

'REFUGEES (AMENDMENT) ACT, 2014'

COMMENTS ON THE EXERCISE TRANSPOSING THE EU RECAST QUALIFICATION DIRECTIVE

aditus
accessing rights



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I N T R O D U C T I O N

This input is presented in the context of on-going Parliamentary discussions regarding proposed amendments to Malta's asylum legislation in order to transpose the EU's Recast Qualification Directive¹. It is understood that further amendments to Malta's asylum legal regime will be proposed in the near future in order to transpose the EU Recast Directives on Reception Conditions² and on Procedures³. We also understand that amendments have already been affected to *Subsidiary Legislation 420.07 Procedural Standards in Examining Applications for International Protection Regulations* through Legal Notice 161 of 2014.

Whilst we welcome this opportunity to present technical feedback, we regret that presentation in Parliament of the relevant proposals was not preceded by any form of consultation, discussion or information-sharing with civil society organisations. We believe the experience and expertise we have accumulated over the years could be put to better use in order to ensure a standard of refugee protection that meets Malta's legal obligations under the various instruments, primarily the 1951 Refugee Convention.

We hope that the present document would be of interest and use to policy- and law-makers, and reiterate our willingness to discuss our concerns and recommendations in further detail. Furthermore, we strongly urge the competent authorities to actively engage with us in the context of the upcoming amendments and discussions in a spirit of cooperation and mutual trust.

This document opens with General Comments, focusing on our core observations, followed by Specific Comments and also a detailed comparative tabulation of the Directive's provisions, with recommendations aimed at ensuring compliance with the Directive's own standards and with those applicable under other relevant instruments.

¹ Directive text available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:EN:PDF>.

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0060:0095:EN:PDF>.

GENERAL OBSERVATIONS

Overall, the Directive's measures seem to be adequately provided for in the proposed amendments. Noting that the Qualification Directive was not significantly amended in the recast process, it is appreciated that the changes required in the Maltese context in order to fully transpose the Recast Directive are in fact minimal. This further highlights the importance of effective consultation for the Recast Reception Conditions and Procedures Directives, both heavily amended in the recast process and having a serious impact on Malta's asylum regime.

With regard to the general transposition approach, we fail to understand why this is being conducted in a piece-meal fashion instead of one that approaches all three amended Directives in a coherent, efficient and targeted manner. The present exercise seems to focus on the Qualification Directive, yet already contains significant elements of the other Directives yet without seeing them through in a complete fashion.

Despite the overall compliance with transposition requirements, a number of concerns may be highlighted:

- A. secondary legislation is not the place for recognising the fundamental human rights of any person;
- B. the rights of beneficiaries of subsidiary protection are abstract and undefined
- C. no definition, or defining criteria are provided for "*applicants in need of special procedural guarantees*".

S P E C I F I C C O M M E N T S

Fundamental human rights and secondary legislation

We are concerned at the inclusion of fundamental human rights, and their protection, in *Subsidiary Legislation 420.07 Procedural Standards in Examining Applications for International Protection Regulations* as opposed to their positioning with the principle Act, the *Refugees Act*.

Fundamental human rights ought to enjoy the full protection afforded by primary legislation, particularly with regard to increased transparency, publicity during adoption and amendment, and limited discretionary authority in the hands of the relevant Ministry.

We strongly recommend a revision of the transposition approach in order to ensure that all fundamental human rights to be recognised are clearly stipulated in the *Refugees Act*, as amended, and not in subsidiary legislation.

Undefined content of protection for subsidiary protection beneficiaries

The first transposition exercise in 2008, incorporating the first set of EU asylum Directives into Maltese law, simply copied the Qualification Directive's generic language in establishing the rights to be enjoyed by beneficiaries of subsidiary protection. Since this first exercise, we have repeatedly encountered the serious legal and policy confusion created by the undefined 'core benefits'.

In the Maltese context this is of particular significance since the vast majority of persons recognised as being in need of international protection are in fact granted subsidiary protection and not refugee status.

Much of our work with public service-providers has in fact centered on their need to clarify the legal meaning of this concept and, importantly, how this meaning translates into an access level of rights to be enjoyed by subsidiary protection beneficiaries. This has been particularly problematic in the areas of social services and health, where existing Maltese law establishing entitlements and related criteria makes no mention of 'core benefits', yet where the 2008 transposition exercise created the obligation on service-providers to consider and engage with a new level of rights-holders.

From the rights-holder's perspective, the lack of clarity as to level of entitlements and related procedures and criteria results in great difficulties understanding their role in society and benefitting from rights otherwise guaranteed under international and EU law. The impact of these limitations is seriously exacerbated in cases involving persons mostly in need of such protection, such as persons with health problems, single heads of households, elderly refugees, persons unable to access employment and persons with disabilities

This second transposition exercise makes no attempt to resolve this uncertainty, and leaves untouched the term ‘core benefits’.

We strongly urge the relevant authorities, in consultation with related Ministries, departments and agencies, UNHCR and civil society to ensure effective access to rights by guaranteeing their clarity in law and policy.

Undefined ‘*applicants in need of special procedural guarantees*’

The recast Procedures Directive introduces the important concept of ‘applicants in need of special procedural guarantees’, appreciating the fact that some asylum-seekers might require added procedural support in order for them to more effectively access and enjoy the Directive rights. The Bill includes this term in the defining sections, yet fails to explore the concept in any detail whatsoever.

It is unclear whether the future exercise transposing the Procedures Directive in full will provide any clarity as to the meaning of this concept, or what it will entail in terms of procedural guarantees.

We urge the authorities, in consultation with the Office of the Refugee Commissioner, the Refugee Appeals Board, UNHCR and civil society, to clarify the practical implications of this concept. Importantly, the following need certainty:

- what are the eligibility criteria to be considered an applicant in need of special procedural guarantees?
- At which procedural stage will a necessary assessment be undertaken, and by which entity?
- What procedure will govern this assessment, also in terms of access to an effective remedy?
- What special procedural guarantees will be afforded to such applicants?

D I R E C T I V E & B I L L C O M P A R A T I V E T A B L E

Qualification Directive RECAST 2011	MALTESE LAW (REFUGEES ACT, SUBSIDIARY LEGISLATION AND DRAFT BILL)	COMMENTS
Chapter I – GENERAL PROVISION		
<p>Article 2 - Definitions</p> <p style="color: red;">“- the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals,</p> <p style="color: red;">-the minor children of the couples referred to in the first indent or of the beneficiary of international protection, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,</p> <p style="color: red;">-the father, mother or another adult responsible for the beneficiary of</p>	<p>Art.3(h) (BILL) amending Art.2 (Refugee Act)</p> <p>“(…)(a) the spouse of the beneficiary of international protection,</p> <p>(b) the minor children of the spouse or of the beneficiary of international protection referred to in paragraph (a) above, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law,</p> <p>(c) the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that</p>	<p>QD RECAST innovations:</p> <ul style="list-style-type: none"> - inclusion of minor children of couples is no longer conditional on dependency. - parents of beneficiaries of international protection are also included in the definition of family for unmarried minors. <p style="color: red;">Recommendation = insert in 3(a): “unmarried partner in a stable relationship...”</p> <p>UNHCR & ECRE Comments</p> <p>The definition is still limited ‘in so far as the family already existed in the country of origin’. = fails to accommodate family ties which have been formed during flight or in the host country.</p>

Qualification Directive RECAST 2011	MALTESE LAW (REFUGEES ACT, SUBSIDIARY LEGISLATION AND DRAFT BILL)	COMMENTS
<p>international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried;”</p>	<p>beneficiary is a minor and unmarried”</p>	<p>Unmarried partners will only be recognized as family members where a Member State’s law or practice relating to third country nationals treats unmarried couples in a comparable way to married ones.</p> <p>= unmarried couples including same-sex couples, in stable relationships should fall within the family definition (ECtHR jurisprudence: co-habiting same sex couples living a stable partnership fall within the notion of family life).</p>
<p>CHAPTER II - ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION</p>		
<p>Article 4 – Assessment of facts and Circumstances</p> <p>Article 4(1),(2),(3) and (5) already transposed correctly into PR Regulation 4B</p>	<p>S.L. 420.07 Procedural Standards Regulations 2014, Regulation 4B</p> <p>“4B. (1) The Commissioner may, from time to time, lay down the rules and guidelines applicable to the</p>	<p>Comments on already transposed Articles in PR Regulations (S.L. 420.07)</p> <p>Recommendation: 4B(1) the Procedure</p>

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<p>(3)-(5).</p> <p>Article 4(4) will be transposed correctly into Article 8(3) of the Refugees Act through Article 6(b) of the Bill.</p>	<p>procedure for the determination of an application...</p> <p>..4B(6) For the purpose of this regulation, where the Commissioner deems it relevant for the assessment of an application, the Commissioner shall, subject to the applicant's consent, arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm:</p> <p>Provided that the applicant's refusal to undergo such a medical examination shall not prevent the Commissioner from taking a decision on the application."</p>	<p>should be laid down in the Regulations and not in rules and guidelines issued by the Commissioner.</p> <p>4B(2) The Directive <u>does not</u> speak about medical examination in the assessment of facts.</p>
<p>Article 7 - Actors of Protection</p> <p>"1. Protection against persecution or serious harm can only be provided by:</p> <p>(a) the State; or</p> <p>(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State;</p> <p>provided they are willing and able to</p>	<p>Article 11 (BILL) amending Article 19 (Act):</p> <p>"(1) Protection may be provided by:</p> <p>(a) the State; or</p> <p>(b) parties or organizations, including international organizations, controlling</p>	<p>QD RECAST innovations:</p> <p>Clarifies that protection against persecution or serious harm can only be provided by the actors indicated in this provision, as well as by requiring that protection against persecution or serious harm must be effective and of a non-</p>

Qualification Directive RECAST 2011	MALTESE LAW (REFUGEES ACT, SUBSIDIARY LEGISLATION AND DRAFT BILL)	COMMENTS
<p>offer protection in accordance with paragraph 2.</p> <p>2. Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors mentioned under points (a) and (b) of paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.</p> <p>3. When assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph 2, Member States shall take into account any guidance which may be provided in relevant Union acts.</p>	<p>the State or a substantial part of the territory of the State:</p> <p>Provided that, for the purpose of this article, actors of protection referred to in paragraphs (a) and (b) are willing and able to offer protection in accordance with sub-article (2).</p> <p>(1A) For the purpose of this article, when assessing whether an international organization controls a State or a substantial part of its territory and provides protection as described in sub-article (2), account shall be taken of any guidance provided for in any other relevant provision of national law, any European Union act or relevant documentation issued by the High Commissioner.</p> <p>(2) Protection against persecution or serious harm must be effective and of a non temporary nature. Such protection is provided when the entities mentioned in sub-article (1) take reasonable</p>	<p>temporary nature and that the State, parties or organizations in question should be able and willing to offer protection and that the applicant has access to such protection.</p> <p>Recommendation:</p> <p>= insert “only” in (1)</p> <p>= remove reference to national laws in 1A?</p> <p>= add RefCom as the main entity in charge of assessing the protection provided (burden of proof on MS)</p> <p>UNHCR and ECRE comments</p> <p>Non State actors should never be considered as actors of protection!</p>

Qualification Directive RECAST 2011	MALTESE LAW (REFUGEES ACT, SUBSIDIARY LEGISLATION AND DRAFT BILL)	COMMENTS
	<p>steps to prevent the acts mentioned in article 17(1) by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.”</p>	
<p>Article 8 - Internal protection</p> <p>1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin, he or she:</p> <p>(a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or</p> <p>(b) has access to protection against persecution or serious harm as defined in Article 7;</p> <p>and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.</p> <p>2. In examining whether an applicant has a</p>	<p>Article 12 (BILL) amending Article 20 (Act):</p> <p>“(1) As part of the assessment of the application for international protection, the Refugee Commissioner may determine that the applicant is not in need of international protection if, <u>in the exercise of his functions</u>, he deems that in a part of the country of origin the applicant:</p> <p>(a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm;</p>	<p><u>Recommendation:</u></p> <p>= the reference to Art 4 QD is missing in the Bill (Assessment of facts and circumstances)</p> <p>= this article seem to have been transposed in the <u>PR: Regulation 4B (See above)</u></p> <p>= insert reference to those provisions implementing Article 4QD into Maltese law (i.e.: Article 8(3) of the Act and 4B of the PR) in order to clarify applicable provisions.</p>

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<p>well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Article 4. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office.</p>	<p>(b) has access to protection against persecution or serious harm as mentioned in article 19; or</p> <p>(c) can safely and legally travel to and gain admittance to that part of the country of origin and can reasonably be expected to settle there.</p> <p>(2) In examining whether a part of the country of origin is in accordance with sub-article (1), the Refugee Commissioner shall at the time of taking the decision on the application, have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.</p> <p>(3) For the purposes of this article, the Refugee Commissioner shall ensure that precise and up-to-date information is obtained from relevant sources, such as the</p>	<p><i>UNHCR and ECRE comments</i></p> <p>Burden of proof is on the Member State to establish whether there is an internal protection alternative = requires taking into account the general circumstances prevailing in that part of the country as well as the personal circumstances of the applicant and obtaining up-to-date information from relevant sources.</p>

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	United Nations High Commissioner for Refugees and the European Asylum Support Office."	
CHAPTER III QUALIFICATION FOR BEING A REFUGEE		
<p>Art 9 - Acts of persecution</p> <p>...</p> <p>“(3). In accordance with point (d) of Article 2, there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1 of this Article or the absence of protection against such acts.”</p>	<p>Article 3 (BILL) amending Article 2 (Act)</p> <p>“Provided that refugee status on the grounds of fear of persecution shall only be granted if there is a connection between the reasons for persecution mentioned in Regulation 18 of the Procedural Standards in Examining Applications for Refugee Status Regulations and the acts of persecution referred to in this definition;”</p>	<p>Comments: (a) - (f): inclusion of acts are in line with the Directive</p> <p>Recommendation:</p> <p>= insert the new §3 “<i>or the absence of protection against such acts.</i>”</p> <p>This point is of particular relevance to gender-based claims where serious discriminatory or other offensive acts committed by individuals or the local population can also be considered as persecution, if such acts are knowingly tolerated by the authorities, or if the authorities refuse, or are unable, to offer effective protection.</p>

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<p>Art 10 - Reasons for persecution</p> <p>“(…) (d) a group shall be considered to form a particular social group where in particular:</p> <ul style="list-style-type: none"> - members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and - that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society. <p>Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States.</p> <p>Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;”</p>	<p>S.L. 420.07 Procedural Standards Regulations 2014, Regulation 18</p> <p>Transposed in Regulation 18</p>	<p>Recommendation:</p> <p>= this article should be in Refugee Act not in subsidiary legislation</p> <p>= replace “and” at the end of the first subsection with “or”. This will clarify that a person requires protection both in cases where he/she is a member of a particular group and in cases where he/she is perceived to be such.</p> <p><i>UNHCR and ECRE comments:</i></p> <p>Two main theories:</p> <ul style="list-style-type: none"> - “protected characteristics approach” based on an immutable characteristic or a characteristic so fundamental to human dignity that a person should not be compelled to forsake it. - “social perception approach” based on a common characteristic which creates a cognizable group that sets it apart from society at large. This means that people may require protection because they are perceived to belong to a group irrespective of whether they actually possess the group’s characteristics.

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		UNHCR recommends that the Directive permit the alternative, rather than cumulative, application of the two concepts.
<p>Article 11 – Cessation</p> <p>“1. A third-country national or a stateless person shall cease to be a refugee if he or she ... (a)...(f)</p> <p>3. Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.</p> <p>= same § is inserted in Article 16 of the Directive relating to subsidiary protection.</p>	<p>Article 7 (BILL) amending Article 9 (Act)</p> <p>“7(1) A person shall cease to possess refugee status if he (...)</p> <p>Provided further that paragraphs (d) and (e) shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.</p> <p>(2)A person who is notified that he has ceased to possess refugee status shall be entitled to appeal against such decision to the Board within fifteen days of such notification and the provisions of article 7 shall mutatis mutandis apply to such appeal. The decision of the Board shall be final.”</p>	<p>Comment: inclusion of the humanitarian exception to the cessation provisions in the Directive when there are “<i>compelling reasons arising out of previous persecution</i>”.</p> <p>= transposed in the same terms</p> <p>UNHCR and ECRE comments:</p> <p>It is important to note that for cessation the mere absence of risk of persecution is not enough, effective protection must also be available and accessible both in law and in practice.</p>

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<p>Chapter VII – CONTENT OF INTERNATIONAL PROTECTION</p>		<p>General: Aligning the content of rights granted to SP beneficiaries with refugees.</p> <p>Provisions relating to the <u>Content</u> of International Protection are found in the S.L. 420.07 Procedural Standards , Regulations 2014</p>
<p>Article 20(3): obligation that MS must take into account specific situation of vulnerable persons</p> <p>“... Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.”</p>	<p>Bill = No reference to vulnerable persons</p> <p>S.L. 420.07 Procedural Standards Regulations 2014 =</p> <p><i>"vulnerable persons" include pregnant women, persons with disabilities, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence, or minors who have been victims of any form of abuse, neglect, exploitation, torture,</i></p>	<p>Recommendation: The definition can be extended to include:</p> <p>To add:</p> <ul style="list-style-type: none"> Minors Unaccompanied minors Elderly Persons Single parents with minor children Victims of human trafficking

Qualification Directive RECAST 2011	MALTESE LAW (REFUGEES ACT, SUBSIDIARY LEGISLATION AND DRAFT BILL)	COMMENTS
	<i>cruel, inhuman or degrading treatment or who have suffered from armed conflict.</i>	Persons with mental disorders
<p>Article 23 – Maintaining Family Unity</p> <p>Member States shall ensure that family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as is compatible with the personal legal status of the family member.</p> <p>24 to 35 relate to the following: Residence permits; Travel document; Access to Employment; Access to Education; Access to Recognition of Qualification; Social Welfare; Healthcare; Unaccompanied minors; Access to Accommodation; Freedom of Movement; Access to Integration Facilities; and Repatriation.</p>	<p>Bill = Does not contain provisions re the content of international protection. These were transposed in the Procedural Regulations renamed: <i>“Procedural Standards in Examining Applications for International Protection Regulations, 2014”</i>.</p> <p>S.L. 420.07 Procedural Standards Regulations 2014, Reg. 14(3)(a) + (b):</p> <p>“(3) (a) Family members of a person granted refugee status, if they are in Malta at the time of the decision or if they join him in Malta, enjoy the same rights and benefits as the refugee so that family unity may be maintained.</p> <p>(b) Family members of a person</p>	<p>Recommendation: MS should apply this to other close relatives dependent on the BIP, irrespective of when/ where they formed part of family unit. SP should be entitled to family reunification rights under same conditions as refugees.</p> <p>To amend:</p> <p>Refugee Act:</p> <p>“25. (1) The Minister may make regulations for the purpose of enabling this Act to have full effect...</p> <p>(f) regulating, with the concurrence of the Minister responsible for labour, the granting of work permits to recognised <i>beneficiaries of international protection and their families</i>”.</p>

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	<p>granted subsidiary protection, if they are in Malta at the time of decision, enjoy the same rights and benefits as the person enjoying subsidiary protection status so that family unity may be maintained.”</p>	<p>Delete: “refugees and their family members, and persons enjoying subsidiary protection”</p>
<p>Article 24 - Residence permits 1. ... Member States shall issue to beneficiaries of refugee status a residence permit which must be valid for at least 3 years... Without prejudice to Article 23(1), the residence permit to be issued to the family members of the beneficiaries of refugee status may be valid for less than 3 years and renewable. 2. As soon as possible after international protection has been granted, Member States shall issue to beneficiaries of subsidiary protection status and their family members a renewable residence permit which must be valid for at least 1 year and, in case of renewal, for at least 2 years, unless compelling reasons of national security or public order otherwise require.</p>	<p>S.L. 420.07 Procedural Standards Regulations 2014, Reg. 14(1)(a)</p> <p>14 “Notwithstanding the provisions of any other law to the contrary, and notwithstanding any deportation or removal order, a person declared to be a beneficiary of international protection shall be entitled:</p> <p>(a) without prejudice to the provisions of articles 9 and 10 of the Act, to remain in Malta with freedom of movement, and to be granted, as soon as possible, personal documents, including a residence permit for a period of three years,</p>	<p>Comment:</p> <p>The duration of residence permits for refugees and SP beneficiaries has been aligned: 3 years.</p>

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	<p>which shall be renewable:</p> <p>Provided that a residence permit to be granted to a family member may be valid for less than three years and shall be renewable”</p>	
<p>Article 25 - Travel document</p> <p>1. Member States shall issue to beneficiaries of refugee status travel documents, in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.</p> <p>2. Member States shall issue to beneficiaries of subsidiary protection status who are unable to obtain a national passport, documents which enable them to travel outside their territory, unless compelling reasons of national security or public order otherwise require.</p>	<p>S.L. 420.07 Procedural Standards Regulations 2014, Regulation 14(1)(b):</p> <p>“(b) unless he is in custody awaiting judicial proceedings for the commission of a criminal offence, or is serving a term of imprisonment, to be given a <i>convention travel document in the case of a refugee</i> and a <i>travel document in accordance with relevant provisions of national law in the case of a beneficiary of subsidiary protection</i>, entitling him to leave and return to Malta without the need of a visa”</p>	<p>Comment:</p> <p>Extended to family members by Regulation 14(3).</p>

Qualification Directive RECAST 2011	MALTESE LAW (REFUGEES ACT, SUBSIDIARY LEGISLATION AND DRAFT BILL)	COMMENTS
<p>Article 26 – Access to Employment</p> <p>1. Member States shall authorise beneficiaries of international protection to engage in employed or self-employed activities subject to rules generally applicable to the profession and to the public service, immediately after protection has been granted.</p> <p>2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience and counselling services afforded by employment offices, are offered to beneficiaries of international protection, under equivalent conditions as nationals.</p> <p>3. Member States shall endeavour to facilitate full access for beneficiaries of international protection to the activities referred to in paragraph 2.</p> <p>4. The law in force in the Member States applicable to remuneration, access to social security systems relating to</p>	<p>S.L. 420.07 Procedural Standards Regulations 2014, Regulation 14(1)(b):</p> <p>“(c) to have access to <i>employment or self-employed activities</i>, social welfare, appropriate accommodation, integration programmes, State education and training, and to receive State medical care...”</p>	<p>No reference to:</p> <ul style="list-style-type: none"> - rules generally applicable to the profession and to the <i>public service</i> - employment-related education opportunities for adults, vocational training, including training courses for upgrading skills, practical workplace experience and counselling services afforded by employment offices, are offered ... under equivalent conditions as nationals.” <p>Recommendation: inclusion of the above and facilitation of access to such activities through e.g. information, incentives within the Regulation.</p> <p>Recommendation: inclusion of reference to laws applicable to remuneration & access to social security systems relating to employment.</p> <p>Extended to family members by</p>

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employed or self-employed activities and other conditions of employment shall apply.		Regulation 14(3).
<p>Article 27 - Access to education</p> <p>1. Member States shall grant full access to the education system to all minors granted international protection, under the same conditions as nationals.</p> <p>2. Member States shall allow adults granted international protection access to the general education system, further training or retraining, under the same conditions as third-country nationals legally resident.</p>	<p>S.L. 420.07 Procedural Standards</p> <p>Regulations 2014, Regulation 14(1)(b):</p> <p>“(c) to have access to employment or self-employed activities, social welfare, appropriate accommodation, integration programmes, <i>State education and training</i>, and to receive State medical care...”</p>	Extended to family members by Regulation 14(3).
<p>Article 28 - Access to procedures for recognition of qualifications</p> <p>1. Member States shall ensure equal treatment between beneficiaries of international protection and nationals in the context of the existing recognition procedures for foreign diplomas, certificates and other evidence of formal</p>	<p>S.L. 420.07 Procedural Standards</p> <p>Regulations 2014, Regulation 14(2)(a)-(b):</p> <p>“(a) Persons granted the status of refugee or subsidiary protection shall</p>	No reference to the Directive 2005/36/EC of the European Parliament on the recognition of professional

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<p>qualifications.</p> <p>2. Member States shall endeavour to facilitate full access for beneficiaries of international protection who cannot provide documentary evidence of their qualifications to appropriate schemes for the assessment, validation and accreditation of their prior learning. Any such measures shall comply with Articles 2(2) and 3(3) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.</p>	<p>also be granted access to existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.</p> <p>(b) For the purpose of paragraph (a), beneficiaries of international protection who cannot provide documentary evidence of their qualifications shall have access to appropriate schemes for the assessment, validation and accreditation of their prior learning.</p>	<p>qualifications or to the implementing legislation [S.L.451.03].</p> <p>Recommendation: Addition of references would add clarity to the process.</p> <p>Extended to family members by Regulation 14(3).</p>
<p>Article 29 - Social welfare</p> <p>1. Member States shall ensure that beneficiaries of international protection receive, in the Member State that has granted such protection, the necessary social assistance as provided to nationals of that Member State.</p> <p>2. By way of derogation from the general rule laid down in paragraph 1, Member States may limit social assistance granted to beneficiaries of subsidiary protection</p>	<p>S.L. 420.07 Procedural Standards</p> <p>Regulations 2014, Regulation 14(1)(b):</p> <p>“(c) to have access to employment or self-employed activities, <i>social welfare</i>, appropriate accommodation, integration programmes, State education and training, and to receive State medical care.</p>	<p>The derogation to the general rule whereby MS may limit access to social welfare should be interpreted in a restrictive manner. Ideally this should not be restricted at all.</p>

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<p>status to core benefits which will then be provided at the same level and under the same eligibility conditions as nationals.</p>	<p><i>Provided that the social welfare benefits granted to beneficiaries of subsidiary protection <u>may</u> be limited to core social welfare benefits.”</i></p>	<p>Recommendation:</p> <ul style="list-style-type: none"> - The use of the word “may” creates uncertainty of position. Is it or is it not? - Include definition of what “<i>core social welfare benefits</i>” are. Neither are these defined in the Social Security Act.
<p>Article 30 – Healthcare</p> <p>1. Member States shall ensure that beneficiaries of international protection have access to healthcare under the same eligibility conditions as nationals of the Member State that has granted such protection.</p> <p>2. Member States shall provide, under the same eligibility conditions as nationals of the Member State that has granted protection, adequate healthcare, including treatment of mental disorders when needed, to beneficiaries of international protection who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological,</p>	<p>S.L. 420.07 Procedural Standards</p> <p>Regulations 2014, Regulation 14(1)(b) & 14(4)</p> <p>“(c) to have access to employment or self-employed activities, social welfare, appropriate accommodation, integration programmes, State education and training, and to receive <i>State medical care</i>...</p> <p>(4) Persons granted the status of refugee or subsidiary protection and who are considered as vulnerable persons shall, as far as possible, be</p>	<p>Recommendation:</p> <p>To add:</p> <ul style="list-style-type: none"> - treatment of mental disorders when needed, <p>[NB: The definition of “<i>vulnerable person</i>” in the PR includes those persons who have “<i>special needs</i>” as defined by the QD.]</p> <p>Extended to family members by Regulation 14(3).</p>

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<p>physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict.</p>	<p>provided with adequate health care.”</p>	
<p>Article 31 – Unaccompanied minors Article 31(1) – (4) remain unchanged. “5. If an unaccompanied minor is granted international protection and the tracing of his or her family members has not already started, Member States shall start tracing them as soon as possible after the granting of international protection, whilst protecting the minor’s best interests. If the tracing has already started, Member States shall continue the tracing process where appropriate. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis. 6. Those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.”</p>	<p>S.L. 420.07 Procedural Standards Regulations 2014, Regulation 15A:</p> <p>“(3) If an unaccompanied minor is granted international protection, the authority responsible for the provision of services to unaccompanied minors, with the assistance of international organisations as necessary, shall proceed with the tracing of the family members of the minor, provided that this is in the best interests of the minor:</p> <p>Provided that in cases where there may be a threat to the life or integrity of the minor himself or his close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning these</p>	<p>Recommendation: Although the provisions of Article 31(1) – (4) remain unchanged, Article 13(3) of the Refugees Act and Article 15A can be improved:</p> <ul style="list-style-type: none"> - Reference to legal guardian after the asylum process is concluded; - The duty of the legal guardian to ensure that the minor’s rights are respected in relation to those guaranteed under the QD (health, education, etc.); - Regular assessment of the legal guardian’s actions; - Link to the draft law on child protection. <p>To add under 15A:</p> <p><i>“Those working with unaccompanied</i></p>

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	persons is undertaken on a confidential basis."	<i>minors shall have had and continue to receive appropriate training concerning their needs"</i>
<p>Article 32 - Access to accommodation 1. Member States shall ensure that beneficiaries of international protection have access to accommodation under equivalent conditions as other third-country nationals legally resident in their territories. 2. While allowing for national practice of dispersal of beneficiaries of international protection, Member States shall endeavour to implement policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation.</p>	<p>S.L. 420.07 Procedural Standards Regulations 2014, 14(1)(b):</p> <p>"(c) to have access to employment or self-employed activities, social welfare, <i>appropriate accommodation</i>, integration programmes, State education and training, and to receive State medical care."</p>	<p>Recommendation: The right to access accommodation should be under the same conditions as nationals and not TCNs.</p> <p>To add:</p> <ul style="list-style-type: none"> - Definition of "appropriate accommodation"; - Conditions for qualifying for accommodation. <p>Extended to family members by Regulation 14(3).</p>