



## **EMN Ad-Hoc Query on Returning Somali applicants to areas ruled by Al-Shabaab**

Requested by Johanna VÄÄNÄNEN on 14th July 2016

### **Return**

Responses from Austria, Belgium, Blocked / Unknown, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, Norway (23 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 Finnish Immigration Service has recently updated its assessments of the security situation in Somalia. Security assessments concerning countries of origin are made to establish whether it is safe to return to a given area, for example, and they are updated twice a year. According to the Finnish Immigration Service, it is currently possible for asylum seekers to return to all areas in Somalia without the ongoing armed conflicts as such presenting a danger to them only because they are staying in the country. Nevertheless, when considering the issue of residence permits, the individual grounds for granting asylum or subsidiary protection are always assessed for each applicant. As Al-Shabaab has a presence and influence in several areas of Central and South Somalia, and there are known to be human rights violations and arbitrary justice and restrictions of basic rights under its rule, Finland would like to know what are Member States' policies regarding returning applicants who are residents of areas currently ruled by Al-Shabaab?




## **Questions**





1. Concerning Somali applicants who have no grounds for asylum or subsidiary protection, or other individual grounds for a residence permit, what is your Member State's policy regarding returning applicants who are residents of areas currently ruled by Al-Shabaab?
2. If it is considered that a person cannot be returned to an area ruled by Al-Shabaab, will your Member State grant a residence permit, and if so, what kind of residence permit?


## **Responses**





	<b>Country</b>	<b>Wider Dissemination</b>	<b>Response</b>
	Austria	Yes	<ol style="list-style-type: none"><li>1. We do not have any experience we could share for this special case.</li><li>2. We do not have any experience we could share for this special case.</li></ol>
	Belgium	Yes	<ol style="list-style-type: none"><li>1. Belgian authorities do not currently enforce returns of Somali applicants who have no grounds for asylum or subsidiary protection or other individual grounds for a residence permit, who are residents of areas ruled by Al-Shabaab. However this is not a policy or stop that Belgian authorities have decided as such (return can in principle be enforced towards safe areas); it is rather</li></ol>


			<p>a result of practical difficulties encountered in enforcing such returns. Somalis concerned can be identified and laissez-passer can be issued but the problems rather relate to transport and the capacity of escorts to reach Mogadishu. It can be noted that many Somali applicants originating from areas currently ruled by Al-Shabaab are granted a protection status. If they do not receive a protection status, that could mean that they have left these regions for a long time (towards another region in Somalia or a neighbouring country) or that they can't make credible that they come from those areas.</p> <p><b>2.</b> As mentioned above, Belgian authorities cannot currently enforce such returns for practical reasons. However the persons concerned are not granted a residence permit. It should be stressed that the number of these Somalis who are not granted a protection status and who cannot be returned is limited.</p>
	Blocked / Unknown	No	
	Croatia	Yes	<p><b>1.</b> 1. We do not have any such a special cases.</p> <p><b>2.</b> 2. We do not have any such a special cases.</p>
	Cyprus	Yes	<p><b>1.</b> Cyprus grants subsidiary protection status to persons who, in case of return to Somalia, will reside in the specific area controlled by Al-Shabaab. The subsidiary protection status is granted according to Article 15(c) of the Qualification Directive. The applicant is rejected if in case of return to Somalia the person will reside or can reside in Mogadishu.</p> <p><b>2.</b> Please see above</p>
	Czech Republic	No	
	Estonia	Yes	<p><b>1.</b> So far Estonia has received 4 applicants from Somalia, all of them received international protection in Estonia (3 of them received refugee status and 1 subsidiary protection). Thus we have</p>

			<p>no policy or practice to return applicants to Somalia. But all applications are reviewed case by case basis.</p> <p>2. -</p>
	Finland	Yes	<p>1. After the provision of the Aliens Act allowing asylum seekers to be granted a residence permit on the basis of humanitarian protection was repealed in May 2016 and the new security assessment concerning Somalia was made, it is more difficult for applicants from Somalia to be granted protection in Finland. In principle, it is not ruled out that applicants could be returned to Somalia, even if they come from areas ruled by Al-Shabaab.</p> <p>2. Finland is currently reassessing policies regarding returns to Somalia. It is not categorically ruled out that applicants could be returned to Somalia, even if they come from areas ruled by Al-Shabaab.</p>
	Germany	Yes	<p>1. If there are no grounds for asylum, nor for subsidiary protection or other grounds for a residence permit the applicant who is a resident of an area currently ruled by Al-Shabaab can be referred to internal flight options if certain conditions are met (such as existing family relations, sufficient funds, the area can be reached with reasonable means) . In the year 2015 there had been no deportations to Somalia.</p> <p>2. Persons required to leave the country after the rejection of their application for international protection, but for which an exit barrier exists for the foreseeable future not due to their own behavior, a residence permit may be granted on humanitarian grounds. If a removal for this reason could not be realized for 18 months, a residence permit should be issued (§ 25 paragraph 5 of the Residence Act).</p>
	Hungary	Yes	<p>1. There is no specific rules for applicants who are residents of areas currently ruled by Al-Shabaab. Hungary grants protection in the form of tolerated stay (befogadott) to a foreigner not complying with the criteria for recognition as refugee or beneficiary of subsidiary protection but, in the event of his/her return to the country of origin, s/he would be exposed to a risk of</p>



			<p>persecution for reasons of race, religion, ethnicity, membership of a particular social group or a political opinion or to behaviour as specified in Article XIV (2) of the Fundamental Law, and there is no safe third country to admit him/her. (1) The refugee authority shall recognise as a person with tolerated stay the individual with regard to whom it a) established the prohibition of refoulement in the alien policing procedures, or b) rejected the application for asylum, parallel with the establishment of the prohibition of refoulement. (2) The refugee authority shall review the criteria for recognition as person with tolerated stay on an annual basis.</p> <p>2. Humanitarian residence permit</p>
	Ireland	No	
	Latvia	Yes	<p>1. Since the last asylum application from Somali applicant was received in 2014 we have no policy regarding returning applicants who are residents of areas currently ruled by Al-Shabaab.</p> <p>2. -</p>
	Lithuania	Yes	<p>1. Lithuania has no practice regarding this question.</p> <p>2. An alien who is not expelled from Lithuania or is not returned to a foreign country shall be issued a temporary residence permit in Lithuania valid for a period not exceeding one year.</p>
	Luxembourg	Yes	<p>1. Luxembourg does not carry out returns to Somalia.</p> <p>2. No residence permit would be granted. However, article 125bis of the amended Law of 29 August 2008 on free movement of persons and immigration establishes that if the individual, who has received a return decision, is unable to leave the territory for reasons not of his/her own making, the Minister in charge of Immigration may postpone the removal of the alien for a period determined in accordance with the circumstances to each case and until there is a reasonable prospect to execute the return. The individual may remain on the territory on a provisional basis,</p>

			without being authorised to reside there. The decision to postpone the removal may be accompanied by an order for house arrest (article 125).
	Netherlands	Yes	<p><b>1.</b> In March 2016 the Dutch Ministry of Foreign Affairs published a country report on the situation in Somalia. As a reaction to the report the State Secretary for Security &amp; Justice decided to adjust the policy towards Somali asylum seekers. In May 2016 the State Secretary sent a letter outlining the envisaged policy changes to the Dutch House of Representatives. In order for the policy changes to take effect, they have to be implemented in the Aliens Act Implementation Guidelines ('Vreemdelingencirculaire'). The implementation is expected to be finalised in August 2016. Regarding the return of Somali applicants to areas ruled by Al-Shabaab the following changes are foreseen: Under the new regime the Dutch authorities will generally assume that everyone who returns to areas ruled by Al-Shabaab faces a serious risk of being treated in a way that conflicts with article 3 of the European Convention on Human Rights (prohibition of torture, and inhuman or degrading treatment or punishment). Previously it was assessed in each individual case whether a returnee would be able to maintain him- or herself under the rule of Al-Shabaab. Moreover, also when the returnee would have to travel through an area ruled by Al-Shabaab in order to reach his/her destination, a serious risk of a violation of article 3 is assumed. For this specific group the Dutch authorities will come under certain circumstances to the conclusion that the applicant has a domestic refugee or settlement alternative in regions not ruled by Al-Shabaab. Persons that cannot be returned to an area ruled by Al-Shabaab due to a risk of violation of article 3 will generally receive a residence permit based on subsidiary protection. Sources Country report on Somalia by the Dutch Ministry of Foreign Affairs  <a href="https://www.rijksoverheid.nl/documenten/ambtsberichten/2016/03/31/somalie-2016-03-31">https://www.rijksoverheid.nl/documenten/ambtsberichten/2016/03/31/somalie-2016-03-31</a> Letter of the State Secretary to the Dutch House of Representatives outlining the envisaged policy changes <a href="https://www.rijksoverheid.nl/documenten/kamerstukken/2016/05/26/tk-ambtsbericht-somalie">https://www.rijksoverheid.nl/documenten/kamerstukken/2016/05/26/tk-ambtsbericht-somalie</a></p> <p><b>2.</b> See answer to question 1.</p>

	Poland	Yes	<p>1. At present, returns from Poland to Federal Republic of Somalia are not suspended regardless if a returnee is a resident of area ruled by Al-Shabaab.</p> <p>2. Conditions for granting protection against expulsion of a foreigner including the fact that the foreigner will be returned to an area ruled by Al-Shabaab, the circumstances are considered each time before the issuance of a return decision.</p>
	Portugal	Yes	<p>1. Once all the possibilities are exhausted, subsidiary protection due to humanitarian reasons may be granted to Somali applicants.</p> <p>2. See answer above.</p>
	Slovak Republic	Yes	<p>1. If it is possible to identify the person and arrange an emergency travel documents for his/her return, it is possible, after the individual assessment of the circumstances of each case, to return the person. There is no specific policy with regards to returning the Somali nationals to the above-mentioned area.</p> <p>2. If an obstacle in relation to the return of the particular TCN occurs, or it is not possible to execute the return, there is a possibility, based on the application to grant him/her a tolerated stay in the territory of the Slovak Republic.</p>
	Slovenia	Yes	<p>1. So far, we do not have experiences with returning of Somali citizens.</p> <p>2. According to the Alien Act, the police, as responsible authority, could issue permission to stay in the territory of Slovenia to a person who cannot be returned. Permission to stay could be granted for a period of six months and renewed for as long as the reasons referred in the Alien Act exist. To an alien who acquires permission to stay a card is issue by the police.</p>
	Spain	Yes	<p>1. No returns are being made to Somalia. Executions of return decisions that have been issued are postponed.</p>

			2. See above.
	Sweden	Yes	<p><b>1.</b> The Migration Agency's policy is as follows. The assessment of the Migration Agency is that it is currently possible for Somali citizens, who have no grounds for asylum or subsidiary protection, or other individual grounds for a residence permit, to return to his or her hometown in southern and central Somalia in an area controlled by Al-Shabaab, if the route to the hometown is deemed safe. According to the Migration Agency the situation in southern and central Somalia is serious and the agency notes that indiscriminate violence occurs. The assessment of the situation does however lead to the conclusion that it is currently possible for asylum seekers to return to all areas in Somalia without the ongoing armed conflicts as such presenting a danger to them only because they are staying in the country. An individual assessment of the applicant's vulnerability in accordance with the principles of the European Court of Justice judgment of 17 February 2009 in Case C-465/07 (Elgafaji) should always be performed when assessing the asylum claim. The assessment shall pay particular attention to vulnerable groups in Somalia. According to the Migration Agency there is currently no official protection in southern and central Somalia. The assessment whether the route to the hometown at the return is safe should be forward-looking. A route that is not secure can result in grounds for protection. According to the Migration Agency, travelling on the road, particularly in southern and central Somalia, can be dangerous due to the security situation, especially if the area is controlled and ruled by Al-Shabaab. The groups that are generally vulnerable in Somali society are the most at risk of abuse during travel on the road, such as women. In light of the risks it entails traveling alone, it is not appropriate to refer a woman to do it, for example to get to the hometown in the area. The assessment whether the route is safe must always be based on the security situation along the route and the applicant's individual circumstances and opportunities to avoid risks. It is necessary to obtain timely and relevant information about the land route. The standpoints presented above appear from the Head of legal affairs judicial position of 7 July 2016 concerning Somalia (SR 28/2016) and from 27 June 2016 regarding the safe route (SR 29/2016).</p> <p><b>2.</b> As presented above, the Migration Agency's standpoint is that Somali citizens can return to their home in areas controlled by Al-Shabaab in southern and central Somalia in the event that the applicant have no grounds for protection and the route to the home is deemed safe. On the other</p>



			<p>hand, if the examination shows that an applicant is in need of protection because the route is not deemed safe, he or she should be granted a residence permit under Article 15 c of the Qualification Directive and Chapter 4 paragraph 2 first paragraph point 1 second part of the Aliens Act. If there is a risk of persecution, such as risk of abuse when traveling to his or her home in southern or central Somalia through the area controlled by Al-Shabaab, because of gender or ethnicity for an example, the applicant can be granted protection as a refugee. From July 20, 2016, Sweden has a new immigration law. Applicants may, depending on the application date, either get a temporary residence permit or permanent. If the applicant has submitted the asylum application after November 24, 2015 and is not a minor or part of the same family as a minor, he or she shall be granted a temporary residence permit. The length of the permits are three years in case the applicant is granted his or her permit as a refugee and thirteen months for applicant's who have grounds for subsidiary protection.</p>
	United Kingdom	Yes	<p><b>1.</b> As the profile of those people who may be at risk from Al-Shabaab in Mogadishu and other urban areas is likely to be high it is unlikely that internal relocation to other areas of south and central Somalia would be a viable option because Al-Shabaab may still be able to reach them. However those with a low profile or who are not associated with the government or an international organisation or where the risk is only local should be able to internally relocate. Those without a high profile who live in rural areas under Al-Shabaab influence should be able to internally relocate to an urban area where Al-Shabaab does not have influence, as long as it would not be unduly harsh to expect them to do so. Consideration should also be given to what protection is available for them from the Somalia government forces, police and AMISON.</p> <p><b>2.</b> Yes. They will be issued with a biometric residence permit.</p>
	Norway	Yes	<p><b>1.</b> If an applicant has no grounds for asylum or subsidiary protection, we will refer the applicant to areas controlled by Al-Shabaab. Exceptions: a) Children will not be referred to areas controlled by Al-Shabaab due to lack of humanitarian aid provided by NGOs, such as health care, food supply. They will be granted subsidiary protection (utl § 38)</p>

			<p>2. Applicants who have no former experience of living under Al-Shabaab rule will not be referred to areas controlled by Al-Shabaab. Applicants who originate from an Al-Shabaab controlled area but who have been living abroad since before 2007, can not be returned to an area controlled by Al- Shabaab due to lack of experience of Al-Shabaab's rules. They will be granted asylum (utl 28 1 a)</p>
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