

Report from
EMN Sweden
2019:2

Comparative overview of national protection statuses in the EU and Norway



**EMN study 2019:
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and Norway**

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Table of contents

| | |
|--|-----------|
| Summary | 6 |
| Sammanfattning på svenska | 9 |
| Introduction | 12 |
| Study aims and objectives | 12 |
| Definitions | 14 |
| Questions to be addressed: | 16 |
| National overview of types of national protection statuses | 17 |
| Subsidiary protection due to an environmental disaster in the country of origin | 18 |
| Protection due to exceptionally distressing circumstances | 18 |
| The suspension of national protection statuses under the Temporary Act. . . . | 20 |
| Special statuses available for children or unaccompanied minors: | 21 |
| National debates regarding the Temporary Act | 22 |
| Key practical or operational challenges | 24 |
| Conclusions | 26 |
| Table 1: Rationale for national protections statuses | 28 |
| Table 2: Content of protection of national statuses | 32 |

Summary

This first EMN Study for 2019 is providing an overview of national protection statuses; on which grounds an asylum seeker can be granted protection in addition to the grounds covered by the EU-harmonised protection statuses, their related procedures, key rights and content of the protection. The aim is to update a similar study that was conducted in 2010 and to provide a synthesis overview of national statuses granted in the Member States and Norway. The temporal scope of the study is 2010 to 2018.

No new protection statuses have been introduced in Sweden within this period. The three national protection statuses within the scope of this study are the following:

- Subsidiary protection due to an external or internal armed conflict or due to other severe conflicts in the country of origin,
- Subsidiary protection due to an environmental disaster in the country of origin and finally
- Protection due to exceptionally distressing circumstances.

A major amendment is the Temporary Act (2016:752) that came into force 20 July 2016, which aimed at adapting the Swedish regulations to the minimum level as required by EU and international law. The national protections statuses were suspended and have subsequently not been applicable for three years, from 20 July to 19 July 2019. Solely if the decision not to grant a residence permit would constitute a breach of international conventions has, it been possible to grant permission on humanitarian grounds (Temporary Act (2016:752) section 11). As a result, of the Temporary Act, there are two different situations when looking at Sweden, before and after 2016.

The reasons behind the amendment were mainly twofold, to decrease the number of asylum seekers coming to Sweden in 2015-2016 and in doing so enabling the society to recover and to strengthen the capacity of the reception of asylum applicants and the integration of newly arrived immigrants. Although the number of asylum seekers coming to Sweden has dropped significantly, the Swedish Parliament decided to extend the Temporary Act the 18 June 2019 for another two years until 19 July 2021 to prevent a return to the provisions applied before the Temporary Act.¹ Furthermore, in June 2019, the Government announced the terms of reference of the all-party commission of inquiry. The key issues are if the main rule in terms of protection should be permanent or temporary residence permits, on what grounds residence permits should be granted, if a new protection status on humanitarian grounds should be

¹ Information provided by the Swedish Parliament, Riksdagen informerar om "Förlängning av lagen om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige", https://www.riksdagen.se/sv/dokument-lagar/arende/betankande/forlangning-av-lagen-om-tillfalliga-begransningar_H601SfU26, 19 June 2019.

introduced and finally the provisions for family migration.² In conclusion, this entails that it is currently difficult to say if the national protection statuses will come into force again in 2021.

The Geneva convention has been given a broader interpretation in Swedish legislation, that fact does however not necessarily mean that more third-country nationals are granted protection statuses in Sweden than in other countries. Worth noting here is that no one has so far been granted protection due to an environmental disaster in the country of origin despite that this possibility was introduced in 1997. National data indicates that subsidiary protection status accounts for the largest number of protection statuses granted within the temporal scope of the study 2010-2018.³ However, the statistics on subsidiary protection include both the EU harmonised status and the national protection status as the same code is used for both the EU harmonised status due to an external or internal armed conflict and the national protection status due to other severe conflicts. In 2014, the two protection statuses were separated so from this year there are statistics presenting the number of persons granted national protection status due to other severe conflicts. The second largest status granted is refugee status, followed by third-country nationals granted national protection statuses due to exceptionally distressing circumstances. The last status due to distressing circumstances was however not granted due to the Temporary Act after 2016.

A broader interpretation of the Geneva convention does not necessarily imply that more third-country nationals are granted protection statuses in Sweden compared to other countries. The application of the law and the assessment of the qualification of persecution also have an impact on the number of protection statuses granted. The UNCHR conducted a study in 2011 in collaboration with the Swedish Migration Agency to examine the application of the law. UNHCR found that the threshold is set high when assessing the qualification of persecution. This entails that one fails to assess if there are other criteria stipulated for the Geneva Convention.⁴ Liv Feijen who was one of the authors behind the study, highlighted the problem also in 2014. The criteria stipulated for protection on basis of severe conflict set the threshold high that is the need to show individualised persecution and nexus between Human Rights violations and conflict.⁵ Her conclusion is, when studying the Nordic countries that the practice is quite restrictive. Complementary protection as non-harmonised protection statuses is positive in itself but it is essential that the conventions and the subsidiary pro-

² Terms of reference of a commission of inquiry, Kommittédirektiv (Dir. 2019:32) Den framtida svenska migrationspolitiken, Beslut vid regeringssammanträde den 14 juni 2019, <https://www.regeringen.se/49d211/contentassets/f0bd496371bb4a8f9ad010b701aba932/den-framtida-svenska-migrationspolitiken-dir.-2019-32.pdf>, 14 June 2019.

³ The EU harmonised subsidiary protection status, Aliens Act (2005: 716) chap. 4, section 2, that is those who when returning to the country of origin, would be at risk of being punished with death or being subjected to corporate punishment, torture or other inhuman or degrading treatment or punishment, or as a civilian person carrying a serious and personal risk of being injured due to indiscriminate violence due to an external or internal armed conflict.

⁴ A collaboration between the UNHCR and the Swedish Migration Agency, a study of the Swedish Migration Agency's examination and decision-making on international protection in 2009-2011, Kvalitet i svensk asylprövning: En studie av Migrationsverkets utredning av och beslut om internationellt skydd, p. 207 (2011).

⁵ Liv Feijen, Filling the Gaps? Subsidiary Protection and Non-EU Harmonized Protection Status(es) in the Nordic Countries, p.195 International Journal of Refugee Law, Volume 26, (June 2014).

tection are applied to their full potential. Interestingly, Feijen highlights in her wording the misconception that complementary protection statuses can be suspended when the number of applicants exceed the reception and absorption capacity. Protection should be provided regardless of the number of people applying for it.⁶ The Swedish Migration Agency has taken a number of measures to address the problems that were highlighted in 2011. There are however, no studies or reports to show to what extent the problems have been addressed or if the findings remain.

A feature of Swedish policy is that policies and legislation are generally generic. Consequently, there are generally no differences regarding the access to apply for asylum nor the asylum procedure. A single procedure is applied, which means an Asylum officer at the Swedish Migration Agency examines whether the requirements for granting international protection are met, and if this is not the case, if the requirements for national protection are met. The national protection due to exceptionally distressing circumstances is above all a derogation, only granted if there are no other grounds. The content of protection is generally the same irrespective of which protection status has been granted. Particular for Sweden is the residence permit concept. The granting of statuses is not decisive as the residence permit is the legal basis for inclusion in the population registry. The key is the Swedish personal identity number that is provided after registration in the population registry. This identity number provides access to all core benefits. For that reason, each individual's rights and entitlements do not depend on the protection status granted but on whether or not a residence permit is granted. The Temporary Act however, that came to force into 2016, introduced differences between refugee statuses and subsidiary protection statuses, both regarding the length of validity of the residence permit and the right to family reunification. The main difference is nevertheless that no protection is granted on humanitarian grounds under the Temporary Act (2016:752), if not infringing international conventions, and that no permanent residence permits are granted.

This EMN study is based primarily on a desk review of Sweden's legal framework and policies concerning protection statuses and recent reports and publications in the field. In particular, reports and analyses from the Swedish Migration Agency have been very useful for the study. Specialists in the field at the Swedish Migration Agency were also particularly helpful in providing comments and feedback on several drafts of the study during the writing process. The final draft of the study was also circulated to the Ministry of Justice.

⁶ Liv Feijen, *Filling the Gaps? Subsidiary Protection and Non-EU Harmonized Protection Status(es) in the Nordic Countries*, p.197 *International Journal of Refugee Law*, Volume 26, (June 2014).

Sammanfattning på svenska

Den första EMN studien för 2019 fokuserar nationella skyddsgrunder; på vilka grunder en asylsökande kan beviljas skydd förutom de EU harmoniserade skyddsgrunderna, processerna som leder fram till beviljandet av skydd samt vilka rättigheter som följer. Syftet med den nationella rapporten är att uppdatera den studie som gjordes år 2010. De nationella rapporterna kommer dessutom ligga till grund för en komparativ syntesrapport. Syftet är således också att ta fram en handbok om de nationella skyddsgrunder som finns inom EU plus Norge. Rapporten täcker perioden 2010 - 2018.

Inga nya nationella skyddsgrunder har tillkommit under perioden som studien täcker utan fortsatt finns följande tre nationella skyddsgrunder:

- Övrig skyddsbehövande – en utlänning som är i behov av skydd på grund av en yttre eller inre väpnad konflikt eller på grund av andra svåra motsättningar i hemlandet känner välgrundad fruktan att utsättas för allvarliga övergrepp
- Övrig skyddsbehövande - en utlänning som inte kan återvända till sitt hemland på grund av en miljökatastrof
- Uppehållstillstånd på grund synnerligen ömmande omständigheter

Den stora förändringen är istället lagen om tillfälliga begränsningar av möjligheten att få uppehållstillstånd (Lag 2016:752) som fick laga kraft den 20 juli 2016. Den begränsar antalet skyddsgrunder till enbart EU harmoniserade såsom flyktingstatus och alternativt skyddsbehövande. Inga nationella skyddsgrunder beviljas således under perioden den tillfälliga lagen är i kraft. Uppehållstillstånd kan dock beviljas om det skulle strida mot svenska konventionsåtaganden att inte bevilja skydd enligt 11§ (Lag om tillfälliga begränsningar 2016:752). Den tillfälliga lagen gör således att två olika situationer framträder i den nationella rapporten, den före och den efter juli 2016.

Lagen om tillfälliga begränsningar av möjligheten att få uppehållstillstånd beslutades av framförallt två skäl: att minska antalet asylsökande till Sverige efter den höga inströmningen av asylsökande under 2015-2016 och för att på så sätt ge det svenska samhället möjlighet att återhämta sig för och för att se till att det finns kapacitet för både mottagning av asylsökande och för att integrera de som beviljas skydd i Sverige. Trots att antalet asylsökande har minskat beslutar den svenska riksdagen den 18 juni 2019 att förlänga den tillfälliga lagen med ytterligare två år till och med den 19 juli 2021 för att Sverige inte ska hamna i samma situation som 2015. I tillägg till att den tillfälliga lagen förlängs, beslutar regeringen i samma månad att ge en parlamentarisk kommitté i uppdrag att utreda den framtida migrationspolitiken. Förutom att utreda om uppehållstillståndet ska vara permanent eller tillfälligt och vilka krav som ska ställas på anhörginvandring ska kommittén ta ställning till om det ska finnas nationella skyddsgrunder och en humanitär grund för uppehållstillstånd. Det gör att det i nuläget är svårt att säga huruvida Sverige i framtiden kommer ha några nationella skyddsgrunder.

Genom att ha nationella skyddsgrunder har Sverige haft en vidare tolkning av flyktingkonventionen jämfört med vissa andra länder. Av betydelse är dock inte enbart vilka skyddsgrunder som finns utan även hur lagen tillämpas. Sverige är till exempel ett av få länder som erbjuder skydd för de som inte kan återvända på grund av miljökatastrof. Skyddsgrunden introducerades i svensk lag år 1997 men än så länge har ingen på denna grund blivit beviljad skydd i Sverige. Den största kategorin är

skyddsbehövande under perioden 2010 – 2018. En och samma kod användes dock för både alternativ och övrig skyddsbehövande fram till 2014 vilket gör att de inte går att särskilja den EU harmoniserade och den nationella skyddsgrunden åt förrån efter 2014. Den näst största kategorin är flyktingstatus följt av synnerligen ömmande omständigheter på tredje plats. Den sistnämnda beviljades dock inte efter juli 2016 på grund av lagen om tillfälliga begränsningar av möjligheten att få uppehållstillstånd förutsatt att det inte stred mot svenska konventionsåtaganden.

En vidare tolkning av flyktingkonventionen betyder inte nödvändigtvis att fler beviljas uppehållstillstånd. Av lika stor betydelse är tillämpningen av lagen och bedömningen utifrån de olika skyddsgrunderna. UNCHR har i samarbete med Migrationsverket genomfört en studie 2011 för att undersöka just tillämpningen av lagen.⁷ En aspekt som undersöktes var hur Migrationsverket bedömer asylskälen. En slutsats var att asylprövningen ställer för höga krav vad gäller intensitet och omfattning av den förföljelse som åberopas. Det resulterar i sin tur i att Migrationsverket inte undersöker de andra rekvisiten för flyktingstatus. Liv Feijen som var med i UNHCR:s granskning tar åter upp detta när hon 2014 även studerar andra nordiska länders asylprövning.⁸ Kraven är högt ställda när det gäller bedömningen av förföljelse vilket resulterar i en restriktiv praxis. Vidare konstaterar hon att nationella skyddsgrunder i sig är positiva men av betydelse är att flyktingkonventionen och EU harmoniserade skyddsgrunder tillämpas i full utsträckning. Intressant är att Feijen i samma artikel tar upp vissa länders uppfattning att nationella skyddsgrunder inte behöver gälla om antalet asylsökande som kommer till landet bedöms överstiga landets mottagningskapacitet. Hon anser att det strider mot internationell flyktingrätt. Migrationsverket har avslutningsvis vidtagit ett antal åtgärder för att komma till rätta med de brister som uppmärksammades 2011. Det saknas dock studier eller rapporter som visar huruvida problemen är åtgärdade eller om nämnda slutsatser fortsatt är aktuella.

Specifikt för Sverige har varit att samma förutsättningar ska gälla oavsett vilken skyddsgrund som en asylsökande ansöker om eller beviljas. En asylutredare utreder huruvida det finns skäl att bevilja skydd som flykting eller skyddsbehövande, om så inte är fallet är det först då som ansökan prövas utifrån synnerligen ömmande omständigheter. Av vikt har varit att särskilja att det senare handlar om en undantagsbestämmelse. Avgörande vid uppehållstillstånd är att den som har beviljats skydd folkbokförs sig och får ett svenskt ID-nummer. Det är folkbokföringen som ger de som har beviljats uppehållstillstånd samma rättigheter som andra boende i landet. Det svenska systemet särskiljer sig på så sätt från andra länder där skyddsgrunden istället är den avgörande faktorn för vilka rättigheter som ges. Lagen om tillfälliga begränsningar av möjligheten att få uppehållstillstånd (Lag 2016:752) har emellertid resulterat i en del skillnader beroende på skyddsstatus både vad gäller tiden för uppehållstillstånd och rätten till familjeåterförening. Den avgörande skillnaden efter den tillfälliga lagen är dock att inga nationella skyddsgrunder beviljas om det inte bryter mot svenska konventionsåtaganden samt inga permanenta uppehållstillstånd utan enbart tillfälliga.

Den nationella rapporten är baserad på framförallt sekundär data såsom lagar, förarbeten, utredningar, Migrationsverkets styrdokument och andra rapporter i ämnet. Av

⁷ Slutrapport från projektet "Förhöjd kvalitet i svensk asylprövning", finansierat av Europeiska Flyktingfonden av UNHCR i samverkan med Migrationsverket, *Kvalitet i svensk asylprövning: En studie av Migrationsverkets utredning av och beslut om internationellt skydd*, p. 207 (2011).

⁸ Liv Feijen, *Filling the Gaps? Subsidiary Protection and Non-EU Harmonized Protection Status(es) in the Nordic Countries*, p.195 *International Journal of Refugee Law*, Volume 26, (June 2014).

stor betydelse för denna studie har varit den expertis som Migrationsverkets rättssavdelning har bidragit med. Till det har Justitiedepartementet varit behjälplig och granskat studien.

Introduction

Study aims and objectives

Much comparative information exists on the practices in the Member States and Norway concerning the EU-harmonised protection statuses – or equivalent,⁹ and on certain national practices concerning specific vulnerable groups such as unaccompanied minors.¹⁰ There is however a lack of up-to-date information on the practices and forms of national (or non-harmonised) protection. This EMN study aims to provide a handbook guide to statuses granted, which address a protection need, other than international protection as harmonised by the Qualification¹¹ and Temporary Protection Directives.¹² This country report will consist of national statuses granted on particular protection grounds, their related procedures, key rights and content of protection.

The 2010 EMN study 'The Different National Practices Concerning Granting of Non-EU Harmonised Protection Statuses'¹³ is a useful and comprehensive overview of practices in 23 Member States¹⁴ but it is now very out of date. The present study will, to some extent, update the 2010 EMN study and, where relevant, highlight statuses that have emerged since 2010 and identify those that no longer exist.

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- 9** See for example the following 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). See for example the 2018 EMN study on 'Approaches to Unaccompanied Minors Following Status Determination in the EU plus Norway'.
- 10** See for example the 2018 EMN study on 'Approaches to Unaccompanied Minors Following Status Determination in the EU plus Norway'.
- 11** 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. Ireland did not participate in Directive 2004/83/EC and is not bound by the recast Directive 2011/95/EU. The UK participated in Directive 2004/83/EC and is not bound by the recast Directive 2011/95/EU.
- 12** 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.
- 13** 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.
- 14** Member States that participated in the 2010 study were Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and United Kingdom.

This study is timely in light of efforts undertaken since 2016 to strengthen the Common European Asylum System (hereafter CEAS) to complement existing legal pathways for admission to the EU of those in need of protection.¹⁵ Building on the 2018 EMN study on 'Changing Influx of Asylum Seekers' and the 2017 EMN study on 'Resettlement and Humanitarian Admission Programmes', this study could also inform the proposed Union Resettlement Framework Regulation and the increasing interest given to other legal pathways for persons in need of protection (e.g. private sponsorship programmes). Finally, the study could complement and support on-going EMN work on the concept of sustainable migration.

In the EU law-making context, harmonisation refers to the approximation of national laws through common (and sometimes minimum) standards 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.

More specifically, subsidiary protection codified and aimed to harmonise a number of existing practices in Member States. However, subsidiary protection, as 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, either stemming 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 death penalty or execution and torture or inhuman or degrading treatment or punishment based on absolute non-refoulement principle, exceptional health situations, etc.

Furthermore, EU legislation allows Member States to adopt statuses on grounds not harmonised by it and adopt, for example, more favourable standards, as long as they do not undermine EU action and are compatible with existing EU legislation. This is reiterated in the recast Qualification Directive (Article 3) and also recalled by the proposal for a Qualification Regulation. In theory, and as confirmed by the Court of Justice of the European Union (hereafter CJEU), the 'right to asylum' is a broader concept than the refugee status and "Member States may grant a right of asylum under their national law to a person who is excluded from refugee status".¹⁶

The aim of the EMN study is to specifically analyse the different practices concerning the granting of national protection statuses in Member States and Norway, meaning: any other protection status granted to a third-country national on the basis of national provisions that do not fall under international protection as established in EU law (i.e. refugee, subsidiary and temporary protections).

The study covers statuses that are available up to 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 'The Different National Practices Concerning Granting of Non-EU Harmonised Protection Statuses', which were ceased or removed from national legislation during the study period.

15 European Commission, Communication 'Towards A Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe', COM(2016) 197, 6 April 2016.

16 See CJEU, B & D, Joined Cases C-57/09 and C-101/09, judgment (Grand Chamber) of 9 November 2010, ECLI:EU:C:2010:661, para. 121

Definitions

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary Version 6.0 unless indicated otherwise.

'Protection': A concept that encompasses 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.¹⁷

'Status': In the context of this study, 'status' refers to a legal status which leads directly to the issuing of a residence permit granting a long-term (i.e. longer than three months¹⁸) right to reside in a Member State.

'International Protection': The EMN Glossary defines 'international protection' with reference to Article 2(a) of the Recast Qualification Directive 2011/95/EU in the following way: In the global context, the actions by the international community on the basis of international law, aimed at protecting the fundamental rights of a specific category of persons outside their countries of origin, who lack the national protection of their own countries. In the EU context, international protection encompasses refugee status and subsidiary protection status.

'National protection status': In the context of this study, national protection refers to any protection status granted by a State to a third-country national on the basis of national provisions that are not related to international protection, as defined in and harmonised by the Qualification Directive 2011/95/EU, nor to temporary protection as defined in the Temporary Protection Directive 2001/55/EC. National protection status is the recognition by a State of a third-country national as a person eligible for national protection.

National protection statuses granted in Member States may be conceived as consisting of rights leading to the issuance of residence permits that are granted to a wide range of third-country nationals for a variety of reasons. Such national (or non-harmonised) protection statuses usually lie outside of the asylum procedure and related residence permits are granted as part of (legal) migration policies, and on grounds relating to the situation of the person including at the time when (forced) removal from the EU Member State is imminent. Grounds may include:

- Status for relocated or resettled persons (that are not granted an international protection status harmonised by EU law or equivalent),
- Statuses for beneficiaries of private or community sponsorship programmes,
- Statuses for beneficiaries of other programmes designed to assist for example family members (of persons legally residing in a state and) in need of protection to enter and reside in the EU),
- Constitutional asylum (that does lead to granting an international protection status harmonised by EU law or equivalent),

¹⁷ UNHCR Master Glossary of Terms, June 2006, Rev.1, available at: <https://www.refworld.org/docid/42ce7d444.html> and EMN Glossary of terms.

¹⁸ In this context, 'long-term' is to be understood in accordance with the provisions of Regulation (EU) No 265/2010 (Long Stay Visa Regulation).

- Collective protection (that does lead to granting an international protection status harmonised by EU law or equivalent),
- Other (including humanitarian) statuses for:
 - Medical reasons,
 - Statuses for climate change reasons and natural disasters,
 - Statuses for local personnel of armed forces (e.g. Interpreters),
 - Special statuses for unaccompanied minors,
 - Special statuses for children (if different from the protection-related status provided to adults for the above-listed reasons).

This is not an exhaustive list.

'Humanitarian protection': A decision granting authorisation to stay for humanitarian reasons by administrative or judicial bodies under national law. Please note that the present study covers humanitarian protection granted to third-country nationals already present on the territory of Member States. This study does not include 'humanitarian visas' aimed to provide access to the territory of Member States of persons in need of protection.

'Resettlement': In the global context, it is the selection and transfer of refugees from a state in which they have sought protection to a third country which has agreed to admit them as refugees with permanent residence status. The status provided ensures protection against refoulement and provides a resettled refugee and his/her family or dependants with access to rights similar to those enjoyed by nationals. For this reason, resettlement is a durable solution as well as a tool for the protection of refugees. In the EU context, resettlement refers to the process whereby, on a request from UNHCR based a person's need for international protection, third-country nationals are transferred from a third country and established in a Member State, where they are permitted to reside with one of the following statuses: (i) refugee status within the meaning of Article 2(d) of Directive 2011/95/EU; (ii) 'subsidiary protection status' within the meaning of point (g) of Article 2 of Directive 2011/95/EU; or (iii) any other status which offers similar rights and benefits under national and Union law as those referred to the previous points.

'Relocation': In the general EU-context, the transfer of persons having a status defined by the Geneva Refugee Convention and Protocol or subsidiary protection within the meaning of Directive 2011/95/EU (Recast Qualification Directive) from the EU Member State which granted them international protection to another EU Member State where they will be granted similar protection, and of persons having applied for international protection from the EU Member State which is responsible for examining their application to another EU Member State where their applications for international protection will be examined. In the context of the EU emergency relocation programme, the transfer of persons in clear need of international protection, as defined in Council Decision 2015/1601 and 2016/1754, having applied for international protection from the EU Member State, CH or NO which is responsible for examining their application to another EU Member State, CH or NO where their application for international protection will be examined.

'Private sponsorship schemes':¹⁹ There is no common and agreed definition of private sponsorship. Generally, they involve a transfer of responsibility from government

¹⁹ <https://publications.europa.eu/en/publication-detail/-/publication/1dbb0873-d349-11e8-9424-01aa75ed71a1/language-en/format-PDF/source-77978210>.

agencies to private actors for some elements of the identification, pre-departure, reception, or integration process for beneficiaries. Thus, sponsorship is best described as a way of admitting persons for humanitarian or (international) protection reasons, rather than as a separate 'protection status' in itself.

Core benefits: In the context of EU law, the concept of core benefits is understood to cover, at least as 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.²⁰

Constitutional asylum: see section 3 on the scope of the study.

Collective protection: see section 3 on the scope of the study.

Questions to be addressed:

- What are the EU-harmonised protection statuses?
- Does Sweden provide protection statuses not covered by EU legislation? (see scope of the study)
- What are the procedures in respect of each non-harmonised protection status available (e.g. map the procedures followed to grant protection)? How does this relate to the procedure applicable to international protection statuses (i.e. at what point can the national status be accessed)?
- Who may access the national (or non-harmonised) statuses?
- What are the key rights, standards and content of protection of the national statuses and how do these compare with the EU-harmonised statuses?

²⁰ See for example Recital 45 of the recast Qualification Directive.

National overview of types of national protection statuses

No new protection statuses have been introduced in Sweden within this period. The three national protection statuses within the scope of this study are the following:

Subsidiary protection due to an external or internal armed conflict or due to other severe conflicts in the country of origin and the applicant having a well-founded fear of being subject to serious abuse, Aliens Act (2005:716) chap.4, section 2a, paragraph 1, point 1. (övrig skyddsbehövande.) This applies irrespective of whether it is the authorities of the country that are responsible for the alien being subjected to persecution or these authorities cannot be assumed to offer protection against persecution by private individuals. To be qualified the applicant need to prove a well-founded fear of being subject to serious abuse in the country of origin. The regulation requires an individual assessment of the risk of being subjected to abuses due to the conflict.²¹ It is of major importance for this status, if there is an internal flight alternative. No protection status will be granted if the applicant is able to live in another part of the country where he or she is offered protection, freedom of movement and opportunities of livelihood.²²

The status 'persons otherwise in need of protection' was introduced in the former Aliens Act (1989:529) chap. 3, section 3. The scope was however different and wider than the recent status, including the requirements stipulated under Article 15 in the Qualification directive. The current wording was introduced in 2010 when implementing the Qualification directive in Swedish law, which led to two different forms of subsidiary protection: one is the EU harmonised protection status (alternativ skyddsbehövande, Aliens Act chap. 4, section 2), and the other the national protection status (övrig skyddsbehövande, Aliens Act, chap. 4, section 2a). The main reason given in the preparatory material regarding the amendments in 1997 was to clarify the difference between protection grounds and humanitarian grounds. Situations that previously were covered under politically humanitarian reasons would be transferred to purely protective grounds.²³ This development led to an expansion of the protection status, also to cover other severe conflicts in the country of origin. Another effect was that these new protection statuses replaced de facto refugees and conscientious objectors who refused to perform military service in wars between states in 1997.

²¹ The Swedish Migration Agency provides a Handbook dealing with Migration, "Handbok i migrationsärenden", recommendations regarding Subsidiary Protection status.

²² Government Bill 1996/97:25 "Svensk migrationspolitik i globalt perspektiv: Proposition 1996/97:25" regarding the introduction of the protection status 'persons otherwise in need of protection'.

²³ Reports by Government commissions of inquiry (SOU 2006:6), "Skyddsgrundsdirektivet och svensk rätt: En anpassning av svensk lagstiftning till EG-direktiv 2004/83/EG angående flyktingar och andra skyddsbehövande", SOU 2006:6, p. 154.

Subsidiary protection due to an environmental disaster in the country of origin

Aliens Act (2005:716) chap. 4, section 2a, paragraph 1, point 2. (övrig skyddsbehövande). The environmental disaster should be sudden and of such dimension that it would be contrary to the spirit of humanity to force the applicant back to the country where the disaster occurred.²⁴ In the preparatory material, it is made clear that this section should not apply to cases where an ongoing deterioration of the food production in the country in question entails difficult livelihoods. Another requirement, which is of major importance for this status is the existence of an internal flight alternative, if the applicant is able to live in another part of the country where there is protection, freedom of movement and opportunities of livelihood. In fact, in cases of environmental disasters, this is often the case that the whole country is not affected.²⁵ The internal flight alternative might for this reason be referred to in these cases. So far, no one has been granted protection status due to environmental disaster.

The status 'persons otherwise in need of protection' was as mentioned above introduced in the former Aliens Act (1989:529). The scope was however different and wider than the recent status, including both the requirements stipulated under Article 15 in the Qualification directive and the national protection status due to an environmental disaster. In the preparatory material regarding the amendments in 1997, the government in office emphasized the need for a clear, effective and a legally secure legislation. Protection should be offered for those who really need it. The Government in office further raised the alarming development in the environment and resource area. People are displaced because of environmental disasters and this has become a new cause of migration. Introducing the new status 'persons otherwise in need of protection', the Geneva Convention was given a broader interpretation in Swedish legislation.²⁶

Protection due to exceptionally distressing circumstances

Aliens Act (2005:716) chap. 5, section 6 (uppehållstillstånd på grund av synnerligen ömmande omständigheter), is a derogation, only granted if there are no other grounds but the circumstances are such that a residence permit should be granted. The decision is preceded by an overall assessment of the alien's situation, particularly the alien's state of health, adaptation to Sweden and the situation for him or her in the country of origin. For children, the criteria stipulated is particularly distressing circumstances, giving children a lower threshold. When assessing whether there are such exceptionally distressing circumstances, the different circumstances of the case should be weighed together. Circumstances that alone would not be sufficient to qualify for protection status could if weighed together be sufficient. The reasons must be of a personal nature, such as physical or mental illness, apply the situation in Sweden or the situation in the country of origin. The situation may be that the applicant has

²⁴ Reports by Government commissions of inquiry (SOU 2006:6), "Skyddsgrundsdirektivet och svensk rätt: En anpassning av svensk lagstiftning till EG-direktiv 2004/83/EG angående flyktingar och andra skyddsbehövande", SOU 2006:6, p. 155.

²⁵ Government Bill 1996/97:25 "Svensk migrationspolitik i globalt perspektiv: Proposition 1996/97:25" regarding the introduction of the protection status 'persons otherwise in need of protection'.

²⁶ Government Bill 1996/97:25 "Svensk migrationspolitik i globalt perspektiv: Proposition 1996/97:25" regarding the basis for the future Asylum and Migration policy, section 6.

adapted to Swedish conditions that together with the illness may be considered sufficient for a residence permit on his basis. The situation and experiences in the country of origin is also included in the assessment.²⁷

A problem identified in the former Aliens Act (1989:529) was that there was no clear dividing line between the different permit bases in practice. Protection-related reasons were examined to some extent within the framework of the provision for humanitarian reasons. The introduction of the subsidiary protection status in the Aliens Act was the first amendment to emphasize the differences. Secondly, it must be clearly set in the Aliens Act that protection due to exceptionally distressing circumstances is a derogation. An examination for humanitarian grounds is initiated only when an examination has made it clear that there are no protection grounds. The introduction of this status in 2006 is accordingly and primarily to further separate protection grounds from humanitarian grounds.²⁸

The adaption to Sweden can have significance in the assessment of whether a residence permit can be granted. In cases where the applicant, pending a final decision in the asylum application, have stayed in Sweden for a long time and under such conditions which led the applicant to have some special ties with Sweden. This is especially the case for children. For adults, special requirements are the duration of the legal stay in Sweden and adaptation to Swedish conditions. However, time itself has no relevance in the assessment. Duration of stay is significant only as a reason why a person has had some special tie with the country.²⁹ A proportionality assessment should be done regarding the adaption to Sweden, a weighing between the individual's right to respect for family life and the state's interest in maintaining a regulated migration.³⁰

Regarding the situation in the country of origin, the criteria refer to conditions that, without being protection-based, mean that an expulsion to the country of origin appears to be unsuitable, based on the overall assessment of the applicant's personal situation. In the overall assessment, circumstances can be weighted as information of social exclusion, traumatization due to trafficking or the like. The situation for the child at a return should also be considered, matters such as family or other network to support, the possibility of getting help from social authorities and the opportunity to receive basic material needs, schooling and nursing care.³¹

Despite the fact that it is an overall assessment, protection might be granted solely on medical grounds according to the preparatory materials for the applicable Aliens

²⁷ Preparatory materials for the Aliens Act (2005:716) Government Bill 2004/05:170, "Ny instans- och processordning i utlännings- och medborgarskapsärenden: Proposition 2004/05:170", p. 187.

²⁸ Preparatory materials for the Aliens Act (2005:716) Government Bill 2004/05:170, "Ny instans- och processordning i utlännings- och medborgarskapsärenden: Proposition 2004/05:170", p. 185.

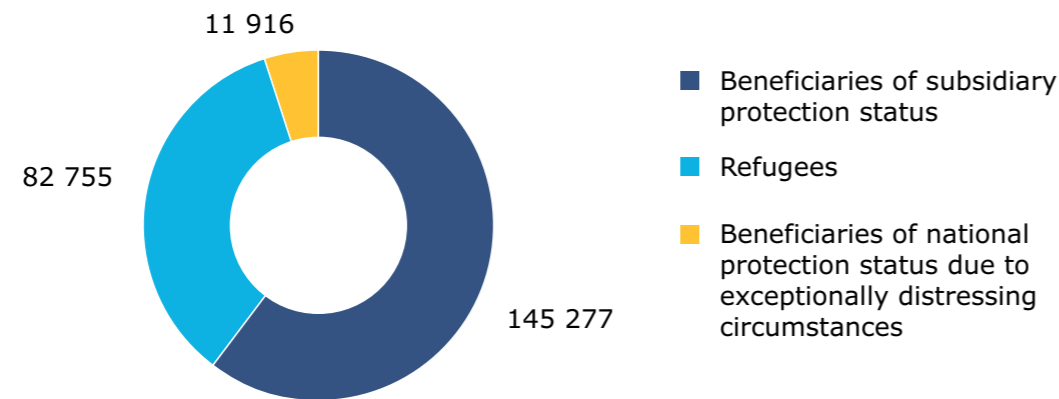
²⁹ Preparatory materials for the Aliens Act (2005:716) Government Bill 2004/05:170, "Ny instans- och processordning i utlännings- och medborgarskapsärenden: Proposition 2004/05:170", p. 191.

³⁰ The Swedish Migration Agency provides additional legal guidelines concerning health conditions and care facilities for children and families with children in particular focus on devitalized children SR 17/2019, Migrationsverket, Rättsavdelningen, "Rättsligt ställningstagande angående hälsotillstånd och vårdmöjligheter som grund för uppehållstillstånd för barn och barnfamiljer med särskilt fokus på devitaliserade barn SR 17/2019.

³¹ The Swedish Migration Agency provides a Handbook dealing with Migration, "Handbok i migrationsärenden", recommendations regarding Protection due to exceptionally distressing circumstances.

Act.³² Such as a life-threatening physical or mental illness or a particularly serious disability. One criteria is that there is no adequate care available in the country of destination. If care is available in Sweden, it needs to be expected to lead to tangible and lasting improvement or the care need to be vital. Further considerations taken are the overall financial consequences for Sweden.³³

Figure 1: The three largest categories of beneficiaries of protection statuses in 2010-2018



Source: Statistics provided by the Swedish Migration Agency³⁴

The suspension of national protection statuses under the Temporary Act

A Temporary Act (Lag (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige) applicable from the 20 July 2016 to the 19 July 2019, repeals the provisions mentioned above on national protection statuses. Solely if the decision not to grant such status would constitute a breach of international conventions will it still be possible to grant permission on humanitarian grounds even under the Temporary Act (Lag 2016:752, 11 §). The reasons behind the amendment were mainly two-fold, to decrease the number of asylum seekers coming to Sweden and in doing so, enabling the society to recover and to strengthen the capacity of the reception of asylum applicants and the integration of newly arrived immigrants.³⁵ The number of asylum seekers has dropped significantly compared to the situation in 2015-2016. However, the Government in office considers that a return to the provisions applied before the Temporary Act would worsen the situation as the number of asylum seekers could once again increase and there are still challenges to address. Thus, a Government bill was submitted to the Swedish Parliament on 9 May 2019, proposing an extension of

³² The Government Bill 2004/05:170, *Ny instans- och processordning i utlännings- och medborgarskapsärenden* Proposition 2004/05:170, p. 190.

³³ The Government Bill 2004/05:170, "Ny instans- och processordning i utlännings- och medborgarskapsärenden: Proposition 2004/05:170" and the Swedish Migration Agency provides a Handbook dealing with Migration "Handbok i migrationsärenden" with recommendations regarding medical reasons.

³⁴ Statistics provided by the Swedish Migration Agency, <https://www.migrationsverket.se/Om-Migrationsverket/Statistik/Beviljade-uppehallstillstand-oversikter.html>, 18 June 2019.

³⁵ The Government Bill 2018/19:128, "Förlängning av lagen om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige 2018/19:128", p. 29, 9 May 2019.

the Temporary Act for another two years, until 19 July 2021 and on 18 June 2019, the Swedish Parliament decided to extend the Temporary Act. Hence, the Swedish regulations will be in line with the minimum level to EU law for a total period of five years. Added to this, the Government has appointed an all-party commission of inquiry. The key issues are if the main rule should be permanent or temporary residence permits, on what grounds residence permit should be granted, if a new protection status on humanitarian grounds should be introduced and finally how the provisions for rules for family migration should look like.³⁶ For that reason, it is currently difficult to say if the national protection statuses will come into force again in 2021.

Special statuses available for children or unaccompanied minors:

There are no special statuses for unaccompanied minors in Sweden however, a Temporary Act addressing unaccompanied young migrants, who had received, or would otherwise, have received, an expulsion order, could be granted residence permits for studies at upper secondary schools. Some of the conditions that must be met are that the applicant must, as a rule, have applied for asylum on 24 November 2015 or earlier, be at least 18 years old when he/she was been issued a decision on expulsion or deportation, and has waited for more than 15 months for such decision. For those who graduate there is the opportunity to apply for a temporary residence permit for six months to search for work. Last day for application under the Temporary Act was 30 September 2018.

The first Temporary Act regarding unaccompanied minors came into force on 1 June 2017 as a consequence of the Temporary Act (2016-2019), as the possibilities of being granted a residence permit for protection purposes in Sweden was restricted. On 7 June 2018, the Swedish Parliament decided to extend the provisions to provide a new opportunity for residence permits for certain unaccompanied minors. The aim was to give asylum seekers who had arrived in Sweden as unaccompanied minors in 2015 or earlier, and who were rejected after long wait times, the opportunity to accomplish studies at upper secondary schools. Another purpose was to address the legal situation of several thousand young migrants in Sweden.

Special statuses for children are also lacking. However the derogation, protection due to exceptionally distressing circumstances Aliens Act (2005:716) chap 5, section 6, was amended in July 2014 to lower the threshold for children. For children, the criteria stipulated is particularly distressing circumstances. This means that the circumstances do not have to be off the same gravity and weight as if it were adults. When the asylum applicant is a child, the so-called portal provision on the best interests of the child, (Aliens Act (2005:716) chap. 1, section 10) should always be applied, the consideration of the child's best and development and the best interests of the child. In assessing the asylum application, it is important that the child's individual reasons are examined separately and not as a part of the parents' cases.³⁷

³⁶ Terms of reference of a commission of inquiry, *Kommittédirektiv (Dir. 2019:32) Den framtida svenska migrationspolitiken, Beslut vid regeringssammanträde den 14 juni 2019*, <https://www.regeringen.se/49d211/contentassets/f0bd496371bb4a8f9ad010b701aba932/den-framtida-svenska-migrationspolitiken-dir.-2019-32.pdf>, 14 June 2019.

³⁷ The Government Bill 2004/05:170, "Ny instans- och processordning i utlännings- och medborgarskapsärenden: Proposition 2004/05:170", p. 195.

National debates regarding the Temporary Act

Many debates still relate to the consequences of the situation in 2015 when the number of asylum seekers reached a record level of almost 163 000 third-country nationals applying for protection in Sweden. One of the outcomes is the Temporary Act (2016:752) which is referred to in this study. An Act that has led to both criticism and justification and one could argue that the national protection statuses have indirectly been debated through the Temporary Act.

A green and liberal think tank, FORES (Forum for Reforms, Entrepreneurship and Sustainability) arranged a seminar the 12 March 2019 to highlight the Temporary Act and its consequences. Two reports in particular were debated, the one from the Swedish Red Cross regarding the humanitarian consequences of the Temporary Act³⁸ and the other from the Rådgivningsbyrå³⁹ analysing the Temporary Act from a legal perspective.⁴⁰ The focus for this study will be the findings related to the protection statuses and the content of the statuses referred. The problem with the Temporary Act according to the Rådgivningsbyrå is that it undermines the protection of children; in particular devitalized children are affected as it is harder for them to obtain protection status. Secondly, the Temporary Act has led to arbitrary assessments in cases where there are humanitarian grounds. This entails a more uncertain judicial process for persons in exceptionally distressing circumstances as the assessment is to a large extent surrendered to the legal practitioner in the individual case

Regarding the humanitarian consequences, the Swedish Red Cross highlights the increased incidence of mental illness among those who were granted temporary residence permits instead of permanent residence permits. A further factor affecting mental illness is the restrictions to family reunification leading to parents and children being separated for a long time. Finally, beneficiaries of subsidiary protection were severely hit when being granted a temporary residence permit of 13 months and being denied family reunification.

The one who justified the Temporary Act on this seminar was a manager from the Swedish Association of Local Authorities and Regions (SKL). The situation in 2015-

³⁸ The Swedish Red Cross, a report regarding the humanitarian consequences of the Temporary Act, *Humanitära Konsekvenserna av den tillfälliga utlänningslagen*, September 2018, https://www.redcross.se/contentassets/4902f3efe95149158fd3b55310ef2cb8/humanitara_konsekvenser-av-den-tillfalliga-utlanningslagen.pdf, 4 June 2019.

³⁹ Rådgivningsbyrå is an agency that helps and give advice for refugees and asylum seekers on issues mainly regarding the asylum process, <http://sweref.org/>, 4 June 2019.

⁴⁰ Rådgivningsbyrå, 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, <https://sweref.org/migrationsrattens-framtid-en-redogorelse-de-juridiska-riskerna-med-att-forlanga-den-tillfalliga-lagen/>, 4 June 2019.

2016 was very constrained for local authorities. There was a need for action to decrease the number of asylum seekers coming to Sweden. The objective of the amendment was precisely to bring down the number of asylum seekers enabling the society to recover and to strengthen the capacity of the reception of asylum applicants and the integration of newly arrived immigrants.

Another example regarding the difficulties obtaining protection status in Sweden under the Temporary Act is from the Swedish Radio. In June 2018, the Swedish Radio reports the outcome from a survey conducted by the Swedish Migration Agency, which showed that it has become more difficult for devitalized children or children with resignation syndrome to obtain residence permits in Sweden under the Temporary Act (2016:752).⁴¹ The temporary Act has not only made it more difficult for children but also other individuals with serious health conditions to obtain protection as exceptionally distressing circumstances do not qualify for a residence permit under the Temporary Act.

Another major topic of debate which is also related to 2015 is the number of unaccompanied minors and youth, especially from Afghanistan that came to Sweden. The number reached 35 000 minors in 2015. Due to long asylum processing times, many of these minors came of legal age in 2016 and in 2017. This has led to debates whether to grant them a collective amnesty or any other possibilities to remain legally in Sweden. As a result of this debate, a Temporary Act to provide those who study at upper secondary level schools the opportunity to stay in the country to finalise their studies, Temporary Act (2016:752), section 16. This legal amendment did not introduce a new protection status but provided a legal opportunity to stay in Sweden for those who qualify. They will also have an opportunity to be granted a residence permit for work purposes if they find a job after finishing school. This topic has been widely debated in Swedish media.⁴²

Finally, overall there have been many national debates regarding migration as there was an election to the Swedish Parliament in 2018 and in this context, migration issues were one of the major campaign topics. However as mentioned above, national protection statuses were not a topic, it was rather individual asylum cases and different types of cases that led to controversial debates, such as unaccompanied minors, devitalized children or asylum seekers with severe health problems, elderly applicants or families that were separated due to Swedish legislation.

⁴¹ The Swedish Radio broadcasting regarding a harder climate for devitalized children to obtain residence permits in Sweden, 27 June 2018, <https://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6984882>, 4 June 2019.

⁴² Dagens Nyheter regarding unaccompanied minors, <https://www.dn.se/om/ensamkommande-flyktingbarn/>. Göteborgsposten regarding unaccompanied minors, <https://www.gp.se/artikelse/Debatt%3A%20Ensamkommande%20barn>, Aftonbladet regarding unaccompanied minors, <https://www.aftonbladet.se/story/9ce4a007-cedc-4695-977d-4e0b2eca3dcf>, 4 June 2019.

Key practical or operational challenges

Before the Temporary Act came into force in 2016, one challenge was the issue of demarcation and consistency between the two forms of subsidiary protection 'Alternativt skyddsbehövande' Aliens Act (2005:716) chap. 4, section 2, and 'Övrig skyddsbehövande' Aliens Act (2005:716) chap. 4, section 2a. There are distinctions between the two protection statuses, first the scope of application and then the level of intensity in the conflict.⁴³ The first one 'Alternativt skyddsbehövande' should be more restrictive according to the preparatory materials for the Aliens Act, applying only to civilians subjected to a serious and individual threat to life or person. The second, 'Övrig skyddsbehövande', on the other hand applies to everyone and there is no requirement of individual risk assessment. The second distinction regards the extent of the conflict. 'Övrig skyddsbehövande' includes situations of political instability in the country of origin, which results in civilians not being guaranteed their basic human rights. 'Alternativt skyddsbehövande' on the other hand applies to a conflict with armed groups leading to indiscriminate violence. To make these distinctions has according to a specialist for the Asylum Procedure at the Swedish Migration Agency been a challenge. To support Asylum Officers in this matter the Swedish Migration Agency has issued internal guidelines.⁴⁴ In addition, there are templates that have been specially designed to support Asylum Officers in handling cases under the Temporary Act as well as an online learning programme. There are also many other internal guidelines that have been issued by the Swedish Migration Agency, an additional one is a "Frequently Asked Questions", dealing with issues that have been perceived as particularly difficult.

Another challenge is the assessment regarding children and protection due to particularly distressing circumstances Aliens Act (2005:716) chap. 5, section 6, especially in cases where the child's best interests might contravene other interests such as the State's right to regulate migration. Cases that are especially challenging are severely ill or otherwise particularly vulnerable children where it is obvious that it is the child's best interest to obtain a residence permit in Sweden, however due to the legislation and other interests, no protection status can be granted. Circumstances in the individual case are weighed against the state's or the society's economic interest. This is particularly the case during the Temporary Act when the possibility of granting protection status under the Aliens Act (2005:716) chap. 5, section 6 is further tightened. This is however not only a challenge when having children seeking asylum but also when assessing very ill adults or elderly people who will face great difficulties when returning to their country of origin. These decisions demand not only legal competence but also the ability to justify the decisions in a clear and comprehensive way so that the applicant understands why the asylum application has been rejected.

The legal provisions to grant a residence permit in Sweden based solely on health conditions and care facilities, has severely been restricted under the Temporary Act (2016:752). As already mentioned in the study, a protection status due to extremely distressing circumstances can solely be granted if the rejection of the asylum application would constitute a breach to International Conventions. However, there is no corresponding reference in chapter 12, section 18 of the Aliens Act, regarding the possibility to have the case re-examined if new circumstances arise after the rejection of the asylum application. This means that the Temporary Act did not entail any amendment in the material conditions for granting a residence permit under the provisions regarding impediments to enforcement, chapter 12, section 18, first paragraph, point 3 of the Aliens Act (medical barriers or any other special reason). The same material assessments that were applied before the Temporary Act was introduced must thus continue to apply. New circumstances are however still needed in order to have the case re-examined. The legal provisions has subsequently been restricted regarding the asylum examination in the first and the second instance but not in the assessment if there are grounds for impediments to enforcement.

⁴³ Liv Feijer, *Filling the Gaps? Subsidiary Protection and Non-EU Harmonized Protection Status(es) in the Nordic Countries*, *International Journal of Refugee Law*, Volume 26, Issue 2, pp. 192, June 2014.

⁴⁴ *The Swedish Migration Agency provides additional legal guidelines, Rättsligt ställningstagande angående skyddsbedömningen vid väpnad konflikt och gränsdragningen mot bestämmelsen om andra svåra motsättningar SR 30/2016.*

Conclusions

When studying the national protection statuses in Sweden there is one period before the Temporary Act (2016:752) and one after. Before the Temporary Act came into force in 2016, there were three national protection statuses: subsidiary protection due to an external or internal armed conflict or due to other severe conflicts in the country of origin, subsidiary protection due to an environmental disaster in the country of origin and finally protection due to exceptionally distressing circumstances. After the Temporary Act (2016:752) came into force the 20 July 2016, the Swedish regulations became in line with the minimum level to EU law. The national protection statuses have not been applied for three years, and will not be applied for another two years as the Swedish Parliament on 18 June 2019 decided to extend the Temporary Act to 2021. Solely if the decision not to grant a residence permit would constitute a breach of international conventions has it been possible to grant permission on humanitarian grounds under the Temporary Act. Hence, the Swedish regulations will be in line with the minimum level as required by EU and international law for a total period of five years and no additional national grounds for protection will be applied.

In addition to that, a major review is planned in the framework of a newly appointed all-party commission of inquiry. For that reason, it is unclear whether the national protection statuses will come into force again in 2021. The reintroduction of national, non-harmonised protection statuses, will likely depend on the views of the politicians on how many asylum seekers Sweden can absorb. Many argue that the situation of 2015, when Sweden experienced a record-level inflow of applicants, may under no circumstances repeat itself and that Sweden should be more restrictive than before 2016. The purpose behind introducing the Temporary Act was to decrease the number of asylum seekers coming to Sweden in order to enable the society to recover and to strengthen the capacity of the reception of asylum applicants and the integration of newly arrived immigrants. The Swedish Parliament's decision to extend the Temporary Act to 2021 signifies that there is now a political majority for a more restrictive asylum policy.

The development in Sweden also depends on the ongoing negotiations in EU regarding asylum- and migration policy, how well the Member States manage to agree about the way forward. In the terms of reference of the all-party commission of inquiry, the government emphasizes that the future migration policy should not deviate too much from other EU Member States. The all-party commission of inquiry is appointed to investigate which factors contribute to individuals applying for asylum in Sweden and to provide an overview of other EU Member States' regulations. The government states in the terms of reference, that measures in place in Sweden cannot deviate too much from the ones in place in other EU Member States as it would counteract the purpose of achieving a more balanced distribution of asylum applicants. Another issue of importance in this context is the protection statuses available. A further issue that will be investigated in the all-party commission of inquiry is subsequently if a new protection status on humanitarian grounds should be introduced. This is why, as argued earlier it is unclear whether the national protection statuses will come into force again in 2021.

Another amendment that was introduced with the Temporary Act was to differentiate the rights of beneficiaries of protection depending on which status they are granted, both regarding the validity of the residence permit and the right to family reunification. In the extension of the Temporary Act to 2021, the right to family reunification is

reinstated again to beneficiaries of subsidiary protection, the EU harmonised protection status. Permanent residence permits will nevertheless not be re-introduced despite the criticisms from NGO:s operating in the field, such as the Swedish Red Cross and Rådgivningsbyrå, that have been referred to in this study. The length of validity of the residence permits granted and which material requirements that are needed when applying for family reunification are another two issues that will be investigated in the all-party commission of inquiry. The content of the protection status granted is consequently also an issue that will be reviewed.

This study is highlighting the number of national protection statuses that is available besides the EU harmonized protection statuses. Swedish legislation has a broader interpretation of the Geneva Convention; three national protection statuses have been outlined. The statistics from the Swedish Migration Agency however indicate that the number of third-country nationals that have been granted national protection statuses are limited. The most obvious example is that no one has so far been granted protection due to environmental disaster. Another significant explanation is that the national protection statuses were suspended under the Temporary Act from 2016. Two reports have however been referred to in this study, indicating a quite restrictive practice in Sweden, the study conducted by UNHCR in collaboration with the Swedish Migration Agency and an article written by Liv Feijen, a Swedish lawyer and researcher specialized in public international law. The conventions and the subsidiary protection statuses have not been applied to its full potential according to these reports and further on, the threshold is set high when assessing the qualification of persecution. However, the study was conducted in 2011 and the report written in 2014. No later studies or reports have been found to explore if this is still a problem. Legal guidelines have been provided to support the Asylum officers and other measures such as an online learning programme and internal guidelines have been developed, particularly to facilitate the application of the Temporary Act. More recent evaluations and studies are thus needed to assess the current practice in Sweden.

Rationale, procedure and content of protection of national protection statuses

Table 1: Rationale for national protection status and determination procedure

| Eligibility | |
|---|---|
| Who is eligible to receive national protection status? | A third-country national who lodges an application for asylum in Sweden, who does not qualify for refugee status or subsidiary protection status but for national protection statuses. |
| Determination procedure | |
| Is an application procedure set out in: a) Legislation? b) Administrative decision/regulation/circular? c) Other (e.g. case law)? | a) Legislation and b) administrative decision. a) The handling of cases by the administrative authorities Aliens Act (2005:716) chap. 13, The appeal of a managing authority's decision Aliens Act (2005:716) chap. 14, The Migration Court and the Migration Court of Appeal Aliens Act (2005:716) chap. 16. b) An administrative decision by the Head of the Quality Department regarding a new standard for processing asylum applications. (Kvalitetschefens instruktion om processbeskrivning för skyddsprocessen I – 69a/2017). Added to this decision, there is one regarding the standard for the initial process (Kvalitetschefens instruktion om processbeskrivningen för initialprocessen I-90/2017) and one decision regarding the standard for the asylum process (Kvalitetschefens instruktion om processbeskrivning för delprocess Prövning I-92/2017). |
| When is application for the national protection status possible: a) Immediately, as part of a single procedure examining the need for international protection? b) Immediately, as part of a separate procedure? c) After exhausting the asylum procedure in-country? d) Other (please explain). | a) Immediately as part of a single procedure examining the need for international protection. d) If new circumstances would arise after a return decision has gained legal force, a new examination will take place to examine if there are grounds for impediments to enforcement. That is if there are obstacles to implement the expulsion order. The scope of this study regarding impediments to enforcement are other protection statuses Aliens Act (2005:716) chap. 12, section 18, paragraph 1, point 1 or of medical reasons chap. 12 section 18, paragraph 1, point 3. |
| Where does the application take place: a) In the territory of your State? b) In a third country? c) Both are possible. | a) In the territory of the state |
| Briefly outline the procedure in terms of: - Authorities involved in examining the application and, if applicable, the issuance of a permit of stay; please clarify if these are the same authorities as those responsible of examining international protection applications; Existing timelines and notification of the (first instance) decision, information to the beneficiary | The Swedish Migration Agency is responsible for the entire process: the registration of the application, the assessment of the application, the issuance of the decision and the enforcement of the decision. However, the Swedish Police Authority is responsible for the enforcement of the return decisions where coercive measures are considered necessary to be able to enforce the decision. All the protection statuses are granted by the Swedish Migration Agency. Since 1 February 2018, the Swedish Migration Agency handles all new asylum applications digitally, which means that all information in an asylum case is found in the Agency's IT-system for case management. The standards for the asylum procedure is outlined in the internal guidelines of the Swedish Migration Agency. ⁴⁵ The initial steps are of major importance to achieve a more efficient procedure. An early screening of the application determines the necessary steps ahead and into which six different tracks the case should be transferred. The objectives of the classification is to shorten the duration of procedures and to assign specialist staff to those cases that need it. Cases that can be subjected to accelerated procedures are transferred to specific tracks for a fast and prioritised process. Personal interviews normally take place in the language the applicant indicated as their mother language. It is normally the same Asylum officer conducting both the personal interview and making the assessment. Asylum officers assess whether the requirements for granting international protection but also for national protection are met. A new legislation entered into force on 20 July 2018, stipulating that the examination procedure should be concluded within 6 months from lodging the application (the Administrative Procedure Act (2017:900) section 11 and 12) with a possibility to extend by additional 9 months. The provision however, does not entail that a case must be decided within six months. The objective of the amendment is to provide the applicant with better opportunities to speed up the final decision in cases that take unreasonably long time to handle. The Swedish Migration Agency is obliged to notify the decision as soon as possible as stipulated in the Administrative Procedure Act. The Swedish Migration Agency calls to a meeting at the Reception Unit for the notification of the decision of the asylum application. |
| Appeal procedures | |
| Is there an appeal in the event of a negative decision? | Yes |
| If yes, is it a two-level system of appeal or one level? | A two-level system |

⁴⁵ The Swedish Migration Agency provides internal guidelines regarding the asylum procedure, "Skyddsprocessen ett helhetsperspektiv", A new standard for processing asylum applications was implemented in 2016, a standard that have been updated and revised since then, <https://verksnatet.migrationsverket.se/download/18.278c5527169445ae55c9716/1551887089088/Skyddsprocessen%20Ett%20helhetsperspektiv.pdf>, 22 May 2019.

| | | |
|--|--|--|
| <p>If yes, is it: - An administrative appeal? - A judicial appeal? - Judicial review? - Other? (please explain)</p> | | <p>Judicial review and judicial appeal</p> |
| <p>Does the appeal have an automatic suspensive effect? If no, can it be requested and what is the procedure in this case?</p> | | <p>Yes</p> |
| <p>Are the authorities involved <u>the same as those in appeal procedures against a negative decision in the international protection procedure?</u></p> | | <p>Yes the same authorities are involved.</p> |
| <p>If the decision on the appeal is negative, will it result in a return decision being issued?</p> | | <p>Yes</p> |
| <p>Change of status</p> | | |
| <p>In case the applicant fails on appeal or his/her status ends or is not renewed, can s/he apply for: a. International protection status? (please specify which) b. Other legal migration statuses? (please specify which)</p> | | <p>a) If new circumstances would arise after a return decision has gained legal force, a new examination will take place to examine if there are grounds for impediments to enforcement. That is if there are obstacles to implement the expulsion order. The scope of this study regarding impediments to enforcement are other protection statuses Aliens Act (2006:716) chap. 12, section 18, paragraph 1, point 1 or of medical reasons chap. 12 section 18, paragraph 1, point 3. b) A rejected applicant can apply for a work permit once the return decision has entered into legal force if the applicant has been exempted from the requirement to obtain a work permit, has been employed for the past four months and has an offer of employment for the same employer for at least further 12 months. Further requirements are that the application of work permit needs to be submitted no later than two weeks after the return decision entered into force, a valid passport, the employment meets the conditions stipulated in the collective agreements and finally a salary that is at least SEK 13 000 per month.</p> <p>A Temporary Act addressing unaccompanied young migrants, who had received, or would otherwise, have received, an expulsion order, could be granted residence permits for studies at upper secondary schools. Some of the conditions that must be met are that the applicant must, as a rule, have applied for asylum on 24 November 2015 or earlier, be at least 18 years old when he/she was been issued a decision on expulsion or deportation, and has waited for more than 15 months for such decision. For those who graduate there is also the opportunity to apply for a temporary residence permit for six months to search for work. Last day for application under the Temporary Act was the 30 September 2018.</p> |
| <p>Relevant case law Only regarding protection due to exceptionally distressing circumstances.</p> | | |
| <p>Case law from the Migration Court of Appeal. Case law: MIG 2015:9, the Swedish Migration Agency rejects an application of residence permit and working permit and protection status the 4 November 2010. The woman appeals the decision. The Migration Court rejects the appeal and the return decision enter into force the 16 March 2012 as the Migration Court of Appeal decides not to grant leave to appeal. The applicant states that there are impediments to the enforcement of the return decision; her state of health is so serious that enforcement would constitute inhuman and degrading treatment within the meaning of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Swedish Migration Agency announces in a decision the 28 October 2013, that the circumstances invoked could not be assumed to constitute such a permanent obstacle. A new examination of the case is not lawful, as the conditions are not met. The applicant appeals this decision. The Migration Court rejects the appeal the 26 November 2013. The Migration Court of Appeal decides the 24 March 2015 that a new examination is valid in exceptional cases under Article 3 of the European Convention. A new examination of an asylum case can as a rule not be granted if the reasons invoked relate to the alien's health status. However, a new examination must be carried out, in exceptional cases if the disease is life-threatening and the decision of expulsion is contrary to Article 3 of the European Convention. Further, an expulsion of a sick person infringes with Article 3 if it is very likely that the lack of adequate care in the country of destination would lead to the person's health deteriorating seriously, swiftly and irreversibly and that this would result in intense suffering.⁴⁶</p> <p>Case law: MIG 2017:6, the Swedish Migration Agency rejects an applicant's claim for status declaration and travel documents and grants a permanent residence permit the 23 September 2015 due to exceptionally distressing circumstances. The Migration Court decides to grant the applicant subsidiary protection status the 22 January 2016. The Swedish Migration Agency appeals against the decision and requests that the Migration Court of Appeal establish the decision taken by the Swedish Migration Agency. The Migration Court of Appeal rejects the appeal the 17 March 2017. The violence and other abuses that children risk being exposed to in a country are of such a nature that this must be considered as inhuman or degrading treatment. Subsidiary protection status should be granted if there is such an individual and specific risk that the child is subjected to abuse, due to the extent of the abuse and the situation in the country of destination and when the child lacks parents, family or other network as well as local knowledge of the country.⁴⁷</p> | | <p>Case law MIG 2012:13: the Swedish Migration Agency rejects the 30 June 2010 the application of a woman and her son, residence permits on grounds of the establishment of an unmarried partner. They appeal the decision. The woman is married with the resident in Sweden in August 2010. Added to this the resident in Sweden is convicted for assault, gross violation of women's rights and sexual harassment for one year and two months by a District Court the 26 May 2008. This decision was appealed, but the Court of Appeal rejects the appeal. The Migration Court rejects the appeal the 12 May 2011. The woman and her son appeal the decision to the Migration Court of Appeal. The Migration Court of Appeal decides the 21 February 2012 that there are prerequisites for granting the woman and her son residence permit. When examining if there are such exceptionally distressing circumstances that a person should stay in Sweden due to their adaption to the country, the right to private and family life under Article 8 of the European Convention must also be taken into account. This entails that Swedish authorities and courts in the examination must take into account all the social and cultural links that a person can have in a society. The total time during which a person has been staying in the country thus becomes important in the way that a long period of residence can mean that the person has had time to get strong links with Sweden. It is then irrelevant, as regards the assessment of the adaption to Sweden, whether the length of stay has been illegal or falls in time before the current application for a residence permit.⁴⁸</p> |

46 Case law MIG 2015:9, <https://lagen.nu/dom/mig/2015:9>, 3 June 2019.

47 Case law MIG 2017:6, <https://lagen.nu/dom/mig/2017:6>, 3 June 2019.

48 Case law MIG: 2012:3, <https://lagen.nu/dom/mig/2012:3>, 4 June 2019.

Table 2: Content of protection of national statuses

| | Yes | No | Other | Detail |
|--|-----|----|-------|--|
| Residence permit | | | | |
| Validity of the first residence permit (or initial length) (in years) ⁴⁹ | x | | | A residence permit granted for refugees and beneficiaries of subsidiary protection shall be permanent or valid for at least three years Aliens Act (2005:716) chap. 5, section 1. However, this section does not apply under the Temporary Act (2016:752). Refugees are granted a residence permit for three years and beneficiaries of subsidiary protection 13 months Temporary Act (2016:752), section 5. |
| Possibilities of renewal/extension? | x | | | In case of an application of extension, a new temporary residence permit is granted if the requirements are met Aliens Act (2005:716) chap. 5, section 1. The new permit shall apply for at least two years. The period of validity cannot be shorter than one year. The new permit should also be temporary if a temporary residence permit is granted after an application of extension under the Temporary Act (2016:752). The period of validity is two years. It is stipulated in the Act that it cannot be shorter than one year. The exception is if the applicant applies for an extension due to an employment, provided he/she is qualified, in this situation a permanent residence permit is granted Temporary Act (2016:716), section 17. The other exception regards children, if at an overall assessment, the situation of a child is such due to exceptionally distressing circumstances related to a permanently reduced health condition, a permanent residence permit might be granted if it is undeniably required Temporary Act (2016:716), section 18. |
| Validity of the residence permit after renewal? (in years) | x | | | Two years, see above. |
| Time period required to be entitled to permanent residence permit (in years) | | | x | As mentioned above, the rule was permanent residence permits before 2016, granted at first application. |
| Travel document | | | | |
| Is a travel document issued ? | x | | | The Swedish Migration Agency shall issue a particular travel document, an Alien's Passport if an alien has been granted subsidiary protection status or national protection status, provided he or she cannot get a national passport Aliens Act (2005 :716) chap. 2, section 1a. That is if an alien granted protection status does not have document that applies as a passport and lacks the opportunity to obtain one. However, Alien's Passport should not be issued if there are compelling reasons such as national security or public order. |
| If so, what type of document is it? | x | | | An Alien's Passport |
| Validity (in years) | x | | | 5 years |
| Accommodation | | | | |
| Access to accommodation (on the same basis as other legally residing third-country nationals)? | x | | | |
| Access to specific schemes/programmes to support access to accommodation? | | | x | The Swedish Migration Agency or the Swedish Public Employment Service instruct municipalities to receive and arrange accommodation. An Act for an effective and solidarity-based reception system entered into force 1 March 2016, (Lag (2016:38) om mottagande av vissa nyanlända invandrare för bosättning). This means it is no longer optional for municipalities as all municipalities in Sweden can be required to receive newly arrived beneficiaries of international protection as well as their family members for settlement. For the beneficiary of protection, there is only one offer of accommodation. If not accepted, accommodation has to be arranged without help from the authorities. |
| Dispersal mechanism? | x | | | 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. |
| Family reunification | | | | |
| Right to family reunification ? | x | x | | There is a right to family reunification Aliens Act (2005:716) chap. 5, section 3. However, a residence permit is only granted if the sponsor can show a sufficient income to support him/herself and if he/she has an appropriate housing that can accommodate the family members who want to settle in Sweden Aliens Act (2005:716) chap. 5, section 3 b. There are however some derogations regarding the supply requirement, it is not applicable when the beneficiary of protection is a child. The Temporary Act (Lag 2016:752) restricted the right to family reunification to only refugees in July 2016. Only if a decision to not grant the right to family reunification would contravene a Swedish commitment under an international convention, is a residence permit granted. However in the extension of the Temporary Act to 2021, the right to family reunification is reinstated again to beneficiaries of subsidiary protection, the EU harmonised protection status, Aliens Act (2005:716) chap. 4, section 2. |

⁴⁹ See definition of permanent residence used in the Long-Term Residence Directive, i.e. third-country nationals who have resided and continuously within its territory for five years prior to the submission of application for a permanent residence permit.

| | Yes | No | Other | Detail |
|---|-----|----|-------|---|
| Eligible family members, for example: | | | | |
| -partner in a legal marriage or in a comparable relationship | x | | | |
| -unmarried partner (e.g. registered partnership, cohabitation, attested long term relationship) | x | | | |
| -underage partner | | | x | Child marriage is normally not accepted in Sweden. The law was tightened 1 January 2019 (Lag (1904:26) om vissa internationella rättsförhållanden rörande äktenskap och förmyndarskap). The guardian/legal representative must apply for the minor if the applicant is under the age of 18. ⁵¹ |
| -minor child (beneficiary's and/or partner's; foster or adopted child) | x | | | |
| -adult dependent children (beneficiary's and/or partner's or adopted child) | | x | | |
| - brother or sisters | | x | | |
| - dependent parents | | x | | |
| - parents of UAMs | x | | | |
| Material requirements sponsor must guarantee, for example: | | | | A residence permit is only granted if the sponsor can show a sufficient income to support him/herself and if he/she has an appropriate housing that can accommodate the family members who want to settle in Sweden Aliens Act (2005:716) chap. 5, section 3 b. The temporary Act (2016:752) extends the maintenance requirement, the sponsor should not only be able to support him/herself but also the applicant applying for a residence permit (section 9). The objective is to adapt temporarily to the minimum level according to EU law. ⁵² The material requirements will be investigated in the all-party commission of inquiry that was decided on 14 June 2019, if the requirements should remain and how they should be designed. ⁵³ |
| - accommodation | x | | | |
| - health insurance | | x | | |
| - sufficient income/financial means | x | | | |
| - other (e.g. criminal record, medical certificate) | | x | | |
| Is there an equivalent of a 'grace period' ⁵⁰ during which no material conditions are required? If so, please indicate the duration of the grace period in the comments column. | | | x | If the application is lodged within a period of three months, counted from the date the person to whom the applicant invokes a connection has been granted a refugee status or a beneficiary of subsidiary protection status (the EU harmonised status). The temporary Act (2016:752), section 10. However, not applicable on national protection statuses. |
| What is the validity of the residence permit of the family member? | | | | Same as the sponsor. |
| Labour market and qualifications | | | | |
| Specific conditions to be granted access (e.g. hold work permit)? | | x | | Work permit is not required for third-country nationals who have been granted a residence permit. Aliens Act (2005:716) chap. 2, section 8 c. There are no differences depending on protection status granted, all have access to the labour market on the same conditions as for nationals. |
| Access to procedures for recognition of qualifications? | x | | | |
| Social assistance | | | | |
| Social assistance limited to core benefits ? *please note definition of 'core benefits' in the introduction | | x | | When being granted a residence permit a population registration is required at the Swedish Tax Agency if the stay in Sweden extends over a year. A Swedish personal identity number is provided after the registration. This identity number will provide access to all core benefits. There are no differences depending on protection status granted. |
| Health care | | | | |
| Access to emergency health care? | x | | | As mentioned above, a Swedish personal identity number is required to have the same access as for nationals. |
| Access to mainstream services ? | x | | | |

⁵¹ The Swedish Migration Agency provides a Handbook dealing with Migration – visit and residence, "Rutinhandboken för besök och bosättning", guidelines regarding child marriage.

⁵² The Government bill (2015/16:174), Regeringens proposition 2015/16:174 Tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige, p. 46, 28 April 2016.

⁵³ Terms of reference of a commission of inquiry, Kommittédirektiv (Dir. 2019:32) Den framtida svenska migrationspolitiken, Beslut vid regeringssammanträde den 14 juni 2019, <https://www.regeringen.se/49d211/contentassets/f0bd496371bb4a8f9ad010b701aba932/den-framtida-svenska-migrationspolitiken-dir.-2019-32.pdf>, 14 June 2019.

⁵⁰ 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).

| | Yes | No | Other | Detail |
|--|-----|----|-------|--|
| 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)? | x | | | |
| Education | | | | |
| Access to general system of education (same as nationals)? | x | | | |
| Additional support provided (e.g. preparatory classes, additional classes of official language, remedial classes, assistance of intercultural assistant)? | | | x | Swedish tuition for immigrants (SFI) is voluntary and free of charge and intended for those who are resident in Sweden and who lack basic knowledge of Swedish. Education Act (2010:800), chap. 20, section 28-29. Civic orientation course is voluntary, free of charge and available for all who are granted protection status. Act (2013:156) on civic orientation course for some newly arrived immigrants. |
| Integration | | | | |
| Access to 'mainstream' support (available for legally residing third-country nationals)? | x | | | |
| Access to targeted support (i.e. specifically for beneficiaries of the status)? | | | x | A new Act entered into force 1 January 2018, The Swedish Public Employment Service is responsible for providing introduction measures to facilitate and to speed up the labour market integration. This support is provided to all beneficiaries of international protection, Act (2017:584), section 1. The objective of the amendment was to harmonise the regulation of new arrivals' integration into labour market and Swedish Society with the regulations that apply to other jobseekers. This entails that the former introduction plan is removed and replaced with a referral to a labour market programme. The new Act introduced an education and training obligation. This means that all newly arrived immigrants involved in the introduction measures, and who are considered in need of education and training to find work, can be instructed to apply for, and undertake, education and training. ⁵⁴ The former Act (2010:197) on introduction measures was valid from May 2010 to January 2018. |
| If so, how long is the support granted for? | | | x | Individuals who actively participates in the introduction measures are entitled to allowance for 2 years. |
| End of protection | | | | |
| Are there any formal ways foreseen to end or refuse to renew the national protection status (e.g. it is foreseen in national legislation)? | x | | | It is stipulated in the Aliens Act (2005:716) chap. 4, section 5. when an alien ceases to be a refugee or a beneficiary of protection. |
| How can national protection end? | | | | |
| - The person no longer qualifies for protection | x | | | A protection status ceases if the circumstances that led to the granting of protection status no longer exist or have been altered to such an extent that protection is no longer needed. When assessing the situation, only significant and lasting changes should be considered. Aliens Act (2005:716) chap. 4, section 5a. This is not applicable if the person in question have weighty reason for not wanting to use the country's protection where he or she is a citizen or where he or she as a stateless person previously had his/her residence. A person is deemed to have voluntarily availed her- or himself of the protection of the country of origin when she/he applies for a new national passport or requests that the national authorities return her/his old national passport, or when the person travels to the country of origin. |
| - Protection was fraudulently acquired | x | | | National visas, residence permits and work permits may be revoked if an alien has deliberately provided false information or has deliberately withheld circumstances that have been of importance for obtaining the permit Aliens Act (2005:716) chap. 7, section 1. |
| - Status ceased | x | | | A declaration of status must be revoked if information is provided that the alien cannot be considered as a person in need of subsidiary protection Aliens Act (2005:716) chap. 4, section 5c. Cessation is applied if the risk of the specific 'serious harm' has ceased. |
| - Status can no longer be renewed | x | | | See above |
| - Other (please explain) | | | | |

⁵⁴ Information regarding the new Act (2017:584) from Swedish Association of Local Authorities and Regions (SKL), Lagen (2017:584) om ansvar för vissa etableringsinsatser för vissa nyanlända invandrare, <https://skl.se/integrationsocialomsorg/asylochflyktingmottagandeintegration/etableringsinsatsersfi.7075.html>, 28 May 2019.

| | Yes | No | Other | | Detail |
|--|-----|----|-------|--|---|
| Naturalisation/citizenship acquisition | | | | | |
| Minimum legal residence required to apply for citizenship/naturalisation | x | | | | Stipulated in the Act (2001:82) on Swedish citizenship, section 11, the difference is 4 years for refugees and stateless persons and 5 years for other third country nationals. |
| <i>*please note that a 2019 EMN study will research in more depth the issue of acquisition of citizenship in Member States</i> | | | | | |
| Status offers more or less favourable conditions (compared to either refugee or subsidiary protection) | | | | | |
| Please describe the extent to which the status offers | | | | | |
| a) more | | x | | | |
| b) same or | x | | | | More or less the same according to the Aliens Act (2005:716) |
| c) less favourable conditions compared to either refugee or subsidiary protection? | x | | | | Due to the Temporary Act (2016:752), national protection statuses are not granted, restrictions on family reunification and the validity of the residence permit. |

About the EMN

The European Migration Network (EMN) is an EU funded network, set up with the aim of providing up-to-date, objective, reliable and comparable information on migration and asylum for institutions of the European Union, plus authorities and institutions of the Member States of the EU, in order to inform policymaking. The EMN also serves to provide the wider public with such information. The EMN was established by Council Decision 2008/381/EC adopted on 14 May 2008. The Swedish Migration Board is the Swedish National Contact Point (NCP) for the EMN.

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