



NANSEN NOTE 2 - 22

The use of the UNHCR and European Asylum Agency policy guidelines in Afghan cases

The NANSEN NOTE is a thematic tool addressed to practitioners and lawyers assisting asylum seekers. It legally frames and analyses practices that affect access to and effective enjoyment of international protection as well as the right to liberty and standards of protection in detention. Particular attention is given to vulnerability, detention and effective access to quality legal assistance.

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Introduction

With the seizure of the Presidential Palace in Kabul on Sunday, 15 August 2021, the Taliban's takeover of power in Afghanistan became a reality. The Taliban takeover led to the Office of the Commissioner-General for Refugees and Stateless Persons (hereinafter referred to as CGRS) to temporarily suspend decisions for Afghanistan applicants. In particular, the assessment of subsidiary protection status was temporarily suspended.¹

On the 2nd of March 2022, the CGRS announced that sufficient information had become available on the situation in Afghanistan and that it could therefore resume taking decisions for all Applicants for International Protection (hereafter referred to as 'AIPs'). Although the CGRS acknowledged that many Afghans would qualify for refugee status due to the deteriorated human rights situation after the Taliban takeover, the CGRS also concluded that subsidiary protection status would no longer be granted due to the improved security situation.² In March 2022, the CGRS took more than 700 refusal decisions.³ However, on 31 March 2022, the Council for alien law litigation (CALL) annulled a CGRS inadmissibility decision dating back to 10 August 2021.⁴ Following the CALL's annulment, the CGRS updated its country-of-origin information and further updated its policy. At the end of May 2022, the processing of Afghan cases was fully resumed by the CGRS.⁵

When drawing up the new policy, the CGRS did not fully follow the advice of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR). Indeed, on 9 February 2022, UNHCR published new guidelines on assessing the protection needs of persons fleeing Afghanistan.⁶ These guidelines replace UNHCR's position on returns to Afghanistan of August 2021⁷ as well as the UNHCR guidelines dating from August 2018.⁸ UNHCR indicates that despite the decrease in indiscriminate violence and the improvement in humanitarian access to many parts of Afghanistan, the situation in Afghanistan is still highly unpredictable with widespread concerns about targeted violence and human rights violations. In addition, Afghanistan is affected by a humanitarian crisis of unprecedented

¹ CGRS, Press release new policy Afghanistan, august 2021 and november 17, 2021, available at <https://www.cgvs.be/nl/actueel/tijdelijke-gedeeltelijke-opschorting-van-de-betekening-van->

² CGRS, Press release policy Afghanistan, 2 March 2022, available at <https://www.cgvs.be/nl/actueel/afghanistan-nieuw-beleid>.

³ CGRS, news report Asylum Statistics March 2022, available at <https://www.cgvs.be/nl/actueel/asielstatistieken-maart-2022>; VRT News, Hundreds of Afghan asylum seekers get no protection and have to leave our country, 23 April 2022 available on <https://www.vrt.be/vrtnws/nl/2022/04/23/afghaanse-asielzoekers-krijgen-weer-het-bevel-om-ons-land-te-ver/>

⁴ CALL, 31 March 2022, no. 270,813.

⁵ CGRS, Press release Processing of Afghan requests, 24 May 2022, available at <https://www.cgvs.be/nl/actueel/behandeling-afghaanse-verzoeken>.

⁶ UNHCR, Guidance Note on the international protection needs of people fleeing Afghanistan, 9 February 2022, available at <https://www.refworld.org/pdfid/61d851cd4.pdf>

⁷ UNHCR, UNHCR Position on Returns to Afghanistan, August 2021, beschikbaar op <https://www.refworld.org/docid/611a4c5c4.html>

⁸ UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan, 30 August 2018, available at <https://www.refworld.org/docid/5b8900109.html>

proportions.⁹ Given the current uncertainties regarding the rule of law, the fears and uncertainties surrounding the authoritarian rule, and the lack of comprehensive information on the human rights situation in Afghanistan, UNHCR believes that it cannot currently provide comprehensive policy guidance. UNHCR considers that in many cases, based on the profile of the applicant and available evidence, it will be possible to grant refugee status to an applicant from Afghanistan. Conversely, it is not possible to establish with sufficient certainty that someone is not in need of protection. UNHCR therefore specifically calls for the suspension of all decisions on AIPs of Afghan asylum seekers, unless it is suddenly clear, based on the profile of the person and available information, that he or she is a refugee under the terms of Article 1 of the Geneva Convention relating to the Status of Refugees (the Refugee Convention).¹⁰

In the meantime, on 20 April 2022, the European Asylum Agency also published an update of its guidelines for assessing asylum applications from applicants from Afghanistan.¹¹ Officially, this new 'Country Guidance' replaces the guidelines of November 2021.¹² However, it is a targeted update and focuses on significant changes during the first months after the Taliban seizure of power on 15 August 2021.¹³ Although the EU Asylum Agency recognises that only limited and/or contradictory information is available on certain topics, the Agency, unlike UNHCR, does not explicitly state that, due to the lack of comprehensive information, sufficiently well-considered (negative) decisions cannot be taken. Therefore, the European Asylum Agency does not specifically call for the suspension of decisions for Afghan asylum seekers.

This analysis by Nansen takes a closer look at the guidelines for the assessment of AIPs pursuant to the UNHCR and the European Asylum Agency guidelines. The analysis aims to provide background information on the purpose, drafting, content, legal status and relative value of these guidelines in order to provide lawyers with arguments regarding the use of the guidelines in individual cases. The first part of the analysis will deal with the guidelines in a more general manner. In the second part, we will specifically discuss the guidelines in relation to the assessment of the protection needs of persons fleeing Afghanistan.¹⁴

⁹ UNHCR, Guidance Note on the international protection needs of people fleeing Afghanistan, paragraph 2 – 3.

¹⁰ *Ibid.*, 12.

¹¹ European Union Agency for Asylum, *Country Guidance: Afghanistan, Common analysis and guidance note*, April 2022, available at <https://euaa.europa.eu/country-guidance-afghanistan-2022>

¹² European Asylum Support Office, *Country Guidance: Afghanistan, Common analysis and guidance note*, November 2021, available at <https://euaa.europa.eu/country-guidance-afghanistan-2021>

¹³ *Ibid.*, p. 6.

¹⁴ Nansen has previously published on the need for international protection of Afghan asylum seekers, both before and after the Taliban takeover, see Nansen Profile 2021/3, *Assessing the Need for Protection of Afghan Man in the Context of a Next Appeal*, 9 November 2021, available at <https://nansen-refugee.be/wp-content/uploads/2021/11/NANSEN-Profile-5-21-Volgend-verzoek-Taliban-machtsovername.pdf>; Nansen Profile 2021/3, *The protection needs of Hazaras in Afghanistan*, 7 May 2021, available at <https://nansen-refugee.be/wp-content/uploads/2021/05/NANSEN-Profile-3-21-Hazaras-Afghanistan.pdf>; Nansen Note 2020/3, *Kabul as an Internal Protection Alternative for Persons in Need of Subsidiary Protection*, 9 November 2020, available at <https://nansen-refugee.be/wp-content/uploads/2020/06/Def-NANSEN-NOTE-2019-2-Kaboul-Alternative-de-protection-interne.pdf>; Nansen Profile 2020/2 *The use of policy guidelines in assessing applications for international protection, Need for protection for Afghan*

1. The use of policy guidelines in assessing applications for international protection

This section first discusses the difference between country information and the analysis of this country information in policy guidelines. This difference is essential as it determines when and how the UNHCR, and European Asylum Agency guidelines can be used in a relevant manner to support the assessment of an AIP by both asylum authorities and lawyers. Subsequently, the UNHCR and European Asylum Agency guidelines will be discussed respectively, specifically the objective, the creation, the content and the legal status of these guidelines will be addressed. Finally, the policy notes of the CGRS will be briefly discussed.

1.1. The difference between country information and policy guidelines

Country of Origin Information (COI) is essential in assessing who is in need of international protection. According to UNHCR, the importance of the use of country information flows directly from the definition of a refugee within the meaning of the Refugee Convention. States must assess whether AIPs are well-founded, which means that they must be sufficiently established on the basis of the facts and/or available evidence, according to UNHCR.¹⁵ To this end, a Protection Officer must place a AIP in the context of the relevant background information.¹⁶

Nowadays, there seems to be an endless amount of information available about the situation in an asylum seeker's country of origin. Through the internet, there is access to reports from the United Nations, national governments, NGOs, media, academics, etc. In addition, social media has become very important for the dissemination of news. The information is collected and analysed by COI researchers in so-called COI units. These COI units exist within the national asylum authorities, but also within the European Asylum Agency or in the form of NGOs.¹⁷

Within the CGRS, COI is collected by Cedoca, the research department for information on countries of origin.¹⁸ The COI reports synthesise the information available from primary and secondary sources: synthesising means organising, combining and grouping information into a relevant and accessible structure.¹⁹ Cedoca produces two types of COI reports, namely COI Case (information relevant to a particular case) and COI Focus (information relevant to

westernised woman, 29 June 2020, available at <https://nansen-refugee.be/wp-content/uploads/2020/05/NANSEN-Profiel-2-20-Nood-aan-internationale-bescherming-van-Afghaanse-verwesterde-vrouw.pdf>

¹⁵ UNHCR Policy paper, Country of Origin Information: Towards enhanced international cooperation, februari 2004, paragraph 4, available at <https://www.refworld.org/pdfid/403b2522a.pdf>

¹⁶ UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, UN Doc HCR/1P/4/ENG/REV.3 (1979, republication 2019), paragraph 42, available at <https://www.refworld.org/docid/4f33c8d92.html>

¹⁷ See for example: Asyls <https://www.asylos.eu/what-we-do>

¹⁸ CGRS, CEDOCA – products and services, available at <https://www.cgvs.be/nl/landeninfo/over-cedoca>

¹⁹ EASO, Country of Origin Report Methodology, june 2019, p. 19, available at https://coi.euaa.europa.eu/administration/easo/PLib/2019_EASO_COI_Report_Methodology.pdf

multiple asylum cases). Within the European Union, many of these compilation reports are produced, including by the European Asylum Agency,²⁰ the UK Home Office,²¹ the Dutch Ministry of Foreign Affairs,²² the Norwegian Landinfo,²³ etc.

The compilation of COI reports do not contain a legal analysis of the information, they do not contain conclusions about the significance of the information for the need for protection. A general assessment of the evidential value of the country information in the light of the criteria for obtaining refugee status or subsidiary protection is in fact made by policy officials working within the national asylum instances, at the UNHCR or the European Asylum Agency. This assessment is set out in policy guidelines.

The policy guidelines serve to support the assessment by the Protection Officers of the CGRS or the judges of the CALL who are responsible for the assessment of the evidential value of the country information in light of the criteria for obtaining refugee status or subsidiary protection and the circumstances of the individual case. In general, the policy rules identify specific profiles of people who may have a well-founded fear of being persecuted or may face a real risk of suffering serious harm. In addition, a number of factors relevant to the assessment of an individual AIP are identified. Policy guidelines may be highly relevant in the case of the situation in Afghanistan. Indeed, the guidelines provide an initial assessment of a significantly changing situation (the Taliban takeover of power) which may have a significant impact on the need for protection of Afghan applicants and the parameters within which this need must be assessed.

1.2. UNHCR Position Papers & Eligibility Guidelines

UNHCR supervises the interpretation and application of the Refugee Convention.²⁴ As part of its supervisory duties, UNHCR publishes thematic guidelines on specific legal issues. UNHCR also publishes guidelines containing the official position of UNHCR with regard to the protection needs of persons fleeing certain specific countries of origin. The guidelines concern an analysis of the available country information and the interpretation of what that information means for the protection needs of persons coming from that particular country of origin.

²⁰ Europees Asielagentschap, COI reports, available at <https://euaa.europa.eu/country-origin-information>

²¹ UK Home Office, Country policy and information notes, available at <https://www.gov.uk/government/collections/country-policy-and-information-notes>

²² Netherlands Ministry of Foreign Affairs, General Official Notices, available at <https://www.rijksoverheid.nl/documenten>

²³ Landinfo, Country reports, available at <https://landinfo.no/en/>

²⁴ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, article 35 (Vluchtelingenverdrag); UNHCR Executive Committee Conclusion No 8 (XXVIII), 'Determination of Refugee Status' (1977).

1.2.1. Purpose

The guidelines published by UNHCR aim to promote the harmonisation of the interpretation and application of the definition of a refugee within the meaning of article 1(A) of the Refugee Convention.

‘UNHCR issues Eligibility Guidelines to promote the accurate interpretation and application of the abovementioned refugee criteria in line with its supervisory responsibility as contained in paragraph 8 of its Statute in conjunction with Article 35 of the 1951 Convention and Article II of its 1967 Protocol and based on the expertise it has developed over the years in matters related to eligibility and refugee status determination.’²⁵

UNHCR Eligibility Guidelines are issued for the purpose of assisting decision-makers, including employees of UNHCR, national authorities and lawyers, in assessing the need for international protection of applicants.

1.2.2. Creation

Several reasons can give rise to the creation of new UNHCR guidelines. For example, regional or local UNHCR offices may indicate a need for guidelines in cases where there is a lack of or contradictory information on a country of origin. States may also identify a shortcoming in evidence or a legal issue that could benefit from UNHCR guidelines.²⁶

There is no set formula for the development of UNHCR guidelines. Different countries and circumstances may require different approaches. In principle, UNHCR starts by gathering information from various sources, information may come from external sources as well as from persons seeking protection, or regional and local offices of UNHCR. Attention is paid to the relevance of the information, but also ensuring that sufficient information is gathered from different types of sources so that the information is balanced. The sources and their information are then assessed for reliability. The information that is collected, found reliable and will be included in the guidelines, is analysed in the light of UNHCR policies and standards of evidence. In assessing the level of risk, UNHCR is guided by institutional memory with regard to the production of Eligibility Guidelines and the assessment of AIPs.²⁷

1.2.3. Content

UNHCR guidelines, regardless of their form, contain country information. The guidelines make direct reference to the sources of country information that are the basis of UNHCR's analysis. As a result, it is possible to identify exactly what information has been included by

²⁵ See for example UNHCR Eligibility Guidelines Afghanistan, 2018.

²⁶ UN High Commissioner for Refugees (UNHCR), UNHCR public statement in relation to AMM and others v. Secretary of State for the Home Department pending before the Upper Tribunal (Immigration and Asylum Chamber), 6 June 2011, paragraph 10, available at <https://www.refworld.org/docid/4edc7b7f2.html>

²⁷ Ibid., paragraph 14-17.

UNHCR in the analysis and what meaning UNHCR gives to this information in relation to a need for protection.

UNHCR country-specific policy guidelines can take different forms, such as Position Papers (mostly related to return) or more comprehensive International Protection Considerations and Eligibility Guidelines.

UNHCR Position Papers are generally shorter and may touch on different themes depending on the country of origin. In principle, UNHCR deals with the security and human rights situation, the humanitarian situation, the position of refugees and internally displaced persons, international protection needs and concludes with a recommendation on return.²⁸ UNHCR can also deal with themes such as access to the territory or sur place claims.²⁹

International Protection Considerations and Eligibility Guidelines can run to hundreds of pages. In general, UNHCR maintains a more fixed structure in International Protection Considerations and Eligibility Guidelines. A summary is followed by an overview of the most important events in a country of origin since the last published UNHCR Guidelines. Next, UNHCR gives an assessment of the need for protection of persons from the country of origin concerned. UNHCR will discuss the different risk profiles with regard to the refugee status as well as the need for complementary forms of protection (such as subsidiary protection in a European context), the internal flight or resettlement alternative and considerations with regard to exclusion on the basis of Article 1F of the Refugee Convention.³⁰

1.2.4. Legal status

There is no legal obligation for the CGRS to follow UNHCR policy guidelines. However, given the fact that UNHCR is responsible for supervising the interpretation and application of the Refugee Convention, UNHCR guidelines should be carefully taken into account when assessing individual cases. A well-motivated decision of the CGRS will, if available, refer to the UNHCR guidelines and explain how the guidelines have been considered in the decision. If the CGRS takes a different stance with regard to a certain risk, the CGRS must provide sufficient and relevant elements to substantiate why the UNHCR's assessment can be deviated from in this case. The burden of proof essentially shifts to the CGRS.

Both Belgian legislation and relevant European regulations refer to UNHCR information in general. For instance, article 57/7 of the law of 15 December 1980 on Access to the Territory, Stay, Settlement and Removal of Aliens (hereafter: the Immigration Law) stipulates that the Commissioner General can turn to UNHCR in order to obtain all useful information for the

²⁸ See for example UNHCR Position on Returns to Ethiopia, march 2022, available at <https://www.refworld.org/docid/623079204.html>

²⁹ UNHCR, UNHCR Position on Returns to Gaza, march 2022, available at <https://www.refworld.org/docid/6239805f4.html> or UNHCR Position on Returns to Ukraine, march 2022, available at <https://www.refworld.org/docid/621de9894.html>

³⁰ See for example UNHCR Eligibility Guidelines Afghanistan 2018 & UNHCR, International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update VI, march 2021, HCR/PC/SYR/2021/06, available at <https://www.refworld.org/pdfid/606427d97.pdf>.

fulfilment of his mandate. Belgian legislation further refers to information from UNHCR in the context of the assessment of a safe country of origin (Article 57/6/1 §3 d) of the Immigration Law) and the assessment of a safe third country (Article 57/6/6 §3 of the Aliens Act).

The revised Asylum Procedure Directive³¹ also contains a relevant provision in relation to information from UNHCR. For example, Article 10(3)(b) specifically states that the examination of an individual application for international protection must be properly conducted and be based on accurate and up-to-date information from a variety of sources, including UNHCR. Article 10(3)(b) of the revised Asylum Procedure Directive has not been transposed into Belgian law.³² However, the provision has a direct effect as the obligation arising from Article 10(3)(b) of the revised Asylum Procedure Directive is sufficiently precise, clear and unconditional and does not require any additional measures.³³ On the basis of Article 10(3)(b) of the Revised Asylum Procedure Directive, it can be argued that information from UNHCR, including information in the form of policy guidelines, should be taken into account when assessing an individual asylum application.

In the context of European legislation, reference is also made here to Article 11 of the Regulation establishing the European Asylum Agency.³⁴ Article 11 concerns the coordination by the Asylum Agency of Member States' efforts in developing a common analysis of the situation in specific countries of origin and guidelines. Article 11(1) states that 'When developing a common analysis and guidelines, the Agency shall take into account the latest UNHCR Guidelines for the assessment of the international protection needs of asylum seekers from specific countries of origin.'

Based on the case law of the European Court of Human Rights (ECtHR), UNHCR guidelines should also be taken into account. The ECHR states that United Nations agencies are particularly qualified to gather information which is highly relevant to the Court's assessment. After all, these agencies have access to national authorities, can carry out inspections and assessments in the territory in a way that States and other organisations cannot.³⁵ Specifically with regard to UNHCR, the ECHR indicates that it attaches significant value to UNHCR's assessment in individual cases.³⁶ The ECHR further indicates that it attaches substantial or significant value to UNHCR Eligibility Guidelines and Position Papers, which provide a more

³¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p. 60-95, available at

<https://eur-lex.europa.eu/legalcontent/NL/TXT/?uri=CELEX%3A32013L0032>

³² See also Nansen Contribution 2021/6, Country of Origin Information, 29 September 2021, available at <https://nansen-refugee.be/wp-content/uploads/2021/09/6.-Country-of-Origin-Information.pdf>

³³ Judgment of the Court of 5 February 1963 - reference for a preliminary ruling under Article 177 of the EEC Treaty, contained in the decision of the tariff commission of Amsterdam of 14 August 1962 in the proceedings between N.V. Algemene Transport - en Expeditie - Onderneming Van Gend & Loos and Nederlandse Administratie der Belastingen, Case No 26/62. See also <https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=LEGISSUM:I14547>.

³⁴ Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Asylum Agency and repealing Regulation (EU) nr. 439/2010, available at <https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=celex%3A32021R2303>.

³⁵ *NA. v. The United Kingdom*, Appl. No. 25904/07, ECHR, 17 July 2008, par. 121.

³⁶ *Jabari v. Turkey*, no. 40035/98, ECHR, 11 July 2000, par. 41.

general overview of the various risk profiles as opposed to a truly individual assessment. Although UNHCR guidelines are not considered decisive by the ECtHR, the guidelines must be taken into account in the assessment of a real risk.³⁷

1.3. EUAA Country Guidance

The European Asylum Agency is the European agency mandated to support the EU member states in applying the package of EU regulations adopted within the framework of the Common European Asylum System (hereafter CEAS). An important task of the European Asylum Agency is to provide technical support through the preparation of country information reports containing accurate, reliable and up-to-date information. The Asylum Agency also publishes common analyses and guidelines, taking into account the latest UNHCR guidelines for assessing the international protection needs of asylum seekers from specific countries of origin.

1.3.1. Purpose

The European Asylum Agency Country Guidance aims to promote the harmonisation of the assessment of applications for international protection and the type of protection granted in the context of the Common European Asylum System (CEAS).

The establishment of the European Asylum Agency was prompted by the call for greater practical cooperation between EU Member States. Practical cooperation would enable Member States to become familiar with the systems and practices in other Member States, as well as to develop working relationships at the operational level of the asylum authorities.³⁸ Practical cooperation would lead to better quality decisions and the harmonisation of the asylum playing field. In terms of country information, this meant that EU Member States had to work towards using the same sources in the same way.³⁹ The European Asylum Support Office (hereafter EASO) was initially mandated to facilitate this cooperation. Recently, the European Asylum Agency has become responsible for this with a stronger mandate than EASO.

Initially, work was done at EU level on common standards for the processing of transparent, objective, impartial and balanced country information.⁴⁰ Subsequently, efforts were made for

³⁷ *NA v. The United Kingdom*, par. 122, 127.

³⁸ Communication from the Commission to the Council and the European Parliament on strengthened practical co-operation - New structures, new approaches: improving the quality of decision making in the Common European Asylum System {SEC(2006) 189} /* COM/2006/0067 final*/ [2006] (Commission communication SEC(2006)), par 3, 4.

³⁹ European Commission staff working document - Annexes to the Communication from the Commission to the Council and the European Parliament on strengthened practical co-operation - New structures, new approaches: improving the quality of decision making in the common European asylum system {COM(2006) 67 final} /* SEC/2006/0189 *//, Annex C (European Commission staff working document SEC(2006)) par 25.

⁴⁰ European Union, 'Common EU Guidelines for Processing Country of Origin Information (COI)' (EU Common guidelines) [2008] JLS/2005/ARGO/GC/0, 3, 2 – 3; European Asylum Support Office, 'EASO Country of Origin Information report methodology' (July 2012, updated June 2019).

the production of country information reports by EASO. However, considerable differences between the asylum procedures in the Member States remain. The European Council considered that it was not sufficient that Member States had access to the same sources and applied country information in the same way. For this reason, in 2016, EASO was asked to analyse country information in order to promote convergence of assessment criteria.⁴¹ This led to the publication of the first Country Guidance for Afghanistan in 2018.⁴²

The European Asylum Agency states that,

The country guidance is intended as a tool for policy-makers and decision-makers in the context of the Common European Asylum System (CEAS). It aims to assist in the examination of applications for international protection by applicants [from Afghanistan], and to foster convergence in decision practices across Member States.⁴³

1.3.2. Creation

Country Guidance is developed by the members of the 'Country Guidance Network'. This network consists of senior policy officials from the EU member states and associated countries. Drafting teams support the work of the Country Guidance Network. A new team of national experts is always put together for the development and/or update of a directive, this team prepares a first document that will be reviewed, discussed and approved by the 'Country Guidance Network'.⁴⁴

The European Asylum Agency organises and coordinates the work of the Drafting teams and the Country Guidance Network. The Asylum Agency ensures that the development of the guidelines is based on objective and recent information as well as relevant guidelines regarding the qualification for international protection.⁴⁵

The European Commission and UNHCR are consulted during the process.

When referring to the EUAA Country Guidance, it should always be considered that the policy guidelines are compiled by senior policy officials and represent the common assessment of a country-of-origin situation by all EU Member States. There is a potential for bias in this assessment on the part of EU Member States due to diplomatic and/or political interests. The risk of potential bias is different for UNHCR which is a humanitarian and not a political organisation.⁴⁶ Depending on the circumstances, the potential bias of the EU Member States

⁴¹ Council of the European Union, Outcome of the 3461st Council meeting, 21 April 2016, 8065/16, available at <http://www.consilium.europa.eu/media/22682/st08065en16.pdf>.

⁴² European Asylum Support Office (EASO), 'Country Guidance: Afghanistan, Guidance Note and Common Analysis' (June 2018).

⁴³ European Union Agency for Asylum, Country Guidance: Afghanistan, Common analysis and guidance note, April 2022, p. 6.

⁴⁴ Ibid., p. 7.

⁴⁵ See [Country Guidance | European Union Agency for Asylum \(europa.eu\)](https://europeanunion.europa.eu/country-guidance)

⁴⁶ See, for example David Forsythe, *UNHCR Working paper nr. 33: UNHCR Mandate, the politics of being non-political*, march 2001.

may be a reason to give less weight to EUAA Country guidance than, for example, UNHCR guidelines.

1.3.3. Content

The guidelines of the European Asylum Agency consist of two parts, namely the Guidance note and the Common analysis. The Guidance note summarises the conclusions from the Common analysis for the purpose of user-friendliness. They are practical guidelines for the assessment of individual cases and should be read in conjunction with the Common analysis. The Guidance Note summarises the actors who may be responsible for persecution, risk profiles for obtaining refugee status, the application of subsidiary protection, actors who may offer protection, the internal flight and resettlement alternative and the considerations regarding exclusion on the basis of Article 1F of the Refugee Convention.

For each identified risk profile, the Common analysis contains a summary of relevant country information from the European Asylum Agency reports, a risk analysis, the nexus to the grounds for persecution and possible exclusion considerations.

Unlike the UNHCR guidelines, the European Asylum Agency does not refer directly to primary and secondary sources of information. The Asylum Agency refers to relevant chapters and paragraphs in country information reports: compilation reports of the Asylum Agency itself. However, the Asylum Agency guidelines lack a meaningful interaction between the available country information and the legal conditions for obtaining international protection. Thus, the risk analysis does not reflect the actual analysis but rather the outcome of the legal assessment of the country information in the country information reports of the European Asylum Agency. Moreover, the assessment of the evidential value of the country information, which information the network of senior policy officials of the EU Member States considered decisive or, on the contrary, less important, is not visible in the Country Guidance Reports of the European Asylum Agency. In short, it remains unclear on the basis of which country information the level of risk for a certain profile has been assessed, which makes it more difficult to cite or refute this specifically relevant information in individual files. The lack of transparency of the guidelines of the European Asylum Agency may be an additional reason to attach more value to UNHCR guidelines.

1.3.4. Legal status

There is no legal obligation for the CGRS to follow the EUAA guidelines, nevertheless the guidelines must be carefully taken into account when assessing individual cases. A properly motivated decision of the CGRS must, if available, refer to the EUAA guidelines and explain how they have been taken into account in the decision. If the CGRS takes a different stance regarding a certain risk, the CGRS must provide sufficient and relevant elements to justify why this case deviates from the common assessment of the EU Member States in the EUAA Country Guideline. The burden of proof essentially shifts to the CGRS.

Belgian legislation contains few relevant provisions regarding the use of country information and policy guidelines of the European Asylum Agency. Belgian legislation only refers to EUAA

information in the context of the assessment of a safe country of origin (Article 57/6/1 §3 d) of the Immigration Law) and the assessment of a safe third country (Article 57/6/6 §3 of the Immigration Law).

However, Article 10(3)(b) of the Revised Asylum Procedure Directive is also the relevant provision with regard to information from the European Asylum Agency. For example, Article 10(3)(b) specifically states that, when dealing with an individual AIP, proper investigations must be carried out which are based on accurate and up-to-date information from various sources, including the EU Asylum Agency. Article 10(3)(b) of the revised Asylum Procedure Directive has not been transposed into Belgian law. However, the provision has a direct effect as the obligation resulting from Article 10(3)(b) of the revised Asylum Procedure Directive is sufficiently precise, clear and unconditional and does not require additional measures.⁴⁷ On the basis of Article 10(3)(b) of the revised Asylum Procedure Directive, it can be argued that information from the EUAA, including information in the form of policy guidelines, should be taken into account when assessing an individual asylum application.

The obligation to take into account the guidelines of the European Asylum Agency further derives from Article 11(3) of the Regulation on the Establishment of the European Asylum Agency.⁴⁸ Article 11(3) states that ‘without prejudice to their power to decide on individual applications for international protection, Member States shall, when assessing applications for international protection, take into account collective applications for international protection’. Based on Article 73 of the Regulation on the Establishment of the European Asylum Agency, this provision is directly applicable. The General Assembly of the Council for alien law litigation (CALL) confirmed in a series of rulings on 21 October 2019 that the CGRS must take EUAA guidelines into account when assessing a need for protection in individual cases.⁴⁹

The Council reasoned in these cases that,

EASO guidance notes are indeed an instrument of practical cooperation between EU Member States and this is within the framework of the objectives of the Common European Asylum System (hereafter: CEAS), namely to support the examination of applications for international protection and to promote convergence in decision-making practices and asylum decisions throughout the EU Member States. These EASO guidance notes are produced by a network involving senior policy officials from all Member States and coordinated by EASO. This network was tasked with carrying out a common assessment and interpretation of the situation in countries of origin, based on common country information, in the light of the relevant provisions of the

⁴⁷ Judgment of the Court of 5 February 1963 - Reference for a preliminary ruling under Article 177 of the EEC Treaty, contained in the decision of the Amsterdam Tariff Commission of 14 August 1962 in the proceedings between N.V. Algemene Transport - en Expeditie - Onderneming Van Gend & Loos and Nederlandse Administratie der Belastingen, Case No 26/62 See also EUR-Lex - I14547 - EN - EUR-Lex (europa.eu)

⁴⁸ Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010.

⁴⁹ CALL, 21 October 2019, no 227.621, see also no 227.622 & 227.623.

EU asylum acquis [...] The EASO guidance note of June 2019 reflects the joint assessment of the situation in Afghanistan by the senior policy officials of the EU Member States and was endorsed by the EASO Management Board, composed of the operational heads of asylum services in the Member States, or their representatives. This shows that the defendant was involved in the development process of this EASO guidance note.

The Council concludes that, in view of the objectives of the CEAS, although the guidelines are not binding, the CGRS will have to provide sufficient and relevant elements to substantiate why it is possible in this case to deviate from the assessment in a EUAA Country Guidance.

Country Guidance.

1.4. CGRS Policy papers

The CGRS policy papers outline the main policy rules used by the CGRS for the assessment of AIPs from a specific country. The policy notes consist of a disclaimer, a short situation sketch in which only the aspects relevant to international protection are discussed, a non-exhaustive overview of the risk profiles and a discussion of possibly other relevant policy themes (such as subsidiary protection, dual nationality or exclusion). The CGRS argues that the policy notes do not contain a complete representation of all possible problems which citizens may face in their country of origin.

The CGRS further indicates that the policy is based on a thorough analysis of accurate and up-to-date information on the general situation in the country of origin. This information is gathered from various objective sources, including the EASO, the UNHCR, relevant international human rights organisations, non-governmental organisations, professional literature, and media reports. The CGRS explicitly states that the policy is not only based on the COI Focuses that are published on its website. Furthermore, the CGRS states,

A policy document has a purely informative value and is published for information purposes and without obligation. No rights of any kind may be derived from the content of a country-specific policy document. The information contained therein is of a general nature only and is not adapted to the personal or specific circumstances of an applicant. A country-specific policy note can therefore not be used as a means of substantiating the application for international protection or an appeal against the decision of the Commissioner General.⁵⁰

Compared to the UNHCR guidelines and the guidelines of the European Asylum Agency, the CGRS policy notes are very short. Although the CGRS states that the policy notes are based on a thorough analysis of accurate and up-to-date information, they do not contain any direct references to country information. Therefore, it is impossible to determine on which specific information the CGRS's policies are based on. Furthermore, only 5 CGRS policy notes, out

⁵⁰ See for example the disclaimer in CGRS, Syria Policy Paper, 19 July 2021.

of the 47 countries of origin for which the CGRS provides country information on its website, are publicly available.⁵¹

Briefly summarised,

	Purpose	Content	Authors	Legal status
UNHCR	Harmonisation	Direct references to/analysis of country information	Research and information officers from the International Protection department	Obligation to consider
EUAA	Harmonisation	Summary of country information, no analysis	Senior policy officers of the EU Member States	Obligation to consider
CGRS	Informative value	No direct references to country information	Employees of the CGRS	No probative value

⁵¹ See CGRS, Country information - policy notes, available at <https://www.cgys.be/nl/landeninfo> ; The CGRS has published policy notes for Burundi, Iraq, Pakistan, Somalia and Syria. A policy note for Afghanistan is due to be published shortly.

2. Guidelines on Afghanistan

An analysis of the relative probative value of the UNHCR Guidance note of February 2022 and the EUAA Country Guidance of April 2022 on the protection needs of Afghan applicants is particularly relevant as UNHCR, unlike the European Asylum Agency, specifically states that there is currently not enough information available on the situation in Afghanistan to take cautious negative decisions. Moreover, the CGRS does not follow this specific part of UNHCR's advice and, on the contrary, states that there is now sufficient information available on the situation in Afghanistan to cautiously decide on AIPs.⁵² The value that can be attributed to the UNHCR Guidance note and the EUAA Country Guidance determines to what extent the CGRS will have to follow these guidelines in individual cases. It also determines the burden of proof that rests on the CGRS if it wishes to deviate from these guidelines in this case.

When determining the evidential value of the UNHCR Guidance note and the EUAA Country Guidance with regard to the protection needs of Afghan asylum seekers, the following elements are relevant to consider: (1) how up to date the information underlying these specific guidelines is, (2) the risk of potential bias arising from the political interests of the EU Member States in not freezing decisions on Afghan applicants, and (3) the interpretation of the information itself.

2.1. Up-to-date information

The UNHCR Guidance note is dated 9 February 2022. UNHCR only refers in the Guidance note to country information in connection with reports of widespread human rights violations, which dates from September to December 2021.⁵³ The EUAA Country Guidance dates from 22 April 2022. The Asylum Agency states that the country information referred to relates to events that took place in Afghanistan before 8 December 2021.⁵⁴ Therefore, the UNHCR and European Asylum Agency guidelines contain a legal analysis of country information over the same period. Although the EU Country Guidance was published two months later, it does not contain an analysis of more recent information than that analysed by UNHCR. Moreover, there are a few observations to be made about how recent the information used by the European Asylum Agency is.

As mentioned above, the EUAA Country Guidance of April 2022 contains a targeted update of the guidelines and focuses on significant changes during the first months after the Taliban took power on 15 August 2021. As a result, some guidelines still date from November 2021⁵⁵ or even December 2020⁵⁶ and therefore contain an analysis of older country information

⁵² CGRS, Press release policy Afghanistan, 2 march 2022, available at <https://www.cgvs.be/nl/actueel/afghanistan-nieuw-beleid> ; CGRS, press release Processing of Afghan requests, 24 may 2022, available at <https://www.cgvs.be/nl/actueel/behandeling-afghaanse-verzoeken>

⁵³ UNHCR Guidance note, footnotes 10 & 13 to 22.

⁵⁴ EUAA Country guidance, p. 6.

⁵⁵ See the guidelines on religious leaders and Hindus and Sikhs.

from before the Taliban took power. The date of 8 December 2021 therefore refers to the end of the research period that formed the basis of the most recent European Asylum Agency report on Afghanistan, namely the EUAA Country Focus of January 2022. However, the analysis is not only based on this report, but also on older country information reports of the European Asylum Agency. For each risk profile, it is important to look for the underlying country information in the EUAA reports and check how recent the information in these reports is.

For example, the analysis regarding the need for subsidiary protection in the EUAA Country Guidance of April 2022, which is very relevant given UNHCR's position, is based on Chapter 3 of the EUAA Country Focus of January 2022. This chapter mainly contains information from September and October 2021, exceptionally there is a reference to information from (early) November 2021.⁵⁶ The conclusion of the European Asylum Agency that at the time of writing the EUAA Country Guidance the level of arbitrary violence was found to be significantly lower than before the Taliban seizure of power is based on older country information than one would think at first glance (lack of transparency).⁵⁷ Given the fragile and unpredictable situation in Afghanistan, the use of up-to-date information is all the more important. For this reason, too much weight cannot be given to the conclusion that the level of indiscriminate violence has significantly decreased. It is more important to take into account the nuance that the European Asylum Agency itself makes,

Nevertheless, the future risk of indiscriminate violence in any part of the country, should always be based on the most recent information concerning the dynamics in the particular area as well as the country as a whole. Limitations with regard to reliable reporting from the country should also be taken into account.⁵⁸

2.2. Impartiality & reliability

It is reiterated that the EUAA Country Guidance is compiled by senior policy officials and the common assessment of the situation in Afghanistan is represented by all EU Member States. Much has already been written about the political interests of the EU member states in relation to the handling of Afghan applicants. For example, political interests are said to play a role in preventing too large an influx of asylum seekers as was the case during the crisis in 2015,⁵⁹ and the EU member states are also accused of applying a double standard with

⁵⁶ See guidelines on persons in fear of forced recruitment, women in fear of violence and harmful traditional marriage practices (only minor updates in April 2022), single women and female headed households (only minor updates in April 2022), child protection needs (other than access to education for girls), persons involved in blood feuds and persons born in Iran or Pakistan/residing there for long periods.

⁵⁷ EUAA Country guidance, p. 130.

⁵⁸ Ibid.

⁵⁹ See for example, Le Monde, 'Accueil de réfugiés afghans : le discours d'Emmanuel Macron indigne la gauche ; la France n'a « pas du tout à rougir » selon l'Elysée, 17 augustus 2021 [Accueil de réfugiés afghans : le discours d'Emmanuel Macron indigne la gauche ; la France n'a « pas du tout à rougir » selon l'Elysée \(lemonde.fr\)](#); The New York Times, 'Why Europe's Leaders Say They Won't Welcome More Afghan Refugees,' 18 augustus 2021, [Why Europe's Leaders Say They Won't Welcome More Afghan Refugees - The New York Times \(nytimes.com\)](#); OpenDemocracy, 'Why Afghans at risk have a right of admission to EU member states,' 30 augustus 2021, [Why at-risk](#)

regard to which refugees the EU member states are willing to admit.⁶⁰ Various measures taken by the European Union with regard to the crisis in Afghanistan also mention preventing illegal migration flows to Europe as much as possible.⁶¹

For this reason, there could be political interests behind the fact that in the EUAA Country Guidance, the EU Member States do not explicitly call for the suspension of decisions in Afghan files since this could possibly have a 'magnet effect' in the eyes of the EU Member States. Therefore, less probative value can be attached to the fact that there is no explicit call for the suspension of decisions in Afghan files. It is particularly relevant to look at what exactly is written in the EUAA Country Guidance about the availability of information and the certainty with which conclusions were reached regarding risk levels. The information in the Country Guidance can be interpreted in line with the advice of UNHCR: a United Nations organisation which, through its access to Afghan territory and broad monitoring of Afghan refugees and internally displaced persons, can be considered to have a better overview of the situation in Afghanistan.

2.3. Interpretation of the guidelines

UNHCR makes only very limited reference to country information in the UNHCR Guidance note. The limited reference to country information is not surprising since UNHCR indicates that it is very difficult to gather comprehensive information on the human rights situation in the different parts of Afghanistan. UNHCR states that it encounters obstacles in gathering information, namely restrictions on Afghan media organisations, the fact that the Afghan Independent Human Rights Commission (AIHRC) can no longer perform its function and that human rights monitoring is limited, particularly the human rights situation of women and girls.⁶² UNHCR concludes,

Given current uncertainties including disregard for the rule of law, the fear and uncertainties related to authoritarian governance, and the lack of comprehensive information about the human rights situation in Afghanistan as outlined above, in

[Afghans have a right of admission to EU member states | openDemocracy](#); UK in Changing Europe, 'Europes Afghanistan problem,' 31 augustus 2021, <https://ukandeu.ac.uk/europes-afghanistan-problem/>; CBS News, 'As Afghanistan crisis worsens, Europe adopts less welcoming stance, 13 september 2021;[As Afghanistan crisis worsens, Europe adopts less welcoming stance towards refugees - CBS News](#)

⁶⁰ The Conversation, 'I've been talking to Afghans stuck on the Bosnian border,' 14 september 2021, [I've been talking to Afghans stuck on the Bosnian border – their predicament is horrifying \(theconversation.com\)](#); The New York Times, 'Afghan Refugees Face a Two-Tier System in Europe,' 5 februari 2022, [Afghan Refugees Face Two-Tier System in Europe - The New York Times \(nytimes.com\)](#); ABC news, 'Europe's unified welcome exposes 'double standard' for nonwhite asylum seekers,' [Europe's unified welcome of Ukrainian refugees exposes 'double standard' for nonwhite asylum seekers: Experts - ABC News \(go.com\)](#)

⁶¹ See for example Commission implementing decision of 16.12.2021 on the financing of the Special Measure for a regional response to the Afghanistan refugee and displacement crisis for 2021, Brussels, 16.12.2021 C(2021) 9312 final, available at <https://www.gtai.de/resource/blob/784968/8f5798b9fcf3c0946404e5fa2c729ab3/PRO20220120784932.PDF> – This special measure aims to support Afghan refugees in the countries neighbouring Afghanistan with a view to preventing illegal migration flows towards the European Union.

⁶² UNHCR Guidance note, paragraph 11.

UNHCR's assessment, it is not currently possible to issue comprehensive guidance on the international protection needs of people fleeing Afghanistan.⁶³

Based on the limited information, UNHCR concludes that it is not possible to issue comprehensive guidance and calls for the suspension of all decisions in Afghan cases other than the granting of refugee status.

The European Asylum Agency also indicates in the EUAA Country Guidance of April 2022 that information on certain topics was very limited and/or contradictory during the research period of the guidelines.⁶⁴ In addition, the European Asylum Agency states that, at the time of writing the guidelines, the situation in Afghanistan is still evolving which makes it difficult to make a definite assessment of international protection needs in certain cases. The European Asylum Agency underlines the following elements that are important when making decisions in Afghan files,

- Due to the transitional period that Afghanistan undergoes at the time of writing, a number of forward-looking questions related to the type of state and rule that may be established by the Taliban are difficult to answer with certainty at this stage.
- While the future behaviour of the Taliban lacks certain predictability, profiles who were previously targeted by the Taliban may be at an increased risk, taking into account this actor's increased capabilities and territorial control.
- The level of indiscriminate violence in the country is considered to be significantly lower than before (the Taliban takeover). However, the future risk of indiscriminate violence in any part of the country, should always be based on the most recent information concerning the dynamics in the particular area as well as the country as a whole.
- Limitations with regard to reliable reporting should also be taken into account, as underreporting from Afghanistan or certain parts of the country is likely.
- Taliban's perception and potential treatment of individuals leaving Afghanistan remains unclear.⁶⁵

In addition, it is relevant to consider what the European Asylum Agency wrote in its Country Focus of January 2022 about the limitations of monitoring developments in Afghanistan. For example, the European Asylum Agency states that there is a large 'information gap' about the situation in the country and about the intentions of the Taliban, but also due to the transitional and unstable period Afghanistan is going through. The European Asylum Agency stresses that experts indicate that it is still too early to draw any final conclusions about the situation in Afghanistan or how it will develop in the future. The findings of EASO are therefore preliminary.⁶⁶ Furthermore, the European Asylum Agency states that the possibilities for journalists to gain an overview of the situation have been greatly reduced because many

⁶³ Ibid., paragraph 12.

⁶⁴ See, for example, persons affiliated with the former Afghan government, individuals who have worked for foreign troops and/or are perceived as supporting foreign troops, religious leaders, and education personnel.

⁶⁵ EUAA Country Guidance on Afghanistan, p. 11, general remarks preceding the guidelines.

⁶⁶ EASO Country Focus Afghanistan, p. 9.

journalists have left Afghanistan and because there are many restrictions on the freedom of the press.⁶⁷ Verifying information from Afghanistan from local sources was very difficult and as a result, the Country Focus is mainly based on information from Western media, particularly American media, and from journalists who mainly work outside Afghanistan. In addition, there was a concentration of reports on events in Kabul.⁶⁸ In conclusion, the European Asylum Agency noted that there was a decrease in relevant reporting. A number of organisations stopped publishing relevant material.⁶⁹

In essence, the European Asylum Agency is saying the same thing as UNHCR about the possibility of gathering accurate and up-to-date information on the situation in Afghanistan and the certainty with which conclusions can be drawn about the level of risk and the need for international protection of Afghan applicants at this time. The identification of the risk profiles in the EUAA Country Guidance is mostly based on information about how the Taliban has treated these persons in the past. The guidelines actually say little about the level of risk in the future as there is not enough information about the Taliban's long-term intentions and/or to what extent military groups such as ISKP can undermine stability in Afghanistan.

2.4. Conclusion

UNHCR's advisory opinion in the Guidance note of February 2022 has significant probative value. UNHCR's advice to suspend all decisions in Afghan cases should carry more weight than the European Asylum Agency guidelines published in the Country Guidance of April 2022 as these guidelines are based on limited and now outdated information. In addition, there is a certain bias on the part of the EU Member States in the development of the guidelines. Thus, careful consideration must be given to the fact that the EUAA Country Guidance draws conclusions about the future risk of a well-founded fear and/or real risk of serious harm with little certainty and indicates essentially the same as UNHCR. The burden of proof on the CGRS is therefore very high if it wants to deviate from the views of UNHCR and take negative decisions in Afghan cases. To this end, the CGRS will have to bring in accurate and up-to-date information from different types of sources in accordance with Article 10(3)(b) of the revised Asylum Procedure Directive. The information should be relevant with regard to the profile of an Afghan applicant and the situation in the region where the applicant comes from and will be sent back to.

⁶⁷ Ibid.

⁶⁸ Ibid., p. 10.

⁶⁹ Ibid., p. 11.

3. CGRS policy towards Afghanistan

The CGRS states that the situation in Afghanistan is particularly problematic and recognises that many applicants from Afghanistan will be in need of protection. This will be provided by recognition of refugee status. Although the CGRS concludes that less detailed and reliable information on the situation in Afghanistan is available today, it states that sufficient information is currently available to assess the risk of a civilian becoming a victim of indiscriminate violence. According to the CGRS, there are fewer grounds to grant subsidiary protection status due to the significantly changed security situation. The policy of the CGRS is in particular based on the COI Focus that the CGRS published on 5 May. Cedoca states that the COI Focus is a concise update of the EUAA report of January 2022.⁷⁰ The following considerations can be taken into account when analysing CGRS decisions in individual cases to determine whether the decision is based on sufficiently accurate and up-to-date information from different types of sources in accordance with Article 10(3)(b) of the Revised Asylum Procedure Directive.

First of all, a brief reference is made to the quality standards for the use of country information.⁷¹ The fact that a decision must be based on sufficiently accurate information means that the information must be **relevant**. The information must be specific to individual circumstances of the applicant for international protection. It must be based on questions rooted in the legal concepts of refugee law and Human Rights or on questions arising from an applicant's statements. The requirement of up-to-date information refers to the fact that the information on which a decision is based should be as **up-to-date** as possible: It must reflect the situation in a country of origin at the time of the decision. A variety of sources ensure that different perspectives are taken into account so that an **accurate** picture of the situation in the country of origin is obtained. The **use of primary sources** is also important: sources that were first to report on an event. Before using the information in a decision, it has to be assessed on **reliability**: Who published the information? What kind of information is given? Why? How was the information obtained? And when was the information collected? The information must also be **balanced**: similarities, differences and contradictions must have been weighed up. Finally, it is noted that the use of country information must be **transparent** and in accordance with the general principles of good governance, so that it can be independently verified on the basis of which exact information a decision was made.⁷²

With regard to the COI Focus on Afghanistan, the following general remarks can be made relating to sources and information. In the COI Focus, Cedoca states that the reporting from and about Afghanistan has not stopped. While the EU Asylum Agency and the asylum

⁷⁰ CGRS, press release policy Afghanistan, 2 march 2022.

⁷¹ For an extensive analysis of quality standards for the use of country information, see Femke Vogelaar, Country of Origin Information: The Essential Foundation for Fair and Credible Guidance for Decision-making on International Protection Needs (VU University Amsterdam, 2020).

⁷² Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 'Researching Country of Origin Information: Training Manual' (ACCORD training manual) (November 2013)

institutions of other EU Member States⁷³ emphasise that there is limited information available, the reliability of which is difficult to verify and based on which only limited conclusions can be drawn about future risks, Cedoca discusses a number of specific sources that currently do report on the situation in Afghanistan. For example, Cedoca states that representatives of UN institutions and humanitarian organisations claim that they have access to certain regions that were previously inaccessible due to the insecure situation.⁷⁴ Cedoca refers to four sources, two of which refer to the same interview that was given by the UN High Commissioner for Refugees to the Washington Post (primary source).⁷⁵ The third source, Landinfo, does not mention a primary source. Landinfo may also be basing its opinion on the interview with the UN High Commissioner for Refugees or on the report by UNAMA, the fourth source mentioned by Cedoca. This may be round-tripping or 'false corroboration',⁷⁶ giving the impression that Cedoca's claim is supported by information from different sources when in fact it is not. Based on the information in the sources referred to, it is not possible to determine exactly which UN agencies and humanitarian organisations are active in Afghanistan or where they operate. This information is important in order to establish which organisations have access to the *de facto* government and can carry out inspections and assessments on the territory in the different provinces and districts of Afghanistan.

The European Asylum Agency indicates that the following elements should be considered when assessing the security situation in Afghanistan, based on relevant and recent country information, namely the different (1) actors in the conflict, (2) incidents and civilian casualties, (3) geographical spread of violence and (4) displacement. These elements are reflected in Cedoca's COI Focus.

Cedoca's analysis of the typology and targets of the violence (element 2: incidents and civilian casualties) is based primarily on information from ACLED and the United Nations Assistance Mission in Afghanistan (UNAMA). It is noted that where Cedoca refers to reports from other UN organisations, this is in fact often information from UNAMA.⁷⁷ Where news reports are cited from, for example, Khaama Press or Pajhwok, this may be information that

⁷³ European Union Agency for Asylum, *Afghanistan, Country Focus*, januari 2022, p. 8 – 11: Landinfo, Afghanistan Taliban regime – situasjonen etter maktovertakelsen, 9 mars 2022, p. 6-7, available at <https://landinfo.no/wp-content/uploads/2022/03/Afghanistan-temanotat-Talibans-regime-situasjonen-etter-maktovertakelsen-09032022.pdf>; Lifos, Afghanistan Säkerhetsläget, MR-situationen och vissa potentiella riskgrupper, september 2021, p. 5-6.

⁷⁴ CEDOCA, COI Focus Afghanistan, 5 may 2022, p. 4, available at https://www.cgvs.be/sites/default/files/rapporten/coi_focus_afghanistan_veiligheidssituatie_202205_05.pdf

⁷⁵ In comparison with Ariana News, UN Refugee Agency notes engagement with IEA has been 'positive', 9 January 2022, available at https://www.ariananews.af/un-refugee-agency-notes-engagement-with-iea-has-been-positive/?utm_source=dlvr.it&utm_medium=twitter en Washington Post, Transcript: Afghan Refugee Crisis with Filippo Grandi, 7 januari 2022, beschikbaar op <https://www.washingtonpost.com/washington-post-live/2022/01/07/transcript-afghan-refugee-crisis-with-filippo-grandi/>

⁷⁶ ACCORD Training manual, p. 87, 136, 137.

⁷⁷ See for example, United Nations High Commissioner for Human Rights, Annual report: Situation of human rights in Afghanistan, 4 mars 2022, paragraph 22.

has already been entered and coded in the ACLED database.⁷⁸ The result is that the primary source of the information, as well as the time of reporting the information, is not always clear, furthermore, it is not always clear to what extent the information relies on information from different types of sources. These considerations are important to determine how **up-to-date**, **accurate**, **balanced** and **reliable** the information is and to what extent probative value can be attributed to it.

The paragraph about the geographical spread of the violence (element 3) is based on the information from the ACLED database that was consulted on 9 April 2022 only.⁷⁹ In order to assess the risks in an individual case, the CGRS will have to consult the most recent information in the ACLED database about the security incidents in the specific province where the applicant comes from in order to meet the requirement of **relevant** (accurate) and **up to date** (current) information. The CGRS will have to assess in each case how reliable the information is and to what extent the information needs to be further supplemented with information from other different types of sources (UN organisations, governmental organisations, NGOs, media, academics) to get the most **accurate** and **balanced** picture of the situation in the relevant province in Afghanistan.

The information on displaced persons due to conflict (element 4) is from 2021, no information on displaced persons in Afghanistan is included for the first period in 2022. UNHCR's estimate of 170,000 IDPs returning to their region of origin by the end of 2021 is not confirmed by other sources.⁸⁰ Furthermore, the information focuses only on internally displaced people and not on displacement in general. The information is neither relevant nor up-to-date, accurate or balanced enough. The CGRS should complete the information in each individual case.

In conclusion, it is noted that Cedoca's COI Focus does not contain any information regarding the socio-economic and humanitarian conditions in Afghanistan. However, in its ruling of 31 March 2022, no. 270.813, the Council of Alien Law Litigation specifically ordered investigative measures regarding the humanitarian crisis in Afghanistan. The CGRS' brief analysis, based among others, on the European Asylum Agency report of January 2022,⁸¹ was not sufficient to ascertain whether the applicant, if returned to Afghanistan, would find himself in a situation of extreme poverty where he could not provide for his basic needs.⁸²

⁷⁸ COI Focus Afghanistan, p. 17: ACLED Methodology and Coding Decisions around Political Violence and Demonstrations in Afghanistan, 2 februari 2022, p. 8.

⁷⁹ COI Focus Afghanistan, p. 18 – 19.

⁸⁰ COI Focus Afghanistan, p. 21, footnote 125.

⁸¹ EASO, Country Focus Afghanistan, januari 2022.

⁸² CALL, no. 270.813, 31 march 2022, paragraph 4.4.12.

4. Conclusion

Policy guidelines, such as the UNHCR Eligibility Guidelines or the European Asylum Agency Country Guidance, assess available country information on the security and human rights situation in a country of origin against the criteria for refugee status or subsidiary protection. Policy guidelines identify specific profiles of people who may have a well-founded fear of being persecuted or may be at real risk of suffering serious harm. In addition, it identifies a number of factors that are relevant to the assessment of an individual AIP.

When inserting these policy guidelines into an individual file, it is important to pay close attention to what exactly the guidelines say about the level of a risk (what treatment, the severity and certainty of the risk) and in the light of which evidence/country information the risk has been assessed. Simply referring to the guidelines is not sufficient. In order to demonstrate in this case that an applicant for international protection fits a certain profile and will effectively run a risk upon return to the country of origin, reference will also need to be made to the relevant country information underlying a policy guideline and, if necessary or possible, to other (more recent) country information. A concrete link should be made between the risk identified in a guideline and the factual circumstances of the individual case.

In case policy guidelines give contradictory advice, it may be useful to determine the respective probative value of the different policy guidelines. When assessing the value of a policy guideline, the purpose of a guideline, the author of the guideline and the content of the guideline should be taken into account. With regard to the specific directives of UNHCR and the European Asylum Agency, it is generally noted that they differ in particular with regard to the independence of the authors and the level of transparency of the analysis of country information in the guidelines.

An analysis of the most recent UNHCR and European Asylum Agency guidelines on Afghanistan shows that more weight should be given to the UNHCR guidelines as the European Asylum Agency guidelines are based on limited and now outdated information. In addition, there is a certain bias of the EU Member States in the development of the EUAA guidelines. It is also concluded that the CGRS' burden of proof is extremely high if it wishes to deviate from UNHCR's advice and take negative decisions in Afghan cases.

To this end, the CGRS will have to bring in accurate and up-to-date information from different types of sources in accordance with Article 10(3) under (b) of the revised Asylum Procedure Directive. The information must be relevant, up to date, accurate, reliable and balanced with regard to the profile of an Afghan applicant and the situation in the region where the applicant comes from and will be sent back to. In conclusion, some comments are made about the COI Focus on the basis of which the CGRS has fully resumed the decisions in Afghan cases. With regard to several elements, it is concluded that the COI Focus in itself is not sufficient for an assessment in individual cases and that the CGRS will have to introduce additional accurate and up-to-date information in each individual case in order to be able to come to a careful assessment.