



Ad-Hoc Query on Possible changes in the social security concerning the foreigners with residence permit on the grounds of protection status

Requested by FI EMN NCP on 18th September 2015

Compilation produced on

Responses from Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom plus Croatia, Norway (23 in Total)

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1. Background Information

The Finnish authorities anticipate a growth in the social security expenses for foreigners as a consequence of the recent large scale increase in the number of asylum seekers. This has raised much political interest. At the moment Finland has residence based social security system, whereby those foreigners with residence permit on the grounds of protection status are entitled to equal social security with the Finnish citizens, with very few exceptions. Restrictions to the residence based social security for persons with protection based residence permits have been brought up as one possible way for reducing these costs.

Questions:

1. Does the residence permit on the grounds of protection status entitle to the equal social security with citizens?

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1.1. If no, how does it differ from the citizens' social security?

In almost all the Member States who had contributed to the request, protection status residence permit entitles to the equal social security with citizens. However some small differences were mentioned:

*- In **Belgium** those with the protection status, unlike the citizens and refugees, are not entitled to export their pension outside the EU and cannot invoke periods worked abroad to calculate the number of required working days in order to be entitled to Belgian unemployment benefits.*

*- In **Greece** adult family members of third country nationals do not enjoy health care benefits.*

*- In **Italy** the budget law for the year 2001 (No 388/2000) introduced a provision excluding all foreign nationals without a Long-term resident's EU residence permit from access to social security services - Article 80(19). However, this provision has been repeatedly held to be unlawful by the Constitutional Court. This means that the above-mentioned Article 80(19) has become inapplicable, even though it is still contained in a law.*

*- In **Latvia** persons with subsidiary status have access only to the State **social insurance benefits** if they have paid social contributions, meanwhile refugees and citizens have access to the State **social benefits** too.*

*- In **Lithuania** third-country nationals, holding a temporary residence permit, can access only the social guarantees that are granted on a contributory basis.*

2. Have the authorities considered reducing or restricting social security for persons with the protection status residence permit?

2.1. If yes, what steps have been taken?

Serious steps towards reducing or restricting social security for persons with the protection status residence permit had not been taken in any of the contributed Member States.



*However there had been some debate about the principles in **Belgium**. Also in the **Slovak Republic** the possibility to apply measures in this regard which will affect also this target group were not excluded. As well **Finland** (the requesting state) restrictions to the residence based social security for persons with protection based residence permits have been brought up as one possible way for reducing the costs. Also in **Lithuania** there are political discussions on the amount of financial entitlements to be provided for beneficiaries of international protection.*

We would very much appreciate your responses by the 9th of October 2015.

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2. Responses¹

		Wider Dissemination? ²	
	Austria	Yes	<p>1. According to Art. 29 para 1 of the new Qualification Directive (Directive 2011/95/EC), persons enjoying international protection status receive the necessary social benefits, just as Austrian citizens.</p> <p>2. No, as this is not possible according to European law.</p> <p>Source: Federal Ministry of the Interior.</p>
	Belgium	Yes	<p>1. Recognised refugees have equal social security rights as Belgian citizens. For beneficiaries of subsidiary protection there are a limited number of differences concerning social rights compared to Belgian citizens and compared to recognized refugees in Belgium.</p> <p>The Belgian social security³ is mainly a double system of</p> <p>(1) social insurance, which is work-based and grants replacement incomes as well as income supplements to compensate for certain costs (e.g. health care) and</p> <p>(2) social aid, which is not work related and residual, hence non-contributory, based on the solidarity principle, and financed by the general taxation system.</p> <p>In general one should note that beneficiaries of protection (like Belgians) only have access to the social insurance rights (first pillar) after they have worked.</p> <p>1.1 For beneficiaries of subsidiary protection there are a limited number of differences concerning social insurance and social aid rights compared to Belgian citizens (and recognized refugees in Belgium).</p> <ul style="list-style-type: none"> Concerning social insurance rights (work-based), there are small differences. For example, beneficiaries of subsidiary protection are entitled to pensions, but cannot export them outside of the EU. They need to have their residence in Belgium or the EU (except Denmark) to be granted their pension rights. Belgians and refugees can have their pensions paid anywhere in the world. Another example is that beneficiaries of subsidiary protection cannot invoke periods worked abroad to






¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

³ The EMN study on Migrant Access to Social Security – Policy and Practice in Belgium provides a detailed overview of the social security entitlements of immigrants in Belgium. More specifically, table 1 on pages 16-38 of this report provides a detailed overview for all social security rights in Belgium with relevant amounts.





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			<p>calculate the number of required working days in order to be entitled to Belgian unemployment benefits.</p> <ul style="list-style-type: none"> Concerning social aid, beneficiaries of subsidiary protection are not entitled to an integration income. They are however entitled to residual social aid, which is equivalent when it comes to income. <p>Other differences between recognized refugees and beneficiaries of subsidiary protection decreased recently (end 2013, beginning of 2014). In the light of the transposition of the qualification directive 2011/95/EU and following a judgement of the Belgian constitutional court, beneficiaries of subsidiary protection are now treated equally as Belgians and recognised refugees concerning their right on 'disabled persons benefits' and on 'guaranteed family allowances' (child benefits)</p> <p>2. No - there was however debate about the principle. There were no concrete measures proposed but in the context of the current influx of asylum seekers, the president of the N-VA (which is the biggest Flemish political party and which is part of the government), pleaded for reduced social security for persons that receive international protection. Most other political parties (including another governmental party) were not in favour. The main argument used – also said by members of the N-VA – is that it is not possible considering the international commitments from Belgium, most specifically in the Geneva Refugee Convention.</p> <p>There was however a proposal in parliament to limit child benefits for newcomers (not only refugees) from 25% of the child benefit in a first year after arrival up to 100% after 4 years). At this moment, it does not look plausible that this proposal will become law.</p>
	Czech Republic	Yes	<ol style="list-style-type: none"> Yes, it does. No.
	Estonia	Yes	<ol style="list-style-type: none"> In Estonia the foreigners with residence permit on the grounds of protection status are entitled to equal social security with Estonian citizens. N/A
	Finland	Yes	<ol style="list-style-type: none"> We have residence based social security, which means that the foreigners with residence permit on the grounds of protection status are entitled to equal social security with the Finnish citizens, with very few exceptions. It has raised political discussion but no concrete steps have been taken.
	France	Yes	<ol style="list-style-type: none"> Yes : when the protection status is given, the appropriate residence permit issued (as refugee or beneficiary of subsidiary protection), the foreign national will have access to the same rights as French nationals, including social security rights. No
	Germany	Yes	<ol style="list-style-type: none"> Yes.






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			2. No.
	Greece	Yes	<p>1. Social security system in Greece is based to employment and all the employed persons (included foreigners with resident permit according to Reg. EU 1231/2010) enjoy the same rights provided that social security contributions are paid.</p> <p>2. Foreigners with resident permit are entitled to equal treatment in social security field with the Greek citizens, with one exemption (family members of TCN who are adult, up to 18 years old, do not enjoy health care. At this time, the competent Ministry does not consider reducing or restricting any relevant entitlement.</p>
	Hungary	Yes	<p>1. Yes, beneficiaries of international protection are entitled to equal social security with the Hungarian citizens, but it is independent from their residence-status. Beneficiaries of international protection, starting from their recognition, are entitled to equal rights and obligations with the Hungarian citizens (with a few exceptions in all respect) by virtue of law, and this includes social allowances, too.</p> <p>2. No.</p>
	Ireland	Yes	<p>1. Persons whose permission to reside in the State is in force can access the social protection system on the same basis as Irish nationals once the qualifying criteria for the various schemes therein are met.</p> <p>1.1 Not applicable.</p> <p>2. No.</p> <p>2.2 Not applicable.</p>
	Italy	Yes	<p>1. Yes. Article 2(29) and Article 41 of the Consolidated Act on Immigration of 1998 established the equality between foreign and Italian nationals when it comes to the enjoyment of fundamental rights. In addition to these provisions, and in accordance with European Union and international law, Article 27 of Legislative Decree No 251/2007, implementing Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, lays down that: “The holders of refugees status and of subsidiary protection status are entitled to the same social security and healthcare as Italian nationals”.</p> <p>2. The budget law for the year 2001 (No 388/2000) introduced a provision excluding all foreign nationals without a Long-term resident’s EU residence permit from access to social security services - Article 80(19). However, this provision has been repeatedly held to be unlawful by the Constitutional Court, in proceedings concerning its compatibility with a number of social security benefits, such as the attendance allowance for the civilian disabled who are totally unfit for work (Judgements No 11/2009 and No 40/2013), the disability pension for civilian disabled or invalids (Judgements No 11/2009 and No 40/2013), the monthly disability allowance for civilian disabled or invalids (Judgement No 187/2010) and the monthly disability allowance for foreign minors (Judgement No 329/2011). Please note that in Italy the judgements of the Constitutional Court are applicable to all</p>







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			similar cases. This means that the above-mentioned Article 80(19) has become inapplicable, even though it is still contained in a law.
	Latvia	Yes	<ol style="list-style-type: none"> 1. We have two kind of social benefits – State social benefit and State social insurance benefit. Refugees have the same access to the State social benefits and State insurance benefits as Latvian citizens, but persons with subsidiary status have access only to the State social insurance benefits if they have paid social contributions. 2. Latvian authorities do not consider to reduce or restrict social benefits to these persons.
	Lithuania	Yes	<ol style="list-style-type: none"> 1. In Lithuania, two different residence permits may be issued on the ground of protection: in case of subsidiary protection, a temporary residence permit will be issued; in case of a refugee status, a permanent residence permit will be issued. Third country nationals, holding a permanent residence permit, are entitled to the equal social security status with citizens, with very few exceptions. Third-country nationals, holding a temporary residence permit, can access only the social guarantees that are granted on a contributory basis. 2. At the moment Lithuania has decided to shorten the time of integration for all beneficiaries of international protection. Integration at the Refugee reception center is shortened from 12 to 3 months and integration in the municipalities is shortened to 12 months. There are political discussions on the amount of financial entitlements to be provided for beneficiaries of international protection, but no measures have been introduced so far.
	Luxembourg	Yes	<ol style="list-style-type: none"> 1. Yes. In Luxembourg articles 50 and 51 (1) of the amended law of 5 May 2006 (Asylum law) guarantee the access to social assistance and to health care under the same conditions as Luxemburgish nationals. 2. No.
	Netherlands	Yes	<ol style="list-style-type: none"> 1. From the moment a TCN is granted a residence permit on the grounds of protection status, he/she has equal access to social welfare as Dutch citizens. 2. The Dutch authorities have not considered reducing or restricting the access to social security for persons with a protection status residence permit.
	Portugal	Yes	<ol style="list-style-type: none"> 1. The Portuguese legal framework (Act n.º 26/2014, 5th May) establishes that persons benefitting from the status of refugee and subsidiary protection enjoy the rights and are subject to the duties of foreign nationals residing in Portugal, insofar as they do not contradict the provisions of this law, of the 1951 Geneva Convention and the 1967 New York Protocol. They are also obliged to uphold laws and regulations, as well as the measures aimed at maintaining public order (Article 65 - Rights and obligations). Regarding social security this Act establishes that persons benefitting from the status of refugee or subsidiary protection are subject to the legal provisions related to the social security system (Article 72 - Social security). 2. No.


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	Slovak Republic	Yes	<ol style="list-style-type: none"> 1. In the Slovak Republic the access to the social security benefits enjoyed by Slovak citizens is in principle granted to all third country nationals who fulfil the conditions set in the legislation. The legislation is enough explicit and accurate with a low rate of discretionary power. The granting of social security benefit is depending on the type of residence of the third country national and is not bound by his/hers legal status. Therefore, provided that those granted international protection fulfil the conditions set in the legislation, they are entitled to the social security benefits under the same terms as the Slovak citizens. For more information please see the EMN national study: Migrant Access to Social Security and Healthcare In the Slovak Republic: Policies and Practice (http://emn.sk/sk/studie-emn/item/download/1027_9372df46f06c02caf242c5c24a7bd159.html) 2. No, but based on the actual socio-political situation, the Ministry of Labour, Social Affairs and Family of the Slovak Republic does not exclude the possibility to apply measures in this regard which will affect also this target group.
	Slovenia	Yes	<ol style="list-style-type: none"> 1. Yes the foreigners with residence permit on the grounds of protection status are entitled to equal social security as Slovenian citizens; 2. N/A
	Spain	Yes	<ol style="list-style-type: none"> 1. Yes. The refugees in Spain are entitled to access to the Social Security in the same terms that the Spanish nationals. 2. No.
	Sweden	Yes	<ol style="list-style-type: none"> 1. Sweden have residence based social security, which means that the foreigners with residence permit on the grounds of protection status are entitled to equal social security with Swedish citizens, with very few exceptions. 2. No, not to the best of our knowledge. The central government budget that was presented on the 21 of September envisages no changes in this regard.
	United Kingdom	Yes	<ol style="list-style-type: none"> 1. In general, refugees and recipients of Humanitarian Protection (HP)(UK equivalent of subsidiary protection)have permission to work and are entitled to broadly the same rights and benefits as UK nationals, once they have been granted this status and for a period of 5 years until their leave expires. Once they have completed 5 years limited leave they are entitled to apply for Indefinite Leave to Remain (ILR) and will need to do so in order to continue to be entitled to such benefits. 2. No
	Norway	Yes	<ol style="list-style-type: none"> 1. YES, the main principle in the Norwegian National Insurance Scheme – is residence. Citizenship, work participation or ability to pay has no significance in the attribution of rights and duties. Granted political asylum or residence permission is required for rights. Support is provided to asylum seekers in reception centres but is generally lower than the rates of support given to Norwegian nationals and other legal residents in need of social support. Membership in the National Insurance Scheme is the key to eligibility for rights to services from NAV and that is based on legal residence. In Norway, membership can be based on residence or employment.

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			2. NO
	Croatia	Yes	<ol style="list-style-type: none"> 1. Beneficiaries of international protection in the Republic of Croatia enjoy the same social welfare rights as the Croatian citizens. This includes: guaranteed minimum benefit, housing benefit, heating cost coverage, personal accommodation user's needs benefit, one-time grant, education grant, personal disability benefit, allowance for care and assistance, (by third persons), parent-caregiver or a caregiver status, unemployment benefit and social services. 2. Currently there is no political discussion on the restricting social security for persons with the protection status residence permit.
