



Ad-Hoc Query on duration of subsidiary protection status

Requested by LT EMN NCP on 12 October 2010

Compilation produced on 30 November 2010

Responses from Austria, Belgium, Czech Republic, Estonia, Finland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Slovak Republic, Sweden, United Kingdom (14 in Total)








Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

1. Background Information

The Directive 2004/83/EC is not explicit on whether subsidiary protection is initially granted for indefinite time or may be granted for a set term. Lithuanian legislation on international protection contains provisions on duration of subsidiary protection status, which is 1 year. According to our procedure, beneficiaries of subsidiary protection, who wish to retain this status, must annually re-apply for protection, while the competent authority each year decides whether to grant subsidiary protection for another year or not. Article 19 of the Directive 2004/83/EC mentions “refusal to renew subsidiary protection status”, which may be interpreted as allowing the procedure where the status is granted for a set term and renewable. Nevertheless, recently The Supreme Administrative Court of Lithuania in a couple of its rulings stated that granting subsidiary protection for a set time contradicts the very essence of the Directive 2004/83/EC, which, if read in its entirety, shall only mean that international protection shall be granted for the period it’s needed, and not for a predefined term. In light of this, we’d like to ask our colleagues a couple of questions:








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2. Responses

	Query	Wider Dissemination? ¹	1. Does your national legislation contain provisions on concrete duration of subsidiary protection granted (e.g. 1 year, 2 years etc.)? 2. In case your national legislation does not provide for a set term for subsidiary protection, is there a procedure, enabling the competent authority to review (on recurrent basis) whether a person still qualifies for subsidiary protection?
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that their response is not disseminated further.
	Belgium	Yes	1. Yes article 49/2 § 2 of the immigration law stipulates that the residence permit attached to a subsidiary protection status is valid for 1 year, and renewable. 2. N/A
	Czech Republic	Yes	1) Yes. Subsidiary protection is granted for a defined period (at least 1 year). 2) Continuance of the reasons for subsidiary protection is reviewed by the Ministry of the Interior when the foreign national applies for renewal of the protection.
	Estonia	Yes	1. In Estonia, the law stipulates that subsidiary protection is granted for 1 year and is renewable. 2.N/A
	Finland	Yes	1. The duration for subsidiary protection status is not included in Section 88 on subsidiary protection. A residence permit on the basis of refugee status or subsidiary protection is issued for four years in accordance with section 53 of the Aliens Act. 2. Yes, a new fixed-term residence permit is issued if the requirements under which the alien was issued with his or her previous fixed-term residence permit are still met.
	Italy	Yes	Art.23, c. 2. Legislative Decree No 251/07 implementing Directive 2004/83/EC provides that the holders of subsidiary protection status have been granted a subsidiary protection residence permit valid for three years. Residence permit renewal is subject to verification of the existence of conditions that have allowed the recognition of subsidiary protection. This residence permit allows access to work and study and is convertible for work purposes, if the conditions are met.
	Latvia	Yes	1. According to the Asylum Law the temporary residence permit for 1 year shall be issued a person who has been granted subsidiary protection (alternative status in national legislation). 2. If the person submits an application to the Office of Citizenship and Migration Affairs regarding extension of the time period of residence one month prior to the expiry of the time period and any of the conditions for granting of alternative status still exist, an official authorised by the head of the Office of Citizenship and Migration Affairs shall, within one month, take a decision regarding the issuance of a temporary residence permit for one year.

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	Lithuania	Yes	<ol style="list-style-type: none"> Yes, 1 year. n/a
	Luxembourg	Yes	<ol style="list-style-type: none"> The Law of 5 May 2006 on Asylum and Complementary Forms of Protection does not contain provisions on a pre-set duration of subsidiary protection but stipulates that a third-country national or a stateless person shall cease to be eligible for subsidiary protection when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required (Article 38 Section 1). The Law of 5 May 2006 does not define a review procedure to determine whether a person still qualifies for subsidiary protection. However, Article 38 Section 2 specifies the preceding section to the effect that the Minister of Labour, Employment and Immigration shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.
	Netherlands	Yes	In the Netherlands, a residence permit for subsidiary protection has a duration of five years. Within that period the residence permit can be withdrawn if the situation in the country of origin changes and the need for protection no longer exists.
	Portugal	Yes	<ol style="list-style-type: none"> According to the Portuguese asylum Act, a residence permit is granted to the beneficiaries of the subsidiary protection status, which is valid for the initial period of two years and renewable after the analysis of the applicant's home country situation evolution, except if imperative reasons related to national security or public order prevent it. n/a
	Slovak Republic	Yes	According to the Act on Asylum 480/2002 Article 20, section 3 the subsidiary protection under Section 13a and 13b shall be granted for one year; after the lapse of one year, provision of subsidiary protection shall always be renewed by one year upon request, provided that the requirements under Section 13a or Section 13b are met and there are no grounds for its denial under Section 13c Paragraphs 2 - 4. The alien shall be obliged to file an application under the previous sentence at the earliest 90 days and at the latest 60 days before the lapse of the one-year time limit. The application shall be filed personally on an official application form, whose sample is attached in the Annex of the Act on Asylum, at a police department according to the place of residence and the police department shall immediately send a completed application to the Ministry of Interior.
	Sweden	Yes	In Sweden most residence permits issued on the basis of subsidiary protection is permanent which means that there is no time limit. However, if the conditions that are the basis for subsidiary protection is considered temporary the residence permit can have a time limit of one or two years. In that case the alien can after that time period make a new application for asylum which means that his/her case will be tried again to see if the grounds for subsidiary protection still are present. But this is an exception - normally there is no time limit as the alien gets a permanent residence permit on the grounds of subsidiary protection.
	United Kingdom	Yes	<ol style="list-style-type: none"> Does your national legislation contain provisions on concrete duration of subsidiary protection granted (e.g. 1 year, 2 years etc.)?

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			<p>Yes. Paragraph 339Q(ii) of the UK Immigration Rules states: "The Secretary of State will issue to a person granted humanitarian protection in the United Kingdom a UKRP as soon as possible after the grant of humanitarian protection. The UKRP will be valid for five years and renewable, unless compelling reasons of national security or public order otherwise require or where there are reasonable grounds for considering that the person granted humanitarian protection is a danger to the security of the UK or having been convicted by a final judgment of a serious crime, this person constitutes a danger to the community of the UK." This is the same period of time awarded to an individual issued with refugee status.</p> <p>2. In case your national legislation does not provide for a set term for subsidiary protection, is there a procedure, enabling the competent authority to review (on recurrent basis) whether a person still qualifies for subsidiary protection? National legislation does provide for a set term for subsidiary protection. In addition, there is a policy document called "Settlement Protection" which outlines the review process for those with refugee status and subsidiary protection when the grant of five years' leave expires, and they apply for indefinite leave to remain in the UK: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/</p>
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