



Ad-Hoc Query on subsidiary protection

Requested by SI EMN NCP on 19th December 2014

Compilation produced on 25th February 2015

Responses from Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom plus Norway (22 in Total)

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1. Background Information

Due to a limited duration of the subsidiary protection status SI established in 2008 a procedure for the renewal of subsidiary protection. Under Article 16 of the Qualification directive, only the reasons for which the subsidiary protection status was recognised are examined. Other reasons indicated as new in the procedure of renewing the subsidiary protection are not examined.

Namely if the person in the subsidiary protection renewal procedure indicates new reasons, which point at the refugee status, the person cannot apply these reasons in the subsidiary protection renewal procedure. The person can however, after the application for renewing the subsidiary protection has

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been finally rejected, file a request for instigating a new procedure in which it is examined if the person did not indicate new reasons in the previous procedure on justifiable grounds, and if they essentially enhance the probability that the international protection will be granted or recognised. Only after fulfilling these two conditions will the competent authority receive a new international protection application and examine it according to the merits of the case.


Based on mentioned facts SI would kind ask Member States to answer on following questions:

1. Is a person under a valid subsidiary protection status allowed in your country to file a new international application in which he or she indicates the reasons for the refugee status?
2. Is a person in the procedure of renewing the subsidiary protection (Articles 16 and 19 of Qualification directive) allowed to file a new international protection application in which he or she indicated the reasons for the refugee status?
3. If the person is unable to file a new international protection application at the time of the duration of subsidiary protection or during the procedure of renewing subsidiary protection, we would like to know if he or she can file a new international protection application in which he or she applies the reasons for the refugee status?
4. We would also like to know what status (international protection applicant / beneficiary of international protection) or rights has a person who filed an application in which he or she indicates new reasons for the refugee status at the time when the well-foundedness of these reasons is still being examined?




2. Responses

		Wider Dissemination?	
	Austria	Yes	<p>1. A subsequent application (Art. 2 para 1 subpara 23 Asylum Act) is in principle possible.</p> <p>A further application for international protection filed within the time-limit for lodging a complaint shall be deemed to be an appeal or a supplementary complaint submission against the rejecting or dismissing administrative decision by the Federal Office for Immigration and Asylum (Art. 17 para 7 Asylum Act)</p> <p>If a further application for international protection is filed or submitted in the course of a pending complaint procedure, that application shall be jointly dealt with as part of the pending complaint procedure. An application for international protection filed in writing in that event shall be deemed to be a supplementary complaint submission; the Federal Office for Immigration and Asylum shall forward such application without delay to the Federal Administrative Court. (Art.17 para 8 Asylum Act)</p>




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			<p>2. Yes, see also under 1.</p> <p>3. If the person is unable to file a new international protection application at the time of the duration of subsidiary protection or during the procedure of renewing subsidiary protection, we would like to know if he or she can file a new international protection application in which he or she applies the reasons for the refugee status ? n/a, See 1 and 2 above.</p> <p>4. If a person under a valid subsidiary protection status and/or in the procedure of renewing the subsidiary protection files such a subsequent or further application for international protection, which is still being examined, the person remains a holder of subsidiary protection. Subsidiary protection status shall terminate if the alien is granted asylum status (Art.8 para 7 Asylum Act). If a person whose application for asylum was rejected and who was not granted subsidiary protection files a subsequent application indicating new reasons for the refugee status, s/he has the status of an asylum seeker. However, under certain circumstances (Art. 12a Asylum Act) the alien who filed a subsequent application is not granted de-facto protection against deportation.</p>
	Belgium	Yes	<p>1. Is a person under a valid subsidiary protection status allowed in your country to file a new international application in which he or she indicates the reasons for the refugee status? Since the introduction of subsidiary protection in October 2006, Belgium has put in place a single asylum procedure. In other words, applicants need to make only one application for international protection in order to obtain either Convention refugee status or subsidiary protection. The Office of the Commissioner General for Refugees and Stateless Persons (CGRS) first determines whether the applicant meets the criteria for refugee status, and if this is not the case, it will determine whether grounds exist for granting subsidiary protection. As a consequence granting subsidiary protection implies refusing the refugee status. An asylum applicant who has been granted subsidiary protection, and thus was refused refugee status, can lodge an appeal against this decision. The Appeal Court (Council for Aliens Law Litigation- CALL) can reform the first instance decision and grant refugee status, but can also revoke the subsidiary protection status that has been granted by the first instance body (CGRS). (Therefore it might be a risk for beneficiaries of subsidiary protection to appeal against the decision granting them subsidiary protection and refusing refugee status, and thus not a lot of beneficiaries of subsidiary protection lodge an appeal with the CALL). If the Appeal Court confirms the CGRS decision of granting subsidiary protection and refusing refugee status. In theory the person could apply for international protection again and lodge a subsequent application, even if he or she is having a subsidiary protection status. . In practice this will occur seldom or never because:</p> <ul style="list-style-type: none"> - The claim for refugee status has already been assessed. (and the chance on a different outcome in this situation is limited). - The person already has a residence permit in Belgium. <p>2. Is a person in the procedure of renewing the subsidiary protection (Articles 16 and 19 of Qualification directive) allowed to file a new international protection application in which he or she indicated the reasons for the refugee status? A person who has been granted subsidiary protection in Belgium will obtain a residence permit. This document is valid for one year and is extended for two years if extension is granted. A temporary residence permit (electronic card A) will be issued.). The person will be</p>




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			authorised to stay in Belgium for an unlimited period of time after five years, counting from the date on which your application for asylum was lodged. Then the person will receive a “type B electronic identity card” (as is the case for recognised refugees).
	Czech Republic	Yes	<p>1. Yes, the person under a valid subsidiary protection is allowed to apply for international protection again. However, this new application will be examined in terms of inadmissibility first of all. If the person doesn't present new elements or new findings don't arise, the subsequent application will be treated as inadmissible. If there are new grounds for granting the refugee status, the status will be granted. The person gives up his/her subsidiary protection status at the same time. We have to point out that presented situation and its solution is rather theoretical and we do not have much experience.</p> <p>2. The same solution can be applied in this case. The person in the procedure of renewing the subsidiary protection is under the status of valid subsidiary protection until the decision is taken.</p> <p>3. As we mentioned above person can ask for international protection again. It is not possible to ask only for the refugee status or only for subsidiary protection status according to national law.</p> <p>4. This person can be under both statuses because the person cannot lose his status of beneficiary of subsidiary protection.</p>
	Estonia	Yes	<p>1. The Law does not provide for such a right expressis verbis, however the possibility is not excluded. The new application would be treated as subsequent application with new important circumstances, which were not known before. We have not had such cases yet.</p> <p>2. The Law does not regulate the specific situation. Renewal is not automatic and will always be processed in essence. In case there are additional reasons to the ones based on which the protection was initially granted, it is possible to grant the “higher” status.</p> <p>3. Yes. The application would be dealt with as subsequent application.</p> <p>4. When the person with protection, including when in the process of prolonging the validity of the residence permit (what can only be done when the residence permit is still valid) would apply for the different status, she/he would have the initial status of the beneficiary of the international protection as the initially granted status has not been revoked.</p>
	Finland	Yes	<p>1. Yes. A person has a right to file an application for asylum at any time if there are grounds for it.</p> <p>2. Yes. While in the procedure of renewing the subsidiary protection if a person indicates that there are new grounds for asylum the application is processed in the asylum procedure and all new grounds are examined.</p> <p>3. Yes. As said in the first question a person has a right to file an application for asylum at any time if there are grounds for it.</p> <p>4. The same rights as s/he would have as a beneficiary of subsidiary protection or some other protection or residence permit.</p>




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	France	Yes	<p>1. If the application has been granted subsidiary protection at first instance and if s/he disagrees with this decision, the applicant has the opportunity to appeal on that ground as long as this appeal is lodged within 30 days after the first instance decision.</p> <p>After this period of 30 days or if the applicant was granted subsidiary protection at second instance, and in case of new elements/circumstances that would make the applicant's situation fall under the refugee status, s/he is allowed to request the re-opening of his/her asylum claim. This procedure, known as a "réexamen", is quite similar to a subsequent application as foreseen in APD. This application will be processed and, if conditions are met, the determination authority may grant refugee status.</p> <p>2. In France, the subsidiary protection is renewed by tacit agreement. The protection is deemed to be still applicable as long as the determination authority doesn't make a decision to withdraw or cease the protection, at its initiative or the applicant's.</p> <p>3. See question 2 above.</p> <p>4. In both cases presented in question 1, the applicant is considered to be a beneficiary of the international protection (more specifically the subsidiary protection) even if s/he has lodged an appeal or a subsequent application.</p>
	Germany	Yes	<p>1. and 2.: yes it is possible to file a succeeding application concerning asylum status and international protection at any state of time. But the application can only be successful, if the personal situation or the legal position in the case has changed to the favour of the applicant.</p> <p>3. Yes he or she can do that. A further application can be filed at any time as long as the applicant is staying on German territory. It does not depend on the residence permission itself or subsidiary protection status.</p> <p>4. the relevant status of protection is still valid. A deportation is not allowed before the end of the examination of the new reasons with one exception: safe third country.</p>
	Hungary	Yes	<p>1. Is a person under a valid subsidiary protection status allowed in your country to file a new international application in which he or she indicates the reasons for the refugee status?</p> <p><i>Yes. The beneficiary of subsidiary protection may file another application for asylum (refugee status), however according to the Hungarian Act on Asylum, the asylum authority shall examine whether the request is obviously unfounded. The application is, among others, obviously unfounded if the applicant files such an application subsequent to a final refusal of a refugee status based on unchanged factual circumstances.</i></p> <p><i>Note: According to the Hungarian Act on Asylum, upon the application of a person seeking asylum in Hungary, the asylum authority would examine first whether the reasons for granting a refugee status are substantiated. If not, the authority goes on to examine whether the reasons for granting subsidiary protection are substantiated. If granted, the asylum authority reviews the status (beneficiary of subsidiary protection) at least every 5 years.</i></p>




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			<p>2. Is a person in the procedure of renewing the subsidiary protection (Articles 16 and 19 of Qualification directive) allowed to file a new international protection application in which he or she indicated the reasons for the refugee status? <i>There is nothing explicitly prohibiting this in the Hungarian Act on Asylum, and the same procedural aspects apply as described above.</i></p> <p>3. If the person is unable to file a new international protection application at the time of the duration of subsidiary protection or during the procedure of renewing subsidiary protection, we would like to know if he or she can file a new international protection application in which he or she applies the reasons for the refugee status ? <i>There is nothing explicitly prohibiting this in the Hungarian Act on Asylum, and the same procedural aspects apply as described above.</i></p> <p>4. We would also like to know what status (international protection applicant / beneficiary of international protection) or rights has a person who filed an application in which he or she indicates new reasons for the refugee status at the time when the well-foundedness of these reasons is still being examined? <i>The status, in the exact wording of the Hungarian Act on Asylum, is "person seeking recognition", in other words, "applicant" seeking asylum.</i></p>
	Ireland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Italy	Yes	<p>1. to 3. Legislative Decree No 25/2008, implementing Directive 2005/85/EC (Asylum Procedure Directive), Article 35, provides for the possibility to resort to a court (composed of a single judge) in the case (among others) in which <i>«the person concerned has applied for refugee status and the Commission has only granted subsidiary protection»</i>. An appeal before the court may be lodged within 30 days from the day the Commission's decision has been notified to the applicant. This is the only provision in Italian legislation <i>expressly</i> regulating the possibility for a beneficiary of subsidiary protection to turn his/her status into refugee status. However, in practice a review of the application hence a new decision by the Commission may be requested if new elements have arisen after the decision, or if the person concerned believes he/she did not represent facts at the time of the interview in a comprehensive manner; in this case, the Commission is entitled to call him/her for another interview. In the absence of these new elements, the only avenue to have the application reviewed is to resort to courts, as per the above-mentioned Article 35 of Legislative Decree No 25/2008. All the above also applies when an applicant has applied for a renewal of his/her residence permit on the grounds of subsidiary protection. Also, Legislative Decree No 18/2014, implementing Directive 2011/95/EU (on a uniform status for refugees or for persons eligible for subsidiary protection) reduced the differences between the status of refugee and that of a beneficiary of subsidiary protection. Relevant rights are now uniform, as well as the length of their residence permits (5 years in both cases).</p> <p>4. A person who filed an application in which he/she indicates new reasons for the refugee status is an <i>international protection applicant</i>.</p>
	Latvia	Yes	1. Yes, a person who has been granted subsidiary form of protection has a right to submit a new application to obtain refugee status. The application will be examined under procedure for subsequent application. In order to take a decision on application admissibility/inadmissibility the <u>new</u> facts presented by person will be assessed whether there is ground for granting refugee status.



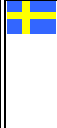
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			<p>2. According to the Asylum Law there is no time limit for submission a subsequent application.</p> <p>3. Please, see the answers above.</p> <p>4. When person with subsidiary form of protection submits a new (subsequent) application he/she is considered as a beneficiary of international protection and enjoy all rights attached to that particular status (during the examination of subsequent application person shall not be deemed an asylum seeker).</p>
	Lithuania	Yes	<p>1. Yes, the person is allowed to file a new application for international protection. In such case a new procedure of examination of the request starts.</p> <p>2. The law does not forbid doing that, although this situation is not explicitly described.</p> <p>3. n/a</p> <p>4. If the term of validity of subsidiary protection is not yet over, the person keeps enjoying the subsidiary protection status. When it comes to an end, the situation of the person is considered individually, and, as the general international protection procedure is applied, the applicant receives the same procedural rights as other asylum seekers.</p>
	Luxembourg	Yes	<p>1. In Luxembourg with the modification introduced by the law of 19 June 2013 which modified the amended law of 5 May 2006 (Asylum Law), the residence permit issued to a beneficiary of subsidiary protection is for a minimum duration of 3 years (article 46 (1)). This is the same minimum period than for a refugee. In both cases the legend that will appear on the residence permit is “international protection” (article 46 (2)).</p> <p>2. There is no legal obstacle to file a new international protection application during the renewal period of a subsidiary protection.</p> <p>3. N/A</p> <p>4. If the residence permit of a beneficiary of a subsidiary protection has not expired and s/he files a new international protection application the person will be treated as an international protection beneficiary as long his/her residence permit is valid. If the residence permit has expired s/he will be treated as an international protection applicant.</p>
	Netherlands	Yes	<p>The Netherlands applies a single status asylum system. This means that all asylum permits are subject to the same rights, no matter what ground they have been granted on. So there is no need for a person under a valid subsidiary protection status to file a new international application for the refugee status.</p>


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	Portugal	Yes	When an applicant is notified of the decision granting subsidiary protection status and does not agree, he/she can appeal before a court. After this, the situation will not be further examined, since the application was firstly examined concerning the qualification for the refugee status and afterwards on the grounds for subsidiary protection (Art 10 APD). If a beneficiary of subsidiary protection (during the validity of the status or within a renewal procedure) indicates new reasons that would qualify he/she for refugee (e.g. <i>protectin sur place</i>) the applicant will undergo a new procedure. When renewing a subsidiary protection status we only attend to the criteria mentioned in art 16 and 19 of QD.
	Romania	Yes	<p>1. Is a person under a valid subsidiary protection status allowed in your country to file a new international application in which he or she indicates the reasons for refugee status? According to the Romanian Law on asylum a new application may be lodged only by the rejected asylum seekers in respect of whom a final decision was taken. Nevertheless, the asylum seekers have the right to make an appeal against the decision to grant subsidiary protection in front of the Courts during the initial asylum procedure. Therefore, beneficiaries of subsidiary protection status are not allowed to lodge a new asylum application.</p> <p>2. Is a person in a procedure of renewing the subsidiary protection (Articles 16 and 19 of the Qualification directive) allowed to file a new international protection application in which he or she indicated the reasons for refugee status? No new application may be lodged until a final decision is taken in respect of the renewing procedure (cessation or cancellation). This type of procedure may only be initiated ex officio or on the proposal of institutions with competencies in the field of national security or public order. In case of a subsidiary protection renewing procedure, refugee status may be granted if 1951 Convention reasons arise during the assessment of the case.</p> <p>3. If the person is unable to file a new international protection application at the time of the duration of the subsidiary protection or during the procedure of renewing subsidiary protection, we would like to know if he or she can file a new international protection application in which he or she applies the reasons for refugee status? Yes, if the outcome of the procedure of renewing subsidiary protection is final and negative.</p> <p>4. We would also like to know what status (international protection applicant/beneficiary of international protection) or rights has a person who filed an application in which he or she indicates new reasons for refugee status at the time when the well-foundedness of these reasons is still being examined? Such situation may not occur as the Romanian Law on asylum does not allow to submit a new application if the previous asylum procedure is not finalized.</p>
	Slovak Republic	Yes	<p>1. Yes, a person with granted subsidiary protection can lodge a new application for international protection in which he/she indicates the reasons for the refugee status.</p> <p>2. Yes, a person in the process of renewal of subsidiary protection (applicant for a renewal of subsidiary protection) can lodge a new application for international protection in which he/she indicates the reasons for the refugee status.</p>


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			<p>3. Yes, if a person does not manage to file an application for renewal of subsidiary protection within the statutory period or the person does not apply for the renewal of subsidiary protection, he/she can file a new application for international protection which will be examined in the new asylum procedure.</p> <p>4. A person who has filed an asylum application in which he /she indicates new reasons for the refugee status and at the same he/she is still granted subsidiary protection status or he/she is in the process of renewal of the subsidiary protection status, he/she has the status of a person with subsidiary protection and due to this fact he/she has rights and obligations of a person with granted subsidiary protection. The only exception is that during the new asylum procedure, the person is obliged to stay in the territory of the Slovak Republic and is not allowed to leave. Otherwise, the new asylum application would be rejected.</p>
	Slovenia	Yes	Due to a limited duration of the subsidiary protection status SI established in 2008 a procedure for the renewal of subsidiary protection. Under Article 16 of the Qualification directive, only the reasons for which the subsidiary protection status was recognised are examined. Other reasons indicated as new in the procedure of renewing the subsidiary protection are not examined.
	Spain	Yes	No. In Spain, the beneficiaries of subsidiary protection are not allowed to start a new procedure for being granted a refugee status, since the rights under subsidiary protection are the same than those obtained under refugee status. That being the case, if the person has been granted subsidiary protection he/she can appeal judicial and administratively.
	Sweden	Yes	<p>The Swedish Migration Board (SMB) took a decision on 3 September 2013, to the effect that Syrian applicants, that before were granted subsidiary protection status, were to be granted permanent residence permits. The decision also paved the way for granting permanent residence to those previously granted subsidiary protection status with temporary permits. The SMB's decision to grant permanent residence permits to Syrian applicants was based on the main rule according to national preparatory work and case law - and is thus, no policy change. Sweden has a long tradition of granting permanent resident permits to those granted international protection (the grant of temporary permits in certain situations was thus a more recent deviation from the main rule). It is currently very rare that the SMB grants temporary residence permits, though the Swedish legislation give us the formal possibility. Temporary residence permit could for example theoretically be granted when a person is not considered to have individual reasons for asylum, but where it is not possible to send him or her to their home country because of war, widespread violence, etc. which is deemed to last for a short time.</p> <p>1. If the decision regarding the temporary residence permit and the status of subsidiary protection has gained legal force (after three weeks from that the person has been informed of the status of subsidiary protection) there exists no such possibility. On the other hand, if the decision did not gain legal force, there exists a possibility for the SMB (first instance) to assess new grounds put forward by the applicant, i.e. indications for refugee status. The SMB could also make an informal review of the case.</p> <p>2. Yes.</p> <p>3. Yes.</p>

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			<p>4. He or she is an international protection applicant / beneficiary of international protection and have the following rights when his or her application is being examined.</p> <ul style="list-style-type: none"> - Accommodation - Social Assistance - Health Care - Education - Access to Labour Market (conditional) <p>Persons who receive a negative decision on their asylum claim continue to have access to the above mentioned benefits until their departure from Sweden. Rejected asylum-seekers, however, have an obligation to cooperate with authorities on the implementation of their return to the country of origin, in order to have access to these benefits.</p>
	United Kingdom	Yes	<p>The UK does not make specific provision in its Rules and policy for those with subsidiary protection to seek recognition of refugee status, but the UK would consider an application at any point during the validity of the subsidiary protection (a five year permission to stay). At the end of that five year period, the person will be considered for the grant of permanent residence if he or she continues to qualify for subsidiary protection. It would be open to the person to seek recognition of refugee status at that stage. However, the decision to grant subsidiary protection in the first instance would have included a decision not to recognise refugee status and it is unlikely that a renewed request for refugee status would be successful. There are very few such requests in practice.</p> <p>1. Is a person under a valid subsidiary protection status allowed in your country to file a new international application in which he or she indicates the reasons for the refugee status? Yes</p> <p>2. Is a person in the procedure of renewing the subsidiary protection (Articles 16 and 19 of Qualification directive) allowed to file a new international protection application in which he or she indicated the reasons for the refugee status? Yes</p> <p>3. If the person is unable to file a new international protection application at the time of the duration of subsidiary protection or during the procedure of renewing subsidiary protection, we would like to know if he or she can file a new international protection application in which he or she applies the reasons for the refugee status ? N/A</p> <p>4. We would also like to know what status (international protection applicant / beneficiary of international protection) or rights has a person who filed an application in which he or she indicates new reasons for the refugee status at the time when the well-foundedness of these reasons is still being examined? There would be no change of status unless the person's subsidiary protection status is subject to cessation under Article 16 of the Qualification Directive or cancellation under Article 19. But it is open to the person to submit reasons why that status should remain or why it should be upgraded to refugee status. An applicant's status as a beneficiary of subsidiary protection continues until a decision is made on any new reasons put forward.</p>

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	<p>Norway</p>	<p>Yes</p>	<p>Due to a limited duration of the subsidiary protection status SI established in 2008 a procedure for the renewal of subsidiary protection. Under Article 16 of the Qualification directive, only the reasons for which the subsidiary protection status was recognised are examined. Other reasons indicated as new in the procedure of renewing the subsidiary protection are not examined.</p> <p>1. Is a person under a valid subsidiary protection status allowed in your country to file a new international application in which he or she indicates the reasons for the refugee status?</p> <p><i>In Norway, both refugees under the Refugee Convention and persons given subsidiary protection as defined in the Qualification Directive article 2 e) are recognized as refugees, see the Immigration Act § 28. It will, however, be written in the decision of the Norwegian Directorate of Immigration (UDI) whether the person is considered to fill the criteria of the (i) Refugee Convention or if he or she is given (ii) refugee status in Norway because he or she is given subsidiary protection. The person may appeal the decision of the UDI to the Immigration Appeals Board (UNE). The person will however not be given free legal counsel in such cases, see the Immigration Act § 92.</i></p> <p><i>If a person has a valid refugee status, he or she would be allowed to formally place a new application (for refugee status and have the new application registered if he or she insists), but the UDI will, as a general rule, formally reject the case and refer the person to either appeal the original decision in the first case or – if the decision is final – ask whichever agency made the final decision, either the Immigration Directorate (UDI) or the Appeals Board (UNE) to overturn the decision. The person would as such, be advised to appeal, or ask the UNE/UDI to overturn the decision, instead of formally placing a new application for refugee status.</i></p>
