



EMN Ad-Hoc Query on Ad-Hoc Query on Asylum seekers from Afghanistan

Requested by Suvi TIAINEN on 2nd November 2015

Protection

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, 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:

Afghan nationals have currently been the second largest group among the asylum seekers in Finland. Therefore political interest has risen whether there are any differences amongst the Member States regarding their policies concerning Afghan asylum seekers.

Questions

1. 1. Do you grant subsidiary protection pursuant to Art. 15 lit. c of the Qualification Directive to asylum seekers from Afghanistan? Concerning which areas?
2. 2. How many asylums and other protection status have been granted and how many asylum applications have been rejected (excluding dismissal of a case) this year concerning asylum seekers from Afghanistan?

Summary

Five countries have listed safe / unsafe areas.

Unsafe areas: Kandahar, Helmand, Kunar, Nangarhar, Kunduz, Paktika, Paktia, Wardak, Ghazni, Faryab, Herat, Khost, Laghman, Badghis Kapisa, Logar, Nimroz, Nuristan, Uruzgan, Zabul , the most unstable districts in Badakhshan, Baghlan, Jawzjan and Sari Pul

Safe areas: the provinces of Kabul, Panjshir, Bamyán, Daikundi, Takhar, Balkh and Samangan,

9 countries consider that there are usafety areas in Afghanistan,




2 countries consider the whole Afghanistan unsafety.




3 countries consider that the situation in Afghanistan does not meet the definition of an armed conflict.






In 6 countries Asylum seekers from Afghanistan are subject to an individual assessment on a case-by-case basis.





2 countries have none or very few asylum seekers from Afghanistan.







Responses




	Country	Wider Dissemination	Response														
	Croatia	Yes	<p>1. Croatian government does not grant subsidiary protection pursuant to Art. 15 lit. c of the Qualification Directive to asylum seekers from Afghanistan.</p> <p>2.</p>														
	Austria	Yes	<p>1. Asylum seekers from Afghanistan are subject to an individual assessment on a case-by-case basis. If appropriate the application is rejected or the status of refugee or of subsidiary protection is recognized.</p> <p>2. In this respect statistics will be published shortly on the Website of the Federal Ministry of the Interior under http://www.bmi.gv.at/cms/BMI_Asylwesen/statistik/start.aspx.</p>														
	Belgium	Yes	<p>1. The Commissioner General recognises that the situation in many regions of Afghanistan is problematic. The available information shows that the level of violence and the impact of armed conflict differs dramatically per region. These strong regional differences characterise the conflict in Afghanistan. For these reasons, when assessing the need for protection, the Commissioner General not only takes into account the current situation in Afghanistan but also examines the security situation in the area from which the applicant originates. The CGRS constantly monitors the situation in Afghanistan. When assessing the need for subsidiary protection, the Commissioner General takes account of the actual situation in Afghanistan as is the case at the moment of decision-making. Under certain circumstances, Afghan applicants for international protection can withdraw from the threat to their lives or person as a result of the security situation in their region of origin by settling outside their region of birth or origin. The principle of the internal flight alternative is only applicable if it can be clearly demonstrated that the applicant has a genuine and stable internal flight alternative.</p> <p>2. Decisions 1.1.-1.11.2015 concerning Afghan asylum seekers: (all children included)</p> <table border="1" data-bbox="613 1299 2047 1378"> <thead> <tr> <th>Refugee Geneva</th> <th>Status</th> <th>Subsidiary</th> <th>Other Residence</th> <th>Positive decisions</th> <th>Negative</th> <th>Negative</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Refugee Geneva	Status	Subsidiary	Other Residence	Positive decisions	Negative	Negative							
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			<table border="1"> <tr> <td>Convention</td> <td>Protection</td> <td>Permits</td> <td>altogether</td> <td>decisions</td> <td>(not taken into consideration)**</td> </tr> <tr> <td>492</td> <td>362</td> <td>N/A *</td> <td>854</td> <td>191</td> <td>215</td> </tr> </table> <p>*In Belgium, a residence permit on humanitarian or medical grounds can not be granted in the framework of an asylum procedure, specific procedures apply.</p> <p>** This concerns subsequent asylum applicants whose subsequent applicant could not be taken into consideration due to a lack of substantial new elements.</p>	Convention	Protection	Permits	altogether	decisions	(not taken into consideration)**	492	362	N/A *	854	191	215
Convention	Protection	Permits	altogether	decisions	(not taken into consideration)**										
492	362	N/A *	854	191	215										
	Bulgaria	Yes	<ol style="list-style-type: none"> The question whether there is a situation of international or internal armed conflict in a given country is assessed in connection with the up-to-date country of origin information. Subsidiary protection under Article 15 C of the Qualification Directive is not granted to Afghan asylum seekers due to the reason that there is no data for such kind of situation in Afghanistan. During the period 01.01. - 31.10.2015 4360 applicants for international protection were granted refugee status, of those 1 Afghan national. 792 applicants were granted subsidiary protection, of those 5 Afghan nationals. <p>During the period 01.01. - 31.10.2015 92 rejection decisions for granting international protection to Afghan nationals were issued.</p>												
	Croatia	Yes	<ol style="list-style-type: none"> Croatian government does not grant subsidiary protection pursuant to Art. 15 lit. c of the Qualification Directive to asylum seekers from Afghanistan. 												
	Cyprus	Yes	<ol style="list-style-type: none"> Each case is examined on its own merits. If they establish a well-founded fear of persecution a refugee status is granted and if the meet the criteria of article 15 of the Qualification Directive a subsidiary protection is granted. In any other case the application is rejected. Statistics for asylum seekers from Afghanistan- Period 1.1.15-30.9.2015: <table border="1"> <thead> <tr> <th>Refugee Status</th> <th>Subsidiary protection</th> <th>Applications</th> <th>Rejections</th> </tr> </thead> <tbody> <tr> <td>0</td> <td>0</td> <td>3</td> <td>1</td> </tr> </tbody> </table> 	Refugee Status	Subsidiary protection	Applications	Rejections	0	0	3	1				
Refugee Status	Subsidiary protection	Applications	Rejections												
0	0	3	1												

	Czech Republic	No	
	Estonia	Yes	<p>1. Estonia has no policy about granting subsidiary protection pursuant to Art 15 (c) of the Qualification Directive to asylum seekers from Afghanistan. Every decision is made case by case.</p> <p>2. During the time period from 1.01.2015 to 1.11.2015 there have been no decisions concerning asylum seekers from Afghanistan.</p>
	Finland	Yes	<p>1. The current policy of Finland is that the natives of Kandahar, Helmand, Khost, Kunar, Nangarhar, Uruzgan and Paktika, and as well the most unstable districts in the province of Ghazni (namely Nawa, Andar, Qarabagh, Giro, Ab Band, Muqur, Waghaz, Gilan, Zana Khan, Rashidan, Wali Muhammadi Shahid, Dih Yak and Ajristan) are granted subsidiary protection pursuant to Art. 15 lit. c of the Qualification Directive, unless they are considered to be able to internally relocate elsewhere in Afghanistan.</p> <p>2. Decisions 1.1.-1.11.2015 concerning Afghan asylum seekers: Asylum: 44 Secondary protection: 41 Other residence permits: 26 Positive decisions altogether: 111 Negative decisions altogether : 32</p>
	France	No	
	Germany	Yes	<p>1. Although an internal armed conflict according to article 15 c QD cannot be excluded for a number of provinces/regions it is not assumed that the situation of indiscriminate violence reaches a level that causes a serious threat to a civilian's life merely on the presence of a civilian there. Individual (risk increasing) factors of an applicant have to be considered additionally. Nevertheless, for some provinces it is assumed that the level of risk is higher than for other provinces. With regard to the different risk levels in the provinces the "sliding scale" according to the ECJ decision from 17th February 2009 (Elgafaj vs NL) is to be applied.</p> <p>2. Decisions 01.01. – 31.10.2015 Decisions: 4.929 Refugee Status: 1.361 Subsidiary protection: 254 humanitarian (national) protection: 599 Rejections :574 Other decisions: 2.141</p>

	Hungary	Yes	<p>1. The current policy of Hungary is that the natives of Kandahar, Helmand, Kunar, Nangarhar, Kunduz, and Paktika, Paktia, Wardak and Ghazni are granted subsidiary protection pursuant to Art. 15 lit. c of the Qualification Directive, unless they are considered to be able to internally relocate elsewhere in Afghanistan. The list is not fixed concerning that the Hungarian refugee authority (Office of Immigration and Nationality - OIN) investigates and applies the current and up to date safety level determination of Afghanistan in every cases.</p> <p>2. Decisions 1 January - 31 October 2015 concerning Afghan asylum seekers: Granted refugee status: 22 Granted subsidiary protection: 53 Rejected applications: 277 Terminated procedures: 29 211</p>										
	Ireland	No											
	Italy	Yes	<p>1. In Italy, subsidiary protection pursuant to Article 15(c) of the Qualification Directive is granted in consideration of the level of indiscriminate insecurity in the area of origin, keeping into account EASO and UNHCR reports. In Italy the provision concerning internal relocation has not been transposed.</p> <p>2. Decisions from 1 January 2015 to 13 November 2015:</p> <table border="1" data-bbox="712 863 1944 1066"> <thead> <tr> <th data-bbox="712 863 958 1002">Asylum</th> <th data-bbox="958 863 1205 1002">Secondary protection</th> <th data-bbox="1205 863 1451 1002">Other residence permits</th> <th data-bbox="1451 863 1697 1002">Positive decisions altogether</th> <th data-bbox="1697 863 1944 1002">Negative decisions altogether</th> </tr> </thead> <tbody> <tr> <td data-bbox="712 1002 958 1066">283</td> <td data-bbox="958 1002 1205 1066">2,474</td> <td data-bbox="1205 1002 1451 1066">102</td> <td data-bbox="1451 1002 1697 1066">2,859</td> <td data-bbox="1697 1002 1944 1066">135</td> </tr> </tbody> </table>	Asylum	Secondary protection	Other residence permits	Positive decisions altogether	Negative decisions altogether	283	2,474	102	2,859	135
Asylum	Secondary protection	Other residence permits	Positive decisions altogether	Negative decisions altogether									
283	2,474	102	2,859	135									
	Latvia	Yes	<p>1. There is no general policy regarding safe/unsafe districts in Afghanistan at the moment - each case is considered on individual merits.</p> <p>2. In 2015 only 34 Afghan asylum seekers requested asylum in Latvia:</p> <ul style="list-style-type: none"> - refugee status granted – 3; - subsidiary protection granted – 4 (contrary to the First instance’s decision the Court granted subsidiary protection to family from Mazar-e-Sharif); - withdrawal – 1; 										

			- all the other cases currently are under consideration.
	Lithuania	Yes	<p>1. Yes. There are too few cases to make any generalizations about concerning areas.</p> <p>2. Asylums – 0. Subsidiary protection – 13. No applications have been rejected; however, 45 cases have been dismissed.</p>
	Luxembourg	Yes	<p>1. Afghan national asylum applications are analysed on a case by case study. There is no prima facie policy in place that would trigger Art. 15c of the QD.</p> <p>2. Decisions 01.01.-30.10.2015 Asylum: 1 Subsidiary protection: 0 Other residence permits: 0 Positive decisions altogether 2 (the Administrative granted international protection status to one Afghan national) Negative decisions altogether: 0 Incompetence: 3</p>
	Malta	Yes	Malta does not get asylum seekers from Afghanistan.
	Netherlands	Yes	<p>1. No.</p> <p>2. First three quarters of 2015: Geneva Convention Status: 80 Humanitarian Status: 45 Rejected: 260 Subsidiary Protection Status: 145 Temporary Protection Status: 0 Source: EUROSTAT</p>
	Poland	Yes	<p>1. No subsidiary protection has been granted pursuant to Art. 15 lit. c of the Qualification Directive to asylum seekers from Afghanistan. Because of the nature of cases and the applicants' profile, no subsidiary protection has been granted taking into account specific areas of Afghanistan.</p> <p>2. 12 citizens of Afghanistan submitted applications for the refugee status in 2015. This year the refugee status has been granted to 6 applicants and subsidiary protection has been granted to 7 applicants from Afghanistan based on Art. 15 lit. b. 3 applications from Afghanistan have been rejected.</p>
	Slovak Republic	Yes	<p>1. The Slovak Republic grants subsidiary protection pursuant to the stated provisions to asylum seekers from Afghanistan unconcerned from which areas they come.</p> <p>2.</p> <p>First instance decisions issued from 1.1.2015 to 30.9.2015 in case of third country nationals from Afghanistan</p>

			Asylum granted	Asylum rejected	Subsidiary protection granted	Subsidiary protection prolonged	Subsidiary protection rejected	Application refused as unfounded	Application refused as inadmissible
			0	5	3	21	0	0	3
	Slovenia	Yes	<p>1. Each asylum application, including Afghanistan citizen, is assessed base on individual approach. We do not have special list of explicit districts or provinces which are considered as unstable. We have same Court decisions regarding conditions of some parts of Afghanistan but those decisions were specific for individual cases. Applicants could grant subsidiary protection based on Art. 15 lit. c of the Qualification Directive when they fulfills all conditions required by the national Asylum Act.</p> <p>2. Decisions 1.1.-1.11.2015 concerning Afghan asylum seekers: Asylum (subsidiary protection); 1 Negative decisions altogether ; 2 Residence permits; 2</p>						
	Sweden	Yes	<p>1. Sweden´s policy is that the security situation in Afghanistan except in the provinces of Kabul, Panjshir, Bamyan, Daikundi, Takhar, Balkh and Samangan, reach the requirement for internal armed conflict pursuant to ART 15 c of the Qualification Directive. The security situation varies a lot between the provinces where internal armed conflict is going on. An individual assessment of the applicants exposition for danger has to be done (in line with Elgafaji judgement). Internal displacement might be relevant to Kabul and other big provincial cities for adult men, couples and families, where an adult man is included.</p> <p>2. Positive decisions altogether: 937 Refugee: 323 Subsidiary protection: 200 Particularly distressing circumstances: 400 Negative decisions: 302</p> <p>The total number of Afghan asylum seekers 2015 until 23 of November: 33590 of which unaccompanied minors: 19669.</p>						
	United Kingdom	Yes	<p>1. Generally the UK does not currently generally grant humanitarian protection (UK equivalent to subsidiary protection) to asylum seekers from Afghanistan.</p> <p>The UK courts found in 2012 that “despite a rise in the number of civilian deaths and casualties and an expansion of the geographical scope of the armed conflict in Afghanistan, the level of indiscriminate violence in the country taken as a whole was not at such a high level as to mean that, within the meaning of Article 15(c) of the Qualification</p>						

			<p>Directive, a civilian faces a real risk to his life or person solely by being present in the country.”</p> <p>This is subsequently reflected in the UK Country Information and Guidance on Afghanistan, available at:</p> <p>https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/455129/CIG_AFG_security_situati_on_August_2015.pdf</p> <p>2. First instance decisions for Afghan Asylum seekers to the UK, 1/01/2015-30/06/2015**</p> <table border="1" data-bbox="712 564 1944 836"> <thead> <tr> <th data-bbox="712 564 958 767">Asylum</th> <th data-bbox="958 564 1205 767">Secondary protection (Humanitarian protection)</th> <th data-bbox="1205 564 1451 767">Other residence permits (discretionary leave and ‘other’ grants of leave)</th> <th data-bbox="1451 564 1697 767">Positive decisions altogether</th> <th data-bbox="1697 564 1944 767">Negative decisions altogether</th> </tr> </thead> <tbody> <tr> <td data-bbox="712 767 958 836">342</td> <td data-bbox="958 767 1205 836">1</td> <td data-bbox="1205 767 1451 836">79</td> <td data-bbox="1451 767 1697 836">422</td> <td data-bbox="1697 767 1944 836">679</td> </tr> </tbody> </table> <p>*Data includes main applicants and dependants. **Data is only available up until 30 June 2015</p> <p>Source: Home Office Immigration Statistics, August 2015</p>	Asylum	Secondary protection (Humanitarian protection)	Other residence permits (discretionary leave and ‘other’ grants of leave)	Positive decisions altogether	Negative decisions altogether	342	1	79	422	679
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342	1	79	422	679									
	Norway	Yes	<p>1. In Norwegian law there is no category of ”subsidiary protection” as such. Section 28 of the Norwegian Immigration Act includes both refugee status in accordance with the Geneva convention (first paragraph letter a), and for other persons in need of international protection (first paragraph letter b). The legal rights of both categories of refugees are almost the same.</p> <p>Section 28 of the Immigration Act states that ”a foreign national who is in the realm or at the Norwegian border shall, upon application, be recognised as a refugee if the foreign national</p> <p>(a) has a well-founded fear of being persecuted for reasons of ethnicity, origin, skin colour, religion, nationality, membership of a particular social group or for reasons of political opinion, and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of his or her country of origin, see Article 1 A of the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967, or</p>										

(b) without falling within the scope of (a) nevertheless faces a real risk of being subjected to a death penalty, torture or other inhuman or degrading treatment or punishment upon return to his or her country of origin.

A foreign national who is recognised as a refugee under the first paragraph shall be entitled to a residence permit (asylum)

The content of QD article 15 (c) has not been transposed into Norwegian legislation. The reason can be seen from the preparatory works to the Immigration Act (ot.prp. 75 2006-2007), where the Norwegian Ministry of Justice stated that it presumed that those included by the QD article 15 (c) would be included in the general protection against return to inhuman treatment (non-refoulement). It was argued that it could be unfortunate to distinguish groups that are protected for a particular reason (such as war or massive violence) because it could give an impression that those at risk for other reasons would not be included by the right to protection.

A decision by the Grand Board of the Immigration Appeals Board (UNE) from October 2010 gives guidance on the interpretation of section 28 first paragraph letter b of the Immigration Act in situations of general violence. The Grand Board stated that the assessment is individual. What is decisive is whether a person will be exposed to a real risk of inhuman treatment, and not how the security situation is defined. To what degree individual circumstances are decisive depends on how serious the general security situation is, and to what degree each person risks being harmed. It follows that only in extreme situations of violence and unrest will return be a violation of ECHR article 3 due to a general situation, that is to say where anyone would be at real risk of assaults by virtue of just being present. The assessment of section 28 first paragraph letter b would be the same. In both ECHR article 3 and section 28 first paragraph letter b of the Immigration Act, all known elements of risk must be assessed and accumulated. The Grand Board also concluded that there is no clear evidence that the QD art. 15 (c) has a considerably broader content than ECHR article 3. It states that while Norway is not bound by the QD, the fact that the Ministry of Justice presumed that section 28 first paragraph litra b would cover the content of QD article 15 (c) means that the practice of EU countries is a relevant source also for Norway.

In many provinces and districts in Afghanistan, the Norwegian Directorate of Immigration (UDI) considers that the violence reaches the level required in section 28 first paragraph letter b of the Immigration Act. Currently, protection may be granted in cases where asylum seekers are natives of Badghis, Farah, Faryab, Kandahar, Helmand, Kapisa, Khost, Kunar, Kunduz, Laghman, Logar, Nangarhar, Nimroz, Nuristan, Paktia, Paktika, Uruzgan, Wardak and Zabul as well as the most unstable districts in Badakhshan, Baghlan, Ghazni, Herat, Jawzjan and Sari Pul.

However, protection is denied in many cases due to available internal flight alternatives in other safe areas in Afghanistan, mainly Kabul..

			<p>2. Decisions January-October 2015 concerning Afghan asylum seekers: Asylum: 182 Other protection: 264 Rejection: 76 MORE DETAILS Asylum: 182 Secondary protection: 264 Humanitarian grounds: 38 UAM limited: 10 Rejection: 76 Dublin: 229 Withdrawn: 11 Dropped: 17 Safe third country: 15 Total sum: 842</p>
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