



# **EMN FOCUSSED STUDY 2018**

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

**Estonian national report**

**Tallinn 2018**

*Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the EMN Focussed Study on the 'Beneficiaries of international protection travelling to their country of origin: Challenges, Policies and Practices in the EU Member States, Norway and Switzerland'. The contributing EMN NCP have provided information that is, to the best of their 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 an EMN NCPs' Member State.*

*This document was produced by Silver Stõun the expert of EE EMN NCP. This report was compiled based on public and available information. Furthermore, experts of this topic were consulted.*

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# Common Template of EMN Study 2018

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**Action:** EMN NCPs and Switzerland are invited to submit their national contributions by **Friday 23 November 2018**. If needed, further clarifications can be provided by directly contacting the EMN Service Provider (ICF) at [emn@icf.com](mailto:emn@icf.com).

## 1 STUDY AIMS AND SCOPE

Travels of beneficiaries of international protection to their country of origin or applications for a passport at the embassy of their country of origin were observed by competent authorities in several (Member) States. While such acts do not automatically imply a misuse of their international protection status, they could, in certain circumstances, contradict the grounds that led to granting protection, namely the individual's fear of persecution in the country of origin (or habitual residence for stateless persons) or real risk of suffering serious harm.

The study aims to map, firstly, information on the reasons for such travels of persons granted international protection in EU Member States, Norway and Switzerland. Both international refugee and EU asylum law encompass several grounds whereby protection status may come to an end in circumstances where it is apparent that protection is no longer necessary nor justified. These are referred to as 'cessation' grounds. Obtaining a national passport and/or frequently travelling to the country of origin could, in certain circumstances, indicate that beneficiaries are no longer in need of international protection. On the contrary, they could indicate that beneficiaries of international protection are willing to (re)avail themselves of the protection of the country of origin or intend to re-establish themselves there.

Furthermore, the study aims to analyse the possible consequences of such acts on the international protection status and residence rights of the persons concerned. The assessment needs to take into account the Refugee Convention and relevant EU asylum law (recast Qualification Directive and Asylum Procedures Directive), the European Convention on Human Rights and national legislation.

The main objectives of this study are therefore (1) to provide objective and reliable information about beneficiaries of international protection who travel to their country of origin or come into contact with national authorities of their country of origin, and (2) information on cases where international protection statuses were ceased leading to, for example, the status being ended, revoked or not renewed (as per Article 45 and 46 of the recast Asylum Procedures Directive) and, ultimately, the permission to stay withdrawn.

In addition to informing policy-makers and the general public, information collected for this study would also support EASO's activities to further develop the Common European Asylum System, particularly in relation to the end of international protection. The UNHCR could also benefit from the findings of this study to better understand how guidelines on cessation clauses are applied in practice across EU Member States, Norway and Switzerland.

For the purpose of this study, 'beneficiaries of international protection' comprise persons who are granted refugee status or subsidiary protection status in the EU Member States. National forms of protection and humanitarian statuses thus fall outside the scope of the study. Similarly, applicants for international protection, persons excluded from international protection, persons with international

protection who have acquired citizenship in one of the EU Member States, Norway or Switzerland are not included in this study. While UNHCR guidelines will be taken into account for the mapping and analysis of information for this study, the concept of 'cessation' mainly refers to cessation grounds included in the Qualification Directive (Articles 11, 14, 16 and 19). Furthermore, the term 'country of origin' is understood to cover both the country of nationality and the country of former habitual residence (in relation to refugees who are stateless) of refugees.

Information contained in the Common Template may be used in the EMN synthesis report, which will be published. Any information which national authorities deem sensitive in nature should be provided in a separate Annex and will only be made available to national authorities and the European Commission.

## 2 INTERNATIONAL AND EU LEGAL FRAMEWORK ON CESSATION

Both international refugee law (1951 Refugee Convention) and EU asylum acquis include grounds based on which international protection may come to an end. The Refugee Convention is based on temporality of refugee protection and thus includes the concepts of cessation and revocation of refugee status, while the concept of cancellation is not clearly defined in the Convention.<sup>1</sup> The concepts related to end of international protection in the EU asylum acquis coincide only in part with the terminology used in the Refugee Convention.<sup>2</sup> While certain concepts, such as cessation, are used consistently in the Refugee Convention and EU asylum legislation, this is not the case regarding other grounds of ending international protection where divergent definitions and interpretations exist.<sup>3</sup>

Based on the scope of the study, the concept of cessation is the most relevant to analyse the consequences of beneficiaries of international protection travelling to their country of origin and/or contacting consulates or embassies of their country of origin to obtain national passports. Additionally, for the purpose of this study, the concepts and terminology included in EU asylum acquis, in particular in the recast Qualification Directive, will be used as a reference point, with references to the Refugee Convention and UNHCR guidelines where relevant. Indeed, the recast Qualification Directive is binding on all (Member) States except Ireland, the UK and Switzerland.<sup>4</sup>

The recast Qualification Directive defines the conditions under which a third-country national or stateless person ceases to be a refugee (Article 11) or a beneficiary of subsidiary protection (Article 16). Support in the interpretation of these concepts can be found in UNHCR's Handbook and guidelines on procedures and criteria for determining refugee status.<sup>5</sup> A judicial analysis on the end of international protection in EU asylum acquis elaborated under EASO's aegis equally provides for additional guidance on the interpretation of these concepts.<sup>6</sup>

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<sup>1</sup> In the 1951 Refugee Convention, cessation refers to the ending of refugee status pursuant to Article 1C of the 1951 Convention because international refugee protection is no longer necessary or justified. Cancellation means a decision to invalidate the recognition of refugee status, where it is subsequently established that the individual should never have been recognized, including in cases where he or she should have been excluded from international refugee protection. Revocation refers to the withdrawal of refugee status in situations where a person properly determined to be a refugee engages in excludable conduct which comes within the scope of Article 1F (a) or (c) of the 1951 Convention after recognition of the refugee status (UNHCR Handbook and guidelines on procedures and criteria for determining refugee status, December 2011, <http://www.unhcr.org/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>).

<sup>2</sup> For example, the concept of end of international protection used by EASO in its Judicial Analysis of Articles 11, 14, 16 and 19 of the Qualification Directive (211/95/EU) encompasses cessation, revocation, ending or refusing to renew protection as well as withdrawal of international protection.

<sup>3</sup> For example, the concept of revocation in the Convention and exclusion in Article 14 of the recast Qualification Directive do not cover similar circumstances, the Qualification Directive expanding the grounds for exclusion beyond those included in Article 1F of the Refugee Convention (<http://www.unhcr.org/4c5037f99.pdf>).

<sup>4</sup> The 2004 Qualification Directive (Directive 2004/83) applies however in Ireland.

<sup>5</sup> Available at: <http://www.unhcr.org/3d58e13b4.html> and <http://www.refworld.org/docid/3c06138c4.html>

<sup>6</sup> EASO, *Ending International Protection: Articles 11, 14 16 and 19 Qualification Directive. A Judicial Analysis*. December 2016, [https://www.easo.europa.eu/sites/default/files/Ending%20International%20Protection\\_Articles%2011\\_14\\_16%20and%2019%20QD%20EASO%20Judicial%20Analysis%20FINAL.pdf](https://www.easo.europa.eu/sites/default/files/Ending%20International%20Protection_Articles%2011_14_16%20and%2019%20QD%20EASO%20Judicial%20Analysis%20FINAL.pdf)

## 2.1 CESSATION OF REFUGEE STATUS

Refugee status can cease in two instances:

- ★ Refugee status is no longer justified or needed following changes in the personal situation of the refugee that have been brought about by voluntary conduct or actions of the refugee him/herself;<sup>7</sup>
- ★ Refugee status is no longer justified following changes in the country of origin.<sup>8</sup>

For the purpose of this study, refugees contacting the authorities of their country of nationality and/or travelling back to their country of origin thus fall within the first type of changes of circumstances as these result from the personal conduct of the third-country national concerned. More specifically, travelling back to the country of origin may serve, in some cases, as an indicator of a 'voluntary re-availment of the protection' of or 'voluntary re-establishment' in the country of origin as defined by Article 11(1)(a) and (d) of the recast Qualification Directive respectively.<sup>9</sup>

Based on UNHCR and EASO guidelines mentioned above, the following acts and considerations should be taken into account to trigger these cessation grounds.

- ★ Voluntary re-availment of the protection of the country of nationality refers to the diplomatic protection by the country of nationality of the refugee, which implies a form of consular assistance. As an example, issuance or renewal of passport at the refugee's request constitutes, in the absence of the contrary, obtaining protection of the country of origin. Most frequent cases of 're-availment of protection' will occur where the refugee wishes to return to his country of origin. On the other hand, occasional or incidental contacts with authorities of the country of origin to obtain, for example, birth and marriage certificates, should not constitute re-availment of protection of the country of origin.<sup>10</sup> Indeed, situations where contact with the authorities of the country of origin are occasional or accidental, or where the issuance of documents related to family reunification were requested were not deemed to constitute a re-availment of the protection of the country of origin by national courts.<sup>11</sup>

The assessment of this cessation ground should determine three points: the refugee has acted voluntarily, has intended to re-avail him/herself of the protection of the country of his/her origin, and eventually has obtained such protection. Furthermore, when assessing this specific cessation ground, the original grounds for granting international protection should be considered. When refugee protection is based on fear of persecution emanating from non-State actors against which national authorities are unable to provide effective protection, the issue of the voluntary re-availment of their protection, particularly in the country of asylum, may have little relevance as to the continuing need for international protection.<sup>12</sup>

- ★ Voluntary re-establishment in the country of origin entails the return and resettlement of the refugee to his/her country of origin. A longer period of stay in the country of origin, creating a family, or normally carrying out a professional activity in the country of origin could constitute re-establishment. A visit or mere presence is unlikely to demonstrate voluntary re-establishment. Re-establishment implies a certain stability and, in that context, *only* repeated return trips on an

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<sup>7</sup> Article 11(1)(a)-(d) of the recast Qualification Directive; these provisions mirror the cessation grounds provided in Article 1C(1)-(4) of the Refugee Convention.

<sup>8</sup> Article 11(1)(e)-(f) of the recast Qualification Directive. Such circumstances can be end of hostilities, change of political regime, democratisation, etc. These provisions mirror the cessation grounds provided in Article 1C(5) and (6) of the Refugee Convention.

<sup>9</sup> Article 11(1)(a) and (d) of the Recast Qualification Directive provides "A third-country national or a stateless person shall cease to be a refugee if he or she: (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; 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 persecution."

<sup>10</sup> UNCHR, Handbook, 2011, paragraph 120-121.

<sup>11</sup> EASO, Ending International Protection, Ibid, section 3.1.4.

<sup>12</sup> EASO, Ending International Protection, Ibid, section 3.1.2.

ongoing basis may lead to cessation.<sup>13</sup> An assessment of the voluntary nature of the refugee's behaviour is also needed to trigger this cessation ground. EASO's research on case law found that this ground was rarely used in practice.<sup>14</sup>

## 2.2 CESSATION OF SUBSIDIARY PROTECTION

EU asylum law draws a distinction between refugees and beneficiaries of subsidiary protection which is also reflected in the cessation grounds. Compared to the six grounds enumerated in Article 11 of the recast Qualification Directive, Article 16 establishes only one cessation ground as regards subsidiary protection, namely where circumstances which led to granting it cease to exist or have changed to such a degree that protection is no longer required. Such changes should consolidate over time before a decision on cessation is made. In practice, this is tantamount to the last two grounds included in Article 11(1) of the Qualification Directive relating to protection no longer being needed due to changes in the country of origin. It is not clear from the wording of the Article whether subsidiary protection cannot be ceased following the personal conduct of the beneficiary (such as frequent travels to the country of origin or coming into contact with the authorities of the country of nationality), or where the beneficiary availed him/herself of the protection of his/her country of origin or decided to re-establish him/herself in the country of origin. In practice, national case law suggests that such behaviour also leads to cessation of subsidiary protection.<sup>15</sup>

## 2.3 CONSEQUENCES OF A CESSATION DECISION

The cessation grounds outlined above must be read in conjunction with the additional provisions of the Qualification Directive stating the consequences where cessation grounds apply: in such cases, Member States *must* revoke, end or refuse to renew refugee status (Article 14) or subsidiary protection (Article 19). The recast Qualification Directive does not differentiate between revocation, ending or refusal to renew international protection to accommodate the various concepts and terms used in Member States' legislations.<sup>16</sup> Indeed, at national level, legislative frameworks may not establish a clear distinction between cessation grounds for refugees and subsidiary protection, nor differentiate between substantive grounds to end international protection and procedural aspects of adopting a decision to end international protection.<sup>17</sup>

According to the Qualification Directive, it is up to Member States to demonstrate that the person concerned ceased to be a refugee (Article 14(2) and 19(2)). UNHCR's guidelines recommend that procedures for application of these cessation clauses, based on acts of the refugee, should include usual procedural safeguards that enable the person concerned to contest the evidence supporting cessation.<sup>18</sup> In this context, provisions of the Asylum Procedures Directive (Directive 2013/32/EU) also apply. The latter enumerates a list of procedural guarantees in case national authorities are considering withdrawing international protection in accordance with Articles 14 and 19 of the recast Qualification Directive, including the right to an effective remedy.

Depending on the national legislative framework and procedures set, the need for international protection may be reassessed or reviewed either during the procedure of withdrawing international

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<sup>13</sup> EASO, Ending International Protection, Ibid, section 3.4.3.

<sup>14</sup> EASO, Ending International Protection, Ibid, section 3.4.1.

<sup>15</sup> EASO, Ending International Protection, Ibid, section 7.1.2, in particular Supreme Administrative Court (Poland), judgments of 23 February 2016, joined cases II OSK 1492/14, II OSK 1561/14, II OSK 1562/14; Regional Administrative Court Warsaw (Poland), IV SA/Wa 2684/12, op. cit., fn. 233; see also H. Battjes, European Asylum Law and International Law (Brill Nijhoff, 2006), p. 268.

<sup>16</sup> See also on this point Hailbronner K. and Thym D. (eds), *EU immigration and asylum law, A commentary*, ed. Hart, Nomos, 2<sup>nd</sup> edition, 2016, Part D, II, Article 14, [MN 1], p. 1227.

<sup>17</sup> See for example ECRE's AIDA country reports on the content of international protection, in particular on cessation and review of international protection status (available at: <http://www.asylumineurope.org/reports>), and last publicly available report from the European Commission on the application of Directive 2004/89/EC of June 2010, section 5.4 (available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0314&from=EN>).

<sup>18</sup> <http://www.refworld.org/docid/47dfaf1d.html>

protection or can be done separately, on a different occasion, for example as part of a procedure to renew the residence permit, or when requested ex-officio by competent authorities in (Member) States.

If a decision on cessation of international protection is adopted, this does not necessarily imply that a third-country national loses his or her right to stay on the territory of a (Member) State, as the decision on the residence permit may be covered by a separate procedure which takes into account individual circumstances of the third-country national concerned, such as the length of stay, degree of integration or family ties, in line with provisions of the ECHR (Article 8).

### 3 PRIMARY QUESTIONS TO BE ADDRESSED BY THE STUDY

The Study will aim to address the following questions:

- ★ What is the extent of the phenomenon in (Member) States (i.e. beneficiaries of international protection travelling back to their country of origin or contacting national authorities of their country of origin)?
- ★ How many cases were considered for cessation in the past 3 years, especially in the case of beneficiaries of international protection's travel to the country of origin? Among these, how many protection statuses were effectively ceased on this ground in the past 3 years?
- ★ What are the national legislative framework and policies regarding cessation of international protection status, especially in case beneficiaries of international protection travel to their country of origin? When is travelling back to the country of origin seen as an indicator for a re-establishment in the country of origin?
- ★ Which information is available in the MS on cases where a travel to the country of origin did not lead to the cessation of international protection? What knowledge do the MS have about motives and grounds of beneficiaries of protection to travel to the country of origin?
- ★ Is the right of residence of beneficiaries of international protection reassessed if they see their protection status ceased? What is the procedure followed in this case, including procedural guarantees?
- ★ Is the international protection status of family members who obtained derivative status assessed when the family member's international protection status was ceased?

### 4 RELEVANT CASE LAW FROM THE COURT OF JUSTICE OF THE EU

- ★ CJEU, C-175/08, *Salahadin Abdulla and Others v. Bundesrepublik Deutschland*, judgment of 2 March 2010, ECLI:EU:C:2010:105<sup>19</sup>

### 5 RELEVANT SOURCES AND LITERATURE

#### UNHCR

- ★ UN High Commissioner for Refugees (UNHCR), Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/1P/4/ENG/REV. 3;<sup>20</sup>

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<sup>19</sup> It should be noted that this case is indirectly relevant for the purpose of this study as it refers to cessation grounds related to significant and non-temporary change of circumstance in the third country of origin and not to cessation grounds related to voluntary behaviour or acts of the refugee.

<sup>20</sup> Available at: <http://www.refworld.org/docid/4f33c8d92.html>

- ★ UN High Commissioner for Refugees (UNHCR), Note on Cessation Clauses, 30 May 1997, EC/47/SC/CRP.30;<sup>21</sup>
- ★ UN High Commissioner for Refugees (UNHCR), The Cessation Clauses: Guidelines on Their Application, 26 April 1999;<sup>22</sup>
- ★ UN High Commissioner for Refugees (UNHCR), Conclusion 69 (Cessation of status), Conclusions Adopted by the Executive Committee on the International Protection of Refugees, December 2009, 1975-2009 (Conclusion No. 1-109)<sup>23</sup>;
- ★ UN High Commissioner for Refugees (UNHCR), Procedural Standards for Refugee Status Determination Under UNHCR's Mandate, 20 November 2003.<sup>24</sup>

### EU Agencies

- ★ European Asylum Support Office (EASO), *Ending International Protection: Articles 11, 14 16 and 19 Qualification Directive. A Judicial Analysis*. December 2016.<sup>25</sup>
- ★ Fundamental Rights Agency (FRA), *Handbook on European law relating to asylum, borders and immigration*, June 2014.<sup>26</sup>
- ★ EASO Query on *Consequences of return trips of persons granted refugee status*, 16 May 2017, not published.

### EMN Studies

- ★ Changes in immigration status and purpose of stay: an overview of EU Member States' approaches, 2015<sup>27</sup>

### EMN Ad-Hoc Queries

- ★ Ad-Hoc Query on *Reconsidering protection needs*, Requested by NO EMN NCP on 8 June 2015
- ★ Ad-Hoc Query on *Revocation of Status for Women from Afghanistan*, Requested by NO EMN NCP on 2 June 2014

### Other studies and reports

- ★ ECRE's Asylum Information Database (AIDA) country reports<sup>28</sup>
- ★ ECRE, AIDA Report *Unravelling Travelling: Travel documents for beneficiaries of international protection*, October 2016<sup>29</sup>
- ★ ECRE, AIDA Report *Asylum on the Clock? Duration and review of international protection status in Europe*, June 2016<sup>30</sup>

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<sup>21</sup> Available at: <http://www.refworld.org/docid/47fdfaf1d.html>

<sup>22</sup> Available at: <http://www.refworld.org/docid/3c06138c4.html>

<sup>23</sup> Available at: <http://www.refworld.org/docid/4b28bf1f2.html>

<sup>24</sup> Available at: <http://www.refworld.org/docid/42d66dd84.html>

<sup>25</sup> Available at:

[https://www.easo.europa.eu/sites/default/files/Ending%20International%20Protection\\_Articles%2011\\_14\\_16%20and%2019%20QD%20EASO%20Judicial%20Analysis%20FINAL.pdf](https://www.easo.europa.eu/sites/default/files/Ending%20International%20Protection_Articles%2011_14_16%20and%2019%20QD%20EASO%20Judicial%20Analysis%20FINAL.pdf)

<sup>26</sup> Available at: <http://fra.europa.eu/en/publication/2013/handbook-european-law-relating-asylum-borders-and-immigration>.

<sup>27</sup> Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn-studies-00.emn\\_study\\_on\\_the\\_change\\_of\\_status\\_final.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-00.emn_study_on_the_change_of_status_final.pdf)

<sup>28</sup> <http://www.asylumineurope.org/>

<sup>29</sup> Available at: <https://www.ecre.org/wp-content/uploads/2016/10/AIDA-Brief-Travel-Documents.pdf>

<sup>30</sup> Available at: [https://www.ecre.org/wp-content/uploads/2016/07/AIDA-Briefing-Asylum-on-the-Clock-duration-and-review-of-international-protection-status-in-Europe\\_-June-2016.pdf](https://www.ecre.org/wp-content/uploads/2016/07/AIDA-Briefing-Asylum-on-the-Clock-duration-and-review-of-international-protection-status-in-Europe_-June-2016.pdf)



## 6 AVAILABLE STATISTICS

The following statistics are available through Eurostat:

- ★ Decisions on withdrawing status granted at first instance (on quarterly basis) [migr\_asywitfstq]
- ★ Decisions on withdrawing status granted as final decision (on annual basis) [migr\_asywitfina]

However, data collected by Eurostat is not disaggregated per *ground* of withdrawal.

## 7 DEFINITIONS

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary v6.0<sup>31</sup> unless specified otherwise in footnotes.

There are no commonly agreed definitions of the concepts of 'good practice' and 'policy challenge'.<sup>32</sup> For the purposes of this Synthesis Report, the term 'good practice' refers to specific policies or measures that are proven to be effective and sustainable, demonstrated by evaluation evidence and/or monitoring and assessment methods using process data and showing the potential for replication. Good practices may cover both the formulation and the implementation of policies or measures, which have led to positive outcomes over an extended period of time. A number of criteria can be used to select good practices, including their policy relevance, scope, evidence-base on their outputs and outcomes, timescale for application, effectiveness and potential for learning and replication in a different (national) context.

- ★ **'Application for international protection'** is defined as a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of Directive 2011/95/EU (Recast Qualification Directive), that can be applied for separately.
- ★ **'Beneficiary of international protection'** is defined as a person who has been granted refugee status or subsidiary protection status.
- ★ **'Cessation of international protection'** refers to 'cessation clauses' of the Refugee Convention (Article 1C(1) to (6) of the Refugee Convention) that enumerate the conditions under which a refugee ceases to be a refugee: protection is no longer necessary or justified on the basis of certain voluntary acts of the refugee concerned or a fundamental change in the situation prevailing in the country of origin. In EU law, cessation means end of international protection status where a third-country national who has been formally recognized as a refugee ceases to be a refugee within the meaning of Article 11 of the Recast Qualification Directive, or a formally recognized beneficiary of subsidiary protection ceases to be a beneficiary of such protection within the meaning of Article 16 of the Recast Qualification Directive. Member States must revoke, end or refuse to renew the refugee status (Article 14 of the recast Qualification Directive) or the subsidiary protection (Article 19 of the recast Qualification Directive) if a third-country national ceased to be a refugee or a beneficiary of subsidiary protection.
- ★ **Country of origin** is the country or countries of nationality or, for stateless persons, of former habitual residence.<sup>33</sup>

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<sup>31</sup> Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/docs/interactive\\_glossary\\_6.0\\_final\\_version.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/docs/interactive_glossary_6.0_final_version.pdf)

<sup>32</sup> In particular, the notion of 'good practice' has been mired in confusion with the terms 'best practices', 'good practices' and 'smart practices' being often used interchangeably. For an overview of the methodological issues and debates surrounding 'best practice research', see e.g. Arnošt Veselý, 'Theory and Methodology of Best Practice Research: A Critical Review of the Current State', *Central European Journal of Public Policy* – Vol. 5 – No 2 – December 2011.

<sup>33</sup> Article 2(n) of Directive 2011/95/EU (Recast Qualification Directive).

- ★ **'Geneva Convention'** is defined as the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, as amended by the New York Protocol of 31 January 1967.<sup>34</sup>
- ★ **'Refugee'** is defined as a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 of Directive 2011/95/EU (Recast Qualification Directive) does not apply.
- ★ **'Refugee status'** is defined as the recognition by a Member State of a third-country national or a stateless person as a refugee.<sup>35</sup>
- ★ **'Person eligible for subsidiary protection'** is defined as a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 of Directive 2011/95/EC (Recast Qualification Directive), and to whom Article 17(1) and (2) of said Directive does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.
- ★ **'Subsidiary protection status'** means the recognition by a Member State of a third-country national or a stateless person as a person eligible for subsidiary protection.<sup>36</sup>
- ★ **'Withdrawal of international protection'** means the decision by a competent authority to revoke, end or refuse to renew the refugee or subsidiary protection status of a person in accordance with the Recast Qualification Directive (Directive 2011/95/EU).<sup>37</sup>

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<sup>34</sup> Article 2 of Directive 2011/95/EU (Recast Qualification Directive).

<sup>35</sup> Article 2 of Directive 2011/95/EU (Recast Qualification Directive).

<sup>36</sup> Article 2 of Directive 2011/95/EU (Recast Qualification Directive).

<sup>37</sup> Article 2 (b) of Directive 2013/32/EU (Recast Asylum Procedure Directive).

## EMN STUDY 2018

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

### Top-line factsheet [max. 2 pages]

*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:*

In Estonia, there have been only few cases where BIPs have travelled to their country of origin. In such cases, the grounds for the international protection and residence permit are re-evaluated by the Estonian Police and Border Guard Board (PBGB).

Generally BIP's possible contacts with his/her country of origin authorities are not known to the Estonian PBGB, however BIPs are asked to notify the PBGB about the intentions of visiting their country of origin and the reasons for it. In some cases BIPs have notified the authorities about such plans. The person is informed about the consequences of such an act by the PBGB and explained, that a refugee travelling to his/her country of origin can be considered as an act of re-establishment in that specific country. Mostly BIPs have responded by discarding their plans.

If the BIP nevertheless decides to visit the country of origin and it will be known to PBGB, the matter is always assessed depending on the circumstances on an ad-hoc basis and all relevant information is being taken into account, especially the duration and the aims of the visit.

The PBGB does not initiate cessation procedures before conducting an interview first with the BIP and inquiring about the purpose and circumstances of such a visit.

Due to the low number of such cases in Estonia, the topic cannot be considered a national policy priority.

### Executive Summary [max. 5 pages]

*The Executive Summary of the **synthesis report** will provide an overview of the study, as well as form the basis of an EMN Inform, which will have EU and national policy-makers as its main target audience. The Executive Summary will be prepared by the EMN Service Provider (ICF).*

### Section 1: Overview of national policy context [max. 3 pages]

*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).*

In Estonia, there have been only few cases where BIPs have travelled to their country of origin and as a result, the grounds of and the need for the international protection and residence permit have been re-evaluated by the PBGB. As a general rule this re-evaluation has taken place within the framework of proceeding the applications for renewal of the residence permit on the international protection ground. Therefore the topic is not a national policy priority in Estonia.

**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).

PBGB does not gather such statistical information. However there have been two cases during the named period where a BIP travelling to his country of origin has been detected and proceedings to review the grounds of international protection has been thus been started.

## Section 2: Travels to or contacts with national authorities of the country of origin and possible cessation of international protection [max. 12 pages]

*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.<sup>38</sup> Contacting consulates or embassies of the country of origin for the issuance of other documents (birth or marriage certificates) cannot amount to re-avilment 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? **Yes**

Generally BIP´s possible contacts with his/her country of origin authorities are not known to the Estonian PBGB and if such contacts have been detected, it does not automatically lead to the cessation of his/her refugee status. In case such information becomes known to the PBGB, the authority can depending of the circumstances decide to invite the BIP for making an inquiry and if needed initiate the process of revocation or refuse to renew the permit. In practise it has not been used.

*If no, please go directly to section 2.2.*

*If yes, please elaborate (e.g. this can be considered as re-avilment 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? **NO**

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

**Q4.** If yes to Q3, is it specified:

In national legislation.

*If box is marked, please specify legislation: there are no direct and specific guidelines in the legal act going in more detail than QD and APD. Rather UNHCR and other guidance is followed concerning the end of the protection. Such possibility is not ruled out that contacting the authorities of the country of origin cannot be considered, depending of the circumstances, to be the indication of the end of the protection need or the indication that the fear of the protection was falsely determined. As described above such cases would be extremely rare.*

In case law.

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

In practice.

*If box is marked, please explain practice:*

**Q5.** If yes to Q3, which of the following acts (by the refugee) can lead to re-avilment 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

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<sup>38</sup> UNHCR Handbook, 2011, para. 121. <http://www.unhcr.org/3d58e13b4.html>

Obtaining the issuance or renewal of a passport

Requesting administrative documents

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

Marriage in the country of origin

Other (please specify)

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

**Q6a.** If yes to Q6, is it specified: It is not specified

In national legislation?

*If box is marked, please indicate legislation:*

In case law?

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

In practice?

*If box is marked, please explain practice:*

**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.<sup>39</sup>*

*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.<sup>40</sup>*

*All relevant personal circumstances shall be taken account of. There has not been much practice therefore not possible to give examples.*

**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.*

Due to very limited practice not possible to give examples.

**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: The PBGB internal guideline regarding procedures.*

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<sup>39</sup> UNHCR Handbook, 2011, para. 120. <http://www.unhcr.org/3d58e13b4.html>

<sup>40</sup> UNHCR Handbook, 2011, para. 124. <http://www.unhcr.org/3d58e13b4.html>

UNHCR guidelines (e.g. guidelines on cessation)

Other

Please specify:

## 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.<sup>41</sup> 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.<sup>42</sup>*

*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.*

A BIP can travel to all countries (except to the country of origin) using a national passport, a refugees travel document or an aliens passport and the residency card.

Aliens passport is a travel document issued according to the Identity Documents Act § 44 (4) to an alien who has received a subsidiary protection and a residence permit and has no valid travel document issues by his or her country of nationality or country of permanent residence.

**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**

*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

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<sup>41</sup> ExCom Note 1997, para 12; EASO Judicial analysis, p. 29.

<sup>42</sup> Idem, p. 24.



*Please specify:* According to the Regulation of the Ministry of the Interior of the 30.11.2017 no 61, there is stated in the Refugee Travel Document, that "This travel document is valid for all countries except: --"

Practice developed by competent authorities

*Please elaborate:* The countries of origin are always marked in the database as ones to where a person cannot return or cannot be returned to when being the BIP.

Case law

*Please elaborate:*

Other sources

*Please elaborate:* There are internal guidelines in place describing how to mark countries of origin in the decisions and on how insert data to the database of refugees and residence permits for enabling for the data to be used, inter alia, for issuing travel documents.

**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? **YES**

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

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

The BIP is asked to notify the national authorities about the intentions regarding visiting the country of origin. However there is no such legal obligation nor there are internal procedures in the PBGB. There are therefore no direct consequences for the failure to report the intent. There is no possibility or intent to deny the permission or to ban a visit. The practice is limited. Nearly in all of the few cases the person has notified the intent and a reason. When the refugee turns to the PBGB or to the consultant with a question, the PBGB notifies the refugee once more about the prohibition to travel to their country of origin and of the possible consequences of such an act.

**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 authorization is enacted. However persons are being asked to inform, when such a trip is planned and the reasons for it. There is no special procedure in place, general administrative procedures principles are being used. All of the relevant documents are added to the case file of the individual refugee and all notifications are requests from the refugee are taken into account in later proceedings.

**Q12.** Can refugees request their original passport from authorities of the State that granted protection? **YES**

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

Applicants for international protection can request their original passport handed over for inspection and being part of the asylum file from the PBGB during the proceedings. In such cases, the transfer of the



document is fixed with a deed of transfer act, which is signed by the receiver and by the authority handing over. The act is stored in the case file of the applicant. A similar act is made when the applicant returns the document. After receiving the refugee status and residence permit, the original passport is returned to the refugee permanently. In case an applicant's travel document has been deposited as a measure of surveillance, then the document is not returned during the effectiveness of the surveillance measure.

**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)

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

The information is recorded and stored in the paper case file and electronic file in the national database.

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

*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):*

A refugee travelling to his/her country of origin can be considered as an act of re-establishment in the specific country. Matter is always assessed on the case by case basis and all relevant circumstances are being taken into account, especially duration and the aims of the visit. The PBGB does not initiate cessation procedures before conducting an interview first with the BIP and inquiring about the purpose and circumstances of such a visit.

**Q14a.** If a refugee travelled to his/her 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):*

A refugee travelling to his/her country of origin can trigger the reassessment of the initial application and grounds for international protection.

**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: Act on Granting International Protection to Aliens § 48.*

- In case law?

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

- In practice?

*If box is marked, please explain practice:*

**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 cases and circumstances are evaluated separately on an ad-hoc basis.

**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.<sup>43</sup>*

There are no direct legislative criteria to assess the voluntariness or refugee's intent to re-establish himself/herself in the country of origin. The evaluation of such cases are done case by case on ad-hoc basis.

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

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.*

Due to the rarity of such cases, it is difficult to indicate challenges that might occur repeatedly in cases of cessation.

**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:

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<sup>43</sup> UNHCR Handbook, para. 125 and 134.

UNHCR guidelines on cessation

Other

*Please specify:* EASO guidelines and practice of other countries is used. Relevant COI expertise is also being considered.

### 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 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).*

#### **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**

Contacting with country of origin authorities doesn't automatically lead to the cessation of the subsidiary protection status, especially since there is no direct element of persecution involved. All personal circumstances are being taken account of, especially the established reasons for the protection need.

*If no, please go directly to question 23.*

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

**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
- Requesting administrative documents

*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?

Please see previous answers.

**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?)*

According to Identity Documents Act § 26 (1) an alien's passport is a travel document issued to an alien by the Republic of Estonia and § 27 (1) an alien's passport shall be issued to an alien who holds a valid residence permit or has a right of residence in Estonia if it is proved that the alien does not hold a travel document issued by a foreign state and that it is not possible for him or her to obtain a travel document issued by a foreign state.

§ 28 (1) of the same act states that an alien's passport shall be issued with a period of validity of up to ten years, however, the period of validity shall not exceed the period of validity of the residence permit issued or the right of residence granted to the alien. Therefore the aliens passport shall be valid for 1 year or for 2 years. § 25 (1) states that an Estonian citizen's or an alien's travel document shall have unlimited scope of application.

**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:*

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

This information is recorded and stored in the case file and in the national database. In the same manner as with refugees.

**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**

**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.*

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

Other

Please specify: EASO guidelines and practice of other countries is used.

**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).

Since there have been very limited number of cases, it is not possible to indicate challenges.

### Section 3: Adoption of a decision on cessation of international protection and implications on the right of residence in the (former) State of protection [max 16 pages]

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**

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

**Table 1 informing beneficiaries of international protection**

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: new information leaflets are being translated into 7 languages</i>	<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)
Beneficiaries are informed orally by competent authorities <i>Please elaborate: when receiving the decision and by councillors</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Beneficiaries are informed at their request <i>Please elaborate (e.g. whether in writing or orally): by councillors</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Other means <i>please elaborate:</i>	<input type="checkbox"/>	<input 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? **YES**

**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: All statuses are systematically reviewed during the renewal procedure.*

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

*Please elaborate: It is carried out systematically.*

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.

Authorities involved in the review and adoption of a decision to cease international protection are BPGB different units – international protection case workers and COI experts. Information may also be obtained from the PBGB’s border guard unit, Estonian Internal Security Service and possibly from the authorities of another MS. BIP is always informed of the procedure.

**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.*

A review of international protection status can lead to the cessation of the international protection.

### 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 PBGB is the only authority with whom the power to make international protection decisions, including refusing to renew and withdrawal, is invested with.

**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:* BIPs can submit explanation and supporting documents to PBGB in writing.

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

Orally?

*Please specify:* PBGB case workers usually conduct an interview where there are indications that a ground for withdrawal should be investigated

*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:*

Other?

*Please specify:*

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

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

In writing?

Orally? Depending of the person and circumstances

Other means?

*Please specify:*

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

*If yes, please elaborate:*

The decision has to be motivated according to the general administrative law principles. Prior to the decision the opinion and objections of the person must be heard, the results of such hearing shall be indicated in the decision. All decisions are rebuttable in court.

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

a) What are the timeframes for appealing the decision?

*Please elaborate:* According to Administrative Procedure Act § 75, the timeframe for appealing is 30 days.



b) Which authority examines the appeal application?

*Please elaborate: the Administrative Court.*

**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? **NO**

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

**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? **YES**

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*).

In one case, the initial decision was not reverted since the court supported the decision made by the PBGB.

#### 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.**

However the end of the residence permit can become effective after 30 days.

*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). **Yes.**

Please see the previous answer.

*If yes, is the decision to cease international protection accompanied by a return decision? Please elaborate:*

The return decision is issued depending of the status of a person after the duration of the residence permit on the protection ground has ended. It might happen, that a person has obtained a residence permit on another grounds.

- 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**

*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):*

All individual circumstances are taken into account and alternative grounds for stay in the country are considered.

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

If yes, this can be: All migration statuses.

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): E.g. residence permit for studying; for settling with a spouse; for settling with a close relative; for settling permanently in Estonia; for employment; for business, for humanitarian reasons etc.

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:

The decision depends of the specific ground of protection granted. E.g. if the ground for the family members was a notion of family unity as a particular social group and the head of the family is not persecuted any longer, then the cessation would include the whole family. It also depends if the family member of the BIP has received a family member´s residence permit or a protection status on their own. The best interests of the child are always taken into account. Please note, that according to EE system all applicants are registered individually, there is no status of being included in someone else´s application.

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:*

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

*Please elaborate:* See answer to Q 41. It is also possible that the family members apply for international protection or get residence permit on other legal grounds.

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.*

*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.*

#### **Case study**

★ Mr Ali<sup>44</sup> from Afghanistan was granted subsidiary protection and a one-year residence permit in August 2012. The reason for granting protection was the fact that there was a national armed conflict in Afghanistan, which extent and impact was continuously changing regionally. Thereafter, Mr. Ali's residence permit was renewed every year until in November 2014, PBGB received a notification that the person had been in Afghanistan during the period of subsidiary protection. PBGB queries indicated that the person purchased plane tickets in the direction of Oslo-Istanbul-Kabul (in October 2014) and Kabul-Istanbul-Oslo (in November 2014).

In February 2015, PPA sent a letter to Mr. Ali, to which Mr Ali replied that he had to go to Pakistan because his uncle's wife had been diagnosed with cancer. He applied for a Pakistani visa, but was refused, and therefore he had to go to Pakistan via Afghanistan. In Afghanistan, he spent only four hours and his only goal was to go to the Pakistani hospital to visit his uncle's wife who had been like a mother to him in childhood.

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<sup>44</sup> The name used in this example is fictional.

In September 2016, Mr Ali submitted an application for the renewal of his residence permit, after what the PBGB invited him for an interview. During the conversation, he was given the opportunity to talk more and explain about his act and the reasons of travel.

In July 2016, the PBGB decided to extend Mr Ali's residence permit and not to withdraw his subsidiary protection. The decisive factor was the fact that despite the efforts of the Afghan Government, the system of returnees and displaced persons did not work sufficiently enough. The lack of information and social ties made the returnee vulnerable to the situation in his country of origin. In addition, the fact that Mr Ali had airline tickets to Afghanistan was the only verifiable fact. There was virtually no evidence that he really went to Afghanistan because his passport did not contain any stamps confirming this. Moreover, he himself claimed that he only spent 4 hours in his country of origin since that is the time it takes for driving to Pakistan.

As Mr Ali received subsidiary protection because of the general situation in Afghanistan and because of his lack of social ties and support networks in Afghanistan, PBGB concluded that his act could not have led to a change in the situation in the country of origin and therefore there are no grounds for revoking the subsidiary protection granted to him.

## Section 4 Conclusions [max 2 pages]

*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?