

**Beneficiaries of International Protection Travelling to  
and Contacting Authorities of their Country of Origin**  
Challenges, Policies and Practices in EU Member States, Norway and Switzerland

**Synthesis Report  
for the EMN Study**

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## Disclaimer

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## Explanatory Note

This Synthesis Report was prepared on the basis of National Contributions from **25 EMN NCPs** (AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PT, PL, SE, SK, UK and NO) **and Switzerland** according to a Common Template developed by the EMN and followed by EMN NCPs to ensure, to the extent possible, comparability.

The National Reports are available for publication and can be consulted on the [EMN website](#).

National contributions were largely based on desk analysis of existing legislation and policy documents, reports, academic literature, internet resources and reports and information from national authorities. Statistics were sourced from Eurostat, national authorities and other (national) databases. The listing of Member States in the Synthesis Report results from the availability of information provided by the EMN. It is important to note that the information contained in this Report refers to the situation in the above-mentioned Member States, Norway and Switzerland up to and including December 2017 and specifically the contributions from their EMN National Contact Points. More detailed information on the topics addressed here may be found in the available National Contributions and it is strongly recommended that these are consulted as well.

EMN NCPs from other Member States could not, for various reasons, participate on this occasion in this study, but have done so for other EMN activities and reports.

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# EXECUTIVE SUMMARY

This synthesis report presents the main findings of the EMN Study on *'Beneficiaries of international protection travelling to and contacting authorities of their country of origin: challenges, policies and practices in the EU Member States, Norway and Switzerland'*. The study aims to offer a comparative overview of the experiences and existing practices in the Member States, Norway and Switzerland<sup>1</sup> regarding the cessation of international protection for individuals who travel to or contact the authorities in their country of origin. In light of the policy priority attached by certain States to examining more closely the motives driving beneficiaries of international protection to travel to their country of origin, the report also explores the different reasons for beneficiaries to make contact with authorities of and/or travel to their country of origin and how these cases are assessed by national authorities in the European Union (EU), Norway and Switzerland.

EU and international asylum and refugee law provide grounds whereby the international protection status may come to an end in circumstances where it becomes apparent that protection is no longer justified. These are referred to as 'cessation' grounds. Beneficiaries of international

protection can travel outside their State of protection to other EU Member States (under certain conditions), including to their country of origin. While there may be legitimate reasons for them to do so, such acts could also mean that the circumstances on the basis of which protection was granted have changed and that protection may no longer be justified. Similarly, obtaining a national passport from authorities of the country of origin could suggest that beneficiaries are no longer in need of protection. Such circumstances could indicate that persons may be willing to 're-avail' themselves of the protection of the country of origin or to 're-establish' themselves there.

This report build on existing United Nations High Commissioner for Refugees (UNHCR) guidelines on cessation and research by the European Asylum Support Office (EASO) on the ending of international protection. Considering that at all stages, fundamental rights must be respected, this study aims to contribute to the current discussions on this topic by providing an overview of practices and challenges faced by national authorities in the following stages: when re-assessing protection status, possible consequences on the status and right to stay of the third-country national concerned.



## KEY POINTS TO NOTE

- 1. Authorities in several Member States, Norway and Switzerland observed travels of beneficiaries of international protection (hereafter BIPs) to their country of origin. To date, the exact extent of the number of BIPs travelling to their country of origin remains difficult to estimate.** In addition, available data in a few States of the number of decisions to withdraw international protection motivated by travels to the country of origin shows these numbers are low overall. Between 2015 and 2018, increased attention given to this issue in some Member States, as evidenced in national parliamentary debates and media reports, contributed to changes to national policies and practices, as well as changes in legislation to provide national authorities with supplementary means to address and monitor such travels and contacts.
- 2. Where some evidence of contacts with authorities of and travelling to the country of origin become known, they are weighed differently by competent authorities in the Member States, Norway and Switzerland.** In a majority of States, contacting authorities of and/or travelling to the country of origin

can be considered as an indication that international protection may no longer be required. However, the act alone would not automatically lead to cessation. This type of evidence could lead national authorities to examine the purpose of the contact(s) and/or travel(s).

- 3. There are numerous reasons BIPs contact the authorities of their country of origin or travel there.** As observed by national authorities, the most commonly invoked motives to travel related to: visiting family members, illness, and attending weddings or funerals. Generally BIPs contacting the authorities of their country of origin (in the State of protection) was not contentious, except in cases whereby the contact led to the allocation or renewal of a passport. Other circumstances have also been taken into account to verify whether re-availment of protection or re-establishment could be concluded, including: voluntariness of these acts, length of stay in the country of origin, and frequency of contacts or travels. Thus the circumstances of each case and criteria set out in EU and national asylum law need to be jointly assessed to justify the cessation of protection.

<sup>1</sup> Switzerland, which is not an EMN NCP, contributed for the first time to an EMN study.

- 4. The assessment of a BIP's travel and of its impact on his/her protection status is generally a challenging task for national authorities**, as is obtaining undisputable and objective evidence that the person had travelled to his/her country of origin. Even where national authorities are aware of the travel, they may still face challenges in verifying information on the motives of the travel and other circumstances relating to the nature of activities pursued by BIPs during their stay in the country of origin.
- 5. A majority of States informed BIPs about the potential consequences of travelling to their country of origin by including travel limitations on the refugee travel document, indicating that it was not valid for travel to the country of origin.** Additional channels used to inform about consequences on the protection status included delivering this information orally or in writing, at the moment of issuing the protection status decision or upon request.
- 6. In all States, the withdrawal of protection status also can have consequences for the right of residence of a (former) BIP on the territory of the State concerned.** While in some States, the withdrawal of protection status was automatically followed by a

decision to end their right of residence, most States examined the individual circumstances of the person concerned. National authorities thus generally consider whether the conditions for other legal grounds to stay (subsidiary or national protection status, residence based on legal migration reasons) would be fulfilled by the individual concerned.

- 7. A reassessment of international protection status, withdrawal of protection and/or end of right to stay of a (former) BIP could also affect the international protection status and right of residence of his/her family members and/or dependants.** In most States, this depends on how family members obtained their status. Where the right of a family member derives from the protection status of a BIP, the right to stay generally ends at the same time as the BIP's loss of status and residence permit. Where family members were granted their own protection status separately, withdrawal of protection status of a BIP would not automatically lead to the withdrawal of protection of his/her other family members. However, reassessment of the BIP's protection status on cessation grounds could lead national authorities to check whether circumstances granting protection status of the family member were still valid.



## 1. AIM AND SCOPE OF THE STUDY

The study aimed to map information on the reasons for BIPs' contacts with authorities and travels to the country of origin and how these cases were assessed by national authorities. Furthermore, the study examined whether such acts have had any possible consequences for the international protection status and the right to stay of the persons concerned, taking into account the provisions of the Refugee Convention and relevant EU asylum law (recast Qualification Directive and Asylum Procedures Directive), of the European Convention on Human Rights and national legislation. In this regard, this study built on existing guidance at international level (UNHCR) and research of EU agencies (EASO) on the subject of ending international protection.

The framework used to analyse the consequences of such contacts and travels relied on international refugee and EU asylum law. Both provide grounds whereby international protection status may come to an end in circumstances

where it is apparent that protection is no longer necessary. These are referred to as 'cessation' grounds, with re-availment of protection of the country of origin and re-establishment in the country of origin being specific conditions of cessation. Against this background, obtaining a national passport from authorities of the country of origin and/or frequently travelling to the country of origin could – in certain circumstances – indicate that beneficiaries are no longer in need of international protection. Such circumstances could suggest that individuals may be willing to re-avail themselves of the protection of the country of origin or to re-establish themselves there. This study also sought to examine cases where contacts and/or travelling to the country of origin do not lead to cessation, as well as examples where national authorities decided to examine these acts under different grounds to end protection, such as fraud or misrepresentation of facts.



## 2. METHOD OF DATA GATHERING AND ANALYSIS

The analysis displayed in this report was based primarily on secondary sources, as provided by EU Member States, Norway and Switzerland. The evidence included reasons for why beneficiaries of international protection contact authorities and/or travel to the country of origin, as well as existing national practices and challenges experienced when assessing such cases. As grounds for granting protection are distinct, the study highlighted the different assessments which could be used for refugees and beneficiaries of subsidiary protection (hereafter BSPs) contacting or travelling to their country of origin. The fact that not all States participating in this study are bound by the EU asylum acquis (Ireland, UK, Norway and Switzerland) has been taken into account in the analysis where relevant.

In terms of the temporal scope, this study focused on policy and legislative changes that occurred between 2015 and 2018. References to changes adopted earlier than 2015 are highlighted (e.g. case law, Eurostat data).

In addition, where statistical data was available, the study provided an estimation of the scale of the number of international protection statuses effectively ceased following travel to the country of origin. This was based mainly on national data, as Eurostat only collects data on withdrawal reasons for all types of grounds, and withdrawal decisions based on cessation grounds or travel to or contact with the country of origin are not disaggregated.



### 3. AN EMERGING POLICY PRIORITY IN A FEW STATES

Since 2015, addressing the issue of BIPs travelling to their country of origin emerged as a policy priority in several States contributing to this report. Increased attention given to this issue in some States, as evidenced in national parliamentary debates and media reports contributed to a change in practices of national authorities and, in some cases, also led to amendments in legislation. To better understand the phenomenon and identify potential cases where refugees would no longer need protection, some States established specific offices within the national asylum and migration authorities to centralise relevant information coming from different authorities (e.g. border control authorities, local authorities). In addition, States established

closer cooperation among competent authorities at national level (e.g. those responsible for granting and withdrawing international protection, border police, and diplomatic representations in third countries). In other States, specific instructions were adopted to reassess protection status and potentially withdraw protection and/or residence permits in cases where national authorities received evidence of BIPs travelling to their country of origin. Furthermore, several States amended national legislation to formally include BIPs travelling to their country of origin as an additional condition of cessation. In some States, national legislation was changed to also include travelling to the neighbouring countries of the country of origin as an aspect of cessation.



### 4. SCALE OF BIPS TRAVELLING TO THEIR COUNTRY OF ORIGIN

It is currently not possible to gain a clear overview of the number of BIPs travelling to their country of origin nor on the number of decisions ending international protection prompted by trips to the country of origin. An estimate of the scale can be inferred, as a first step, from Eurostat which collects data on the number of decisions to withdraw international protection. Overall, from 2012 to 2018, less than 1 300 final withdrawal decisions were issued per year in EU, Norway and Switzerland. However, this data is not disaggregated by reason for withdrawal and it is not possible to deduce the number of withdrawal decisions that were made based on particular cessation grounds, let alone the number of withdrawal decisions based on travels to or contacts with authorities of the country of origin. Likewise,

at national level, little (public) data is available on the number of withdrawals based on cessation grounds, and even less so based on a BIP travelling to or contacting the authorities of the country of origin.

Remaining States whom contributed to this study did not have such data for several reasons. One main reason cited was the near impossibility to monitor travels of beneficiaries of international protection to their country of origin as the final destination of a BIP's travel can be easily hidden, since BIPs can travel to their country of origin from a different State than the State which originally granted them protection. Some States, however, kept track of BIPs travelling to their country of origin by monitoring border crossings.



### 5. BIPS CONTACTING AUTHORITIES OF THEIR COUNTRY OF ORIGIN

No equivalent monitoring was reported with regard to BIPs contacting authorities of their country of origin, except in the case of obtaining or renewing a passport which could be detected when travelling abroad and passing

border controls. Other types of contacts were generally not considered as contentious and could constitute valid reasons to contact authorities of the country of origin (e.g. obtaining necessary administrative papers).



### 6. REASONS FOR TRAVELLING TO THE COUNTRY OF ORIGIN

While BIPs are free to move to other countries, including travelling to and from their country of origin, such circumstances are not without consequences for their protection status. The study sought to map the most frequent reasons for BIPs travelling to their country of origin – as observed by national authorities in the States participating in this study. The most common motive to travel – as stated by BIPs – related to visits to family members in the country

of origin, due to illness or attending funerals. Another common reason was attending weddings of relatives or the organisation of his/her own wedding in the country of origin. Other invoked reasons included: managing a business, travelling for holidays, assisting family members to flee persecution, homesickness and the desire to return permanently.



## 7. ASSESSMENT OF TRAVELS TO THE COUNTRY OF ORIGIN AND POSSIBLE CESSATION OF INTERNATIONAL PROTECTION STATUS

All States reported that a possible return to the country of origin could have consequences for the status of the person concerned, and encourage national authorities to reassess the protection status. The possible consequences of BIPs travelling to the country of origin on their status were generally stated in national legislation and/or detailed in national administrative practice. National legislation, in a majority of the Member States applying the EU asylum acquis, only referred to the grounds for cessation as provided in EU legislation. Legislation in some States explicitly highlighted that travelling to the country of origin could lead to cessation of protection status. The most common grounds upon which protection was reassessed – in the case of traveling to the country of origin – were voluntary re-availment of the protection of the country of origin and/or re-establishment in the country of origin.

When reassessing international protection status, most States considered travel to the country of origin as an indication that cessation of refugee status could apply, but the act alone would not automatically lead to cessation. One exception is Hungary where any trip to the country of origin could be considered to provide sufficient reason to presume that the individual had re-availed him/herself of the protection of his/her country of origin. Most States did not establish a set of formal criteria to assess travels to

the country of origin, although they generally followed the UNHCR guidelines on the cessation clauses of the Refugee Convention.

Generally, most States assessed such cases individually, trying first to determine the intent of the travel and whether it was voluntary. Another criterion taken into account was whether the country of origin was willing to and could or already effectively provided protection to the individual. In addition to the reasons to travel to the country of origin, other circumstances considered included the length of stay in the country of origin, the frequency of travels to the country of origin, the specific place of stay in the country of origin, mode of entry, and the time span between the granting of the refugee status and the travel to the country of origin.

The main challenges faced by national authorities in this assessment process pertained to the collection of information and its assessment, as the burden of proof lay with national authorities primarily. For example, Member States reported the difficulties to obtaining undisputable and objective evidence that the person had travelled to his/her country of origin. Even where national authorities were aware of the travel, it was difficult to obtain information on the activities pursued by refugees during their stay in their country of origin.



## 8. OTHER POSSIBLE GROUNDS FOR ENDING INTERNATIONAL PROTECTION DUE TO TRAVELS TO THE COUNTRY OF ORIGIN

Some States reported other possible grounds for ending international protection due to travels to the country of origin, following the concept of cancellation that was developed by UNHCR and the grounds of misrepresentation or omission of facts included in the recast Qualification Directive (Article 14(3)). Some States reported that travels to the country of origin, as a new element coming to the attention of national authorities after the granting of an international protection status, could indicate that there was

a misrepresentation or omission of facts (or fraud) which were decisive to the determination of the refugee status. On this basis the withdrawal of international protection on this ground would be justified. The application of misrepresentation or omission of facts to end international protection of individuals who travelled to their country of origin was reported by a few States and national practices in this particular context were still in their early stages.



## 9. INFORMING BIPs OF THE POSSIBLE CONSEQUENCES OF EITHER CONTACTING AUTHORITIES OF THEIR COUNTRY OF ORIGIN OR TRAVELLING THERE

All States participating in the study reported informing BIPs of the limitation and of the possible consequences on their status of either contacting or travelling to their country of origin. The most frequently used channel was an indication on the refugee travel document that it was not valid for travels to the countries of origin. While one may expect information to be provided to BIPs in the case of travel to their country of origin, in particular to refugees, in some Member States, the travel document also explicitly

contained information on the consequences of contacting the authorities of the country of origin. Another means was to indicate this information on the decision granting protection. A few Member States observed, however, that despite the details and information provided, BIPs were not always aware of the consequences of either contacting authorities or travelling to their country of origin on their protection status.



## 10. REVIEW OF INTERNATIONAL PROTECTION STATUS

A large majority of States reviewed the protection status of BIPs at various stages. Most frequently, such reviews take place at the initiative of national authorities when they are made aware of evidence calling into question the BIP's status (e.g. travels to the country of origin). Other States adopted a systematic review of international protection statuses, with varying degrees of frequency ranging

from systematic reviews operated once every year to after three years at the latest. Depending on the national framework, such systematic review was applied only to refugees, only to beneficiaries of subsidiary protection or both, with the type of residence permit (temporary or permanent) also playing a role.



## 11. WITHDRAWAL OF INTERNATIONAL PROTECTION

Where national authorities gather sufficient elements to conclude that international protection ceased, EU legislation requires national authorities to revoke, end or refuse to renew international protection status. This is referred to under the umbrella term of 'withdrawal of international protection' in EU law. Withdrawal procedures in all States provided the opportunity for the BIPs to present evidence defending their case before the issuing of a final withdrawal decision. BIPs could either present their evidence in writing directly to the national authority in charge of carrying out the investigation, or they could request or wait to be invited to an interview.

All Member States, Norway and Switzerland offered the possibility to BIPs concerned to appeal a decision withdrawing their protection status, in a majority of cases before an administrative court. Member States reported challenges in practice, related for example to BIPs not providing explanation at the beginning of the procedure where the opportunity was provided, but only at appeal stages.

The withdrawal of an international protection status often also impacts on the right to stay on the territory of the (former) State of protection. In some Member States, however, this was subject to exceptions depending on the residence permit: if the BIP held a permanent permit, legislation did not foresee withdrawal of protection based on cessation grounds but only on grounds of public order and national security. In more than a third of States participating in this study, a withdrawal decision automatically led to ending

the right of residence, while in other States these were separate processes. Before issuing such decisions, national authorities in a majority of States examined the individual circumstances of the person concerned, considering other legal grounds to stay such as subsidiary protection status, a national protection status or a legal migration status. In most States, following a decision to withdraw international protection, a former BIP could nonetheless apply for a different status and obtain it if s/he fulfilled the conditions to be granted such status.

The international protection status of family members and/or dependants can also be affected. In cases where the right of a family member derived from the protection status of a BIP, the right to stay generally ended at the same time as the BIP's loss of status and residence permit. In some States, this would mean losing their (derived) international protection status together with the residence permit. Where family members' status was also dependent on the recognition and status of the original beneficiary, withdrawal of international protection of the BIP's status would also lead to withdrawing international protection of the dependants (and their right to stay). Where family members were granted their own protection status separately, withdrawal of protection of a BIP would not automatically lead to the withdrawal of protection of his/her other family members. However, a reassessment of the BIP's protection status on cessation grounds could lead national authorities to check whether the circumstances granting protection status of the family member were still valid.



# 1. INTRODUCTION

This synthesis report presents the main findings of the EMN Study on *'Beneficiaries of international protection travelling to and contacting authorities of their country of origin: challenges, policies and practices in the EU Member States, Norway and Switzerland'*. It identifies national legislation, relevant case law and practices, and challenges faced by Member States, Norway and Switzerland, and provides up-to-date information on the latest trends in this area of migration policy.

The study aims to offer a comparative overview of Member States, Norway and Switzerland's experiences and existing practices regarding the cessation of international protection

for individuals who travel to or contact the authorities of their country of origin. The phenomenon of BIPs travelling to their country of origin, or making contact with the authorities in their country of origin, has been observed by the competent authorities in several Member States, Switzerland and Norway. While such acts in themselves do not constitute a ground for ending international protection (cessation), they could, in certain circumstances, contradict the grounds that led to the granting of such protection, namely the individual's fear of persecution in the country of origin (or habitual residence for stateless persons) or the real risk of suffering serious harm.

## 1.1. STUDY AIMS AND SCOPE

Both international refugee and EU asylum law provide 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, that they are willing to re-avail themselves of the protection of the country of origin, or intend to re-establish themselves there.

This study aims to map information on the reasons for travel to the country of origin of persons granted international protection and how cases of contacts with authorities of the country of origin and/or return to the country of origin are assessed by national authorities in EU Member States, Norway and Switzerland.

Furthermore, the study seeks to analyse the possible consequences of such acts on the international protection status and right to stay of the persons concerned. The study also aims to gather information on cases where international protection statuses were ceased leading to, for example, the status being ended, revoked or not renewed, as well as cases where contacts and/or travels to the country of origin did not lead to such consequences. This assessment needs to take into account the Refugee Convention and relevant EU asylum law (recast Qualification Directive<sup>2</sup> and Asylum

Procedures Directive<sup>3</sup>), the European Convention on Human Rights and national legislation.

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

The recast Qualification Directive<sup>4</sup> is binding on all Member States except Denmark, Ireland and the UK<sup>5</sup>; the Directive is neither applied in Norway nor in Switzerland. Throughout this study the terminology included in EU asylum acquis will be used, with references to the Refugee Convention and UNHCR guidelines where relevant.

In light of the above, the study addresses the following questions:

- What is the extent of the phenomenon in Member States, Norway and Switzerland (i.e. beneficiaries of international protection travelling to their country of origin or contacting national authorities of their country of origin)?

<sup>2</sup> Directive 2011/95/EU of the the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011, p. 9–26.

<sup>3</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p. 60–95.

<sup>4</sup> Directive 2011/95/EU of 13 December 2011, OJ L 337, 20.12.2011, p. 9–26.

<sup>5</sup> The 2004 Qualification Directive (Directive 2004/83/EC) applies however in Ireland and the UK.

- How many cases were considered for cessation in the past three years, especially in the case of beneficiaries of international protection travelling to their country of origin? Among these, how many protection statuses were effectively ceased or withdrawn following travel to the country of origin in the past three years?
- What are the national legal frameworks and policies regarding cessation of international protection status, especially in the case of beneficiaries of international protection travelling to their country of origin? When is travelling to the country of origin considered as an indicator in the determination of cessation of international protection and when such travels do not lead to a determination of cessation of the protection status?
- What knowledge do the Member States, Norway and Switzerland have about motives and reasons of beneficiaries of international protection to travel to their country of origin?
- How is the right of residence of beneficiaries of international protection assessed if their protection status ceases or is withdrawn? What is the procedure followed in this case, including procedural guarantees?
- Where family members obtained a (derivative) international protection status, how is their legal ground to stay to be reassessed if the status of the (main) beneficiary of international protection ceases or is withdrawn?



## 1.2. INTERNATIONAL AND EU LEGAL FRAMEWORK ON CESSATION

The 1951 Refugee Convention provides criteria following which refugee status is to be granted, but also circumstances which could lead to refugee protection no longer being needed or where they could indicate that refugee protection should not have been granted in the first place. This logic is reflected in the EU asylum *acquis* which provides a number of eligibility criteria to grant international protection status as well as provisions ending protection when these conditions are no longer met and protection is therefore no longer required. As a preliminary step, this section first provides an overview of the relevant concepts and definitions which will be used throughout the study (section 1.2.1).

For the purpose of this study, the concept of cessation is the most relevant to analyse the consequences for the international protection status of a person who came into contact with authorities of the country of origin (in the State of protection) or travelled to his/her country of origin (section 1.2.2). This is due to the fact that such behaviour may indicate a change of circumstances in the personal situation of the individual concerned and which would qualify as a ground for cessation as defined in international and EU law. More broadly, such behaviours could also suggest a change of circumstances in the country of origin. This latter aspect can create a separate ground for cessation, which is examined only incidentally in this report, considering that distinguishing between these two grounds may not be straightforward in practice.

Lastly, contacts with authorities of the country of origin and/or travel to the country of origin may be an indication that international protection was obtained based on fraud (misrepresentation) or the omission of facts (section 1.2.3).

### 1.2.1. Key concepts and definitions

For the purpose of this study, BIPs 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 and persons with international protection who have acquired citizenship in one of the EU Member States, Norway or Switzerland are not included in this study.

EU asylum law draws a distinction between refugees and BSPs as the legal basis for granting protection and access to rights are different. The recast Qualification Directive defines refugee protection on the same grounds as those included in the Refugee Convention, namely “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 (on exclusion) does not apply”.<sup>6</sup>

Unlike refugee protection, subsidiary protection is only defined in EU law and is granted when a person does not qualify as a refugee but nevertheless would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of his/her country of origin. A person can thus qualify for subsidiary protection where s/he does not face the threat of being persecuted individually by his/her country of origin’s authorities, but is subject to serious harm in his/her country of origin,<sup>7</sup> which is indiscriminate, based on conditions such as civil war in the country of origin.

This difference in grounds for granting protection is also reflected in the grounds for cessation (section 1.2.2.). Both international refugee law (1951 Refugee Convention) and EU asylum *acquis* include grounds on which international protection may come to an end. The Refugee Convention is based on the temporality of refugee protection and thus provides for the cessation and revocation of the refugee status based on a number of exclusion grounds, with the

<sup>6</sup> Article 2(d) of the recast Qualification Directive.

<sup>7</sup> Serious harm is defined in Article 15 of the recast Qualification Directive as consisting of:

a) death penalty or execution,

b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, or

c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

concept of cancellation, not mentioned in the Refugee Convention, developed by the UNHCR at a later stage (see section 1.2.3). The various concepts related to ending or withdrawing of international protection in the EU asylum acquis coincide only in part with the terminology used in the Refugee Convention.<sup>8</sup> While certain concepts, such as cessation, are used consistently in the Refugee Convention and EU asylum legislation, this is not the case regarding other grounds for ending or withdrawing international protection (e.g. revocation, exclusion) where divergent definitions and interpretations exist.<sup>9</sup>

The concept of cessation is the most relevant in analysing the consequences of BIPs travelling to their country of origin and/or contacting consulates or embassies of their country of origin. Such acts may indicate a change of circumstances either in the personal situation of the individual concerned, or more broadly, in the country of origin, which stands at the basis of the concept of cessation as defined in international and EU law.

More specifically, cessation of international protection refers to the ‘cessation clauses’ of the Refugee Convention (Article 1C(1) to (6) of the Refugee Convention) that enumerate the circumstances 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 of a fundamental change in the situation prevailing in the country of origin. In EU law, cessation means ending the international protection status of a third-country national who has been formally recognised as a refugee and who ceases to be a refugee upon the fulfilment of one of the grounds laid down in Article 11 of the recast Qualification Directive, or of a formally recognised beneficiary of subsidiary protection who ceases to be a beneficiary of such protection upon the fulfilment of one of the grounds laid down in Article 16 of the recast Qualification Directive.

Following a cessation decision, Member States must revoke, end or refuse to renew the refugee status (Article 14 of the recast Qualification Directive) or the subsidiary protection status (Article 19 of the recast Qualification Directive). These consequences are referred to in EU law under the umbrella term of ‘withdrawal’ of international protection as a decision by a competent authority to revoke, end or refuse to renew the protection status of a person.<sup>10</sup>

## 1.2.2. Cessation of international protection status due to contacts and/or travel to the country of origin

Refugees and beneficiaries of subsidiary protection alike are allowed to move around in the State which granted them protection.<sup>11</sup> Outside the State of protection, the freedom of movement of BIPs in the Schengen area, for a short-term period, is also possible provided certain conditions are met.<sup>12</sup> In addition, EU law foresees the mobility between Member States after five years of continuous residence of BIPs in their State of protection.<sup>13</sup> Regarding travel outside the State of protection and of the EU altogether, refugees are free to move to other countries, including to return to their country of origin (see also section 4.1.1).<sup>14</sup> The latter would mean, however, that the personal situation or the circumstances in the country of origin have changed allowing for this return, thus prompting an assessment of the application of cessation.

As mentioned, 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). UNHCR’s Handbook and guidelines on procedures and criteria for determining refugee status provides guidance on the interpretation of cessation of refugee status in international law.<sup>15</sup> A judicial analysis on the ending of international protection in the EU asylum acquis, and elaborated in EASO’s research, equally provides for additional guidance on the interpretation of EU provisions governing cessation and the withdrawal of international protection.<sup>16</sup>

### Cessation of refugee status

Based on EU law and the Refugee Convention’s provisions, refugee status can cease where a change of circumstances occurs because either:

- A refugee status is no longer justified or needed following changes in the personal situation of the refugee that have been brought about by voluntary conduct or actions of the refugee him/herself;<sup>17</sup> or
- A refugee status is no longer justified following changes in the country of origin.<sup>18</sup>
- Based on UNHCR guidelines and the research by EASO mentioned above, the following acts and considerations should be taken into account to possibly apply these cessation grounds:

<sup>8</sup> For example, the concept of end of international protection used by EASO in its Judicial Analysis of Articles 11, 14, 16 and 19 of the Qualification Directive (2011/95/EU) encompasses cessation, revocation, ending or refusing to renew protection as well as withdrawal of international protection.

<sup>9</sup> For example, the concepts of revocation in the Convention and exclusion in Article 14 of the recast Qualification Directive do not cover similar circumstances, the Qualification Directive expanding the grounds for exclusion beyond those included in Article 1F of the Refugee Convention (<http://www.unhcr.org/4c5037f99.pdf>).

<sup>10</sup> Article 2 (b) of Directive 2 013/32/EU (Recast Asylum Procedure Directive).

<sup>11</sup> As provided in Article 33 of the recast Qualification Directive.

<sup>12</sup> BIPs who hold a residence permit and a valid travel document may move freely within the Schengen area for a period of up to 90 days in any 180-day period. See Article 21 of the Convention Implementing the Schengen Agreement: beneficiaries of international protection who hold valid residence permits and travel documents may move freely within the Schengen Area for up to three months, if they fulfil the entry conditions referred to in this Convention. Inter alia, these conditions are “that the aliens produce, if necessary, documents justifying the purpose and conditions of the intended stay and that they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted” (Article 5(1)(c) of the Convention Implementing the Schengen Agreement).

<sup>13</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, pp. 44–53, and Directive 2011/51/EU of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection, OJ L 132, 19.5.2011, p. 1–4.

<sup>14</sup> See Article 12(4) of the International Covenant on Civil and Political Rights (which provides that “No one shall be arbitrarily deprived of the right to enter his own country”). Furthermore, national legislation may also provide which countries (thus including third countries) the refugee is allowed to travel to (e.g. in a travel document).

<sup>15</sup> Available at: <http://www.unhcr.org/3d58e13b4.html> and <http://www.refworld.org/docid/3c06138c4.html>.

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

<sup>17</sup> Article 11(1)(a)–(d) of the recast Qualification Directive; these provisions mirror the cessation grounds provided in Article 1C(1)–(4) of the Refugee Convention.

<sup>18</sup> Article 11(1)(e)–(f) of the recast Qualification Directive. Such circumstances can be end of hostilities, change of political regime, democratisation, etc. These provisions mirror the cessation grounds provided in Article 1C(5) and (6) of the Refugee Convention.

- Voluntary re-availment of the protection of the country of origin refers to the diplomatic protection by the country of nationality of the refugee, which includes a form of consular assistance. As per UNHCR guidelines, 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.<sup>19</sup> 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 protection in the country of asylum may have little relevance as to the continuing need for international protection.<sup>20</sup>
- Voluntary re-establishment in the country of origin entails the return and resettlement of the refugee to his/her country of origin. Re-establishment implies a certain stability and, in that context, only repeated return trips on an ongoing basis may lead to cessation.<sup>21</sup> An assessment of the voluntary nature of the refugee's behaviour is also needed to apply this cessation ground. EASO's 2016 judicial analysis of the provisions ending international protection in the EU found that this ground was rarely used in practice.<sup>22</sup>

The above shows that, for the purpose of this study, refugees contacting the authorities of their country of origin and/or travelling to their country of origin may thus fall within the first type of changes of circumstance, i.e. those resulting from the personal conduct of the third-country national concerned. This is supported by the fact that the act of travelling can be considered 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.<sup>23</sup>

As an example of refugees contacting authorities, the issuance or renewal of a passport at the refugee's request may constitute, in the absence of proof to the contrary, a re-availment of the protection of the country of origin. However, occasional or incidental contacts with authorities of the country of origin to obtain, for example, birth and marriage certificates, should not constitute re-availment of protection of the country of origin.<sup>24</sup> Indeed, situations where contact with the authorities of the country of origin are occasional or accidental, or where the issuance of documents related to family reunification were requested were not deemed to constitute a re-availment of the protection of the country of origin by national courts.<sup>25</sup>

Similarly, with regard to refugees returning to their country of origin, a longer period of stay in the country of origin, creating a family, or carrying out a normal professional activity in the country of origin could constitute re-establishment. A visit or mere presence is unlikely to demonstrate voluntary re-establishment according to the above-mentioned UNHCR guidelines.

### Cessation of subsidiary protection

Compared to the six grounds enumerated in Article 11 of the recast Qualification Directive, Article 16 establishes only two cessation grounds 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 be consolidated over time before a decision on cessation is made by national authorities.

It is not clear from the wording of Article 16 whether subsidiary protection status can 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 there. However, in practice, and as further elaborated in sections 3.1 and 3.2, Member States have been using this ground as a basis, *mutatis mutandis*, to cease subsidiary protection in cases where beneficiaries of subsidiary protection contacted authorities and/or travelled to their country of origin.

### 1.2.3. Other grounds to end international protection prompted by travels to the country of origin

In addition to the cessation of refugee status, the UNHCR foresees the possibility for contracting States to cancel refugee status if it is found that the individual was not eligible for international protection to start with. This is because either they did not fall within the inclusion criteria or because the exclusion criteria applied, meaning that the decision to grant international protection status was made in error.<sup>26</sup>

In contrast with cessation and revocation based on exclusion clauses of Article 1F (a) or (c),<sup>27</sup> cancellation is not specifically addressed in the Refugee Convention. However, the UNHCR considers that national legislation generally provides sufficient legal basis to invalidate flawed decisions determining protection status.<sup>28</sup>

What the UNHCR defines as cancellation is commonly referred to by a wide variety of terms in EU and national legal frameworks, including 'revocation', 'withdrawal', or

<sup>19</sup> UNCHR, Handbook, 2011, paragraph 119.

<sup>20</sup> EASO, Ending International Protection, *Ibid*, section 3.1.2.

<sup>21</sup> EASO, Ending International Protection, *Ibid*, section 3.4.3.

<sup>22</sup> EASO, Ending International Protection, *Ibid*, section 3.4.1.

<sup>23</sup> Article 11(1)(a) and (d) of the Recast Qualification Directive provides "A third-country national or a stateless person shall cease to be a refugee if he or she: (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or (...) (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution."

<sup>24</sup> UNCHR, Handbook, 2011, paragraph 120-121.

<sup>25</sup> EASO, Ending International Protection, *Ibid*, section 3.1.4.

<sup>26</sup> UNHCR, "Legal and Protection Policy Research Series, Cancellation of Refugee Status", 2003, <https://www.unhcr.org/3e9418df4.pdf>, and UNHCR, Note on Cancellation of Refugee Status, 22 November 2004, available at: <https://www.refworld.org/docid/41a5dfd94.html>.

<sup>27</sup> Revocation of refugee status under the Refugee Convention concerns situations in which the exclusion clauses of Article 1F(a) or (c) (i.e. the individual has committed a crime against peace, a war crime or a crime against humanity, and when he or she has been guilty of acts contrary to the purposes and principles of the United Nations) apply to the activities of a refugee after recognition.

<sup>28</sup> UNHCR, Note on Cancellation of Refugee Status, *Ibid*.

'termination' of refugee protection. Conversely, as noted by UNHCR, national legislation and authorities sometimes refer to cessation or withdrawal as cancellation.<sup>29</sup> It is therefore essential to draw the line between these terms as much as possible.

Cancellation differs from cessation and revocation (based on the application of the exclusion clauses of Article 1F (a) or (c) of the Refugee Convention) in that it implies that the refugee status should have never been granted. Whereas, cessation and revocation in application of the exclusion clauses assume that the status was properly conferred. Therefore, cancellation decisions generally have an *ex tunc* effect (i.e. from the outset), as opposed to cessation and/or revocation (based on exclusion clauses) decisions, which have an *ex nunc* effect (i.e. from this point onward).<sup>30</sup>

According to the UNHCR, the re-assessment of eligibility for refugee protection, at the time of the original determination, is justified if one or more of the following grounds is present:<sup>31</sup>

- Applicability of an exclusion clause, with or without fraud on the part of the applicant;
- Substantial fraud on the part of the applicant with regard to core aspects relating to his or her eligibility for protection (i.e. misrepresentation or concealment of facts);
- An error of law and/or fact by the determining authority, relating to inclusion or exclusion criteria; and
- Other misconduct affecting eligibility by the applicant, such as threats or bribery.

The first of these grounds is provided by EU law with the recast Qualification Directive as a clause that may lead to revocation of, ending of or refusal to renew refugee status under Articles 14(3)(a) for refugee status and 19(3)(a) for subsidiary protection (exclusion grounds).<sup>32</sup>

Similarly, the second ground, is equally present in the recast Qualification Directive under Articles 14(3)(b) for refugee

status and in 19(3)(b) for subsidiary protection status referring to cases where misrepresentation or omission of facts were decisive for granting international protection status.<sup>33</sup>

The third ground concerning the error of law or fact by the determining authority is not explicitly provided by the recast Qualification Directive, which could mean it falls under the remit of domestic legislation. However, the recast Asylum Procedures Directive refers, in its Article 44, to situations in which "*new elements or findings arise indicating that there are reasons to reconsider the validity of his or her international protection*".

The possible application of EU asylum legislation on this ground was the subject of a preliminary ruling before the Court of Justice of the EU (hereafter CJEU).<sup>34</sup> On 28 December 2017, the Austrian Supreme Administrative Court lodged a preliminary ruling before the CJEU regarding the possibility for national authorities to revoke subsidiary protection status due to the authorities' knowledge of the circumstances which led to the grant of a subsidiary protection having changed. The Court ruled that if national authorities have new information which establishes that a person does not fulfil the conditions to keep the subsidiary protection status, the subsidiary protection status must be revoked. The fact that the error which led to the granting of subsidiary protection was not attributable to the person does not change the fact that the person is not eligible for this status. In its reasoning, the Court also referred to UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status which considers that, in the same situation, the decision granting refugee status must be annulled.

However, the Court also noted that, although the revocation of the status is mandatory in these circumstances, this does not imply the loss of any right of residence in the Member State concerned nor that the person can be deported without further assessment of the personal circumstances (e.g. examination of family and private life). Additionally, this does not prevent a person applying for another type of protection outside the scope of EU law.

<sup>29</sup> UNHCR, Note on Cancellation of Refugee Status, *Ibid.*

<sup>30</sup> UNHCR, Note on Cancellation of Refugee Status, *Ibid.*

<sup>31</sup> UNHCR, Note on Cancellation of Refugee Status, *Ibid.*

<sup>32</sup> Article 14(3)(a) of the recast Qualification Directive provides that Member States "shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if after he or she has been granted refugee status, it is established by the Member State concerned that: (...) (a) *he or she should have been or is excluded from being a refugee in accordance with Article 12*".

<sup>33</sup> Article 14(3)(b) of the recast Qualification Directive provides that Member States "shall revoke, end or refuse to renew the refugee status of a third-country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body if after he or she has been granted refugee status, it is established by the Member State concerned that: (...) (b) *his or her misrepresentation or omission of facts, including the use of false documents, was decisive for the granting of refugee status*"; See also UNCHR, Handbook, 2011, paragraph 117. See EASO, Ending international protection: Articles 11, 14, 16 and 19 of the Qualification Directive, in particular chapter 5.2.

<sup>34</sup> See the Opinion of the Advocate General in case C-720/17, *Mohammed Bilali v. Bundesamt für Fremdenwesen und Asyl*, issued on 24 January 2019, ECLI:EU:C:2019:63. The CJEU issued its ruling on the 23 May 2019, ECLI:EU:C:2019:448.

# 2. OVERVIEW OF NATIONAL POLICY CONTEXTS AND DEBATES

This section provides an overview of recent debates in Member States, Norway and Switzerland on the travels of BIPs to their country or origin, as well as legal and policy changes implemented in these countries (section 2.1). This

section also examines available information on the number of such beneficiaries travelling to their countries of origin based on existing public data at European and national level (section 2.2).



## 2.1. DEBATES AT NATIONAL LEVEL

Out of 26 States participating in this study, six EU Member States, Norway and Switzerland listed BIPs travelling to their country of origin as an emerging policy priority.<sup>35</sup> Each of these reported that the topic had featured in public debates over the last few years, and as early as 2015 for Switzerland. For example, the issue of BIPs travelling to their country of origin was raised during EU<sup>36</sup> and national parliamentary sessions in Austria,<sup>37</sup> Belgium,<sup>38</sup> the Netherlands,<sup>39</sup> and Switzerland.<sup>40</sup> The topic also featured in parliamentary sessions in Finland<sup>41</sup> and Luxembourg,<sup>42</sup> yet authorities in these Member States did not attach the same level of policy priority to this topic.

The issue was also the subject of debate in news articles and other forms of media. For instance, an article on refugee Eritrean nationals residing in Europe who had allegedly travelled back to Eritrea sparked a national debate in the Netherlands<sup>43</sup> and Switzerland.<sup>44</sup> The debate centred on whether individuals enjoying refugee protection were really at risk of persecution in their country of origin if they could return for 'leisure' and whether they still qualified for protection. Media reports in the Netherlands reported that these refugees would travel to Eritrea through neighbouring Member States. In Switzerland, further information indicated that the Eritrean nationals in question returned to Eritrea after they had received Swiss citizenship, thus no longer being BIPs. In Germany, the case of a Yezidi woman who travelled to Iraq was the subject of public debate. The woman was enslaved by the Islamic State (IS) until she managed to flee from Iraq. After having been granted protection in Germany,

she met her IS persecutor in Germany and returned for several months to Iraq out of fear before travelling to Germany again.

In most States where the topic of BIPs travelling back to their country of origin was discussed,<sup>45</sup> changes to policy, administrative practices and, in some States, even legislative changes were subsequently made.

In terms of changes to administrative practices, the Ministry of Justice and Public Security of Norway issued specific instructions to the Directorate of Immigration and the Directorate of the Police to open a case on revocation of residence permits and refugee status if the refugee voluntarily travelled to his or her country of origin. Similar changes in practice involving stronger cooperation between migration authorities, including municipalities and embassies, and the border police were reported by Belgium, Bulgaria and Poland. Belgium and Switzerland created specific offices within the national asylum and migration authorities, responsible for mapping BIPs travelling to their country of origin as well as centralising information, while Poland set up a "deprivation working group". Moreover Belgium, Germany, the Netherlands and Switzerland established bilateral cooperation agreements to collect and share information on the movements of BIPs, as it was observed that some would travel to their country of origin via airports in neighboring States.

35 AT, BE, DE, IT, NL, SK, CH and NO.

36 Parliamentary question by Ms Helga Stevens (N-VA / ECR), nr. P-002698-18: <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=P-2018-002698&language=SV>.

37 Federal Ministry of the Interior, Beantwortung der parlamentarischen Anfrage betreffend „Heimaturlaub von Asylberechtigten und Asylwerbern“ 9978/J vom 15. Juli 2016, 9545/AB (XXV.GP), p. 1, available at [www.parlament.gv.at/PAKT/VHG/XXV/AB/AB\\_09545/imfname\\_559176.pdf](http://www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_09545/imfname_559176.pdf) (accessed on 31 October 2018).

38 Parliamentary question by Ms Helga Stevens (N-VA / ECR), nr. P-002698-18: <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=P-2018-002698&language=SV>.

39 References to NL Parliamentary questions: Appendix to the Proceedings, session year 2016-2017, no. 1789; Appendix to the Proceedings, session year 2016-2017, no. 1790; Appendix to the Proceedings, session year 2016-2017, no. 1788.

40 CH Parliamentary questions references: 16.3666 Ip. Steinemann; 16.3398 Ip. Steinemann; 15.3953 Mo. Gerhard Pfister; 15.3844 Mo. SVP; 15.3803 Mo. FDP.

41 Finnish Parliament: written question 614/2012 vp.

42 Parliamentary question n° 3088 of 21 June 2017.

43 De Telegraaf. (2017). Zorgeloos in Eritrea (in Dutch). 30 March 2017, to be consulted on <https://www.telegraaf.nl/nieuws/97356/zorgeloos-in-eritrea>.

44 Die Weltwoche, 'Ferien in Eritrea', 1 December 2016, (available at: <https://www.weltwoche.ch/ausgaben/2016-48/artikel/ferien-in-eritrea-die-weltwoche-ausgabe-482016.html>); NZZ am Sonntag, 'Auf Party in Eritrea: Schlecht fürs Leben. Aber gut für Ferien', 15 January 2017, p. 5 (available at: <https://nzzas.nzz.ch/gesellschaft/auf-party-in-eritrea-schlecht-fuers-leben-aber-gut-fuer-ferien-ld.1085411?reduced=true>); Basler Zeitung, 'Verbotene Heimaturlaube: Wie Flüchtlinge die Reisen in ihre Herkunftsstaaten rechtfertigen', 12 March 2018 (available at: <https://www.bazonline.ch/schweiz/standard/fluechtlinge-auf-heimaturlaub/story/28736577>); Basler Zeitung, 'Hunderte von Eritreern fliegen heim', 24 January 2017 (available at: <https://www.bazonline.ch/schweiz/standard/eritreer-machen-heimaturlaub/story/28502813>); Tages Anzeiger, 'Flüchtlinge müssen Heimreise erklären, kein generelles Reiseverbot', 12 June 2018 (paper version only);

45 AT, BE, DE, FI, HU, IT, NL, SK CH and NO.

Austria, Switzerland and Italy reported on recent legislative changes. In Austria, following a change introduced by the Act Amending the Aliens Law of 2018, travelling to the country of origin was defined as a specific indication initiating the withdrawal procedure. The Italian government also passed a new Decree-Law in 2018 which explicitly provided that the return of a BIP to his/her country of origin could constitute a ground for cessation of protection. In Switzerland, following wide public and parliamentary debates, the legislation was changed to place the burden

of proof onto refugees: they now need to provide evidence that their travel to the country of origin was not voluntary (e.g. motivated by the situation of a dying family member). Swiss legislation restricted refugee travels to their country of origin and, as of 2020, travels to neighbouring countries of the country of origin will also be considered. This will be the case where travels to neighbouring countries would show there was a reasonable suspicion that they were made to bypass the restriction to travel to the country of origin.

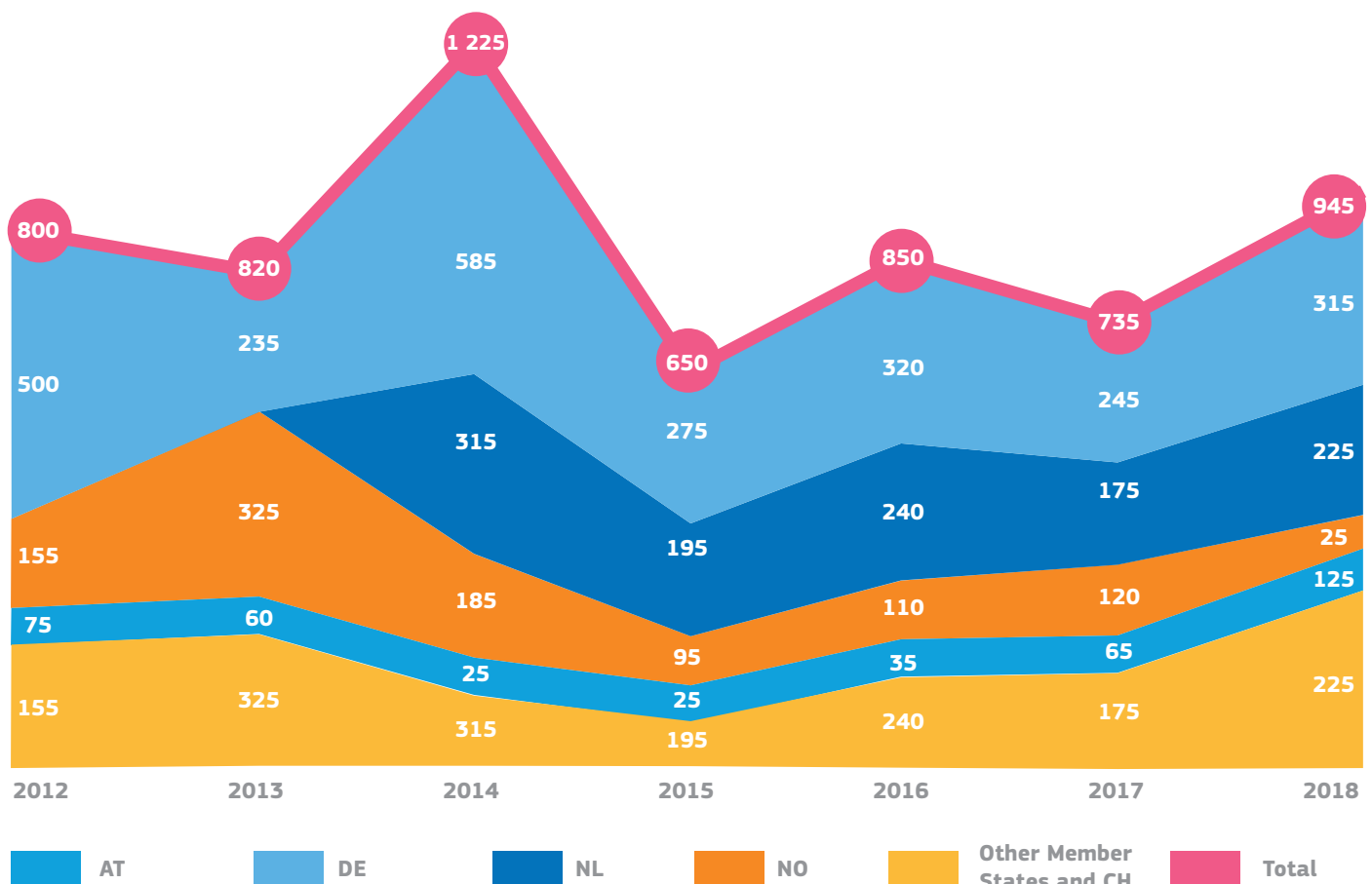


## 2.2. SCALE OF BIPS TRAVELLING TO THEIR COUNTRY OF ORIGIN

Eurostat collects data on the number of decisions to withdraw international protection adopted by Member States, Norway and Switzerland. This data is subject to limitations as it is not disaggregated by reason of withdrawal and thus does not provide information on whether such withdrawals were made for reasons relating to travels to or contacts with authorities of the country of origin.

Between 2012 and 2018, less than 1 300 final withdrawal decisions per year were issued in Member States, Norway and Switzerland (Figure 1), with the most decisions adopted by Austria, Germany, the Netherlands, and Norway. After reaching a spike of 1 225 decisions in 2014, the trend in the number of withdrawal decisions is increasing from 650 decisions in 2015 to 950 in 2018. A majority of other Member States did not report withdrawal decisions of international protection from 2012 to 2018 to Eurostat.<sup>46</sup>

**Figure 1: Number of final withdrawal decisions of international protection for all reasons in the EU, Norway and Switzerland (2012-2018)**



Source: Eurostat, decisions withdrawing status granted as final decision by type of status withdrawn Annual data (rounded), [migr\_asywifna], last accessed 31 January 2019.

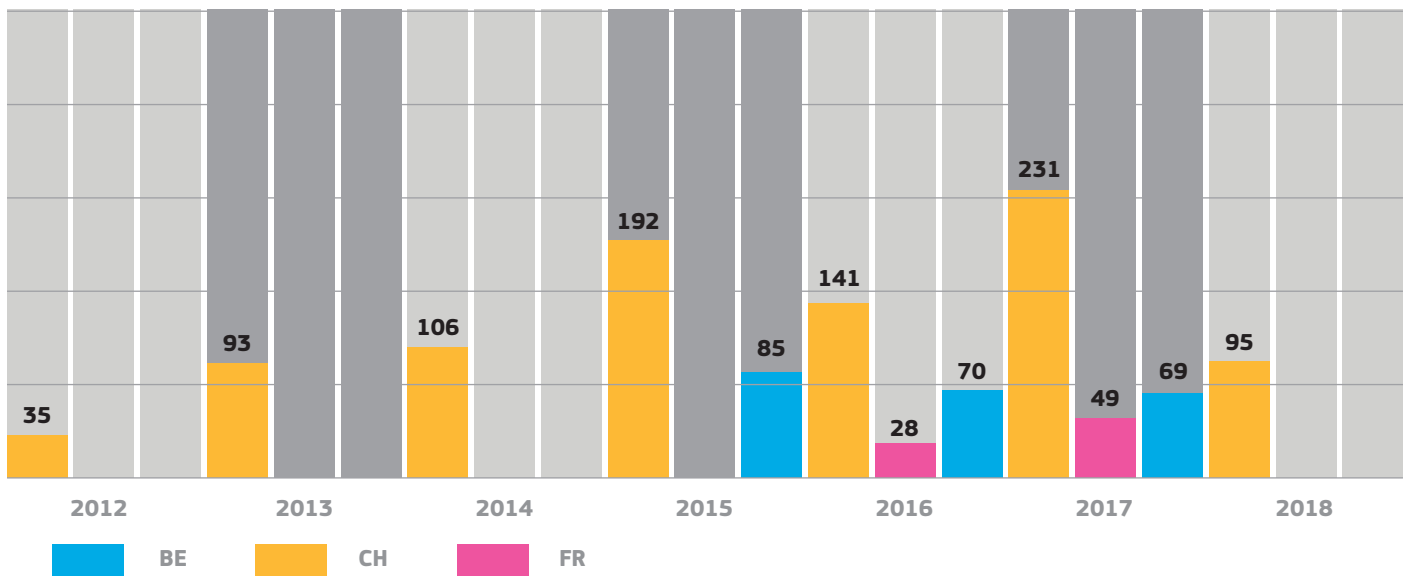
Note: 'Other Member States' refers to data from BE, BG, CY, CZ, DK, EE, IE, EL, ES, FI, HR, IT, HU, MT, LV, LT, LU, PL, PT, RO, SI, SK, SE and UK. Out of these, BG, CY, EE, IE, EL, ES, HR, IT, MT, LV, LT, LU, PL, PT, RO, SI, SK, FI, SE did not report withdrawal decisions. No data on withdrawal decisions were reported to Eurostat by NO in 2018; by CZ in 2012, 2013, 2015, 2018; by FR in 2016 and 2018; by NL in 2012 and 2013; by UK in 2017 and 2018; HU reported withdrawal decisions only in 2015.

<sup>46</sup> BG, CY, EE, IE, EL, ES, HR, IT, MT, LV, LT, LU, LV, PL, PT, RO, SI, SK, FI and SE.

At national level, little public data is available on the actual number of withdrawals based on cessation grounds, or following a BIP travelling to or contacting authorities of the country of origin. Out of all States participating in this study, only Belgium, France and Switzerland reported complete data on the number of refugee statuses ceased due to

voluntary re-availment of the protection of the country of origin since 2012 (see Figure 2). In Belgium, in 2017, the international protection status of 49 persons was ended (final decisions) following travels to the country of origin,<sup>47</sup> and in Switzerland this number reached a peak in 2017 at 231 decisions.<sup>48</sup>

**Figure 2: Number of cessations of refugee status because of voluntary re-availment of the protection of the country of origin adopted in Belgium, France and Switzerland (2012-2018)**



Source: EMN NCP reports.

Note: data from 2012 until 30 June 2018.

Other Member States cited the near impossibility to monitor the number of BIPs travelling to their country of origin, as it was easily dissimulated and BIPs could travel to their country of origin from a different State than the State which originally granted them protection.<sup>49</sup> Thirteen Member States did not specifically monitor BIPs travelling to their country of origin nor had data on this issue.<sup>50</sup> For instance, Ireland and Luxembourg did not collect such data as they do not have a system of exit controls at the border.<sup>51</sup>

Austria, Belgium, Italy and Norway kept track, to a certain extent, of cases of BIPs travelling to their country of origin by monitoring border crossings<sup>52</sup> or the number of cases referred to national authorities for consideration to initiate

cessation due to such travels. As an example, Belgium also recorded since 2016 the number of requests to end protection status for reasons of travelling to the country of origin put forward by the Immigration Office towards the Commissioner General for Refugees and Stateless Persons (CGRS).<sup>53</sup>

Overall, the exact number of BIPs travelling to their country of origin is unknown, while the number of withdrawals of international protection status and whose protection status was ceased and withdrawn as a result prompted by those travels remains low throughout the EU Member States, Norway and Switzerland.

<sup>47</sup> The most important nationalities issued withdrawal decisions based on voluntary re-availment in Belgium between 2012 and 2017 were nationals of Afghanistan and Iraq.

<sup>48</sup> The top three nationalities issued withdrawal decisions based on voluntary re-availment were nationals of Vietnam, Iraq and Bosnia and Herzegovina.

<sup>49</sup> BG, CZ, NL and LU.

<sup>50</sup> CY, CZ, EE, ES, FI, HR, HU, IE, LT, MT, LU, SE and UK.

<sup>51</sup> In LU, the only external border crossing point is the international airport in Fidel; third-country nationals willing to travel abroad (e.g. country of origin) can do so by using the low cost airlines operating from neighbouring States (Belgium, France or Germany).

<sup>52</sup> Austria recorded a total of 36 BIPs travelling to their country of origin in 2015, 171 BIPs in 2016, 97 BIPs in 2017 and 32 BIPs in the first half of 2018.

Italy recorded a total of 2133 border crossings by BIPs between September 2017 and 31 October 2018, out of which 618 were travelling to their country of origin and 1515 were returning to Italy.

<sup>53</sup> In 2016, the Immigration Office submitted 56 requests, in 2017 – 136 requests, and 113 requests in the first half of 2018.



# 3. THE POSSIBLE CESSATION OF INTERNATIONAL PROTECTION DUE TO TRAVEL TO AND/OR CONTACT WITH NATIONAL AUTHORITIES OF THE COUNTRY OF ORIGIN

This section provides information on BIPs contacting authorities of their country of origin, followed by BIPs travelling to their country of origin, and the possible cessation of their protection status as a result of such actions. This section examines first the legal grounds most frequently used where contacts with authorities and/or travels to the country of origin occur, namely re-availment of protection of the country of origin and/or re-establishment in the country of origin. It then analyses the circumstances assessed by national authorities and, lastly, the extent to which they are considered to amount or not to cessation.

Additionally, and where appropriate, a distinction between refugees and BSPs is highlighted. As set out in section 1.2.2, BSPs do not have the same limitations framing their contacts and/or travels to the country of origin, and the recast Qualification Directive (Article 16) leaves a larger margin of discretion to Member States to interpret whether

*“the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required”*. All Member States transposed Article 16 in their legislation with the exception of Cyprus, where this Article is nonetheless considered in practice by national authorities in cases of cessation applicable to BSPs.<sup>54</sup>

The specifics of the national frameworks in Bulgaria, France, Hungary, the Netherlands<sup>55</sup> and Norway (the latter not being bound by the Qualification Directive’s provisions) should be brought forward in this context, as these States apply (nearly) the same cessation provisions to refugees and BSPs. Switzerland, also not bound by EU’s asylum acquis, does not have a concept of subsidiary protection but rather a form of national protection and therefore not reported in this study.<sup>56</sup>



## 3.1. BIPS CONTACTING AUTHORITIES OF THE COUNTRY OF ORIGIN

In the context of this study, BIPs’ contacts with authorities of their country of origin – in the State which granted protection, such as embassies or other official representations of the country of origin – are considered as acts that may amount to re-availment of protection of the country of origin and therefore justifying cessation of their protection status.

While certain circumstances may be viewed as a preparation of future travel to the country of origin or provide an indication that such travel occurred (e.g. in the case of obtaining a renewal of a passport or of a visa to travel to the country of origin), other circumstances are generally not considered as leading to cessation (e.g. in the case of obtention of necessary administrative acts such as birth certificates).

### 3.1.1. Legal grounds for cessation of international protection prompted by contacts with authorities of the country of origin

In the case of refugees, a majority of Member States, Norway and Switzerland reported that contacting official authorities of the country of origin could lead to the cessation of refugee status. This was generally based on specific provisions in national legislation governing cessation, in particular voluntary re-availment of protection of the country of origin,<sup>57</sup> as well as in administrative procedures or practices,<sup>58</sup> and in national case law.<sup>59</sup> Other Member States did not regulate nor provide guidance regarding the conduct of contacting authorities of the country of origin.<sup>60</sup>

<sup>54</sup> In Cyprus, Article 16 of the recast Qualification Directive is currently being formally transposed in national law. In practice however the provisions of Article 16 are taken into consideration in cases of cessation applicable to BSPs.

<sup>55</sup> In the Netherlands, this is due the ‘single status’ approach implemented, whereby national legislation makes a distinction between beneficiaries of international protection based not on the grounds of protection but on the type of residence permit issued: fixed period or indefinite period. Accordingly, BIPs with a residence permit with a fixed period may see their residence permit ceased on the reason that the ‘the ground for the issuing of the permit has ceased to exist’. BIPs with a residence permit for an indefinite period have a higher level of protection as the aforementioned ground does not exist for this type of permit.

<sup>56</sup> It is a form of national protection status (“*vorläufige Aufnahme*”).

<sup>57</sup> AT, BE, CY, CZ, DE, EE, FI, FR, HU, IT, LV, LT, MT, NL, PL, PT, SE and SK.

<sup>58</sup> CY, HU, LT, LU, MT, NL, PL, PT, SE, SK and CH.

<sup>59</sup> BE, DE, FI and FR.

<sup>60</sup> BG, ES, HR, IE, UK and NO.

However, contacting national authorities was also subject to exceptions in eight Member States and in Switzerland.<sup>61</sup> In these States, certain forms of contact, that would usually trigger a reassessment of refugee protection, formed an exception due to specific circumstances linked to the grounds which led to issuing refugee protection. Exceptions were mainly applied in cases where the fear of persecution emanated not from the national authorities of the country of origin but rather from non-State actors, such as terrorist groups operating in the country of origin. Contacts with authorities of the country of origin would generally not lead to cessation (see sections 3.1.2 and 3.1.3).

In five Member States,<sup>62</sup> BSPs contacting authorities of their country of origin would not lead to cessation, either due to a lack of specific provisions in national legislation and/or cases pointing to this outcome. However, in nearly half of all Member States participating in this study, contacts with authorities could lead to cessation, at least in theory.<sup>63</sup> In these Member States, cessation would be based on general grounds of ceasing subsidiary protection status: in cases where circumstances which granted subsidiary protection status have ceased or suggest that the protection is no longer needed, as provided in Article 16 of the recast Qualification Directive.

### 3.1.2. Circumstances leading to re-availment of protection of the country of origin

#### Refugees

When refugees contact official authorities of their country of origin such as consulates and embassies (e.g. visits in person or other forms of contacts) for various reasons (e.g. requesting of official documents), these acts may imply an intention to re-avail themselves of the protection of the country of nationality, as set out in the cessation grounds under Article 11(1)(a) (concerning refugee protection) of the Qualification Directive and Article 1(C) of the 1951 Refugee Convention.

Obtaining the issuance or renewal of a passport was considered as the most contentious action, with 21 Member States, Switzerland and Norway considering these actions to potentially imply re-availment of protection of the country of origin (Figure 3).

The issuance or renewal of a passport by authorities of the country of origin and whether it could or could not lead to re-availment of protection must firstly consider the full circumstances of an application for international protection. In the case of an application for refugee status, individuals are generally requested to submit the original passport (i.e. issued by the country of origin) with their application, if they have one. These are then kept by the asylum authorities during the asylum procedure. If the applicants for refugee protection need their original passport during this period,

some Member States allow them to request the responsible authorities to return it.<sup>64</sup>

The conditions for subsequent return of the (original) passport at the end of the application procedure may determine whether, once a (positive) decision on the application is taken, a request for a new passport to authorities of the country of origin is legitimate or not.

Once the decision to grant refugee protection has been taken, States may decide to retain the original passport or to give it back to the recognised refugee. Most Member States, Norway and Switzerland reported that they kept the passport after the (final positive) decision granting refugee status.<sup>65</sup> Out of these, eight Member States and Norway foresaw the possibility for refugees to collect it upon request.<sup>66</sup> For example, in Finland, when collecting their original passport, BIPs must return their (refugee) travel document (see also section 4).<sup>67</sup> In Belgium, a refugee will be asked by national authorities to explain the circumstances of the request. Similarly, Cyprus and Latvia highlighted that the (written) application must include the reason(s) for requesting it back.

Additionally, as noted by three Member States, Norway and Switzerland,<sup>68</sup> a request of the original passport from the authorities State of protection, after a positive decision on an application for international protection was issued, could attract the attention of its competent authorities and initiate a reassessment of the individual's refugee status.

In contrast, in Spain, no specific procedure was established to request the original passport, and Sweden indicated that national authorities had no grounds to refuse this type of request. In all these countries, the authorities assessed the requests on a case-by-case basis.

Seven Member States reported that the original passport is returned to the individual when it was no longer needed for the asylum procedure<sup>69</sup> or after the positive decision.<sup>70</sup>

Fourteen Member States, Norway and Switzerland regarded frequent contacts with national authorities over a certain period of time, as well as requesting of administrative documents as a possible indicator of re-availment (Figure 3).

In seven Member States,<sup>71</sup> other circumstances were also taken into account. For instance, in Finland, requesting and obtaining a visa to enter the country of origin was treated equally in Finnish law as the renewal of a passport.

61 BE, CY, DE, FI, LT, MT, NL, UK and CH.

62 ES, HR, LU, LV and UK.

63 AT, BE, CZ, CY, DE, EE, FI, FR, IE, IT, LT, MT, SK and SE

64 EE, the applicant must always state the purpose for which the document is needed.

65 BE, CY, CZ, ES, FI, FR, HR, HU, IT, LU, LV, SE, SK, UK, CH and NO.

66 BE, CY, ES, FI, HR, LV, SE, SK and NO.

67 The obligation to return the refugee travel document was not explicitly stated in legislation but authorities interpreted the obligation to hand in their original passport when given a refugee travel document.

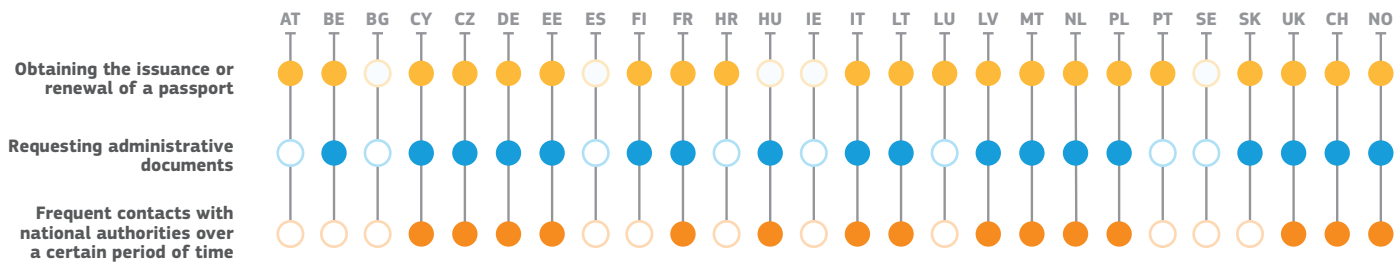
68 BE, FI, SE, CH and NO.

69 AT.

70 BG, DE, EE, LT, PL and NL.

71 BE, FI, LV, NL, PL, SK, and UK.

**Figure 3: Types of contacts with authorities of the country of origin which may lead to re-availment of protection of the country of origin**



Source: EMN NCP reports

Note: Fully coloured circles indicate States where contacts with authorities of the country of origin as a possible indicator of re-availment of protection of the country of origin

### Beneficiaries of subsidiary protection

With regards to BSPs, in eight Member States,<sup>72</sup> solely contacting authorities of the country of origin was not sufficient to trigger a reassessment of their protection status. On the contrary for example in Luxembourg, BSPs were expected to produce a national passport to receive protection and related travel documentation, therefore they were encouraged to contact national authorities of their country of origin, unless the procedure for granting and/or renewing a national passport was unduly long or unreasonably difficult.

In 14 Member States, the act of BSPs contacting authorities of their country of origin, to obtain or renew a passport or requesting other administrative documents, could initiate reassessment of subsidiary protection based on cessation grounds.<sup>73</sup> As in the case of refugees, Member States emphasised that contact with authorities of the country of origin, when known to relevant authorities of Member States, could generally be used to reassess protection but would not automatically lead to cessation.

### 3.1.3. Assessment of the contacts with authorities of the country of origin and challenges

Contacting official authorities could lead to a (re)assessment of the protection status based on these cessation grounds in most of the States participating in this study. More specifically, the circumstances around this contact were carefully examined by national authorities to identify whether the contact could be considered a real attempt of the persons concerned to re-avail themselves of the protection of the country of origin.

### Refugees

Thirteen Member States,<sup>74</sup> Switzerland and Norway used the UNHCR guidelines<sup>75</sup> for guidance on the voluntary re-availment of the protection of the country of nationality. Finland and Latvia also used EASO guides and handbooks.<sup>76</sup>

<sup>72</sup> CY, ES, IE, LU, LV, HR, PL and UK.

<sup>73</sup> AT, BE (in theory), CZ, DE, EE, FI, FR, HU, IE, IT, LT, MT, SE and SK.

<sup>74</sup> BE, CY, DE, EE, FI, HU, IT, LV, LT, LU, MT, NL, SE, CH and NO.

<sup>75</sup> E.g. guidelines contained in UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, Reissued December 2011, available at: <https://www.unhcr.org/publications/legal/3d58e13b4/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>. For example, Italy makes use of the 'Operational guidelines for Territorial Commissions for the assessment of International Protection', a recently revised version in collaboration with UNHCR and published in July 2018, which also applies to the assessment of contacts with countries of origin and of travels to countries of origin.

<sup>76</sup> The EASO End of Protection module and handbook, more information to be found at: <https://training.easo.europa.eu/lms/> and the EASO Practical Guide on Exclusion, January 2017, available at: <https://www.easo.europa.eu/sites/default/files/EASO%20Practical%20Guide%20-%20Exclusion%20%28final%20for%20web%29.pdf>.

<sup>77</sup> AT, BE, CY, DE, EE, FI, IT, LT, LV, MT, PL, SK, UK and CH.

<sup>78</sup> DE, FI, SE, CH and NO.

<sup>79</sup> FI and NO.

According to UNHCR guidelines, the assessment on whether a refugee status can be ceased on grounds of re-availment of protection should draw a distinction between actual re-availment and occasional and incidental contacts with national authorities (see Introduction, section 1.2.2).

In line with these guidelines, most of the Member States and Switzerland<sup>77</sup> sought to establish whether the refugee's intention for the contact was to re-avail him or herself or whether the purpose of the contact was simply to obtain official documents from the country of origin. Germany for example aligned with these guidelines by tolerating contact with authorities of the country of origin if it was a 'technical' contact, i.e. a contact to obtain official documents, while other types of contact could be considered as re-availment.

Additionally, competent authorities in Germany, Finland, Sweden, Switzerland and Norway<sup>78</sup> first assessed whether the requesting of a passport of the country of origin was voluntary, i.e. not linked to any bureaucratic procedures in the State of protection, in order to determine whether there had been re-availment. For example, in Switzerland, national authorities did not consider as re-availment when refugees contacted authorities of their countries of origin to receive documents requested by the Swiss authorities for naturalisation proceedings, as the contact was not considered to be voluntary. A similar case took place in Finland, where Congolese refugees were required to obtain Congolese passports to open bank accounts and apply for an identity card in Finland. As they had not established any further contact with the Congolese authorities and had not returned there, no procedure to cease their protection status was initiated.

In Finland and Norway, the request for a passport could be considered as re-availment of protection if the request was effectively granted and a passport issued or renewed,<sup>79</sup> as this indicated that the country of origin was willing to offer protection to the applicant.

### Assessment of a refugee using his original passport to travel to the country of origin in Finland

In Finland, an Iraqi refugee travelled to the Kurdistan region of Iraq with the existing Iraqi passport (i.e. a passport possessed before being granted a refugee status in Finland). However, the travel did not lead to the cessation of the refugee status as the use of an existing passport was not considered to be equal to obtaining a new passport which would have been read as a sign of re-availment. Among other points, this case clarified that only obtaining 'new' passports from countries of origin after being granted refugee status can lead to cessation of status, but that the possession of passports of the country of origin before being granted the refugee status was not problematic.

National authorities in Luxembourg did not consider the number of contacts with national authorities nor the type of requests, but rather whether those contacts demonstrated an absence of fear of persecution from the refugee concerned. In contrast, in France, all the acts mentioned in section 3.1.2 could be considered to constitute re-availment of protection, unless there was a 'compelling need' for contact with the authorities of the country of origin. An example of this would be requesting a passport to obtain without delay an identity document or if children wanted to join a parent in their country of origin.

Only Hungary considered any type of contact with authorities of the country of origin as re-availment of protection of the country of origin. Consequently, where Hungarian authorities become aware of the contact, this would automatically lead to cessation of refugee protection.

National authorities also encountered challenges when handling cases of refugees contacting authorities. Challenges included assessing the nature and circumstance of the contact and establishing the reason for this contact.<sup>80</sup> Identification of such cases has been another challenge, as it has been difficult to detect when refugees had contacted the authorities of the country of origin and (subsequently) travelled to their country of origin,<sup>81</sup> given that this phenomenon was not monitored in most countries (see section 2). Another challenge identified by the Netherlands was that refugees which made contact with the authorities of their country of origin were often not aware of the consequences that this could have on their refugee status (see section 4).

### Beneficiaries of subsidiary protection

Austria, Czech Republic and Finland noted that cases where a BSP requested and subsequently obtained a passport from national authorities could meet the necessary threshold to prove cessation, and even more so if this was followed by travel to the country of origin.

### Assessment of subsidiary protection after obtaining a new passport from the authorities of the country of origin in Finland

In the case of a Chechen person granted subsidiary protection in Finland, the reassessment of protection was initiated after obtaining a new Russian passport and after voluntarily travelling to Russia several times. The Finnish Immigration Service and the Administrative Court found that considering the fact that the person had obtained a Russian passport, travelled voluntarily to the country of origin and resided there, there were no longer substantial grounds for believing that the appellant would face a real risk of being subjected to serious harm in the country of origin.

In some Member States, the assessment of whether contacts with the authorities of the country of origin could lead to cessation of subsidiary protection looked more at the grounds for subsidiary protection and at the nature of the agent of persecution (State or non-State actors).

As reported by Belgium, Germany and the Slovak Republic, where the 'actor of serious harm' is a non-State entity and the reason for which subsidiary protection was granted was the fact that the authorities of the country of origin were unable to provide protection from the harm, contacting the authorities of the country of origin alone cannot generally lead to ceasing subsidiary protection. However, in case the beneficiary's 'serious harm' was the responsibility of his/her country of origin's national authorities, contacting them could mean that the circumstances which led to granting the status no longer apply and that subsidiary protection is no longer required. In this last scenario, and similarly to the case of refugees, voluntary contacts with representations of authorities of the country of origin (embassies or consulates), and the obtaining of a national passport or a visa to enter the country of origin could trigger a reassessment of subsidiary protection and may lead to the status being ceased.

Furthermore, persons who were granted subsidiary protection based on a "*serious or indiscriminate threat by reason of indiscriminate violence in situations of international or armed conflict*"<sup>82</sup> could come into contact with authorities of their country of origin without it leading to a reassessment of their protection status. In this case as well, authorities of the country of origin are not responsible of the serious harm suffered by the BSP. Subsidiary protection could be ceased based on significant and non-temporary changes of circumstance in the country of origin (and not changes in the personal situation of the BSP concerned).

<sup>80</sup> DE, FI, PL, UK and NO.

<sup>81</sup> AT, CZ, DE, EE, FI, LU, LV, MT, SE, SK, UK and CH.

<sup>82</sup> Article 15(c) of the recast Qualification Directive.



## 3.2. BIPS TRAVELLING TO THEIR COUNTRY OF ORIGIN

Regarding travel outside the State of protection and of the EU altogether, refugees are free to move to other countries, including to return to his/her country of origin.<sup>83</sup> The latter would mean, however, that the circumstances in the country of origin have changed allowing for this return, thus attracting the attention of national authorities who may consider reassessing their protection status (section 3.2.1). There are numerous reasons why BIPs decide to travel to their country of origin (section 3.2.2), with national authorities not having a complete overview of whether such travels actually took place (section 3.2.3). Depending on how complete the information and evidence at hand is, national authorities seek to assess travels to the country of origin on a case by case basis, weighing the different reasons against the assumption that BIPs have re-availed themselves of the protection of their country of origin, have decided to re-establish there or against the assumption that the travel took place under legitimate circumstances (sections 3.2.4 and 3.2.5). In some States, BIPs' travels to the country of origin may be approached under a different ground than cessation, suggesting that international protection was based on misinterpretation or omission of facts on the part of the person concerned (section 3.2.6).

### 3.2.1. Legal grounds for cessation of international protection prompted by travels to the country of origin in national framework

#### Refugees

Irrespective of the degree of permissibility towards refugees travelling to their countries of origin, all Member States, Norway and Switzerland indicated that a potential travel and return to the country of origin could have consequences for the status of the person concerned, namely the reassessment of the reasons for granting protection and which could ultimately lead to cessation.

The most common grounds upon which Member States, Norway or Switzerland based cessation of status arising from travel to the country of origin were voluntary re-availment of the protection of and re-establishment in the country of origin. More specifically:

- In five Member States and Switzerland<sup>84</sup> travel could give rise to cessation on the ground of voluntary re-availment.<sup>85</sup>
- In four Member States<sup>86</sup> reported that travel could give rise to cessation on grounds of re-establishment in the country of origin.<sup>87</sup>
- Ten Member States reported that travel could give rise to cessation on the grounds of either re-availment or

re-establishment, depending on the circumstances of each case.<sup>88</sup>

In addition, in five Member States, cessation could also be based on the ground that the circumstances that led to the granting of the status no longer existed.<sup>89</sup> The possible consequences of refugees travelling to the country of origin on their status were generally stated in national legislation and/or detailed in national administrative practice. Seven Member States reported that their laws explicitly mentioned that travel to the country of origin could lead to cessation of refugee status,<sup>90</sup> while in 16 Member States and Switzerland national provisions only referred to the grounds for cessation without specifying that travel to the country of origin could trigger these.<sup>91</sup> In Switzerland, an amendment to the current law will introduce an explicit reference to travels to the neighbouring countries of country of origin, effective as 2020.

Furthermore, in five Member States, judges have explicitly ruled that travelling to the country of origin may be considered to amount to re-availment and therefore may ultimately lead to cessation.<sup>92</sup>

#### Beneficiaries of subsidiary protection

As set out in sections 1.2.2 and 3.1, BSPs' travels to the country of origin would not automatically lead to cessation of subsidiary protection.

However, as highlighted by Belgium, Germany and the Slovak Republic, the reasoning applied to refugees travelling to their country of origin was also applied to BSPs whose protection was granted on the grounds of serious harm committed by the authorities of the country of origin.

In Belgium, if the initial subsidiary protection status has been granted based on indiscriminate violence in situations of international or internal armed conflict and there has been established proof of travel(s) to the country of origin, national authorities (CGRS) could come to the conclusion that there was an internal flight alternative for the individual concerned, constituting a significant non-temporary change and that the beneficiary of subsidiary protection no longer faced a real risk or serious harm in the country of origin. National authorities would therefore take a cessation decision in such case. National authorities could come to a similar conclusion in cases where the general situation of indiscriminate violence in the country of origin had significantly changed in a non-temporary way and therefore subsidiary protection was no longer required (see section 1.2.2). In both scenarios, the fact that a BSP travelled to his/her country of origin was one element which confirmed the change of circumstances.

Lastly, five Member States indicated that the cessation of subsidiary protection rarely occurred in practice, due to the very low numbers of cases reported or assessed in the

<sup>83</sup> See Article 12(4) of the International Covenant on Civil and Political Rights (which provides that "No one shall be arbitrarily deprived of the right to enter his own country"). Furthermore, national legislation may also provide which countries (thus including third countries) the refugee is allowed to travel to (e.g. in a travel document).

<sup>84</sup> AT, CY, FR, HU and LT.

<sup>85</sup> As per Article 11(1)(a) of the recast Qualification Directive; Article 1C(1) of the Refugee Convention.

<sup>86</sup> HR, ES, LU and SE.

<sup>87</sup> As per Article 11(1)(d) of the recast Qualification Directive; Article 1C(4) of the Refugee Convention.

<sup>88</sup> BE, BG, DE, EE, FI, IE, LV, MT, PL and UK.

<sup>89</sup> BE, CZ, IE, NL and PL. As per Articles 11(1)(e) and 11(1)(f) of the recast Qualification Directive; Articles 1C(5) and 1C(6) of the Refugee Convention

<sup>90</sup> AT, CY, EE, IT, PT, SK and UK.

<sup>91</sup> BE, BG, CZ, DE, ES, FI, FR, HR, HU, IE, LU, LV, MT, NL, PL, SE and CH.

<sup>92</sup> BE, DE, FR, IE and NL.

past years.<sup>93</sup> As a result, less guidance from the courts or administrative practice was available on the approach to be taken by national authorities in these cases.

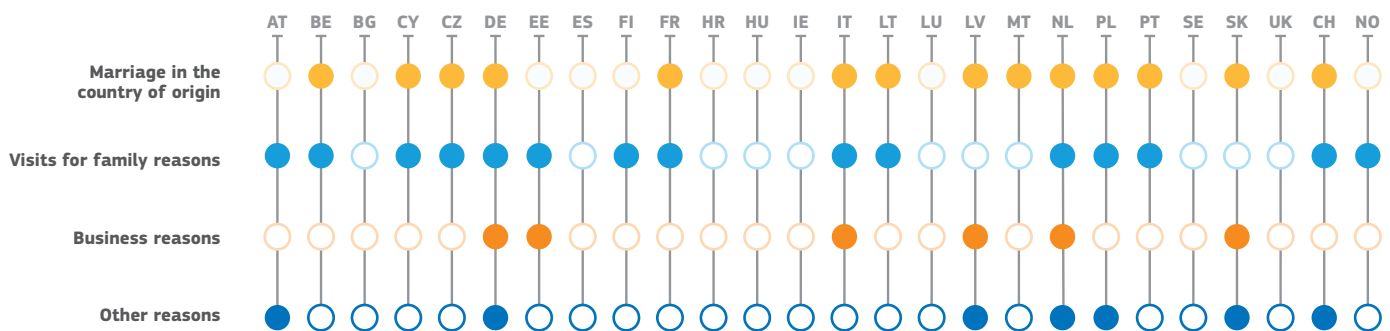
### 3.2.2. Reasons for travelling to the country of origin

Fifteen Member States, Norway and Switzerland reported information on the reasons cited by BIPs to travel to their country of origin.<sup>94</sup> The most common reason to travel stated by BIPs related to family-related issues, such as visits to close relatives – especially seriously-ill relatives

– or funerals. This was followed by marriage in the country of origin, business activities and other reasons (Figure 4).

Other reasons – mentioned by BIPs – included: procurement of documents and other formalities linked to divorce cases,<sup>95</sup> holidays and leisure,<sup>96</sup> and dealing with property issues in the country of origin.<sup>97</sup> The Slovak Republic reported that the most common reason is the desire to return permanently. Germany noted additional range of reasons. These were: helping family members or friends to flee persecution, checking risks to personal security in the country of origin, homesickness and re-traumatisation, discrimination or fear of persecution in Germany after having met (former) agents of persecution there.

**Figure 4: Most common reasons for travel to the country of origin observed by Member States, Norway and Switzerland**



Source: EMN NCP reports

Note: Fully coloured circles indicate States the above-mentioned reasons to travel to the country of origin were observed

### 3.2.3. Information available on BIPs' travels to the country of origin

Authorities in some Member States, Norway and Switzerland observed BIPs travelling to their country of origin, either by using their original passport (if original passport was available), through neighbouring countries or using other mode of entry. Evidence about BIPs travelling to their country of origin may come from various sources, one of them being the monitoring of border crossings (see section 2).

The obligation upon refugees to obtain an authorisation from national authorities before travelling outside the State of protection or obligation to notify such travels was another source of information reported by some Member States, Switzerland and Norway.

More specifically, three Member States and Norway required refugees to actively request an authorisation from national or local authorities to travel to their country of origin.<sup>98</sup> The authorisation could take various forms. In France, Spain and Norway, refugees needed to obtain specific travel documents to travel to their country of origin (e.g. a 'safe conduct' in France), which implied an obligation to inform and obtain an authorisation from authorities. In Norway,

refugees could be issued with an immigrant's passport for a single journey valid for their country of origin in exceptional cases, such as funerals of relatives or visits to family members with an acute and life-threatening illness. In Cyprus, if refugees did not obtain an authorisation to travel to their country of origin, they ran the risk of being refused entry upon return to Cyprus and their travel documents confiscated. It could also lead to possible cessation of their refugee status.

In Belgium, Croatia and Cyprus, refugees are requested to notify authorities of their intention to travel or stay abroad, irrespective of the destination. This notification was an obligation in these Member States, yet refugees did not have to report on their final destination, only their absence from the territory. In Austria, Germany and Norway such obligation to notify also existed, however it was not linked to the refugee status of a third-country national as it was based on legislation relating to social benefits. In Estonia, where the notification was not a legal obligation, no direct consequences were attached if refugees failed to notify, but absence from the territory for more than three months would have a negative impact on their social benefits.

Absence from the territory could not exceed three weeks in Germany, three months in Belgium and six months in Croatia in a given calendar year. In Croatia, if a person

<sup>93</sup> EE, ES, HR, LV and SE.

<sup>94</sup> AT, BE, BG, CY, CZ, DE, EE, FI, FR, IT, LT, LV, MT, NL, SK, CH and NO.

<sup>95</sup> AT, DE and PL.

<sup>96</sup> DE and CH.

<sup>97</sup> DE and LV.

<sup>98</sup> CY, ES, FR and NO.

stayed abroad longer than the allowed duration, s/he might lose his or her right to stay in Croatia and would thus have to regulate his or her stay again upon return.

Regarding BSPs, they were in the majority of cases not obligated to notify nor required to obtain prior authorisation, with the exception of Belgium which applied the same legislative provisions to refugees and BSPs on this point

### BIPs' obligation to notify authorities of travels abroad in Belgium

The obligation to request a specific permission or authorisation to travel to the country of origin existed – although it was not used very often in practice – until mid-2016, after which it was abandoned. The Belgian Commissioner General for Refugees and Stateless Persons (CGRS) argued that the former system lacked a clear legal framework and that it was difficult to assess *a priori* the reasons of the travel to the country of origin. Since 22 March 2018, an obligation to notify the authorities was introduced whereby BIPs need to notify if they intend to stay abroad for over three months. This notification must be done to the local authority, which then informs the Immigration Office, information which could lead to a reassessment of their refugee status.

In addition to information provided by the monitoring of BIPs' travels, prior authorisations and notification mechanisms set up by some Member States, eight Member States and Switzerland also collected data on reasons for travelling to the country of origin.<sup>99</sup> Switzerland stored it in a central database, while others kept it in the person's case file<sup>100</sup> or both.<sup>101</sup>

In some cases, the information contained therein was only partial. For example, in Latvia, the Office of Citizenship and Migration Affairs stored the applications submitted by refugees to obtain their original passport – which states the purpose for which the document was needed – but the authorities did not record information regarding the issuance or return of such document, or whether the person actually travelled. In other cases, like in the Czech Republic, the information is only recorded on an *ad-hoc* basis.

Finally, national authorities in nine Member States and Switzerland have also allocated additional resources to streamline processes and forward relevant information to competent authorities.<sup>102</sup> As an example, Belgium established a specific unit within the Immigration Office in October 2017 to focus on launching the request for the CGRS to reconsider international protection status. This office also collects all available information regarding travels to the country of origin and forwards it to the CGRS, which then takes a decision on whether or not to withdraw international protection status. Likewise, in Switzerland and as of 2015, the State Secretariat for Migration (SEM) set up a reporting office to which the border control authorities, the cantonal police or other local authorities could report cases

of alleged travels of refugees to their country of origin. Every report would be carefully examined by SEM.

### Information available on the reasons to travel to the country of origin to authorities in the Netherlands.

Although the reasons for travelling back to the country of origin are not recorded as a separate file in IND's database (INDiGO), this information tended to be recorded through other means. If BIPs were stopped at the Dutch border or airport for questioning in regards to the travel to the country of origin, they would be asked about their reasons for returning. The Royal Netherlands Marechaussee (the Dutch gendarmerie, usually referred to as KMar) conducts the questioning and, if necessary, a report is made and sent to the IND.<sup>103</sup> This document may be accessed by the IND in the framework of a subsequent reassessment of protection and procedure to withdraw protection. In addition to this, the IND also receives information on the reasons for travelling to the country of origin in writing from the BIPs themselves in which they state their reason for returning. This information is then stored in the electronic file of the individual on INDiGO.<sup>104</sup>

## 3.2.4. Assessment by national authorities of travels to the country of origin

Once information about (possible) travels to the country of origin comes to the attention of the competent authorities, they may or may not be in a position to assess whether or not a reassessment of the protection status is necessary. National authorities face different challenges depending on whether it is a case concerning refugees or beneficiaries of subsidiary protection.

### Refugees

In all Member States, travel to the country of origin could be considered as an indication that one of the grounds for cessation could apply, but that it did not automatically lead to cessation. An exception to that was Hungary, where a trip to the country of origin was sufficient reason to presume that the individual had re-availed him or herself of the protection of his or her country of origin, and travel was considered automatically as a ground for cessation of refugee status. National authorities in Hungary supposed that, should a refugee need to come into contact with family left in his/her country of origin, s/he could get in touch with them through other channels, such as NGOs working there, instead of travelling.

Most Member States have not established a set of formal criteria to assess the voluntariness and intent of the travel. Cases of cessation based on travel were carefully and individually assessed by national authorities to, for example, determine whether the person travelled voluntarily. Authorities in Austria and France have interpreted the concept

<sup>99</sup> BE, CZ, CY, EE, LV, LT, NL, SK and CH (only refugees).

<sup>100</sup> BE, CY, CZ, EE, LV, LT, NL and SK.

<sup>101</sup> EE.

<sup>102</sup> BE, DE, HU, FI, LT, LU, NL, SE, SK and CH.

<sup>103</sup> Additionally, signals of a BIP travelling back to their country of origin also arrive at the border office of the IND at Schiphol ('IND Grenskantoor') and could possibly ask questions, assist the KMar and/or transfer these signals to the the Reassessment Unit (IND).

<sup>104</sup> The database from the IND.

of voluntariness as a lack of coercion or the absence of exceptional circumstances (*force majeure*). The Slovak Republic presumed that refugees' travels to their country of origin were voluntary, claiming that the opposite was virtually impossible to ascertain in practice. Echoing this interpretation to some extent, Luxembourg pointed out that, in practice, it was nearly impossible to determine the reasons for travelling to the country of origin and thus, to prove that BIPs had voluntarily re-established themselves there.

Another criterion reported by Member States was the intent of the travels (see also section 3.2.2). Guidelines to interpret the intent of the travel existed in Malta, where national authorities considered the fact that a person had returned legally and carried out a normal life during the period they stayed in the country of origin constituted a clear indication that they had re-established in the country. In Germany, commentaries to the Asylum Act have helped interpret the law, clarifying that under specific circumstances, travels to the country of origin may be an indication of re-availment or re-establishment while at the same time listing several circumstances indicating that the BIPs would have not re-availed themselves of the protection of the country of origin (e.g. travels for reasons of moral duty, or mere visiting stays in the country of origin). In other Member States, short stays in the country of origin could be permitted and as such, not lead to cessation of status.

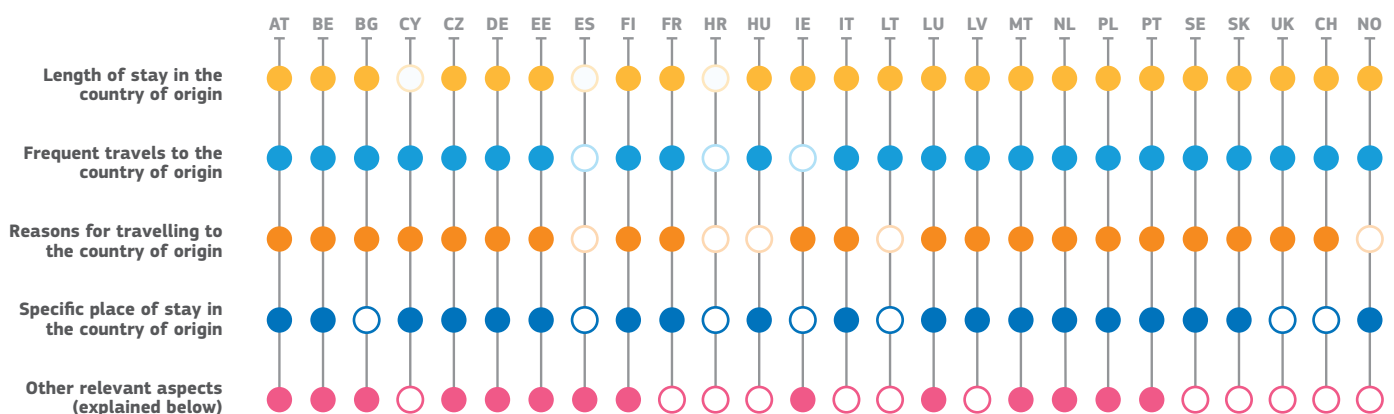
Additionally, Germany, Poland and Switzerland also considered a third element during this process, namely whether the country of origin was willing to and could effectively provide protection to the individual.

Other types of information used by Member States to determine whether to cease status are presented in Figure 5. It shows that some circumstances are taken into account by a majority of national authorities, indicating a common understanding of the conditions required for an assessment of cessation of an international protection status.

Other elements which could be taken into account further included:

- The time-span between the granting of refugee status and the return to the country of origin;<sup>105</sup>
- The grounds upon which asylum was granted and the relationship with the actor of persecution;<sup>106</sup>
- Where the person indicated visiting an ill-relative, authorities in Belgium will look into the necessity for the person to travel to the country of origin (i.e. if there was no other person who could take care of the ill-relative);
- The mode of entry (i.e. if they entered legally, it can be assumed that they made their presence known to authorities);<sup>107</sup>
- The behaviour and activities the persons carried out during their stay, including if they took up employment<sup>108</sup> or if they showed themselves in a public space;<sup>109</sup>
- The circumstances during the stay (e.g. with whom they stayed);<sup>110</sup>
- Forecast of possible future travels to the country of origin;<sup>111</sup> and
- Previous cases of cessation opened against the individual seen, amongst others, as an indication for repeated travel.<sup>112</sup>

**Figure 5: Circumstances considered when assessing cessation of protection following travels to the country of origin**



Source: EMN NCP reports

Note: Fully coloured circles indicate States which consider the above mentioned circumstances when assessing cessation of protection

<sup>105</sup> BE and NL.

<sup>106</sup> BE, FI, MT, NL and PL.

<sup>107</sup> BE, MT and NL. Also DE, however with the limitation that a distinction is made if the actor of persecution was a non-State actor in the first place.

<sup>108</sup> AT.

<sup>109</sup> BE, DE, NL and NO.

<sup>110</sup> BE, DE, FI, NL and PL.

<sup>111</sup> PL.

<sup>112</sup> DE.



### Beneficiaries of subsidiary protection

As in the case of refugees, all Member States (with the exception of Hungary) interpreted travel to the country of origin as an indication that cessation could apply but not automatically lead to it. Where possible and available, national authorities would collect additional information on the travel to the country of origin to assess whether circumstances which led to the granting of subsidiary protection had indeed ceased to exist.<sup>113</sup>

Overall, the same circumstances which were considered in the assessment of cessation in the case of refugees were also considered for BSPs. Particular attention was paid in Belgium and the Slovak Republic to the length of stay and the specific region in the country of origin where BSPs travelled to. Travel to a safer region of the country of origin, where there was no risk of torture, inhuman or degrading treatment or punishment, or no risk of indiscriminate violence or armed conflict could indicate the existence of an internal flight alternative for the person concerned and could warrant the end of subsidiary protection. However, as noted by the Slovak Republic, this was very difficult to verify, as for example a stamp on a BSP's passport would not indicate the region of the travel in the country of origin.

#### Assessment of a BSP travelling to his country of origin in Germany

The foreigners authority (local branch of the Federal Office for Migration and Refugees in the federal States) gained knowledge about the travel of a national of Sri Lanka beneficiary of subsidiary protection to Sri Lanka by a marriage certificate, and informed the Federal Office for Migration and Refugees of this travel. Subsequently the Federal Office for Migration and Refugees which, after an examination of whether the person in question was still at risk of persecution and weighing the fact that the individual had travelled to the country of origin for a (public) marriage celebration, revoked the protection due to a change of circumstances and the conclusion that the person in question did not face persecution in his country of origin.

Following an appeal of this decision before the Administrative Court, this decision was upheld by the Court, which noted that the person, following the issuance of a passport in 2009 and his marriage in the country of origin in 2012 suggested that his return in his country of origin did not put him at risk of serious harm.<sup>114</sup> Additionally, the person concerned confirmed that he was able to enter and leave his country of origin through official means and controls performed at the airport of Colombo, nor did he mention any issues with national authorities during his stay in his country of origin of several weeks.

## 3.2.5. Challenges in assessing cases of cessation

### Refugees

Given the complexity of cessation cases and their potential far-reaching consequences for a refugee, national authorities emphasised the importance of being meticulous during these procedures. In this sense, most Member States reported that they faced challenges when assessing cessation cases based on travel to the country of origin, with only six Member States declaring that no major obstacles had been identified.<sup>115</sup> In some Member States, this was linked to the limited experience with these cases (i.e. only a few cases have occurred),<sup>116</sup> while France attributed it to the fact that cessation clauses were sufficiently clear, as in most cases, they were based on facts that were objectively verifiable. The most significant challenges identified by Member States related to the collection of information and its assessment. Concerning the collection of information, the main challenge identified by 12 Member States and Switzerland related to the difficulties to obtain – undisputable and conclusive – proof that the person had travelled to their country of origin.<sup>117</sup> Other States encountered obstacles due to the fact that refugees often cross the border in a neighbouring country (of the country of origin) or, when travelling to the State of protection part of the Schengen area, through a different State (see section 2).<sup>118</sup> Malta and Poland found it difficult to obtain information on what refugees did during their stay in their country of origin, as they could not enquire with the authorities from these countries directly.<sup>119</sup> Even where national authorities were aware of the travel, the fact that the burden of proof lay with them constituted a challenge.<sup>120</sup>

### Beneficiaries of subsidiary protection

Challenges noted by 11 Member States and Norway on the cessation of subsidiary protection were largely the same as those reported on the assessment of refugee cessation,<sup>121</sup> with however a lesser proportion of Member States reporting such challenges. In this regard, seven Member States indicated a rather limited experience with cessation of subsidiary protection due to the overall limited number of cases assessed by national authorities.<sup>122</sup> Finland observed that as subsidiary protection could be granted on the basis of indiscriminate violence in the country of origin, thus without a more in-depth assessment of individual grounds for protection, national authorities found it challenging to show that a change in individual circumstances would cause the cessation of subsidiary protection.

<sup>113</sup> BE, IT, LV and SK.

<sup>114</sup> Administrative Court of Aachen 2016, 7 K 1690/14.A.

<sup>115</sup> CY, FR, HR, HU and IE.

<sup>116</sup> EE, HU and IE.

<sup>117</sup> AT, BE, BG, CZ, DE, FI, LU, LV, NL, MT, PT, SK and CH.

<sup>118</sup> DE, FI and LU.

<sup>119</sup> As per Article

<sup>120</sup> IT and UK.

<sup>121</sup> BE, BG, CZ, FI, HU, LT, LV, MT, NL, SK, UK and NO.

<sup>122</sup> CY, EE, ES, HR, LT, LV and SE.

### 3.2.6. Other grounds to end international protection prompted by travels to the country of origin

As outlined in the introduction, in addition to cessation, other grounds could be used by Member States to end international protection in case of BIPs travelling to their country of origin.

Seven Member States reported other grounds than cessation to end refugee protection of individuals who travelled to their country of origin.<sup>123</sup> Authorities could end or withdraw the refugee status due to travel to the country of origin as it could indicate that there was a misrepresentation or omission of facts that were decisive to the determination of the refugee status (i.e. the circumstances under which the travel to the country of origin took place contradicted the reasons on the basis of which refugee status was granted). In such cases, the decision to end or withdraw protection would have an *ex-tunc* effect (i.e. from the beginning, see section 1.2.3.).

National authorities in Belgium (the CGRS) could end refugee status if the 'personal conduct' of the refugee

concerned showed a lack of a need for protection from the beginning, namely refugee status granted on unjustified grounds. Finland indicated that this ground was especially relevant in cases when the person travelled back shortly after s/he was granted refugee protection.

In the Netherlands, due to the 'single status' approach concerning BIPs where BIPs with an indefinite period of residence permit could not see their status withdrawn based on cessation grounds, authorities could opt to withdraw their status on this ground instead. However, this ground to withdraw international protection was difficult to apply in practice since a ruling of 2011 by the highest administrative court in the Netherlands had decided that merely returning to the country of origin could not – in principle – lead to the conclusion that incorrect information was provided in the application for international protection and therefore justify withdrawal of protection.<sup>124</sup>

Similar to the ground reported for refugees, five Member States indicated that travel to the country of origin could lead to the authorities withdrawing subsidiary protection status based on an omission of facts or fraud.<sup>125</sup>

<sup>123</sup> BE, EE, FI, IE, LT, LU and LV.

<sup>124</sup> Judgment of the Administrative Jurisdiction Division of the Council of State (ABRvS) of 13 December 2011 (201100110/1/V1). The case involved a refugee who returned to the country of origin (Afghanistan) after the granting of the residence permit. The Court ruled that the burden of proof for the occurrence of a ground for withdrawal lies with the IND and the circumstance invoked by the IND must have already occurred at the time of the decision granting the residence permit. In this case, the return to the country of origin was not considered 'incorrect information' as it had not occurred at the time of the decision granting the residence permit.

<sup>125</sup> BE, FI, IE, LV and SK.

# 4. ADOPTION OF A DECISION TO WITHDRAW INTERNATIONAL PROTECTION AND IMPLICATIONS ON THE RIGHT OF RESIDENCE

Where national authorities consider to have sufficient elements to conclude that the need for international protection has ceased, the recast Qualification Directive requires them to revoke, end or refuse to renew refugee status (Article 14) or subsidiary protection (Article 19). The recast Qualification Directive refers to “*revocation, ending or refusal to renew international protection*” at the same time, accommodating the various concepts and terms used in Member States’ legislation.<sup>126</sup> Indeed, at national level, legislative frameworks may not establish a clear distinction on terms used to designate grounds and the procedure to end international protection (e.g. use of the term ‘revocation’). As the recast Asylum Procedures Directive refers to “*withdrawal*” –as does the proposed Qualification Regulation – it will be used in this section to designate this type of consequences irrespective of the terms used in national legislation.

In this context, a fair procedure implies informing the concerned individuals beforehand of the possible consequences in case of contacts with authorities of or travels to the country of origin (section 4.1). Depending on the

national procedures and frameworks, the need for international protection may be reviewed *ex-officio* by (or at the own initiative of) national authorities, for example during a procedure assessing the application of cessation grounds. This could also be done separately, on a different occasion, for instance as part of a procedure to renew the residence permit of a BIP (see section 4.2).

The procedure to adopt a decision ending international protection follows several procedural safeguards as provided in the recast Asylum Procedures Directive, mirroring those applicable in other administrative and judicial procedures concerning asylum (see section 4.3).

If a decision to withdraw international protection on the grounds of cessation is adopted, this does not necessarily imply that a third-country national loses his or her right of residence on the territory of a 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 (see section 4.4).



## 4.1. INFORMING BIPS ABOUT CONSEQUENCES OF CONTACTING OR TRAVELLING TO THE COUNTRY OF ORIGIN ON THEIR STATUS

Most of the States participating in the study informed BIPs about the potential consequences of either contacting or travelling back to their country of origin on their status.<sup>127</sup> No differences were cited between procedures informing refugees and BSPs with the exception of the means of information shown in Figure 6 below.

The most frequently used channel to communicate the consequences was to indicate this on the refugee travel document (section 4.1.1). Other means of information reported were informing BIPs in writing or orally, either at the moment of issuing the protection status decision or at the request of the BIP him/herself (section 4.2.2).

### 4.1.1. Informing with limitations included on the refugee travel document

Due to the reasons granting refugee status and the more ‘temporary’ nature of a subsidiary protection, the refugees travel outside the State of protection is more precisely framed than for BSPs. This relates for example to the issuance of a specific travel document – sometimes referred to as “blue passport”, which is generally not valid for travel to the country of origin. EU asylum *acquis* does not govern the validity of travel documents and the only guidance is contained in the Refugee Convention and ‘Schedule’, which provides that it must be issued with a validity of one or two years (Article 28 of the Refugee Convention).<sup>128</sup>

<sup>126</sup> See also on this point Hailbronner K. and Thym D. (eds), *EU immigration and asylum law, A commentary*, ed. Hart, Nomos, 2<sup>nd</sup> edition, 2016, Part D, II, Article 14, [MN 1], p. 1227.

<sup>127</sup> AT, BE, CY, CZ, DE, EE, FI, FR, HU, IT, LU, NL, PL, SK, UK, CH and NO.

<sup>128</sup> As established by Article 28 of the 1951 Refugee Convention, refugees have a right to be supplied travel documents by the State which granted asylum. Accordingly, Contracting States shall issue travel documents to refugees “lawfully staying in their territory, for the purpose of travel outside their territory”. This obligation is reflected in Article 25 of the recast Qualification Directive, which provides that Member States shall issue travel documents to refugees following the specifications contained in the Schedule of the Refugee Convention, except when important considerations of national security or public order otherwise require. The Schedule of the Refugee Convention establishes a number of rules concerning the content of the travel document, its validity, the fees and other aspects that are relevant for the effective implementation of this obligation.

In all Member States, Norway and Switzerland, who were granted refugee protection received a refugee travel document enabling them to travel outside the State. The maximum validity of the refugee travel document varied among Member States, Norway and Switzerland, ranging from one year (Hungary) to 10 years (Czech Republic, Ireland, United Kingdom) (Figure 6).

In principle, the refugee travel document enables refugees to travel to any country that accepts it, meaning countries that are signatories of the Refugee Convention.<sup>129</sup> However, limitations may be imposed by the issuing country, the most common being the limitation to travel to the country of origin. The travel document may include either a specific reference to the country (by name or international code of the country) or the more generic terms “country of origin”. Austria, Estonia, France, Germany and Spain were the only States where the travel document for refugees was explicitly not valid for travel to the country of origin (or country of habitual residence). In Norway, if the refugee did not comply with these limitations, authorities could confiscate the refugee travel document. Some countries, such as Switzerland and Norway, could impose further geographical limitations to the travel documents issued for refugees. Examples included travelling to countries neighbouring the refugee’s country of origin, as allegedly, in many cases, refugees circumvented detection by travelling first to a neighbouring country and then entering the country of final destination.<sup>130</sup> While this limitation was not applied as a general principle, these countries foresaw the possibility to introduce travel restrictions if special reasons arose (e.g. a clear trend of refugees entering their country of origin through neighbouring countries).

In Finland, Poland and the Slovak Republic did not impose such limitation and six Member States did not indicate this

on the travel document (refugees are nonetheless informed about this limitation through other means, see Table 1).<sup>131</sup>

While the Refugee Convention applies only to refugees, EU asylum law requires Member States to also issue documents for travel outside their territory to BSPs, but only to those who cannot obtain a national passport.<sup>132</sup> They can refuse to do so in cases where compelling reasons of national security or public order exist.

In the majority of Member States,<sup>133</sup> BSPs could indeed obtain such a travel document, in some cases only if they were unable to obtain a valid identity or travel document from their country of origin. This could be proved in various ways by BSPs. In Belgium, beneficiaries were required to obtain such confirmation from national authorities. In the UK, beneficiaries had to prove that ‘reasonable attempts’ to obtain a national passport or identity document were made and that there were serious humanitarian reasons for travel to the country of origin. In Luxembourg, the BSPs had to prove that the application for a national passport was very difficult and burdensome in order to obtain a travel document for foreigners. An exception to the above was Finland, where each beneficiary of subsidiary protection was entitled to an ‘alien’s passport’ and beneficiaries needed to apply for the passport themselves once subsidiary protection was granted.

Cyprus did not issue a travel document but only a “laissez-passer” which could be obtained for medical reasons or for visiting a family member in the country of origin and which clearly indicated the final country of destination and transit countries.

The types of documents issued, and the validity of the travel documents are summarised in Figure 6.

<sup>129</sup> A total of 144 countries, full list available at: <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>.

<sup>130</sup> These cases were raised by Switzerland and Norway, where they were reported in the media (for example, Basler Zeitung in Switzerland) and sparked parliamentary discussions.

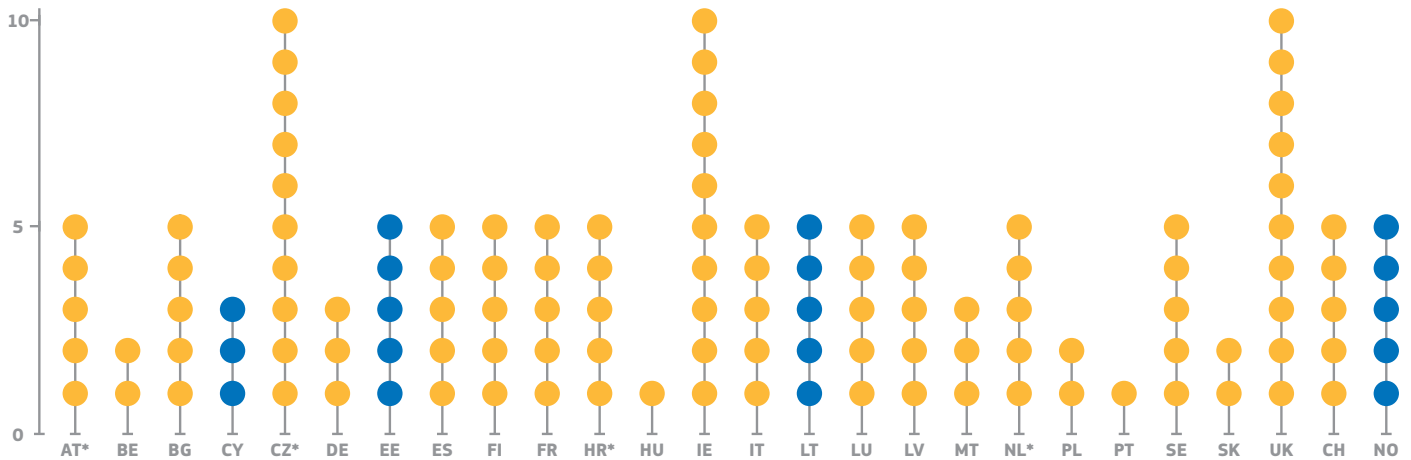
<sup>131</sup> BE, BG, CY, HR, HU and PT.

<sup>132</sup> Article 25 of the recast Qualification Directive.

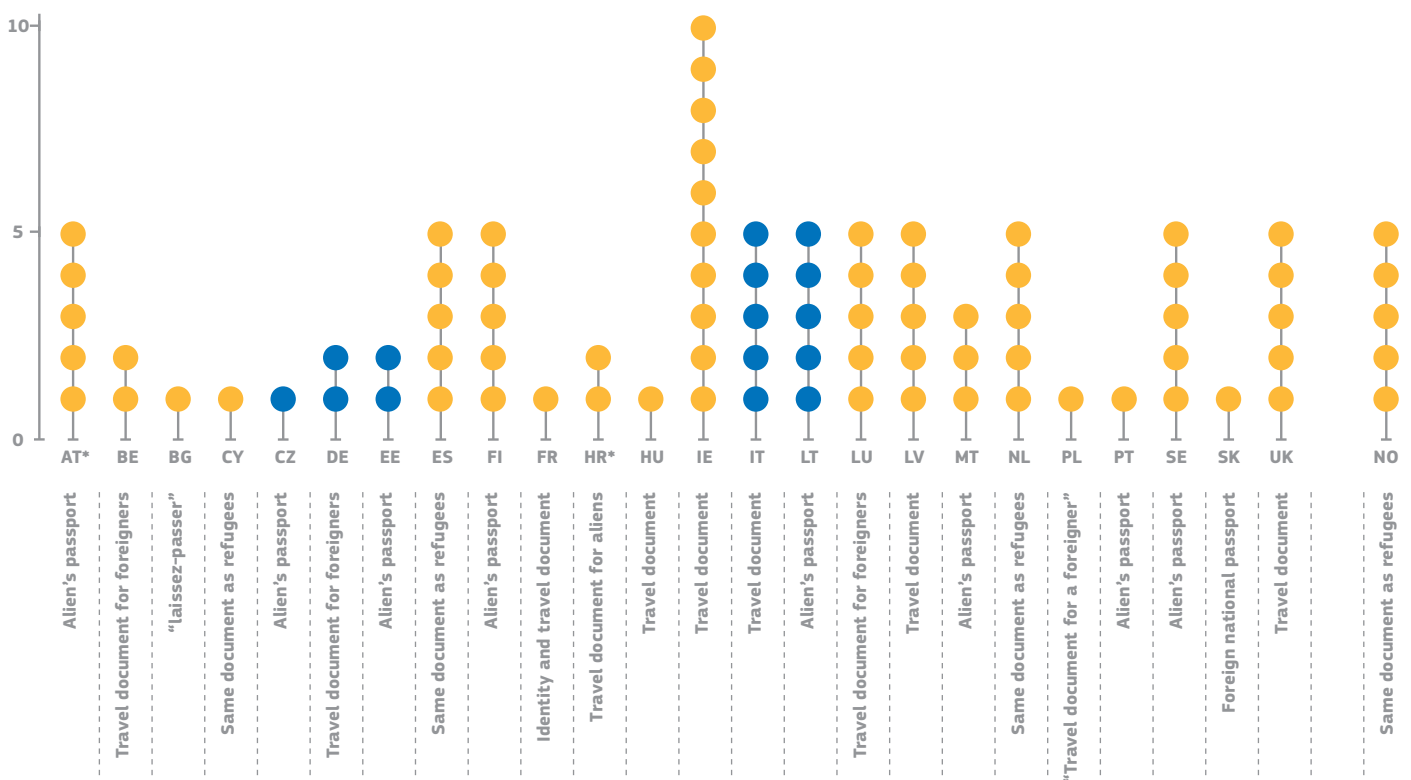
<sup>133</sup> AT, BE, BG, CZ, DE, EE, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, SK, SE and UK.

## Figure 6: Type and maximum validity of the travel document issued to BIPs

### Validity of refugee travel document issued to refugees (maximum duration in years)



### Type and validity of travel document issued to beneficiaries of subsidiary protection (maximum duration in years)



Source: EMN NCP reports

Note: ● one yellow circle indicates 1 year duration; circles in blue ● indicate that travel document is of the same duration as the residence permit.

\* AT (the travel document issued to BIPs is non-renewable), HR (travel document issued to BIPs is renewable), CZ (validity of refugee travel document to children under 15 years is of 5 years); CZ, IT (travel document issued to BSPs is renewable); IE (travel document issued to BSPs is generally for 3 years renewable up to 10 years); NL (refugees granted a residence permit with fixed duration, travel document no longer than 3 years; travel document valid for 5 years for refugees with permanent residence).

### 4.1.2. Other means used to inform BIPs

Eleven Member States, Norway and Switzerland cited additional practices to communicate consequences of contacting or travelling to the country of origin in writing.<sup>134</sup> This would usually take the form of a brochure or pamphlet, available in the official language(s) of the host country, or directly in the decision granting international protection. In some cases, the documents were translated in a wider selection of languages.<sup>135</sup> Publication and circulation of documents and other types of materials varied across Member States. Dissemination could be the responsibility of the authority granting a positive decision on an application for international protection<sup>136</sup> or upon request<sup>137</sup> or both.<sup>138</sup> Lastly, in Belgium and Norway such documents were accessible on the designated authority's website.

Information could also be delivered by national authorities orally, either at the time of the positive decision,<sup>139</sup> or upon

request,<sup>140</sup> or both.<sup>141</sup> Generally, the assistance of an interpreter was available if the BIP did not speak the language(s) of the Member State. These States indicated that obtaining this information was usually easy: either the BIP or their legal representation could do so by email, requesting a meeting or phone call to the responsible authority.

Other means cited by four Member States<sup>142</sup> included for Belgium where newspapers regularly published articles with the results of monitoring BIPs.<sup>143</sup> In the Netherlands, the Dutch Council for Refugees provided this information as part of social and legal support for refugees (through 'Helpdesks').

Germany and the Netherlands noted that, despite the details provided above, BIPs did not always seem to be aware of the consequences of contacting authorities of their countries of origin or of travelling there, despite the indication on the travel document that it was not valid for travels to the country of origin.

**Table 1: Informing beneficiaries of international protection**

Means used to inform BIP	Contacting authorities of the country of origin	Travelling to the country of origin
Beneficiaries are informed in writing	AT, BE, CZ, EE, FI, FR, IT, LU, NL, PL, SK, CH and NO	AT, BE, CZ, DE, EE, ES, FI, FR, IE, IT, LU, LV, NL, PL, SE, SK, UK, CH and NO
Only national language(s)	FR, NL, PL, CH, and NO	FR, NL, PL, UK, CH and NO
Other languages	BE, CZ, FI, EE, IT, LU and SK	BE, CZ, EE, FI, IT, LU and SK
When granting status	BE, EE, FI, FR, LU and NO	BE, FI, FR, EE, LU and NO
It is indicated on the travel document	IT, PL and CH	AT, CZ, DE, EE, ES, FR, IE, IT, LT, LU, LV, NL, PL, SE, UK, CH and NO
Upon request	AT, BE, IT, LU, NL and NO	AT, BE, IT, LU, NL and NO
Beneficiaries are informed orally	AT, BE, CY, EE, FI, HU, IT, LU, NL and NO	AT, BE, CY, DE, EE, FI, HU, IT, LU, NL and NO
When granting status	CY, EE, HU and LU	CY, EE, HU and LU
Upon request	AT, BE, CY, DE, EE, FI, HU, IT, LU, NL and NO	AT, BE, CY, DE, EE, FI, HU, IT, LU, NL and NO

Source: EMN NCP reports

<sup>134</sup> BE, CZ, EE, FI, FR, IT, LU, NL, PL, SK, UK, CH and NO.

<sup>135</sup> FI has translated its pamphlet in 18 languages, EE in 7 and IT in five.

<sup>136</sup> BE, EE, FI and FR.

<sup>137</sup> AT, IT, NL and NO.

<sup>138</sup> BE, LU and PL.

<sup>139</sup> CY, EE, HU and LU.

<sup>140</sup> AT, BE, CY, EE, FI, HU, IT, LU, NL and NO.

<sup>141</sup> CY, EE, HU and LU.

<sup>142</sup> For contacting: NL; and for travelling to the country of origin: BE, FI, LU and NL.

<sup>143</sup> In Belgium, media reported among others about the number of BIPs detected travelling to their country of origin, and the number of beneficiaries who lost their protection. For example the newspaper 'De Standaard' reported about BIPTRACO on 11 September 2018, 31 July 2018, 27 March 2018, 13 October 2017, 3 July 2017, 26 March 2017, 9 December 2016 and 26 July 2016.



## 4.2. REVIEW OF INTERNATIONAL PROTECTION STATUS

A large majority of Member States,<sup>144</sup> Norway and Switzerland reviewed the protection status of BIPs, albeit the moment of the review varied (Figure 7). Most reported that a review of the protection status could be triggered *ex-officio* by (or at the own initiative of) national authorities whenever they were made aware of evidence calling into question a protection status, which in turn could result in withdrawal. As analysed in section 3, evidence of contact or travel to the country of origin could initiate such review process and lead to cessation.

In twelve Member States and Norway, an international protection status could be reviewed upon renewal of the residence permit accompanying status.<sup>145</sup> While national legislation foresaw such review, Finland reported that national authorities might not always implement a full review or reassessment of the international protection status at that stage due to limited resources.

Six Member States and Norway have adopted a more systematic review of international protection statuses. In Austria and Germany, this review took place systematically when refugees requested the renewal of their initial residence permit (valid for three years); their residence permit would in this case be renewed for an indefinite period of validity, provided that no procedure to withdraw asylum was initiated or that such a procedure has been stopped. In Austria, this systematic review would be conducted every calendar year. Systematic review could vary depending on the protection status in some States: Austria, and Germany reviewed refugee status; Italy, Lithuania and the Slovak Republic reviewed the status of BSPs; whilst Estonia, Hungary and Norway reviewed both. However, in Norway, refugees with a permanent residence permit could not be subject to a review procedure.

The possibility of systematic status reviews was also included into the 2016 proposed Qualification Regulation yet no agreement was reached on this proposal.

This systematic review procedure has been a major concern in Germany, as it was expected that the Federal Office for Migration and Refugees would have to review several hundred thousand asylum decisions by the end of 2020, shifting the focus of the work of the Federal Office on revocation procedures. In this context, the beneficiary's 'duty to cooperate', included in the national asylum legislation in November 2018, extended the application of this obligation to procedures to revoke and withdraw protection. In practice, the duty to cooperate duty could mean for example handing over the passport or passport replacement and other documents (air tickets, driving licences, documents on the travel route from the country of origin to Germany, etc). This change in legislation has been believed to significantly support the work of the Federal Office in the regular review of recognised refugees.

### Systematic reviews of international protection in Austria, Germany and Norway

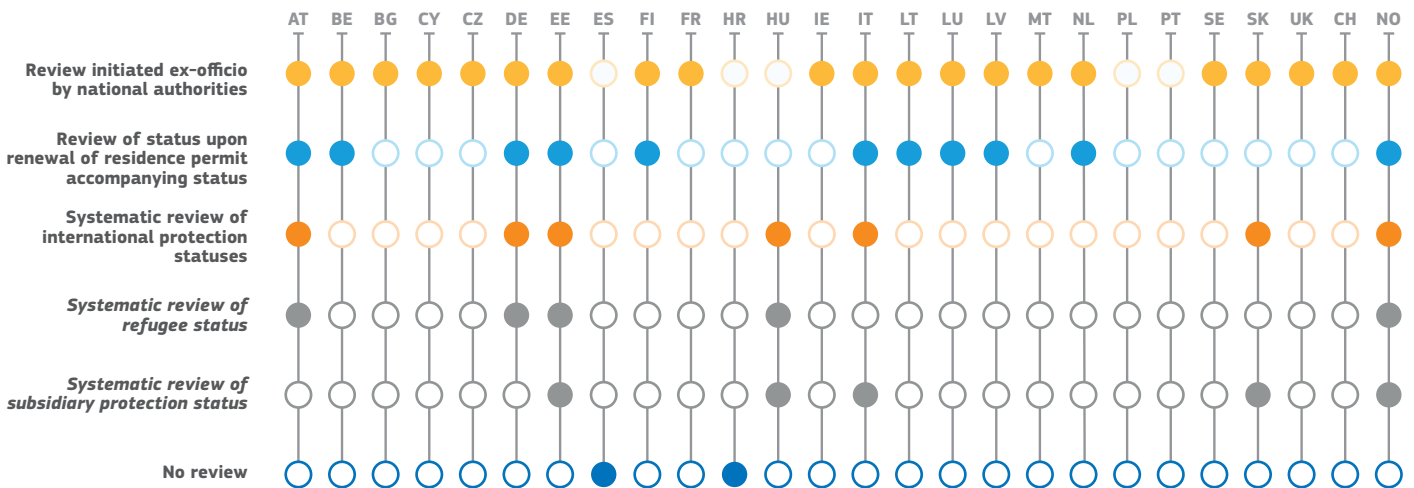
**In Austria,** the systematic review is conducted at least once every calendar year, assessing in particular if a significant and lasting change in the specific circumstances occurred in the countries of origin accounting for the largest numbers of persons granted refugee status within the previous five years.

**In Germany,** a systematic review of refugee status is foreseen after three years the latest, as the temporary residence status of refugees can become permanent after this review. In case new information about potential grounds for revocation comes to light, the Federal Office for Migration and Refugees will initiate a formal revocation procedure. Should the conditions for revocation be met, the Federal Office for Migration and Refugees will inform the foreigners' authority and the concerned refugee of the result.

Similarly, **in Norway,** since 2016, an instruction was issued to open a case on revocation of the refugee status (and residence permits) if the person is no longer in need of protection, initiating a more systematic use of the revocation provisions. In this case, a systematic review of refugee status (and the equivalent of BSP status) will be undertaken in the event of changes in circumstances in the country of origin or changes in the personal situation of the person concerned. This procedure does not apply however to refugees who have already obtained a permanent residence permit.

<sup>144</sup> AT, BE, BG, CY, CZ, DE, EE, IE, FI, FR, LT, LU, LV, MT, NL, PL, PT, SE, SK, UK, CH and NO.  
<sup>145</sup> AT, BE (in theory), DE, EE, FI, IT, LT, LU, LV, NL, PL, PT and NO.

### Figure 7: Type of review of international protection status



Source: EMN NCP reports

Note: Fully coloured circles indicate States that review international protection status



## 4.3. WITHDRAWAL PROCEDURE FOLLOWING APPLICATION OF CESSATION GROUNDS

Firstly, the recast Qualification Directive indicates that it is up to Member States to demonstrate that the person concerned ceased to be a refugee or beneficiary of subsidiary protection (Article 14(2) and 19(2)). Following UNHCR's guidelines and recommendations, procedures for application of cessation clauses should include usual procedural safeguards that enable the person concerned to contest the evidence supporting cessation (see section 4.3.1).<sup>155</sup>

In the context of a procedure which may result in the adoption of a decision to withdraw international protection, based on cessation or other grounds, the recast Asylum Procedures Directive's provisions on safeguards in a withdrawal procedure apply (Articles 44 and 45). The latter enumerates a list of procedural guarantees in case national authorities are considering withdrawing international protection, including the right to an effective remedy (see sections 4.3.2 and 4.3.3).

### 4.3.1. Presenting contrary evidence during the procedure

In line with the standards set out in Articles 44 and 45 of the recast Asylum Procedures Directive, all Member States – including States that are not part of the recast Asylum Procedures Directive (e.g. Ireland, UK, Switzerland and Norway) – provided the opportunity for the BIPs to present evidence during the withdrawal procedure. BIPs

could either present their evidence in writing directly to the national authority in charge of carrying out the investigation, or they could request or wait to be invited to an interview.

While evidence could be presented in writing, Croatia and Malta invited the BIP to present their evidence orally via a personal interview after they received notice of the procedure and were presented with the circumstances. When an interview was scheduled, the BIPs could present their evidence orally as well as in writing in most Member States. However, this was subject to some variations. For example Ireland and Switzerland did not provide opportunities for the BIP to present their evidence orally; Hungary provided for both, but in practice tended to favour interviews (written submissions were invited should the BIP be unavailable or miss the interview). Six Member States reported that they mostly relied on the written submissions, but an interview could be arranged for clarification at the request of national authorities<sup>156</sup> or at the request of the BIP.<sup>157</sup>

According to the recast Qualification Directive, the burden of proof is upon the Member States to demonstrate that the person concerned ceased to be a refugee (Article 14(2) and 19(2)). Several Member States reported a number of challenges in this context. Austria explained that when confronted, BIPs usually put forward reasons for which travels to the country of origin would not have consequences for their protection status, such as visits to sick relatives. Belgium

<sup>146</sup> In theory.

<sup>147</sup> Every year (regarding the countries of origin accounting for the largest numbers of persons granted asylum in Austria in the previous five calendar years).

<sup>148</sup> After three years at the latest.

<sup>149</sup> Every three years.

<sup>150</sup> Every three years.

<sup>151</sup> The first year and then every two years.

<sup>152</sup> Every three years.

<sup>153</sup> Every five years.

<sup>154</sup> After one year and then after two years.

<sup>155</sup> See UNHCR guidelines available at: <http://www.refworld.org/docid/47fdfaf1d.html>.

<sup>156</sup> CZ, DE, EE, FI, FR and UK.

<sup>157</sup> FI.



witnessed BIPs not showing up at interviews, nor providing written arguments when provided with the opportunity to explain the reasons of their travel; explanations and arguments to maintain their status often resurfaced only at the appeal stage once a cessation decision was adopted. In Germany, if the BIP did not provide any written arguments within the foreseen period, the Federal Office for Migration and Refugees will decide on the basis of the known indications which, as a rule, could result in the withdrawal of the protection status.

Several recent legislative changes aim to alleviate the burden of proof borne by national authorities. In Switzerland, following legislative amendments adopted in 2017 and 2018, the burden of proof leans towards the refugee: if a travel to the country of origin were to be detected by national authorities, the refugee concerned would have to prove that he or she was “forced” to travel to the country of origin. Similarly, following a 2018 legislative amendment in Germany, BIPs have an obligation to cooperate with national authorities in the context of withdrawal procedures, whereby BIPs have the obligation to hand their identity papers (i.e. passports, ID cards) and other documents (e.g. documents on the travel route from the country of origin to Germany) over to national authorities.

### 4.3.2. Issuing and notifying a withdrawal decision

From the moment a BIP was notified of the initiation of the procedure, not all the States reported specific deadlines or timeframes within which to issue the decision to withdraw international protection. In 10 Member States where this was the case, the timeline ranged from one to six months.<sup>158</sup> The remaining Member States and Switzerland either did not provide a specific deadline,<sup>159</sup> or the decision was issued “as soon as possible” or within a

“reasonable” timeframe, complying with the standards set out in administrative procedural law.<sup>160</sup> In Germany, due to the high number of applications in 2015 and 2016 and ensuing backlog in the asylum procedures, the timeframe in which to treat withdrawal procedures due to travels to or contact with authorities of the country of origin dating from the past few years did not have an end date. They would however be evaluated through the regular review of status (see section 4.2).

All Member States, Switzerland and Norway notified BIPs of their withdrawal decision in writing, and six Member States and Norway further provided for the decision to be notified orally via an interpreter should the BIP not understand the language in which the decision was issued.<sup>161</sup> All of the States provided reasons for their decision in writing. In seven Member States<sup>162</sup> and Norway, in addition to providing details about the facts and the legal grounds for the decision, information about available legal remedies were also included.

### 4.3.3. Appealing a withdrawal decision

BIPs in all Member States were offered the opportunity to appeal a withdrawal decision, mostly before an administrative appeal court.<sup>163</sup> For the majority of the States studied, the appeal instance was a different body than the institution in charge of granting international protection or issuing a decision to withdraw protection.<sup>164</sup>

The timeframes in which to appeal at the first instance varied from eight days to two months within the notification of the decision, except for the UK for which it depended on court availability.<sup>165</sup> Most of the States reported that there was only a one-level system of appeal,<sup>166</sup> while eight States provided two<sup>167</sup> or three levels, which could involve the supreme or cassation level of appeal.<sup>168</sup>

<sup>158</sup> AT (1 month), BE (60 working days if procedure initiated on request of the Immigration Office, otherwise no time limits provided in national legislation), BG (3 months), CZ (6 months), ES (6 months), HU (60 days according to the usual practice for administrative proceedings), LV (2 months), LT (3 months), PL (6 months) and SK (6 months).

<sup>159</sup> EE, FI, HR, IE, LU, MT, NL, UK and CH.

<sup>160</sup> CY and FR.

<sup>161</sup> FI, EE, LT, MT, SK and NO.

<sup>162</sup> BE, EE, FR, FI, IE, NL and LU.

<sup>163</sup> BE, CY, CZ, DE, EE, FI, HR, LT, LU, NL, PL, SK, UK and CH.

<sup>164</sup> AT, BE, CY, CZ, DE, EE, ES, FI, FR, HR, IE, IT, LT, LU, LV, MT, NL, PL, SK, UK, CH and NO.

<sup>165</sup> AT (2 weeks for a refugee and 4 weeks for a beneficiary of subsidiary protection), BE (one month), BG (14 days), CH (30 days), CY (20 days), CZ (15 days), DE (as a rule 2 weeks), EE (30 days), ES (2 months), FI (30 days), FR (one month), HR (8 days), HU (8 days), (15 days), IE, (10 days), IT (30 days), LV (30 days), LT (14 days), LU (one month), MT (15 days), NL (6 weeks), PL (14 days), SK (30 days) and NO (three weeks).

<sup>166</sup> BE, CY, EE, ES, FR, HR, IE, IT, LV, MT, UK, CH and NO.

<sup>167</sup> LU.

<sup>168</sup> AT, BG, CZ, DE, EE, ES, FI, LT, NL, PL and SK.

### Case study in Austria

Mr A., a national of Iran, applied for international protection in Austria in 2012 on grounds of religious persecution in his country of origin. The Federal Office for Immigration and Asylum issued a decision granting Mr A refugee status.

On 18 April 2017, the Federal Office for Immigration and Asylum received information from the German Federal Police that Mr A, at a passport check in Germany, had shown his Austrian refugee travel document, along with a Turkish visa. During an initial discussion with national authorities, Mr A explained that he travelled with his wife to Turkey for tourist purposes and had never travelled to Iran since he got refugee status in Austria. However, these explanations were not coherent with other stamps in his passport. Other checks performed showed that a ticket in the name of Mr A's wife was booked for Iran via Istanbul, identification and military documents in the name of Mr A issued by Iran and plane tickets to Iran issued for the couple were found too. The plane tickets indicated that Mr A and his wife stayed in Iran for a total of 18 days. When confronted with this evidence, Mr A admitted travelling to Iran to visit family.

The Federal Office for Immigration and Asylum notified, on 26 April 2017, of the intention to initiate a procedure to withdraw refugee protection in light of the evidence found. Mr A was given the opportunity to provide a statement in writing. He explained that the main purpose of his travel to Iran was to visit his father-in-law, who was suffering from a terminal-stage illness.

Mr A married his wife by proxy and further explained that he had never had the opportunity to make contact with his father-in-law. In his statement, Mr A also indicated that he entered Iran unlawfully, with the help of smugglers. In its assessment of the case, the Federal Office for Immigration and Asylum came to the conclusion that Mr A had returned and stayed in Iran for a specified duration in 2017, and Mr A did not in fact face the threat of acts of persecution by the Iranian authorities. This assessment was substantiated by the fact that Mr A did not face challenges to enter Iran, travel documents issued in his real name, and his initial claim of not travelling to Iran cast a doubt on the veracity of the explanations brought forward later. On 23 May 2017, the Federal Office for Immigration and Asylum withdrew Mr A's refugee status. Mr A was also not granted subsidiary protection.

Mr A lodged an appeal against this decision. The Federal Administrative Court ruled that Federal Office for Immigration and Asylum had failed to make the enquiries necessary to establish the relevant facts. Although the Federal Administrative Court also doubted Mr A's credibility, it nonetheless ruled that specific details of the facts established by the Federal Office for Immigration and Asylum were lacking in the disputed decision. Citing the deficient investigation of the facts, the Federal Administrative Court required the Federal Office for Immigration and Asylum to carry out further investigations in any case. In a ruling of 25 October 2017, the Court lifted the withdrawal decision and referred the case back to the Federal Office for Immigration and Asylum.



## 4.4. CONSEQUENCES OF WITHDRAWING INTERNATIONAL PROTECTION BASED ON CESSATION GROUNDS

Holders of an international protection status, once granted that status, have a right of residence in the State that grants them protection, provided in the form of a residence permit. Therefore, the withdrawal of their status based on cessation grounds usually impacted on the right to reside in that State as well.

This was subject to some exceptions in Belgium, the Netherlands and Norway. BIPs holding a permanent permit (Netherlands, Norway) or a permit with an unlimited duration (Belgium) were granted a 'higher level' of protection as their residence permit can only be ended based on reasons of public order and national security. In addition, in Belgium, the Netherlands and Norway, this residence permit may also be ended in case it was granted on the basis of incorrect information (see also section 3.2.6).

A decision to withdraw international protection does not in itself lead to the person concerned being removed from the territory of the (former) State of protection. If refugee protection is withdrawn, the person could still apply for other forms of protection (subsidiary or national form of protection) or apply for other grounds for legal stay. Before

a return decision is taken, Member States need to consider the principle of non-refoulement as prohibited by EU law on international protection and return,<sup>169</sup> and by the Refugee Convention.<sup>170</sup> Additionally, Article 3 of the ECHR provides an absolute ban to removal where this would put the person concerned at risk of torture or inhuman or degrading treatment or punishment in his/her country of origin.

### 4.4.1. End of the right of residence

In 11 States participating in this study, the decision withdrawing international protection would automatically lead to an end of the residence permit,<sup>171</sup> with both decisions issued together in most Member States and Norway.<sup>172</sup> In other States, the end of the residence permit was not automatic and these were generally separate processes.<sup>173</sup>

Most Member States, Norway and Switzerland considered individual circumstances before ending a residence permit, which included considerations of humanitarian grounds, medical reasons and legal migration reasons. Therefore, where international protection ceased, another status could

<sup>169</sup> Article 21 of the recast Qualification Directive and Articles 5 and 9 of Directive 2008/115/EC (the Return Directive).

<sup>170</sup> Article 33 of the Refugee Convention.

<sup>171</sup> AT, BG, CY, CZ, EE, HR, HU, IE, LV, NL and PL.

<sup>172</sup> AT, BG, CY, CZ, EE, FI, HR, HU, LV, LU, NL, PL, PT, SE, SK and NO.

<sup>173</sup> BE, DE, ES, FR, IE, IT, LT, MT, UK and CH.

be granted in most Member States, Switzerland and Norway (Figure 8).<sup>174</sup> These statuses were normally either a legal migration status,<sup>175</sup> a subsidiary protection status or a national protection status. In some States, these reasons were assessed by competent authorities at their own discretion before issuing a decision withdrawing a residence permit. As an example, in Germany, the foreigners authority assessed whether a third-country national had a right to stay independently of a need for protection, which could be the case for example if s/he got his/her international protection status withdrawn but married to a German national in the meantime, granting him/her a residence permit for family reasons.

Generally, access to legal migration statuses is governed by EU and national laws, and therefore subject to the (former) BIP fulfilling the specific conditions to be granted such status such as applying for such status from abroad. Therefore, in a majority of States, former BIPs can apply for a residence permit on legal migration grounds (Figure 8).

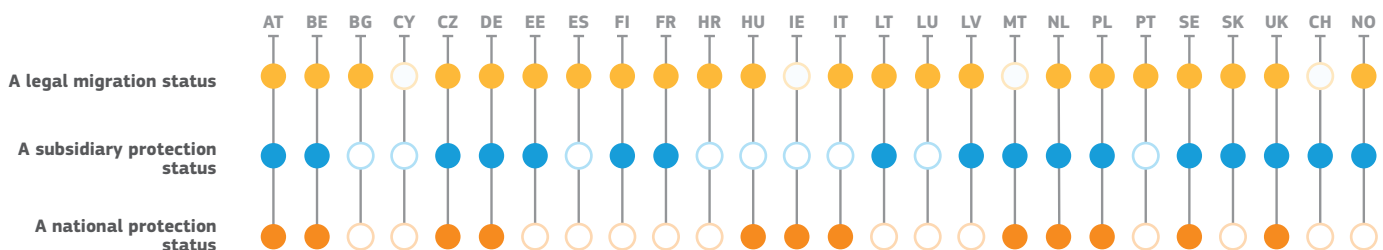
Seventeen Member States, Switzerland and Norway allowed for the granting of a subsidiary protection status after refugee status was ceased (Figure 8). In the UK, Switzerland and Norway, a national form or an equivalent of subsidiary protection status could also be granted under the 2004 Qualification Directive. In seven Member States,<sup>176</sup> eligibility for a subsidiary protection status was already assessed during the review process (see section 4.2) in case the conditions for refugee protection were no longer fulfilled.

These practices are in line with the findings of the CJEU in the case *Aydin Salahadin Abdulla* where it ruled that “*Within the system of the [Qualification] Directive, the possible cessation of refugee status occurs without prejudice to the right of the person concerned to request the granting of subsidiary protection status [...]*”<sup>177</sup>

The single status system of the Netherlands, which made no distinction between refugees and BSPs, allowed for a new application for an international protection status after the first status had been ceased.

In 12 Member States, national protection statuses were also a possible outcome.<sup>178</sup> Some offered statuses related to humanitarian protection. For example in Ireland, a decision to withdraw international protection status is followed by a notice of the Minister’s intention to issue a deportation order. The (former) BIP can make representations against the making of a deportation order, on the basis of which consideration can then be given to granting the former BIP ‘leave to remain’. In Austria, when a refugee status was ceased, there was a possibility to obtain a right of residence for exceptional circumstances, for example based on the necessity to maintain private and family life and if a person had become sufficiently integrated. In Sweden, the granting of national protection statuses has been suspended since July 2016. The suspension has been extended until 19 July 2021 and, as a result, no residence permits based on national protection statuses can be granted.

**Figure 8: Possible change of status after withdrawal of international protection**



Source: EMN NCP reports

Note: Fully coloured circles indicate States where another legal status can be granted after withdrawal of international protection

#### 4.4.2. Possible end of right of residence of family members and dependants

In the context of this study, ‘family members’ refer to three different situations:

- Family members who came to a Member States at the same time as the BIP, and who were therefore included in the initial application for protection; they could either be granted an individual international protection status

in their own right or a derived right to reside as family member.

- Family members who followed later, thereby not being included in the original application for international protection; they could also be granted an individual international protection status in their own right or derived right to reside as family member.
- Family members who followed later on the basis of family reunification.<sup>179</sup> As the Family Reunification Directive does not apply to BSPs, there is no harmonisation across the EU on the type of status

<sup>174</sup> AT, BE, CZ, DE, EE, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE and UK and NO.

<sup>175</sup> A legal migration status is one of the statuses that forms part of the EU’s legal migration acquis, thereby falling under one of the following Directives: the EU Blue Card Directive (2009/50/EC), the Family Reunification Directive (2003/86/EC), the Long-Term Residents Directive (2003/109/EC), the Single Permit Directive (2011/98/EU), the Seasonal Workers Directive (2014/36/EU), the Intra-Corporate Transferees Directive (2014/66/EU) or the Students and Researchers Directive (EU) 2016/801.

<sup>176</sup> AT, BE, DE, FR, LV, MT and SK.

<sup>177</sup> CJEU, C-175/08, C-176/08, C-178/08 and C-179/08, *Aydin Salahadin a.o. v Bundesrepublik Deutschland*, 2 March 2010, ECLI:EU:C:2010:105.

<sup>178</sup> AT, BE, CZ, HU, IE, IT, MT, NL, PL, SE and UK. An overview of the national protection statuses in Member States and Norway is the subject of a forthcoming 2019 EMN Study titled *Comparative overview of national protection statuses in EU Member States and Norway*.

<sup>179</sup> All Member States, except Ireland and the UK, apply the Family Reunification Directive to refugees. Switzerland and Norway do not apply this Directive.

granted nor on what would trigger cessation of family members joining a BSP.

Although there are these three distinct situations, in practice however Member States did not attach different consequences to the type of status, but most States rather focussed on whether the family member's status was independent or not<sup>180</sup> from the refugee or BSP whose status was under consideration for cessation. If the right to stay of a family member derived from the protection status of a BIP, as also found by the EMN study on family reunification, in practice a family member's right to stay in a Member State ended in general at the same time as their sponsor's residence permit.<sup>181</sup>

Overall, most Member States had adopted a similar approach to both cases where the family/dependants were included in the initial application for international protection and where they were not included in the initial application. Nineteen Member States<sup>182</sup> and Norway assessed on a case by case basis whether family/dependants would lose their international protection status and/or right to stay where they were included in the initial application.

Only in Austria, Germany and Switzerland, family/dependants generally kept their international protection status, in either way the family members joined.

In Austria, members of one family would each be granted the same, but individual, protection status and when one of the family members lost their status, this was not automatically applied to the rest of the family. However, during

a withdrawal procedure for one family member, national authorities would also investigate whether the grounds to end the protection status applied to other family members too. Additionally, in Switzerland, the status could only be withdrawn of persons that met the criteria for cessation.

In Member States that looked at cases individually, the majority<sup>183</sup> treated family members that were granted their own protection status separately. This meant that the cessation of status for one family member would not automatically lead to the cessation of status for the other family members.

The situation was only different in some Member States whereby family members' status was dependent on the recognition and status of the original beneficiary. In such cases the status of family members could be ceased together with that of the main beneficiary. In Latvia, Lithuania, Luxembourg and the Slovak Republic, the family/dependants of a former BIP would immediately lose their international protection status and their right to stay if his/her status was withdrawn or revoked. In Italy, cessation of international protection would also impact on the minor children of the (former) BIP concerned, who would then also see their status ceased. In contrast, in France, when the protection was obtained according to the principle of family unity, an instruction procedure to end protection status would be triggered according to the same procedure that is foreseen for the BIP. The decision would then be taken on a case-by-case basis. However, if the family members obtained protection individually, there would be no consequences on their right to stay.

<sup>180</sup> Member States overall have the discretion to decide whether the residence permit and protection status of a family member is dependent on the person in their family who has an international protection status.

<sup>181</sup> EMN study 'Family Reunification of Third-Country Nationals in the EU plus Norway: National Practices', April 2017, p. 40.

<sup>182</sup> BE, CY, CZ, DE, EE, FI, HU, HR, IE, IT, LV, LT, LU, LV, MT, NL, PL, PT, SE, UK and NO.

<sup>183</sup> BE, BG, CZ, DE, EE, FI, HU, HR, IT, LU, MT, LV, NL and UK.

## 5. CONCLUSIONS

This study has shown that with regard to travel outside of the State of protection and of the EU altogether, BIPs can move to other countries, including to their country of origin. Travelling to the country of origin could, however, mean that the grounds for which protection was initially granted have changed, and that international protection is no longer justified. Additionally, national legislation could provide which third countries a refugee is allowed to travel to (e.g. in a travel document) without losing his or her refugee status. National, EU, international asylum and refugee law provide grounds whereby protection status may come to an end in circumstances where it is apparent that protection is no longer necessary, referred to as 'cessation'. Cessation has several aspects. Travelling to and/or contacting the authorities of the country of origin and/or travelling there may indicate a change of circumstances in the BIP's personal situation. This could suggest that a BIP is willing to re-avail him/herself of the protection of the country of origin or intends to re-establish him/herself there.

The study has also revealed that there is a range of reasons why BIPs might contact the authorities of their country of origin or travel there. As observed by national authorities, the most common motivation for travel stated by BIPs was to visit family members due to illness, to attend weddings or funerals. Other reasons reported included: managing a business in the country of origin, home-sickness, to take holidays and sometimes the desire to return permanently. BIPs contacting authorities of their country of origin was generally not reported to be contentious, except in cases where this led to the issuance or renewal of a passport.

When travels to and contacts with authorities of the country of origin become known in the host country, the study has identified differences in how such acts are weighted in the context of a reassessment of the protection status initiated by national authorities. Hungary assessed any contact with authorities of the country of origin or any travel there as sufficient reason to presume that a BIP had re-availed of the protection of his or her country of origin or had decided to re-establish him/herself there. However, in a majority of States, contacts and travels were considered as a possible indication that one of the grounds for cessation of international protection status could apply, but the act alone would not be sufficient to apply cessation. In addition to examining the purpose of contacts or travel, and the voluntariness of these acts, other factors were also taken into account to verify if cessation should apply. These were for example: the reasons for the travel, the length of stay in the country of origin, the frequency of contacts or travels, and the mode of entry. Thus, the circumstances of each case and the

criteria set out in EU asylum law or national law were jointly assessed to justify the cessation of protection.

The study showed that Member States faced several challenges with regard to both detecting and assessing possible cases of cessation of international protection of BIPs who travelled to their country of origin. First, many States explicitly stated that if BIPs travelled to their country of origin, this could lead to cessation of the protection status. However this was very difficult to substantiate in practice. Second, only a few Member States actively monitored movements of BIPs at the border or via other means, and even those that did, emphasised the difficulties, for example considering that BIPs in the Schengen area could travel to their country of origin via another Member State or enter the country of origin via a neighbouring country.

In this context, nearly all States participating in the study considered that it was very difficult to collect evidence and assessed whether any of the cessation grounds applied, especially when it came to the motivation of BIPs to travel to their country of origin. Many referred to the use of UNHCR, EASO and national guidelines or instructions, and some to case law. Another challenge identified was the lack of awareness on the part of BIPs of the consequences that their actions – in terms of contacting authorities in their country of origin or travelling thereto – could have on their status, even though most States outlined the ways in which they provide relevant information to BIPs.

Six Member States and Switzerland reported that the topic of beneficiaries of international protection travelling to their country of origin had been a political priority in recent years. These States have been adopting specific measures for national authorities to assess whether the status of those BIPs should cease. These included Belgium, Germany, the Netherlands and Switzerland to commit additional staff and/or adopt specific guidelines to support with the assessment of BIPs travelling to their country of origin. Additionally, some States established cooperation mechanisms and information exchange with neighbouring EU Member States. Lastly, recent legislative amendments in some States were adopted to specifically include travels to the country of origin as a reason to initiate a reassessment of protection status. Switzerland introduced a legislative change to the effect of better monitoring travels of BIPs to neighbouring countries (of the country of origin). As it has been generally the responsibility of national authorities to assess and prove that travels to the country of origin amount to cessation, Switzerland and Germany recently adopted national provisions that now have strengthened the duty of BIPs

to inform and cooperate with national authorities in cases whereby the travel to the country of origin becomes known to authorities.

Other Member States and Norway constituted a more mixed group, with some Member States adopting specific legislation (Italy), or this issue becoming a policy priority (the Slovak Republic), thus driving changes in administrative practice. Other States reported that the issue of BIPs travelling to and/or contacting the authorities of their country of origin was not a policy priority and did not adopt any changes to existing practices during the study period.

A majority of States reported a low number of cases where cessation had been applied, with little administrative practice or case law to support the assessment of such cases. This may be due to the low number of BIPs travelling to their country of origin in some Member States, the low number of cases that came to the attention of the respective national authorities, and/or to the relatively low level of priority placed on the issue at national level. The

lack of sufficient data – at EU and at national level – on the number of withdrawal decisions based on cessation and/or motivated by BIPs travelling to their country of origin has been one of the main limitations identified by this study, preventing an accurate assessment of the extent to which BIPs travelling to their country of origin could result in a cessation of their protection status.

The increased attention the issue of BIPs who travel to their country of origin has attracted in some Member States has suggested that national authorities could benefit from improved measures to assess and conclude whether such individuals were still in need of protection. These could include pre-authorisations, notifications or other monitoring measures of travel to country of origin, exchanges of good practices, and other measures that would raise awareness of the framework applicable to the withdrawal of international protection as set out in the EU asylum *acquis* and international refugee law.



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Bulgaria [www.emn-bg.com](http://www.emn-bg.com)

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Cyprus [www.moi.gov.cy](http://www.moi.gov.cy)

Czech Republic [www.emncz.eu](http://www.emncz.eu)

Denmark [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/authorities/denmark\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/authorities/denmark_en)

Estonia [www.emn.ee](http://www.emn.ee)

Finland [www.emn.fi](http://www.emn.fi)

France [www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migrations-REM2](http://www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migrations-REM2)

Germany [www.emn-germany.de](http://www.emn-germany.de)

Greece [www.emn.immigration.gov.gr/el/](http://www.emn.immigration.gov.gr/el/)

Hungary [www.emnhungary.hu](http://www.emnhungary.hu)

Ireland [www.emn.ie](http://www.emn.ie)

Italy [www.emnitalyncp.it](http://www.emnitalyncp.it)

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Luxembourg [www.emnluxembourg.lu](http://www.emnluxembourg.lu)

Malta <https://homeaffairs.gov.mt/en/mhas-information/emn/pages/european-migration-network.aspx>

Netherlands [www.emnetherlands.nl](http://www.emnetherlands.nl)

Poland [www.emn.gov.pl](http://www.emn.gov.pl)

Portugal [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/authorities/portugal\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/authorities/portugal_en)

Romania [www.mai.gov.ro](http://www.mai.gov.ro)

Slovak Republic [www.emn.sk](http://www.emn.sk)

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Sweden [www.emnsweden.se](http://www.emnsweden.se)

United Kingdom [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/authorities/united-kingdom\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/authorities/united-kingdom_en)

Norway [www.emnnorway.no](http://www.emnnorway.no)