



# EASO

## Practical Guide on the Application of Cessation Clauses

*EASO Practical Guide Series*

November 2021







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Manuscript completed in November 2021

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Luxembourg: Publications Office of the European Union, 2021

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PDF	ISBN 978-92-9485-221-2	doi:10.2847/247136	BZ-02-20-081-EN-N
Print	ISBN 978-92-9485-219-9	doi:10.2847/71046	BZ-02-20-081-EN-C

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# About the guide

**Why was this guide created?** The mission of the European Asylum Support Office (EASO) is to support Member States of the European Union and associated countries (EU+ countries <sup>(1)</sup>) through common training, common quality standards and common country-of-origin information (COI), among others. In accordance with its overall aim of supporting Member States in achieving common standards and high-quality processes within the Common European Asylum System, EASO develops common practical tools and guidance.

**How was this guide developed?** This guide was developed by experts from EU+ countries, with valuable input from the European Commission and the European Council on Refugees and Exiles (ECRE). Valuable input was also received from the United Nations High Commissioner for Refugees (UNHCR <sup>(2)</sup>). The process was facilitated and coordinated by EASO. Before its finalisation, a consultation of the guide was carried out with all EU+ countries through the EASO Asylum Processes Network.

**Who should use this guide?** This guide is primarily intended for asylum case officers dealing with cessation cases, interviewers and decision-makers, as well as policymakers in the national determining authorities. Additionally, this tool is useful for quality officers and legal advisers, as well as any other person working or involved in the field of international protection in the EU context.

**How to use this guide.** This guide on the application of cessation clauses is structured in five parts: I. Legal framework, II. Legal analysis of cessation clauses for refugees and beneficiaries of subsidiary protection, III. Procedural steps of the cessation workflow, IV. Legal consequences of cessation and V. Large-scale cessation exercises. Throughout the guide, references and summaries of relevant jurisprudence are used, as well as checklists and indicative topics for exploration to assist case officers when dealing with cessation cases.

This guidance should be used in conjunction with the *EASO Practical Guide: Qualification for international protection* <sup>(3)</sup>.

**How does this guide relate to national legislation and practice?** This is a soft convergence tool and it is not legally binding. It reflects commonly agreed standards and incorporates dedicated space for national variances in legislation, guidance and practice.

## Disclaimer

This guide was prepared without prejudice to the principle that only the Court of Justice of the European Union can give an authoritative interpretation of EU law.

<sup>(1)</sup> The 27 Member States of the European Union, complemented by Iceland, Liechtenstein, Norway and Switzerland.

<sup>(2)</sup> The finalised guide does not necessarily reflect the positions of UNHCR.

<sup>(3)</sup> *EASO Practical Guide: Qualification for international protection*, 2018.

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# List of abbreviations

<b>APD</b>	asylum procedures directive – 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 (recast)
<b>CJEU</b>	Court of Justice of the European Union
<b>COI</b>	country of origin information
<b>EASO</b>	European Asylum Support Office
<b>EU</b>	European Union
<b>EU+ countries</b>	Member States of the European Union plus Associated Countries
<b>IPA</b>	internal protection alternative
<b>Member States</b>	Member States of the European Union
<b>original QD</b>	original qualification directive – Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
<b>QD</b>	qualification directive – Directive 2011/95/EU of 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 (recast)
<b>Refugee Convention</b>	the 1951 Convention relating to the Status of Refugees and its 1967 protocol (United Nations)
<b>UNHCR</b>	United Nations High Commissioner for Refugees

# Introduction

This guide focuses on the application of cessation clauses as defined by Article 1C (1)-(6) Refugee Convention <sup>(4)</sup> and Articles 11 and 16 qualification directive (Directive 2011/95/EU (recast)) (QD). Its purpose is to provide practical guidance in relation to the procedural and substantial aspects of cessation, on the basis of relevant case-law and national practices. This guide also outlines the differences between the application of cessation clauses for refugees and for beneficiaries of subsidiary protection.

Cessation is one of the grounds that can lead to the withdrawal of international protection <sup>(5)</sup>. International protection can also be withdrawn in situations where individuals should have been excluded from international protection <sup>(6)</sup>, in situations where the protection status was obtained based on misrepresentation or omission of facts, and in cases where the beneficiary of international protection constitutes a danger to the security of the state and/or the community. It is possible that more than one ground for ending international protection applies. It is therefore paramount for case officers to have a comprehensive understanding of these notions.

The cessation clauses correspond to circumstances under which a person is no longer a refugee or beneficiary of subsidiary protection because international protection is no longer necessary or justified. The rationale behind cessation clauses is that international protection is a protection of substitution, meaning that it is provided as long as protection from the country of origin is not available. When it is established that the person is no longer in need of protection, the protection status is terminated.

While applying cessation clauses, it has to be kept in mind that the termination of international protection can have significant consequences on the life and security of the concerned persons. The cessation clauses should be applied with caution and due consideration should be given to the context in which cessation takes place. This prudent approach results from the necessity to safeguard the person's security, which international protection is intended to provide <sup>(7)</sup>, and to respect the state's obligations under human rights treaties <sup>(8)</sup>.

When deciding whether to withdraw international protection, EU+ countries are regularly challenged as the burden of proof shifts towards them. Indeed, it is up to them to demonstrate that the cessation grounds are applicable and that the relevant criteria are met. The exhaustive nature of the cessation grounds ensures security to the international protection status, as the latter can cease only when such well-determined circumstances are present.

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<sup>(4)</sup> United Nations, [Convention relating to the Status of Refugees](#), Geneva, 28 July 1951 and protocol to that convention, 31 January 1967 (referred to in EU asylum legislation and by the CJEU as 'the Geneva Convention').

<sup>(5)</sup> For a detailed discussion see EASO, [Ending International Protection: Articles 11, 14, 16 and 19 Qualification Directive \(2011/95/EU\) – A judicial analysis](#), 2016.

<sup>(6)</sup> Article 1F Refugee Convention refers to exclusion from refugee status.

<sup>(7)</sup> See O'Sullivan, M., *Refugee Law and Durability of Protection: Temporary residence and cessation of status*, Routledge, London, 2019.

<sup>(8)</sup> Most notably the [Charter of Fundamental Rights of the European Union](#) and the [European Convention on Human Rights](#).

# I. Legal framework

## (a) International law

The Refugee Convention is the cornerstone of the international legal regime for the protection of refugees. The cessation clauses are detailed in Article 1C.

### Article 1C Refugee Convention

This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

As seen above, the first four cessation clauses are related to actions or behaviour of the individual as opposed to the fifth and sixth clauses, which are applicable when there is an objective change of circumstances in the country of origin/habitual residence and do not necessarily require any actions from the beneficiary of international protection.

Given the importance of the integrity of the asylum procedure system, the cessation clauses and the Refugee Convention as a whole should be interpreted in good faith, also taking into account their text, context, object and purpose. The *travaux préparatoires* (official records) of the Refugee Convention, along with the preambles and annexes, serve as valuable but not exclusive evidence as to the true meaning of the Refugee Convention. It should also be acknowledged that the Refugee Convention is human-rights-oriented and, *mutatis mutandis*, 'has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation' <sup>(9)</sup>. For this reason, this practical guide takes into account the guidance provided in the *travaux préparatoires* and human rights law.

<sup>(9)</sup> International Court of Justice (ICJ), advisory opinion of 21 June 1971, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, ICJ reports 1971, para. 53.

Pursuant to Article 45 Refugee Convention, all states that are party to the Refugee Convention, including the EU+ countries, have an obligation to cooperate with UNHCR. The asylum procedures directive (APD) also refers to the supervisory role of UNHCR<sup>(10)</sup> and states that Member States should allow UNHCR to present its views regarding individual asylum applications at any stage of the procedure. In this context, UNHCR guidelines provide valuable guidance to EU+ countries when determining refugee status as well as insight on the interpretation of cessation clauses. Several public UNCHR documents refer to the application of the cessation clauses, dealing with both procedural and substantial aspects of cessation. For example, the UNHCR Executive Committee discussed cessation in the *General Conclusion on International Protection No 65* in 1991<sup>(11)</sup> and in *Cessation of Status No 69*<sup>(12)</sup> in 1992. UNHCR published guidelines on the application of cessation clauses in April 1999<sup>(13)</sup>, as well as guidelines on international protection concerning ceased circumstances in 2003<sup>(14)</sup>. In addition, the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and 1967 Protocol relating to the Status of Refugees*<sup>(15)</sup> touches upon the subject of cessation in paragraphs 111–139.

## (b) European Union law

In compliance with Article 14(1) QD, Member States are to revoke, end or refuse to renew refugee status if the beneficiary has ceased to be a refugee in accordance with Article 11. Similarly, as stated in Article 19(1), Member States are to revoke, end or refuse to renew subsidiary protection status if the beneficiary has ceased to be eligible for subsidiary protection in accordance with Article 16. The APD uses the overarching term ‘withdrawal of international protection’ to refer to the modalities for ending international protection, namely: revoke, end, and refuse to renew the status.

The grounds for withdrawal are listed below.

### Grounds for withdrawal of international protection under the APD<sup>(16)</sup>

**Cessation (Articles 11 and 16 QD).** International protection is no longer necessary or justified either due to individual behaviour of the refugee or to fundamental changes in the country of origin.

**Exclusion (Articles 12 and 17 QD).** An applicant or a beneficiary of international protection is excluded from international protection when they have committed acts such as crimes against peace, war crimes, serious (non-political) crimes and acts contrary to the purposes and principles of the UN. Furthermore,

<sup>(10)</sup> UNHCR is responsible for supervising the application of international conventions for the protection of refugees (United Nations General Assembly (UNGA), *Statute of the Office of the United Nations High Commissioner for Refugees*, 1950, A/RES/428(V), para. 8(a)).

<sup>(11)</sup> UNHCR, Executive Committee of the High Commissioner’s Programme, *General Conclusion on International Protection No 65 (XLII) – 1991*, 1991, No 65 (XLII).

<sup>(12)</sup> UNHCR, Executive Committee of the High Commissioner’s Programme, *Cessation of Status No 69 (XLIII) – 1992*, 1992, No 69 (XLIII).

<sup>(13)</sup> UNHCR, *The Cessation Clauses: Guidelines on their application*, 1999.

<sup>(14)</sup> UNHCR, *Guidelines on International Protection No 3: Cessation of refugee status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the ‘ceased circumstances’ clauses)*, 2003, HCR/GIP/03/03.

<sup>(15)</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, Geneva, 2019, HCR/1P/4/ENG/REV. 4.

<sup>(16)</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 (recast), (OJ L 180, 29.6.2013, p. 60).

an applicant is excluded from refugee status if a UN agency other than UNHCR offers protection or when they have acquired equivalent rights and obligations as attached to the citizenship of the country in which they reside.

**Misrepresentation or omission of facts (Articles 14(3)(b) and 19(3)(b) QD).** If it appears that refugee status or subsidiary protection was obtained through misrepresentation or omission of material facts by the applicant at the time of the initial determination, without which it would never have been granted.

**Danger to the security of the state and/or the community <sup>(17)</sup> (Articles 14(4) QD).** Whenever it is established that the person currently poses, or may pose in the future, a danger to the security of the Member State in which they are present. The clause under Article 17(1)(d) QD, referring to the danger to the security of the community or the Member State, only refers to beneficiaries of subsidiary protection.

### **Cessation of refugee status and cessation of subsidiary protection status**

The grounds for cessation referring to refugee status and subsidiary protection are set out, respectively, in Article 11 and Article 16 QD.

#### **Article 11 QD – Refugee status**

##### **Cessation**

1. 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
  - (b) having lost his or her nationality, has voluntarily re-acquired it; or
  - (c) has acquired a new nationality, and enjoys the protection of the country of his or her new 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; or
  - (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality; or
  - (f) being a stateless person, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.
2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.
3. Points (e) and (f) of paragraph 1 shall not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

<sup>(17)</sup> CJEU, judgment of 2 May 2018, *K. v Staatssecretaris van Veiligheid en Justitie (and H. F. v Belgische Staat)*, joined cases C 331/16 and C 366/16, ECLI:EU:C:2018:296. Summary available in the [EASO Case Law Database](#). While the mentioned cases do not deal directly with Articles 11, 14, 16 or 19, they refer to 'public security', which is potentially relevant in terms of withdrawal of protection.

## Article 16 QD – Subsidiary protection status

### Cessation

1. A third-country national or a stateless person shall cease to be eligible for subsidiary protection when 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.
2. In applying paragraph 1, Member States shall have regard to whether the change in circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.
3. Paragraph 1 shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.

Regarding **refugee status**, the cessation clauses contained in Article 11(1) are the same as the cessation clauses in Article 1C Refugee Convention. Additionally, Article 11(2) touches upon the significant and non-temporary nature of the change of circumstances referred to under Article 11(1)(e) and (f).

The provisions concerning cessation of **subsidiary protection**, however, do not contain clauses relating to the behaviour of the beneficiary. Furthermore, with regard to the changed circumstances, the cessation of subsidiary protection differs from the cessation of the refugee status in the sense that the circumstances which led to the granting of subsidiary protection may not only have ‘ceased to exist’ but may also have ‘changed to such a degree that protection is no longer required’. In this way, Article 16(1) defines the changed circumstances slightly differently, and possibly more widely, than the corresponding article on refugee status, even though the common benchmark for cessation of both refugee status and subsidiary protection is that international protection is no longer required. With regard to the nature of change, the same wording (‘significant and non-temporary’) is used for subsidiary protection and refugee status. Similar wording is also used on the exception due to compelling reasons.

The criteria of the cessation clauses and their substantial meaning in practice are discussed in detail in [Chapter II ‘Legal analysis of cessation clauses’](#).

The procedural requirements for withdrawal of international protection, which includes cessation, are provided in the APD in Articles 44, 45 and 46. These include certain guarantees for the beneficiary of international protection. These procedural considerations are discussed more in detail in [Chapter III ‘Procedural steps of the cessation workflow’](#).

### Related EASO tool

EASO, *Ending International Protection: Articles 11, 14, 16 and 19 Qualification Directive (2011/95/EU) – Judicial analysis*, 2016.

## (c) European jurisprudence

### CJEU, judgment of 2 March 2010, *Abdulla and others v Bundesrepublik Deutschland* <sup>(18)</sup>

The CJEU was addressed with a request for a preliminary ruling from a German Court concerning the interpretation of Article 11 of the original qualification directive (Directive 2004/83/EC) (original QD) when refugee status is deemed to have ceased to exist.

The case concerned Iraqi nationals who had been granted refugee status in Germany based on their fear of being persecuted in the country of origin by the ruling party. After several years, the German authority revoked their recognition because of the change in circumstances in Iraq. The case ended up at the Federal Administrative Court which decided to refer it to the CJEU for preliminary ruling.

The CJEU ruled that a change in circumstances must remedy the reasons which led to the recognition of refugee status. This means that the actors of protection in the country of origin must take reasonable steps to prevent persecution, must operate an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the person concerned must have access to such protection. To satisfy the requirement of significant and non-temporary nature, the reasons why the applicant was granted refugee status must be permanently eradicated. International organisations, including by means of the presence of a multinational force, can be actors of protection.

The CJEU noted that the cessation of refugee status cannot depend on the finding that a person does not qualify for subsidiary protection status, as those are two distinct systems of protection.

When the determining authority verifies that there are no other circumstances which could justify a fear of persecution, the standard of probability to assess such circumstances is the same as when the applicant was granted refugee status.

When the competent authority plans to withdraw refugee status because of the change in circumstances, Article 4(4) QD applies normally if the applicant relies on reasons for persecution different from those that were accepted before and if there are earlier acts or threats of persecution connected to these different reasons.

<sup>(18)</sup> CJEU, judgment of 2 March 2010, *Aydin Salahadin Abdulla, Kamil Hasan, Ahmed Adem, Hamrin Mosa Rashid, Dler Jamal v Bundesrepublik Deutschland*, joined cases C-175/08, C-176/08, C-178/08 and C-179/08, ECLI:EU:C:2010:105. Summary available in the [EASO Case Law Database](#).

**CJEU, judgment of 20 January 2021, *Secretary of State for the Home Department v OA* <sup>(19)</sup>**

The CJEU was addressed with a request for a preliminary ruling from the United Kingdom concerning the interpretation of Article 2(e) and Articles 7 and 11 of the original QD.

The case concerned a Somali national who had been granted refugee status in the United Kingdom based on the violent persecution he and his wife faced in their country of origin. After several years, the British authority revoked their recognition because of the change in circumstances in Somalia. The case ended up at the Upper Tribunal which decided to refer it to the CJEU for preliminary ruling.

The CJEU referred to the *Abdulla* judgment <sup>(20)</sup> concerning the definition of protection: the actors of protection in the country of origin must take reasonable steps to prevent persecution, must operate an effective legal system for the detection, prosecution and punishment of acts constituting persecution and the person concerned must have access to such protection.

The CJEU also noted that social and financial support provided by private actors (e.g. the family) after returning to the country of origin cannot constitute protection as such support is inherently incapable of either preventing acts of persecution or of detecting, prosecuting and punishing such acts and, therefore, cannot be regarded as providing protection.

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<sup>(19)</sup> CJEU, judgment of 20 January 2021, *Secretary of State for the Home Department v OA*, C-255/19, ECLI:EU:C:2021:36. Summary available in the [EASO Case Law Database](#).

<sup>(20)</sup> CJEU, 2010, *Abdulla*, op. cit., fn. 18.

## II. Legal analysis of cessation clauses

### (a) Individual's voluntary acts leading to cessation

Of the six cessation clauses mentioned in Article 11 QD, the first four reflect changes that have been made by the beneficiary themselves. The following clauses apply only to beneficiaries of the refugee status:

- (a) voluntary re-availment of protection in the country of origin;
- (b) voluntary re-acquisition of nationality;
- (c) acquisition of a new nationality;
- (d) voluntary re-establishment in the country where persecution was feared.

There are instances where the person's acts, such as contacting the authorities of the country of origin or travelling there, raise considerations on whether continued international protection is indeed necessary or a need for protection has ceased to exist. In three out of the four situations mentioned above (letters (a), (b) and (d)) the main and common element that needs to be examined and assessed is the voluntariness of the person's acts.

The notion of 'voluntariness' implies the absence of any physical, psychological, or material pressure. Only **voluntary** re-availment, reacquisition or re-establishment can substantiate the conclusion that the need for protection has indeed ceased to exist. The assessment of voluntariness must be based on the specific circumstances of the case. The relation that the refugee has with their country of origin should be objectively and independently analysed.

#### 1. Voluntary re-availment of protection in the country of nationality

Article 11(1)(a) reflects Article 1C(1) Refugee Convention. Refugee status will end if an individual has 'voluntarily re-availed himself or herself of the protection of his country of nationality'.

This clause can apply only when the beneficiary is in possession of the nationality of the country of origin but lives outside of it. However, this clause does not necessarily mean that the person has returned to their country of origin. The clause will lead to termination of international protection because the person concerned has availed themselves of the protection of their country of origin, thus demonstrating that they are no longer in need of protection from the country of asylum.

The re-availment of the protection of the country of nationality can only lead to cessation when the following conditions are met.

- The refugee has acted voluntarily.
- The individual's actions carry the intention to re-avail themselves of the protection of the country of their nationality.
- The refugee has obtained effective protection.

It has to be stressed that the act alone would not automatically lead to cessation. The individual should have acted of their own free will, with the aim of seeking and obtaining protection. If the person is obliged to act by circumstances beyond their control, the criterion of voluntariness is not met. The actions of the person should also show the intent to re-avail themselves of the protection of the country or nationality. The term 'protection' in this sense encompasses both diplomatic protection and consular assistance against persecution or serious harm. The protection sought should be effective <sup>(21)</sup> insofar as mere attempts or unsuccessful requests for protection by the country of nationality would not lead to cessation. Attention should be drawn to the different types and degrees of re-availment, as occasional contact with the authorities differs significantly from actual re-availment, where the person has established regular and strong relations with the country of nationality.

### **Contacting the authorities of the country of origin** <sup>(22)</sup>

Cases where the consular authorities provide documents and certificates that the nationals of the country may need whilst abroad, including renewal of passports, birth and marriage certificates, authentication of diplomas, etc., could be examined under the perspective of re-availment of protection. Regarding the issuance of national documents, the key issue is the reason why the document was obtained or renewed, along with the personal circumstances of the individual and the situation in the country of origin. For example, issuance or extension of national passports may imply an intention to re-establish normal relations with the country of nationality <sup>(23)</sup>. There may be cases, though, where obtaining or renewing a national passport does not imply the intention to re-avail of the protection of the country of nationality. This is the case, for example, where the national passport is requested by the authorities of the host country. Depending on the individual circumstances and on the intention of the beneficiary, contacts with embassies or consulates for the purpose of certification of academic documents, or for obtaining copies of birth, marital, and other records, may or may not be considered as acts which carry the intention of re-availing of the protection of the country of origin.

In every case, national authorities would need to examine the purpose of the contact(s) and/or travel(s) since the act, taken out of context, could give the wrong impression. Moreover, the assessment of any contact with the authorities of the country of origin should take into account whether the person is targeted by state or non-state actors. In cases where, for example, the beneficiary of international protection fears persecution by an armed group, the contact with the state authorities does not necessarily imply that the state is able or willing to provide protection against the armed group.

The key challenge in this procedure is to determine whether the refugee, by their actions, has intended to re-avail themselves of the protection of the country of origin and whether such protection would be effectively provided by the country of origin.

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<sup>(21)</sup> For a further discussion of the concept of 'effective protection' see Chapter II, section b.

<sup>(22)</sup> See also in 'Beneficiaries of International Protection Travelling to and Contacting Authorities of their Country of Origin', Synthesis Report for the EMN Study, 2019.

<sup>(23)</sup> UNHCR, *The Cessation Clauses: Guidelines on their application*, op. cit., fn. 13, para. 10.

**Examples of acts that may be indicative of re-availment of protection <sup>(24)</sup>**

- Voluntary return/stay
- Long stay without hiding
- Issuance or renewal of a passport
- Issuance of an administrative document
- Taking up a job with the authorities of the country of origin
- Frequent contacts with national authorities over a certain period of time, initiated by the individual.

**Practical examples**

Cessation may not be applicable in the following cases.

- The individual cannot or has not explicitly manifested a will to re-avail himself of the protection of the country of origin, for example in the case of a child or when a third person has sought re-availment without the consent of the refugee.
- The individual has only made occasional contact, e.g. to request documents for family reunification, request passports for minor children, etc.
- The individual has made contact only because it was absolutely necessary, for example to continue receiving vital treatments.

## 2. Voluntary reacquisition of nationality

As stated in the UNHCR 1999 cessation guidelines, ‘nationality is generally considered to reflect the bond between the citizen and the State and, as long as the refugee has of his own free will reacquired the lost nationality, the intent to obtain the protection of his or her government may be presumed’ <sup>(25)</sup>. The loss of nationality could have occurred before or after recognition of refugee status. Such loss can be at the initiative of the country of origin, e.g. *ex lege* loss of nationality due to marriage with a national of another country, or at the initiative of the individual, e.g. renunciation of nationality.

Article 11(1)(b) QD is applicable to any person who, at some point, has lost the nationality of their country of origin and has now **voluntarily** reacquired it. The voluntary reacquisition of the nationality is a clear indication that there is a normalisation of the bond between the refugee and the government in relation to which they had a well-founded fear of persecution <sup>(26)</sup>. Once the voluntary character of the reacquisition has been established, the intent or the motive of the person is presumed.

Further, the UNHCR note on the application of the cessation clauses <sup>(27)</sup> states: ‘Voluntary reacquisition of former nationality must be accompanied by the **actual restoration of relations** between the individual and the country of nationality, that is, the effective protection of the country of nationality must be available to the refugee, who willingly re-avails himself or herself of it. This latter aspect is particularly important in regard to those refugees who were persecuted by deprivation of nationality.’

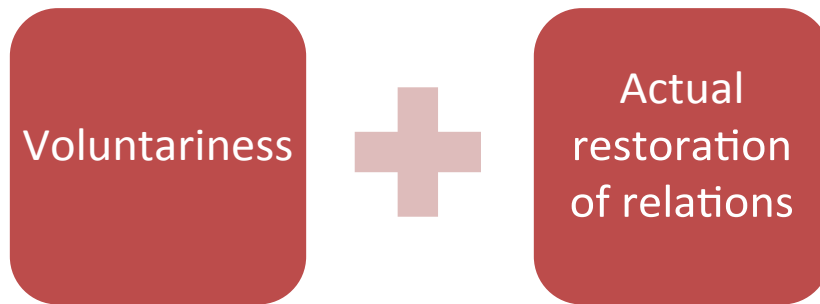
<sup>(24)</sup> This list is indicative and is not intended to be exhaustive.

<sup>(25)</sup> UNHCR, *The Cessation Clauses: Guidelines on their application*, op. cit., fn. 13, para. 13.

<sup>(26)</sup> UNHCR, *The Cessation Clauses: Guidelines on their application*, op. cit., fn. 13, para. 13.

<sup>(27)</sup> UNHCR, *UNHCR Note on the Applicability of the Cessation*, May 1997, EC/47/SC/CRP.30, para. 13.

The reacquisition of nationality *de jure* is not sufficient in itself to apply the cessation clause. So, in cases where the law in the refugee's country of origin automatically confers nationality and the refugee has reacquired nationality in this way, there may be no act on the part of the refugee which would automatically trigger the application of this clause <sup>(28)</sup>. However, there might still be cases where Article 11(1)(b) QD could apply, if the person explicitly accepted the nationality. Special attention should be drawn to the particularities of each case, namely, the specific terms of the decree conferring nationality and the steps and options given to the individual, as well as the refugee's knowledge of their options.



As in every cessation case, all the relevant information and evidence gathered should be carefully assessed. The decision should not be solely based on one aspect or the other, i.e. the situation in the country of origin or the individual circumstances of the applicant. Both factors should be assessed diligently and in good faith.

### 3. Acquisition of a new nationality

International protection can be also terminated in cases where the refugee has acquired a new nationality and enjoys the protection of the country of the new nationality. This clause is most commonly applicable in cases where refugees are successfully integrated in the host countries, eventually acquiring the nationality of the host country through naturalisation. However, this clause also applies in cases when the person acquires the nationality of another (third) country.

The elements to be examined by the national authorities are whether the new nationality has been acquired *de jure* and *de facto*, and whether, due to a well-founded fear of persecution or a real risk of serious harm in the country of new nationality, the person is unable or unwilling to avail themselves of the **protection of the country of the new nationality**. Case officers should assess both the legal framework and the administrative practice in order to assess if the nationality is effective and reflects a genuine link. The refugee should be able to enjoy the rights that the citizens of that country have, including the right to return and reside in said country. In cases where the new nationality is acquired by operation of law, case officers should thoroughly examine whether the protection is effective and the laws are implemented in such a way that the protection is available in practice. This is particularly relevant in cases of women who automatically acquire their husbands' nationalities and in cases of succession of states.

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<sup>(28)</sup> UNHCR, *The Cessation Clauses: Guidelines on their application*, op. cit., fn. 13, para. 14.

In the examination of this clause, COI on both legislation and practice should be consulted and any documentary evidence, such as passports and ID documents, should be examined along with the person's statements.

#### 4. Voluntary re-establishment in the country from which the refugee left

The last cessation clause related to the individual's own acts (Article 11(1)(d) QD) requires the person not only to have voluntarily returned but also to have resettled in the country from which protection was sought. The rationale of this cessation clause is that in cases where the voluntary return amounts to re-establishment, the person no longer needs international protection since they have already been able to secure national protection <sup>(29)</sup>. In the application of this clause, case officers should consider two key issues: the voluntariness of the person's acts and the re-establishment aspect.

In relation to the first key issue, in principle, both the return and the stay must have been undertaken **voluntarily**. Case officers should be cautious in cases where either the return or the prolonged stay were not voluntary. In that sense, this cessation clause will not be applicable to cases where (a) the return is not in reality based on the refugee's free consent (including situations of coercion or threats of sanction or of the withdrawal of rights, deportation, extradition, kidnapping or unexpected travel routes by transport services) and (b) where the person returned to their country of origin voluntarily, but their stay was not voluntary, due to circumstances such as imprisonment, kidnapping or a critical medical condition impeding travelling.

With regard to the second key issue, there is no definition as such of what '**re-establishment**' entails. The essential element is that there is a normalisation of the relations with the government of the country of origin. Case officers should assess, on a case-by-case basis, the acts of the refugee. Elements such as the length of stay and acts indicating a sense of 'commitment' to the society of the country – for example opening a new business, building or buying a new house or becoming a member of a political party, paying taxes, adopting a child or performing military duties – can play an important role in assessing re-establishment. Even when the refugee has returned to the country involuntarily, voluntary further steps to settle and to resume a normal life for a prolonged period may mean that the cessation clause still applies. In contrast, travelling back to assess the situation, in particular to assess if the situation is suitable for a permanent return, does not amount to 're-establishment'. In the same context, visiting family and friends for short periods of time is not sufficient to consider that the refugee has voluntarily re-established themselves in their country of origin.

The application of this cessation clause does not preclude the person from making a new refugee claim based on circumstances in the country of origin which occur after they have re-established themselves <sup>(30)</sup>.

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<sup>(29)</sup> EASO, *Ending International Protection: Articles 11, 14, 16 and 19 Qualification Directive (2011/95/EU) – A judicial analysis*, 2016.

<sup>(30)</sup> UNHCR, *The Cessation Clauses: Guidelines on their application*, op. cit., fn. 13, para. 22.

### Practical example

In Denmark a national programme is available that supports beneficiaries of international protection returning to their countries of origin. They benefit from a special allowance for their re-establishment in their country of origin. Those individuals who are not able to re-establish can, within a certain time frame, return to the host country with no legal consequences regarding their international protection status.

## (b) Change of circumstances

Article 11 QD

Article 16 QD

While the previous section dealt with the clauses related to the beneficiary's behaviour, this section discusses the cessation clauses related to changed circumstances, i.e. when the relevant circumstances 'have ceased to exist' or 'have changed to such a degree that protection is no longer required'. Unlike the clauses related to the behaviour of the beneficiary, which apply to refugees only, cessation due to change of circumstances can apply to both refugees and beneficiaries of subsidiary protection.

In order to assess the change of circumstances, the case officer must rely on relevant COI. This can include, for example, information about the political situation, enforcement of the rule of law or improvements in the protection of human rights. According to UNHCR, 'it is generally assumed that the "circumstances" in question are, principally, the political and basic human rights conditions in the country of origin or habitual residence. These circumstances will have been at the base of the fear of persecution giving rise to refugee status' <sup>(31)</sup>.

The changes should be related to the circumstances **in connection with which the beneficiary was granted international protection**. In other words, the changes should not be considered in isolation: they should always be considered in relation to the reasons why the applicant was recognised as a beneficiary. The examination always has to assess how the changes affect the individual and their need for international protection.

The type of changes under consideration are most commonly changes in the general situation of the country of origin, for example a change in the political or security situation. The changed circumstances can also be more closely linked to the situation of the beneficiary, for example when a durable settlement has been reached in a vendetta between families for which the authorities were unable or unwilling to provide protection. However, in order to be significant and non-temporary, the changes that fall under such cessation clauses should not merely depend on the actions or attitude of the individual. In other words, changes in the individual's convictions or beliefs or a change of the personal status (such as family relations) of the beneficiary do not qualify as a change in circumstances leading to cessation.

While the cessation clauses based on individual behaviour (Article 11 (a)(d) QD) only apply to those who have been granted refugee status, the individual actions of a beneficiary who has been granted subsidiary protection status can, in certain cases, trigger an assessment of whether the circumstances in

<sup>(31)</sup> UNHCR, *Discussion Note on the Application of the 'ceased circumstances' Cessation Clauses in the 1951 Convention*, 20 December 1991, EC/SCP/1992/CRP.1.

relation to which they have been recognised may have changed. This can be the case when, for example, the beneficiary has travelled back to their country of origin. The return itself would not be the ground of cessation, but it can be a trigger to investigate if the circumstances in relation to which the beneficiary has been granted subsidiary protection status have ceased to exist or have changed to such a degree that international protection is no longer required.

## 1. Significant and non-temporary nature of change

For both refugee status and subsidiary protection status, the changed circumstances need to be of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded, or that the person eligible for subsidiary protection no longer faces a real risk of serious harm <sup>(32)</sup>.

### CJEU, judgment of 2 March 2010, *Abdulla and others v Bundesrepublik Deutschland* <sup>(33)</sup>

The CJEU was addressed with a request for a preliminary ruling from Germany concerning the interpretation of Article 11(1)(e) of the original QD.

In its judgment, the CJEU held that the change in circumstances needs to be of such a 'significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well founded.'

In its ruling, the CJEU indicated that:

'the assessment of the significant and non-temporary nature of the change of circumstances thus implies that there are no well-founded fears of being exposed to acts of persecution amounting to severe violations of basic human rights within the meaning of Article 9(1) of the Directive'.

The '**significant**' nature of the change needs to be assessed in relation to the original circumstances in connection with which the beneficiary was recognised. The change or the event itself does not need to be significant in terms of being 'historic', but rather in terms of resulting in the eradication of the factors which formed the basis of the original well-founded fear or real risk <sup>(34)</sup>. When the changes concern the general situation in the country of origin, indicators which are relevant to assess if the change is significant are, for example, the establishment of democracy, successful changes to the constitution and their consequences on the political regime, general respect for human rights, democratic elections and a multi-party system, reforms to the legal and social structure, operating conditions of institutions and administrations, repeal of oppressive laws, dismantling of repressive security forces and of all groups or entities likely to be at the origin of acts of persecution <sup>(35)</sup>. Indicators such as the application of amnesty schemes or successful large-scale repatriation can also be taken into account.

As to the **non-temporary nature** under Article 11(2) QD, the Court held that the change of circumstances will be considered to be of such a nature when the factors which formed the basis of the refugee's fear of persecution may be regarded as having been **permanently** eradicated <sup>(36)</sup>. Given the different nature of

<sup>(32)</sup> Articles 11(2) and 16(2) QD (recast).

<sup>(33)</sup> CJEU, 2010, *Abdulla*, op.cit., fn. 18.

<sup>(34)</sup> CJEU, 2010, *Abdulla*, op.cit., fn. 18, para. 73.

<sup>(35)</sup> O'Sullivan, M. *Refugee Law and Durability of Protection: Temporary residence and cessation of status*, 2019, op. cit., fn. 77, Chapter 4.

<sup>(36)</sup> CJEU, 2010, *Abdulla*, op. cit., fn. 18, para. 73.

each situation as well as the individual elements, no precise minimum period has been set in the context of EU legislation. In order to conclude the non-temporary nature of change, it is in any case paramount to analyse the progress and the changes made during the period elapsing after the occurrence of the change. This assessment requires considering the manner in which the significant changes came about and, in particular, the subsequent evolution of the stability of the situation in the country of origin. For example, a transition taking place through a democratic process with fair and open elections is more likely to meet the standards of the ‘non-temporary’ nature of change than a change occurring following a regime taking power through violence.

The UNHCR cautions against taking possible transitory changes into account, as ‘a refugee status should not in principle be subjected to frequent review’ (UNHCR Handbook para. 135 <sup>(37)</sup>). In particular, with regard to the general situation in a country of origin, it is not always easy to assess if a change is non-temporary.

## 2. Fear of persecution no longer well-founded / real risk of serious harm no longer faced

In accordance with Articles 11(2) and 16(2) QD, the changes of circumstances should be such that the refugee’s fear is no longer well-founded, and the beneficiary of subsidiary protection no longer faces a real risk of serious harm. In other words, the circumstances that initially justified the granting of international protection should have ceased to exist (Article 11(1)(e) QD) or for subsidiary protection only should have changed to such a degree that protection is no longer required (Article 16(1) QD).

It must be examined whether grounds that could lead to the need for international protection continue to exist. They can be the same grounds on the basis of which the beneficiary was initially recognised, or other, new, grounds that arose after the recognition. For example, in the event of a return to the country of origin, new circumstances could give rise to fear of persecution or to a real risk of serious harm.

When applying the relevant cessation clause, it can be challenging to determine the threshold for the required change as well as the **standard of proof** applied to assess the extent of the change of circumstances that is likely to justify a decision on cessation. The standard of proof required for application of the ‘ceased circumstances’ clause has to be understood as a mirror of Article 4(4) QD <sup>(38)</sup>, as it needs to be determined that the past persecution or serious harm which led to the initial recognition will not recur or that the effects of it have been eradicated. Cessation therefore implies that the change in circumstances has remedied the reasons which led to the recognition of refugee status <sup>(39)</sup>. In this context the UNHCR notes that ‘the standard of proof (or standard of probability) required for the application of the “ceased circumstances” clause must be high, in particular due to the serious

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<sup>(37)</sup> ‘[Change of] circumstances refers to fundamental changes in the country, which can be assumed to remove the basis of the fear of persecution. A mere – possibly transitory – change in the facts surrounding the individual refugee’s fear, which does not entail such major changes of circumstances, is not sufficient to make this clause applicable.’ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, 2019, op. cit., fn. 15, para. 135.

<sup>(38)</sup> ‘The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, is a serious indication of the applicant’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated’.

<sup>(39)</sup> CJEU, 2010, *Abdulla*, op.cit., fn. 18, para. 69.

consequences of cessation for the refugee, and the fact that the “ceased circumstances” clause is not triggered by a voluntary act on the part of the refugee.’<sup>(40)</sup>

According to the *EASO Practical Guide: Evidence assessment* <sup>(41)</sup>, ‘the elements listed in Article 4(3) QD have to be analysed in relation to the applicable standard of proof in order to be able to make a risk assessment. The most commonly applied standard of proof in assessing the well-founded fear of persecution and the real risk of serious harm is “reasonable degree of likelihood”. The applicable standard of proof should in any case be lower than “beyond reasonable doubt”.

Once it has been established that the circumstances based on which refugee status was granted have ceased to exist, it is still necessary to verify whether **other circumstances** may have arisen leading the person to have a well-founded fear of persecution or run a real risk of serious harm. Only if the answer to this question is ‘no’ may the refugee or subsidiary protection status be ended. The assessment to be carried out is analogous to the one taking place during the examination of an initial application for the granting of the status <sup>(42)</sup>. In particular, the case officer has to examine if the person has a well-founded fear of persecution connected to one of the five grounds, follow all the necessary steps of the assessment, and make a decision on eligibility <sup>(43)</sup>. If the well-founded fear of persecution for one of the five grounds is substantiated, the person will be granted the refugee status. If the person does not qualify for refugee status, the examination continues to assess subsidiary protection. If it is established that the person will have a real risk of serious harm, as described on Article 15 QD, then the refugee status will cease but they will be granted subsidiary protection.

With regard to the standard of proof to be applied upon examination, if there are no other circumstances which could justify a fear of persecution for the person concerned (either for the same reason as that initially at issue or for new reasons), the CJEU stated that ‘the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted’ <sup>(44)</sup>.

### 3. The notion of effective protection and non-state actors of protection

In accordance with Articles 11 and 16 QD, in order to apply cessation in the case of a change of circumstances of a significant and non-temporary nature, the beneficiaries of international protection should be able to avail themselves of the protection of the country of origin (Article 11(1)(e)) or it should be established that international protection is no longer required (Article 16(1)).

In cases where a risk of persecution or serious harm continues to exist, the application of cessation clauses is subordinate to protection being granted effectively by the actors of protection under the same terms as referred to in Article 7 QD <sup>(45)</sup>. The fact that the beneficiary was previously recognised as such

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<sup>(40)</sup> UNHCR, *UNHCR public statement in relation to Salahadin Abdulla and Others v Bundesrepublik Deutschland pending before the Court of Justice of the European Union*, 2008, p. 18.

<sup>(41)</sup> *EASO Practical Guide: Evidence assessment*, 2015, p. 21.

<sup>(42)</sup> CJEU, 2010, *Abdulla*, op. cit., fn. 18, paras 81–83.

<sup>(43)</sup> For further guidance on the examination of international protection, see *EASO Practical Guide: Evidence assessment*, 2015 and *EASO Practical Guide: Qualification for international protection*, 2018.

<sup>(44)</sup> CJEU, 2010, *Abdulla*, op. cit., fn. 18, para. 84.

<sup>(45)</sup> CJEU, 2021, *OA*, op. cit., fn. 19, para. 38.

implies that they were unable or, owing to fear or risk, unwilling to avail themselves of the protection of their country of origin. If the ground for the fear or risk has not ceased, the change of circumstances should then apply to the availability of protection of the home country. This means that the availability of protection should have changed to such an extent that there is no longer a well-founded fear or real risk.

Article 7(2) QD sets out guidance as to when protection is ‘generally provided’ and the factors that Member States must consider in their assessments:

Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors mentioned ... take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.

In its 2010 judgment in the case of *Abdulla and others*, the CJEU ruled that, when carrying out the assessment of actors of protection, it is necessary to verify that such actors have taken reasonable steps to prevent the persecution. It is therefore necessary to verify that they operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if the person ceases to have refugee status <sup>(46)</sup>.

In that respect, when assessing the actors of protection, their willingness and ability to offer protection should be examined. It should also be assessed whether the protection offered is effective and of a non-temporary nature, and whether the applicant also has access to such protection. The non-availability of protection does not necessarily need to be linked to the reasons for persecution or serious harm. Failure or inability to sufficiently provide protection proves a de facto lack of protection.

According to the judgment of the CJEU in the case of *OA* <sup>(47)</sup>, mere social and financial support provided by private actors, such as the family or a clan, is **inherently** incapable of either preventing or punishing acts of persecution and, therefore, cannot be regarded as providing the protection required from those acts. Consequently, the Court also finds that such social and financial support offered by private actors is of no relevance to the assessment of the effectiveness or availability of the protection provided by the state. Also, when private actors offer protection, for example in terms of security, according to the same judgment it is not possible to take this element into account when assessing if effective state protection is available in line with Article 7(2) QD <sup>(48)</sup>.

When assessing the actors of protection, it is necessary to examine the existing laws and regulations of the country of origin as well as the way in which they are applied in practice. The abolishment of discriminatory laws or the extent to which respect for fundamental human rights is ensured in practice can be relevant examples when examining actors of protection in that context.

When examining if a non-state body is an actor of protection, an additional condition requires that the actor controls the state or a substantial part of the territory. Therefore, in order for an entity to be eventually considered as an actor of protection meeting the requirements of Article 7 QD, it must be

<sup>(46)</sup> CJEU, 2010, *Abdulla*, op. cit., fn. 18, para. 70.

<sup>(47)</sup> CJEU, 2021, *OA*, op. cit., fn. 19, paras 41 and 46.

<sup>(48)</sup> Ibid., para. 53.

established that it exercises relevant governmental functions over the controlled territory <sup>(49)</sup>. However, the presence of such entities can also be an indication of instability. Thereby, a thorough and individual assessment must be made in each case, resorting to relevant COI able to substantiate that the changed circumstances are not temporary.

### (c) Compelling reasons to refuse the protection of the country of origin

The purpose of the compelling reasons exception is to guarantee that persons who have been subjected to previous severe persecution are not returned to their country of origin, even if the change of situation may suggest that they can return.

#### Article 1C(5) Refugee Convention

In accordance with Article 1C(5) Refugee Convention, cessation 'shall not apply to a refugee ... who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality'.

The QD introduces 'compelling reasons' as an exception in Article 11(3) <sup>(50)</sup> for refugee status and in Article 16(3) <sup>(51)</sup> for subsidiary protection. These exceptions provide for the maintenance of protection for compelling reasons arising out of previous persecution or previous serious harm and are considered as reflecting a general humanitarian principle.

The compelling reasons cover refugees and beneficiaries of subsidiary protection who have suffered very serious persecution in the past and whose need for protection will therefore not cease even if the circumstances in the country of origin have changed. In practical terms, that means that once international protection has been granted, it is not to be taken away even though there is no longer a fear of persecution or serious harm. In this case, the persecution or harm suffered in the past must have been of such a serious nature and have taken such 'atrocious forms' <sup>(52)</sup> that the person cannot reasonably be expected to return to their country.

The reasons for refusing to avail oneself of the protection of the country of origin must be so strong that it is utterly unreasonable to require the beneficiary to return. The unreasonableness of that request is to be established objectively, taking into account the subjective state of mind of the refugee. The severity can be inferred from the act itself, from the duration of the treatment and from the context in which it

<sup>(49)</sup> See *EASO Practical Guide: Qualification for international protection*, 2018, pp. 36–39.

<sup>(50)</sup> 'Points (e) and (f) of paragraph 1 shall not apply to a **refugee** (emphasis added) who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.'

<sup>(51)</sup> 'Paragraph 1 shall not apply to a beneficiary of **subsidiary protection** (emphasis added) status who is able to invoke compelling reasons arising out of previous serious harm for refusing to avail himself or herself of the protection of the country of nationality or, being a stateless person, of the country of former habitual residence.'

<sup>(52)</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, 2019, op. cit., fn. 15.

took place <sup>(53)</sup>. In some cases, medical expertise and a medico-legal report can be of great value for the assessment <sup>(54)</sup>.

The compelling reasons must, in accordance with the QD, arise from previous persecution or previous serious harm. This can be a combination of the circumstances of the original persecution and the consequences that return to the country might have had. It could also happen that the previous persecution which gives rise to the compelling reasons was not the actual ground for the recognition of refugee status or the granting of subsidiary protection. Let us take, for example, the scenario of a refugee who has scars on their body as the result of severe torture, a claim which would have been explored and assessed during the examination of the application. The granting of refugee status may nevertheless have been based on the consideration that any person bearing scars (of whatever source) is suspected by the government of having taken part in the ongoing civil war and, for that reason alone, can be subject to persecution. In the context of cessation considerations due to a change of circumstances and given the purpose of the provision, it seems that the refugee should be able to rely on acts of persecution that were not necessarily the grounds for the original recognition of refugee status – in this case, the severe torture. In any case, these acts should at least have been mentioned by the refugee during the initial application. During the cessation proceedings, it should be proved that such acts actually occurred.

Below is a non-exhaustive list <sup>(55)</sup> of the forms of persecution that could potentially lead to the application of compelling reasons.

#### Examples of possible compelling reasons (non-exhaustive list)

- Genocide
- Torture
- Inhuman and degrading treatment or punishment
- Detention in camps or prisons
- Acts of threats of severe violence
- Mutilation
- Rape
- Other forms of sexual assault
- Loss of close relatives through persecution
- Survivors or witnesses of violence against family members
- Severely traumatised persons.

The compelling reasons need to be examined on a **case-by-case basis**. Special attention should be given to certain individual aspects such as age, gender, cultural background and social experiences.

<sup>(53)</sup> UNHCR, *Guidelines on Exemption Procedures in respect of Cessation Declarations*, December 2011, para. 26.

<sup>(54)</sup> Refer to: OHCHR, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('Istanbul Protocol')*, 2004, HR/P/PT/8/Rev.1; UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection*, 2019, op. cit., fn. 15, paras 208–210.

<sup>(55)</sup> The list is, except for the last three items, taken from UNHCR, *Guidelines on Exemption Procedures in respect of Cessation Declarations*, 2011, op. cit., fn. 53, para. 26.

UNHCR recommends taking into account the following considerations during the assessment <sup>(56)</sup>.

- Extreme stress of the person due to exposure to severe forms of persecution which could be considered a traumatic event for the person concerned. In such cases, it is essential to identify the psychological impact these events had on the beneficiary, for example through obtaining expert evidence.
- Ongoing emotional, mental and physical problems of the person resulting from experiences of severe persecution.
- Special consideration should be given to children, bearing in mind that they may cope with past persecutory events in different ways than adults and they may suffer the negative effects of persecution more seriously.
- The place of the persecutory act or event causing the trauma should not be the determining factor in assessing whether exemption from the application of cessation clauses is applicable. For example, if a refugee was attacked in the country of asylum by agents from the country of origin, this attack may still form the basis of compelling reasons warranting the continued need for international protection.

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<sup>(56)</sup> For more details see UNHCR, *Guidelines on Exemption Procedures in respect of Cessation Declarations*, 2011, op. cit., fn. 53.

### III. Procedural steps of the cessation workflow

This chapter aims to describe the cessation workflow as it is in practice. It provides relevant examples and checklists regarding all the stages of the cessation procedure.

A decision to withdraw international protection is never automatic. There are procedural guarantees that need be respected to ensure a fair, transparent and consistent application of the provisions to end the international protection. As provided in Articles 14(2) and 19(4) QD, before taking a decision Member States have the duty to carry out **an individual assessment** and to assess all the relevant elements of the individual case. The person subject to an examination to re-evaluate their international protection has the duty to submit all relevant facts and documents at their disposal.

#### (a) Triggering factors and initiation of the procedure

##### Article 44 APD

##### 'Withdrawal of international protection

Member States shall ensure that an examination to withdraw international protection from a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of his or her international protection.'

The possible triggering factors for initiating cessation considerations can be divided into two groups, depending on whether the potential cessation would be a consequence of the individual actions or behaviour of the person or a consequence of changed circumstances. The triggering factors listed below do not form an exhaustive list.

#### 1. Factors related to the behaviour of the refugee

When considering triggering factors related to the individual's behaviour, the assessment of the **actual intention** of the refugee to avail themselves of the state's protection will be key. The refugee's declarations therefore need to be taken into account as well.

*The refugee has voluntarily re-availed themselves of the protection of the country of nationality*

- **Passport or other documents issued to the refugee by their national authorities.**  
A refugee who, of their own free will, contacts the embassy or the consulate of their country of origin in order to get a document (birth certificate, other personal certificate) or in order to apply for a new passport.
- **Reports of other national authorities, like police, border guards, embassy or consulates abroad.**  
These authorities can become aware of the departure to or return from the country of origin of a refugee, either at the border or when they apply for the renewal of their residence permit or other services and present the relevant documents. Such documents can include:

- o **flight tickets**
- o **stamps on the passport.**

Stamps on the passport give an indication not only of the return, but also of the length of the stay and of the number of times that the person has travelled to their country of origin.

*Having lost their nationality, the refugee has voluntarily reacquired it*

- **Documents** issued to the person, proving the reacquired nationality.
- Changes in the nationality **legislation** in the country of origin as a starting point for initiating an assessment.

*The refugee has acquired a new nationality and enjoys the protection of the country of their new nationality*

- **New passport** obtained demonstrating that the refugee has acquired a new nationality.
- **Direct information** from the authorities responsible for granting nationality in the country of asylum.
- **List of naturalised persons** published in the official gazettes of the relevant country.

*The refugee has voluntarily re-established themselves in the country they had left or outside of which they remained owing to fear of persecution*

- The **person's statements** and their will to remain and re-establish themselves in their country of origin.
- Relevant **documents** related to the activities of the applicant in the country of origin. These can be for example documents related to a job that the refugee has taken up or to property bought in the country of origin.
- **Reports of other national authorities, like police, border guards, embassy or consulates abroad** which may provide evidence of return, as mentioned above.
- **Unofficial reports or information** on a possible return which need to be assessed with due diligence including the motives of the person concerned.

#### Checklist for triggers related to the individual's behaviour

Issuance of a passport or other relevant documents  
 Documents proving new nationality  
 Evidence of travelling back to the country of origin or of former habitual residence  
 Evidence of settling into the country of origin  
 Official information/report from other authorities  
 Unofficial information/report from another person, assessed with due caution  
 COI reports  
 Declarations of the beneficiary, in order to substantiate their actual intentions

**NOTE:** regarding the assessment of the triggering factors above, the notion of voluntariness on part of the beneficiary (as described in the section above, 'factors related to the behaviour of the refugee') is crucial for the assessment.

## 2. Factors related to the change of circumstances

In the initiation of a cessation procedure, the triggering factors connected with the change of circumstances mostly originate from new COI becoming available. These can be changes in the **security situation, political circumstances, social policy or legislation** in the countries of origin concerned. Such triggering factors come to the attention of the responsible case officer through the internal workflows of the determining authority.

In particular, Member States use COI to assess whether the circumstances in the country of origin have changed in a significant and non-temporary way, in order to examine whether the beneficiary's fear of persecution or real risk of serious harm still applies. The use of COI reports can be systematic, for example through the issuance of periodic reports on the situation of the country of origin by the relevant units of Member State administrations (see, for example, Chapter V 'Large-scale cessation exercises'). However, there can also be ad hoc COI reports such as those requested during the review process of a beneficiary's residence permit renewal. The return of the beneficiary to their country of origin can also trigger such an investigation. It is important to underline that, in addition to the relevant COI, the administration has to take into account the personal situation of the beneficiary and their individual characteristics, as these may have changed since the time of the original decision and because the changed circumstances in the country of origin may affect different individuals in very different ways.

### (b) Information provision

Once it has been assessed that a cessation case is to be initiated, the beneficiary of international protection must be informed accordingly.

#### Article 45(1) APD

1. Member States shall ensure that, where the competent authority is considering withdrawing international protection from a third-country national or stateless person in accordance with Article 14 or 19 of Directive 2011/95/EU, the person concerned enjoys the following guarantees:

- (a) to be informed in writing that the competent authority is reconsidering his or her qualification as a beneficiary of international protection and the reasons for such a reconsideration; and
- (b) to be given the opportunity to submit, in a personal interview in accordance with Article 12(1)(b) and Articles 14 to 17 or in a written statement, reasons as to why his or her international protection should not be withdrawn.

Before any decision on cessation is taken, the beneficiary must be informed in writing of the fact that a cessation is being considered, of the reasons for this reconsideration and of the possibility for the beneficiary to bring forward the reasons why their status should not be withdrawn. The reasons for a reconsideration of the status can be indicative, but should be sufficiently detailed to allow the beneficiary to prepare for the personal interview or to share through a written statement their point of view on why their status should not be withdrawn.

The extent of the written information provided to beneficiaries varies from country to country. One practice is that the letter of information on the initiation of the process includes specific information on the reasons, but not necessarily the sources of the information. If, for example, the administration is assessing re-availment of protection in cases where they have been informed that the person had returned to their country of origin, the administration would not reveal the source of the information

until the interview (if the source was an official one, e.g. the border police). In other Member State practices, the administration seeks to strike a balance between the information provided in the information letter and during the interview.

The information provided at this stage can contain a description of the next steps of the procedure as well as referring to the possibility of appealing a possible negative decision.

### (c) Personal interview

It is recommended to arrange for a personal interview, during which the administration can explain in detail the reasons why cessation considerations have been initiated and the beneficiary can explain any reasons why cessation may not be applicable in their personal situation <sup>(57)</sup>. The personal interview allows to assess further any credibility issues that may arise with regard to the counter arguments brought in by the beneficiary. When personal interviews are not organised systematically, it is important to envisage the possibility of an interview upon review of the written statements, in order to dispel any uncertain or unclear elements that may have arisen from the written statements. Such an interview may also serve to further explore, as necessary, any new elements put forward by the beneficiary.

Further, it is recommended that case officers responsible for the cessation interview and/or assessment have followed specialised training on cessation <sup>(58)</sup> and the end of protection, such as the [EASO training module 'End of Protection'](#).

The requirements for the personal interview are stated in detail in Article 15 APD. The personal interview should normally take place without the presence of family members, unless it is considered necessary for an appropriate examination, and under conditions which ensure confidentiality. The Member States are required to take appropriate steps to ensure that personal interviews are conducted under conditions which allow the beneficiary to present their views. Finally, the Member States may provide rules concerning the presence of third parties at the personal interview.

Furthermore, the UNHCR <sup>(59)</sup> makes the following recommendations in the case of a cessation process.

- The interview takes place in a suitable environment.
- An empathetic attitude is used during the interview.
- Sufficient time is allotted for the interview.
- If the stress becomes intolerable for the applicant, it may be necessary to reschedule the appointment to resume the interview later.
- It is important to bear in mind that reviving traumatic memories after many years can result in worsening or reigniting symptoms of trauma.

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<sup>(57)</sup> According to [UNHCR's Guidelines on Exemption Procedures in respect of Cessation Declarations](#), the right to be heard, including an individual interview at first instance, is listed among the minimum procedural standards of the procedural issues (see paras 29 and 42).

<sup>(58)</sup> According to [UNHCR's Guidelines on Exemption Procedures in respect of Cessation Declarations](#), 'Governmental officials deciding on exemptions should have experience in Refugee Status Determination (RSD) and, where feasible, exemption procedures' (para. 9).

<sup>(59)</sup> UNHCR, [Guidelines on Exemption Procedures in respect of Cessation Declarations](#), 2011, op. cit., fn. 53, paras 51–53.

- Questions about psychological problems and sexual matters are considered taboo in many societies and the interviewer should show respectful awareness of these conditions.

## 1. The structure of the interview

Before conducting an interview, it is always important to obtain relevant COI. In addition, it may be appropriate to identify relevant topics to be explored based on the information on the case.

### Related EASO tool

Guidance on how to conduct a high-quality interview can be found in the *EASO Practical Guide: Personal interview*, 2014.

For each of the cessation clauses, different topics need to be explored during the interview when examining cessation cases. The lists below are meant to be a source of inspiration and are not exhaustive. The questions and topics need to be adapted to the individual case.

#### *Voluntary re-availment of protection in the country of nationality – topics to be explored*

- The reasons why the issuance of a passport / other documents was requested from the authorities of the country of origin.
- How have the passport/documents been used? In what context, with which end result?
- Has the person been travelling? If yes, did they use their passport and where did they travel to?
- How did the person obtain the passport/documents?
- Has the person been issued other documents?
- Which entitlements are linked to the issuance of the passport/document?

#### *Voluntary reacquisition of nationality – topics to be explored*

- Did the reacquisition happen automatically?
- Did the person actively do something to obtain the reacquisition?
- Is the reacquisition of nationality effective in practice?
- Does the person have available documentation for the reacquisition?

#### *Acquisition of new nationality – topics to be explored*

- Has the person actually acquired the new nationality or is acquisition of a new nationality just a possibility?
- Is the acquisition of the new nationality effective in practice?
- Is there a fear of persecution or risk of serious harm in the country of the new nationality?

#### *Voluntary re-establishment in the country of nationality / habitual residence – topics to be explored*

- What were the reasons for going back to the country of nationality / habitual residence?
- How did the person proceed with their life in the country of origin (housing, work, personal belongings, children's school, etc.)?

- How did the person proceed in their contacts with the authorities in their country of origin? Which requests were made to the authorities?
- Which commitments did the beneficiary make to both the society and authorities of the country of origin?
- What was the duration of the time spent in the country of nationality / habitual residence? What was the reason for the length of stay?
- What are the conditions and requirements for the economic and social establishment in the country of nationality / habitual residence?
- Is the person in contact with close family members in the country concerned, thus suggesting the intention of re-establishment?
- Did the person manage to settle without problems?

*Fear of persecution no longer well-founded – real risk of serious harm no longer faced*

During the interview the initial assessment that had led to the granting of international protection needs to be reopened and reconsidered in the light of the changed circumstances.

- Do the changed circumstances remove the risk of persecution and/or serious harm?
- Do the changed circumstances lead to effective protection being available to the beneficiary in the country of origin?
- Are there any other/new reasons for fear of persecution or risk of serious harm, despite the change of circumstances?

*Topics to explore or assess when the beneficiary presents documents*

Particular attention should also be paid when documents are submitted and assessed during the interview <sup>(60)</sup>.

- How was the document obtained?
- Passports should be checked for entry/exit stamps and/or visas.
- What does the beneficiary want to prove with the document; how is it related to a particular material fact?
- Does the type of document provided exist, according to general information? Is it compatible with COI?
- Does the document contain any internal contradictions?
- Is the content compatible with the beneficiary's statements?
- Is the content compatible with COI?
- Is the content of the document precise?
- Is the document a direct account of a material fact? Does the information come from a direct source or is it a recounting of the beneficiary's statements?

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<sup>(60)</sup> See also *EASO Practical Guide: Evidence assessment*, 2015, Section 2.3 'Assess the documents', p. 13.

## (d) Evidence assessment

Following the personal interview, an evidence-assessment process takes place. In this process it is important to identify the material facts that can lead to a cessation of status and to assess the evidence gathered for each of the material facts.

To apply the cessation clauses, it is of paramount importance that officers dealing with cessation are familiar not only with the facts of each individual case but also with the general situation in the country of origin at the time of the examination. Case officers should have access to and take into account relevant and up-to-date information from various reliable sources, such as EASO and UNHCR.

### EASO COI Portal

The [EASO COI Portal](#) provides access to COI for use in protection status determination procedures. It holds carefully selected information on countries of origin to assist asylum practitioners, including COI researchers, case officers, decision-makers and policymakers, lawyers, legal aid providers and judges. For more guidance for case officers on how to use COI in the examination process, see the [EASO practical guide on the use of country-of-origin information by case officers for the examination of asylum applications](#), 2020.

Depending on the cessation clause that is being applied, the evidence assessment will need to focus on:

- the specific requisites of the cessation clauses: re-availing of protection, reacquisition of lost nationality, acquisition of new nationality, re-establishment in the country of origin;
- the risk assessment related to already accepted grounds or reasons, including the availability of protection;
- the full assessment of new grounds or reasons for the need of international protection.

In order to start the assessment, the case officer needs to gather the relevant information by:

- collecting a statement from the beneficiary through:
  - the personal interview,
  - a written statement,
  - documents presented by the beneficiary;
- collecting evidence from other sources:
  - COI,
  - expert reports,
  - medical and psychological reports,
  - information from other persons (e.g. witness) <sup>(61)</sup>,
  - information from other Member States.

Once the material facts have been identified and the evidence has been gathered, the case officer will perform a credibility assessment, examining aspects on both the internal and the external credibility.

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<sup>(61)</sup> Not all sources have the same evidentiary value. It depends on the case and reliability of the source.

When the credibility assessment is completed, the case officer proceeds with the risk assessment based on the accepted material facts.

#### Articles 14(2) and 19(4) QD

Article 14(2) QD: 'Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted **refugee status** (emphasis added) shall, on an individual basis, **demonstrate** (emphasis added) that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.'

Article 19(4): 'Without prejudice to the duty of the third-country national or stateless person in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his or her disposal, the Member State which has granted the **subsidiary protection** (emphasis added) status shall, on an individual basis, **demonstrate** (emphasis added) that the person concerned has ceased to be or is not eligible for subsidiary protection in accordance with paragraphs 1, 2 and 3 of this Article.'

During the application of the cessation procedure, the **burden of proof** lies on the asylum authorities. To reach a relevant decision on cessation, the asylum authority needs to demonstrate that the person concerned has ceased to need international protection. In particular, the asylum authority needs to substantiate that the exhaustive grounds provided in Articles 11 and 16 QD apply, for the cessation of refugee status or the beneficiary of subsidiary protection status respectively. However, during the examination of the case, the burden of proof can shift back to the beneficiary when it comes to establishing their continued refusal to avail themselves of the protection of the country of origin despite the changed circumstances. The burden of proof is shared during the examination of the cessation case when it comes to establishing a possible new well-founded fear of persecution or risk of serious harm, as is the case during the regular examination procedure.

More specifically, regarding the burden of proof applied when assessing facts and circumstances, according to Article 4(4) QD 'The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.'

In relation with cessation cases, in accordance with the CJEU judgment in the *Abdulla* <sup>(62)</sup> case, Article 4(4) may apply when the competent authorities plan to withdraw refugee status due to a change of circumstances as provided in Article 11(1)(e) QD, in order to demonstrate that there is still a well-founded fear of persecution, due to circumstances other than those as a result of which the person was recognised as being a refugee.

That may be the case, in particular, where the refugee relies on a reason for persecution other than the one accepted at the time when refugee status was granted and:

- prior to the initial application for international protection, the person suffered acts or threats of persecution on account of the other reason, but did not then rely on it;

<sup>(62)</sup> CJEU, 2010, *Abdulla*, op.cit., fn. 18.

- the person suffered acts or threats of persecution for that reason after leaving their country of origin and those acts or threats originate in that country.

On the other hand, where the refugee refers to the same facts based on which they were granted refugee status, and submits to the competent authorities evidence that the cessation of the facts which gave rise to the granting of that status was followed by other facts which gave rise to a fear of persecution for that same reason, then the assessment of the case will normally be made under the provisions of Article 11(2) QD on the assessment of the significant nature of the change of circumstances. In particular, in this case the competent authorities must assess whether the alleged change of circumstances – for example, the disappearance of one actor of persecution followed by the appearance of another actor of persecution – is of such a significant nature that the refugee’s fear of persecution can no longer be regarded as well founded <sup>(63)</sup>.

It should be noted that in cases where the beneficiary refuses to cooperate with the asylum authorities during the personal interview, such a lack of cooperation on the part of the beneficiary does not constitute a ground for cessation as such. The beneficiary can be asked whether they wish to have the assessment take place in another way, for example by submitting a written statement <sup>(64)</sup>. However, lack of cooperation could potentially lead to failure to meet one of the requirements of Article 4(5) <sup>(65)</sup> on substantiating the application.

#### Related EASO tool

Detailed guidance as to how to complete an evidence assessment can be found in the [EASO Practical Guide: Evidence assessment](#), 2015.

## (e) Drafting of the decision

Following the evidence assessment, the case officer proceeds with analysing the applicability of cessation grounds. In the decision, the case officer should demonstrate that all the criteria of a cessation ground are applicable taking into consideration all individual elements of the case. The case officer should take into account whether the beneficiary’s acts can activate the application of more than one cessation and/or withdrawal clause. The Member State’s practices may vary when it comes to consider a particular act under one or more of the cessation clauses, where the necessary elements are present.

<sup>(63)</sup> CJEU, 2010, *Abdulla*, op. cit., fn. 18, paras 92–100.

<sup>(64)</sup> See section h on Practical challenges in contacting the beneficiaries in the cessation process.

<sup>(65)</sup> Article 4(5) QD (recast): ‘Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant’s statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met: (a) the applicant has made a genuine effort to substantiate his application; (b) all relevant elements at the applicant’s disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements; (c) the applicant’s statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant’s case; (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and (e) the general credibility of the applicant has been established.’

## 1. Written decision

In accordance with Article 45(3) APD, 'Member States shall ensure that the decision of the competent authority to withdraw international protection is given in writing. The reasons in fact and in law shall be stated in the decision ...'

Therefore, the written decision must contain the facts of the case and the applicable legal provisions.

## (f) Notification of the decision and effective remedy

### Article 45 (3) APD: procedural rules

'Member States shall ensure that the decision of the competent authority to withdraw international protection is given in writing. The reasons in fact and in law shall be stated in the decision and information on how to challenge the decision shall be given in writing.'

Notification of the decision to the beneficiary must be in written form. Along with the actual decision and the reason of the decision in fact and in law, the notification should also contain information on appeal possibilities in accordance with Article 45(3) APD. The decision can also provide information about the possibilities of legal aid.

## 1. Effective remedy

Member States must ensure that applicants have the right to an effective remedy before a court or tribunal, against a decision based on one of the cessation clauses.

### Article 46 APD: right to effective remedy

'1. Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal, against the following:

(a) a decision taken on their application for international protection ...

[...]

(c) a decision to withdraw international protection pursuant to Article 45.

[...]

3. In order to comply with paragraph 1, Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs pursuant to Directive 2011/95/EU, at least in appeals procedures before a court or tribunal of first instance.

4. Member States shall provide for reasonable time limits and other necessary rules for the applicant to exercise his or her right to an effective remedy pursuant to paragraph 1. The time limits shall not render such exercise impossible or excessively difficult.

[...]

5. Without prejudice to paragraph 6, Member States shall allow applicants to remain in the territory until the time limit within which to exercise their right to an effective remedy has expired and, when such a right has been exercised within the time limit, pending the outcome of the remedy.'

It is stated in Article 46 APD that an effective remedy contains a full *ex nunc* examination of both facts and points of law. Therefore, second instance examination and assessment of the case must be equivalent to the administration's own assessment <sup>(66)</sup>.

Member States must provide reasonable time frames and other necessary rules for the beneficiary to be able to exercise their right to an effective remedy, in accordance with Article 46(4) APD. In order to meet this requirement, the administration may set a time frame in which the beneficiary can appeal the decision. However, the time limit for appealing the decision may not render such an exercise impossible or excessively difficult.

In addition, in accordance with Article 46(5) APD, the beneficiary should be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.

## (g) Specific considerations for vulnerable persons

It is important to pay attention to categories of vulnerable persons since the very onset of the cessation procedure, in order to provide them with adequate support throughout the cessation process.

The UNHCR notes that for beneficiaries with a 'trauma and/or mental disability, it may be necessary to lighten the burden of proof and the adjudicator may have to seek information elsewhere, using whatever external sources of information available, including country of origin information, medico-legal reports or interviews with family members. As a rule, the examination has to be more "searching" than in other cases, involving a close examination of the applicant's past history and background' <sup>(67)</sup>.

**Children.** When a triggering factor concerning the initiation of the cessation process is activated, the best interests of the child must be given primary consideration <sup>(68)</sup>.

**Other categories of vulnerable persons.** It is relevant to examine the conditions at the moment of granting international protection and to assess to what extent the special needs of the beneficiary were taken into consideration, along with the current special needs of the person.

### 1. Personal interview

**Children.** In cases concerning children, a child-friendly approach should be adopted and a representative of the child should be present if they are unaccompanied. It should be assessed whether or not to interview the child, taking into account the child's best interests. If it is considered necessary to conduct the interview, it must be conducted by a case officer who is trained in working with children and conducting interviews with them. Throughout the interview, the special needs of the child must be taken into account, as well as the best interests of the child.

**Other categories of vulnerable persons.** When interviewing other categories of vulnerable persons, the case officer must assess whether the person in question is fit for the interview and understands

<sup>(66)</sup> See also CJEU, judgment of 9 September 2020, *JP v Commissaire général aux réfugiés et aux apatrides*, C-651/19, ECLI:EU:C:2020:681. Summary available in the [EASO Case Law Database](#).

<sup>(67)</sup> UNHCR, *Guidelines on Exemption Procedures in respect of Cessation Declarations*, 2011, op. cit., fn. 53, para. 59.

<sup>(68)</sup> For guidance on how to provide adequate support to children, refer to the *EASO Practical guide on the best interests of the child in asylum procedures*, 2019.

what the interview is about and the consequences their statements may have. These considerations are particularly relevant for persons with disabilities and physical, mental or psychosocial conditions. If it is assessed that the person can carry out the interview, it can then be examined whether the person in question should have a third party with them during the interview to provide support and help. The case officer should take into consideration any special needs or special procedural guarantees to be met during the interview and should provide for the relevant support measures.

## 2. Notification of the decision

**Children.** Once a decision has been made, it must be assessed how the child will be notified of the decision. It would be most appropriate for the decision to be notified and explained orally, while the guardian / legal representative / parents are present. It is also important to devote time to explaining to the child all the relevant aspects and the next steps of the case.

**Other vulnerable persons.** It is good practice to take into account the individual circumstances of the person and their special needs when deciding on the timing and modalities of notifying the decision. For some categories, such as persons with disabilities, it may be more appropriate for the decision to be notified orally and for a third party to be present to support the person in question. However, the third party should not be informed of the outcome of the decision when there are confidentiality obligations. Depending on the circumstances, it can also be assessed that time must be devoted to explaining the decision and the next steps of the case, in addition to providing a written decision and reasoning.

### Checklist. Examples of triggering factors and initiation of the procedure

#### I. Factors related to the behaviour of the refugee

##### a. *Voluntary re-availment of protection in the country of nationality*

- Return to the country of origin
- Repeated trips
- Obtaining and using a national passport
- Reports of other authorities such as police, border guards, embassy or consulate abroad
- Flight tickets and/or indications on travel documents
- Declarations on the part of the beneficiary

##### b. *Voluntary reacquisition of nationality*

- Documentation issued to the refugee establishing reacquired nationality
- Declarations on the part of the beneficiary

##### c. *Acquisition of a new nationality and protection of the country of their new nationality*

- Obtaining a new passport
- Declarations of the refugee

##### d. *Voluntary re-establishment in the country which they left*

- Relevant documentation
- Evidence of return and establishment, such as reports from other authorities including embassy or consulate abroad
- Declarations on the part of the beneficiary or other persons

## Checklist. Examples of triggering factors and initiation of the procedure

### II. Factors related to the changed circumstances

*Change of circumstances in connection with recognition of international protection status*

Situation in country of origin recorded in a COI report

Change in individual circumstances of the applicant, e.g. shift in political or security situation relevant for the granting of status, etc.

## Checklist. Procedural considerations in the implementation of the cessation process

### Information provision

Written information that a cessation case has been initiated and relevant reasoning for its initiation

Information provided to beneficiary about their rights and obligations while the case is ongoing

### Personal interview

Not a legal requirement in all cases depending on Member State practices, but recommended to offer beneficiaries at least the option of an interview

Requirements on personal interview <sup>(69)</sup>

Specific topics under exploration (consult relevant checklists above)

### Evidence assessment

Gathering of information: collecting statements from the beneficiary, collecting evidence from other sources (COI, expert reports, information from others, etc.)

Applying credibility indicators

### Legal analysis / written decision

Qualification of the beneficiary in the cessation grounds applied

Written issuance of decision containing the facts of the case and the applicable legal provisions

### Notification of the decision / effective remedy

Right to appeal before a court or tribunal

Right to remain in the country while an appeal is pending

## (h) Practical challenges in contacting the beneficiaries in the cessation process

During the cessation process, practical challenges may arise and hinder the examination. In particular, the following situations may occur.

- The beneficiary is residing abroad.
- The beneficiary cannot be reached.
- The beneficiary does not attend the scheduled interview.

As discussed above, the beneficiary of international of protection has a right to be informed about the reconsideration of international protection and they need to be given the opportunity to submit reasons why their international protection should not be withdrawn. Further, as stated in Article 46(1)(c) APD, the beneficiary has the right to an effective remedy against a decision to withdraw international protection.

<sup>(69)</sup> See also *EASO Practical Guide: Personal interview*, 2014.

However, in cases where cessation is considered, there is the possibility that the beneficiary cannot be found or that they are residing outside the country of protection. This may hinder the cessation process, or even prevent cessation, due to the fact that the beneficiary cannot be informed of the process or be given the opportunity to submit reasons as to why their international protection should not be withdrawn, in accordance with Article 45 (1)(a) (b) APD.

Any previously attained information may be useful in locating the beneficiary. If other people are contacted in order to receive the contact information of the beneficiary, it is important to bear in mind confidentiality. Other persons should not be informed of the ongoing cessation process. Other authorities in the country of protection may also have information about the beneficiary and their whereabouts. As a last resort, the beneficiaries could be informed through a public announcement if there are clear rules under national law providing for this possibility. The rights to be heard, to an effective remedy and to the necessary confidentiality would need to be ensured. This possibility should be communicated to the beneficiary in advance, preferably in the decision granting international protection. This can be particularly appropriate in the context of large-scale cessation exercises, which will be discussed in further detail in the [Chapter V 'Large-scale cessation exercises'](#).

If the beneficiary cannot be found or disappears during the process, it has to be assessed on a case-by-case basis whether it is possible to proceed with the cessation process or not. There are some practical considerations that can be taken into account for this assessment.

Aspects to consider during the initiation of the cessation process phase.

- Whether the beneficiary has been informed that their international protection status is being examined under the cessation process.
- Whether there are any other applications for a residence permit, naturalisation or other documents that contain any alternative contact information of the beneficiary.
- If the beneficiary has any relatives or a spouse residing in the country of protection, whether they can be contacted to collect information about the whereabouts of the beneficiary and update their contact information.
- Whether other authorities in the country of protection have any contact information of the person, bearing in mind data protection considerations.
- If the person is residing abroad, whether embassies and consulates of the country of protection may be able to help with locating the beneficiary.
- Depending on national practice, social media and other open sources can give information on the place of residence of the beneficiary, bearing in mind the principle of confidentiality and data protection considerations.

Aspects to consider in the phase of the personal interview and/or the written statement of the beneficiary.

- Whether the beneficiary has been given the opportunity to submit reasons why their international protection should not be ceased.
- In case the beneficiary does not cooperate in relation to the interview, whether they wish to have the assessment take place in a different way, for example by submitting a written statement.

- Raising the possibility of having another person present at the interview who can support the beneficiary.
- Whether the beneficiary can be given the opportunity to provide further comments and remarks after the interview, within a set time frame.
- If the beneficiary does not attend the interview, they should be contacted either by phone or in writing.
- A new interview can be scheduled, or a written hearing can be sent to the person.
- If the beneficiary is residing abroad, whether the interview could be conducted in an embassy or consulate of the country of protection or possibly even remotely <sup>(70)</sup>.
- Whether the beneficiary can be given the opportunity to submit a written statement via post or email. Where possible, the use of a secure email connection for possible confidential information should be favoured.

Aspects to consider in the phase of notification of the decision.

- Whether the beneficiary has been notified of the decision.
- Depending on national practice, whether embassies or consulates of the country of protection might also be able to notify the person of the decision, if they are abroad.
- Depending on national practice and legislation, whether the decision could also be sent by post.

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<sup>(70)</sup> See also *EASO Practical Recommendations on Conducting the Personal Interview Remotely*, 2020.

## IV. Legal consequences of cessation

### (a) Consequences for the beneficiary

#### 1. Basis of a final decision on cessation of international protection

When the withdrawal decision is based on a cessation clause, the legal status of a refugee or beneficiary of subsidiary protection is officially ended after a final decision, i.e. once the period for appeal has expired or after an appeal against the withdrawal decision has been dismissed. The cessation is generally effective *ex nunc* from the moment the cessation decision is taken <sup>(71)</sup>.

According to a 2019 EASO survey, 9 out of 23 responding EU+ countries subject the international protection status to a systematic renewal process after 1, 3 or 5 years (all 9 countries apply this renewal process to the subsidiary protection status and 6 of them also apply it to the refugee status). The other 14 responding countries grant international protection status for an indefinite period and only initiate withdrawal procedures when specific triggers arise.

After a final decision on cessation has been taken, the person will face all the legal consequences according to EU and national law. If the person cannot be granted a right to stay on other legal grounds than international protection, the most serious consequence of cessation is the return of the person to their country of origin, always taking into account the principle of *non-refoulement*.

#### 2. Other legal consequences for the person concerned

Although the QD and APD state the conditions and process of cessation, the directives do not contain any provisions or information on the further legal consequences of the cessation for the person concerned. From the provisions on the content of international protection (Article 20 QD), it can be inferred that, in general, access and entitlement to the benefits that are grounded in EU legislation on asylum are, as such, no longer applicable after cessation of protection, unless they can be derived from other legal grounds.

Apart from the mere end of protection, withdrawal has a variety of legal consequences depending on the Member State concerned and may include withdrawal of the legal right of residence. However, the approach taken in this respect differs greatly from country to country.

#### 3. Possible grounds for the right to stay in the host country

In many Member States, in addition to termination of international protection, there is a separate procedure for the termination of the residence permit. However, this termination does not take place immediately.

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<sup>(71)</sup> Even though cessation is, by its nature, generally effective *ex nunc*, in situations where it is clear that the international protection status should never have been granted, but this can only be remedied by withdrawing the status, the situation must be remedied in legal terms also for the past, so that its revocation is retroactively effective (i.e. *ex tunc*). This distinction can have a practical effect on the person affected by the cessation, depending on the national context.

In most Member States, the individual circumstances of the person concerned are to be taken into account when assessing termination of the residence permit. Depending on such circumstances and on national policy, either the person is granted an exceptional leave to remain or the legal possibilities of a new residence permit for other grounds are examined.

### Practical example

After a final decision on cessation, the person concerned is required to hand in to the immigration authority their refugee travel document and the positive decision on the granting of protection. However, the residence permit of the person concerned does not expire automatically. It must be cancelled separately. The immigration authority can revoke the residence permit taking into account all the circumstances of the individual case. Such circumstances are the person's private interests arising from family ties, integration, protection of confidence to avoid disclosure of confidential information or alienation from the home country due to a long period of absence. In addition, the public interest in terminating a right of residence that is no longer justified is to be taken into account.

Such an approach assesses the personal interests of the person concerned, without however disregarding compliance with national provisions and consideration of the public interest.

## (b) Legal consequences of cessation for family members <sup>(72)</sup>

The QD clearly states that the family unit should in principle be maintained and that family members of the beneficiaries are entitled to claim and enjoy the same benefits.

### Article 23 QD – Maintaining family unity

1. Member States shall ensure that family unity can be maintained.
2. Member States shall ensure that family members of the beneficiary of international protection who do not individually qualify for such protection are entitled to claim the benefits referred to in Articles 24 to 35, in accordance with national procedures and as far as is compatible with the personal legal status of the family member.
3. Paragraphs 1 and 2 are not applicable where the family member is or would be excluded from international protection pursuant to Chapters III and V.
4. Notwithstanding paragraphs 1 and 2, Member States may refuse, reduce or withdraw the benefits referred to therein for reasons of national security or public order.
5. Member States may decide that this Article also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of international protection at that time.

When examining cessation clauses for a beneficiary of international protection, the treatment of their family members depends on the grounds for cessation. If the cessation clause is related to the change of circumstances in the country of origin, then the family is to be treated as a unit, with the individual circumstances and potential reasons for each family member to be taken in consideration. Exceptions apply to children who have meanwhile become adults and to divorced spouses. In such situations,

<sup>(72)</sup> This chapter refers to family members in the host country and not in the country of origin for whom [Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification](#) (OJ L 251, 3.10.2003, pp. 12–18) applies.

depending on national legislation and practice, the files may have to be separated and the cessation examination may take place on an individual level, since the family relationship with the former beneficiary has been dissolved (in the case of divorce) or the former beneficiary is not considered as family by the QD (in the case of children who have reached adulthood).

In cases where there are grounds for cessation for only one person who was granted protection as part of a common case file with their family, the examination is focused on that person, and a cessation file is created only for them. Nevertheless, in these situations, the protection of the other family members could also be examined in order to obtain an overall picture of the status of the entire family. For this examination, it is very important to keep in mind the basis on which the family members were granted protection status. Family members who have their own grounds for protection will not necessarily be affected by a cessation regarding another member of the family. For family members whose status derives from a principal beneficiary, the examination of a possible cessation will still include the examination of individual reasons that the family member might have for being granted international protection. When the status of at least one of the family members is not ceased, the principle of family unity should still be assessed based on the national legislation, before cessation for the other family members can be applied.

### (c) Subsequent application for international protection

In accordance with the APD, a person whose application for international protection has been rejected has the right to file a new application. The APD <sup>(73)</sup> provides Member States with the framework conditions for subsequent applications.

If a new application is lodged by an applicant for whom a decision to cease international protection has been taken, the cessation decision will be the starting point for the admissibility assessment of the subsequent application. In fact, in the cessation decision the international protection has been called into question for one of the two following reasons:

- the applicant's own behaviour
- changed circumstances.

The admissibility examination will thus focus on the ability of the new elements to add significantly to the likelihood that the cessation decision no longer applies or will no longer apply. The elements have to be considered as 'new' in comparison to all the elements that were available at the time of the cessation of international protection. The applicant may wish to establish that the reasons for cessation may be called into question in light of the new elements they submit in support of their subsequent application.

#### Related EASO tool

For more information on subsequent applications, see the *EASO Practical Guide on Subsequent Applications*, 2021 (forthcoming).

The practical guide provides information on what a subsequent application is, practical tips for the assessment of the new elements and, finally, a description of specific situations when a subsequent application can be submitted.

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<sup>(73)</sup> Articles 40–42 APD.

## V. Large-scale cessation exercises

When there are important changes in the situation of a country of origin which affect a large group of beneficiaries of international protection, this may lead to the organisation of large-scale cessation exercises. While the same requirements and standards under Articles 11 and 16 QD – as outlined above – need to be met when conducting a large-scale cessation exercise, the size of the operation poses particular challenges to the determining authority and all the stakeholders involved. Individual examination of each case is still needed, and it has to be assessed whether a beneficiary who is included in a large-scale cessation exercise has [compelling reasons to refuse the protection in the country of nationality or former habitual residence](#).

Large-scale cessation exercises, by their nature, only fall within the cessation clauses related to ‘[change of circumstances in the country of nationality](#)’, as the relevant clauses can apply to more than one beneficiary of international protection at the same time. A large-scale cessation exercise will generally be initiated based on COI indicating a significant and non-temporary change in the country of nationality of a group of beneficiaries. Over the years, the UNHCR has occasionally issued declarations of general cessation in certain situations for (sub)groups of a refugee population, in accordance with the Article 6A UNHCR Statute <sup>(74)</sup> and Article 1C Refugee Convention, and without prejudice to the individual assessment of each case regarding continued international protection needs or ‘compelling reasons’ <sup>(75)</sup>.

### (a) Context of the exercise

Based on the available COI, the administration will assess whether there have been significant and non-temporary changes to the circumstances that make it possible to start a large-scale exercise. Once it has been decided that a large-scale exercise is to be started, the persons who are included in the large-scale exercise must be informed.

The beneficiaries of international protection affected by a large-scale cessation exercise can be informed either individually or through a public statement by the administration (as mentioned in [Chapter III, Section h](#)) that could be in the form of a press release. Individual communication would ensure that the information reaches all affected beneficiaries and the risk of stigmatisation by the public can be avoided.

If the option of a public statement is chosen, it is important to think through the content of the announcement well in advance. It needs to be clear who is targeted by the announcement: if it includes persons who come from a specific area or from the whole country, if it only applies to beneficiaries of subsidiary protection or also to refugees, if there is a cut-off date regarding when the beneficiaries arrived in the country of asylum, etc. When releasing a public statement, it is useful for the administration to prepare a plan for answering enquiries following the announcement, in order to address questions from beneficiaries, the public and the media.

<sup>(74)</sup> UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 1950, A/RES/428(V).

<sup>(75)</sup> For more information see UNHCR, *Guidelines on International Protection No 3: Cessation of refugee status*, 2003, op. cit., fn. 14.

## 1. The use of COI

Large-scale cessation exercises are generally triggered by drastic changes in COI. Given the serious consequences of cessation, the significant and non-temporary change will need to be consistently confirmed by different COI sources. One report alone would normally not be considered sufficient to initiate the process. There should be several reliable reports over a sufficient period of time that describe the changes in the circumstances.

COI will help case officers understand the background of the exercise, explain to the persons in question why exactly they are included in the exercise and support the examination of the individual cases.

## 2. The possibility for more structured work

A large-scale exercise gives case officers the opportunity to work in a more structured way, as the cases will be very similar to each other, even though an individual and concrete assessment must be carried out for each case in line with all the requirements provided for by the QD and the APD as described in the previous sections. It also gives the administration the possibility to draw up specific instructions on how to conduct the interview or the written consultation and to make a list of topics to examine.

### (b) Practical arrangements

Ahead of any large-scale cessation exercise, due attention needs to be devoted to planning and to the practical arrangements. Amongst other things, these practical considerations can include the resources needed to handle the caseload, the time and duration of the exercise and the numbers of persons affected, along with the examination settings.

Due to the fact that, in a large-scale cessation exercise, a larger number of cases need to be assessed within a limited time period, the administration will need a sufficient number of case officers to assess any written statements provided by the beneficiaries, conduct interviews and make written decisions. As any cessation decision can be appealed against, resource planning for this potential second instance needs to be prepared simultaneously. The number of beneficiaries affected by the exercise will need to be taken into account when planning the exercise. Furthermore, the time frame in which the exercise will take place will need to be decided based on the number of cases and the available resources. Other practical arrangements will include space arrangements, interview scheduling, interpreters, training of the case officers involved in the exercise and communication with beneficiaries and other stakeholders.

### (c) Stakeholders in the large-scale exercise

Given the large scale of the exercise, the effect on other stakeholders and their role in the exercise need to be thought through from the start.

#### *Legal aid*

Many lawyers will be involved in a large-scale cessation exercise. Therefore, it may be useful to have meetings with the lawyers to inform them of the start of the exercise, of the expected number of persons involved and of the criteria for their involvement. It is advisable to maintain this information exchange on a regular basis throughout the implementation of the exercise.

When communicating with the beneficiaries who will fall under the cessation exercise, the administration must also inform the persons in question of their right to legal aid.

#### *Border police and return officers*

There must be cooperation with the border police and return officers in connection with the return process. This will enable the authorities responsible for return to prepare the exercise and lay the groundwork for cooperation with the authorities of the country of origin for an increase of returns. The authorities of the country of origin will need to be prepared to process all the cases and to conduct, where needed, nationality verification interviews, in order to avoid a bottleneck at the end of the procedure.

#### *Civil society organisations*

There can also be collaboration with civil society organisations, as they can help to inform the persons concerned about the exercise and the possible consequences. Furthermore, civil society organisations can be involved in advising the persons concerned about the exercise.

#### *Administrations responsible for integration*

There must also be cooperation between the administration responsible for integration and the asylum administration. Indeed, a decision on cessation may put an end to integration efforts and will have consequences for schools and employers. Therefore, there must be communication throughout the exercise between the administration that is responsible for integration and the asylum administration, so that it is possible to take any measures that may be necessary in relation to the integration processes.

#### *Government ministries responsible for migration*

It is advisable to include the ministry responsible for migration in the plans, and to provide ongoing information to the government, as large-scale cessation exercises will have political implications. This kind of communication is important also so that progress in the exercise can be reported to the public.

## **(d) Consequences of large-scale exercises**

Large-scale cessation exercises can have far-reaching consequences for the administration, the society and the individuals affected.

#### *Consequences for the administration*

As mentioned above, a large-scale exercise entails a great workload for the administration. It also puts a lot of work pressure on the second instance system because all cases where the protection status is considered ceased are normally expected to be appealed.

There may also be financial consequences, as the administration may need to hire more case officers in order to be able to stick to the time frame of the exercise. Regarding the interviews held in connection to the exercise, there may also be financial consequences regarding interpretation costs.

A large-scale exercise can also lead to additional tasks for other parts of the administration, including dependent family members applying for asylum on their own behalf or an increase in requests for residence permits on other grounds.

The administration must also decide on other issues regarding the people whose protection status ceases. For example, the administration has to make plans regarding the accommodation of the persons whose protection status has ceased until their return. This includes whether they can stay at their current residence.

Overall, the consequences for the administration can potentially be costly and demanding. This concerns the organisation of work within the large-scale exercise as well as the work to do after the decisions have been made.

### *Consequences for the community*

A cessation exercise can also have an impact on society if there are many people who have their protection status ceased. Beneficiaries are often contributing members of the community or are involved in an integration process whereby they are expected to become contributing members of the community <sup>(76)</sup>. This could mean that businesses may lose employees and associations may lose voluntary labour. A large-scale exercise can also have consequences for the perception of international protection by the community, as a large-scale exercise – especially when it is widely publicised – can give the impression that refugees are not welcome in the country.

### *Consequences for the beneficiaries*

In general, consequences can be hard for people who are included in the exercise as it creates a great deal of uncertainty in their lives. In the period from the announcement that the administration will start a large-scale exercise until they receive a decision for their case, they do not know what their future holds. Furthermore, if it is decided that their protection status is ceased, they can exercise all their rights for an effective remedy – which means that they also may have to wait for the final decision for their case.

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<sup>(76)</sup> According to the Executive Committee of the High Commissioner's Programme (ExCom), in [Conclusion No 69](#), it is recommended that States consider 'appropriate arrangements' for persons 'who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links' (e).



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