



First Study 2019

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

Luxembourg



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The European Migration Network, created by Council Decision no. 2008/381/EC of 14 May 2008, has the objective of supplying up-to-date, objective, reliable and comparable information on migration and asylum in the Community institutions, to the authorities and institutions of the Member States and to the general public with a view to support policy- and decision-making with the European Union.

## Preface

The opinions expressed in this report are those of the authors. They do not necessarily reflect the positions of the Luxembourg Ministry for Family, Integration and the Greater Region or of the Ministry of Foreign and European Affairs.

The present report was drafted by Adolfo Sommaribas and Ralph Petry, staff members of the National Contact Point Luxembourg within the European Migration Network, under the overall responsibility of Prof. Dr. Birte Nienaber. Continuous support was provided by the members of the national network of the National Contact Point Luxembourg: Sylvain Besch (CEFIS), Christiane Martin (Directorate of Immigration, Ministry of Foreign and European Affairs), François Peltier (STATEC) and Marc Hayot (OLAI, Ministry for Family, Integration and the Greater Region).

## Methodology

National reports are produced by the respective National Contact Points (NCPs) on the legal and policy situation in their Member State according to common specifications. Subsequently, a comparative synthesis report is generated by the European Commission with its service provider giving the key findings from each national report, highlighting the most important aspects and placing them as much as possible within an EU perspective. The various national accounts and the summary report are made publicly available.

The EMN engages primarily in desk research, i.e. it collects and analyses data and information already available or published at the Member State or international level. Legal texts, official documents (such as parliamentary documents) and reports have been used for this study. Furthermore, experts from the Directorate of Immigration of the Ministry of Foreign and European Affairs have been consulted.

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# EMN STUDY 2018

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### National Contribution from Luxembourg

*Disclaimer: The following information has been provided primarily for the purpose of contributing to a synthesis report for this EMN study. The EMN NCP has provided information that is, to the best of its knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of the EMN NCPs' Member State.*

### Top-line factsheet

*The top-line factsheet will serve as an overview of the **national contribution** introducing the study and drawing out key facts and figures from across all sections, with a particular emphasis on elements that will be of relevance to (national) policy-makers. Please add any innovative or visual presentations that can carry through into the synthesis report as possible infographics and visual elements.*

Luxembourg has integrated in the protection system the European legal framework on protection. However, besides the international protection (refugee status and subsidiary protection status) and the temporary protection statuses, the Luxembourgish legal system foresees two humanitarian statuses which are:

- a) residence permit for private reasons based on serious humanitarian grounds<sup>i</sup>;
- b) the postponement of removal<sup>ii</sup> based on medical reasons.<sup>iii</sup>

In regard to the latter, there are the following steps: 1) the postponement of removal can be granted and renewed for up to 24 months; 2) after 2 years, if the medical condition persists, an authorisation of stay for medical reasons may be granted and a residence permit for private reasons<sup>iv</sup> may be issued.

However, it is important to stress at this point that the Luxembourgish authorities do not consider the two aforementioned residence permits issued according to articles 78 (3) and 131 (2) of the Immigration Law as "protection statuses" as such, but precisely as residence permits issued to the applicant.<sup>v</sup>

The granting of these two "protection statuses" are based on the discretionary power of the Minister in charge of Immigration and Asylum. The residence permit for private reasons based on humanitarian grounds (Status A of this report) allows for the Minister to grant an authorisation to stay in the country to an irregular migrant if s/he is in need to stay based on humanitarian reasons of exceptional circumstances. There is not an exhaustive list of reasons on which the Minister can base his/her decision. However, there is an exhaustive analysis of the reasons advanced by the applicant.

Any third country national irregularly staying on the territory can apply for this residence permit. However, in the case of rejected asylum seekers, the application will be rejected if the applicant advances the same reasons that s/he advanced during the international protection procedure.

On the contrary, the residence permit for medical reasons requires that, in the first stage, the applicant had received a return decision and an order to leave the territory. In order to obtain the residence permit, he/she has to obtain first a decision for a postponement of removal for medical reasons that has to be renewed for two years before the applicant can file the application for the residence permit based on medical reasons. This residence permit is not granted automatically and if the applicant does not file his/her application after expiration of the postponement of removal for medical reasons after two years, s/he will be precluded and the return decision will be executed, except if s/he proves that s/he cannot be returned for medical reasons. In this case, the entire procedure will have to start again.

The residence permit for private reasons based on serious humanitarian grounds is a permanent residence permit that is issued the first time for one year, but when it is renewed is for a maximum validity of up to three years. On the contrary, the residence permit for medical reasons is issued for a

maximum duration of one year and it is renewed for a maximum duration of one year. It is of temporary nature if the appointed medical examiner considers that the beneficiary is no longer fulfilling the conditions. However, seen the time of residence and the links that the third-country national has, the Directorate of Immigration can consider granting a residence permit for humanitarian reasons. The temporary nature of this permit has been maintained by the Court of Cassation (see Q5 Table 3 for Status B, p. 23).

These residence permits do not grant the same rights as the international protection statuses as they do not have access to: a) the social inclusion revenue (REVIS); b) the labour market without passing the labour market test and without any sector restriction (with the exception of the public sector); c) education for adults; d) a simplified family reunification procedure (see sections 'Status offers more or less favourable conditions (compared to either refugee or subsidiary protection)' for Statuses A and B on p. 35-36 and p. 42-44).

There has not been any debate or discussion from civic society or the national authorities over modifying or abrogating these residence permits and introducing an alternative protection status, with the exception of the Ombuds-Committee for the Rights of the Child who repeatedly called on the national authorities to introduce a specific status for unaccompanied minors (UAM). The main reason for the absence of much debate or discussion over these residence permits can be explained through the fact that in 2018, the international protection statuses amounted to 19,2%<sup>vi</sup> of the first residence permit issued during 2018, while the residence permit for humanitarian reasons represented only 0,3% and the residence permit for medical reasons only 0,02% in 2018. It is obvious that these two residence permits are not a real alternative to the international protection statuses in Luxembourg.

## Section 1: Overview and mapping of types national protection statuses

**Q1.** Aside from the EU-harmonised protection statuses, are there any other protection statuses currently available in your Member States? Yes/No

*Please note that any evolution in the type of statuses that were available in the past years but not currently available is to be developed in question 8.*

<p>Yes.</p> <p>In Luxembourg, besides the international protection (refugee status and subsidiary protection status) and the temporary protection status, which are foreseen in the Law of 18 December 2015 on international protection and temporary protection (hereafter referred to as "Asylum Law")<sup>vii</sup>, there are other two humanitarian statuses foreseen in the amended law of 29 August 2008 on free movement of persons and immigration (hereafter referred to as "Immigration Law"):</p> <ul style="list-style-type: none"><li>a) residence permit for private reasons based on serious humanitarian grounds<sup>viii</sup>;</li><li>b) the postponement of removal<sup>ix</sup> based on medical reasons.<sup>x</sup></li></ul> <p>In regard to the latter, there are the following steps: 1) the postponement of removal can be granted up to 24 months; 2) after 2 years, if the medical condition persists, an authorisation of stay for medical reasons may be granted and a residence permit for private reasons<sup>xi</sup> may be issued.</p> <p>However, it is important to stress at this point that the Luxembourgish authorities do not consider the two aforementioned residence permits issued according to articles 78 (3) and 131 (2) of the Immigration Law as "protection statuses" as such, but precisely as residence permits issued to the applicant.<sup>xii</sup></p>
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**Q2. If no to Q1**, please elaborate.

*Please note question 12 (e.g. in case statuses reported in the 2010 study no longer exist, please note your answer there).*

N/A
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**Q3. If yes to Q1**, please complete **Table 1** with the type of non-harmonised protection statuses *currently* available.

*Please indicate in **Table 1** the type of non-harmonised protection status(es) currently available*

- *Do not include any non-protection statuses: please refer to the scope of the study as defined in the introduction of the template.*
- *The type of statuses listed in **Table 1** is not exhaustive and is meant to act as a guide.*
- *National protection statuses can include for example those issued on the basis of ECHR Articles 3 and the principle of non-refoulement, medical reasons, climate change reasons, and other measures used to facilitate the legal admission and issuing of residence permits to persons in need of protection.*

*If a group of statuses (e.g. for medical, climate change and non-refoulement reasons) fall within a more general, overarching humanitarian status, please fill in the row below related to humanitarian status and include information on who is eligible for such status in Table 3. If there are differences in the content of protection, however, please indicate them in Table 4.*

Table 1: Type of non-harmonised protection status(es) currently available

Type of non-harmonised protection status	Yes	No	Comments
<b>Constitutional asylum</b>			
<i>Please note section 3 in the template for background; if the status provided falls under an 'EU protection status' please note that that in your answer in the 'comments' column.</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The Constitution of the Grand Duchy of Luxembourg <sup>xiii</sup> does not foresee the status of constitutional asylum.
<b>Collective protection</b>			
<i>Please note section 3; if the status provided falls under an 'EU protection status' (e.g. the Temporary Protection Directive) please note that that in your answer in the 'comments' column.</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>Other national (including humanitarian) statuses based on:</b>			
Medical reasons  <i>See section 3 of the introduction in the study's template</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	As mentioned in the answer to Q1, in case a third country national cannot be returned and s/he proves by medical certificates that his/her state of health is such as to need medical treatment without which s/he would face consequences of exceptional gravity. The applicant must produce evidence showing that s/he cannot effectively receive appropriate treatment in the country to which s/he may be removed. <sup>xiv</sup>
Statuses available for climate change reasons and natural disasters	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Statuses available for local personnel of armed forces of respective Member States (e.g. interpreters in Afghanistan or Iraq)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Special statuses available for unaccompanied/aged-out minors  <i>* Please note the recent EMN study on UAM and summarise where relevant</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Unaccompanied minors (UAM) can be granted a refugee or subsidiary protection status in accordance with the Asylum Law (see also Q7) <sup>xv</sup> , and if not, the UAM can obtain a authorisation to stay based on humanitarian grounds (Status A of this study) when it's decided that it is not in his interest to return in his country of origin. <sup>xvi</sup>
Special statuses available for children  <i>* Please include only if status is different from the protection-related status provided to adults/unaccompanied minors for the above-listed reasons</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

<p>Other (national protection) grounds</p> <p><i>Please specify and add as many rows as necessary.</i></p> <p><i>Please note that study covers only national statuses granted to persons based on protection grounds – which could be applicable to persons that cannot be returned on the principle of non-refoulement. However, <u>legal statuses granted due to practical challenges to remove a third-country national fall outside the scope of the study</u> (see Section 3 in the introduction).</i></p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Resident permit for humanitarian grounds of exceptional gravity (see section 'eligibility' for Status A, p. 18-19).<sup>xvii</sup></p>
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**Q4. If yes to Q1**, please complete **Table 2** with the type of statuses currently available for relocated and resettled persons, persons who are admitted through private/community sponsorship or other type of special programmes

If statuses available also include non-harmonised protection status(es), please also complete Table 3 and Table 4 in section 2.

Table 2: Type of protection status(es) currently available for relocated and resettled persons, persons who are admitted through private/community sponsorship or other type of special programmes

Type of protection status	Yes		No	Comments
	EU-harmonised protection status	Non-harmonised protection status		
<b>Status(es) available for resettled persons</b>				
<p><i>*Please note: EMN study on resettlement and humanitarian admission programmes</i></p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>All persons resettled to Luxembourg get their international protection status (refugee status), that had been granted prior to departure, confirmed upon arrival in Luxembourg and are required to apply for a residence permit "international protection – refugee status".<sup>xviii</sup></p>
<b>Status(es) available for relocated persons</b>				
<p><i>*Please note the EU relocation programmes (introduction of the template)</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>Third-country nationals relocated to Luxembourg enter the regular international protection application procedure.</p>
<b>Status(es) available to beneficiaries of community/private sponsorship programmes</b>				
<p><i>*Please note: EMN study on resettlement and humanitarian admission programmes</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>Statuses available to beneficiaries of other special programmes</b>				
<p><i>E.g.: special programmes designed to assist persons in need of protection to enter and reside in the EU (e.g. in the frame of</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

humanitarian admission programmes; family members of third-country nationals already legally residing in Member States)				
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## Section 2: Rationale, procedure and content of protection of national protection statuses

**Q5. If yes to Q1** and indicated in Tables 1 and 2 types of non-harmonised protection status(es), please elaborate on rationale for the adoption of the status(es) and the determination procedure for each of the non-harmonised protection statuses.

Please refer to the relevant law or policy throughout.

Please add as many tables as necessary, filling one table per status, clearly indicating to which type of non-harmonised category it belongs to.

Table 3: Rationale for national protection status and determination procedure

<b>Type of category the national protection status belongs to (as mentioned in Table 1 or Table 2):</b>	
<b>Other (national protection) grounds</b>	
<b>Status A</b>	
<b>Residence permit for private reasons based on humanitarian reasons of exceptional gravity</b>	
<b>Background</b>	
<p>Why was the status adopted?</p> <p><i>* please briefly brief outline of the policy background that led to the adoption of this status</i></p>	<p>The residence permit for humanitarian reasons of exceptional gravity was introduced by the bill n° 5802 on free movement of persons and immigration. The main reason of this norm is to give discretionary power to the Minister in charge of Immigration to grant an authorisation of stay to individuals who cannot obtain an authorisation of stay through another residence permit.<sup>xix</sup> One of these cases is humanitarian reasons (Article 78 (1) d).<sup>xx</sup> It also included the beneficiaries of an authorisation of stay for medical reasons<sup>xxi</sup>, which are granted a residence permit for private reasons.<sup>xxii</sup></p> <p>The authorisation of stay for humanitarian reasons of exceptional gravity was amended by the bill n° 6218<sup>xxiii</sup>, which transposed the Directive 2008/115/CE (Return Directive).<sup>xxiv</sup> In the exposition of motives of this bill, the legislator mentioned as the main reasons the easing of the conditions for granting the authorisation of stay for humanitarian reasons.<sup>xxv</sup></p> <p>Until the amendment, in order to stay in the territory, the applicant who requested an authorisation of stay based on humanitarian reasons of exceptional gravity was obliged to prove that s/he has sufficient resources to stay in the territory. This condition was abrogated and the maximum duration of the residence permit was extended from 1 to 3 years by the law of 1 July 2011.</p>

**Type of category the national protection status belongs to** (as mentioned in Table 1 or Table 2):

**Other (national protection) grounds**

**Status A**

**Residence permit for private reasons based on humanitarian reasons of exceptional gravity**

In what year was this status established?	It was established by the Immigration Law and it entered into force on 1 October 2008. It was later modified by the law of 1 July 2011, which entered into force on 28 July 2011. <sup>xxvi</sup>
Is this status established on: a) A permanent basis? b) A temporary (or ad-hoc) basis? If it is temporary/ad-hoc, when did/will it cease operation?	This status was established on a permanent basis by the Immigration Law (see below).  In accordance with the Immigration Law, the residence permit based on humanitarian reasons is issued for a maximum period of three years and it can be renewed at the request of the applicant, if s/he continues to fulfil the conditions for issuing it. <sup>xxvii</sup>  If the conditions are no longer met, the residence permit will not be renewed. The Immigration Law also foresees that the authorisation of stay can be withdrawn if the conditions are not met anymore during the period it was granted. <sup>xxviii</sup>

**Legal basis**

Is the <i>status</i> set out in: a) Legislation? b) Administrative decision/regulation/circular? c) Other (e.g. case law, public policy guidance surrounding the application of any provision in practice)? Please elaborate	a) This status is set out in article 78 (3) of the Immigration Law.
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**Eligibility**

Who is eligible to receive this status?	The Luxembourgish government can grant an autonomous residence permit or an authorisation of stay for compassionate, humanitarian or other reasons to a third-country national who is irregularly staying in the territory and who is not capable to obtain another residence permit. <sup>xxix</sup>  Examples of eligible persons in this regard are: <sup>xxx</sup> - Rejected applicants for international protection; - Unaccompanied minors (UAM) who saw their application for international protection rejected and who were not ordered to leave the territory while they were still minors. This residence permit will be issued to them until they reach majority; - where appropriate, a beneficiary of a residence permit for medical reasons (see Status B in this study), if, after a negative opinion by the
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**Type of category the national protection status belongs to** (as mentioned in Table 1 or Table 2):

**Other (national protection) grounds**

**Status A**

**Residence permit for private reasons based on humanitarian reasons of exceptional gravity**

	<p>appointed medical physician of the Directorate of Health of the Ministry of Health and following an analysis of the proportionality of the file, the Directorate of Immigration considers that the person in question is not yet in good enough health to be returned. In these cases, the Directorate of Immigration takes a number of elements into account, such as the age of the applicant, the period of residence in Luxembourg, etc.);</p> <p>- where appropriate, a person who has had the opportunity, on the part of the Directorate of Immigration, to regularise his situation by way of work (salaried activity), but who still needs a certain period of time to collect all the necessary documents or who does not have fulltime work contract (i.e. 20 hours work contract). In such cases, for example, a residence permit for 6 months may be granted.</p> <p>It is important to note that the authorization of stay for humanitarian reasons is not issued automatically, but an application needs to be filed with the Directorate of Immigration by the applicant and a case-by-case analysis is conducted by the latter.<sup>xxxii</sup></p>
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**Determination procedure**

<p>Is an application procedure set out in:</p> <ul style="list-style-type: none"><li>a) Legislation?</li><li>b) Administrative decision/regulation/circular?</li><li>c) Other (e.g. case law)?</li></ul>	<p>No, the application procedure is not explicitly set out in any official documents (see below for more details).<sup>xxxii</sup></p>
<p>When is application for the national protection status possible:</p> <ul style="list-style-type: none"><li>a) Immediately, as part of a single procedure examining the need for international protection?</li><li>b) Immediately, as part of a separate procedure?</li><li>c) After exhausting the asylum procedure in-country?</li><li>d) Other (please explain).</li></ul>	<p>b) Immediately as part of a separate procedure.<sup>xxxiii</sup> The application is declared inadmissible if it is based on motives previously mentioned in another application that was rejected by the Minister in charge of Immigration and Asylum.<sup>xxxiv</sup></p>
<p>Where does the application take place:</p> <ul style="list-style-type: none"><li>a) In the territory of your State?</li><li>b) In a third country?</li><li>c) Both are possible.</li></ul>	<p>a) In accordance with the exposition of motives and the comments of article 78 (3) of the Immigration Law, the application has to take place in the territory of Luxembourg.</p>
<p>Briefly outline the procedure in terms of:</p> <ul style="list-style-type: none"><li>— Authorities involved in examining the application and, if applicable, the issuance of a permit of stay; please clarify</li></ul>	<p>The individual must apply, in written form on plain paper, for a temporary authorisation of stay for humanitarian reasons with the Directorate of Immigration. The individual must detail the humanitarian reasons of exceptional gravity, if</p>

**Type of category the national protection status belongs to (as mentioned in Table 1 or Table 2):**

**Other (national protection) grounds**

**Status A**

**Residence permit for private reasons based on humanitarian reasons of exceptional gravity**

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

applicable with supporting documents, on which the application is based.<sup>xxxv</sup> Different from the other residence permit for private reasons the third-country national does not have to prove sufficient resources, adequate accommodation and health insurance coverage.<sup>xxxvi</sup>

An agent of the Foreigners Unit of the Directorate of Immigration will treat the file. This unit is different from the one that treats the applications for international protection (Refugees Unit), but both units are within the Directorate of Immigration. The agent of the Foreigners Unit can request any additional information that s/he considers necessary for the examination of the application.<sup>xxxvii</sup>

In some cases, the analysis of the application may show that the file needs to be treated under a different authorisation of stay that is more appropriate to the specific case. According to the Directorate of Immigration, many applications do not fulfil the requirements of this specific residence permit.<sup>xxxviii</sup>

Once the file is completed, the decision will be taken by the Minister in charge of Immigration within a reasonable amount of time. There is no deadline fixed by law, and the amount of time may also vary depending on if the Directorate of Immigration considers that additional information or evidence needs to be provided by the applicant in order to decide on the application.<sup>xxxix</sup>

The motivated decision (positive or negative) will be notified to the applicant. In the event of a positive decision, and where applicable, the applicant may be required to obtain and/or present documents that had been missing or were not requested previously. These documents include the passport (if it was not joined to the initial application)<sup>xl</sup>, an extract from the police records or an affidavit as well as a proof of health insurance covering all risks in Luxembourg.<sup>xli</sup>

In addition, the beneficiary of the temporary authorisation of stay is required to follow the same administrative procedure as for any other residence permit, meaning that s/he must undergo a medical check for foreigners, including a TB screening, as soon as possible.

Furthermore, s/he needs to apply for the residence permit at the Directorate of Immigration within three months, including the following documents:

**Type of category the national protection status belongs to** (as mentioned in Table 1 or Table 2):

**Other (national protection) grounds**

**Status A**

**Residence permit for private reasons based on humanitarian reasons of exceptional gravity**

	<ul style="list-style-type: none"> <li>• a copy of the temporary authorisation to stay;</li> <li>• a copy of the declaration of arrival issued by the communal authority;</li> <li>• proof of payment of the fee for the residence permit of 80€.</li> </ul> <p>The residence permit can be renewed if all the conditions continue to be fulfilled.<sup>xliii</sup></p>
<b>Appeal procedures</b>	
Is there an appeal in the event of a negative decision?	Yes. The third-country national can appeal the negative decision before the First instance Administrative Court <sup>xliiii</sup> within a deadline of three months after the notification of the decision. <sup>xliv</sup>
If yes, is it a two-level system of appeal or one level?	It is a two-level system of appeal. If the decision of the First instance Administrative Court is negative, the applicant can file an appeal before the Administrative Court within a deadline of 40 days after the notification of the decision. <sup>xliv</sup>
<p>If yes, is it:</p> <ul style="list-style-type: none"> <li>- An administrative appeal?</li> <li>- A judicial appeal?</li> <li>- Judicial review?</li> <li>- Other? (please explain)</li> </ul>	Judicial appeal.
<p>Does the appeal have an automatic suspensive effect? Yes/No</p> <p><u>If no</u>, can it be requested and what is the procedure in this case?</p>	No. However, the applicant can request a suspension of the effects of the decision that must be filed at the same time of the appeal.
<p>Are the authorities involved <u>the same as those in appeal procedures against a negative decision in the <i>international protection procedure</i></u>?</p>	No. In principle the same administration takes the decision (Directorate of Immigration examines the file and the Ministry in charge of Immigration and Asylum takes the decision) but by different services (International Protection is handled by the Refugee Unit and the residence permit for humanitarian reasons of exceptional gravity is handled by the Foreigners Unit). However, the appeal of a negative decision is filed before the First instance Administrative Court.
If the decision on the appeal is negative, will it result in a return decision being issued?	Yes. <sup>xlvi</sup>
If there is no possibility for appeal, please explain what happens.	N/A

**Type of category the national protection status belongs to** (as mentioned in Table 1 or Table 2):

**Other (national protection) grounds**

**Status A**

**Residence permit for private reasons based on humanitarian reasons of exceptional gravity**

**Change of status**

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)

If the third-country national fails on appeal or it is not renewed and the applicant has not applied for international protection previously, s/he can apply for international protection.<sup>xlvii</sup>

Normally, as the status is foreseen for someone who is in irregular stay on the territory, s/he may already have a return decision.<sup>xlviii</sup>

In principle, the applicant of the authorisation of stay based on humanitarian reasons of exceptional gravity does not have the possibility to apply for any other legal migration status. If the authorisation of stay is rejected or not renewed, there is no other possibility to obtain another status.

**Relevant case law**

Is there any relevant case law (by the highest instance courts and final judgements) that led to *systemic* changes in the procedure (and/or with major policy implications) concerning this national protection status? Yes/No

If so, please briefly provide references to case law and briefly describe the changes brought about by this case law.

*In the references to the case law please include: the court name, date of decision, title/parties if applicable, case number (or citation, document symbol), link to the full version of the case (if possible)*

No.

**Type of category the national protection status belongs to** (as mentioned in Table 1 or Table 2):

**Other (including humanitarian) statuses based on: medical reasons**

**Status B**

**Postponement of removal and residence permit for medical reasons**

**Background**

Why was the status adopted?

*\* please briefly brief outline of the policy background that led to the adoption of this status*

The main reason why this article was adopted is related to the right of the serious ill person, who requires necessary and adequate medical treatment that cannot be provided in his/her country of origin, even though an order of removal had been issued, to remain in the territory.<sup>xlix</sup> The serious illness that is taken into consideration is the one that without adequate medical treatment can cause death, reduce his/her life expectancy or provoke a serious handicap.<sup>i</sup>

However, this status involves various levels: During a first time, it is concretised by the granting of a postponement of removal, which does not equal an authorisation of stay. However, it grants the right to receive medical treatment and social aid as well as to a temporary occupation authorisation (*'autorisation d'occupation temporaire' – AOT*) which allows the third-country national to work.<sup>ii</sup>

After two years of stay due to a prolonged illness, the individual is granted a residence permit.<sup>iii</sup>

In what year was this status established?

It entered into force on 1 October 2008.

Is this status established on:

- a) A permanent basis?
- b) A temporary (or ad-hoc) basis?  
If it is temporary/ad-hoc, when did/will it cease operation?

The residence permit is established by law and the case law has defined its temporary nature (see endnote).<sup>iiii</sup>

**Legal basis**

Is the *status* set out in:

- a) Legislation?
- b) Administrative decision/regulation/circular?
- c) Other (e.g. case law, public policy guidance surrounding the application of any provision in practice)? Please elaborate

a) Legislation. The status is foreseen in articles 130 to 132 of the Immigration Law.

**Eligibility**

Who is eligible to receive this status?

A third-country national, provided s/he does not constitute a threat to public policy or public security, may not be removed from the territory if s/he establishes by means of medical

**Type of category the national protection status belongs to (as mentioned in Table 1 or Table 2):**

**Other (including humanitarian) statuses based on: medical reasons**

**Status B**

**Postponement of removal and residence permit for medical reasons**

	<p>certificates that his/her state of health is such as to need medical treatment without which s/he would face consequences of exceptional gravity and if s/he produces evidence showing that he/she cannot effectively receive appropriate treatment in the country of return.<sup>liv</sup> The medical certificated need to be up-to-date and detailed and will be submitted for opinion to the appointed medical physician.<sup>lv</sup></p>
<p><b>Determination procedure</b></p>	
<p>Is an application procedure set out in:</p> <ul style="list-style-type: none"> <li>a) Legislation?</li> <li>b) Administrative decision/regulation/circular?</li> <li>c) Other (e.g. case law)?</li> </ul>	<p>a) Legislation</p>
<p>When is application for the national protection status possible:</p> <ul style="list-style-type: none"> <li>a) Immediately, as part of a single procedure examining the need for international protection?</li> <li>b) Immediately, as part of a separate procedure?</li> <li>c) After exhausting the asylum procedure in-country?</li> <li>d) Other (please explain).</li> </ul>	<p>d) Other: As mentioned above, this status refers to a third-country national who has an order to leave the territory (i.e. rejected international protection applicant or irregularly staying migrant)</p>
<p>Where does the application take place:</p> <ul style="list-style-type: none"> <li>a) In the territory of your State?</li> <li>b) In a third country?</li> <li>c) Both are possible.</li> </ul>	<p>a) The application takes place in Luxembourg.</p>
<p>Briefly outline the procedure in terms of:</p> <ul style="list-style-type: none"> <li>– Authorities involved in examining the application and, if applicable, the issuance of a permit of stay; please clarify if these are the <u>same authorities as those responsible of examining international protection applications</u>;</li> <li>– Existing timelines and notification of the (first instance) decision, information to the beneficiary</li> </ul>	<p>The third country national must file his/her application for a postponement of removal for medical reasons at the Foreigners Unit<sup>lvii</sup> of the Directorate of Immigration.</p> <p>The applicant must prove through medical certificates that his/her state of health requires adequate medical treatment without which s/he would face consequences of exceptional gravity. Furthermore, s/he has to produce evidence showing that s/he cannot effectively receive appropriate treatment in the country of return.<sup>lviii</sup></p> <p>The agent of the Directorate of Immigration will review the documentation and request all the information that s/he will consider necessary for the examination of the file.</p> <p>The medical certificates will be sent to the appointed medical physician of the Directorate of</p>

**Type of category the national protection status belongs to (as mentioned in Table 1 or Table 2):**

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Health who will examine the patient and render a report on the case. The physician will order all the tests that s/he considers necessary.

Furthermore, s/he will have to determine if a medical treatment is required, the consequences of exceptional gravity if the medical treatment is not provided and the possibility of receiving appropriate treatment in the country of return.<sup>lviii</sup>

Once the medical opinion is received by the Directorate of Immigration, the Minister in charge of Immigration will take a decision. The Minister in charge of Immigration follows the recommendation of the appointed medical physician in all cases.<sup>lix</sup> There is no deadline fixed by law, all applications are treated on a case-by-case basis and as soon as possible. Moreover, the amount of time to take a final decision may be extended in cases where the doctor is not in possession of the medical documents of the doctor treating the person and/or additional examinations of the applicant are needed. The refusal by the applicant to undergo medical checks may result in the refusal of the postponement of removal or the residence permit.<sup>lx</sup>

In the event of a negative opinion by the appointed medical physician, a negative decision on the application for the postponement of removal or the authorisation to stay for medical reasons or refusing an extension to stay for medical reasons will be taken. However, depending on the particular circumstances of the case and after a thorough examination on a case-by-case basis, another authorisation of stay, for example on humanitarian grounds of exceptional gravity (Status A), may be granted where it is considered that the person cannot be returned.<sup>lxi</sup>

If the decision is positive, the Directorate of Immigration will grant a postponement of removal (which is not an authorisation of stay) for a maximum duration of six months, and which can be renewed up to a maximum of two years.<sup>lxii</sup>

After two years, if the situation remains the same, the third-country national can apply for an authorisation of stay for medical reasons for the duration of the treatment. At this stage of the procedure, the medical certificates will be sent again to the appointed medical physician of the Directorate of Health who will examine the

**Type of category the national protection status belongs to** (as mentioned in Table 1 or Table 2):

**Other (including humanitarian) statuses based on: medical reasons**

**Status B**

**Postponement of removal and residence permit for medical reasons**

	<p>situation of the patient and render a report on the case. Once the medical opinion is received by the Directorate of Immigration, the Minister in charge of Immigration will take a decision based on the recommendation of the appointed medical physician. It is important to stress in this context that the third-country national needs to file an application for this authorisation of stay as no automatic issuance of a residence permit is foreseen by law.<sup>lxiii</sup></p> <p>Once the applicant has received a positive decision on the authorisation of stay for medical reasons, s/he has to fulfil the same administrative steps as described for Status A above in order to receive the residence permit for medical reasons (see brief outline of the determination procedure for Status A on p. 19-21).<sup>lxiv</sup></p> <p>The maximum duration of this authorisation of stay is up to one year, but it may also be issued for a duration of 6 months, depending on the individual case and the opinion of the appointed medical physician.<sup>lxv</sup> This authorisation of stay can be renewed after the re-examination of the situation.<sup>lxvi</sup> These decisions are taken by the Minister in charge of Immigration based on the motivated medical opinion of the appointed medical physician mentioned above.</p> <p>In both cases, for the postponement of removal for medical reasons and the residence permit for medical reasons, the applicant is exempted from the condition to prove sufficient resources. However, if the beneficiary of a residence permit for medical reasons is accompanied by family members, the latter must present sufficient resources.<sup>lxvii</sup></p>
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**Appeal procedures**

Is there an appeal in the event of a negative decision? Yes/No	Yes.
If yes, is it a two-level system of appeal or one level?	Two level system of appeal.
<p>If yes, is it:</p> <ul style="list-style-type: none"> <li>- An administrative appeal?</li> <li>- A judicial appeal?</li> <li>- Judicial review?</li> <li>- Other? (please explain)</li> </ul>	Judicial appeal.

**Type of category the national protection status belongs to** (as mentioned in Table 1 or Table 2):

**Other (including humanitarian) statuses based on: medical reasons**

**Status B**

**Postponement of removal and residence permit for medical reasons**

Does the appeal have an automatic suspensive effect? Yes/No <u>If no</u> , can it be requested and what is the procedure in this case?	No. However, the third-country national can file a request for the suspension of the effects of the negative decision at the same time as the appeal.
Are the authorities involved <u>the same as those in appeal procedures against a negative decision in the <i>international protection procedure</i></u> ?	No. The authorities involved are not the same in appeal procedures against a negative decision in the international protection procedure. However, the First instance Administrative Court as well as the Administrative Court deal in appeal with both kinds of issues.
If the decision on the appeal is negative, will it result in a return decision being issued? Yes/No	No. In principle, the individual already has a return decision, so at the end of the appeal procedure, the return decision will be executed.
If there is no possibility for appeal, please explain what happens.	N/A
<b>Change of status</b>	
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)	a. No. b. No.
<b>Relevant case law</b>	
Is there any relevant case law (by the highest instance courts and final judgements) that led to <i>systemic</i> changes in the procedure (and/or with major policy implications) concerning this national protection status? Yes/No  If so, please briefly provide references to case law and briefly describe the changes brought about by this case law.  <i>In the references to the case law please include: the court name, date of decision, title/parties if applicable, case number (or citation, document symbol), link to the full version of the case (if possible)</i>	No.

**Q6. If yes to Q1** and indicated in Tables 1 and 2 types of non-harmonised protection status(es), please also fill in **Table 4 for each status**. Please add as many tables as necessary, completing one table per status, clearly referring to the name/title of the status used in Table 3.

Table 4: Content of protection of national statuses

Status A	Yes	No	Other	Details
<b>Residence permit for private reasons based on humanitarian reasons of exceptional gravity</b>				
<b>Residence permit</b>				
Issuance of a residence permit required?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Validity of the first residence permit (or initial length) (in years)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The maximum duration foreseen by the law is 3 years. <sup>lxxviii</sup>  In practice, the first residence permit is issued for 1 year. Furthermore, depending on the individual case, the validity can also be inferior to one year. For example, an unaccompanied minor whose application for international protection was rejected and who did not receive an order to leave the territory may receive a residence permit valid for 6 months until s/he reaches his/her majority. <sup>lxxix</sup>
Possibilities of renewal/extension?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	If the granting conditions still remain at the time of renewal. <sup>lxxx</sup>
Validity of the residence permit after renewal? (in years)	-	-	-	The maximum duration foreseen by the law is 3 years.  In practice, the residence permit can be renewed for 1 to 3 years, depending on the case by case evaluation of the individual application. <sup>lxxxi</sup>
Time period required to be entitled to permanent residence permit (in years) <sup>1</sup>	-	-	-	This is a permanent residence permit.  The beneficiary can apply for a long-term residence permit after 5 years of residence in the country <sup>lxxxii</sup> and if s/he fulfils all the criteria required for granting this residence permit. <sup>lxxxiii</sup> However, in practice, the requirement of sufficient, regular and stable resources may be challenging to fulfil for a beneficiary of a resident permit for humanitarian reasons. For this reason, the Directorate of Immigration reported that they have received very few applications in this regard in recent years. <sup>lxxxiv</sup>
Does this time period differ from the general rule for applying for permanent residence permit?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

<sup>1</sup> 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 the application for a permanent residence permit.

Status A				
Residence permit for private reasons based on humanitarian reasons of exceptional gravity	Yes	No	Other	Details
<b>Travel document</b>				
Is a travel document issued?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	If the third-country national holder of an authorisation of stay does not have a national passport and is unable to obtain a national passport or it is impossible for him/her to request or extend a travel document because of exceptional reasons <sup>lxxxv</sup> (i.e. it is very difficult or complicated to obtain a national passport from the authorities of his/her country of origin), he/she can obtain a travel document.
If so, what type of document is it?	-	-	-	Travel document for foreigners. <sup>lxxxvi</sup>
Validity (in years)	-	-	-	The maximum duration is of 5 years. <sup>lxxxvii</sup>
<b>Accommodation</b>				
Access to accommodation (on the same basis as other legally residing third-country nationals)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Access to specific schemes/programmes to support access to accommodation?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Dispersal mechanism? <sup>2</sup>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Luxembourg does not have a dispersal mechanism in place.
<b>Family reunification</b>				
Right to family reunification?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The individual will have to fulfil the same conditions for family reunification as any other third-country national as established by law. <sup>lxxxviii</sup> However, in practice, the condition of sufficient, regular and stable resources may be challenging to fulfil for a beneficiary of a resident permit for humanitarian reasons. For this reason, the Directorate of Immigration reported that they have received very few applications in this regard in recent years. <sup>lxxxix</sup>
Eligible family members, for example:				
- partner in a legal marriage or in a comparable relationship	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Marriage <sup>lxxx</sup>
- unmarried partner (e.g. registered partnership, cohabitation, attested long term relationship)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Only registered partnership <sup>lxxxii</sup>
- underage partner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

<sup>2</sup> In asylum policies, a 'dispersal mechanism' refers to a policy implemented by national authorities to 'distribute' asylum seekers or beneficiaries of protection across the territory of the State, to ensure an even distribution among local authorities and avoid 'overburdening' available accommodation or housing facilities.

<u>Status A</u> Residence permit for private reasons based on humanitarian reasons of exceptional gravity	Yes	No	Other	Details
<ul style="list-style-type: none"> <li>- minor child (beneficiary's and/or partner's; foster or adopted child)</li> <li>- adult dependent children (beneficiary's and/or partner's or adopted child)</li> <li>- brother or sisters</li> <li>- dependent parents<sup>lxxxvii</sup></li> <li>- parents of UAMs</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>Children of the sponsor and/or of his/her spouse or partner.<sup>lxxxii</sup> Formally adopted children may apply for family reunification, if judicial proof for the adoption can be provided (i.e. in the frame of the Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption of 29 May 1993).<sup>lxxxiii</sup></p> <p>Foster children, for whom no formal adoption procedure has taken place, do not fall under the scope of article 70 of the Immigration Law. However, a residence permit for private reasons can be granted to a foster child if the Ministry assesses the personal ties with the sponsor as well as their closeness, the length of time for which they have existed and their stability and the fact that such refusal to authorise their stay would disproportionately affect their right to privacy and family life.<sup>lxxxiv</sup></p> <p>In general, the Directorate of Immigration is cautious to avoid any risk of child abduction.<sup>lxxxv</sup></p> <p>The Immigration Law<sup>lxxxvi</sup> allows the family reunification of unmarried adult children of the sponsor and/or of his/her spouse or partner, provided that they are objectively incapable to provide for themselves due to their health condition.</p>
Material requirements sponsor must guarantee, for example: <ul style="list-style-type: none"> <li>- accommodation</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The Immigration Law<sup>lxxxviii</sup> requires that the sponsor has appropriate accommodation to host the family member(s)<sup>lxxxix</sup> (e.g. rental contract, proof of property ownership/title deed). This accommodation must have a floor area of at least 12m<sup>2</sup> for the first occupant and 9m<sup>2</sup> per additional occupant<sup>xc</sup>, natural light entering through windows that can be opened and closed properly and which measure at least 1/10 of the floor area, heating, running water, electricity, etc.<sup>xc</sup></p>

<a href="#">Status A</a> <b>Residence permit for private reasons based on humanitarian reasons of exceptional gravity</b>	Yes	No	Other	Details
<ul style="list-style-type: none"> <li>- health insurance</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The Immigration Law<sup>xcii</sup> establishes that the sponsor must have health insurance to cover for him/herself and the family member(s). The sponsor must join to his/her application a health insurance certificate issued by a Luxembourg or foreign social security authority and/or by a private insurance company, covering their stay in Luxembourg.<sup>xciii</sup></p>

<u>Status A</u> Residence permit for private reasons based on humanitarian reasons of exceptional gravity	Yes	No	Other	Details
- sufficient income/financial means	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The Immigration Law<sup>xciv</sup> establishes that the applicant must produce evidence showing that s/he has stable and regular resources which are sufficient to meet his/her own needs and those of his/her family members for whom s/he is financially responsible (e.g. salary slips, tax declaration), without recourse to the social aid system. The amount of the resources of the sponsor shall be assessed by reference to the social minimum salary of a non-qualified worker (2.071,10 € per month).<sup>xcv</sup></p> <p>The prospective evaluation of the probability to maintain sufficient, regular and stable financial resources is based on a prognostic according to which the resources could reasonably be available during the year following the filing of the application for family reunification to ensure that the applicant will not have recourse to the social aid system.</p> <p>When the sponsor cannot meet this threshold, the Minister in charge of Immigration can issue a positive decision, taking into consideration the favorable evolution of the economic situation of the applicant in regard to the stability of his/her employment and income as well as taking into consideration that s/he is the owner of the property s/he inhabits or that her or his accommodation is free of charge.<sup>xcvi</sup></p> <p>In the evaluation of the resources, the Minister in charge of Immigration takes into consideration income from salaried work or independent activity, as any other replacement income and income coming from assets of the applicant. The Minister also takes into consideration the income of the spouse who participates in the budget of the household in a stable manner.<sup>xcvii</sup></p>
- other (e.g. criminal record, medical certificate)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The criminal record must be filed with the application.<sup>xcviii</sup> The beneficiary of the family reunification will have to pass a physical examination at his/her arrival in the country and before the issuance of the residence permit.<sup>xcix</sup></p>

Status A				
Residence permit for private reasons based on humanitarian reasons of exceptional gravity	Yes	No	Other	Details
Is there an equivalent of a 'grace period' <sup>3</sup> during which no material conditions are required?  If so, please indicate the duration of the grace period in the comments column.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	No. <sup>c</sup>
What is the validity of the residence permit of the family member?	-	-	-	The validity of the "family member" residence permit is valid for 1 year and is renewable upon request. In any case, the validity of the residence permit cannot be longer than the one of the sponsor. <sup>ci</sup>
<b>Labour market and qualifications</b>				
Specific conditions to be granted access (e.g. hold work permit)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The beneficiary of an authorisation of stay for humanitarian reasons of exceptional gravity can apply for a residence permit as a salaried worker <sup>ci</sup> if s/he engages in a salaried activity as a main activity and if s/he has the professional qualifications required for the exercise of the activity and has a labour contract issued in regard to a position declared before the National Employment Administration (ADEM). <sup>cii</sup> The concerned person is exempted of the specific conditions of article 42 (1) 1 (hiring priority of EU citizens) and 2 (activity serves the economic interest of Luxembourg).
Access to procedures for recognition of qualifications?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Any third-country national legally residing in Luxembourg has the right to access the procedure for recognition of qualifications.
<b>Social assistance</b>				
Social assistance limited to core benefits?  <i>*please note definition of 'core benefits' in the introduction</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The Immigration law does not foresee that the beneficiary of an authorisation of stay for humanitarian reasons is not entitled to social assistance (i.e. social inclusion revenue, or ' <i>Revenu d'inclusion social</i> ' in French - REVIS <sup>civ</sup> ). However, in order to benefit from the REVIS, the TCN must justify the condition of residence in the country (5 years during the last 20 years). <sup>cv</sup>  Furthermore, as any legal resident in Luxembourg, s/he is entitled to social aid. <sup>cvi</sup>

<sup>3</sup> 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).

Health care				
Access to emergency health care?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Any person residing in the Grand Duchy who is not enrolled with the Joint Social Security Centre ( <i>'Centre commun de la sécurité sociale'</i> – CCSS) either individually (as an insured party) or as a family member (as a co-insured party), may voluntarily enrol for health and maternity insurance. <sup>cvii</sup> The contribution is of 114,72€ per month. <sup>cviii</sup> However, there is a waiting period ( <i>'période de carence'</i> ) of three months during which the insured party will not be reimbursed by the CCSS for any medical expenses. <sup>cix</sup>
Access to mainstream services?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	See above.
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)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	See above.
Education				
Access to general system of education (same as nationals)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Adults will have access in the same conditions as any third-country national legally residing in Luxembourg.  Children of the beneficiary will have the same access to the general education system than any national.
Additional support provided (e.g. preparatory classes, additional classes of official language, remedial classes, assistance of intercultural assistant)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	As the beneficiary of the authorisation of stay for humanitarian reasons is a legal resident of Luxembourg, s/he is entitled to subscribe to the Welcome and Integration Contract ( <i>'contrat d'accueil et d'intégration'</i> ), which will provide language courses in one of the three official languages of the country, a citizenship training course and an orientation day. <sup>cx</sup>
Integration				
Access to 'mainstream' support (available for legally residing third-country nationals)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	See reference to the Welcome and Integration Contract above.
Access to targeted support (i.e. specifically for beneficiaries of the status)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If so, how long is the support granted for?	-	-	-	N/A
End of protection				
Are there any <i>formal</i> ways foreseen to end or refuse to renew the national protection status (e.g. it is foreseen in national legislation)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The Immigration Law foresees the possibility of withdrawing or refusing to renew any residence permit if the conditions under which it was issued are not fulfilled any longer. <sup>cxii</sup>
How can national protection end?				

- The person no longer qualifies for protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
- Protection was fraudulently acquired	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
- Status ceased	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
- Status can no longer be renewed	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
- Other (please explain)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

### Naturalisation/citizenship acquisition

<p>Minimum legal residence required to apply for citizenship/naturalisation</p> <p><i>*please note that a 2019 EMN study will research in more depth the issue of acquisition of citizenship in Member States</i></p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The beneficiary of a residence permit of humanitarian reasons is entitled to apply for nationality after having resided 5 years in Luxembourg. Only the final year of residence immediately preceding the naturalisation application must have been uninterrupted.<sup>cxii</sup></p>
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### Status offers more or less favourable conditions (compared to either refugee or subsidiary protection)

Please describe the extent to which the status offers				
a) <u>more</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b) <u>same</u> or	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

<p>c) <i>less favourable conditions compared to either refugee or subsidiary protection?</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<p><input type="checkbox"/> The status is less favourable in comparison to the refugee and the subsidiary protection status.</p> <p>One of the most significant differences is that the beneficiary of a residence permit for private reasons based on humanitarian grounds is entitled to social assistance (i.e. REVIS social inclusion revenue), but must prove that s/he has an effective residence in Luxembourg of 5 years during a 20 year period.<sup>cxiii</sup></p> <p>The residence permit does not provide access to nationality through an option procedure, which is a simplified procedure.<sup>cxiv</sup></p> <p>The residence permit is issued for a maximum duration of 3 years while the residence permits for beneficiaries of international protection are usually issued for 5 years.</p> <p>Access to the labour market is conditioned for the beneficiaries of a resident permit for humanitarian reasons, namely that they have to fulfil the conditions of an authorisation of stay for salaried worker<sup>cxv</sup>, or request an authorisation for an accessory activity. They can request a salaried worker residence permit without fulfilling the labour market test.<sup>cxvi</sup></p> <p>Different from the refugees, who receive a refugee travel document when the refugee status is granted, the beneficiaries of a residence permit for humanitarian reasons must be in possession of a valid national passport. If s/he is unable to receive a national passport, s/he needs to make an application for a travel document for foreigners, which will be granted if all the conditions are fulfilled (see above on p. 29).</p>
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**Relevant case law**

<p>Is there any relevant case law (by the highest instance courts and final judgements) that led to <i>systemic</i> changes in the procedure (and/or with major policy implications) concerning this national protection status? Yes/No</p> <p>If so, please briefly provide references to case law and briefly describe the changes brought about by this case law.</p> <p><i>In the references to the case law please include: the court name, date of decision, title/parties if applicable, case number (or citation, document symbol), link to the full version of the case (if possible)</i></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Status <u>B</u> Postponement of removal and residence permit for medical reasons	Yes	No	Other	Details
<b>Residence permit</b>				
Issuance of a residence permit required?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>During the first two years, the third-country national does not receive a residence permit. S/he receives a certificate of postponement of removal for medical reasons.<sup>cxvii</sup></p> <p>After two years, and if the serious illness persists, the Ministry in charge of Immigration will grant a residence permit for medical reasons (<i>'autorisation de séjour pour raisons médicales'</i>) with a maximum validity of 1 year. The residence permit for medical reasons is issued in accordance with article 78 of the Immigration Law (<i>'autorisation de séjour pour des raisons privées'</i>).<sup>cxviii</sup> This resident permit can be renewed after a re-examination of the medical condition by the appointed medical physician.<sup>cxix</sup></p>
Validity of the first residence permit (or initial length) (in years)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The maximum validity of the first residence permit is one year, after two years of renewing the certificate of postponement of removal for medical reasons. However, depending on the individual case and the opinion of the appointed medical physician, the first residence permit may also be issued for a duration of 6 months. <sup>cxx</sup> See above.
Possibilities of renewal/extension?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The resident permit for medical reasons can be renewed for a maximum validity of one year after the re-examination made by the appointed medical physician. <sup>cxxi</sup>
Validity of the residence permit after renewal? (in years)	-	-	-	The renewed residence permit will have a maximum validity of 1 year.
Time period required to be entitled to permanent residence permit (in years) <sup>4</sup>	-	-	-	This is a temporary residence status that cannot provide permanent residence status. <sup>cxxii</sup>
Does this time period differ from the general rule for applying for permanent residence permit?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	N/A
<b>Travel document</b>				
Is a travel document issued ?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

<sup>4</sup> 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 the application for a permanent residence permit.

Status B				
Postponement of removal and residence permit for medical reasons	Yes	No	Other	Details
If so, what type of document is it ?	-	-	-	N/A
Validity (in years)	-	-	-	N/A
<b>Accommodation</b>				
Access to accommodation (on the same basis as other legally residing third-country nationals) ?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Access to specific schemes/programmes to support access to accommodation?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Dispersal mechanism? <sup>5</sup>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Luxembourg does not have a dispersal mechanism in place.
<b>Family reunification</b>				
Right to family reunification?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Eligible family members, for example:				No. However, the Immigration law foresees that the Minister in charge of Immigration can extent the benefits of the postponement of removal/residence permit to family members of the beneficiary who accompany him/her and who are equally susceptible to be returned.  This residence permit will have the same duration as the one of the beneficiary. <sup>cxixiii</sup> Under these conditions the following members can accompany him/her:
- partner in a legal marriage or in a comparable relationship	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
- unmarried partner ( <i>e.g. registered partnership, cohabitation, attested long term relationship</i> )	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
- underage partner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
- minor child (beneficiary's and/or partner's; foster or adopted child)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	However, not for a foster child (see explanation for Status A on p. 30).
- adult dependent children (beneficiary's and/or partner's or adopted child)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
- brother or sisters	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
- dependent parents	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
- parents of UAMs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Not possible because the family members have to be in the territory and risk to be returned as the beneficiary.
Material requirements sponsor must guarantee, for example:				
- accommodation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
- health insurance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

<sup>5</sup> In asylum policies, a 'dispersal mechanism' refers to a policy implemented by national authorities to 'distribute' asylum seekers or beneficiaries of protection across the territory of the State, to ensure an even distribution among local authorities and avoid 'overburdening' available accommodation or housing facilities.

Status B				
Postponement of removal and residence permit for medical reasons	Yes	No	Other	Details
- sufficient income/financial means	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	For the postponement of removal, the beneficiary does not need to fulfil the condition of sufficient resources. However, in order to be issued the residence permit for medical reasons, the applicant needs to fulfil the condition of sufficient resources (see also 'brief outline of the procedure on p. 26). <sup>cxxiv</sup>
- other (e.g. criminal record, medical certificate)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Is there an equivalent of a 'grace period' <sup>6</sup> during which no material conditions are required?  If so, please indicate the duration of the grace period in the comments column.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
What is the validity of the residence permit of the family member?	-	-	-	N/A
<b>Labour market and qualifications</b>				
Specific conditions to be granted access (e.g. hold work permit)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The beneficiary of a certificate of postponement of removal for medical reasons can request the Minister in charge of Immigration a temporary occupation authorisation. In order to obtain this authorisation, the applicant must fulfil the requirements of the authorisation of stay as a salaried worker <sup>cxxv</sup> and has to pass the labour market test. This authorisation of temporary occupation is issued for a maximum of six months and is renewable, but it cannot be longer than the postponement of removal. <sup>cxxvi</sup> It is valid only for a determined employer and for a single profession.  If the situation persists and the beneficiary is granted an authorisation of stay for private reasons and in consequence a residence permit for private reasons, the access to the labour market will apply as mentioned above for Status A.
Access to procedures for recognition of qualifications?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

<sup>6</sup> 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).

Social assistance				
Social assistance limited to core benefits? <i>*please note definition of 'core benefits' in the introduction</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Nevertheless, the beneficiary of a postponement of removal for medical reasons is entitled to receive humanitarian relief aid. <sup>cxxvii</sup>  The beneficiary of the residence permit for private reasons for medical reasons is entitled to the same aid.
Health care				
Access to emergency health care?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Under the same conditions established for the residence permit for humanitarian reasons. See Status A in this section.
Access to mainstream services?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	See above.
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)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	See above.
Education				
Access to general system of education (same as nationals)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Once the beneficiary obtains a residence permit for medical reasons, s/he is entitled to access the general system education as s/he is a legal resident. In regard to the children of the beneficiary, as they fall under the scope of compulsory education, they are obliged to attend school.
Additional support provided (e.g. preparatory classes, additional classes of official language, remedial classes, assistance of intercultural assistant)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Yes, but only after s/he obtains the residence permit for medical reasons. Before the granting of the residence permit, the third-country national has the right to stay in the territory, but not to reside. <sup>cxxviii</sup>
Integration				
Access to 'mainstream' support (available for legally residing third-country nationals)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Yes, after receiving the residence permit for medical reasons.
Access to targeted support (i.e. specifically for beneficiaries of the status)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If so, how long is the support granted for?	-	-	-	N/A
End of protection				
Are there any <i>formal</i> ways foreseen to end or refuse to renew the national protection status (e.g. it is foreseen in national legislation)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Yes. If the appointed medical physician considers that the adequate treatment can be provided in the country of return or that the consequences of not receiving the treatment are not of exceptional gravity and if the Minister in charge of Immigration follows the medical advice. <sup>cxxix</sup>
How can national protection end?				
- The person no longer qualifies for protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

- Protection was fraudulently acquired	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
- Status ceased	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Under the medical opinion of the appointed medical physician of the Directorate of Health. <sup>cxxx</sup>
- Status can no longer be renewed	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	As it was mentioned above, the postponement of removal can be renewed for up to a maximum of 2 years if the medical situation persists. <sup>cxxxi</sup> After this period, and if the situation persists, the TCN may be granted an authorisation of stay for medical reasons and a residence permit for private reasons. <sup>cxxxii</sup> This residence permit will be renewed until there is a medical opinion of the appointed medical physician of the Directorate of Health that says otherwise.
- Other (please explain)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

### Naturalisation/citizenship acquisition

<p>Minimum legal residence required to apply for citizenship/naturalisation</p> <p><i>*please note that a 2019 EMN study will research in more depth the issue of acquisition of citizenship in Member States</i></p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<p>The postponement of removal is not a residence permit. Only after two years, the beneficiary can opt for a residence permit for reasons (based on medical reasons). The law on Luxembourgish nationality allows that the holder of a residence permit for humanitarian (medical) reasons can apply for naturalisation if s/he has resided in Luxembourg for 5 years.<sup>cxxxiii</sup> Only the final year of residence immediately preceding the naturalisation application must have been uninterrupted. The law does not make any difference between the types of residence permits.</p>
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### Status offers more or less favourable conditions (compared to either refugee or subsidiary protection)

Please describe the extent to which the status offers				
• <i>more</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
• <i>same or</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

<ul style="list-style-type: none"> <li>less favourable conditions compared to either refugee or subsidiary protection?</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>It is less favourable for the following reasons:</p> <ol style="list-style-type: none"> <li>the postponement of removal is it not a residence permit and only after two years that it can become a residence permit;</li> <li>It only provides humanitarian relief aid and not social assistance as the refugee/subsidiary protection status</li> <li>Very limited access to the labour market through an authorisation of temporary occupation</li> <li>It does not provide a travel document under any circumstances.</li> </ol> <p>The private reasons resident permit for private reasons is also less favourable than the refugee and subsidiary protection status for the following reasons:</p> <ol style="list-style-type: none"> <li>the residence permit is issued for one year and the duration of the validity of the renewal is of maximum one year. The residence permit for refugee or subsidiary protection status are of at least of 3 years<sup>cxxxiv</sup> (in practice it is issued for 5 years);</li> <li>the beneficiaries of international protection are not subject to the labour market test and they have access to the labour market in the same conditions as a Luxembourg national (with the exception of the public sector) . The beneficiary of a residence permit for medical reasons has access to the labour market but it is subject to the labour market test and once he/she obtains a salaried worker residence permit the permit will be issued for one year and limited to a specific sector;</li> <li>the beneficiaries of international protection are not subject to the labour market test<sup>cxxxv</sup> and they have access to the labour market in the same conditions as a Luxembourg national (with the exception of the public sector)<sup>cxxxvi</sup> . The beneficiary of a residence permit for medical reasons has access to the labour market but it is subject to the labour market test and once he/she obtains a salaried worker residence permit the permit will be issued for one year and limited to a specific sector;</li> </ol>
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				d) the beneficiaries of international protection have the right to apply for the REVIS without any probation period. The beneficiary of a residence permit for medical reasons will not have access to the REVIS if she/he has not resided in Luxembourg for at least 5 years during a 20-year period.
<b>Relevant case law</b>				
<p>Is there any relevant case law (by the highest instance courts and final judgements) that led to <i>systemic</i> changes in the procedure (and/or with major policy implications) concerning this national protection status? Yes/No</p> <p>If so, please briefly provide references to case law and briefly describe the changes brought about by this case law.</p> <p><i>In the references to the case law please include: the court name, date of decision, title/parties if applicable, case number (or citation, document symbol), link to the full version of the case (if possible)</i></p>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

### Section 3: National debates and challenges as regards national protection statuses

**Q7.** Are the national protection statuses the **subject of debate** in your Member State (e.g. political, academic and civil society debate)? Yes/No

Please outline the key debates referencing parliamentary questions or policy documents media, academic literature and commentary or literature from civil society organisations.

Please note that future plans – if any – should be mentioned under question 10.

Overall, the national protection statuses are not subject of too much debate in Luxembourg.<sup>cxxxvii</sup> However, one status that has been evoked on several occasions over the recent years is a specific status for unaccompanied minors (UAM), as the current national legal framework does not provide such a protection status.<sup>cxxxviii</sup>

In practice, the large majority of UAMs apply for international protection upon arrival in Luxembourg, allowing them to stay in the country and to benefit from social and legal assistance as well as from accommodation. Consequently, in the event of a positive answer to their application, the large majority of UAMs are granted international protection status (see also Table 1 on p. 15).<sup>cxxxix</sup>

In the absence of a specific status for UAMs, the Ombuds-Committee for the Rights of the Child (ORK) has repeatedly recommended the Luxembourgish authorities to reflect on a possible introduction of a special status for UAMs, which should establish an automatic guardianship. This status should also entitle the young person to the same benefits as beneficiaries of international protection, namely an unlimited right of residence in the country.<sup>cxl</sup>

It is in this context that the coalition agreement of the newly formed government following the legislative elections on 14 October 2018 notes that some minors in Luxembourg are in an irregular situation, as their application for international protection has been rejected, or because they did not wish to introduce an application for international protection. The parties wish to put in place specific reception facilities for these minors and thereby improve immediate and adequate care.<sup>cxli</sup>

**Q8.** What are the **key practical or operational challenges** in your Member State regarding national protection statuses?

Please consider in particular any challenges related to the implementation and uptake of these statuses in practice, challenges observed to ensure consistency with other EU-harmonised protection statuses, etc.

The Directorate of Immigration did not report any key practical or operational challenges regarding the two presented residence permits.<sup>cxlii</sup>

One element, however, that the Directorate of Immigration did report was the fact that in the context of an application for an authorization of stay for humanitarian reasons according to article 78 (3), applicants cannot invoke the same reasons which have already been invoked in the context of a previous application. This distinction is not understood in all cases, as the Directorate of Immigration reported that there have been applications, brought forward by the lawyer of the applicant, containing the same arguments had already been invoked in other cases (i.e. international protection, etc.).

However, this was not reported as a practical or operational challenge as it is the legislative disposition of the article in question.<sup>cxliii</sup>

**Q9.** Did your (Member) State adopt any concrete measures to tackle the above-mentioned challenges? Yes/No

If so, please elaborate.

No, as no major any key practical or operational challenges were reported by the Directorate of Immigration.<sup>cxliv</sup>

**Q10.** Is your Member State planning to introduce any **new protection statuses** that have been announced publicly (i.e. in the form of official strategy documents, existing draft legislation or proposal)? Yes/No

If so, when and why?

No, there are no current plans in this regard.<sup>cxlv</sup>

**Q11.** Is your Member State planning to **terminate or significantly change** any of the protection statuses currently available? Yes/No

If so, when and why?

No, there are no current plans in this regard.<sup>cxlvi</sup>

**Q12.** If applicable, have any of the statuses identified within **the 2010 EMN study**,<sup>7</sup> and within the scope of the present study, ceased to exist or been significantly amended since 2010? Yes/No

Alternatively, if your Member State did not participate in the 2010 EMN study, have any statuses within the scope of the present study and available at the time of the study in 2010 ceased to exist or been significantly amended (regarding grounds and content of protection) since 2010? Yes/No

If so, how, when and why?

Luxembourg did not take part in the 2010 EMN study. However, the two statuses presented in the context of this study already existed at the time of this study.

The authorisation of stay for humanitarian reasons of exceptional gravity was amended by the bill n° 6218<sup>cxlvii</sup>, which transposed of the Directive 2008/115/CE. In the exposition of motives of this bill they mentioned as the main reasons the easing the conditions for granting the authorisation of stay for humanitarian reasons.<sup>cxlviii</sup> The main concern was that in the original version of article 78 (1) d), the combined interpretation of articles 34, 38 and 78, the Minister in charge of immigration and asylum could not grant this type of authorisation of stay to a person who is not legally staying in the country. As the main intention of the amendment was to transpose article 6 (4) of the Directive allowing a Member State to grant an autonomous residence permit or any other authorisation granting the right to stay based on compassionate, humanitarian or other motives, the amendment was foreseen in order that the Minister can grant the authorisation of stay for humanitarian reasons to third-country nationals irregularly staying in the country.<sup>cxlix</sup> The applicant must no longer fulfil the conditions of resources, housing and healthcare insurance and the residence permit can be granted for a duration of three years.

There was no amendment of the residence permit for medical reasons.

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<sup>7</sup> 'The Different National Practices Concerning Granting of Non-EU-Harmonised Protection Statuses'. Member States that participated in the 2010 EMN 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.

Study is 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](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).

## Section 4: Conclusions

**Q13.** With regard to the aims of this study, what conclusions would you draw from your findings reached in elaborating your national contribution? In particular, what is the relevance of your findings to (national and/or EU level) policy-makers?

Luxembourg has integrated in the protection system the European legal framework on protection. However, besides the international protection (refugee status and subsidiary protection status) and the temporary protection statuses, the Luxembourgish legal system foresees two humanitarian statuses which are:

- a) residence permit for private reasons based on serious humanitarian grounds<sup>cl</sup>;
- b) the postponement of removal<sup>cli</sup> based on medical reasons.<sup>clii</sup>

In regard to the latter, there are the following steps: 1) the postponement of removal can be granted and renewed for up to 24 months; 2) after 2 years, if the medical condition persists, an authorisation of stay for medical reasons may be granted and a residence permit for private reasons<sup>cliii</sup> may be issued.

However, it is important to stress at this point that the Luxembourgish authorities do not consider the two aforementioned residence permits issued according to articles 78 (3) and 131 (2) of the Immigration Law as "protection statuses" as such, but precisely as residence permits issued to the applicant.<sup>cliv</sup>

The granting of these two "protection statuses" are based on the discretionary power of the Minister in charge of Immigration and Asylum. The residence permit for private reasons based on humanitarian grounds (Status A of this report) allows for the Minister to grant an authorisation to stay in the country to an irregular migrant if s/he is in need to stay based on humanitarian reasons of exceptional circumstances. There is not an exhaustive list of reasons on which the Minister can base his/her decision. However, there is an exhaustive analysis of the reasons advanced by the applicant.

Any third country national irregularly staying on the territory can apply for this residence permit. However, in the case of rejected asylum seekers, the application will be rejected if the applicant advances the same reasons that s/he advanced during the international protection procedure.

On the contrary, the residence permit for medical reasons requires that, in the first stage, the applicant had received a return decision and an order to leave the territory. In order to obtain the residence permit, he/she has to obtain first a decision for a postponement of removal for medical reasons that has to be renewed for two years before the applicant can file the application for the residence permit based on medical reasons. This residence permit is not granted automatically and if the applicant does not file his/her application after expiration of the postponement of removal for medical reasons after two years, s/he will be precluded and the return decision will be executed, except if s/he proves that s/he cannot be returned for medical reasons. In this case, the entire procedure will have to start again.

The residence permit for private reasons based on serious humanitarian grounds is a permanent residence permit that is issued the first time for one year, but when it is renewed is for a maximum validity of up to three years. On the contrary, the residence permit for medical reasons is issued for a maximum duration of one year and it is renewed for a maximum duration of one year. It is of temporary nature if the appointed medical examiner considers that the beneficiary is no longer fulfilling the conditions. However, seen the time of residence and the links that the third-country national has, the Directorate of Immigration can consider granting a residence permit for humanitarian reasons. The temporary nature of this permit has been maintained by the Court of Cassation.

These residence permits do not grant the same rights as the international protection statuses as they do not have access to: a) the social inclusion revenue (REVIS); b) the labour market without passing the labour market test and without any sector restriction (with the exception of the public sector); c) education for adults; d) a simplified family reunification procedure.

There has not been any debate or discussion from civic society or the national authorities over modifying or abrogating these residence permits and introducing an alternative protection status, with the exception of the Ombuds-Committee for the Rights of the Child who repeatedly called on the national authorities to introduce a specific status for unaccompanied minors (UAM). The main reason for the absence of much debate or discussion over these residence permits can be explained through the fact that in 2018, the international protection statuses amounted to 19,2%<sup>clv</sup> of the first residence permit issued during 2018, while the residence permit for humanitarian reasons represented only 0,3% and the

residence permit for medical reasons only 0,02% in 2018. It is obvious that these two residence permits are not a real alternative to the international protection statuses in Luxembourg.

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<sup>i</sup> Article 78 (3) of the amended law of 29 August 2008 on free movement of persons and immigration. Article 78 (3) states:

“(3) Provided their presence does not constitute a threat to public policy, public health or public security, the Minister may grant a third-country national an authorisation to stay on humanitarian grounds of exceptional gravity. An application in that regard shall be inadmissible if it is founded on grounds invoked in the course of a previous application which has been rejected by the Minister. Where an authorisation to stay as referred to above is granted, any earlier return decision shall be annulled.”

<sup>ii</sup> For the purposes of this study, the term of “postponement of removal based on medical reasons” is used that must not be confused with the suspension of removal because of reasons independent to the third country national foreseen in article 125bis (1) of the amended law of 29 August 2008.

<sup>iii</sup> Article 130 of the amended law of 29 August 2008. Article 130 states: “Provided s/he does not constitute a threat to public policy or public security, a third country national may not be removed from the territory if s/he establishes by means of medical certificates that his/her state of health is such as to necessitate medical treatment without which he/she would face consequences of exceptional gravity and if s/he produces evidence showing that s/he cannot effectively receive appropriate treatment in the country to which s/he may be removed.” See also article 131(1) of the amended law of 29 August 2008.

<sup>iv</sup> Article 78 (3) of the amended law of 29 August 2008.

<sup>v</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.

<sup>vi</sup> There were 1.083 refugee statuses granted and 103 subsidiary protection statuses granted from a total of 6.174 first residence permits granted during 2018.

Source: Directorate of Immigration of the Ministry of Foreign and European Affairs, *Bilan de l’année 2018 en matière d’asile, d’immigration et d’accueil*, p. 24.

<sup>vii</sup> Amended law of 18 December 2015 on international protection and temporary protection, published in the Memorial A-255 on 28 December 2015 and amended by law of 18 July 2018.

<sup>viii</sup> Article 78 (3) of the amended law of 29 August 2008 on free movement of persons and immigration. Article 78 (3) states:

“(3) Provided their presence does not constitute a threat to public policy, public health or public security, the Minister may grant a third-country national an authorisation to stay on humanitarian grounds of exceptional gravity. An application in that regard shall be inadmissible if it is founded on grounds invoked in the course of a previous application which has been rejected by the Minister. Where an authorisation to stay as referred to above is granted, any earlier return decision shall be annulled.”

<sup>ix</sup> For the purposes of this study, the term of “postponement of removal based on medical reasons” is used that must not be confused with the suspension of removal because of reasons independent to the third country national foreseen in article 125bis (1) of the amended law of 29 August 2008.

<sup>x</sup> Article 130 of the amended law of 29 August 2008. Article 130 states: “Provided s/he does not constitute a threat to public policy or public security, a third country national may not be removed from the territory if s/he establishes by means of medical certificates that his/her state of health is such as to necessitate medical treatment without which he/she would face consequences of exceptional gravity and if s/he produces evidence showing that s/he cannot effectively receive appropriate treatment in the country to which s/he may be removed.” See also article 131(1) of the amended law of 29 August 2008.

<sup>xi</sup> Article 78 (3) of the amended law of 29 August 2008.

<sup>xii</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.

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- <sup>xiii</sup> Constitution of the Grand Duchy of Luxembourg of 17 October 1868 published in Memorial 23 of 22 October 1868.
- <sup>xiv</sup> Article 130 of the amended law of 29 August 2008.
- <sup>xv</sup> See articles 3 (2) paragraph 3, 5 (4), 20, 21 and 63 of the amended law of 18 December 2015 on international protection and temporary protection.
- <sup>xvi</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 13 May 2019.
- <sup>xvii</sup> Article 78 (3) of the amended law of 29 August 2008.
- <sup>xviii</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>xix</sup> Bill n° 5802 on free movement of persons and immigration of 20 November 2007. Parliamentary document n° 5802/00 of 20 November 2007, p. 77.
- <sup>xx</sup> Law of 29 August 2008 on free movement of persons and immigration, published in Memorial 138 of 10 September 2018.
- <sup>xxi</sup> Article 132 (3) of the amended law of 29 August 2008.
- <sup>xxii</sup> Article 132 (3) of the amended law of 29 August 2008.
- <sup>xxiii</sup> Bill n° 6218 amending the amended law of 29 August 2008 on free movement of persons and immigration and the amended law of 5 May 2006 (Asylum law). Parliamentary document n° 6218/00 of 9 November 2010.
- <sup>xxiv</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0115&from=FR>.
- <sup>xxv</sup> See Parliamentary document n° 6218/00 of 9 November 2010, Exposition of Motives, p. 12.
- <sup>xxvi</sup> Law of 1 July 2011 published in Memorial A-151 of 25 July 2011.
- <sup>xxvii</sup> Article 79 (1) of the amended law of 29 August 2008.
- <sup>xxviii</sup> See article 101 (1) 1) of the amended law of 29 August 2008.
- <sup>xxix</sup> See parliamentary document n° 6218/00 of 9 November 2011, Commentary of articles, Comment to article 78 (ad 5°), p.7. This article was amended in order to transpose article 6 (4) of the Directive 2008/115/EC.
- <sup>xxx</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>xxxi</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>xxxii</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>xxxiii</sup> Article 79 (1) of the amended law of 29 August 2008.
- <sup>xxxiv</sup> Article 78 (3) of the amended law of 29 August 2008.
- <sup>xxxv</sup> Article 79 (1) of the amended law of 29 August 2008. Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>xxxvi</sup> See comment to article 78 (3), parliamentary document n° 6218/00, p. 7.
- <sup>xxxvii</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.

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- <sup>xxxviii</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>xxxix</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>xi</sup> Sometimes the beneficiaries of a residence permit for humanitarian reasons are in the situation that they are not/no longer in possession of a national passport. In these cases, a positive decision to an application for a residence permit from the Luxembourg authorities may facilitate them to receive the passport within a shorter amount of time at their embassy. In the event that they do not receive it and are able to prove it, the Luxembourg authorities may issue a travel document for foreigners in accordance with the Grand-Ducal Regulation of 26 September 2005.
- <sup>xii</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>xiii</sup> Article 79 (1) of the amended law of 29 August 2008.
- <sup>xiii</sup> Article 1 of the amended law of 21 July 1999 regulating the procedure before the administrative courts.
- <sup>xliv</sup> Article 16 of the amended law of 21 July 1999.
- <sup>xlv</sup> Article 38 of the amended law of 21 July 1999.
- <sup>xlvi</sup> Article 78 (3) of the amended law of 28 August 2008 (*contrario sensu*).
- <sup>xlvii</sup> Article 78 (3) of the amended law of 28 August 2008 states that the application will be declared inadmissible if it is based on motives that were already rejected by the Ministry in charge of Immigration and Asylum.
- <sup>xlviii</sup> Parliamentary document 6218/00, Commentary of Articles, Commentary to Article 78 (Ad 5°), p. 7.
- <sup>xlix</sup> Parliamentary document 5802/00, Commentary of Articles, Comment to article 131, p. 86.
- <sup>i</sup> Parliamentary document 5802/00, Commentary of Articles, Comment to article 131, p. 86.
- <sup>ii</sup> Parliamentary document 5802/00, Commentary of Articles, Comment to article 133, p. 87.
- <sup>iii</sup> Parliamentary document 5802/00, Commentary of Articles, Comment to article 133, p. 87.
- <sup>iiii</sup> See decision of the Council of Arbitration of Social Security of 19 April 2013. This decision was overturned by a decision of the High Council of Social Security of 23 January 2014 and later confirmed by the Court of Cassation. See also articles 131 (1) and (2) and 132 (3) of the amended law of 29 August 2008.
- <sup>liv</sup> Article 130 of the amended law of 29 August 2008.
- <sup>lv</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>lvi</sup> Service étrangers - Cellule empêchement à l'éloignement, sursis à l'éloignement, autorisation de séjour pour raisons médicales; titre de de voyage pour étranger, pour apatride.
- <sup>lvii</sup> Article 130 of the amended law of 29 August 2008.
- <sup>lviii</sup> Article 131 (3) of the amended law of 29 August 2008.
- <sup>lix</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>lx</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>lxi</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>lxii</sup> Article 131 (1) of the amended law of 29 August 2008.

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- <sup>lxiii</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>lxiv</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>lxv</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>lxvi</sup> Article 131 (2) of the amended law of 29 August 2008.
- <sup>lxvii</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>lxviii</sup> Article 79 (1) of the amended law of 29 August 2008.
- <sup>lxix</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>lxx</sup> Article 79 (1) of the amended law of 29 August 2008.
- <sup>lxxi</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>lxxii</sup> Article 80 (1) of the amended law of 29 August 2008.
- <sup>lxxiii</sup> Article 81 (1) of the amended law of 29 August 2008.
- <sup>lxxiv</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>lxxv</sup> Article 1 (1) of the amended Grand ducal regulation of 26 January 2005 establishing the modalities for granting a travel document for foreigners.
- <sup>lxxvi</sup> Article 1 (1) of the amended Grand ducal regulation of 26 January 2005 establishing the modalities for granting a travel document for foreigners.
- <sup>lxxvii</sup> Article 3 (2) of the amended Grand ducal regulation of 26 January 2005 establishing the modalities for granting a travel document for foreigners.
- <sup>lxxviii</sup> Article 69 (1) of the amended law of 29 August 2008.
- <sup>lxxix</sup> Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- <sup>lxxx</sup> Article 70 (1) a) of the amended law of 29 August 2008.
- <sup>lxxx1</sup> Article 70 (1) b) of the amended law of 29 August 2008.
- <sup>lxxxii</sup> Article 70 (1) c) of the amended law of 29 August 2008.
- <sup>lxxxiii</sup> Information provided by the Directorate of Immigration in the context of: LU EMN NCP, Family Reunification of TCNs in the EU: National Practices, Luxembourg Study, 2016, p.8.
- See also: Wagner and J.M.W.L. v. Luxembourg, n° 76240/01 of 28 September 2007.
- <sup>lxxxiv</sup> Article 78 (1) c) of the amended Law of 29 August 2008.
- <sup>lxxxv</sup> Information provided by the Directorate of Immigration in the context of: LU EMN NCP, Family Reunification of TCNs in the EU: National Practices, Luxembourg Study, 2016, p.8.
- <sup>lxxxvi</sup> Article 70 (5) b) of the amended law of 29 August 2008.
- <sup>lxxxvii</sup> Article 70 (5) a) of the amended law of 29 August 2008.

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- <sup>lxxxviii</sup> Article 69 (1) 2 of the amended law of 29 August 2008. Also Article 9 (1) of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration.
- <sup>lxxxix</sup> Article 9 (1) of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration.
- <sup>xc</sup> Article 5 of the amended Grand-ducal regulation of 25 February 1979 establishing the criteria of renting, health and hygiene which have to fulfil all rental accommodation.
- <sup>xcj</sup> Article 4 of the amended Grand-ducal regulation of 25 February 1979.
- <sup>xcii</sup> Article 69 (1) 3 of the amended Law of 29 August 2008.
- <sup>xciii</sup> Guichet.lu, Government of the Grand Duchy of Luxembourg, "Family reunification for third-country nationals", URL: <http://www.guichet.public.lu/entreprises/en/ressources-humaines/recrutement/ressortissant-pays-tiers/regroupement-familial/index.html>.
- <sup>xciv</sup> Article 69 (1) 1 of the amended law of 29 August 2008.
- <sup>xcv</sup> Article 6 (1) of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration as amended by Grand ducal regulation of 1 August 2018.
- <sup>xcvi</sup> Article 6 (1) paragraph 2 and 3 of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration.
- <sup>xcvii</sup> Article 6 (2) of the amended Grand-ducal regulation of 5 September 2008 establishing the criteria of resources and accommodation foreseen by the Law of 29 August 2008 on free movement of persons and immigration.
- <sup>xcviii</sup> Article 70 (1) of the amended law of 29 August 2008. This article states that the family reunification can only be granted to an individual that does not represent a threat to public order, national security or public health.
- <sup>xcix</sup> Article 41 (1) of the amended law of 29 August 2008.
- <sup>c</sup> Article 69 (3) of the amended law of 29 August 2008. This only applies for beneficiaries of international protection, which have a grace period of three months during which they can do the application without providing proof of adequate accommodation, health insurance coverage and sufficient resources.
- <sup>ci</sup> Article 74 (1) of the amended law of 29 August 2008.
- <sup>cii</sup> Article 79 (3) of the amended law of 29 August 2008.
- <sup>ciii</sup> Article 42 (1) 3) and 4) of the amended law of 29 August 2008.
- <sup>civ</sup> See article 2 (2) of the law of 28 July 2018 on the social inclusion revenue, published in Memorial A-630 of 30 July 2018 and which entered into force on 1 January 2019.
- <sup>cv</sup> Article 2 (2) of the law of 28 July 2018.
- <sup>cvi</sup> Article 4 and 27 of the amended law of 18 December 2009 organising social aid.
- <sup>cvi</sup> See <https://guichet.public.lu/en/citoyens/sante-social/assurance-maladie-maternite/prestations-personnes-inactives/assurance-maladie-volontaire.html>.
- <sup>cvi</sup> See <https://www.ccss.lu/volontaires/maladie/>.
- <sup>cix</sup> Ibidem.
- <sup>cx</sup> LU EMN NCP answer to UK EMN NCP ad-hoc query on early language support, launched on 29 January 2019.  
For more information, see <https://forum-cai.lu/?lang=en>.
- <sup>cx</sup> Article 101 (1) 1) and article 79 (1) of the amended law of 29 August 2008.

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- cxii Article 14 (1) 1 of the amended law of 8 March 2017 on Luxembourgish nationality.
- cxiii Article 2 (2) of the law of 28 July 2018 on social inclusion revenue. This law entered into force on 1 January 2019.
- cxiv Article 31 of the amended law of 8 March 2017 on Luxembourgish nationality.
- cxv Article 79 (3) of the amended law of 29 August 2008.
- cxvi Article 79 (3) of the amended law of 29 August 2008.
- cxvii Article 132 (1) of the amended law of 29 August 2008.
- cxviii Article 132 (3) of the amended law of 29 August 2008.
- cxix Article 131 (2) of the amended law of 29 August 2008.
- cxx Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- cxxi Article 131 (2) of the amended law of 29 August 2008.
- cxxii Article 132 (3) of the amended law of 29 August 2008.
- cxxiii Article 131 (4) of the amended law of 29 August 2008.
- cxxiv Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 13 May 2019.
- cxv Article 42 (1) of the amended law of 29 August 2008.
- cxvii Article 132 (2) of the amended law of 29 August 2008.
- cxviii Article 132 (1) of the amended law of 29 August 2008 in accordance with article 27 of the amended law of 18 December 2009.
- cxviiii Article 132 (1) of the amended law of 29 August 2008.
- cxvix Article 131 (3) of the amended law of 29 August 2008.
- cxvix Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.
- cxvxi Article 131 (1) of the amended law of 29 August 2008.
- cxvxi Article 132 (3) of the amended law of 29 August 2008.
- cxvxi Article 14 (1) 1 of the amended law of 8 March 2017 on Luxembourgish nationality.
- cxvxi Article 57 (1) of the amended law of 18 December 2015 on international protection and temporary protection.
- cxvxi Article 42 (1) 1 of the amended law of 29 August 2008.
- cxvxi Article 59 (1) of the amended law of 18 December 2015
- cxvxi Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019. A desktop press review did not result in further information in this regard.
- cxvxi LU EMN NCP, (Member) States' Approaches to Unaccompanied Minors Following Status Determination, Luxembourg 2017, p. 5-6.
- cxvxi LU EMN NCP, (Member) States' Approaches to Unaccompanied Minors Following Status Determination, Luxembourg 2017, p. 7-8.
- cxl Ombudscommittee for the rights of the child (ORK), Report 2016 to the Government and the Chamber of Deputies, Luxembourg, November 2016, p. 9, 85 and 87, URL: [http://ork.lu/files/RapportsORK\\_pdf/RAPPORT\\_ORK\\_2016.pdf](http://ork.lu/files/RapportsORK_pdf/RAPPORT_ORK_2016.pdf).

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See also: Ombudscommittee for the rights of the child (ORK), Report 2017 to the Government and the Chamber of Deputies, Luxembourg, November 2017, p. 16, URL:

[http://ork.lu/files/Rapports\\_ORK/RAP2017Compil\\_AvecAnnexesVersionWeB.pdf](http://ork.lu/files/Rapports_ORK/RAP2017Compil_AvecAnnexesVersionWeB.pdf).

See also: Ombudscommittee for the rights of the child (ORK), Report 2018 to the Government and the Chamber of Deputies, p. 11 and p. 70-71, URL: [http://ork.lu/files/Rapports\\_ORK/RAPPORT\\_ORK\\_2018.pdf](http://ork.lu/files/Rapports_ORK/RAPPORT_ORK_2018.pdf).

See also: LU EMN NCP, (Member) States' Approaches to Unaccompanied Minors Following Status Determination, Luxembourg 2017, p. 5-6.

cxli DP, LSAP and déi gréng, 4 December 2018, Accord de coalition 2018-2023, p.231. URL:

<https://gouvernement.lu/en/publications/accord-coalition/2018-2023.html>.

cxlii Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.

cxliii Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.

cxliv Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.

cxlv Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.

cxlvi Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.

cxlvii Bill n° 6218 amending the amended law of 29 August 2008 on free movement of persons and immigration and the amended law of 5 May 2006 (Asylum law). Parliamentary document n° 6218/00 of 9 November 2010.

cxlviii See Parliamentary document n° 6218/00 of 9 November 2010, Exposition of Motives, p. 12.

cxlix Parliamentary document n° 6218/00 of 9 November 2011, Commentary of articles, Comment to article 78 (ad 5°), p.7.

cl Article 78 (3) of the amended law of 29 August 2008 on free movement of persons and immigration. Article 78 (3) states:

“(3) Provided their presence does not constitute a threat to public policy, public health or public security, the Minister may grant a third-country national an authorisation to stay on humanitarian grounds of exceptional gravity. An application in that regard shall be inadmissible if it is founded on grounds invoked in the course of a previous application which has been rejected by the Minister. Where an authorisation to stay as referred to above is granted, any earlier return decision shall be annulled.”

cli For the purposes of this study, the term of “postponement of removal based on medical reasons” is used that must not be confused with the suspension of removal because of reasons independent to the third country national foreseen in article 125bis (1) of the amended law of 29 August 2008.

clii Article 130 of the amended law of 29 August 2008. Article 130 states: “Provided s/he does not constitute a threat to public policy or public security, a third country national may not be removed from the territory if s/he establishes by means of medical certificates that his/her state of health is such as to necessitate medical treatment without which he/she would face consequences of exceptional gravity and if s/he produces evidence showing that s/he cannot effectively receive appropriate treatment in the country to which s/he may be removed.” See also article 131(1) of the amended law of 29 August 2008.

cliii Article 78 (3) of the amended law of 29 August 2008.

cliv Information provided by the Directorate of Immigration of the Ministry of Foreign and European Affairs on 8 April 2019.

clv There were 1.083 refugee statuses granted and 103 subsidiary protection statuses granted from a total of 6.174 first residence permits granted during 2018.

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Source: Directorate of Immigration of the Ministry of Foreign and European Affairs, *Bilan de l'année 2018 en matière d'asile, d'immigration et d'accueil*, p. 24.