



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

Common Template of EMN Study 2018

24th August 2018

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.

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.¹ 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.² 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.³

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

¹ 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>).

² 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.

³ 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>).

Convention and UNHCR guidelines where relevant. Indeed, the recast Qualification Directive is binding on all (Member) States except Ireland, the UK and Switzerland.⁴

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.⁵ 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.⁶

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;⁷
- ★ Refugee status is no longer justified following changes in the country of origin.⁸

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' or of 'voluntary re-establishment' in the country of origin as defined by Article 11(1)(a) and (d) of the recast Qualification Directive respectively.⁹

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.¹⁰ 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.¹¹

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-

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

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

⁶ 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

⁷ 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.

⁸ 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.

⁹ 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."

¹⁰ UNCHR, Handbook, 2011, paragraph 120-121.

¹¹ EASO, *Ending International Protection*, Ibid, section 3.1.4.

availment of their protection, particularly in the country of asylum, may have little relevance as to the continuing need for international protection.¹²

- ★ 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 ongoing basis may lead to cessation.¹³ 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.¹⁴

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.¹⁵

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.¹⁶ 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.¹⁷

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.¹⁸ 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

¹² EASO, Ending International Protection, Ibid, section 3.1.2.

¹³ EASO, Ending International Protection, Ibid, section 3.4.3.

¹⁴ EASO, Ending International Protection, Ibid, section 3.4.1.

¹⁵ 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.

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

¹⁷ 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>).

¹⁸ <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:2010:105¹⁹

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;²⁰
- ★ UN High Commissioner for Refugees (UNHCR), Note on Cessation Clauses, 30 May 1997, EC/47/SC/CRP.30;²¹
- ★ UN High Commissioner for Refugees (UNHCR), The Cessation Clauses: Guidelines on Their Application, 26 April 1999;²²

¹⁹ 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.

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

²¹ Available at: <http://www.refworld.org/docid/47fdaf1d.html>

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

- ★ 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)²³;
- ★ UN High Commissioner for Refugees (UNHCR), Procedural Standards for Refugee Status Determination Under UNHCR's Mandate, 20 November 2003.²⁴

EU Agencies

- ★ European Asylum Support Office (EASO), *Ending International Protection: Articles 11, 14 16 and 19 Qualification Directive. A Judicial Analysis*. December 2016.²⁵
- ★ Fundamental Rights Agency (FRA), *Handbook on European law relating to asylum, borders and immigration*, June 2014.²⁶
- ★ 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, 2015²⁷

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 reports²⁸
- ★ ECRE, AIDA Report *Unravelling Travelling: Travel documents for beneficiaries of international protection*, October 2016²⁹
- ★ ECRE, AIDA Report *Asylum on the Clock? Duration and review of international protection status in Europe*, June 2016³⁰

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 v6.0³¹ unless specified otherwise in footnotes.

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

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

²⁵ 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

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

²⁷ 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

²⁸ <http://www.asylumineurope.org/>

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

³⁰ 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>

³¹ 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

There are no commonly agreed definitions of the concepts of 'good practice' and 'policy challenge'.³² 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.³³
- ★ **'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 1967.³⁴
- ★ **'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.³⁵
- ★ **'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

³² 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 – № 2 – December 2011.

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

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

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

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.³⁶
- ★ **‘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).³⁷

8 ADVISORY GROUP

For the purpose of providing support to EMN NCPs while undertaking this focussed study and for developing the Synthesis Report, an ‘Advisory Group’ has been established.

An ‘Advisory Group’ (AG) has been established within the context of this Study for the purpose of (i) developing the (common) specifications for the study, (ii) providing support to EMN NCPs during the development of the national contributions to the Study, as well as (iii) providing support to the drafting of the Synthesis Report. In addition to COM and the EMN Service Provider (ICF-Odysseus), the members of the AG for the Study include EMN NCPs from AT, BE, DE, HU, IT, LU, NL, NO, PL and the UK. It was agreed that Switzerland (CH), that has expertise and experience in this matter, participates in this advisory group and in the study.

EMN NCPs are invited to send any requests for clarification or further information on the Study to the following representatives of the Advisory Group:

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

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

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9 TIMETABLE

The following timetable has been proposed for the next steps of the Study:

Date	Action
23 August 2018	Official <u>launch of the study</u>
23 November 2018	<u>Submission of national reports</u> by EMN NCPs
17 December 2018	Circulation of the <u>1st draft of the synthesis report</u> to all EMN NCPs, CH, European Commission, Odysseus expert and EASO to provide comments
11 January 2019	Deadline for the NCPs and CH to provide comments on 1st draft of the Synthesis report
28 January 2019	Circulation of the 2nd draft of the synthesis report to all EMN NCPs, CH, European Commission, Odysseus expert and EASO to provide comments
11 February 2019	Deadline for the NCPs and CH to provide comments on 2 nd draft
25 February 2019	Final draft of the synthesis report and revisions
Mid-March 2019	Finalisation of the synthesis report, publication and dissemination

10 TEMPLATE FOR NATIONAL REPORTS

The template provided below outlines the information that should be included in the National Contributions of EMN NCPs and Switzerland to this Study. The indicative number of pages to be covered by each section is provided in the guidance note. For national reports, the total number of pages should not exceed **35 pages**, including the questions and excluding Annexes. A limit of **25 pages** (excluding the Annex) will also apply to the synthesis report, in order to ensure that it remains concise and accessible.

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:

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? **YES**

The Republic of Bulgaria is a party to the Convention relating to the Status of Refugees from 1951 (the Geneva Convention) and is fully committed to applying it. Bulgaria has ratified the Convention Relating to the Status of Refugees from 1951 and the Protocol relating to the Status of Refugees from 1967, by law.

The provisions of Directive 2011/95/EU and Directive 2013/32/EU have been transposed into national legislation. The norms of these European legal acts were introduced into the Law on Asylum and Refugees.

The cessation of the international protection granted is performed in compliance with the provisions of the international, European and national legislation.

According to Bulgarian legislation, the international protection granted is ceased when the following grounds indicated in the Law on Asylum and Refugees, are ascertained regarding the foreigner:

- Art. 15 (1)(2) – the foreigner has voluntarily re-availed himself/herself of the protection of the country of origin;
- Art.5(1)(5) – the foreigner has voluntarily re-established himself/herself in the country where has been persecuted;

When data is available, that the foreigner, beneficiary of international protection in the Republic of Bulgaria, has returned in the country of origin, the competent authority undertakes the necessary measures for examining the circumstances and reviewing the international protection granted.

Upon receiving a notification from the relevant authorities - Ministry of Interior, Ministry of Foreign Affairs, the consular missions of the Republic of Bulgaria abroad – that a foreigner, holder of international protection has returned to the country of origin, the competent authority takes action to initiate proceedings for cessation of the protection, in the course of which all circumstances of the return are examined.

Data about the return of a foreigner, beneficiary of international protection, to the country of origin, could be obtained from any other official authority of the Republic of Bulgaria. Based on the data received, the State Agency for Refugees takes action for the initiation of proceedings for cessation of the international protection granted.

The proceedings could be also initiated on the basis of an application from the foreigner, declaring willingness for cessation of the protection granted.

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).*

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 should be noted, that no regular flights to destinations in the countries of origin of the persons with the largest relative share of the total number of beneficiaries of international protection in the Republic of Bulgaria, are available from Bulgarian international airports. Thus, the identification of trips to the countries of origin is objectively impossible.

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.³⁸ 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**

Bulgarian legislation, the Law on Asylum and Refugees in particular, does not comprise a legal norm providing that if a beneficiary of refugee status gets in contact with an official authority, representing his country of origin in the Republic of Bulgaria, his or her protection status should be ceased.

Only in the case of information about a foreigner having contacted official authorities of his/her country of origin, for instance consulates, embassies or other official representations in the Republic of Bulgaria, and having expressed willingness to voluntarily return to his/her country of origin, has been referred to the State Agency for Refugees, actions will be taken for cessation of the refugee status granted. Up to now, such information has not been submitted to the State Agency for Refugees.

Upon detection of data (laid down in the national passport or the travel document issued by the Republic of Bulgaria border stamps, visa stickers or others) which could be the source of drawing a grounded conclusion on an actual travel to the foreigner's country of origin, an operative discussion is being held with him and in case of a confirmation, the State Agency for Refugees is being informed.

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? **NO**

No existing legal mechanisms are in place, enabling the competent authority in the Republic of Bulgaria to identify if the beneficiary of refugee status has contacted the official authorities of his/hers country of origin. Up to that moment, no such case is known.

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:

In case law.

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

In practice.

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

If box is marked, please explain practice:

Not applicable considering the response to Q3.

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

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

Marriage in the country of origin

Other (please specify)

The response to Q3 is negative.

Q6. If yes to Q3, are exceptions or derogations possible (*e.g. if the fear of persecution emanates from non-State actors*)? **YES/NO**

The response to Q3 is negative.

Q6a. If yes to Q6, is it 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:

The response to Q3 is negative.

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.³⁹

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.⁴⁰

The response to Q6 is negative.

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

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

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

The response to Q3 is negative.

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.*

Q8. Is guidance or any other form of established practice on cessation on the grounds of 'voluntary re-avallment of the protection of the country of nationality' available to national authorities in your (Member) State? **YES/NO**

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

Internal guidelines

Please specify:

UNHCR guidelines (e.g. guidelines on cessation)

Other

Please specify:

Actions aiming at the cessation of international protection granted in the Republic of Bulgaria are carried out in accordance with the international, European and national legislation. The guidelines of the Handbook on Procedures and Criteria for Determining Refugee Status of UNHCR are also taken into account.

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.⁴¹ 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.⁴²

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).

A foreigner being granted a refugee status in the Republic of Bulgaria is entitled to the rights and obligations of a Bulgarian national, excluding:

⁴¹ ExCom Note 1997, para 12; EASO Judicial analysis, p. 29.

⁴² Idem, p. 24.

1. the right to vote in elections for national and local authorities, national and local referenda and to take part in the establishment of political parties or to become a member of such;
2. to hold positions for which Bulgarian nationality is required by law;
3. to be an army serviceman;
4. other restrictions, explicitly provided for by law.

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 accordance with the requirements of Art. 28 of the Geneva Convention and Art. 25 of the Qualification Directive, the foreigners, beneficiaries of international protection in the Republic of Bulgaria are entitled to travel documents, for the purpose of traveling outside Bulgarian territory, except when important considerations of national security or public order otherwise require.

The foreigners, beneficiaries of refugee status are entitled to a certificate for travelling abroad, issued for a period of validity of 5 years. The certificate issued guarantees the person's right to exit and enter the territory of the Republic of Bulgaria within the term of its validity, under the conditions and order for Bulgarian nationals and as long as the country of destination does not provide for any other requirements.

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? **NO**

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:

- Case law

Please elaborate:

- Other sources

Please elaborate:

- 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:

No specific countries of destination or travel ban are indicated in the documents, issued to foreigners with refugee status granted in the Republic of Bulgaria.

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**

Bulgarian legislation does not contain a legal norm, explicitly providing for an obligation on the part of a foreigner with refugee status granted, to inform a competent authority in the Republic of Bulgaria about his/her intention to travel to his/her country of origin. The provisions of the Law on Asylum and Refugees are fully compliant with the international and European legislation in the realm of asylum.

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

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

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**

Bulgarian legislation does not contain an explicit legal norm, creating an obligation for a foreigner with refugee status granted, to request a special permission from a competent authority of the Republic of Bulgaria to travel to his/her country of origin.

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

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:

According to the Law on Asylum and Refugees, the identity documents of the foreigner who has applied for international protection, are detained and stored in the State Agency for Refugees until the finalization of the procedure and a decision enforced is in place. Upon completion of the proceedings, the identity documents are returned to the foreigner. The Law on Asylum and Refugees does not provide for an explicit provision, requiring that the foreigner lodges and application to have his/her documents returned. It's the duty of the officials in charge to return the stored identity documents to the foreigner.

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 State Agency for Refugees do not store statistical data on the reasons for travelling to the country of origin, as motivated by the refugees before the authorities.

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

It's not applicable as Bulgarian legislation does not contain a legal norm, explicitly providing for an obligation on the part of a foreigner with refugee status granted, to inform a competent national authority about his/her intention to travel to his/her country of origin.

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):

All circumstances related to the return of the foreigner are being investigated: motivation, duration, intention, voluntariness, whether the person actually re-availed himself or herself of the protection of the country of origin.

Q14a. If a refugee travelled to his/her country of origin, can this have other consequences on his/her refugee status? **YES/NO**

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

Yes, this could trigger a re(assessment) of the initial application for refugee protection and undertaking actions for initiating proceedings for cessation of the refugee status granted.

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:

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 Law on Asylum and Refugees explicitly states that the refugee status granted is ceased when it's established that the person has voluntarily re-availed himself or herself of the protection of the country of origin or has voluntarily re-established himself or herself in the country where he/she has been persecuted. The norm is imperative and when these circumstances are established in an indisputable way, the national authority, after conducting the respective proceedings, ceases the protection.

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:

The indicated circumstances are taken into account by the national authority, conducting the proceedings for cessation, i.e. are established in the administrative practice.

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.⁴³

A foreigner with refugee status granted, who has voluntarily re-availed himself/herself of the protection of his/her country of origin, is considered no longer in need of international protection. The person has to demonstrate through his/her actions the intention to re-avail himself/herself of the protection of the country of origin. If cessation is to be applied, the return and the stay must have happened voluntarily.

When the return of the foreigner to his country of origin has been a result of coercion or his/her stay has not been voluntary, also when the reason for the trip has been, for instance, a visit to a sick family member, there is no ground for cessation.

In order to make an assessment on a case by case basis, whether there is voluntariness and intention for establishment in the country of origin, the reasons for travelling, the frequency of the trips and the length of stay are being examined in detail.

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.

When assessing the facts and circumstances during the proceedings for termination of the international protection granted, the competent authority should be entirely directed by the provisions of the law. In case the presence of a legal ground for cessation of the protection is not indisputably established, the proceedings for cessation should be terminated.

The competent authority is facing certain challenges when taking decision for cessation of the refugee status granted, based on the facts and circumstances, collected during the proceedings for ending the protection. In order to end the refugee status, the competent authority shall establish conclusively and categorically, that the foreigner has been voluntarily returning to his/her country of origin and has acted on his own volition; through his/her actions has demonstrated his/her intention to re-avail himself/herself of the protection of his country of citizenship and has actually being granted such protection. The establishment of the facts and circumstances indicated, on certain occasions, could be challenging for the competent authority as the decision to terminate the refugee status should be fully consistent with the requirements of the law.

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**

The established practice is to have the refugee status withdrawn if legal grounds, explicitly indicated in the Law on Asylum and Refugees, are present. The guidelines of the Handbook on Procedures and Criteria for Determining Refugee Status of UNHCR are also being considered in the practice.

If yes, do these take the form of:

Internal guidelines

Please explain:

⁴³ UNHCR Handbook, para. 125 and 134.

UNHCR guidelines on cessation

Other

Please specify:

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**

Bulgarian legislation, the Law on Asylum and Refugees in particular, does not comprise a legal norm providing that if a beneficiary of subsidiary protection gets in contact with an official authority, representing his country of origin in the Republic of Bulgaria, his or her protection status should be ceased.

Only in the case of information about a foreigner having contacted official authorities of his/her country of origin, for instance consulates, embassies or other official representations in the Republic of Bulgaria, and having expressed willingness to voluntarily return to his/her country of origin, has been referred to the State Agency for Refugees, actions will be taken for cessation of the subsidiary protection granted. Up to now, such information has not been submitted to the State Agency for Refugees.

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**

The response to Q20 is negative

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:

The sole fact that the foreigner has contacted official authorities of his/her country of origin on the territory of the Republic of Bulgaria is not a ground for cessation of the subsidiary status granted.

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):

As already indicated in Q24, the sole fact that the foreigner has contacted official authorities of his/her country of origin on the territory of the Republic of Bulgaria, is not a ground for cessation of the subsidiary status granted.

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?

A foreigner with subsidiary status granted is entitled to the rights and obligations of a foreigner holding permanent residence permit in the Republic of Bulgaria.

In accordance with the requirements of Art. 28 of the Geneva Convention and Art. 25 of the Qualification Directive, the foreigners, beneficiaries of international protection in the Republic of Bulgaria are entitled to travel documents, for the purpose of traveling outside Bulgarian territory, except when important considerations of national security or public order otherwise require.

The foreigners, beneficiaries of subsidiary status are entitled to a certificate for travelling abroad, issued for a period of validity of 3 years.

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?)*

As pointed in Q23, a foreigner with subsidiary status granted is entitled to a certificate for travelling abroad with a period of validity of 3 years. The document is issued by the Ministry of Interior and no geographic limitations for travelling are indicated.

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).

In case it becomes known that the person has returned to the country of origin, proceedings for termination of the status are initiated, in the course of which the context of the return is investigated.

For this purpose, the foreigner is interviewed, which is recorded in a protocol.

There is no separate database specifically designated to record this information.

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*)? **YES**

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:

It is likely that the return of the foreigner to his/her country of origin leads to the cessation of the subsidiary status as the Law on Asylum and Refugees explicitly states, that the international protection granted is ended when it's established that the person has voluntarily re-availed himself or herself of the protection of the country of origin or has voluntarily re-established himself/herself in the country where he/she has been persecuted. Whether there is legal ground for cessation of the subsidiary status is considered on a case by case basis. In order to make an assessment on a case by case basis, whether there is voluntariness and intention for establishment in the country of origin, the reasons for travelling, the frequency of the trips and the length of stay are being examined in detail.

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:

The circumstances indicated are taken into account by the national authority conducting the proceedings for cessation, i.e. are established in the administrative practice.

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:

The established practice is to have the subsidiary status ceased if legal grounds, explicitly indicated in the Law on Asylum and Refugees are present. The guidelines of the Handbook on Procedures and Criteria for Determining Refugee Status of UNHCR are also being considered in the practice.

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).

When assessing the facts and circumstances during the proceedings for termination of the international protection granted, the competent authority should be entirely directed by the provisions of the law. In case the presence of a legal ground for cessation of the protection is not indisputably established, the proceedings for cessation of the protection should be terminated. Thus, the foreigner continues to be entitled to all rights of a person being granted international protection.

The facts, relevant to each case, should be primarily provided by the foreigner himself. On certain occasions, comparing and assessing the authenticity of the foreigner's claims and the data received from the official authorities about his/her return to the country of origin, could be challenging for the competent authority. In order to end the subsidiary status, the competent authority shall establish conclusively and categorically, that the foreigner has been voluntarily returning to his/her country of origin and has acted on his own volition; through his/her actions has demonstrated his/her intention to re-avail himself/herself of the protection of his country of citizenship and has actually being granted such protection. The establishment of the facts and circumstances indicated, on certain occasions, could be challenging for the competent authority as the decision to terminate the subsidiary status should be fully consistent with the requirements of the law.

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? **NC**

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 type="checkbox"/>
Beneficiaries are informed in writing by national authorities <i>Please specify language of communication used by national authorities:</i>	<input type="checkbox"/>	<input type="checkbox"/>
Beneficiaries are informed orally by competent authorities <i>Please elaborate:</i>	<input type="checkbox"/>	<input type="checkbox"/>
Beneficiaries are informed at their request <i>Please elaborate (e.g. whether in writing or orally):</i>	<input type="checkbox"/>	<input type="checkbox"/>
Other means <i>please elaborate:</i>	<input checked="" 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?

The Law on Asylum and Refugees does not contain an explicit legal norm, providing for compulsory review of all statuses granted.

In case it becomes known that the person has returned to the country of origin, proceedings for termination of the status are initiated, in the course of which the context of the return is investigated.

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:

- 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 foreigner is informed by acknowledgment of receipt letter about the proceedings initiated, the motivation for that and the timing and location of the interview in the course of which he/she could present his/her objections against the cessation of the international protection. The interview is conducted for the purpose of clarifying the motives behind the foreigner's return to his/her country of origin and to make a sound judgement whether there are grounds for terminating the international protection granted.

Within three months of the initiation of the proceedings, the Chairperson of the State Agency for Refugees, takes a decision for cessation of the international protection.

When a ground for cessation of the international protection is not acknowledged, the Chairperson of the State Agency for Refugees terminates 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.

The decision for cessation of the international protection granted is taken as a consequence of the procedure, indicated in Q30b.

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 State Agency for Refugees is the sole authority in the Republic of Bulgaria, competent to take decisions on the cessation of the international protection granted.

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?

In the course of the proceedings for cessation of the international protection, the foreigner could present to the competent authority written evidence.

Please specify:

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

Orally?

Please specify:

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:

In the course of the proceedings, an interview with the foreigner is conducted. In case of declared willingness on the part of the foreigner, the interview is conducted in the presence of a lawyer.

Other?

Please specify:

Q34. Is there a specific deadline set to issue the decision to (possibly) cease international protection?

YES

Within three months of the initiation of the proceedings, the competent authority takes a decision for cessation of the international protection.

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:

The decision is handed to the foreigner or to his/her lawyer. The content of the decision is communicated to the foreigner in a language that he/she is supposed to understand.

The handing of the decision is certified by the signatures of the foreigner and the interpreter. The refusal of the foreigner to sign the decision is certified by the signatures of two witnesses.

If the decision is not handed personally within 14 days of being issued, a return receipt message is sent to the alien.

If the person fails to appear within seven days of the receipt of the message, the decision is considered handed.

If the return receipt message is returned to the State Agency for Refugees due to failure of the service, the decision is considered handed.

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

If yes, please elaborate:

The decision is detailing the reasons for cessation as well as the motivation for considering the relevant facts and circumstances proven.

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 Bulgarian legislation, within 14 days of handing the decision, the alien could lodge an appeal.

b) Which authority examines the appeal application?

Please elaborate:

The appeal is filed through the competent authority which issued the decision, to the respective 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? **YES**

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

The authority, conducting the procedure for cessation of the international protection fully complies with the norms of the international, European and national legislation in the realm of asylum, including 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).

There are cases when the court annuls a decision of cessation of protection status due to the following reasons:

- The reasons for the return of the foreigner to the country of origin are not examined in detail;
- The circumstances related to the duration of the stay in the country of origin are not examined in detail;

It should be noted, that on very rare occasions, the court annuls decisions of cessation of international protection.

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?

The National authority, conducting the procedure for cessation of protection, is ruling solely on the issue of the protection being ceased or not.

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**

If yes, is the decision to cease international protection accompanied by a return decision? **NO**

Please elaborate:

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*):

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):

Other

Please specify:

If no, please elaborate:

When the international protection status is ceased, the person acquires the status of a „foreigner“ and is being treated in accordance with the provisions of the Law for the Foreigners in the Republic of Bulgaria. According to this law, a foreigner could apply for a legal residence on the country's territory.

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:

Other consequences

Please elaborate:

It should be noted that the decision for cessation of international protection, is an individual administrative act and affects only the person concerned.

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:

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

- In case of availability of data that the alien has returned to the country of origin:
- Initiation of proceedings for cessation of international protection:
- Informing the foreigner about the proceedings initiated and the possibility to present evidence and make objections:
- Conducting an interview for clarification of all relevant facts and circumstances:
- Analysis of all information, collected in the course of the proceedings for cessation of the protection:
- In case of indisputably established ground for cessation of the protection granted – issuance of decision for ending protection termination:
- In case, the presence of a ground for cessation is not indisputably established – issuing of decision for ending the proceedings initiated:

[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.

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

Case studies

★ Mr Ahmadzai⁴⁴ 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.

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

⁴⁴ Names used in these examples are fictional.

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?

In conclusion, it should be pointed out that the procedure for cessation of international protection is entirely in accordance with the international and European legislation in the realm of asylum.

The so called „ termination clauses“, indicated in the provision of Art.15(1)(2) of the Law on Asylum and Refugees, determine the conditions under which a foreigner with international protection granted, ceases to be such. The application of the clauses is based on the understanding that international protection should not be granted in cases when it's not any longer needed or justified.

Once a person is granted refugee or subsidiary status, the status remains, until the person falls within the scope of one of the termination clauses. This strict approach stems from the need to secure guarantees for the foreigners with international protection granted, that their status will not be subject to continuous review in the light of non-fundamental and of temporary nature, changes in the country of origin.

In view of the above, any termination clause should be interpreted restrictively and no other reasons could be brought by analogy as justifying the cessation of the refugee or subsidiary status granted.

A foreigner who has voluntarily re-availed himself/herself of the protection of his country of origin, is no longer in need of international protection. He/she has demonstrated that is no longer in a position of being „unable or unwilling to avail himself/herself of the protection“ of his/her country of citizenship. In such a case, so that the termination clause is applicable, three grounds should be present: voluntariness – the foreigner has acted on his own will, intention to re-avail himself/herself of the protection of his/her country and to have actually been granted such protection. The competent authority should ascertain the presence of these circumstances and to take decision in accordance with the requirements of the law.