

**EASO Consultative Forum Plenary
Brussels, 11-12 December 2014**

Round Table 4: Facilitating a more common use of Article 15 QD in the EU – EASO’s COI and practical cooperation activities on Afghanistan and the development of guidance and tools on Article 15(c) QD.

Moderator: Judge Bernard Dawson, Upper Tribunal, Immigration and Asylum Chamber, UK

Speakers: Achilles Skordas, Professor at University of Bristol, UK
Laurent Aldenhoff, European Council on Migration and Refugees, ECRE
Commissariat Général aux Réfugiés et aux Apatrides, Belgium.

1. Aim

- To discuss factors influencing Member States’ interpretation and implementation of Article 15(c) QD, e.g.:
 - Case Law;
 - Country of Origin Information (COI);
 - Position of (international) organisations;
 - Other Member States’ practice;
 - Other...?
- To identify current challenges in reaching a common interpretation and harmonised application of Article 15(c) QD
- To identify possible roles for external stakeholders in relation to improving current practices and reaching a harmonised interpretation and implementation of Article 15(c) QD

2. Background

Article 15 QD defines serious harm: “Serious harm consists of: (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (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.”

Despite landmark decisions from the Court of Justice of the European Union such as *Elgafaji* (C-465/07, Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie, 17 February 2009) or *Diakité* (C-285/12, Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides, 30 January 2014), Member States (MS) face challenges in the interpretation and the practical implementation of the EU legal provisions on subsidiary protection for civilians at risk of serious harm caused by indiscriminate violence in a situation of armed conflict.

The mapping exercise under the EASO Quality Matrix, concluded in 2013, has shown that the practices with regard to the application of Article 15(c) QD vary across MS.

Such variances are illustrated, for example, by the application of Article 15(c) QD in cases of Afghan applicants: in 2013, out of 23 MS participating in the Quality Matrix, only 3 MS indicated they were still considering that Article 15(c) QD was applicable to Afghanistan in general; while 6 other MS replied they would only apply 15(c) QD to applicants coming from specific regions in Afghanistan such as, for instance, Farah, Helmand, Kandahar, Uruzgan, Zabul, Ghazni, Paktika, Paktya, Khost och Kunar.

In some cases these divergences are related to differences in the transposition of the QD. Some MS, for example, have not taken over the requirement of individual risk when transposing the QD into

national legislation; when some others, on the contrary, require that the risk is both 'individual' and 'direct'.

EASO has taken several steps to address the need for enhanced harmonization of the application of Article 15(c) QD.

- *Article 15(c) QD and COI*

In the EASO Conference on Afghanistan in November 2012, participants from EU+ countries' authorities, courts and tribunals, UNHCR and civil society identified the need to develop common/shared sources of COI on Afghanistan; regular security updates with a high level of regional detail; development of qualitative, up-to-date and reliable COI.

EASO started the production of a detailed security update on Afghanistan, in cooperation with different MS and UNHCR. The Terms of Reference for the report include security-related information relevant for international protection status determination (refugee status and subsidiary protection). In a general part, an overview of the conflict is given. This is followed by a more detailed description of the security situation in 2014 per province, with information on: the province itself; violent incidents; parties to the conflict; use of weapons and tactics; impact (victims, civilians, authorities, displacement).

- *Common interpretation of Article 15(c) QD*

During the same EASO Conference on Afghanistan, November 2012, participants also identified the need for elaborating on the development of common indicators, criteria/method to assess in particular 'armed conflict', 'indiscriminate violence', 'intensity' of the indiscriminate violence.

In this respect, in 2013, EASO has undertaken a mapping of MS policy and practical application of Article 15(c) QD through its Quality Matrix process. The findings of this mapping were discussed by Member States during the EASO thematic meeting on Eligibility in September 2013, with a particular focus on the application of Article 15(c) QD.

Finally, the EASO network of Courts and Tribunal is currently finalising a professional development tool on Article 15(c) QD to be published in January 2015.

3. Expected outcomes

- To identify factors influencing MS practice
- To identify possible roles for civil society and other stakeholders in this field

4. Discussion points

- What are the current challenges in reaching a common interpretation and harmonised application of Article 15(c) QD
 - Different factors influencing the interpretation of Article 15(c)?
 - Different policy at the national level?
 - Other...?
- What common steps may be taken to harmonise practice where appropriate?
 - Common interpretation of the legal regime?
 - Common assessment of the situation in countries of origin?
 - Other?
- What role is there for EASO and other stakeholders to provide support and provide input to MS with regard to the interpretation and application of Article 15(c) QD?