



## **EMN Ad-Hoc Query on FR AHQ on Assessment of the Situation in Ukraine**

Requested by Christelle CAPORALI-PETIT on 19th September 2016

### **Protection**

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, Norway (25 in total)

#### *Disclaimer:*

*The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

### **Background information:**

The French office for the protection of refugees and stateless persons is interested in the evaluation of the situation in the eastern provinces in Ukraine, regarding the application for the subsidiary protection.

1. How does your Member State assess the situation in the eastern provinces of Ukraine?
2. Article 15 c) of the Qualification Directive on subsidiary protection in situation of internal or international armed conflict is it applied to the case of asylum applicants from the provinces of Donbass?

Please note that the same question is also sent to EASO query

### **Summary**

Please find attached a Summary of FR Ad-Hoc Query on Assessment of the Situation in Ukraine.


with the Responses from 25 NCPs (AT, BE, BG, HR, CY, CZ, EE, ES, FI, FR, DE, EL, HU, IE, LV, LT, LU, NL, PL, PT, SK, SI, SE, UK, NO).



*Please note that some of the answers are for closed dissemination.*




### **Questions**


1. How does your Member State assess the situation in the eastern provinces of Ukraine?
2. Article 15 c) of the Qualification Directive on subsidiary protection in situation of internal or international armed conflict is it applied to the case of asylum applicants from the provinces of Donbass?




### **Responses**



	<b>Country</b>	<b>Wider Dissemination</b>	<b>Response</b>
	Austria	Yes	<b>1.</b> Ukraine is in a difficult situation of upheaval. In violation of international law, Russia annexed the Crimean Peninsula. Pro-Russian separatists subsequently seized power in several areas in eastern Ukraine and, backed by Russian citizens, proclaimed the “Donetsk People’s Republic” and the “Luhansk People’s Republic”. The Ukraine Government responded with what is referred to as




			<p>an “anti-terrorist operation” (ATO), with the aim of restoring government rule. In view of the armed conflict in eastern Ukraine, the government in Kiev has partly derogated from the European Convention on Human Rights in the regions affected. Notification to this effect was made to the Council of Europe in Strasbourg. According to this information, the government in the regions of Donetsk and Luhansk, where rebels and government forces are involved in fighting, no longer guarantees a number of basic human rights. These include the rights to liberty and security, to a fair trial and to respect for family life. Kiev has justified the derogation with Russia’s “armed aggression” against Ukraine. Despite the cease-fire agreement, peace has not been restored to eastern Ukraine and serious fighting continues to break out intermittently. No permanent solution is in sight. Eastern Ukraine threatens to become a “frozen conflict”. Source: Federal Ministry of the Interior.</p> <p>2. Austria’s asylum system is based on the principle of examining each individual application for asylum. Statistical information: Austria received a total of 508 applications from Ukraine in 2015. According to statistics from previous years, 12% of asylum applications from Ukraine were accepted with final effect and 62.5% were rejected with final effect. Subsidiary protection was granted in a total of 10 cases and humanitarian protection was granted in 29 cases. No specific data are available for applicants from the Donbas region. Source: Federal Ministry of the Interior.</p>
	Belgium	Yes	<p>1. For the moment the situation in the provinces Donetsk and Lugansk is considered as a situation as described under Article 15 c) of the Asylum Qualification Directive. However, this policy to grant subsidiary protection due to the general security situation is currently under consideration.</p> <p>2. Yes, for the moment subsidiary protection is granted to applicants from Donetsk and Lugansk (provinces of Donbass) on the basis of Article 15 c, unless an internal flight alternative is available. Though, this policy to grant subsidiary protection due to the general security situation is currently under consideration. Obviously refugee status can be granted on individual grounds, as is the case for all asylum applicants.</p>
	Bulgaria	Yes	<p>1. Each application for international protection is examined on a case-by-case basis. According to art. 9. (amend. – SG 52/07) (1) (amend. – SG 80/15, in force from 16.10.2015) of the Law on</p>

			<p>Asylum and Refugees, Humanitarian status is granted to a foreigner who does not meet the requirements for granting of refugee status and who cannot or does not wish to get protection by his country of origin, because he can be exposed to a real risk of heavy encroachments, such as: 1. sentence to death or execution, or 2. torture, inhuman or humiliating attitude or punishment, or 3. heavy threat to his life or personality as a civilian due to promiscuous violence in case of internal or international armed conflict.</p> <p>2. Please see answer to the question 1.</p>
	Croatia	Yes	<p>1. Croatia does not have any specific policy on asylum claims from any part of Ukraine. The asylum claims from Ukraine are examined on case-by-case basis.</p> <p>2. Please see answer to the question 1.</p>
	Cyprus	Yes	<p>1. Cyprus does not have a specific policy with regards to applicants of international protection from the eastern provinces in Ukraine, due to the low number of applicants from that specific area and from Ukraine in general.</p> <p>2. n/a</p>
	Czech Republic	Yes	<p>1. With regard to the latest security development, CZ considers the security situation in the eastern provinces of Ukraine, with the exception of Donetsk and Luhansk oblasts, to be stable. According to available information, there are no military activity and no security incidents in the eastern provinces currently under control of the Ukrainian authorities. CZ does not have any information on any security incidents in Poltava Oblast, Sumy Oblast, Chernihiv Oblast, Kharkiv Oblast, Zaporizhia Oblast and Kherson Oblast. Despite the ceasefire agreed in 2015, the security situation at the contact line and in Luhansk and Donetsk oblasts remains tense and volatile with ongoing clashes between Ukrainian armed forces and armed rebels.</p> <p>2. With regard to the latest security development, CZ considers the security situation in the eastern provinces of Ukraine, with the exception of Donetsk and Luhansk oblasts, to be stable. According</p>





			<p>to available information, there are no military activity and no security incidents in the eastern provinces currently under control of the Ukrainian authorities. CZ does not have any information on any security incidents in Poltava Oblast, Sumy Oblast, Chernihiv Oblast, Kharkiv Oblast, Zaporizhia Oblast and Kherson Oblast. Despite the ceasefire agreed in 2015, the security situation at the contact line and in Luhansk and Donetsk oblasts remains tense and volatile with ongoing clashes between Ukrainian armed forces and armed rebels.</p> <p><b>3.</b> With regard to the latest security development, CZ considers the security situation in the eastern provinces of Ukraine, with the exception of Donetsk and Luhansk oblasts, to be stable. According to available information, there are no military activity and no security incidents in the eastern provinces currently under control of the Ukrainian authorities. CZ does not have any information on any security incidents in Poltava Oblast, Sumy Oblast, Chernihiv Oblast, Kharkiv Oblast, Zaporizhia Oblast and Kherson Oblast. Despite the ceasefire agreed in 2015, the security situation at the contact line and in Luhansk and Donetsk oblasts remains tense and volatile with ongoing clashes between Ukrainian armed forces and armed rebels.</p> <p><b>4.</b> Article 15 c) of the Qualification Directive has been applied to the majority of asylum applicants from the provinces of Donbass, but each case has been examined with reference to its particular characteristics.</p> <p><b>5.</b> Article 15 c) of the Qualification Directive has been applied to the majority of asylum applicants from the provinces of Donbass, but each case has been examined with reference to its particular characteristics.</p> <p><b>6.</b> Article 15 c) of the Qualification Directive has been applied to the majority of asylum applicants from the provinces of Donbass, but each case has been examined with reference to its particular characteristics.</p>
	Estonia	No	



	Finland	No	
	France	Yes	<p>1. Before the ceasefire, France used to grant subsidiary protection on the basis of the following: "for a civilian, a direct and individual serious threat against his or her life or well- being owing to generalised violence resulting from an internal or international armed conflict". Since the implementation of the ceasefire, France has been thinking about a new assessment of the situation.</p> <p>2. see above</p>
	Germany	Yes	<p>1. The armed confrontations in Ukraine are restricted to specific locations, i.e. to parts of the oblasts of Donetsk and Luhansk in Eastern Ukraine, where heavily armed pro-Russian separatists have been fighting the regular Ukrainian forces since spring of 2014. They established the non-recognized "peoples republics" of Donetsk and Luhansk. Although fighting has abated currently after a peace plan was agreed in Minsk in September 2014, it keeps flaring up in some hot-spots. On both sides of the line of conflict civilians are repeatedly killed or injured by gunfire or bombings of the Ukrainian security forces or the rebels. A future escalation of the fighting cannot be ruled out. There are reports of serious human rights violations committed both on by the Ukrainian authorities and the separatists in the oblasts of Donetsk and Luhansk. In a joint report published on 21 July 2016 the human rights organisations Amnesty International (AI) and Human Rights Watch (HRW) („You Don't Exist.' Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine“) document nine cases of arbitrary detention of civilians for long periods in informal detention centres, including several cases of 'dis-appearances' - by the Ukrainian authorities. Furthermore the report describes nine cases of arbitrary detention of civilians for long periods by Russian-supported separatists. The persons detained had been suspected of supporting or spying for the respective other party in the Eastern Ukraine conflict. Most detainees had suffered torture or other forms of abuse. The majority of the cases documented occurred in 2015 and in the first half of 2016.</p> <p>2. The pro-Russian separatist controlled areas in the Donbas region (oblasts of Donetsk and Luhansk) and the regions in which so-called "volunteer battalions" are fighting the separatists and not the Ukrainian military itself, are areas subject to an internal armed conflict. However, not</p>



			<p>every civilian is seriously personally affected by arbitrary violence that would give rise to a right to protection, merely by staying in this very region. A level of risk that would give rise to protection will only be assumed in the presence of additional personal factors exacerbating the risk. If, in individual cases, one must assume that a risk of serious consequences exists because of the armed conflict raging in the Donbas region and those areas under control of the so-called "volunteer battalions", it is considered that these individuals may usually find internal protection in other areas in Western Ukraine that are not affected by the conflict.</p>
	Greece	Yes	<p><b>1.</b> The Greek Asylum Service does not have a specific policy on asylum claims from any part of Ukraine nor has it issued any guidance to its case workers on asylum seekers from this particular country. The examination of asylum claims from Ukraine is done on an individualized, case-by-case basis.</p> <p><b>2.</b> See answer to Question above</p>
	Hungary	Yes	<p><b>1.</b> The Act LXXX of 2007 on Asylum, Paragraph 12, Subsection (1) states that „Hungary shall grant subsidiary protection to a foreigner who does not satisfy the criteria of recognition as a refugee but there is a risk that, in the event of his/her return to his/her country of origin, s/he would be exposed to serious harm and s/he is unable or, owing to fear of such risk, unwilling to avail himself/herself of the protection of his/her country of origin.” According to Paragraph 61 „Upon the examination of the criteria of recognition, the following shall be regarded as serious harm: a) threat of the death penalty; b) application of torture, cruel, inhuman or degrading treatment or punishment; c) a serious threat to the life or physical integrity of a civilian person which is the consequence of indiscriminate violence used in the course of an international or internal armed conflict.” According to the Country of Origin Information from the Office of Immigration and Nationality due to the security situation in the Donbass region of Ukraine the need for subsidiary protection is realistic.</p> <p><b>2.</b> Paragraph 63, Subsection (1) says that „Protection against persecution or serious harm may be regarded as duly granted if effective tools are available in the state from which the applicant is forced to flee to prevent persecution or acts of serious harm as well as to punish the persons</p>


			committing acts constituting persecution or causing serious harm, and the applicant can avail himself/herself of such protection.” Paragraph 63, Subsection (2) states that „Protection defined in Subsection (1) may also be regarded as duly granted if in the state from which the applicant is forced to flee, the requirement of well-founded fear or the effective risk of serious harm does not prevail in a part of the country, and the applicant can reasonably be expected to remain in that part of the country.” Considering the security situation in other parts of Ukraine the internal flight alternative – as stated in § 63 (1) and (2) – is applied if the asylum seeker is from the above mentioned region.
	Ireland	No	
	Latvia	Yes	<p><b>1.</b> There still exist concerns regarding the possible development of the security situation in Donbas region; however we consider that a violence in the region is not at the level when a mere presence in the region puts person in a “direct and individual serious threat against his/her life or wellbeing”. Each case is considered on its individual merits. The number of asylum seekers from Ukraine has decreased considerably in 2016.</p> <p><b>2.</b> See answer to Q1</p>
	Lithuania	Yes	<p><b>1.</b> The situation in Eastern Ukraine is assessed as defined in the Qualification directive Article 15 (c): „serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict”</p> <p><b>2.</b> When it is established that a persons has originated from the territory of Ukraine of an armed conflict internal displacement alternative is being assessed. Each case is assessed individually following the practice of Court of Justice of the European Union and European Court of Human Rights. If there are no individual obstacles for internal displacement which would make it impracticable, then internal displacement alternative is applicable.</p>



	Luxembourg	Yes	<p><b>1.</b> Luxembourg treats every international protection application on a case by case basis analysing the facts described by the applicant as well as the evidence provided and taking into consideration the general situation of the country of origin. The COI Unit follows closely the events in the eastern provinces of Ukraine.</p> <p><b>2.</b> See answer to question 1.</p>
	Netherlands	Yes	<p><b>1.</b> In principle, the Netherlands views the situation in Ukraine as a whole as normal. In the areas under affective control of the government, functioning of public life is normal. In the Crimea-area and the areas in the eastern provinces occupied by the rebels (parts of Donetsk and Lugansk, and zones directly adjacent to these areas) the situation is slightly different. Some incident happen in these areas but apart from that, the situation in the eastern provinces is quiet. Persons originating from these occupied areas can be subject to an internal relocation alternative.</p> <p><b>2.</b> Since the Netherlands holds that there is an internal relocation alternative for Ukrainians originating from the eastern provinces, we do not grant subsidiary protection on the basis of Article 15c of the Qualification Directive to asylum applicants origination from this region.</p>
	Poland	No	
	Portugal	Yes	<p><b>1.</b> In the provinces of Donetsk, Lugansk and the occupied territory of Crimea, the situation of belligerence still raising concerns about human rights. The existence of a non-declared conflict caused by the current crisis of interference perpetrated by Russian militias has brought general insecurity to the Ukrainian population from the affected zones. Despite the fact that the hostilities have lately experienced a decrease, PT still assesses it with some reluctance because of the tensions remaining between the two parts of the conflict and the resurgence of latent hostilities and intolerance.</p> <p><b>2.</b> Yes. Both men and women fleeing from the eastern provinces are still eligible for subsidiary protection. If an applicant comes from the provinces of Donbass, that fact is, by itself,</p>

			considered/contemplated as a reason of founded fear of or threat to his/her life that could result in indiscriminate violence due to armed conflict.
	Slovak Republic	Yes	<p><b>1.</b> The Slovak Republic assesses the situation in Donbas and Luhansk as an ongoing situation of an internal armed conflict, due to which there is a serious threat to a civilians' lives by a reason of indiscriminate violence. This violence has a non-selective character. With regards to this we provide the persons from this regions who do not have an alternative of internal flight within Ukraine, with subsidiary protection. Other regions of Eastern Ukraine are consider as stable and applicants are therefore not granted subsidiary protection.</p> <p><b>2.</b> Yes, Article 15 c) of the Qualification Directive on subsidiary protection in the situation of internal or international armed conflict is applied to the case of asylum applicants from the provinces of Donbas. At the same time an internal flight alternative is considered in each case individually, meaning the subsidiary protection is granted only after the internal flight alternative is excluded.</p>
	Slovenia	Yes	<p><b>1.</b> Since second part of 2015 SI didn't receive asylum applications from applicants coming from eastern provinces of Ukraine (province Doneck, Lugansk) for that reason we cannot provide with any specific opinion on current assessment of circumstance in this region.</p> <p><b>2.</b> For a reason of absence of asylum applications, we could not provide any internal assessment on current circumstances in region Donbass. Before second part of 2015, our assessment based on decision the then circumstances did not applied to the Article 15. Qualification Directive.</p>
	Spain	Yes	<p><b>1.</b> In Spain, for the moment, it is not feasible to assess the situation since the files of Ukraine are in the preliminary phase.</p> <p><b>2.</b> -</p>

	<p>Sweden</p>	<p>Yes</p>	<p><b>1.</b> According to a legal comment issued by the Director of Legal Affairs on 7 April 2016 it is said: "In the provinces of Luhansk and Donetsk in the eastern parts of Ukraine there is nowadays no offensive operations by the Ukraine government armed forces or by the from Russia supported separatists. But there are regularly smaller strikes and they are enough to fulfil the requirements for internal armed conflict according to 4 chapter, 2 § 1 paragraph in the Swedish Aliens Act (2005:716). The violence in the regions of Luhansk and Donetsk is for the time being not of the size that everyone returning to these regions has an individual risk to be threatened for actions that would require protection. An individual assessment must be done for these persons where the possibility of refuge within the country also is taken into account."</p> <p><b>2.</b> Not according to this legal comment it only applies in the provinces of Luhansk and Donetsk.</p>
	<p>United Kingdom</p>	<p>Yes</p>	<p><b>1.</b> Following the annexation of Crimea by Russia and introduction of Russian Federation legislation, there has been a deterioration in citizens' rights with regard to freedom of expression, peaceful assembly, association, religion or belief. Reports included a number of cases of abduction, unlawful arrest and detention by unidentified armed groups, harassment, and violence against peaceful demonstrators. Following the uprising in the Donetsk and Luhansk regions, regional governments ceased to function, as did the police and judiciary. Banks were robbed, coal mines were attacked, with many forced to close. Railways were blown up and salaries, pensions and other social welfare payments were stopped in places under the control of the armed groups. There are reports of incidents of abductions, physical and psychological torture, ill-treatment and other serious human rights violations. People are abducted for ransom, for forced labour and to be exchanged for fighters held by the Ukrainian authorities. There is however no information available regarding the scale of abductions or whether particular profiles of people are targeted for abduction or whether it is random. For a more in depth assessment, please see our CIGs (country information and guidance) on the Crimea/Donetsk/Luhansk and Background for assessments of situation (accessible from the Gov.uk website <a href="https://www.gov.uk/government/publications/ukraine-country-information-and-guidance">https://www.gov.uk/government/publications/ukraine-country-information-and-guidance</a>).</p> <p><b>2.</b> We would not return a person to Donbass. Persons from those provinces are entitled to reside elsewhere in Ukraine to where we affect returns. The Article 15 (c) question has not therefore</p>

			<p>arisen and we have not taken a position on it. On the face of it, the situation is not such that “an ordinary civilian” would, solely by being present there, face a real risk which threatens his or her life or person. However particular factors relevant to the person’s individual circumstances which might nevertheless place them at risk would need to be considered.</p>
	Norway	Yes	<p><b>1.</b> Norway does not consider that the current general situation in the Luhansk and Donetsk regions in itself merits granting protection according to the convention (2. Article 15 c) of the Qualification Directive on subsidiary protection). In Norway, the cases are handled individually, and internal flight to Kiev must be considered in all cases where the person is at risk in the East. In general, Norway considers internal flight to be available for all citizens of Donetsk and Luhansk.</p> <p><b>2.</b> N/A</p>