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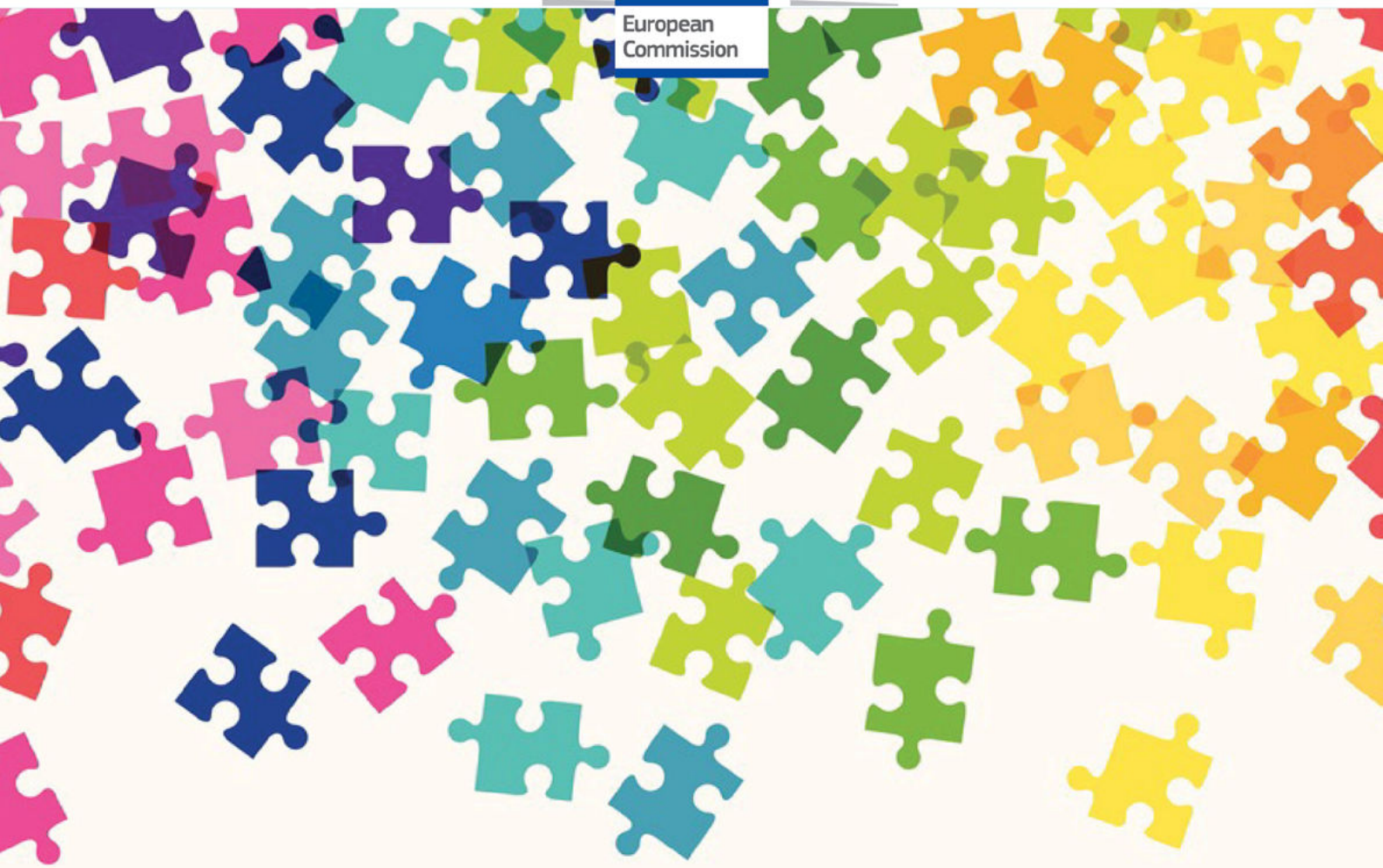

# Comparative overview of national protection statuses in the EU and Norway

## EMN Synthesis Report for the EMN Study 2019

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## Disclaimer

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The study was part of the 2019 Work Programme for the EMN.

## Explanatory note

This Synthesis Report was prepared on the basis of national contributions from **25 EMN NCPs** (AT, BE, BG, CY, CZ, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SK, UK and NO) collected via a Common Template developed by the IE NCP and EMN NCPs to ensure comparability, to the extent possible. National contributions were primarily based on desk analysis of existing legislation and policy documents, reports, academic literature, internet resources, and reports and information from national authorities rather than primary research. The listing of Member States and Norway in the Synthesis Report following the presentation of synthesised information indicates the availability of more detailed information in their national contributions and it is strongly recommended that these are consulted as well.

Statistics were sourced from Eurostat, national authorities and other national databases.

It is important to note that the information contained in this report refers to the situation in the abovementioned Member States and Norway up to December 2018, and specifically the contributions from their EMN NCPs.

EMN NCPs from other Member States could not participate in this study for a variety of reasons but have done so for other EMN activities and reports.

# CONTENTS

# EXECUTIVE SUMMARY

This Synthesis Report presents the main findings of the European Migration Network (EMN) study 'Comparative overview of national protection statuses in the European Union (EU) and Norway'. The study explores the key characteristics of non-harmonised protection statuses and the types of national statuses granted by Member States and Norway to address a protection need not covered by international protection statuses as set out in the Qualification Directive or temporary protection in the Temporary Protection Directive.

The report includes an overview of national statuses granted by particular protection ground, reviewing the conditions and rights associated with each. It also considers commonalities and differences with the minimum standards established at EU level for the EU-harmonised statuses (refugee status, subsidiary protection and, in one case, temporary protection).

This assessment is timely, in light of efforts undertaken since 2016 to strengthen the Common European Asylum System (CEAS) to complement existing legal pathways to admit those in need of protection to the EU, including the proposed Union Resettlement Framework Regulation and, increasingly, other legal pathways for persons in need of protection.

## KEY POINTS TO NOTE

1. **Of the countries that participated in this study, 20 Member States and Norway had at least one national protection status (as defined in the scope of this study)** in addition to those harmonised at EU level. This study identified **a total of 60 national protection statuses**.
2. **Limited statistics are available on national protection statuses granted by Member States and Norway**. However, Eurostat figures on authorisations to stay for humanitarian reasons suggest a five-fold increase in the number of national protection statuses granted between 2010 and 2018, following a similar trend to (positive) decisions on refugee and subsidiary protection statuses.
3. **Ten Member States introduced changes to their legislation on national protection statuses between 2010 and 2018.** These changes often established more restrictive eligibility criteria or adjusted the national protection statuses to the amended EU acquis. In one case, the change had the effect of suspending the application of all available national protection statuses.
4. **National protection statuses cater for a wide variety of needs and situations, exceeding the grounds for international protection under the EU acquis.** These range from serious health conditions, to humanitarian and *non-refoulement* principles, to environmental disasters in the country of origin and the interest of a minor to remain on the territory of a State.
5. **The majority of national protection statuses are based on general humanitarian reasons**. This type of status was available in 15 Member States and Norway. Several more specific protection statuses exist, most commonly for exceptional circumstances (six Member States), the principle of *non-refoulement* (seven Member States), and medical reasons (seven Member States).
6. **The grounds for the national protection statuses remain largely undefined in national legislation.** This leaves a significant margin of discretion to competent authorities, potentially creating challenges for authorities in assessing applications, as well as for applicants when lodging a claim for national protection.
7. **A greater level of discretion is found in Member States' determination procedures than in EU-harmonised statuses.** In half of the statuses examined, asylum authorities are not involved, with other migration authorities or political bodies (president, national parliament) deciding which third-country nationals may access these statuses. In several instances, the application is not examined as part of the single procedure (either at the same time as an application for international protection or at the end of the international protection procedure) but, rather, in a separate procedure.
8. **In the majority of cases, the content of protection is similar to the minimum standards set in EU law**, particularly in relation to the duration of the residence permit, access to healthcare and integration services. **It is rare that national protection statuses offer more favourable standards than EU law.** This only applies to protection statuses available for children, notably in relation to the length of the residence permit and access to social benefits, and to constitutional asylum. When **national protection statuses grant less favourable conditions than the EU-harmonised statuses**, these chiefly relate to shorter duration of residence permits and restrictions to access the labour market, education, integration services and social benefits. Less favourable conditions were particularly evident in protection statuses granted for serious health reasons, *non-refoulement* principle, and environmental reasons.
9. **In about half of the Member States and Norway that have one or more national protection statuses, such statuses were the subject of debate**. Policy makers in some Member States, such as Sweden and Italy, argued for the abolition of all national protection statuses, claiming that the EU international protection covered all relevant protection grounds. By contrast, civil society often stressed the need to expand the scope of the protection grounds of national statuses, for instance to climate refugees or family members. Media debates predominantly focused on individual situations, raising ethical and emotional questions relating to the status of well-integrated irregular migrants or more vulnerable migrants, for example.

# SCOPE OF THE STUDY

The study focuses on protection statuses granted to third-country nationals on the basis of national provisions that do not fall under international protection as established in EU asylum law (i.e. refugee, subsidiary and temporary protection). The temporal scope of the study is 2010-2018, with additional information included up to April 2019 where relevant.

The types of statuses considered include those granted on 'humanitarian grounds'. These are often a product of national policies and encompass a variety of situations, eventually decided by national authorities and judges, with varying levels of discretion. 'Humanitarian reasons' is not a defined concept, although references to humanitarian grounds can be found in the EU's subsidiary protection status, in the European Convention on Human Rights (ECHR), and in national provisions. Humanitarian reasons often refer to the state of health of a third-country national, protection against expulsion and the respect of the non-refoulement principle, deriving from State obligations under Article 3 of the ECHR, as enshrined in the jurisprudence of the European Court of Human Rights (ECtHR).

Some protection grounds were left outside the scope of the study. Notably, it does not consider protection grounds deriving directly from international law and for which there are specific EU instruments in place, namely protection for stateless persons and victims of trafficking in human beings or victims of violence, nor does it look at humanitarian visas. The study does not analyse statuses granted to third-country nationals who are considered non-removable due to the impossibility of technically carrying out the return (for lack of travel or identification documents, available transportation, etc.). Lastly, the study does not cover cases based on the right to family and private life, as enshrined by Article 8 of the ECHR and its interpretation by the ECtHR.

# METHOD AND ANALYSIS

The information used in this Synthesis Report comes primarily from national studies prepared by 25 EMN National Contact Points (NCPs).[1] These national contributions were based on desk analysis of existing legislation and policy documents, reports, academic literature, internet resources, reports and information from national authorities. In some Member States and Norway, primary data collection was carried out through interviews with national stakeholders. The statistical information presented here was primarily sourced from Eurostat data, as well as national reports containing disaggregated data.

# OVERVIEW AND MAPPING OF TYPES OF NATIONAL PROTECTION STATUSES

The EU asylum framework offers Member States the possibility to adopt non-harmonised statuses provided they do not undermine, and are compatible with, existing EU acquis. Of the 25 States participating in this study, 20 have at least one national protection status.

The non-harmonised protection statuses reported were divided into two main categories. The first group comprises constitutional asylum and collective protection, which were usually in place before the introduction of the EU-harmonised protection statuses. The second group consists of statuses based on humanitarian or compassionate grounds. This second category ranges from statuses based on rather generic legislative definitions to more specific statuses covering, for example, medical cases or national statuses based on the principle of *non-refoulement* and are thus situated at the interface between subsidiary protection and Article 3 ECHR. This second group also covers statuses based on very specific grounds, such as those linked to natural disasters and climate change or made available to (unaccompanied) children.

Eurostat data on the 'authorisations to stay for humanitarian reasons' is used to give an indication of the scale of national protection statuses. These data show that the number of positive decisions increased five-fold from 2010 to 2018, with a peak in 2016, broadly following the trend in the total number of positive decisions on asylum applications.

## CONSTITUTIONAL ASYLUM

Three Member States, Bulgaria, Poland and Portugal, have constitutional asylum as a national protection status. Each defines 'persecution' more broadly than the 1951 Refugee Convention, providing national authorities with greater discretion to grant asylum under their national law to a person who may be excluded from international protection. In practice, constitutional asylum as a national protection status is seldom granted.

Compared to EU-harmonised statuses, Portugal's content of protection offered to beneficiaries of constitutional asylum was the same or more favourable than refugee status. This included, for example, the validity of the residence permit and the lack of material requirements to reunite with family members. This was reinforced by the fact that the grounds for constitutional asylum were examined as part of a single procedure together with the grounds for international protection. In Bulgaria, while the content of protection was the same as refugee status, access to constitutional asylum was framed in a less robust procedure than for refugees, as the decision to grant the status was left to the discretion of the President of the State and the applicant could not appeal a negative decision. The level of protection offered under constitutional asylum in Poland was lower than EU-harmonised statuses, as beneficiaries did not have access to accommodation nor integration measures.

## COLLECTIVE PROTECTION

Unlike other (national or harmonised EU) protection statuses, where the determination of the status is individualised, 'collective protection' is made available to a group of persons in need of protection. Two Member States (Finland and the Netherlands) have or had such national protection status. In Finland, the rationale underpinning this status is to enable the government to admit groups of third-country nationals based on 'special humanitarian grounds' or to 'fulfil international obligations'. No definition is attached to 'special humanitarian grounds', leaving the eligibility criteria deliberately undefined. Since its adoption in 2004, this status has been applied only rarely, most recently

1 AT, BE, BG, CY, CZ, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SK, UK and NO.

in 2015, when Finland agreed to review the case of 100 Syrian asylum seekers from Germany. The Netherlands had a collective protection status in place but abolished this category-based (or group) protection in 2014, as the government considered the 'collective' elements sufficiently covered by the existing EU international protection statuses, as well as by the provisions of the ECHR.

The discretionary nature of the status extends to the content of protection. Beneficiaries of this status in Finland do not automatically have access to the right to family reunification, as they would under the Temporary Protection Directive or under refugee status. Rather, their right to family reunification is considered by the government, on a case-by-case basis. However, the content of other rights - including access to the labour market, access to education and integration measures - is similar to the standards set in the Temporary Protection Directive and in the EU asylum acquis. Social assistance was not limited to 'necessary assistance' (Article 13 of the Temporary Protection Directive) or 'core benefits', suggesting more favourable treatment than beneficiaries of temporary protection and subsidiary protection.

## PROTECTION BASED ON 'GENERAL' HUMANITARIAN GROUNDS

Of the 25 States that contributed to this study, 15 have national statuses that can be granted on humanitarian grounds. This category of national statuses refers to a broad 'humanitarian' need to cater for cases where the refugee status or subsidiary protection grounds did not apply. These statuses cover a variety of humanitarian or 'compassionate' cases, including prohibition of expulsion for the *non-refoulement* principle, health and medical needs, protection of minors, conflict and unrest in the country of origin, as well as considerations linked to their level of integration in the hosting country.

Three Member States (Italy, the Netherlands and Sweden) introduced changes to this type of protection status. In Italy, the status was discontinued in 2018 when legal reforms introduced a set of more specific protection grounds. In Sweden, the protection status on national grounds was suspended until 2021, following the adoption of the Temporary Act in 2016. In the Netherlands, the discretionary power of the Ministry of Justice and Security to grant a residence permit on humanitarian grounds was abolished in January 2019.

Several Member States grant this status on a discretionary basis. This is illustrated by the lack of specific criteria or list of grounds to determine who is eligible for this form of protection, as well as the discretionary competence of the national authorities issuing this type of national status.

Many of the national protection statuses on humanitarian grounds offer rights similar to the minimum standards set out for EU-harmonised subsidiary protection status, notably regarding the length of the residence permit and access to education and employment. For access to core social benefits, the level of protection is comparable to refugee status under EU law.

## PROTECTION BASED ON EXCEPTIONAL CIRCUMSTANCES

Six Member States have a protection status for 'exceptional circumstances', established to offer protection to third-country nationals in exceptionally distressing circumstances that nevertheless do not fall under EU-harmonised statuses or other national protection statuses. Such situations include personal distressing circumstances impeding the expulsion of the third-country nationals (Luxembourg); emerging conflict or natural disaster in the country of origin (Italy and Finland); personal circumstances of a third-country national who, after living regularly in the country for a number of years, required a form of protection by the authorities (Austria). Finally, this status can be used as a residual option where no other EU or national status applies but it is deemed that the person needs to be given permission to stay (Sweden).

Similar to humanitarian grounds, these protection statuses are generally granted at the discretion of the national authorities. This is reflected in the criteria used to assess the eligibility of applications, as well as in their procedures. In some cases, the content of protection is similarly at the discretion of the competent national authorities. In Italy and Finland, for instance, the status can only be granted following the adoption of a government decision determining the specific exceptional circumstances to grant protection, the procedure to be followed and the rights to be granted.

Overall, the statuses granted on the grounds of exceptional circumstances do not provide more favourable conditions than those set out in the EU statuses, notably regarding the length of the residence permit and access to education, social benefits, employment and integration.

## PROTECTION STATUSES AVAILABLE FOR CLIMATE CHANGE REASONS AND NATURAL DISASTERS

Only Italy and Sweden have a specific protection status in place for reasons of calamity or natural disaster, for third-country nationals who do not qualify for refugee status or subsidiary protection status.

Sweden's residence permit offers similar conditions to the harmonised EU refugee status, while that of Italy is comparable to EU subsidiary protection, although the status offers less favourable conditions, such as the length of the residence permit.

## PROTECTION FOR MEDICAL REASONS

Protection statuses based on medical grounds stand on the fringe of EU asylum and national laws. The extent to which a serious medical condition could amount to subsidiary protection was the subject of recent rulings of the Court of Justice of the European Union (CJEU). This should be considered in conjunction with the ECtHR case-law on Article 3 ECHR, according to which protection against removal of seriously or terminally ill third-country nationals should be granted if certain conditions are met.

In line with the above, seven Member States – Belgium, Greece, Italy, Luxembourg, the Netherland, Spain and the United Kingdom – have a total of 11 protection statuses specifically for medical reasons. This status is granted in cases where a seriously ill third-country national requires tailored procedures and services, where a third-country national irregularly staying in the territory is suffering from a sudden illness requiring healthcare that cannot be provided in their country of origin, or where protection from expulsion or postponement of return are necessary as the third-country national is unable to travel due to the (serious) nature of their medical condition. The Netherlands has three protection statuses that depend on the duration of the medical condition (suspension of departure for medical reasons, stay for 'medical reasons' and 'after residence in connection with medical treatment').

These statuses have undergone no major changes since 2010. Belgium, however, introduced changes in 2015, to discourage the submission of multiple applications from the same person and thus increase efficiency in procedures. National authorities now apply a prima facie assessment of the seriousness of the illness and also assume that an application for this 'medical regularisation' status would imply withdrawal of any other pending applications on the same legal ground.

Overall, the national protection statuses for medical reasons do not offer more favourable conditions than EU-harmonised protection statuses. Member States applied similar to less favourable conditions than the harmonised subsidiary protection status, with some not providing access to the labour market, or restricting access to integration support. In the Netherlands, access to social integration support is restricted, as beneficiaries of this status are not expected. In Luxembourg and the Netherlands, where the status was designed to temporarily postpone removal, beneficiaries of suspension of departure for medical reasons do not immediately receive a formal residence permit, limiting their access to the labour market and family reunification.

### PROTECTION STATUS ON THE BASIS OF THE NON-REFOULEMENT PRINCIPLE

The principle of non-refoulement can be taken into account at various stages of asylum and migration procedures. It is a core principle of international refugee and human rights law that prohibits States from returning individuals to a country where there is a real risk they will be subjected to persecution, torture, inhuman or degrading treatment or any other human rights violation. The Czech Republic, Finland, Hungary, Italy and Norway each have a national protection status that was granted on the basis of the principle of non-refoulement. With the exception of the United Kingdom, which redefined the conditions for granting this status in its administrative guidelines in 2013, all statuses were established before 2010.

In general, protection granted on the basis of the non-refoulement principle gives access to less favourable conditions and rights compared to the EU-harmonised statuses. An exception is the Czech Republic where the national subsidiary protection based on international obligations granted the same standards of protection as the EU-harmonised subsidiary protection status. In most Member States and Norway, where such status is in place, the validity of the initial permit is aligned with the standards set by the EU-harmonised subsidiary protection, and access to accommodation, social assistance and healthcare are aligned with the content of rights offered by international protection. However, the status does not envisage the long-term integration of beneficiaries, as suggested by the restrictions in access to the labour market, family reunification and mainstream integration support in some States.

### PROTECTION STATUSES AVAILABLE FOR MINORS, UNACCOMPANIED AND AGED-OUT MINORS

National statuses for minors, and unaccompanied or aged-out minors are available in Belgium, Italy, the Netherlands and the United Kingdom. These statuses were all established in national legislation after 2010 and generally consist of forms of protection for underage children until they reach the legal age of adulthood.

Overall, these statuses offer similar conditions compared to EU subsidiary protection, whilst in some cases they offer similar or more favourable conditions than EU refugee protection. This was the case for the longer length of the residence permit in the Netherlands and the United Kingdom, and more favourable access to social benefits that exceeded the core benefits in the Netherlands.

### PROTECTION STATUSES AVAILABLE FOR BENEFICIARIES OF SPECIAL PROGRAMMES (RELOCATION, RESETTLEMENT)

Only two Member States have a status in place for beneficiaries of special programmes such as relocation or resettlement: programme refugee status in Ireland, first established in 1996, and local subsidiary protection in Malta, created in 2016. These statuses seek to clarify the status of resettled persons and to grant a national form of protection.

Overall, these statuses offer the same or less favourable conditions than international protection. In Ireland, however, programme refugees are the only group given access to targeted orientation and integration support upon arrival.

## MAIN DEVELOPMENTS SINCE 2010, CURRENT DEBATES AND CHALLENGES

Since 2010, Austria, Belgium, Finland, Ireland, Italy, Malta, the Netherlands, Sweden and Slovak Republic introduced changes to their national statuses.

Member States typically introduced amendments restricting the eligibility criteria or tightening the procedures for some national protection statuses, such as humanitarian statuses in the Netherlands and Italy, protection available to unaccompanied minors in Finland and in the Netherlands, and protections available to individuals with medical conditions in Belgium. Sweden suspended the granting of national protection statuses entirely. In Finland and the Netherlands, the changes readjusted the scope of the national protection statuses in line with the eligibility grounds and content of protection set by EU-harmonised statuses.

The national protection statuses were the subject of debate in nine Member States. A common theme was the extent to which the scope of national protection statuses could be expanded and/or whether new ones could be added. Civil society in several Member States argued for expanding the scope of eligibility criteria to grant protection to larger categories of third-country nationals. Conversely, in other countries, for instance Italy and in Sweden, the public debate was rather dominated by policymakers' arguments in favour of reducing the scope of national protection statuses. Reporting in mainstream media mostly focused on individual stories to shine a light on the most vulnerable cases, such as children, migrants with health conditions, etc.

Public debates in Finland, Sweden and Norway also focused on the difficulty of ensuring a uniform practice in granting national protection statuses due to the wide definition of the protection grounds and the ensuing broad margin of discretion for authorities interpreting eligibility criteria.

# 1. INTRODUCTION

## 1.1. STUDY AIMS AND OBJECTIVES

While good comparative information exists on how Member States deal with European Union (EU) harmonised protection statuses – or their equivalent[2] - there is an overall lack of up-to-date information on national practices with regard to non-harmonised protection and the types of national statuses granted.

This European Migration Network (EMN) study provides an overview of those statuses granted in the Member States and Norway that address a protection need not covered by the international protection status as set out in the Qualification Directive (2011/95/EU)[3] and Temporary Protection Directive (2001/55/EC).[4] It includes a synthesis overview of national statuses granted on particular protection grounds, their related procedures, key rights and content of protection.

The predecessor 2010 EMN study 'The Different National Practices Concerning Granting of Non-EU Harmonised Protection Statuses'[5] already provided a useful and comprehensive overview of practices in 23 Member States[6] but is now out of date. The present study aims to update the 2010 EMN study and, where relevant, highlight statuses that have emerged since 2010 and identify those that no longer exist.

The study also compares national protection statuses and their content with the standards set at EU level. It considers the commonalities and differences between the procedures and content of protection of national statuses with the minimum standards established at EU level for EU-harmonised statuses. Thus, categories of national statuses are compared for the extent to which their content of protection offers the same, lower or higher protection than the EU protection statuses. An overview of EU-harmonised protection statuses[7] and the content of protection as set out in EU asylum instruments is presented in Annex 1 to support this comparative analysis,[8] allowing interested readers to compare the level of protection granted by a specific national protection status in a given Member State (or Norway) with the standards offered by the EU-harmonised statuses applied therein.

This study is timely, given the efforts undertaken since 2016 to strengthen the Common European Asylum System (CEAS) to complement existing legal pathways to admit to the EU those in need of protection.[9] Building on the 2018 EMN study, 'Changing Influx of Asylum Seekers' and the 2017 EMN study, 'Resettlement and Humanitarian Admission Programmes', this study also intends to inform the proposed Union Resettlement Framework Regulation and the increasing interest in other legal pathways for persons in need of protection (e.g. private sponsorship programmes). Finally, the study seeks to complement and support ongoing EMN work on the concept of sustainable migration.

## 1.2. STUDY RATIONALE AND BACKGROUND

In the EU law-making context, harmonisation refers to the approximation of national laws through common standards, which can take the form of 'minimum harmonisation' set by EU legislation to ensure consistency and convergence of standards and practices across the EU. In the field of asylum, EU legislation requires Member States to harmonise their legislation and practices in line with the CEAS. From the perspective of protection statuses, with the adoption of the 'first' and 'second phase' instruments, the CEAS aimed to codify the status of persons identified as needing international protection and harmonise the content of protection granted. The CEAS instruments not only embedded the concept of refugee (as defined by the 1951 Refugee Convention) but also introduced the subsidiary protection status in the Qualification Directive of 2004 and its 2011 recast, as well as the temporary protection status in the 2001 Directive, to reflect the existence of asylum seekers in need of international protection who did not fall under the scope of the European Convention on Human Rights (ECHR) but were nevertheless considered in need of protection in accordance with Member States' obligations under international human rights instruments and/or national practices.[10]

2 See, for example, the EMN studies on: 'The Changing Influx of Asylum Seekers In 2014-2016' (2018), 'Family Reunification of Third-Country Nationals in the EU and Norway: National Practices' (2016), 'Returning Rejected Asylum Seekers: Challenges and Good Practices' (2016), 'Resettlement and Humanitarian Admission Programmes in Europe – What Works?' (2016); 'Integration of Beneficiaries of International/Humanitarian Protection into the Labour Market: Policies and Good Practices' (2015).

3 Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L337/9 (Qualification Directive). The UK and Ireland participated in Directive 2004/83/EC and are not bound by the recast Directive 2011/95/EU.

4 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L212 (Temporary Protection Directive).

5 Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/non-eu-harmonised-protection-status/0_emn_synthesis_report_noneuharmonised_finalversion_january2011_en.pdf

6 Member States that participated in the 2010 study were AT, BE, BG, CZ, DE, EE, EL, ES, FI, FR, IE, IT, Italy, LV, LT, MT, NL, PL, PT, SE, SI, SK, UK.

7 The recast Qualification Directive of 2011 further aligned the content of protection granted to refugees and beneficiaries of subsidiary protection compared to the minimum harmonisation ensured by the 2004 Qualification Directive. The Temporary Protection Directive adopted in 2001 established minimum standards of protection in the event of a mass influx, the implementation of which remains dependent on a collective decision of Member States. The temporary protection foreseen in this Directive has never been invoked.

8 All Member States have implemented the provisions of the recast Qualification Directive, with the exception of Ireland and the UK, both of which participated in Directive 2004/83/EC but are not bound by the recast Directive 2011/95/EU. Likewise, all Member States have implemented the provisions of the Temporary Protection Directive. Despite not being bound by these Directives, Norway has adopted equivalent protection statuses in its national legislation.

9 European Commission, Communication 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe', COM(2016) 197, 6 April 2016.

10 Subsidiary protection is distinct from temporary protection in that it is granted following an individual status determination on specifically defined grounds related to broader application of the non-refoulement principle in international human rights law, while temporary protection concerns protection granted in a mass influx situation.

However, specifically subsidiary protection - now defined in the recast Qualification Directive - does not cover all cases where Member States grant protection. Indeed, Member States may grant other forms of protection, stemming either from international obligations not covered by the Qualification Directive or based on discretionary grounds adopted by national legislation. These forms of protection can include, for example, situations where third-country nationals are excluded from refugee status or subsidiary protection, but face the death penalty/execution, torture or inhumane or degrading treatment or punishment, based on the absolute *non-refoulement* principle, represent exceptional health situations, etc.

This state of play is, to a certain extent, recognised by the recast Qualification Directive, which clarifies that authorisation to stay on the territory of a Member State that are granted for reasons not due to need for international protection but on compassionate or humanitarian grounds fall outside the scope of the recast Qualification Directive.[11] The 2016 proposal for a Qualification Regulation would allow Member States to grant humanitarian status to those who do not qualify for international protection, provided that such status does not to entail a risk of confusion with international protection.[12]

EU legislation allows Member States to adopt statuses on non-harmonised grounds and to adopt more favourable standards under Article 3 of the recast Qualification Directive, as long as they are compatible with the Directive (as confirmed by the CJEU in the case-law examined below).

## 1.3. SCOPE OF THE STUDY

The study aimed to analyse the different legislation and/or practices of EU Member States and Norway in the granting of national protection statuses, meaning any protection status granted to a third-country national on the basis of national provisions that does not fall under international protection as established in EU law (i.e. refugee, subsidiary and temporary protections). This sub-section aims to clarify the specific statuses included in and excluded from the remit of the study.

### IN SCOPE: 'HUMANITARIAN GROUNDS'

National protection granted for humanitarian (or compassionate) reasons is one of the most common discretionary grounds in national legislation, despite the concept being infrequently defined.[13] It is often a product of national protection policies and encompasses a variety of situations, eventually decided by national authorities and judges, including ministers or even heads of state, with varying levels of discretion.

In the context of EU (migration) law, the CJEU was called on to decide on the concept of 'humanitarian grounds'. In the *X and X* and *Jafari* cases, the Opinions of the Advocates-General expressed the view that 'humanitarian grounds' is an autonomous and broad concept of EU law and cannot be limited, for example, to cases of medical assistance or healthcare.[14] In the frame of EU asylum law, the Qualification Directive makes a clear distinction between the scope of statuses granted based on international protection grounds embedded in EU law and those granted based on national humanitarian grounds. In this context, too, the CJEU was asked to rule on the distinction between subsidiary protection and humanitarian grounds, which proved to be particularly challenging in cases concerning the state of health of a third-country national. Relevant rulings include:

- The *M'bodj* case,[15] which concerned the scope of application of the Qualification Directive to third-country nationals suffering from illness and whose removal would amount to inhumane or degrading treatment. In this case, the Court confirmed that protection for medical reasons is a form of humanitarian protection, granted on a discretionary basis by Member States, and is as such excluded from the scope of the EU asylum acquis, unless there is no appropriate treatment for the individual in the country or origin, or the individual would be intentionally deprived of healthcare there. The CJEU ruled that Member States could not extend subsidiary protection to medical cases on the basis of Article 3 of the Qualification Directive.
- The *Moussa Abdida* case,[16] in which the CJEU confirmed that protection for medical reasons is a form of humanitarian protection that is excluded from the scope of EU law, and that an application under national legislation granting leave to remain due to a serious illness, coupled with a lack of medical treatment in the country of origin, did not constitute a claim for subsidiary protection within the scope of the Qualification Directive;
- More recently, the *MP* case of 24 April 2018, where the CJEU ruled that cases where the medical situation of a third-country national could be attributed to the intentional failure to act of the authorities of the country of origin to provide appropriate medical care did fall under the scope of subsidiary protection as harmonised by the Qualification Directive.[17]

At this stage of development of CJEU jurisprudence, the decisive criterion for determining whether a medical case falls under subsidiary protection or (national) humanitarian protection appears to be intentional denial of medical treatment in the country of origin. Under EU law, the substantial aggravation of a third-country national's health alone cannot be regarded as inhumane or degrading treatment in the country of origin.

### IN SCOPE: STATUSES BASED ON ECHR AND THE BROADER NON-REFOULEMENT PRINCIPLE

The European Court of Human Rights (ECtHR) has reiterated that the ECHR and its protocols do not contain a right to asylum. This stems from the right of State Parties to the ECHR, as a matter of well-established international law, to control the entry, residence and expulsion of third-country nationals. Nonetheless, the ECtHR has pointed out that this right is not unqualified and is subject to States' treaty obligations, including under the ECHR, which contains various protections concerning the expulsion and other

11 See Recital 15 of recast Directive 2011/95/EU of 13 December 2011.
12 See Article 3(2) of the proposal (which states that "This Regulation does not apply to other national humanitarian statuses issued by Member States under their national law to those who do not qualify for refugee status or subsidiary protection status. These statuses, if issued, shall be issued in such a way as not to entail a risk of confusion with international protection.") European Commission, Proposal for a Regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, COM(2016) 466 final, 13 July 2016.
13 See, for example, the following EMN ad hoc queries on the Number of applications for humanitarian reasons (third country nationals applying for residence permits for medical reasons) limited to AT, BE, DE, FI, FR, NL, LU, SE, UK and NO, requested by FR EMN NCP on 19 September 2018 and that on Humanitarian Protection, requested by ES EMN NCP on 2 June 2017.
14 Opinion of the Advocate-General in X and X, C-638/16 PPU, EU:C:2017:93, paragraph 130, in relation to Article 25 of the Visa Code; Opinion of the Advocate-General in Jafari, C-646/16, paragraph 202, ECLI:EU:C:2017:443.
15 CJEU, C-542/13, Judgment of the Court (Grand Chamber) of 18 December 2014, Mohamed M'Bodj v État Belge, ECLI:EU:C:2014:2452.
16 CJEU, C562/13, Judgment of the Court (Grand Chamber), 18 December 2014, Centre public d'action sociale d'Ottignies-Louvain-La-Neuve v Moussa Abdida, ECLI:EU:C:2014:2453.
17 CJEU, C-353/16, Judgment of the Court (Grand Chamber) of 24 April 2018, MP v Secretary of State for the Home Department, ECLI:EU:C:2018:276, paragraph 58: "a third-country national who in the past has been tortured by the authorities of his country of origin and no longer faces a risk of being tortured if returned to that country, but whose physical and psychological health could, if so returned, seriously deteriorate, leading to a serious risk of him committing suicide on account of trauma resulting from the torture he was subjected to, is eligible for subsidiary protection if there is a real risk of him being intentionally deprived, in his country of origin, of appropriate care for the physical and mental aftereffects of that torture, that being a matter for the national court to determine."

forms of removal of third-country nationals, such as protection against *refoulement*.[18]

In addition to the ECtHR jurisprudence on the *non-refoulement* principle (somewhat codified under the subsidiary protection concept in the recast Qualification Directive), a range of other protection grounds were defined by the ECHR and the ECtHR, such as exceptional medical cases, family reasons and best interest of the child,[19] or expulsion of persons excluded from international protection who are at risk of the death penalty or torture in their country of origin.[20]

EU Member State Parties to the ECHR are also bound by the provisions of the recast Qualification Directive of 2011,[21] according to which subsidiary protection is to be granted to (among others) third-country nationals who do not qualify as refugees but who nevertheless face a real risk of torture or inhumane or degrading treatment or punishment in their country of origin. The distinction between the grounds leading to subsidiary protection, as defined in Article 15 of the Qualification Directive, and the prohibition of torture or inhumane or degrading treatment or punishment, as included in Article 3 of the ECHR is highly relevant to this study. From the CJEU's perspective, as per the *Elgafaji* case, Article 15(b) of the Qualification Directive essentially corresponds to Article 3 ECHR. However, the *M'Bodj* case shows that some situations falling within the scope of Article 3 ECHR are excluded from subsidiary protection, thus falling under the remit of national legislations and the 'humanitarian grounds' category. While the CJEU indicated situations falling outside the scope of subsidiary protection, they can, according to ECtHR case-law, be considered grounds of protection and include, for example, protection against expulsion of seriously or terminally ill third-country nationals.[22]

This study thus covers possible grounds of national protection statuses outside the scope of the Qualification Directive yet falling under Article 3 of the ECHR and related ECtHR case-law.

## PROTECTION GROUNDS AND STATUSES OUT OF SCOPE

The recognition of stateless persons is established in accordance with the 1954 Convention on the Reduction of Statelessness.

A 2016 EMN Inform, 'Statelessness in the EU',[23] updated in December 2019,[24] provided an overview of the legislation and practices in 23 countries[25] in relation to the determination of statelessness and the issuance of a residence permit. As this study deals with 'national protection statuses' rather than those deriving from international law, the status of stateless person falls outside its remit.

Likewise, statuses granted to victims of crime (e.g. trafficking in human beings, smuggling, witnesses to criminal proceedings) are not covered by this study, as other EU instruments[26] and national criminal laws govern most aspects of the relevant grounds and procedures. The same is true of witness protection programmes.

While this study covers national humanitarian protection statuses granted to third-country nationals already present on the territory of Member States and Norway, it does not include 'humanitarian visas' intended to provide access to the territory of Member States of persons in need of protection.

The variety of residence permits issued to third-country nationals considered non-removable are excluded, i.e. situations where national authorities are faced with the impossibility of returning a person (they would not be readmitted to their country of origin, lack of identification documents, no transportation available, etc.).

Lastly, this study does not cover cases based on the right to family and private life as enshrined by Article 8 of the ECHR and its interpretation by the ECtHR.

## TEMPORAL SCOPE OF THE STUDY

The study covers statuses available in EU Member States and Norway up until the end of 2018 (in terms of data) and planned or recent legislative changes in 2019. The study also includes statuses available at, or introduced since, the time of the 2010 EMN study 'Different National Practices Concerning Granting of Non-EU Harmonised Protection Statuses', which ceased or were removed from national legislation during the study period. The strict temporal scope of the study is therefore 2010-2018, with additional information up to April 2019 included where relevant.

18 UN High Commissioner for Refugees (UNHCR), UNHCR Manual on the case-law of the European Regional Courts, June 2015, 1st edition, available at: https://www.refworld.org/docid/558803c44.html [accessed 11 January 2019], p. 188. See also the following ECtHR case-law: Soering v. the United Kingdom, 1989; Cruz Varas and Others v. Sweden, 1991; Vilvarajah and Others v. the United Kingdom, 1991, Babar Ahmed and Others v. the United Kingdom, 2012; T.I. v. the United Kingdom, 2000; K.R.S. v. the United Kingdom, 2008; M.S.S. v. Belgium and Greece, 2011; Abdolkhani and Karimnia v. Turkey, 2009; Hirsi Jamaa and Others v. Italy, 2012.

19 Examples of ECtHR case-law in: Amrollahi v. Denmark, 2002; Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, 2007; Guliev v. Lithuania, 2008; Hode and Abdi v. the United Kingdom, 2012; Berisha v. Switzerland, 2013; Mugenzi v. France, Tanda- Muzinga v. France and Senigo Longue and Others v. France, 2014.

20 For example, ECtHR, Auad v. Bulgaria, Application No. 46390/10, 1 October 2011.

21 With the exception of Ireland and the UK, where the 2004 Qualification Directive applies.

22 ECtHR judgments in cases N. v. the United Kingdom, D v. the United Kingdom, Poposhvili v. Belgium; The N case test requires judges to use a high threshold, which would only allow very exceptional cases where the grounds against removal were compelling, effectively limiting protection against removal to 'deathbed' cases.

23 Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-informs/emn-informs-00_inform_statelessness_final.pdf.

24 Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_inform_statelessness_en.pdf

25 States participating in this inform were: AT, BE, CZ, DE, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, SE, SI, SK, UK and NO.

26 Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, OJ L315/57; Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, OJ L101/1.

# 2. OVERVIEW AND MAPPING OF TYPES OF NATIONAL PROTECTION STATUSES

This section presents an overview of the types of national protection statuses that exist in the Member States and Norway. Together with a general overview of these statuses, the section introduces available statistical data.

Of the 25 States participating in this study, 21 have at least one national protection status[27] in addition to those harmonised at EU level. Four do not have any national protection status in their legal frameworks (as per the definition of these statuses used by this study, see section 1).[28]

## 2.1. TYPOLOGY OF NON-HARMONISED PROTECTION STATUSES

Non-harmonised protection statuses are divided into two main categories (see Figure 1).

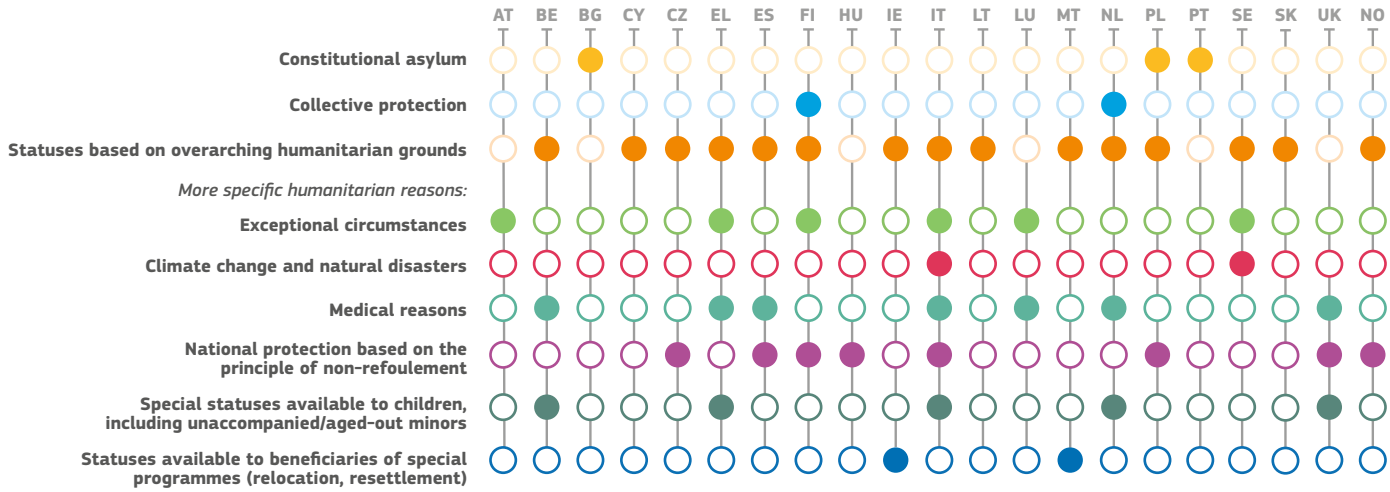
The first group comprises constitutional asylum and collective protection, which typically pre-dated the harmonised EU protection statuses. Constitutional asylum as a form of national protection status was identified in three Member States.[29] Collective protection, as a national protection status available to groups of persons in need of protection or a status distinct from that harmonised by the Temporary Protection Directive, was reported only in Finland.[30]

The second group consists of statuses based on humanitarian or compassionate grounds. As there is no common definition of 'humanitarian grounds', this category ranges from statuses based on rather generic legislative definitions to more specific statuses covering, for example, medical cases or national statuses based on the principle of *non-refoulement* and thus situated at the interface between subsidiary protection and Article 3 ECHR. It also includes statuses based on climate change or made available to (unaccompanied) children.

In some Member States, the national protection statuses presented may cover more than one category, but for the sake of clarity they have been organised and analysed under the most relevant category.

The study makes no specific distinction between the terms *status* and *residence permit,* even though these are usually two different concepts. Broadly speaking, 'status' refers to the legal recognition that a person meets the required conditions to be granted permission to reside in the State and the attribution of a set of rights and entitlements to this person associated with that status.

### FIGURE 1: TYPOLOGY OF NON-HARMONISED PROTECTION STATUSES IN EU MEMBER STATES AND NORWAY




27 AT, BE, BG, CY, CZ, EL, ES, FI, HU, IE, IT, LT, LU, MT, NL, PL, PT, SE, SK, UK and NO.
28 EE, FR, HR, LV.
29 BG, PL, PT.
30 Section 93 of the Aliens Act.

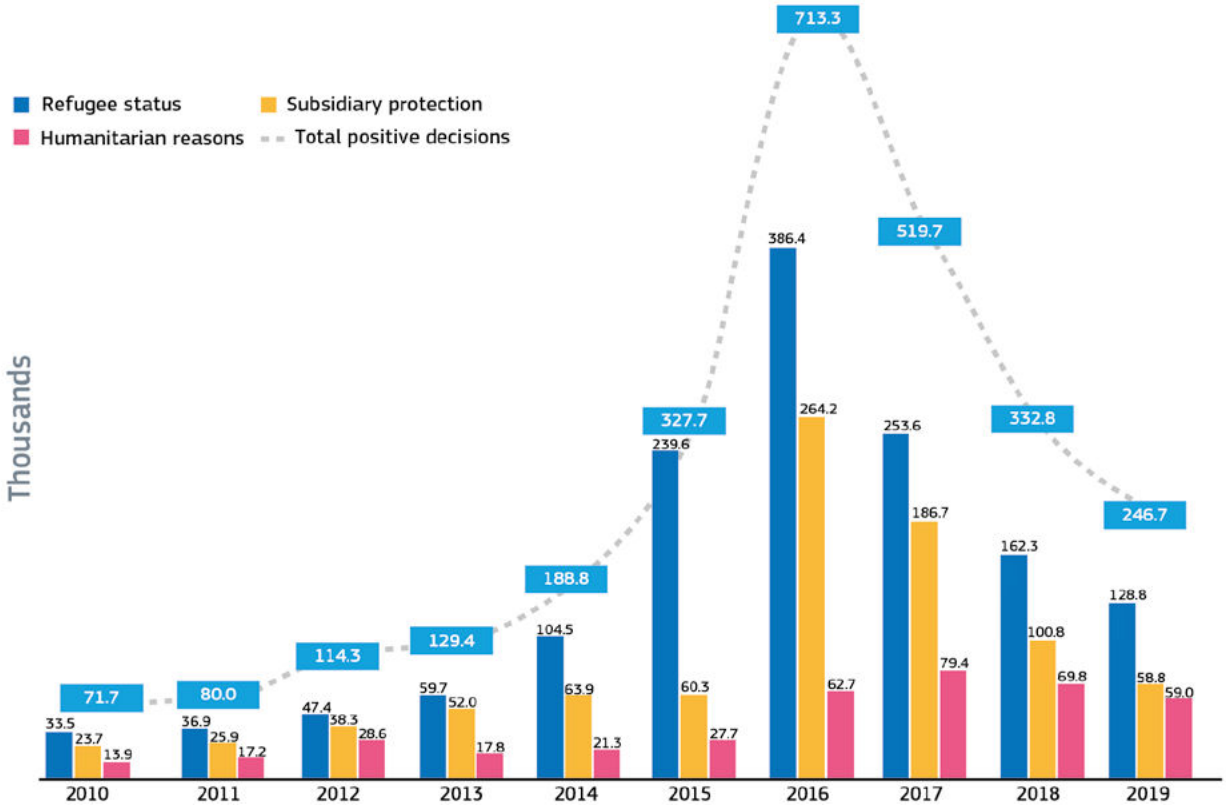
The granting of a status entails a right of stay, which requires the issuing of a residence permit (or the issuance of the latter is incorporated in the decision on the status) providing a long-term (i.e. longer than three months) right to reside in a State. However, several States do not distinguish between 'status' and 'residence permit',[31] which often means that it is the permit which determines the rights and entitlements provided to an individual. To allow for a comparative analysis, the grounds for granting a status or a residence permit falling within the scope of the study are thus examined together, as well as the content of protection granted by the status and/or the permit.

The study understands 'protection' as encompassing all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of human rights, refugee and international humanitarian law. Protection involves creating an environment conducive to respect for human beings, preventing and/or alleviating the immediate effects of a specific pattern of abuse, and restoring dignified conditions of life through reparation, restitution and rehabilitation.[32] Each status presented in Figure 1 is analysed separately in the following sections (sections 3 to 11), considering, in each case, the rationale and eligibility criteria, the determination and appeal procedures, followed by a synthesis of the content of protection. Where possible, a comparative analysis of the differences and commonalities in the content of the respective national statuses and the EU-harmonised statuses is included.

## 2.2. ESTIMATED SCALE OF BENEFICIARIES OF NATIONAL PROTECTION STATUSES

Eurostat data on 'authorisations to stay for humanitarian reasons' are one of the rare sources of information that give some indication of the scale of national protection statuses issued by Member States. These data do not equate to national protection statuses and should be read in light of the definition used by Eurostat of 'authorisations to stay for humanitarian reasons'.33 This dataset covers cases of individuals that received a decision granting them authorisation to stay for humanitarian reasons under national law, but not all such decisions correspond to the scope of this study. Data reported to Eurostat are more restricted than the national statuses covered by this study, as they cover only persons who are not eligible for international protection under the Qualification Directive but who are nonetheless protected against removal under the obligations imposed on all Member States. In addition, the data reported to Eurostat only refer to persons who were previously reported as asylum applicants in the asylum data collection. Individuals granted permission to stay for humanitarian reasons but who have not previously applied for international protection, or whose application was not considered as part of a single asylum procedure, are thus excluded.

### FIGURE 2: TOTAL POSITIVE DECISIONS ON APPLICATIONS IN 28 EU MEMBER STATES AND NORWAY, 2010-2019



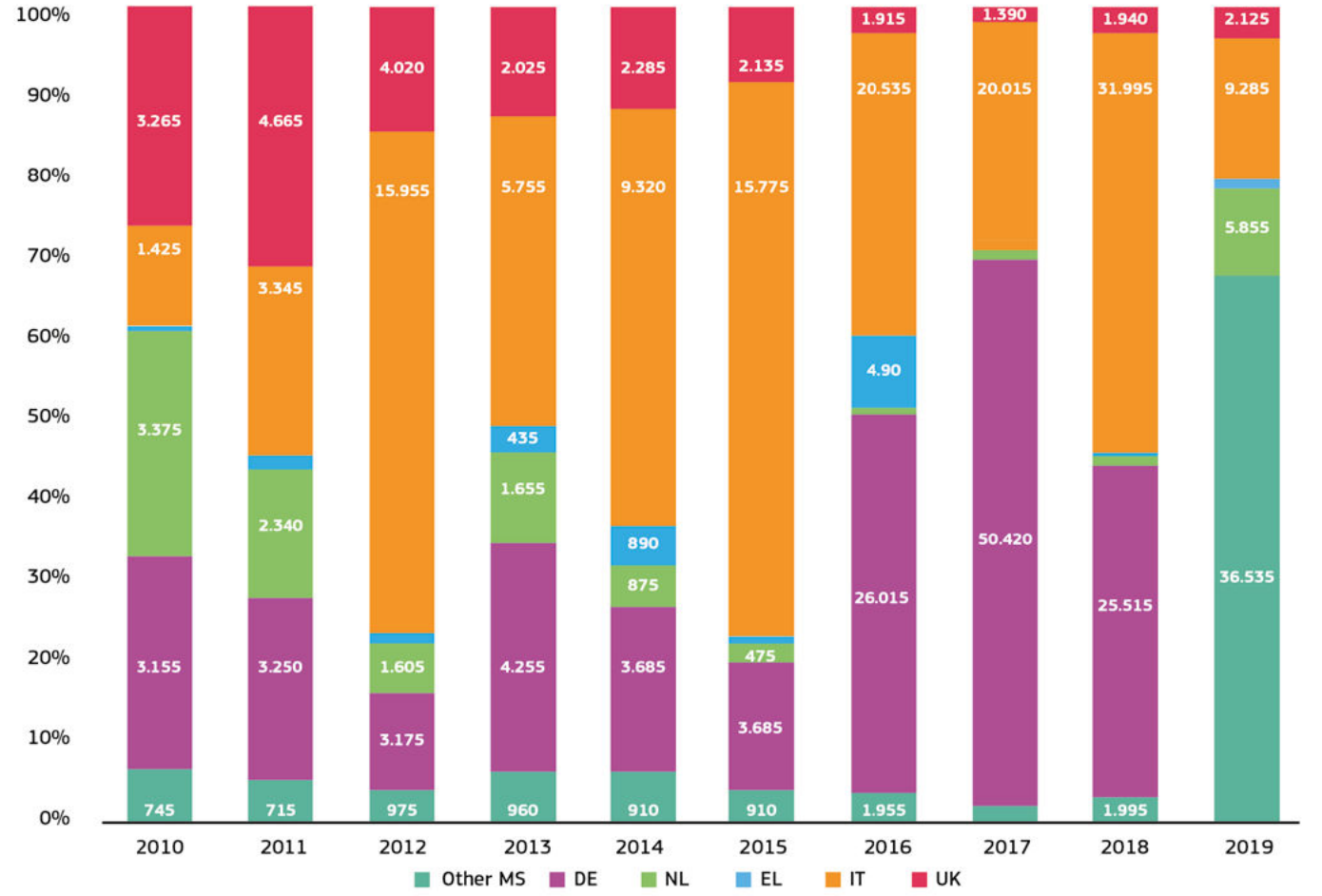

*Source: Eurostat, Positive decisions (positive decisions in first instance decisions on applications [migr_asydcfsta] and final positive decisions (rounded) [migr_asydcfina]*[34]

31 CZ, EE, ES, FI, FR, IT, NL, SE.
32 UNHCR Master Glossary of Terms, June 2006, Rev.1, available at: https://www.refworld.org/docid/42ce7d444.html; EMN Glossary of terms.
33 Eurostat, Statistical concepts and definitions in Decisions on applications and resettlement (migr_asydec), Reference Metadata in Euro SDMX Metadata Structure (ESMS), available at: https://ec.europa.eu/eurostat/cache/metadata/en/migr_asydec_esms.htm
34 Available at: https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asydcfsta&lang=en and https://ec.europa.eu/eurostat/product?code=MIGR_ASYDCFINA&mode=view

The data on 'humanitarian reasons' thus provide only a partial picture of the number of protection statuses granted at national levelData available at EU level on the total number of positive decisions on asylum applications for the period of 2010-2018 show that the positive decisions on authorisations to stay for humanitarian reasons increased five-fold (Figure 2), with a peak in 2016. This development is similar in magnitude to the overall increase in the number of total positive decisions on asylum applications across all Member States and Norway. The trend in decisions on humanitarian status is largely similar to the number of total positive decisions on subsidiary protection, although the share of positive decisions issued for humanitarian reasons increased markedly in 2018. This was primarily driven by the high numbers of positive decisions on humanitarian statuses in Germany and Italy that year (Figure 3).

Focusing on the number of positive decisions on authorisations to stay for humanitarian reasons issued by Member States (Figure 3), it is apparent that, from 2010 to 2018, Germany and Italy[35] granted the highest number of humanitarian statuses. In Germany, this figure was driven by decisions on a specific status, namely the 'national ban on deportation'.[36] Other national protection statuses granted outside the asylum procedure (residence permit for resettled persons, residence permit by the supreme Länd authorities, temporary residence permit granted by the Federal Ministry of the Interior or designated body, etc.) are not reported to Eurostat. The majority of humanitarian statuses in 2019 were issued by Spain (over 35,000).

## FIGURE 3: POSITIVE DECISIONS ON AUTHORISATIONS TO STAY FOR HUMANITARIAN REASONS, 2010-2019




*Source: Eurostat, Positive decisions (positive decisions in first instance decisions on applications [migr_asydcfsta] and final positive decisions (rounded) [migr_asydcfina]*[37]

35 For Italy, statuses reported to Eurostat concern only those persons who were granted the national protection status 'humanitarian permit', which was in force until 2018. In 2019, data referred to residence permits issued under the transitional regime foreseen for procedures in progress as of 5 October 2018, when new legal provisions entered into force (see section 5).

36 See https://www.bamf.de/EN/Themen/AsylFluechtlingsschutz/AblaufAsylverfahrens/Schutzformen/Abschiebeverbote/abschiebeverbote-node.html

37 Available at: https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asydcfsta&lang=en and https://ec.europa.eu/eurostat/product?code=MIGR_ASYDCFINA&mode=view Please note that the 'other MS' category includes nine Member States that did not report 'humanitarian statuses' to Eurostat (BE, BG, EE, FR, LT, LU, LV, PT, SI).

# 3. CONSTITUTIONAL ASYLUM

The EU asylum framework offers Member States the possibility to adopt non-harmonised statuses, provided they do not undermine and are compatible with existing EU acquis. The right to asylum may be embedded in the constitution or fundamental laws of Member States,[38] and established before the adoption of the 1951 Refugee Convention and/or before EU asylum law. For example, the right to asylum in Bulgaria can be traced back to the first Constitution of the Republic of Bulgaria of 1879. The Czech Republic's constitution includes similar provisions, as the formulation was inherited from the legislation of the Czech and Slovak Federative Republic.

The definition of 'persecution' under the right to asylum contained in national constitutions is broader than the one included in the 1951 Refugee Convention, thus providing authorities a wider degree of discretion in granting a right to asylum under their national law to a person who may be excluded from international protection. Potential beneficiaries of a right to (constitutional) asylum may include third-country nationals who:

- "Are persecuted for their views or activity undertaken in order to protect internationally recognised rights or freedoms";[39]
- "Are persecuted in virtue of their actions in favour of liberty";[40]
- "Are being persecuted for the assertion of their political rights and freedoms";[41]
- "To protect the foreigner or secure a vital national interest";[42]
- "Are persecuted or seriously threatened by persecution as a result of their activity in favour of democracy, social and national liberation, peace between peoples, freedom and human rights".[43]

While the grounds for persecution were laid down in Member States' constitutions, concrete implementation of the status was set out in national laws. In some of the Member States whose constitutions contain the right to asylum, beneficiaries are granted refugee status. In Czech Republic and France, for example, beneficiaries of the right to asylum had the same protection as refugees. This type of protection did not qualify for a 'national' protection status as defined in this study, however. The present study examines cases of constitutional asylum where the content of protection granted is different to refugee status, such as in Poland and Portugal (see the next subsection).

According to available national data, constitutional asylum as a national protection status was seldom granted in practice. Since 2010, the status was issued only once in Bulgaria and a total of 112 statuses were granted in Poland[44] (mainly to Ukrainian nationals).

## 3.1. DETERMINATION AND APPEAL PROCEDURES

In the three Member States that had this type of status,[45] the foundation of the status was laid down in their national constitutions, while the application procedure was set out in national asylum legislation.

More specifically, in Portugal, authorities examined the grounds for constitutional asylum as part of a single procedure assessing the need for international protection. This meant that national authorities first examined the need for international protection and, where the grounds for international protection were not met, they would then examine the reasons to grant constitutional asylum, within the same procedure. In Bulgaria and Poland, the application was examined in a separate procedure. In Poland and Portugal, these applications were processed by the same authorities that processed asylum applications and issued decisions on international protection.[46] The exception was Bulgaria, where constitutional asylum fell within the competencies of the president, while applications for international protection were examined by the State Agency for Refugees.[47]

In Poland and Portugal, an appeal procedure was in place in the event of a negative decision on an application for constitutional asylum. In Portugal, the authorities examining the appeal were the same as those examining appeals against a negative decision in the international protection procedure. In Poland, as constitutional asylum was examined in a separate procedure, the appeal on a negative decision was lodged to the Head of the Office for Foreigners, while the appeal authority for a negative decision on an international protection application was the Refugee Council. Only in Portugal did the appeal have an automatic suspensive effect.

In the case of a negative decision on an application for constitutional asylum in Bulgaria, or if the applicant failed on appeal in Poland, they could apply for international protection. In Portugal, no further standard international protection procedure was available, as the grounds for international protection were already examined within the single procedure.

38 For an analysis of constitutional asylum, see Meili, S., The Constitutional Right to Asylum: The Wave of the Future in International Refugee Law?, 41 Fordham International L.J. 383 (2018), available at: https://ir.lawnet.fordham.edu/ilj/vol41/iss2/3.
39 BG.
40 FR.
41 CZ.
42 PL.
43 PT.
44 In Poland, 2 statuses were issued in 2013, 56 in 2015 (of which 55 were to Ukrainian nationals), 54 in 2016 (all to Ukrainian nationals) and 1 in 2017.
45 BG, PL and PT.
46 PL and PT.
47 However, at the request of the President, the State Agency for Refugees shall inquire and clarify all facts and circumstance relevant to the procedure for granting asylum and shall provide assistance to them. The President may grant asylum even if the conditions for asylum are not fulfilled.

**National legal basis for the protection status of constitutional asylum**

**Bulgaria** Article 27(2) of the Constitution of the Republic of Bulgaria (1991) and the Law on Asylum and Refugees (2002)

**Portugal** Article 33 (8) of the Constitution (1976) and Article 3(1) of Law no. 27/2008

**Poland** Article 56 of the Constitution and the Act on granting protection to foreigners (1997)

## TABLE 1: CONTENT OF PROTECTION OF CONSTITUTIONAL ASYLUM STATUS

| Statuses on 'general' humanitarian grounds | Yes | No |
|---|---|---|
| **Residence permit** | | |
| Issuance of a residence permit required? | BG, PL, PT | |
| Validity of the first residence permit (or initial length) (in years) | **5 years:** BG, PT<br>**10 years:** PL | |
| **Travel document** | | |
| Is a travel document issued? | BG, PL, PT | |
| Validity (in years) | **1 year:** PL (renewable)<br>**5 years:** BG | |
| **Accommodation** | | |
| Access to accommodation (on the same basis as other legally residing third-country nationals)? | BG, PT | PL |
| Access to specific schemes/programmes to support access to accommodation? | BG, PT | PL |
| **Family reunification** | | |
| Right to family reunification (under the Family Reunification Directive)? | BG, PL | |
| What is the validity of the residence permit of the family member? | **3 years:** PL<br>**5 years:** BG<br>**Same as for the sponsor:** PT | |
| **Labour market** | | |
| Specific conditions to be granted access (e.g. hold work permit)? | | BG, PT, PL |
| Access to procedures for recognition of qualifications? | BG, PT, PL | |
| **Social assistance, healthcare** | | |
| Social assistance limited to core benefits?[48] | BG, PL | **Above core benefits:** PT |
| Access to emergency health care? | BG, PL, PT | |
| Access to mainstream health services? | BG, PL, PT | |
| Specific support to those with special needs? | BG, PL, PT | |
| **Education** | | |
| Access of minors to general system of education (same as nationals)? | BG, PL, PT | |
| Access of adults to general system of education, further training or retraining (same as legally residing third country nationals)? | BG (as nationals), PT, PL | |
| **Integration** | | |
| Access to 'mainstream' support (available for legally residing third-country nationals)? | BG (as refugees), PT | PL |
| Access to targeted support (i.e. specifically for beneficiaries of the status)? | PT | BG, PL |

48 In the context of EU law, the concept of core benefits is understood to cover, at a minimum, income support, assistance in case of illness, pregnancy, and parental assistance, in so far as these benefits are granted to nationals under national law (see, for example, Recital 45 of the recast Qualification Directive).

## 3.2. CONTENT OF PROTECTION

### RESIDENCE PERMIT AND TRAVEL DOCUMENTS

In all Member States granting these statuses, a residence permit was issued, with a validity period ranging from five to 10 years, and the option to renew. Overall, in all Member States, beneficiaries of this status had access to more favourable standards than refugees under the recast Qualification Directive, where the minimum validity of the first residence permit was set at three years.

Each Member State where constitutional asylum was available could issue travel documents for beneficiaries of the status, similar to the travel document issued to refugees. The exception was Poland, where a different type of travel document would be issued ('Polish travel document').

### ACCESS TO RIGHTS AND INTEGRATION

In Portugal, access to accommodation was granted on the same basis as for other legally resident third-country nationals. Schemes and programmes were in place to support them, including assistance and financial aid while searching for accommodation, which were similar to those supporting beneficiaries of international protection. Poland, again, was the exception, where constitutional asylum was designed as a separate status to 'refugee'. As a result, applicants for this status did not have access to social benefits during their application, nor did they have access to accommodation or other supports to access accommodation once constitutional asylum was granted.

All Member States where constitutional asylum was available allowed for family reunification. The eligible categories of family members in all Member States were close relatives, namely partners in a legal marriage or in a comparable relationship, minor children and parents of unaccompanied minors. In Bulgaria, family reunification with unmarried partners, underage partners, adult dependent children, and dependent parents was also possible. In Poland, the sponsor needed to prove that they met material requirements, such as adequate accommodation and sufficient income/financial means. Poland also required the sponsor to have health insurance. Thus, family reunification with close family members was possible in all Member States, and most did not impose material requirements to enable family reunification, suggesting a more favourable approach towards beneficiaries of this status.

Similar to beneficiaries of international protection, beneficiaries of constitutional asylum had access to the labour market in all Member States. Constitutional asylum also gave access to emergency healthcare, mainstream services and specific supports for those with special needs in all Member States. Social assistance was limited to core benefits in Bulgaria, Poland and Portugal.

Protection under constitutional asylum entitled beneficiaries to access the general system of education under the same conditions as nationals. Except in Poland, they also could receive additional supports (also available to beneficiaries of EU-harmonised statuses), such as language classes to learn the local language.[49] Beneficiaries of constitutional asylum were given access to mainstream integration supports for third-country nationals in Bulgaria and Portugal.

### CONDITIONS AND RIGHTS OF THE CONSTITUTIONAL ASYLUM COMPARED TO THE EU STATUSES

In Bulgaria, while the content of protection was the same as refugee status, the access to constitutional asylum was framed in a less robust procedure, as the decision to grant the status was left to the discretion of the President of the State and the applicant could not appeal a negative decision. The level of protection offered under constitutional asylum in Poland was lower than EU-harmonised refugee status, in that beneficiaries did not have access to accommodation or integration measures.

49 BG

# 4. COLLECTIVE PROTECTION

In contrast to other (national or EU-harmonised) protection statuses, where the determination of the status is individualised, 'collective protection' is made available to a group of persons in need of protection. In the EU asylum acquis, the Temporary Protection Directive harmonised the conditions to grant temporary protection to a group of persons in response to emergency and mass-influx situations.[50] Adopted in 2001 as a measure to express solidarity among EU Member States, the Directive has never been applied.[51]

In 2004, Finland adopted a national protection status ('other humanitarian immigration'), covering the collective protection concept. The same legal basis could be used to grant individual protection for 'exceptional circumstances' (see section 6). The rationale underpinning this status was to enable the Finnish government to admit groups of third-country nationals based on 'special humanitarian grounds' or to 'fulfil international obligations', thus depending on policy priorities as well. No definition was attached to 'special humanitarian grounds', leaving the eligibility criteria for this status deliberately undefined. This was to cover unforeseen situations, such as natural or other disasters requiring prompt humanitarian measures and warranting the admission of a group of third-country nationals to Finland.

Since its adoption in 2004, the procedure set under this status was applied only rarely, most recently in 2015, when Finland agreed to review the case of 100 Syrian asylum seekers from Germany, as a gesture of burden-sharing.[52]

The Netherlands had a collective protection status in place but abolished this category-based (or group) protection in 2014. Among the reasons given for its abolition were that the 'collective' elements were sufficiently covered by existing EU international protection statuses, as well as by the provisions of the ECHR. The proposal to cease this status also expressed the concern that such status increases the risk of fraud and was acting as a pull-factor in attracting groups of people not in real need of protection.

In Italy, a procedure can be activated by the government for the reception of individuals or groups of people on the basis of exceptional circumstances (status analysed in section 6).

## 4.1. DETERMINATION AND APPEAL PROCEDURES

Similar to the eligibility grounds, the application procedure for this status was not clearly defined and a broad margin of discretion is left to the Finnish government. The government decides in a plenary session which group of third-country nationals to admit based on 'other protection grounds' (understood as grounds different from those foreseen in other statuses). The procedure is therefore ad hoc and separate from the procedure to apply for international protection. In theory, national legislation would not preclude beneficiaries of this status from applying for international protection once they are admitted to Finland.

## 4.2. CONTENT OF PROTECTION

The discretionary nature of the status extends to the content of protection, namely the type of residence permit and access to family reunification. When the status was adopted in 2004 in Finland, the initial residence permit was temporary and did not exceed one-year validity, in line with Articles 4 and 8 of the Temporary Protection Directive. This was amended in 2016 to grant beneficiaries either a temporary or a continuous permit. The type of residence permit (temporary or continuous) was therefore left to the discretion of the Immigration Service, ultimately impacting on the content of protection. In contrast to the maximum duration of the protection set in the Temporary Protection Directive,[53] no such restrictions were introduced for this national protection status (e.g. renewal of the residence permit).

Beneficiaries of this status would not automatically have access to the right to family reunification, as may be the case under the Temporary Protection Directive [54] or for refugees. Rather, the government considers the right to family reunification on a case-by-case basis. However, access to the labour market and access to education and integration measures are similar to the standards set in the Temporary Protection Directive and in the EU asylum acquis. Social assistance is not limited to 'necessary assistance' (Article 13 Temporary Protection Directive) nor to 'core benefits', suggesting ore favourable treatment than beneficiaries of either temporary protection or subsidiary protection.

**National legal basis for the national statuses of collective protection**

| | |
|---|---|
| **Finland** | Permit on 'other humanitarian immigration', Section 93 of Aliens Act (2004) |
| **Netherlands** | Category-based protection, Section 29.1(d) of the Aliens Act (adopted in 2000 and abolished in 2014) |

50 Temporary Protection Directive.
51 European Commission, Study on the Temporary Protection Directive, 2016, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/asylum/temporary-protection/docs/final_report_evaluation_tpd_en.pdf.
52 https://intermin.fi/artikkeli/-/asset_publisher/suomi-valmistautuu-vastaanottamaan-100-syyrialaista-turvapaikanhakijaa-saksasta?_101_INSTANCE_jyFHKc3on2XC_languageId=fi_FI (in Finnish) (Accessed 18.3.2019)
53 Article 4 of the Temporary Protection Directive.
54 Article 15 of the Temporary Protection Directive.

# 5. PROTECTION BASED ON 'GENERAL' HUMANITARIAN GROUNDS

Of the 25 Member States and Norway that contributed to this study, 15 have national statuses that could be granted on humanitarian grounds.[55] In Italy, the general humanitarian status was discontinued in October 2018, with the provision replaced by specific forms of national protection.[56] In Sweden, the national protection status on humanitarian grounds was suspended until July 2021, following the adoption of the Temporary Act in 2016. In the Netherlands, the residence permit on humanitarian grounds could be granted by discretionary powers of the Ministry of Justice and Security, which were abolished in January 2019.

This category of national statuses refers to a broad 'humanitarian' need to cover cases where refugee status or subsidiary protection could not be granted. In four Member States, national legislation did not further define what was intended as 'humanitarian' or list specific criteria to grant this protection status, leaving the assessment to the discretion of the deciding authority.[57]

In others, the legislation listed a variety of situations where this status could be applied, including:

- Prohibition of expulsion or protection based on *non-refoulement* principle.[58]
- Health and medical reasons.[59] For instance, in the Netherlands, this status could be granted to a failed asylum seeker who was terminally ill or suffered from a severe or life-threatening medical condition that would not have an adequate cure in their country of origin.
- Protection against violations of the rights of the child in the country of origin, including prohibition of expulsion of minors.[60]
- Conflict and unrest in the country of origin.[61] This was the case in Sweden, where a form of protection could be granted to a third-country national who, while not qualifying for refugee status or subsidiary protection, could not be returned due to an external or internal armed conflict in their country of origin.
- Considerations linked to the integration of the third-country national in the host country[62] For example, the Czech Republic provided a permit for a 'generic' humanitarian ground and a residence permit for former asylum seekers, who are already well integrated into society. Similarly, in Poland, a humanitarian status was granted, among other reasons, where the individual's children were integrated in Poland and removing them would infringe the Convention on the Rights of the Child.

Specific forms of protection that were issued for 'exceptional circumstances', or national statuses specifically based on medical grounds or on the principle of *non-refoulement*, are analysed further in sections 6, 8 and 9 of this report.

Between 2010-2018, the statistics show the following use of this form of protection: a total of 107 beneficiaries in the Czech Republic, 2 816 in Finland, 24 in Latvia, 933 in Malta, 547 in Poland and 45 in Spain. In Ireland, a total of 310 beneficiaries were granted this form of protection in 2017 and 2018, following its introduction in 2016. In Sweden, this form of national protection was granted to 586 beneficiaries between 2014-2018.[63]

## 5.1. DETERMINATION AND APPEAL PROCEDURES

The Member States and Norway had different application procedures in place for statuses on humanitarian grounds. In Ireland, the Slovak Republic, Sweden and Norway, the application was examined as part of a single procedure (which also assessed whether the person qualified for international protection). In Poland and Malta, humanitarian grounds were examined only after the regular asylum procedure was exhausted, and in Greece and Spain, humanitarian reasons were examined only if a previous asylum request was rejected. In five other Member States, application for this status was part of a separate procedure,[64] examining the application for this status at any point, irrespective of the procedure for international protection. In all countries processing applications in a separate procedure, the authorities responsible were immigration authorities instead of those responsible for examining international protection applications,[65] with the exception of Finland and Lithuania. In Italy, both procedural pathways were possible: either submit an application for humanitarian protection directly to the Territorial Chief of Police (responsible for issuing the permit), or, after

55 BE, CY, CZ, EL, ES, FI, IE, IT, LT, MT, NL, PL, SE, SK and NO. In Italy, the humanitarian status was granted until the reform in 2018; humanitarian permits issued before October 2018 are valid until their expiry date. After October 2018, if requirements would still be met, they can be replaced with a permit for special cases. In Sweden, following the adoption of the Temporary Act in 2016, this national protection status will not be issued until July 2021. However, under the Temporary Act (section 11) permission to stay on humanitarian grounds will be granted if a decision not to grant a residence permit would constitute a breach of international conventions; between 2016 and 2018, 270 permissions were granted on this basis.

56 The statuses introduced included: special protection for non-refoulement (see section 9), protection for natural disasters (see section 7), protection from removal in case of medical conditions (see section 8), protection for acts of special civil value, and protection for special cases, including victims of exploitation and domestic violence. The last two statuses fall outside the scope of this study and are not analysed here.

57 BE, CZ, ES, IT and NL.

58 FI, EL, IE, LT, PL and SE.

59 CY, EL, FI, LT, MT, PL and NO.

60 LT, MT and NO.

61 SE.

62 CY, CZ, IE, PL and NO.

63 Until 2014, national statistics on subsidiary protection did not disaggregate between EU-harmonised subsidiary protection status and the national protection status related to the protection due to an external or internal armed conflict or due to other severe conflicts in the country of origin ('övrig skyddsbehövande') as the same code is used.

64 BE, CY, CZ, FI and LT.

65 BE, CY, CZ, ES and PL.

the regular asylum procedure was exhausted, when asylum authorities declared that serious humanitarian reasons existed.

The basis for the application procedure also varied, in part reflecting differences between the national asylum and migration systems. While in Norway and most Member States where such status was in place, the application procedure was set out in legislation,[66] in Malta it was set out in an administrative decision. In Belgium and Sweden, the application was set out in both (legislation and administrative decision). For some statuses, such as the 'other humanitarian immigration' status in Finland, there were no defined criteria for the application procedure.

In several Member States[67] the status is granted on a discretionary basis. This is illustrated by the discretionary competences of the national authorities issuing this type of national status. For example, in Ireland, the Minister for Justice and Equality has broad discretion to decide whether or not to issue an unsuccessful international protection applicant 'permission to remain' under the International Protection Act 2015. In the Netherlands, humanitarian status could be granted only via discretionary power by the Secretary for Justice and Security, in dire individual cases.[68]

This broad margin of discretion was further confirmed by decisions of Supreme Administrative Court in the Slovak Republic. The Court ruled that the decision on whether or not to grant asylum on humanitarian grounds depended on the discretion of the administrative authority. Therefore, no judicial review of the result is possible.[69] Only recently did the Supreme Court underline the need to duly justify and logically explain the decision.[70]

If a negative decision is issued on an application for this type of status, third-country nationals can bring an appeal against it, with the exception of Ireland and Malta. In Ireland, the decision can be reviewed by the Minister for Justice and Equality in the course of an appeal against a decision not to grant the applicant international protection.

The appeal has an automatic suspensive effect (on enforcing return) in The Czech Republic, Greece, Italy, Lithuania, the Netherlands, Poland, Sweden and Norway, while in Belgium and Spain the suspensive effect has to be requested. Where the applicant fails in their appeal, a subsequent application for international protection is possible in all Member States (except Cyprus), provided that the elements included in this application were not previously examined, or that new elements are submitted.

## 5.2. CONTENT OF PROTECTION

### RESIDENCE PERMIT AND TRAVEL DOCUMENTS

In all Member States (except Ireland) where national protection was granted based on general humanitarian grounds, a residence permit was issued. In Ireland, no requirement was set out in legislation for the issuance of a residence permit or the type of permit to be issued, with this decision left to the discretion of the Minister for Justice and Equality.

The validity of the permits was one year in six Member States (see Table 3). In other States, the residence permit was issued for longer periods, ranging from two years in Poland to three years in Sweden and Norway,[71] five years in the Netherlands, and 10 in the Czech Republic (five for minors) and the Slovak Republic. In Italy, the duration of the residence permit depended on the individual situation for which the protection was granted and could vary from six months to two years.

**National protection statuses based on general humanitarian grounds**

| | |
|---|---|
| **Belgium** | Authorisation to stay for humanitarian reasons, Article 9bis Immigration Act (former Article 9, third paragraph) (1980) |
| **Cyprus** | Residence permit for humanitarian reasons, Chapter 105 of Aliens and Immigration Law (2012). |
| **Czech Republic** | Permanent residence permit for humanitarian reasons, Section 66 of Act on the Residence of Foreign nationals (1999)<br>Permanent residence permit granted because the person is already integrated, Section 67 of the Act on the Residence of Foreign nationals (1999) |
| **Finland** | Residence permit on compassionate grounds, Section 52 of the Aliens Act (2004) |
| **Greece** | Residence permit of third-country nationals whose application for international protection has been rejected, Article 19A(1f) Immigration Law 4251/2014 |
| **Ireland** | Permission to remain, Section 49 International Protection Act (2015) |
| **Italy** | Residence permit on humanitarian grounds, Article 5 of Immigration Act (introduced in 1998 and abolished in October 2018) |
| **Lithuania** | Temporary residence permit for humanitarian reasons, Law on the legal Status of the Aliens (2004, amended in 2014 and 2015) |
| **Malta** | Temporary Humanitarian Protection, based on an administrative procedure (2010) |
| **Netherlands** | Discretionary power of the Minister of Justice and Security to grant a residence permit (abolished as of January 2019) |
| **Poland** | Residence permit for humanitarian reasons, Act on Foreigners (2013). |
| **Spain** | Humanitarian residence permit linked to international protection, Article 37b and 46.3 of the Act on Asylum (1995) |
| **Sweden** | Protection due to an external or internal armed conflict or due to other severe conflicts in the country of origin, Chapter 4, Section 2, Aliens Act (introduced in 2005 and suspended as of 2016 following the adoption of the Temporary Act in 2016, extended until July 2021) |
| **Slovakia** | Humanitarian asylum, Section 8 of Act n° 480/2002 Coll. on Asylum (2002) |
| **Norway** | Residence permit on strong humanitarian grounds or a particular connection to the realm, Section 38 of the Immigration Act (2008) |

66 BE, CY, CZ, EL, ES, FI, IE, LT, NL, PL and SE.
67 BE, IE, IT, NL and SK.
68 The status was abolished in January 2019. Instead, the head of the IND (Immigration and Naturalisation Service) was given the power to assess ex officio upon first application whether there is a dire situation as a result of a combination of special circumstances (as of 1 May 2019).
69 10Sžak/41/2015.
70 10Sžak/18/2017.
71 In Sweden, the Temporary Act (Lag 2016:752) restricted the right to family reunification to refugees in July 2016. A residence permit is granted only where a decision to refuse the right to family reunification would contravene a Swedish commitment under an international convention. However, in the extension of the Temporary Act to 2021, the right to family reunification is reinstated for beneficiaries of subsidiary protection, the EU-harmonised protection statuses, Aliens Act (2005:716) chap. 4, section 2.

# TABLE 2: CONTENT OF PROTECTION OF STATUSES ON HUMANITARIAN GROUNDS[72]

| Statuses on 'general' humanitarian grounds | Yes | No | Other |
|---|---|---|---|
| **Residence permit** | | | |
| Issuance of a residence permit required? | BE, CY, CZ, EL, ES, FI, IT, LT, MT, NL, PL, SK and NO | | IE, SE |
| Validity of the first residence permit (or initial length) (in years) | **1 year:** BE, CY, ES, FI, LT, MT,<br>**2 years:** PL,<br>**3 years:** NO (maximum), SE, | **5 years:** CZ, NL,<br>**10 years:** SK | |
| **Travel document** | | | |
| Is a travel document issued? | BE, CZ, EL, ES, FI, IT, LT, MT, NL, PL, SE, SK and NO | CY, IE | |
| Validity (in years) | **1 year:** FI, MT, NL (max. 3 years) and PL<br>**2 years:** BE, SK and IT | **5 years:** EL, CZ (minors under 15),<br>**10 years:** CZ (adults)<br>**Other:** FI, ES, LT, NL, NO and SE | |
| **Accommodation** | | | |
| Access to accommodation (on the same basis as other legally residing third-country nationals)? | BE, CY, CZ, EL, ES, FI, IT, LT, NL, PL, SE, SK and NO | MT | IE and NO |
| Access to specific schemes/programmes to support access to accommodation? | CY, EL, FI, IT and SK | BE, CZ, ES, IE, LT, MT, NL and PL | SE and NO |
| **Family reunification** | | | |
| Right to family reunification (under the Family Reunification Directive)? | BE, CZ, EL, ES, FI, LT, NL, PL, SE and SK | CY, IE, IT and MT | NO |
| What is the validity of the residence permit of the family member?[73] | **Same as the sponsor and/or one year:** BE, CZ, EL, ES, FI, IT, NL and SE<br>**5 years:** SK | | |
| **Labour market** | | | |
| Specific conditions to be granted access (e.g. hold work permit)? | CY, MT and NO | BE, CZ, EL, ES, FI, IT, LT, NL, PL, SE and SK | IE |
| Access to procedures for recognition of qualifications? | BE, CZ, EL, ES, IT, LT, MT, NL, SE, SK and NO | CY and IE | FI and PL |
| **Social assistance, healthcare** | | | |
| Social assistance limited to core benefits? | EE, MT and LT | BE, CY, CZ, FI, EL, ES, IE, IT, LT, NL, PL, SE and SK | NO |
| Access to emergency health care? | BE, CY, CZ, EL, ES, FI, IE, IT, LT, MT, NL, PL, SE, SK and NO | | |
| Access to mainstream health services? | BE, CY, CZ, EL, ES, FI, IE, IT, LT, MT, NL, PL, SE, SK and NO | | |
| Specific support to those with special needs? | BE, CY, CZ, ES, FI, IE, IT, LT, NL, PL, SE and SK | MT | NO |
| **Education** | | | |
| Access of minors to general system of education (same as nationals)? | BE, CY, CZ, ES, EL, FI, IE, IT, LT, MT, NL, PL, SE, SK and NO | | |
| Access of adults to general system of education, further training or retraining (same as legally residing third country nationals)? | BE, CY, CZ, EL, FI, IE, IT, MT, SK, SE and NO | PL | |
| **Integration** | | | |
| Access to 'mainstream' support (available for legally residing third-country nationals)? | BE, CY, CZ, EL, ES, FI, IE, IT, LT, NL, SE, SK, MT and NO | PL | |
| Access to targeted support (i.e. specifically for beneficiaries of the status)? | SK | BE, CY, CZ, EL, ES, FI, IE, IT, LT, MT, NL, PL, SE and NO | CZ and ES |

72 In CZ and IE, both statuses reported for each country in this section receive similar content of protection.

73 Ireland and Norway are not bound by the provisions of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251 (Family Reunification Directive).

Generally, therefore, this status offered conditions comparable to the minimum standard (one year) set for subsidiary protection under EU law, while four Member States granted the same or exceeded the standards for refugee protection under EU law (three years).[74] Permits were renewable, and the validity of the renewed residence permits ranged from one year to a maximum of five years.

Permanent residence was possible for most of the statuses after five years of continuous residence,[75] which did not differ from the general rule for applying for a permanent residence permit. However, in Malta, persons granted humanitarian status were not eligible for permanent residence.

Ten Member States and Norway[76] issued a travel document to beneficiaries of this status. Several issued it only in specific cases,[77] usually where it could not be obtained from the authorities of the person's country of origin.

## ACCESS TO RIGHTS AND INTEGRATION

In the Member States (and Norway) that had this type of status in place, third-country nationals with humanitarian status were given the same access to accommodation as other legally resident third-country nationals. With the exception of Sweden – which applied the same dispersal system for beneficiaries of international protection to beneficiaries of humanitarian protection[78] – no other State applied a dispersal system. In Italy, the beneficiaries of humanitarian protection were hosted in reception centres for asylum seekers and beneficiaries of international protection. Specific supports for finding accommodation was not in place in any country, although several Member States[79] reported allowing beneficiaries of humanitarian protection to access support initiatives targeting all third-country nationals. These were primarily implemented at the level of municipalities.

Similar to EU-harmonised refugee protection, beneficiaries of this status had a right to family reunification in 10 Member States[80] having a status based on humanitarian grounds and Norway, with the exception of Cyprus, Ireland and Malta. The validity of the permit granted to eligible family members was usually the same as a sponsor's permit,[81] but never longer than the sponsor's permit. In most cases,[82] the sponsor needed to prove that they met material requirements, such as adequate accommodation, health insurance and sufficient income in order to be eligible for family reunification. In the Slovak Republic, the sponsor needed to prove that they met material requirements, such as shared accommodation with sponsor and sufficient income/financial means. A three-month 'grace period' was applied, however, during which the material conditions did not (yet) have to be met.

Beneficiaries of the humanitarian status had access to the labour market, benefitting from the same rights and conditions as beneficiaries of international protection under the EU acquis. Several Member States,[83] however put in place specific conditions, for example Cyprus, where the work contract had to be approved and signed by the Department of Labour. Access to procedures for recognition of qualifications was also provided.[84] Access to mainstream healthcare was provided in all Member States and Norway having a status on humanitarian grounds, similar to the minimum standard set under the EU harmonised refugee protection status. Equally, all beneficiaries of protection statuses on humanitarian grounds had access to emergency healthcare.

Access to social benefits exceeded the core benefits in most Member States with a protection status on humanitarian grounds, in which beneficiaries accessed social benefits on an equal footing with nationals[85] or other third-country nationals.[86] Member States thus provided access to rights similar to the minimum standards for refugee protection under EU law. Malta limited access to core benefits, similar to the derogation allowed under EU law for subsidiary protection beneficiaries. In Norway, access to core benefits was conditional on the status-holder's participation in an introductory integration programme.

Ten Member States and Norway granted children access to the general system of education and additional supports.[87] Access to additional supports was not specific for beneficiaries of humanitarian status but included measures (language classes, orientation courses) that were also open to other legally resident third-country nationals. Adults were given access to the general system of education and training in nine Member States and Norway.[88]

Member States and Norway with a national status granted on general humanitarian grounds offered beneficiaries of such status access to integration support, except in Poland. The Slovak Republic provided targeted support for persons granted humanitarian status, including support for labour market integration. In Norway, third-country nationals with this status had to pay to participate in integration programmes.

## CONDITIONS AND RIGHTS OF THE HUMANITARIAN STATUS COMPARED TO THE EU STATUSES

In many respects, the majority of the national statuses on humanitarian grounds offer conditions comparable to the minimum standards set for EU harmonised subsidiary protection status. This includes the duration of the residence permit, family reunification and access to employment. In some instances, the rights and conditions offered were close to refugee protection, for example in access to social benefits and the length of the residence permit.

However, the content of protection was less favourable in some Member States on a number of key elements for long-term integration. For example, less favourable conditions were applied in relation to access to integration services, which was not provided to beneficiaries of humanitarian protection in Poland, and integration programmes, which were only provided subject to payment in Norway.

74 CZ, NL, SE, SK
75 CY, CZ, ES, IT, LT, NL, PL, SE. Ireland has not opted into the Long-term Residence Directive.
76 BE, CZ, ES, FI, LT, MT, NL, PL, SE, SK and NO.
77 BE, CZ, FI, IT, LT, PL and NO.
78 Under the dispersal mechanism, the Swedish government decides how many beneficiaries of protection each Swedish County will have to accept. The 21 County Administrative Boards then decide how to distribute the beneficiaries of protection among the municipalities within their respective jurisdictions. The number of beneficiaries of protection assigned should be based on each municipality's local labour market, its population size and the overall number of newly arrived immigrants, unaccompanied minors and asylum seekers already living in the municipality.
79 CY, FI, SK. In Italy, beneficiaries had access to reception centres for migrants (the 'SPRAR' system, now SIPROIMI).
80 BE, CZ, ES, FI, IT, LT, NL, PL, SE and SK.
81 In some cases, it was one year (in BE and FI).
82 BE, CZ, ES, IT, LT, PL, SE and NO.
83 CY and MT.
84 At the time of writing this report, Cyprus had no procedures in place for recognition of qualifications of third-country nationals.
85 FI, IE, IT, NL, PL, SE and SK.
86 BE, ES and LT.
87 BE, CY, CZ, ES, FI, IT, LT, MT, SE, SK and NO.
88 BE, CY, CZ, FI, IE, IT, SE, SK and.

# 6. PROTECTION BASED ON EXCEPTIONAL CIRCUMSTANCES

Six Member States reported having a protection status for 'exceptional circumstances'.[89] Generally, the rationale for this protection status corresponded to a need to offer protection to third-country nationals in exceptionally distressing circumstances who nevertheless do not fall under the other EU-harmonised statuses or other national protection statuses examined here.

In Italy and in Finland, for example, this status was intended as a form of exceptional temporary protection in favour of third-country nationals fleeing conflict, natural disasters or other particularly serious events. In both Member States, the status could only be granted following the adoption of a government decision determining the specific exceptional circumstances for which the status could be granted. The procedure to be followed and the rights to be granted were decided on a case-by-case basis.

In other Member States, such as Austria, specific authorities had discretionary power to grant a status to a third-country national already legally residing on the territory in exceptional circumstances (not further detailed in the legislation). In Greece, such status can be issued to third-country nationals who resided legally, no longer hold an authorisation to reside and 'developed strong bonds with the country'. Likewise, an authorisation to stay on the grounds of distressing circumstances in Luxembourg, or humanitarian reasons of exceptional gravity in Sweden could be granted to a third-country national who was irregularly staying in the territory and who was unable to obtain any another permit to stay. In Sweden, this status was granted based on consideration of the personal circumstances of the individual, including their health condition or level of integration.

In practice, the use of this status varied greatly during the period examined. In Italy, it was rarely used, most recently in 2011, in response to an influx of citizens from North African countries. Conversely, in Sweden, between 2010-2018, 11 916 third-country nationals were granted this form of protection, counting for the third largest category of individuals granted protection.[90] In Luxemburg, 70 residence permits for humanitarian reasons of exceptional gravity were issued between 2010-2018 (40 in 2017 and 2018 alone).

## 6.1. DETERMINATION AND APPEAL PROCEDURES

In Italy and Sweden, application for this status formed part of the single procedure examining the need for international protection. In Austria, Finland, Greece and Luxembourg, it was part of a separate procedure that could be initiated at any point. In Austria, the determination procedure required the applicant to have at least five years' residence in the country and, in Greece, it was seven years. In Luxembourg, the application was declared inadmissible if it was based on motives mentioned in a previous application for international protection or other status.

The application and subsequent granting of the status was only possible while present on the territory of the Member States themselves, similar to applications under EU asylum law. One exception was Finland, which allowed applications from a third country as well.

In the event of a negative decision, the majority of Member States provided for a judicial appeal with automatic suspensive effect. In Luxembourg, however, the applicant had to request the suspensive effect.

In the case of a negative decision on appeal, an application for international protection or another national protection status was possible in all Member States that provided for a status based on exceptional circumstances. In Luxembourg, an application for international protection was considered only where the applicant had not previously applied for international protection and/or brought new elements to support this application. In Sweden, where the initial application was examined as part of a single procedure, a subsequent application was possible provided that new circumstances could be proved and/or after the expiration of the four-year statutory limitation period of the return decision.

Only Sweden reported relevant case-law for this status. In 2012, the Migration Court of Appeal ruled that the status could be granted to applicants who were already integrated in the country and not eligible for other statuses.[91] In 2015, the Court decided that medical cases were to be considered for this form of protection only in exceptional cases, if the disease was life-threatening and the decision of expulsion was contrary to Article 3 of the ECHR.[92] In 2017, the Court decided that in cases of inhumane treatment in the home country of a child, subsidiary protection should be granted instead of the status for exceptional circumstances.[93]

## 6.2. CONTENT OF PROTECTION

### RESIDENCE PERMIT AND TRAVEL DOCUMENT

All Member States[94] issued a residence permit for one year, with the exception of Greece and Sweden, which offered three years. In Luxembourg, the maximum duration of the first residence permit was three years, and, in practice, it could be less than one year, depending on the individual case (e.g. permits granted to minors whose return was postponed until they reach adulthood).

89 AT, EL, FI, IT, LU and SE.
90 In Sweden, this status, like other national protection statuses, was suspended as of 2016, following the adoption of the Temporary Act.
91 MIG 2012:13.
92 MIG 2015:9.
93 MIG 2017:6.
94 AT, FI, IT (depends on government decision), LU, SE.

**National protection based on exceptional circumstances**

| | |
|---|---|
| **Austria** | Humanitarian right of residence, Article 56 Asylum Act (Chapter 7 Residence Titles for Exceptional Circumstances) (2005) |
| **Finland** | Humanitarian protection on exceptional circumstances, Section 93 of the Aliens Act (2004) |
| **Greece** | Residence Permit to third-country nationals for exceptional reasons, Article 19 Immigration Law 4251/2014 (2014) |
| **Italy** | Extraordinary reception measures for exceptional events, Article 20 of the Immigration Act (1998) |
| **Luxembourg** | Residence permit for humanitarian reasons of exceptional gravity, Article 78(3) of the Law on free movement of persons and immigration (2011) |
| **Sweden** | Protection due to exceptionally distressing circumstances, Chapter 5, Section 6, of the Aliens Act (introduced in 2006 and suspended following the adoption of the Temporary Act in 2016, extended until July 2021). |

## TABLE 3: CONTENT OF PROTECTION OF STATUSES BASED ON EXCEPTIONAL CIRCUMSTANCES

| Statuses on 'general' humanitarian grounds | Yes | No | Other |
|---|---|---|---|
| **Residence permit** | | | |
| Issuance of a residence permit required? | AT, EL, FI, IT and LU | | SE |
| Validity of the first residence permit (or initial length) (in years) | **1 year:** AT, FI and LU (max. 3 years)<br>**3 years:** EL, SE<br>**Depends on government's decision:** IT | | |
| **Travel document** | | | |
| Is a travel document issued? | EL, IT and SE | AT | FI and LU |
| Validity (in years) | **1 year:** FI<br>**3 years: EL, LU, SE**<br>**Depends on government's decision:** IT | | |
| **Accommodation** | | | |
| Access to accommodation (on the same basis as other legally residing third-country nationals)? | AT, EL, FI, IT, LU, SE | | |
| Access to specific schemes/programmes to support access to accommodation? | | AT, EL, FI, LU, IT | SE, IT |
| **Family reunification** | | | |
| Right to family reunification (under the Family Reunification Directive)? | EL, FI, LU, SE | AT | IT |
| What is the validity of the residence permit of the family member? | **Same as the sponsor:** EL, FI, LU, SE | | |
| **Labour market** | | | |
| Specific conditions to be granted access (e.g. hold work permit)? | AT, EL, FI, LU | SE | IT |
| Access to procedures for recognition of qualifications? | AT, EL, LU, SE | | FI, IT |
| **Social assistance, healthcare** | | | |
| Social assistance limited to core benefits? | | AT, EL, FI, IT, SE | LU |
| Access to emergency health care? | AT, EL, FI, IT, LU and SE | | |
| Access to mainstream health services? | AT, EL, FI, IT, LU and SE | | |
| Specific support to those with special needs? | **As part of mainstream services:** EL, FI, IT, LU and SE | AT | |
| **Education** | | | |
| Access of minors to general system of education (same as nationals)? | AT, EL, FI, IT, LU and SE | | |
| Access of adults to general system of education, further training or retraining (same as legally residing third country nationals)? | AT, EL, FI, LU and SE | PL | IT |
| **Integration** | | | |
| Access to 'mainstream' support (available for legally residing third-country nationals)? | AT, EL, FI, IT, LU and SE | | |
| Access to targeted support (i.e. specifically for beneficiaries of the status)? | IT | AT, EL, FI, LU and SE | |

In Italy, the type of residence permit and related rights depend on the government's decision. In all Member States except Austria, the permit could be renewed for a period between one to four years, if all the conditions were still valid.[95] As such, conditions were comparable to the minimum standards set for the EU subsidiary protectionIn order to obtain permanent residence, the general rules applied, including five years' continuous residence in the Member State (in Finland it is four years, for all third-country nationals).

With the exception of Austria, all other Member States issued a travel document on request. In Italy, the issuance of the travel document needed to be determined by the same government decision on the exceptional protection.

## ACCESS TO RIGHTS AND INTEGRATION

Similar to the minimum standards for beneficiaries of international protection under EU law, third-country nationals with this status were granted access to employment and education, and their right to integration was recognised, with specific integration measures provided. Beneficiaries were also given access to emergency and mainstream healthcare. Third-country nationals under this status were able to access social benefits without restriction in all Member States, except Luxembourg.[96] In Luxembourg, beneficiaries of an authorisation of stay for humanitarian reasons were entitled to 'social inclusion revenue' where they met certain legal residence requirements.[97] For housing, Sweden offered the option to access schemes under the Swedish dispersal mechanism, which allows national authorities to require municipalities to receive newly arrived beneficiaries of international protection – and their family members - for settlement.

The right to family reunification was granted to beneficiaries of protection for exceptional circumstances in Finland, Luxembourg and Sweden. In Sweden, the sponsor needed to comply with specific requirements in respect of accommodation and sufficient income. The same was true for Luxembourg, where the sponsor needed to fulfil the same conditions for family reunification as any other third-country national. The validity of the residence permit for family members was the same as the permit duration of the sponsor in Finland, Luxembourg and Sweden. The right to family reunification was not granted to beneficiaries of this status in Austria, despite partially similar conditions. In Italy, the type of residence permit and the related rights depended on the government decision.

## CONDITIONS AND RIGHTS OF THE STATUS FOR EXCEPTIONAL CIRCUMSTANCES COMPARED TO THE EU STATUSES

The statuses granted on the ground of exceptional circumstances did not allow more favourable conditions than those set out in the EU statuses, and included several less favourable conditions, notably the lack of a right to family reunification opportunities in Austria. In Greece, this residence permit granted access to similar content of protection as beneficiaries of EU-harmonised subsidiary protection.

Although in line with the minimum standard for subsidiary protection, it appears that beneficiaries of this status received less favourable treatment compared to beneficiaries of international protection, particularly in relation to the duration of the residence permit. In Austria, the permit was limited to one year non-renewable, whereas the permit granted to beneficiaries of subsidiary protection was a one-year permit that could be renewed for a further two years. In Finland, the permit was valid for only one year, compared to four years for a permit under the refugee status.

Finally, the degree of discretion left to government authorities in Italy to decide on the procedure for granting protection for exceptional circumstances and determine the rights of beneficiaries of protection, makes it difficult to assess whether the status offers a less, more or similar level of protection compared to the EU-harmonised statuses.

95 In Austria, no renewal is possible, as a transfer to another residence permit is intended, if all requirements are met.
96 AT, FI, IT, SE.
97 A 'revenu d'inclusion sociale' (REVIS) if beneficiaries were (among other conditions) at least 25 years old and met the required condition of legal residence in the country (5 years during the last 20 years). This condition of legal residence does not apply to beneficiaries of international protection or to the family members of a beneficiary of international protection.

# 7. PROTECTION STATUSES AVAILABLE FOR CLIMATE CHANGE REASONS AND NATURAL DISASTERS

Only Italy and Sweden had a specific protection status available for calamities – linked to climate change reasons, and/or natural disasters - that could be granted to third-country nationals who did not qualify for refugee status or subsidiary protection status. Finland included climate reasons when assessing humanitarian or compassionate grounds (see section 5).

In general, persons eligible for this protection are third-country nationals who, while not fulfilling the criteria for refugee or subsidiary protection, could not be returned to their country of origin because of environmental circumstances.

In Italy, the residence permit for calamities or natural disasters was introduced in 2018 to provide a specific type of protection, namely to third-country nationals who cannot return to the country of origin due to a contingent situation and exceptional calamity that does not allow their return and stay in safe conditions.[98] Since its adoption in 2018, this status has been granted only once.

In Sweden, additional eligibility requirements specified that the environmental disaster should be sudden and there should be a lack of 'internal flight' alternatives. The status did not cover cases where ongoing deterioration of food production entailed difficult livelihoods in the country of origin. In practice, this status has not been granted since 2010. The extension of the Temporary Act, which suspends the granting of national protection statuses (or suspends the granting of protection statuses other than international protection status) until 2021 means that the national authorities may not grant this status until 2021.

## 7.1. DETERMINATION AND APPEAL PROCEDURES

In Sweden, the application for this national protection status formed part of a single procedure examining the need for international protection. The application was assessed by the same authority that examined the application for international protection (the Swedish Migration Agency). In Italy, the application was part of a separate procedure, submitted to and assessed by the Territorial Chief of Police.

In the case of a negative decision, an appeal was possible in both Member States. While in Sweden, the appeal procedure had an automatic suspensive effect, in Italy, a request for suspension had to be submitted. In both Member States, the authorities involved were the same as those involved in appeal procedures for international protection. A negative appeal decision could result in a return decision being issued in both Italy and in Sweden.

Where the applicants failed to appeal, or their status ended or was not renewed, they could apply for international protection if they introduced new elements to substantiate this subsequent application. In Sweden, where a return decision was issued, a subsequent application for international protection could be introduced only after the expiry of the four-year duration of the return decision.

## 7.2. CONTENT OF PROTECTION

### RESIDENCE PERMIT AND TRAVEL DOCUMENT

Both Italy and Sweden issued residence permits, the validity of which varied between six months in Italy and three years in Sweden (before 2016). In Italy, beneficiaries of this status had access to less favourable standards than the beneficiaries of subsidiary protection under the recast Qualification Directive, where the minimum validity of the first residence permit was set at one year.

While, in Italy, the permit was valid only within the national territory, Sweden could issue a travel document (an alien passport).

### ACCESS TO RIGHTS AND INTEGRATION

The right to family reunification did not apply to beneficiaries of this status in Italy, providing for less favourable conditions than EU refugee protection. Conversely, Sweden granted this right – before the entry into force of the Temporary Act in 2016. Eligible categories of family members were partners in a legal marriage or in a comparable relationship, unmarried partners, dependent children, and parents of unaccompanied minors.

Like the minimum standards for beneficiaries of international protection under EU law, third-country nationals with this status were granted access to housing, employment and education, and their right to integration was recognised. In Italy, the residence permit allowed the beneficiary of this status to access employment. Both Italy and Sweden also provided access to mainstream healthcare on an equal footing with other legally resident third-country nationals. However, access to social benefits was limited to core benefits in Italy, a less favourable condition than that applied to refugees under EU *acquis*.

In both Member States, beneficiaries of protection for climate change and environmental disaster reasons could access mainstream integration support, although they did not benefit from any tailored measures.

### CONDITIONS AND RIGHTS AVAILABLE FOR CLIMATE CHANGE REASONS COMPARED TO THE EU STATUSES

In Sweden, the residence permit offered similar conditions compared to EU-harmonised refugee status (possibility suspended until 2021). In Italy, it was comparable to the minimum standards under EU subsidiary protection, although it offered less favourable conditions, including a shorter duration of residence permit.

98 Law no. 132/2018.

**National protection statuses available for climate change reasons and natural disasters**

**Italy** Residence permit for calamities, Article 20bis of the Immigration Act (2018)

**Sweden** Subsidiary protection due to an environmental disaster in the country of origin, Section 2a of the Aliens Act (introduced in 2005, suspended since the adoption of the Temporary Act in 2016, extended until July 2021)

## TABLE 4: CONTENT OF PROTECTION OF STATUSES FOR CLIMATE CHANGE REASONS AND NATURAL DISASTERS

| Statuses on 'general' humanitarian grounds | Yes | No | Other |
|---|---|---|---|
| **Residence permit** | | | |
| Issuance of a residence permit required? | IT | | SE |
| Validity of the first residence permit (or initial length) (in years) | **6 months renewable for other 6 months:** IT<br>**3 years:** SE | | |
| **Travel document** | | | |
| Is a travel document issued? | SE | IT | |
| Validity (in years) | **5 years:** SE | | |
| **Accommodation** | | | |
| Access to accommodation (on the same basis as other legally residing third-country nationals)? | IT, SE | | |
| Access to specific schemes/programmes to support access to accommodation? | | IT | |
| **Family reunification** | | | |
| Right to family reunification (under the Family Reunification Directive)? | SE | AT | IT |
| What is the validity of the residence permit of the family member? | **Either the same as the sponsor and/or one year:** SE | | |
| **Labour market** | | | |
| Specific conditions to be granted access (e.g. hold work permit)? | | IT, SE | |
| Access to procedures for recognition of qualifications? | SE | IT | |
| **Social assistance, healthcare** | | | |
| Social assistance limited to core benefits? | IT | SE | |
| Access to emergency health care? | IT and SE | | |
| Access to mainstream health services? | IT and SE | | |
| Specific support to those with special needs? | IT and SE | | |
| **Education** | | | |
| Access of minors to general system of education (same as nationals)? | IT and SE | | |
| Access of adults to general system of education, further training or retraining (same as legally residing third country nationals)? | SE | | |
| **Integration** | | | |
| Access to 'mainstream' support (available for legally residing third-country nationals)? | IT and SE | | |
| Access to targeted support (i.e. specifically for beneficiaries of the status)? | | IT and SE | |

# 8. PROTECTION BASED ON MEDICAL REASONS

The extent to which a serious medical condition could amount to subsidiary protection was the subject of recent CJEU rulings (see section 1.2 for analysis). Certain circumstances and medical conditions were assessed by the CJEU as falling outside the scope of subsidiary protection (*M'bodj* case). This has to be considered in conjunction with the ECtHR case-law on Article 3 ECHR, according to which protection against removal of seriously or terminally ill third-country nationals should be granted if certain conditions are met.[99] The Strasbourg Court further clarified this matter in the *Paposhvili* case. Article 3 ECHR would be triggered in cases where "*the absence of appropriate treatment in the receiving country or the lack of access to such treatment, exposes the individual to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy*" upon removal.[100] National authorities should no longer solely assess whether healthcare is available in the country of origin, but also whether this healthcare is actually accessible to the person in question.

Six Member States had a total of nine protection statuses specifically in place for medical reasons.[101] In six other Member States and Norway, medical conditions were mentioned as part of 'wider' grounds for national protection statuses, namely those for humanitarian or exceptional reasons (see sections 5 and 6, respectively).[102]

The rationale for protection based on medical reasons included:

- The need for tailored procedures and services for seriously-ill third-country nationals.[103] In Belgium, while policy makers initially agreed that these circumstances would fall within the scope of harmonised subsidiary protection, the legislator eventually decided to have a separate status and procedure, as it estimated that medical conditions could not be adequately assessed within the international protection procedure.
- The provision of a legal status to a third-country national irregularly staying in the territory and suffering from a sudden illness, and the need to ensure continuity of necessary healthcare where this cannot be provided in the country of origin.[104]
- To provide protection from expulsion[105] or postpone return[106] where a third-country national is unable to travel due to the (serious) nature of the medical condition.

In Italy, two different protection statuses based on medical grounds were available:

- One to prevent the forced return of third-country nationals whose health conditions would be at risk in case of execution of the removal, and the removal of pregnant women and the father of the child for the period before or immediately after giving birth (Article 19 Immigration Act).
- Another granting an authorisation to stay to (third-country national) parents for serious medical reasons, due their child's psycho-physical development and health (Article 31 Immigration Act).

The Netherlands had three protection statuses, which depended on the duration of the medical condition:

- 'Suspension of departure for medical reasons', which is a short-term status extending the beneficiary's stay briefly while not being able to travel due to medical reasons. The Netherlands changed its practices following the CJEU's ruling in *M'bodj*, where the Court concluded that an application for admission on medical grounds cannot be considered an application for international protection. Thus, in addition to other grounds, an application may be filed for suspension of departure in cases of a real risk of breach of Article 3 of the ECHR for medical reasons.
- Stay for 'medical reasons', which is a medium-term status (up to one year, renewable) for receiving medical treatment not available in the country of origin and for which the Netherlands is the most suitable country (to receive such treatment).
- 'After residence in connection with medical treatment', which is a long-term status (five years) covering beneficiaries who have held that status for three years and who still meet all conditions under which the 'medical reasons' permit was granted.

Available statistics at national level showed that, between 2010-2018, more than 6 000 persons were granted this status in Belgium,[107] with close to 4 000 as part of a wider regularisation campaign in 2010, and more than 4 500 persons in Spain.[108] In Italy, in 2019, 2 411 persons benefitted from protection based on medical grounds (Article 19).[109] In the Netherlands, between 2014 and 2018, a total of 424 persons were granted the medium-term and the long-term status.[110]

99 See ECtHR judgments in cases N. v. the United Kingdom, D v. the United Kingdom, Paposhvili v Belgium; The N case test requires judges to use a high threshold, which would only allow very exceptional cases where the grounds against removal were compelling, effectively limiting protection against removal to 'deathbed' cases.
100 Para 183, ECtHR Paposhvili v. Belgium (application n° 41738/10).
101 BE, EL (2 statuses), ES, IT (2 statuses), LU, NL (3 statuses), UK.
102 FI, LT, MT, PL, SK, SE and NO.
103 BE, EL.
104 ES, IT, UK.
105 Italy.
106 NL, LU.
107 The number of persons issued authorisations to stay on the basis of Article 9ter Immigration Act were: 2010 – 3 964; 2011 - 945; 2012 - 535; 2013 - 225; 2014 - 496; 2015 - 284; 2016 - 274; 2017 - 410; 2018 - 412
108 The number of persons issued Status based on medical grounds were: in 2010 – 491 persons; 2011 – 598, 2012 – 436, 2013 – 417, 2014 – 501, 2015 – 539, 2016 – 524, 2017 – 503, 2018 – 644.
109 This status was amended in 2018. Prior to that, statistics for this status were counted as part of the 'general' humanitarian permit.
110 National data did not disaggregate between the two statuses: 79 in 2014; 59 in 2015; 85 in 2016; 85 in 2017; 116 in 2018.

## 8.1. DETERMINATION AND APPEAL PROCEDURES

The application procedure was set out in legislation in nearly all of the Member States that could grant this type of national status,[111] with the exception of the United Kingdom. In Belgium, the rules of procedure were set out in both the Immigration Act and in Royal Decrees implementing the Act. In the Netherlands, while all three statuses were mentioned in national legislation, the determination procedure and rights were further detailed in the Aliens Act Implementation Guidelines. Similarly, the 'discretionary leave' in the United Kingdom was set out in policy guidance.

In all Member States where a national protection status could be granted for medical reasons,[112] examination of the application was part of a separate procedure that was triggered by the medical condition of the applicant or initiated when the serious illness became apparent.[113] In Belgium, 'medical regularisation' could be initiated at any time, irrespective of the stage of application for (international) protection or other applications for legal stay. However, to discourage the submission of multiple applications from the same person and thus increase efficiency in procedures, this was changed in 2015. Since then, national authorities assumed that an application for 'medical regularisation' status implied withdrawal of any other pending applications on the same legal ground.

In all Member States where such status could be issued, the application for protection on medical grounds had to take place on the territory of the State. One exception was the Netherlands' 'medical reason' status, which could also be applied for from a third country, at the relevant diplomatic mission. In order to be eligible for this status, the third-country national abroad must be in need of urgent medical treatment, with the Netherlands the most suitable country in which to undergo urgent treatment. Adequate funding for this treatment was also required.

In most Member States (except the United Kingdom) where national protection for medical reasons could be granted,[114] the application was processed by authorities other than those examining applications for international protection. In some Member States,[115] this was due to the fact that the procedure was clearly separate from the examination of international protection. In the Netherlands, from a procedural standpoint, the same authorities assessed applications for this ground as international protection. Time limits to issue a decision were set out in Spain, while Belgium, Luxembourg and the Netherlands[116] set no such timelines and applications were assessed on a case-by-case basis.

Specific to this status, the procedure systematically involved a medical examination and/or a medical professional in all Member States: in some cases, a medical certificate must have already been obtained by the applicant and would then be examined by the immigration authorities.[117] In other cases, the immigration authorities worked together with the public health authorities who examined the applicant's medical condition as part of the application procedure.[118]

In all Member States where this national protection status was available, the applicant could appeal against a negative decision. In most cases, the authorities involved in the appeal procedure were the same as those involved in appeals in the international protection procedure.[119] In Spain and Luxembourg, however, this was not the case. The appeal did not typically have an automatic suspensive effect, with the exception of the Netherlands' medium and long-term statuses. Most Member States with this type of status required the suspensive effect to be requested.[120]

If an applicant's appeal was rejected, they could apply for international protection status in most Member States, except Luxembourg.[121] In Belgium, where a person did not succeed in their application for authorisation to stay for medical reasons and lodged an application for humanitarian reasons, all elements already submitted in the former application for medical reasons would be considered inadmissible.

**National legal basis for the national protection statuses based on medical reasons**

| | |
|---|---|
| **Belgium** | Authorisation to stay for medical reasons, Article 9ter Immigration Act (2007) |
| **Greece** | Residence Permit to adult third-country nationals unable to take care of their own matters due to severe health reasons and minors in need of protection measures and accommodation in Institutions or other public purpose entities, Article 19A (2a) Immigration Law 4251/2014 (status A)<br>Residence Permit to third-country nationals for health reasons, Article 19A (2e) Immigration Law 4251/2014 (status B) |
| **Italy** | Residence permit 'for medical treatment', Article 19, paragraph 2, letter D bis Immigration Act (1998) and as amended in 2018 (by Decree Law No. 113 of 2018 converted into law by Law No. 132/2018).<br>Residence permit for medical reasons according to Article 31 Immigration Act (1998), related to the child's psycho-physical development and health |
| **Luxembourg** | Prevention of removal, Articles 130 to 132 of the amended Law of 29 August 2008 on free movement of persons and immigration (2008) |
| **Netherlands** | Suspension of departure for medical reasons, Section 64 of the Aliens Act (2001)<br>Medical treatment, Aliens Act Implementation Guidelines (2001)<br>After residence in connection with medical treatment, Aliens Act Implementation Guidelines (2001) |
| **Spain** | Status based on medical grounds, Article 126(2) of the Royal Decree developing the principles of Immigration Act (2004) |
| **United Kingdom** | Discretionary Leave based on Secretary of State's residual discretion, Section 3(1) of the Immigration Act 1971 (2003) |

111 ES, IT, LU, NL.
112 BE, ES, IT, LU, NL, UK.
113 BE, ES, IT, NL, UK.
114 BE, ES, IT, LU.
115 BE, ES, LU.
116 For the 'short-term' medical treatment permit.
117 BE, ES, LU, NL.
118 IT.
119 BE, IT, NL, UK.
120 BE, ES, IT, LU, NL.
121 As the context of the application is the postponement of removal for medical reasons and the person has already received a refusal decision which is res judicata and a return decision is being executed.

# TABLE 5: CONTENT OF PROTECTION OF STATUSES BASED ON MEDICAL REASONS

| Statuses on 'general' humanitarian grounds | Yes | No | Other |
|---|---|---|---|
| **Residence permit** | | | |
| Issuance of a residence permit required? | BE, EL, ES, IT, NL and UK | LU and NL (short-term) | |
| Validity of the first residence permit (or initial length) (in years) | **1 year:** BE, ES, IT (Art. 19), LU and NL (short-term)<br>**2 years:** EL<br>**5 years:** NL (medium and long-term)<br>**Other:** IT (Art. 31) and UK | | |
| **Travel document** | | | |
| Is a travel document issued? | BE, EL (both statuses) and NL | ES, IT, LU, NL and UK | FI |
| Validity (in years) | **1 – 3 years:** NL<br>**2 years:** BE<br>**5 years:** EL (both statuses) | | |
| **Accommodation** | | | |
| Access to accommodation (on the same basis as other legally residing third-country nationals)? | BE, EL, ES, IT, NL and UK | LU and NL | |
| Access to specific schemes/programmes to support access to accommodation? | EL, NL | BE, ES, IT, LU, NL and UK | |
| **Family reunification** | | | |
| Right to family reunification (under the Family Reunification Directive)?[122] | BE, ES, LU and NL | FI, IT, NL and UK | |
| What is the validity of the residence permit of the family member? | **1 year or same as sponsor:** BE, ES<br>**Same as the sponsor:** LU, NL | | |
| **Labour market** | | | |
| Specific conditions to be granted access (e.g. hold work permit)? | ES, LU and IT (Art. 31) | BE, EL, NL and UK | IT (Art. 19) |
| Access to procedures for recognition of qualifications? | BE, EL, ES, IT, NL and UK | LU | |
| **Social assistance, healthcare** | | | |
| Social assistance limited to core benefits? | NL and UK | BE, EL, ES, IT and LU | |
| Access to emergency health care? | BE, EL, ES, IT, LU, NL, FI and UK | | |
| Access to mainstream health services? | BE, EL, ES, IT, LU, NL and UK | | |
| Specific support to those with special needs? | IT, LU, NL and UK | | |
| **Education** | | | |
| Access of minors to general system of education (same as nationals)? | BE, ES, IT, LU, NL and UK | | |
| Access of adults to general system of education, further training or retraining (same as legally residing third country nationals)? | BE, ES, LU and NL | NL | IT |
| **Integration** | | | |
| Access to 'mainstream' support (available for legally residing third-country nationals)? | BE, ES, IT, LU, NL and UK | NL | |
| Access to targeted support (i.e. specifically for beneficiaries of the status)? | | BE, IT, LU, NL and UK | |

122 The United Kingdom is not bound by the Family Reunification Directive.

## 8.2. CONTENT OF PROTECTION

### RESIDENCE PERMIT AND TRAVEL DOCUMENT

In most Member States that grant national protection status specifically on medical grounds, a residence permit was issued when protection for medical reasons was granted, except for the Netherlands' short-term status and Luxembourg, which issued a certificate of postponement of removal. In Luxembourg, the individual was issued with a certificate of postponement of removal for medical reasons for a maximum duration of six months (renewable up to two years). If the serious illness persists, a beneficiary could apply for an authorisation of stay for medical reasons after staying and renewing this certificate for two years. First residence permits were typically issued for a period of one year[123], and up to 30 months in the UK. In Italy, the exact length of the residence permit depended on the type, duration and treatment of illness, although the initial permit was generally issued for a maximum of one year.

Renewal of the status on medical grounds was possible in all Member States. The validity of the renewed permit varied, from the same amount of time as the initial permit,[124] to somewhat longer in Belgium (two years), to a more tailored 'time necessary to complete treatment' (Spain) or while 'serious health conditions persist' (Italy). In most Member States, therefore, the validity of the initial residence permit was similar to the standards set for the EU-harmonised subsidiary protection status, with the exception of the UK, where more favourable conditions were applied than those under the subsidiary protection status. The Netherlands (short-term status) and Luxembourg granted less favourable conditions than the subsidiary protection status, as the nature of the status was closely linked to the enforcement of return.

In most Member States, applicants for this status could apply for permanent residence after five years, in line with general rules.[125] In Luxembourg, however, the temporary nature of the certificate of postponement of removal did not provide its beneficiaries with access to permanent residence status. In the Netherlands, only beneficiaries of the non-temporary 'after residence in connection with medical treatment' status could apply for permanent residence. This implied a minimum of three years' continuous residence in the Netherlands, based on the status of 'medical treatment' beforehand.

In Belgium, Spain[126] and the Netherlands, like beneficiaries of subsidiary protection, a travel document could be issued for beneficiaries of this status. This was not the case in Italy, Luxembourg, the Netherlands (beneficiaries of the suspension of departure) or the United Kingdom.

### ACCESS TO RIGHTS AND INTEGRATION

In all Member States that could grant a national protection status based on medical reasons, holders of that status had access to accommodation on the same basis as other legally resident third-country nationals. The exceptions were Luxembourg and the short-term status in the Netherlands. In the latter, beneficiaries of the suspension for removal for medical reasons had recourse to specific supports to access accommodation. This depended on whether the person applied for international protection or not: those who had not applied for asylum would not have access to accommodation.

Italy, the Netherlands (short-term status) and the United Kingdom did not allow for family reunification. In the countries where this was allowed,[127] it encompassed partners in a legal marriage or similar relationship, unmarried partners and minor children. Reunification with adult dependent children was allowed in Belgium, Spain [128], and Luxembourg. The CJEU rulings in the *M'bodj* and *Abdida* cases had some impact on the procedure to apply for family reunification for beneficiaries of this status, as the Court strictly interpreted the serious medical conditions that could fall within the scope of the EU-harmonised subsidiary protection (see section 1.2). Beneficiaries of subsidiary protection could, in some Member States, benefit from a 'grace period' when applying for family reunification.[129] As a result of the CJEU rulings above, the Immigration Office in Belgium no longer granted a grace period to beneficiaries of medical regularisation for their family reunification procedure, as the grounds did not fall under subsidiary protection. However, in 2018, a Belgian national court ruled that beneficiaries of medical regularisation should continue benefitting from the 'grace period' in the same way as beneficiaries of subsidiary protection on the basis of national legislation.[130] Material requirements for family reunification - such as accommodation, health insurance and sufficient financial means - had to be fulfilled by beneficiaries of this status in Spain, while sufficient income was required in the Netherlands.[131]

Generally, beneficiaries of this status could access the labour market in most of the Member States, similar to beneficiaries of EU-harmonised protection statuses. The exceptions were Luxembourg and the Netherlands. In Luxembourg, beneficiaries of this status had to obtain a temporary 'occupation authorisation', which included passing a labour market test. After passing the test, the authorisation was issued for six months (renewable), but in any case not longer than the postponement of removal. In the Netherlands, no access to the labour market was possible for beneficiaries of short-term and medium-term statuses. In Italy, the permit for medical treatment generally did not provide access to employment,[132] except where it was issued following a judgment of the Minors' Court authorising residence in Italy of an irregular foreign parent for serious reasons related to the child's psycho-physical development and health.

In some Member States, social assistance granted for this status was as favourable as that for beneficiaries of refugee status. In Italy (after a one-year residence) and in the Netherlands (long-term status), this status granted the same access to social assistance rights as nationals. In Belgium and Spain, access was similar to that for other legally resident third-country nationals. Beneficiaries of this status had access to social assistance at the same level as beneficiaries of subsidiary protection (limited to core benefits) in Italy, the Netherlands and the UK. More specifically, in the Netherlands, beneficiaries of the short-term status had access to the same level of social assistance as asylum seekers. However, those benefitting from the medium-term status (humanitarian temporary medical treatment) had no access to social assistance, as the status was granted on the condition that the person concerned had sufficient access to means of subsistence (i.e. did not need to rely on social assistance). In Luxembourg, postponement of removal for medical reasons gave access only to humanitarian relief aid, which

123 BE, ES, IT and LU.
124 NL and UK.
125 BE, ES, IT and NL.
126 Only if required to leave Spain and in the absence/on expiry of a valid passport or travel document.
127 BE, EL, ES (more specifically, the right to family reunification can be exercised after renewing the residence permit once), LU and NL (mid-term and long-term medical treatment status).
128 In these cases, the sponsor needs to have a long-term residence permit.
129 This refers to the possibility, mentioned in Article 12 of the Family Reunification Directive, for competent authorities to exempt applicants for family reunification from the obligation to meet the material requirements for a minimum period of three months after the granting of refugee status.
130 Council for Alien Law Litigation, 22 February 2018 (n. 200.115).
131 Beneficiaries of the short-term status (medical treatment) and of the long-term status ('after residence in connection with medical reason').
132 The right is not excluded in national legislation; however, it can be exercised only for the duration of the residence permit (one year).

implied more restricted social assistance than access to core benefits.

In all Member States where this national status based on medical reasons was available, beneficiaries were given access to emergency and mainstream healthcare, similar to that granted to beneficiaries of EU-harmonised protection statuses. In addition, most Member States provided supports to address their special needs,[133] in line with those made available to asylum seekers, except in Belgium and Spain.

In all Member States, beneficiaries of protection statuses based on medical reasons could access the general system of education in the same way as nationals. In Luxembourg, this was possible after the beneficiary received a residence permit for medical reasons (i.e. after two years of renewal of the certificate of postponement of removal for medical reasons).

As in the case of EU-harmonised protection statuses, beneficiaries of this national protection status had access to mainstream integration support in most Member States.[134]

In the Netherlands, access to social integration support was restricted, as integration was not expected from beneficiaries of this status.[135]

## CONDITIONS AND RIGHTS OF PROTECTION ON MEDICAL GROUNDS COMPARED TO THE EU STATUSES

Overall, the national protection statuses based on medical reasons did not offer more favourable conditions compared to EU-harmonised protection statuses. Member States applied similar or less favourable conditions than the EU-harmonised subsidiary protection status, e.g. not providing access to the labour market or restricting access to support for integration. In Luxembourg and the Netherlands (beneficiaries of suspension of departure for medical reasons), where the status was designed to be temporary and in the frame of postponement of removal, beneficiaries did not (immediately) receive a formal residence permit, which in turn limited their access to the labour market and family reunification.

133 IT, LU, NL, UK.
134 BE, ES, IT, LU, NL (long-term status).
135 Netherlands: applicable to beneficiaries of the suspension of departure for medical reasons and beneficiaries of the stay for 'medical reasons'.

# 9. PROTECTION STATUS ON THE BASIS OF THE NON-REFOULEMENT PRINCIPLE

The principle of *non-refoulement* is a core principle of international refugee and human rights law that prohibits States from returning individuals to a country where there is a real risk of their being subjected to persecution, torture, inhumane or degrading treatment or any other human rights violation.[136]

Six Member States and Norway had a national protection status specifically granted for the purpose of *non-refoulement*.[137] In seven other Member States, the principle of *non-refoulement* was examined as part of 'wider' humanitarian reasons (section 5)[138] or exceptional circumstances (section 6).[139]

EU asylum law provides for protection against *non-refoulement* in some of the grounds covered by Article 3 of the ECHR, but not all. In the Czech Republic, non-harmonised protection statuses sought to provide other forms of protection to cover situations where third-country nationals would face the death penalty/execution and torture or inhumane treatment in their country of origin. The status was established as a national form of subsidiary protection that covered additional situations to those contained in the EU-harmonised subsidiary protection, as they were based on a broader definition of 'international obligations' and thus encompassed the risk of degrading treatment or punishment. However, the content of protection was identical to the EU-harmonised subsidiary protection status. Between 2010 and 2018, over 1 789 third-country nationals benefitted from this status, mainly Syrian nationals. In Italy, the national protection status ('special protection') primarily comprised the grounds referred to in Article 3 of the ECHR.[140] This form of national protection was limited to cases in which the asylum authorities examining the individual situations of asylum seekers determined that the applicant could not be returned, based on the principle of *non-refoulement*. As expressly specified by law, this status would not be issued if expulsion can be arranged to a State granting similar protection. In 2019, a total of 111 permits for special protection were issued.

In Finland and Norway, if, after examining a claim for international protection, exclusion clauses apply (e.g. it is determined that the person has committed serious crimes) but the person cannot be returned in accordance with the principle of *non-refoulement*, national authorities would issue a residence permit. The latter would be temporary, valid only until protection against *non-refoulement* would no longer be necessary.

In addition to the EU asylum acquis referring to the principle of *non-refoulement*,[141] it is also mentioned in the Return Directive (2008/115/EC) as a mandatory ground for postponement of removal.[142] In such cases, Member States that granted protection based on the *non-refoulement* principle could decide to grant a permit or a right to legal stay based on national law (e.g. Hungary, Poland).[143] More specifically, in Poland, a permit for tolerated stay would be granted where a residence permit for humanitarian reasons cannot be issued for security reasons (see section 5)[144] or where return cannot be enforced.[145] These statuses were rarely issued since 2010: 150 statuses were granted in Poland,[146] and 271 in Hungary.[147]

In contrast to the cases above, the *non-refoulement* principle was taken into account in Spain in legal migration procedures. As a rule, before obtaining a residence permit for legal migration grounds (employment, studies, etc.), a third-country national would have to apply for a visa of entry from abroad, either their country of origin or the country of residence. However, the person concerned could already be present on the territory of Spain when introducing their application for a residence permit and returning to their country of origin (or residence) in order to apply for the visa from abroad would place them in a situation of danger. If the person fulfilled the other conditions to obtain the residence permit for legal migration reasons, an authorisation to stay in Spain would be issued.

## 9.1. DETERMINATION AND APPEAL PROCEDURES

The status was set out in legislation in the six relevant Member States and Norway. In The Czech Republic and Italy, eligibility for the status was assessed as part of a single procedure examining the need for international protection. In the four remaining Member States and Norway,[148] this status was examined separately, generally once the asylum procedure was exhausted and enforcement of return would be in breach of the non-refoulement principle. For example, in Poland, granting tolerated stay was assessed as part of the return procedure and migration authorities were involved (Chief of the Border Guard, Head of the Office for Foreigners). Given the specifics of the status in Spain, the determination procedure was separate from the international

136 EMN Glossary definition.
137 CZ, ES, FI, HU, IT and NO.
138 BE, FI, IE, LT, PL, SE.
139 LU, SE.
140 Namely, protection against persecution on grounds of race, sex, language, citizenship, religion, political opinions, personal or social conditions or risk of torture.
141 See, for example, Article 21 of the recast Qualification Directive; Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ, L180/60 (the recast Asylum Procedures Directive); Articles 9, 28, 35, 39, 41 of the recast Asylum Procedures Directive.
142 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L348/98 (the Return Directive). Article 9 of the Return Directive.
143 Article 6(4) of the Return Directive.
144 Where the exclusion grounds in asylum law apply, i.e. the person committed a serious crime under international law, committed an act that violates the UN Charter, committed or encouraged an act considered a serious crime under Polish law, poses a threat to the state or public order.
145 For reasons beyond the control of the authority or when the competent authority refused extradition.
146 74 statuses in 26, 43 in 2017, 33 in 2018.
147 58 statuses in 2010, 14 in 2011, 57 in 2012, 4 in 2013, 32 in 2014, 6 in 2015, 7 in 2016, 75 in 2017 and 18 in 2018.
148 ES, FI, HU, IT, PL and NO.

protection procedure, with applications for this status exclusively examined by migration authorities.

The application and subsequent granting of the status was only possible in the States themselves and the authorities involved were the same as those responsible for international protection, except in Spain.

In the event of a negative decision, an appeal was possible in all six Member States and Norway, before the same authorities examining appeals against negative decisions on applications for international protection. The exception was Spain, where the appeal could be lodged either before the administrative (migration) authority issuing the permit, or before the judicial authorities. The appeal had an automatic suspensive effect in all Member States, again with the exception of Spain, where the suspensive effect had to be requested as an interim measure before the national courts. Where the appeal resulted in a negative decision, the person concerned could apply for an EU-harmonised protection status in Spain if they fulfilled the necessary conditions. An application for international protection could theoretically be lodged in The Czech Republic, Finland, Italy and Poland, to the extent that the person concerned would bring new elements to support their application. A negative decision on appeal could be followed by the issuance of a return decision in The Czech Republic, Italy and Spain. However, in all Member States and Norway, as long as the circumstances leading to protection based on the principle of *non-refoulement* remained valid, this precluded the enforcement of a return decision (under which *non-refoulement* needed to be re-examined).

## 9.2. CONTENT OF PROTECTION

### RESIDENCE PERMIT AND TRAVEL DOCUMENT

In most Member States and Norway where a national protection status could be granted based on *non-refoulement*, validity of the initial residence permit generally did not exceed one year, the same as beneficiaries of subsidiary protection.[149] In Italy, where the asylum authority considers that the principle of *non-refoulement* is applicable to the case (thus prohibiting expulsion), a residence permit is issued, valid for one year and noting 'special protection'. In Norway, a residence permit would, in practice, be granted for seven months and could be extended to one year in exceptional circumstances.

In six Member States, the residence permit could be renewed, depending on a re-examination of the *non-refoulement* principle.[150] In Finland, upon expiry of the first permit, a renewal of the permit was possible for one year, following a re-examination of the circumstances of *non-refoulement*. If the postponement of removal and circumstances leading to *non-refoulement* remained valid after three years of continuous residence in Finland, the beneficiary of this status could be granted a continuous residence permit. The exception was Spain, where, due to the nature of the authorisation of stay and the impossibility of returning to the country of origin to apply for legal migration status, the initial authorisation to stay could not be renewed.

Similar to the standards set for subsidiary protection status, Hungary, Poland and Norway did not issue a travel document to beneficiaries of this national protection status, as it was not foreseen under the status. More specifically, in Hungary, the beneficiaries of this status were entitled to the same rights as other third-country nationals issued a residence permit, which would allow only short-term travel to other Member States in the Schengen area. In Poland, a residence card issued on the basis of tolerated stay did not allow the holder to cross the border of the State. A residence card issued on the basis of tolerated stay does not give the foreigner the right to cross the border. The Czech Republic and Finland issued a 'passport for foreigners' or an 'alien's passport', which had the same validity as the residence permit. Spain issued a travel document only if the beneficiary needed to leave Spain, and in the absence or on expiry of a valid passport or travel document.

The general rules applied with regard to permanent residency, including a minimum time period of five years' continuous residence in the Member States where such status was available, with the exception of Finland[151] and Poland,[152] where permanent residence is possible for all third-country nationals after four years' continuous residence. However, beneficiaries of this status in Finland were initially issued a temporary permit and a continuous residence permit after three years. The time period of four years to apply for permanent residency would thus start on the first day of the issuance of the continuous residence permit. In Norway, permanent residence was not possible for beneficiaries of this status.

### ACCESS TO RIGHTS AND INTEGRATION

Similar to beneficiaries of international protection, the same right to accommodation as other legally resident third-country nationals was foreseen for all beneficiaries of this particular status in all Member States and Norway. Additionally, in the Czech Republic also granted access to specific schemes, while Finland left the provision of specific schemes to access accommodation to the discretion of municipalities.

Family reunification was possible in the Czech Republic and Spain. However, in Spain, the right to family reunification could be exercised by a beneficiary of this status after a renewal of their residence permit. Eligible family members chiefly included spouses in a legal marriage or comparable relationship, and, in

**National legal basis for the national protection statuses based on the principle of non-refoulement**

| | |
|---|---|
| **Czech Republic** | National subsidiary protection based on international obligations, Section 14a, paragraph 2(d) of the Asylum Act (2006) |
| **Finland** | Temporary residence permit based on Section 89 of Aliens Act (2004) |
| **Hungary** | Tolerated status (2007) |
| **Italy** | Residence permit for special protection, Article 32, par. 3 of Legislative Decree no. 25/2008 (as amended by Legislative Decree no. 113/2018) |
| **Poland** | Permit for tolerated stay, Act of 13 June 2003 on granting protection to foreigners |
| **Spain** | Status for third-country nationals linked to danger to their safety or their family members' safety if they return to their country of origin to apply for a visa, Article 126(3) of Royal Decree developing the principles of Immigration Act (2004) |
| **United Kingdom** | Leave Outside the Rules (LOTR) on compelling compassionate grounds, part 7 and Appendix FM of the Immigration Rules (2013) |

149 CZ, ES, FI, HU, IT and NO.
150 CZ, FI, HU, IT, PL and NO.
151 In Finland, permanent residency is possible for all third-country nationals after four years' continuous residence.
152 In Poland, beneficiaries of tolerated stay can access permanent residency after 10 years, except where the obligation to return is not feasible for reasons beyond the control of national authorities and/or beyond the control of the third-country national concerned.

# TABLE 6: CONTENT OF PROTECTION OF THE STATUS GRANTED IS ON THE BASIS OF THE *NON-REFOULEMENT* PRINCIPLE

| Statuses on 'general' humanitarian grounds | Yes | No | Other |
|---|---|---|---|
| **Residence permit** | | | |
| Issuance of a residence permit required? | CZ, ES, FI, IT, HU, PL | | NO |
| Validity of the first residence permit (or initial length) (in years) | **7 months to 1 year:** NO<br>**1 year:** CZ, ES, FI, IT, HU<br>**2 years:** PL | | |
| **Travel document** | | | |
| Is a travel document issued? | CZ | HU, PL and NO | IT, ES, FI |
| Validity (in years) | **Same as residence permit:** CZ, ES, FI | | |
| **Accommodation** | | | |
| Access to accommodation (on the same basis as other legally residing third-country nationals)? | CZ, ES, FI, HU, IT and PL | | NO |
| Access to specific schemes/programmes to support access to accommodation? | CZ | ES, HU, IT, PL and NO | FI |
| **Family reunification** | | | |
| Right to family reunification (under the Family Reunification Directive)?[153] | CZ, ES | FI, IT, HU, PL and NO | |
| What is the validity of the residence permit of the family member? | **Same as the sponsor:** CZ, ES | | |
| **Labour market** | | | |
| Specific conditions to be granted access (e.g. hold work permit)? | | CZ, ES, HU, IT[154] and PL | FI, NO |
| Access to procedures for recognition of qualifications? | CZ, ES | HU, IT, NO | FI |
| **Social assistance, healthcare** | | | |
| Social assistance limited to core benefits? | NO | CZ, ES, FI, HU, IT and PL | |
| Access to emergency health care? | CZ, ES, FI, IT, HU, PL and NO | | |
| Access to mainstream health services? | CZ, ES, FI, HU, PL and IT | NO | |
| Specific support to those with special needs? | CZ, ES, FI HU, IT (as part of mainstream services) and PL | NO | |
| **Education** | | | |
| Access of minors to general system of education (same as nationals)? | CZ, ES, FI, HU, IT, PL and NO | | |
| Access of adults to general system of education, further training or retraining (same as legally residing third country nationals)? | CZ, ES, FI, HU and PL | NO, PL | IT[155] |
| **Integration** | | | |
| Access to 'mainstream' support (available for legally residing third-country nationals)? | CZ, ES, FI, IT, LU | HU, PL and NO | |
| Access to targeted support (i.e. specifically for beneficiaries of the status)? | | CZ, ES, HU, IT, PL and NO | FI |

153 Norway is not bound by the provisions of the Family Reunification Directive.
154 The right is not expressly excluded in legislation.
155 The right is not expressly excluded in legislation.

the Czech Republic siblings below 18 years of age and unmarried partners.[156] The requirements for family reunification included sponsor accommodation, health insurance and sufficient income in Spain. No family reunification was possible in Finland, Italy, Hungary, Poland and Norway. In Finland, family reunification was possible only if the beneficiary received a continuous residence permit (i.e. after three years of holding this protection status).

Contrary to EU-harmonised statuses, in Finland, beneficiaries of this protection status did not have access to employment.[157] In Norway, the permit issued for this status could limit access to the labour market but, in practice, many beneficiaries are allowed to work. In other Member States, access was given without specific conditions.[158] Recognition of qualifications was possible in Czech Republic and Spain, but this was not the case in the other Member States and Norway.

Social assistance was limited to core benefits in Norway, unlike in the Member States, where third-country nationals with this status were able to access additional social assistance services, depending on the duration of their residence permit. In the relevant Member States and Norway, access to emergency healthcare was granted. Most States also granted access to mainstream services, with the exception of Norway. Specific supports were available to this group of beneficiaries in The Czech Republic, Finland and Hungary. Finland, for instance, assessed and provided treatment to the severely traumatised and torture victims, which is also accessible to beneficiaries of international protection and asylum seekers.

With the exception of Norway, the Member States granted access to the general system of education, and two provided additional support.[159] Access to mainstream integration supports was available across the Member States, except for Hungary and the UK, which, like Norway, offered no integration support. In The Czech Republic, beneficiaries had access to the targeted support and integration programme available to other beneficiaries of international protection. In Finland, no specific integration support was foreseen for beneficiaries of this status, as they would have access to the same reception and integration support as other asylum seekers.

## CONDITIONS AND RIGHTS OF THE PROTECTION STATUS ON THE BASIS OF THE NON-REFOULEMENT PRINCIPLE COMPARED TO THE EU STATUSES

In general, the protection granted on the basis of the *non-refoulement* principle gave access to less favourable conditions and rights compared to the EU-harmonised statuses. One exception was The Czech Republic, where the national subsidiary protection based on international obligations granted the same standards of protection as the EU-harmonised subsidiary protection status. In most Member States and Norway, the validity of the initial permit was aligned with the standards set by the EU-harmonised subsidiary protection, and access to accommodation, social assistance and healthcare were aligned with the content of rights offered by international protection. However, the granting of this status was not intended to target long-term integration of the beneficiaries, as evident in the restricted access to the labour market and family reunification, and more limited access to mainstream integration support in some States.

156 In the Czech Republic, family reunification with unmarried partners would be possible only in the case of family reunification outside the territory of the Czech Republic (i.e. the family member is outside of the territory).
157 In Finland, persons issued with a temporary residence on the basis of Section 89 do not have the right to employment. A person with this permit is not considered to be living in Finland permanently, and can usually only be entitled to emergency social assistance (e.g. food, acute need of medicines) from the Social Insurance Institution of Finland.
158 CZ, ES, HU and IT.
159 CZ and IT.

# 10. PROTECTION STATUSES AVAILABLE FOR MINORS, UNACCOMPANIED AND AGED-OUT MINORS

National statuses for minors, and unaccompanied or aged-out minors are available in Belgium, Italy, the Netherlands and the United Kingdom.[160] These statuses were all established in national legislation after 2010 and generally consisted of forms of protection for underage children until they reach the legal age of adulthood.[161]

In Belgium, authorisation to stay could be granted to unaccompanied minors as a 'durable solution', if this was preferred to family reunification in the country where the parents were residing or to a return to the country where the minor was authorised to stay. In Italy and the United Kingdom, beneficiaries of this type of protection status were unaccompanied minors that could not be returned because of the lack of safe and adequate reception arrangements in their country of origin. In Italy, this form of protection was also granted to minors placed in foster families, minors cohabiting with a guardian, or in favour of whom the judicial authority had adopted a custody order (residence permit for family or foster care reasons).

In the Netherlands, the three protection statuses available to children responded to three different needs.

- The 'no fault' permit for unaccompanied minors, established in 2013, was meant to protect minors who could not be returned to their country of origin through no fault of their own. This replaced the temporary permit available to all unaccompanied minors until the age of 18.
- The protection status for children placed in foster families or institutions was established in 2014 following the entry into force of the Hague Convention on Parental Responsibility and Measures for the Protection of Children (1996). This status aims to protect unaccompanied children who cannot be returned to their family of origin by providing foster care until the age of 18.
- The third status responds to the need to protect westernised school-going minor women. The status was established in 2011 in response to a ruling of the District Court of Den Bosch concerning a minor woman and her family, who would be at risk upon return to Afghanistan since they had been westernised as a result of their long-term residence in the Netherlands.

## 10.1. DETERMINATION AND APPEAL PROCEDURES

In the Netherlands and the United Kingdom, the authority for granting these statuses was the same as that processing the application for asylum, namely the Immigration and Naturalisation Service (IND) in the Netherlands and the Home Office in the UK. In Belgium, the authority responsible for examining the applications for authorisation to stay for unaccompanied minors (the Immigration Office) was different to that examining the requests for international protection (the Office of the Commissioner General for Refugees and Stateless Persons).

In the four Member States[162] where this status was available, the application was not assessed as part of the single procedure examining the need for international protection. In Belgium and Italy, the special procedure for minors could be initiated at any time, irrespective of the asylum procedure. In the Netherlands, application for the status for unaccompanied minors unable to leave the Netherlands through no fault of their own could be filed after an earlier application for residence and could also be granted *ex officio*. In the United Kingdom, this form of permission derived from the refusal of an international protection claim, therefore the child did not need to make a separate or further claim/application, beyond the original protection claim.

In the case of a negative decision, an appeal procedure was available in Belgium, Italy and the Netherlands. The appeal had an automatic suspensive effect in the Netherlands, while, in Belgium, a separate appeal for suspension of removal measures could be submitted in the same petition. The UK had no specific appeal procedure for this status.

In cases where these statuses were not granted, it was possible to apply for international protection. In Belgium, it was also possible to apply for humanitarian regularisation.

## 10.2. CONTENT OF PROTECTION

### RESIDENCE PERMIT AND TRAVEL DOCUMENT

In Belgium, if authorisation to stay had been identified as a durable solution in the best interest of the child, the unaccompanied minor received a temporary residence permit ('A-card') valid for one year, that could be extended. Beneficiaries of this status had access to standards similar to EU-harmonised subsidiary protection under the recast Qualification Directive, where the minimum validity of the first residence permit was set at one year. On the other hand, in the Netherlands[163] and the UK, the validity of the first residence permit was five years, giving beneficiaries of this status more favourable standards than refugees under the recast Qualification Directive.

160 In France, the protection of unaccompanied minors is covered by common law on child protection until they reach the age of 18. The protection is based on the criteria of being a minor and in a dangerous situation and not on the grounds of nationality.
161 Please note the statuses typically granted to unaccompanied minors mapped in the 2017 EMN 'Study on approaches to unaccompanied minors following status determination. To the extent possible, this section will not duplicate information provided in that study.
162 BE, IT, NL, UK.
163 In the Netherlands: only applicable to unaccompanied minors unable to leave through no fault of their own.

**National protection statuses available for minors, unaccompanied and aged-out minors**

| | |
|---|---|
| **Belgium** | Authorisation to stay as durable solution for unaccompanied minors, Article 61/14-25 of the Immigration Act (2011) |
| **Greece** | Residence permit to minors, whose custody has been entrusted to Greek families or families of third-country nationals who legally reside in Greece or the adoption of whom is pending before the Greek authorities, Article 19A (2b) Law 4251/2014 |
| **Italy** | Provisions on measures to protect unaccompanied foreign minors, Article 10 Law 47/2017 and Article 18 Immigration Law, (1998) |
| **Netherlands** | Residence permit for unaccompanied minor unable to leave the Netherlands through no fault of their own, Aliens Act Implementation Guidelines (2000) (Status A)<br>Special statuses for children: placement in a foster family or institution in the Netherlands (2014) (Status B)<br>Special statuses for children: westernised school-going minor women (2011) (Status C) |

## TABLE 7: CONTENT OF PROTECTION AVAILABLE FOR MINORS, UNACCOMPANIED AND AGED-OUT MINORS

| Statuses on 'general' humanitarian grounds | Yes | No |
|---|---|---|
| **Residence permit** | | |
| Issuance of a residence permit required? | BE, EL, IT, NL, UK | |
| Validity of the first residence permit (or initial length) (in years) | **1 year:** BE, NL (B and C)<br>**2 years:** EL<br>**30 months:** UK (or until the child turns 17 ½ years old)<br>**5 years:** NL (A)<br>**Other:** IT (until the child turns 18 years old) | |
| **Travel document** | | |
| Is a travel document issued? | BE, EL, NL | UK |
| Validity (in years) | **2 years:** BE, EL<br>**1-3 years:** NL<br>**Other:** ES (temporary) | |
| **Accommodation** | | |
| Access to accommodation (on the same basis as other legally residing third-country nationals)? | BE, EL, IT, NL, UK | |
| Access to specific schemes/programmes to support access to accommodation? | BE, EL, IT, NL | UK |
| **Family reunification** | | |
| Right to family reunification (under the Family Reunification Directive)?[164] | EL, NL | BE, UK |
| What is the validity of the residence permit of the family member? | **1 year or same as the child:** EL, NL | |
| **Labour market** | | |
| Specific conditions to be granted access (e.g. hold work permit)? | IT | BE, EL, NL, UK |
| Access to procedures for recognition of qualifications? | BE, EL, IT, NL, UK | |
| **Social assistance, healthcare** | | |
| Social assistance limited to core benefits? | UK | BE, EL, IT, NL |
| Access to emergency health care? | BE, EL, IT, NL, UK | |
| Access to mainstream health services? | BE, EL, IT, NL, UK | |
| Specific support to those with special needs? | BE, EL, IT, NL, UK | |
| **Education** | | |
| Access of minors to general system of education (same as nationals)? | BE, EL, IT, NL, UK | |
| **Integration** | | |
| Access to 'mainstream' support (available for legally residing third-country nationals)? | UK, EL, IT, NL | BE |
| Access to targeted support (i.e. specifically for beneficiaries of the status)? | EL, IT, NL | BE, UK |

164 The United Kingdom opted out of the Family Reunification Directive.

In the Netherlands, the residence permit for children placed in foster care or institutions could be renewed if the child was still with the foster family or in an institution in the Netherlands, and the special status for westernised school-going minor women could be renewed under certain circumstances if the situation in the country of origin remained unchanged. The non-fault residence permit in the Netherlands could be renewed, and if return was not possible, the unaccompanied minor could apply for permanent residence. In Italy, the permit was valid until the minor turned 18 years old.[165]

In Belgium, the authorities could issue a special travel document granted under the same conditions as those for beneficiaries of subsidiary protection (e.g. if a national passport is not available). In the Netherlands, beneficiaries of these statuses were issued an alien passport. No travel document was issued to beneficiaries of this status in the UK.

Unaccompanied minors could apply for a permanent residence permit after three years (Belgium), five years (the Netherlands) or 10 years (United Kingdom).

## ACCESS TO RIGHTS AND INTEGRATION

The right to family reunification was not granted to beneficiaries of this status in Belgium or the United Kingdom, thus providing for less favourable conditions than EU-harmonised refugee protection. Family reunification was allowed in the Netherlands, and in cases where the leave was granted by the Final Regulation for long-term resident children, the IND could provide permits to the parents, minor siblings, partners (aged 18 or older) and minor children.

Similar to the minimum standards for beneficiaries of international protection under EU law, third-country nationals with this status were granted access to housing, employment and education. In Italy, access to employment could be granted under the same conditions as to those imposed on other minors in national law. In the Netherlands, targeted supports were foreseen for the beneficiaries of this status. The three Member States allowed access to healthcare on an equal footing to legally resident third-country nationals. For support to access accommodation, in Belgium, unaccompanied minors under the age of 15, who were considered particularly vulnerable or with special needs, could be referred to the Youth Care Services for alternative forms of accommodation.

While the United Kingdom limited social benefits to core benefits, in the Netherlands, third-country nationals with a temporary residence permit had the same access to social assistance as Dutch citizens. In Belgium, all unaccompanied minors staying in the reception system received material aid, including housing, food, clothing, psycho-medical and social assistance, and a subsistence allowance. Unaccompanied minors who did not stay in the reception system were entitled to social aid provided by the Public Social Welfare Centres.

Access to procedures for recognition of qualifications was open in the three countries, although, in the Netherlands, this was a paid service.

## CONDITIONS AND RIGHTS OF THE PROTECTION AVAILABLE FOR MINORS COMPARED TO THE EU STATUSES

Overall, these statuses offered similar conditions compared to EU-harmonised subsidiary protection, with some notable exceptions, where they offered better conditions than EU refugee protection, such as the length of the residence permit (Netherlands, the United Kingdom) or access to social benefits (the Netherlands).

165 Nonetheless, in the case of a minor who needs prolonged support to complete the path of autonomy, the Juvenile Court, could order, at the request of social services and with a motivated decree, that the minor be entrusted to social services up to the age of 21 years (as per Circular of the Ministry of the Interior of 27 August 2017). Where it was impossible to convert the permit to stay because of missing requirements, the local authorities (Territorial Chief of Police) would renew the permit for custody on a biannual basis.

# 11. PROTECTION STATUSES AVAILABLE FOR BENEFICIARIES OF SPECIAL PROGRAMMES (RELOCATION, RESETTLEMENT)

Two Member States had a status in place for beneficiaries of special programmes, such as relocation or resettlement: programme refugee status in Ireland, and local subsidiary protection in Malta. In Ireland, programme refugee status was first established in 1996 to allow the Minister for Justice and Equality to enter into agreements with the United Nations Refugee Agency (UNHCR) for the reception and resettlement of programme refugees and to clarify the status of persons resettled to Ireland. In Malta, the Local Subsidiary Protection was created in 2016 to provide the possibility to grant national protection to a third-country national who was admitted on humanitarian grounds from a third country, where they had been displaced, in accordance with a resettlement scheme introduced at EU level, or a national resettlement scheme.

Other Member States and Norway have not established national protection statuses for beneficiaries of these types of programmes and instead grant EU-harmonised protection statuses.[166]

## 11.1. DETERMINATION AND APPEAL PROCEDURES

In both Ireland and Malta, the procedure to grant this national form of protection started with a referral from the UNHCR, the European Asylum Support Office (EASO) or other relevant international bodies. Self-referrals or referrals by other organisations or individuals were not accepted.

UNHCR, together with its partner organisations on the ground, identified vulnerable individuals to be assessed for resettlement eligibility. The final decision on whether to accept or reject a case for resettlement was taken by the Member State. In Ireland, the Department of Justice and Equality arranged selection missions and made the final decision to officially accept refugees interviewed, usually within three to four months of the mission. Decisions related to urgent medical cases were reported to take approximately six weeks to be processed. In Malta, the cases were examined by the Maltese Determining Authority.

For these statuses, no appeal procedure was foreseen in the event of a negative decision.

## 11.2. CONTENT OF PROTECTION

### RESIDENCE PERMIT AND TRAVEL DOCUMENTS

Both Member States issued a renewable residence permit. The residence permit was valid for one year in Malta, giving protection equivalent to the minimum standard set for subsidiary protection in EU law. In Ireland, the legislation did not provide the minimum validity of the residence permit nor its validity after renewal, which was instead subject to Ministerial discretion. Irish law provided that programme refugees were entitled to the same rights as beneficiaries of international protection, with the exception that permission to remain could be granted for a specified period of less than three years. In Malta, the validity after renewal was one year. These statuses did not give access to long-term residence. Both countries accorded an entitlement to travel documents to beneficiaries of protection.

### ACCESS TO RIGHTS AND INTEGRATION

In Ireland, specific schemes were provided to support access to accommodation. Programme refugees resettled to Ireland under the government-led resettlement programme were housed by local authorities in private or social housing around the country, following a short-term stay in emergency reception and orientation centres. The Irish Red Cross managed a programme offering accommodation secured through public pledges, while housing associations (e.g. Clúid Housing) provided social housing for resettled persons with the aid of grants. Persons admitted under Community Sponsorship Ireland were granted programme refugee status, and housing and integration support was provided by the sponsoring community group.

The right to family reunification was granted only in Ireland. While not expressly included in national legislation, the right to family reunification was upheld in practice on the same basis as for beneficiaries of international protection. The categories of eligible family members were the spouse/civil partner and the sponsor's children who are under 18 and unmarried. The validity of the residence permit for the family members was a matter of discretion for the Minister for Justice and Equality.

Programme refugees were entitled to access the labour market in Ireland without restriction, while beneficiaries of local subsidiary protection in Malta required a work permit. Social assistance was limited to core benefits in Malta, while, in Ireland, programme refugees were entitled to access the same medical care and social welfare as Irish citizens. In both countries, this protection status gave access to the general system of education and to additional supports (e.g. preparatory classes, additional official language classes, remedial classes, intercultural assistants).

In Malta, beneficiaries of this status had access to the integration procedure established in 2017 and available to legally resident third-country nationals. In Ireland, beneficiaries had access to targeted supports: following an initial orientation course, resettled refugees were assigned a resettlement support worker. The role of the resettlement support worker was to facilitate access to local services and assist with any problems that might arise.

### CONDITIONS AND RIGHTS OF THE PROTECTION STATUS FOR BENEFICIARIES OF RELOCATION AND RESETTLEMENT PROGRAMMES COMPARED TO THE EU STATUSES

Overall, these statuses offered the same or less favourable conditions than international protection. However, in Ireland, unlike persons with refugee or subsidiary protection status, programme refugees were the only group that had access to targeted orientation and integration supports on arrival in the State and following settlement in the local community.

166 See EMN 2016, study on 'Resettlement and Humanitarian Admission Programmes in Europe – what works?'.

**National legal basis for the protection status for relocated and resettled persons**

**Ireland** Programme refugee status, Section 59 International Protection Act (2015)

**Malta** Local subsidiary protection, administrative procedure adopted in 2016

## TABLE 8: CONTENT OF PROTECTION STATUSES AVAILABLE FOR RELOCATED AND RESETTLED PERSONS

| Statuses on 'general' humanitarian grounds | Yes | No |
|---|---|---|
| **Residence permit** | | |
| Issuance of a residence permit required? | IE, MT | |
| Validity of the first residence permit (or initial length) (in years) | **1 year:** MT | **Not specified:** IE |
| **Travel document** | | |
| Is a travel document issued? | IE, MT | |
| Validity (in years) | **1 year: MT** | Not specified: IE |
| **Accommodation** | | |
| Access to accommodation (on the same basis as other legally residing third-country nationals)? | IE, MT | |
| Access to specific schemes/programmes to support access to accommodation? | IE | MT |
| **Family reunification** | | |
| Right to family reunification (under the Family Reunification Directive)?[167] | IE | MT |
| What is the validity of the residence permit of the family member? | **Discretion for the Minister for Justice and Equality:** IE | |
| **Labour market** | | |
| Specific conditions to be granted access (e.g. hold work permit)? | MT | IE |
| Access to procedures for recognition of qualifications? | IE, MT | |
| **Social assistance, healthcare** | | |
| Social assistance limited to core benefits? | MT | IE |
| Access to emergency health care? | IE, MT | |
| Access to mainstream health services? | IE, MT | |
| Specific support to those with special needs? | | IE, MT |
| **Education** | | |
| Access of minors to general system of education (same as nationals)? | IE, MT | |
| Access of adults to general system of education, further training or retraining under the same conditions as legally residing third country nationals? | IE, MT | |
| **Integration** | | |
| Access to 'mainstream' support (available for legally residing third-country nationals)? | IE, MT | |
| Access to targeted support (i.e. specifically for beneficiaries of the status)? | IE | MT |

167 Ireland is not bound by the provisions of the Family Reunification Directive.

# 12. MAIN DEVELOPMENTS SINCE 2010, CURRENT DEBATES AND CHALLENGES

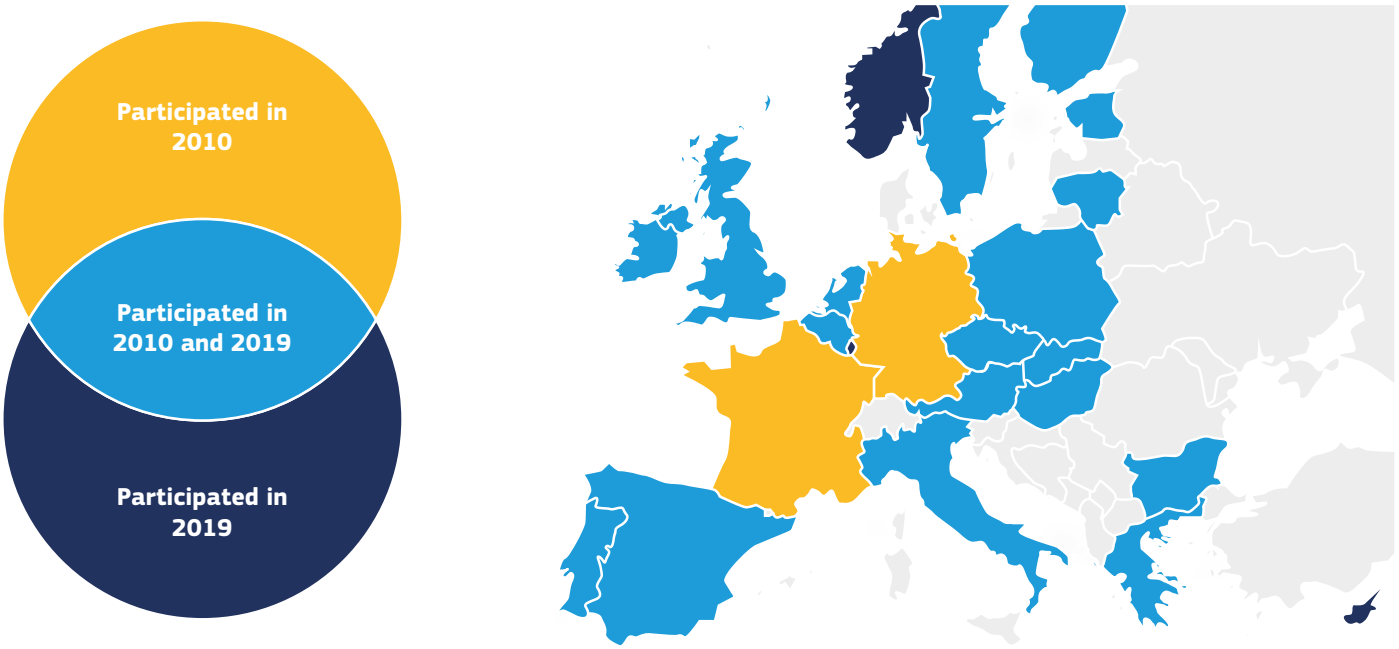
## CHANGES IN THE NON-HARMONISED PROTECTION STATUSES

Since the publication of the 2010 EMN study on non-harmonised protection statuses, the number of Member States granting non-EU-harmonised statuses remained the same overall. In 2010, a majority of Member States (20) granted at least one non-harmonised status, and the number was at 21 Member States and Norway in 2018. The 2010 study identified over 60 different statuses. The present study accounts for a similar number of national protection statuses (total of 60) although the scope of this study (see section 1.3) differs from the scope of the 2010 study. For instance, statuses issued to victims of trafficking or other serious crimes, for family reasons and stateless persons were included in 2010 but expressly excluded here. The two studies have different geographical coverage, as not all Member States that contributed to the 2010 study participated in the current study and vice versa. Cyprus, Luxembourg and Norway did not participate in the 2010 study, while Germany did not participate in the current study and Croatia, Estonia, France, and Latvia did not report on any status falling within the scope of this study.

In this context, 11 Member States reported changes to their national protection statuses between 2010 and 2018 (see Figure 5).[168] Changes at national level must also be viewed in the context of reforms of the CEAS, adopted in 2013-2015, in particular the recast Qualification Directive, which sought to align the content of subsidiary protection with refugee protection. Indeed, the eligibility grounds and content of protection set by EU-harmonised statuses underpinned the decision to cease some of the national protection statuses in Finland and the Netherlands.

Several amendments to national protection statuses were adopted in 2014-2018,[169] suggesting a link between these policy decisions and the high numbers of asylum applications resulting from the outbreak of conflict in Syria and other global unrest. A more recent example is Italy, where the 1998 framework on national protection status for humanitarian reasons was repealed and replaced in October 2018, with a more specific set of statuses covering special protection for principle of *non-refoulement*, medical cases, natural disasters, acts of civil value and special cases, including victims of domestic violence and exploitation.[170] NGO reports suggest that this new framework affords lower levels of protection. Another trend observed was the shaping of more restrictive eligibility criteria for some national protection statuses, such as those available to unaccompanied minors in Finland and the Netherlands, while Sweden suspended the granting of national protection statuses entirely until 2021. To reduce the high number of applications for humanitarian and medical regularisations, Belgium introduced administrative fees for applications for the first category and a *prima facie* assessment of the seriousness of the illness ('medical filter') for the second. In both cases, these measures were adopted to reduce parallel applications on the same ground.

### FIGURE 4: CONTRIBUTION TO THE 2010 EMN AND 2019 STUDIES ON NATIONAL PROTECTION STATUSES




Source: EMN national reports

168 AT, BE, FI, IE, IT, NL, MT, SE and SK.
169 AT, FI, IT, NL and SE.
170 The newly established protection statuses for acts of civil value and for special cases fall outside the scope of this study and were not further analysed.

## PUBLIC DEBATE

National protection statuses were subject to public debate in seven Member States and Norway,[171] while they were not specifically debated in 16 Member States.[172] This was either because these States had no national protection statuses (as defined in the scope of this study[173]) or because the limited number of authorisations to stay based on these statuses did not generate any controversy.[174] In Ireland, discussion in the media primarily focused on the various pathways to protection in place for people fleeing persecution or harm, as opposed to the statuses themselves. Where public debate took place, it was brought about by civil society organisations[175] or the media.[176] Debates also occurred when legislative changes were introduced or discussed in national parliaments.[177]

A common theme of public debate was the extent to which national protection statuses could be expanded in scope and/or whether new ones could be added.

In some Member States, civil society organisations argued that national protection statuses, in contrast to EU-harmonised statuses which have 'fixed' and harmonised eligibility criteria, were based on national law, at the (substantial) discretion of the State, and could be extended to include other categories of third-country nationals in need of protection.[178] Likewise, in France, although not having national protection statuses as defined in this study, debate focused on the need to legislate on 'climate refugees', in part stemming from France's organisation of the COP21 conference. Civil society organisations challenged the – in their view, rather strict – interpretation by national authorities of the eligibility criteria set in national protection statuses.[179] They did this by highlighting that existing evidence showed that the share of individuals obtaining an authorisation to stay on the basis of such statuses was particularly low.[180]

In contrast to the above positions, policy makers in some Member States argued that the EU-harmonised protection statuses adequately covered all cases of third-country nationals with protection-related needs, and built public consensus for a reduced scope of national protection statuses.[181] This was the case in Finland, for example, where, in 2016, policy makers argued that, in practice, humanitarian protection fell within the scope of the EU-harmonised subsidiary protection status and on this basis abolished all non-harmonised protection statuses linked to 'humanitarian protection'. In reaction to the record numbers of third-country nationals applying for protection, the government in Sweden adopted the Temporary Act in 2016. One of the effects of the Temporary Act was that no national protection statuses were granted in the past three years. An extension of the Temporary Act for a further two years was adopted in June 2019. In Italy, political leadership has reduced the margins of discretion of the eligibility criteria to grant national humanitarian protection and adopted new legislation in 2018 regulating national protection statuses, with lower standards of protection, according to NGOs and some media.

Reporting in the mainstream media primarily addressed the topic of national protection statuses indirectly, in the context of people who lost the right to stay or were found to be staying irregularly.[182] Media articles concerned cases of persons whose asylum application was rejected, but who, because they had stayed in a Member State for a long period of time, were considered to be well-integrated.[183] Similarly, other articles discussed cases of minor children born and brought up in a Member State, but whose parents did not have or lost the right to stay.[184] This was the case in Belgium, Finland, the Netherlands and Sweden, where the situation of (unaccompanied) minors and changes in legislation and practices were discussed in media reports. In Finland, internal restructuring in 2017 resulted in all residence permit extensions of unaccompanied minors being processed by the Finnish Immigration Service, which applied a stricter policy regarding permit renewals. In practice, this meant that unaccompanied minors were issued only one-year permits following renewal, instead of the former practice to renew residence permits for four years. This change in administrative practice led to debates, as it left many beneficiaries in an uncertain legal situation, with access to permanent residency proving more challenging with shorter and temporary residence permits. Likewise, in the Netherlands, changes to the long-term residence policy for children (the 'children's pardon scheme') were envisaged. Under this policy, children and their families could be granted a residence permit if they had been staying in the Netherlands without a residence status for several years. In September 2018, the government announced its intention to form an independent committee of inquiry to investigate the factors influencing the prolonged stay of this category of third-country nationals in the Netherlands. In January 2019, the government proposed abolishing the policy for long-term resident children. In 2017, Italy introduced a specific permit for minors that can be issued even before the appointment of a guardian and is valid until the age of majority.

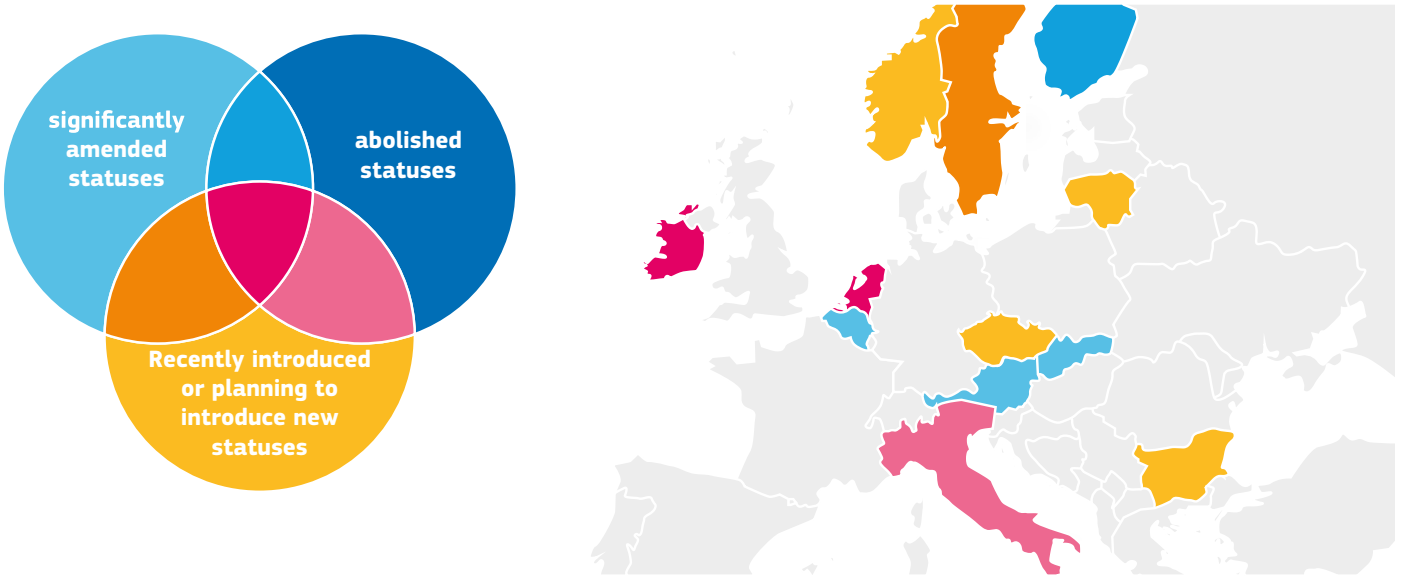
In Sweden, the high numbers of applications for protection introduced by (unaccompanied) minors in 2015 resulted in longer processing times that would see some applicants reach adulthood in the meantime. This led to debates on whether to grant them collective amnesty or some other possibility to remain legally in Sweden. As a result, the Temporary Act adopted in 2016 also foresaw providing those who studied at upper secondary level schools with the opportunity to stay in the country to finalise their studies. It did not introduce a new protection status but, rather, provided a temporary solution for those who qualified. Among other points of concern raised by civil society, the Temporary Act was considered by the Swedish Red Cross and another

171 AT, BE, FI, FR, IT, NL, SE and NO.
172 BG, CY, CZ, EE, EL, HR, HU, IE, LT, LU, LV, MT, PL, PT, SK and UK.
173 EE, HR and LV.
174 BG, CZ and SK.
175 AT, BE, FI, FR, NL and SE.
176 AT, BE, FI, NL and SE.
177 BE, IT, FI, NL and SE.
178 BE, FI, NL and SE (part of civil society organisations' criticism of the Temporary Act of 2016).
179 BE, FI, and NL.
180 SE.
181 FI and SE.
182 AT, BE, FI, NL and SE.
183 See, for example, in Austria: Der Standard, Umstrittene Abschiebungen, 2 December 2010, available at: https://derstandard.at/1289609395003/Chronik-Umstrittene-Abschiebungen (accessed on 1 April 2019); Der Standard, Herr Ibisi und die Willkür der Integration, 8 September 2011, available at: https://derstandard.at/1315005901401/Kritik-am-Bleiberecht-Herr-Ibisi-und-die-Willkuer-der-Integration (accessed on 1. April 2019); Vorarlberger Nachrichten, Ein Stein ist vom Herzen gefallen, 21. December 2012, available at: www.vn.at/vorarlberg/2012/12/21/ein-stein-ist-vom-herzen-gefallen.vn (accessed 1 April 2019); Kurier, Bürgermeister rettet Tschetschenen vor der Abschiebung, 15 January 2013, available at: https://kurier.at/chronik/niederoesterreich/waidhofen-an-der-ybbs-buergermeister-rettet-tschetschenen-vor-der-abschiebung/2.568.286 (accessed on 1 April 2019); Bürgermeister will Asylwerber im Rathaus unterbringen, 15 November 2013, available at: https://kurier.at/chronik/oesterreich/wolfsberg-buergermeister-will-asylwerber-im-rathaus-unterbringen/35.870.887 (accessed on 1 April 2019).
184 See, for example, in Finland: https://yle.fi/uutiset/3-10118282, Yle news 19 March 2018 (in Finnish) (accessed 18 March 2019); https://www.aamulehti.fi/a/200442461 Aamulehti 6 October 2017 (in Finnish) (accessed 18 March 2019). In the Netherlands, NOS (2018). Howick en Lili: de kinderen die toch niet worden uitgezet [Howick and Lili: the children who will not be deported after all], available at: https://nos.nl/artikel/2249564-howick-en-lili-de-kinderen-die-toch-niet-worden-uitgezet.html (accessed 5 April 2019).
See also EMN, 'Study on approaches to unaccompanied minors following status determination in the EU plus Norway' (2018), available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_synthesis_report_unaccompanied_minors_2017_en.pdf

refugee agency (*Rådgivningsbyrån*[185]) to undermine the level of protection available to children (in particular children suffering from 'depressive devitalisation' (a form of clinical mental health distress), as it did not allow them to be granted (full) protection status.

The situation of third-country nationals facing special or severe medical circumstances were also the subject of debate in Belgium and Sweden. In Belgium, debate focused on the existing status (of medical regularisation) and on the amendments adopted by the government in 2011 and 2014 to prevent misuse. The amendments debated were those introducing stricter conditions to grant the status. This led to parliamentary and public discussion, particularly the assessment of the 'seriousness' of the illness by the Immigration Office.[186]

## FIGURE 5: CONTRIBUTION TO THE 2010 EMN AND 2019 STUDIES ON NATIONAL PROTECTION STATUSES




Source: EMN national reports

### CHALLENGES

Debates reported by the media and civil society echoed the challenges faced by competent authorities in Finland, Sweden and Norway when assessing applications for national protection. A common challenge was the interpretation of the eligibility criteria due to the (wide) definition of protection grounds and, accordingly, the discretion left to authorities. This was the case in Finland, where 'compassionate grounds' implied an assessment of an applicant's situation as a whole, rather than a precise set of factors. Likewise, in Sweden, the eligibility criteria of the national form of subsidiary protection were reportedly not sufficiently distinct from the EU-harmonised subsidiary protection. Indeed, the national form of subsidiary protection covered a wider array of circumstances than the EU-harmonised status (including environmental disaster, external or internal armed conflict in the country of origin), which left a greater margin of discretion to the caseworker examining the application. Ensuring consistent and robust decision-making was reported as a challenge in Ireland, while Norway highlighted that uncertainties around the assessment of eligibility criteria could have an adverse impact on a uniform practice in granting national protection statuses. Some EU Member States reported measures to tackle the various challenges faced and to ensure robust decision-making.[187] In Sweden, this meant strengthening the expertise of caseworkers by adopting internal guidelines on assessing applications for national protection. Ultimately, whether decisions on applications for national protection would be held on appeal was an important indicator of their robustness.[188]

### FUTURE POLICY CHANGES

Future policy changes to existing national protection statuses or the introduction of new statuses could be expected in six States.[189] The governments in the Netherlands and Sweden[190] have announced their intention to re-examine the grounds for granting certain national protection statuses, while Bulgaria and Norway have discussed establishing new grounds for protection for vulnerable persons, on unaccompanied minors and elderly persons, respectively, in a protracted irregular situation.[191]

185 Rådgivningsbyrån is an agency that helps and gives advice to refugees and asylum seekers on issues related to the asylum process (http://sweref.org/). Rådgivningsbyrån, a report regarding the Temporary Act from a legal perspective, Migrationsrättens framtid: En redogörelse för de juridiska riskerna med att förlänga lagen (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige, 8 October 2018, available at: https://sweref.org/migrationsrattens-framtid-en-redogorelse-de-juridiska-riskerna-med-att-forlanga-den-tillfalliga-lagen/, 4 June 2019.

186 See, for example, in Belgium, where a group of physicians, lawyers and social workers co-authored a white paper on the topic Witboek over de machtiging tot verblijf om medische redenen (9ter). Voor een toepassing van de wet met respect voor de mensenrechten van ernstig zieke vreemdelingen, available at: https://medimmigrant.be/uploads/Publicaties/Witboek%209ter%20NL.pdf. Likewise, the Belgian Advisory Committee on Bioethics issued a critical opinion on the situation of seriously ill foreign nationals: Opinion No. 65 of 9 May 2016 concerning the issue of immigrants with medical problems, including serious psychiatric ones, available at: https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/opinion_65_schotsmans.pdf. The Ombudsman published a review report on the functioning of the 9ter department of the Immigration Office: Medische regularisatie. Werking van de afdeling 9ter bij de Dienst Vreemdelingenzaken, 2016, available at: http://www.federaalombudsman.be/sites/1070.b.fedimbo.belgium.be/files/medische_regularisatie_werking_van_de_afdeling_9ter_nl_def_lage_resolutie.pdf

187 FI, SE.

188 FI and SE.

189 BG, CZ, LT, NL, SE and NO.

190 An all-party Commission of Inquiry has been appointed by the government to investigate the grounds on which residence permits should be granted. The committee report should be finalised on 15 August 2020.

191 The Norwegian government has announced a new provision that will secure a residence permit for elderly former asylum seekers if they have stayed more than 16 years in Norway and if it is considered impossible to return them to their country of origin. This provision has not been implemented.

# TABLE 12: OVERVIEW OF MAIN CHANGES TO NATIONAL PROTECTION STATUSES SINCE 2010

| | Compared to 2010… | | |
|---|---|---|---|
| States | …significantly amended statuses | …abolished statuses | Recently introduced or planning to introduce new statuses |
| AT | ■ In 2014: changes to the decision-making competence for the **residence title for particularly exceptional circumstances** (competence for granting the status shifted to the Federal Office for Immigration and Asylum, previously examined by the settlement and residence authorities in the provinces). | | |
| BE | ■ In 2010 and 2012: changes to the determination procedure for **medical regularisation** (e.g. use of a standard medical certificate, introduction of a 'medical filter' at the stage of admissibility whereby the illness must correspond to a 'serious illness').<br>■ In 2010, 2014 and 2015: changes to the determination procedure for **humanitarian regularisation** (e.g. a fee for processing the application).<br>■ In 2011: incorporating the durable solution procedure for **unaccompanied minors** into legislation (previously based on a circular); additional changes to determination procedure in 2015 (guardian can apply regardless of other pending procedures for protection or authorisation to stay). | | |
| BG | | | ■ In 2018: new legislation to grant **residence permit on humanitarian grounds to (former) UAMs** who do not apply for international protection in Bulgaria. |
| CZ | | | ■ Discussions to abolish the residence permit granted to **third-country nationals (former asylum seekers) who are 'already integrated'** (Section 67 of the Act 326/1999 Coll., on the Residence of Foreign nationals), included in the national framework to cater for the numerous asylum applications in 2002 to 2004. |
| FI | ■ In 2016: **Residence permit on 'compassionate' grounds** was amended to allow unaccompanied minors with no other grounds to reside be granted residence<br>■ In 2015: **beneficiaries of the residence permit based on section 93 of the Aliens Act** (collective protection) can be issued with a temporary or continuous residence permit. | ■ In 2016, **'humanitarian protection'** ceased to exist (grounds covered by EU-harmonised subsidiary protection). | |
| IE | ■ Up to 2016, **persons who were refused international protection** and were issued with a proposal to make a deportation order under section 3 of the Immigration Act 1999 were entitled to make representations to the Minister for Justice and Equality against the making of a deportation order and in favour of granting leave to remain. If successful, leave to remain could be granted in lieu of deportation at the discretion of the Minister. While non-refoulement principle was a consideration in the Minister's decision to make a deportation order, beneficiaries were not informed of the reasons for granting leave to remain, whether for non-refoulement, humanitarian reasons or other non-protection reasons. However, with the introduction of the International Protection Act 2015, this no longer applies to unsuccessful international protection applicants. | ■ A **Syrian Humanitarian Admission Programme** (SHAP) operated from 14 March 2014 to 30 April 2014, under which beneficiaries were granted a SHAP Stamp. | ■ In 2017, the International Protection Act 2015 came into force, introducing the **status of permission to remain for international protection applicants who receive a negative decision** on refugee status and subsidiary protection. |

# TABLE 12: OVERVIEW OF MAIN CHANGES TO NATIONAL PROTECTION STATUSES SINCE 2010

| | Compared to 2010... | | |
|---|---|---|---|
| States | ...significantly amended statuses | ...abolished statuses | Recently introduced or planning to introduce new statuses |
| IT | | ■ Introduced in 1998, the permit **for 'general' humanitarian reasons** covered several cases at the discretion of the deciding authority (i.e. objective and serious personal situations which do not allow expulsion from national territory: medical care, natural disasters or conflicts, victims of exploitation, etc.).The 1998 legislative provision on residence permits for humanitarian reasons was repealed in 2018. | ■ Other types of protection grounds were introduced in October 2018 (covering medical cases, natural disasters, acts of special civil value special protection, special cases).<br>■ Specific permit for **minors** introduced in 2017. |
| LT | | | ■ Preliminary discussions at the Parliament to expand the eligibility grounds for granting subsidiary protection to include persons outside their country or origin and is unable to return there due to a well-founded fear that they would be denied the **right to a fair trial.** |
| MT | ■ **Temporary Humanitarian Protection** was introduced in 2010 on a permanent basis in order to grant a national form of protection to asylum seekers who, while not meeting the eligibility criteria to be granted international protection, are still in need of protection on humanitarian grounds<br>■ **Local Subsidiary Protection** established in 2016 to provide the possibility for a third country national or stateless person who has been admitted to Malta on humanitarian grounds from a third country where he/she has been displaced to in accordance with a resettlement scheme introduced at a Union level, or a national resettlement scheme, to be granted a national form of protection (which is without prejudice to the possibility of said person to apply for international protection once he/she arrives in Malta). | | |
| NL | ■ In 2012, **changes to the policy for pressing reasons of a humanitarian nature**, i.e. situations where a person could not be expected to return to the country of origin: changes to the determination procedure by including these grounds in the regular asylum procedure<br>■ In 2013: **changes to the policy on unaccompanied minors,** which saw their asylum application rejected (UAMs below 15 can apply for a permit if 'unable to leave the Netherlands through no fault of their own', with stricter eligibility criteria and rights). | ■ In 2014, end of the **category-based (or group) protection.** | ■ In 2018, expressed intention of the Government to end the **'children's pardon'** and the discretionary power of the State Secretary for Justice and Security<br>■ In 2019, **new ground for stay based on medical reasons** introduced for third-country nationals who are in a terminal phase of illness (previously covered by the discretionary power of the State Secretary for Justice and Security). Only third-country nationals who are expected to die within six months to one and a half years are eligible. |
| SE | ■ National protection statuses are not in force under **the Temporary Act** which was adopted in 2016 and extended to July 2021. | | ■ In 2019, the government decided to appoint an **all-party commission** of inquiry to examine, among other topics, if a new protection status on humanitarian grounds should be introduced, if the main rule should be permanent or temporary residence permits, on what grounds residence permits should be granted and finally how the provisions for rules for family migration should look like. |
| SK | ■ The 2018 amendment to the Act on Asylum added the **reasons for termination and withdrawal of asylum on humanitarian grounds:** if the beneficiary has unlimited residence in another state, if they obtained citizenship in another EU MS or asylum on the grounds of persecution in another EU MS. | | |
| NO | | | ■ The Government has announced a new provision to secure a **residence permit to elderly former asylum seekers** if they have stayed more than 16 years in Norway and if it is considered impossible to return them to their country of origin |

# CONCLUSIONS

Updating the earlier 2010 EMN study, this study provides an overview of the protection statuses in place in Member States and Norway that address a protection need not covered by international protection as harmonised by the EU asylum acquis. The instruments of the CEAS have been recast since 2010, thus the study also investigated the extent to which the development of EU asylum law has led to fewer or additional national protection statuses being adopted, and, more generally, the extent to which EU-harmonised and non-EU-harmonised protection statuses co-exist.

With the caveat that the substantive and geographical scope of the two studies do not entirely overlap, this synthesis shows that the number of States with at least one non-harmonised national protection status remained the same, with 22 Member States in 2010 and 20 Member States and Norway in 2018. Not all Member States that contributed to the 2010 study participated in the current study and vice versa: Cyprus, Germany, Luxembourg and Norway did not participate in the 2010 study, while Germany did not participate in the current study, and Croatia, France, Greece and Latvia did not report a status falling within the scope of this study. Additionally, the scope of this study differs from the scope of the 2010 study, as statuses issued to victims of trafficking, for family reasons and stateless persons, for example, were included in 2010 but expressly excluded here.

Few data sources are available at national level to grasp the scale of national protection statuses granted by Member States and Norway. Information reported to Eurostat on the 'authorisations to stay for humanitarian reasons' presents only a partial picture of the national protection statuses issued, as it refers only to persons who were previously reported as asylum applicants. Persons who have been granted permission to stay for humanitarian reasons but who did not previously apply for international protection are excluded from this data collection.

Available Eurostat data show that the number of statuses granted increased throughout 2010-2018, following a similar trend to (positive) decisions on refugee and subsidiary protection statuses. Throughout 2010-2018, Italy and Germany together issued the most humanitarian statuses - although, in Germany, this refers only to one specific status ('national ban on deportation'). This indicates that national protection statuses continued to exist in parallel with EU-harmonised protection statuses, addressing protection needs not harmonised by EU law.

Several Member States did not have any national protection status falling within the scope of this study. These were Member States that joined the EU after 2004, namely Croatia and Latvia, suggesting that the EU-harmonised protection grounds were considered adequate to cater for all protection-related needs in these States, or perhaps the limited number of persons seeking (international or national) protection there. In most Member States that had national protection statuses, these were already in place before the EU asylum acquis was developed and continued to exist in parallel. In some Member States, up to four different national protection statuses were reported (Italy, the Netherlands). Several national protection statuses ceased to exist (chiefly in Finland and the Netherlands), as their grounds were considered obsolete, or because the EU-harmonised grounds of protection (temporary protection and subsidiary protection) were considered adequate to cater for that specific protection need. In Italy, the legislative provision on residence permits for humanitarian reasons was repealed and specific types of residence permit were introduced in October 2018 (covering medical cases, natural disasters, and other special protection needs). In Sweden, national protection statuses were suspended under the Temporary Act of 2016, with no such statuses to be issued until 2021.

In all 21 States that reported a national protection status, the nature of these statuses did not change, with the definition of the grounds of protection largely shaped at the discretion of States' policy priorities. This study shows that national or non-EU-harmonised protection statuses cater for a wide variety of needs and situations, ranging from serious health conditions to humanitarian (and *non-refoulement*) reasons not to return to the country of origin, to environmental disasters in the country of origin and interest of a minor to remain on the territory of a State.

While these indeed provide added forms of protection over and above the EU statuses, granted at the discretion of Member States but not undermining the international protection status, the national protection grounds remain largely undefined in national legislation. This discretion in the eligibility criteria leaves a significant margin of interpretation to competent authorities, potentially raising challenges for authorities in assessing applications and for applicants in lodging a claim for protection.

A greater level of discretion is found when examining the type of procedures and authorities involved. In half of the statuses examined, asylum authorities were not involved and other migration authorities or political bodies (president, national parliament) decided which third-country nationals may access these statuses. This was echoed in the procedures followed to grant certain statuses, where an application was not examined as part of a single procedure (either at the same time as an application for international protection or at the end of the international protection procedure) but, rather, as a separate procedure. Where procedures were outside the 'regular' asylum procedure, there may be a risk to applicants' access to the same procedural safeguards (e.g. appeals and suspensive effect) as in the regular asylum procedure.

The level of discretion and variation in the content of protection offered by non-EU-harmonised statuses was less evident. In the majority of cases, the content of protection was similar to the minimum standards set in EU law (duration of residence permit, access to healthcare and integration services). For some statuses, the more favourable standards can be explained by the fact that the status existed in national legislation before EU-harmonised statuses were transposed (constitutional asylum and some humanitarian statuses forms of national subsidiary protection). Less favourable conditions were observed for beneficiaries of statuses based on serious health conditions and other 'exceptional circumstances', as well as on protection against *non-refoulement*. A shorter duration of residence permits (less than one year) and restricted access to the labour market could represent a challenge to the integration of beneficiaries. National protection statuses based on climate change and environmental disasters in the country of origin is another example of the stricter approach to the content of protection adopted by some Member States. Recent changes ranged from suspending the granting of this status to adopting a specific status with more restricted access to rights than the EU-harmonised subsidiary protection.

# ANNEX: OVERVIEW OF EU-HARMONISED STATUSES AND IMPLEMENTATION BY MEMBER STATES AND NORWAY

All EU Member States implemented the provisions of the recast Qualification Directive, with the exception of Ireland[192] and the UK,[193] and of the Temporary Protection Directive. Norway[194] and Denmark[195] are not participating States to these Directives but have adopted in their national legislations' equivalent protection status.This annex presents an overview of the content of protection under each of the three harmonised statuses. This Annex was prepared by the EMN Service Provider with the support of EASO.

**METHODOLOGICAL NOTE:** The annex was initially compiled by EASO (Information and Analysis Sector) based on information available in EASO Information and Documentation System (IDS), EASO Annual Reports on the Situation of Asylum, EASO Quality Matrix report on Content of Protection (forthcoming), AIDA country reports, EASO and EMN queries, EC evaluation report on the application of the recast Qualification Directive, NIEM study on the "European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries" as well as publicly available online resources of national authorities (e.g. legislation and official websites of asylum authorities). As the next step, the information was provided to the appropriate national asylum authorities for review[196]. Consequently, **25 EU+ countries (AT, BE, BG, CY, CZ, DE, DK, EE, EL, FI, FR, HR, IE, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK and NO)** reviewed and validated the information collected by EASO. As information for the remaining **4 countries** (**ES, HU, IT** and **UK**) was not officially validated by the national authorities.[197]; for ease of reference, the list of sources used by EASO is provided below for each of those countries.

**Legend**

The content of protection as per EU asylum law

**QD:** Qualification Directive (Directive 2011/95/EU)

**FRD:** Family Reunification Directive (Directive 2003/86/EC)

192 Ireland participated in Directive 2004/83/EC but did not opt into the recast Directive 2011/95/EU. Refugee and subsidiary protection are incorporated in the Irish International Protection Act 2015.

193 The UK participated in Directive 2004/83/EC and is not bound by the recast Directive 2011/95/EU. Subsidiary protection does not exist in the country, but an equivalent form of protection, the so-called humanitarian protection, is recognised by the UK Immigration Rules 339 C.

194 Norway grants refugee status based on the Geneva Convention and the 1967 Protocol and in accordance with the Immigration Act (Act of 15 May 2008). With regards to subsidiary protection, the Norwegian immigration Act states an equivalent form of protection (referred as asylum protection), as defined in the recast Qualification Directive 2011/95/EU that is granted if there is a real risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment upon return to their country of origin. However, does not explicitly encompass protection from the type of serious harm described by the Article 15 c of the Directive but according to the wording of **§** 28(b) of the Immigration Act of 2008, there is no nexus requirement; It is also stated explicitly in the *travaux preparatoires* that it covers the so-called "war-refugees").

195 Denmark is not bound by the recast Qualification Directive and the Temporary Protection Directive, as Denmark has legal reservations towards these Directives. Denmark grants refugee status and subsidiary protection in accordance with the Danish Aliens Act of 2003 (2013), Section 7 (1) and (2).

196 More specifically, EASO directed it to EASO National Contact Points for policy-related queries as well as IDS Advisory Group members.

197 For ease of reference, the list of sources used by EASO for each of those countries are the following:
ES: EASO Information and Documentation System (IDS), EASO Annual Reports on the Situation of Asylum, EC evaluation report on the application of the recast Qualification Directive, NIEM study on the "European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries", AIDA Country Report – Spain, EMN Queries, e.g. EMN, Ad-Hoc query on civic integration policy in relation to recognised refugees (October 2018).
HU: EASO Information and Documentation System (IDS); EASO Annual Reports on the Situation of Asylum; EC evaluation report on the application of the recast Qualification Directive; BMBAH (National Directorate-General for Aliens policing), Asylum Procedures, NIEM study on the "European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries"; AIDA Country Report - Hungary; EMN Queries: EMN Query on Lines of intervention for the effective integration of persons entitled to international protection (ongoing query, July 2019); EMN Query on Access to housing for international protection holders (July 2019); EMN Query on Refugee Employment Support (April 2019); EMN Query on the Status granted to family members of recognized refugees or beneficiaries of subsidiary protection (March 2019); EMN Query on Civic integration policy in relation to recognised refugees (October 2018); EMN Query on Evidence on the impact that policy changes on the right to refugee family reunion may have on asylum intake and the number of family reunion applications received (February 2018).
IT: EASO Information and Documentation System (IDS); EASO Annual Reports on the Situation of Asylum; EASO Quality Matrix report on Content of Protection (forthcoming); EC evaluation report on the application of the recast Qualification Directive; NIEM study on the "European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries"; AIDA Country Report – Italy; EMN Queries: EMN Query on Refugee Employment Support (April 2019); EMN Query on the Status granted to family members of recognized refugees or beneficiaries of subsidiary protection (March 2019); EMN Query on Civic integration policy in relation to recognised refugees (October 2018); EMN Query on Evidence on the impact that policy changes on the right to refugee family reunion may have on asylum intake and the number of family reunion applications received (February 2018).
UK: EASO Information and Documentation System (IDS); EASO Annual Reports on the Situation of Asylum; EC evaluation report on the application of the recast Qualification Directive; AIDA Country Report – United Kingdom; EMN Queries: EMN Query on Refugee Employment Support (April 2019); EMN Query on the Status granted to family members of recognized refugees or beneficiaries of subsidiary protection (March 2019); EMN Query on Civic integration policy in relation to recognised refugees (October 2018); EMN Query on Evidence on the impact that policy changes on the right to refugee family reunion may have on asylum intake and the number of family reunion applications received (February 2018).

# ANNEX: CONTENT OF PROTECTION OF EU-HARMONISED STATUSES

| Content of protection | Refugee Protection | Subsidiary Protection |
|---|---|---|
| **Residence permit** | **Article 24 recast QD** | **Article 24 recast QD** |
| **Issuance of a residence permit required?** | Yes (as soon as possible after refugee protection status has been granted)<br>Yes in all 28 EU MS and NO<br>AT, BE, BG (ID card), CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU (Hungarian ID card), IE, IT, LT, LU, LV, MT, NL, PL (residence card), PT, RO, SE, SI, SK and UK ("leave to remain"), NO | Yes (As soon as possible after subsidiary protection status has been granted)<br>Yes in all 28 EU MS and NO<br>AT, BE, BG (ID card), CY, CZ, DE, DK (subsidiary protection and temporary subsidiary protection), EE, EL, ES, FI, FR, HR, HU (Hungarian ID card), IE, IT, LT, LU, LV, MT, NL, PL (residence card), PT, RO, SE, SI, SK and UK (humanitarian protection), NO |
| **Validity of the first residence permit (or initial length) (in years)** | Minimum 3 years<br>■ Up to 2 years: DK<br>■ Minimum 3 years: IE<br>■ Up to 3 years: CY, HU, DE, EL, MT, PL, RO, SE and NO<br>■ 3 years: AT, EE<br>■ Up to 4 years: FI<br>■ 5 years: LV<br>■ Up to 5 years: BE, BG, ES, HR, IT, LT LU, NL, PT and UK<br>■ Up to 10 years: CZ (or 5 years validity, if younger than 15 years old) and FR<br>■ Permanent: SI and SK | Minimum 1 year<br>■ No less than 1 year: CZ (up to the duration of the protection)<br>■ 1 year: AT, EE<br>■ Up to 1-year: BE, CY, DE, DK (subsidiary protection status), DE, LV, SK<br>■ Up to 13 months: SE<br>■ Up to 2 years: LT, PL and RO<br>■ Up to 3 years: BG, DK (temporary subsidiary protection), EL, HR, HU, MT, PT and NO<br>■ Minimum 3 years: IE<br>■ Up to 4 years: FI, FR<br>■ Up to 5 years: IT, LU, NL, ES, SI (from 1 to 5 years) and UK |
| **Validity of the subsequent residence permit (in years)?** | No harmonisation<br>■ Permanent: AT, BE, FR, NL and UK<br>■ Up to 2 years: DK and DE (1 year, if integration course is not completed)<br>■ Up to 3 years: CY, , EL, HU, MT, PL, RO and SE<br>■ 3 years: EE, IE<br>■ Up to 4 years: FI<br>■ Up to 5 years: BG, ES, HR, IT, LT, LU and PT<br>■ 5 years: LV<br>■ Up to 10 years: CZ (5 years, if younger than 15 years old)<br>■ Norway: depends on the beneficiary request. Temporary permit (with 3-year validity) will be granted, if the individual requests just a renewal, whereas a permanent one, if a specific request is filled<br>■ Not applicable: SI and SK (permanent residency) | No harmonisation<br>■ Permanent: NL and UK<br>■ Up to 1 years: and EL<br>■ Up to 2 years: BE, CY, CZ, DE, DK (subsidiary protection and temporary subsidiary protection), LT, LV, PL, RO, SE, SI and SK<br>■ 2 years: AT, EE<br>■ Up to 3 years: BG, IE, EL, HR, HU, MT and PT<br>■ 3 years: IE<br>■ Up to 4 years: FI<br>■ Up to 5 years: ES, IT and LU Up to 5 years: IT<br>■ Up to 10 years: FR<br>■ Norway: same as refugees |
| **Possibilities of renewal/extension?** | Yes<br>Yes: all EU MS. Not applicable to SI and SK (the first residence permit is permanent) and NO (if the same circumstances apply) | Yes (at least 2 years)<br>Yes: 28 EU MS and NO (if the same circumstances apply) |
| **Time period required to be entitled to permanent residence permit (in years)** | No harmonisation<br>■ After 1 year: HU<br>■ After 3 years: AT, DE, EL and NO<br>■ After 4 years: FI | No harmonisation<br>■ After 3 years: EL, HU and NO<br>■ After 4 years: FI<br>■ After 5 years: BE (from the date of the lodging of the application), CY, CZ, DE, ES, HR, IT, LT, LV, MT, NL, PL, PT, RO (exceptionally, after 4 years), SI and UK |

| Content of protection | Refugee Protection | Subsidiary Protection |
|---|---|---|
| **Time period required to be entitled to permanent residence permit[198] (in years)** | ■ After 5 years: BE (from the date of the lodging of the application), CY, CZ, ES, HR, IT, LT, LV, MT, NL, PL, PT, RO (exceptionally, after 4 years) and UK<br>■ After 8 years: DK (or 4 years in certain cases)<br>■ After 10 years: FR<br>■ Not applicable – permanent residence is granted from the start: BG (rights granted at the beginning, but ID card must be renewed every 5 years), SI and SK<br>■ Permanent residence is not issued: AT (permit renewed every 2 years if the reasons for which the status was given still exist), IE (but after 3 years, they can apply for citizenship) and LU (but admissible to apply for citizenship after 5 years) | ■ After 8 years: DK (or 4 years in certain cases)<br>■ After 14 years: FR<br>■ Temporary residence permit: SE (same as refugees)<br>■ Not applicable – permanent residence is granted from the start: BG (as refugees)<br>■ Permanent residence is not issued: AT (permit renewed every 2 years if the reasons for which the status was given still exist), IE (but after 5 years, they can apply for citizenship), LU (but after 5 years, they can apply for nationality) and SK (but may be issued based on other grounds stipulated by the law, e.g. marriage with Slovak national) |
| **Does this time period differ from the general rule for applying for permanent residence permit?** | No harmonisation<br>Yes: AT, BG, HU, IE, IT, EL, FI, FR, RO, SE, SI and SK<br>No: BE, CY, CZ, DE, DK, EE, ES, HR, LV, LT, LU, MT, NL, PT, UK, NO<br>Not applicable: PL (no general rule) | No harmonisation<br>Yes: BG, IE, IT, EL, FI, FR, PL, RO, SE and SK<br>No: BE, CY, CZ, DE, DK, EE, ES, HR, HU, LT, LU, LV, MT, NL, PT, SI, UK, NO<br>Not applicable: AT, PL (no general rule) |
| **Travel document** | **Article 25(1) QD** | **Article 25(2) QD** |
| **Is a travel document issued?** | Yes<br>Yes all 28 EU MS and NO | Yes<br>Yes all 28 EU MS and NO |
| **If so, what type of document is it (e.g. Geneva travel document or a national travel document)?** | Travel documents in the form set out in the Schedule to the Geneva Convention<br>**Geneva Travel Document:** 28 EU MS and NO | If unable to obtain a national passport should be issued with documents which enable to travel<br>Yes all 28 EU MS and NO<br>■ **Aliens/third-country national passport/travel document:** AT ("Fremdenpass"), BE, BG, HR, DK, CZ, EE, ES, FI, FR, DE, EL, HU, IE, IT, LV, LT, LU, MT, NL, PL, PT, RO, SE, SI, SK and NO<br>■ **Geneva Travel Document:** EL (only in case the person does not have a previous travel document and he/she cannot get one from his/her country of origin)<br>■ **Home Office Certificate of Travel (CoT):** UK<br>■ **Laissez-passer:** CY |
| **Validity (in years)** | No harmonisation<br>■ Up to 1 year: HU and PT<br>■ Up to 2 years: BE, PL, RO and SK<br>■ Up to 3 years: CY, DE, MT and SE<br>■ 3 years: EE<br>■ Up to 5 years: AT, BG, EL, ES, FI, FR, HR, IT, LT, LU, LV (if under 5 years old, 2-year validity or for the period of travel, if for more than 2 years, but not longer than 5 years), and NL<br>■ Up to 10 years: CZ (if younger than 15 years old, 5 years' validity), IE, SI, UK (or 5 years, the same time as the refugee's limited leave)<br>■ 10 years: DK (if 18 years old and holding a permanent residence permit; 5-year validity, if between 2 and 18 years old; and 2-year validity, if younger than 2 years old). | No harmonisation<br>■ One-time document (one-journey): CY<br>■ Up to 1 year: FR, DE, HU, PL and SK<br>■ Minimum 1 year: CZ, EE<br>■ Up to 2 years: BE, HR, LT, PT, RO and SI<br>■ Up to 3 years: BG and MT<br>■ Minimum 3 years: IE<br>■ Up to 5 years: AT (depending on the requested validity from the beneficiary), FI, EL, ES, IT, LU, LV (if under 5 years old, 2-year validity or for the period of travel if for more than 2 years, but not longer than 5 years), NL, SE, SI and UK (or in line with limited |

198 The aim of this question is to cover information on the acquisition of a permanent residence permit according to national legislations in EU+ countries. This section does not refer to the long-term status prescribed in the Directive 2003/109/EC.

| Content of protection | Refugee Protection | Subsidiary Protection |
|---|---|---|
| **Accommodation** | **Article 32 recast QD** | **Article 32 recast QD** |
| **Access to accommodation (as other legally residing third-country nationals)?** | Yes | Yes |
| | Yes all 28 EU MS and NO | Yes all 28 EU MS and NO |
| **Access to specific schemes/programmes to support access to accommodation? (e.g. allowances, assistance in arranging housing, social housing, dedicated platforms/portals)** | No harmonisation | No harmonisation |
| | Yes BE, CZ, DE (at municipal level), DK, EE, EL, FI, FR, ES, HR (2-year support at the expense of the state budget), LU, LV (only monthly cash support), MT, NL, PL (only monthly cash support), RO, SE, SI, SK and NO | Yes BE, DE, DK (for both, subsidiary protection and temporary subsidiary protection), CZ, EE, EL, ES, FI, FR, HR (2-year support at the expense of the state budget), LU, LV (only in monthly cash support), NL, PL (only in monthly cash support), RO, SE, SI, SK, UK and NO |
| | No: AT, BG, CY, IE, IT, HU, LT, PT and UK | No: AT, BG, CY, IE, IT, HU, LT, MT and PT |
| **Dispersal mechanism?[199]** | Allowed on condition of non-discrimination of beneficiaries of international protection (Article 32(2) QD) | Allowed on condition of non-discrimination of beneficiaries of international protection (Article 32(2) QD) |
| | Yes DE, NL, SE and NO | Yes DE, NL and SE |
| | No: AT, BE, BG, CZ, DK, FR, IE, CY, EE, ES, EL, FI, HR, IT, HU, LT, LU, LV, MT, PL, PT, RO, SI, SK and UK | No: AT, BE, BG, CZ, DK, FR, IE, CY, EL, EE, ES, FI, HR, HU, IT, LT, LU, LV, MT, PL, PT, RO, SI, SK and UK |
| **Family unity & reunification** | **Articles 2 and 23 recast QD** | **Articles 2 and 23 recast QD** |
| **Right to family reunification?** | Yes (Obligation of MS to maintain family unity[200]) | Yes (Same as for refugees) |
| | Yes all 28 EU MS and NO | Yes AT (only after three years of the status recognition), BE, BG, CZ, DE (limited to up to 1,000 people per months), DK (for temporary subsidiary protection, the sponsor may normally not have the right to reunify before the residence permit extension after 3 years of residence), EE, ES, FI, FR, HR, IE, IT, LT, LU, LV (after 2 years of residence), NL, PL, PT, RO, SE (but restricted), SI (when sponsor has recognised status for more than 1 year), SK, UK and NO |
| | | No: CY, EL, HU and MT |
| **Eligible family members** | Family ties should have already existed in the country of origin | Same as for refugees |
| | Spouse; unmarried partner in a stable relationship; minor unmarried children; father, mother or another adult responsible for the refugee | |
| | Possibility to restrict family reunification with close relatives on the condition that family ties have already existed in the country of origin and who were dependant on the sponsor | |
| | **Sponsor - Adult refugee** | **Sponsor - Adult beneficiary of subsidiary protection** |
| | **Spouse:** 28 EU MS and NO | **Spouse:** 25 EU MS: AT, BE, BG, CZ, DE, DK, EE, ES, FI, FR, HR, IE, IT, LV, LT, LU, NL, PL, PT, RO, SI, SK, UK and NO |
| | **Unmarried partner in a stable relationship:** AT, BE, BG, DE, DK, EL, ES, FI, FR, HR, IE (civil partner), LT, LU, NL, PT (civil partner), SE (at least 21-years old), SI and UK; NO (partner of at least 24 years old) | **Unmarried partner in a stable relationship:** AT, BE, BG, DE, DK, HR, FI, FR, ES, IE (civil partner), LT, LU, NL, PT (civil partner), SE (at least 21-years old), SI and UK; NO (partner of at least 24 years old) |

199 In asylum policies, a 'dispersal mechanism' refers to a policy implemented by national authorities to 'distribute' asylum seekers or beneficiaries of protection across the territory of the State, to ensure an even distribution among local authorities and avoid 'overburdening' available accommodation or housing facilities

200 According to the recast QD (Article 13(2)), family unity involves ensuring that family members who do not qualify for international protection status nevertheless have access to the same rights as the family member with refugee or subsidiary protection status.

| Content of protection | Refugee Protection | Subsidiary Protection |
|---|---|---|
| Eligible family members | **Dependant unmarried children:**<br>■ Minor children (under 18): AT, BE, BG (also foster), CY, CZ, DE (also foster), DK, EE (also adopted), EL (also foster), ES (also foster and adopted), FI (also foster), FR (also foster), HR (also adopted), HU (also foster), IE, IT, LT, LV (also foster), LU, MT, NL (also foster and adopted), PL (also foster and adopted), PT (also adopted), RO, SE (only exceptionally or if they hold permanent residence permit), SI, SK (also foster) and UK; NO<br>■ Adult unmarried children (over 18) unable to support themselves (e.g. disability): BE (only children with disability), BG, CZ (but under 26 years), EE, EL, ES, FI, FR (but under 19 years old), HR (must be proven they cannot support themselves), IT, LU, NL (but under 25, also foster and adopted child), RO, PT, SE (only exceptionally or if they hold permanent residence permit), SI (when obliged to support them by law) and UK (under 25 years old, exceptionally); NO<br>**Dependant unmarried children of spouse:**<br>■ Minor children (under 18): BE, BG (also foster), CY, CZ, DE (also foster), EE (also foster and adopted), EL (also foster), ES (also foster and adopted), FI (also foster), FR, HR, HU, IT, LT, LU, LV, NL (including foster and adopted children), PL, PT (also married and adopted), RO, SI, SE and SK (also foster); NO (including if children of the partner)<br>■ Adult children (over 18): EE (unable to support themselves (e.g. disability); EL, ES, LU, RO, SE (only exceptionally or if they hold permanent residence permit) and SI (when obliged to support them by law), NO<br>**Dependant unmarried minor children of unmarried partner:**<br>BE, BG, EL, ES, FI, HR, LT, PT, SE and SI<br>**Dependant ascendant (parents) of the adult refugee (e.g. due to medical conditions or luck of family support in the country of origin):**<br>BG, CZ (over 65 or handicapped), EL, EE, ES, HR, HU (including brothers and sisters if dependant due to medical conditions) IT, LT, LU (discretionary, case-by-case), SE (if joint household and only if they hold a permanent residence permit), SI (when obliged to support them by law) and UK (exceptionally)<br>**Dependant ascendant (parents) of the spouse of a refugee (e.g. due to medical conditions):** BG, EE, ES, IT, LT, LU, RO, SE (if joint household and only if they hold a permanent residence permit) and SI | **Dependant unmarried children:**<br>■ Minor children (<18): AT, BE, BG (also foster), CZ, DE (also foster), DK, EE (also adopted), ES (also foster), FI (also foster), FR (also foster), HR, IE, IT, LT, LU, LV (also foster and adopted), NL (also foster and adopted), PL (also foster and adopted), PT (also adopted), RO, SE, SI, SK (also foster) and UK; NO (under 18, including foster children)<br>■ Adult unmarried children (>18) unable to support themselves (e.g. disability): BE (only children with disability), BG, CZ (only <26 years), EE, ES, FI, FR (only <19 years old), HR (must be proven they cannot support themselves), IT, LU, NL (only <25, also foster and adopted), PT, RO, SE (only exceptionally or if they hold permanent residence permit), SI (when obliged to support them by law) and UK (under 25 years old, exceptionally), NO (over 18)<br>**Dependant unmarried children of spouse:**<br>■ Minor children (<18): BE, BG (also foster), CZ, DE (also foster), EE (also foster and adopted), ES (also foster and adopted), FI (also foster), FR, HR, IT, LT, LU, LV, NL (including foster and adopted children), PL, PT (also married and adopted), RO, SI and SK (also foster), NO (under 18, including if children of the partner)<br>■ Adult children (>18): EE (unable to support themselves (e.g. disability),, ES, SE (only exceptionally or if they hold permanent residence permit) and SI (when obliged to support them by law), NO<br>**Dependant unmarried minor children of unmarried partner:**<br>BE, BG, ES, FI, HR, LT, PT and SI<br>**Dependant ascendant (parents) of the adult of the beneficiary of subsidiary protection (e.g. due to medical conditions):**<br>BG, CZ (over 65 or handicapped), EE, ES, FI, HR, IT, LT, LU, RO, SI (when obliged to support them by law) and UK (exceptionally) |
| | **Sponsor – Unmarried minor refugee:** | **Sponsor – Unmarried minor beneficiary of subsidiary protection:** |
| | **Father and/or mother:** AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, IE, HR, HU, IT, LV, LT, LU, NL, PL, PT, SE, SI, SK and NO<br>**Legal guardian/representative:** BG, EE, EL (in case the minor has no relatives in the ascending line or they cannot be located), ES, FI, HR (case-by-case assessment), HU, LU, LV, PL, PT (when no biological parents), RO, SE, SI, SK and NO<br>**Brothers and sisters:** EL (in case the minor has no relatives in the ascending line or they cannot be located), FR (only if dependent on the parents and accompanying them), IE (under 18), PT (when no biological parents), SE and NO<br>**Grandparents:** EL (in case the minor has no relatives in the ascending line or they cannot be located), PL and SE<br>**Open clause for exceptional cases:** any other dependant relatives (e.g. siblings) under individual or humanitarian grounds: CY, DE, EE (other family member if he or she has no parents or if the parents cannot be traced unless this is contrary to the rights and interests of the minor), EL, FI, HR, HU and IT (relatives within the third degree) | **Father and/or mother:** AT, BE, BG, CZ, DE, DK, EE, ES, FI, FR, HR, IT, IE, LV, LT, LU, NL, PL, PT, SE, SI, SK and NO<br>**Legal guardian/representative:** BG, EE, ES, FI, HR (case-by-case assessment) LU, LV, PL, PT (when no biological parents), RO, SI, SK and NO<br>**Brothers and sisters:** FR (only if dependent on the parents and accompanying them), IE (under 18), PT (when no biological parents) and NO<br>**Grandparents:** PL<br>**Open clause for exceptional cases:** any other dependant relatives (e.g. siblings) under individual or humanitarian grounds: DK |

| Content of protection | Refugee Protection | Subsidiary Protection |
|---|---|---|
| **Material requirements sponsor must guarantee[201]** | **Articles 6-9 Family Reunification Directive: Accommodation, health insurance and/or sufficient financial resources** | **Excluded from the scope of the FRD** |
| | Accommodation: AT, BE, CY, CZ, DE, DK, EE (except for UAMs),, EL (except for UAMs), ES, HU, HR, LT, LU, LV, MT, PL, SE, NO<br>Health insurance: AT, BE, CY, CZ, DE, EE (except for UAMs),, EL (except for UAMs), ES, HU, LT, LU, MT, PL, SI, NO<br>Sufficient financial resources: AT (except for reunified parents of UAM), BE, CY, CZ, DE, DK, EE (except for UAMs), EL (except for UAMs), ES, FI, HU, LT, LU, MT, PL, SE, SI, NO<br>No material requirements are requested: BG, EE (if applied within 6 months after status has been granted), FR, IT, EL (only for UAMs), IE, NL (no material requirements, but should apply within 3 months after status has been granted), RO, PT, SK and UK | Accommodation: AT, BE, CZ, DE, DK, EE (except for UAMs), ES, HR, LT, LU, LV, PL, SE and NO<br>Health insurance: AT, BE, CZ, DE, EE (except for UAMs),, ES, LT, LU, PL, SI and NO<br>Sufficient financial resources: AT, BE, CZ, DE, DK, EE (except for UAMs), ES, FI, LT, LU, PL, SE, SI and NO<br>No material requirements are requested: BG, , EE (if applied within 6 months after status has been granted), FR, IT, IE, NL (no material requirements but should apply within 3 months after status has been granted), RO, PT, SK and UK<br>Not applicable: CY, EL, HU, MT and SE (unless they applied before Nov 24, 2015) |
| **'Grace period'?[202]**<br>**If so, please indicate the duration of the grace period** | **Article 12 FRD: Exemption to from the obligation to meet the material requirements for a minimum period of three months after the granting of refugee status** | **Excluded from the scope of the FRD** |
| | Yes:<br>■ 3 months: AT, CZ, DE, EL, FI, HU, LT, LU, MT, NL, SI and SE<br>■ 6 months: EE, PL and NO<br>■ 1 year: BE<br>**No:** BG, CY, DK, ES, HR, LV and UK<br>**No material requirements are requested:** FR, HR, IE, IT, NL, PT, RO and SK | Yes:<br>■ 3 months: DE, EL, FI, LT, LU, SE and SI<br>■ 6 months: EE, PL and NO<br>■ 1 year: BE<br>■ Unlimited: HR<br>**No:** AT, CZ, DK, ES, HR, LV<br>**No material requirements are requested:** BG, FR, HR, IE, IT, NL, PT, RO, SK and UK<br>**Not applicable:** CY, HU, MT and SE (unless they applied before Nov 24, 2015) |
| **What is the validity of the residence permit of the family member?** | It may be valid for less than 3 years and renewable (Article 24(1) recast QD) | It may be valid for less than 3 years and renewable (Article 24(1) recast QD) |
| | ■ Up to 1 year: BE, CZ, HR (up to 5 years in case of unmarried child), IE and LT<br>■ Minimum 1 year: IE<br>■ Up to 2 years: DK<br>■ Up to 3 years: CY, DE, EE, EL, HU, MT, PL, RO SE, SK and NO<br>■ 3 years: AT<br>■ Up to 4 years: FI<br>■ Up to 5 years: BG, ES, IT, LU, NL, PT and UK ("leave in line")<br>■ Up to 10 years: FR<br>■ Permanent: LV (but renewable card with 5-year validity) and SI | ■ Not applicable: CY, EL, HU, MT and SE (unless they applied before Nov 24, 2015)<br>■ Minimum 1 year: CZ (maximum validity as sponsor's permit), IE and DE<br>■ 1 year: AT, HR (up to 3 years in case of unmarried child),<br>■ Up to 13 months: SE<br>■ Up to 1 year: BE, DK, EE, IE, LT, LV and SK<br>■ Up to 2 years: RO<br>■ Up to 3 years: BG, DE, PL, PT and NO<br>■ Up to 4 years: FR and FI<br>■ Up to 5 years: ES, IT, LU, NL, SI and UK ("leave in line") |

201 In this case, it refers to the requirements sponsor or family members need to meet once the grace period expire, if applicable.
202 See Article 12 of the Family Reunification Directive: material requirements do not have to be fulfilled or may be subject to a grace period before these requirements apply (minimum 3 months).

| Content of protection | Refugee Protection | Subsidiary Protection |
|---|---|---|
| **Labour market and qualifications** | **Articles 26 and 28 recast QD** | **Articles 26 and 28 recast QD** |
| **Specific conditions to be granted access (e.g. hold work permit)?** | Yes, possible<br>(Article 26(1): access can be subject to rules generally applicable to the profession and to the public service) | Yes, possible<br>(as for refugees) |
| | Yes: MT<br>No: AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LV, LU, NL, PL, PT, RO, SE, SI, SK, UK and NO (free access to the labour market as soon as they are granted protection) | Yes: BE, MT<br>No: AT, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LV, LU, NL, PL, PT, RO, SE, SI, SK, UK and NO (free access to the labour market as soon as they are granted protection) |
| **Access to procedures for recognition of qualifications?** | Yes (equal treatment with nationals) | Yes (as for refugees) |
| | Yes (equal treatment with nationals): 28 EU MS and NO) | Yes: 28 EU MS and NO |
| **Social assistance** | **Article 29(1) recast QD** | **Article 29(2) recast QD** |
| **Social assistance limited to core benefits?[203]** | No | Yes |
| | No: 28 EU MS and NO | No: BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, NL, RO, PL, PT, SE, SI, SK, UK and NO<br>Yes: LV and MT<br>Yes/No: AT (depends on the federal state) |
| **Healthcare** | **Article 30 recast QD** | **Article 30 recast QD** |
| **Access to emergency healthcare?** | Yes (as nationals) | (Yes as nationals) |
| | Yes (as nationals): 28 EU MS and NO | Yes (as nationals): AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK and NO |
| **Access to mainstream services?** | Yes (as nationals) | Yes |
| | Yes (as nationals): 28 EU MS and NO | Yes: AT, BE, BG, HR, HU, CY (need to pay as nationals do), CZ, DK, FI, FR, DE, EE, EL, ES, IE, IT, LT, LU, LV, MT, NL (need to pay as nationals do), PL, PT, RO, SE, SI, SK and UK, NO |
| **Specific support to those with special needs (e.g. to persons who have undergone torture, rape, or other serious forms of psychological, physical or sexual violence)?** | Yes | Yes |
| | Yes, specific support is provided: AT, BE, EL, FR, HR, HU (but limited), IT, LV, PT, RO (to those with special needs) SE, SI, SK, and UK (extremely limited)<br>No specific support (same as nationals): BG, CY, CZ, DE, DK, EE, EL, ES, FI, IE, LT, LU, MT, NL, PL, NO (special support provided is integrated in the general healthcare system) | Yes, specific support is provided: AT, BE, FR, EL, HR, HU (but limited), IT, LV, PT, RO (to those with special needs) SE, SI, SK and UK (extremely limited)<br>No specific support (same as nationals): BG, CY, CZ, DE, DK, EE, EL, ES, FI, IE, LT, LU, MT, NL, PL, NO |
| **Education** | **Article 27 recast QD** | **Article 27 recast QD** |
| **Access to general system of education (same as nationals)?** | Yes | Yes |
| | Yes: 28 EU MS and NO | Yes: 26 EU MS plus DK (for beneficiaries of subsidiary protection) and NO<br>No: DK (beneficiaries of temporary subsidiary protection have access but required to pay) |
| **Additional support provided (e.g. preparatory classes, additional classes of official language, remedial classes, assistance of intercultural assistant)?** | No harmonisation | No harmonisation |
| | Yes: AT, BE, CY, CZ, DE, DK, EE, EL, FI, FR, HR, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK and NO (special financial support/scholarships)<br>No: BG (same as nationals), ES, HU, IE, and UK | Yes: AT, BE, CY, CZ, DE, DK, EE, EL, FI, FR, HR, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK and NO (special financial support/scholarships)<br>No: BG (same as nationals), ES, IE, HU and UK |

203 The Qualification Directive 2011/95/EC refers to core benefits as the benefits that cover "at least minimum income support, assistance in the case of illness, or pregnancy, and parental assistance, in so far as those benefits are granted to nationals under national law". There are several CJEU judgements that further clarify this issue.

| Content of protection | Refugee Protection | Subsidiary Protection |
|---|---|---|
| **Integration** | **Article 34 recast QD** | **Article 34 recast QD** |
| **Access to 'mainstream' support (available for legally residing third-country nationals)?** | Yes<br>Access to integration programmes which are considered to be appropriate so as to take into account the specific needs of beneficiaries of international protection or create pre-conditions which guarantee access to such programmes | Yes<br>Same as refugees |
| | Yes: AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK and NO<br>No: HU | Yes: AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK and NO<br>No: BG and HU |
| **Access to targeted support (i.e. specifically for beneficiaries of the status)?** | Yes | Yes |
| | Yes: AT, BE, CY, CZ, DE, DK, EE, EL, ES, FR, HR, IT, LT, LU, LV, NL, PL, PT, RO, SE, SI, SK, UK and NO<br>No: BG, EL, FI, HU, IE and MT | Yes: AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FR, HR, IT, LT, LU, LV, NL, PL, PT, RO, SE, SI, SK, UK and NO<br>No: EL, FI, HU, IE and MT |
| **If so, how long is the support granted for?** | No harmonisation | No harmonisation |
| | ■ One-time support: LT and LV (plus single financial support for 10 months during the first 12 months of protection, if not sufficient resources; only during 3 months, if the person starts to work)<br>■ Up to 12 months: CZ (targeted accommodation in an integration facility may be provide up to 18 months), DK (in case of employment integration programmes, up to 5 years), FR, PL, RO and SK<br>■ Up to 18 months: ES (or 24 months in case of vulnerable beneficiaries)<br>■ Up to 2 years: HR (e.g. accommodation support), NL and SE (additional financial allowance)<br>■ Up to 3 years: SI<br>■ Not applicable (no specific integration support provided): BG, EL, FI, HU, IE and MT<br>■ No time-limit set: AT, CY, DE (depends on the specific measures), BE (depends on the place where the beneficiary lives), EL (the time period depends on specific programme), LU (the Welcome and Integration Contract has to be completed within 2 years, but some support is provided as long as it is needed) and PT<br>■ Norway: Refugees receive two kinds of integration support. For 5 years they have access to economic support provided by the local community (founded by the State). Refugees can also receive direct support (salary as part of the integration program) for 2 years. | ■ One-time support: LT and LV plus single financial support for 7 months during the first 12 months of protection, if not sufficient resources; only during 3 months, if the person starts to work)<br>■ Up to 12 months: CZ, DK (in case of employment integration programmes, up to 5 years), FR, PL, RO and SK<br>■ Up to 18 months: ES (or 24 months in case of vulnerable beneficiaries)<br>■ Up to 2 years: HR (e.g. accommodation support), NL and SE (additional financial allowance)<br>■ Up to 3 years: SI<br>■ Not applicable (no specific integration support provided): BG, EL, FI, HU, IE and MT<br>■ No time-limit set: AT, CY, DE (depends on the specific measures), BE (depends on the place where the beneficiary lives), EL (the time period depends on specific programme), LU (the Welcome and Integration Contract has to be completed within 2 years, but some support is provided as long as it is needed) and PT<br>■ Norway: Beneficiaries receive two kinds of integration support. For 5 years they have access to economic support provided by the local community (founded by the State). Refugees can also receive direct support (salary as part of the integration program) for 2 years. |
| **Ending or refusal to renew protection** | **Articles 11, 12 and 14 recast QD** | **Articles 16, 17 and 19 recast QD** |
| **Are grounds to end or refusal to renew protection formally foreseen?** | Yes | Yes |
| | Yes: 28 EU MS and NO | Yes: 28 EU MS and NO |
| **Change of status** | | |
| **Possibility to lodge an application for another protection status?** | Yes, to subsidiary protection[204] | Yes |
| | Yes: 28 EU MS<br>No: Norway (single procedure), unless a refugee submits a new application entirely based on new ground/s | Yes: 28 EU MS<br>No: Norway (single procedure), unless a refugee submits a new application entirely based on new ground/s |

204 See CJEU, joined cases C-175/08, C-176/08, C-178/08 and C-179/08, Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashi & Dier Jamal v Bundesrepublik Deutschland, 2 March 2010, ECLI:EU:C:2010:105, para 76


## Keeping in touch with the EMN

EMN website www.ec.europa.eu/emn

EMN LinkedIn page www.linkedin.com/company/european-migration-network/

EMN Twitter www.twitter.com/EMNMigration

## EMN national contact points

Austria www.emn.at

Belgium www.emnbelgium.be

Bulgaria www.emn-bg.com

Croatia www.emn.hr

Cyprus www.moi.gov.cy

Czech Republic www.emncz.eu

Denmark https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/authorities/denmark_en

Estonia www.emn.ee

Finland www.emn.fi

France www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migrations-REM2

Germany www.emn-germany.de

Greece www.emn.immigration.gov.gr/el/

Hungary www.emnhungary.hu

Ireland www.emn.ie

Italy www.emnitalyncp.it

Latvia www.emn.lv

Lithuania www.emn.lt

Luxembourg www.emnluxembourg.lu

Malta https://homeaffairs.gov.mt/en/mhas-information/emn/pages/european-migration-network.aspx

Netherlands www.emnnetherlands.nl

Poland www.emn.gov.pl

Portugal https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/authorities/portugal_en

Romania www.mai.gov.ro

Slovak Republic www.emn.sk

Slovenia www.emm.si

Spain http://extranjeros.empleo.gob.es/en/redeuropeamigracion

Sweden www.emnsweden.se

Norway www.emnnorway.no

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