



**Ad-Hoc Query on the interpretation of the Article 8 paragraph 2 of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 (recast Qualification Directive)**

**Requested by SK EMN NCP on 21st July 2015**

**Reply requested by 18th August 2015**

**Responses from Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovak Republic, Spain, Sweden, United Kingdom plus Norway (22 in Total)**

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**1. Background Information**

As demonstrated by the current asylum practice in the Slovak Republic, Slovak courts deciding on the asylum applications have different legal opinion on the interpretation of the Article 8 paragraph 2 of the 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 Qualification Directive). When examining and assessing of asylum applications, the Migration Office of the Ministry of Interior of the Slovak Republic works with different

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information sources about the country of origin information (COI) of the applicant which needs to be precise (depending on the applicant's case) and up-to-date. The information sources from UNHCR and EASO are in some concrete cases insufficient or they do not take into consideration specific characteristics of the applicant's case which Migration Office needs to consider on the individual basis. In such cases the information sources from UNHCR and EASO are not listed under the COI information. According to the Migration Office, the listing of the UNHCR and EASO sources of information on COI as stated in the Article 8 paragraph 2 of the Qualification Directive is only demonstrative (resulting from the English version of the Qualification Directive and its Slovak translation) and not using the information from UNHCR and EASO sources does not have the impact on unlawfulness of the decision on the asylum application.

The first-instance courts (relevant regional courts) have similar opinion within the appellate procedure. The second-instance court (Supreme court of the Slovak Republic) pronounced two contradictory opinions on the interpretation of the of the Article 8 paragraph 2 of the Qualification Directive. The first legal opinion states that different guides/recommendations of UNHCR or EASO do not have legally binding character and are only recommendatory. The second legal opinion states that the Article 8 paragraph 2 of the Qualification Directive obligates the Migration Office to consider the outcomes stated in such guides (which are legally binding documents) and the failure to take into account these information sources results in insufficient determination of the facts and the application decision is for its prematurity unlawful.

Based on the above mentioned we would like to ask the following questions:

1. Based on the interpretation of the Article 8 paragraph 2 of the Qualification Directive do the sources of information from UNHCR or EASO have recommendatory or binding character for asylum decision making in your Member State?
2. What is the practice (legal opinion) of your national courts on the mentioned issue?
3. What is the impact of the UNHCR/EASO information sources on the final decision? Are their subjective outcomes and assessments accepted or is the individual approach used?
4. Has the failure to take into account UNHCR/EASO information sources the impact on the unlawfulness (erroneousness) of the decision?
5. Have the information sources from UNHCR/EASO a higher degree of relevancy for your Member States' taking of the decision on the asylum application compared to other numerous and plausible information sources?

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We would appreciate to have your responses by **18th August 2015**.

## 2. Responses

		Wider Dissemination?	<ol style="list-style-type: none"> <li>1. Based on the interpretation of the Article 8 paragraph 2 of the Qualification Directive do the sources of information from UNHCR or EASO have recommendatory or binding character for asylum decision making in your Member State?</li> <li>2. What is the practice (legal opinion) of your national courts on the mentioned issue?</li> <li>3. What is the impact of the UNHCR/EASO information sources on the final decision? Are their subjective outcomes and assessments accepted or is the individual approach used?</li> <li>4. Has the failure to take into account UNHCR/EASO information sources the impact on the unlawfulness (erroneousness) of the decision?</li> <li>5. Have the information sources from UNHCR/EASO a higher degree of relevancy for your Member States' taking of the decision on the asylum application compared to other numerous and plausible information sources?</li> </ol>
	Austria	Yes	<ol style="list-style-type: none"> <li>1. Recommendatory character; The Member State has the obligation and opportunity to consider all the circumstances of the applicant's case. Therefore the outcomes stated in the UNHCR/EASO guidelines which might be general, should not be legally binding for asylum decision making in the Member State.</li> <li>2. According to the case-law relevant recommendations have indicative effect. This indicative effect does not mean that the asylum authorities for instance have to grant asylum bound by respective recommendations. If the asylum authority does not follow the assessment in its determination of the situation in the country of origin, the asylum authority rather has to outline in consideration of evidence, why and based on which opposing reports it came to a different assessment of the situation in the country of origin.</li> <li>3. Objective findings about the situation in country of origin should be taken into consideration and the situation assessment with regard to the international protection should be exclusively a decision-making authority's competence. Each application should be assessed individually and subjective conclusions in the UNHCR and EASO reports should not be binding.</li> <li>4. See Nr. 2; In general the failure to take into account these information sources does not have the impact on the unlawfulness of the decision. The failure to take into account the UNHCR and EASO information sources may not result in the unlawfulness of the decision when the Member State draws from other credible and relevant sources applied on the applicant's case.</li> <li>5. No. The COI information sources do not have any hierarchy, depends on the question/issue and on the up-to-dateness. Source: Federal Ministry of the Interior</li> </ol>
	Belgium	Yes	<ol style="list-style-type: none"> <li>1. The Office of the Commissioner General for Refugees and Stateless persons (CGRS) has the opinion that article 8, par. 2 of the Qualification Directive has only a recommendatory character. The UNHCR guidelines are not binding. Belgian asylum authorities have the obligation and opportunity to take all the circumstances of the applicant's case into account. The information and guidelines provided by UNHCR and/or EASO will equally be taken into account by the CGRS. However, every application for international protection will be assessed by the CGRS on individual grounds.</li> <li>2. The Belgian Court, the Council for Alien Law Litigation, in general agrees to the point of view stated above. It is not sufficient to refer to or cite the UNHCR guidelines or EASO sources. The applicant has to convince the asylum authorities and the Court that he has a personal fear for persecution or a real risk on serious harm.</li> </ol>

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			<p>However, the Court will take the information and guidelines by the UNHCR or EASO into account when the overall situation has changed in the country of origin of the applicant. In case the CGRS has not yet had the opportunity to examine the recent developments in the situation, the Court can demand the CGRS to reexamine the case, taking into account the most recent information.</p> <ol style="list-style-type: none"> <li>3. As stated above, the impact of the UNHCR/EASO sources will depend on some factors, such as the actuality of the information. The objective findings about the situation in the country of origin should be accepted when being relevant. The Belgian asylum authorities will treat the UNHCR/EASO information in the same way as other reliable sources of information. Sometimes, the UNHCR will give an opinion in a particular applicant's case. Belgian law states in these cases that the CGRS will have to appreciate the UNHCR opinion. If the CGRS does not agree with the UNHCR statement in the particular case, the CGRS has to give reasons in the decision for not agreeing with the UNHCR.</li> <li>4. The failure to take into account the information sources does not have an impact on the unlawfulness of the decision. In case the CGRS does not take the information into account, the Court has the opportunity to do so. If the UNHCR/EASO sources are more recent and contradictory to the other information provided in the applicant's file, the Court may demand the CGRS to reexamine the case.</li> <li>5. No, the COI information sources do not have any hierarchy. The relevancy of the source depends on other factors. UNHCR and EASO sources have in general the same relevancy as other objective and up-to-date information. For some nationalities (Afghanistan, Pakistan) the research desk of the CGRS, Cedoca has contributed to reports issued by EASO. Those reports will be used as the main information source by the CGRS.</li> </ol>
	<b>Bulgaria</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. According to the opinion of the State Agency for Refugees with the Council of Ministers the Article 8 paragraph 2 of the Qualification Directive has only recommendatory character. In the light of the Bulgarian legislation in the field of international protection, the case workers have the obligation and opportunity to consider all the circumstances of the applicant's case on the individual basis.</li> <li>2. The legal opinion of the Bulgarian courts on the mentioned issue state that different guides/recommendations of UNHCR or EASO do not have legally binding character and are only recommendatory.</li> <li>3. In the drafting process of the final decisions the individual approach is used by the case workers.</li> <li>4. The failure to take into account these information sources does not have the impact on the unlawfulness of the decision.</li> <li>5. Information from UNHCR and EASO has in general the same relevancy as other objective and up-to-date information. The COI reports are drafted in accordance with COI qualitative standards (EASO Country of Origin Information report Methodology).</li> </ol>
	<b>Croatia</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. According to Article 28 of the International and Temporary Protection Act (Official Gazette, No. 70/15), sources of information from UNHCR or EASO have only recommendatory character for asylum decision making in Croatia.</li> <li>2. According to the current practice of our national courts, it is evident that different guides/recommendations of UNHCR or EASO do not have legally binding character, but only recommendatory.</li> <li>3. Individual approach is being applied for asylum decision making and subjective conclusions in the UNHCR and EASO reports are not applied.</li> <li>4. The failure to take these information sources into account does not have the impact on the unlawfulness of the decision.</li> <li>5. The information from UNHCR and EASO have in general the same relevancy as other objective and up-to-date information.</li> </ol>

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	<b>Czech Republic</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. We interpret “such as” as an introduction to a non-exhaustive list, therefore we consider UNHCR and EASO sources as recommendatory as – and you mention it in the background information – especially EASO has limited COI reports available and they are not produced as fast as it is necessary and sources both from UNHCR and EASO cannot provide answer for every situation we may be in need to verify/find out.</li> <li>2. The courts stress the variability, quality of sources and whether they are up-to-date.</li> <li>3. They are one of the sources upon which the final decision is taken.</li> <li>4. No, on condition that they are not the only relevant source available.</li> <li>5. It depends on the situation and the country of origin we need to assess. UNHCR reports serve as a crucial COI source in certain specific situations, similarly EASO information.</li> </ol>
	<b>Estonia</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. In Estonia sources of information from UNHCR and EASO are considered important sources in refugee determination process, but they have only recommendatory character. Every asylum application is reviewed individually and all the relevant circumstances of the applicant’s case are taken into consideration.</li> <li>2. Estonian national courts have not yet given a legal opinion about whether the sources of information from UNHCR and EASO are considered binding or recommendatory.</li> <li>3. Estonia appreciates highly the information sources from UNHCR and EASO, but for the final decision an individual approach is used. Each asylum application is assessed individually and the final decision and assessment is done by the Police and Border Guard Board.</li> <li>4. Every asylum decision is made after thorough consideration of all the relevant information (e.g. applicant’s statements, submitted documents, relevant country of origin information). The failure to take into account these information sources does not necessarily result in the unlawfulness of the decision when it is possible to apply other relevant plausible information sources on the applicant’s case or when for example the applicant is not considered credible.</li> <li>5. While assessing the need for international protection, Estonian Police and Border Guard Board analyses different information sources about the specific country of origin information. The sources need to be objective, plausible, up to date and the information has to be precise. The sources from UNHCR and EASO are very important, but also other sources are used, especially for more specific information.</li> </ol>
	<b>Finland</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. They are of a recommendatory character. The Finnish legislation does not contain a mention of these sources. They are mentioned as examples in the preparatory documents to the legislation.</li> <li>2. In practice, attention is paid to varied and recent/timely sources, instead of naming particular sources.</li> <li>3. UNHCR and EASO are considered to be important sources, but not necessarily the only ones, as they do not at all times have country of origin information from all relevant countries or it is not the most recent information available. According to the government proposal (86/2008) when processing an application for international protection, it is important to also consider possible future violations of the rights of a person in addition to events that have taken place in the past. The crucial issue is to evaluate what might happen to the applicant if he/she was sent back to his/her country of origin, previous place of residence or a transit country.</li> <li>4. Not solely, because as mentioned in question 3, the most recent and relevant country of origin information can sometimes be found from other sources.</li> </ol>

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			<p>5. The information sources from UNHCR and EASO do have a high degree of relevance in Finland, although as mentioned more relevant and recent country of origin information can also be found elsewhere depending on the case in question.</p>
	<b>France</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. According to the French version of the Directive (relevant sources, <b>such as</b> the UNHCR, etc.) the mention of UNHCR and EASO is only indicative and is an example of sources that can be used inter alia.</li> <li>2. This case did not occur in the French jurisdiction.</li> <li>3. The case-by-case approach is generally chosen. The application of Article 15 c (subsidiary protection in situation of internal armed conflict) takes into account assessments of the conflict from several sources of information, using the reports of international organizations and NGOs, including the ones from UNHCR and EASO.</li> <li>4. The failure to take into account UNHCR and EASO information sources as such does not affect the legality of a decision on asylum application.</li> <li>5. Collaboration between the French Office for the Protection of Refugees and Stateless Persons (OFPRA) and the UNHCR provided in the Code for Entry and Residence of Foreigners and Right of Asylum and defined in a framework agreement, has the consequence that UNHCR reports are considered reliable and have particular weight in the evaluation of sources, without that their findings are binding. It is the same for EASO reports to which OFPRA protection officers have sometimes contributed.</li> </ol>
	<b>Germany</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Certainly no binding character. According to the German text of Art. 8 par. 2 of the Qualification Directive as well as of § 3e subs.. 2 AsylVfG(Asylum Procedure Act) the UNHCR and EASO are simply mentioned as <b>examples</b> for “relevant sources” of information, as the expression “...Informationen aus relevanten Quellen, <b>wie etwa Informationen des Hohen Kommissars</b> ... (like, for instance, informations from the UNHCR)..” shows. The regulation is focussed on the information, not the information-giver, to avoid “sweeping judgements” and unsubstantiated assumptions. The Federal Office for Migration and Refugees and the German Administrative Courts have to gather reliable information to be able to decide whether part of the COI can be considered to offer internal protection for the applicant in his or her individual case. To this end “relevant sources” have to be asked for information, and UNHCR and EASO are exemplarily named as such. The law does neither say that only the UNHCR and EASO must be asked for information nor that their informations, opinions, principles and guidelines have to be heeded in any case or even predetermine or anticipate the outcome.</li> <li>2. There isn’t any jurisdiction in Germany on the issue yet, so the courts obviously don’t see a problem here. Basically, the German courts don’t have to follow or observe any “guidelines” from anyone, not even from their own superiour courts, and they can consider whatever they feel is significant in the case so they don’t have to take the UNHCR’s or EASO’s findings into consideration either. The Federal Office isn’t obliged to consider (only) certain informations or heed certain legal opinions or (external) guidelines either, as long as they aren’t rulings by superiour courts. By law (§ 3e subs.2,sentence.2 AsylfG) it is only obliged to gather reliable informations about the question of possible internal protection and to decide on that basis and according to § 31 AsylVfG has to put down its decision in writing and to point out the reasons for it. In this context the Federal Office will usually elaborate on which informations have been gathered and considered vital in deciding the actual case. The non-consideration of certain informations including those offered by the UNHCR and/or EASO has basically no legal effect. The decision isn’t unlawful just because it hasn’t taken certain informations into consideration, as long as it isn’t merely based on unfounded assumptions.</li> <li>3. The case is always looked into and decided individually, and the decision lies exclusively with the Federal Office and the administrative courts. As was said before, neither the Federal Office nor the Courts are obliged to call for and heed the findings,</li> </ol>

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			<p>opinions or informations of any certain organisation or source to begin with. They have to decide for themselves which reliable source they ask for information and what they make of it eventually. So the subjective outcomes or assessments of UNHCR/EASO may be deemed to be of substantial importance in one case, while they are inconclusive in an other one. The Office and the courts gather informations on a wider scale to enable the decision to be as up-to-date, impartial, unbiased and fact-based as possible, for instance also considering the findings of government departments like the various Foreign Offices, Embassies on site, national and international police forces, secret services, of legal scholars, other scientists or specialists on different issues, various NGOs press reports and so forth. The Office's decision as well as the courts' rulings have to be based on objective facts, they have to be objectively correct, so a subjective viewpoint or approach won't do. So you can only say it depends on the details of every individual case if information from UNHCR and/or EASO and their conclusions or viewpoints are deemed vital to the outcome or not.</p> <ol style="list-style-type: none"> <li>4. No. The UNHCR or EASO are no decisive bodies within the German legal system, so their guidelines, "subjective outcomes" or case-related informations are not decisive or anticipating a decision by the Office or the courts.</li> <li>5. No. Though especially the UNHCR has certainly the benefit of a decades-long experience in dealing with refugees from various countries and continents and safeguarding conventions for the protection of refugees so their informations will frequently be considered as coming from a renowned and relevant source, it doesn't mean that they are automatically valued higher than others. In any given individual case the UNHCR's or EASO's informations can thus be considered inappropriate or inconclusive while those of other organisations or experts are deemed to be more up-to-date, case-related, profound etc.</li> </ol>
	<b>Hungary</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. According to the Office of Immigration and Nationality's interpretation, any country of origin information or guidance from the EASO or the UNHCR is not binding, however, it should be taken into account.</li> <li>2. In asylum cases the court procedure is a one instance procedure. Regarding the above mentioned issue, there is not a single opinion of the judges in these asylum cases, it means that the decision of a judge in the matter at hand does not have a binding character for the decisions of other judges in similar cases. The opinion of the college of judges is a recommendatory guidance, nevertheless, in certain cases the UNHCR guidelines have, as the basis of the decision, been referred to, through the reasoning part of the certain decision.</li> <li>3. In the practice of the Office of Immigration and Nationality, individual approach is used.</li> <li>4. Various decisions were received from the courts, but no trends can be detected.</li> <li>5. Country of Origin Information provided by the UNHCR and the EASO is one of the most relevant information resources, even if a strict hierarchy cannot be established among the various sources.</li> </ol>
	<b>Ireland</b>	<b>Yes</b>	Ireland did not opt into Directive 2011/95/EU.
	<b>Italy</b>	<b>Yes</b>	1-2-3-4. According to Article 3(3) of Legislative Decree No 251/2007 and Article 8 of Legislative Decree No 25/2008 , the examination of international protection applications is carried out by the Territorial Commissions for the Recognition of International Protection (coordinated by the National Asylum Commission), on the basis of a number of elements. This information on the applicant's country of origin, as well as on his/her individual and social situation is accurate and updated, and to be verified through an interview and specific documents. The relevant decision is obviously complex and delicate; it is taken considering the specificities of each individual case, without disregarding the general conditions in the applicant's COI. So much so that Article 6 of the Decree of the President of the Republic No 21/2015 (Regulation on the procedures for the recognition and the withdrawal of international

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			<p>protection) establishes that the decision must be «legally and factually grounded» and keep into account information on the COI. Therefore, we can conclude that the assessment of the general conditions in the COI during the international protection procedure is mandatory. This has been regularly confirmed by the case law of the Court of Cassation (supreme court) and of Regional Administrative Courts (TARs) which have considered application rejections by the Territorial Commission unlawful if the reasons for the decision did not take into consideration information on the COI. (Among others, Cass. Civ. Sez. Unite Sentence No. 27310/2008; TAR Puglia No. 1870/2008; Tar Lazio Sentence No. 8831/2008.</p> <p>If the analysis and therefore the assessment of the information on the applicants' COIs is certainly mandatory, it is more difficult to state with certitude to what extent that information is binding. This information is in fact always analysed together with other elements that the applicants carry to support their claims, in a way that an element may confirm and strengthen (or neither confirm and nor strengthen) the other. Only following an overall assessment of all the circumstances related to an individual case it is possible to establish which was the binding force of the information on the COI.</p> <p>5. The Territorial Commissions for the Recognition of International Protection and the Judicial Authorities with responsibility over international protection have the power to collect information on the political and social situation of the applicants' COIs autonomously. However, since under Article 4/3) of Legislative Decree No 25/2008, an UNHCR representative is entitled to be a member of the Territorial Commissions and since the National Commission has by now established a stable and structural collaboration with EASO, UNHCR/EASO information has priority over other information.</p>
	<b>Latvia</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. The sources of information from UNHCR or EASO have recommendatory character.</li> <li>2. National courts evaluate the above-mentioned sources as equal to other sources.</li> <li>3. The individual approach is used always.</li> <li>4. No.</li> <li>5. No (the relevance of sources results from the individual aspects of each case and COI quality standards).</li> </ol>
	<b>Lithuania</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. They have recommendatory character.</li> <li>2. National courts haven't taken any stance on this issue.</li> <li>3. The UNHCR/EASO information sources are taken into account, however, each case is being assessed individually, and all the available information (including other sources of COI) is examined.</li> <li>4. No.</li> <li>5. No.</li> </ol>
	<b>Luxembourg</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. In LU, these sources are not binding but have a recommendatory character in the asylum decision process. As these organisations constitute a part of all the available sources, the decision makers, via information provided by the Country of Origin Information unit (COI), use various sources in the process in order to be able to take an objective decision.</li> <li>2. The administrative courts take into account the information provided by UNHCR and EASO, but just like mentioned at point 1, a larger amount of sources are used to judge individual cases. These sources are therefore not legally binding.</li> <li>3. A case by case study is applied for every asylum request. UNHCR and EASO reports are taken into account and weigh in the decision making process. Their objective outcomes are accepted but on an individual approach.</li> <li>4. COI has to be objective, relevant and up-to-date. The failure to take into account UNHCR and EASO information sources does not result in the unlawfulness of the decision as long as the determining authority draws from other COI sources which are objective, up-to-date and relevant to the applicant's case.</li> </ol>

EMN BE Ad-Hoc Query on the use of escort missions (on commercial flights) other than the own police escorts

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			5. UNHCR and EASO information sources are considered highly relevant. However, this does not preclude the use of other relevant information for the decision of the case. COI information sources do not have a hierarchy.
	<b>Malta</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. It must be noted that the concept of internal protection is rarely applied by the Office of the Refugee Commissioner. The concept is applied infrequently and only as an additional argument to rejected cases that is to a case that have already been thoroughly assessed to examine whether the applicant meets the criteria to be granted international protection and found not to qualify. In such cases, the Office would make sure that precise and up-to-date information is obtained from both UNHCR and EASO. Information from other sources is also obtained. Information from UNHCR and EASO is deemed important but not necessarily binding in nature.</li> <li>2. Refer to answer to question 1.</li> <li>3. The availability of internal protection is rarely applied and when it is applied, it is only an additional argument to rejected cases.</li> <li>4. No.</li> <li>5. The Office ensures that up-to-date information is obtained from different sources, such as UNHCR and EASO. Information sources from EASO/UNHCR are considered significant but the Office does not limit itself to these sources. Other relevant sources are taking into consideration when taking a decision on an asylum application.</li> </ol>
	<b>Netherlands</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Recommendatory. Article 8 of the Qualification Directive has been implemented (word-for-word) in article 3.37d of the Aliens Regulation. As in the Directive, UNHCR and EASO information is 'only' mentioned as an example. In the Netherlands the freedom-of-evidence rule applies, that is to say that evidence may be supplied in any appropriate form except where the law provides otherwise. The wording of article 8 of the Qualification Directive is not such that it would limit the freedom-of-evidence rule assessing an asylum application.</li> <li>2. The national courts demand that assessment of the application for internal protection is based on available accurate and up to date information on the country of origin from relevant sources. In the majority of cases, this information is derived from country reports from the Dutch Ministry of Foreign affairs. These country reports are themselves based on a variety of sources, which may include information that is derived from investigation by the Ministry itself, information from the UNHCR and EASO, country reports from other (member) states, Amnesty International, Human Rights Watch and other NGO's. There is no jurisprudence that demands that the assessment can only and exclusively be made using information from the UNHCR or EASO.</li> <li>3. What value is attached to a public source depends on multiple factors. Some sources are of course more authoritative than others, but even for an authoritative source like UNHCR simply taking a position will not suffice. In one case for example, a UNHCR letter did not gain precedence over the findings of a country report from the Dutch Ministry of Foreign affairs, as the UNHCR had not substantiated its position.</li> <li>4. If UNHCR/EASO information sources are brought up by the applicant, they must be taken into account.</li> <li>5. See 3.</li> </ol>
	<b>Poland</b>		
	<b>Portugal</b>		
	<b>Slovak Republic</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. According to the opinion of the Migration Office of Ministry of Interior of the Slovak Republic has the Article 8 paragraph 2 of the Qualification Directive only recommendatory character. The Member State has the obligation and opportunity to consider all the circumstances of the applicant's case. Therefore the outcomes stated in the UNHCR/EASO guidelines which might be</li> </ol>

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			<p>general, should not be legally binding for asylum decision making in the Member State.</p> <ol style="list-style-type: none"> <li>2. The Slovak courts deciding on the asylum applications have two different contradictory legal opinions on the interpretation of the Article 8 paragraph 2 of the Qualification Directive. The first legal opinion states that different guides/recommendations of UNHCR or EASO do not have legally binding character and are only recommendatory. The second legal opinion states that the Article 8 paragraph 2 of the Qualification Directive obligates the Migration Office to consider the outcomes stated in such guides (which are legally binding documents) and the failure to take into account these information sources has results in insufficient determination of the facts and the application decision is for its prematurity unlawful.</li> <li>3. According to the Migration Office, only the objective findings about the situation in country of origin should be accepted and the situation assessment with regard to the international protection should be exclusively a decision-making authority's competence. Each application should be assessed individually and subjective conclusions in the UNHCR and EASO reports should not be applied.</li> <li>4. According to the Migration Office, the failure to take into account these information sources does not have the impact on the unlawfulness of the decision. The failure to take into account the UNHCR and EASO information sources which can't be applied in some cases/applications due to the subjectivity (e.g. with regard to the testimony of the applicant) does not result in the unlawfulness of the decision when the Member State draws from other credible and relevant sources applied on the applicant's case.</li> <li>5. No. The COI information sources do not have any hierarchy. The relevancy of each information source depends on the question/issue. The subject of the research is always influenced by the consideration, validation and use of the source of information while maintaining the COI qualitative standards (based on the Common EU Guidelines for Processing Country of Origin Information (COI) (2008), ACCORD training manual on Researching Country of Origin Information (2013) and the EASO Country of Origin Information report Methodology). Information from UNHCR and EASO have in general the same relevancy as other objective and up-to-date information.</li> </ol>
	<b>Slovenia</b>		
	<b>Spain</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. The practice of the Spanish Office for Asylum and Refugees is based on the understanding that the sources of information referred to in Article 8 paragraph 2 of the Qualification Directive do not have binding character for asylum decision making. Nevertheless, the information provided by UNHCR and EASO is considered trustworthy, updated and relevant information that is frequently used to provide the final decision with factual grounds.</li> <li>2. According to the Spanish asylum law, during the asylum procedure UNHCR must provide a report that expresses their opinion regarding the particular case. When the decision-maker adopts a decision that is contrary to the opinion expressed by UNHCR, Spanish courts usually demand abundant legal and factual grounds for justifying that the final decision does not take into account UNHCR opinion.</li> <li>3. UNHCR and EASO COI are important sources of information for the making of the final decision. Additionally, other sources of information (such as NGO reports, newspaper articles...) may be taken into consideration as well. When studying a particular case, the decision-maker must contrast and compare the COI using different sources that are reliable in terms of objectivity and relevance.</li> <li>4. The failure to take into account UNCHR/EASO information sources does not have an impact on the unlawfulness of the decision. Every case is assessed individually after a deep study of the country of origin situation, based on contrasted and solid information</li> </ol>

EMN BE Ad-Hoc Query on the use of escort missions (on commercial flights) other than the own police escorts

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			<p>from different sources. Nevertheless, as stated before, during the asylum procedure, when the perceptive UNHCR report express an opinion regarding a particular case, the decision-maker must make a special effort to provide with legal and factual grounds in order to make a decision that contradicts the UNHCR opinion.</p> <p>5. Although it is assumed that the COI information provided by UNHCR/EASO is accurate, relevant and updated, these information sources do not necessarily have a higher degree of relevance than other sources of information that maintain the COI qualitative standards established in the Common EU Guidelines for processing COI and the EASO Country of Origin Information Report Methodology.</p>
	<b>Sweden</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. The Migration Court of Appeal has stated that information from UNHCR is not a part of domestic law, but has a recommendatory character and it has to be assessed together with other relevant COI. The reports and recommendations from UNHCR are though a very important source of law and have special dignity. Relevant case law is MIG 2007:37 and MIG 2013:15. Information from EASO is to be assessed in the same way.</li> <li>2. The lower national courts have to observe the case law of the Migration Court of Appeal.</li> <li>3. Every individual case has to be examined on its own merits. The reports and recommendations from UNHCR have to be compared with other relevant COI, see question no 1.</li> <li>4. No</li> <li>5. See question no 1. above.</li> </ol>
	<b>United Kingdom</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. The United Kingdom are not taking part in the adoption of this Directive and are not bound by it or subject to its application.</li> <li>2. That UNCHR's reports are important documents because of their provenance and the rigour and depth of their analysis, and are typically given considerable weight. However, ultimately they are one source of material and courts reach their conclusion on the basis of the whole body of evidence before them. For an example of the UK courts' assessment of the weight to attach to the UNHCR's eligibility guidelines, see paragraphs 31 to 54 of <a href="#">HF (Iraq) &amp; Ors v Secretary of State for the Home Department [2013] EWCA Civ 1276 (23 October 2013)</a> We are not aware that the UK courts have ruled on the use of EASO reports, but they are likely to take the same approach as to considering UNHCR material.</li> <li>3. Each case is considered on its individual merits, taking into account all relevant country information.</li> <li>4. N/A</li> <li>5. See also response to question 2. Decision makers need to take into account a range of source information when considering a case, which needs to be critically assessed and given weight according to its relevance, reliability and currency. We consider EASO and UNHCR as generally providing reliable information and, where they provide relevant material, this information usually carries significant weight in our country information and guidance products and in determining individual asylum cases. However neither source necessarily has precedence over other sources.</li> </ol>
	<b>Norway</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Norway is not a member of the EU and we are not bound by the Qualification Directive (QD). There are no provisions in Norwegian legislation with a wording similar to QD art. 8.2. When considering applications for protection we are, however, bound by the general principles concerning correct facts as basis for correct decisions - for example do general provisions of Norwegian Administrative law and principles laid down by Norwegian courts oblige authorities to consider precise and up-to-date country of origin information from relevant and reliable</li> </ol>

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			<p>sources before deciding applications for protection.</p> <p>UNHCRs country-specific recommendations on protection, like for example Eligibility Guidelines, provide both COI and recommendations on interpretation of the criteria for protection for specific profiles based on that information. We do not consider them legally binding; according to international or Norwegian law. As stated in the preparatory works for the Norwegian Immigration Act, Norwegian Immigration Authorities are, however, in general, expected to apply considerable weight to UNHCRs recommendations. The Norwegian immigration authorities decide each application on its individual merits while the UNHCRs recommendations are general in character. In addition, the Norwegian authorities may also consider other sources of information – so results may differ in individual cases.</p> <p>Norway is not legally bound by COI or recommendations on interpretation of criteria for protection issued by EASO. COI provided by EASO will, however, be considered when it is (i) relevant to the specific case, (ii) precise and (iii) up-to-date. We are not bound by the QD, but EASO recommendations on interpretation may provide valuable and useful background information should issues on interpretation of protection criteria arise.</p> <ol style="list-style-type: none"> <li>2. Norway is not bound by the QD and has no provisions similar to art. 8.2. Legal opinions expressed by Norwegian Courts generally concur with the descriptions under 1.</li> <li>3. See 1 above - Norway generally applies considerable weight to UNHCRs country-specific recommendations on protection, like for example Eligibility Guidelines, but we also consider each case on its individual merits. Decisions in some individual cases may therefore sometimes differ from the recommendations, that are more general in character.</li> <li>4. Failure to take relevant and up-to-date country of origin information from reliable sources, like for example UNHCR and also EASO, into account, may lead to decisions that are based on insufficient/incorrect facts and are therefore invalid (unlawful/erroneous).</li> </ol> <p>UNHCRs country specific recommendations on application of criteria for protection are not legally binding as such (in Norway). We do, however, have a provision in our Immigration Regulations that calls for handling by the Grand Board of the Immigration Appeals Board of at least one representative case, if (i) a practice is in breach of formal country specific recommendations from UNHCR, or (ii) establishing such practice is being considered, unless the practice is in accordance with a Ministry order to the Directorate of Immigration. Though decisions from the Grand Board have underlined the weight of UNHCRs country specific recommendations, and also their non-binding character, the board has not concluded that any practice in breach of the recommendations would be unlawful.</p> <ol style="list-style-type: none"> <li>5. In general we consider the relevance of COI to depend on what light it may shed on the issue that needs to be illuminated. To that end, matters like the (i) reliability and competence of the source, (ii) presence in the area in question and (iii) how up-to-date and (iv) precise the information actually is, will have a bearing. <b>Due to UNHCRs mandate, position, reliability, competence, experience and international presence, up-to-date information provided by UNHCR will as a main rule, be (are) considered as particularly valuable and carry considerable weight. EASO is a younger agency without the same mandate, experience and global presence as UNHCR, but EASO COI reports and other information will also be (are) given due consideration.</b></li> </ol>
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