

Third Study 2018

**Beneficiaries of international protection
travelling to their country of origin:
Challenges, Policies and Practices in the
EU Member States, Norway and
Switzerland**

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 Sarah Jacobs and Adolfo Sommarribas, staff members of the National Contact Point Luxembourg within the European Migration Network, under the overall responsibility of Ass. 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 as documentary sources for this study. A semi-structured interview was conducted with the Directorate of Immigration of the Ministry of Foreign and European Affairs. The Grand Ducal Police, Caritas and the Luxembourgish Red Cross were consulted by means of a questionnaire; the Civil Registry of Luxembourg City and a lawyer were consulted by means of a telephone interview

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Top-line factsheet

*The top-line factsheet will serve as an overview of the **national reports** 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 provide a concise summary of the main findings of Sections 1-3:

Firstly, it should be noted that in Luxembourg, beneficiaries of the refugee status and of the status of subsidiary protection are not subject to the same restrictions with regard to travel to the country of origin or contact with national authorities. While refugees are in principle not permitted to travel to the country of origin, beneficiaries of subsidiary protection are not subject to this restriction.

In this context, the phenomenon of beneficiaries of the refugee status travelling to their country of origin is currently not considered a policy priority in Luxembourg. While it does occur, there are no statistics providing information on how many refugees undertake this journey or contact the national authorities, on the reasons for travel to the country of origin, nor is there any case law on the cessation of the refugee status for reasons of travel to the country of origin. Luxembourg's authorities are not systematically informed of such events by the authorities of other Member States. Luxembourg has no external borders with the exception of the international airport of Luxembourg, from where only an extremely limited number of flights to third countries depart. Thus, it is extremely difficult to capture the extent of the phenomenon in Luxembourg.

Luxembourg's Asylum Law establishes the re-availment of the protection of the country of origin and the voluntary re-establishment in the country of origin as grounds for cessation of the refugee status. Travel to the country of origin or contact with its national authorities are not explicitly forbidden by legislation.

In principle, refugees are not permitted to travel back to the country of origin. They are provided with this information on multiple occasions: for instance at the moment of the introduction of their application, as well as when they are issued the decision granting them protection. Their travel document also clearly states the restriction. There is no notification or authorisation procedure that would authorise such travel in Luxembourg.

When the Directorate of Immigration has the information that a refugee travelled back to the country of origin, it will proceed to an in-depth analysis of the personal situation of the individual. Determining that this travel is proof of the voluntary re-establishment in the country of origin is however considered extremely difficult, as it is nearly impossible to ascertain the reasons for which the refugee returned. Furthermore, a short stay in the country of origin is not necessarily considered like the (permanent) establishment in the country of origin or a proof thereof. This is also due to the fact that the Luxembourgish authorities cannot contact the authorities of the country of origin and have no tools to undertake an investigation there in order to verify that the refugee has re-established him/herself. The travel and the surrounding circumstances can be taken into account if the minister decides to re-examine the validity of the status, which could potentially lead to a withdrawal.

The Directorate of Immigration has never considered ceasing protection because a refugee contacted the authorities of the country of origin. Proving that this contact occurred in the first place, and next, proving that it constitutes a re-availment of the protection of the country of origin, is considered nearly impossible. In addition, it is a fact that certain administrative procedures require the production of official

documents and that the substitution of these documents with affidavits are in practice not always feasible.

As previously mentioned, beneficiaries of subsidiary protection are authorised to travel back to their country of origin and are permitted to contact the authorities of their country of origin. They are even encouraged to contact the national authorities in order to obtain a national passport. These actions can thus not lead to the cessation of the status of subsidiary protection.

If the decision to cease the status is taken, the beneficiary is notified of this decision in writing. The decision can be appealed before the First instance Administrative Court. If the decision of the Court is negative, the individual can file an appeal before the Second instance Administrative Court. In principle, the decision to cease international protection carries a return decision. However, the individual can apply for another residence permit if s/he fulfils the conditions established in the Immigration Law. The same is true for family members who got a residence permit through family reunification with the concerned person: the family members will lose their right to stay unless they can gain access to another residence permit under the Immigration Law.

1 Overview of national policy context

This introductory section of the synthesis report will aim at contextualising the study by providing an overview of the national policy priorities related to beneficiaries of international protection travelling to their country of origin.

Q1. Is the topic of beneficiaries of international protection travelling to their country of origin a national policy priority in your Member State? **NO**

In particular, please indicate whether this topic is perceived as a matter of concern to stakeholders in your (Member) State and the reasons stated by them.

Please indicate key points of discussion, whether they have changed over time and stakeholders involved in this debate.

*Please provide **qualitative evidence** to support your answer (e.g. case law where travels of beneficiaries of international protection led to cessation of protection status, media reports, national parliamentary debates, statements or reports of NGO/civil society organisations or International Organisations (IOs), other policy documents).*

No.

The topic of beneficiaries of international protection travelling to their country of origin is not a national policy priority in Luxembourg.¹

The Law of 18 December 2015 on international protection and temporary protection (hereafter 'Asylum Law') establishes that all third-country nationals or stateless persons cease being a refugee in the following cases²:

- a) has voluntarily re-availed himself or herself of the protection of the country of nationality³; or
- b) having lost his or her nationality, has voluntarily re-acquired it⁴; or
- c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality⁵; or
- d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution⁶; or
- e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist⁷; or
- f) being 'a stateless person', he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.⁸

With regard to subsidiary protection, the Asylum Law establishes that it ceases when the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required.⁹ The minister decides whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.¹⁰

During the approval of the bill corresponding to the Asylum Law, the articles in question were not discussed.

Nevertheless, a parliamentary question¹¹ on the issue of refugees travelling back to the country of origin was addressed to the Ministry of Foreign and European Affairs on 21 June 2017. The author of the question based his request on certain articles published by the international press regarding refugees in the neighbouring countries returning temporarily to their country of origin. The author asked whether this phenomenon exists in Luxembourg, what its scale is, and requested the minister's political appreciation of the phenomenon.

There is no case law in which the travel to the country of origin led to the cessation of status¹².

Q2. If available, please provide (estimated) **statistics** on the number of beneficiaries of international protection (allegedly) travelling to their country of origin registered from 2012 to 2018 (until 30 June 2018, if available).

It is firstly important to note that beneficiaries of subsidiary protection have the right to return to their country of origin.

There are no statistics on the number of refugees travelling to their country of origin, even though the phenomenon does exist.

The lack of statistics is due to the fact that Luxembourgish authorities are not systematically informed of the travel of refugees to their country of origin or cannot necessarily verify that a stay in the country of origin took place. Some beneficiaries of the refugee status might attempt to hide their stay in their country of origin. If an overland route was taken to enter the country of origin, it is possible that there is no stamp in the person's travel document that would enable the authorities to retrace the stay. It can also not be excluded that certain beneficiaries enter their country of origin with a national passport that they hid from the Luxembourgish authorities.¹³

Furthermore, Luxembourg does not have any external borders, with the exception of the international airport of Luxembourg. From this airport, there are hardly any direct flights to third countries: the only flights are Turkey and Cape Verde.

A beneficiary of the refugee status can easily go to a nearby airport in a neighbouring country in order to take a flight to the external border, and thereby avoid detection by the Luxembourgish authorities.¹⁴

The ministry does however have statistics on the withdrawal of the status of international protection (refugee or subsidiary protection status) on the basis of the articles 47 and 52 of the Asylum Law. These take into account more reasons than those established in articles 44 and 49 of the Asylum Law. Between 2012 and 2018, the number of withdrawals was 12 (all categories confounded), thus extremely low.¹⁵ The withdrawal of international protection based on reasons of cessation is nearly inexistent.

2 Travels to or contacts with national authorities of the country of origin and possible cessation of international protection

This section of the synthesis report will provide information on beneficiaries of international protection contacting authorities of their country of origin or travelling to their country of origin, and the possible cessation of their international protection status as a result. The reasons granting protection status differ between those granted refugee status and subsidiary protection status. These are reflected in the reasons that could lead to the cessation of refugee or subsidiary protection status. This section thus draws a distinction between refugees (section 2.1 and 2.2) and beneficiaries of subsidiary protection (section 2.3).

2.1. Refugees contacting authorities of country of origin and re-availment of the protection of the country of nationality

This sub-section of the synthesis report will provide information on refugees contacting official authorities of their country of origin such as consulates and embassies (e.g. visits in person or other forms) of their

country of nationality established in the (Member) State that granted them protection with the purpose of requesting the issuance or extension of their passports. Such acts may imply an intention to re-avail themselves of the protection of the country of nationality – a cessation ground regulated in the same manner in Article 1(C) of the 1951 Refugee Convention and Article 11(1)(a) of the recast Qualification Directive.

This section will thus consider which circumstances lead to the loss of refugee status and how they are assessed by national authorities, including jurisprudence where available. According to UNHCR, the assessment whether a refugee status can be ended on these grounds should draw a distinction between actual re-availment of protection and occasional and incidental contacts with national authorities. In case a refugee requests and obtains a national passport (or its renewal), this could amount, in the absence of contrary evidence, that the refugee intends to avail him or herself of the protection of the country of origin.¹ Contacting consulates or embassies of the country of origin for the issuance of other documents (birth or marriage certificates) cannot amount to re-availment of protection according to UNHCR's guidelines.

Q3. If a refugee in your (Member) State contacts official authorities of their country of origin (e.g. consulates, embassies, or other official representations of the country of origin in the State that granted protection), can this possibly lead to the cessation of his/her refugee status?

No, the Directorate of Immigration has to date never considered ceasing a refugee status because a refugee contacted the national authorities of his/her country of origin.

The Asylum Law is clear that the status of a refugee can only be ceased in this context if the person voluntarily re-availed him/herself of the protection of the country of nationality¹⁶, or if s/he has voluntarily re-established him/herself in the country which s/he left or outside which s/he remained owing to fear of persecution¹⁷.

Generally speaking, the simple fact of contacting the authorities of the country of origin does not trigger the cessation of the refugee status.¹⁸ However, if there is evidence that those contacts demonstrate that there is no fear of persecution, the status can be withdrawn.

For instance, in the jurisprudence 31667C, which did not deal explicitly with the cessation of status, a person was issued a passport by his country of nationality and crossed the border with this passport. The Second instance Administrative Court established that these facts go against the argument of non-protection by the state of which the person has the nationality.¹⁹

Nevertheless, in another case, the First instance Administrative Court²⁰ also stated that the simple fact of being in the compound of the Iranian Embassy in Brussels in order to obtain documents to get married does not suffice to put into question the integrity of the story of the beneficiary of international protection, according to which he was wanted by the Iranian authorities. It was argued that when the beneficiary enters the embassy located in a Western country, he does not expose himself to the same risks as he would in Iran, where he is wanted by the police and the religious authorities.

If no, please go directly to section 2.2.

If yes, please elaborate (e.g. this can be considered as re-availment of national protection of the country of nationality in certain circumstances (see options in question 5)):

Q3a. If a refugee in your (Member) State contacts official authorities of their country of origin, can this have other consequences on his/her refugee status? **YES.**

If yes, please elaborate (e.g. this can trigger a (re)assessment of the initial application for refugee protection:

Generally speaking, the simple fact of contacting the authorities of the country of origin does not trigger the cessation of the refugee status.²¹ However, if there is evidence that those contacts demonstrate that there is no fear of persecution, then the status can be withdrawn.

¹ UNHCR Handbook, 2011, para. 121. <http://www.unhcr.org/3d58e13b4.html>

Q4. If yes to Q3, is it specified:

In national legislation.

If box is marked, please specify legislation:

In case law.

If box is marked, please indicate case law reference and short summary:

In practice.

If box is marked, please explain practice:

The Directorate of Immigration will carry out an in-depth analysis of the personal situation of the concerned individual. However it is nearly impossible to determine if, and if so why the refugee contacted the national authorities, and thus to determine that s/he re-availed him/herself of the protection of the country of origin.²²

Q5. If yes to Q3, which of the following acts (by the refugee) can lead to re-availment of protection of the country of origin:

Please tick boxes that apply.

For each of the (ticked boxes) options below, please indicate whether it is based on legislation, case law or (administrative) practice.

Frequency of contacts with national authorities over a certain period of time

Obtaining the issuance or renewal of a passport

Requesting administrative documents

No.²³

E.g. documents pertaining to family reunification or civil status such birth certificates

Marriage in the country of origin

Other (please specify)

All circumstances are taken into account that prove the re-availment of the protection of the country of origin. However it is nearly impossible to ascertain if, and if so why the refugee contacted the national authorities, and thus to determine that s/he re-availed the protection of the country of origin.

The acts above are not acts that indicate as such re-availment of protection. These circumstances can however be taken into account if the minister decides to re-examine the validity of the status, which could potentially lead to a withdrawal.²⁴ The minister will take into consideration the type of contacts, their frequency and on whether the agent of persecution is the state or not. A withdrawal of the refugee status is possible if there is evidence that those contacts or acts demonstrate that there is no fear of persecution and/or that the individual re-availed him/herself of the protection of the country of origin.²⁵

Q6. If yes to Q3, are exceptions or derogations possible (e.g. if the fear of persecution emanates from non-State actors)? **YES**.

Q6a. If yes to Q6, is it specified:

In national legislation?

If box is marked, please indicate legislation:

There are no exceptions or derogations specified as such in the legislation.

Nevertheless, the Asylum Law specifies that actors of persecution can be non-state actors, if it can be demonstrated that parties or organisations controlling the State or a substantial part of the territory of the State, including international organisations, are unable or unwilling to provide protection against persecution or serious harm.²⁶

In this case, the refugee contacting the national authorities of his or her country of origin will not lead to cessation.

In case law?

If box is marked, please indicate case law reference and a short summary:

Case Law n°30733 (see Q3).²⁷

In practice?

If box is marked, please explain practice:

The Directorate of Immigration analyses each case individually, takes into account special circumstances and on this basis decides whether the contact with the national authorities of the country of origin is not considered a re-availment of its protection.

Q6b. If yes to Q6, please specify which circumstances are taken into account.

E.g.: need to apply for a divorce in his home country because no other divorce may have the necessary international recognition.ⁱⁱ

E.g.: Obtaining a national passport or an extension of its validity may not involve cessation of refugee status for example where the holder of a national passport is not permitted to return to the country of his nationality without specific permission.ⁱⁱⁱ

All circumstances are taken into account when assessing the re-availment of the protection of the country of origin.

Q7. If yes to Q3, what **challenges** do national authorities encounter in practice when assessing such circumstances and cessation ground?

For each challenge describe for whom it is a challenge (policy-maker, organisation, other), why it is considered a challenge and whether the assessment that this is a challenge based on input from experts (and if so, which experts), surveys, evaluation reports, focus groups or other sources.

*Please answer with examples taken from (national) **case law** if available.*

The assessment of challenges is based on the experience of authorities. No other sources (surveys, evaluation reports, focus groups) are available.

According to the national authorities, the biggest challenge is to gain knowledge of the existence of the contact in the first place. In addition, the assessment of the contact – its type, duration, frequency – is

ⁱⁱ UNHCR Handbook, 2011, para. 120. <http://www.unhcr.org/3d58e13b4.html>

ⁱⁱⁱ UNHCR Handbook, 2011, para. 124. <http://www.unhcr.org/3d58e13b4.html>

also very difficult. Most diplomatic missions are not located in Luxembourg so it is impossible to determine the frequency and the extent of the refugee's contacts with the authorities of his/her country of origin.

Q8. Is guidance or any other form of established practice on cessation on the grounds of '*voluntary re-availment of the protection of the country of nationality*' available to national authorities in your (Member) State? **YES.**

If yes, please elaborate whether it takes the form of:

Internal guidelines

Please specify:

UNHCR guidelines (e.g. guidelines on cessation). In accordance with article 29(1) c) of the Procedure Directive (Recast).²⁸

Other

Please specify: The Directorate of Immigration follows the terms as outlined in Article 44 of the Asylum Law.²⁹

2.2. Refugees travelling to and 'voluntary re-establishment' in the country of origin

This sub-section of the synthesis report will provide information on refugees travelling to the country of origin and whether such acts can amount to cessation of protection, such as voluntary re-establishment in the country of origin. This cessation ground is regulated in Article 1C(4) of the Refugee Convention and Article 11(1)(d) of the recast Qualification Directive in the same manner. This is the only cessation clause which takes – explicitly – into account the travels and return of a refugee to his or her country of origin. Although there are no definite criteria as to when a person could be considered as being 're-established', frequent travels to the country of origin may serve as indicators.^{iv} In addition, for Article 11(1)(d) to apply, it is necessary to determine whether the refugee returns voluntarily to the country of origin for the purpose of permanent residency.^v

This sub-section will consider this cessation ground taking into account refugees' right to a travel document contained in Article 28 of the Refugee Convention and Article 25 of the recast Qualification Directive. Refugee travel documents are different from the right of residence granted to international protection beneficiaries, as the latter is restricted to the country that grants protection. Under EU law, such obligation exists only for refugees and not for beneficiaries of subsidiary protection. The duration and geographical validity of the travel document is left at the discretion of national legal frameworks.

Q9. Please describe national legislation applicable to refugees regarding their right to travel (i.e. outside the State that granted them protection).

Please note the right to a travel document for refugees set in Article 28 of the Refugee Convention and 25 of the recast Qualification Directive.

In Luxembourg, the Asylum Law foresees that refugees are issued a travel document drawn up in accordance with the Annex to the Geneva Convention, enabling them to travel outside of the territory of Luxembourg, unless this is precluded by compelling reasons of national security or public order.³⁰ The travel document specifically mentions that it is not valid for the country of origin.³¹

^{iv} ExCom Note 1997, para 12; EASO Judicial analysis, p. 29.

^v Idem, p. 24.

Q10. Is a travel limitation:

- a) To the country of origin (or country of habitual residence) specified in the travel document issued to refugees in your (Member) State? **YES**, the travel limitation to the country of origin is specified in the travel document.

E.g. the name of the country the refugee is not allowed to travel to is explicitly mentioned in the travel document.

If yes, please elaborate whether this limitation stems from:

National legislation

Please specify:

Practice developed by competent authorities

Please elaborate: See below.

Case law

Please elaborate:

Other sources

Please elaborate:

The written decision granting the status of refugee specifies that the refugee is not allowed to travel back to the country of origin.³² The website of the Luxembourgish Government clearly mentions that beneficiaries of the refugee status are not allowed to return to their country of origin, otherwise their status might be withdrawn.³³

- b) To neighbouring countries of the country of origin (or country of habitual residence) specified in the travel document issued to refugees in your (Member) State? **NO**.

If yes, please elaborate on the rationale behind the limitation to travel to neighbouring countries:

Q11. If refugees travel to their country of origin:

- a) Do they need to notify in advance national authorities of the State of protection? **NO**.

If yes, please specify (i) procedures and (ii) national authority they should notify.

Please also elaborate (iii) on the consequences of non-notification.

No, there is no notification procedure. In principle, travelling to the country of origin is prohibited.³⁴

- b) Do they need to request a specific permission or authorisation to do so to a designated national authority in the State that granted protection? **NO**.

If yes, please answer by indicating (i) what procedures and authorities are involved, and (ii) on what grounds they can request such authorisation.

No, there is no authorisation procedure. In principle, travelling to the country of origin is prohibited.³⁵

Q12. Can refugees request their original passport from authorities of the State that granted protection?
NO

If yes, please elaborate on (i) procedures and (ii) circumstances in which such requests are possible:

No. The recognised refugee is granted a travel document in accordance with the Annex of the Geneva Convention and must submit his/her passport to the Directorate of Immigration. The identity documents are not returned to the refugee once the individual has been granted the refugee status.³⁶

Q13. What are the most common reasons for travel to their country of origin stated by refugees to authorities in your (Member) State?

- Visits for family reasons (please specify)
- Marriage in the country of origin
- Business reasons
- Other reasons (please specify)

The Directorate of Immigration has no data regarding this question.³⁷

Q13a. Please specify if this information is recorded by national authorities (e.g. in a database).

There is no database that records this information.³⁸

Q14. If a refugee travelled to his/her country of origin, can this possibly lead to the cessation of his/her refugee status? **YES** (see below).

If no, please go directly to Section 2.3.

If yes, please elaborate (e.g. this can be considered as re-establishment in the country of origin, etc):

The simple fact that a refugee returns to his/her country of origin does not automatically trigger the cessation of his/her status.

As previously mentioned, a refugee will be issued a travel document for refugees, which permits him or her to travel outside of Luxembourg's territory. There is only one exception to the refugee's freedom to travel; in principle, the refugee cannot return to the country of origin.³⁹

The interdiction to return to the country of origin is not absolute. The Asylum Law states that a third-country national or a stateless person will cease to be a refugee if s/he has voluntarily returned for re-establishment in the country, which s/he left or outside which s/he remained owing to fear of persecution.⁴⁰ Short stays in the country of origin are therefore not excluded.⁴¹

When the Directorate of Immigration has been informed that a refugee has voluntarily returned to his/her country of origin, it is in its competence to verify if this individual returned with the intention to establish his/her permanent residence or if it was a temporary stay without the intention to establish himself/herself in a permanent manner.⁴²

The Directorate of Immigration will carry out an in-depth analysis of the personal situation of the concerned individual. In practice, it is nearly impossible to determine the reasons for which the refugee travelled to the country of origin, and thus to determine that s/he voluntarily re-established him/herself in the country of origin, which would lead to cessation.⁴³

Q14a. If a refugee travelled to his/her country of origin, can this have other consequences on his/her refugee status? **YES.**⁴⁴

If yes, please elaborate (e.g. this can trigger a (re)assessment of the initial application for refugee protection):

It should be noted that the travel to the country of origin could potentially lead to the withdrawal of the refugee status. If the travel of the refugee to the country of origin indicates that the refugee misrepresented or omitted facts that were decisive in the granting of the refugee status, or that the situation in the country of origin has changed, the minister can decide to re-examine the validity of the status and thus consider to withdraw the status on basis of Article 47 of the Asylum Law.⁴⁵

In this case, the withdrawal is a consequence of the changed situation in the country of origin that enables the travel, and not a consequence of the travel itself.⁴⁶

Q15. If travelling to the country of origin may lead to cessation of protection (see question 14), is it specified:

In national legislation?

If box is marked, please specify legislation:

Article 44 (1) d) of the Asylum Law lists the voluntarily re-establishment in the country of origin as a ground for cessation.⁴⁷

The Asylum Law does however not explicitly mention travelling to the country of origin.

In case law?

If box is marked, please indicate case law reference and short summary:

In practice?

If box is marked, please explain practice:

The written decision granting the status of refugee specifies that the refugee is not allowed to travel back to the country of origin.⁴⁸ The website of the Luxembourgish Government clearly mentions that refugees are not allowed to return to their country of origin, otherwise they will risk that their status will be withdrawn.⁴⁹ The passport of the refugee also clearly mentions this restriction.⁵⁰

Q16. Which of the following circumstances are taken into account when assessing cessation of protection (e.g. re-establishment in the country of origin):

Please indicate which options apply. For each of the (ticked boxes) options below, please indicate whether it is based on legislation, case law or (administrative) practice.

Frequency of travels to the country of origin

Length of stay in the country of origin

Specific place of stay in the country of origin

Reasons to travel to the country of origin

Other

Please specify:

All circumstances are taken into account that prove the voluntary re-establishment in the country of origin. However it is nearly impossible to ascertain the reasons for which the refugee has travelled to the country of origin, and thus to determine that the refugee has returned to voluntarily re-establish him/herself there.⁵¹

Frequency of travels, length of stay, specific place of stay or reasons to travel are not circumstances that indicate voluntary re-establishment. These circumstances can however be taken into account if the minister decides to re-examine the validity of the status, which could potentially lead to a withdrawal.⁵²

Q17. If travelling to the country of origin could lead to cessation of refugee protection, are there any **criteria to assess the voluntariness** and/or refugee's **intent** to re-establish himself/herself in the country of origin?

Note: For the cessation ground of re-establishment to be applicable, both the return and the stay must have been undertaken voluntarily. For example, where the return of the refugee in his/her country of origin was the result of coercion or the prolonged stay was not voluntary (e.g. imprisonment), such travels to the country of origin may not amount to cessation of international protection.

A temporary visit by a refugee to his former country of origin not with a national passport but with a travel document issued by the State that granted protection may not necessarily amount to reestablishment: travelling to the country of origin for the purpose of visiting an old sick parent is different from frequent travels to the country of origin with the purpose of establishing business relations.^{vi}

There are no specific criteria. The Directorate of Immigration will make an in-depth analysis of the personal situation of the concerned individual. However it is nearly impossible to ascertain the reasons for which the refugee has returned, and thus to determine that the refugee has returned to voluntary re-establish him/herself in the country of origin.⁵³

Q18. Do national authorities encounter any **challenges** when assessing such cases of cessation? **YES.**

If yes, please elaborate e.g. case law (if available).

For each challenge describe a) for whom it is a challenge (policy-maker, organisation, other), b) why it is considered a challenge and c) whether the assessment that this is a challenge based on input from experts (and if so, which experts), surveys, evaluation reports, focus groups or other sources.

The assessment of challenges is based on the input from the authorities. No other sources (surveys, evaluation reports, focus groups) are available.

Luxembourg does not have external borders, with the exception of the Luxembourg International Airport. There are only very few direct flights to third countries. If the refugee does not leave through the Luxembourg International Airport to return to his/her country of origin, if s/he does not inform the authorities, or if the Luxembourgish authorities are not informed by the authorities of another (Member) State, the Luxembourgish authorities will not have any suspicion and no pertinent information that allows them to determine that the TCN travelled to his/her country of origin.⁵⁴

Even if the Luxembourgish authorities learn that a refugee travelled back to the country of origin, it is nearly impossible to ascertain the reasons for which the refugee has returned, and thus to determine that the refugee has returned to voluntary re-establish him or herself in the country of origin. This is also due to the fact that the national authorities cannot contact the authorities of the country of origin to verify whether the refugee has re-established him/herself and have no tools to undertake an investigation in the country of origin.⁵⁵

There is no case law regarding this situation.

Q19. Is guidance or any other form of established practice on cessation on the grounds of 'voluntary re-establishment in the country of origin' available to authorities in your (Member) State? **YES.**

If yes, do these take the form of:

Internal guidelines

Please explain:

UNHCR guidelines on cessation. In accordance with article 29(1) c) of the Procedure Directive (Recast).⁵⁶

Other

Please specify: The Directorate of Immigration follows the terms as outlined in Article 44 of the Asylum Law.⁵⁷

2.3. Beneficiaries of subsidiary protection travelling to and/or contacting authorities of the country of origin

This sub-section will specifically collect information on beneficiaries of subsidiary protection (or equivalent standards for (Member) States not bound by the recast Qualification Directive) travelling to and/or

^{vi} UNHCR Handbook, para. 125 and 134.

contacting authorities of the country of origin. In the recast Qualification Directive, the grounds for granting and ceasing subsidiary protection depart from the ones applicable to refugees. Thus, this section will examine if contacts with and/or travels to countries of origin can lead to considering that the risk of serious harm and eligibility for subsidiary protection has ceased to exist.

The analysis of information in this sub-section will particularly pay attention to the concept of subsidiary protection as defined in the recast Qualification Directive, namely that it is granted to third nationals who do not qualify for refugee status but for whom substantial grounds have been shown for believing that they would face a 'real risk of suffering serious harm' if returned to their country of origin (Article 15 of the recast Qualification Directive). Differences with third-country nationals granted refugee status do not lie only on the grounds granting protection but also on obtaining a travel document. Of relevance for this study, beneficiaries of subsidiary protection thus must use their passports unless they are unable to obtain one, in which case a travel document can also be issued to them (Article 25(2) of the recast Qualification Directive).

For the cessation of the subsidiary protection status, see Q1.

Contacting official authorities of the country of origin

Q20. If a beneficiary of subsidiary protection in your (Member) State contacts official authorities of his/her country of origin (e.g. consulates, embassies, other official representations of the country of origin), can this possibly lead to the cessation of the subsidiary protection status? **NO.**

If no, please go directly to question 23.

If yes, please elaborate (e.g. re-availment of national protection of the country of nationality):

No. Beneficiaries of subsidiary protection are for example expected to produce a national passport in order to receive the documents enabling them to travel, and are thus encouraged to contact the national authorities to be provided with this national passport.⁵⁸

The subsidiary protection may be granted to a third-country national or a stateless person when the perpetrators of the persecution or serious harm are non-State actors, if it can be demonstrated that parties or organisations controlling the State or a substantial part of the territory of the State, including international organisations, are unable or unwilling to provide protection against persecution or serious harm.⁵⁹ The beneficiary contacting the national authorities of his/her country of origin will not lead to cessation.

Q20a. If a beneficiary of subsidiary protection in your (Member) State contacts official authorities of his/her country of origin, can this can have *other consequences*. **NO.**

If yes, please elaborate:

Q21. If a beneficiary of subsidiary protection contacting official authorities of their country of origin may lead to cessation of subsidiary protection, is it specified:

Please indicate whether the same legislative provisions (and/or case law or practice) are applicable to refugees and to beneficiaries of subsidiary protection in your (Member) State.

In national legislation?

If box is marked, please specify legislation:

In case law?

If box is marked, please indicate case law reference and short summary:

In practice?

If box is marked, please explain practice:

Q22. If a beneficiary of subsidiary protection contacts official authorities of his/her country of origin, which of the following circumstances can lead to cessation of *subsidiary* protection:

Please tick options that apply. For each of the (ticked boxes) options indicated, please elaborate whether it is based on legislation, case law or (administrative) practice.

- Frequency of contacts with national authorities of the country of origin.
- Obtaining the issuance or renewal of a passport

No, in fact, beneficiaries of subsidiary protection are for example expected to produce a national passport in order to receive the documents enabling them to travel, and are thus encouraged to contact the national authorities to be provided with this national passport.⁶⁰

Requesting the issuance or renewal of a passport is one of the reasons why the beneficiary of subsidiary protection can be granted a Travel Document for Foreigners, when the procedure for granting and/ or renewing a national passport is unduly long or unreasonable difficult.⁶¹

- Requesting administrative documents

See above.

E.g. Document pertaining to family reunification or civil status such as birth certificates

- Marriage
- Other

Please elaborate (e.g. other administrative formalities):

Travelling to the country of origin

Q23. Please briefly describe national legislation on the right to travel (i.e. outside the State that granted subsidiary protection) of *beneficiaries of subsidiary protection* in your (Member) State?

The beneficiary of subsidiary protection is granted a residence permit and must in principle obtain a passport from his/her country of origin. Beneficiaries of the subsidiary protection status who are unable to obtain a national passport will obtain documents enabling them to travel, unless this is precluded by compelling reasons of national security or public order.⁶² They are not restricted from travelling to their country of origin, under the condition that they obtain a visa, if required.⁶³

Q24. Can a beneficiary of subsidiary protection request a travel document in your Member State? **YES.**

Please note the provisions of Article 25 of the recast Qualification Directive on this question.

*If yes, please specify (i) its format (similar to the one issued to refugees?), (ii) duration and (iii) any **geographical limitations attached to it** (i.e. is a travel limitation to the country of origin specified in the travel document?)*

It is a biometric passport with a green cover.⁶⁴ It bears the words "Travel document for foreigners".⁶⁵ The duration is of 5 years at most⁶⁶ and it does not establish any geographic limitations. However, as some countries do not recognise the Travel Document for Foreigners, there are intrinsic restrictions to travel because the holder must apply to a visa for some of the countries (i.e. someone who has a travel document for foreigners will need a visa to go to the UK).

In comparison, the travel document for refugees is a biometric passport of sky blue colour, bears the words "Travel document, Convention of 28 July 1951" and carries two lines in the upper left corner.⁶⁷ The travel document for refugees includes the travel restriction to the country of origin.⁶⁸

Q25. What are the most common reasons for travel to their country of origin stated by beneficiaries of subsidiary protection to national authorities:

- Visits for family reasons
- Marriage in the country of origin

- Business reasons
- Other reasons

Please specify:

The Directorate of Immigration has no data regarding this question.⁶⁹

Q25a. Please specify if this information is recorded by national authorities (e.g. in a database).

No data available. See above.

Q26. If a beneficiary of subsidiary protection in your (Member) State travels to his/her country of origin, can his/her protection status be ceased (*e.g. re-establishment in the country of origin*)? **NO.**

No. The beneficiary of subsidiary protection is permitted to travel to his/her country of origin, no restrictions apply in this regard.⁷⁰

Q26a. If yes to Q26, is it specified:

Please indicate whether the same legislative provisions (and/or case law or practice) are applicable in the same way to refugees and beneficiaries of subsidiary protection in your (Member) State. No, the same legislative provisions are not applicable.

- In national legislation?

If box is marked, please specify legislation:

- In case law?

If box is marked, please indicate case law reference and short summary:

- In practice?

If box is marked, please explain practice:

Q26b. If yes to Q26, which of the following circumstances are taken into account when assessing cessation of protection:

Please tick options that apply. For each of the (ticked boxes) options indicated, please specify whether it is based on legislation, case law or (administrative) practice.

- Frequency of travels to the country of origin
- Duration of stay in the country of origin
- Specific place of the stay in the country of origin
- Reason for travel to the country of origin
- Other

Please specify:

Guidance and challenges in assessing cases of cessation of subsidiary protection

Q27. Is guidance or any other form of established practice on cessation of *subsidiary* protection available to national authorities? **YES.**

If yes, please indicate whether they take the form of:

- Internal guidelines

Please explain:

- UNHCR guidelines on cessation. In accordance with article 29(1) c) of the Procedure Directive⁷¹ (Recast).
- Other

Please specify: The Directorate of Immigration follows the terms as outlined in Article 49 of the Asylum Law.⁷²

Q28. Based on previous answers to questions in this sub-section 2.3., what challenges do national authorities encounter when assessing cases of cessation of *subsidiary* protection?

Please elaborate e.g. case law (if available).

For each challenge mentioned, please describe a) for whom it is a challenge (policy-maker, organisation, other stakeholders), b) why it is considered a challenge and c) whether the assessment that this is a challenge based on input from experts (and if so, which experts), surveys, evaluation reports, focus groups or from other sources (please indicate which ones).

There are no challenges with regard to cessation of subsidiary protection for reasons of contacting the national authorities or travelling to the country of origin, as Luxembourg applies no restrictions in this regard.

3 Adoption of a decision on cessation of international protection and implications on the right of residence in the (former) State of protection

This section of the synthesis report will present Member States' practices in relation to procedural aspects of the adoption of a decision on cessation of international protection based on cessation grounds examined in the previous section. This section will also present information on the procedural guarantees available to third-country nationals throughout the procedure, including the right to an effective remedy. It will also examine the implications that such decision may have on the right to stay on the territory of a Member State by the third-country national concerned by the decision, as well as on the right to stay of his/her family members.

Any difference between refugees and beneficiaries of subsidiary protection should be clearly indicated.

3.1. Informing beneficiaries of international protection

Q29. Are beneficiaries of international protection informed about possible consequences on their protection status if they contact authorities or travel to their country of origin? **YES.**

The contact or travel with the country of origin has no consequences for the beneficiary of subsidiary protection, hence there is no provision of information in this regard.⁷³

The minister in charge of Asylum and Immigration will inform the refugee of the rights and obligations that his or her status implies. He will do so in a language that the refugee can understand.⁷⁴

If yes, please indicate the means by answering in the table 1 below:

Table 1 informing beneficiaries of international protection. NB. This table is only applicable to refugees.

Means used to inform beneficiaries of international protection	Contacting authorities of the country of origin	Travelling to the country of origin (or country of habitual residence)
It is indicated on beneficiaries' travel document	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Beneficiaries are informed in writing by national authorities <i>Please specify language of communication used by national authorities:</i> A person will be informed with the means of a brochure of the rights and obligations linked to the refugee status already when introducing his or her application for international protection. As soon as possible after granting the refugee status, the Ministry in charge	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Means used to inform beneficiaries of international protection	Contacting authorities of the country of origin	Travelling to the country of origin (or country of habitual residence)
<p>of Asylum and Immigration will provide the refugee with the information on the rights and obligations that the refugee status implies in a language that the refugee understands or that s/he can reasonably be expected to understand. The communication can be made in writing or orally.⁷⁵</p>		
<p>Beneficiaries are informed orally by competent authorities</p> <p><i>Please elaborate:</i></p> <p>As soon as possible the Ministry in charge of Asylum and Immigration will provide the information on the rights and obligations that the refugee status implies in a language that the refugees understands or that s/he can reasonable understand. The communication can be made in writing or orally.⁷⁶</p> <p>At any time, the beneficiaries, as well as their lawyers can contact the Directorate of Immigration by telephone or at their offices to receive information.⁷⁷</p>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Beneficiaries are informed at their request</p> <p><i>Please elaborate (e.g. whether in writing or orally):</i></p> <p>At any time, the beneficiaries, as well as their lawyers, can contact the Directorate of Immigration by telephone, fax, etc. or in person at the offices of the Directorate of Immigration in order to receive information.⁷⁸</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Other means</p> <p><i>please elaborate: Website⁷⁹</i></p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

3.2. Review of protection status

Q30. Is the status of beneficiaries of international protection that travelled to and/or contacted authorities of their country of origin reviewed in your (Member) State?

There is a possibility that the status is reviewed.

Q30a. If yes to Q30, please briefly elaborate on the framework of the review in your (Member) State:

- There is a systematic review of all international protection statuses.

Please briefly elaborate on the frequency of the review:

- There is a possibility to review the international protection status upon renewal of residence permit accompanying status.

Please elaborate: The withdrawal of international protection is defined as the decision with which the minister revokes the refugee or subsidiary protection status of a person, refuses to renew it or ceases it in conformity with the articles 47 and 52 of the Asylum Law.⁸⁰ The minister can undertake an examination in view of withdrawing the status of a person when new elements or facts emerge that indicate that the validity of the international protection should be re-examined.⁸¹

- A review can be triggered *ex officio* by national authorities.

E.g. as part of procedures to cease international protection

Q30b. If yes to Q30, please briefly elaborate on (i) authorities involved and procedure followed (*e.g. same authorities involved in the review and adoption of a decision to cease international protection*), and (ii) whether a beneficiary of international protection is informed of the review.

The Directorate of Immigration, at the request of the minister in charge of Asylum and Immigration, will reassess the international protection status of the beneficiary if the conditions established in article 44 (1) of the Asylum Law (refugee status) or 49 (1) and (2) (subsidiary protection) trigger the reassessment.

In the case of the renewal of the international protection status⁸², the Directorate of Immigration can reassess if the conditions to grant the international protection are still valid.

The Directorate of Immigration will also reassess the situation if there are new elements or facts which come to light in order to cease the international protection status.⁸³

The Minister in charge of Asylum and Immigration issues the decision to withdraw the status (to revoke the status, to refuse to renew it or to end it according to articles 47 and 52.⁸⁴

The concerned person is informed in writing that the minister is proceeding to the re-examination of the beneficiary's right to international protection, of the motives for re-examination, and has the right to present the reasons why his/her status should not be withdrawn during a personal interview or in writing.⁸⁵

Q31. Can a review of international protection status lead to a decision to cease international protection in your (Member) State? **YES.**

Please elaborate whether this procedure leads to a decision to cease international protection directly or whether the decision to cease international protection is adopted once the review/reassessment has identified that there may be existing grounds for cessation.

The decision to cease international protection is adopted once the review/reassessment has identified that there may be existing grounds for cessation.⁸⁶

3.3. Cessation procedure

Q32. Based on circumstances that can trigger cessation grounds explored in section 2, which authorities are involved in the decision to cease international protection status in your (Member) State?

Please elaborate:

The minister in charge of Asylum and Immigration issues the decision to cease the status.⁸⁷

Q33. Can the beneficiary of international protection present contrary evidence or elements during the procedure to cease his/her protection status? **YES.**

Q33a. If yes to Q33, can s/he present defence:

In writing to the competent authority?

Please specify:

E.g. can the beneficiary of international protection present testimonial evidence?

Yes, the beneficiary of international protection can present the reasons why his or her status should not be withdrawn in writing.⁸⁸

Orally?

Please specify:

In case of the cessation of the status the individual has the right to an interview.⁸⁹ S/he can be accompanied by a lawyer.⁹⁰

E.g. does the beneficiary of international protection have the right to an interview? Can s/he be accompanied by a lawyer?

Both?

Please specify: See above.

Other?

Please specify:

Q34. Is there a specific deadline set to issue the decision to (possibly) cease international protection? **NO.**

No, there is no specific deadline set to issue the decision to cease international protection. The beneficiary is notified of the decision in writing.⁹¹ The Asylum Law requires that every decision of the Ministry withdrawing the refugee status must be motivated.⁹² The notification of the decision indicates not only the reasons why the decision was taken but the recourses available against the decision.

Q34a. If yes to Q34, how is the decision notified to the (former) beneficiary of international protection? Is it done:

In writing?

Orally?

Other means?

Please specify:

Q34b. If yes to Q34, does the decision include the reason(s) for cessation? **YES.**

If yes, please elaborate: See Q34.

Q35. In case a decision to cease the international protection status is adopted:

a) What are the timeframes for appealing the decision?

Please elaborate:

The appeal has to be filed in the month following the notification of the decision.⁹³ The appeal against the decision of the First instance Administrative Court has to be filed in a month after the decision was notified.⁹⁴

b) Which authority examines the appeal application?

Please elaborate:

The appeal of the decision is filed before the First instance Administrative Court.⁹⁵ If the decision of the First instance Administrative Court is negative the individual can file an appeal before the Second instance Administrative Court.⁹⁶

Q36. When a competent authority assesses elements to cease (or not) an international protection status, does it also assess the proportionality of a removal from national territory? **YES**⁹⁷

If yes, please elaborate (e.g. taking into account of the principle of non-refoulement).

If necessary, the Minister can agree to a deadline for removal that is longer than 30 days, taking into account the individual circumstances of each case, such as the length of stay, the existence of children that are attending school and other family and social links.⁹⁸

In addition, under the condition that the person is not a threat to public or security, a person cannot be removed if s/he establishes by means of medical certificates that his/her state of health requires medical care, the lack of which would have consequences of exceptional gravity, and if the person can prove that s/he cannot have appropriate treatment in the country to which s/he will be removed.⁹⁹

In the case of an unaccompanied minor, s/he can only be removed if the decision is based on imperative grounds of public security or if the removal is in his or her interest.¹⁰⁰

Q37. Have there been any court decisions on appeals against a (first instance) decision of cessation of a protection status *due to travels to the country of origin* in your (Member) State? **NO**.

If yes, please briefly summarise:

- a) The result of the appeal (e.g. was the initial decision to cease international protection reverted?), and
- b) The main justifications given by the Court (e.g. reasons to uphold or quash the first instance decision).

3.4. Consequences of a cessation decision

Right to stay, possible change of status or return

Q38. In your (Member) State, is the decision to cease international protection issued together with the decision to end the residence permit? **YES**¹⁰¹

If no, when is the decision to end the residence permit taken? Please elaborate:

Q39. What are the consequences of a decision to cease international protection in your (Member) State on the right to stay of the (former) beneficiary of international protection:

- a) Automatic loss of the right to stay (in the State that granted protection).

No. In principle the decision to cease international protection carries a return decision.¹⁰² However, the individual can apply for another residence permit if s/he fulfils the conditions established in the Immigration Law (i.e. family member residence permit¹⁰³ or residence permit for private reasons¹⁰⁴).

If yes, is the decision to cease international protection accompanied by a return decision? **YES**.¹⁰⁵

Please elaborate:

The decision of the minister constitutes a return decision. The order to leave the territory includes the deadline by which the territory must be left and the country to which the recipient will be returned.¹⁰⁶

- b) Individual circumstances of the (former) beneficiary of international protection are taken into account (e.g. *the person has a right to stay on other grounds*). **YES.**¹⁰⁷

If yes, please elaborate (e.g. taking into account health or medical reasons, other humanitarian grounds, length of stay in the (Member) State, the principle of non-refoulement, etc):

If necessary, the minister can agree to a deadline for removal that is longer than 30 days, taking into account the individual circumstances of each case, such as the length of stay, the existence of children that are attending school and other family and social links.¹⁰⁸

Q40. Can a (former) beneficiary of international protection be granted another status? **YES.**

If yes, this can be:

Please indicate options that apply. For each option marked, please elaborate on how and when a (former) beneficiary of international protection can apply for or obtain that status.

- A subsidiary protection status

Please elaborate:

- A national protection status

Please elaborate:

- A legal migration status

Please elaborate (e.g. based on family, social or economic links):

If the person fulfils the conditions, s/he can apply for the status of salaried worker¹⁰⁹, independent worker¹¹⁰, Blue card residence permit¹¹¹, family member residence permit¹¹², residence permit for private reasons¹¹³.

- Other

Please specify:

If no, please elaborate:

Right to stay of family members and dependents

Q41. In case of a (final) decision to cease international protection status, what are the consequences on family members and dependents included in the initial application for international protection:

- Keep their international protection status
- Lose their international protection status and lose their right to stay
- Lose international protection status and keep their right to stay on other grounds

Please briefly elaborate on 'other grounds':

- Case by case decision if they keep or lose their international protection status and their right to stay

Please elaborate on elements taken into account: It depends on the reasons for which the partner obtained the international protection. It can depend on whether children are minors and depends on the parent. It also depends on whether they can gain access to another residence permit under the Immigration Law.¹¹⁴

- Other consequences

Please elaborate:

Q42. In case of a (final) decision to cease international protection status, what are the consequences on family members and dependents not included in the initial application for international protection, and who got a residence permit through family reunification with the former beneficiary of international protection.

Keep their right to stay

Please elaborate:

Lose their right to stay

Please elaborate: They will lose their right to stay unless they can gain access to another residence permit under the Immigration Law.¹¹⁵

Case by case decision if they keep or lose their right to stay

Please elaborate:

Other consequences

Please elaborate:

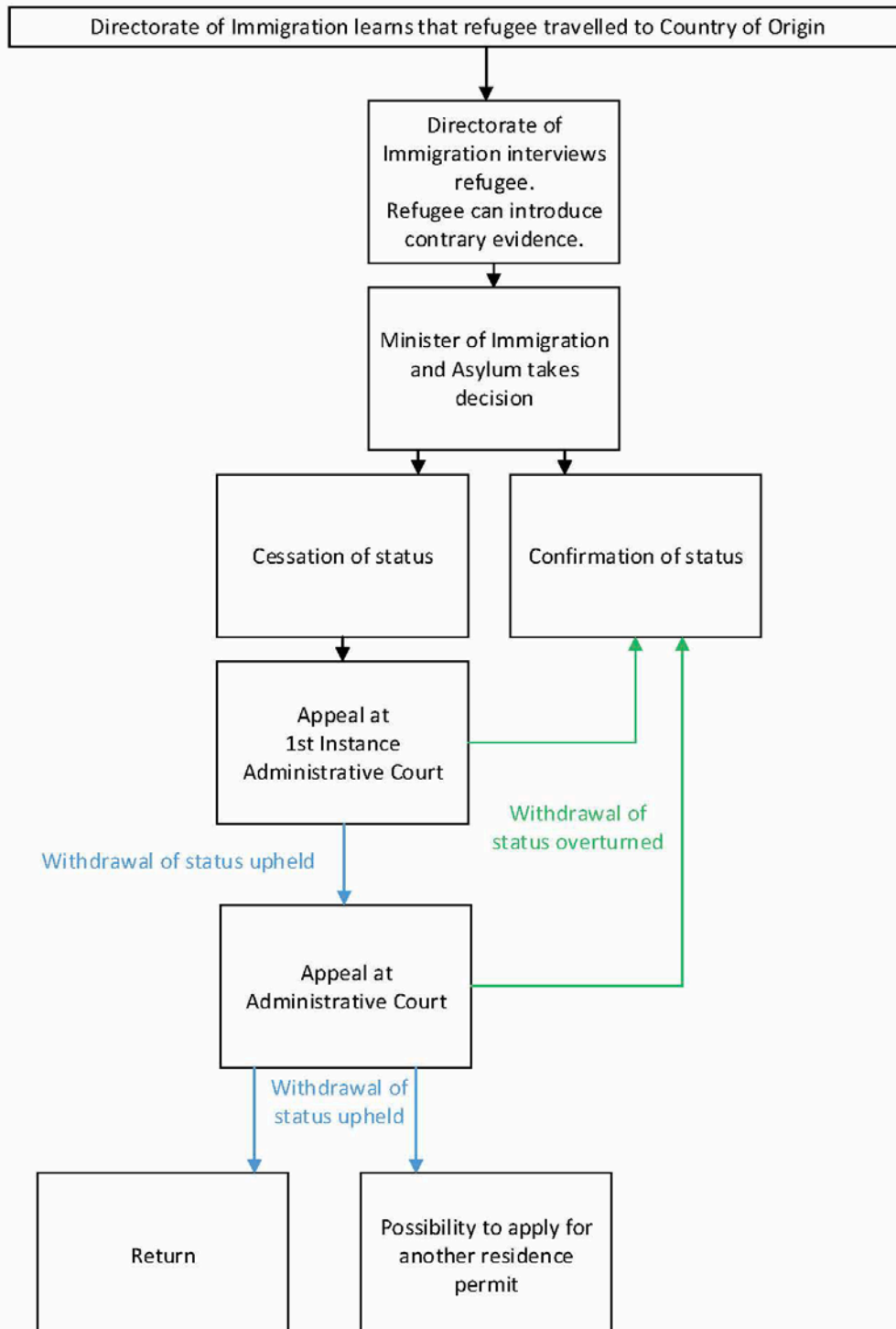
Summarising chart and case study(-ies)

Q43. Summarising chart and **illustrative examples** on the adoption of a decision on cessation of international protection and implications on the right of residence in the (former) State of protection

[Possible visual element]

*Please include a **chart** to visualise and describe (a) the actors involved and (b) process followed in all stages mentioned in Section 3, namely the process of adopting a decision to cease international protection status as a result of travels to the country of origin (and/or contacts with national authorities of the country of origin) and appeal procedures, possible consequences on the right of stay of the former beneficiary of international protection, his family members and issuance of a return decision. This chart can accompany and illustrate the case studies below.*

Process of adopting a decision to cease refugee status as a result of travels to the country of origin



Note: Please refer to LU EMN NCP contribution to EMN study 'Beneficiaries of international protection travelling to their country of origin: Challenges, policies and practices in the EU Member States, Norway and Switzerland' (2018) for full information.

Please provide **one or two illustrative (and anonymised) case(s)** of a beneficiary of international protection travelling to his/her country of origin, the consequences on his/her international protection status and procedures followed. If available, please select case studies reflecting different situations, including, for example and if available, examples where the decisions taken was not to withdraw international protection status.

Below are examples of case studies based on existing legislation and practices in Belgium

Case studies

Mr Ahmadzai^{vii} from Afghanistan was granted refugee status in Belgium in March 2012 based on his fear of the Taliban. On 7 October 2016, upon arrival in Belgium at the airport from Kabul, he was subjected to a check by the border police, where he presented his travel document for refugees. The entry and exit stamps on this document showed that he stayed in Afghanistan for over a month. The border police transmitted a copy of the travel document to the Immigration Office (to the International Protection Follow-up Unit) on 9 October 2016. As a result, the Immigration Office requested the Office of the Commissioner General for Refugees and Stateless persons to cease his refugee status.

A few months later, in January 2017, Mr Ahmadzai was invited for an interview by the Office of the Commissioner General for Refugees to explain the reasons of his visit to his country of origin and provide him with the opportunity to present evidence showing that he was still in need of refugee protection. Based on these statements, the length of stay in Afghanistan and the extensive family ties there, the Office of the Commissioner General for Refugees established that his behaviour did not show a fear of persecution in the country of origin. It took the decision to cease his refugee status on 28 April 2017. Mr Ahmadzai filed a suspensive appeal before the Council for Alien Law litigation against this decision on 31 May 2017. The Council confirmed the decision of cessation on 15 February 2018.

As a consequence of the end of his refugee status, the Immigration Office examined on 28 February 2018 whether his right to stay in Belgium should be ended or not. The Immigration Office first sent Mr Ahmadzai a registered letter asking him to submit any evidence and elements deemed necessary in favour of keeping a residence right. He didn't reply to this letter. After analysing all the elements in his file, and taking into account his length of stay, medical situation, family life and cultural and social links in Belgium, the Immigration Office took on 18 March 2018 a decision to end Mr Ahmadzai's right to stay in Belgium and issued a decision to return within 30 days.

Mr Al-Nouri from Syria was granted refugee status in Belgium in April 2010. On 15 November 2017, he arrived at Brussels airport returning from Syria and was subjected to a border check. The entry and exit stamps in his travel document for refugees showed that he went back to Syria for three weeks. The border police transferred its report and a copy of the travel documents to the Belgian Immigration Office (International Protection Follow-up Unit). On 18 November 2017, the Immigration Office asked the Office of the Commissioner General for Refugees and Stateless Persons to cease his status.

Mr Al-Nouri was interviewed at the Office of the Commissioner General on 10 March 2018 to enable him to present evidence in favour of maintaining his protection status. Based on this and past behaviour, the Commissioner General assessed that he failed to establish a real fear of persecution in Syria. Hence, on 28 March 2018, a decision to end his refugee status was adopted. Mr Al-Nouri did not bring an appeal against it.

After analysing Mr Al-Nouri file, the Immigration Office established that his wife and three underage children were staying in Belgium through family reunification. From a legal point of view, the residence right of Mr Al-Nouri and his family could be ended. On 15 May 2018, a questionnaire was sent to both him and his wife asking them to fill this in and to submit all documents and provide all elements deemed necessary for reviewing their residence rights. Based on all these elements (employment status of Mr Al-Nouri and his wife, school-aged children, integration courses followed), the Immigration Office decided on 25 June 2018 not to end Mr Al-Nouri's and his family's right to stay in Belgium.

^{vii} Names used in these examples are fictional.

As known instances of beneficiaries of the refugee status travelling to their country of origin are extremely rare, it is not possible to provide case studies.

4 Conclusions

This section of the Synthesis Report will draw conclusions as to the Member States' existing policies, practices and case law related to ending international protection and impacts on the right to stay of beneficiaries of international protection contacting authorities of their country of origin and or travelling to their country of origin.

Q44. 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?

As previously outlined, in Luxembourg, beneficiaries of the refugee status are not permitted to travel back to their country of origin, while beneficiaries of subsidiary protection are not subject to this restriction.

The phenomenon of refugees returning to their country of origin does exist – it is however not considered a policy priority and there are no statistics regarding the issue. Luxembourg's only external border is at the Luxembourg Airport; there are only a few flights leaving to third countries. As outlined in the study, there are a number of ways in which refugees could potentially travel to their country of origin without being detected by Luxembourg's authorities.

If the Directorate of Immigration is informed that a refugee went to the country of origin or contacted the country's authorities, which in practice is an infrequent occurrence, it will proceed to an individual analysis of the particular case. It is considered extremely difficult to cease a refugee's status based on the aforementioned travel or contact as it would have to be demonstrated that these actions correspond to the re-availment of the protection of the country of origin or the voluntary re-establishment in the country of origin. If the Directorate of Immigration has no way of establishing what the purpose is of the refugee's travel to or contact with the authorities of the country of origin is, there are no grounds for cessation.

Nonetheless, the trip to the country of origin or the contact with its authorities, as well as the surrounding circumstances, can be taken into account if the minister decides to re-examine the validity of the status, which could potentially lead to a withdrawal.

Based on the data provided, it can be concluded that the issue of beneficiaries of the refugee status travelling to their country or origin is relatively minor in Luxembourg. Due to Luxembourg's geographical location, it is very difficult to ascertain that such events occur in the first place; it would likely take considerable resources to effectively detect the true scale of the phenomenon.

The return to the country of origin and the contact with its authorities are not legal motives for the cessation or the withdrawal of status as such. They could be taken into consideration by the authorities in case it is decided to re-examine the validity of the status.

Based on the information gathered, there were no cases of cessation or of withdrawal of the refugee status because of travel to the country of origin or of contact with the authorities of the country of origin.

¹ Information provided by the Directorate of Immigration and the Judicial Police on 6 November 2018

² The six conditions are a textual transposition of Article 11 (1) of the [Council Directive 2011/95/EU](#) of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

³ Article 44 (1) a), Law of 18 December 2015 on international protection and temporary protection.

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- ⁴ Article 44 (1) b), Law of 18 December 2015 on international protection and temporary protection.
- ⁵ Article 44 (1) c), Law of 18 December 2015 on international protection and temporary protection.
- ⁶ Article 44 (1) d), Law of 18 December 2015 on international protection and temporary protection.
- ⁷ Article 44 (1) e), Law of 18 December 2015 on international protection and temporary protection.
- ⁸ Article 44 (1) f), Law of 18 December 2015 on international protection and temporary protection.
- ⁹ Article 49 (1), Law of 18 December 2015 on international protection and temporary protection.
- ¹⁰ Article 49 (2), Law of 18 December 2015 on international protection and temporary protection.
- ¹¹ [Parliamentary question n° 3088 of 21 June 2017](#).
- ¹² Information provided by the Directorate of Immigration on 6 November 2018. Also see [Case Law Database on migration and asylum](#).
- ¹³ [Answer to the parliamentary question n° 3088](#) by the Minister of Foreign and European Affairs, 12 July 2017.
- ¹⁴ [Answer to the parliamentary question n° 3088](#) by the Ministry of Foreign and European Affairs, 12 July 2017.
- ¹⁵ Information provided by the Directorate of Immigration on 5 October 2018.
- ¹⁶ Article 44 (1) a), Law of 18 December 2015 on international protection and temporary protection.
- ¹⁷ Article 44 (1) d), Law of 18 December 2015 on international protection and temporary protection.
- ¹⁸ Information provided by the Directorate of Immigration on 6 November 2018.
- ¹⁹ See in this sense Judgement of the Second instance Administrative Court, [n° 31667C of 12 November 2012](#).
- ²⁰ Judgement of the First instance Administrative Court, 1st Chamber, [n° 30733 of 6 May 2013](#)
- ²¹ Information provided by the Directorate of Immigration on 6 November 2018.
- ²² Information provided by the Directorate of Immigration on 6 November 2018.
- ²³ Judgement of the First instance Administrative Court, 1st Chamber, [n° 30733 of 6 May 2013](#).
- ²⁴ Information provided by the Directorate of Immigration on 6 November 2018.
- ²⁵ For some administrative procedures, a refugee may be required to present documents such as a birth certificate or a certificate of celibacy, which s/he may only be able to obtain from the authorities of his/her country of origin. The person who is unable to provide a birth certificate may replace it with an affidavit containing the declaration of three witnesses testifying the name and first name of the person and of his/her parents if they are known ; the place and, as far as possible, the date of birth, and the reasons that make the provision of the birth certificate impossible. If a person is unable to provide a certificate of celibacy, this may also be replaced by an affidavit ; this is decided upon on a case by case basis in coordination with the Prosecutor General's Office. Replacing the respective certificates with affidavits may not be possible in all cases and may thus result in the refugee's inability to finalise certain administrative procedures. Information provided in telephone interview with a lawyer and the Civil Registry of Luxembourg City.
- ²⁶ Article 39 c), Law of 18 December 2015 on international protection and temporary protection.
- ²⁷ Judgement of the First instance Administrative Court, 1st Chamber, [n° 30733 of 6 May 2013](#).
- ²⁸ [Council Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedure for granting and withdrawing international protection](#).
- ²⁹ Article 44, Law of 18 December 2015 on international protection and temporary protection.
- ³⁰ Article 58 (1), Law of 18 December 2015 on international protection and temporary protection.
- ³¹ Information provided by the Directorate of Immigration on 6 November 2018.
- ³² Information provided by the Directorate of Immigration on 6 November 2018.
- ³³ Guichet.lu, Droits conférés par la protection internationale, URL: <https://guichet.public.lu/fr/citoyens/immigration/cas-specifiques/protection-internationale/droits-protection-internationale.html>
- ³⁴ Information provided by the Directorate of Immigration on 6 November 2018.
- ³⁵ Information provided by the Directorate of Immigration on 6 November 2018.
- ³⁶ Guichet.lu, Droits conférés par la protection internationale, URL: <https://guichet.public.lu/fr/citoyens/immigration/cas-specifiques/protection-internationale/demande-protection-internationale.html>

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- ³⁷ Information provided by the Directorate of Immigration on 6 November 2018.
- ³⁸ Information provided by the Directorate of Immigration on 6 November 2018.
- ³⁹ [Answer to the parliamentary question n° 3088](#) by the Ministry of Foreign and European Affairs, 12 July 2017.
- ⁴⁰ Article 44 (1) d), Law of 18 December 2015 on international protection and temporary protection.
- ⁴¹ [Answer to the parliamentary question n° 3088](#) by the Ministry of Foreign and European Affairs, 12 July 2017.
- ⁴² [Answer to the parliamentary question n° 3088](#) by the Ministry of Foreign and European Affairs, 12 July 2017.
- ⁴³ Information provided by the Directorate of Immigration on 6 November 2018.
- ⁴⁴ Information provided by the Directorate of Immigration on 6 November 2018.
- ⁴⁵ Information provided by the Directorate of Immigration on 6 November 2018 and Article 47 of the Law of 18 December 2015 on international and temporary protection.
- ⁴⁶ Information provided by the Directorate of Immigration on 6 November 2018.
- ⁴⁷ Article 44, Law of 18 December 2015 on international protection and temporary protection.
- ⁴⁸ Information provided by the Directorate of Immigration on 6 November 2018.
- ⁴⁹ Guichet.lu, Droits conférés par la protection internationale, URL: <https://guichet.public.lu/fr/citoyens/immigration/cas-specifiques/protection-internationale/droits-protection-internationale.html>
- ⁵⁰ Information provided by the Directorate of Immigration on 6 November 2018.
- ⁵¹ Information provided by the Directorate of Immigration on 6 November 2018.
- ⁵² Information provided by the Directorate of Immigration on 6 November 2018.
- ⁵³ Information provided by the Directorate of Immigration on 6 November 2018.
- ⁵⁴ [Answer to the parliamentary question n° 3088](#) by the Ministry of Foreign and European Affairs, 12 July 2017.
- ⁵⁵ Information provided by the Directorate of Immigration on 6 November 2018.
- ⁵⁶ [Council Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedure for granting and withdrawing international protection.](#)
- ⁵⁷ Article 44, Law of 18 December 2015 on international protection and temporary protection.
- ⁵⁸ Information provided by the Directorate of Immigration on 6 November 2018.
- ⁵⁹ Article 39 c), Law of 18 December 2015 on international protection and temporary protection.
- ⁶⁰ Information provided by the Directorate of Immigration on 6 November 2018.
- ⁶¹ Article 1 (2), Coordinated Text of 25 June 2013 of the Grand Ducal Regulation of 26 January 2005 fixing the modalities for obtaining a travel document for foreigners, published in [Memorial A 113 of 3 July 2013](#) (henceforth “Coordinated Text of 25 June 2013”).
- ⁶² Article 58 (2), Law of 18 December 2015 on international and temporary protection and Article 1, Coordinated Text of 25 June 2013.
- ⁶³ Information provided by the Directorate of Immigration on 6 November 2018.
- ⁶⁴ Article 1bis (1), Coordinated Text of 25 June 2013.
- ⁶⁵ Article 1bis (2), Coordinated Text of 25 June 2013.
- ⁶⁶ Article 3 (2), Coordinated Text of 25 June 2013.
- ⁶⁷ Article 13 (1), Grand ducal regulation of 25 January 2008 fixing the modalities for obtaining a biometric passport, biometric travel document for foreigners, stateless people and refugees, published in [Memorial A 10 of 28 January 2008](#)
- ⁶⁸ Information provided by the Directorate of Immigration on 6 November 2018.
- ⁶⁹ Information provided by the Directorate of Immigration on 6 November 2018. The two NGOs (Luxembourgish Red Cross and Caritas) questioned for this study did not have any knowledge of refugees travelling back to their country of origin and returning to Luxembourg. They confirmed that there are isolated cases in which they contact the national authorities of their country of origin to receive documents. Caritas noted that they emphasise awareness-raising in this regard, informing individuals already as applicants on the rights and obligations associated with the status during information sessions. This way, they for instance aim to prevent

occurrences in which a refugee contacts the national authorities of the country of origin through ignorance of the applying restrictions.

⁷⁰ Information provided by the Directorate of Immigration on 6 November 2018.

⁷¹ [Council Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedure for granting and withdrawing international protection.](#)

⁷² Article 44, Law of 18 December 2015 on international protection and temporary protection.

⁷³ Information provided by the Directorate of Immigration on 6 November 2018

⁷⁴ Article 55, Law of 18 December 2015 on international protection and temporary protection.

⁷⁵ Article 55, Law of 18 December 2015 on international protection and temporary protection.

⁷⁶ Article 55, Law of 18 December 2015 on international protection and temporary protection.

⁷⁷ Information provided by the Directorate of Immigration on 15 November 2018.

⁷⁸ Information provided by the Directorate of Immigration on 15 November 2018.

⁷⁹ Guichet.lu, Introduire une demande de protection internationale, URL: <https://guichet.public.lu/fr/citoyens/immigration/cas-specifiques/protection-internationale/demande-protection-internationale.html>

⁸⁰ Article 33 (1), Law of 18 December 2015 on international protection and temporary protection.

⁸¹ Article 33 (2), Law of 18 December 2015 on international protection and temporary protection.

⁸² Article 57 (1), Law of 18 December 2015 on international protection and temporary protection.

⁸³ Article 33 (2), Law of 18 December 2015 on international protection and temporary protection.

⁸⁴ Article 33 (1), Law of 18 December 2015 on international protection and temporary protection.

⁸⁵ Article 33(3), Law of 18 December 2015 on international protection and temporary protection.

⁸⁶ Article 33 (1) to (5), Law of 18 December 2015 on international protection and temporary protection.

⁸⁷ Article 33 (1), Law of 18 December 2015 on international protection and temporary protection.

⁸⁸ Article 33 (1) and (3), 18 December 2015 on international protection and temporary protection and Article 2, Coordinated Text of the amended Law of 21 June 1999 regulating the procedure before the administrative jurisdictions, published in [Memorial A 196 of 19 September 2011](#).

⁸⁹ Article 47 (1) and (2) and 52 (1) and (4) in accordance with Article 33 (3), Law of 18 December 2015 on international protection and temporary protection.

⁹⁰ Article 17 in accordance with article 33 (6), Law of 18 December 2015 on international protection and temporary protection.

⁹¹ Article 34 (1), Law of 18 December 2015 on international protection and temporary protection.

⁹² Article 34 (1), Law of 18 December 2015 on international protection and temporary protection.

⁹³ Article 35 (1), Law of 18 December 2015 on international protection and temporary protection.

⁹⁴ Article 35 (1) paragraph 3, Law of 18 December 2015 on international protection and temporary protection.

⁹⁵ Article 35 (1), Law of 18 December 2015 on international protection and temporary protection.

⁹⁶ Article 35 (1) paragraph 2, Law of 18 December 2015 on international protection and temporary protection.

⁹⁷ Article 34 (2), Law of 18 December 2015 on international protection and temporary protection.

⁹⁸ Article 34 (2), Law of 18 December 2015 on international protection and temporary protection.

⁹⁹ Article 130, Coordinated text of the Law of 29 August 2008 on the free movement of people and immigration published in [Memorial A 113 of 3 July 2013](#) (henceforth “Law of 29 August 2008 on the free movement of people and immigration”).

¹⁰⁰ Article 103, Law of 29 August 2008 on the free movement of people and immigration.

¹⁰¹ Article 33 (1), Law of 18 December 2015 on international protection and temporary protection.

¹⁰² Article 34 (2), Law of 18 December 2015 on international protection and temporary protection.

¹⁰³ Article 67, Law of 29 August 2008 on free movement of people and immigration.

¹⁰⁴ Article 78 (1) c), Law of 29 August 2008 on free movement of people and immigration.

¹⁰⁵ Article 34 (2), Law of 18 December 2015 on international protection and temporary protection.

¹⁰⁶ Article 34 (2), Law of 18 December 2015 on international protection and temporary protection.

¹⁰⁷ Article 34 (2), Law of 18 December 2015 on international protection and temporary protection.

¹⁰⁸ Article 34 (2), Law of 18 December 2015 on international protection and temporary protection.

¹⁰⁹ Article 42, Law of 29 August 2008 on free movement of people and immigration.

¹¹⁰ Article 51, Law of 29 August 2008 on free movement of people and immigration.

¹¹¹ Article 45, Law of 29 August 2008 on free movement of people and immigration.

¹¹² Article 6, Law of 29 August 2008 on free movement of people and immigration.

¹¹³ Article 78 (1) c), Law of 29 August 2008 on free movement of people and immigration.

¹¹⁴ Information provided by the Directorate of Immigration on 15 November 2018.

¹¹⁵ Information provided by the Directorate of Immigration on 15 November 2018.