



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

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.

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

- ★ 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 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.

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/47fdaf1d.html>

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
- ★ 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;

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/47fdfaf1d.html>

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

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

- ★ 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.

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

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

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 – No 2 – December 2011.

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 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

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).

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

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

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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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>

Date	Action
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:

In Italy since 2017, it has been possible to observe an exponential increase of the phenomenon. Starting from 1 September 2017 until 31 October 2018, 2133 border crossing of international protection holders to and from the Country of Origin were reported to the **National Commission for the Right of Asylum (NATIONAL COMMISSION FOR THE RIGHT OF ASYLUM - CNA – Commissione Nazionale Asilo**, which decides on revocation and cessation of international protection status), by the border police at airports (mainly Rome Fiumicino and Milan Malpensa).

The legislative framework and policies applying in cases of beneficiaries of international protection travelling to their countries of origin is Legislative Decree 19 November 2007, n. 251.

The European directive 2011/95/EU has been transposed into the Italian legal system with **Legislative Decree 19 November 2007, n. 251**.

Art. 9 of the Legislative Decree 251/2007 regulate cases of cessation for refugee status holder and **art. 15** regulate cases of cessation for subsidiary protection holder. **Cessation is based on an individual evaluation of the personal situation of the foreigner.**

The topic of the present study is addressed by **Decree-Law 4 October 2018, n. 113** converted in **Law 1 December 2018, n. 132** "Urgent provisions on international protection and immigration, public security (.....)" that establishes that any return to the Country of origin is pertinent for the application of art. 9³⁸, paragraph 1, letter d) - refugee status -, and art. 15³⁹ – subsidiary protection - of Legislative Decree 19 November 2007, n. 251 (Qualification Directive), without prejudice to the assessment of the specific case".

³⁸ Art. 9. Cessation

1. A foreigner **ceases to be a refugee** when:

- a) voluntarily availed himself again of the protection of the Country of which he has citizenship;
 - b) having lost citizenship, he voluntarily reacquired it;
 - c) has acquired Italian citizenship or other citizenship and enjoy the protection of the country of which it has acquired citizenship;
 - d) has voluntarily re-established himself in the country he left or in which he did not return due to fear of being persecuted;
 - e) can no longer renounce the protection of the country of which it has citizenship, because the circumstances that have determined the recognition of refugee status have disappeared;
 - f) if it is a stateless person, it is able to return to the country in which he had his habitual residence, because the circumstances that have determined the recognition of refugee status have disappeared;
2. For the application of letters e) and f) of paragraph 1, the change of circumstances must have a non-temporary nature and such as to eliminate the well-founded fear of persecution and there must not be serious humanitarian reasons preventing the return to the Country of origin.
3. Cessation is declared on the basis of an individual evaluation of the personal situation of the foreigner.

³⁹ Art. 15. Cessation

1. The cessation of subsidiary protection status is declared on an individual basis when the circumstances that have led to recognition have failed or changed to an extent such that protection is no longer necessary.

2. To produce the effects referred to in paragraph 1, it is necessary that the changed circumstances have such a significant and non-temporary nature that the person admitted to the benefit of protection subsidiary is no longer exposed to the actual risk of serious harm, referred to in Article 14, and there must be no serious humanitarian reasons that prevent the return to the country of origin.

Every travel to the country of Origin is seen as possible indicators. However, cases are assessed on an individual basis, following an in-depth interview conducted by the NATIONAL COMMISSION FOR THE RIGHT OF ASYLUM - CNA, responsible for revocation and cessation procedures.

Every single case is analysed by the NATIONAL COMMISSION FOR THE RIGHT OF ASYLUM - CNA that after an independent interview will assess reasons and grounds to travel to the Country of Origin. There generally be an assessment of: agent of persecution, reasons for travel (for instance family reasons, health-related reasons, inheritance reasons), travel documentation requested, length of stay in the country of origin, place of stay, frequency of travel to the country of origin. An appeal can be lodged against decision of cessation to the Civil Judge.

Starting from October 4, 2018 (entry into force of Decree 113/3018 converted in Law 1 December 2018, n. 132), as part of the cessation procedure, the NATIONAL COMMISSION FOR THE RIGHT OF ASYLUM - CNA assesses the conditions for the application of the principle of non-refoulement (Article 19 Immigration Act 286/1998)

As regards cases considered for cessation in the past 3 years, we had:

-in 2016 n. 2 refugee status holders and n. 40 subsidiary protection holders were ceased, whereas n.8 subsidiary protection holder were ceased with simultaneous concession of the Humanitarian protection⁴⁰ (art. 5 c.6 D.lgs 286/1998)

-in 2017 n. 2 of refugee status holders were ceased whereas 8 refugee status holders were ceased with simultaneous concession of the Humanitarian protection (art. 5 c.6 D.lgs 286/1998); n. 39 subsidiary protection holders were ceased whereas n. 17 subsidiary protection holder were ceased with simultaneous concession of the Humanitarian protection (art. 5 c.6 D.lgs 286/1998)

-in 2018 n. 2 refugee status holders whereas 4 refugee status holders were ceased with simultaneous concession of the Humanitarian protection (art. 5 c.6 D.lgs 286/1998); n. 119 subsidiary protection holder were ceased whereas n. 17 subsidiary protection holder were ceased with simultaneous concession of the Humanitarian protection (art. 5 c.6 D.lgs 286/1998);

If the holder has minor children, the cessation also acts on the children. If the children have become over 18 years old, cessation has no effect on them. If the family members are single holders of protection, this remains (the international protection is strictly personal). In any case, the family members are not summoned and listened by the Commission.

The cases considered for cessation in THE LAST YEAR are 1682 reported in total.

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/NO**

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

⁴⁰ Starting from October 4, 2018 (entry into force of Decree 113/3018 converted in Law 1 December 2018, n. 132) the Humanitarian permit of stay does not exist anymore, replaced by five coverage cases' permit of stay: serious health conditions, natural disaster in the Country of origin, acts of important civil value, social protection, victim of domestic violence.

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).

The topic of the study is addressed by Decree-Law 4 October 2018, n. 113 converted in Law 1 December 2018, n. 132 "Urgent provisions on international protection and immigration, public security (.....)" that establishes that **any return to the Country of origin is pertinent for the application of art. 9, paragraph 1, letter d) - refugee status -, and art. 15 – subsidiary protection -** of Legislative Decree 19 November 2007, n. 251 (Qualification Directive), without prejudice to the assessment of the specific case".

Legislative Decree 19 November 2007, n. 251

Art. 9. Cessation

A foreigner ceases to be a refugee when:

(.....)

d) has voluntarily re-established itself in the country he left or in which he did not return due to fear of being persecuted;

Art. 15. Cessation

1. The **cessation of subsidiary protection** status is declared on an individual basis when the circumstances that have led to recognition have failed or changed to an extent such that protection is no longer necessary.

2. To produce the effects referred to in paragraph 1, it is necessary that the changed circumstances have such a significant and non-temporary nature that the person admitted to the benefit of protection subsidiary is no longer exposed to the actual risk of serious harm (.....)

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).

2015 and 2016 data not available

- To September to December 2017 a total of 630 border crossing were monitored: 260 came back to their country of origin and 370 returned to Italy.
- To January to 31 October 2018 a total of 1503 border crossing were monitored: 358 travelling to their country of origin and 1145 returning to Italy.

In total since September 2017 up to 31 October 2018 a total of **2133 border** crossing of international protection holders were monitored: 618 travelling to their country of origin and 1515 returning to Italy.

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.⁴¹ 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? **YES/N**

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)):

The contact with Country of origin Authority (Embassy /Consulate) become a prerequisite for the start of cessation procedure; for the final decision we take into account the personal story and we assess all relevant elements, case by case.

Q3a. If a refugee in your (Member) State contacts official authorities of their country of origin, can this have other consequences on his/her refugee status? YES/**NO**

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

Q4. If yes to Q3, is it specified:

In national legislation.

If box is marked, please specify legislation:

In case law.

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

In practice.

If box is marked, please explain practice:

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

⁴¹ UNHCR Handbook, 2011, para. 121. <http://www.unhcr.org/3d58e13b4.html>

- 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)

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 Italian legal system does not foresees exceptions or derogations. The NATIONAL COMMISSION FOR THE RIGHT OF ASYLUM - CNA evaluate case by case

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:

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.⁴²

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.⁴³

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

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

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

For whom it is a challenge: for **National Commission for Asylum (CNA)**, responsible for revocation and cessation procedures, **and for Territorial Commissions for the assessment of International Protection**, that every 5 years verify if the circumstances that have led to recognition of subsidiary protection have failed or changed. **If so the Territorial Commissions send the documentation to the CNA to start the cessation procedure.**

Challenge: evaluate the credibility of the refugee's declarations during the interview and obtain reliable documentation to support the reasons for traveling to the country of origin.

Q8. Is guidance or any other form of established practice on cessation on the grounds of 'voluntary re-avilment 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:

⁴² UNHCR Handbook, 2011, para. 120. <http://www.unhcr.org/3d58e13b4.html>

⁴³ UNHCR Handbook, 2011, para. 124. <http://www.unhcr.org/3d58e13b4.html>

Internal guidelines “Operation guidelines for Territorial Commissions for the assessment of International Protection” new edition revised in collaboration with UNHCR and published on July 2018

Please specify:

UNHCR guidelines (e.g. guidelines on cessation)

Other

Please specify:

2.2. REFUGEES TRAVELLING TO AND ‘VOLUNTARY RE-ESTABLISHMENT’ IN THE COUNTRY OF ORIGIN

This sub-section of the synthesis report will provide information on refugees travelling to the country of origin and whether such acts can amount to cessation of protection, such as voluntary re-establishment in the country of origin. This cessation ground is regulated in Article 1C(4) of the Refugee Convention and Article 11(1)(d) of the recast Qualification Directive in the same manner. This is the only cessation clause which takes – explicitly – into account the travels and return of a refugee to his or her country of origin. Although there are no definite criteria as to when a person could be considered as being ‘re-established’, frequent travels to the country of origin may serve as indicators.⁴⁴ 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.⁴⁵

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

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

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

Refugees are entitled to receive a Travel Document that can be used to travel to countries that recognise it, but cannot be used to travel to the Country of origin, according to Art. 24 LEGISLATIVE DECREE 19 November 2007, n. 251 (art. 28 Refugee Convention).

Art. 24.

Travel documents

1. To allow travel outside the national territory, the competent police headquarters issue to the holders of **refugee status** a travel document of five-year validity renewable according to the model attached to the Geneva Convention. 2. When there are well-founded reasons that do not allow the holder of **subsidiary protection** status to apply for a passport to diplomatic authorities of the country of citizenship, the police headquarters competent authority issues the travel document to the foreigner concerned. If there are reasonable grounds to doubt of the identity of the subsidiary protection holder, the document is refused or withdrawn. 3. The release of the documents referred to in paragraphs 1 and 2 is refused or, in the case of release, the document is withdrawn if they exist very serious reasons concerning national security and order public that prevent their release.

Q10. Is a travel limitation:

a) To the country of origin (or country of habitual residence) specified in the travel document issued to refugees in your (Member) State? **Yes./NO**

⁴⁴ ExCom Note 1997, para 12; EASO Judicial analysis, p. 29.

⁴⁵ Idem, p. 24.

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

It is specified in the travel document

If yes, please elaborate whether this limitation stems from:

National legislation Art. 24 LEGISLATIVE DECREE 19 November 2007, n. 251 (art. 28 Refugee Convention)

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? YES/NO

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

Q11. If refugees travel to their country of origin:

a) Do they need to notify in advance national authorities of the State of protection? YES/NO

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? YES/NO

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/ NO Refugee Status holders cannot be in possession of a passport, issued by the authorities of his / her country of origin. According to Legislative Decree 251/2007, to allow journeys outside the national territory, the competent police headquarters issue to the refugee a renewable five-year travel document.

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

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) very common: visits for family reasons (health reasons mother /father / wife with health problem. Visiting at hospital, assist them, etc.)

Marriage in the country of origin

Business reasons

Other reasons (please specify)

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

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

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):

It is an indicator that the reasons that lead to protection could be ceased, and it is considered as a possible trigger for cessation. However, there is no automatism, because the national authority in charge of cessation assesses the individual situation.

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):

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

In national legislation? Decree-Law 4 October 2018, n. 113 converted in Law 1 December 2018, n. 132 "Urgent provisions on international protection and immigration, public security (.....)" that establishes that **any return to the Country of origin is pertinent for the application** of art. 9⁴⁶, paragraph 1, letter d) - refugee status -, and art. 15⁴⁷ – subsidiary protection - of Legislative Decree 19 November 2007, n. 251 (Qualification Directive), without prejudice to the assessment of the specific case".

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:

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.

⁴⁶ Art. 9. Cessation

1. A foreigner **ceases to be a refugee** when:

a) voluntarily availed himself again of the protection of the Country of which he has citizenship;

b) having lost citizenship, he voluntarily reacquired it;

c) has acquired Italian citizenship or other citizenship and enjoy the protection of the country of which it has acquired citizenship;

d) has voluntarily re-established himself in the country he left or in which he did not return due to fear of being persecuted;

e) can no longer renounce the protection of the country of which it has citizenship, because the circumstances that have determined the recognition of refugee status have disappeared;

f) if it is a stateless person, it is able to return to the country in which he had his habitual residence, because the circumstances that have determined the recognition of refugee status have disappeared;

2. For the application of letters e) and f) of paragraph 1, the change of circumstances must have a non-temporary nature and such as to eliminate the well-founded fear of persecution and there must not be serious humanitarian reasons preventing the return to the Country of origin.

3. Cessation is declared on the basis of an individual evaluation of the personal situation of the foreigner.

⁴⁷ Art. 15. Cessation

1. The cessation of subsidiary protection status is declared on an individual basis when the circumstances that have led to recognition have failed or changed to an extent such that protection is no longer necessary.

2. To produce the effects referred to in paragraph 1, it is necessary that the changed circumstances have such a significant and non-temporary nature that the person admitted to the benefit of protection subsidiary is no longer exposed to the actual risk of serious harm, referred to in Article 14, and there must be no serious humanitarian reasons that prevent the return to the country of origin.

- 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:

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.⁴⁸

Every travel to the country of Origin is seen as possible indicators. However, cases are assessed on an individual basis, following an in-depth interview conducted by the NATIONAL COMMISSION FOR THE RIGHT OF ASYLUM - CNA, responsible for revocation and cessation procedures.

Every single case is analysed by the NATIONAL COMMISSION FOR THE RIGHT OF ASYLUM - CNA that after an independent interview will assess reasons and grounds to travel to the Country of Origin. There generally be an assessment of: agent of persecution, reasons for travel (for instance family reasons, health-related reasons, inheritance reasons), travel documentation requested, length of stay in the country of origin, place of stay, frequency of travel to the country of origin. An appeal can be lodged against decision of cessation to the Civil Judge.

Q18. Do national authorities encounter any **challenges** when assessing such cases of cessation? **YES** /NO.

*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.

For whom it is a challenge: for **National Commission for Asylum (CNA)**, responsible for revocation and cessation procedures, **and for Territorial Commissions for the assessment of International Protection**, that every 5 years verify if the circumstances that have led to recognition of subsidiary protection have failed or changed. **If so the Territorial Commissions send the documentation to the CNA to start the cessation procedure.**

Challenge: evaluate the credibility of the refugee's declarations during the interview and obtain reliable documentation to support the reasons for traveling to the country of origin.

⁴⁸ UNHCR Handbook, para. 125 and 134.

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**/NO

If yes, do these take the form of:

Internal guidelines

"Operation guidelines for Territorial Commissions for the assessment of International Protection" new edition revised in collaboration with UNHCR and published on July 2018

Please explain:

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? **YES**/NO

If no, please go directly to question 23.

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

Re-availment of national protection of the country of nationality

E.g. if beneficiary of subsidiary protection hold a travel document issued by the Italian authorities. The travel document, according with Art. 24 of Legislative Decree 251/2007 "is issued by the Italian authorities when there are well-founded reasons that prevent the request from the authorities of the country of citizenship". Contacting authorities of the country of citizenship could be an indicator that the circumstances that have led to recognition have changed to an extent such that protection is no longer necessary

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*. **YES/NO**

If yes, please elaborate:

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

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

In national legislation?

If box is marked, please specify legislation: Article 15 of Legislative Decree 251/2007: The cessation of subsidiary protection status is declared on an individual basis when the circumstances that have led to recognition have failed or changed to an extent such that protection is no longer necessary

In case law?

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

In practice?

If box is marked, please explain practice:

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

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

Frequency of contacts with national authorities of the country of origin

Obtaining the issuance or renewal of a passport

Requesting administrative documents

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

Marriage

Other

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

All reasons mentioned can lead to assess the case under a cessation procedure, but there is no automatic cessation.

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?

Beneficiaries of subsidiary protection have the right to travel inside and outside the Italian territory.

Traveling to the Country of origin is, according to Decree-Law 4 October 2018, n. 113, converted in Law 1 December 2018, n. 132, "Urgent provisions on international protection and immigration, public security (.....)", **considerable** for the application of art 15 of Legislative Decree 19 November 2007, n. 251, as an indicator that the circumstances that have led to recognition have failed or changed to an extent such that protection is no longer necessary.

Q24. Can a beneficiary of subsidiary protection request a travel document in your Member State? **YES/N**
Beneficiaries of Subsidiary Protection can apply for a Travel Document, if they cannot obtain a travel document from the authorities of their country of origin.

The travel document, according with Art. 24 of Legislative Decree 251/2007 "is issued by the Italian authorities when there are well-founded reasons that prevent the request from the authorities of the country of citizenship".

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?)

Format similar to the one issued to refugees, duration 5 years

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).

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/NO

Q26a. If yes to Q26, is it specified:

Please indicate whether the same legislative provisions (and/or case law or practice) are applicable in the same way to refugees and beneficiaries of subsidiary protection in your (Member) State. No. The provisions are in the same Law. Legislative Decree 251/2007, but in different articles in consideration of the differences between the two categories of protection.

- In national legislation?

*If box is marked, please specify legislation: **Traveling to the Country of origin is**, according to Decree-Law 4 October 2018, n. 113, converted in Law 1 December 2018, n. 132 "*Urgent provisions on international protection and immigration, public security (.....)*", **considerable** for the application of art. 15 of Legislative Decree 19 November 2007, n. 251, as an indicator that the circumstances that have led to recognition have failed or changed to an extent such that protection is no longer necessary.*

- In case law?

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

- In practice?

If box is marked, please explain practice:

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

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

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

Please specify:

Guidance and challenges in assessing cases of cessation of subsidiary protection

Q27. Is guidance or any other form of established practice on cessation of *subsidiary* protection available to national authorities? **YES/NO**

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

Internal guidelines

“Operation guidelines for Territorial Commissions for the assessment of International Protection” new edition revised in collaboration with UNHCR and published on July 2018

Please explain:

UNHCR guidelines on cessation

Other

Please specify:

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).

For whom it is a challenge: for **National Commission for Asylum (CNA)**, responsible for revocation and cessation procedures, **and for Territorial Commissions for the assessment of International Protection**, that every 5 years verify if the circumstances that have led to recognition of subsidiary protection have failed or changed. **If so, the Territorial Commissions send the documentation to the CNA to start the cessation procedure.**

Challenge: evaluate the credibility of the refugee's declarations during the interview and obtain reliable documentation to support the reasons for traveling to the country of origin.

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

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

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

3.1. INFORMING BENEFICIARIES OF INTERNATIONAL PROTECTION

Q29. Are beneficiaries of international protection informed *about possible consequences on their protection status* if they contact authorities or travel to their country of origin? **YES/NO**

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

Table 1 informing beneficiaries of international protection

Means used to inform beneficiaries of international protection	Contacting authorities of the country of origin	Travelling to the country of origin (or country of habitual residence)
It is indicated on beneficiaries' travel document	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Beneficiaries are informed in writing by national authorities YES. An information leaflet about international protection, in which are indicated their respective rights and duties, including the impossibility to travel to the Country of origin. The Police Headquarters is the competent authority to provide such information.</p> <p><i>Please specify language of communication used by national authorities:</i> Information are provided in English, Spanish, Arabic, French and, if necessary, in another language that can be understood with the help of an interpreter</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Beneficiaries are informed orally by competent authorities</p> <p><i>Please elaborate:</i> YES, if necessary. For example in a language other than the ones used for the leaflet that can be understood with the help of an interpreter</p>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Beneficiaries are informed at their request</p> <p><i>Please elaborate (e.g. whether in writing or orally):</i> YES, if necessary. For example in a language other than the languages used for the leaflet that can be understood with the help of an interpreter</p>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Other means</p> <p><i>please elaborate:</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

3.2. REVIEW OF PROTECTION STATUS

Q30. Is the status of beneficiaries of international protection that travelled to and/or contacted authorities of their country of origin reviewed in your (Member) State? **YES/NO**

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. **Only for beneficiaries of subsidiary protection, every 5 years.**

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. **For beneficiaries of subsidiary protection and refugees as part of procedures to cease international protection**

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.

REVIEW PROCEDURE for beneficiaries of subsidiary protection (every 5 years) made by the **Territorial Commissions for the Right of Asylum** to verify if the circumstances that have led to recognition have failed or changed to an extent such that protection is no longer necessary. If so, the Territorial Commissions for the Right of Asylum send the documentation to the **CNA** to start the cessation procedure.

The beneficiaries of subsidiary protection are informed in writing about the new examination of their individual situation.

Q31. Can a review of international protection status lead to a decision to cease international protection in your (Member) State? **YES/NO**

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.

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:

NATIONAL COMMISSION OF ASYLUM (**NATIONAL COMMISSION FOR THE RIGHT OF ASYLUM - CNA**), as stated by art. 5 Legislative Decree n 25/2008.

For **beneficiaries of subsidiary protection** Territorial Commissions for the Right of Asylum are also involved: during the review procedure verify if the circumstances that have led to recognition have failed or changed to an extent such that protection is no longer necessary. If so they send the documentation to the **CNA** to start the cessation procedure.

Q33. Can the beneficiary of international protection present contrary evidence or elements during the procedure to cease his/her protection status? **YES/NO**

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

In writing to the competent authority?

Please specify:

During the assessment interview conducted by the NATIONAL COMMISSION FOR THE RIGHT OF ASYLUM - CNA the beneficiary can present relevant documentation to support the reasons to travel to the Country of origin.

Orally?

Beneficiary of international protection have the right to an interview

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? **YES**

Please specify:

Other?

Please specify:

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

The decision about cessation is taken on the day of the interview. The provision of cessation is notified to the beneficiary in the days immediately following

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

- In writing?
- Orally?
- Other means?

Please specify:

Q34b. If yes to Q34, does the decision include the reason(s) for cessation? **YES/NO**

If yes, please elaborate:

The provision of cessation contains the reasons for cessation

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

a) What are the timeframes for appealing the decision?

30 days

Please elaborate:

b) Which authority examines the appeal application?

Please elaborate:

The appeals are examined by the immigration's specialized sections located in the Courts. The appeal must be lodged to the specialized section in which the territorial commission is located. (art. 35 and 35bis D.lgs 25/2008; art.1 and over of D.L. n.13/2017)

The proposition of the appeal suspends the effectiveness of the contested provision except in some cases (inadmissibility of the application, manifest groundlessness, etc.) art 35 and 35bis del D.lgs 25/2008

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/NO**

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

The evaluation and the cessation are exclusive competences of the **CNA** that assess also the applicability of the principle of *non refoulement*.

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

If yes, please briefly summarise:

a) The result of the appeal (*e.g. was the initial decision to cease international protection reverted?*), and

The decisions are different, sometime *pro* NATIONAL COMMISSION FOR THE RIGHT OF ASYLUM - CNA and sometime *pro* applicant.

b) The main justifications given by the Court (*e.g. reasons to uphold or quash the first instance decision*).

Among the most frequent reasons of the decisions pro applicant there is the different evaluation on the danger in the country of origin made by the Court.

3.4. CONSEQUENCES OF A CESSATION DECISION

Right to stay, possible change of status or return

Q38. In your (Member) State, is the decision to cease international protection issued together with the decision to end the residence permit? YES/**NO**

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/**NO**

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

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):

- i. family, social or economic links
- ii. health or medical reasons
- iii. length of stay in the Member State
- iv.** the principle of non-refoulement **YES** we take into account, in any case, the principle of non-refoulement (with the COI support), if there is a risk (personal or general) or fear of persecution in Country of origin

Q40. Can a (former) beneficiary of international protection be granted another status? **YES/NO**

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:

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 **If children have become adults, cessation has no effect on them**

Lose their international protection status and lose their right to stay *If the international protection holder has minor children, the cessation also acts on his/her children.*

Lose international protection status and keep their right to stay on other grounds *The residence permit, whether the decision to terminate is adopted at the time of expiry, or whether it is adopted while the residence permit is valid, can be converted into a residence permit issued for another purpose (for example for work)*

Please briefly elaborate on 'other grounds':

Case by case decision if they keep or lose their international protection status and their right to stay *If the members of the family are holders of their own protection, this remains. The international protection is strictly personal. In any case, the family members are not summoned or heard by the National Commission.*

Please elaborate on elements taken into account:

Other consequences

Please elaborate:

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

Keep their right to stay

At the time of the expiry of the residence permit for family reasons, if the conditions that allowed the first release no longer exist, if the person is carrying out a regular work activity, he will have to provide for the renewal directly for work reasons

Please elaborate:

Lose their right to stay

Please elaborate:

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

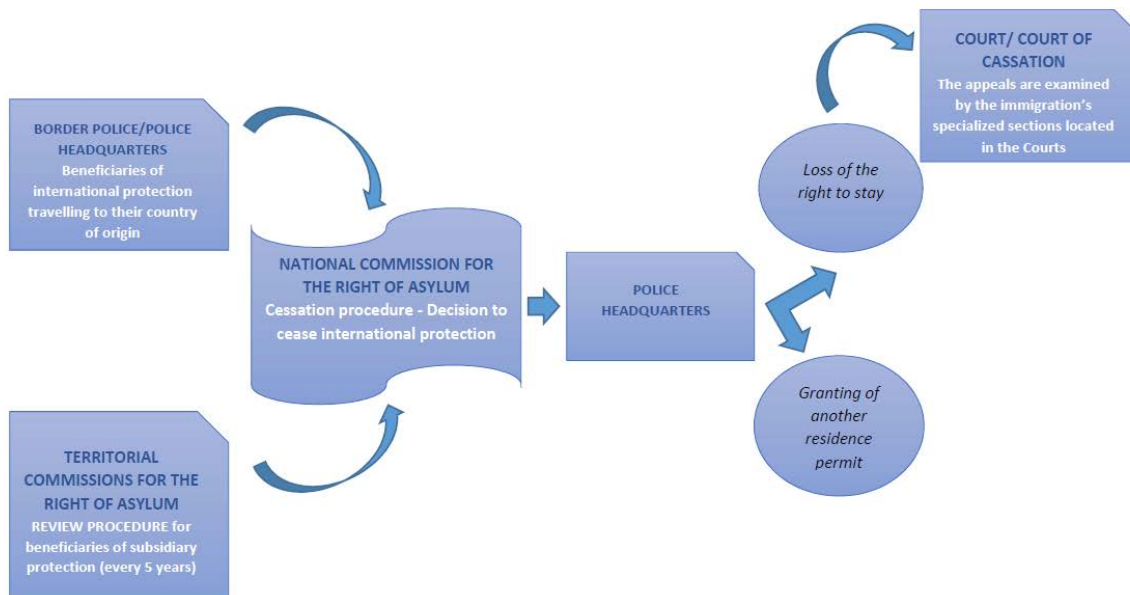
Please elaborate:

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



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 study in Italy

1) **Citizen of Pakistan, entitled to International Protection**, reported by Air Border Police at Rome Airport Fiumicino following his return to Italy from the country of origin, where the same appears to have returned to multiple times, each time staying for a long period of time (4/6 months). These circumstances are evident from the stamps on the passport and travel tickets of the person concerned. In the report, Border Police also indicated the transit airport (Istanbul). The NATIONAL COMMISSION FOR THE RIGHT OF ASYLUM - CNA starts the cessation procedure as per art.15 of Law Decree 251/2007, and after the notification of the start of the procedure, and summons the person concerned to assess the case as a whole following a hearing. During the hearing, the beneficiary of international protection declares that he has returned to his country several times for personal reasons, in particular because of his mother's illness, whom he had to care for (this is the most commonly used excuse, especially for those coming from Pakistan and Afghanistan). In this regards, upon request by the National Commission for the Right of Asylum, during the hearing, he presented medical documentations (hospital certificates, medical prescriptions, clinical reports, etc.) whose reliability and authenticity were assessed (in most cases, only generic medical prescriptions or clinical reports are presented, and hardly ever there are exact diagnoses). Further to the results of the hearing and upon submission of the above mentioned evidence (note that this documents do not certify the severe disease declared), as well as updated and reliable information from COI (sources processed by CNA/UNHCR/EASO/other) decided to **revoke** the international protection status, justifying the decision with the research of the COI Unit, in relation to the changed circumstances in the country of origin and with the lack of real risk if the person concerned was to return to their country of origin (art. 15 law decree 251/2007)

proven by the long stays during which the person in question admitted to not having any particular problems.

2) **Citizen of Afghanistan with Refugee Status**, reported by the Italian Police authorities because of the possession of a Passport released by the authorities of the country of origin. **CNA** verified, through the relevant Police Headquarters, the presence of stamps confirming the fact that the person concerned had returned to Afghanistan. A cessation procedure was started and, after the interested party was notified, he was summoned for a hearing at the NATIONAL COMMISSION FOR THE RIGHT OF ASYLUM – CNA, to assess the situation in the country of origin and the related real risk if the interest person was to return, as per Art. Law Decree 14, 251/2007. It also assessed the social and work integration of the person concerned (permanent employment contract, presence of the family unit - children under the age of 18 in Italy). The Commission decided to revoke the previously recognized Refugee Status, citing as justification the unlawful presence of stamps on the passport.

Section 4 Conclusions [max 2 pages]

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

Q44. With regard to the aims of this study, what conclusions would you draw from your findings reached in elaborating your national contribution? In particular, what is the relevance of your findings to (national and/or EU level) policy-makers?