling humanitarian reasons relating to their individual circumstances, for instance in the light of traumatic experiences;
- d. if return to their country of origin would place them at grave risk because of the general situation there, for instance because it is at war
- e. if the applicant belongs, as husband, wife or minor child, to the family of the alien as referred to at (a) to (d), has the same nationality as the alien and has either entered the Netherlands at the same time as the alien or has entered it within three months of the date on which the alien referred to at (a) to (d) was granted a temporary asylum residence permit;
- f. if the applicant is, as a partner or a child who is of age, dependent on the alien as referred to at (a) to (d) and can for that reason be considered as belonging to the family of this alien, has the same nationality as the alien and has either entered the Netherlands at the same time as the alien or has entered it within three months of the date on which the alien referred to at (a) to (d) was granted a temporary asylum residence permit.

Asylum can thus be granted to people who are refugees according to the definition in article 1A of the Geneva Convention, but also to people who request for international protection on another ground. Notwithstanding the different grounds, the Aliens Act 2000 leaves only one asylum permit to be obtained. All holders of this asylum permit get the same rights ('one asylum status system').

**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:**

In the Netherlands, applying for asylum is **not a possibility**, but a **precondition** if one wants to benefit from temporary protection (Article 43a Aliens Act 2000). It is questionable whether this is in conformity with the Directive. Article 17 of the Directive seems to start from the idea that a person who (already) enjoys temporary protection should be able to lodge an asylum application in addition to that. This can create a problem with respect to the applicability of the Dublin Regulation. Article 3.1a (2) (a) Aliens Decree 2000 stipulates that TP can be denied if according to the Dublin Regulation another Member State is responsible for examining the asylum application.

The decision on this asylum application has to be taken somewhere between the date of application and six months after the temporary protection has ended. This decision-making can however be further extended on several individual (Article 42(4) Aliens Act 2000) and categorical grounds (Article 43 Aliens Act 2000). This can amount to a suspension of the status determination procedure for a maximum period of five years (!).

**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:**

Article 43a Aliens Act 2000 stipulates that the decision on the asylum application has to be taken somewhere between the date of application and six months after the temporary protection has ended. This decision-making can however be further extended on several individual (Article 42(4) Aliens Act 2000) and categorical grounds (Article 43 Aliens Act 2000). During this decision-making period the asylum seeker can stay in the Netherlands (Article 8(f) Aliens Act 2000). In case of a negative decision he can lodge an appeal to an administrative court. This appeal has suspensive effect: the asylum seeker is allowed to remain in the country and has a right to reception facilities while awaiting the outcome of the appeal (article 5(1)(a) of the Rva 2005). If the administrative court decides that the appeal is unfounded, the asylum seeker can lodge a further appeal to the Council of State which is the highest court in administrative matters. The appeal has no suspensive effect. This means that the asylum seeker may not await the Council of State's judgment in the Netherlands and has no right to reception facilities. In that case a preliminary injunction ('voorlopige voorziening') has to be requested. According to policy rules the asylum seeker is allowed to await the outcome of this first preliminary injunction. During this period he has a right to reception facilities (article 5(1)(b) of the Rva 2005).

**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.**

The criteria and mechanisms as defined in the Dublin Regulation (Directive 343/2003/EC) are applicable.

**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.

In the Netherlands the rights and entitlements mentioned in the TPD have been transposed at the level of the asylum seeker (except for the right to work and the right to family reunification). The temporary protection beneficiary is thus entitled to the same welfare provisions as the asylum seeker.

**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:**

If the asylum application will be rejected during the temporary protection regime (installed by a Council decision) and the temporary protection beneficiary appeals against this rejection he will retain his lawful residence awaiting the court decision: expulsion will be suspended as long as the Council decision will be in place (Article 8 (h) Aliens Act 2000). If the asylum application has already been definitely rejected at the moment the Council decision to install a temporary protection regime enters into force, there is no lawful residence pursuant to Article 8 Aliens Act 2000, because the person is not awaiting a decision on his application or appeal (anymore). In these cases Article 45 (6) and (7) Aliens Act 2000 applies. According to this provision the automatic (de jure) effects of the negative decision (which is a.o. the fact that the alien is no longer lawfully resident) shall not take effect as long as the expulsion of the person concerned will be suspended due to the Temporary Protection Directive. His residence will be equated with lawful residence as defined in Article 8 (f) Aliens Act 2000.

## **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?**

Article 21(1), second sentence of the TPD is not explicitly laid down in Dutch legislation. Section A4/5 of the Aliens Circular however mentions that the International Organization for Migration (IOM) offers support to aliens in The Netherlands who would like to return to their country of origin. IOM provides e.g. support on the basis of the ‘Return and Emigration of Aliens from the Netherlands’ (REAN) programme which consists of information on return issues; assistance at Schiphol airport; an airline ticket to the airport nearest their final destination; remuneration of the costs for travel documents; a financial contribution to help during the first period after leaving the Netherlands. This REAN programme provides the so-called basic facilities. In addition

to these basic facilities, IOM offers extra (financial) support and individual mediation to certain vulnerable groups such as unaccompanied minor aliens, victims of human trafficking and persons with health problems.

**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).**

There is no statutory provision from which it is clear how the Netherlands ensures that the decision of those persons to return voluntarily is taken in full knowledge of the facts.

**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 possibility has not been laid down in Dutch legislation. However, in the 1990ies this possibility was offered to Bosnian refugees who at that time stayed in the Netherlands. After the Dayton Peace agreement (December 1995), Dutch policy was aimed at the support of voluntary return, at least at the beginning. Amongst other things the Registration Centre Bosnia (Meldpunt Bosnië) was set up. The goal of this Registration Centre was to provide information to Bosnians staying in the Netherlands and to record the number of persons that would like to repatriate voluntarily to Bosnia and/or would like to make a contribution to post-war reconstruction of Bosnia. Refugees were given the possibility to have a look in their country of origin and to return afterwards on the basis of a return visa (the so-called look and see arrangement).<sup>21</sup>

**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?**

Pursuant to Article 3.1a (2)(d) Aliens Decree 2000, temporary protection of someone who returns voluntarily to his or her country of origin before the temporary protection regime has come to an end, can be ended. It would be logical if the asylum application would be denied or withdrawn in that case. Article 3.1(2)(d) Aliens Decree 2000 however does not make it mandatory for the authorities to end temporary protection in these cases. If a person who has left the Netherlands voluntarily returns to the Netherlands and applies for asylum, Article 3.1a (1) Aliens Decree 2000 will be applicable again : expulsion will be postponed as long as the temporary protection regime will be in force.

**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.**

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<sup>21</sup> TBV 1996/6 of 12 July 1996 (extended to 1 January 1996).

(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).

This possibility has not been laid down in Dutch legislation.

**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.**

The essence of the Aliens Act 2000 is that aliens who have been rejected and who have no further recourse to the courts have an obligation to leave the Netherlands on their own within 28 days after the period of lawful residence has ended (Article 61 (1) in conjunction with Article 62 (1) Aliens Act 2000). The alien himself is responsible for leaving the Netherlands. Aliens who do not leave the Netherlands voluntarily can be forcibly removed by the government (Article 63 Aliens Act 2000). According to Article 6.1 Aliens Decree 2000 in conjunction with Article 6.1 Aliens Regulation 2000 the Minister, in particular border control officers and aliens supervision officers, is competent to carry out all necessary acts to this end. Usually, enforced return takes place by airplane or ship through the intervention of the Royal Netherlands Military Constabulary (Koninklijke Marechaussee) (KMar) or the harbour police of the police district Rotterdam-Rijnmond (Dienst Zeehavenpolitie van de politieregio Rotterdam-Rijnmond)(ZHP). These bodies can use several tools for the purpose of enforced return, like metal handcuffs, combination belt with handcuffs, Velcro, tie-raps and helmets (section A4/6.6 Aliens Circular). Regarding the assessment as to if and which tools need to be used, the principles of subsidiarity and proportionality have to be taken into account. Also available information on the behaviour of the alien has to be taken into consideration. Besides the use of these tools, also the use of compulsory medication caused a lot of fuss in Dutch media and in politics. It is questionable whether in this kind of situations one can speak of due respect for human dignity.

**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.**

These reasons can be considered during the asylum procedure. See answer Q16A: on the basis of Article 29 (1) (c) Aliens Act 2000 the immigration authorities can consider whether the alien qualifies for an asylum residence because he cannot, for pressing reasons of a humanitarian nature connected with the reasons for his departure from the country of origin, reasonably be expected, in the opinion of the Minister, to return to his country of origin. This provision is however applied in a rather restrictive way, especially with regard to traumatic events.<sup>22</sup> According to the Aliens Act 2000 a negative decision on an asylum application (also called the more-enclosing decision) has several ‘automatic’ effects. The decision to reject an asylum application does not only mean that the asylum seeker is not entitled to a residence permit, it also implies that the asylum seeker is no longer entitled to accommodation and has to leave the country within 28 days. Furthermore, the asylum seeker can be evicted

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<sup>22</sup> Apart from the fact that these traumatic events should be reported as soon as possible in the procedure failing of which could lead to these events not being considered during the procedure, the immigration authorities apply a strong presumption that only traumatic events occurring within six months of flight so qualify; when more than six months have elapsed, the applicant must demonstrate that the traumatic event directly caused him or her to flee, a standard that is very hard to meet in practice.

from the reception centre and, in anticipation of his deportation, be held in detention. Under the Aliens Act 2000 it is not possible for the asylum seeker to lodge an appeal against all of these effects separately. The asylum seeker can only lodge an appeal against the negative *asylum* decision. Reasons lodged by the asylum seeker to avoid e.g. the ending of the reception facilities, which reasons do not relate directly to the legal grounds on which the residence permit was asked, are not being judged in the asylum procedure. As a consequence a major part of e.g. serious medical and psychological problems are (according to the jurisprudence of the Council of State) not assessed in the asylum procedure. The question can be asked whether the Dutch system of the 'more-enclosing decision' in connection with the rather strict interpretation of Article 29 (1) (c) Aliens Act 2000 is in conformity with the TPD.

Article 64 Aliens Act 2000 contains an imperative (medical) obstacle to return, meaning that an alien shall not be expelled as long as his health or that of any of the members of his family would make it inadvisable for him to travel (see answer Q19B). According to information provided by the Dutch Council for Refugees this provision is also applied in a rather restrictive way.

**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 practice expulsion can only take place when the alien is in possession of a valid passport or travel document. Difficulties may arise when the country of origin is unwilling to readmit its nationals and to cooperate in providing travel documents when lacking. In these cases the Minister (at present: the State Secretary for Justice) has the authority to grant a residence permit when the person concerned can demonstrate that he or she cannot return 'through no fault of his own' (buiten schuld). See Article 3.6 (1)(a) Aliens Decree 2000. In practice, it appears very hard to convince the Minister (at present: State Secretary of Justice) that return is impossible 'through no fault of one's own'. For unaccompanied minors who want to stay in the Netherlands it may be possible to qualify for the special residence permit because of their age pursuant to Article 3.6 (1)(b) Aliens Decree 2000 (one of the requirements being that the unaccompanied minor must not have qualified for an asylum residence permit). Finally, according to Article 3.4 (3) Aliens Decree 2000 the Minister has the authority to issue a regular residence permit to e.g. the alien who in the past applied for an asylum residence permit, but who would like to continue his stay on regular grounds not foreseen in Article 3.4 (1) Aliens Decree 2000 (e.g. family reunification, labour, study, etc.). Article 3.4 (3) Aliens Decree 2000 explicitly mentions that this regular purpose should not be connected with the situation in the country of origin, because for that purpose filing an asylum application is the appropriate action.

**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:**

According to Article 64 Aliens Act 2000 expulsion of an alien will not take place when it is not safe to travel due to health conditions (pregnancy, tuberculosis, medical treatment in order to prevent a medical emergency situation). In order to assess whether Article 64 Aliens Act 2000 is applicable, the immigration authorities will seek the advice of the foundations for Community Health Services for Asylum Applicants ('Medische Opvang van Asielzoekers')(MOA) or of another independent medical expert. If Article 64 Aliens Act 2000 is considered

to be applicable, the duty to leave will be suspended. The immigration authorities will inform the alien in writing with reference to the medical advice. Also the expectation of the duration of suspension of the duty to leave will be mentioned. This period is in principle equal to the period mentioned in the medical advice, with a maximum of 6 months. This period of 6 months is, however, not imperative. For example, if someone is infected with TBC, which is a reason to suspend the duty to leave, the treatment period is expected to take approximately 9-12 months. Throughout this period of suspension of the duty to leave the alien has a right to reception facilities. The alien will regain lawful residence on the basis of Article 8(f) Aliens Act 2000. After this period, the duty to leave revives and consequently also the expulsion. No separate decision is taken in this case except if the suspension of the duty to leave has taken place without a concrete closing date. Also the family members of the person who cannot be expelled due to health conditions will not be expelled. This extension to include family members is not required by the TPD and therefore contains a more favourable condition as defined in Article 3(5) of the TPD. The following persons shall be considered to be part of the family: spouses and unmarried partners and their minor children (by a previous marriage) and children who are of age and who are and were (in the country of origin) in fact part of the family.

**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:**

This may-provision has not been transposed in Dutch legislation. In recent years, in particular educational institutions themselves have passed criticism on the fact that children of asylum seekers are taken away from school in order to expel them. They are of the opinion that children should in any case be allowed to complete the current school year.

**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 is no statutory provision transposing this obligation.

**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 is no statutory provision transposing the obligation that Member States have to take care of the fact that persons who are about to be transferred for reasons of solidarity (chapter VI of the TPD) must consent. Regarding family reunification, the Explanatory Memorandum to the Decision of 12 January 2005 to amend the Aliens Decree 2000 in order to implement the TPD referred to the applicability of (Article 15 of) the Dublin Regulation according to which the persons concerned must consent. As mentioned above (answer Q14A), it is questionable whether the Netherlands can simply refer to the applicability of the Dublin Regulation. Moreover, the system for determining the Member State responsible for the examination of an asylum application in the Dublin Regulation is completely different from the solidarity mechanism as defined in Article 25(1) of the TPD.

**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:**

This obligation to communicate requests for transfers to other Member States and to notify the Commission and UNHCR has not been explicitly laid down in national norms of transposition. In the framework of the Dublin Regulation requests for transfers of family members will be communicated to the other Member State.

**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:**

This obligation to provide information as set out in Annex II of the Directive at the request of another Member has not been explicitly laid down in national norms of transposition. In the framework of the Dublin Regulation information on the person to be transferred will be communicated to the other Member State.

**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:**

Article 3.1a (2)(c) Aliens Decree 2000 mentions that the transferral of a person from the Netherlands to another EU/EEA Member State in connection with the TPD has as a consequence that the lawful residence of that person on the basis of temporary protection in the Netherlands will come to an end and that expulsion will no longer be withheld.

**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:**

See answer Q21D: a transferral to another Member State means the end of temporary protection in the Netherlands. According to the Explanatory Memorandum to the Decision of 12 January 2005 to amend the Aliens Decree 2000 in order to implement the TPD, in this case one can speak of a voluntary departure and the withdrawal of the asylum application would be logical.

**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 statutory provision stipulating that a person, who has previously enjoyed temporary protection in another Member State and who is transferred to the Netherlands, will be granted temporary protection in the Netherlands. Article 3.1a (2)(c) Aliens Decree 2000 mentions that in case a temporary protection beneficiary will be transferred from the Netherlands to another Member State, temporary protection in the Netherlands will end. Reasoned by analogy this would also implicate that a person who previously enjoyed temporary protection in another Member State, but is transferred to the Netherlands, would be granted temporary protection in the Netherlands if he or she lodges an asylum claim (= requirement in order to benefit from temporary protection). The person concerned would then fall under the scope of Article 3.1a (1) Aliens Act 2000.

**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 model pass set out in annex I of the TPD is incorporated as an appendix to the Aliens Regulation 2000. Aliens who are in the possession of this document (which is regarded as a laissez-passer) and who want to come to the Netherlands for a period of more than three months will not be refused entry because of the lack of an authorization for temporary stay (machtiging tot voorlopig verblijf)(mvv). See Article 2.3 (3) (b) of the Aliens Decree 2000 in conjunction with appendix 3 (L) to the Aliens Regulation 2000.

### **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:** This has not been explicitly laid down in national legislation. In all probability this will be the Immigration and Naturalization Service (Immigratie- en Naturalisatiedienst)(IND) which is a department of the Ministry of Justice and acts on behalf of the State Secretary of Justice.

### **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).

Subsections e-g of paragraph 2 and paragraphs 3 and 4 of Article 3.1a Aliens Decree 2000 are based on Article 28 of the TPD and contain the so-called exclusion clauses.

Subsection e of Article 3.1a (2) is based on Article 28 (1) (a) TPD and relates to the fact that an alien (1) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes, (2) has committed a serious non-political crime outside the Netherlands prior to his admission to the Netherlands as a person enjoying temporary protection and (3) has been guilty of acts contrary to the purposes and principles of the United Nations.

Subsection f of Article 3.1a (2) is based on the second part of Article 28 (1) (b) TPD and refers to the alien who, having been convicted by a final judgment of a particularly serious crime, is a danger to the community of the Netherlands.

Subsection g of Article 3.1a (2) is based on the first part of Article 28 (1) (b) TPD and concerns the alien with regard to whom there are reasonable grounds for regarding him as a danger to the national security.

Paragraph 3 of Article 3.1a mentions that regarding the application of subsection e, point 2 of Article 3.1a (2) the severity of the expected persecution is to be weighed against the nature of the criminal offence of which the person concerned is suspected. Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators.

Paragraph 4 of Article 3.1a says that a decision pursuant to Article 3.1a (2) subsections e-g shall be based solely on the personal conduct of the person concerned with due regard to the principle of proportionality.

**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:**

See answer Q23A in conjunction with Article 28 of the Directive regarding the exclusion clauses. However, there are also possibilities for the Minister to end lawful residence by virtue of temporary protection in individual cases (cessation clauses). According to Article 3.1a (2) Aliens Decree 2000 the expulsion of someone enjoying temporary protection won't be withheld if: a) the asylum application will be denied because of the applicability of the Dublin Regulation; b) the person concerned enjoys temporary protection in another EU/EEA Member State; c) the person enjoying temporary protection will be transferred to another EU/EEA Member State (because of family reunification or because of reasons of solidarity); d) the person enjoying temporary protection returns voluntarily to his country or region of origin.

**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:**

Paragraph 4 of Article 3.1a Aliens Decree 2000 says that a decision pursuant to Article 3.1a (2) subsections e-g Aliens Decree 2000 shall be based solely on the personal conduct of the person concerned with due regard to the principle of proportionality.

**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:**

Paragraph 4 of Article 3.1a Aliens Decree 2000 says that a decision pursuant to Article 3.1a (2) subsections e-g Aliens Decree 2000 shall be based solely on the personal conduct of the person concerned with due regard to the principle of proportionality.

**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:**

Besides the possibility of the Minister to exclude someone from temporary protection pursuant to subsections e-g of Article 3.1a (2) Aliens Decree 2000, subsections a-d of Article 3.1a (2) Aliens Decree 2000 also hold possibilities for the Minister to end lawful residence by virtue of temporary protection (see answer Q23B).

According to the Explanatory Memorandum to the Decision of 12 January 2005 to amend the Aliens Decree 2000 in order to implement the TPD (p. 7), application of Article 3.1a (2) Aliens Decree 2000 requires an express and explicit decision of the Minister. Against this decision an appeal can be lodged. This means that when temporary protection is ended because of Article 3.1a (2) the normal rules regarding asylum applications will be applicable. Because of the fact that the decision to end temporary protection because of Article 3.1a (2) Aliens Decree 2000 will normally be accompanied by the decision on the asylum application itself, the Explanatory Memorandum to the Decision of 12 January 2005 to amend the Aliens Decree 2000 in order to implement the Directive says that no additional procedures are to be expected. This entails that in most cases there will be no separate procedure with regard to the ending of temporary protection and the asylum application itself.

If the Minister decides (in an application centre) that a person does not belong to the group of persons mentioned in the Council decision he will reject the asylum application. If the person concerned does not agree, he can lodge an appeal against the negative decision.

With regard to family reunification, in order to benefit from temporary protection the family member has to file an asylum application as well. If the Minister decides (in an application centre) that this family member does not qualify for temporary protection on the basis of Article 3.1a (b)-(d) Aliens Decree 2000, the asylum application will be denied. Against this negative decision an appeal can be lodged.

### **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.**

It follows from the system of the Aliens Act 2000 and the decision at issue that the normal rules regarding appeals against the rejection of asylum applications will apply. This means that the decision can be challenged before an administrative court. The appeal has to be lodged within four weeks. This appeal has suspensive effect: the alien is allowed to remain in the country and has a right to reception facilities while awaiting the outcome of the appeal (article 5(1)(a) of the Rva 2005). When the administrative court decides that the appeal is unfounded, the asylum seeker can lodge a further appeal to the Council of State which is the highest court in administrative matters. He has to lodge this appeal within four weeks as well. The appeal has no suspensive effect. This means that the asylum seeker may not await the Council of State's judgment in the Netherlands and has no right to reception facilities. In that case a preliminary injunction ('voorlopige voorziening') has to be requested. According to policy rules the asylum seeker is allowed to await the outcome of this first preliminary injunction. During this period he has a right to reception facilities (article 5(1)(b) of the Rva 2005).

The system mentioned above is different if the decision to end or exclude someone from temporary protection is reached within the so-called accelerated determination procedure (AC-procedure). In this procedure a decision is reached within 48 'processing' hours (spread over 4-5 working days). The asylum seeker can lodge an appeal against the negative decision to the administrative court within one week, but this appeal has no suspensive effect. He has to ask for a preliminary injunction. According to policy rules of the Minister the asylum seeker is allowed to await the outcome of this procedure, but he has to find accommodation himself. Against the judgment of the district court the asylum seeker can lodge an appeal to the Council of State, again within one week, but also in this case the appeal has no suspensive effect.

**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).

Example: according to article 10 of Rva 2005 reception conditions can be reduced or withdrawn if an asylum seeker (and by analogy the temporary protection beneficiary):

- does not give proper information which is necessary in order to realize reception, like name, date of birth, nationality, country of origin, family composition, properties, date of asylum application;
- does not contribute to reception facilities if he or she has income from work or capital;
- does not comply with the house rules;
- does not follow instructions of the COA personnel;
- refuses to do cleaning tasks in or around his or her living area;
- does not give entrance to his living area to the COA personnel when it is likely that the asylum seeker does not comply with the house rules or when this is deemed necessary because of the management of the reception facility;
- does not comply with the duty to report at the COA (once a week);
- causes trouble to other asylum seekers or the COA personnel;
- refuses to participate in programmes aimed at informing, stimulating and alerting the asylum seeker with regard to his or her return.

Details on the (punitive) measures and sanctions are laid down in the COA's Rules on the Withholding of Provisions 2005 (Reglement Onthoudingen en Verstrekingen 2005)(ROV 2005. There are 11 sanctions ranging from a one-off deduction of benefits (with a maximum up to € 15,89 for adults and € 5,45 for children from 12-17 years of age) in case of a very light form of nuisance to a permanent end of all provisions and services provided by COA (including housing) in case of very extreme extraordinary nuisance.

**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.

Decisions on the reduction or withdrawal of reception conditions are individual administrative decisions within the meaning of article 1:3 (2) of the General Administrative Law Act. As a consequence all the (procedural) provisions of this Act are applicable. This implicates a.o. that the administrative decision need to be properly motivated, taken with due care and consideration of all the interests. According to information provided by the Dutch Council for Refugees it occurs that in practice decisions of COA personnel often lack proper motivation. In that case the asylum seeker can object against the decision with the COA. When the objection is held to be legally unfounded, the asylum seeker can lodge an appeal with an administrative court. The District Court will then decide whether or not the COA's decision was correct. If the court agrees with the rejection of the objection, the asylum seeker can lodge a further appeal with the Council of State, the highest court in administrative matters.

## **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?**

Regarding the practice of granting temporary protection in the event of the mass influx of displaced persons from former Yugoslavia / Bosnia-Herzegovina: Secretariat of the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia: Report on Temporary Protection in States in Europe, North America and Australia (August 1995), PART III: Country Reports: Netherlands, p. 138-156.

### **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 debate in parliament about the Act of 16 December 2004 to amend the Aliens Act 2000 in order to implement the Directive 2001/55/EC. Several political parties raised questions regarding the method of transposition, namely the decision moratorium of Article 43a Aliens Act 2000 (which means that the decision on the asylum application can be suspended until up to six months after temporary protection has ended). Besides this suspension of the decision-making (of a maximum duration of 3,5 years) on the basis of Article 43a Aliens Act 2000, the Aliens Act 2000 also contains other individual and categorical possibilities to postpone the decision on the asylum application which can be used cumulatively. As a result the maximum period of three years mentioned in the Directive will be further extended and the beneficiary of temporary protection ends up in an even worse position than the 'normal' asylum seeker. With other words: in comparison with the asylum seeker the temporary protection beneficiary can be subjected to more possibilities to postpone the decision whereas apart from that, temporarily protected persons hold the same rights as asylum seekers. How does this postponement of decision-making square with the fact that beneficiaries of temporary protection may well include refugees within the meaning of the Refugee Convention?

Other questions that were raised during the parliamentary debate referred to the level of transposition: the rights and entitlements mentioned in the Directive have been transposed at the level of the asylum seeker. This means that the temporary protection beneficiary is entitled to the same welfare provisions as the asylum seeker. Can this implementation at the lowest level be held to be in conformity with the Directive (especially with regard to the right to a residence permit and the right to 'suitable' housing)? Why did the Minister not resort to Article 29 (1)(d) of the Aliens Act according to which the alien for whom return to the country of origin would, in the opinion of the State Secretary of Justice, constitute an exceptional hardship in connection with the overall situation there (categorical grounds) can qualify for an asylum residence permit?

During the parliamentary debate several motions were tabled of which one has been adopted. The Minister decided to include in the text of Article 43a Aliens Act 2000 that in case the temporary protection regime is in force the decision on the asylum application has to be taken somewhere between the date of application and six months after temporary protection has come to an end (with other words the period of 3,5 years is a maximum period). If the immigration authorities are able to decide earlier they will do so.

### **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?**

#### **Method of transposition**

As we have seen, in the Netherlands the TPD has mainly been transposed through an amendment of the Aliens Act 2000, the Aliens Decree 2000 and the Aliens Regulation 2000. The amendment of the Aliens Act 2000 in order to implement the TPD introduced amongst others section 43a into the Aliens Act 2000. First of all, this section stipulates that temporary protection beneficiaries in the Netherlands will have to submit an asylum application in order to benefit from the proclaimed temporary protection regime. Besides the fact that it is questionable whether this requirement is in conformity with the TPD (the original idea behind temporary protection was to keep people out of the asylum procedure in case of a mass influx), temporary protection can be

ended because another Member State can be held responsible for dealing with the asylum application according to the Dublin Regulation (Article 3.1 (2)(a) Aliens Decree 2000). As explained above, the question can be asked whether the Netherlands can simply refer to the applicability of the Dublin Regulation since the system for determining the Member State responsible for the examination of an asylum application in the Dublin Regulation is completely different from the solidarity mechanism as defined in Article 25(1) of the TPD.

Article 43a Aliens Act 2000 further states that the decision on the asylum application can be suspended until up to six months after temporary protection has ended. As an EU temporary protection regime can be installed for a maximum period of three years this implies a considerable extension of the normal time limit within which a decision on an asylum application has to be taken (six months). Besides, at the national level there are several individual and categorical possibilities for the immigration authorities to postpone the decision on the asylum application which can be used consecutively in combination with the extension on the basis of Article 43a Aliens Act 2000.<sup>23</sup> As a result the maximum period of three years mentioned in the TPD will be further extended and the beneficiary of temporary protection ends up in an even worse position than the 'normal' asylum seeker. With other words: in comparison with the asylum seeker the temporary protection beneficiary can be subjected to more possibilities to postpone the decision whereas apart from that, the same rights are provided. Moreover, when the temporary protection beneficiary will only learn of a negative decision on his asylum application towards the end of the temporary protection regime he cannot derive any right from the fact that he has been legally residing in the country for three years. This does not square with the basic assumption the European Commission has formulated in its Statement on Integration that the longer third country nationals lawfully reside in a country the more rights they have to be provided with (in other words: rights should be incremental with the length of stay).<sup>24</sup> Also the Directive concerning the status of third-country nationals who are long-term residents is based on the long tradition in the Member States that the length of residence has an influence on the level of rights of the person concerned.<sup>25</sup>

### **Level of transposition**

In the Netherlands the rights and entitlements mentioned in the TPD have been transposed at the level of the asylum seeker: the temporary protection beneficiary is entitled to the same welfare provisions as the asylum seeker. Since beneficiaries of temporary protection may well include refugees within the meaning of the Refugee Convention who will lack the rights and entitlements as a refugee for a maximum period of three years it is questionable whether this implementation at the lowest level is in conformity with the TPD itself and the intention of the European Commission when formulating its proposal. The fear that a higher status would possibly stimulate temporary protection beneficiaries coming to the Netherlands has played an important role in the decision how to transpose the TPD and at what level of rights and benefits. During the parliamentary debate on the transposition of the TPD it became clear that the Dutch Minister for Alien Affairs and Integration attached great importance to the fact that the neighbouring countries Belgium and Germany would only provide rights and provisions at the level of the asylum seeker. Besides, despite the fact that the Netherlands has always seen itself as a model country with regard to its unique one asylum status system<sup>26</sup>, the Netherlands was now faced with a negative side-effect of this one asylum status system which forced the government to make a choice between providing the temporary protection beneficiary with a full residence permit with the rights of a Convention refugee or treating him as an asylum seeker or even worse as we have seen above.

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<sup>23</sup> Section 42 (4) of the Aliens Act provides for an extension of this period with another six months in case external advice is needed and section 43 of the Aliens Act holds three categorical grounds on the basis of which a decision can be postponed for up to one year. This last variant is also called a decision moratorium. It can be proclaimed for example if the uncertainty about the situation in the country of origin is expected to exist for a short period and it would therefore not be reasonable to take a decision on whether a residence permit can be granted (ground b).

<sup>24</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment, 3 June 2003, COM (2003) 336.

<sup>25</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44.

<sup>26</sup> In the Netherlands, pursuant to section 29 (1) of the Aliens Act 2000 asylum can be granted to people who are refugees according to the definition in article 1A of the Geneva Convention, but also to people who request for international protection on another ground (Article 3 ECHR, compelling humanitarian reasons or if return to their country of origin would place them at grave risk because of the general situation there). Notwithstanding the different grounds, the Aliens Act 2000 leaves only one asylum permit to be obtained. All holders of this asylum permit get the same rights.

**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>Before the transposition of the TPD the Minister could only postpone the decision on the asylum application for up to one year in case of a mass influx (if the number of applications is so great that the Minister cannot be reasonably be expected to give a decision on them in good time). See Article 43(c) Aliens Act 2000.</p> <p>Besides, in case of mass influx due to the general bad situation in the country of origin the Minister had (and still has) the possibility to create a general, categorical protection policy regarding asylum seekers coming from a specific country or a specific part of that country. In that case a full residence permit with the same rights as a Convention refugee will be provided (Article 29 (1)(d) Aliens Act 2000).</p>	<p>After the transposition of the TPD there is an extra possibility to postpone the decision-making in case of a mass influx: the possibility to postpone the decision for a maximum period of 3,5 years (but only if the Council of Ministers (EU) has decided to install a regime of temporary protection according to TPD).</p> <p>During the parliamentary debate on the transposition of the TPD, the Minister said that because of the realization of an EU Directive on Temporary Protection, the necessity to create such a national general, categorical protection policy on the basis of Article 29 (1)(d) Aliens Act 2000 can be questioned.</p>	<p><input checked="" type="checkbox"/> <i>Less favourable than previous national rules</i></p> <p><input 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> (see Q 8 and 12 regarding the residence permit and the suitable accommodation)</p> <p><input 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) Family reunification / access to the labour market		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
Before the transposition of the TPD, the asylum seeker (also in case of a mass influx) had no right to family reunification and only a very limited access to the labour market (a maximum of 12 weeks per year after a period of six months during which the asylum seeker is fully excluded from the labour market)	After the transposition of the TPD, in case a mass influx is decided upon by the Council, the asylum seeker will have (under certain conditions) a right to family reunification in certain situations and a right to enter the labour market under the conditions as mentioned in the TPD	<input type="checkbox"/> <i>Less favourable than previous national rules</i> <input type="checkbox"/> <i>Status quo</i> <input checked="" type="checkbox"/> <i>More favourable than previous national rules</i>	<input type="checkbox"/> <i>Less favourable than the Directive</i> <input checked="" type="checkbox"/> <i>In line with the directive</i> (it is questionable however whether the Netherlands can simply refer to the applicability of the Dublin Regulation in case of family reunification) <input type="checkbox"/> <i>More favourable than the directive</i>

**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><u>DATE:</u></b>	<b><u>REFERENCE OF PUBLICATIONS:</u></b>	<b><u>SUMMARY OF CONTENT:</u></b>
<b>DECISION OF SUPREME COURTS</b>	5 October 2006	MigratieWeb ve06001365  (No. of the judgment 200604616/1)	This judgment by the Council of State concerned the case of a Burundi national who invoked the direct effect and wrong transposition of Article 28 TPD. The Council of State decided that even if the applicant's reasoning should be followed he could not derive any right from the TPD because no Council decision to install a temporary protection regime regarding Burundi nationals has been taken (Article 5(3) TPD).
<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.**

See Q28.