

SK EMN NCP 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)

(21 October 2015)

- 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?**

Out of the 22 (Member) States that answered the ad-hoc query, 3 states (IE, UK, NO) are not bound by the recast Qualification Directive. In the 18 (Member) States which opted for the recast Qualification Directive the sources of information from UNHCR or EASO have only recommendatory character and are not binding. In IT the assessment of the information on the applicants' COIs is certainly mandatory and it is more difficult to state with certitude to what extent that information is binding.

- 2. What is the practice (legal opinion) of your national courts on the mentioned issue?**

In most of the (Member) States, the courts take the information into account, but also stress the most up to date information from variety of sources. DE, EE, FR, LT, NL stated that there isn't any jurisdiction on the issue yet.

In AT the case-law relevant recommendations have indicative effect. 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. In ES during the asylum procedure UNHCR must provide a report that expresses their opinion regarding the particular case. When a 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.

- 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?**

In all of the responding (Member) States, the UNHCR/EASO information is treated in the same way as information from other reliable sources and the individual approach is used by assessing the applications.

- 4. Has the failure to take into account UNHCR/EASO information sources the impact on the unlawfulness (erroneousness) of the decision?**

Most of the (Member) States stated that the failure to take into account UNHCR/EASO information sources does not have the impact on the unlawfulness of the decision provided that there were other relevant sources of information used. The most recent and relevant country of origin information can be obtained also from other sources.

NL mentioned that if UNHCR/EASO information sources are brought up by the applicant, they must be taken into account. In BE 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 responsible national assessing authority to re-examine the case.

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?

The information sources from UNHCR/EASO does not have a higher degree of relevancy compared to other objective and up-to-date information sources in all of the responding (Member) States except IT where UNHCR/EASO information has priority over other information. This is due to the fact that UNHCR representative is entitled to be a member of the Territorial Commissions for the Recognition of International Protection and the Judicial Authorities with responsibility over international protection which have the power to collect information on the political and social situation of the applicants' COIs autonomously, and due to a stable and structural collaboration with EASO.

Several (Member) States mentioned that a strict hierarchy cannot be established among the various sources but UNHCR/EASO sources are given considerable weight.

BE and FR have also mentioned that their national assessing authorities have contributed to reports issued by EASO or collaborated with UNHCR on national legislation and therefore the reports of UNHCR/EASO have particular weight in the evaluation of sources. CZ noted that the degree of relevancy of UNHCR/EASO information sources depends on the situation and the country of origin which needs to be assessed. However, UNHCR reports and EASO information serve as crucial COI source in certain specific situations in CZ.