European Commission

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BENEFICIARIES OF INTERNATIONAL PROTECTION TRAVELLING TO AND CONTACTING AUTHORITIES OF THEIR COUNTRY OF ORIGIN

EMN INFORM 2019

This Inform summarises 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 24 Member States, Norway and Switzerland 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 study 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 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 study builds 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.
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.

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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. EMERGING POLICY PRIORITY IN A FEW STATES

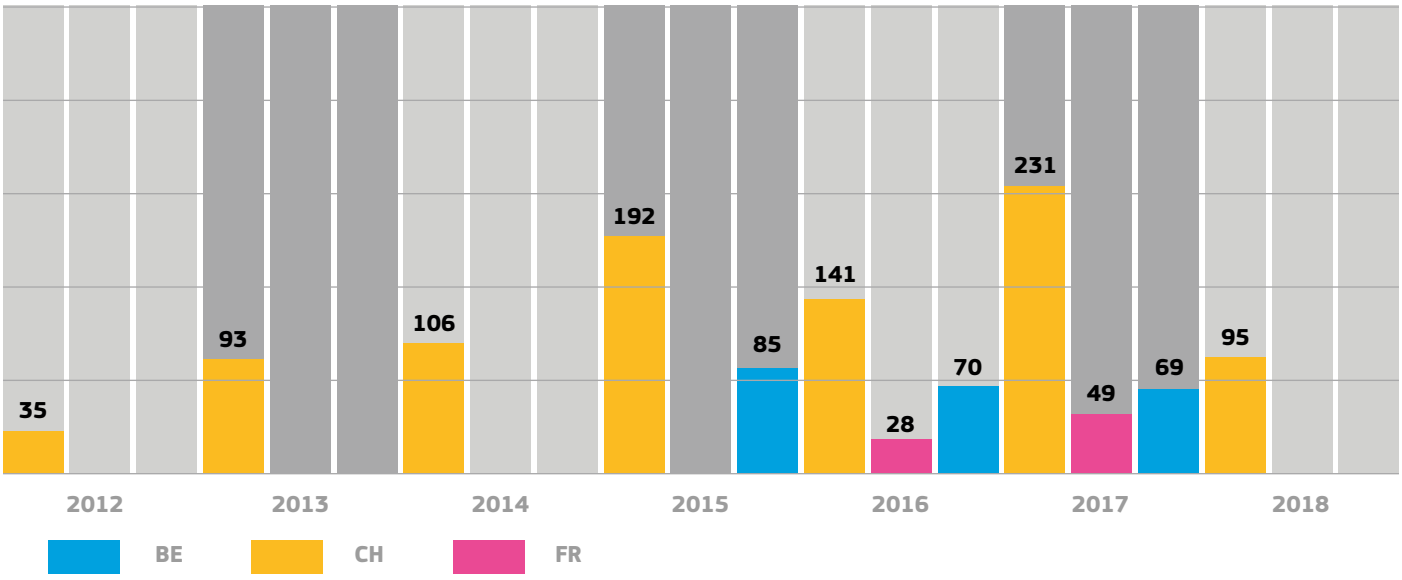
Since 2015, addressing the issue of BIPs travelling to their country of origin emerged as a policy priority in several States contributing to this report. Increased attention given to this issue in some States, as evidenced in national parliamentary debatesand media reports contributed to a change in 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.

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.

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.

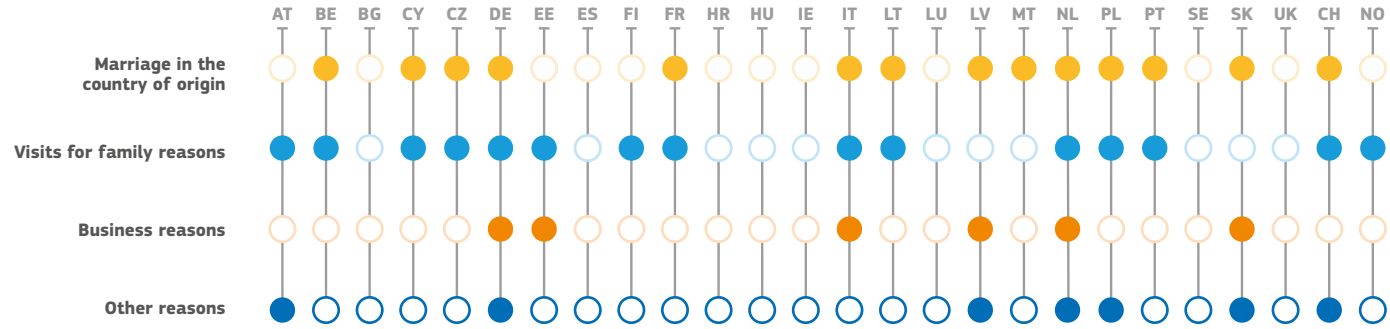
5. BIPS CONTACTING AUTHORITIES OF THEIR COUNTRY OF ORIGIN

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 BIPS TRAVELLING TO THEIR 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.

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

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

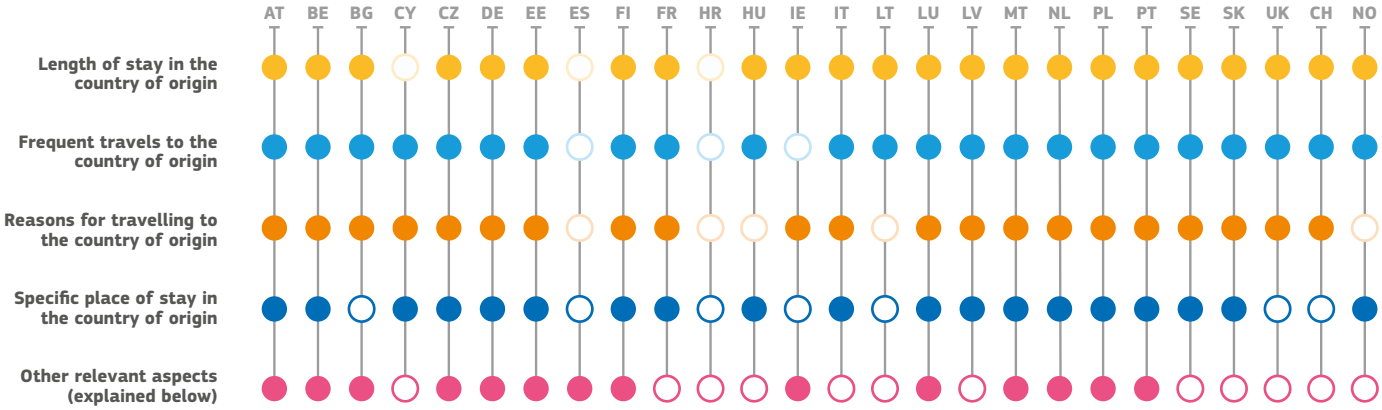
All States reported that a possible return to the country of origin could have consequences for the status of the person concerned, and encourage national authorities to reassess the protection status. The possible consequences of BIPs travelling to the country of origin on their status were generally 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 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.

Circumstances considered when assessing cessation of protection following travels to the country



Source: EMN NCP reports

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

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.

Informing beneficiaries of international protection

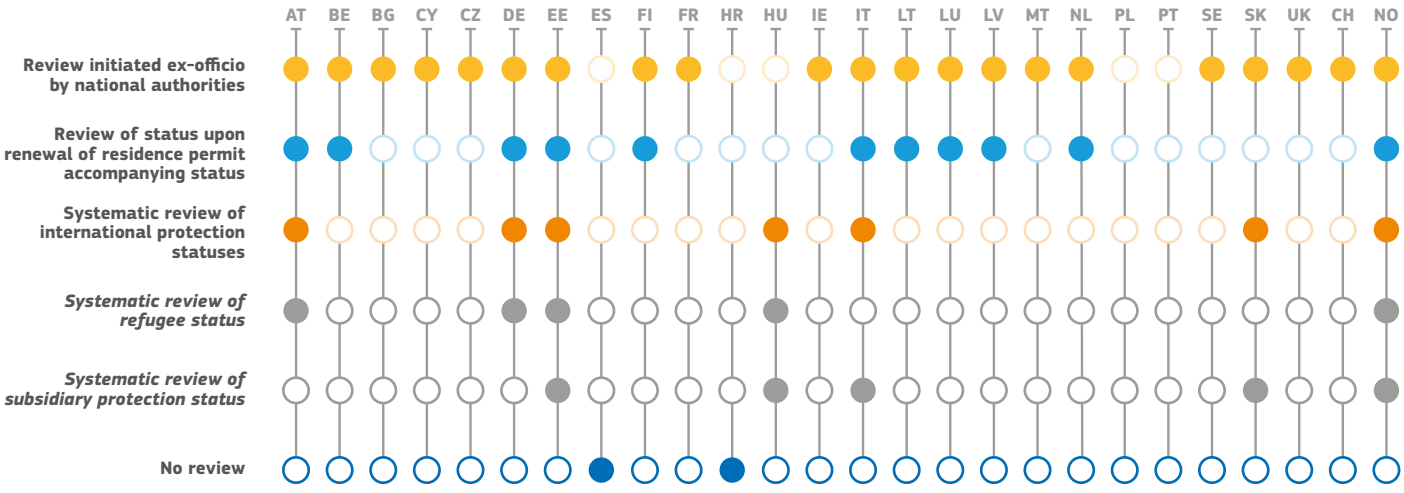
Means used to inform BIP	Contacting authorities of the country of origin	Travelling to the country of origin
Beneficiaries are informed in writing	**AT, BE, CZ, EE, FI, FR, IT, LU, NL, PL, SK, CH and NO**	**AT, BE, CZ, DE, EE, ES, FI, FR, IE, IT, LU, LV, NL, PL, SE, SK, UK, CH and NO**
Only national 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

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.

Figure 7: Type of review of international protection status



Source: EMN NCP reports

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

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.

FULL STUDY PUBLICATION

European Migration Network (2019). 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. Brussels: European Migration Network.

URL to be added

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