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Asylum Information Database

Country Report: Malta

2016
Update

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Acknowledgements & Methodology

This report is jointly researched and written by aditus foundation and the Jesuit Refugee Service (Malta) and was edited by ECRE.

This report draws on the information gathered by the authors' practice, statistical data and other information provided by the Maltese authorities, as well as other available sources.

We would like to thank the Office of the Refugee Commissioner, the Refugee Appeals Board, the Agency for the Welfare of Asylum Seekers (AWAS) and the Malta Police Force for their cooperation in providing the requested data and information.

The information in this report is up-to-date as of 31 December 2016.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

This report is part of the Asylum Information Database (AIDA) funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative of the Network of European Foundations.

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Glossary & List of Abbreviations

AAT	Age Assessment Team
AWAS	Agency for the Welfare of Asylum Seekers
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DS	Detention Service, Ministry for Home Affairs
DVB	Detainees Visitors Board
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EDAL	European Database of Asylum Law
EEPO	European Employment Policy Observatory
ETC	Employment and Training Corporation
FAV	Further Age Verification
FSM	Foundation for Shelter and Support to Migrants
IAB	Immigration Appeals Board
IRC	Initial Reception Centre
MMA	Malta Migrants' Association
MQF	Malta Qualifications Framework
MQRIC	Malta Qualifications Recognition Information Centre
NCFHE	National Commission for Further Higher Education
OHCHR	Office of the United Nations High Commissioner for Human Rights
PHP	Provisional Humanitarian Protection
PQ	Preliminary questionnaire
RAB	Refugee Appeals Board
RefCom	Office of the Refugee Commissioner
THP	Temporary Humanitarian Protection
VAAP	Vulnerable Adult Assessment Procedure

Statistics

Overview of statistical practice

No statistical information is publicly available in Malta regarding asylum, although UNHCR Malta publishes basic information on asylum applications and decisions on a monthly basis.

Applications and granting of protection status at first instance: 2016

	Applicants in 2016	Pending applications in 2016	Refugee status	Subsidiary protection	Humanitarian protection	Rejection	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
Total	1,745	796	197	1,029	95	150	13.3%	70%	6.5%	10.2%

Breakdown by countries of origin of the total numbers

Libya	656	:	99	452	1	8	17.5%	81%	0.2%	1.3%
Syria	285	:	38	334	1	4	10.1%	88.6%	0.3%	1%
Eritrea	256	:	5	104	0	15	4%	84%	0%	12%
Somalia	227	:	9	94	0	10	8%	83%	0%	9%
Ukraine	84	:	0	0	34	0	0%	0%	100%	0%
Iraq	42	:	16	1	0	1	89%	5.5%	0%	5.5%
Ethiopia	27	:	3	11	8	17	7.8%	28.2%	20.5%	43.5%
Egypt	20	:	0	6	3	14	0%	26%	14%	60%
Nigeria	16	:	10	8	20	8	22%	17.4%	43.2%	17.4%
Sudan	16	:	0	11	1	5	0%	65%	6%	29%
Palestine	15	:	0	1	3	3	0%	14%	43%	43%
Iran	9	:	7	0	0	3	70%	0%	0%	30%

Source: Office of the Refugee Commissioner, data provided upon request, January 2017.

Gender/age breakdown of the total number of applicants: 2016

	Number	Percentage
Total number of applicants	1,745	100%
Men	1,011	58%
Women	318	18%
Children	402	23%
Unaccompanied children	14	1%

Source: Office of the Refugee Commissioner, data provided upon request, January 2017.

Comparison between first instance and appeal decision rates: 2016

	First instance		Appeal	
	Number	**Percentage**	**Number**	**Percentage**
Total number of decisions	1,376	100%	183	100%
Positive decisions	1,226	89%	50	27%
• *Refugee status*	197	16%	16	9%
• *Subsidiary protection*	1,029	84%	34	19%
Negative decisions	150	11%	133	73%

Source: Office of the Refugee Commissioner and Refugee Appeals Board, data provided upon request, January 2017. The total number of decisions does not include humanitarian status, inadmissibility or withdrawal decisions.

Overview of the legal framework

Main legislative acts relevant to asylum procedures, reception conditions and detention

Title (EN)	Abbreviation	Web Link
Refugees Act, Chapter 420 *Amended by:* Act VI of 2015 *Amended by:* Act VII of 2015	Refugees Act	http://bit.ly/1KuiEsU (EN) http://bit.ly/1LQjEov (EN) http://bit.ly/1Npu2Vg (EN)
Immigration Act, Chapter 217	Immigration Act	http://bit.ly/1ee7pa9 (EN)
Children and Young Persons (Care Orders) Act, Chapter 285	Care Orders Act	http://bit.ly/1Npg8Td (EN)

Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention

Title (EN)	Abbreviation	Web Link
Procedural Standards for Granting and Withdrawing International Protection Regulations, Legal Notice 416 of 2015	Procedural Regulations	http://goo.gl/SHBvX4 (EN)
Social Security (UN Convention relating to the Status of Refugees) Order, Legal Notice 291 of 2001	Refugees Social Security Regulations	http://bit.ly/1eUcuVZ (EN)
Refugees Appeals Board (Procedures) Regulations, Legal Notice 252 of 2001	RAB Regulations	http://bit.ly/1SWWIYP (EN)
Board of Visitors for Detained Persons Regulations, Legal Notice 266 of 2007	DVB Regulations	http://bit.ly/1GURBTA (EN)
Agency for the Welfare of Asylum-seekers Regulations, Legal Notice 205 of 2009	AWAS Regulations	http://bit.ly/1GURCHj (EN)
Asylum Procedures (Application for a Declaration) Regulations, Legal Notice 253 of 2001	Declaration Regulations	http://bit.ly/1KpjB5V (EN)
Immigration Appeals Board (Additional Jurisdiction) Regulations, Legal Notice 2 of 2012	IAB Dublin Regulations	http://bit.ly/1ds1pK9 (EN)
Refugee Appeals Board (Chambers) Rules, Legal Notice 47 of 2005	RAB Chambers Regulations	http://bit.ly/1GHgCyh (EN)
Reception of Asylum-seekers (Minimum Standards) Regulations, Legal Notice 320 of 2005 *Amended by:* Reception of Asylum Seekers Regulations, Legal Notice 417 of 2015	Reception Regulations	http://goo.gl/uiOm2v (EN) http://bit.ly/1HpyUcd (EN)
Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, Legal Notice 81 of 2011 *Amended by:* Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals (Amendment) Regulations, Legal Notice 15 of 2014	Returns Regulations	http://bit.ly/1GQaxQr (EN) http://bit.ly/1NyuzV5 (EN)
Family Reunification Regulations, Legal Notice 150 of 2007	Family Reunification Regulations	http://bit.ly/2kC9tiH (EN)
Strategy for the Reception of Asylum Seekers and Irregular Immigrants (2015)	2015 Strategy Document	https://goo.gl/FFz7qJ (EN)

Overview of the main changes since the previous report update

The report was previously updated in **November 2015**.

Asylum procedure / Reception conditions

- **Transposition:** In the course of 2015, Malta finalised the introduction of the recast asylum package into national legislation with the transposition of the recast Reception Conditions Directive and the recast Asylum Procedures Directive. This transposition reforms key aspects of the reception of asylum seekers in Malta.

- **No detention upon arrival:** The main feature of the new reception system is that detention is now no longer either mandatory or an automatic consequence of the decision to issue a removal order. Asylum seekers arriving irregularly in Malta are now taken to an Initial Reception Centre (IRC).

Detention of asylum seekers

- **Grounds for detention:** The amended Reception Regulations have transposed the six grounds for detention of asylum seekers foreseen in the recast Reception Conditions Directive. According to the authorities, 20 asylum seekers were detained in 2016. For most of the cases, the detention was based on the ground that the identity of the individual had yet to be determined and that the elements of the claim could not be ascertained in the absence of detention i.e. risk of absconding.

- **Alternatives to detention:** According to the amended Reception Regulations, when a detention order of an asylum seeker is not taken, alternatives to detention such as reporting or financial guarantees may be applied to non-vulnerable applicants when the risk of absconding still exists, for a period not exceeding 9 months. NGOs' concerns that alternatives to detention could be imposed when no ground for detention was found to exist proved to be true, as in 2016, several persons were released from detention after 2 months and placed under alternatives to detention without any ground to extend the detention as they had already applied for protection and provided all the required information.

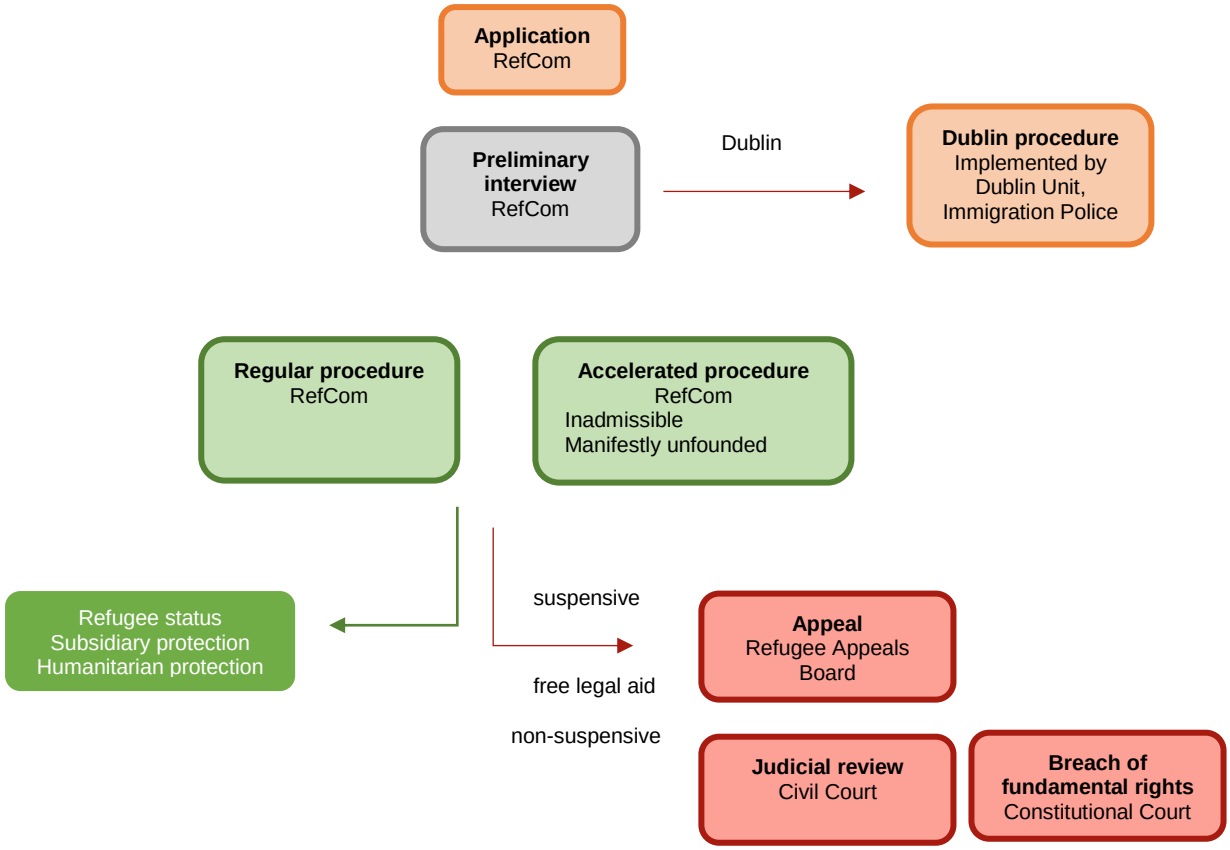
Content of international protection

- **Family reunification:** The Family Reunification Regulations provide that family members shall be granted a first residence permit of at least one year's duration which shall be renewable. In the past, the reuniting family members were given a one-year residence document indicating "Dependant family member – refugee", causing difficulties when public service providers (e.g. hospitals) failed to recognise the holder's entitlements as being equal to those of his or her refugee sponsor. Policy has recently changed and reunited family members are now granted a residence permit of 3 years, with the mention "Dependant family member".

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

❖ Regular procedure:	☒ Yes	☐ No
▪ Prioritised examination:[1]	☐ Yes	☒ No
▪ Fast-track processing:[2]	☐ Yes	☒ No
❖ Dublin procedure:	☒ Yes	☐ No
❖ Admissibility procedure:	☒ Yes	☐ No
❖ Border procedure:	☐ Yes	☒ No
❖ Accelerated procedure:[3]	☒ Yes	☐ No
❖ Other:		

Are any of the procedures that are foreseen in the law, not being applied in practice? ☐ Yes ☒ No

1 For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.
2 Accelerating the processing of specific caseloads as part of the regular procedure.
3 Labelled as “accelerated procedure” in national law. See Article 31(8) APD.

3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority (EN)
Application	Office of the Refugee Commissioner
Dublin (responsibility assessment)	Office of the Refugee Commissioner (designated authority) & Malta Police Force (Dublin Unit) as the implementing agency
Refugee status determination	Office of the Refugee Commissioner
Accelerated procedure	Office of the Refugee Commissioner & Refugee Appeals Board (joint procedure)
Appeal	Refugee Appeals Board
Subsequent application (admissibility)	Office of the Refugee Commissioner

4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Office of the Refugee Commissioner	19 caseworkers	Ministry for Home Affairs and National Security	☒ Yes ☐ No

5. Short overview of the asylum procedure

Applications for international protection are to be lodged with the Refugee Commissioner, as the Office of the Refugee Commissioner (RefCom) is the authority responsible for examining and determining applications for international protection at first instance.[4] The procedure in place is a single procedure with the examination and determination of eligibility for subsidiary protection being undertaken by the Refugee Commissioner within the context of the same procedure. The Refugee Commissioner is the only entity authorised by law to receive applications for international protection. Should the individual express a need for international protection at the border, this information is passed on to the Refugee Commissioner for the necessary follow-up.

The initial stages of the procedure require the filling in of a form known as the Preliminary Questionnaire (PQ) which asylum seekers are asked to complete following an information session given by RefCom staff members. The PQ is considered to be the registration of the asylum seeker's desire to seek international protection. If, at this stage, an individual provides information that, *prima facie*, renders him or her eligible for a transfer to another EU Member State in terms of the Dublin III Regulation, the examination of the application for protection is suspended pending the outcome of the Dublin procedure. It is pertinent to note that although the Refugee Commissioner is designated as the head of the Dublin Unit, the immigration police are charged with implementing the Dublin procedure in practice.

Following the initial collection of information in the PQ, an appointment is scheduled for an interview with the applicant. Once the applicant is called for the interview, he or she is first asked to fill in an Application Form that contains questions similar to those previously answered in the PQ. The application form is considered to be the official application for international protection. Then the recorded interview takes place and the applicant is informed at the end of the interview that he or she will be notified of the decision in due course.

[4] Article 4 Refugees Act.

National law specifies a 2-week time period from when an applicant is notified of the decision of the Refugee Commissioner, during which he or she may appeal to the Refugee Appeals Board (RAB). This Board, an administrative tribunal set up in terms of the Refugees Act which is currently made up of 3 chambers, is entrusted to hear and determine appeals against recommendations issued by the Refugee Commissioner. The Refugees Act specifies that the Minister may also lodge an appeal against the recommendation at first instance.[5] An appeal to the Board has suspensive effect such that an asylum seeker may not be removed from Malta prior to a final decision being taken on his or her appeal.[6]

The Refugees Act specifies that no appeal is possible from the decision of the Refugee Appeals Board, although it is possible to submit a judicial review application to the First Hall of the Civil Court.[7] Notwithstanding, no appeal lies on the merits of the decision except the possibility of filing a human rights claim alleging a violation of fundamental human rights in terms of the European Convention on Human Rights (ECHR) and/or the Maltese Constitution, should the rejected appellant be faced with a return that is prejudicial to his or her rights.[8]

The above refers to the regular procedure employed in adjudicating the majority of applications for international protection. Accelerated procedures are also foreseen in national law for applications that appear to be *prima facie* inadmissible or manifestly unfounded. All applicants for asylum are interviewed by the Refugee Commissioner although their case might be classified as being inadmissible following an evaluation of their asylum claim. In such cases, the accelerated procedure kicks in at appeal stage. The recommendation of the Refugee Commissioner is transmitted to the Refugee Appeals Board with the Board having a 3-day time-limit, specified at law, during which an examination and review of the Refugee Commissioner's recommendation is to be carried out.[9]

The procedure for determining applications for international protection from detained applicants is identical to that for applicants who are not detained. Asylum seekers who arrive in Malta without the required documentation, therefore being classified as "prohibited immigrants", can be detained upon arrival in immigration detention facilities following an assessment of the need to detain based on a limited list of grounds. In such case, their application for protection starts to be examined while they are in detention.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☐ Yes ☒ No

In the course of 2015, Malta transposed the recast Reception Conditions Directive and the recast Asylum Procedures Directive into national legislation. Malta's transposition of these Directive was effected through amendments to the Immigration Act as well as to the Reception of Asylum-Seekers Regulations, adopted under the Refugees Act.

This transposition process brought about substantial changes in the migrants' reception system in Malta and reformed key aspects of the national immigration set-up.

5 Article 7 Refugees Act.
6 Regulation 12 Procedural Regulations.
7 This is the Chamber of general jurisdiction. For further information on the First Hall of the Civil Court see the website of Malta's judiciary, available at: http://bit.ly/1ds58HF.
8 Article 7(9) Refugees Act.
9 Articles 23 and 24 Refugees Act.

In November 2015, following the transposition, the authorities launched a Policy document entitled "Strategy for the Reception of Asylum Seekers and Irregular Migrants" detailing the new system in place.[10]

First of all, all migrants entering Malta irregularly by boat, are first pre-screened upon arrival by the Police and Health authorities. They are then taken to an Initial Reception Centre (IRC) in order "to be medically screened and processed by the pertinent authorities."[11] According to the authorities, migrants can be kept in this centre for a time limited to 7 days, unless health-related considerations so dictate. This IRC is administrated by the Agency of the Welfare of Asylum Seekers (AWAS) within the Ministry for Home Affairs and National Security.

During their stay, migrants are provided with information about their right to apply for international protection, they are assigned a caseworker and are interviewed by Immigration Police.

An assessment of the need to detain the applicant is then carried out by the Principal Immigration Officer based on the limited list of detention grounds foreseen in the amended legislation.[12] Following this assessment, the applicant is either put in detention or offered accommodation in an open centre.

Following an informal agreement between Italy and Malta in 2014, almost all persons rescued at sea in 2016, including persons rescued by the Armed Forces of Malta, and those rescued in Maltese territorial waters or Malta's Search and Rescue Zone, were disembarked in Italy. As a consequence, only 29 persons arrived in Malta by boat in 2016,[13] and they were all medical evacuations.

So far, most people who arrived irregularly, by boat have spent two to three days in the IRC awaiting medical clearance. During this time, they received information about the asylum procedure and were given the opportunity to lodge an asylum application.

Relocated asylum-seekers from Greece and Italy,[14] in the framework of the EU Relocation scheme, were also sent to the IRC upon arrival before being accommodated in Open Centres.

According to the Strategy Document, migrants entering Malta irregularly by plane and apprehended at the airport are also taken to the IRC. Although the new reception policy refers to "all persons entering Malta irregularly",[15] according to JRS Malta, all applicants who arrived irregularly by plane were immediately detained without being placed in the IRC.[16]

Moreover, concerns were raised recently in Malta regarding the criminalisation by the authorities of the use of false documentation by asylum-seekers in their attempt to enter Malta. Asylum-seekers entering Malta with fake documents are brought before the Magistrates Court (Criminal Judicature) and most of the time condemned to serve a prison sentence. The prosecutions are based on the Maltese Criminal Code and the Immigration Act which foresee that entry in Malta with false or forged document invariably constitutes an offence.[17] In 2016, several cases of applicants for international protection imprisoned for that reason were reported. Several Maltese NGOs expressed their concern over the situation as this

10 Ministry for Home Affairs and National Security, *Strategy for the reception of asylum seekers and irregular migrants* (hereafter "Strategy Document"), November 2015, available at: http://bit.ly/2kPVl3A, 9-10.
11 *Ibid*, 10.
12 Regulation 6(1) Reception Regulations.
13 5 in May, 5 in June, 4 in September, 7 in October, 3 in November and 5 in December: UNHCR, *Malta Asylum Trends*, available at: http://www.unhcr.org.mt/charts/.
14 Information provided by Mr Julian Micallef, Ministry for Home Affairs and National Security, 17 January 2017.
15 Strategy Document, November 2015, 7.
16 Information provided by Dr Katrine Camilleri, Director of JRS Malta, January 2017.
17 Article 32(1)(d) Immigration Act.

criminalisation violates goes against the provisions of the 1951 Geneva Convention and penalise persons opting not to risk their lives at sea.[18]

2. Registration of the asylum application

Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application?
   ☐ Yes ☒ No
2. If so, what is the time-limit for lodging an application?

The authority responsible for registering asylum applications in Malta is the Refugee Commissioner (RefCom). The RefCom is also the authority responsible for taking decisions at first instance on asylum applications.[19]

The law no longer provides for time limits for an asylum seeker to apply for international protection and it also specifies that the Commissioner shall ensure that applications are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.[20]

With respect to asylum seekers who arrive undocumented by boat, the registration of their asylum application is relatively unhindered since they are almost immediately intercepted, registered and channelled into the IRC where they are given the opportunity to apply for asylum. On the other hand, with respect to asylum seekers who arrive documented but who do not express a wish to apply for asylum to the immigration officials present or who become refugees *sur place*, problems may arise as a result of the fact that they could not readily know how or where to apply for asylum.

Generally, due to the particular circumstances of persons arriving by boat, asylum applications are registered a few days or – at most – a couple of weeks after arrival by boat. The applications of persons approaching the RefCom directly are immediately registered.

Applications must be made at the RefCom. Any person approaching any other public entity, particularly the Malta Police Force, expressing his or her wish to seek asylum, is referred to the RefCom. Detained asylum seekers complete a Preliminary Questionnaire that indicates their intention to seek asylum, which is followed by the formal application that is completed during their first interview with RefCom case-workers.

18 JRS Malta et al., 'Journeys of Hope: We urge Malta to grant safe and legal access to refugees', 28-29 June 2016; available at: http://bit.ly/2lwccYu; Times of Malta, 'Refugees should not be prosecuted for using false documents', 1 July 2016; available at: http://bit.ly/2kcquMZ.

19 Article 4(3) Refugees Act.

20 Regulation 8(1) Procedural Regulations.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☐ Yes ☒ No
3. Backlog of pending cases as of 31 December 2016: 796

The RefCom is a specialised authority in the field of asylum. However, it falls under the Ministry responsible also for Police, Immigration, Asylum, Local Government, Correctional Services and National Security.

According to the amended Procedural Regulations, the Refugee Commissioner shall ensure that the examination procedure is concluded within 6 months of the lodging of the application. The Commissioner may extend this time limit for a period not exceeding 9 months for limited reasons, when complex issues are involved, when a large number of third-country nationals simultaneously apply for international protection or when the delay can clearly be attributed to the failure of the applicant to comply with his obligations.[21]

The examination procedure shall not exceed the maximum time limit of twenty-one months from the lodging of the application.[22]

When a recommendation cannot be made by the Refugee Commissioner within six months, the applicant concerned shall be informed of the delay and receive information on the time frame within which the decision on his application is to be expected. However, such information does not constitute an obligation for the Commissioner to take a decision within that time frame.[23]

Most of the decisions taken by the RefCom are, in practice, taken before the lapse of 6 months. The average length of the asylum procedure at first instance is not available for 2016.

1.2. Prioritised examination and fast-track processing

The Refugee Commissioner may decide to prioritise an examination of an application for international protection only when the application is likely to be well-founded and when the applicant is vulnerable or is in need of special procedural guarantees, in particular unaccompanied minors.[24]

In the past, as a matter of practice, certain caseloads were by the RefCom. The types of cases which were prioritised included cases involving particular vulnerable persons who, on a *prima facie* basis, were likely to be given protection, cases involving persons who were in closed centres over those who were in open centres and, in the case of mass influx, preference was given to those coming from countries whose nationals are, *prima facie*, more liable to be given protection.[25] However, in 2015 due to the very few

21 Regulation 6(4) Procedural Regulations.
22 Regulation 6(6) Procedural Regulations.
23 Regulation 6(7) Procedural Regulations.
24 Regulation 6(8) Procedural Regulations.
25 Communication from Refugee Commissioner to Dr Neil Falzon, aditus foundation, 2013.

arrivals and asylum applications, no cases were prioritised by RefCom. No information is available for 2016.

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision? ☒ Yes ☐ No
3. Are interviews conducted through video conferencing? ☐ Frequently ☒ Rarely ☐ Never

The amended Procedural Regulations now provide for a systematic personal interview of all applicants for international protection but foresee a few restrictive exceptions. The grounds for omitting a personal interview are the same as those contained in the recast Asylum Procedures Directive, namely: (a) when the Commissioner is able to make a positive recommendation on the basis of evidence available; or (b) when the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control.[26]

In practice, all asylum seekers are interviewed. The interviews are conducted by the RefCom or by one of his representatives, which means that the interviews are conducted by the same authority that takes the decision on the application.

The presence of an interpreter during the personal interview is required according to national legislation.[27] Interpreters for Somalis, Eritreans, Syrians or Libyans, that constitute the main nationalities of asylum seekers in Malta, are largely available. However, interpreters for other languages are not always readily available. Complaints as to the quality and conduct of the first instance interpreters are at times raised with legal representatives at the appeal stage, with the possibility of these being included in the appeal submissions. It is possible for interview procedures to be gender sensitive by appointing an interpreter and interviewer of the gender preferred by the applicant. However, this is not automatic, and requests to this end have to be made either by the applicant him or herself or by his or her legal assistant before the interview is carried out.

The amended law now provides for the possibility of audio or audio-visual recording of the personal interview. Regulations state that when such recording is made, the Commissioner shall ensure that the recording (or transcript) is available in connection with the applicant's file.

In practice, interview notes are taken during the personal interview whilst the interviewer is asking the questions, as well as the responses provided by the interpreter (if any). However, there is no indication that the consent of the asylum seeker is obtained for the audio recording of the interview and it appears, from several case files of applicants for asylum, that asylum seekers are simply informed of the fact that the interview will be audio recorded. As a matter of standard practice, all interviews are recorded. It is uncertain whether an audio/video recording is admissible in the appeal procedure as there are no known cases wherein the Refugee Appeals Board made use of such recording material.

Interviews can and have been conducted through video conferencing. According to the Refugee Commissioner, interviews through video conferencing are considered to be essential in situations where

[26] Regulation 10 Procedural Regulations.
[27] Regulations 4(2)(c) and 5(3) Procedural Regulations.

there is a lack of interpreters available in order to proceed with the interview of an asylum seeker. To date, three asylum interviews have been conducted through video conferencing and, it seems, these were carried for the purpose of interpretation.[28]

The applicant is usually granted a copy of the Interview Notes with a first instance negative decision. However, this is not always the case, and the applicant would have to make a separate request to be granted such a copy in preparation for his or her appeal. Unfortunately, the applicant is only granted the opportunity to make corrections to the content of the application form and not to the content of the Interview Notes of the personal interview, as a copy of the former is granted to the applicant before the first instance decision is taken. In practice, the quality of the Interview Notes may not be fully ascertained since these are taken during the interview itself and based on the responses provided by the interpreter. The audio recording is hardly ever made available to applicants or their lawyers and, if so, only following a formally reasoned request to RefCom.

1.4. Appeal

Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure? ☒ Yes ☐ No
   - If yes, is it ☐ Judicial ☒ Administrative
   - If yes, is it suspensive ☒ Yes ☐ No
2. Average processing time for the appeal body to make a decision: 2 months

An appeal mechanism of the first instance decision is available before a board known as the Refugee Appeals Board. Following the March 2015 amendments to the Refugees Act, the Board consists of 3 separate chambers, each made up of 4 persons - a chairperson and an additional 3 members.[29] It is an administrative review and involves the assessment of facts and points of law. An asylum seeker has 2 weeks to appeal and these 2 weeks start to run from the day the asylum seeker receives the written negative decision of the Refugee Commissioner.[30] The Refugee Appeals Board does not accept late appeals. There is no time limit set in law for the said Board to take a decision. Nevertheless, the appeal has suspensive effect.

In practice, asylum seekers can face obstacles in appealing a decision. First of all, the decision containing the reasons for the rejection of the application at first instance is always written in English, hindering an asylum seeker who does not understand English from appealing the decision. Moreover, asylum seekers in detention can face obstacles in appealing because there are no clear and established procedures in place for them to lodge an appeal. For instance, standard appeal forms are not always available to asylum seekers in detention as such forms are mostly provided by NGOs who are not present in detention on a daily basis. Regarding the processing time at the appeal stage, information provided by the Refugee Appeals Board refers to 2 months on average, however experience by NGOs providing legal aid to asylum seekers has shown that the waiting time may vary a lot depending on the Chamber to which the case is assigned, ranging from a couple of months to a couple of years. There are no time limits foreseen in national legislation.

Usually, the appeal takes the form of written submissions to the Refugee Appeals Board, however, the Board can, where appropriate, hold an oral hearing and it shall only hear new evidence which was previously unknown or which could not have been produced earlier when the case was first examined by the Refugee Commissioner.[31] As a result, asylum seekers can be heard in practice at the appeal stage

28 Communication from Refugee Commissioner to Dr Neil Falzon, aditus foundation, 2013.
29 Article 5(1) Refugees Act.
30 Article 7 Refugees Act.
31 Regulation 5(1)(h) RAB Procedures Regulations.

but only on a discretionary basis. Some Chambers systematically call for hearings in all cases when others appoint hearings on specific cases. The past few years have shown an increase in the number of oral hearings held by the Board, a significant increase in the proportion of first-instance decisions which have been overturned at appeal stage and lengthier decisions referring to EU and national legal norms, country of origin information and jurisprudence of the ECtHR and the CJEU. Hearings of the Refugee Appeals Board are not public and its decisions are communicated only to the applicant concerned, their legal representative, if known, the Refugee Commissioner, the Minister concerned and the High Commissioner i.e. UNHCR.[32] In 2016, 68 oral hearings have been held.

One of the main concerns expressed by NGOs regarding the appeal stage remains the lack of asylum-related training and capacity of the Board Members. The quality of the decisions also varies substantially amongst Chambers, with some more effective than others and little coordination amongst them all. The consequences include inconsistency in procedures, process and decisions, as well as the lack of coherent case law.[33] While some decisions include a comprehensive examination of the elements of fact and law of the case, others do not include any reasoning at all, rejecting the case on the basis of one sentence.

Judicial review

An onward appeal is not provided in the law in case of a negative decision from the Refugee Appeals Board. However, judicial review of the decisions taken by the Board is possible and several cases to this effect have been filed in the past couple of years.[34] No information on judicial reviews is available for 2016. Unfortunately, judicial review does not deal with the merits of the asylum claim but only with the manner in which the concerned administrative authority reached its decision. Moreover, such cases would not automatically have suspensive effect. Judicial review is a regular court procedure, assessing whether administrative decisions comply with required procedural rules such as legality, nature of considerations referred to and duty to give reasons. Applicants could be granted legal aid if eligible under the general rules for legal aid in court proceedings.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☐ Yes ☐ With difficulty ☒ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview ☐ Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
   ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☒ Representation in courts ☒ Legal advice

National legislation states that at first instance an applicant is allowed to consult a legal adviser at his or her own expense. However, in the event of a negative decision at first instance, free legal aid shall be granted under the same conditions applicable to Maltese nationals.[35] In the case of Maltese nationals, legal aid is available for all kinds of cases. However, legal aid for civil cases is subject to a means test

32 Regulation 5(1)(n) RAB Procedures Regulations.

33 UN General Assembly, *Report by the Special Rapporteur on the human rights of migrants, François Crepeau*, December 2014.

34 The judicial review process is regulated by Article 469A of the Code of Organisation and Civil Procedure (COCP), Chapter 12 of the Laws of Malta. These cases include: Court of Appeal (Civil, Superior), *Washimba Paul v Bord Ta' L-Appelli Dwar ir-Rifugjati Et*, Reference No. 65/2008/1, Judgment of 28 September 2012; Civil Court First Hall, *Gebremariam Teshome Tensea K/a Teshome Baerhanu Asbu v Bord Ta' L-Appelli Dwar ir-Rifugjati Et*, Reference No. 65/2010, Judgment of 10 July 2012; Civil Court First Hall, *Saed Salem Saed v Bord Ta' L-Appelli Dwar ir-Rifugjati Et*, Reference No. 1/2008, Judgment of 3 November 2009.

35 Regulation 7(1)-(2) Procedural Regulations.

whilst legal aid for criminal cases is not.[36] According to the office responsible for the provision of free legal assistance within the relevant Ministry, such legal assistance is usually not subject to a means test for asylum seekers. In practice, the appeal forms the applicants fill in and submit to the Refugee Appeals Board contain a request for legal aid. Unless an applicant is assisted by a lawyer working with an NGO, this request is forwarded to the office responsible for the provision of legal aid within the Ministry, which will distribute the cases amongst a pool of asylum legal aid lawyers. One appointment with the applicant is then scheduled. To date, legal aid in Malta for asylum appeals has been financed through the State budget.[37]

The only free legal assistance available to asylum seekers at first instance is that provided by lawyers working with NGOs. These services are regularly provided by a small group of NGOs as part of their on-going services and are funded either through project-funding or through other funding sources. It is to be noted that funding limitations could result in the services being reduced due to prioritisation. Generally, such lawyers provide legal information and advice both before and after the first instance decision, including an explanation of the decision taken and, in some cases, interview preparation. They can also attend personal interviews whenever the asylum seeker requests their presence. However, this is at the discretion of the Refugee Commissioner and their contribution throughout the interview is limited.[38] The main obstacle with regard to access to this kind of assistance is that there are a limited number of NGO lawyers who are able to provide such a service in relation to the number of asylum seekers requiring it. There are no known private lawyers providing free legal assistance to asylum seekers at first instance.

Legal assistance at the appeal stage is not restricted by any merits test or considerations, such as that the appeal is likely to be unsuccessful. There are, however, some restrictions in national legislation and in practice that can impinge on the ability of lawyers to effectively assist applicants for asylum at the appeal stage. Such restrictions relate to access to the applicants' files as well as the applicants themselves. For instance, in practice, lawyers that assist applicants for asylum at the appeal stage are requested to go to RefCom's office where they can manually copy the relevant information contained in their clients' files in preparation for the appeal. This situation might further discourage more lawyers from assisting, or assisting effectively, asylum seekers.

On the other hand, the law states that access to information in the applicants' files may be precluded when disclosure may jeopardise national security, the security of the entities providing the information, and the security of the person to whom the information relates.[39] Moreover, access to the applicants by the legal advisers or lawyers can be subject to limitations necessary for the security, public order or administrative management of the area in which the applicants are kept.[40] In practice, however, these restrictions are rarely, if ever, implemented. Usually, the appeal takes the form of written submissions to the Board by a stipulated time. Thus, it is not a very complicated procedure in practice. Nevertheless, the assistance of lawyer is essential for an effective appeal.

According to a local legal aid lawyer, the amount of €70 paid to a legal aid lawyer for every appeal is not enough to cover the preparatory work (reading the interview notes and decision as well as manually copying the contents of the appellant's file at the Refugee Commissioner's office and preparing questions to ask the appellant), the meeting with the appellant and the writing of the submissions. Meetings with appellants who are in detention can be particularly problematic for practical and logistical reasons that can be of detriment to both the appellants and the lawyers. For instance, at the entrance of the detention centres, legal aid lawyers have to show their identity cards and be given a pass. Sometimes this is a cumbersome procedure because the lawyer's name could not be on the list of people authorised to enter the detention centre. Also, there is rarely an adequate place for the lawyer to discuss the case with his or

36 The Judiciary Malta, *Frequently Asked Questions*, available at: http://bit.ly/1FJWCug.
37 *Ibid*.
38 Regulation 7(4) Procedural Regulations.
39 Regulation 7(2) Procedural Regulations.
40 Regulation 7(3) Procedural Regulations.

her client in detention. According to the legal aid lawyer, they sometimes had to speak to their clients in corridors or sitting on crates. As a result, the financial remuneration does not compensate for the amount of work as well as the practical and logistical obstacles involved in effectively representing asylum seekers at the appeal stage.

2. Dublin

2.1. General

Dublin statistics: 1 January – 30 June 2016

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	**46**	**8**	**Total**	**184**	**29**
France	13	2	Sweden	49	6
Poland	7	:	Germany	45	8
Germany	5	1	France	24	:

Source: Dublin Unit, data provided by upon request, September 2016.

There is no specific legislative instrument that transposes the provisions of the Dublin Regulation into national legislation. The procedure relating to the transfers of asylum seekers in terms of the Regulation is an administrative procedure, with reference to the text of the Regulation itself. The Refugee Commissioner is the designated head of the Dublin Unit with the Immigration Police implementing the procedure in practice.

Application of the Dublin criteria

According to NGOs' experience, there is no clear rule on the application of the family unity criteria as it usually depends on the particulars of the individual case. The Maltese Dublin authorities do not apply DNA tests but tend to rely on the documents and information immediately provided by the applicant. In some cases regarding children, when no documents are provided, the authorities can request additional information from UNHCR, IOM or AWAS. They usually put together all the information available as evidence. Matching information between members of the family can be relied on, and may be enough for determining family links.

The family unity criterion is the most frequently used in practice for outgoing requests. For incoming requests, the most frequently used criteria are either the first EU Member State entered (Article 13), or the EU Member State granting a Schengen visa (Article 12).

The discretionary clauses

There is no information available on the use of the humanitarian or the sovereignty clauses, although the Refugee Commissioner has indicated that there are cases where the humanitarian clause is used and Malta takes charge of the applicant on account of health reasons.

2.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not available

All those who apply for asylum are systematically fingerprinted and photographed by the Immigration authorities for insertion into the Eurodac database. Those who enter Malta irregularly are immediately taken into the custody of the Immigration authorities and are subsequently fingerprinted and photographed. Asylum seekers who are either residing regularly in Malta or who apply for international protection prior to being apprehended by the Immigration authorities, are also sent to the Immigration authorities to be fingerprinted and photographed immediately after their desire to apply for asylum is registered.

According to the authorities,[41] no force or coercion is required to take the fingerprints of asylum seekers. When migrants make attempts to avoid their fingerprints being taken by various means such as applying glue to the fingertips, a note is taken and the migrant is recalled for fingerprinting at a later stage when the effects of the glue would have subsided. When persons have damaged fingerprints, measures, such as repeated attempts, are taken to ensure that a good copy is available.

In previous years, NGOs working with asylum seekers confirmed a trend of individuals refusing to be fingerprinted. Migrants arriving in Malta are usually reluctant to be fingerprinted as this identification could prevent them to move beyond Malta. In 2014, individuals claimed that they saw persons being harassed or physically abused following their refusal to have their fingerprints taken. The Special Rapporteur on the human rights of migrants also reported that a degree of force was sometimes used.[42]

In registering their desire to apply for international protection, asylum seekers are also asked to fill in a "Dublin questionnaire" wherein they are asked to specify if they have family members residing within the EU. Should this be the case, the information is passed on to the Immigration Police Office responsible for Dublin transfers and the examination of their application for protection is suspended until further notice. It is up to the Immigration Police to then contact the asylum seeker to ask for further information regarding the possibility of an inter-state transfer, such as the possibility of providing documentation proving familial links.

Information is usually provided to the lawyer representing the applicant upon request. Where an applicant is detained, it is inherently more difficult for the individual to follow up on the Dublin case with information being obtained solely through the lawyer.

Individualised guarantees

No information is provided by the Dublin Unit on the interpretation of the duty to obtain individualised guarantees prior to a transfer, in accordance with the ECtHR's ruling in *Tarakhel v Switzerland*.[43]

Transfers

In practice, no official statistics are available regarding the length of time it takes for a transfer to be effected after another Member State would have accepted responsibility.

Over the course of 2016, NGOs providing legal aid to asylum seekers have noticed an increase of cases where persons were not informed about the status of their application and the ongoing Dublin procedure. As of the end of the year, RefCom provides a standard information sheet explaining that the Dublin procedure is applied and that the examination of the application is put on hold (see Information on the Procedure).

41 European Migration Network, *Ad-Hoc Query on EURODAC Fingerprinting,* 22 September 2014, available at: http://bit.ly/1PBRfaP.

42 UN General Assembly, *Report by the Special Rapporteur on the human rights of migrants, François Crepeau, Mission to Malta*, May 2015.

43 ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

2.3. Personal interview

Indicators: Dublin: Personal Interview

☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure? ☒ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☐ Yes ☒ No

2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

Upon notification that an asylum seeker might be eligible for a Dublin transfer, he or she will be called by the Immigration Police operating the Dublin Unit to verify the information previously given to the Refugee Commissioner or to the legal representative and will be advised to provide supporting documentation to substantiate the request for transfer. These interviews take place at the Police General Headquarters wherein the asylum seekers are escorted from the detention centre to be questioned by the police. Although the Immigration Police stated that interpreters are provided at the interview stage, legal practitioners who have assisted a number of asylum seekers within the Dublin procedure stated that no cultural mediators[44] are available at this point, although at times an English-speaking detainee might provide interpreting services. Moreover, the interview is not recorded nor is a transcript available.

2.4. Appeal

Indicators: Dublin: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☐ Judicial ☒ Administrative
   - ❖ If yes, is it suspensive ☒ Yes ☐ No

Appeals against decisions taken under the Dublin Regulation are possible through the filing of an appeal to the Immigration Appeals Board.[45]

The provisions of the Immigration Act indicate that the appeal must be filed within 3 working days from when the individual is notified with the decision.[46] Immigration legislation regulating procedures before the Immigration Appeals Board does not specify whether such appeals have suspensive effect or otherwise, yet may be interpreted as implying such a suspensive effect if requested, even verbally, by the appellant.

There is no specific appeal procedure for Dublin cases, leaving such applications pending for several months with the Board.

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44 Different to interpreters, as cultural mediators play a more active role in ensuring culturally appropriate language and communication.

45 Regulation 3 IAB Dublin Regulations.

46 Article 25A Immigration Act.

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice? ☐ Yes ☐ With difficulty ☒ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview ☐ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice? ☐ Yes ☐ With difficulty ☒ No
   - ❖ Does free legal assistance cover ☐ Representation in courts ☐ Legal advice

No provision is made for the availability of free legal assistance. Instead, if the asylum seeker is in detention, legal assistance is provided by an NGO that is regularly present in detention and offers professional legal services. If the asylum seeker is not detained, he or she can seek the services of a lawyer at his or her own expense or through the services offered by NGOs. In practice, the only way in which an asylum seeker pending a Dublin transfer can obtain consistent information about the stage of the proceedings is through the assistance of a lawyer who is able to follow up with the competent authorities.

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries? ☒ Yes ☐ No
   - ❖ If yes, to which country or countries? Greece

Following the ECtHR's judgment in *MSS v Belgium and Greece*,[47] Malta suspended the transfers of asylum seekers to Greece although the police will still assist with the transfer should an asylum seeker voluntarily ask to be returned to Greece. When transfers are suspended, Maltese authorities then assume responsibility for the examination of the application and the asylum seeker is treated in the same way as any other asylum seeker who would have lodged the asylum application in Malta.

Apart from these situations, Malta has not suspended transfers as a result of evaluation of systemic deficiencies in any EU Member State.

2.7. The situation of Dublin returnees

The main impact of the transfer on the asylum procedure relates to the difficulties in accessing the procedure upon return. If an asylum seeker leaves Malta without permission of the Immigration authorities, either by escaping from detention or by leaving the country irregularly, the Refugee Commissioner will consider the application for asylum to have been implicitly withdrawn, in pursuance of Regulation 13 of the Procedural Regulations, transposing the provisions of the Asylum Procedures Directive. Consequently, an asylum seeker who is transferred back will in almost all cases find that his or her asylum application has been implicitly withdrawn leaving him susceptible to return by the Immigration authorities.

Furthermore, persons travelling from Malta in an irregular manner run the risk of facing criminal charges upon being returned, on the basis of the Immigration Act. Upon return, the person would probably be arrested and brought before the Court of Magistrates (Criminal Jurisdiction) to face charges. During this

[47] ECtHR, *MSS v. Belgium and Greece*, Application 30696/09, Judgment of 21 January 2011.

time, pending the case, the asylum seeker would be remanded in custody at Corradino Correctional Facility for the entire duration of the criminal proceedings, which generally last for about 1 to 2 months from the date of institution of proceedings. The asylum seeker will be entitled to request the appointment of a legal aid lawyer, or to avail him or herself of a private lawyer should he or she have access to one. If found guilty, the Court may sentence the asylum seeker to either a fine of not more than around €12,000 or a maximum imprisonment term of 2 years, or for both the fine and imprisonment. It is noted that decisions are largely unpredictable, as some individuals have also been sentenced to imprisonment yet suspended for a number of years.

Suspension of transfers to Malta

In September 2016, the UK Upper Tribunal found that the return of a Sudanese applicant for international protection to Malta under the Dublin Regulation was lawful.[48] The applicant was challenging, through judicial review, the decision to transfer him to Malta, arguing that such a transfer would violate his rights under the Article 18 of the EU Charter. He was arguing that his asylum application would not be determined within a reasonable time and on the basis of a fair procedure considering the shortcomings of the Maltese asylum system which provides for slow and pro forma procedures. The Tribunal concluded that there was no risk of the violations of the procedural rights granted under Article 18 and that was no risk of any unlawful *refoulement*. The Tribunal noted that the applicant's experience as an asylum-seeker in Malta, where he was detained for more than a year, occurred several years ago and that significant changes have occurred since then in the Maltese reception system as a result of the transposition of the recast Asylum Procedures and Reception Conditions Directives. Moreover, regarding the claim that the applicant would probably have to submit a new application in Malta upon transfer, the Tribunal noted that the right to pursue a subsequent asylum application or to have an asylum application determined without a preliminary admissibility examination was not contained in Article 18 of the EU Charter.

The Federal Administrative Courts of Austria and Switzerland also upheld decisions to transfer asylum seekers to Malta in February 2017. The Austrian court found that the applicant, a pregnant woman, could access the necessary health care in Malta and therefore could not establish a violation of Article 3 ECHR.[49] For its part, the Swiss Federal Administrative Court noted that, following the change of detention policy under the 2015 Strategy Document, it could not be established that asylum seekers would be at risk of ill-treatment due to imminent detention upon return.[50]

In January 2016, the Council of Aliens Law Litigation in Belgium suspended the decision of the Belgian authorities which issued an order to leave the territory taken against a Somali asylum-seeker, in order for him to be transferred to Malta which had been determined as the State responsible for his application for international protection under the Dublin Regulation.[51] The applicant argued that he had been detained in Malta for several months in poor conditions, that receptions conditions in Malta were inadequate and that he was not provided with legal assistance during the first instance asylum procedure. The Court decided in favour of the applicant and reasoned that he had supported his claim with sufficient evidence, corroborated by several NGO reports available (AIDA) and that the State did not undergo through a rigorous and thorough examination of the risk under Article 3 ECHR.

48 UK Upper Tribunal, *R (Hassan) v Secretary of State for the Home Department* [2016] UKUT 00452 (IAC), Judgment of 28 September 2016, available at: http://bit.ly/2layekL.

49 Austrian Federal Administrative Court, Decision W192 2142903-1, 6 February 2017.

50 Swiss Federal Administrative Court, Decision E-850/2017, 14 February 2017.

51 Belgian Council of Aliens Law Litigation, Decision No 161122, 29 January 2016, available at: http://bit.ly/2kMIjTP.

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

Article 24 of the Refugees Act provides for "inadmissible applications" under Part V of the Act, in the provisions related to the accelerated procedures. As amended in March 2015, the following grounds allow for deeming an asylum application inadmissible:[52]

(a) Another Member State has already granted the applicant international protection under the Dublin III Regulation;
(b) The applicant comes from a first country of asylum;
(c) The applicant comes from a safe third country;
(d) The applicant has lodged a subsequent application presenting no new elements;
(e) A dependant of the applicant has lodged a separate application after consenting to have his or her case made part of an application made on his or her behalf; and
(f) The applicant has been recognised in a third country and can avail him or herself of that protection or otherwise enjoys sufficient protection from *refoulement*, and can be readmitted to that country.
(g) The applicant comes from a safe country of origin.

As the law mentions the inadmissibility of an application for recognition of refugee status, only the Refugee Commissioner can decide upon the admissibility of the application.[53] According to the Office of the Refugee Commissioner, all asylum applications are processed under the regular asylum procedure with no applications actually processed through the accelerated procedure. Data on inadmissible applications is not available for 2016.

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview
☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure? ☒ Yes ☐ No
   - ❖ If so, are questions limited to identity, nationality, travel route? ☐ Yes ☒ No
   - ❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No

2. Are interviews conducted through video conferencing? ☐ Frequently ☒ Rarely ☐ Never

According to Regulation 5(5) of the Procedural Regulations, the interview may be omitted if the application is unfounded. However, the RefCom systematically interviews all asylum seekers. The same regular procedures therefore apply for inadmissible applications.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal
☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure? ☒ Yes ☐ No
   - ❖ If yes, is it ☐ Judicial ☒ Administrative
   - ❖ If yes, is it suspensive ☒ Yes ☐ No

[52] Article 24 Refugees Act.
[53] Court of Appeal, *Paul Washimba v Bord tal-Appelli dwar ir-Rifugjati*, 28 September 2012.

All recommendations under the accelerated procedure shall immediately be referred to the Chairman of the Board who shall examine and review the recommendation of the Commissioner within 3 working days.[54] In practice, the 3 day time limit hinders any legal assistance, particularly in a detention context.

Although, the law foresees a possibility to appeal against a decision considering an application to be inadmissible, this provision does not apply for accelerated procedures.

In practice, when a decision of inadmissibility is taken by RefCom under the accelerated procedure, no appeal is allowed as the recommendation is referred to the RAB. The RAB is effectively a review of the recommendation, and not an appeal procedure. The applicant is usually not notified of this review and is not given the opportunity to submit an appeal submission.

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance
☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
   ☐ Yes ☐ With difficulty ☒ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview
     ☐ Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?
   ☒ Yes ☐ With difficulty ☐ No
   - ❖ Does free legal assistance cover ☒ Representation in courts
     ☒ Legal advice

Article 23(6) of the Refugees Act provides the right to be assisted by a legal adviser but it does not provide for free legal aid service. It does not differ in any way to the regular procedure.

4. Border procedure

There is no border procedure in Malta.

5. Accelerated procedure

5.1. General (scope, grounds for accelerated procedures, time-limits)

Article 23 of the Refugees Act provides that applications should be examined under accelerated procedures where:[55]

- The application is manifestly unfounded;
- The applicant has or could have found safe protection elsewhere under the Refugee Convention or the asylum Directives; or
- The applicant holds a travel document from a safe country.

The definition of "manifestly unfounded applications" was amended in March 2015 to reflect the grounds for accelerated procedures laid down by Article 31(8) of the recast Asylum Procedures Directive. An application is considered manifestly unfounded where the applicant:[56]

54 Article 23(3) Refugees Act. This applies to inadmissibility decisions as well: Article 24(2) Refugees Act.
55 Article 23(1), (8) and (9) Refugees Act.
56 Article 2(k) Refugees Act, as amended by Article 3 Act VI of 2015.

(a) In submitting his or her application and presenting the facts, has only raised issues that are not relevant to the examination as to whether such applicant qualifies as a beneficiary of international protection;
(b) Has given clearly insufficient details or evidence to substantiate his claim and his story is inconsistent, contradictory or fundamentally improbable;
(c) Has based his application on a false identity or on forged or counterfeit documents which he maintained as genuine when questioned about them;
(d) Has misled the authorities by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision;
(e) Made false representations of a substantial nature;
(f) Has, without reasonable cause and in bad faith, destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim, either in order to establish a false identity for the purpose of his application or to make the consideration of his application by the authorities more difficult;
(g) Having had ample earlier opportunity to submit an application for international protection, submitted the application in order to forestall an impending removal order from Malta, and did not provide a valid explanation for not having applied earlier;
(h) Is from a safe country;
(i) Refuses to comply with an obligation to have his or her fingerprints taken in accordance with the relevant legislation;
(j) May, for serious reasons, be considered a danger to the national security or public order, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law;

Article 23(2) provides that if the RefCom is of the opinion that an application is manifestly unfounded, he shall examine the application within 3 working days and his recommendation shall immediately be referred to the Refugee Appeals Board, who then also examine within 3 working days.

In practice, however, the RefCom does not consider *prima facie* applications and examines all applications under the regular procedure. According to the Office of the Refugee Commissioner, in 2015 no applications were processed under the accelerated procedure. Information for 2016 is not available.

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

☒ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure? ☐ Yes ☐ No
   - ❖ If so, are questions limited to nationality, identity, travel route? ☐ Yes ☐ No
   - ❖ If so, are interpreters available in practice, for interviews? ☐ Yes ☐ No

2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

The RefCom does not consider applications *prima facie* manifestly unfounded and therefore examines all applications under the regular procedure.

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure? ☐ Yes ☒ No
   - ❖ If yes, is it ☐ Judicial ☐ Administrative
   - ❖ If yes, is it suspensive ☐ Yes ☐ No

Articles 23(2) and 23(3) of the Refugees Act provide that if the Refugee Commissioner is of the opinion that an application is manifestly unfounded, he shall examine the application within 3 working days and refer his recommendations immediately to the Refugee Appeals board, which in turn is provided as well 3 working days to examine the application. No further appeal is allowed.

Yet under Regulation 22 of the Procedural Regulations the applicant is able to appeal against a decision of inadmissibility on the basis of the safe third country if he or she is able to show that return would subject him or her to torture, cruel, inhuman or degrading treatment or punishment.

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice? ☐ Yes ☐ With difficulty ☒ No
   - ❖ Does free legal assistance cover: ☐ Representation in interview ☐ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice? ☐ Yes ☐ With difficulty ☒ No
   - ❖ Does free legal assistance cover ☐ Representation in courts ☐ Legal advice

As per the regular procedure, free legal assistance is only provided at the appeal stage. The modalities and obstacles referred to under the regular procedure are also applicable under the accelerated procedure, possibly exacerbated by the extremely short operational time frame and limitation on appeal possibilities.

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☒ For certain categories ☐ No
   - ❖ If for certain categories, specify which: Unaccompanied children
2. Does the law provide for an identification mechanism for unaccompanied children? ☒ Yes ☐ No

National legislation transposes literally the recast Reception Conditions Directive regarding the definition of vulnerable applicants and provides that “an evaluation by the entity responsible for the welfare of

asylum seekers, carried out in conjunction with other authorities as necessary shall be conducted as soon as practicably possible."[57]

According to the new policy, during their stay at the Initial Reception Centre (IRC), migrants shall be assessed by professionals from AWAS with a view to identifying possible vulnerabilities through the Vulnerable Adults Assessment Procedure (VAAP), also known as the Adult Referral Assessment Tool. The organisation accepts referrals for assessment from any and all the entities that come in contact with migrants. Referrals could be made on various grounds, including:

- Serious chronic illness;
- Psychological problems, stemming from trauma or some other cause;
- Mental illness;
- Physical disability; and
- Age (where the individual concerned is over 60).

These referrals are usually accompanied by medical certificates or other supporting documents.

According to AWAS, an Initial Assessment is done by social workers for every migrant the day they arrive at the IRC. This basic assessment is designed to collect basic information about the applicant. It is supposed to help the care team and can be used as a base for the vulnerability assessment.[58]

According to the new policy, the vulnerability assessment procedure shall take into account potentially traumatic experiences undergone by the individual migrant. If necessary, AWAS professionals may call on the assistance of other specialised professionals whilst conducting vulnerability assessments.[59] In practice, AWAS conducts these assessments with a social worker and a coordinator.[60]

Like the Age Assessment Procedure discussed below, the VAAP is not regulated by clear publicly available rules. Where a referral is rejected, the individual concerned is not always informed of the decision; where the decision is communicated it is rarely communicated in writing and no reasons are ever given to the individual concerned. Where the case is being followed by a social worker, it is usually possible for the said professional to request and obtain information regarding the reasons for rejection on the client's behalf. The VAAP allows for the possibility of review of a decision not to recommend release at any point during an individual's detention, usually upon presentation of new evidence.

The length of time taken to conclude assessment procedures varies. As a rule, cases concerning referrals on grounds of mental health or chronic illness are likely to take longer to determine than cases where vulnerability is immediately obvious, e.g. in the case of physical disability.

When an applicant is deemed vulnerable, the result shall be communicated to the Police authorities so that the applicant in question shall not be subject to a detention decision according to the amended legislation (see Detention of Vulnerable Applicants).[61] They shall be instead immediately accommodated in open centres. According to the authorities, in those cases where vulnerability emerges only after an asylum seeker has been detained, the result shall be communicated to the Police authorities so that the detention order is withdrawn with immediate effect. The applicant shall then be released from detention and offered accommodation at an open centre.

In Malta, there is a specific reception centre for families and unaccompanied minors (**Dar il Liedna**) but there are no other facilities equipped to accommodate applicants with other special reception needs.

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57 Regulation 14 Reception Regulations.
58 Information provided by AWAS, 24 January 2017.
59 Strategy Document, November 2015, 15.
60 Information provided by AWAS, 24 January 2017.
61 Regulation 14(3) Reception Regulation.

The main issue is that the new reception system is only tailored for people arriving in Malta irregularly and referred to the IRC. Asylum seekers arriving regularly and therefore not accommodated in the IRC may never be assessed and their vulnerability may never be identified. A further concern is that, following their identification as vulnerable, individuals receive little or no support as they are required to access mainstream, and therefore non-specialised, support services as a matter of national policy.

Age assessment

Unaccompanied asylum seekers who declare that they are below the age of 18 upon arrival or during the filling in of the Preliminary Questionnaire are referred to AWAS for age assessment.

The Age Assessment Procedure was developed and implemented with a view to assessing claims of children. Although there are some references to this procedure in legal and in policy documents, the procedure itself is not regulated by law.

The only reference to age assessment procedures in law is found in Regulation 17 of the Procedural Regulations, which deal with the use of medical procedures to determine age, within the context of an application for asylum.

According to the new policy, irregular migrants who are undoubtedly children shall immediately be treated as such without recourse to any age assessment procedures. Age assessment shall be undertaken in all other cases.[62]

The age assessment procedure was reviewed in late 2014, introducing a number of positive improvements by focusing on a holistic approach, by including a greater integration of the benefit of the doubt in decision-making and by reducing the timeframe of the procedure. No real changes have taken place in practice since the reform.[63]

The first age assessment phase consists of an interview conducted jointly by an AWAS staff member and a transcultural counsellor.[64] For persons visibly under the age of 14, AWAS begins this first phase on the day immediately following their arrival. For other claims, AWAS begins two working days later and this phase must be completed by the sixth working day. Under the new procedure, there is no obligation to take into consideration any documentation provided by the person. At the end of the first phase, if the panel determines that the person is a minor, a Care Order is issued and the minor is transferred to an open reception centre where the asylum procedure resumes.

If the assessment is not conclusive at the end of the first phase, the person is referred for further age assessment. This second phase consists of a more-in-depth interview with a team of three transcultural counsellors. This interview must be completed by the eighth working day after referral. Following the interview, the panel submits its recommendations, which are then presented to a Chairperson. The last phase consists of the decision taken by the Chairperson. This determination must come by the tenth working day after referral. If the person is found to be a minor, a Care Order is issued, the minor is transferred to an open centre where the asylum procedure resumes. Under the new procedure, a Social Report is prepared by AWAS including the findings and the outcome of the assessment, this document is shared with the Department of Social Welfare Standards then send to the Ministry for the Family and Social Solidarity.

62 Strategy Document, November 2015, 11.
63 Information provided by AWAS, 24 January 2017.
64 The transcultural counsellors consist of a team of recent university graduates trained by JRS. They are not official AWAS employees but they fall under its supervision and responsibility.

At the end of the third phase, if the assessment is still not conclusive, the Chairperson can either refer the person for a second age assessment or for a bone density test, conducted by the Ministry of Health.[65]

The Age Assessment Procedure has been improved but is still plagued by a lack of adequate procedural guarantees, including lack of information about the procedure and the possibility of appeal. There is no real possibility to challenge the decision taken by the Age Assessment Team (AAT).

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?
   ☒ Yes ☐ For certain categories ☐ No
   - ❖ If for certain categories, specify which:

In transposing the recast Asylum Procedures Directive, Malta introduced special procedural guarantees for vulnerable people. According to the law, the Refugee Commissioner shall assess such applications within a reasonable period of time and ensure that such applicants are provided with adequate support throughout the whole procedure.[66] Moreover, the accelerated procedure shall not be applied in case it is considered that an applicant requires special procedural guarantees as a consequence of having suffered torture, rape or other serious form of psychological, physical or sexual violence.[67]

Special guarantees are also foreseen for unaccompanied minors as it shall be ensured that they shall be provided with legal and procedural information, free of charge on their application for international protection, and the interview is to be conducted and the decision prepared by a person who has the necessary knowledge of the special needs of minors.[68] Moreover, the Refugees Act provides that unaccompanied children may only be subject to the accelerated procedure where:

(a) they come from a safe country of origin;
(b) have introduced an admissible subsequent application; or
(c) present a danger to national security or public order or have been forcibly expelled for public security or public order reasons.[69]

The Office of the Refugee Commissioner provided information that in the case that an asylum seeker has been identified as being in need of special procedural guarantees, a trained caseworker is assigned to do the interview, during which the caseworker remains sensitive to the fact that the person might be unable to fully disclose details of the asylum claim. Nonetheless, practitioners who have attended several interviews over the last few years indicate that this may not always be taken into consideration as the asylum seeker will still be expected to provide a considerable amount of detail that they might not always be able to provide on account of the trauma they would have experienced. In the absence of a procedure geared towards identifying victims of trauma and torture, and the emphasis on concluding cases in the shortest time possible, these asylum seekers may be at a disadvantage as they could be unable to comprehensively disclose their protection needs.

65 aditus foundation, *Unaccompanied minor asylum-seekers in Malta: a technical report on age assessment and guardianship procedures*, October 2014, available at http://bit.ly/1W5M0Pq.
66 Regulation 10 Procedural Regulations.
67 Regulation 7 Procedural Regulations.
68 Regulation 18 Procedural Regulations.
69 Article 23A Refugees Act.

3. Use of medical reports

Indicators: Use of medical reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
   ☐ Yes ☐ In some cases ☒ No

2. Are medical reports taken into account when assessing the credibility of the applicant's statements? ☒ Yes ☐ No

The law does not mention the submission of medical reports in support of an asylum seeker's claim. When these are presented, the Refugee Commissioner treats them as documentary evidence presented by the applicant. Practitioners who have assisted a number of asylum seekers at first instance note that medical reports are taken into consideration, especially with regard to applicants with mental health problems where reports provided by medical professionals are given considerable weight in the evaluation of the applicant's need for protection. Medical reports documenting torture and other violence are not routinely provided by asylum applicants.

The Office of the Refugee Commissioner notes that it has very rarely requested an applicant to undergo a medical examination and in these cases the examination is paid for from public funds.[70]

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?
   ☒ Yes ☐ No

The Procedural Regulations set out that as soon as possible and no later than 30 days from the issue of the care under, unaccompanied minors shall be represented and assisted by a representative during all the phases of the asylum procedure.[71] The assigned legal guardian is an AWAS staff member, usually a social worker, and the Regulations provides that he shall have the necessary knowledge of the special needs of minors.

The legal guardian shall inform the unaccompanied child about the meaning and consequences of the personal interview and prepare the child for the interview. Moreover, the representative attends the status determination interview and may ask questions during the procedure. In practice, although the legal guardian does attend the interview together with the child, information and advice regarding the asylum procedure is provided by NGOs upon referral by the children's guardians.

The above procedure is not enshrined in any law, and no formalities exist to ensure compliance. Legal guardians are generally the social workers engaged by AWAS, who are, therefore, not independent from public authorities and in most cases responsible for a large number of children, due to resource constraints. NGOs have expressed the need for additional human resources and the necessity to train staff about the specific needs of minor children from different cultural backgrounds regarding reception and care. The situation is of particular concern regarding traumatised children who have fled situations of war and violence.[72]

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70 Information obtained via email from Refugee Commissioner.
71 Regulation 18 Procedural Regulations.
72 IOM & UNHCR, *Unaccompanied Migrant and Refugee Children: Alternatives to detention in Malta*, IOM-UNHCR Joint Technical Mission, May 2014, available at: http://bit.ly/1rsk1t3.

E. Subsequent applications

Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No

2. Is a removal order suspended during the examination of a first subsequent application?
   - ❖ At first instance ☒ Yes ☐ No
   - ❖ At the appeal stage ☐ Yes ☒ No

3. Is a removal order suspended during the examination of a second, third, subsequent application?
   - ❖ At first instance ☒ Yes ☐ No
   - ❖ At the appeal stage ☐ Yes ☒ No

An asylum seeker whose claim has been rejected may submit a subsequent application to the Refugee Commissioner. [73] A person may apply for a subsequent application, if he or she can provide elements or findings that were not presented before – subject to strict interpretation – at first instance. This evidence would have to be proof of which the applicant was either not aware of, or, which could not have been submitted before. Such new elements need to be presented within 15 days of receiving the information.

RefCom will first assess the admissibility of the subsequent application and if the application is deemed admissible, the applicant may be called for an interview, at the discretion of the Refugee Commissioner. Once the application is evaluated, a decision on the case is communicated to the appellant in writing. Seeing that, at this stage of the proceedings there is no free legal aid, asylum seekers are almost entirely dependent on NGOs.

There is no limit as to the number of subsequent applications lodged, as long as new evidence is presented every time. Second, third and other subsequent applications are generally treated in the same manner.

Removal orders are only suspended once the applicant has formally been confirmed to be an asylum seeker by the Refugee Commissioner, since this confirmation triggers the general protection from *non-refoulement* guaranteed to all asylum seekers.

In the eventuality that a subsequent application is deemed admissible but is not accepted on the merits, there is the possibility of appealing this decision to the Refugee Appeals Board within 15 days, in the same way as with the regular procedure. The time limit within which to appeal is 15 days.[74]

There are two main obstacles faced by asylum seekers. The first is lack of information. Information on the possibility to lodge a subsequent application is never communicated to asylum seekers whose appeal at the RAB has been rejected. The other obstacle is the lack of free legal assistance when submitting a subsequent application. The only alternative for asylum seekers is to approach JRS which is the main NGO offering a free legal service in the field of asylum.

In 2016, 196 subsequent applications have been submitted to RefCom.

[73] Articles 7A and 4 Refugees Act.
[74] Article 7(1A)-(2) Refugees Act.

F. The safe country concepts

Indicators: Safe Country Concepts		
1. Does national legislation allow for the use of "safe country of origin" concept?	☒ Yes	☐ No
❖ Is there a national list of safe countries of origin?	☒ Yes	☐ No
❖ Is the safe country of origin concept used in practice?	☒ Yes	☐ No
2. Does national legislation allow for the use of "safe third country" concept?	☒ Yes	☐ No
❖ Is the safe third country concept used in practice?	☐ Yes	☒ No
3. Does national legislation allow for the use of "first country of asylum" concept?	☒ Yes	☐ No

Article 2 of the Refugees Act defines the notions of safe country of origin and safe third country.

1. Safe country of origin

According to the Act, a safe country of origin means a country of which the applicant is a national or, being a stateless person, was formerly habitually resident in that country and he has not submitted any serious grounds for considering the country not to be a safe country of origin in his particular circumstances.

The Refugees Act also provides by way of a Schedule the list of countries of origin considered as safe. The Minister responsible for Home Affairs is competent to amend the list of countries and may review the list whenever necessary by means of an administrative act. The last amendment to the list is dated 2008. Currently the list of safe country of origin includes: Australia, Iceland, Benin, India, Botswana, Jamaica, Brazil, Japan, Canada, Liechtenstein, Cape Verde, New Zealand, Chile, Norway, Croatia, Senegal, Costa Rica, Switzerland, Gabon, United States of America, Ghana, Uruguay, Member States of the European Union and European Economic Area. The basis on which countries are listed/removed is unclear.

The concept of safe country of origin can be used to consider an application manifestly unfounded and therefore would make it fall under the accelerated procedure.[75] It can also be used to deem an application inadmissible.[76]

2. Safe third country

A safe third country means a country of which the applicant is not a national or citizen and where:

(a) Life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
(b) The principle of non-*refoulement* in accordance with the Convention is respected;
(c) The prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected;
(d) The possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Convention;
(e) The applicant had resided in the safe country of origin for a meaningful period of time prior to his entry into Malta.

Under the Refugees Act, the concept of safe third country can be used to determine if an application should be considered under the accelerated procedure as manifestly unfounded or considered inadmissible.[77] In practice, the Refugee Commissioner confirmed that the concept of "safe third country" has never been applied and thus, there is no list of safe third countries available.[78]

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75 Articles 8(1)(h) and 23 Refugees Act.
76 Article 24(1)(g) Refugees Act.
77 Articles 8(1)(g) 23 and 24(1)(c) Refugees Act.
78 Information provided by RefCom, August 2016.

3. First country of asylum

The concept of first country of asylum is defined as a country where the applicant has been recognised as a refugee or otherwise enjoys sufficient protection, including respect of the *non-refoulement* principle, and maybe readmitted thereto. This is also mentioned as a ground for inadmissibility.[79]

No information is available about the application of this concept. According to RefCom, this provision may apply "on a case by case basis".

G. Relocation

Indicators: Relocation

1. Number of persons effectively relocated since the start of the scheme 80

Relocation statistics: 2016

Relocation from Italy			Relocation from Greece		
	Received requests	Relocations		Received requests	Relocations
Total	46	46	**Total**	34	34
Eritrea	46	46	Syria	27	27
-	-	-	Eritrea	6	6
-	-	-	Iraq	1	1

Source: Ministry for Home Affairs and National Security, data provided upon request, 17 January 2017.

So far, Malta has relocated 80 asylum seekers coming from Greece and Italy. According to the authorities, one relocation request has been rejected. The process from the request by Italy or Greece to actual relocation usually takes between a few weeks to a couple of months depending on the specific situation of each case.

Upon arrival, relocated persons are placed in the Initial Reception Centre (IRC). During their stay in the centre, they are medically screened before being taken to reception centres. So far most relocated applicants have spent two to three days in the IRC awaiting medical clearance.

During this time, they receive information about the asylum procedure and they are given the opportunity to lodge an asylum application. While at the IRC they also receive visits from UNHCR and the Red Cross.

Upon release from the IRC, relocated persons are transferred to open reception centres.

Persons who are relocated to Malta go through the normal asylum procedure i.e. following the lodging of their application for international protection, the Office proceeds to schedule their interview, after which the case is examined and a final decision taken. According to the authorities, all cases are concluded on average within 2 months. Since relocation cases are not subject to Visa Information System (VIS), Eurodac or Dublin procedures, in practice they are seen to immediately.

[79] Article 24(1)(b) Refugees Act.

H. Information for asylum seekers and access to NGOs and UNHCR

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☐ Yes ☒ With difficulty ☐ No

   ❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No

The provisions in the law regarding information to asylum seekers are Regulation 3(3) of the Declaration Regulations and Regulation 4(1) of the Procedural Regulations. The latter states that asylum seekers have to be informed, in a language that they understand or they may reasonably be supposed to understand, of, among other things, the procedure to be followed and their rights and obligations during the procedure. It also states that asylum seekers have to be informed of the result of the decision in a language that they may reasonably be supposed to understand, when they are not assisted or represented by a legal adviser and when free legal assistance is not available. The amended provision also covers the information about the consequences of an explicit or implicit withdrawal of the application, and information on how to challenge a negative decision This provision does not, however, state in which form such information has to be provided except for the decision that, by virtue of Regulation 14 of the Procedural Regulations, has to be provided in a written format. In practice, information is provided both by the Immigration Police and personnel working for the Refugee Commissioner. In the case of the Immigration Police, information on the rights and obligations of asylum seekers is provided almost immediately in the form of a booklet that is available in English, French and Arabic.

The information is delivered using different means and includes an explanation of the purpose of the session by the personnel (with the help of an interpreter), an audio-visual presentation available in the most common 11 languages of the asylum population i.e. Amharic, Tigrinya, Arabic, English, Djoula, French, Hawsa, Oromo, Russian, Somali and Swahili; further languages to be added, according to the exigencies of the applicants.[80] A booklet that contains a transcript of the audio-visual presentation is also available in the said eleven different languages; this is not available online. The same type of information session is provided to asylum seekers who are not in detention but who apply directly at the Refugee Commissioner's office.

However, information provided to persons not detained remains a concern as the asylum system is not structured for asylum seekers arriving regularly and therefore not taken at the IRC within a controlled environment. There is no systematic and structured way to provide comprehensive information to asylum seekers outside detention. They receive only basic information about the asylum procedure but not about their rights regarding reception. For example, they do not have access to information about access to healthcare or education, while asylum seekers in detention see their basic needs covered.

Alternative sources of information are available in practice mostly through NGOs. For instance, staff of the Jesuit Refugee Service (JRS) Malta visit detention centres after each boat arrival to provide an information session on the asylum procedures as well as on the rights and obligations pertaining to such procedures. When available, booklets containing such information, in English, French, Tigrinya and Somali, are provided to asylum seekers by JRS Malta. JRS Malta is also available to provide information sessions to asylum seekers who are not kept in detention. However, such is only possible if the asylum seekers concerned come to the attention of the said organisation.

In addition, personnel from the office of the Refugee Commissioner conduct only one information session per group of arrivals and, usually, such is conducted before asylum seekers register their desire to apply

[80] Communication from the Refugee Commissioner to Dr Neil Falzon, aditus foundation, 2013.

for asylum. There is a lack of a constant flow of information from the authorities throughout the various stages of the procedure, with no information desk or similar initiative at the Refugee Commissioner's office. Throughout the different stages of the asylum procedure, asylum seekers can only obtain further information from NGOs.

Information on the Dublin procedure

With respect to the Dublin Regulation, some information is provided to asylum seekers with a document that is given to each person by the Immigration authorities upon their arrival. The information is contained in a few short paragraphs and is written in English. It does not include information on the consequences of continuing to travel to another EU Member State or absconding from a transfer. As a result of all this, the information provided cannot be considered to be sufficient for asylum seekers to fully understand the way in which the Dublin system functions as well as its consequences. According to legal practitioners operating in the field, it appears that Dublin-related information leaflets for adults and unaccompanied children as included in Annexes X and XI of the Commission Implementing Regulation No 118/2014 are not distributed to asylum seekers.[81]

Over the course of 2016, NGOs providing legal aid to asylum seekers have noticed an increase of referrals to the Dublin Unit regarding Iraqi and Libyan applicants. It appeared that these applicants were usually not or poorly informed about the status of their application and about the ongoing Dublin procedure. It happened on several occasions that information in writing about the fact that the case is being examined or even decisions were not provided, preventing the applicant to exercise his or her right to legal remedies. The Dublin Unit was not in capacity to provide specific and updated information on individual files which left dozens of applicants wondering about their cases. NGOs were eventually informed that most of the Dublin cases had expired and that Malta was again responsible for asylum applications concerned.

Since the end of 2016, RefCom provides to asylum seekers for whom a Dublin transfer is considered, a document explaining the Dublin procedure and the fact that their case is on hold until a possible Dublin decision is taken. This document is a standard information sheet and does provide any other individualised information than the name of the applicant to whom it is given.

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☒ Yes ☐ With difficulty ☐ No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? N/A

National legislation provides that UNHCR shall have access to asylum applicants, including those in detention and in airport or port transit zones.[82] Moreover, the law also states that a person seeking asylum in Malta shall be informed of his right to contact UNHCR.[83] There is no provision in the law with respect to access to asylum applicants by NGOs, however, it states that legal advisers who assist applicants for asylum shall have access to closed areas such as detention facilities and transit zones for the purpose of

81 See Commission Implementing Regulation (EU) No 118/2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, *OJ* 2014 L 39/1.

82 Regulation 16(a) Procedural Regulations.

83 Regulation 3(3)(c) Declaration Regulations.

consulting the applicant.[84] Thus, NGOs have indirect access to asylum applicants through lawyers who work for them. In practice, however, asylum seekers located at the border or in closed centres do not face major obstacles in accessing NGOs and UNHCR.

Access to IRC is regulated by AWAS and is not granted to family members or NGOs on grounds of the medical clearance conducted in this facility.

I. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☒ Yes ☐ No
   - ❖ If yes, specify which: Syria, Libya

2. Are applications from specific nationalities considered manifestly unfounded?[85] ☒ Yes ☐ No
   - ❖ If yes, specify which: Jamaica, Brazil, Japan, Canada, US, Cape Verde, New Zealand, Child, Senegal, Costa Rica, Gabon, Ghana, Uruguay, EU/EEA

In recent years, the Office of the Refugee Commissioner has granted some groups of applicants a "Provisional Humanitarian Protection" (PHP) pending a final decision on their application, until a recommendation on protection or return from UNHCR is issued. It was used in case of mass influx or sudden increase of certain groups of asylum seekers coming from countries that *prima facie* were more liable to be given protection.

"Provisional Humanitarian Protection" is essentially a form of temporary protection status pending full determination of the individual case. It is not contained in any law, so quite dependent on the Refugee Commissioner's discretion. Provisional Humanitarian Protection also lacks clarity as to the content of associated rights and obligations but in general beneficiaries of PHP are treated in the same manner as asylum seekers. In recent years this form of protection was granted to groups of **Eritreans**, **Libyans** and **Syrians**. This is no longer the case for these groups.

Situation of Syrian applicants

Prior to the start of the Syrian conflict, Syrian asylum applicants constituted only a small proportion of those seeking international protection in Malta. In the large majority of cases, those Syrians who requested asylum would not have arrived by boat from Libya but applied after being apprehended for having overstayed their permission to stay.

In the initial months of the conflict, Syrian asylum seekers were being granted "Provisional Humanitarian Protection" pending a final determination of their need for international protection. This provided protection from forced removal yet applicants were still considered as being asylum seekers, and were only entitled to the rights of the latter category.

Some months later when the conflict intensified and it seemed unlikely that the situation would be resolved swiftly, applications made by Syrian nationals were finally concluded. At this point a distinction was made between those Syrians who arrived in Malta following the start of the conflict and those who had been in Malta for a number of years and/or months and applied for protection after the start of the conflict.

Those who arrived in Malta and applied for asylum immediately following the start of the conflict had their claims examined in accordance with the normal procedure and were subsequently granted refugee status,

[84] Regulation 7(3) Procedural Regulations.
[85] Whether under the "safe country of origin" concept or otherwise.

or subsidiary protection on account of the serious harm they would face if sent back to Syria at that point in time. The applications of those who had been in Malta for some time and who only applied for asylum after the start of the conflict were also examined in line with the normal procedure, yet if it was found that they were not eligible for refugee status, instead of being granted subsidiary protection they were granted 'Temporary Humanitarian Protection' on the same ground that return to Syria would put them at risk because of the nature of the conflict. Temporary Humanitarian Protection, which is to be distinguished from provisional humanitarian protection as discussed above, is a domestic form of protection which, while still providing protection from forced return and a selection of the same rights of beneficiaries of subsidiary protection, is not set out in law and is granted on a discretionary basis.

In 2013 the Refugee Appeals Board disagreed with the assessment that the harm feared by Syrian asylum seekers on account of the civil war rendered them eligible only for Provisional Humanitarian Protection. First-instance decisions were therefore overturned and the asylum seekers concerned granted subsidiary protection. At around this same time, all Syrian applicants who had been granted PHP had their protection changed to subsidiary protection; currently, all Syrian applicants who prove their Syrian nationality are granted, as a minimum, subsidiary protection. A number of persons have also been recognised as refugees.

In 2016, 377 Syrian nationals applied for international protection in Malta. Four rejections decisions were taken. The vast majority of applicants (334) were granted subsidiary protection while 38 applicants were recognised as refugees.

Situation of Libyan applicants

In 2014, applicants from Libya were granted as a minimum a Temporary Humanitarian Protection (THP) until they could safely return to Libya. This protection was granted to ensure that applicants, who did not qualify for refugee status or subsidiary protection, would be protected against refoulement. At that time, RefCom did not consider the situation in Libya was reaching the threshold of indiscriminate violence in terms of Article 15(c) of the recast Qualification Directive.

In January 2015, RefCom conducted a review of the situation in Libya to assess whether the security situation reached that threshold. The Office identified a number of indicators to measure the level and nature of indiscriminate violence and based its reasoning on European case law, UNHCR guidelines and up-to-date country of origin information. RefCom came to the conclusion that "the armed conflict in Libya meets the threshold of an indiscriminate violence since it is of such intensity that any person, only by returning to the country, would be at risk simply on account of his/her presence there". As a consequence, the status of all the beneficiaries of THP who RefCom felt did not originally qualify for refugee status or subsidiary protection based on Article 15(b) of the recast Qualification Directive, was revised and changed to subsidiary protection under Article 15(c) of the recast Qualification Directive.

In 2016, RefCom received 560 applications from Libyan nationals. 452 were granted subsidiary protection and 99 were recognised as refugees. 8 applications were rejected.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions available to asylum seekers in the following stages of the asylum procedure?
   - ❖ Regular procedure ☒ Yes ☐ Reduced material conditions ☐ No
   - ❖ Dublin procedure ☒ Yes ☐ Reduced material conditions ☐ No
   - ❖ Admissibility procedure ☒ Yes ☐ Reduced material conditions ☐ No
   - ❖ Accelerated procedure ☒ Yes ☐ Reduced material conditions ☐ No
   - ❖ Appeal ☒ Yes ☐ Reduced material conditions ☐ No
   - ❖ Subsequent application ☒ Yes ☐ Reduced material conditions ☐ No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? ☒ Yes ☐ No

Maltese law does not distinguish between the various procedures in order to determine entitlement to reception conditions, nor does it establish any distinction in the content of such conditions linked to the kind of procedure. Relevant legislation simply refers to "applicant", defined as a person who has made an application for international protection.[86] No reference is made to the duration of entitlement to reception conditions.

Material receptions conditions shall be available for applicants from the moment they make their application for international protection. According to the law, reception conditions are available for "applicants [who] do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence."[87] Applicants with sufficient resources or who have been working for a reasonable amount of time may be required to contribute to the cost of material reception conditions. However, no specific indication is provided as to the level of personal resources required and it is unclear how this is determined and by whom, including whether an assessment of risk of destitution is actually carried out.

Regulation 16 of the Reception Regulations states that asylum seekers who feel aggrieved by a decision relating to the Regulations may be granted leave to appeal before the Immigration Appeals Board, established by the Immigration Act.

With regard to subsequent applications, whereas the Reception Regulations apply to all asylum seekers, in practice reception conditions may not be offered to asylum seekers who might have benefitted from them earlier and subsequently departed from the Open Centre system. As a matter of policy, persons departing from the Open Centre system are not generally authorised to re-enter it, with consequential lack of provision of reception modalities. However, AWAS has indicated that some individuals may be authorised to return to reception centres. Usually, those persons are asked to come to AWAS' office to apply for accommodation. An assessment is then made by a social worker who first tries to refer the person to the mainstream services. No formal criteria exist to decide on why certain persons can be reintegrated in reception centres, but AWAS indicated that vulnerability is taken in account in priority.[88]

86 Regulation 2 Reception Regulations.
87 Regulation 11(4) Reception Regulations.
88 Information provided by AWAS, 24 January 2017.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2016 (in original currency and in €): €130

The Reception Regulations cover the provision of "material conditions", defined as including "housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance."[89]

In practice, asylum seekers in detention are provided with accommodation, food and clothing in kind. Asylum seekers in Open Centres are provided with accommodation and a daily food and transport allowance.

The Reception Regulations generally specify that the level of material reception conditions should ensure a standard of living adequate for the health of the asylum seekers, and capable of ensuring their subsistence. However, legislation neither requires a certain level of material reception conditions, nor does it set a minimum amount of financial allowance provided to detained asylum seekers. Asylum seekers living in Open Centres are given a small food and transport allowance, free access to state health services, in cases of children, free access to state education services. They are not entitled to social welfare benefits. Asylum seekers in detention enjoy free state health services, clearly within the practical limitations created by their presence within a detention centre.

Asylum seekers living in Open Centres experience difficulties in securing an adequate standard of living. The daily allowance provided is barely sufficient to provide for the most basic of needs, and the lack of access to social welfare support exacerbates these difficulties. Social security policy and legislation precludes asylum seekers from social welfare benefits, except those benefits which are defined as "contributory". With contributory benefits entitlement is based on payment of a set number of contributions and on meeting the qualifying conditions, which effectively implies that only a tiny number of asylum seekers would qualify for such benefits, if any.

AWAS provides different amounts of daily allowance, associated with the asylum seeker's status:

- €4.66 for asylum seekers;
- €2.91 persons returned under the Dublin III Regulation; and
- €2.33 children (including unaccompanied minors) until they turn 17.

This allowance is usually given for a year, but exceptions are known to have been made on a case by case basis depending on the individual's needs and degree of vulnerability.[90]

Asylum seekers in detention receive less favourable treatment than nationals with regard to material support, due to the fact that they are detained. Persons living in Open Centres are treated less favourably than nationals in relation to access to social welfare support, as they are denied access.

3. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions? ☒ Yes ☐ No
2. Does the legislation provide for the possibility to withdraw material reception conditions? ☒ Yes ☐ No

89 Article 2 Reception Regulations.

90 JRS Malta and aditus foundation, *Struggling to survive, An investigation into the risk of poverty among asylum-seekers in Malta*, January 2017, available at: http://bit.ly/2lrTJQV.

The Reception Regulations state that reception conditions may be withdrawn or reduced where the asylum seeker abandons the established place of residence without providing information or consent or does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure.

The law does not define when a place is considered abandoned. However, practice shows that this is the case where a resident:[91]

- Fails to sign the residence sheet for a set number of times without a valid excuse;
- Does not comply with reporting duties;
- Fails to appear for the asylum interview; or
- Has concealed financial resources.

The Regulations state that such decisions shall be taken "individually, objectively and impartially and reasons shall be given," with due consideration to the principle of proportionality. Whether this assessment includes risk of destitution cannot be confirmed as this is not specifically mentioned and no such cases have ever arisen.

Asylum seekers may appeal these decisions before the Immigration Appeals Board, in accordance with the Immigration Act. When these decisions are taken regarding reception conditions in detention, it is the Detention Service taking them, whilst AWAS would take these decisions in relation to residents of its Open Centres. It is unclear how reception conditions of asylum seekers living in the community, and not in any AWAS-coordinated centre, are regulated as relevant legislation does not provide this information and no such situation has ever arisen.

Appeals to the Immigration Appeals Board are particularly problematic for asylum seekers who are detained, as no information is provided on how to access the Board and its procedures. This was also highlighted by the ECtHR in its Article 5 ECHR cases against Malta.[92]

4. Freedom of movement

Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country? ☐ Yes ☒ No
2. Does the law provide for restrictions on freedom of movement? ☐ Yes ☒ No

Asylum seekers residing in Open Centres enjoy freedom of movement around the island(s). All persons living in an Open Centre are required to regularly confirm residence through signing, 3 times per week. These signing procedures also confirm eligibility for the *per diem* (see Forms and Levels of Material Reception Conditions) and to ensure a continued right to reside in the Centre. Residents who are employed, and who therefore might be unable to sign three times a week, are not given the per diem for as long as they fail to sign.

Malta does not operate any dispersal scheme, since residence in Open Centres remains voluntary. Nonetheless, placement in a particular open centre generally implies limited possibility to change centre, although such decisions could be taken on a case-by-case basis. Moreover, legislation foresees that transfers of applicants from one accommodation facility to another shall take place only when necessary,

91 Regulation 13 Reception Regulations.

92 ECtHR, *Louled Massoud v. Malta,* Application No 24340/08, Judgment of 27 July 2010; *Aden Ahmed v. Malta*, Application No 55352/12, Judgment of 23 July 2013; *Suso Musa v. Malta*, Application No 42337/12, Judgment of 23 July 2013.

and applicants shall be provided with the possibility of informing their legal advisers of the transfer and of their new address.[93]

Residing in an open centre brings with it entitlement to a financial *per diem*, intended to cover food and transportation costs. With the exception of a few cases, following a specific request which is assessed on a case-by- case basis, persons living outside the open centres do not receive this *per diem*.

Beyond individual situations, movement between centres is sometimes affected due to space considerations. Rarely, asylum seekers might be moved from one centre to another in order to maintain security and order within particular centres.

Asylum seekers arriving irregularly and taken to the IRC are requested to stay in this confined environment for a couple of days. While located within the **Marsa Open Centre**, which hosts the IRC, asylum seekers however have not access to the courtyard.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:[94] 8
2. Total number of places in the reception centres: 2,200
3. Total number of places in private accommodation: cc. 400

4. Type of accommodation most frequently used in a regular procedure:
   ☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

5. Type of accommodation most frequently used in an accelerated procedure:
   ☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

There 8 reception centres in Malta – one of which is currently being refurbished. Out of those, 6 are run by AWAS and the remaining 2 by NGOs. The latter do, however, fall within AWAS' overall reception system.

In October 2015, the contract with the NGO running the **Marsa Open Centre**, one of the largest reception centres, was terminated, with daily management reverting to AWAS. The centre was previously run by the Foundation for Shelter and Support to Migrants (FSM). This centre now includes the Initial Reception Centre (IRC) which was set up in 2015 in order to process medical clearance, age and vulnerability assessment and registration before a transfer to an open centre.

The IRC is at the moment used for all the migrants arriving irregularly but also for all asylum-seekers in need of accommodation. Adults, families, minors are all requested to stay at the IRC in Marsa for two or three days for medical clearance.[95]

The reception centres and respective capacity are as follows:

Open centre	Maximum capacity
Tent Village Hal-Far	736
Hangar Hal-Far	624

93 Regulation 13 Reception Regulations.
94 Both permanent and for first arrivals.
95 Information provided by AWAS, 24 January 2017.

Initial Reception Centre	188
Marsa Open Centre	238
Emigrants Commission	310
Peace Lab	cc. 40
Dar is Sliem[96]	cc. 30
Dar il-Liedna	cc. 60

Source: AWAS, February 2017.

The total reception capacity of the centres is approximately 2,200 places. At the end of 2016, 673 persons were accommodated in Open Centres.

One NGO also offers accommodation in the form of private houses/flats, also falling within AWAS' overall reception system. In exceptional cases, particularly where the existing facilities are overcrowded, alternative venues are utilised as for example shelters for homeless persons. Persons applying at the airport are generally transferred to the main Open Centres.

Some families, single women and unaccompanied children are accommodated in separate Open Centres although families also often share accommodation with other groups. Foster families are hardly ever resorted to and in such cases these would be processed through the mainstream fostering procedures.

Unaccompanied children are generally accommodated alone, or in a centre where families are also accommodated, although the spaces are kept separate. The Reception Regulations do specify (Regulation 15) that unaccompanied children aged 16 years or over may be accommodated with adult asylum seekers, and it has happened in practice.

Apart from the above considerations (age, family composition), there are no clear allocation criteria on the basis of which persons are accommodated in specific centres. There does not seem to be a contingency plan for situations of severe over-crowding.

Whilst efforts are made to segregate single women from single men, it is not uncommon for men and women, single or otherwise to be accommodated in the same centre.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☐ Yes ☒ No
2. What is the average length of stay of asylum seekers in the reception centres? 6 months
3. Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No

Conditions in the open centres vary greatly from one centre to another. In general, the centres provide sleeping quarters either in the form of rooms housing between 4 (the centres for unaccompanied children) to 24 people (**Marsa Open Centre**), or mobile metal containers sleeping up to 8 persons per container (**Hal-Far Hangar site** [HOC], and **Hal Far Tent Centre** [HTV]). Common cooking areas are provided, as also common showers and toilets. The large number of persons accommodated in each centre (e.g. around 400 in **Marsa Open Centre**) inevitably results in severe hygiene and maintenance problems.

Despite the large numbers of residents, the majority of open centres are run by small teams that are responsible for the centres' daily management and also for the provision of information and support to

[96] Closed in mid-2015 since all the unaccompanied minors it accommodated turned 18.

residents. Individuals are also referred to AWAS' social welfare team as necessary. Around 50 AWAS staff are currently working in several reception centres. An AWAS coordinator is based in the centres run by NGOs, and social workers are visiting migrants on a regular basis.

The majority of centres do not offer any form of activities for residents, yet these are able to freely leave the centre as they please.

Overall, the living conditions in the open centres, save for a few exceptions, are extremely challenging. Low hygiene levels, severe over-crowding, lack of physical security, location of most centres in a remote area of Malta, poor material structures and occasional infestation of rats are the main general concerns expressed in relation to the Open Centres.[97]

For asylum seekers living in Open Centres, it is difficult to calculate average length of stay as they will probably finalise their asylum procedure whilst in the Open Centre so consequently switching asylum status. Once their procedure is finalised, either positively or negatively, they will be allowed to remain in the Open Centre. Residents are requested to sign a one-year contract with AWAS. At the end of the contract, they might be authorised to stay longer following an individual assessment with a care-worker.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market	
1. Does the law allow for access to the labour market for asylum seekers?	☒ Yes ☐ No
❖ If yes, when do asylum seekers have access the labour market?	9 months
2. Does the law allow access to employment only following a labour market test?	☐ Yes ☒ No
3. Does the law only allow asylum seekers to work in specific sectors?	☐ Yes ☒ No
❖ If yes, specify which sectors:	
4. Does the law limit asylum seekers' employment to a maximum working time?	☐ Yes ☒ No
❖ If yes, specify the number of days per year	
5. Are there restrictions to accessing employment in practice?	☒ Yes ☐ No

Asylum seekers are entitled to access the labour market, without limitations on the nature of employment they may seek. In terms of the Reception Regulations this access should be granted no later than 9 months following the lodging of the asylum application, Malta issues 'employment licences' for asylum seekers, the duration of which varies from 3 months for asylum seekers whose application is initially rejected to 6 months for those whose application is still pending. Fees are payable for new licences and for every renewal.

In practice, employers are deterred from applying for the permits because of their short-term nature and the administrative burden associated with the application.[98]

Asylum seekers who are not detained face a number of difficulties, namely: language obstacles, limited or no academic or professional background, intense competition with refugees and other migrants, limited or seasonal employment opportunities. Asylum seekers from sub-Saharan Africa are especially

97 See for example, International Commission of Jurists, *Not Here to Stay*, May 2012.

98 European Commission, *Challenges in the Labour Market Integration of Asylum Seekers and Refugees*, EEPO Ad Hoc Request, May 2016, available at: http://bit.ly/2kX5NsN.

vulnerable to exploitation and abuse; issues highlighted include low wages, unpaid wages, long working hours, irregular work, unsafe working conditions and employment in the shadow economy.[99]

A number of vocational training courses are available to asylum seekers, yet not specifically organised for them. Eligibility conditions vary between courses and generally reflect eligibility criteria for Maltese nationals.

2. Access to education

Indicators: Access to Education		
1. Does the law provide for access to education for asylum-seeking children?	☒ Yes	☐ No
2. Are children able to access education in practice?	☒ Yes	☐ No

Article 13(2) of the Refugees Act states that asylum seekers shall have access to state-funded education and training. This general statement is complemented by the Reception Regulations, wherein asylum-seeking children are entitled to access the education system in the same manner as Maltese nationals, and this may only be postponed for up to 3 months from the date of submission of the asylum application. This 3-month period may be extended to 1 year "where specific education is provided in order to facilitate access to the education system".[100] Primary and secondary education is offered to asylum seekers up to the age of 15-16, as this is also the cut-off date for Maltese students. Access to state schools is free of charge. These rules apply for primary and secondary education.

The practical difficulties faced by asylum seeking children relate to the absence of a formal assessment process to determine the most appropriate entry level for children; the absence of preparatory classes; limited or no educational background; language difficulties.

The location of centres might be problematic as the transport provided by the schools (public or private) is not free of charge. In practice, children do attend school. Children with particular needs are treated in the same manner as Maltese children with particular needs, whereby a Learning Support Assistant (LSA) may be appointed to provide individual attention to the child. Yet it is noted that in the situation of migrant or refugee children, language issues are not appropriately provided for, with possible implications on the child's long-term development.[101]

Adults and young asylum seekers are eligible to apply to be exempted from fees at state educational institutions, including the University of Malta, vocational training courses, languages lessons and other adult education. Vocational training courses offered by the Employment and Training Corporation are also accessible to asylum seekers.

Beneficiaries of protection are increasingly making use of these educational services, primarily since information on their availability is becoming available to the various communities through NGO activities and also increased openness by the relevant governmental authorities.

English lessons are provided by AWAS at the **Marsa Open Centre**. Residents from other centres are allowed to attend these classes. Some NGOs also organise lessons in English and/or Maltese.

99 *Ibid*.
100 Proviso to Regulation 9(2) Reception Regulations.
101 Neil Falzon, Maria Pisani and Alba Cauchi, *Research Report: Integration in Education of Third Country Nationals*, aditus foundation, 2012, available at: http://bit.ly/1Kuqe6M.

D. Health care

Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?
   ☒ Yes ☐ No
2. Do asylum seekers have adequate access to health care in practice?
   ☐ Yes ☒ Limited ☐ No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?
   ☐ Yes ☐ Limited ☒ No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?
   ☒ Yes ☐ Limited ☐ No

Article 13(2) of the Refugees Act states that asylum seekers shall have access to state medical care, with little additional information provided. The Reception Regulations further stipulate that the material reception conditions should ensure the health of all asylum seekers, yet no specification is provided as to the level of health care that should be guaranteed. The Regulations specify that applicants shall be provided with emergency health care and essential treatment of illness and serious mental disorders.[102]

Asylum seekers who are not detained may access the state health services, with the main obstacles being mainly linked to language difficulties.

Furthermore, institutional obstacles prevent effective recourse to the mainstream health services when required, including in cases of emergencies: limited transport availability, absence of full-time medical staff in the detention centres, informal transactions for medicine, etc.

Persons suffering mental health problems fall under the above-mentioned legal provisions. As with vulnerable persons, detained asylum seekers suffering from mental health problems face the practical difficulty of not being identified, owing to the absence of a formal identification process or of full-time specialists within the detention centres. Once identified, they are generally transferred to **Mount Carmel** mental health hospital for treatment.

No specialised services exist in Malta for victims of torture or trauma, primarily owing to the lack of such capacity on the island.

Decisions to reduce or withdraw material reception conditions would not affect access to health care.

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?
   ☒ Yes ☐ No

National legislation transposes literally the recast Reception Conditions Directive regarding the definition of applicants with special needs and provides that “an evaluation by the entity responsible for the welfare of asylum seekers, carried out in conjunction with other authorities as necessary shall be conducted as soon as practicably possible”.

According to the new reception system, upon arrival alleged unaccompanied minors, family groups with children and other manifestly vulnerable persons are processed first and AWAS takes charge of them.

[102] Regulation 11(2) Reception Regulations

During their stay at the IRC, alleged vulnerable persons will undertake either an age assessment or a vulnerability assessment.[103]

As mentioned in Identification, AWAS is responsible for implementing government policy regarding persons with special reception needs and is in charge of these assessments. When someone will be deemed to be vulnerable, he or she will not be detained and will immediately be accommodated in open centres or apposite centre for unaccompanied minors.

Beyond the general principle, specific measures provided by law for vulnerable persons are as follows: maintenance of family unity where possible;[104] particular, yet undefined, attention to ensure that material reception conditions are such to ensure an adequate standard of living.[105]

Families and unaccompanied minors are generally accommodated in a dedicated reception centre where they receive appropriate and adequate support. The centre has an official capacity of 30 and is staffed by care workers from AWAS with three members on each shift.

All other vulnerable individuals are treated on a case-by-case basis by AWAS social workers, with the view to providing the required care and support.

Despite all of the above, due to resource and infrastructural limitations, some vulnerable individuals are either never identified or, once identified, are unable to access the care and support they require. The main concern remains that the new system is exclusively tailored for migrants arriving irregularly. For asylum-seekers arriving regularly, the situation is unclear as to whether they will have access to this vulnerability assessment. It is also unclear whether all persons at the IRC will undergo vulnerability screening, or simply those persons who are visibly vulnerable. Since NGO access to the IRC is not permitted, there is concern at the lack of referral possibilities. Also, it is not clear how vulnerability assessment will take place after release from the IRC, at later stages.

With regard to ongoing monitoring, whilst no formal monitoring system exists within detention, vulnerable individuals may be referred to AWAS at any point of their stay. Within open centres, no formal monitoring mechanism is established, yet vulnerable individuals may approach or be referred to open centre management and staff.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The Reception Regulations require that within 15 days from lodging the asylum application, the Principal Immigration Officer ensures that all applicants are informed of reception benefits and obligations, and of groups and individuals providing legal and other forms of assistance.[106]

During their stay at the IRC, individuals are informed of their right to apply for international protection by the Office of the Refugee Commissioner. UNHCR Malta also visits applicants at the IRC to provide information. AWAS provides information about the reception conditions available.

In the detention centres, all persons are within days provided with the document entitled “Your Entitlements, Responsibilities and Obligations while in Detention”, a publication of the former Ministry for

103 Regulation 14 Reception Regulations.
104 Regulation 7 Reception Regulations.
105 Regulation 11(2) Reception Regulations.
106 Regulation 4 Reception Regulations.

Justice and Home Affairs.[107] The document provides information, albeit in a basic format, on: Dublin procedures; asylum procedure; the Immigration Appeals Board; daily material reception condition rights (e.g. catering, clothing, correspondence, hygiene, etc.) and various responsibilities and obligations e.g. information disclosure, discipline, personal hygiene, medical self-care, etc. The information contained in the booklet is not deemed to be adequate or sufficient due to the limited quantity of information actually provided, the languages in which it is available (English, French and Arabic), the language style and the generality of the issues presented.

In Open Centres, within days of their placement residents are provided with detailed information on their rights and obligations, covering issues such as maintenance, registrations, financial allowance, and so forth.

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
   ☐ Yes ☒ With limitations ☐ No

Access to IRC is regulated by AWAS and is not granted to family members or NGOs in reason of the medical clearance conducted in this facility.

Access to Open Centres is regulated by AWAS, for which permission is also required. Criteria to be granted access to the Centres are unclear, although it does not seem to be problematic for individuals/organisations wishing to provide a service to residents. In practice NGOs, lawyers and UNHCR have effective access to any reception centre. Non-service-related visits are not granted permission easily, as is the case for academics, friends, research students, reporters, and so forth.

G. Differential treatment of specific nationalities in reception

NGOs have not observed any form of preference given to particular nationalities, although there is concern at the general treatment of **Libyan** asylum seekers in relation to private accommodation.

[107] The document is not available online, but is included in the Annex to the 'Responses of the Maltese Government to the report of the CPT on its visit to Malta from 15 to 21 June 2005', 2007, available at: http://www.refworld.org/docid/4714c9929.html.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention		
1.	Total number of asylum seekers detained in 2016:[108]	20
2.	Number of asylum seekers in detention at the end of 2016:[109]	6
3.	Number of detention centres:	1
4.	Total capacity of detention centres:	200

Detention of asylum seekers is now regulated by national law following the reform of the reception system in 2015. The amended Reception Regulations provide for the possibility to detain asylum seekers on six limited grounds, which are the ones listed in the recast Reception Conditions Directive.

The main feature of the new reception system is that detention is now no longer either mandatory or an automatic consequence of the decision to issue a removal order.

Over the past few years, the majority of the asylum-seeking population in Malta used to arrive by boat, having travelled in an irregular manner from Libya. Most were brought ashore after they were rescued from vessels in distress; upon arrival all were issued with a Return Decision and Removal Order in terms of the Immigration Act and placed in detention. Submission of an application for international protection did not imply release from detention. As the majority of asylum seekers reached Malta after travelling irregularly by boat from Libya, most asylum seekers were detained.

Unlike the situation of the past few years, the majority of asylum seekers now arrive by plane in Malta, regularly or irregularly. The ones arriving regularly are not detained and usually apply for international protection by going spontaneously to RefCom.

The ones arriving irregularly by plane or by boat are referred to the IRC where the need to detain will be assessed by the Principal Immigration Officer. They will then be either detained, placed under alternative to detention or sent to reception centres. Furthermore, as mentioned above, if the irregular entry involves use of false documentation, criminal action is taken and the asylum seeker risks a sentence of up to two years' imprisonment.

The **Safi Barracks** facility is used to detain both asylum seekers and immigrants awaiting removal. At the end of 2016, 6 asylum seekers were detained there. A total 20 asylum seekers have detained in the course of 2016.

[108] Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

[109] Specify if this is an estimation, or if it includes rejected asylum seekers as well.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
   - ❖ on the territory: ☐ Yes ☒ No
   - ❖ at the border: ☒ Yes ☐ No

2. Are asylum seekers detained in practice during the Dublin procedure? ☐ Frequently ☒ Rarely ☐ Never

3. Are asylum seekers detained during a regular procedure in practice? ☐ Frequently ☒ Rarely ☐ Never

According to the amended Reception Regulation,[110] the Principal Immigration Officer may order the detention of an applicant for the same grounds foreseen in the Reception Conditions Directive, namely:

1. In order to determine or verify his or her identity or nationality;
2. In order to determine those elements on which the application is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding on the part of the applicant;
3. In order to decide, in the context of a procedure, in terms of the Immigration Act, on the applicant's right to enter Maltese territory;
4. When the applicant is subject to a return procedure, in order to prepare the return or carry out the removal process, and the Principal Officer can substantiate that there are reasonable grounds to believe that the applicant is making the application merely in order to delay or frustrate the enforcement of the return decision;
5. When protection of national security or public order so require; or
6. In accordance with the Dublin III Regulation.

The individual detention order shall be issued in writing, in a language that the applicant is reasonably supposed to understand and shall state the reasons of the detention decision. Information about the procedures to challenge detention and obtain free legal assistance shall be provided as well.

According to the authorities, 20 asylum seekers were detained in 2016. For most of the cases, the detention was based on the ground that the identity of the individual had yet to be determined and that the elements of the claim could not be ascertained in the absence of detention i.e. risk of absconding.[111]

JRS and aditus foundation have noticed that people arriving irregularly by plane and apprehended at the airport were usually immediately detained without being taken to the IRC.[112] Attempts to challenge this almost automatic detention before the Immigration Appeals Board and the Criminal Courts have proved unsuccessful.

110 Regulation 6 Reception Regulations.
111 Information provided by Neville Xuereb, Snr Superintendent Immigration Police, 26 January 2017.
112 Information provided by Dr Katrine Camilleri, Director of JRS, January 2017.

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
   - ☒ Reporting duties
   - ☒ Surrendering documents
   - ☒ Financial guarantee
   - ☒ Residence restrictions
2. Are alternatives to detention used in practice? ☒ Yes ☐ No

According to the amended Reception Regulations, when a detention order of an asylum seeker is not taken, alternatives to detention may applied for non-vulnerable applicants when the risk of absconding still exists.[113] These alternatives to detention foreseen in the Regulations are the same as the ones listed in the Directive, namely the possibility to report to a police station, to reside at an assigned place, to deposit or surrender documents or to place a one-time guarantee or surety. These measures would not exceed 9 months.[114]

Following the transposition of the recast Reception Conditions Directive, concerns were expressed by NGOs that alternatives to detention could be imposed when no ground for detention is found to exist.[115] The wording of the legislation and the Strategy Document seem to imply that alternatives to detention may apply in all those cases where detention is not resorted to, including those cases where there are no grounds for the detention of the asylum seeker. This goes against the letter and the spirit of the Directive where alternatives to detention should only be applied in those cases where there are grounds for detention.

NGOs' concerns proved to be true, as in 2016, several persons were released from detention after 2 months and placed under alternatives to detention without any ground to extend the detention as they had already applied for protection and provided all the required information.

According to the authorities, 5 asylum seekers in 2016 were released from detention and placed under alternatives to detention. They were requested to report regularly at the police station, to reside at an assigned place and to deposit some of their documents.[116]

There are no available statistics on compliance rates.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
   - ☐ Frequently
   - ☐ Rarely
   - ☒ Never
   - ❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☐ No
2. Are asylum seeking children in families detained in practice?
   - ☐ Frequently
   - ☐ Rarely
   - ☒ Never

113 Strategy Document, November 2015, 26.
114 Regulation 6(8) Reception Regulations.
115 aditus foundation, et al., NGO *Input on the Draft Strategy Document: Strategy for the Reception of Asylum-Seekers and Irregular Migrants*, November 2015; available at: http://bit.ly/2kX6K4j.
116 Information provided by Neville Xuereb, Snr Superintendent Immigration Police, 26 January 2017.

With regard to vulnerable applicants, including minors and alleged unaccompanied minors, the amended legislation along with the new policy prohibit their detention. Reception Regulations state that "whenever the vulnerability of an applicant is ascertained, no detention order shall be issued or, if such an order has already been issued, it shall be revoked with immediate effect."[117]

Upon arrival at the border, alleged unaccompanied minors, family groups with children and other manifestly vulnerable persons would be prioritised during the preliminary screening. When an asylum seeker is deemed vulnerable, following a vulnerability assessment conducted during their stay at the IRC, he or she will not be detained and will be accommodated immediately in a reception centre and assisted according to his or her vulnerability. Minors will have access to leisure and open-air activities. According to the Regulations, whenever the vulnerability becomes apparent at a later stage, assistance and support would be provided from that point onwards.

In order to give effect to this policy, two procedures are in place to assess 'vulnerability' in individual cases. These procedures are known as the Age Assessment Procedure and the VAAP (see section on Identification). Both of these procedures are officially implemented by AWAS.[118]

In practice, asylum seekers entering Malta irregularly by plane are immediately detained and not sent through the IRC, with the possibility of any vulnerability not being identified.

4. Duration of detention

Indicators: Duration of Detention	
1. What is the maximum detention period set in the law (incl. extensions):	9 months
2. In practice, how long in average are asylum seekers detained?	2 months

National law now specifies a time limit for the detention of asylum seekers which is limited to 9 months. According to the Reception Regulations "any person detained in accordance with these regulations shall, on the lapse of nine months, be released from detention if he is still an applicant."[119]

In practice, since the reform, detained asylum seekers are usually released after two months following their interview with RefCom.

In 2016, due to the very small number of boat arrivals, very few asylum seekers were detained. Almost all of them have been released after 2 months following the first review of their detention.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention		
1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?	☒ Yes	☐ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?	☐ Yes	☒ No

117 Regulation 14(3) Reception Regulations.
118 Strategy Document, November 2015,15.
119 Regulation 6(7) Reception Regulations.

There are currently two detention centres, yet only one facility is in use due to the limited number of boat arrivals: **Safi Barracks, B Block**, with a maximum capacity of 200. The facilities known as the Warehouses in Safi Barracks were closed for refurbishment at the beginning of 2014 and have not been used since. **Lyster Barracks**, the other detention facility, was closed in mid-2015 because no more migrants were detained there.

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities		
1. Do detainees have access to health care in practice?	☒ Yes	☐ No
❖ If yes, is it limited to emergency health care?	☐ Yes	☒ No

Overall living conditions

In 2015, the recast Reception Conditions Directive provisions regarding detention conditions were introduced into the Regulations.[120] According to the amended legislation, applicants for international protection shall be detained in specialised facilities and they shall be kept separate, insofar as possible, from third country nationals who are not asylum-seekers. They shall also have access to open-air spaces. Separate accommodation for families shall be put in place in order to guarantee adequate privacy as well as separate accommodation for male and female applicants. The new policy document published at the end of 2015 following the transposition commits to improve the quality of living conditions in the detention centres. The documents foresees that detention facilities shall comprise or have access to a clinic, medical isolation facilities, telephone facilities, an office for the delivery of information by RefCom, rooms for interviews with RefCom and NGOs, facilities for leisure and the delivery of education programmes as well as a place of worship.

The detention centre is managed by the Detention Service (DS), a government body that falls under the Ministry for Home Affairs and National Security. The DS was set up specifically "to cater for the operation of all closed accommodation centres; provide secure but humane accommodation for detained persons; and maintain a safe and secure environment"[121] within detention centres. The DS is neither established nor regulated by a specific law. It is made up of personnel seconded from the armed forces and civilians specifically recruited for the purpose, many of whom are ex-security personnel. DS staff receives some in-service training, however people recruited for the post of DS officer or seconded from the security services are not required to have particular skills or competencies.

As the Regulations came into force recently, no monitoring or analysis of the implementation of these provisions is available. However, NGOs visiting detention on a regular basis did not notice any improvement since the reform.[122]

Asylum seekers and other third-country nationals, who have over-stayed their visa, are detained in the military barracks, which offer inadequate sanitation and hygiene facilities, and allow no privacy for the detainees. Whilst detainees are provided with a bed each, there is little space in between the beds and no place where they may store their personal possessions. The UN Special Rapporteur on the human rights of migrants visited the detention centre in 2014 and acknowledged that the facility lacks personal space, privacy as well as potable water and decent quality food.[123] Detainees are provided with cleaning materials and are expected to take care of the cleaning of the centre. Although detainees are issued with basic items of clothing upon arrival, there is no systematic or consistent practice for the distribution of clothes which are weather-appropriate. Most of the clothing which is provided to detainees is donated on

120 Regulation 6A Reception Regulations.
121 For more information see Ministry for Home Affairs, *Detention services*, available at: http://bit.ly/1M7HMkS.
122 Information provided by Katrine Camilleri, Director of JRS Malta, January 2017.
123 UN General Assembly, *Report by the Special Rapporteur on the human rights of migrants, François Crépeau*, December 2014.

a charitable basis to the detention service management and is then distributed accordingly. Moreover, there is little to no heating or ventilation, exposing migrants to extreme cold and heat. Following a visit in 2015, the CPT stated that, despite better detention conditions mainly due to the very few people detained, no activities were being offered to persons in detention.[124]

Men are detained separately from women, as are families and couples.

Moreover, reading and leisure materials are not systematically provided and detainees rely on NGO staff visiting detention as well as friends and family on the outside to bring them books, magazines and other basic recreational items. Detainees only have access to news and other media through the television set which is in place per centre as no newspapers are ever provided. There are no computers or internet access within the centres.

Lack of interpreters has also been pointed out by the CPT which noticed that usually another detained person with the necessary language skills was requested to act as an interpreter. This situation is inappropriate when used for other but emergency situations. Moreover, the CPT expressed concerns about the lack of information provided to detainees regarding the house rules of the detention facility.[125]

In recent years there have been a number of incidents within the centres which raised concern because of allegations of excessive use of force, as well as because of the lack of any systematic review of DS conduct and of any effective remedies to provide redress wherever abuse or ill-treatment by DS staff is alleged.

The use of excessive force and other questionable forms of punishment remains an issue primarily in contexts such as protests or escapes from detention, when force is used in an attempt to assert control or, at times, to discipline detainees.

Health care in detention

All detainees are seen by a doctor in the first week after their arrival. The services of a doctor are available in the detention centres between two to three mornings a week. However, the CPT noticed that there was no systematic medical screening in place for every newly arrived detainee, nor was there any screening to identify possible victims of torture. Communication with the health professionals is very often difficult, if not impossible, as the services of a translator or cultural mediator are not provided. In emergencies, the detainees are usually taken to the nearest health centre. Migrants and asylum seekers requiring more specialised care are referred to the general hospital for an appointment.

Practical difficulties arise for asylum seekers who are detained, as the detention system seriously hinders their access to health services. Although health services are provided in the detention centres, these are not sufficient to meet the entirety of needs in the centres. Following a visit in 2015, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stated that there was no systematic medical screening in place for every newly arrived detainee.[126]

Persons with special reception needs who could have not been identified as vulnerable during their stay at the IRC would usually be identified by visiting NGOs who then refer the individuals in question to AWAS for vulnerability assessment. Detainees who are referred for vulnerability assessment remain in detention pending the outcome of the assessment procedure.

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124 CPT, *Report to the Maltese Government on the visit to Malta carried out from 3 to 10 September 2015*, October 2016.

125 *Ibid.*

126 *Ibid.*

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to
   - ❖ Lawyers: ☒ Yes ☐ Limited ☐ No
   - ❖ NGOs: ☒ Yes ☐ Limited ☐ No
   - ❖ UNHCR: ☒ Yes ☐ Limited ☐ No
   - ❖ Family members: ☐ Yes ☒ Limited ☐ No

According to the 2015 policy,[127] UNHCR, relevant international organisations, health officials, legal counsels and relevant accredited NGOs shall have access to applicants in detention. Moreover, the legislation provides for the possibility for detainees to receive visits from family members and friends up to once per week. The Detention Service administration shall determine dates and times once the Principal Immigration Officer (PIO) approves such visits.[128]

In practice, the possibility for family members and friends to visit detainees remains very difficult and totally discretionary as people need to request permission to the Detention Service administration which does not always reply and grant appointments. When authorisation is granted, lack of privacy for visits remains an issue.[129]

Representatives of the media may be given access to Detention Centres subject to authorisation by the Minister for Home Affairs and National Security.

There is no published policy position regarding visits by politicians, but politicians have visited the detention centres on occasion.

Access to detention centres is regulated by the Immigration Police, which in turn needs to provide authorisation. No formal procedures exist for friends and family members to visit detained persons and practice is erratic and largely discretionary. When such visits are allowed, logistical modalities are also extremely erratic and discretionary with no clear procedures and rules.

UNHCR, legal advisers and NGOs are allowed access at any time in order for them to provide their services to detained persons. No specific criteria seem to apply, except possibly the provision of services or support to detained asylum seekers. Persons in detention centres encounter difficulties communicating with legal advisers, UNHCR and NGOs primarily due to the fact that little or no information is provided on the existence and means of contacting these entities, and actual contact is only possible to a limited extent and due to the limited means available to NGOs and UNHCR.

127 Strategy Document, November 2015, 17.
128 Regulation 6A Reception Regulations.
129 Information provided by Katrine Camilleri, Director of JRS Malta, January 2017.

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention		
1. Is there an automatic review of the lawfulness of detention?	☒ Yes	☒ No
2. If yes, at what interval is the detention order reviewed?	7 days, then 2 months	

1.1. Review of asylum detention under the Reception Regulations

The amended law foresees possibilities to review the lawfulness of the detention and this review would be automatically conducted by the Immigration Appeals Board (IAB) after 7 working days from the detention order, which may be extended by another 7 working days.[130] If the applicant is still detained, a new review would be conducted after periods of two months thereafter. When the IAB would rule that detention is unlawful the applicant would be released immediately. Free legal assistance would be provided for this review according to the Regulations.

From the practice observed in 2016, review of detention usually is not done after the first 7 days but only a few weeks later. Furthermore, due to the unclear wording of the law, the IAB, NGOs and legal practitioners fail to agree on the precise detention review schedule required by the Regulations.

Parallel to this automatic review, the new Reception Regulations provide for the possibility to challenge the Detention Order before the IAB within 3 working days from the order. In practice, it is practically impossible to challenge the Detention Order itself as asylum seekers are not in capacity to submit such an appeal on such short notice as there is not enough time to seek the assistance of a lawyer. These difficulties were also highlighted by the European Court of Human Rights in the cases brought against Malta by detained asylum seekers.

NGOs have noticed that, in 2016, asylum seekers have been released and placed under alternatives to detention after 2 months, following their interview with RefCom.

1.2. Review of pre-removal detention under the Returns Regulations

In 2014, amendments were made to the Returns Regulations in order to further transpose the Returns Directive. The amendments introduced the review, either on application by the detained individual or *ex officio* by the Principal Immigration Officer, of a person's detention at reasonable intervals that shall not exceed 3 months. As it is provided for in the law, Regulation 11(8) further specifies that in situations of detention lasting 6 months or more, this review process is obligatory and the Principal Immigration Officer is duty-bound to inform the Immigration Appeals Board of it, with the Board supervising the review.

Throughout the second half of 2014 a number of reviews were in fact conducted, resulting, in most cases, in the release of the detained person. Although the Regulations apply to persons in a return procedure, some reviews of the detention of asylum seekers awaiting a decision on their asylum application were also conducted. Some of these reviews resulted in the asylum seeker's release from detention. Limited information is available on the details of the review procedures, but it seems that those implemented so far have consisted of an assessment of the "returnability" of persons based on their nationalities.

Since the transposition of the Returns Directive, the law provides for the possibility to institute proceedings to challenge the lawfulness of detention before the Immigration Appeals Board.

130 Regulation 6(3) Reception Regulations.

In addition to the fact that the extent to which this Act applies to detained asylum seekers, who by definition cannot be subject to removal proceedings, is questionable, from the text of the law it would appear that migrants arriving by boat who are apprehended at sea or upon arrival and migrants who are refused admission into Malta are exempt from the benefits of this provision, as Regulation 11(1) states that:

> "The provisions of Part IV shall not apply to third country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by sea or air of the external border of Malta and who have not subsequently obtained an authorisation or a right to stay in Malta".

This said, in one case the Board held that the benefits of this provision are indeed applicable to detained asylum seekers, however it ceases to apply once their application is no longer pending.

To date the remedy has not proved particularly speedy, with few applications decided prior to the applicant's release from detention in terms of Government policy. Moreover, it remains to be seen how the Board will interpret the concept of 'lawfulness'.

1.3. Other remedies

Although there are a number of remedies available to detainees to challenge their detention, in addition to the remedy introduced in 2014, the ECtHR clearly stated in *Louled Massoud v. Malta* that three of these remedies do not qualify as "speedy, judicial remedies" in terms of Article 5(4) ECHR.[131]

Human rights action before the national courts

This remedy, which allows a detainee to challenge the lawfulness of his or her detention in terms of the ECHR and the Constitution of Malta, has failed the Article 5(4) ECHR test as, although it is clearly judicial, it is far from speedy.

In addition to the length of time for delivery of judgments, constitutional proceedings are virtually inaccessible to detainees as in practice most asylum seekers do not have access to a lawyer who could file a court case on their behalf. In fact, to date most cases have been filed by lawyers working in collaboration with NGOs assisting asylum seekers. In such cases there is no waiver of court fees, as there would be if the applicant had been granted the benefit of legal aid.

Application under Article 409A of the Criminal Code

This remedy too allows a detainee to challenge the lawfulness of detention before the Court of Magistrates, and is based on an assessment of the legality of the person's detention. Though this remedy is both speedy and judicial in nature, it failed the test because it does not allow for an examination of the lawfulness of detention in terms of Article 5 ECHR, since the Courts interpreted their remit under this Article as being strictly limited to provisions of Maltese law.

Application under Article 25A of the Immigration Act

In the terms of Article 25A of the Immigration Act, the Immigration Appeals Board is competent to

> "[H]ear and determine applications made by persons in custody in virtue only of a deportation or removal order to be released from custody pending the determination of any application under the Refugees Act or otherwise pending their deportation... the Board shall only grant release...

131 ECtHR, *Louled Massoud v. Malta,* Application No 24340/08, 27 July 2010.

where in its opinion the continued detention of such person is taking into account all the circumstances of the case, unreasonable as regards duration or because there is no reasonable prospect of deportation within a reasonable time."

This remedy too was deemed to be inadequate by the ECtHR for a number of reasons: the fact that the relevant legal provision is limited since a request for release from custody has no prospect of success in the event that the identity of the detainee, including his or her nationality, has yet to be verified, in particular where he or she has destroyed his or her travel or identification documents or used fraudulent documents in order to mislead the authorities; the fact that over the years there were only very few cases where this remedy was used successfully; and the duration of such proceedings.

Detainees who apply for asylum from detention are subject to the same asylum procedure as those who apply from the community. The Refugee Commissioner will proceed to examine the application of the detained asylum seeker in the same manner as those who are not deprived of their liberty. The main difference lies in that detainees are escorted to the Refugee Commissioner's offices and are not informed in advance of the date of their interview. They are usually informed on the day that their presence is required at the Office of the Refugee Commissioner. Detained asylum seekers do however face considerable difficulties in obtaining documents and compiling all the information which they might want to present in support of their application as their means of communication are severely restricted. Very often, detained asylum seekers rely on support from NGOs to obtain documentation and any other information which might be required.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
   ☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?
   ☐ Yes ☒ No

The amended Reception Regulations provide for the possibility for asylum-seekers to be granted free legal assistance and representation during the review of the lawfulness of detention.[132] Free legal assistance and representation entails preparation of procedural documents and participation in any hearing before the Immigration Appeals Board. Yet despite this specification, the public entity coordinating the provision of legal aid for such reviews has confirmed that legal aid will only be made available for the first review by the IAB and not for subsequent reviews.

Regulation 11(5) of the Returns Regulations provides that within the context of an application to the Board to review decisions related to return, a legal adviser shall be allowed to assist the third-country national and free legal aid will be provided where the said individual meets the criteria for entitlement in terms of national law. It is however questionable whether an application to the Board to review the lawfulness of detention would qualify as a request to review a decision relating to return, which are usually understood to include a decision to issue a removal order and/or a return decision

In the case of the asylum procedure, while applicants may be represented by a lawyer at first instance, this is not available for free and they will have to bear all the costs involved. Free legal aid is however provided at the appeal stage of the asylum procedure. JRS Malta and aditus foundation are the only two organisations providing free legal services to detainees, yet capacity is very much limited according to available resources.

132 Regulation 6(5) Reception Regulations.

E. Differential treatment of specific nationalities in detention

No differential treatment on the basis of nationality has been reported.

Content of International Protection

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
   - ❖ Refugee status 3 years
   - ❖ Subsidiary protection 3 years
   - ❖ Humanitarian protection 1 year

According to the law, persons who are granted refugee status and subsidiary protection in Malta are issued a three years' residence permit which is renewable.[133]

Once international protection is granted by RefCom, the beneficiary is issued a residence permit by Identity Malta, the public agency in charge of matters relating to passports, identity documents, work and residence permits for expatriates,

In practice, the issuance and renewal of the residence permits can raise some difficulties for many beneficiaries of protection, mainly due to the lack of provision of practical information, excessive administrative delays in processing applications, burdensome requirements and negative attitude in their regard by public officials.

Very little information is available for protection beneficiaries on the procedures and requirement relating to residence permits. Furthermore, the information provided by state officials is not always provided in a language understood by applicants. The procedure, including requirements, is not clearly indicated, written, or available online.

Usually, applicants are required to wait for a couple of months for their documentation to be provided. Although a receipt of their application form is provided, this has no real legal value, resulting in persons being unable to access their basic rights due to lack of possession of their residence papers.

Residence permit applicants are required to present evidence of their protection status, together with evidence of their current address. This latter requirement is particularly burdensome for protection beneficiaries as it is interpreted as requiring them to present a copy of their rent agreement together with a copy of the identification document of their landlords. In the majority of cases, Maltese landlords refuse to provide either rent agreements or personal documentation due to a fear of imposition of income tax on the income deriving for the rent.

Many protection beneficiaries report strong negative attitudes, comments and behaviour in their regard by public officials receiving and handling their residence permit applications. Many persons are ignored, rebuked, dismissed or otherwise not handled respectfully.

The renewal of residence permits is automatic upon request.

133 Regulation 20 Procedural Regulations.

2. Long-term residence

Indicators: Long-Term Residence	
1. Number of long-term residence permits issued to beneficiaries in 2016:	Not available

National legislation provides for the possibility for third-country nationals residing regularly in Malta to access long-term residence.[134] The criteria are the same for all migrants, no special conditions are foreseen for beneficiaries of international protection.

To be able to apply for such permit, applicants must have to fulfil a long list of requirements:

1. They first need to have resided legally and continuously in Malta for 5 years immediately prior to the submission of the application;
2. Applicants are also requested to provide "evidence of stable and regular resources which have subsisted for a continuous period of two years immediately prior to the date of application and which are sufficient to maintain the applicant and his family without recourse to the social assistance system in Malta or to any benefits or assistance."[135] The law provides that these resources have to be equivalent to the national minimum wage with an addition of another twenty percent of the national minimum wage for each member of the family;
3. An appropriate accommodation, regarded as normal for a comparable family in Malta, a valid travel document and a sickness insurance are also requested to be entitled to apply;
4. In addition, Regulations require integration conditions, including courses of at least 100 hours about the social, economic, cultural and democratic history and environment of Malta recognised by an examination pass mark.

The application for long-term residence has to be submitted in writing to the Director for Citizenship and Expatriate Affairs. The law provides for a time limit of 6 months after an application is lodged to receive an answer. If the Director fails to give a decision within this period specified, the application shall automatically be passed on for appeal to the Immigration Appeals Board.[136]

In practice, it is close to impossible for beneficiaries to access long-term residence as the threshold for income is particularly high and the organisation of the mandatory integration courses is quite *ad hoc*.

3. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	10 years
2. Number of citizenship grants to beneficiaries in 2016:	Not available

The Citizenship Act foresees that foreigners or stateless person may apply for citizenship in Malta.[137] The law makes no difference between beneficiaries of international protection and other third-country nationals but in practice **subsidiary protection beneficiaries**' applications are not usually considered.

The conditions to be able to apply include a residence in Malta throughout the 12 months immediately preceding the date of application and a residence in Malta for periods amounting in the aggregate to a minimum of 4 years, during the 6 years preceding the above period of 12 months. Applicants must also be of good character and have an adequate knowledge of the Maltese or the English language.[138]

134 Status of Long-Term Residents (Third Country Nationals) Regulations, Subsidiary Legislation 217.05, November 2006, available at: http://bit.ly/2kX9hvu.
135 Regulation 5 Long-Term Residence Regulations.
136 Regulation 7 Long-Term Residence Regulations.
137 Citizenship Act, Chapter 188, September 1964, available at: http://bit.ly/2lz5z8H.
138 Article 10(1) Citizenship Act.

Prior to submitting an application, the person has to present a residence certificate issued by the Principal Immigration Office to the Identity Malta Agency. Once the Office confirms the eligibility of the applicant, additional documents have to be produced, including birth certificate, passport and police conduct.

There is no time limit foreseen for a decision and the law does not require from the authorities to give reasons for rejections of applications.

In practice, it is close to impossible for refugees to access citizenship by naturalisation as the procedure is entirely at the discretion of the Minister. Moreover, while no written policy is available, refugees are in practice only allowed to apply for citizenship after ten years of regular residence in Malta.

4. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? ☐ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☐ With difficulty ☒ No

The Refugees Act provides for the possibility of cessation of **refugee status**.[139] The grounds for cessation apply to cases where the refugee:

1. Has voluntarily re-availed himself of the of the protection of the country of his or her nationality, or, having lost his nationality, has voluntarily re-acquired it;
2. Has acquired a new nationality and enjoys the protection of this country;
3. Has voluntarily re-established him or herself in the country which he left or outside which he remained owing to fear of persecution;
4. Can no longer because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;
5. Is a person who has no nationality and, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, is able to return to the country of his former habitual residence.

The law provides for the possibility of an appeal against a cessation decision before the Refugee Appeals Board within 15 days after notification.[140] The rules regulating appeals for cessation decision are the same as the ones applicable to regular appeals.

Regards to beneficiary of **subsidiary protection**, the situation is different according to the EU recast Qualification Directive as the legislation states that such protection "shall cease if the Minister is satisfied, after consulting the Commissioner, that the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required Provided that regard shall be had as to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm." The law further Provides further that the provisions of this article shall not apply to a beneficiary of subsidiary protection 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."[141]

139 Article 9 Refugees Act.
140 Article 9(2) Refugees Act.
141 Article 21 Refugees Act.

Appeals are possible against such decisions under the same conditions as for the regular procedure.[142]

According to the authorities,[143] cessation is not applied to individuals or specific groups of beneficiaries of international protection in Malta. Moreover, there is no systematic review of protection status in Malta.

5. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the withdrawal decision? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☐ With difficulty ☒ No

According to the Refugees Act, a declaration of **refugee status** can be revoked by the Minister of Home Affairs after due investigation, in the case where a person was erroneously recognised as a refugee on an application which contains any materially incorrect or false information, or was so recognised owing to fraud, forgery, false or misleading representation of a material or substantial nature in relation to the application.[144]

The refugee shall be informed in writing that his or her status is being reconsidered and shall be given the reasons for such reconsideration. The refugee shall also be given the opportunity to submit, in a personal interview, reasons as to why his or her refugee status should not be withdrawn.

The Minister of Home Affairs may also revoke or refuse to renew the protection granted to a refugee when there are reasonable grounds for regarding him or her as a danger to the security of Malta or if, having been convicted by a final judgment of a particularly serious crime, he constitutes a danger to the community of Malta. In such cases, the person is entitled to appeal against the revocation to the Board within 7 days of the notification of the revocation.[145]

Regarding **subsidiary protection** beneficiaries, the Minister shall revoke or refuse to renew such status if the person, after having been granted subsidiary protection status, should have been or is excluded from being eligible for subsidiary protection or if that person's misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status.[146]

No information is available for 2016 regarding withdrawals of protection status.

142 Article 9(2) Refugees Act.
143 Information provided by RefCom, 2 June 2016.
144 Article 10 Refugees Act.
145 Article 10(3) Refugees Act.
146 Article 22 Refugees Act.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification? ☒ Yes ☐ No
   - ❖ If yes, what is the waiting period? 12 months
2. Does the law set a maximum time limit for submitting a family reunification application? ☐ Yes ☐ No
   - ❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement? ☒ Yes ☐ No

Recognised **refugees** may apply for family reunification in Malta according to national legislation.[147] Only refugees may apply for family reunification, since the Regulations specify that subsidiary protection beneficiaries are excluded from this provision: "The sponsor shall not be entitled to apply for family reunification if he is authorised to reside in Malta on the basis of a subsidiary form of protection…"[148]

"Family members" include the refugee's spouse and their unmarried minor children.

Refugees are entitled to apply for family reunification after having legally resided in Malta for at least twelve months. Applications have to be addressed to the Director for Citizenship and Expatriate Affairs who have to give a written notification of the decision no later than nine months after the lodge of the application.

In order to be able to apply, applicants need to provide evidence of the relationship with family member(s), they need to have an accommodation regarded as normal for a comparable family in Malta as well as a sickness insurance. Moreover, applicants are requested to prove a stable and regular resources which are sufficient to maintain the sponsor and the members of the family without recourse to the social assistance system in Malta which would be equivalent to, at least, the average wage in Malta with an addition of another 20% income or resources for each member of the family.[149]

2. Status and rights of family members

As soon as the application for family reunification has been accepted, family members will be authorised to enter Malta and every facility for obtaining the required visas will be given to them. In practice, problems for the issuing of documentation may arise with countries with no Maltese embassies.

The Family Reunification Regulations provide that family members shall be granted a first residence permit of at least 1 year's duration which shall be renewable. In the past, the reuniting family members were given a one year residence document indicating "Dependant family member – refugee", causing difficulties when public service providers (e.g. hospitals) failed to recognise the holder's entitlements as being equal to those of his or her refugee sponsor.

Policy has recently changed and reunited family members are now granted a residence permit of 3 years, with the mention "Dependant family member".[150]

147 Family Reunification Regulations, LN 150 of 2007, Immigration Act Cap 217, 2007, available at: http://bit.ly/2kC9tiH.
148 Regulation 3 Family Reunification Regulations.
149 Regulation 12 Family Reunification Regulations.
150 Information provided by Mr Ryan Spagnol, Director of Identity Malta, 29 September 2016.

The family members of the sponsor have access, in the same way as the sponsor, to education, employment and self-employed activity. While a refugee has access to employment and self-employment without the need for an assessment of the situation of the labour market, said family members are subject to such assessment the first 12 months following their arrival. They also have access to vocational guidance, initial and further training and retraining.[151]

C. Movement and mobility

1. Freedom of movement

Beneficiaries have freedom of movement within the Maltese territory. No dispersal scheme is in place to allocate beneficiaries to specific geographic regions.

2. Travel documents

The Procedural Regulations provide that every beneficiary of international protection is to be granted a travel document entitling him or her to leave and return to Malta without the need of a visa.[152]

Travel documents for beneficiaries of international protection in Malta are issued by the Malta Passport Office following a request by the refugee or subsidiary protection beneficiary. They are valid for the validity of Residence permits issued by the Expatriates Unit, that is 3 years.[153]

The Malta Passport Office issues a Convention Travel Document for people who are granted **refugee status** while persons holding **subsidiary protection** and **Temporary Humanitarian Protection** are issued an Alien's Passport. There are no geographical limitations imposed by the Passport Office or the Immigration Police but holders of Aliens' Passports are bound to ascertain that the document is recognised and valid for travel to the country they intend to visit,[154] as it is not an internationally recognised travel document.

D. Housing

Indicators: Housing		
1.	For how long are beneficiaries entitled to stay in reception centres?	1 year
2.	Number of beneficiaries staying in reception centres as of 31 December 2016	Not available

People are usually allowed to stay one year in reception centres. In practice, there is a possibility for beneficiaries to stay longer than one year. Their request is assessed by AWAS on a case by case basis.

Moreover, as noted in Reception Conditions: Criteria and Restrictions, AWAS has indicated that some individuals may be authorised to return to reception centres. Usually, those persons are asked to come to AWAS' office to apply for accommodation. An assessment is then made by a social worker who first tries to refer the person to the mainstream services. No formal criteria exist to decide on why certain persons can be reintegrated in reception centres but AWAS indicated that vulnerability is taken in account in priority.[155]

151 Regulation 15 Family Reunification Regulations.
152 Regulation 20 Procedural Regulations.
153 Information provided by Mr Ignatius Ciantar, Senior Principal, Passport Office and Civil Registration Directorate, 19 September 2016.
154 *Ibid*.
155 Information provided by AWAS, 24 January 2017.

The main form of accommodation provided is access to reception centres. Two centres are dedicated to host minors and women and provide for smaller types of accommodation.

Refugees are entitled to apply to the Maltese Housing Authority program for alternative accommodation known as "Government Units for Rent", provided have been residing in Malta for 12 months and have limited income and assets. Refugees are also entitled to all of the schemes that the Housing Authority offers.

A recent study carried out among the migrant community in Malta (asylum-seekers and beneficiaries of international protection) evidenced that housing remains an issue for such population as rental prices have increased greatly over the past few years. Most of the people interrogated for the survey qualified housing costs as a burden. Moreover, problems such as shortage of space and lack of light are common as the overall quality of the dwellings rented by the migrant population is usually poor and/or their size is not suited for the number of individuals living in them.[156]

E. Employment and education

1. Access to the labour market

Beneficiaries of international protection have access to the labour market both as employees and self-employed workers.[157]

Refugees are entitled to access the labour market under the same conditions as Maltese nationals. In order to do so, they need an employment licence issued by the Employment and Training Corporation (ETC). The maximum duration of the employment licence is 12 months and is renewable. In such cases, the person is granted an employment licence in their own name. Obstacles in this area include the application costs: a new application costs €58 while annual renewal costs €34.[158]

Refugees are eligible for all positions and have access to benefits including employment insurance and pension. They also have access to employment training programmes at ETC.

Subsidiary protection beneficiaries may not be eligible for certain jobs e.g. police, military. Although they must pay tax on wages, legislation foresees that the social welfare benefits granted to beneficiaries of subsidiary protection may be limited to core social welfare benefits with no access to many employment benefits, including employment insurance and pension. They have access to employment training programmes at ETC.

In Malta, research findings by the European Network Against Racism indicate that non-EU qualifications are often not recognised.[159] Furthermore, research carried out by aditus foundation and the UNHCR Office in Malta in 2013 indicates that most interviewees were unaware of the Malta Qualification Recognition Information Centre (MQRIC) or the possibility of having their skills, qualifications and experience recognised and accredited in Malta. Another obstacle is the difficulty in obtaining the necessary certificates from their country of origin. The Malta Migrants Association (MMA) argues that even when refugees are aware of the possibility of their qualifications being recognised, it is a protracted process, in

156 aditus foundation and JRS Malta, *Struggling to survive, an investigation into the risk of poverty among asylum seekers in Malta*, January 2017, available at: http://bit.ly/2kVtuRz.
157 Regulation 20c Procedural Regulations.
158 European Commission, *Challenges in the Labour Market Integration of Asylum Seekers and Refugees*, EEPO Ad Hoc Request, May 2016.
159 European Commission, *Labour market integration of asylum seekers and refugees: Malta*, 2016, available at: http://bit.ly/2lkMKc6.

some cases taking up to five or six months. The situation is even more laborious for those who require a warrant to practise their profession: once they have their qualifications recognised, they then need to start another process to be able to work in Malta.

The Malta Qualifications Recognition Information Centre (MQRIC) is the competent body within the National Commission for Further Higher Education (NCFHE) that recognises qualifications against the Malta Qualifications Framework (MQF).

2. Access to education

All beneficiaries of international protection are covered under compulsory and free of charge state education up to the age of 16. After secondary school, and after obtaining relevant necessary Ordinary Level examination passes, students may enrol for post-secondary education: two years of study in preparation for Advanced Level Examinations. All beneficiaries of protection may also apply to enrol at the University of Malta and in principle they are treated as all other third-country national applicants in terms of application procedures, fees and stipends.

According to national legislation,[160] family members of refugees or subsidiary protection beneficiaries, if they are in Malta at the time of the decision or if they join the refugee in Malta, enjoy the same rights and benefits as the refugee.

In 2014, the Ministry Education launched the policy document "National Strategy on Literacy for the period 2014-2019".[161] The document acknowledges the need to support third-country nationals living in Malta and the necessity to review the education system with regard to the participation of migrant children in schools. In this context, the policy foresees a list of recommendations ranging from the provision of information about schooling options for migrant parents, the instauration of small language support classes to the implementation of assessment procedures and training courses for teachers to the active involvement of parents with literacy courses for adult migrants.

This National Strategy is yet to be implemented at national level regarding integration of migrant children. Nevertheless, in practice, several initiatives to integrate migrant children are in place in Malta.

The Migrant Learners Unit within the Ministry for Education is in charge of promoting the inclusion of newly arrived learners into the education system and runs several projects which aim to provide migrant learners in school with further support in basic and functional language learning over and above the teaching provided by the class teacher.

Several projects have been implemented at local level in recent years in schools in Malta to help students to integrate in providing targeted language classes for children.

F. Health care

Refugees have access to state medical services free of charge. They have equal rights as Maltese citizens and are, therefore, entitled to all the benefits and assistance to which Maltese citizens are entitled to under the Maltese Social Security Act,[162] as defined in the Procedural Regulations.[163] Access to medication and to non-core medical services is not always free of charge, in the same way as it is also not always free of charge for Maltese nationals. All low-income individuals may be given a Yellow Card

160 Reguation 20(2)(a) Procedural Regulations.
161 Ministry of Education, *Launch of the National Literacy Strategy*, available at: http://bit.ly/2kYx6mE.
162 Social Security (U.N. Convention Relating to the Status of Refugees) Order, Subsidiary Legislation 318.16, 2001, available at: http://bit.ly/2kvoIaz.
163 Regulation 20 Procedural Regulations.

to indicate entitlement to free medication. The main public mental health facility, **Mount Carmel** Hospital, also offers free mental health services to refugees.

Beneficiaries of **subsidiary protection** are only entitled to core medical services according to national legislation[164] and guidelines provided by the authorities. Beneficiaries have to lodge an application for Core Benefits at one of the Social Security branch offices. They are obliged to sign once a week at the Social Security branch office on a fixed registration date.

The public health service provides interpreters on a roster basis. This service can be booked by anyone within the public health sector in order to aid a specific patient, although it appears that not all health professionals are aware of this support.[165]

In practice, specialised treatment for victims of torture or traumatised beneficiaries is not available. As no special referral system is in place, when officers come across someone who was tortured and is in need of assistance, they refer the individual to the mainstream mental health services and to the psychiatric hospital for in-depth support. Most cases are usually referred from the communities and are sent to polyclinics. Very few cases of victims of torture and violence have officially been noticed over the past few years.[166]

164 Regulation 20 Procedural Regulations.
165 Nitktellmu, Refugee Integration Perspectives in Malta, December 2013, available at: http://bit.ly/2lywmBc.
166 Information provided by Ms Marika Podda Connor, Migrant Health Liaison Office, Primary Health Care Department, 2016.

ANNEX I - Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	3 March 2015 11 December 2015	Refugees (Amendment) Act, No VI of 2015 Procedural Standards for Granting and Withdrawing International Protection Regulations, Legal Notice 416 of 2015	http://bit.ly/1LQjEov (EN) http://goo.gl/SHBvX4 (EN)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015	11 December 2015	Procedural Standards for Granting and Withdrawing International Protection Regulations, Legal Notice 416 of 2015	http://goo.gl/SHBvX4 (EN)
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	11 December 2015	Reception of Asylum Seekers Regulations, Legal Notice 417 of 2015	http://goo.gl/uiOm2v (EN)
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013	11 December 2015	Reception of Asylum Seekers Regulations, Legal Notice 417 of 2015	http://goo.gl/SHBvX4 (EN)