The different national practices concerning granting of non-EU harmonised protection statuses

produced by the

European Migration Network

December 2010

This EMN Synthesis Report summarises the main findings of National Reports produced by twenty-three of the EMN National Contact Points (EMN NCPs) from **Austria**, **Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden** and **United Kingdom**, principally covering the period up to mid-2010.

Following an Introduction, giving also the methodology followed, EU harmonised protection statuses are first outlined. Descriptions of non-EU Harmonised Protection Statuses are then given, covering *inter alia* the grounds on which these are given, their implementation, procedures, rights, standard of protection and duration of stay. An overview of the available statistical data is provided, along with National Opinions on the granting of non-EU Harmonised Protection then Concluding Remarks analysing the findings from this study.

The EMN Synthesis Report, as well as the 23 National Reports upon which the synthesis is based, are also available from http://emn.sarenet.es/Downloads/prepareShowFiles.do;?directoryID=122. Several of the National Reports are available in the Member States' national language, as well as in English.

Table of Contents

Disclaimer

This Synthesis Report has been produced by the EMN Service Provider (GHK-COWI), in co-operation with the European Commission and the 23 EMN National Contact Points (EMN NCPs) participating in this study. This report does not necessarily reflect the opinions and views of the European Commission, GHK-COWI, nor of the EMN National Contact Points, nor are they bound by its conclusions.

Explanatory note

The 23 EMN National Contact Points who participated in this activity were from **Austria**, **Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden** and **United Kingdom**.

The Member States mentioned above are given in **bold** when mentioned in the report and when reference to "Member States" is made, this is specifically for these Member States.

EMN NCPs from other Member States could not, for various reasons, participate in this study, but have done for other EMN activities.

Executive summary

The aim of this EMN Study on *"The different national practices concerning granting of non-EU harmonised protection statuses"* was to analyse the different national practices concerning the granting of non-EU harmonised protection statuses, i.e. everything which is neither Temporary Protection, as defined in the Temporary Protection Directive 2001/55/EC[1], nor Refugee and Subsidiary Protection, as defined in the Qualification Directive 2004/83/EC[2]. This Synthesis Report aims to summarise and compare, within a European perspective, the findings from 23 National Reports (**Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden** and the **United Kingdom**), prepared by the National Contact Points of the European Migration Network (EMN NCPs). The period covered by this study is up to mid-2010.

The Synthesis Report begins with a brief discussion of EU-harmonised protection statuses (Section 2) and then goes on to present the non-EU harmonised statuses granted in the Member States (Section 3). These non-EU harmonised protection statuses are organised on the basis of the *grounds* given for providing protection, such as medical reasons, family reasons, or the presence of obstacles to return. For each protection status granted on particular grounds, their related procedures, rights, duration of stay, implementation and standard of protection are presented.

With regard to the state of play of EU-harmonised protection statuses, all Member States, except **Ireland**, have transposed *Council Directive 2001/55/EC* or the "*Temporary Protection Directive*" (Section 2.1) and all Member States transposed Council Directive 2004/83/EC or the "Qualification Directive" in their national legislation (Section 2.2). The statuses presented in Section 2.3 constitute *non*-EU harmonised protection statuses, as these are granted by Member States on grounds lying outside the Qualification Directive and/or on the basis of national law. However, as the procedures for applying for these protection statuses and the rights granted to those benefiting from them are in line with the Directive, these protection statuses are recognised as lying within the Directive's scope. Refugee protection is granted on grounds not covered by the Qualification Directive and/or on the basis of national law in **Bulgaria, Czech Republic, Germany, Hungary**, **Poland** and **Portugal**, and subsidiary protection in **Austria**, **Bulgaria**, **Czech Republic**, **Germany**, **Lithuania**, **Portugal** and **Sweden**. In addition, one Member State (**Netherlands**) applies a single asylum system, granting a "temporary asylum residence permit" to those judged in need of international protection and not distinguishing between, for example, refugees and beneficiaries of subsidiary protection. Their national legislation offers four additional national grounds, supplementary to those defined by the Geneva Convention and to those defined for subsidiary protection in *Council Directive 2004/83/EC*. These are provided in Section 2.3.4.

The different non-EU harmonised protection statuses granted in the Member States have been organised according to the following three main categories:

The first category relates to protection statuses consistent with the Geneva Convention and/or EU acquis (Section 3.1). This category includes protection statuses that closely "lean" towards the concept of protection as set out in the Geneva Convention and/or EU acquis,

[1] Available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF
[2] Available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:NOT.

predominantly granting protection on the basis of an assessment of the person's situation when fleeing their country of origin, often as an outcome of the asylum procedure. This covers national temporary protection statuses, exceptional residence permit granted on the basis of an international agreement, protection statuses granted on humanitarian grounds and residence permit on humanitarian grounds granted to third-country nationals who can prove that there is a risk to their security if they return to their country of origin to obtain a visa. Seven Member States (**Austria**, **Belgium**, **Greece, Ireland**, **Italy, Poland** and **Spain**) grant national temporary protection statuses (Section 3.1.1). **Estonia** has granted, in the past, exceptional residence permits for people escaping conflicts and **Germany** has the possibility to grant protection in cases where an international treaty gives rise to an obligation to admit individual foreigners. **Poland** signed a bilateral agreement with the State of Bosnia and Herzegovina (Section 3.1.2). Twelve Member States (**Belgium, Czech Republic**, **Finland**, **Germany**, **Ireland**, **Italy**, **Malta**, **Poland, Portugal**, **Slovak Republic**, **Spain** and **Sweden)** grant alternative forms of protection on humanitarian grounds (Section 3.1.3). Finally, **Poland** and **Spain** foresees the possibility to grant a temporary residence permit to third-country nationals who can prove that returning to their country of origin to request a visa will put their security and/or their family's security at risk (Section 3.1.4).

The second category relates to additional protection statuses (Section 3.2). These mainly include protection statuses that are centred on the principle of *non-refoulement* (as often the asylum applicant already finds him/herself on the territory of the Member State) as laid down in the Geneva Convention and the *European Convention on Human Rights* and/or linked to other factors, sometimes of a technical or procedural nature. This covers national protection statuses granted on medical grounds, national protection statuses granted for family reasons, national protection statuses granted to unaccompanied minors, stateless protection statuses and tolerated stay/suspension of removal. Protection statuses on medical grounds are granted in twelve Member States (**Belgium**, **Czech Republic**, **Finland, Germany**, **Greece**, **Malta**, **Netherlands**, **Poland, Portugal, Slovak Republic**, **Spain** and **Sweden)** (Section 3.2.1), while five Member States (**Austria**, **Germany**, **Greece**, **Poland**, **Slovak Republic** and **Sweden)** grant national protection status granted for family reasons (Section 3.2.2). Ten Member States (**Austria**, **Belgium**, **Finland**, **Hungary**, **Malta**, **Netherlands**, **Slovak Republic**, **Slovenia, Spain** and the **United Kingdom)** offer specific forms of protection to unaccompanied minors and/or separated children **(**Section 3.2.3**)**. In six Member States (**Finland**, **France**, **Greece**, **Hungary, Netherlands** and **Spain**), there is a specific protection status for stateless persons, whereas other Member States grant protection to such persons in the framework of other statuses (Section 3.2.4). Finally, fifteen Member States (**Austria**, **Belgium**, **Czech Republic**, **Finland**, **Germany**, **Hungary**, **Ireland**, **Netherlands**, **Poland, Portugal**, **Slovak Republic**, **Slovenia, Spain, Sweden** and **United Kingdom)** have statuses linked to "tolerated stay"/ suspension of removal, although they have different definitions of the tolerated stay status, which are also regulated by different legislative instruments (Section 3.2.5).

The third category refers to other statuses or permits to stay (Section 3.3). These include permits to stay that are granted to a wide range of third-country nationals for a variety of reasons, in most cases outside of the asylum procedure and as part of migration policies, and on grounds relating to the situation of the person at the time when (forced) removal from the EU Member State is imminent. This covers protection statuses granted to victims of trafficking, national protection statuses granted to witnesses to criminal proceedings, national protection statuses granted on the ground of "national interest", national protection statuses to victims of specific offences, national protection statuses for victims of environmental

disasters and residence as a consequence of the Minister using his/her discretionary power. In twenty Member States (**Austria**, **Belgium**, **Bulgaria**, **Czech Republic**, **Estonia**, **Finland**, **France**, **Germany**, **Greece**, **Hungary**, **Ireland**, **Lithuania**, **Malta, Netherlands, Poland, Portugal**, **Slovak Republic**, **Slovenia**, **Spain** and the **United Kingdom**), some form of protection to people who were victims of trafficking is granted, the type of protection/status being granted in line, except for **Greece**, with Council Directive 2004/81/EC[3] (Section 3.3.1). Whilst this Directive is framed within the pursuit of the development of a common EU *immigration* policy, many Member States grant statuses/residence permits to victims of human trafficking in the national context as forms of *protection*, sometimes adopting or maintaining more favourable provisions for beneficiaries than foreseen in the Directive. Two Member States, namely **Greece** and **Sweden,** developed specific national protection statuses for witnesses in criminal proceedings (Section 3.3.2), while national forms of protection in **Austria**, **Germany, Netherlands, Poland** and **Spain** can be also issued in the context of other crimes in order to guarantee the prosecution of criminal offences (**Austria, Germany**) and of '*prostitution, but also all other forms of modern slavery and exploitation'* (**Netherlands**). Five Member States (**Czech Republic**, **Germany, Poland, Portugal** and **Spain**) may grant residence permits on the basis of "national interest" (Section 3.3.3), whilst three Member States (**Greece**, **Portugal** and **Spain**) grant residence permits to victims of specific offences. This protection status is applicable to third-country nationals who become victims of specific offences while already in the territory (Section 3.3.4). Two Member States (**Finland** and **Sweden**) have a form of protection for victims of environmental disasters (Section 3.3.5).

Data concerning non-EU harmonised protection statuses granted, and applied for, in the Member States is presented under Section 4. Furthermore, an overview of the various opinions on the granting of protection expressed by, for example, national governments, national network members, NGOs, researchers, civil bodies or through public opinion surveys in the EU Member States is given (Section 5). Mixed views are expressed by this different range of actors on the rationale and implementation of these non-EU harmonised protection statuses.

Concluding remarks are presented in Section 6. Firstly, the multitude and complexity of non-EU harmonised practices for granting protection is highlighted (Section 6.1), referring to a high number of Member States (N=22) that grant non-EU harmonised protection statuses (**Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden** and the **United Kingdom**) and the existence of a high number of different non-EU harmonised protection statuses (minimum 60[4]) that are granted by these Member States throughout the EU.

The co-existence of national statuses with the EU acquis is then discussed (Section 6.2). With regard to the EU's stated goal to pursue high *and* common protection standards across the EU, a first question is whether the non-EU harmonised protection statuses identified by this EMN study (and established before or after EU acquis in relation to protection) provide the same level of protection required by the EU acquis. The findings presented here indicate that, in some Member States, where national statuses compete with EU acquis, there might be a

[3] Available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0081:EN:HTML

[4] Only a rough estimate of this figure can be given. While the Tables in the Annexes to this Synthesis Report could be used for identifying this number, it would require a complicated counting exercise, avoiding the double counting of protection statuses granted on different grounds and hence presented in different Tables.

danger that protections standards are lowered. This may arise when individuals are more frequently granted the national protection status which provides for a lower form of protection in terms of grounds, procedures and rights. A second question is whether some of these statuses could be considered for possible incorporation in EU acquis. The continuing existence and use of national protection statuses may suggest that there are some cases of third-country nationals seeking protection who cannot (currently) be dealt with in the framework of the EU acquis and, as a consequence, continue to require national responses. In other cases, Member States have developed (and/or retained after the development of EU acquis in relation to protection) national protection statuses to address the "mismatch" between the nature of demand for protection and the criteria laid down in the Geneva Convention or EU acquis. Therefore, national forms of protection continue to play an important complementary role to the protection system created at the EU level, but are nevertheless not common across the EU. Furthermore, a significant proportion of the residence permits granted by Member States as additional forms of protection are primarily part of managed migration policies, and not considered to be forms of international protection (Section 6.3).

1. INTRODUCTION

The European Migration Network (EMN)[5] was established through *Council Decision 2008/381/EC*[6] and serves to provide up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the EU. It provides this information also to the general public.

1.1 Purpose of the study

The aim of this study on *"The different national practices concerning granting of non-EU harmonised protection statuses"* was to analyse the different national practices concerning the granting of non-EU harmonised protection statuses, i.e. everything which is neither Temporary Protection, as defined in the *Temporary Protection Directive 2001/55/EC*[7], nor Refugee and Subsidiary Protection, as defined in the *Qualification Directive 2004/83/EC*.[8] The period covered by this study is up to mid-2010.

This Synthesis Report, and the National Reports upon which it is based, are primarily intended for national and EU officials/practitioners concerned with the development of asylum policy, particularly the Common European Asylum System (CEAS); other groups (e.g. NGOs, academic researchers) who would be potential users of the study; plus the wider public with an interest in asylum policy. Twenty-three (**Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden** and the **United Kingdom.** National Contact Points of the EMN (EMN NCPs) each produced a National Report according to common specifications, developed by the EMN. On the basis of these National Reports, this Synthesis Reports aim to summarise and compare, within a European perspective, the findings from those 23 National Reports.[9]

More detailed information on the situation in a particular Member State can be found in each National Report, and one is strongly recommended to consult these also.

---

[5] More information on the EMN, including its outputs, is available from http://emn.sarenet.es.
[6] Available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0381:EN:NOT.
[7] Available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF
[8] Available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:NOT.
[9] National Reports and Synthesis Report available from http://emn.sarenet.es/Downloads/prepareShowFiles.do;?directoryID=122

1.2 Methodology

EMN NCPs do not normally engage in primary research, but rather collect, gather and evaluate data and information which are already available. Most of the elements needed to draft this study were publicly available. Some EMN NCPs, however, such as **Germany** and **Ireland**, gathered statistics on protection which were previously not available to the public and/or published. Many EMN NCPs (**Austria, Belgium, Czech Republic, Estonia, Germany, Greece, Spain, Ireland, Finland, Hungary, Poland** and the **United Kingdom**) also drew on literature reviews, academia, research institutes, think tanks, media, parliament, political parties, NGOs and/or IGOs in the sense that they relied on their studies, reports and documents. Some EMN NCPs (**Belgium, Bulgaria, Czech Republic, Estonia, Greece, Ireland, Hungary, Lithuania, Portugal, Slovak Republic**, **Slovenia, Sweden** and **United Kingdom**) conducted interviews with colleagues, national network partners and experts to find out more about certain aspects.

1.3 Structure of the Synthesis Report

The Synthesis Report begins with a brief discussion on EU-harmonised protection statuses and then goes on to present the non-EU harmonised statuses granted in the Member States. These non-EU harmonised protection statuses are organised on the basis of the *grounds and reasons* given for providing protection, such as medical reasons, family reasons, or the presence of obstacles to return. Hence, the primary question driving this Synthesis Report is *"What do these non-EU harmonised protection statuses aim to protect people from?"*

Each section focussing on a particular ground given for providing protection is further structured according to:

- *Which EU Member States apply this non-EU harmonised protection status?*
- *Grounds:* giving in more detail the grounds and, if applicable, additional requirements for granting the protection status(es) in the Member States.
- *Procedures:* including, where possible, whether the protection status(es) are granted within or outside of the asylum procedure and what procedural guarantees are provided (e.g. appeal).
- *Rights:* such as access to education or to medical care, that is granted to the persons benefiting from the protection status.

- *Duration of stay:* that is provided to the persons concerned.
- *Implementation:* whether the protection status has been (frequently) granted by the Member States concerned.
- *Standard of protection:* the extent to which the protection provided through the non-EU harmonised protection statuses is similar, higher, or lower than that laid down in the Geneva Convention and/or the *Council Directive 2004/83/EC* (Qualification Directive).

The level of information provided in the National Reports on, for example, the procedures and rights, varies. As a result, these sub-sections may sometimes be shorter, longer, or may not appear in the description and analysis of a specific non-EU harmonised protection status.

For each Section of the Synthesis Report, a Table with detailed comparative information supporting the analysis presented was also created and added as an Annex to this Synthesis Report.

1.4 Caveats

Caution has to be exercised with regard to treating all the non-EU harmonised protection statuses described in the National Reports as *international protection.*[10] A broad-brush categorisation of the non-EU protection statuses granted in Member States may be conceived as consisting of:

1) Protection statuses that closely "lean" towards the concept of protection as set out in the Geneva Convention and/or EU acquis, i.e. predominantly granting protection on the basis of an assessment of the person's situation when fleeing the country of origin, and often as an outcome of the asylum procedure;

2) Protection statuses that are centred on the principle of non-refoulement as laid down in the Geneva Convention and the European Convention on Human Rights and/or linked to other factors, sometimes of a 'practical' nature, which make return not possible; and

[10] As defined in the EMN Glossary: "In an EU context, this encompasses the refugee and subsidiary protection status as defined in Article 2(d) and (f) of Council Directive 2004/83/EC. In a global context, this means the actions by the international community on the basis of international law, aimed at protecting the fundamental rights of a specific category of persons outside their countries of origin, who lack the national protection of their own countries. [Source: Council Directive 2004/83/EC; UNHCR Master Glossary of Terms]"

3) Residence permits that are granted to a wide range of third-country nationals for a variety of reasons, outside of the asylum procedure and as part of migration policies, and on grounds relating to the situation of the person at the time when (forced) removal from the EU Member State is imminent.

In some cases, the resulting residence permits issued do not constitute "protection", especially as conceptualised in the Geneva Convention and EU acquis. Nevertheless, these are included in order to present a comprehensive overview of all EU harmonised and non-EU harmonised protection statuses as identified and outlined in the National Reports. The question as to which non-EU harmonised protection statuses lean closer towards the international and EU protection system has been further explored in the sub-sections on *Standard of protection* under each ground of protection discussed in Section 3 and Section 6.3 of the Report.

It should be noted that many of the non-EU harmonised protection statuses were already in place before the EU acquis on international protection was developed. The historical context in which the national protection statuses were developed, as pointed out in several Sections of the Report and Section 6.2 in particular, thus affected the related grounds, procedures and rights, which are often still in place.

2. EU HARMONISED PROTECTION STATUSES GRANTED IN THE MEMBER STATES

Sections 2.1 and 2.2. review the state of play of the EU harmonised protection statuses, as laid down in the two Council Directives addressing temporary protection in the event of mass influx (Council Directive 2001/55/EC or "Temporary Protection Directive") and the qualification of persons applying for international protection (Council Directive 2004/83/EC or "Qualification Directive"). Section 2.3 gives an overview of the Member States that grant temporary protection, refugee status and/or subsidiary protection on grounds not covered by the relevant Council Directive.[11] These constitute *non*-EU harmonised protection statuses, and are also presented as such in the National Reports. The rationale for presenting them immediately after the outline of protection statuses covered by either the *Council Directive 2001/55/EC* (Temporary Protection Directive) or *the Council Directive 2004/83/EC* (Qualification Directive) is that the procedures for granting these national protection statuses and the rights attached were often found to be in line with those foreseen in EU acquis.

2.1 EU harmonised statuses covered by the definition of Council Directive 2001/55/EC[12] (Temporary Protection Directive)

2.1.1 Transposition

All Member States, except **Ireland**, have transposed *Council Directive 2001/55/EC*, which took place between 2002 (e.g. **Finland**) and 2007 (e.g. **Bulgaria**). **Ireland** initially opted not to participate in the adoption of this Directive, but subsequently requested to do so. By a Decision of the European Commission in 2003,[13] the Directive was deemed to apply to **Ireland**, although to date, **Ireland** does not have domestic legislation giving effects to the Directive's provision. However, the *Immigration, Residence and Protection Bill 2010*[14] contains provisions that are to comply with the Directive. In addition, representatives of the *Irish Department of Justice, Equality and Law Reform* estimate that the existing administrative procedures are in compliance with the Directive's objectives.

[11] Hence, Member States mentioned in these Sections grant, for example, refugee status both on the basis of the Qualification Directive and on the basis of national law.
[12] Council Directive 2001/55/EC from 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.
[13] Decision 2003/690/EC of 2 October 2003 on the request by Ireland to accept Council Directive 2001/55/EC.
[14] Immigration, Residence and Protection Bill 2010, http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2010/3810/b3810d.pdf .

In the absence of a Council Decision establishing the existence of a mass influx of displaced persons, as required by Article 5 of *Council Directive 2001/55/EC*, Member States have not yet implemented this EU harmonised form of protection at national level. In December 2009, the *State Secretary of Justice* in the **Netherlands** pointed out that excessively high expectations of the *Council Directive 2001/55/EC* (Temporary Protection Directive) should not be held, given that, precisely due to the lack of a joint assessment of situations in conflict areas, it has to date never proven possible in the European Union to activate this Directive.[15]

2.1.2 Procedures

A detailed national procedure in **Belgium** for the granting and withdrawing of application for temporary protection covered by Directive 2001/55/EC, that must be followed from the moment that a Council Decision enters into force, has not yet been elaborated. **Finland**, which also foresees national forms of temporary protection in addition to the one set out in the Directive, mentioned the complexity and time-consuming aspect of the temporary protection procedure, which requires the Government's decision, rendering it difficult to apply it in practice. In **Poland**, the *Head of the Office for Foreigners* is responsible for the issuance and renewal of residence permits to beneficiaries of temporary protection and for any actions to assist return when temporary protection ends.

2.1.3 Future implementation

France, Greece and **Poland** permit temporary protection to be extended, by a decision of the national authorities, to additional categories of displaced persons if they come for the same reasons and from the same country or region of origin. This possibility is in line with Article 7 of Council Directive 2001/55/EC.

[15] Parliamentary documents II 2009/10, 19 637, no. (Explanatory Memorandum) 1314 (Letter). The 'Vision of protection' memorandum can also be found at www.justitie.nl.

2.2 EU harmonised statuses covered by the definition of Council Directive 2004/83/EC (Qualification Directive)

2.2.1 Transposition

All Member States transposed *Council Directive 2004/83/EC* in their national legislation.[16] Transposition took place between 2004 (e.g. **France**) and 2009 (e.g. **Finland, Spain**), with **Spain** considering that despite the delay in transposing this Directive, provisions were already applied in practice by governmental authorities and by national judges and courts.

Belgium noted that transposition of *Council Directive 2004/83/EC* (Qualification Directive) in its national legislation formalised the non-refoulement principle, which already applied to certain categories of rejected asylum applicants who could not be returned given the situation in their country of origin.[17] **Finland** has narrowed the scope of subsidiary protection, as already defined in its national legislation, to meet the definition as set out in the *Council Directive 2004/83/EC* (Qualification Directive). The introduction of subsidiary protection in their national legislation in **Austria, France** and **Malta** led to the replacement of their pre-existing national protection statuses, which were very similar to subsidiary protection.[18] In **Austria,** a subsidiary status was introduced in 2003. Then, in 2005, with the transposition of the *Council Directive 2004/83/EC* (Qualification Directive), the definition and the rights attached to the status were modified, although the previous system of subsidiary protection remained as it was considered successful. Also in **France**, the introduction of subsidiary protection status in its national legislation had consequences on the procedure to be followed.[19] In addition, **France** has two types of subsidiary protection at national level, the main difference consisting in the origin of the threat posed to the beneficiary of subsidiary protection.[20] In **Germany**, *Council Directive 2004/83/EC* (Qualification Directive) was

[16] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

[17] Prior to the introduction of Council Directive 2004/83/EC, Belgian legislation foresaw the possibility to include a non-refoulement clause in the refugee authority's refusal decisions, which prevented the return of the rejected asylum applicant in his/her country of origin due to the given situation.

[18] Prior to the introduction of Council Directive 2004/83/EC, the Maltese Refugee Act provided for a humanitarian protection status, which constituted a special leave to remain on the Maltese territory for persons who did not qualify for refugee status but could not be returned safely to their country of origin. Similarly, the introduction of subsidiary protection into French Law replaced the granting of the so-called territorial protection.

[19] One of the main changes identified by France between territorial protection and subsidiary protection is procedural: Unlike the procedure used for territorial asylum, the choice of the appropriate form of protection is not made by the asylum applicant, but is the sole competence of the national refugee authority.

[20] **France** distinguishes two types of subsidiary protection: in case the threat posed to beneficiaries of subsidiary protection comes from authorities of the third-country nationals' country of origin, the national Refugee

implemented in national law by adjusting some elements of the pre-existing national protection system to the provisions of the Directive. In some areas of protection, the scope of grounds on which refugee status and subsidiary protection are granted was widened by the transposition of the Directive, thus leading to certain improvements in the field of protection.[21] **Greece** observed that the transposition of this Directive contributed to the introduction of new concepts in its national legislation.[22] In addition, it led to the introduction of a new form of protection status in its national legislation (i.e. subsidiary protection) and to the subsequent explicit recognition of the rights attached to this status. In the **Netherlands**, the transposition of the Directive resulted in a number of amendments to existing legislation and regulations. Overall, these amendments were not, by nature, substantive but consisted of the transfer of provisions laid down in policy rules (*Aliens Act Implementation Guidelines 2000*) and/or legal precedents to a generally binding regulation. The most important innovation in Dutch legislation and regulations stemmed from Articles 14[23] and 19[24] of the Directive, which requires the obligatory withdrawal of refugee status or subsidiary protection if the ground for granting has lapsed. In **Poland**, the transposition of Directive 2004/83/EC led to the introduction of subsidiary protection into national law.[25] Beneficiaries of subsidiary protection in **Sweden** are currently not granted a status but a residence permit,[26] although this matter is currently under revision. In the **United Kingdom**, it resulted in changes being made

Authority replaces the authorities in the country of origin for the issue of all civil status or travel documents. In case the threat posed to beneficiaries of subsidiary protection comes from independent groups against which the authorities in the country of origin are not able to provide effective protection to their nationals, beneficiaries of subsidiary protection can and must continue to apply to the consular authorities of the country of origin for the issue of civil status and travel documents.

[21] **Germany** continues to apply the Right to Asylum as foreseen by Article 16a of the Basic Constitutional Law. The granting of refugee status, however, is now oriented towards the Qualification Directive (see Section 2.3.2). As regards subsidiary protection, the provisions of the Qualification Directive were implemented in the German Residence Act. Additionally, however, some national forms of subsidiary protection continue to exist alongside European ones (see Section 2.3.3).

[22] **Greece** identified that the transposition of Council Directive 2004/83/EC led to the adoption of explicit provisions on the assessment of facts and circumstances, the introduction of the concept of international needs arising "sur place", the definition of actors of persecution or serious harms, actors of protection, internal protection, acts of persecution and reasons of persecution in its national legislation.

[23] Article 14, paragraph 1 of the Qualification Directive stipulates that if the ground for granting has lapsed, the refugee status must be withdrawn.

[24] Article 19, paragraph 1 of the Qualification Directive stipulates the same for subsidiary protection.

[25] Prior to the introduction of subsidiary protection, Poland granted permit for tolerated stay to third-country nationals. In **Poland** the prerequisites needed to issue permit for tolerated stay were similar to those required when granting subsidiary protection (see Section 3.2.5).

[26] The *Aliens Act* in **Sweden** is presently built on the concept of residence permit and not on the concept of granting a status.

to the protection status *"Humanitarian Protection",* which had been introduced in 2003,[27] in order to reflect the requirements of *Council Directive 2004/83/EC* (Qualification Directive).

Belgium and **France** have applied the Geneva Convention[28] in a broader manner than the one envisaged in *Council Directive 2004/83/EC* (Qualification Directive) by, for example, extending the notion of social group to the largest extent possible. Similarly, in **Ireland**, national legislation qualifies the refugee definition in relation to the particular social group, providing that "membership of a particular social group" includes membership of a trade union, as well as membership of a group of persons whose defining characteristic is their gender or having a particular sexual orientation. In **Ireland**, the transposition of Directive 2004/83/EC led to the introduction of subsidiary protection in national law. **Ireland** does not currently, however, have a single protection system, and instead deals with refugee status and subsidiary protection separately.

Bulgaria and **Portugal** consider that their national legislation had a more generous scope when compared to the minimum norms established by *Council Directive 2004/83/EC* (Qualification Directive), especially with regard to the period of validity of residence permits granted to beneficiaries of international protection.[29] **Sweden** also considered the *Aliens Act* as more generous than the regulation for subsidiary protection in the Council Directive 2004/83/EC (Qualification Directive), since the Swedish regulation covers "other severe conflicts." For the **Netherlands** and **Spain,** beneficiaries of refugee status and beneficiaries of subsidiary protection enjoy the same level of rights, independently of the status granted.

2.2.2 Implementation

Belgium considered that the introduction of subsidiary protection in its national legislation had not led to a decline in the granting of refugee status, which still took priority over the granting of subsidiary protection. Conversely, the experience of **Malta** was that a considerable share of beneficiaries of international protection did not qualify for refugee status, but for subsidiary protection – in the same way that, prior to the introduction of legislation regarding subsidiary protection, the large majority qualified for humanitarian

[27] Humanitarian Protection and Discretionary Leave were the two key statuses introduced by United Kingdom following the abolition of the protection status 'exceptional leave' on 31 March 2003.

[28] The Convention of 28 July1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967.

[29] In **Bulgaria** and **Portugal**, residence permit granted to individuals benefitting from refugee status last 5 years while residence permit granted to beneficiaries of subsidiary protection are attributed for 3 (Bulgaria) and/or 2 years (Portugal). This represents higher standards compared to the respective 3 years (for refugee status) and 1 year (for subsidiary protection) as set out in Council Directive 2004/83/EC.

protection rather than for refugee status. In **Poland**, the introduction of subsidiary protection into the national legislation in 2008 resulted in a decreased number of residence permits issued for tolerated stay within the asylum procedure.

2.3 Protection statuses recognised within the scope, but granted on grounds outside, the Council Directives 2001/55/EC (Temporary Protection Directive) or 2004/83/EC (Qualification Directive)

As highlighted in the introduction to Section 2, the statuses outlined here constitute *non*-EU harmonised protection statuses, as these are granted by Member States on grounds lying outside *Council Directive 2001/55/EC* (Temporary Protection Directive) or *Council Directive 2004/83/EC* (Qualification Directive). However, as the procedures for applying these protection statuses and the rights granted to those benefiting from them are in line with the (respective) Council Directive, these protection statuses are recognised as lying within their scope.

2.3.1 Temporary protection granted on grounds other than those covered in EU acquis

None of the Member States referred to the possibility to grant EU temporary protection on grounds other than the ones covered by the *Council Directive 2001/55/EC* (Temporary Protection Directive).

2.3.2 Refugee status on grounds other than those covered by EU acquis

As illustrated in **Table 1** in the Annex, a first group of Member States, i.e. **Bulgaria, Czech Republic, Germany, Hungary**, **Poland** and **Portugal** have the possibility in their national legislation to grant refugee status on other grounds which are not explicitly covered by the *Council Directive 2004/83/EC* (Qualification Directive).[30] Hence, in these Member States, refugee protection is granted both in accordance with the Qualification Directive and on the basis of national law.

2.3.2.1. Grounds

The above mentioned Member States are split amongst those that define particular grounds for granting refugee status (**Bulgaria, Czech Republic, Germany, Poland** and **Portugal**) in their national asylum legislation and those that foresee the possibility to grant refugee status

[30] In the **Netherlands**, the State applies a single asylum system, granting only one type of permit to those seeking international protection and does not distinguish in its grounds, or in the subsequent rights and benefits granted, as to who is to considered as qualifying for "subsidiary protection" or "asylum". Hence, a separate Section (2.4) was created to present this unique system. In the **Slovak Republic**, refugee status can be granted on humanitarian grounds. Further information on this status is available in section 3.1.3 relating to protection statuses granting on humanitarian grounds.

on a discretionary basis (**Hungary**). Among Member States which have defined particular grounds, the **Czech Republic** identified two extra grounds for granting refugee status, namely *asylum on humanitarian ground in a case worthy of special consideration*[31] and *asylum for the purpose of family reunification*.[32] In **Germany,** asylum is granted on the basis of its *Basic Constitutional Law* to third-country nationals *exposed to political persecution in their country of origin.*[33] This basic constitutional right to asylum continues to be applied even though refugee status granted in accordance with European Law (Qualification Directive) also covers this protection ground. In **Poland**, a third-country national may be granted asylum if the following two prerequisites are met: "*if it is necessary to provide him/her with protection and when vital interests of the Republic of Poland are at stake."* The latter is subject to the discretion of the Polish authority.[34] In **Portugal**, refugee status is granted to third-country nationals and stateless persons who are being persecuted or seriously threatened by

[31] In the **Czech Republic**, asylum on humanitarian grounds in a case of worthy consideration can include, for example, seriously ill or handicapped persons, persons of a higher age, unaccompanied minors and/or neonates of unaccompanied minors, etc.

[32] Asylum for purpose of family reunification is granted to a family member of a recognised refugee, who was granted asylum as defined in the Geneva Convention or on humanitarian grounds, in a case worthy of special consideration, even if no reason for grant of international protection is found in the proceedings for grant of international protection in his/her case. For these purposes, a family member is deemed to be: a) the recognised refugee's spouse or partner; b) the recognised refugee's single child younger than 18 years; c) a parent of a recognised refugee younger than 18 years; or d) a person of legal age responsible for an unaccompanied minor person. Czech legislation imposes the existence of a marriage before the asylum was granted to the recognised refugee is a condition for granting asylum to the recognised refugee's spouse for the purpose of family reunification.

[33] That is to say, the third-country national risks a violation of his/her rights at a nationwide level in connection with his/her political conviction, basic religious choices or characteristics beyond his/her control to mark him or her rights out as being different. This political persecution must come from the state or be prompted or approved of by the State or at least the state must, through inaction despite having the capability to provide protection, have acquiesced in it. It may also be exercised by quasi-state organisations who have supplanted the state. In addition, the acts of persecution in question must also reach certain intensity – in other words, they must be of such a type as to exclude the foreigner from the overall peaceful framework inside the unified state. Either the foreigner must already have suffered acts of persecution or such acts must be directly imminent. It must as a result be unreasonable to expect the foreigner to remain in his/her country of origin or to return there.

[34] Three judgements from Polish administrative courts provided further interpretation on this notion: according to the first judgement, *"willingness to work honestly in Poland, possession of professional skills and experience as well as Poland's need to meet its international obligations, including those imposed by the European Convention for the Protection of Human Rights and Fundamental Freedoms dated from 1950"* presented by the third-country national as reasons for being granted asylum could not be regarded as 'crucial' for the interest of Poland. According to another judgement from the Supreme Administrative Court, "*persecution due to national identity is not considered as a basis for granting asylum, as this type of persecution exhausts the notion of the 'refugee' in the meaning of Article 1 letter A sec.2 of the Geneva Convention, and in the case in which it is really taking place, it may authorise the third-country national to seek refugee status".* In a third judgement, the Supreme Administrative Court stated that "*if the applicant is seeking asylum, he/she has to prove that his/her political activity has exposed him/her to persecution in the country of origin."*

persecution as a consequence of their activities in favour of democracy, social and national liberty, peace amongst peoples, freedom and human rights.[35]

Bulgaria has the possibility to grant asylum to third-country nationals who were *victimised for reasons of their convictions or activity in defence of internationally recognised rights and freedom*. Despite this definition, the granting of asylum in **Bulgaria** also includes a discretionary element as its national legislation stipulates that the President grants asylum, including in the cases where the national interest or special circumstances necessitate this. **Hungary** allows for the recognition of refugee status on a discretionary basis,[36] in cases where the Geneva Convention grounds do not apply.

2.3.2.2. Procedures

In the **Czech Republic**, **Germany** and **Portugal**, refugee status granted on grounds which are not explicitly covered by Council Directive 2004/83/EC (Qualification Directive) or laid down in national law is assessed using the same procedures as those foreseen by the Directive, or through a similar procedure (**Poland**). In **Poland**, third-country nationals may also apply for asylum from aboard through the respective consul which is then in charge of transferring the application to the *Head of Office for Foreigners*, i.e. the institution to which applications for international protection have to be directed in general.[37] Conversely, in **Bulgaria**, this is not the case, applicants for asylum not covered by the Directive have to submit their applications to the administration of the President. Upon the request of the President, officials of the *State Agency for Refugees* establish all facts and circumstances relevant to the procedure for granting asylum (Art. 53, point 2 LAR) and give an opinion on an application for asylum (Art. 48 (2) LAR). Even if the above mentioned requirements (Art. 48 (2) and Art. 52, point 2 LAR) are not met, the President may still grant asylum. In **Hungary**, refugee status based on *special considerations* is directly granted by the Minister responsible for asylum matters, instead of the *Office of Immigration and Nationality*, in case of a single asylum application.

---

[35] For **Portugal**, this includes the granting of refugee status to individuals who are persecuted on account of their activities in favour of democracy, social and national liberty, peace amongst peoples, freedom and human rights aimed at protecting constitutionally recognised values and principles.

[36] Asylum legislation in **Hungary** foresees the possibility to grant refugee status based on special considerations. In such cases, that are not defined in the asylum law, the Minister responsible for asylum matters directly decides to grant refugee status, based on its discretionary power.

[37] A special visa is issued to third-country nationals who apply for asylum from abroad in order to allow them entry into the territory of Poland and participation in the asylum procedure.

2.3.2.3. Rights

The **rights** granted on refugee status granted on grounds which are not explicitly covered by Council Directive 2004/83/EC (Qualification Directive) or laid down in national law are similar and/or congruent (**Bulgaria**, **Czech Republic**, **Germany**, **Poland**) or equal (**Portugal**) to the ones attached to refugee status granted on grounds covered by the Directive.

2.3.2.4. Implementation

With regard to the **effective use** of these forms of refugee status granted on grounds which are not explicitly covered by Council Directive 2004/83/EC (Qualification Directive) or laid down in national law, these additional grounds are used in the **Czech Republic** and **Portugal**. In **Germany**, it has been observed that the number of positive decisions based on the Qualification Directive significantly outweighs those granted on the basis of the national law. **Germany** considered that refugee status on the basis of the Directive has a broader scope and applicability than the national status and is therefore granted more frequently. Similarly, **Portugal** considered that its national legal framework had instituted a more favourable legal regime for determining whether individuals are eligible for the status of refugee than the one defined in the Council Directive 2004/83/EC (Qualification Directive), as foreseen in Article 3.[38]

In **Bulgaria, Hungary** and **Poland**, these particular grounds to grant refugee statuses existed before the transposition of the EU acquis and/or the ratification of the Geneva Convention, but have hardly been used since. In **Bulgaria**, this regime even existed before this Member State became party to the Geneva Convention in 1993. From 2001 to 15 January 2010, 136 applications for asylum were submitted (15 applications in 2008; 7 in 2009), but asylum was not granted in any of these cases. In **Hungary**, the recognition of refugee status based on "special considerations" only happened once in recent years and was a rather theoretical possibility. **Poland** indicated that the granting of asylum had been maintained solely due to its constitutional character and no case of granting asylum had been recorded since 1997.

[38] Article 3 of Directive 2004/83/EC stipulates that 'Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive'.

2.3.3 Subsidiary protection on grounds other than those covered by Council Directive 2004/83/EC

As also indicated in **Table 1** in the Annex, a second group of Member States, i.e. **Austria**, **Bulgaria**, **Czech Republic**, **Germany**, **Lithuania**, **Portugal** and **Sweden**, grants subsidiary protection on grounds not covered by the Council Directive 2004/83/EC (Qualification Directive). [39]

2.3.3.1. Grounds

In the **Czech Republic**, **Lithuania**, **Portugal** and **Sweden**, these additional grounds for subsidiary protection consist of an expansion of Article 15(c) of the Council Directive 2004/83/EC (Qualification Directive). Other grounds which are not covered by this Directive include

- *reason of humanitarian nature* (**Bulgaria** and **Portugal**[40]);
- *subsidiary protection for the purpose of family reunification* **(Czech Republic**);
- subsidiary protection *when deportation is inadmissible under the terms of the Convention for the Protection of Human Rights and Fundamental Freedoms* (**Germany**);
- subsidiary protection *when deportation of a third-country national is inadmissible to a State in which there is a substantial concrete danger to his or her life and limb or liberty* (**Germany**)';
- *threat to the human rights and basic freedoms of the asylum seeker*"(**Lithuania**);
- *subsidiary protection can be granted if the person's rejection at the border, forcible return or deportation to his/her country of origin would constitute a real risk of violation of article 2 or article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms or of Protocol No. 6 or Protocol No. 13 to the Convention*[41] (**Austria**[42]); and

---

[39] In the **Netherlands**, the State applies a single asylum system, granting only one type of permit to those seeking international protection and does not distinguish in its grounds, or in the subsequent rights and benefits granted, as to who is to considered as qualifying for "subsidiary protection" or "asylum". Hence, a separate Section (2.4) was created to present this unique system.

[40] In **Portugal**, the granting of subsidiary protection by reason of generalized violation of human rights in the country of the applicant is aimed at reaffirming the Portuguese approach of safeguarding constitutionally recognised fundamental rights.

[41] Articles 2 and 3 of the Convention for the Protection of Human Rights and Fundamental Freedom respectively relate to Right to Life and Prohibition of Torture. Protocols 6 and 13 of this Convention respectively requires

- subsidiary protection due to environmental disaster (**Sweden**).

The decision by **Sweden** to foresee the possibility to grant subsidiary protection on environmental grounds mainly stemmed from the fact that environmentally-driven migrants are not covered by any EU Directives. However, at the same time, **Sweden** received criticism from the UNHCR on this, as the latter did not consider environmental grounds to fall under the protection regime of the Geneva Convention and recommended a separate procedure for such cases from the one determining protection needs.[43]

2.3.3.2. Procedures

Subsidiary protection on grounds which are not covered by *Council Directive 2004/83/EC* (Qualification Directive) is investigated and granted within the single asylum procedure in all Member States mentioned. In **Germany**, decisions concerning the granting of subsidiary forms of protection fall under the responsibility of the *Federal Office for Migration and Refugees (BAMF)*, but they can also be taken at a Länder level by the relevant foreigners' authorities.[44]

2.3.3.3. Rights

In the seven Member States listed above, the **rights** that subsidiary protection granted on grounds not covered by *Council Directive 2004/83/EC* (Qualification Directive) are similar or the same to the ones attached to subsidiary protection granted on grounds covered by the Directive.

2.3.3.4. Implementation

Subsidiary protection due to environmental disasters had not been granted in **Sweden** to date, but subsidiary protection due to "other severe conflicts" had been frequently granted.

---

parties to the Convention to restrict the application of death penalty to times of war or national emergencies and to abolish death penalty completely.

[42] In **Austria**, the case law of the asylum authorities shows that this can include *inter alia* 'medical case' under certain conditions.

[43] It is the opinion of UNHCR that individuals who cannot return to their country of origin because of a natural or ecological disasters do not generally fall under the protection regime of the 1951 Convention, unless access to national protection is denied on the basis of a Convention ground. In the past, UNHCR's Executive Committee has argued that the return of individuals who have fled natural or ecological disaster to their country of origin might in exceptional circumstances reach a level of severity amounting to inhuman treatment, which consequently gives rise to protection from *refoulement* under human rights instruments. In addition, UNHCR furthermore advise against confusing persons in need of protection with migrants in need of humanitarian assistance or other forms of assistance, thus not under the scope of international protection, as this may undermine the international refugee protection regime.

[44] This may happen if a foreigner does not lodge any application for asylum and only presents an "isolated application for subsidiary protection" to a foreigners' authority.

2.3.4 National practices of granting an asylum residence permit on grounds which are not covered by Council Directive 2004/83/EC

The **Netherlands** apply a single asylum system, granting a "temporary asylum residence permit" to those judged in need of international protection and not distinguishing between, for example, refugees and beneficiaries of subsidiary protection. Consequently, this scenario is presented here as a separate Section. The national legislation of the **Netherlands** offers four supplementary national grounds for providing an asylum residence, in addition to the two grounds corresponding to refugee status, as defined by the Geneva Convention, and to subsidiary protection, as defined in Council Directive 2004/83/EC.[45] It refers to the latter two as the "a and b grounds"; the former are named the "c, d, e and f grounds."

2.3.4.1. Grounds

The four supplementary national grounds for providing a temporary asylum residence permit are:

- *The c ground – traumata policy:* Granted to third-country nationals who cannot reasonably be expected to return to their country of origin on the basis of compelling humanitarian grounds relating to the reasons for their departure from the country of origin. Three different elements can be taken into account: trauma policy; special individual compelling humanitarian grounds; and specific groups.
- *The d ground – group protection / categorical protection policy:* Granted to third-country nationals for whom return to the country of origin would be particularly harsh in connection with the general situation there. The d) ground is not a protection on individual grounds but a group/categorical protection.
- *The e ground – family member who travels later in a narrower sense:* Granted to a third-country national who, as the husband or wife or underage child, actually belongs to the family of the third-country national to whom an asylum permit has been granted on the a); b); c) or d) grounds; who has the same nationality as this third-country national and has travelled to the Netherlands at the same time or has travelled there within three months after said third-country national was granted the asylum residence permit.

[45] Article 29 of the Dutch Aliens Act contains six different provisions. Article 29 a) and b) relate to refugee status and subsidiary protection while Article 29 c); d); e) and f) cover four supplementary national grounds for providing an asylum residence permit.

- *The f ground – family member who travels later in a wider sense:* Granted to a third-country national who, as a partner or as an adult child, is dependent on the third-country national, to whom an asylum permit has been granted on the a); b); c) or d) grounds in such a way that, for that reason, they belong to the family of this third-country national, who has the same nationality as the third-country national and has travelled to the Netherlands with this third-country national at the same time or has travelled there within three months after said third-country national was granted the asylum residence permit.

An asylum residence permit granted on c) ground is based on three different elements, which are: traumata policy; special individual compelling humanitarian grounds; and specific groups.[46] Only one of these three different elements is necessary to grant asylum permit on c) ground. In addition to the designation of specific groups under the c) ground asylum permit, the national legislation also foresees the possibility to offer group protection, by granting an asylum residence permit on d) ground. This group protection policy allows a temporary asylum residence permit to be granted to asylum applicants who come from a (certain part of a) country and/or belong to a certain group population, on the basis of the situation in the country of origin.[47] Eventually, an asylum permit can also be granted under the e) and f) grounds, which guarantee protection to family members of third-country nationals who have already been granted an asylum residence permit on the a); b); c) or d) ground.

2.3.4.2. Procedures

The four additional grounds for granting a "temporary asylum residence permit" in the **Netherlands** are examined through the asylum procedure. The different steps of the asylum procedure can be summarised as follows:[48]

- Submission of the application for asylum to one of the two *Immigration and Naturalisation Service* (IND) application centres;
- Processing of the asylum claim through the '48 hour procedure': the 48 hour procedure is composed of an initial interview during which the asylum applicant discusses his/her

[46] These three elements are explained in more details in the Dutch Aliens Act Implementation Guidelines, C2/4 Aliens Act Implementation Guidelines.

[47] However, this group protection implies a preliminary assessment to determine whether the applicant is eligible for an asylum residence permit on individual grounds. It should also be noted that the Aliens Decree provides the indicators which have to be taken into account when defining the situation in the country of origin as falling under the d) ground.

[48] For further details on this particular aspect, please refer to the National Report, pp.31-35.

identity, nationality and route with an IND employee; and of a detailed interview when the asylum applicant can explain why he/she applied for asylum; when it is clear that no decision is to be expected within the 48 hour procedure, the 'standard procedure' is followed.

- Assessment of and decision on the asylum application by the IND; and
- Possibility to launch an appeal procedure in case of negative decision.

With regard to the supplementary national grounds for providing an asylum residence permit, one should note that the assessment of whether an asylum applicant is eligible, on the basis of special individual compelling humanitarian reasons for an asylum residence permit,[49] only takes place after it has been determined that the applicant is not eligible for the granting of an asylum permit on the a); b); and c) "traumata policy" grounds.

2.3.4.3. Rights

One of the main features of the single asylum system applied by the **Netherlands** is that all asylum residence permits are subject to the same rights, no matter on what ground they have been granted.

These rights include:

- Temporary residence permit granted for five years;
- Possibility to obtain a permanent asylum residence permit after five years of lawful residence on the grounds of a temporary asylum residence permit;
- Access to education, medical care, legal aid, social provisions and student grants under the same conditions as for nationals;
- Access to labour market under the same conditions as for nationals;
- Entitlement to a Dutch travel document for refugees;[50]
- Family reunification possible under the e) and f) grounds of the asylum residence permits. In case the given period of three months mentioned as a condition to be granted these kind of permits has passed, family reunification is subject to the regular family reunification policy; and

[49] The so-called c) ground asylum residence permit for "special individual compelling humanitarian ground.

[50] The term of validity of such travel document depends on the type of asylum permit that has been granted.

- Possibility to obtain the Dutch nationality after five years.[51]

2.3.4.4. Implementation

With regard to the concrete implementation of these supplementary national grounds for providing an asylum residence permit, the **Netherlands** have applied the asylum residence permit on c) ground for *specific groups* on two occasions. Since 2006, single women with Afghan nationality and Iranian homosexuals, bisexuals and transsexuals have been designated as specific groups which, for reasons other than traumata, are eligible for an asylum residence permit on c) ground.

In addition, the **Netherlands** have applied the d) ground asylum permit to asylum applicants coming from Burundi, Iraq, Democratic Republic of Congo, Somalia, Ivory Coast and Sudan. Group protection for Ivory Coast and certain parts of Sudan still applies, while group protection for the other countries has been ended. The **Netherlands** are currently considering discontinuing their group protection policy, as provided under the d) ground asylum permit, one of the main reasons being that Council Directive 2004/83/EC (Qualification Directive) already states who is entitled to protection and refers to the situation in the country of origin. Therefore, the intended element of group protection is already safeguarded by subsidiary protection.

[51] Exceptions exist to the general rule that the third-country national must have had a residence permit for five years. For example, a three-year period applies to stateless persons and to third-country nationals who have cohabited for at least three years with an unmarried Dutch person.

3. NON-EU HARMONISED PROTECTION STATUSES GRANTED IN THE MEMBER STATES

This Section presents the different non-EU harmonised protection statuses granted in the Member States, i.e. not covered by any EU acquis. They have been organised according to the following three main categories, as also outlined previously in Section 1.4 above:

- **Protection statuses consistent with the Geneva Convention and/or EU acquis** (Section 3.1). This category includes protection statuses that closely "lean" towards the concept of protection as set out in the Geneva Convention and/or EU acquis and predominantly grant protection on the basis of an assessment of the person's situation when fleeing their country of origin, often as an outcome of the asylum procedure. Their aim is usually to give asylum applicants protection, when they flee from situations not directly covered by the Geneva Convention and/or the Council Directive 2004/83/EC (Qualification Directive).
- **Additional protection statuses** (Section 3.2). These mainly include protection statuses that are centred on the principle of non-refoulement (as often the asylum applicant already finds him/herself on the territory of the Member State) as laid down in the Geneva Convention and the *European Convention on Human Rights* and/or linked to other factors, sometimes of a technical or procedural nature.
- **Other statuses and permits to stay** (Section 3.3). These include permits to stay that are granted to a wide range of third-country nationals for a variety of reasons, in most cases outside of the asylum procedure and as part of migration policies, and on grounds relating to the situation of the person at the time when (forced) removal from the EU Member State is imminent.

Table 3.1 below lists the categories and types of non-harmonised statuses identified and outlined in the subsequent Sections, as well as the Member States which grant these statuses.

Table 3.1 – Overview table of non-EU harmonised protection statuses granted in Member States

Type of national protection status	Member States granting this national form of protection
3.1 Protection statuses consistent with the Geneva Convention and/or EU acquis)	
3.1.1 National **temporary protection** statuses	Austria, Belgium, Greece, Ireland, Italy, Poland, Spain
3.1.2 Exceptional residence permit granted on the basis of an **international agreement**	Estonia, (Germany), Poland
3.1.3 National protection statuses granted on **humanitarian grounds**	Belgium, Czech Republic, Finland, Germany, Italy, Malta, Netherlands, Poland, Portugal, Slovak Republic, Spain, Sweden
3.1.4 Residence permit on humanitarian grounds granted to third-country nationals who can prove that **there is a risk to their security if they return to their country of origin to obtain a visa**	Spain, Poland
3.2 Additional protection statuses (for technical, procedural or humanitarian reasons, and / or to fully respect the non-refoulement principle)	
3.2.1 National protection statuses granted on **medical grounds**	Belgium, Czech Republic, Finland, Germany, Greece, Malta, Netherlands, Poland, Portugal, Slovak Republic, Spain, Sweden
3.2.2 National protection statuses granted for **family reasons**	Austria, Czech Republic, Germany, Greece, Netherlands, Poland, Slovak Republic, Spain, Sweden
3.2.3 National protection statuses granted to **unaccompanied minors** (UAMs)	Austria, Belgium, Finland, Hungary, Malta, Netherlands, Slovak Republic, Slovenia, Spain, United Kingdom
3.2.4 **Stateless** protection statuses	Finland, France, Greece, Hungary, Netherlands, Spain
3.2.5 **Tolerated Stay / Suspension of removal**	Austria, Belgium, Czech Republic, Finland, Germany, Hungary, Ireland, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom
3.3 Other statuses and permits to stay	
3.3.1 Protection statuses granted to **victims of trafficking**	Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Lithuania, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, United Kingdom
3.3.2 National protection statuses granted to **witnesses to criminal proceedings**	Austria, Germany, Greece, Netherlands, Poland, Spain, Sweden
3.3.3 National protection statuses granted on the ground of **"national interest"**	Czech Republic, Germany, Portugal, Spain, Poland
3.3.4 National protection statuses to **victims of specific offences**	Greece, Portugal, Spain
3.3.5 National protection statuses for **victims of environmental disasters**	Finland, Sweden
3.3.6 Permission to remain/ Residence as a consequence of the Minister using his discretionary power	Ireland, Netherlands

3.1 Protection statuses consistent with the Geneva Convention and/or EU acquis

3.1.1 National temporary protection

3.1.1.1. Which Member States apply this non-EU harmonised protection status?

Austria, **Greece**, **Ireland**, **Italy, Poland** and **Spain** grant national temporary protection statuses. As illustrated in **Table 2** in the Annex, the names of the protection statuses granted in these Member States are mostly similar (*temporary protection* or *national temporary protection*). This type of status is regulated in the *Residence Act* in **Austria** and in specific laws in **Greece**, **Italy** and **Spain**.[52] Before the adoption of Council Directive 2001/55/EC (Temporary Protection Directive), **Belgium** granted several times national temporary protection, on an ad-hoc basis, through the adoption of Ministerial circulars.

3.1.1.2. Grounds

The **grounds** for national temporary protection can be similar to those indicated in *Council Directive 2001/55/EC* (Temporary Protection Directive), but are not restricted to those grounds. **Austria, Belgium**, **Greece, Italy** and **Spain** grant or have granted this protection status in cases of mass influx or imminent mass influx of persons who are unable to return to their country of origin due to conflicts (**Austria, Italy**), or other circumstances threatening the safety of entire population groups (**Austria**), internal turmoil (**Belgium**), natural disasters (**Italy**), human rights violations (**Spain**), or other "*reasons of force majeure"* (**Greece**) in third countries. While in need of immediate protection, these persons are not considered as refugees in the sense of the Geneva Convention (**Greece**, **Italy**). As outlined previously in Section 2.1, *Council Directive 2001/55/EC* (Temporary Protection Directive), requires the existence of a mass influx of displaced persons to be established by a Council Decision,[53] while for national temporary protection, Member States foresee the introduction of a temporary protection measure, and the displaced persons or groups that it refers to, via a Circular and/or special Minister's Decree (in **Austria**, **Belgium** and **Italy**).

[52] **Greece**: Temporary protection under article 25 para 6 of law 1975/1991 in cases of mass influx (as amended by article 2 of law 2452/1996); **Italy**: Article 20 of the Legislative Decree no. 286 of 25/07/98, "special reception measures in case of unordinary events", and by the Legislative Decree no. 85 of 07/04/2003; **Spain**: Royal Decree 1325/2003 of 24 October on the temporary protection system in the event of a mass influx of displaced persons. (BOE of 25 October 2003).

[53] Art 5.3 of the Directive states that the Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions of this Directive

In **Ireland**, legislation provides that "a programme refugee" is a person to whom leave to enter and remain in the State for temporary protection or resettlement, as part of a group of persons, has been given by the Government whether or not such person is a refugee.

3.1.1.3. Procedures

In **Austria**, the procedures are regulated in the *Residence Act*: the Federal Government, in agreement with the *Executive Committee of the National Council*, may grant temporary right of residence to displaced persons. A Ministerial order has to regulate the entry of the persons defined and the duration of the residence. If the circumstances prolong it may be stipulated in the Ministerial order that specific categories of persons enjoying temporary residence may submit an application for the granting of a settlement permit. In **Italy** and **Spain**, this kind of protection is provided through an *ad hoc decision of the Government* from time to time stipulating the applicable procedures and rights. Similarly, in **Poland**, persons fleeing Kosovo and evacuated by the Polish government from the territory of Macedonia and Albania were issued temporary residence cards. In this case, a resolution was passed by the Polish government to also provide financial resources for their stay. A standard and detailed procedure for granting national temporary protection had not been established (yet) in **Belgium** and **Greece**.

It seems that, in most of the Member States, this protection status is granted on discretionary grounds, i.e. the assessment of the need for protection is not assessed on fixed judicial criteria, and that the procedure for implementing this status is / should only be established when the need arises. The set up of a procedure on an as needed basis would again be in line with the *Council Directive 2001/55/EC* (Temporary Protection Directive), which provides for a procedure of exceptional character in order to relieve the pressure from the national asylum system.

3.1.1.4. Rights

Some Member States stressed the discrepancy in the level of rights provided to this national form of temporary protection. In **Greece**, for example, there are no legislative provisions setting out the rights granted to persons concerned. In **Ireland**, Programme Refugees are entitled to the same rights and privileges as refugees, but are not expressly entitled to apply for family reunification. The relevant government department has nonetheless accepted and processed such applications. In **Poland**, children and youths were given the opportunity to learn their native language and attend local schools. An integration programme was financed

by the UNHCR covering persons with special needs. In **Spain**, the rights are regulated by *Royal Decree*, including the conditions for obtaining a work and residence permit and the granting of temporal protection to family members.

3.1.1.5. Implementation

In practice, it seems that these forms of temporary protection statuses were applied more regularly during the nineties, i.e. before the adoption and transposition of the Council Directive 2001/55/EC (Temporary Protection Directive), and are rarer nowadays. Furthermore, it seems that, when such statuses were granted in the Member States in the past, these were linked to geographic proximity to the EU (for example, former Yugoslavia), or were based on historical/cultural links with the EU (for example, **Belgium** and Rwanda). To illustrate this, in **Belgium**, national temporary protection status has been granted to:

- Displaced persons of the former Republic of Yugoslavia (1992);
- Nationals of Rwanda (1994);
- Displaced persons from Bosnia-Herzegovina (1997); and
- Displaced persons from Kosovo (1999).

In **Italy**, national temporary protection status has been granted to:

- Somali citizens devoid of a refugee status (1992);
- Displaced persons of the Republics of former Yugoslavia (1992); and
- Non-EU citizens coming from Albania (1997).

Ireland, Poland and **Spain** have also granted temporary protection to persons from Bosnia-Herzegovina and Kosovo.

Conversely, in **Austria** the provisions concerning temporary protection status has not (yet) been applied, and for **Greece,** its national form of temporary protection status has never been granted.

3.1.1.6. Standard of protection

Overall, it seems that the standard of protection provided through these national temporary protection statuses may be lower than that granted through *Council Directive 2001/55/EC* (Temporary Protection Directive). The reason is that the procedure to be followed to grant this non-EU harmonised protection status, as well as the level of rights granted to persons

concerned, are, in several Member States, not provided for in legislation and/or not elaborated.

3.1.2 Exceptional residence permit granted on the basis of an international agreement

3.1.2.1. Which Member States apply this non-EU harmonised protection status?

Only **Estonia** has foreseen the possibility in the past to grant exceptional residence permits for people escaping conflicts. In **Germany**, its *Residence Act* foresees the granting of protection in cases where an international treaty gives rise to an obligation to admit individual foreigners. At present, however, no such treaties exist. Following the armed conflict in Bosnia and Herzegovina in 1992, **Poland** signed a bilateral agreement with this State to receive 900 persons, mainly children, youths and their guardians.

3.1.2.2. Grounds

The official decision to grant such a permit only occurred once in **Estonia** and was related to the Georgian-Russian conflict in August 2008. At that time, it decided to grant Georgian nationals, fleeing the conflict, exceptionally a residence permit on the basis of an international agreement.

3.1.2.3. Procedures, rights and implementation

The procedure and rights granted were the same as for other aliens applying for a residence permit on the basis of an international agreement in **Estonia**. There were no favourable rules for Georgian citizens. In **Poland**, persons coming from Bosnia and Herzegovina were granted a Polish travel document under an extraordinary procedure authorising them to cross the border.

3.1.2.4. Standard of protection

This extraordinary intervention could be considered as similar to national forms of temporary protection granted in other Member States (see Section 3.1 above).

3.1.3 Protection statuses granted on humanitarian grounds

More detailed information on the modalities on the form of protection granted in each Member State may be found in **Table 3** in the Annex. Here, an overview of the protection statuses granted on humanitarian grounds in the Member States is presented.

3.1.3.1. Which Member States apply this non-EU harmonised protection status?

In twelve Member States (**Belgium,**[54] **Czech Republic**,[55] **Finland**,[56] **Germany**,[57] **Ireland**,[58] **Italy**,[59] **Malta**,[60] **Poland**[61]**, Portugal**,[62] **Slovak Republic**,[63] **Spain**[64] and **Sweden**[65]) alternative forms of protection on humanitarian grounds are in place.[66] As to the type of legislation that regulates the granting of the protection statuses and/or residence permits on humanitarian grounds, this ranges from legislation on alien affairs in **Finland** (*Aliens Act*), **Poland** (*Act on Foreigners* and *Act on granting protection to foreigners within the territory of the Republic of Poland*), **Portugal** (*Foreigners law*), **Slovak Republic** (*Act on Asylum*) and **Sweden** (*Aliens Act*), to acts on the residence of third-country nationals in the **Czech Republic** (*Act on Residence of Foreigners*), **Germany** (*Residence Act*) and **Italy** (*Consolidated Text on Immigration*). In **Spain**, the status is regulated in both Asylum and Immigration Law. In **Belgium**, there is no legislative basis underpinning the administrative practice of the humanitarian clause or the humanitarian visa. With regard to granting a

---

[54] The following non-EU harmonised protection statuses are granted on humanitarian grounds in **Belgium**: *humanitarian clause; humanitarian visa; residence permit on humanitarian grounds.*

[55] The following non-EU harmonised protection statuses are granted on humanitarian grounds in the **Czech Republic**: permanent residence permit on "humanitarian" grounds; permanent residence permit for other Reasons Worthy of Special Consideration; permanent residence granted after termination of the proceedings for grant of international protection.

[56] The following non-EU harmonised protection statuses are granted on humanitarian grounds in **Finland**: *humanitarian protection*

[57] The following non-EU harmonised protection statuses can be granted on humanitarian grounds in **Germany**: *Admission from Abroad, Temporary Residence, Residence to Persons who are under an enforceable Obligation to leave the Country and Temporary suspension of removal (Duldung).*

[58] The following non-EU harmonised protection statuses are granted on humanitarian grounds in **Ireland**: *Temporary leave to remain.* Here, humanitarian considerations, as well as other matters, must be considered in determining whether someone will be deported under Section 3 of the Immigration Act, 1999.

[59] The following non-EU harmonised protection statuses are granted on humanitarian grounds in **Italy**: *permit for humanitarian reasons.*

[60] The following non-EU harmonised protection statuses are granted on humanitarian grounds in **Malta**: *temporary humanitarian protection.*

[61] The following non-EU harmonised protection statuses may be granted on humanitarian grounds in **Poland**: *permit for tolerated stay, Residence visa (uniform short-stay Schengen visa and Polish long-stay national visa) issued for the purpose of arrival for the humanitarian reasons, Residence permit for a fixed period issued to a foreigner if an exceptional personal situation that requires the presence of a foreigner on the territory of the Republic of Poland has occurred,*

[62] The following non-EU harmonised protection statuses are granted on humanitarian grounds in **Portugal**: *resident permits waiving the need of a residence visa in exceptional circumstances; An extraordinary regime for granting residence permits, granted, among others reasons, on the basis of humanitarian interest; special visa for the purpose of entry and temporary stay on the territory granted for humanitarian reasons.*

[63] The following non-EU harmonised protection statuses are granted on humanitarian grounds in the **Slovak Republic**: *Asylum granted on humanitarian grounds*.

[64] The following non-EU harmonised protection statuses are granted on humanitarian grounds in **Spain**: *protection proposed by the Inter-Ministerial Commission of Asylum and Refuge on humanitarian grounds; exceptional residence permit on humanitarian grounds*.

[65] The following non-EU harmonised protection statuses are granted on humanitarian grounds in **Sweden**: *humanitarian protection.*

[66] The **Netherlands** grants asylum on related grounds, as discussed in Section 2.3.4.1.

residence permit on humanitarian grounds, its *Aliens Act* foresees procedural legislation but there is no legislation defining the exact humanitarian grounds, which means that in essence decision-making on such applications is discretionary. In **Malta**, specific laws regulating the granting of these statuses and/or residence permits do not exist.

3.1.3.2. Grounds

These non-EU harmonised protection statuses are predominantly granted to a person whose return to his or her country of origin does not occur due to "humanitarian" (**Czech Republic**, **Finland, Germany**, **Italy**, **Ireland**, **Malta**, **Poland, Portugal**, **Slovak Republic**, **Spain**), "exceptional" (**Poland**, **Spain**, **Sweden**), "distressing" (**Sweden**), "pressing" (**Germany**) or other reasons.

As to what qualifies as "humanitarian", "exceptional", "distressing", "compassionate", "pressing", this can be broadly divided into two groups.

With regard to the first group, in **Finland** (*humanitarian protection*), **Italy** (*protection proposed by the Territorial Commission for Asylum Right on humanitarian grounds*) and **Spain** (*protection proposed by the Inter-Ministerial Commission of Asylum and Refuge on humanitarian grounds*), the grounds for granting protection relates to the state of the applicant's country of origin when fleeing, or having to return to that country. For example, **Spain** identifies war or widespread violence, **Finland** armed conflict and "a troubled human rights situation," and **Italy** situations in the country of origin preventing a person's return. Additionally, **Finland** refers to an environmental catastrophe (outlined further in Section 3.3.4).

While this first group of national protection statuses can be considered as leaning towards the concept of protection laid down in the Geneva Convention and/or EU acquis, the second group of protection statuses, granted on the grounds listed below, can ultimately be considered as category two and three protection statuses (see Section 1.4). Here the grounds for granting protection for humanitarian reasons include:

- Health/ (fatal) illnesses/ (severe) disabilities, whose condition can be improved in the Member State if adequate care is not possible to acquire in their country of origin

(**Portugal**[67], **Spain**, **Sweden**); medical grounds (**Germany**, **Malta**); illness (**Czech Republic, Slovak Republic**); necessity to carry out a medical operation (**Germany, Poland**[68]) and/or in case where temporary care is provided by the third-country national to family members who are ill (**Germany, Poland**[69]). These have been further categorised under protection statuses granted on medical grounds discussed in Section 3.2.1 below.

- The risk of negative socio-psychological consequences if the person is forced to return to the country of origin (e.g. trauma for torture-victims; social rejection of victims of human trafficking) (**Sweden**); Post-Traumatic Stress Disorder (**Slovak Republic**).
- Risk to their security on return to their country in order to obtain a visa (**Spain**). This is discussed in Section 3.1.4.
- Victims of trafficking (**Portugal**[70]**, Spain**). This is discussed in Section 3.3.1 .
- Children/minors: children whose development will be gravely endangered after an order of expulsion (**Sweden**); applicant is a minor (**Malta**[71]); when unaccompanied minor reaches legal age (**Czech Republic**).
- Dependants (**Czech Republic**, **Spain**); applicant is the spouse of, or minor child of, a recognised refugee (**Czech Republic**) or has another family tie with a citizen of the Member State (**Czech Republic**). These have been categorised, and hence discussed under, protection statuses granted for "family reasons" discussed in Section 3.2.2 below.
- Old age (**Czech Republic, Slovak Republic, Spain**).
- Victims of gender-based or domestic violence; victims of offences with the aggravating circumstances of racism, anti-Semitism, or other types of discrimination (**Spain**),

[67] This applies to *Residence permit waiving the need for a residence visa issued to third-country nationals or stateless individuals who suffer from an illness that requires prolonged medical assistance in Portugal which prevents them from returning to their country, in order to avoid risks for the health of the individual in question*.

[68] This applies to *Residence visa issued for the purpose of arrival for humanitarian reasons* and *permit for tolerated stay*.

[69] This applies to Residence permit for a fixed period of time issued to a foreigner if an exceptional personal situation that requires the presence of a foreigner on the territory of Poland has occurred as well as to permit for tolerated stay.

[70] This applies to *Residence permit waiving the need for a residence visa issued to third-country nationals or stateless individuals who have benefitted from a residence permit under the terms of the legal regime regarding protection of victims of penal infractions linked to human trafficking or aiding and abetting illegal immigration.*

[71] This applies to *Temporary Humanitarian protection.*

victims of offences in terms of labour relations (**Portugal**)[72]; these have been further categorised as residence permits granted to victims of specific offences discussed in Section 3.3.4 below.

- Length of the proceedings for considering the application for international protection (**Czech Republic**[73]).
- Humanity principle (admission from abroad for pressing humanitarian reasons - **Germany**);[74] humanitarian considerations (**Ireland**).[75]
- Conclusion of an ongoing course of schooling, professional training or study course (**Germany**).
- Direct imminence of a marriage with a national or with a foreigner who is entitled to residence (**Germany**).
- Settlement of important personal affairs, such as attendance at a funeral or in judicial proceedings (**Germany**).
- Individuals who have ceased to benefit from the right of asylum, owing to the fact that the reasons for which they were granted the said protection no longer exist (**Portugal**).[76]

[72] This applies to *Residence permit waiving the need for a residence visa issued to third-country nationals or stateless individuals that are victims of very serious penal or administrative offence in terms of labour relations, translating into conditions of a lack of social protection, exploitation in terms of wages and working hours*.

[73] In Czech Republic, the length of proceedings must extend over more than two years and has to be combined with other conditions such as old age, minor, dependent, father/mother of minor, etc.

[74] An admission from abroad for pressing humanitarian reasons presupposes that the foreigner is in a particular emergency situation that urgently calls for intervention and justifies admitting this particular foreigner as opposed to other persons who are in a comparable situation. Here, the admission of the person in search of protection must, in each individual concrete case, be something dictated by humanity.

[75] Humanitarian considerations relate to issues advanced by the person seeking leave to remain, and relate to personal or family issues in **Ireland**, and not to quality of life issues in the country of origin.

[76] The third-country national or stateless person could seize to benefit from the asylum status if s/he (art. 41º (1) of *Asylum Law*) : a) Voluntarily decides to resort again to the protection of the country of his/her nationality; b) Having lost his/her nationality, voluntarily recovers it; c) Acquires a new nationality and becomes protected by the country of his/her new nationality; d) Voluntarily returns to the country he/she abandoned or stayed away due to be afraid of being persecuted; e) Can not continue to refuse resorting to the protection of his/her home country, as the circumstances which resulted in being recognised as a refugee ceased to exist; f) In the case of a person without any nationality who is in conditions to return to the country where he/she has its usual residence, as the circumstances that made him/her to be recognized as a refugee, ceased to exist; g) Expressly waives the right of asylum.

3.1.3.3. Procedures

Six Member States (**Finland, Italy**, **Malta**, **Slovak Republic**, **Spain** and **Sweden**) grant these protection statuses **within the asylum procedure**. This is the case in **Finland** (*humanitarian protection/complementary protection*), **Italy** (*protection proposed by the Territorial Commission for Asylum Right on humanitarian grounds*), **Malta** (*temporary humanitarian protection*), **Slovak Republic** (*Asylum granted on humanitarian grounds*), **Spain** (*protection proposed by the Inter-Ministerial Commission of Asylum and Refuge on humanitarian grounds*) and **Sweden** (*humanitarian protection*). In **Finland, Italy**, **Malta**, **Spain** and **Sweden**, the investigation as to whether a person qualifies for protection on humanitarian grounds takes place (often immediately and automatically) after it has been ascertained that the requirements for granting refugee status or subsidiary protection are not met. **Sweden**, for example, stipulates the need for an overall assessment of the alien's situation to determine whether "the circumstances are so exceptionally distressing that he or she should be allowed to stay in" the Member State.

In some Member States, protection or a residence permit on humanitarian grounds is investigated and/or decided upon **outside of the asylum procedure** (**Belgium**, **Czech Republic**, **Germany**, **Italy, Ireland, Portugal** and **Spain**). For example, in the **Czech Republic**, applications for one of the three types of permanent residence permit on humanitarian grounds[77] have to be filed at an Embassy abroad or at the *Ministry of Interior*. To apply within the Member State, the applicant has to be in possession of a temporary residence permit (and spouse, minor of recognised refugee), or long-term residence permit or visa for stay longer than 90 days. Officials of the *Department for Asylum and Migration Policy of the Ministry of Interior* are responsible for the processing of the application.

In **Germany**, admission from abroad for pressing humanitarian reasons, as well as the other forms of residence for humanitarian reasons mentioned in this Section, are investigated outside the asylum procedure. In the case of admission from abroad, in order to be eligible, third-country nationals must still be located in a third country. Applications must be submitted to diplomatic missions of the *Foreign Office*. As for applicants for temporary residence permits granted for humanitarian and/or personal reasons, foreigners' authorities are responsible for drawing up a prognosis as to whether the humanitarian or personal reasons

[77] (1) Permanent residence permit on what is referred to as "humanitarian" grounds; (2) Permanent residence permit for other Reasons Worthy of Special Consideration; (3) Permanent residence permit granted after termination of the proceedings for grant of international protection.

present in the case genuinely call for a temporary residence permit. With regard to the temporary suspension of removal (so called "Duldung" status) for humanitarian reasons, the assessment on whether the removal order should be temporarily suspended is carried out by the *Supreme Lander Authorities* or by *local Foreigners' Authorities.*

In **Ireland**, certain persons, including those formally refused a declaration of refugee status, receive a notice proposing their removal and informing them that the *Minister for Justice and Law Reform* will consider representations as to why a Deportation Order should not be made. The granting of "temporary leave to remain" in the Member State is at the Minister's discretion. Grantees are not informed of the reasons, whether 'humanitarian considerations' or otherwise, for granting leave to remain.

In **Italy**, "humanitarian protection" is not considered as a status, i.e. a subjective right assigned to the person asking for protection, but as a simple residence authorisation for humanitarian reasons. The *Board of Examiners* (the so-called Territorial Commissions) may grant international protection, reject the application or ask the police commissioner to issue a residence permit on humanitarian grounds.[78] In this sense, it lies outside, but at same time is strictly linked to, the asylum procedure.

In **Portugal**, "residence permits issued for reasons of humanitarian interests to third-country nationals who do not comply with the different grounds stipulated in the legal regime"[79] are examined and granted on the initiative of the *Minister for the Internal Administration* or by means of a proposal by the *National Director of the Aliens and Border Service*. As for the special visa issued for the purpose of entry and temporary stay in the country, on the basis of humanitarian reasons to third-country nationals who do not meet the usual legal

[78] The recommendation of the Territorial Commission is necessary for granting the humanitarian protection, but not sufficient as it must be followed by a decision from the police commissioner.

[79] Examples of those benefiting from the extraordinary regime for humanitarian reasons in practice are: illegally-staying persons, usually having arrived in **Portugal** as a very young child, in the framework (or soon after) the independence of the former Portuguese colonies in Africa (Angola, Guinea-Bissau, Cape Verde, S. Tome and Mozambique); third-country nationals of minor age, unaccompanied or not; situations of legal or *de facto* difficulty/impossibility of removal from the country; family reunification and illness; third-country nationals who do not meet the requirements defined in other legal frameworks, in particular in what concerns subsistence means requirements.

requirement,[80] this is granted at border posts and recognised by a dispatch issued by the Portuguese *Ministry for Internal Administration*.[81]

In **Spain**, next to "protection proposed by the Inter-Ministerial Commission of Asylum and Refuge on humanitarian grounds," which is investigated within the asylum procedure, a "exceptional residence permit on humanitarian grounds" can also be granted outside the asylum procedure, i.e. as foreseen in national immigration law.

3.1.3.4. Rights

In relation to the rights that third-country nationals benefiting from this status are entitled to, they differ between Member States:

- Access to education is granted in **Belgium, Czech Republic, Germany, Italy, Portugal, Slovak Republic, Spain** and **Sweden**.
- Access to health care is similar to that available to citizens of the Member State in the **Czech Republic**, **Finland, Germany, Portugal**, **Slovak Republic, Spain** and **Sweden**. In **Malta**, it is limited to core benefits.
- Access to social welfare is provided for in **Finland, Germany, Malta**, **Portugal**, **Slovak Republic, Spain** and **Sweden**. Again for **Malta**, it is limited to core benefits.
- Access to accommodation provided by the State is permitted in **Finland**, Italy and **Sweden**.
- Access to employment is not dependent on national labour market considerations in **Finland, Portugal, Spain** and **Sweden**; may be limited due labour market considerations in **Germany**[82] and **Malta**; and similar to citizens of the Member State in the **Czech Republic**, **Italy** and **Slovak Republic**.

[80] For example, those affected by sudden, severe illness and/or require medical assistance; illegal passengers on ships; shipwreck victims; and undocumented asylum seekers.

[81] Holders of this special visa who wish to remain on the Portuguese territory for a period longer than the stay that was initially authorised can apply for an extension of their stay for a period up to 60 days. If an application for a residence permit is pending or in duly justified cases, the visa can be extended beyond this limit.

[82] In Germany, third-country nationals admitted from abroad and those who are granted temporary residence permit for pressing humanitarian reasons are granted unrestricted access to the labour market after 3 years at the latest. As for third-country nationals who benefit from temporary suspension of removal, they only have subordinate access to the labour market after a one-year waiting period. Unrestricted access to the labour market will only be granted after 4 years, unless residence is abusive.

- There is no right to family reunification in the **Slovak Republic**. Family reunification can be granted in **Belgium**[83], **Czech Republic**, **Germany** (albeit limited), **Portugal** and **Sweden**.
- Right to a travel document is granted in **Finland**, **Malta**[84] and the **Slovak Republic**.
- Right to settlement permit after 7 years is provided for in **Germany**[85] and a long-term residence status after five years of uninterrupted, legal stay in **Portugal**.
- In **Belgium**, rights vary depending on the individual's personal circumstances, the procedure followed and the phase of the procedure.
- In **Ireland**, rights are discretionary and vary dependent on an individual's personal circumstances and the prevailing circumstances in the State, including economic factors.

3.1.3.5. Duration of stay

As to the **length of authorisation to reside**, the duration can be of short-term (e.g. **Ireland, Italy**, **Malta**: one year, renewable; **Portugal**: one year, renewable for successive periods of two years) or long-term (e.g. **Czech Republic**, unlimited but identity card needs to be renewed after 10 years; **Slovak Republic**, permanent residence permit of 5 years after which it can be renewed for an indefinite period of time). In some cases (**Germany** – temporary residence permit), the duration is fixed according to the nature of the humanitarian and/or personal reasons.[86] In **Sweden**, a permanent residence permit is granted.

3.1.4 Residence permit on humanitarian grounds granted to third-country nationals who can prove that there is a risk to their security if they return to their country of origin to obtain a visa

More detailed information on the modalities on the form of protection granted in each Member State may be found in **Table 4** in the Annex. Here, an overview of this type of residence permits granted in the Member States is presented.

---

[83] This only concerns third-country national granted a residence permit on humanitarian grounds.

[84] A person granted national protection by the Maltese authorities and requesting a travel document must provide justification as to the need for travel prior to such a request being accepted.

[85] This applies to third-country nationals who are granted temporary residence permit and/or are admitted from abroad for pressing humanitarian reasons.

[86] Foreigners' authorities have to assess whether the pressing humanitarian or personal reasons necessitate or not the "continued" residence of the third-country national within **Germany**.

3.1.4.1. Which Member States apply this non-EU harmonised protection status?

In addition to the temporary residence permits granted to victims of specific offences, **Spain** foresees the possibility to grant an *exception residence permit on humanitarian grounds* to third-country nationals who can prove that returning to their country of origin to request a visa will put their security and/or their family's security at risk.[87] The status is only granted to third-country nationals who meet all other requirements for obtaining a temporary residence permit or a work and residence permit. In **Poland**, a permit for tolerated stay may also be granted to a third-country national who can prove that returning to their country of origin to request a visa will put their security and/or their family's security at risk. This status may be issued both within or outside the asylum procedure.

3.1.4.2. Procedures

The procedure to be followed lies **outside the asylum procedure**.

3.1.4.3. Rights

In relation to the rights that third-country nationals benefiting from this status are entitled to, provisions in Poland grants:

- Access to free education until completing post-gymnasium school (or until reaching the age of 18). Same access to further education in public post-secondary schools, public teacher training centres and other public institutions as for nationals and possibility to apply for higher education studies;
- Unlimited access to labour market and entitlement to unemployment benefits;
- Access to social assistance[88];
- Same access to health care as nationals;
- National and/or temporary travel document, if required;
- Permit to settle obtain after 10 years of uninterrupted residence in Poland.

3.1.4.4. Duration of stay

In **Poland** and **Spain**, the residence permit is of temporary nature, valid for up to one year and renewable.

---

[87] The **Netherlands** grants asylum on related grounds (i.e. c-ground), as discussed in Section 2.3.4.1.

[88] Social assistance may be granted for the following reasons: poverty, unemployment, chronic or severe illness, domestic violence, sudden and unpredictable situations (a natural/ecological disaster, a crisis situation, a fortuitous event), and others.

3.1.4.5. Standard of protection

These residence permits are granted outside of the asylum procedure and, therefore, cannot be considered as offering a protection in line with the Geneva Convention and EU acquis. Furthermore, these residence permits constitute a part of Spain's national migration policies.

3.2 Additional protection statuses

3.2.1 Protection statuses granted on medical grounds

More detailed information on the modalities on the form of protection granted in each Member State may be found in **Table 5** in the Annex. Here, an overview of the protection statuses granted on medical grounds in the Member States is presented.

3.2.1.1. Which Member States apply this non-EU harmonised protection status?

Protection statuses on medical grounds are granted in twelve Member States (**Belgium**,[89] **Czech Republic**,[90] **Finland**,[91] **Germany**,[92] **Greece**,[93] **Malta**,[94] **Netherlands**,[95] **Poland,**[96] **Portugal**,[97] **Slovak Republic**,[98] **Spain**[99] and **Sweden**[100]). In eight of these Member States

[89] The following non-EU harmonised protection statuses are granted on medical grounds in **Belgium**: *residence status on medical grounds.*

[90] The following non-EU harmonised protection statuses are granted on medical grounds in the **Czech Republic**: *residence granted for other reasons worthy of special consideration.*

[91] The following non-EU harmonised protection statuses are granted on medical grounds in **Finland**: *residence permit on compassionate grounds.*

[92] The following non-EU harmonised protection statuses can be granted on medical grounds in **Germany**: Subsidiary protection, *Temporary residence* permit [...] *for pressing humanitarian or personal reasons*, exceptional granting of residence to persons who are under an enforceable obligation to leave the country. Even other forms of national protection, such as the *temporary suspension of removal (Duldung)* can be granted for medical reasons. This is discussed in the Section relating to medical reasons.

[93] The following non-EU harmonised protection statuses are granted on medical grounds in **Greece**: *residence on humanitarian grounds.*

[94] The following non-EU harmonised protection statuses are granted on medical grounds in **Malta**: *temporary humanitarian protection.*

[95] The following non-EU harmonised protection statuses are granted on medical grounds in the **Netherlands**: *Residence in connection with medical treatment or medical emergency; temporary residence permit for third –country nationals who are unable to leave the Netherlands through no fault of their own (one of the sub-categories being: third-country nationals who cannot leave for medical reasons) and withholding of repatriation.*

[96] The following non-EU harmonised protection statuses may be granted on medical grounds in **Poland:** *Residence visa (uniform short-stay Schengen visa and Polish long-stay national visa) issued for the purpose of arrival for humanitarian reasons and Residence permit for a fixed period issued to a foreigner if an exceptional personal situation that requires the presence of the foreigner on the territory of Poland has occurred. Even other forms of national protection, such as permit for tolerated stay can be granted for medical reasons.*

[97] The following non-EU harmonised protection statuses are granted on medical grounds in **Portugal**: *consular temporary stay visa resident permits waiving the need of a residence visa in exceptional circumstances; residence permits waiving the need of a residence visa in exceptional circumstances.*

(**Belgium**, **Finland**, **Greece**, **Netherlands**, **Poland**, **Portugal**, **Spain** and **Sweden**), the granting of residence permits on such grounds is defined in the national *Aliens or Foreigners' Law/Act*; in the **Slovak Republic**, the granting of protection on medical grounds is laid down in asylum law.

3.2.1.2. Grounds

The **grounds** are similar in most Member States (**Belgium**, **Germany**, **Greece**, **Netherlands**, **Portugal**, **Spain**, **Sweden**), i.e. a third-country national should not be returned to his or her country of origin or habitual residence because:

1) The third-country national suffers from a serious illness or health problems (**Belgium**,[101] **Finland**, **Germany**, **Greece**, **Poland**,[102] **Portugal**, **Spain**, **Sweden**);

2) The third-country national is in need of specialised healthcare or treatment (**Belgium**, **Greece**, **Netherlands**,[103] **Poland**,[104] **Portugal**, **Spain**, **Sweden**), as interrupting or not receiving such care would entail a serious risk to their health, physical integrity or life (**Belgium**, **Finland**, **Germany**, **Netherlands**,[105] **Spain**);

3) This specialised healthcare or treatment cannot be accessed in the country of origin or habitual residence (**Belgium**, **Finland, Germany**, **Netherlands**,[106] **Portugal**, **Spain**, **Sweden**);

4) An obligation to return cannot be enforced because the third-country national is not capable to travel due to his/her health condition (**Germany, Netherlands,**[107] **Sweden**).

---

[98] The following non-EU harmonised protection statuses are granted on medical grounds in the **Slovak Republic**: *asylum granted on humanitarian grounds.* Even other forms of national protection, such as the *tolerated stay status* can be granted for medical reasons.

[99] The following non-EU harmonised protection statuses are granted on medical grounds in **Spain**: *exceptional residence permit on humanitarian grounds (medical reasons).*

[100] The following non-EU harmonised protection statuses are granted on medical grounds in **Sweden**: *impediment to enforcement; humanitarian protection*.

[101] According to the Belgian government, foreign nationals suffering from a serious illness cannot be removed from the territory if their situation fulfils the conditions which have been elaborated through the jurisprudence of the European Court of Human Rights, more particular on article 3 ECHR.

[102] This situation refers to permit for tolerated stay and residence permit issued to a foreigner if an exceptional personal situation that requires the presence of a foreigner on the territory of Poland has occurred.

[103] This situation refers to residence permit granted in connection with medical treatment.

[104] This situation refers to residence visa issued for the purpose of arrival for humanitarian reasons.

[105] This situation refers to residence permit granted in connection with medical emergency.

[106] This situation also corresponds to the residence permit granted in connection with medical emergency.

[107] This situation corresponds to the so-called *Withholding of repatriation* and to temporary residence permit granted to third-country nationals who are unable to leave the country because of no fault of their own *for medical reasons.*

In the **Czech Republic**, **Finland**,[108] **Malta** and the **Slovak Republic**, medical grounds for granting protection seem to be more loosely defined and not to have been translated into fixed judicial criteria. For example, the **Czech Republic** refers to *"various humanitarian reasons such as illness, old age [...]"*.

3.2.1.3. Procedures

Four of these protection statuses are granted **within the asylum procedure**. This is the case in **Finland, Malta**, **Slovak Republic** and **Sweden**.[109] For example, in the **Slovak Republic,** grounds for granting asylum are examined first, and then those for granting subsidiary protection. In exceptional cases, a residence permit on compassionate grounds may also be granted outside of the asylum procedure in **Finland**. Protection on the basis of medical grounds appears to be granted **outside of the asylum procedure** in **Belgium**, **Czech Republic**, **Greece**, **Netherlands, Portugal, Spain** and **Sweden**.[110]

In those Member States that grant residence (permits) on medical grounds outside the asylum procedure, both the illness suffered by the third-country national, as well as his or her need for specialised healthcare or treatment are to be proven through medical records, a medical certificate and/or a statement from the official or officially accredited healthcare establishment (**Belgium**, **Greece**, **Portugal**, **Spain**, **Sweden**). As to how to ascertain that adequate treatment cannot be accessed in the country of origin, the examination is done in **Belgium** by the *Immigration Department* and occurs on an individual case-by-case basis.

In the **Netherlands**, before residency is permitted, the three following conditions have to be fulfilled: the Netherlands must be the designated country for the medical treatment; the medical treatment must be essential; and the financing of medical treatment must be properly arranged. While the granting of residence permit on medical grounds takes place outside the asylum procedure, rejected asylum applicants can also be granted residence permits or authorisation to stay on such grounds.[111]

---

[108] **Finland** made reference to internal diseases such as diabetes, coronary disease, and cancer.

[109] This situation refers to the granting of humanitarian protection.

[110] This situation refers to impediment to enforcement.

[111] In the **Netherlands**, third-country nationals can apply for regular residence permit in connection with undergoing treatment. If an asylum seeker wants residency in the Netherlands in connection with medical treatment, he/she can submit a relevant application for a regular residence permit after objection of his/her application for asylum. The treatment of this regular application will not take into account any asylum aspects. , If a failed asylum seeker believes that he/she cannot be repatriated in connection with his/her state of health, he/she can invoke the withholding of repatriation for medical reasons, as defined by Article 64 of

In **Germany** and **Poland**, protection on medical grounds can often be granted outside the asylum procedure or after an asylum application has been rejected. However, health problems are also taken into account in asylum procedures, for example, as part of the assessment whether subsidiary protection is to be granted.

Additional requirements put forward are, amongst others, a prior residence permit in **Greece**, a valid passport or travel document with a minimum validity period of four months in **Spain**, and a visa in **Portugal.**

3.2.1.4. Rights

In relation to the **rights** that third-country nationals benefiting from this status are entitled to, these vary among Member States:

- Access to education is granted in **Belgium**, **Malta**, **Netherlands**,[112] **Poland**, **Portugal**,[113] the **Slovak Republic** and **Sweden**.
- Access to medical care, either as accorded to nationals of the Member State or similar to that allocated to them, is provided in **Belgium**, **Finland**, **Germany**, **Greece, Netherlands**[114]**, Portugal, Slovak Republic** and **Sweden**. In **Malta**, medical care is limited to core benefits. In **Poland**, beneficiaries have access to the public health care system if they have an insurance policy or pay for the services.
- Access to the labour market is granted if a third-country national has a work permit in **Belgium** and **Malta**, whilst a work permit is not required in **Finland**, **Portugal**, **Slovak Republic**, **Spain** and **Sweden**. In **Belgium**, **Finland**, **Portugal** and **Spain**, access to employment is granted independent of the national labour market situation. In **Greece** and **Malta**, national labour market considerations are taken into account. In

---

the *Aliens Act*, without having to submit an application for a regular residence permit for medical reasons. In addition, automatic extension takes place if a third-country national, who application for admission has be rejected, can demonstrate that he/she is unable to leave the Netherlands through no fault of his/her own, for medical reasons.

[112] This right is attached to *Residence in connection with medical treatment or medical emergency and temporary residence permit for third –country nationals who are unable to leave the Netherlands through no fault of their own (one of the sub-categories being: third-country nationals who cannot leave for medical reasons*).

[113] This right is attached to *residence permits waiving the need of a residence visa in exceptional circumstances.*

[114] *This right is attached to Residence in connection with medical treatment or medical emergency and temporary residence permit for third –country nationals who are unable to leave the Netherlands through no fault of their own* (one of the sub-categories being: *third-country nationals who cannot leave for medical reasons*).

Germany, during the first three years, access to employment is dependent on the labour market situation. Full access is granted after three years of stay.

- Family reunification is permitted in **Belgium** (conditional on proving sufficient housing and health insurance in respect of all risks normally covered for nationals;[115] the length of the temporary residence permit depends on the one of the main beneficiary) and **Sweden**. For the **Netherlands** and the **Slovak Republic,** the right to family reunification is not granted. However, in the **Netherlands**, when the residence permit's holder acquires a continued residence permit after three years of temporary residence, his/her family members are eligible for family reunification.[116]
- Right to travel is granted in **Malta**,[117] **Netherlands** (under certain conditions),[118] the **Slovak Republic** and **Sweden**.
- In the **Netherlands**, reception provisions are guaranteed to third-country nationals benefiting from *withholding of repatriation* for medical reasons.

3.2.1.5. Duration of stay

Most Member States that grant residence permits for medical reasons issue a temporary residence permit valid for one year, often renewable. This is the case in **Belgium**,[119] **Greece, Malta, Netherlands**,[120] **Portugal**[121] and **Spain**. In **Portugal**, the territorial validity of the *consular temporary stay visa* is limited to three months (renewable). The **Slovak Republic** issues a permanent residence permit of five years to those that qualify for *asylum granted on humanitarian grounds* (which include medical grounds), after which it can be renewed for an

[115] This also applies to handicapped dependent children over 18 years, but in this case proof of stable, regular and sufficient means of existence is required.

[116] This right is attached to *Residence in connection with medical treatment or medical emergency and temporary residence permit for third –country nationals who are unable to leave the Netherlands through no fault of their own (one of the sub-categories being: third-country nationals who cannot leave for medical reasons*).

[117] A person granted temporary humanitarian protection by the Maltese authorities and requesting a travel document must provide justification as to the need for travel prior to such a request being accepted.

[118] This right is attached to *Residence in connection with medical treatment or medical emergency and temporary residence permit for third –country nationals who are unable to leave the Netherlands through no fault of their own (one of the sub-categories being: third-country nationals who cannot leave for medical reasons).*

[119] A third-country national who after five years still benefits from *residence status on medical grounds* is granted a permanent right of residence. After 5 years of uninterrupted residence, the person can apply for a long-term residence permit.

[120] This right is attached *to Residence in connection with medical treatment or medical emergency and temporary residence permit for third –country nationals who are unable to leave the Netherlands through no fault of their own (one of the sub-categories being: third-country nationals who cannot leave for medical reasons).*

[121] This right is attached to residence permits waiving the need of a residence visa in exceptional circumstances.

indefinite period of time. In the **Netherlands**, third-country nationals benefitting from *withholding of repatriation* for medical reasons are in a situation of lawful residence, but are not granted a residence permit as such. At the end of the period during which the return is postponed, the third-country national is required to leave. In **Poland**, the *residence permit granted if an exceptional personal situation requires the presence of the foreigner on the territory of Poland* is issued for the period of time necessary to fulfil the purpose for which it was issued and cannot exceed two years. The stay of third-country nationals issued a uniform *short-stay Schengen visa for humanitarian reasons* may not exceed 3 months while the stay of third-country nationals issued a *Polish long-stay national visa for humanitarian reasons* may not exceed one year.[122] In **Sweden**, a residence permit granted on medical grounds is permanent.

3.2.1.6. Standard of protection

Overall, it appears that the standard of protection provided through this type of national temporary protection statuses is lower than that granted through the EU-harmonised protection statuses for the following reasons. Only two Member States (**Malta**,[123] **Slovak Republic**) grant protection on medical grounds within the asylum procedure; although these Member States do not appear to have defined fixed judicial criteria for granting the protection status. More importantly, most Member States (for example **Belgium**, **Greece**, **Poland**, **Portugal**, **Spain**) appear to grant residence permits, outside of the asylum procedure and to a wide range of third-country nationals present on their territory (i.e. not only asylum applicants). These residence permits do not relate to international protection as conceptualised by the Geneva Convention and the EU acquis, but instead are concerned with those who shall not be returned or removed principally due to their health condition.

[122] A third-country national staying on the territory of the Republic of Poland may have his/her visa extended if all the following conditions are met: it is justified by the personal interest of the third-country national or for humanitarian reasons; events that constitute the reason for applying for a visa extension occurred independently from the third-country national's will and could not be foresee when issuing a visa; circumstances do not indicate that the third-country national's purpose of stay on the territory of Poland shall be different from the declared one; and there are no circumstances, as stipulated in legal regulations, that would justify refusal of a visa.

[123] In Malta, it is however not specifically excluded that a residence permit can be granted outside the asylum procedure on medical grounds.

3.2.2 National protection statuses granted for family reasons

In this Section, an overview of the protection statuses granted for family reasons in the Member States is presented. It has to be noted that, what these family reasons consist of for the national protection statuses, differ. Three broad "types" of national protection statuses granted for family reasons can be discerned: firstly, those relating to the non-removal of a person because of family ties; secondly, those aimed at family reunification; and thirdly, those concerned with maintaining the family unit at the moment of applying for asylum. The second "type" of national practices of granting protection for family reasons are part of national family reunification procedures, in accordance with Council Directive 2003/86/EC (Family Reunification Directive). As the Directive only relates to situations in which one individual is already residing in an EU Member State and wishes for the rest of his / her family to join him/her once he / she has obtained a status, it does not apply to the first and third "type" of protections statuses granted for family reasons. The third "type" finds its origins in Article 8 ECHR regarding the Right to respect private and family life and could considered to be in the same "vein" as Article 23 of Council Directive 2004/83 (Qualification Directive), which also emphasises the need for family unit to be maintained. More detailed information on the modalities on the form of protection granted in each Member State may be found in **Table 6** in the Annex.

3.2.2.1. Which Member States apply this non-EU harmonised protection status?

Five Member States, namely **Austria**, **Germany**, **Greece**, **Slovak Republic** and **Sweden,** have a national protection status granted on the basis of family reasons.[124]

3.2.2.2. Grounds

The definition of "family reasons" varies significantly between Member States. In **Austria**[125] and **Sweden**,[126] protection statuses are granted if the removal order would violate the right to family or private life in accordance with Article 8 ECHR (**Austria**) or separate family

[124] The **Netherlands** grants asylum on related grounds (i.e. e- and f-grounds), as discussed in Section 2.3.4.1. In **Poland**, whilst no specific status exists, foreigners may, on an ad-hoc basis and when the situation requires so, be granted a permit for tolerated stay (for family reasons), as discussed in Section 3.2.5. In Spain, the Court has recognized this possibility during 2009, in the cases of foreign parents of children with Spanish nationality, on the basis of an interpretation of Spanish Immigration Law.

[125] This relates to the protection status '*Humanitarian right to residence for reasons relating to the protection of the right to family and private life'* granted in **Austria**.

[126] This relates to the protection status '*impediment to enforcement*' granted in **Sweden**.

members (**Sweden**). **Greece**[127] refers to family members as, for example, minors whose parents reside legally in the territory. The **Slovak Republic**[128] refers to "*relationships between close relatives (e.g. parent and child) between whom there are strong emotional ties and who maintain contact*." In **Germany**, a residence permit may be issued to a person who is providing care to a family member who is seriously ill or in cases where a marriage with a German national or a legally residing third-country national is imminent.[129]

In **Greece** and **Slovak Republic**, the person applying for this status needs to be able to demonstrate the family ties.[130] In **Austria**, the situation of the person needs to be taken into consideration.[131]

3.2.2.3. Procedures

The protection status granted by **Greece** is investigated and granted **within the asylum procedure**. Protection statuses are granted **outside of the asylum procedure** in **Germany**, **Slovak Republic** and **Sweden**. In **Austria** and **Poland**, the protection status can be granted within or outside the asylum procedure.

In the **Slovak Republic**, a person may apply for a tolerated stay if they fail to satisfy the conditions for being granted permanent residence permit in the country, e.g. they are not married with the mother of their child but have developed a family and private life. If the application is rejected, the applicant has the right to appeal.

3.2.2.4. Rights

In relation to the rights that third-country nationals benefitting from this status are entitled to, they differ between Member States:

- Medical assistance is granted in **Austria**, **Germany**, **Greece** (same or similar as nationals), **Slovak Republic** (if employed or voluntarily insured commercially) and **Sweden** (if alien is registered in the Civil Register).

---

[127] This relates to the protection status '*Residence on exceptional grounds (not humanitarian)*' granted in Greece.
[128] This relates to the protection status '*Tolerated stay if required for respect for family and private life'* granted in the **Slovak Republic**.
[129] This relates to the humanitarian protection status "temporary residence."
[130] In the **Czech Republic**, additional proofs might also be required where relevant for a particular status.
[131] This concerns in particular the length of the stay in **Austria** and *the kind of residence, especially if the person stayed legally or illegally in the country, the actual existence of family life, the necessity to protect private life, the degree of integration, existing ties to the home country, criminal records and the fact, if family life was established at a time when the persons were aware of their uncertain residence status*.

- Education at school level is granted in **Austria**, **Greece**, **Slovak Republic** and **Sweden** (if domiciled in the country) and free of charge. At university level, access to education is granted to all third-country nationals in **Greece** and **Sweden**. In **Austria** and the **Slovak Republic,** third-country nationals are required to pay a tuition fee.
- Access to the labour market is granted in **Austria** (if the third-country national has not fulfilled the Integration Agreement, a work permit has to be obtained) and **Sweden**, whilst he or she does not require a work permit in **Greece**. Access to the labour market is granted to third-country nationals benefitting from a tolerated stay permit for reasons of respecting family and private life in the **Slovak Republic**. **Germany** grants limited access to the labour market, with full access being provided after three years.
- Right to travel is permitted for all third-country nationals in **Austria**, **Greece** and **Sweden** if they have obtained a national passport. In the **Slovak Republic**, third-country national passport holders benefitting from tolerated stay may travel abroad, but then are not permitted to re-enter.

3.2.2.5. Duration of stay

This varies between short-term (e.g. **Slovak Republic**, 180 days renewable), medium-term (e.g. twelve months in **Austria** and six months in **Greece**, and it is renewable in **Austria**, whilst in **Greece** the third-country national must have new grounds for protection) and permanent (e.g. **Sweden**). In **Germany**, the duration of stay depends on the facts of the individual case.

3.2.2.6. Standard of protection

The standard of protection granted through non-EU harmonised protection statuses for family reasons differs between Member States in terms of the scope of the definition of "family member,"[132] the procedure that has to be followed and the rights that are granted to the persons concerned. Moreover, it also differs from the standard of protection as provided for in the Geneva Convention and EU acquis. For example, the procedural safeguards identified by the *Council Directive 2005/85/EC* (Asylum Procedures) do not apply in some Member States (**Germany**, **Slovak Republic**, **Sweden**), as the protection status or residence permit is granted outside of the asylum procedure. Additionally, the concept of protection underpinning these

[132] As set out in Section 3.2.1.2 the definition of family members not only varies, but more importantly is either lacking or remains vague/broad allowing for different interpretation. This makes it difficult to compare what is understood as "family reasons" or who is considered a "family member" in the Member States.

non-EU harmonised protection statuses appears to be further removed from that embodied in the Geneva Convention and EU acquis. Rather than an assessment of the person's situation at the time of leaving his or her (third) country, or of the situation in the country of origin at the time of departure, it is the situation of the third-country national at the time of being required to leave the Member State that determines whether the person is given protection or a residence permit.

3.2.3 Protection statuses for non-EU Unaccompanied Minors[133]

In this Section, an overview of the protection statuses granted to non-EU unaccompanied minors in the Member States is presented. More detailed information on the modalities on the form of protection granted in each Member State may be found in **Table 7** in the Annex. This Section should be read in conjunction with the EMN Study relating to *Policies on Reception, Return and Integration arrangements for, and number of, Unaccompanied Minors*[134] which provides detailed information on policies targeting unaccompanied minors at national level. Particular attention should also be paid to the Commission Action Plan on Unaccompanied Minors (2010-2014)[135] and to the Council Conclusions on unaccompanied minors adopted on 3 June 2010[136] which illustrate the EU's commitment for the promotion and protection of children's rights.

3.2.3.1. Which Member States apply this non-EU harmonised protection status?

Ten Member States, i.e. **Austria**,[137] **Belgium**,[138] **Finland**,[139] **Hungary**,[140] **Malta**,[141] **Netherlands**,[142] **Slovak Republic**,[143] **Slovenia**[144], **Spain**[145] and the **United Kingdom**[146] offer

---

[133] More information on Member States' national policies and practices relating to the admission, integration and return of unaccompanied minors can be found in the EMN synthesis report "*Policies on reception, return, and integration arrangements for, and numbers of, unaccompanied minors,"* available from http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=2.

[134] Available on the EMN Website: http://emn.sarenet.es/Downloads/prepareShowFiles.do;?directoryID=115

[135] COM (2010) 213 Final, Brussels, 6 May 2010, Communication from the Commission to the European Parliament and the Council, Action Plan on Unaccompanied Minors (2010-214),

[136] Council of the European Union, Council Conclusions on unaccompanied minors, 3018th Justice and Home Affairs Council Meeting, Luxembourg, 3 June 2010, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/114887.pdf

[137] **Austria** adopted the Law that introduced a residence permit for unaccompanied minors in November 2009 (i.e. after the submission of the national report, thus no further information could be provided).

[138] The following non-EU harmonised protection statuses are granted to unaccompanied minors in **Belgium**: *special protection status for non-EU unaccompanied minors.*

[139] The following non-EU harmonised protection statuses are granted to unaccompanied minors in **Finland**: *residence permit on compassionate grounds.*

[140] The following non-EU harmonised protection statuses are granted to unaccompanied minors in **Hungary**: a *residence permit on humanitarian ground to unaccompanied minors.*

[141] The following non-EU harmonised protection statuses are granted to unaccompanied minors in **Malta** who apply for asylum but do not qualify for refugee status or subsidiary protection: *temporary humanitarian protection.*

specific forms of protection to unaccompanied minors and/or separated children, which are not harmonised at EU level. In **Belgium**, **Hungary**, **Slovak Republic** and **Slovenia**, the special protection status for non-EU unaccompanied minors defined in the national legislation is considered as an additional protection possibility, applicable also to illegally-staying unaccompanied minors, who are not engaged in any other procedure.[147] In the **Netherlands**, non-EU unaccompanied minors are eligible for a temporary regular residence permit if their asylum application is rejected and/or if their asylum residence permit is withdrawn.[148] In **Hungary**, **Netherlands, Slovak Republic, Slovenia** and **Spain**, this additional form of protection is defined in the national aliens' legislation. In two Member States (**Finland**, **Malta**[149]), this additional form of protection granted to unaccompanied minors falls within their asylum policy framework. In **Belgium**, in addition to the national *Guardianship Act* which provides specific provisions for unaccompanied minors, a *Ministerial Circular Letter* defines the specific procedure to apply for authorisation to reside in the Member State until they reach the age of 18 years.

In the **Czech Republic**, **Finland**, **Germany**, **Ireland**, **Malta, Poland,**[150] **Portugal**[151] and **Sweden**,[152] unaccompanied minors can be granted in principle the same protection statuses as adults. There is no specific protection status only for minors.[153]

---

[142] The following non-EU harmonised protection statuses are granted to unaccompanied minors in the **Netherlands**: *unaccompanied minor foreign national residence permit.*

[143] The following non-EU harmonised protection statuses are granted to unaccompanied minors in the **Slovak Republic**: a *tolerated stay permit for minors found in its territory.*

[144] The following non-EU harmonised protection statuses are granted to unaccompanied minors in **Slovenia**: *a permission to stay for unaccompanied minors.*

[145] The following non-EU harmonised protection statuses are granted to unaccompanied minors in **Spain**: *unaccompanied foreign minors residence permit.*

[146] The following non-EU harmonised statuses are granted to unaccompanied minors in the **United Kingdom**: Discretionary Leave.

[147] Unaccompanied minors also have access to protection through the standard asylum and/or aliens procedure in other Member States. For example, **Greece** indicated offering residence permit on humanitarian grounds to persons accommodated in charitable institutions, including unaccompanied minors and unaccompanied minors victims of trafficking. As this residence permit does not only concern unaccompanied minors, the rationale of such permit is not described in this section but under section 3.7.

[148] In the **Netherlands**, the granting of a non-EU unaccompanied minors' regular residence permit is a consequence of the asylum procedure. In order for a non-EU unaccompanied minor to be granted a regular residence permit, it is essential that an asylum procedure has first been completed.

[149] In **Malta**, temporary humanitarian protection was introduced in form of a policy rather than legislation. This provides the Refugee Commissioner a greater degree of discretion and flexibility and ensures that this form of protection can be provided whenever necessary.

[150] In **Poland**, in its decision refusing the refugee status, the Head of the Office for Foreigners (or the Council on Refugees in the second instance) may decide to grant subsidiary protection or permit for tolerated stay.

[151] In **Portugal**, the protection statuses granted to unaccompanied minors are the same than the ones granted to adults. However, some of the grounds specifically addressed the situation of minors.

3.2.3.2. Grounds and procedures

In **Belgium**, **Hungary, Slovak Republic** and **Spain**, the procedure to be granted a special resident permit is initiated *ex officio* by the Guardianship authorities and not by the unaccompanied minor him/herself.[154] In two Member States (**Finland**, **Malta**) the investigation as to whether an unaccompanied minor qualified for (temporary) protection on humanitarian grounds takes place after it has been ascertained that the requirement for granting refugee status or subsidiary protection are not met.

With regard to the purpose of the procedure, Member States can be divided into those that have established a procedure to assess, in an "holistic way", the options available for the unaccompanied minor (**Belgium**, **Finland** and **Hungary**) and those whose procedure mainly aims at allowing the temporary stay of the unaccompanied minor (**Malta**, **Netherlands**, **Slovak Republic**, **Slovenia, United Kingdom**). As a Member State using a "holistic approach," **Belgium** considered that the aim of the specific protection procedure for unaccompanied minors was to find the best durable solution for the minor. Three options are foreseen by national legislation: family reunification in **Belgium** or abroad; return of the unaccompanied minor to their country of origin or any other country where the unaccompanied minor has a right of residence with guarantees of an adequate reception and care;[155] or unlimited stay or settlement in the Member State. During the procedure, these three options are equally considered and the competent authority decides on the durable solution in the best interest of the child. Similarly, **Hungary** assesses which viable solution appears to be the most adequate for the unaccompanied minor applicant. Family reunification, child care available in another country and temporary resident permit, constitute the options considered during the procedure. In **Finland**, consideration should be given to the best interest of the child as a whole, taking into account the individual needs, wishes and opinions of the child. It should also be established whether the interest of the child differs from that of the guardian.

---

[152] In **Sweden**, while the protection statuses granted to minors are the same than the ones granted to adults, in most cases the circumstances do not have to be a severe to grant a residence permit to a minor as when the applicant is an adult (e.g.. humanitarian protection).

[153] For further information on the granting of protection to unaccompanied minors in these and other Member States, please see the *EMN Comparative Study relating to Policies on Reception, Return and Integration arrangements for, and number of, Unaccompanied Minors* and the National Reports on which it is based.

[154] In **Spain**, the entity holding the guardianship requests the residence permit for the unaccompanied minor. Where a foreign unaccompanied minor applies on his/her own for asylum in the country, s/he is referred to the Child Protection Services for the necessary assistance and for assuming guardianship. Once under the guardianship of the Child Protection Services, this body represents the child throughout the asylum procedure.

[155] This assessment is made according to the needs of the unaccompanied minor, taking into account his/her age and self-reliance. The reception and care must be provided by the unaccompanied minor's parents, by government authorities or NGOs.

As Member States focusing on allowing temporary stay, **Netherlands**,[156] **Slovenia** and the **United Kingdom** only grant permission to stay to unaccompanied minors who cannot be returned, due to a lack of suitable reception in the country of return and/or a potential breach of international obligations. In the **Slovak Republic,** the tolerated stay is granted after the guardian has submitted the application for tolerated stay on behalf of the unaccompanied minor. In **Malta**, unaccompanied minors granted temporary humanitarian protection are allowed to remain in the territory for a year. This status may also be renewed for further periods of one year if the circumstances warranting temporary humanitarian protection subsist. In addition, the **Netherlands** grant residence permit to third-country national unaccompanied minors who have exhausted all legal remedies who are unable to leave the Member State through no fault of their own subject to the following conditions:

- He/she has resided in the Member State for three consecutive years or longer despite having to be legally returned;
- his/her departure has not been arranged in this period;
- after the end of the three year period, has not yet reached the age of eighteen; and
- he/she has sufficiently cooperated with the investigation,[157] in view of this return, carried out to assess the adequate reception in his/her country of origin or residency.

As for the competent authorities, a range of actors intervene in the procedure dedicated to unaccompanied minors. In **Belgium**, **Hungary, Slovak Republic** and **Spain**, guardianship authorities initiate the procedure, while the *Immigration Department* (**Belgium** and **Hungary**) and the Police (**Slovak Republic**) are responsible for conducting the procedure and deciding on the case. In **Belgium**, the so-called *"Bureau MINTEH"* has overall competence for unaccompanied minors who have not claimed asylum and is responsible for the issuance of temporary or definitive residence permits. In the **Netherlands**, the *Immigration and Naturalisation Service* (IND) automatically carries out a test to assess whether the unaccompanied minor is eligible for a national residence permit when his/her application for

[156] In the **Netherlands**, non-EU unaccompanied minors can be eligible for a temporary residence permit only if they cannot support themselves independently in the country of origin or another country they could reasonably go to and that there are no adequate reception provisions, according to local criteria, in the country of origin or another country they could reasonably go to. Non-EU unaccompanied minors who, during the procedure, do not cooperate with the investigation relating to reception possibilities in the country of origin or another country, will not be eligible for such temporary residence permit.

[157] During the procedure, an investigation is carried out to determine the age of the unaccompanied minor, if there is any doubt, and to identify and assess the reception possibilities in the country of origin or another country.

asylum has been rejected or his/her asylum permit has been withdrawn.[158] In practice, the investigation relating to the application for asylum partly coincides with the assessment related to whether this regular residence permit can automatically be granted. Guardians do not initiate the asylum procedure, but assist the child during such procedure. For unaccompanied minors who are granted a residence permit for third-country nationals who are unable to leave the Member State through no fault of their own, the procedure either takes place after the rejection of the application for asylum and/or for any other regular residence permit or via submission of an application.

Appeal on the decision made is possible in **Belgium**, **Finland**, **Hungary** and the **Slovak Republic**. In **Malta**, appealing against a temporary humanitarian protection decision is not allowed.[159] In **Belgium**, such an appeal is submitted by the guardian in case the guardian does not agree with the "durable solution" proposed by the *Immigration Department*. In **Belgium** and **Hungary**, the usual administrative courts responsible for aliens-related decisions are in charge of processing the appeal. Annulment of decisions is possible (due to violation of the rules of procedures in **Belgium** and with reference to the breach of law in **Hungary**). In the **Netherlands**, because there is no application as such for being granted an *unaccompanied minors' temporary regular residence permit*, there is no possibility to submit an application for review against the automatic decision not to grant a temporary residence permit to unaccompanied minors. However, given that, as part of the asylum decision, it is automatically assessed whether the unaccompanied minor should be granted a *temporary residence permit*, there is a possibility to present an appeal against the asylum decision.[160] In **Spain**, the residence permit is granted automatically after the entity holding the guardianship has requested it to the competent authorities. Hence, there is no provision for appeal.

[158] No application as such is submitted for non-EU unaccompanied minors' temporary regular residence permit. Non-EU unaccompanied minors' temporary regular residence permit can be granted following an application after a previous asylum procedure.

[159] An appeal can only be applied for in relation to decisions on refugee status or subsidiary protection

[160] The court will assess the asylum decision both in view of the asylum application and of the automatic assessment relating to the possibility to grant a temporary residence permit.

3.2.3.3. Rights

The **rights** attached to the protection statuses for unaccompanied minors include:

- Basic medical and social care (**Belgium, Hungary, Malta, Slovak Republic** and **Spain**); medical care and social provisions similar to the ones provided to nationals (**Finland**, **Netherlands**);
- Access to education (**Belgium, Finland, Hungary, Malta, Netherlands, Slovak Republic** and **Spain**);
- Legal aid as provided to nationals (**Netherlands**); and
- Right to a travel document (**Finland, Malta**) or possibility, subject to certain conditions, to obtain a travel document, if the third-country national is enabled to obtain a travel document for another country, or for whom it can be proved that they cannot reasonably be required to apply for a travel document from another country (**Netherlands**).[161]

As a general rule, most of the unaccompanied minors benefit from these rights when hosted in a special accommodation centre. In **Belgium**, rights guaranteed to unaccompanied minors vary accordingly to the phase of the procedure.[162]

3.2.3.4. Duration of stay

This differs from one Member State to another. In **Belgium**, unaccompanied minors are first granted a prolongation of removal order for one month or a declaration of arrival valid for three months.[163] After six months, unaccompanied minors are then granted a temporary resident permit valid from 6 months to one year, extendable if certain criteria are met.[164] In **Finland**, a residence permit on compassionate grounds is granted to unaccompanied minors for a fixed term and is continuous by nature. In **Hungary**, unaccompanied minors are granted a temporary residence permit valid for one year, renewable for a maximum of one year. In **Malta**, unaccompanied minors granted temporary humanitarian protection are allowed to remain in the territory for a year. This status may also be renewed for further periods of one

[161] The term of validity of this travel document depends on the permit that has been granted.
[162] For a complete overview of the rights granted to unaccompanied minors in **Belgium**, depending on the phase of the specific procedure, please refer to the National Report, pp.112-115.
[163] The issuance and prolongation of these residence documents will not happen automatically, but will depend on the appreciation of the "Bureau Minors" on a case by case basis and after analysis of all elements present in the file of the unaccompanied minor.
[164] i.e. Sufficient knowledge of one the three national languages; regular school attendance; family situation of the UAM; specific element related to the situation of the unaccompanied minor.

year if the circumstances warranting temporary humanitarian protection persist. In the **Netherlands**, the residence permit is granted for one year, renewed annually after an assessment of whether the unaccompanied minor still fulfils the conditions for being eligible for such a permit.[165] The residence permit granted to unaccompanied minors who have exhausted all legal remedies and who are unable to leave the **Netherlands** through no fault of their own, is also granted for one year and can be extended for a maximum of one year each time.[166] In the **Slovak Republic**, tolerated stay is granted for 180 days, renewable repeatedly upon the request of the third-country national and the reasons for granting such a permit persist. In the **United Kingdom**, *Discretionary Leave* is granted to unaccompanied minors for three years or until the minor reaches the age of 17.5 years, whichever is the shorter period of time. In **Slovenia** and **Spain**, there is no fixed timeframe. In **Slovenia**, the unaccompanied minor is allowed to remain on the territory until his/her return to another country is made possible. In **Spain**, the unaccompanied minor is allowed to remain on the territory until reaching majority age and while under the guardianship of the Spanish *Child Protection Services*.

3.2.3.5. Standard of protection

In most Member States, the principles laid down in international and European legal instruments of relevance to unaccompanied minors are respected in the process of granting national protection (e.g. the rights provided). Some Member States (e.g. **Belgium, Finland** and **Hungary**) emphasised the need for a holistic approach to the assessment of the needs of unaccompanied minors and the (durable) solutions that are subsequently devised and implemented.

3.2.4 Non-EU harmonised protection granted to stateless persons

In this section, an overview of the protection statuses granted to stateless persons in the Member States is presented. More detailed information on the modalities on the form of protection granted in each Member State may be found in **Table 8** in the Annex.

[165] In the **Netherlands**, in general, the temporary residence permit will, in any case, cease to be valid when the child reaches the age of 18. Only non-EU unaccompanied minors, who, upon reaching the age of 18, have already had a non-EU unaccompanied minor residence permit for three years, will in principle be entitled to a "continued residence permit."

[166] Non-EU unaccompanied minors that are granted a residence permit for exhaustion of all legal remedies and inability to leave the country through no fault of their own can be granted a "continued residence permit" if they have had a temporary residence permit for three years and still fulfils the conditions of the grounds on which the previous residency was permitted.

3.2.4.1. Which Member States apply this non-EU harmonised protection status?

In six Member States, namely **Finland**,[167] **France**,[168] **Greece**,[169] **Hungary**,[170] **Netherlands**[171] and **Spain**[172] protection to stateless persons is granted. In **Finland**, **Greece**, **Hungary** the granting of such protection is defined in the national *Aliens Act*. Several Member States grant protection to stateless persons, even if they do not have, or in addition to, a particular protection status for such persons (e.g. **Austria, Belgium**, **Finland**, **Germany**). In **Finland**, for example, stateless persons can also qualify for *"stronger forms of protection,"* such as asylum. In **Austria**, **Germany**, **Ireland**, **Malta**, **Netherlands**, **Poland**,[173] **Portugal** and **Sweden**, stateless persons can, in principle, obtain all existing protection statuses.

Greece, **France, Hungary** and **Spain** considered protection to stateless persons to be granted according to international legislation (i.e. the *1954 United Nations Convention relating to the Status of Stateless Persons*).

3.2.4.2. Grounds

In **Hungary**, a stateless person is defined as "*a person who is not recognised as a citizen by any country under its national law."* However, the protection provided to stateless persons by the law is limited by the fact that the *Aliens Act* makes only lawfully residing third-country nationals eligible to apply for stateless status, hence persons arriving and/or staying illegally in **Hungary** are excluded from protection. Both the *Hungarian Helsinki Committee* and the UNHCR had repeatedly expressed concerns about this criterion, qualifying it an additional exclusion clause that is not permitted under international law, as the 1954 United Nations

[167] The following non-EU harmonised protection statuses are granted to stateless persons in **Finland**: "*residence permit on compassionate grounds*."

[168] The following non-EU harmonised protection statuses are granted to stateless persons in **France**: *"status of stateless persons."*

[169] The following non-EU harmonised protection statuses are granted to stateless persons in **Greece**: *humanitarian and/or exceptional reasons*."

[170] The following non-EU harmonised protection statuses are granted to stateless persons in **Hungary**: *"status of stateless persons."*

[171] The following non-EU harmonised protection statuses are granted to stateless persons in the **Netherlands**: residence permit to third-country nationals who are unable to leave the Member State through no fault of their own.

[172] The following non-EU harmonised protection statuses are granted to stateless persons in **Spain**: *"stateless persons status."*

[173] This relates to the humanitarian protection granted to foreigners within the *Residence permit for a fixed period issued to a foreigner if an exceptional personal situation that requires the presence of a foreigner on the territory of the Republic of Poland has occurred, Residence visa (uniform short-stay Schengen visa and Polish long-stay national visa) issued for the purpose of arrival for the humanitarian reasons* as well as permit for *tolerated stay*.

Convention relating to the Status of Stateless Persons[174] sets forth an exhaustive list of exclusion grounds.

In **France**, this status is not recognised or regulated by law. However, there are several court decisions which have enabled the definition of policy with regard to recognition of the status of statelessness, namely:

- *The OFPRA cannot reject an application on the grounds that the person concerned invoked a nationality (Paris Administrative Court of Appeal, 30 December 1997),*
- *Stateless status is of a recognitive nature (European Council (EC), 29 December 2000), and stateless persons are legally resident from the date of their application (EC, 22 January 1997),*
- *Stateless status may be granted to a person of Palestinian origin, whose status deriving from UNRWAS's mandate has been discontinued (EC, 22 November 2006), and*
- *The parent of a stateless child cannot be removed as this would be a violation of stateless status or the child's private and family life (EC, 9 November 2007).*

In **Greece**, stateless persons have to prove their status as de jure stateless persons[175] in order to benefit from the protection status.

In the **Netherlands**, stateless persons are granted a residence permit on the basis that they are unable to leave the country through no fault of their own in cases where they are unable to gain re-entry to the country where they previously had continuous residency. They must be able to prove, by using objective evidence, that the authorities of their country of previous residence will not cooperate with their return.[176]

In **Spain**, this status is regulated by law,[177] which stipulates that the requirements for granting it are those established in the *1954 United Nations Convention relating to the Status of Stateless Persons*.

---

[174] The United Nations Convention relating to the Status of Stateless persons is available at: http://www2.ohchr.org/english/law/stateless.htm.

[175] De jure statelessness is where there exists no recognised state in respect of which the subject has a legally meritorious basis to claim nationality.

[176] Further information on the evidence to be provided by the third-country national is presented in Annex, in Table 9.

[177] *Organic Law 4/2000* (11 January 2000) and *the Regulation of the Stateless Status Acknowledgement adopted by the Royal Decree 865/2001*(20 July 2001).

3.2.4.3. Procedures

In **France, Hungary** and **Spain**, this protection status is **investigated and granted outside the asylum procedure**. In **Hungary,** the statelessness determination procedure is a specific third-country national policing procedure. In **France**, the *French Office for Refugees and Stateless persons* (OFPRA),[178] responsible for examining the application, collects all necessary evidence to determine whether the applicant can receive protection from another country.[179] Third-country nationals, who do not have any nationality and are subject to persecution, can also lodge an application both for asylum and stateless status. In this case, the application will be first examined on the basis of the asylum claim. In **Spain**, the *Asylum and Refugees Office (General Directorate of Internal Policy)* is the body responsible for studying the applications, after which the *General Director of Internal Policy* makes a recommendation for a decision to the *Ministry of Interior*.

In **Finland**, stateless persons may lodge applications for asylum **through the asylum procedure**, in which statelessness is duly taken into account in order to assess whether the applicant can receive protection in another country. In the **Netherlands**, this residence permit can be **granted within or outside the asylum procedure.**[180]

3.2.4.4. Rights

These include:

- Access to education is granted in **Hungary**, where primary and secondary education is free of charge and participation in higher education occurs on a fee-paying basis, and equivalent to nationals in the **Netherlands**.
- Access to medical care is provided for in **Finland** and in the **Netherlands**.
- Access to the labour market is granted in **Finland, France**, **Hungary, Netherlands** and **Spain**. In **Hungary**, a third-country national requires a work permit and proof that there is no qualified, national or other EU/EEA-citizen applying for the same job. In

[178] In French, l'Office français pour les Réfugiés et Apatrides.

[179] During the procedure, the OFPRA has the possibility to contact the consular representations of countries to which the stateless person may be linked to assess the legal connection of the third-country national to these countries.

[180] A residence permit subject to the restriction 'residency as a third-country national who, through no fault of his own, is unable to leave the **Netherlands'** not only takes place automatically but also via submission of an application. Automatic extension then takes place if a third-country national, whose application for admission has been rejected, can demonstrate during the asylum procedure.

the **Netherlands**, access to labour market is granted only if the employer applies for a work permit.

- Right to family reunification in **Spain**.
- Right to travel document is provided for in **Greece, Hungary** and **Spain** and under certain conditions in the **Netherlands**.[181]
- Right to long-term residence permit (granted for 10 years) after three years of regular residence is provided in **France**.
- In **Greece,** stateless persons are entitled to the same rights as legally residing foreigners.

3.2.4.5. Duration of stay

In **Hungary** and the **Netherlands**, temporary residence permits are granted for one year and are renewable. In **France**, temporary residence permits are granted for the recognised stateless person, the spouse and minor children and, after three years, the recognised stateless person may obtain a full residence permit. In **Spain,** a residence permit is granted for five years. In **Greece**, the duration of such a permit is not specified.

3.2.4.6. Standard of protection

Greece and **Hungary** indicated legal criteria for the protection of stateless persons, without leaving significant discretionary powers to the decision-maker. The rights granted in **Hungary** suggest that the conditions for the persons concerned are less favourable than for those benefiting from refugee status or subsidiary protection. With only **Hungary** allowing stateless persons to apply for protection via the asylum procedure, it is not known whether the procedural safeguards laid down in Council Directive 2005/85/EC (Asylum Procedures Directive) are applied.

3.2.5 Tolerated stay / Suspension of removal

In this Section, an overview of whether and how tolerated stay / suspension of removal is granted in the Member States is presented. More detailed information on the modalities on the form of protection granted in each Member State may be found in **Table 9** in the Annex.

[181] A Dutch travel document is issued if the third-country national is unable to obtain a travel document from another country or can prove that s/he cannot reasonably be required to apply for a travel document from another country. The term of validity of this travel document depends on the permit that has been granted.

3.2.5.1. Which Member States apply this non-EU harmonised protection status?

Fifteen Member States (**Austria**, **Belgium**, **Czech Republic**, **Finland**, **Germany**, **Hungary**, **Ireland**, **Netherlands**, **Poland, Portugal**, **Slovak Republic**, **Slovenia, Spain**, **Sweden** and **United Kingdom)** have statuses linked to "tolerated stay". These Member States have different definitions of the tolerated stay status, which are also regulated by different legislative instruments.

3.2.5.2. Grounds and procedures

Significant variation exists regarding the grounds and procedures through which Member States grant tolerated stay. The only broad conclusion that can be drawn is that tolerated stay is often granted to persons whose removal is rendered impossible for practical reasons (e.g. documents lacking; the country of origin refuses to accept the person who is required to leave by the Member State) or who cannot be subject to refoulement as laid down in the Article 33 of the Geneva Convention.

In **Austria**, the recent *Government Bill* (adopted in November 2009, entered into force in January 2010) introduced tolerated stay ("*Duldung*") for persons who may not be removed due to the principle of non-refoulment or whose removal is impossible due to factual reasons that do not originate from the persons. According to Article 69a of the *Residence Act*, if a person had a tolerated stay for at least one year, a residence permit can be issued provided that he/she does not constitute a threat to public order and security of State or has not been sentenced for a crime.[182]

In **Belgium**, three different options are linked to this type of protection, namely:

- *Suspension of removal measures for families with school going children in a situation of illegal stay*: Families residing illegally in the Member State and school going children under 18 years can be granted a suspension of the execution of a removal order until the end of the school year.
- *Delay of departure / prolongation of declaration of arrival or temporary residence title*: In certain cases, delay of departure or an exceptional prolongation of a declaration of arrival (tourist/business visit) or of a temporary residence permit are allowed. Some of these cases are protection-related, for example, when: 1) a third-country national

[182] These provisions were adopted after the submission of the Austrian National Report, thus further information could not be included in the Synthesis Report.

cannot leave the country due to illness and/or treatment thereof or pregnancy; or 2) a third-country national intends to marry another third-country national legally residing in the territory or a national.

- Suspension of removal for certain categories of failed asylum seekers for which the Immigration Department automatically deferred removal orders. These cases may be understood as a general acknowledgment of non-refoulement vis-à-vis failed Afghan asylum applicants, in a time where subsidiary protection was not yet in force in national legislation.

Similarly, in the **Czech Republic**, three different options exist under the "tolerated stay" status, namely:

- Visa for residence longer than 90 days as a leave to remain under the *Asylum Act* (governed by the *Act on the Residence of Foreign Nationals*, except for the exceptions defined in the *Asylum Act*);
- Visa for residence as a leave to remain under the *Act of Residence on Foreign Nationals*; as defined in the Act; and
- Long-term residence permit as a leave to remain in the country (legal basis same as previous).

Here, tolerated stay is associated with a residence permit, issued on the following conditions to:

- Third-country nationals, who have filed a complaint at a higher court against a previous judgment of a lower court on a legal action against a decision of the *Ministry of Interior* in a case of international protection;
- Third-country nationals: a) who are prevented from leaving the country by an obstacle beyond his/her control, or if there are the reasons referred to as "reasons preventing departure from the country;[183] b) who are witnesses or an injured party in criminal

[183] The conditions defined in Section 179(5) of the Act on the Residence of Foreign Nationals, which correspond to the conditions for grant of harmonised subsidiary protection. The difference is that subsidiary protection as well as asylum cannot be granted, according to the law, if there is a reasonable suspicion that the foreign national committed a certain type of crime (a crime against peace, a war crime, a crime against humanity), committed an especially grave crime or carried out actions in conflict with the principles and goals of the UN, or if the foreign national poses a risk to the security of the state. This also applies to those foreign nationals, who incite to such actions or who participate in their perpetration. A visa as a leave to remain can be issued in

proceedings and whose participation in the proceedings is necessary; c) who filed a certain application for a residence status under specific circumstances defined by the law; d) whose departure is not possible under Section 120a of the *Act on the Residence of Foreign Nationals* – i.e. when the Police, while preparing administrative expulsion, is informed by the *Ministry of Interior* that is not possible for the third-country national to leave the country (Section 179); and

- Foreign nationals with a visa issued as a leave to remain under the *Act on the Residence of Foreign Nationals* (i.e. previous ground) if the foreign nationals' stay in the territory of the **Czech Republic** is going to be longer than one year and if the reasons, for which the visa was issued, continue to exist.

In **Finland**, the non-refoulement principle, applied to third-country nationals who cannot be returned to their (third) countries, is laid down in the *Aliens Act*. Tolerated stay (*Duldung*) is possible when the "*temporary residence has expired but the removal of the third-country national is still impossible" (*Section 51 of the *Aliens Act* on Issuing residence permits in cases where aliens cannot be removed from the country). Also, Section 147 of the *Alien Act* stipulates "*no one may be refused entry and sent back or deported to an area where he or she could be subject to the death penalty, torture, persecution or other treatment violating human dignity or from where he or she could be sent to such an area."*

In **Germany**, the *"Duldung"* status, which is not a residence permit but merely a *"temporary suspension of removal,"* is granted in cases in which removal is impossible for:

- factual reasons;
- legal reasons;
- reasons of international law;
- humanitarian reasons;
- pressing humanitarian reasons (see also **Section 3.3**); or
- personal reasons.[184]

---

these cases – this is a way of complying with the obligation of the **Czech Republic** under the Convention on the Protection of Human Rights and Fundamental Freedoms, specifically Article 3 on prohibition of torture.

[184] For decisions of this type, in addition to the humanitarian criteria, considerations of external and domestic policy constitute pivotal factors. Among the factors capable of counting as legal or factual reasons for the impossibility of removal are:

Further to the suspension of removal, **Germany** also foresees the possibility of "*Granting of residence in cases of hardship*."[185] In order to obtain this status, which – as opposed to the *Duldung* – can lead to permanent residence, the third-country national in question must be subject to an enforceable obligation to leave the country and must represent a case of hardship: "*Humanitarian or personal reasons include the duration of the third-country national's residence in Germany to date, his/her economic and social integration and the disadvantageous conjunction of personal and economic circumstances."*

A third status linked to this type of protection concerns the "*granting of residence to persons who are subject to an enforceable obligation to leave the country."* If it proves impossible for the third-country national to leave **Germany** for legal[186] or factual[187] reasons that are not his / her responsibility and it is likely that these reasons will cease to apply in the foreseeable future, then the person can be granted a residence permit. The purpose of this passage in the *Residence Act* is to ensure that a third-country national who is subject to an enforceable obligation to leave the country, and who has, for at least 18 months, only been in possession of an exceptional leave to remain ("*Duldung*"), may, provided the appropriate conditions apply, be placed in a better legal position – in other words, receive a residence permit. These three relevant statuses in **Germany** are regulated by the *Residence Act.*

In **Hungary**, the tolerated status regime (*befogadott*) is based both on Asylum and Aliens legislation. The prohibition of refoulement prevails if *"the person seeking recognition is*

---

* the presence of a prohibition on deportation related to the destination country in accordance with § 60, Paragraph 1 or Paragraphs 2 to 5 or Paragraph 7, AufenthG, without the issuing of a residence permit;
* the presence of an obstacle to the enforcement of deportation relating to internal domestic matters;
* the suspension of the deportation by judicial order;
* unfitness to travel occasioned by illness;
* an ongoing lack of a passport if, in the experience of the foreigners' authority, deportation without a passport or a German substitute for a passport is not possible, or if an attempt to deport the subject has failed;
* interrupted transport routes for a deportation.

[185] According to § 23a of the German *Residence Act*, foreigners who are subject to an enforceable obligation to leave the country can, in cases of particular hardship, be issued with a residence permit. The objective of the regulation is to provide a humanitarian solution to individual instances that cannot be dealt with appropriately through routine application of the *Residence Act*.

[186] Impossibility for legal reasons encompasses obstacles to departure related to internal domestic matters – for example, the presence of a physical or mental illness if there is a serious danger that the foreigner's state of health would, because of his/her leaving the country as such – in other words, independently of the circumstances in the country to which he or she would be deported – become significantly worse. Please see pg. 33 of the National Report for additional reasons (i.e. health may also be taken into account).

[187] The impossibility of leaving the country for factual reasons applies, for example, to cases in which the subject is not fit to travel or is without his/her passport for no fault of his/her own, or in which transport links have been interrupted or are absent altogether, provided that there is no likelihood of these obstacles ceasing to apply in the foreseeable future. Please see pg. 33 of the National Report for additional reasons (i.e. health may also be taken into account).

exposed to the risk of persecution due reasons of race, religion, nationality, membership of a particular social group or political opinion or to death penalty, torture, cruel, inhuman or degrading treatment or punishment in her/his country of origin for, and there is no safe third country which would admit her/him". Third-country nationals granted the tolerated status are provided with a residence permit for humanitarian reasons.

In **Ireland**, the relevant protection status is called "*Leave to remain"* and it is linked to the *Refugee Act* of 1996, which sets out the prohibition of refoulement: "a *person shall not be expelled from the State or returned in any manner whatsoever to the frontiers of territories where, in the opinion of the Minister, the life or freedom of that person would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion".* Temporary leave to remain is granted in circumstances where an applicant does not qualify for either refugee status or subsidiary protection but cannot be returned to his or her country of origin, or otherwise on a discretionary basis. A grantee of leave to remain is not told whether he or she is being allowed to remain in the State specifically for non-*refoulement* reasons, or for reasons unconnected with international protection. Rather, the Minister considers each case in its entirety having regard to the facts and circumstances specific to each case before deciding to remove or not.

In the **Netherlands**, a temporary residence permit can be granted to third-country nationals *who are unable to leave the country through no fault of their own.* There are three categories of third-country nationals eligible for this type of residence permit, namely:

- Third-country nationals who have tried to leave the country unsuccessfully;
- Unaccompanied minors who have exhausted all legal remedies (see also Section 3.2.3); and
- Third-country nationals who cannot leave for medical reasons (see also Section 3.2.1).

The policy relating to third-country nationals who are unable to leave the country through no fault of their own is detailed in the *Aliens Act Implementation Guidelines*.

In order to become eligible for a residence permit on the ground that the *third-country national has tried to leave unsuccessfully,* the third-country national needs to fulfil all of the following conditions:[188]

- The third-country national has him/herself tried to arrange his/her (voluntary) departure. He/she can prove that he/she has contacted the representatives of the country or the countries of which he/she has the nationality, or the country or the countries where he/she previously had his/her habitual residence as a stateless foreign national, and/or other countries with regard to which it can be assumed, on the basis of all the facts and circumstances, that the third-country national will be granted access; and
- He/she has contacted the International Organisation for Migration (IOM) to facilitate his/her departure and this organisation has indicated that it is unable to arrange the departure of the third-country national due to the fact that the third-country national claims that he/she does not have travel documents; and
- He/she has requested mediation as regards obtaining the required documents from the authorities of the country he/she is allowed to go to, and this mediation has not produced the desired result; and
- There is a coherent whole of facts and circumstances which provide grounds for ascertaining that the person involved cannot leave the country through no fault of his/her own; and
- He/she is residing without a residence permit and does not fulfil other conditions for a residence permit.

This policy applies both to asylum seekers who have exhausted all legal remedies and to other illegally staying third-country nationals.

Further to the temporary residence permit granted to third-country nationals who are unable to leave the country due to no fault of their own, the **Netherlands** also foresee the possibility to issue *decision* and *departure moratoria*. The *decision moratorium* applies when no immediate decision is taken on applications for asylum for third-country nationals from a certain third

[188] The point of departure for the Dutch policy is that all third-country nationals are able to return to their country of origin. Nevertheless, exceptional situations may arise in which the third-country nationals is unable to leave the country through no fault of his/her own because it cannot obtain the necessary travel documents despite their being no doubt about the details he has provided regarding his/her identity. The third-country national must be able to prove, using objective reliable evidence, that the authorities of the country of origin or of the country where he had residency, will not cooperate in his/her repatriation.

country. The Minister can also decide to adopt a *departure moratorium* in cases where the applications have been irrevocably rejected and the third-country nationals are required to leave but the situation in the country changed in such a way that the third-country nationals cannot be repatriated. It has to be noted that no protection statuses are granted through these moratoria; these merely result in suspensions, either of the taking of a decision, or of the effecting of a departure.[189]

In **Poland**, a third-country national can be issued a *permit for tolerated stay* pursuant the 2003 *Act of granting protection to foreigners within the territory of the Republic of Poland.* The permits for tolerated stay can be issued for protection reasons, or for technical reasons within the procedure for granting refugee status as well as under the expulsion procedure or during the procedure for withdrawing asylum. A third-country national can be granted a permit for tolerated stay in a situation in which his/her removal:

- Could be effected only to a country where his/her right to life, to freedom and personal safety could be under threat, where he/she could be subjected to torture or inhumane or degrading treatment or punishment, or could be forced to work or deprived the right to fair trial, or could be punished without any legal grounds—within the meaning of the *Convention on Human Rights and Fundamental Freedoms* signed in Rome on 4th November 1950;
- Would violate the right to family life in the meaning of the *Convention for the Protection of Human Rights and Fundamental Freedoms* dated 4th November 1950, or would violate the children's rights as set out in the *Convention on the Rights of the Child* adopted by the United Nations Assembly General on 20th November 1989, to a degree that would significantly endanger the child's physical and mental development;
- Was unenforceable due to reasons beyond the control of the authority executing the decision on expulsion of the foreigner;
- Could only be effected to a country to which extradition is inadmissible on the basis of court's judgment on inadmissibility of a foreigner's extradition or on the basis of a decision of the Minister of Justice on the refusal to remove the foreigner; and

[189] The decision and departure moratoria are further discussed on page 33 of the National Report.

- Would be effected for reasons other than a threat to the defence or security of the state or public security and order, and the foreigner was a spouse of a national or of a foreigner holding a permit to settle.

In addition, the 2003 *Act of Foreigners* also foresees the possibility to grant a permit for tolerated stay when the removal of a foreigner residing on national territory could be effected to a country to which extradition is inadmissible on the basis of court's judgment on inadmissibility of a foreigner's extradition or on the basis of a decision of the *Minister of Justice* to refuse to extradite the foreigner. In such cases, the decision is issued by the *Head of Office for Foreigners* and includes a discretionary element.

In **Portugal**, removal of third-country nationals can be restricted due to family reasons. A third-country national cannot be removed if his/her situation corresponds to one of the following:

- The third-country national has been born in **Portugal** and resides there;
- The third-country has lived in **Portugal** from before the age of 10 years old and resides there;
- The third-country national has effective custody of minor children with Portuguese nationality residing in **Portugal**;
- The third-country national has minor children, nationals of a third-country, resident in Portugal, over whom s/he effectively exerts his/her effective authority, being responsible for their subsistence and education.

The **Slovak Republic** provides, within the *Act on Stay of Aliens*, five different possibilities linked to *tolerated stay*, namely:[190]

- Tolerated Stay – an Impediment to Administrative Expulsion;
- Tolerated Stay – When Departure is not Possible and Detention is not Purposeful;
- Tolerated Stay – Minor Found in the Territory of the Slovak Republic (Unaccompanied Minor) (see also Section 3.2.3);

[190] The grounds for granting the first two are described below while the other are described in the relevant sub-sections of this report.

- Tolerated Stay – Victim of a Criminal Offence Related to Trafficking in Human Beings (see also Section 3.3.1); and
- Tolerated Stay – When Required for Respect for Private and Family Life (see also Section 3.2.2).

Tolerated stay is granted in the **Slovak Republic** either on non-refoulement grounds or in cases when the third-country national cannot be sent back due to practical obstacles of no fault of his or her own, for example:

- Impediment to administrative expulsion:
  a) threat to the life of a foreign national on the grounds of his/her race, nationality, religion, membership in a certain social group, or political conviction; or
  b) threat of torture, cruel, inhuman or humiliating treatment, or punishment; or
  c) death penalty, or threat of death penalty under pending criminal proceedings;
  d) threat to the freedom of a foreign national on the grounds of his/her race, ethnicity, religion, belonging to a certain social group or political conviction, with the exception of a foreigner who by means of his/her conduct endangers the security of the state, or if he/she was convicted for a particularly serious crime and constitutes a danger to the Slovak Republic.
- If departure is not possible and detention is not purposeful: The departure is obstructed independent of the will of the foreign national (for example, the foreigner has been hospitalised for a longer period of time; he/she lost or was robbed of his/her travel document and is waiting to obtain a new document; the foreigner's planned flight has been delayed and his/her visa expires; or any other serious circumstances), and his/her detention is not purposeful.

In **Slovenia**, the "Permission to stay" is based on the principle of non-refoulement. The *Aliens Act* stipulates prohibition of removal of an alien in cases when "*the deportation or return of an alien to a country in which his/her life or freedom would be endangered on the basis of race, religion, nationality, membership of a special social group or political conviction, or to a country in which the alien would be exposed to torture or to inhumane and humiliating treatment or punishment*".

In **Spain**, the regulation implementing *Immigration Law* orders the *suspension of removal* for women whose expulsion poses a risk to their pregnancy.

In **Sweden**, the *Aliens Act* provides for "impediment to enforcement" provisions, which are based on the principle of non-refoulement and can be considered both within and outside the asylum procedure: "*the persecution threatening the alien in the other country entails danger for the life of the alien, or is otherwise of a particularly severe nature*." The *Aliens Act* stipulates also a possibility to order a "stay of enforcement" or grant a residence permit to an alien when new circumstances – such as medical or other special grounds – come to light, and as such justify why the order should not be enforced. This provision has been applied in cases in which:

- The alien suffers from severe health-problems that the transportation/travel could cause a danger to his or her life; or
- The enforcement of the expulsion order would separate family members for an unreasonably long time.

In **Sweden**, a person whose application for protection has been refused can call upon the *Migration Board* to re-examine the matter and issue 'an order staying the enforcement' on the ground of new circumstances. New circumstances should constitute a lasting impediment to enforcement. If the *Migration Board* decides not to grant this re-examination, this decision may be appealed in the same procedure as the 'normal' asylum procedure.

Finally, the **United Kingdom** grants "Discretionary Leave," which it considers to be *"a form of 'leave to remain' rather than a 'protection status'"*. It is granted outside its *Immigration rules*, most often for reasons relating to the *European Convention of Human Rights*. All asylum claims are considered firstly for asylum, secondly for Humanitarian Protection and thirdly for Discretionary Leave. Where a person would qualify for a grant of asylum or Humanitarian Protection, but has been excluded as undeserving of protection on grounds of, for example, being a war criminal or other serious criminality, the applicant can normally claim that their Article 3 of the *European Convention of Human Rights*[191] would be infringed if returned to their country of origin. In such cases Discretionary Leave is usually granted for a six-month period only, and is subject to active review at the time an application is made for further leave. Leave for a period of three years is granted to applicants who do not qualify for grants of asylum or Humanitarian Protection, but whose return to their country of origin would:

[191] Article 3 of the *European Convention on Human Rights* stipulates that: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

- *Breach Article 3 of the European Convention on Human Rights*[192]*:* For example, where a person's medical condition or severe humanitarian conditions in the country of return would make return contrary to Article 3.
- *Breach Article 8 of the European Convention on Human Rights*[193]*:* For example, in the context of a marriage or civil partnership application where, although the requirements of the *Immigration Rules* are not met (for example, because the correct entry clearance is not held), there are genuine Article 8 reasons that would make return inappropriate.
- *Breach other Articles of the European Convention on Human Rights:* For example, an applicant may argue that conditions in his or her country of origin are such that they would be completely denied the right to freedom of religion under Article 9.
- Any other exceptionally compelling case falling outside the Immigration Rules.

The practice of granting Discretionary Leave to unaccompanied minors (Section 3.2.3) or to victims of trafficking (Section 3.3.1) in the **United Kingdom** is discussed in the relevant Sections of this Synthesis Report.

3.2.5.3. Rights

In the **Netherlands**, applicants granted residence permit on the basis that they cannot leave the country through no fault of their own (i.e. trying to leave the country unsuccessfully) are provided the same medical assistance, social provisions and education as nationals. Access to the labour market is permitted only if the employer requests a specific work permit. Issuance of a Dutch travel document can be considered under certain conditions.[194] This temporary residence permit is granted for a year and can be extended for a maximum of one year each time. After three years of temporary residence permit as a third-country national who, through no fault of his/her own, is unable to leave the Member State, and if the third-country national still fulfils the relevant applicable conditions, a residence permit for the purpose of continued residence can be granted.[195] At present, only third-country nationals granted continued

[192] Article 3 of the European Convention on Human Rights stipulates that: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
[193] Article 8 of the European Convention on Human Rights stipulates that: Everyone has the right to respect for his or her private and family life, his or her home and his or her correspondence.
[194] If the third-country national is unable to obtain a travel document from another country or can prove that s/he cannot reasonably be required to apply for a travel document from another country. The term of validity of this travel document depends on the permit that has been granted.
[195] The residence permit for the purpose of continued residence implies that the residence permit is not withdrawn and the application for an extension is not refused, if the third-country national does no longer fulfil the conditions of the special policy on which grounds previous residency was permitted.

residence can access the labour market without the employer requested to have a specific work permit and may be eligible for family reunification. In **Poland**, third-country nationals granted a permit for tolerated stay have access to education, health care and the labour market on the same basis as nationals. They may also benefit from unemployment and social assistance. They are expected to travel using their own national passport but may be issued with a Polish travel document or a temporary travel document if needed. This permit is granted for a year and after ten years of uninterrupted residence in Poland may be granted a permit to settle. In **Sweden**, the persons granted permanent residence permit due to new circumstances have the same rights as all other persons that are resident. In the **United Kingdom**, applicants granted Discretionary Leave have full access to the National Health Service, public funds (social benefits), social care, education and the labour market. They are expected to travel outside the Member State on their national passports.[196] When six years of Discretionary Leave have been completed, an application can be made for residency (settlement) or Indefinite Leave to Remain (ILR).[197] At present, applicants granted Discretionary Leave are not eligible for family reunification until they have received Indefinite Leave to Remain (ILR); at that stage they may choose whether or not to apply for citizenship.[198]

3.2.5.4. Implementation

In **Finland**, the so called "*duldung*" status, was applied widely during 2004-2006 for nationals of Afghanistan, Somalia and Iraq without grounds for asylum/subsidiary protection or any other residence permit. In 2008, **Germany** issued *residence to persons who are subject to an enforceable obligation to leave the country* to 30 861 persons and "*Duldung*" documents to a total of 88 152 persons. These rather high numbers suggest that the "Duldung" can be interpreted as a catch-all clause for the large amount of cases in which foreigners are found not to be in need of protection, but in which removals, due to a great variety of different reasons, nonetheless cannot be carried out. In **Poland**, the reasons for granting tolerated stay to third-country nationals were gradually expanded. However, with the introduction of subsidiary protection in national legislation, the number of residence permits issued for tolerated stay within the asylum procedure decreased notably.

---

[196] However, if an applicant can show that they have been refused a national passport, they may apply for a Home Office Certificate of Identity (CID) for travel purposes.

[197] These renewal applications are subject to an 'active review' process undertaken by UK Border Agency.

[198] The UK Border Agency plans to introduce a reform of the naturalisation process called 'earned citizenship' in July 2011. Under the new proposals, 'probationary citizenship' will replace Indefinite Leave to Remain.

3.3 Other statuses and permits to stay

3.3.1 National protection statuses granted to victims of trafficking

In this Section, an overview of the protection statuses granted to victims of trafficking in the Member States is presented. More detailed information on the modalities on the form of protection granted in each Member State may be found in **Table 10** in the Annex.

Council Directive 2004/81/EC[199] stipulates that a residence permit is to be issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who cooperate with the competent authorities. While this Directive is framed within the pursuit of the development of a common *immigration* policy in the EU, many Member States grant statuses/residence permits to victims of human trafficking in the national context as forms of *protection*. In addition, Member States have adopted or maintained more favourable provisions for the persons covered by Council Directive 2004/81/EC, as allowed for in its Article 4, in order to, for example, maintain the same level of *protection* that was in place for this particular group before EU acquis (e.g. access to the labour market, which is not required by the Directive). Furthermore, the (continued) examination of individuals' eligibility through the asylum procedure firmly places / keeps it within the realm of national *policies relating to international protection*. Consequently, this Section presents the EU harmonised practice of granting residence permits to victims of human trafficking in conjunction with the non-EU harmonised forms of protection granted to this group.

3.3.1.1. Which Member States apply this non-EU harmonised protection status?

In twenty Member States (**Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Lithuania, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain** and the **United Kingdom**), some form of protection to people who were victims of trafficking is granted. The type of protection/status that is being granted by these Member States to victims of trafficking is in line, except for **Greece**, with Directive 2004/81/EC. For **Estonia, Finland, Hungary, Lithuania, Poland** and **Spain,** this status was created with the transposition of the Directive. Conversely, in A**ustria, Czech Republic, Belgium, Bulgaria, France, Germany** and the **Netherlands**, it appears that

[199] Directive 2004/81/EC on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities'.

a similar protection status already existed, which was adapted with the transposition of the Directive. In **Ireland**, this status exists on an administrative basis, and a legislative basis is proposed in the *Immigration, Residence and Protection Bill 2010*. Finally, **Portugal** also grants a residence permit additionally to the one granted in line with Directive 2004/81/EC, when and if the need for protection (as victim of human trafficking) ends.[200]

3.3.1.2. Grounds

In terms of beneficiaries, all Member States offer this protection status to victims of trafficking in human beings who have agreed to participate in criminal proceedings as witnesses. In **Austria,** the criminal or civil procedures have to start before the issuance of the residence permit; however participation in the criminal proceedings is not mentioned explicitly as a precondition. **Belgium**, **Germany**, **Greece, Estonia** and **Poland** also accept minors under this category.[201]

Next to the requirement that the person takes part in the criminal proceedings, **Belgium**, **Czech Republic**, **Estonia, Finland**, **France**, **Germany, Poland, Portugal** and the **Slovak Republic** also specify that this person needs to have severed all ties with the criminal organisation they were the victim of. Another precondition applied in **Germany** is that the person will only remain in the country on a temporary basis.

The grounds for withdrawing or not granting this protections status are aligned with the grounds included in the Directive. In **Belgium, Estonia** and the **Slovak Republic**, these comprise:

- If a person has renewed his/her ties with the criminal organisation;
- If a person no longer co-operates with the authorities; and,
- If a person is a danger to the national security (**Belgium**).

[200] In **Portugal**, legislation stipulates that the status of resident can be granted without a residence visa in exceptional circumstances, included *individuals who have benefitted from a residence permit under the terms of the legal regime regarding protection of victims of penal infractions linked to human trafficking or aiding and abetting illegal immigration.*

[201] The EMN synthesis report "*Policies on reception, return, and integration arrangements for, and numbers of, unaccompanied minors"* dedicates a specific section to unaccompanied minors who are victims of human trafficking.

3.3.1.3. Procedures

Protection statuses are granted **outside of the asylum procedure** in **Austria, Belgium**,[202] **Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Lithuania, Netherlands, Poland, Portugal**,[203] **Slovak Republic, Slovenia** and **Spain**. The **United Kingdom** investigates the status for victims of trafficking within the asylum procedure. In **Finland**, it can also be investigated within the asylum procedure if any suspicions arise that the person may be a victim of human trafficking.

In **Belgium**, **Czech Republic, Netherlands, Poland** and the **Slovak Republic**, the potential victim is provided with legal assistance and/or social support whilst the procedure is ongoing. Appeal of the decision is possible in **Austria, Belgium**, **Bulgaria** and **Hungary**. In **Austria, Bulgaria**, **Czech Republic**, **Estonia**, **Poland**, **Portugal, Slovak Republic** and **Spain,** there is a suspension of removal whilst the potential victim evaluates whether he or she wants to be part of the criminal proceedings. In the **Netherlands**, victims or witnesses file a report on human trafficking with the local police, which then forwards the application for a "temporary residence permit in connection with prosecution of human trafficking" to the *Immigration and Naturalisation Service* (IND) for a decision within 24 hours.

3.3.1.4. Rights

The **rights** that this protection status grants are generally in line with the rights provided for in the Directive 2004/81/EC, namely:

- Right to medical care is granted in the **Czech Republic**, **Germany**, **Greece, Poland**[204] and **Portugal**; limited to emergency health care in **Estonia**, **Hungary** and **Slovenia**; and dependent on the stage the person is at in the granting procedure in **Belgium.**[205]

---

[202] In **Belgium**, the status for victims of trafficking is usually investigated outside the asylum procedure. However, if during the asylum procedure, the national Refugee Authority receives indications that the asylum applicant is also a victim of human trafficking or smuggling, the applicant will be referred to the appropriate instances (e.g. counselling), while the examination of the application will still take place within the asylum procedure.

[203] This is applicable both to the protection/status in line with Directive 2004/81/EC, and to the residence permits granted individuals who have benefitted from a residence permit under the terms of the legal regime regarding protection of victims of penal infractions linked to human trafficking or aiding and abetting illegal immigration.

[204] In **Poland**, medical care is provided within the Programme for support and protection of victims/witness of trafficking in human beings."

[205] In Belgium there are four distinct stages: 1. Detection and identification of the victim of human trafficking and of aggravated forms of human smuggling – suspension of the order to leave the territory and reflection

Additionally, in **Austria**,[206] **Bulgaria**[207] and the **Slovak Republic**[208] health care is provided under the programmes specifically designed to offer support to the victims of trafficking.

- Right to social benefits is provided in **Belgium**, **Estonia**, **Bulgaria**, **Germany**, **Poland**, **Portugal** and the **Slovak Republic**.[209]
- Right to education is guaranteed in **Austria, Belgium**, **Czech Republic**, **Estonia**, Germany, **Greece**, **Hungary**, **Poland, Portugal**, **Slovak Republic** and **Slovenia**. For the **Czech Republic, Poland** and **Slovenia**, it is free of charge and mandatory at primary and secondary school level.
- Access to the labour market is granted, if a third-country national has a work permit, in **Austria, Hungary, Poland**[210] and **Spain**. The issue of the work permit takes into account the national labour market situation. No work permit is required in the **Czech Republic**, **Estonia, Netherlands** and **Portugal**. In **Belgium**, the work permit requirement depends on the stage of the procedure that the person finds him/herself in.
- The right to travel is granted in **Austria, Bulgaria**, **Czech Republic**, **Greece** and **Portugal**. It is not allowed in **Hungary**, **Slovak Republic** and **Slovenia**. In **Poland**, a third-country national who has been granted a residence permit as a victim of human trafficking may use a valid travel document from his/her country of origin, but cannot be issued with a Polish travel document or a temporary travel document.[211]
- The right to family reunification is granted by the **Czech Republic**, **Estonia**, **Greece**, **Hungary** and **Portugal**. It is not permitted for the **Slovak Republic** and **Slovenia**. In **Belgium**, the provision of this right again depends on the stage of the procedure that the person founds him/herself in. In **Poland**, family reunification is permitted for third-

---

period of 45 days; 2. Making of statements or filing a complaint – temporary residence permit valid for three months; 3. The foreign national is found to be a victim of human trafficking or an aggravated form of human smuggling – temporary residence permit valid for six months; 4. Permanent residence permit.

[206] " IBF- Interventionsstelle für Betroffene des Frauenhandels (Intervention centre for female victims of trafficking)"

[207] 'Centre for protection and support of victims of trafficking' in Bulgaria.

[208] 'Programme of support and protection of the victims of trafficking in human beings' in the Slovak Republic.

[209] In Bulgaria, Poland and the Slovak Republic, social benefits can be accessed under the programmes specifically designed to offer support to the victims of trafficking.

[210] In **Poland**, third-country nationals who have been granted a residence permit as victims of human trafficking are also entitled to undertake and carry out economic activities solely in the form of a limited partnership, a limited joint-stock partnership, a limited liability company and a joint-stock company and also joining such companies or purchasing their share and stock unless international agreements stipulate otherwise.

[211] A Polish travel document or temporary travel document cannot be issued even when the third-country national has lost his/her own travel document or this document has been damaged or has become invalid.

country nationals who have been granted a specific residence permit as victims of human trafficking and whose stay needs to be prolonged for more than two years to guarantee their participation in criminal proceedings.

- In **Greece,** beneficiaries of this status can start a family in the country.
- **Lithuania** grants all rights as foreseen by the Directive 2004/81/EC.

3.3.1.5. Duration of stay

The duration of stay can be long-term (one year renewable in **Bulgaria**, **Estonia**, **Greece**, **Netherlands**, **Portugal,**[212] **Spain**) and medium term (at least six months, renewable up to one year in the **Austria, Czech Republic**, **Finland**, **Hungary**, **Lithuania, Slovak Republic, Slovenia**, and at least six months with a possibility to extend it to two years in **Poland**). For **Belgium**, this is dependent on the phase of the process, whereas in **France** the duration of the residence permit is at the discretion of the Prefect. In **Germany**, the length of stay granted is dependent on the facts of the individual case. In the **Netherlands**, the validity of the residence permit for *victims* of human trafficking corresponds (at least) with the length of the criminal proceedings, whereas that for *witnesses* to human trafficking depends on whether the Public Prosecutor deems it important for the third-country national to remain in the Netherlands.[213]

3.3.1.6. Standard of protection

No conclusions are drawn as most Member States may have considered the protection granted to victims of human trafficking to be harmonised at EU level in accordance with Directive 2004/81/EC.

3.3.2 National protection statuses granted to witnesses in criminal proceedings

More detailed information on the modalities on the form of protection granted in each Member State may be found in **Table 11** in the Annex. It is important to note that all the national protection statuses described under the previous victims of human trafficking section

[212] This is applicable both to the protection/status in line with Directive 2004/81/EC, and to the residence permits granted individuals who have benefitted from a residence permit under the terms of the legal regime regarding protection of victims of penal infractions linked to human trafficking or aiding and abetting illegal immigration

[213] The temporary regular residence permit can be altered to a permit with the aim being 'continued residence'.

(Section 3.3.1) can also be considered as witnesses in criminal proceedings, because the victim's willingness to collaborate in the proceedings against the criminal organisation is a requirement for obtaining the status. In this Section, an overview of the protection statuses granted to witnesses in *other* criminal proceedings in the Member States is presented.

3.3.2.1. Which Member States apply this non-EU harmonised protection status?

Two Member States, namely **Greece**[214] and **Sweden**[215] developed specific national protection statuses for witnesses in criminal proceedings. In **Austria**, the *residence permit - special protection* that is granted to victims of human trafficking can be also issued in the context of other crimes in order to guarantee the prosecution of criminal offences or in order to lodge and enforce civil claims in connection with these criminal actions. In **Germany**, the '*Temporary residence*' can be granted for humanitarian reasons, but also if '*a foreigner is needed as a witness in judicial proceedings or is collaborating with the German authorities in the investigation of criminal offences*'. In relation to the *'Temporary regular residence permit in connection with prosecution of human trafficking',* the **Netherlands** defines human trafficking as encompassing not only *'forced prostitution, but also all other forms of modern slavery and exploitation'*. Although in **Poland** a specific protection status for witnesses in criminal proceedings does not exist, foreigners may be provided with a temporary residence permit if the law requires their appearance in court. In **Spain**, the *'Exceptional residence permit for collaboration with Justice'* can be issued, as foreseen in the *Immigration Act*.

3.3.2.2. Procedures

In **Austria, Germany, Greece**, **Netherlands, Poland** and **Spain**, this protection status appears to be granted **outside the asylum procedure**. In **Sweden**, protection to witnesses in criminal proceedings appears to be granted **both within and outside the asylum procedure**.

3.3.2.3. Rights

The **rights** granted by **Austria, Germany**, **Greece** and **Sweden** in relation to this status are similar, namely:

- Access to medical care and social benefits;
- Education is accessible to beneficiaries;

[214] The following non-EU harmonised protection statuses are granted to witnesses in criminal proceedings in **Greece**: 'Residence permit granted within the temporary judicial protection system'.

[215] The following non-EU harmonised protection statuses are granted to witnesses in criminal proceedings in **Sweden**: 'Tribunal *witnesses*'.

- Access to employment is provided in the **Netherlands, Spain** and **Sweden**, whilst it is restricted in **Greece** to dependent employment only (no self-employment) and dependent on national labour market considerations in **Austria** and **Germany**.
- Right to travel is granted in **Austria** and **Sweden**.
- Right to family reunification is granted (only) in **Sweden.**

3.3.2.4. Duration of stay

In **Austria**, the residence permit is issued for a minimum period of six months (renewable). The duration of stay is set to one year (renewable) in **Greece, Netherlands** and **Spain**.[216] In **Germany**, it depends on the nature of the individual case.

3.3.2.5. Standard of protection

A limited number of non-EU harmonised protection statuses (i.e. in **Austria**, **Germany**, **Greece, Netherlands, Spain** and **Sweden**) are granted to witnesses in criminal proceedings. The protection status granted by **Sweden** within the asylum procedure appears to meet the standard of protection as envisaged in the Geneva Convention and EU acquis, in that their asylum system foresees the same procedure to be followed and same rights to be granted in relation to all protection statuses. The protection status granted in **Greece** does not seem to meet the standard of protection laid down in the Geneva Convention and EU acquis, in that it is granted outside of the asylum procedure – hereby precluding the application of Council Directive 2005/85/EC (Asylum Procedures Directive) – and provides for fewer rights for the persons concerned.

3.3.3 Residence permits granted on the basis of "national interest"

In this Section, an overview of residence permits granted in the Member States on the basis of "national interest" is presented. More detailed information on the modalities on the form of protection granted in each Member State may be found in **Table 12** in the Annex.

3.3.3.1. Which Member States apply this non-EU harmonised protection status?

Five Member States, namely **Czech Republic**,[217] **Germany**[218]**, Poland,**[219] **Portugal**[220] and **Spain**[221] grant residence permits on the basis of "national interest." In the **Czech Republi**c,

[216] In the **Netherlands**, the validity of the residence permit for victims of human trafficking corresponds (at least) with the length of the criminal proceedings, whereas that for witnesses to human trafficking depends on whether the Public Prosecutor deems it important for the third-country national to remain on Dutch territory.

Germany, Poland and **Portugal**, residence permits granted on the basis of "national interest" are defined in the national *Residence Act* of third-country nationals or *Act on Foreigners* (**Poland**).

3.3.3.2. Grounds

The **grounds** for granting such permits slightly differ from one Member State to another. **Czech Republic**, **Germany, Poland** and **Portugal** have substantial latitude and discretion when granting residence permits on the ground of national interest. In the **Czech Republic**, residence permits are granted at the request of the third-country national, if his/her stay is of particular interest to the Member State. Examples include individuals who are of significant benefit because of their unique abilities (e.g. expertise of certain workers in specific fields, highly qualified workers, exceptional sport or cultural performances). In **Germany**, when granting *admission from abroad [...] for safeguarding the political interests of the Federal Republic,* authorities may take into account interests related both to international and domestic affairs.[222] The same applies for *admission by the German Federal Authorities when special political interests apply*, but particularly for groups located outside of the Member State.[223] In addition, **Germany** foresees the possibility to grant *temporary residence* permit [...] *if the temporary presence of the third–country national in question within Germany would serve the public interest.*[224] In **Poland**, the notion of *interest of the state* may, but does not

---

[217] The following non-EU harmonised protection statuses are granted on the basis of national interests in the **Czech Republic**: *residence permit in the interest of Czech Republic.*

[218] The following non-EU harmonised protection statuses are granted on the basis of national interests in **Germany**: *admission from abroad [...] for safeguarding the political interests of the Federal Republic; temporary residence permit [...] if the temporary presence of the third –country national in question within Germany would serve the public interest; Admission by the German Federal Authorities when special political interests apply.*

[219] The following non-EU harmonised protection statuses are granted on the basis of national interests in **Poland**: *Residence permit for a fixed period issued to a foreigner who illegally resides on the territory of the Republic of Poland if it is required by the interest of the Republic of Poland and Residence visa (uniform short-stay Schengen visa and Polish long-stay national visa issued if it is required by the interest of the Republic of Poland.*

[220] The following non-EU harmonised protection statuses are granted on the basis of national interests in **Portugal**: *residence permit for reasons of national interest.*

[221] The following non-EU harmonised protection statuses are granted on the basis of national interests in **Spain**: *Temporary residence permit issued in exceptional circumstances* as regulated by Article 45 of *Royal Decree 2393/2004*.

[222] Examples of admission from abroad [...] for safeguarding the political interests of the Federal Republic of **Germany** include known members of the opposition or dissidents, individual refugees from overburdened host states, or indeed individual persons for whom, in the view of the German security authorities, allowances should be made.

[223] This protection status has been granted in the past to groups originating from, for example, Vietnam, Chile, Argentina, Jews from Russian Federation, refugees from Iraq, etc.

[224] i.e. the residence of the third-country national is necessary for the safeguarding of the interest of German security authorities or because of interests relating to foreign policy or sports policy.

necessarily have to, be understood as for the procedure for granting national asylum to a third-country national.[225]

3.3.3.3. Procedures

Residence permits granted on the basis of "national interest" are investigated and granted **outside the asylum procedure**. Indeed, in the **Czech Republic**, **Germany, Poland, Portugal** and **Spain**, residence permits granted on the basis of "national interest" relate more to immigration policy.

In some instances in the **Czech Republic** and **Germany**, third-country nationals are required to apply from abroad, although for the former, there are certain circumstances when it is possible to apply within the country.[226] For **Germany**, submission of applications from abroad concerns *Admission from abroad [...] for safeguarding the political interests of the Federal Republic* and *admission by the German Federal Authorities when special political interests apply*[227], but does not apply to *temporary residence* which can be granted *if the temporary presence of* a *third –country national within Germany would serve the public interest*. An important assumption in this instance is that not all people who are in need of protection are capable of travelling to Europe to apply for asylum. German law therefore foresees the possibility of diplomatic missions and/or of *Federal and Länder authorities* to admit persons who are found to be in need of protection or whom they want to admit for reasons of public interest. Even resettlement schemes fall under this category of protection. Thus, for example, this form of protection was used when the *Standing Conference of the Ministers and Senators of the Interior of the Federal Länder* decided in December 2008 to admit a total of 2 500 refugees from Iraq who had fled to Jordan and Syria.

In **Poland**, illegally staying third-country nationals can have their residence legalised by the respective administrative body if it is judged to be of national interest. In addition, the *Act on*

---

[225] A third-country national can be granted national asylum in **Poland** 'if asylum is necessary for providing the third-country national with protection and when vital interests of the Republic of Poland are at stake'. But no further definition of state *interests* is provided.

[226] In the **Czech Republic**, this is also possible to apply for permanent residence on the grounds of the interest of Czech Republic if the third-country national is staying in the territory of Czech Republic under a temporary residence permit.

[227] There are four stages to the procedure to be followed. Firstly, the *Federal Ministry of the Interior* (BMI) reaches agreement with the *Supreme Länder authorities* in respect of the "special political interests" of the Federal Republic. Following this, the BMI issues an instruction to the *Federal Office for Migration and Refugees* (BAMF) concerning the admission of foreigners from particular countries, or groups of foreigners determined in some other fashion. On the basis of this, the BAMF then issues, in individual instances, an undertaking to admit the foreigner who is benefiting from this provision. The diplomatic missions and the local foreigners' authorities within Germany then issue a visa and / or a residence permit on the basis of this.

Foreigners also foresees the possibility to issue a residence visa (i.e. either a uniform short-stay Schengen visa or a long-term national visa) if the State's interest requires so.

In **Portugal**, third-country nationals have the possibility to apply, at border posts, for a *special visa for reasons of national interest*. This special visa only allows the entry and temporary stay of third-country nationals who do not meet the legal requirement necessary to be admitted on the national territory. Holders of such a visa, who wish to remain on the territory for a longer stay, should then apply for *a residence permit granted for reasons of national interests.*[228]

3.3.3.4. Rights

The **rights** attached to residence permits granted for reasons of "national interest" vary among Member States:

- In the **Czech Republic**, *persons granted residence permit in the interest of the Czech Republic* benefit from the same rights as the ones enjoyed by nationals, with the exception of several political and elective rights.
- In **Germany**, persons admitted from abroad in order to safeguard national political interests and persons admitted by the Federal Authorities when special political interests apply, have immediate and unrestricted access to the labour market and are guaranteed a limited right to family reunification, while persons granted temporary residence only have limited access to the labour market and cannot benefit from family reunification.
- In **Poland**, the rights granted to an illegally staying third-country national who is issued a residence permit in the interest of Poland or to a third-country national who is issued a residence visa if it is required by the interest of Poland are limited. Beneficiaries of such a form of protection are not entitled to work, or to social assistance benefits, family benefits, social pension or family reunification. Access to health care is provided if the beneficiaries of such a form of protection have an insurance policy. Access to education is provided from the age 7 to 18 years, like for all third-country nationals regardless of their legal status.

[228] Holders of a Special Visa who wish to remain in the country for a period longer than the stay that was initially authorised can apply for an extension of their stay for a period of up to 60 days and, if an application for a residence permit is pending or in duly justified cases, the visa can be extended beyond this limit.

3.3.3.5. Duration of stay

The residence permit granted by the **Czech Republic** is permanent. In **Germany**, persons benefiting from admission from abroad for safeguarding the national political interests or from resettlement schemes, obtain a residence permit that can be converted into a settlement permit after seven years, while persons granted residence permit because their temporary presence will serve the national interest have usually no prospect to remain for a long time. Indeed, *Foreigners' Authorities* have to assess, in advance, whether the third-country national in question will leave the country once the circumstances that necessitate his/her temporary stay no longer apply.[229] In **Poland**, the residence permit granted to an illegally staying third-country national if the State's interest requires so, is issued for the period of time necessary to fulfil the purpose for which it was issued and cannot exceed two years. The stay of third-country nationals issued a uniform short-stay Schengen visa may not exceed 3 months while the stay of third-country nationals issued a long-stay national visa may not exceed one year. These visas can only be prolonged in certain circumstances. In **Portugal**, persons benefitting from this type of permit are granted a temporary residence permit valid for a year, renewable by period of two years, as for any other resident third-country national. In **Spain**, a temporary residence permit valid for one year and renewable for one year is issued.

3.3.3.6. Implementation

In the **Czech Republic, Germany** and **Poland**, residence permits for reasons of national interest were not granted very often. **Germany** considered that this kind of residence nonetheless played a very important role. As mentioned above, this form of protection was recently applied, for example, in the framework of a resettlement scheme for refugees from Iraq who had initially fled to Jordan and Syria.

3.3.3.7. Standard of protection

The practice of granting protection on the basis of "national interest" in the **Czech Republic, Germany, Poland** and **Portugal** constitutes another example of national practices preceding, and/or providing additional or complementary forms of protection to those foreseen in, relevant EU acquis. It can be noted that these national practices of granting protection differ from EU acquis and the Geneva Convention in a few respects. Firstly, the authorities in the

[229] If the temporary residence permit granted on such ground is not designed to establish a permanent right of residence, circumstances pertaining to the individual case could lead to the extension of such permit. Please refer to the table "Overview of national protection statuses granted on the ground of national interest" for more information.

Czech Republic, **Germany, Poland** and **Portugal** have substantial latitude and discretion when granting residence permits on the ground of national interest. Secondly, the residence permits relate more to migration policy and, hence, are granted outside the asylum procedure. This implies that not only asylum applicants can benefit from this protection, but also that the procedures followed and the rights attached are not (necessarily) in line with those stipulated in *Council Directive 2005/85/EC* (Asylum Procedures Directive) and *Council Directive 2004/83/EC* (Qualification Directive). **Portugal** considers that this national legal regime provides an additional level of protection when compared to its other national protection statuses.

3.3.4 Residence permits granted to victims of specific offences

In this Section, an overview of protection statuses granted to victims of specific offences in the different Member States is presented. More detailed information on the modalities on the form of protection granted in each Member State may be found in **Table 13** in the Annex.

3.3.4.1. Which Member States apply this non-EU harmonised protection status?

Three Member States (**Greece**, **Portugal** and **Spain**) grant residence permits to victims of specific offences. This protection status is applicable to third-country nationals who become victims of specific offences while already in the Member State.

3.3.4.2. Grounds

The **grounds** can be split between those related to racist acts (**Greece,**[230] **Spain**[231]), labour-related offences and/or accidents (**Greece,**[232] **Portugal**[233]) and gender-based violence[234] (**Spain**).

3.3.4.3. Procedures

Residence permits corresponding to such grounds are granted **outside the asylum procedure** and often relate to judicial proceedings.[235] In **Portugal** and **Spain**, collaboration with the

[230] In **Greece,** this applies to: victims of labour or other accidents and the victims of racist acts.
[231] In **Spain**, this applies to: victims of offences against workers' rights with the aggravating circumstance of racism, anti-Semitism or other type of discrimination.
[232] In **Greece**, this applies to: *residence on humanitarian grounds*, which mentions "victims of labour or other accidents."
[233] In **Portugal**, this applies to: victims of very serious penal or administrative offence in terms of labour relations, translating into conditions of a lack of social protection, exploitation in terms of wages and working hours.
[234] In **Spain**, this applies to: victims of domestic and/or gender-based violence.

Member States' national authorities is a pre-requisite for the applicant. In **Spain**, an additional requirement is set, i.e. the residence permit is only granted if there has been a conviction of the offence.

For **Portugal,** residence permits were aimed at third-country nationals who do not meet the conditions for accessing the status of residence required by the general regime governing immigration (i.e. when they do not possess the necessary residence visa issued by a Portuguese consular entity abroad) but who, due to extenuating circumstances, should be guaranteed the possibility to access the status of a third-country national resident. **Spain** follows a similar rationale, as these types of residence permits have, as their main characteristic, the waiving of the visa requirement. In **Greece**, holding a prior residence permit is a pre-requisite to apply for a residence permit granted to victims of labour or other accidents and victims of racist crimes.

3.3.4.4. Rights

The **rights** granted differ from one Member State to another. In **Portugal**, the rights attached to this type of residence permit are similar to the ones attached to the resident permit granted to any third country national regularly resident on its national territory. The situation is similar in **Greece**, with regard to the access to medical assistance, social support and education. In addition, **Greece** allows beneficiaries of this type of residence permit to access the labour market and they are entitled to travel if they have their own passport; to family reunion with family members living outside the Member State; to family reunification; and to submit an application for naturalisation. Several instructions, issued by the *General Directorate of Immigration* in **Spain**, define a certain number of rights guaranteed to the beneficiaries of this type of permit. These include, for example, access to protection programmes, education and/or training activities, as well as procedures to facilitate the victim's integration into the labour market for the particular case of victims of domestic and/or gender-based violence.

3.3.4.5. Duration of stay

Residence permits granted for victims of specific offences are of temporary nature i.e. one year, but renewable.

---

[235] Residence permits granted to victims of specific offences relate to judicial proceedings, except the one granted to victims of labour or other accident.

3.3.4.6. Standard of protection

The residence permits for victims of specific offences are granted outside of the asylum procedure and, therefore, cannot be considered as offering a protection in line with the Geneva Convention and EU acquis. In principle, these residence permits constitute more a part of national migration policies.

3.3.5 National protection statuses for victims of environmental disasters

3.3.5.1. Which Member States apply this non-EU harmonised protection status?

Two Member States, namely **Finland** and **Sweden**, have a form of protection for victims of environmental disasters.[236] In **Finland**, an environmental catastrophe occurring in the country of origin represents one of the grounds for granting *humanitarian protection*. In **Sweden**, this constitutes an additional ground for granting subsidiary protection (see Section 2.2.5). Conversely, the **Czech Republic**, **France** and **Hungary** note the lack of such protection status in their Member State. In the **Czech Republic**, environmental disasters are generally not recognised as a reason to grant international protection, because it is presumed that these victims should primarily seek to relocate within their country of origin or of residence.

In **France**, there is currently a legal vacuum for certain categories of persons seeking protection from nationwide environmental pollution or from accidents damaging the environment of their country of origin or residence. The exclusion of this category of persons from the national definition of 'refugee' is the result of a *Council of State* ruling which refused protection statuses to the victims of the Chernobyl nuclear power station accident in 1986. In **Hungary** people displaced by environmental disasters are not covered by national asylum legislation.

3.3.5.2. Grounds

In **Finland**, the 2009 *Aliens Act* refers to environmental disasters. While there are no fixed judicial criteria for granting protection on this ground, *Government Bill 323/2009* refers to an *"environment [that] has become unusable for residential purposes or hazardous to person's health."*

[236] This has been criticised by UNHCR (Asylum in the European Union. A study on the implementation of the Qualification Directive," UNHCR, November 2007, paras 10, 19 and 22, available at: http://www.unhcr.org/refworld/pdfid/473050632.pdf).

3.3.5.3. Procedures

Protection on the basis of an environmental catastrophe occurring in the country of origin is granted in **Finland within the asylum procedure**.

3.3.5.4. Rights

In **Finland**, these consist of:

- Access to medical care;
- Access to social care;
- Access to accommodation provided by the State;
- Access to employment; and
- Right to travel.

3.3.6 Permission to remain/Residence as a consequence of the Minister using his /her discretionary power

More detailed information on the modalities on this form of protection granted in each Member State may be found in **Table 14** in the Annex. Here, an overview of protection statuses allowing third-country nationals to remain in the country on the basis of a discretionary decision is given.

3.3.6.1. Which Member States apply this non-EU harmonised protection status?

This type of protection is a non-EU harmonised protection status implemented in **Ireland,** established in their *Immigration Act 2004,* and the **Netherlands,** *Aliens Decree.* In **Ireland**, it also appears that the *Minister for Justice* exercises an inherent discretion to grant permission to remain.

3.3.6.2. Grounds and procedures

The permission to land or be in the State (**Ireland**[237]) *and to reside as a consequence of the Minister using its discretionary power* (**Netherlands**) are granted **outside the asylum procedure.**

[237] In **Ireland**, another relevant status is called "*Leave to remain,"* which is discussed above in Section 3.2.5 in relation to its link to the *Refugee Act* of 1996, and the prohibition of refoulement.

In **Ireland**, an Immigration Officer, on behalf of the *Minister for Justice, Equality and Law Reform*, has the discretion to provide a non-national with permission to land or be in the Member State where a person is residing without permission. No specific procedures or specific grounds for granting this permission have been laid out in national legislation, but the legislation requires that the officer shall have regard to all known circumstances of the non-national, and sets out matters for consideration.

In the **Netherlands**, the *Minister of Justice* has the discretionary power to grant a regular residence permit subject to specific restrictions.[238] This power can be invoked in two ways:

- If unforeseen cases are of a categorical nature, a policy rule will be drawn up for the whole group, usually on the grounds of this power; and
- Exceptional individual situations may provide grounds for using this discretionary power to grant a residence permit.

3.3.6.3. Rights

In **Ireland,** the legislation does not set out any specific rights for people benefitting from discretionary permission to stay, and instead Ministerial discretion applies. In the **Netherlands**, third-country nationals granted a residence permit as a consequence of the Minister using his/her discretionary power are provided with:

- Same rights to medical care, social assistance and education as nationals;
- Travel document under certain conditions; and
- Right to family reunification or family formation.

3.3.6.4. Implementation

In the **Netherlands**, the Minister's discretionary power is generally only used if the third-country national's individual circumstances are so special that they provide grounds for deciding that their situation is extreme, with the third-country national not being eligible, on the grounds of the policy, for either an asylum permit or a regular permit.

3.3.6.5. Standard of procedure

Due to the discretionary nature of these non-EU harmonised protection statuses, the standard of protection put forward in the Geneva Convention and EU acquis cannot be fulfilled. No

[238] This discretionary power is laid down in Article 3.4, paragraph 3 of the Aliens Decree.

specific procedure or grounds for granting this permission to land or be in the State have been provided for in the national legislation of **Ireland**, although relevant legislation sets out matters to which the Minister, or an immigration officer, must have regard. In the **Netherlands**, the defined grounds leave an important margin of manoeuvre to the *Ministry of Justice* when deciding on such cases.

4. STATISTICAL DATA ON NON-EU HARMONISED PROTECTION STATUSES

This Section provides an overview of data concerning non-EU harmonised protection statuses granted, and applied for, in Member States. It deals with each Member State in turn in order to provide a comprehensive overview of the number applying for, and granted, protection statuses and/or residence permits at national level. This is because the data on non-EU harmonised protection statuses available at Member State level are currently not comparable. Each National Report gives a more comprehensive overview of the available data in a Member State.

In **Austria**, the number of persons to whom subsidiary protection was granted rose from 909 in 2006 to 1628 in 2008.[239] Of these figures, the most prominent countries of origin were Russia, Iraq, Afghanistan and Serbia.

In **Belgium**, the number of third country nationals to whom protection was granted on **medical grounds** or on the basis of **(other) humanitarian grounds** between 2005 and 2008 was 41 500. Approximately 20% of these individuals received a permit for medical reasons. Concerning those granted protection as **victims of human trafficking**, Belgium experienced a decrease in the number of persons who applied for this status from 205 (2003) to 124 (2009), with applications mainly coming from nationals of Brazil, China, India and Morocco. Though there was a decrease in the number of applicants, the number of persons to whom the status was actually granted increased from 33 (2004) to 73 (2009).

In **Bulgaria**, to date no residence permits were granted to **victims of human trafficking**.

In the **Czech Republic**, the total number of persons who were granted asylum on the basis of national law and subsidiary protection on the basis of national law increased from 95 (2004) to 162 (2006), with a total of 623 third-country nationals granted this protection between 2004 and 2008.[240] Of this total, 18 persons were granted national subsidiary protection between 2007 and 2008. In 2008, the main countries of origin for those granted non-EU harmonised protection were Ukraine, Belarus and Russia, for both males and females. The number of persons to whom national protection was granted on **humanitarian grounds** varied greatly, with it reaching its peak in 2006 when 579 persons were granted this status, in comparison

[239] Figures provided for 2009 only cover the period from January to July and do not permit to confirm whether this trend was confirmed in 2009.

[240] This non-EU harmonised protection includes Asylum under Section 13 and Section 14 and subsidiary protection under Section 14(b).

with 233 in 2004. A decrease was, however, observed between 2006 and 2008, with 148 third-country nationals granted protection on humanitarian grounds in 2008. Additionally, an increase was observed from 2 (2006) to 13 (2008) in the number of third-country nationals to whom protection was granted as **victims of human trafficking**. These numbers also include the family members of victims. The number of persons to whom permanent residence was granted on the '**ground of national interest'** and for **foreign policy interest** increased from 81 (2004) to 1 215 (2006). Between 2004 and 2008, 3 029 individuals were also granted permanent residence status for '**other reasons worthy of consideration'**. Finally, 3 574 visas and long-term residence statuses were granted as **leave to remain** between 2004 and 2008, with an increase experienced from 370 (2004) to 718 (2008).

Finland experienced a significant decrease in the number of persons to whom protection was granted on '**compassionate grounds'**, with 464 individuals granted this status in 2004 compared to 107 in 2009. Nationals from Iraq were the most prominent in receiving protection on 'compassionate grounds' in 2009. In addition, the number of persons to whom **humanitarian protection** was granted in 2009 was 365, with the most prominent countries of origin being Afghanistan, Iraq and Somalia.

In **Germany**, 6 741 third-country nationals were granted '**temporary residence'** in 2008, compared to 9 940 in 2007. This status can be granted on **humanitarian grounds**, or for **reasons of public interest**. It is sometimes also granted on **medical grounds**. Many of those granted this status in 2007 and 2008 were less than 16 years old, with slightly more men than women benefiting from the status.[241] Concerning the granting of protection on **medical grounds**, there are several different legal provisions in place, on the basis of which protection can be granted. It is difficult to analyse exactly in how many cases protection was granted on medical grounds. For example, in 2008, 30 861 third-country nationals were issued with a 'residence permit for persons who are under an enforceable obligation to leave the country'. Medical reasons constitute one of the main grounds on the basis of which this type of residence permit is issued. Other possible grounds are pressing humanitarian or personal reasons and reasons of public interest. A total of 21 individuals were granted protection for **victims of human trafficking** in 2008, with 18 to 25 years being the most prominent age group in this category. Most of these 21 individuals were nationals of **Bulgaria**, Nigeria,

[241] Most figures given here for Germany refer to the number of residence permits issued during the respective reference periods. They contain both new residence permits and residence permits that were extended, changed or renewed.

Romania, **Poland** and Russia. With regard to "**tolerated stay**," data was provided for the three types of status existing in **Germany**. In 2008, 88 152 third-country nationals were issued with a **temporary suspension of removal** ("Duldung"). Of these, a total of 13 437 were nationals of Serbia. Other important nationality groups were Iraq, Turkey and Syria. Some 30 548 individuals were issued with a residence permit for third-country nationals who are subject to an **enforceable obligation to leave the country** in 2007 (30 861 in 2008). Residence permits in **cases of hardship** were granted to 2 450 (2007) and 2 678 (2008) third-country nationals. Within this group, a relatively high share was taken up by young people. The number of persons who were granted protection on grounds of **special political interests** dropped from 11 208 in 2004 to 2 502 in 2008 and 3 158 in 2009. For the years 2004 to 2008, these numbers mainly refer to the admission of Jewish immigrants from countries of the former Soviet Union. In 2009, however, in addition to 1 436 Jewish immigrants, 2 070 Iraqi refugees from Syria and Jordan were resettled to Germany on the basis of this protection status. In the framework of 'admission from abroad' for reasons of **international law**, **pressing humanitarian reasons** or in order to **safeguard the political interests** of **Germany**, 25 third-country nationals were granted a residence permit in 2008 (22 in 2007). The predominant age group both in 2007 and 2008 were those aged less than 16 years. The main country of citizenship for this group was Yemen. With regard to subsidiary protection, 519 third-country nationals were granted a **national form of subsidiary protection** and 155 an EU-harmonised form of subsidiary protection between 1st January and 30th June 2009. In more than 50% of the cases in which national subsidiary protection was awarded, protection *when deportation of a third-country national is inadmissible to a State in which there is a substantial concrete danger to his or her life and limb or liberty* was brought to bear. With regard to asylum and refugee status, it was observed that in 2008, 233 individuals were recognised as persons entitled to asylum on the basis of the *German Basic Constitutional Law* and 7 058 were granted refugee status in accordance with European law. This shows that decisions in favour of protection as refugees (with EU law as a basis) significantly outweigh those in favour of recognition as a person entitled to asylum (with national law as a basis).

In **Greece**, 795 residence permits were granted on **humanitarian grounds** in 2004. The number of persons to whom residence permits were granted for **humanitarian reasons** in the period 2005 to 2008 was 3 684, with Albania and Pakistan being the predominant countries of origin. In the same period, 1 398 were granted residence permits for **exceptional reasons**.

The most prominent countries of origin for those granted protection for exceptional reasons were Albania, Georgia and the Philippines.

In **Hungary**, there was a decrease in the number of persons who applied for protection as a **stateless person** from 47 (2008) to 15 (2009). Of the 47 applicants in 2008, 20 were granted protection as a stateless person, half of whom were women. **Hungary** also noted a decrease in the number of persons to whom the status was granted, from 20 (2008) to 11 (2009). With regard to protection for **tolerated stay**, there was a decrease from 177 (2004) to 83 (2007). Additionally, from January to June 2009, 54 third-country nationals had been granted this status.

In **Ireland**, with regard to **national temporary protection**, 58 individuals were granted this status in 2004, increasing to 192 in 2009. The persons to whom the status was granted originated from a diverse range of countries, including Afghanistan, Cameroon and Sri Lanka. Additionally, in 2010, 10 third-country nationals applied for protection as **victims of human trafficking**, with four granted this protection status. This is in contrast with 66 applications in 2009, with 11 being granted protection, one of whom was an EU national who was granted temporary residence.[242] According to the *Anti-Human Trafficking Unit* these 10 individuals had received a 60 day recovery and reflection period to enable them to remain. Four of these 10 persons were granted six months temporary residence and, of these four, two are in their second period of temporary residence. Protection statuses granted to victims of human trafficking are recommended by a specified member of 'an Garda Síochána'.[243] Persons may either inform the Garda Síochána directly that they are victims of human trafficking or they may be referred to the Garda Síochána as potential victims of human trafficking by another State body or NGO. In addition, 42 persons were granted **alternative forms of protection or residence** and 22 applications for leave to remain under Section 3 of the *Immigration Act 1999* were granted in 1999, rising to 1 278 in 2008. A total of 659 applications were granted during 2009.

In **Italy**, the number of persons to whom **humanitarian protection** was granted ranged from 1 002 (2004) to 5 641 (2007). A decrease was, however, experienced in 2008 with 1 621 third-country nationals being granted this protection. With regard to the other form of

[242] A period of 'reflection and recovery' as well as temporary residence permits are granted. A temporary residence permission may be granted during the recovery and reflection period or following the expiry of that period as the Minister considers appropriate.
[243] Police authority in Ireland

temporary protection provided on the basis of ad-hoc decision of the government, there were no cases in the last five years.

In **Lithuania**, the number of persons to whom subsidiary protection was granted decreased from 407 (2004) to 349 (2008). Such individuals were issued with temporary residence permits due to armed conflicts or human rights violations taking place in their countries of origin. The most prominent countries for those granted subsidiary protection were Russia and Afghanistan, with 348 nationals of Russia granted subsidiary protection in 2004.

In the **Netherlands**, 576 third-country nationals were granted residence permits due to **medical emergency** between 2005 and 2009. In addition, 207 third-country nationals were also granted residence permits as they were **unable to leave** through no fault of their own. It must be noted, however, that this latter figure includes also third-country nationals who could not leave the country on medical grounds. Between 2008 and 2009, 543 third-country nationals were granted an asylum residence permit on the basis of the c ground (i.e. traumata policy) while 4 618 third-country nationals were granted an asylum residence permit on the basis of the "d" ground (i.e. categorical protection). Furthermore, 2 653 third-country nationals were granted an asylum residence permit on the basis of the "e" and "f" grounds (i.e. family members who travel later, in a narrower sense –e ground- or in a wider sense – "f" ground). Concerning the number of persons to whom protection was granted as **victims of human trafficking**, there was an increase from 73 (2005) to 285 (2009).

In **Poland**, the number of persons granted **tolerated stay**, at first instance, decreased from 2 872 (2007) to 65 (2009). A decrease was also experienced at second instance, from 62 (2006) to 17 (2009). During this period, the most prominent country of origin for individuals granted tolerated stay at second instance was Russia.

In 2008, **Portugal** granted national protection status on **medical grounds** to 267 persons. In addition, 24 third-country nationals were granted protection as **victims of human trafficking** in 2008. Also, in 2008, 4 residence permits were granted to **victims of penal or administrative infractions regarding labour relations** and 194 residence permits were issued under the terms of the **exceptional regime**, for which some were granted for **humanitarian reasons**. Furthermore, the number of third-country nationals to whom **temporary stay visas** were granted was 1 344 in 2008, with an additional 3 407 granted an

extension of their temporary stay visas. These numbers reflect the total number of visas issued, with only some granted on the grounds of illness.

In the **Slovak Republic**, for asylum granted on **humanitarian grounds**, there was a decline in the number of persons to whom this status was granted from 13 (2005) to 3 (2008). There was also a decrease in the number of persons to whom **tolerated stay** was permitted, from 195 (2007) to 131 (2008). With regard to the number of persons to whom protection was granted for **family reasons** (tolerated stay for respect for private and family life), a decrease was also experienced from 43 (2007) to 31 (2008). For **unaccompanied minors**, 53 were granted **tolerated stay** between 2004 and 2008, though a decrease was experienced from 20 (2006) to 4 (2008). In addition, the total number of persons to whom tolerated stay was granted due to an **impediment to administrative expulsion** was 60 over the period 2004 to 2008, with a decrease also experienced from 22 (2004) to 6 (2008). Tolerated stay to those individuals whose **departure was not possible and where detention was not purposeful**, was permitted for a total of 563 third-country nationals in the period 2004 to 2008. With regard to **victims of trafficking in human beings**, only one individual was granted tolerated stay for this reason in 2007. The most prominent countries of origin for those granted tolerated stay were Ukraine, Libya and Vietnam, with 26 stateless persons granted this status from 2004 to 2008.

In **Slovenia**, 20 persons were granted asylum for humanitarian reasons in 2004 and 12 in 2005. With regard to the protection of **victims of human trafficking**, two persons were granted this protection in 2008, 1 in 2006 and 1 in 2004. Additionally, the number of persons to whom permits were granted as **stateless persons** increased from 1 (2006) to 3 (2008).

In **Spain**, the number of persons to whom protection was granted on humanitarian grounds was 163 in 2004, with this figure including both subsidiary protection and protection granted on **humanitarian grounds**. From 2008 onwards, data only on the number of authorisations on the basis of humanitarian grounds is available, with 16 made in 2008 and 8 in 2009.

In **Sweden**, there was a significant increase in the number of individuals to whom subsidiary protection was granted according to national legislation, from 61 (2004) to 8 644 (2007). Iraq was the dominant country of nationality for residence permits granted on grounds of **subsidiary protection under national legislation**. In addition, protection status was granted to third-country nationals on **humanitarian grounds** (status granted for exceptionally

distressing circumstances/humanitarian protection) with a decrease from 3 043 (2004) to 1 571 (2008). The reasons for this decrease could be based on the fact that these grounds for protection have become unusual due to the implementation of the new *Aliens Act*. The nationalities most frequently granted residence permits on these grounds are Serbia-Montenegro, Iraq and Somalia. Additionally, several stateless persons have been granted residence permits on humanitarian grounds. Additionally, **Sweden** experienced a decrease in the number of individuals who were granted **permits under temporary law** from 2 362 (2005) to 14 (2008).

In the **United Kingdom,** 2 480 persons were granted **Discretionary Leave** in 2009 and 50 were granted **Humanitarian Protection**.

5. NATIONAL OPINIONS

This Section provides an overview of the various opinions on the granting of protection expressed by, for example, national governments, national network members, NGOs, researchers, civil bodies or through public opinion surveys in the EU Member States. In particular, it focuses on views as to whether the national protection statuses are having positive or negative impacts and/or whether these should be harmonised at EU level.

5.1 National governments

Positive opinions on non-EU harmonised statuses by **national governments** were given by **Germany, Greece**, **Slovak Republic** and the **United Kingdom. Greece** commented positively on the implementation of the national humanitarian status. The government in **Germany** argued that the implementation of *Council Directive 2004/83/EC* (Qualification Directive) had been a positive step towards better refugee protection in Europe, but that national statuses were still needed alongside European ones in order to provide a comprehensive system of protection. According to the *German Federal Ministry of the Interior*, the European protection system still has loopholes, which needed to be filled by national rules. National forms of protection were found not be in competition with European rules – rather, they constituted a sensible element to complement them. In the **United Kingdom**, the *UK Border Agency*'s view is that provisions in the immigration system have always been made for those who do not qualify for asylum, but need to stay in the Member State for humanitarian reasons, in accordance with international obligations and national legislation. It also considers that its unified system, with one application process, allows for a thorough consideration of asylum and human rights claims under one application.

On the other hand, some Member States have identified a number of problems related to non-EU harmonised statuses. These were:

- The spectrum of non-harmonised statuses is too broad (**Czech Republic**);
- The content of the various non-harmonised statuses can overlap (**Czech Republic**);
- Tolerated stay, a status originally designed to deal with exceptional cases, is used too frequently and sometimes over too long periods of time (**Germany**);

- Tolerated stay: A distinction between the protection-related and technical-related prerequisites to be granted tolerated stay would increase the transparency of regulations and make the procedures more efficient (**Poland**);
- Lack of sufficient protection for certain categories, for example, trafficked women (**Ireland**);
- Existence of a legal gap outside the traditional scope of the right of asylum (**France**);
- Less favourable legal and social conditions tied to national forms of protection than those tied to refugee status or subsidiary protection (**Hungary**);
- Intention to terminate the group protection policy (so-called *d-ground asylum residence permit*) as the government considers that the element of group protection is already safeguarded in the provisions of Council Directive 2004/83/EC relating to subsidiary protection (**Netherlands**). In addition, the Dutch government announced that they were considering abolishing the *unaccompanied minor third-country national residence permit*.

The national governments of **Czech Republic**, **Germany**, **Greece**, **Italy**, **Portugal** and **Slovenia** expressed views in favour of seeking to harmonise the existing national statuses, or at least some of them, at EU level. However, **Slovenia** considered that it would impossible to harmonise the existing non-harmonised national statuses, as the national aliens legislations of the Member States vary too much. In the **United Kingdom**, the *UK Border Agency* supported harmonising the protection rights of asylum applicants across the EU, but proposed that this could be best achieved through practical co-operation between Member States reflecting existing practice and policy.

5.2 National members

Opinions expressed by **national members** of the European Migration Network on the granting of particular national forms of protection were negative for **Italy** and **Sweden**, while positive for **Malta**. More specifically, the national network members of **Sweden** criticised the limited possibilities to grant *asylum on humanitarian grounds* due to the restrictive approach of the Swedish Regulation on humanitarian protection. The national network members of **Italy** considered that the lack of a normative reference regarding the granting of *residence permits on humanitarian grounds* made the activities of the Board of Examiners harder, both

on procedural grounds and on the question of merit. They also added that the legislation lacked the basic information concerning the requirements and conditions which would lead the Board to recognise the necessity of granting the applicant a form of protection, other than international protection, thus stimulating police headquarters to issue the residence permit on humanitarian grounds. The legislation was also said to lack an indication of evidence which the applicant must provide in order to demonstrate at least the need for this type of protection.

On the other hand, the national network members of **Malta** were more positive and stated that, generally, the introduction of *Temporary Humanitarian Protection* had been welcomed, particularly since it allowed protection to be afforded to a broader category of persons than that covered by the relevant EU Directives, the *Refugees Act* and relevant subsidiary legislation.

In **Germany**, the UNHCR, which is also a national network member, was positive on the resettlement of Iraqi refugees to Germany in 2009 and 2010, which is carried out on the basis of a national form of protection. The UNHCR issued a statement asking the government to consider introducing a permanent resettlement scheme based on the experiences made so far. In the **United Kingdom,** it was the view of one national network member that allowing Member States to retain their own national forms of protection would prevent a full harmonisation in this particular field of law. But the network member also acknowledged the complexity of harmonising the existing national protection statuses.

5.3 NGOs

The majority of **NGOs** expressed negative opinions on the non-EU harmonised statuses. In fact, NGOs in the **Czech Republic**, **France**, **Ireland** and **Spain** considered that national non-EU harmonised statuses trigger the following main problems:

- Limited protection for some groups of individuals, such as victims of trafficking (**France, Slovenia**);
- Limited grounds to grant non-harmonised statuses and lack of clarity of the latter (**Czech Republic**, **Malta**, **Slovenia** and **Spain**);
- Limited rights provided to the person (**Slovak Republic**);

- Lack of legal definition of non-harmonised statuses, i.e. absence of specific laws regulating them (**Malta**);
- Lack of possibility of appeal (**Ireland**, **Malta**[244]);
- Lack of awareness of non-harmonised statuses (**Malta**);
- Lack of access to early and free legal representation (**Ireland**); and
- Low rate of success of the applicants for tolerated stay (**Czech Republic**).

NGOs in **Belgium** expressed positive views on seeking to harmonise the existing national statuses at EU level, while NGOs in **Slovenia** said this was not desirable. NGOs in **Portugal** were of the view that harmonisation of national protection statuses should be approached carefully.

In the **Netherlands**, NGOs deplored the announcement that the Government was considering discontinuing the group protection policy (so-called *d- ground asylum residence permit*), arguing that the consequence of such a decision would be to send people back to life-threatening situations. In addition, children's rights organisations disagreed on the intended abolition of *the unaccompanied minor third-country national permit* as it would probably lead to illegal residency for most of the unaccompanied minors. In **Poland**, with regard to the *residence permit for tolerated stay*, NGOs applauded the right of unlimited access to the labour market, but expressed concerns regarding, for example, the difficulty of demonstrating that a decision on removal was unenforceable for reasons beyond the control of the individual, the prolonged procedure for granting a permit for tolerated stay and the absence of the right to family reunification for holders of a permit for tolerated stay.

5.4 Researchers

Researchers in the Member States expressed mixed views on national non-EU harmonised protection statuses. In **Belgium**, some non-EU harmonised national protection statuses were sometimes more easily accessible and obtainable than EU protection statuses, but their legislative basis was less solid. In a number of cases, the national protection statuses were

[244] In **Malta**, there is no appeal from the decision not to grant Temporary Humanitarian Protection. On the contrary, where it is granted, the beneficiary may nevertheless appeal with a view to obtaining subsidiary protection or refugee status.

solely based upon administrative practices and provided the beneficiaries with fewer rights. Also, non-harmonised national protection statuses were often granted for a limited time and the burden of proof often lay entirely with the third-country nationals.

On the other hand, positive views on the current national situation were expressed in **Lithuania**. They considered that there was no need to extend the list of grounds for granting international protection or to introduce new, non-harmonised international protection statuses.

5.5 Civil bodies

Civil bodies in **Ireland** and the **Netherlands** expressed their news on national non-harmonised protection statuses. The Irish RIS (*Refugee Information Service*) commented negatively on the family reunification issue, highlighting that Ireland was alone among a study of twelve EU Member States in having no right to appeal to a negative family reunification decision. Issues in relation to delays in processing family reunification applications were also raised.

In the **Netherlands**, the *Advisory Committee on Migration Affairs*[245] advised the government to continue the group protection policy (so-called *d-ground asylum residence permit*) and recommended that initiatives should be developed within the European Union for harmonising international law standards so that the group protection policy could be tailored to the European situation concerning legislation and execution.

5.6 Public opinion surveys

Italy and the **United Kingdom** outlined the findings of public opinion surveys regarding attitudes towards refugees and asylum applicants. In **Italy**, reference was made to the lack of public awareness of the existing humanitarian protection status. In general, several national public opinion polls show that little attention was given to asylum and international protection issues, while even less interest was shown for the discussions between policymakers and social organisations. In the **United Kingdom**, surveys revealed that most of the respondents were largely sympathetic towards genuine asylum-seekers and refugees, but a large

[245] The Advisory Committee on Aliens Affairs (Adviescommissie voor Vreemdelingenzaken - ACVZ) is an independent Committee that advises the Dutch Government and Parliament on immigration law and policy.

proportion of respondents also equally expressed concerns about the number of asylum-seekers being accepted.

5.7 Other actors

The opinions of other actors were also reported. For example, **Portugal** mentioned the positive opinion of the National Focal Point of the RAXEN Network of the Agency for Fundamental Right on the current situation. In fact, according to the latter, the national legislation surpasses the minimum standards set by EU Directives.

UNHCR opinions were also reported by **Hungary** and **Lithuania**. In **Hungary**, the UNHCR, together with *Hungarian Helsinki Committee*, expressed some concerns about the guarantees included in the Hungarian statelessness determination procedure. Both organisations expressed concerns about the fact that the law excludes unlawfully staying persons from applying for stateless status. This provision raises international law concerns, as the 1954 Statelessness Convention sets forth an exhaustive list of exclusion clauses and unlawful stay does not figure among them. The current national legislation can therefore be seen as creating an additional *de facto* exclusion ground from protection, raising serious concerns about compliance with their international obligations.

According to the national branch of the IOM in **Lithuania**, there is no need to introduce new non-harmonised international protection statuses.

Finally, **Belgium** presented the opinions of some stakeholders on non-harmonised protection statuses as follows:

- The current procedure used to grant residence permits on medical grounds allows for less procedural guarantees and rights (for example, no right to a hearing, right of appeal does not concern the review of the negative decision on facts, etc.);
- Lack of legal definition of “residence permit on humanitarian grounds” in the Aliens' Act;
- Piecemeal and ad-hoc approach to national protection statuses, as they are mainly based on administrative practices which find their origin in specific ministerial circulars; and

- Lack of protection for non-removable and stateless persons as they are not granted with a residence permit.

Various governmental and non-governmental actors in **Germany** are of the opinion that EU legislation, such as *Council Directive 2004/83/EC (Qualification Directive)* has had positive effects on protection. However, there have also been suggestions concerning the further development of national forms of protection, such as improved protection of victims of forced marriages and more generous provisions for dealing with persons whose removal has been suspended for several years and who have integrated into German society.

6. CONCLUDING REMARKS

This European Migration Network (EMN) study on non-EU harmonised protection statuses describes, as comprehensively as possible, the situation in the 23 participating Member States, principally up to mid-2010. This Section first outlines the multitude and complexity of the non-EU harmonised protection statuses which are being granted by the Member States (Section 6.1), followed by considerations on their co-existence with the EU acquis in this area (Section 6.2) and the concepts underpinning the non-EU harmonised protection statuses (Section 6.3).

6.1 The multitude and complexity of non-EU harmonised practices for granting protection

On the basis of Table 3.1, which provides an overview of the non-EU harmonised protection statuses granted in the Member States, it can be concluded that:

- A high number of Member States (N=22) grant non-EU harmonised protection statuses, i.e. **Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden** and the **United Kingdom. Latvia** appears to be the only Member State, which does not have non-EU harmonised protection statuses.
- A high number of different non-EU harmonised protection statuses (minimum 60[246]) are granted by EU Member States.
- There is a wide range of grounds on which non-EU harmonised protection statuses are granted throughout the EU. This Synthesis Report has, for example, distinguished 15 different types of grounds.
- There is significant variety between Member States with regard to the procedures, rights, duration of stay and level of implementation of the non-EU harmonised protection statuses granted on their territory.
- In some cases, this can entail great complexity for those wishing to claim, or in the process of applying for, protection in the EU.

[246] Only a rough estimate of this figure can be given. While the Tables in the Annexes to this Synthesis Report could be used for identifying this number, it would require a complicated counting exercise, avoiding the double counting of protection statuses granted on different grounds and hence presented in different Tables.

- Who is granted protection, how, and to what effect (rights and duration of stay) sometimes depends on which Member State a third-country national seeking international protection enters.

6.2 The co-existence of national statuses and the EU acquis

The "cohabitation" of EU-harmonised and non-EU harmonised protection statuses in the Member States may be considered as reflecting the (successes of) policymaking at EU level in terms of creating a "Common European Asylum System." When the Council Directive 2004/83/EC (Qualification Directive) entered into force, some of the national protection statuses in Member States were modified or replaced by EU-harmonised protection statuses in order to correctly implement the Directive. In other cases, when the EU acquis did not cover / apply to national protection statuses granted, there was no need to adjust them and the national practice of granting these statuses thus continued to exist. Other Member States, after having implemented the EU acquis, have developed additional national protection statuses to respond to specific needs for protection or to other specific situations not covered by the EU acquis.

As stated also in the Introduction to this Synthesis Report, in many (especially EU-10) Member States, national protection statuses were already in place when the EU acquis on international protection was developed. The historical context in which these national protection statuses were developed has shaped the grounds and procedures for granting such status, as well as the rights attached to those benefiting from it. For example, the practice of granting national forms of temporary protection in several Member States appears to reflect the historical or cultural ties that Member States have with particular third countries and the heightened concern with securing international protection for citizens of those third countries, when in a state of turmoil. Similarly, the institutional framework at the time of the development of the national protection status explains why, for example, in some Member States an application for (a particular type of) international protection is addressed to the President of the Member State.

The grounds, procedures and rights relating to a national protection status can thus be considered as profoundly influenced by the historical and contextual framework in which they were created. The standards provided through these statuses are, in some cases, higher than those required by the EU-harmonised protection statuses and, in other cases, they are similar.

However, in a few cases, questions can be raised as to the level of protection and rights provided, as elaborated in Section 6.3 below.

Two relevant questions which may be raised, in light of the EU's stated goal to pursue high *and* common protection standards across the EU,[247] are: (i) whether the non-EU harmonised protection statuses identified by this EMN study (and established before or after EU acquis in relation to protection) provide the same level of protection required by the EU acquis; and (ii) whether some of these statuses could be considered further for possible incorporation in EU acquis.

In relation to the first question, in some Member States, where national statuses compete with EU acquis, there might be a danger that protections standards are lowered. This may arise when individuals are more frequently granted the national protection status which provides for a lower form of protection in terms of grounds, procedures and rights.

In relation to the second question, the continuing existence and use of national protection statuses may suggest that there are some cases of third-country nationals seeking protection who cannot (currently) be dealt with in the framework of the EU acquis and, as a consequence, continue to require national responses. For example, in some Member States, additional forms of protection make it possible to take into account the health conditions of a third-country national or to deal with a lack of travel documents or other technical, procedural or humanitarian reasons why return to the country of origin is not possible. In other cases, Member States have developed (and/or retained after the development of EU acquis in relation to protection) national protection statuses to address the "mismatch" between the nature of demand for protection and the criteria laid down in the Geneva Convention or EU acquis (see Section 6.3 below), for example, to protect those fleeing from new forms of conflict or persecution.[248] Therefore, national forms of protection continue to play an important, complementary role to the protection system created at EU level.

---

[247] As outlined in the EU's policy towards a Common European Asylum System. For further information, see: http://ec.europa.eu/home-affairs/policies/asylum/asylum_intro_en.htm

[248] This argument is brought forward in a number of National Reports. In particular, the Report from the Netherlands (pg.10) referred to the "Policy plan on asylum: an integrated approach to protection across the EU - Impact Assessment" commissioned by COM which concluded that: *"more and more often, people seek protection for reasons which are not referred to in the traditional refugee arrangements (the Geneva Convention) and acquire protection statuses with fewer safeguards."* Examples given refer to humanitarian or medical reasons; climate or environmental changes in the country of origin; non-refoulement. For further information on the findings of this Impact Assessment: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008SC2029:EN:NOT

Also in relation to the second question, the national complementary forms of protection in place, however important and necessary they may be, are not *common across the EU*. For example, they are applied only in some Member States, and not in others, and, similarly, the grounds, procedures and rights attached to these differ among the Member States.

6.3 The concept(s) of protection that underpin non-EU harmonised practices for granting protection

This final Section seeks to identify the different concepts of protection underlying the non-EU harmonised practices for granting protection.

A first conclusion that can be drawn is that some non-EU harmonised protection statuses have been developed by Member States to address the (growing) "mismatch" between the nature of demand for protection and the criteria laid down in the Geneva Convention and EU acquis. Some of these predate the establishment of the EU protection system, whereas others might have been created afterwards. For example, in **Finland**, **Italy**, **Malta** and **Spain**, the national protection status "humanitarian protection" was developed due to a **growing mismatch between the nature of demand for protection and the criteria laid down in the Geneva Convention or *Council Directive 2004/83/EC* (Qualification Directive)**. The aim is to ensure asylum applicants have protection when they are not covered by these EU harmonised statuses. Hence, it seeks to cover many of today's refugees who flee from situations such as, for example, new forms of conflict or persecution; lack of medical treatment of life-threatening illnesses, or illegally-staying third-country nationals whose return cannot be enforced.

A first indication is that the investigation as to whether a person qualifies for protection on humanitarian grounds tends to take place at the same time as, or after, the assessment that the requirements for granting refugee status or subsidiary protection are not met and not, for example, when a removal order has been issued. This is the case for protection statuses granted on humanitarian grounds in **Austria**, **Finland**, **Italy**, **Malta**, **Spain** and **Sweden** and is captured in the definition given by **Malta** of its national protection status "temporary humanitarian protection": *"Temporary Humanitarian Protection is a form of protection granted to applicants **who do not satisfy the conditions for Refugee status or Subsidiary Protection** as laid down in the Qualification Directive and the corresponding provisions of*

the Refugees Act and Procedural Standards Regulations, ***but who nonetheless should not be returned in view of humanitarian considerations.****"[emphasis added]*

Secondly, the grounds for granting this additional form of protection tends to relate to the (individual's) situation in the country of origin (whether or not at the time of the applicant's departure), as reference is made to armed conflict (**Finland**), war (**Spain**), widespread violence (**Spain**), "other severe conflicts" (**Sweden**), *"prevailing poor security circumstances there which may be caused by armed conflict or a troubled human rights situation"* (**Finland**), an environmental catastrophe (**Finland**), *"serious humanitarian reasons preventing the applicant's return to his country of origin"* (**Italy**), *"[return...] puts the life or freedom of the person at risk"* (**Spain**). In other Member States, by way of contrast, additional forms of protection mainly relate to the individual's situation after their entry into the EU, making it possible, for example, to take into account the health condition of a third-country national or to deal with a lack of travel documents or other technical, procedural or humanitarian reasons why return to the country of origin is not possible (**Germany**) or the right to private and family life in accordance with Article 8 ECHR (**Austria**).

Thirdly, some Member States consider that the additional protection status is to ensure a concept of international protection that is more inclusive (**Finland**) or flexible (**Malta**) than those foreseen by the Geneva Convention and *Council Directive 2004/83/EC* (Qualification Directive). **Finland**, for example, considers that the qualification for subsidiary protection laid down in the Directive was more restrictive than the concept of international protection in Section 88 of their *Aliens Act.* In order to maintain the same level of protection, a new Section 88a was added to the *Aliens Act,* covering humanitarian protection when there were no grounds for asylum or subsidiary protection and non- refoulement. For **Malta**, the decision to adopt this protection status ("temporary humanitarian protection") within the national asylum policy framework, rather than laying it down in law, was considered by the *Refugee Commissioner* as offering a greater degree of discretion and flexibility, thus ensuring that this form of protection could be granted whenever it was deemed necessary. This could thus cover particular cases which might arise, but which could not yet be foreseen.

A further concept is through a significant number of Member States that use residence permits, for example, on humanitarian grounds, as a national practice for granting protection. However, it is not always clear whether these residence permits constitute "protection,"

especially as conceptualised in the Geneva Convention and EU acquis, for the following reasons:

- The investigation and decision as to whether the applicant fulfils the requirements often takes place outside of the asylum procedure;
- The fact that the residence permit is acquired outside of the asylum procedure implies that the procedural safeguards, as laid down in *Council Directive 2005/85/EC (Asylum Procedures Directive)*, do not have to be in place;
- The rights and benefits, as well as the length of the authorisation to stay, differ from those that are foreseen in *Council Directive 2004/83/EC* (Qualification Directive) in that they are often fewer and/or limited to core benefits.
- (Rejected) asylum applicants do not constitute the sole group that can apply for and/or benefit from these types of residence permits, nor are they in a more favourable or straightforward position to do so. In general, a wide range of third-country nationals, such as labour migrants, illegally-staying third-country nationals, rejected asylum applicants and others can lodge an application for temporary, or more long-term, national residence permits.

In fact, it would seem that a significant proportion of the residence permits presented by Member States as additional forms of protection are primarily part of managed migration policies, and not necessarily forms of international protection.

****