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From:	General Secretariat of the Council
To:	Strategic Committee on Immigration, Frontiers and Asylum
Subject:	Pilot Convergence Analysis 2023 - Final Report

With a view to the forthcoming SCIFA meeting delegations will find attached the "Pilot Convergence Analysis 2023 - November, 2023", as received from EUAA.

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Pilot Convergence Analysis 2023

Final report

Pilot Convergence Analysis 2023

Final Report

November 2023



Manuscript completed in November 2023

1st edition [including corrections implemented on p. 87 and p. 130]

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This analysis benefitted from the strong support of EU+ countries, offering valuable insights into their respective national systems and reflections on the origins of differences in recognition rates. The contributions of these countries¹ were as follows.

National determining authorities (first instance)

Responding to an initial survey: BE, CZ, DE, DK, EL, FI, FR, IE, LT, LU, LV, NL, NO, PT, RO, SE, SI, SK.

Providing input during a kick-off meeting: BE, BG, DE, EL, FI, FR, LV, LU, NL, NO, PL, PT, SE, SI, SK.

Sharing insights during a dedicated advanced workshop: BE, FI, FR, EL, NL, PL, RO, SE, SK.

Responding to the surveys on national caseload: BE, CZ, FI, LU, LV, NO, PT, SE, SI, SK.

Supplying a sample of national guidance: BE, FI, FR, NL, NO, SE.

Sharing anonymised case files related to selected profiles of applicants: BE, FI, FR, NO, PL, SI, SK.

Providing decisions within a mock case exercise and taking part in a dedicated workshop: BE, CZ, DK, ES, FI, FR, LU, NL, NO, PT, RO, SE, SK.²

Members of courts and tribunals (appeal instances)

At the appeal instance, members of courts and tribunals from different countries and organisations³ also substantially contributed to the pilot convergence analysis. Their participation included:

Providing input during a national meeting: ARMJ, BE, CY, CZ, EL, FR, IE, LU, NL, PL, PT, SE.

Responding to a dedicated survey: BE, CZ, DE, FR, HR, IE, IT, PL, PT, SE, SI.

Providing cases for a case sample analysis related to selected profiles of appellants: AT, BE, CZ, DE, FR, SE.

An Advisory Group of members of courts and tribunals from BE, CZ, DE, EL, FR, IT further supported the design and implementation of the pilot analysis with regard to the appeal instances.

¹ For abbreviations, see [Glossary and abbreviations](#).

² In addition, sharing anonymised interview transcripts to facilitate the design of a mock case: BE, DK, FI, RO, SI.

³ For abbreviations, see [Glossary and abbreviations](#).



Disclaimers and distribution

Dissemination

The dissemination of this report is **LIMITED** to the EUAA, European Commission, Member States' asylum authorities and other members of and observers to the EUAA Management Board. It is intended that the report be shared with the Council of the European Union, via the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and with the Asylum Working Party.

Sections of the report concerning the appeal instances are also intended be shared with the members of the EUAA Courts and Tribunals Network and Judicial Expert's Pool.

A summary of the main findings will form the basis for a parallel publicly available report.

Findings

The analysis was conducted by the EUAA with the input of national determining authorities and members of courts and tribunals in EU+ countries. While these stakeholders have been consulted on the final report, the information, findings and recommendations have not been explicitly verified and validated by them.

Data

Section [1.1 Data analysis](#) (first instance) is primarily based on statistical data exchanged under the Early warning and Preparedness System (EPS), which are exchanged between the EUAA and European Union Member States plus Norway and Switzerland (EU+) via a standard template. The data shared with the EUAA by the EU+ countries are provisional, unvalidated data and therefore might differ from validated data submitted at a later date to Eurostat (according to Regulation (EU) 2020/851 amending Regulation (EC) 862/2007). In addition and as specified in the respective sections of the analysis, statistical data from Eurostat have been used to supplement the analysis in section [1.1](#) and for the analysis of convergence at the appeal instance ([2.1 Data analysis](#)).



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List of abbreviations

Term	Definition
APD	Asylum procedures directive — 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 (recast)
APNet	EUAA Asylum Processes Network
AT	Austria
BE	Belgium
BG	Bulgaria
CEAS	Common European Asylum System
CF and DN	CJEU, <i>CF and DN v Bundesrepublik Deutschland</i> , C-901/19, Third Chamber, judgment of 10 June 2021 (CF and DN), url .
CG	EUAA country guidance
CGNet	EUAA Country Guidance Network
CH	Switzerland
COI	country of origin information
CTNet	EUAA Courts and Tribunals Network
CY	Cyprus
CZ	Czechia
DE	Germany
Diakité	CJEU, <i>Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides</i> , C-285/12, judgment of 30 January 2014 (Diakité), url .
DK	Denmark





Term	Definition
Dublin III regulation	Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)
EE	Estonia
EL	Greece
Elgafaji	CJEU, <i>Elgafaji v. Staatssecretaris van Justitie</i> , C-465/07, judgment of 17 February 2009, url .
EPS	EUAA Early warning and Preparedness System
ES	Spain
EU	European Union
EU+ countries	Member States of the European Union, Norway and Switzerland
EUAA	European Union Agency for Asylum
FI	Finland
FR	France
HR	Croatia
HU	Hungary
IARMJ	International Association of Migration and Refugee Judges
Ibrahim	CJEU, <i>Ibrahim</i> , judgment of 19 March 2019 in Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17, url .
IE	Ireland
IP	international protection
IPA	internal protection alternative
ISIL	Islamic State of Iraq and the Levant
ISKP	Islamic State Khorasan Province
IT	Italy





Term	Definition
JEP	EUAA Judicial Experts' Pool
LGBTIQ	Lesbian, gay, bi-sexual, trans, intersex and queer persons
LT	Lithuania
LU	Luxembourg
LV	Latvia
Member States	Member States of the European Union
MPSG	Membership of a particular social group
MT	Malta
NL	Netherlands
NO	Norway
PL	Poland
pp	percentage points
PT	Portugal
QD	Qualification directive — 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)
RO	Romania
RS	refugee status
SE	Sweden
SI	Slovenia
SK	Slovakia
SP	subsidiary protection
UNHCR	United Nations High Commissioner for Refugees



Introduction

This final report consolidates the findings of the pilot EUAA convergence analysis of 2023. It is LIMITED and is intended for the specified recipients above (see [Disclaimers and distribution](#)).

The report combines three main objectives:



In its roadmap for convergence, the French Presidency of the Council of the EU invited the EUAA to *'launch a pilot study, in close cooperation with Member States, to analyse asylum decision-making practices and the origin of differences in protection rates between Member States, in particular with regard to countries of origin for which guidance notes have been developed by the Agency, and present an annual report to the Management Board and to the Council on this analysis and on the work towards a true convergence, starting from 2023'*.⁴

The topic of convergence is key to the EUAA and underpins every aspect of the work the agency does - when generating asylum knowledge and guidance, providing training, and supporting individual Member States operationally. Nevertheless, and despite legislative efforts, numerous practical cooperation activities and support from a dedicated Agency, the national decision making on asylum continued to present significant differences. The conclusions of the French Presidency were therefore a welcome invitation to strengthen the efforts devoted to understanding the current state of the common European asylum system (CEAS), and the factors that hinder greater convergence.

The study was designed in a participatory manner, actively involving national determining authorities and appeal bodies in developing a pilot methodology, which is best suited to explore the complex phenomena behind recognition rates. It employed innovative and holistic approaches and tools, unpacking the elements that constitute national decision making and the factors that may lead to variations. On that basis, the analysis offers unprecedented insights into the current state of the CEAS and an evidenced-based roadmap to further convergence.

⁴ Council of the European Union, Presidency conclusion, 'For a roadmap for the convergence of asylum practices in the field of asylum', Brussels, 23 June 2022, JAH 952, AS LE 77, M GR 204, [url](#).



The focus of the pilot analysis is on the two main countries of origin at the EU+ level, Afghanistan and Syria. The remaining countries in the EUAA country guidance (CG) portfolio - Iraq, Nigeria and Somalia - are also addressed in various sections of the report, albeit not to the same extent of detail.

While not all questions could be addressed and answered comprehensively in the time constraints of this project, it provided a robust understanding of some of the factors that influence the observed variations in recognition rates, as well as a baseline for further analysis. The pilot convergence analysis of 2023, upon its evaluation, will also serve as a basis for the design of an annual convergence analysis methodology.



Key findings

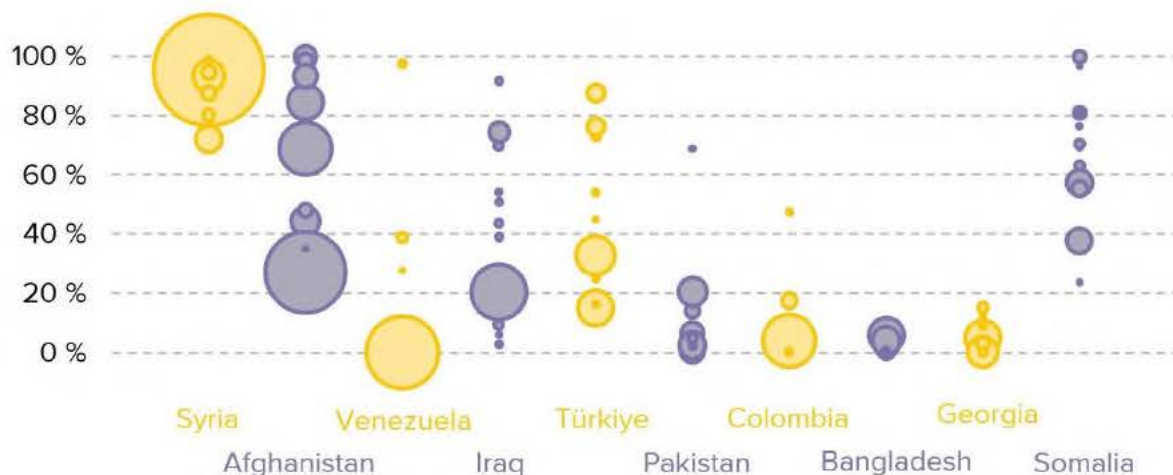
The key findings section provides a concise overview of the primary observations derived from the pilot convergence analysis, addressing several fundamental questions explored in the study.

- [What is convergence?](#)
- [Why do we aim to foster convergence?](#)
- [Can we measure convergence?](#)
- [What are the main factors leading to variations in recognition rates?](#)
- [What level of convergence do we aim for?](#)
- [What can contribute to convergence?](#)

What is convergence?

When addressing the topic of convergence, audiences are often presented with an overview of international protection recognition rates per country of origin, showing wide disparities for certain nationalities and relatively less variation for others, such as in Figure 1 below.

Figure 1. Recognition rates for top citizenships (in terms of issued decisions at first instance) by EU+ countries, 2022



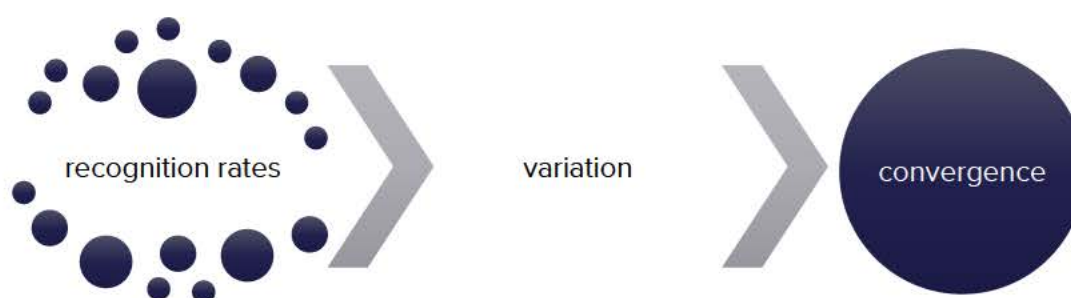
Source: EUAA EPS, [Annual Trend Analysis Report](#) - 2022 [LIMITED]

Note: Each bubble represents a different EU+ country (that issued at least 200 decisions in 2022). The bubble size indicates the number of first instance decisions issued, while the placement on the vertical axis denotes the recognition rate.

While this is an evocative illustration of the outcomes of decision making across the EU+ for the main nationalities, the picture it presents remains incomplete for several reasons. This analysis aims to address and, where possible, overcome the identified limitations, and to provide a holistic and evidence-based understanding of the existing variations in recognition rates.

(a) Definitions

As a starting point, this analysis puts forward the following working definitions for some of the main terms used within the document:



RECOGNITION RATES

For the purposes of the EUAA pilot convergence analysis, recognition rates include positive refugee status decisions and subsidiary protection decisions. National forms of protection have not been included in the scope of positive decisions.

It should be acknowledged that for a number of EU+ countries, the proportion of decisions granting a national form of protection is substantial and the latter would have a notable impact, should recognition rates be calculated differently.

VARIATION IN RECOGNITION RATES

Variation refers to the differences within a particular set of recognition rates. This is linked to a specific moment in time and indicates a 'state of play'. In the analysis, we refer to the variation observed on a monthly and on an annual basis.

CONVERGENCE

While variation refers to the state of play at a given moment, convergence, on the other hand, refers to the process of different elements or entities becoming more similar or approaching a common point over time. Therefore, convergence or divergence are the tendencies we can observe in recognition rates over time.

This analysis often refers to convergence also in terms of bringing practices and policies closer together. As noted by the French Presidency in their conclusions from June 2022, *'The objective remains to promote a Common European Asylum System (CEAS), characterised by greater convergence of practices and decisions, both of the determining authorities and of the judicial authorities of the Member States competent in asylum matters, so that the place*

where the application for international protection is lodged is not decisive in the outcome of the procedure.'

Convergence is understood as the process of harmonising decision-making practices and policies, aiming to achieve a situation where the same application for international protection would be treated in the same manner and reach the same outcome irrespective of the Member State in which it has been lodged.

Ultimately, and without prejudice to the objective factors substantiating existing variations in recognition rates, this convergence of practices and policies should also result in a decreasing variation in recognition rates.

(b) Outcome vs process

Currently available statistical data is only capable of capturing decision outcomes numerically. It provides no insight into the decision-making practices that lead to these outcomes. Based on the figures alone, one cannot assess the consistency of the processes across EU+ countries, as other important factors may be coming into play, including notably the actual makeup of the caseload in a particular EU+ country, or the applicability of certain inadmissibility procedures.

The very purpose of this study is to identify the origins of the observed differences. This is approached with the understanding that some variations in outcome are justified and necessary in a correct and objective implementation of the EU legal framework and that efforts should focus not on eliminating differences in recognition rates, but on establishing and implementing consistent policies and decision-making practices across EU+ countries.

(c) Types of EU-regulated international protection

Recognition rates often reflect only the positive vs negative decisions, namely refugee status and subsidiary protection decisions (totalled together) vs rejections (including in inadmissibility procedures). This may not show important disparities in the examination of applications for international protection, but also in the rights accorded to the beneficiaries as a result.

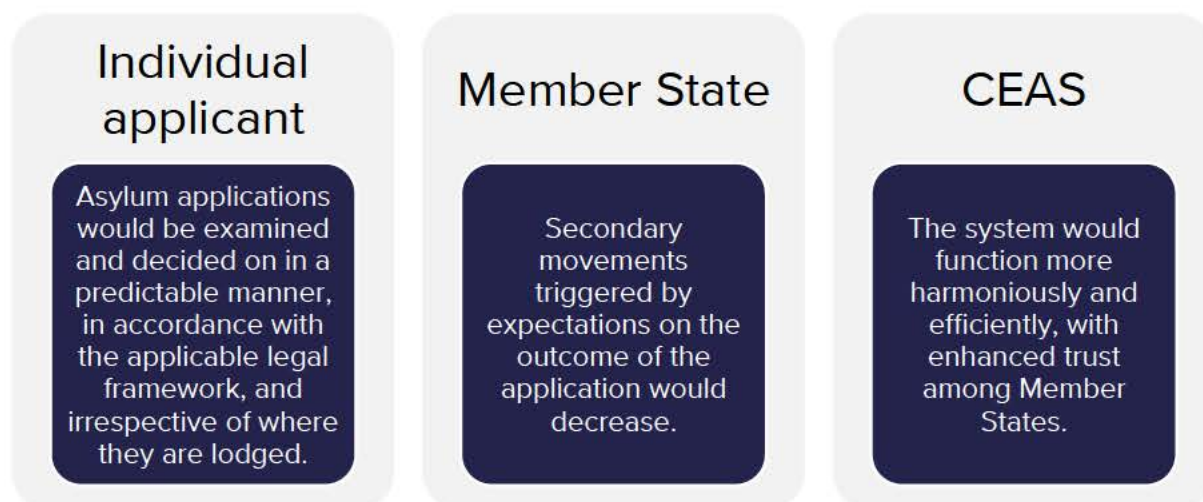
This analysis aims to take a step further and to present a more comprehensive picture of actual differences when it comes to the examination of cases and the type of EU-regulated international protection granted.

Convergence should not be limited to reaching consistently positive or negative decisions, but should encompass the granting of the same form of protection for the same claims, observing the primacy of refugee status.



Why do we aim to foster convergence?

The CEAS is built on the premise of convergence and efforts of Member States and the EUAA are continuously dedicated to this objective. The main benefits of achieving greater convergence can be seen at different levels:



Can we measure convergence?

In this study, the EUAA proposes a way to measure and classify variation in recognition rates, which would then allow to measure convergence over time. After testing several methods of measuring variation, the Agency chose to rely on the standard deviation measure.

To ensure reliability of the findings, and to compensate for the bias that may be created by the recognition rate of EU+ countries that only examined a small number of applications, it introduced certain cut-offs in the respective datasets. Member States agreed that for the first instance, the recognition rate per country of origin becomes relevant for measuring overall convergence if the EU+ country took at least 200 decisions within a year.⁵ A smaller number of cases would be more substantially influenced by the specifics of the claims and would be insufficient to show patterns in the national decision-making practice. For appeals, the appropriate threshold was defined as 100 decisions in a year on the respective country of origin.

⁵ Discussions during an advanced workshop on convergence, April 2023.



low variation < 10 percentage points
medium variation 10-25 percentage points
high variation > 25 percentage points

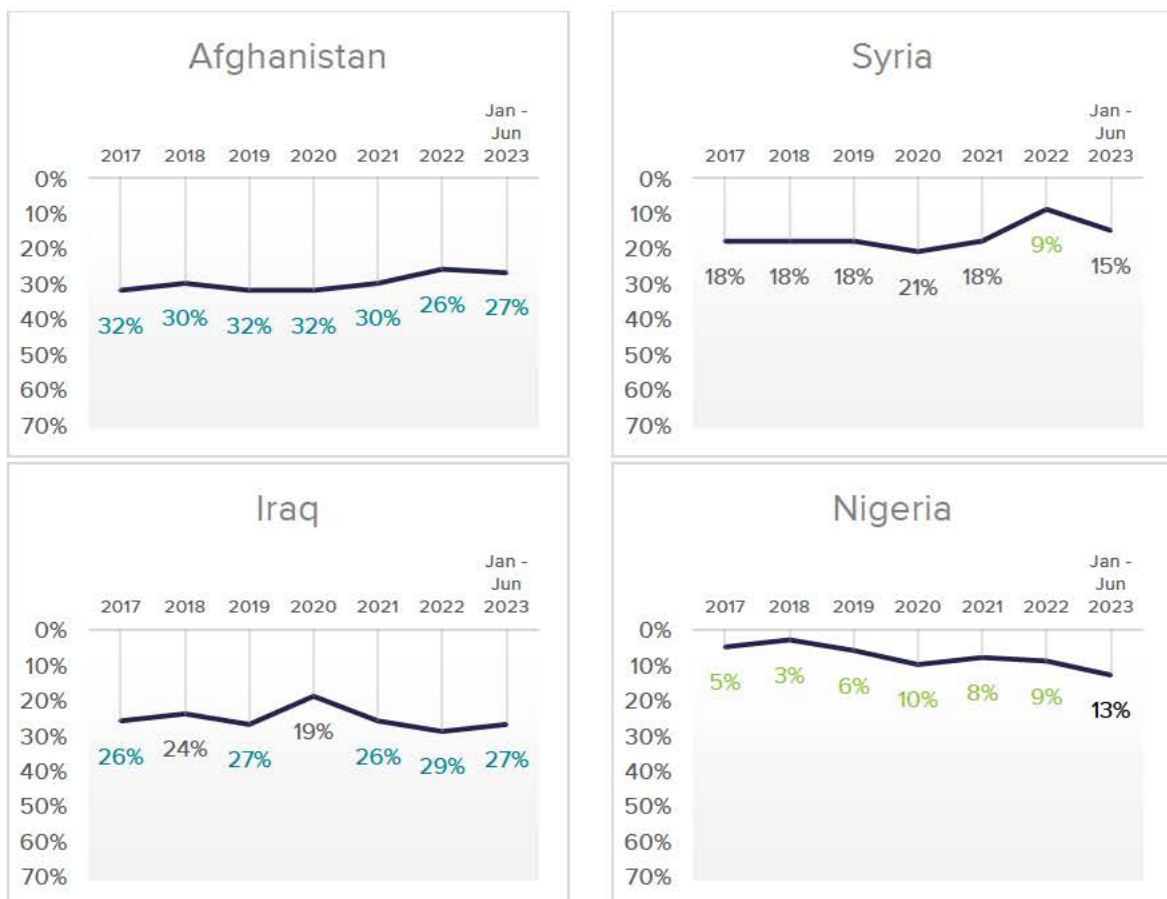
To further read these findings, the EUAA introduced thresholds for 'low', 'medium' and 'high' variation, based on observations of actual and simulated datasets. The proposed classifications were further discussed, based on their illustrative application to **Afghanistan** and **Syria**, and were agreed with EU+ countries in the framework of the advanced convergence workshop in April 2023.

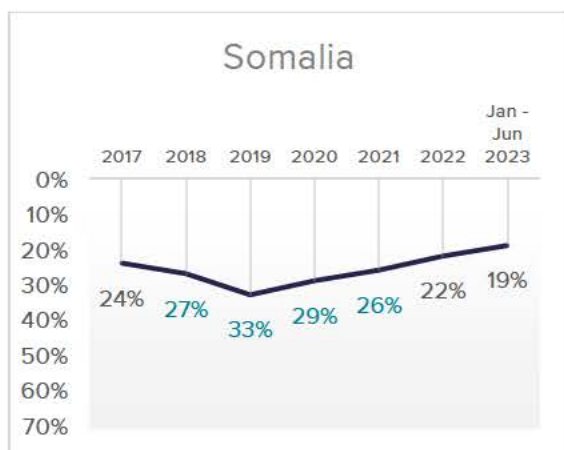
For the purposes of this analysis:

- Variation lower than 10 percentage points is considered low.
- Variation between 10 and 25 percentage points is considered medium.
- High variation would be variation larger than 25 percentage points. This is with the understanding that the maximum possible variation is 71 percentage points.

On this basis, the EUAA estimated the annual variation in recognition rates for first-instance decisions in 2017 – 2022. In addition, the variation in recognition rates for the first six months of the year, January – June 2023, was estimated by applying a cut-off of 100 decisions (half the standard cut-off of 200 decisions per year).

Figure 2. Variation rates 2017 - June 2023 in decisions at first instance, countries of origin covered in EUAA country guidance.





Source: Elaboration based on EPS data, January 2017 – June 2023

As seen in [Figure 2](#) above, the annual variation in recognition rates since 2017 remained high for **Afghanistan**. Some evidence of convergence was observed from 2020 to 2021 and especially from 2021 to 2022. For 2021 – 2022, the observed convergence could be correlated with the takeover of the country by the Taliban and the suspension of the issuance of negative decisions in a number of EU+ countries. The latter coincided with increasing recognition rates overall.

At the other end of the spectrum, **Nigeria** consistently presented low variation in recognition rates at the first instance, with the exception of the first six months of 2023, when the variation could be characterised as medium. This low variation, indicative of high convergence at EU+ level, was correlated with relatively low recognition rates across the main receiving countries.

First-instance decisions on **Iraq** showed notable convergence from 2019 to 2020, coinciding with the first CG document published in June 2019. However, significant divergence was observed from 2020 to 2022 and variation remained high in the first six months of 2023.

In the case of **Somalia**, a convergence trend can be noted since 2019. In 2022 and the first six months of 2023, the variation in recognition rates was medium for the first time since 2017. This coincided with the publication of the first EUAA CG on Somalia in June 2022.

Lastly, looking at the main country of origin over the period from 2017, **Syria**, we can see that variation in recognition rates remained medium, with the exception of 2022, when it was classified as low. A notable convergence trend was observed from 2020 to 2022, coinciding with the publication of the first EUAA CG on Syria in 2020 and its annual updates since. However, the first six months of 2023 indicate a diverging trend.

Similar estimations could be made based on Eurostat data concerning decisions in **appeal instances**. Focusing on the two main countries, **Afghanistan** and **Syria** in the last two years, the variation at this level is displayed below.

Figure 3. Variation rates 2021 - 2022 in decisions at appeal instances, Afghanistan and Syria



Source: Elaboration based on Eurostat data, annual 2021 – 2022.

For **Afghanistan**, the variation in the decisions of appeal bodies was classified as high in 2021 at 27 percentage points and further increased in 2022 to 35 percentage points.

For **Syria**, unlike decisions at the first instance, variation was also classified as high in both 2021 and 2022, with some convergence noted to 34 percentage points in 2022.

What are the main factors leading to variations in recognition rates?

The observed variations in recognition rates are the result of the interplay of multiple complex and interlinked factors.

Some of these factors are inherent to the institution of asylum. While they can be studied and their impact explained, they do not need to be remedied to achieve effective convergence within the CEAS. The different elements pertaining to the national caseload are prime examples of such factors. In conjunction with the obligation to examine applications for international protection individually and objectively, these elements correlate with expected and justified differences in recognition rates.

Other drivers of variation in recognition rates, on the other hand, reflect differences among national systems and decision-making practices which may not be objectively necessary or even justified in accordance with the EU legal framework. The convergence analysis confirms that national policies, guidance and jurisprudence have a significant impact on recognition rates and that some differences between national approaches remain present in each main step of the decision-making process. Within this second category of factors, further efforts towards common standards, policies and practices can contribute to meaningful and effective convergence, in accordance with the existing legal framework and building on the support provided by the EUAA.

This study explores the role of some of the main drivers of variations in recognition rates with concrete illustrations of their relevance and impact. Its findings are evidence-based and largely corroborated across sources and analytical methods. However, they cannot be considered exhaustive or definitive.

Insights generated in the study further suggest that broader, less tangible aspects can play an important role in shaping national policies and decision-making practices, notably in reference to the broader political context in which the different national asylum systems function and the overall level of scrutiny placed on these systems.

Figure 4. Factors impacting recognition rates, focus of the pilot convergence analysis.

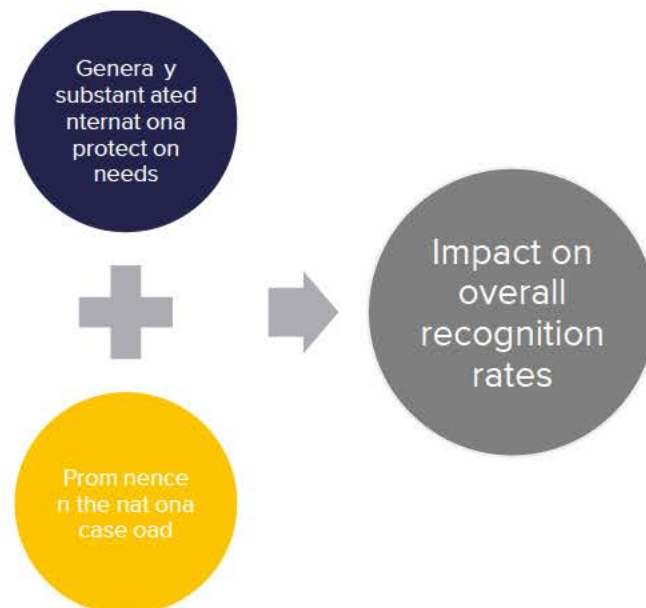


CASELOAD

The main protection claims examined with respect to a particular country of origin have a determinative impact on its respective recognition rates. However, little reliable information is currently available on the composition of national caseloads, apart from some demographic characteristics, such as gender and age. With this in mind, the following main observations can be made.

The prevalent claims encountered in the national caseloads are a key determinative factor for recognition rates. However, the available information concerning the composition of national caseloads suggests that the reported variations in main claims across EU+ countries cannot at this stage conclusively account for the observed differences in recognition rates.

Other factors continue to play an important role, including differences in the general assessment of protection needs of certain profiles. Therefore, reaching and effectively applying a common assessment of international protection needs, especially for profiles which represent a notable proportion of national caseloads, would have a significant positive impact on convergence in the EU+.



The potential impact of the main profiles or claims examined as part of the national caseloads can be differentiated based on the expectations regarding the general assessment of their protection needs. A reference point for forming such expectations are the relevant EUAA CG documents, reflecting the common analysis and guidance developed by the EUAA together with EU+ countries on the basis of relevant COI.⁶ The actual impact of the consistency in the

⁶ See <https://euaa.europa.eu/ asylum-knowledge/country-guidance>.



assessment of their protection needs on the overall variation in recognition rates and their convergence would then be determined by the relevance of the respective caseload.

Notable examples in particularly prevalent profiles at the EU+ level are draft evaders from **Syria** and women and girls from **Afghanistan**. In both cases, the respective CG documents currently provide clear conclusions, confirming well-founded fear of persecution in general and a highly likely reason for persecution in relation to the refugee definition.⁷ Convergence in the assessment of the protection needs of both of these profiles is likely to have a significant positive impact on overall convergence, as they represent a notable proportion of most national caseloads. At the same time, as seen especially in the case of female applicants from **Afghanistan**, their prevalence may vary among the receiving countries, potentially manifesting in differences in recognition rates among EU+ countries, depending on the remaining profiles represented in the respective national caseloads.

For other profiles with high likelihood of being granted international protection according to the respective CG documents, national caseloads show more limited prevalence overall. Some self-reported variations in the proportions, which these profiles represent at the national level, may in principle account for differences in overall recognition rates. However, the analysis of their actual impact on recognition rates needs to take into account a number of additional complexities, most notably the differences in likely outcomes indicated by this study. This can be observed, for example, in relation to the profiles with links to the foreign military troops, which were present in **Afghanistan**.

Moreover, certain profiles with high level of agreement concerning their protection needs (e.g. LGBTIQ applicants from **Afghanistan** or **Syria**), would have no or very limited actual impact on overall recognition rates and their convergence, due to the profiles' limited relevance within national caseloads.

The clear guidance concerning the profiles above offers some predictability as to the expected outcome. Therefore, their prevalence in national caseloads could be correlated with existing variations in recognition rates. Similarly, the conclusive assessment that 'mere presence' in some territories would suffice to substantiate protection needs under Article 15(c) QD⁸, can be directly correlated with an expectation for positive decisions for applicants from those areas.⁹

On the other hand, the required highly individualised assessment for other profiles would make an analysis of convergence in their assessment and of their impact on variation in recognition rates particularly complex.

Linked to the main claims presented by the applicants from a specific country ([1.2.2\(b\) Claim profile](#)), the study also explores the relevance of establishing the country of origin of the

⁷ See EUAA, CG **Afghanistan**, January 2023, [3.15. Women and girls](#); EUAA, CG **Syria**, February 2023, [4.2.2. Draft evaders](#). Reported assessments across EU+ countries suggest a positive decision would indeed be taken in relation to these profiles. Nevertheless, important differences persist in terms of the type of protection granted to such applicants, depending on the EU+ country which examines the application.

⁸ See, in particular, EUAA, CG **Syria**, [5.3.4. Indiscriminate violence in Syria](#).

⁹ This takes into account the lack of or extremely limited applicability of internal protection alternatives for the mentioned profiles and countries.



applicant as a first step [\(1.2.2\(a\)\)](#), and of their gender, age and family status [\(1.2.2\(c\)\)](#), as well as their ethno-religious background [\(1.2.2\(d\)\)](#) and area of origin [\(1.2.2\(e\)\)](#). A number of other factors related to the composition of the national caseload were also identified as relevant.

Inadmissibility grounds can come into play and result in decisions reported as rejections, notably in the case of applications from beneficiaries of international protection in another Member State [\(1.2.2\(f\)\)](#) or in the case of subsequent applications [\(1.2.2\(g\)\)](#). The proportion of such cases in the respective EU+ country can have an impact on its recognition rates and distort the picture of convergence in terms of the in-merit assessment of protection needs of applicants from the respective country of origin.

The elements constituting the national caseload which may have an impact on the exhibited variations in recognition rates go beyond the substance of the applications and into elements concerning admissibility.

Furthermore, applications resulting from relocation, or following the evacuation efforts from **Afghanistan**, may correlate to a noticeable positive impact on recognition rates in the respective receiving country [\(1.2.2\(h\)\)](#).

In some specific circumstances, where the protection needs are to a certain extent assumed (e.g. relocation, direct evacuation), the prevalence of such cases in the caseload can also have a notable impact on national recognition rates and their potential variation.

SPECIAL PROCEDURES AND APPROACHES

As mentioned above, some decisions rejecting the application as inadmissible are recorded as rejections in the overall recognition rates. Notably, these include inadmissibility decisions on subsequent applications and on applications from beneficiaries of international protection in another Member State. The relevance of these factors depends on the composition of the national caseload as addressed above.

Another inadmissibility ground identified as relevant in this study is the application of the ‘safe third country’ concept. While some use of this concept has been reported on a case-by-case basis for applicants from **Afghanistan, Iraq, Nigeria, Somalia** and **Syria**, its systematic use remains exceptional. See [1.2.3\(c\) Safe third country](#).



Applying the ‘safe third country’ concept in a systematic manner has the potential to significantly impact recognition rates and, therefore, to lead to variations which are not indicative of differences in the substantive assessment of international protection needs.

The application of the ‘safe country of origin’ concept is of little relevance to the CG countries and relevant information on its impact is limited. Nevertheless, it can be noted that in the specific case of **Nigeria**, its designation as a ‘safe country of origin’ has not had a noticeable impact on recognition rates. This observation aligns with the objectives of this concept as a tool to introduce efficiency in the asylum systems rather than a change in assessment concerning the particular country. See [1.2.3\(d\) Safe country of origin](#).

Apart from the admissibility-related aspects and the application of the safe country concepts, the study looks into the impact of prioritisation and suspension of the examination of (some of) the applications from a specific country. See [1.2.3\(a\) Prioritisation and suspension](#).

Procedural approaches such as the prioritisation of certain applications or the suspension of examinations or the issuance of specific decisions may have a notable impact on recognition rates. However, this impact is temporarily limited, and it does not appear indicative of differences in the assessment of the relevant protection needs.

NATIONAL POLICY, GUIDANCE AND JURISPRUDENCE

EUAA guidance and training have become integral parts of the CEAS and over the years have had a noteworthy impact on national policies and practices, assisting EU+ countries and contributing to enhanced practical cooperation and, ultimately, convergence. See [1.3.2. The role of EUAA](#) and [1.3.3. The use and impact of EUAA country guidance](#).

Nevertheless, the decisions on applications for international protection continue to display significant variations. This observation remains valid when the analysis focuses on largely similar cases or even on identical facts.

It is, therefore, evident that elements pertaining to the national system are among the main drivers of variation in recognition rates. Depending on the national system, its legal traditions and set-up, key factors may include written or unwritten policy and guidance ([1.2.4](#)), national jurisprudence ([1.2.5](#)), or the less tangible organisational culture or even the broader political context ([1.2.6](#)).

Based on the documents shared in the framework of this study, it could be seen that written national guidance, both thematic and country-specific, is largely consistent with the available EUAA guidance. Nevertheless, some important differences were noted. The analysis of specific cases allowed for the further identification of the elements which were addressed



differently by EU+ countries and their respective impact on the outcome of the examination of protection needs.

Both evidence assessment and the legal analysis were identified as areas where differences continue to manifest with significant impact on recognition rates as well as the type of protection granted across the EU+ countries.

In some cases, national jurisprudence played an important role, shaping national guidance and practices differing from the guidance developed by the EUAA together with EU+ countries.

MAIN DRIVERS OF VARIATION AT THE APPEAL INSTANCES

The right to an effective remedy is an integral element of the CEAS. The members of courts and tribunals hearing asylum cases are, therefore, key stakeholders in the implementation of the EU legal framework on international protection, along with the first instance determining authorities. Moreover, the appeal bodies play a dual role in relation to convergence.

Firstly, they are decision-makers in their own capacity, examining applications for international protection in accordance with the applicable legal regime.

Secondly, the jurisprudence produced and confirmed at the national level has a significant influence on first-instance decision-making policies and practices.

In addition to factors relevant at the first instance, some specific aspects can be pertinent to the recognition rates and their variation at the appeal instances.

Importantly, the **caseload** of the asylum appeal bodies is largely shaped by the decisions taken by the first-instance determining authorities. As the outcomes at the first instance continue to vary, EU+ courts and tribunals encounter different cases and a different proportion of cases. Depending on the caseload and outcomes specifics, appeal bodies may encounter to a varying degree a range of rejections on inadmissibility (e.g. safe third country decisions, decisions rejecting the applications from beneficiaries of international protection in another Member State as inadmissible, subsequent applications). They may also encounter a varying volume of rejections on the merits, and – depending on legal standing and the existence of legitimate interest – appeals from beneficiaries of subsidiary protection. See [2.2.2. The caseload at appeal instances](#).

The **national judicial set-up** also plays an important role, including the degree of specialisation of the members of the appeal instances competent in asylum matters. The existence of binding national jurisprudence and the way in which the CJEU jurisprudence is applied are also key potential drivers of variation in recognition rates. See [2.2.3. The set-up of appeal instances](#) and [2.2.4. The role of CJEU jurisprudence](#).



The exposure to and **use of EUAA products and engagement in EUAA's activities** for members of courts and tribunals may also vary across EU+ countries. See [2.3. The use and impact of EUAA products and activities](#).

What level of convergence do we aim for?

Meaningful convergence is convergence towards common standards, policies and practices. The latter would not be expected to result in the lack of any variation in recognition rates and may not necessarily translate in low variation of recognition rates across all countries of origin. Its impact on recognition rates would depend on a number of objective factors, most notably the specifics of the national caseload.

A closer look at the makeup of the caseload per country of origin, along with the joint assessment of protection needs related to the main claims of applicants from this country, as per the EUAA CG, should inform the expectations with regard to the level of variation which would be objectively justified.

Taking **Syria** as an example, we would currently expect and aim for low variation. This is primarily due to a significant proportion of the applicants being men within the conscription age group (18-42 years old) or otherwise seen as political opposition. In these cases, refugee status should be a highly likely outcome, unless exclusion grounds are applicable on an exceptional basis. Furthermore, a number of governorates in the country experience such exceptionally high levels of indiscriminate violence, that no additional individual elements are required to apply Article 15(c) QD. Internal protection alternative would also generally not be applicable in **Syria**, with limited exceptions possible.¹⁰ All these elements justify an expectation of consistently high recognition rates across EU+ countries and, therefore, low overall variation.

The findings of the data analysis showed that over the period since 2017, variation in recognition rates for **Syria**, however, remained mostly medium, with the exception of 2022, when the variation was classified as low. The latter followed a notable convergence trend since 2020 - a positive development which could, to a certain extent, be correlated with the publication of the CG on **Syria**.

It is of note that in their large proportion negative decisions concerning **Syrian** applicants, have been related to inadmissibility rather than the examination of the applications on their merits. See for reference [Figure 13. Recognition rates at first instance in EU+ countries with most Syrian applications rejected in admissibility procedures, 2022](#). Therefore, the observed differences in recognition rates in **Syrian** cases can be explained by factors that do not relate to the actual assessment of the situation in the country of origin. When focusing only on the assessment itself, convergence may be higher than the current recognition rates appear to indicate. With this in mind, in addition to a common assessment of the situation in a particular

¹⁰ See the [EUAA CG Syria](#), February 2023.



country of origin, other aspects also appear pertinent to fostering greater convergence, including for example the examination of subsequent applications, the examination of applications from beneficiaries of international protection in another Member State, and the application of the safe third country concept. A number of EUAA tools and materials exist and continue to be developed to assist EU+ countries in this regard, contributing to the efforts of reaching further convergence in decision-making on **Syria**.¹¹

Afghanistan, on the other hand, presents a more diversified picture in terms of protection needs. In view of the EUAA CG from January 2023, an expectation of consistently high recognition rates can be formed regarding a number of different profiles of applicants.¹² However, their overall relevance in the caseload of Member States varies. For example, based on the latest assessment, **Afghan** women and girls should be highly likely to be granted refugee status across EU+ countries. However, women and girls did not traditionally form the majority of the Afghan caseload and the respective impact of this general assessment on overall recognition rates may be limited. Many of the other profiles fall within the categories where additional risk-enhancing circumstances would be necessary to grant international protection. Therefore, depending on the differences in caseload across EU+ countries, we can expect and aim for medium to medium-low variation in relation to **Afghanistan**.

At 26 percentage points, the variation in first instance decisions for **Afghan** applicants already appeared close to that aim (medium variation is considered variation between 10 and 25 percentage points). However, as with **Syrian** applicants, albeit perhaps less visibly, further efforts are also needed in addressing the differences between refugee status recognition vs the granting of subsidiary protection across EU+ countries.

The examples above focus on cases where protection would be highly likely to be granted. However, low variation and convergence should not be equated with high recognition rates. **Nigeria** is a suitable example of a country where the recognition rates are generally low and where we do not observe significant variations among EU+ countries. In fact, in the period 2017 – 2022, the variation in recognition rates for **Nigeria** remained low. This would be consistent with generally lower proportion of applicants with claims that would be highly likely to lead to international protection, along with the likely availability of an internal protection alternative. Countries in similar situations would also justify an expectation of low variation in recognition rates.

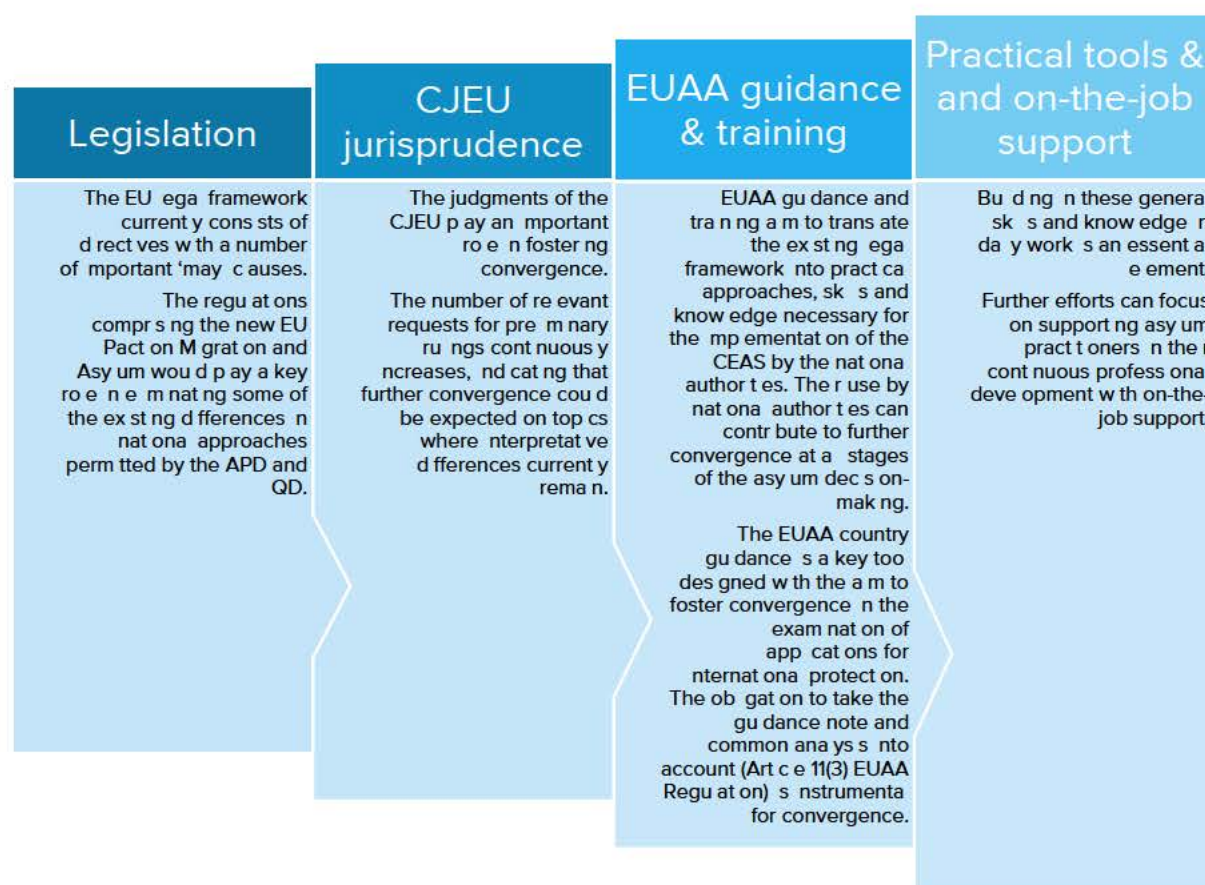
See the [EUAA Practical Guide on Subsequent Applications](#), December 2021, and the EUAA publications [Applying the Concept of Safe Countries in the Asylum Procedure](#), December 2022, and [Jurisprudence on Secondary Movements by Beneficiaries of International Protection](#), June 2022.

² See the [EUAA CG on Afghanistan](#), January 2023.



What can contribute to convergence?

A number of elements contribute to convergence in decision-making practices and, therefore, in decision outcomes.



Over the years, the EUAA (previously as EASO) has developed a large portfolio of products and activities aimed at supporting a truly common asylum system. EU+ countries contribute actively to the design of the methodologies behind these processes and to the development of their content.

The **EUAA CG documents** are a prime example and culmination of the Agency's convergence-driven work to-date. To develop these common analyses and guidance notes on main countries of origin, EU+ countries jointly assess country of origin information (COI). The COI itself is produced in line with a methodology, which has also been jointly developed with EU+ countries. In the work on CG, senior national policy experts agree on this analysis and guidance to policy- and decision-makers, which is then endorsed by the EUAA Management Board consisting of representative of all Member States.¹³

Indeed, as seen in [Figure 2](#) above, there is some evidence of convergence which may be correlated with the deliberation and publication of the relevant EUAA CG documents. This is especially the case for **Syria** and **Somalia**, and to some extent for **Iraq** and **Afghanistan**, while

³ See Article 11, [EUAA Regulation](#).



for **Nigeria**, where variations were already at a low level, there was no notable further convergence.

Similarly, EU+ countries largely train their case officers by making use of the **EUAA Training Curriculum**, including its core modules on the asylum interview method, evidence assessment and inclusion. **EUAA general guidance** is also available on these topics. However, despite having this common fundamental training and access to common guidance, in their national systems, the competent authorities appear to apply varying approaches at most steps of the decision-making process.

These differences may impact the possible outcome of the applications to a varying degree, as evidenced by the case samples analysis completed as part of this study. Some would manifest a different approach, which is not likely to affect the outcome of the application, while others would be key for the decision between recognising the person as a refugee, granting subsidiary protection, or rejecting the application.

To effectively foster convergence, efforts should address each step of the examination process, and focus on the elements which have the potential to lead to differences in outcome. The outline below addresses the main stages in the examination of applications for international protection, along with some of the key EUAA tools aimed to provide support and to foster convergence in these areas. In addition to the tools mentioned specifically, a wide array of EUAA publications and activities aim to directly or indirectly foster convergence. Among others, these include the wider situational awareness portfolio of the agency, the guidance and tools for quality assurance in the asylum procedure, as well as the operational support provided by the agency.

Admissibility

Topics relevant at this stage include subsequent applications, the examination of the applications of beneficiaries of international protection in another Member State, and the application of the safe third country concept.

A key EUAA tool relevant at this stage of the examination is the [EUAA Practical Guide on Subsequent Applications](#).

In addition, relevant EUAA situational analysis publications include [Applying the Concept of Safe Countries in the Asylum Procedure](#) and [Jurisprudence on Secondary Movements by Beneficiaries of International Protection](#).



Personal interview on the merits

Conducting the personal interview is a core competence for asylum case officers. The way that the interview is conducted is essential for the outcome of the application. Therefore, the harmonisation of procedural safeguards and of the practices in the identification and exploration of the material facts during the interview is key for overall convergence.

The EUAA guidance and training promote a well-developed comprehensive methodology for the asylum interview.

The training module [Asylum Interview Method](#) should be a starting point to fostering convergence in this regard. This can be further built on with advanced modules focusing on interviewing specific groups, such as [children](#) or [other vulnerable applicants](#).

In terms of EUAA guidance, a key tool is the [EUAA Practical Guide on the Personal Interview](#), along with further thematic practical guides, such as the [Practical Guide on Interviewing Applicants with Religion-based Asylum Claims](#).

Evidence assessment: credibility and risk

The way the evidence is collected and assessed is paramount for the outcome of the applications, making evidence assessment a key constitutive element of the decision on international protection. It determines which material facts are identified as such and accepted. Ensuring a common framework, including the application of consistent thresholds for the assessment of credibility and risk, is paramount for convergence.

The EUAA guidance and training promote a structured approach to evidence assessment, with clearly defined thresholds.

The core training module [Evidence assessment](#) aims to prepare asylum practitioners to apply the EUAA's structured method of evidence assessment when assessing an application for international protection so that the risk of subjectivity in individual cases is reduced.

Further guidance is provided in the [EUAA Practical Guide on Evidence Assessment](#), as well as thematic guides such as the [Practical guide on the use of country of origin information](#).

Here, a key EUAA line of products are the Agency's [COI reports and queries](#), developed following a [methodology](#) guided by the principles of objectivity, usability, transparency and publicity, validity and quality. These documents directly feed into the external credibility assessment as well as the overall factual risk analysis. In light of Article 10(3)(b) APD, the consistent use of EUAA COI should be strongly encouraged. Furthermore, in terms of risk assessment, Member States have the obligation to take the EUAA CG into account in accordance with Article 11(3) EUAA Regulation.



Legal assessment

The qualification for international protection would further depend on the application of the definitions of a refugee and the grounds for subsidiary protection in accordance with the Qualification Directive. Here, differences may pertain to the interpretation of the reasons for persecution, the requirement for an actor of persecution or serious harm, the application of the 'sliding scale' in the context of Article 15(c) QD, the application of the internal protection alternative, etc. These differences may result in variations in overall recognition rates, as well as in differences in the type of protection granted.

The EUAA modules on [Inclusion](#) and [Inclusion advanced](#) aim to provide asylum officials with the knowledge and skills necessary to apply the refugee and subsidiary protection criteria in a structured and consistent manner.

General guidance provided by the EUAA includes the [Practical Guide on Qualification for international protection](#), as well as a number of thematic guides, including those on [political opinion](#), [membership of a particular social group](#), and [internal protection alternative](#).

The most concrete EUAA tools for fostering convergence in the legal assessment are the [EUAA country guidance documents](#), which provide common analysis and guidance on the qualification for international protection of applicants from specific main countries of origin. At the time of writing, CG is available on:

- [Afghanistan](#): last updated January 2023
- [Iraq](#): last updated June 2022
- [Nigeria](#): last updated October 2021
- [Somalia](#): last updated August 2023
- [Syria](#): last updated February 2023

To foster convergence, a consistent approach in these aspects should be ensured among EU+ countries, including by applying a **quality assurance framework** aligned with the common standards and indicators developed by the EUAA.

Appeal

Last, but certainly not least, the appeal authorities play a key role in relation to the outcome of applications for international protection and in the efforts towards greater convergence. The appeal bodies across the EU+ countries are firstly, important decision-makers, but also, and especially at higher instances, responsible for shaping the decision-making policies and practices of the determining authorities at first instance.

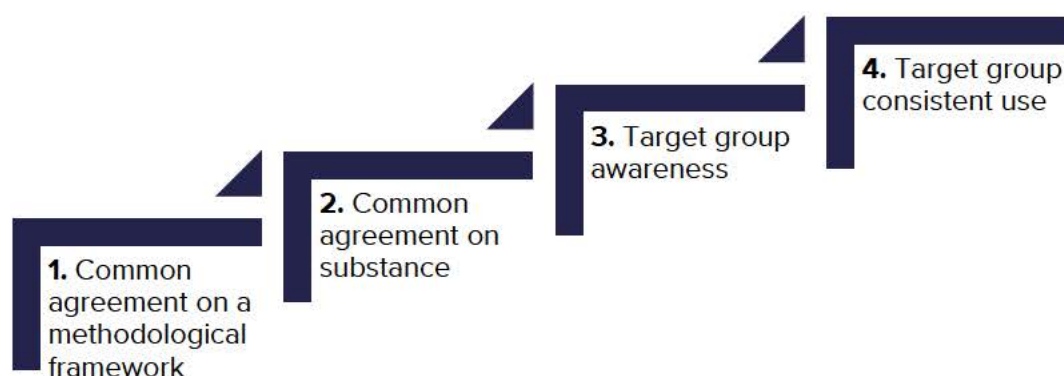
A [dedicated line of EUAA support](#) aims to benefit the members of courts and tribunals across Europe who are working in this highly specialised area of the law. The EUAA coordinates the Courts and Tribunals Network and produces high-quality [materials](#) designed to support judicial practitioners in their daily tasks. Regular capacity-building activities are also organised, including [judicial workshops](#) and [expert panels](#).

Furthermore, members of courts and tribunals can make use of a [case law database](#) and [quarterly case law overviews](#).

Notably, in the assessment of applications for international protection, appeal bodies are also expected to ensure that ‘precise and up-to-date [information is obtained from various sources, such as \[the EUAA\]](#)’ (Article 10(3)(b) APD) and to take into account the [EUAA common analysis and guidance notes](#) (Article 11(3) EUAA Regulation).

The overview above presents an indication of the array of EUAA tools and activities which have the potential to foster convergence. Over the years, the Agency has also engaged in cycles of evaluations of the use and impact of these products, and in their continuous improvement. The findings of these evaluations and of the present convergence analysis corroborate that the following steps are necessary for the EUAA to effectively support convergence.

Figure 5. Steps towards convergence with the support of EUAA.



Step 1 relates to the ‘ownership’ of the different products and the ‘buy-in’ from EU+ countries. It signifies that the trust in the methodology used by the EUAA is essential for the use of the respective products. While every methodology merits regular review and potential update, for

most of the relevant EUAA products, this step has been completed with commonly agreed, clear and transparent methodologies put in place to provide a suitable framework for the development of high-quality products.

For the products where this is relevant, **Step 2** is also largely completed. EUAA general guidance and CG, in particular, are developed with the active participation of EU+ countries. Here, some challenges emerge in the efforts to find a balance between the willingness to develop these tools by consensus and ensuring that the guidance that these products provide is sufficiently clear and directive to effectively foster convergence.

In terms of awareness, **Step 3**, the EUAA increasingly invests efforts in outreach initiatives, aimed to bring the existing products closer to their target groups. Evaluations of some of these products confirm increasing awareness, which is a prerequisite for increased use of the relevant EUAA products.

The picture in relation to **Step 4** remains more complex. Currently, a significant number of EU+ countries develop national guidance and training, in parallel to the efforts they contribute to the common products developed by the EUAA. The direct use of the relevant EUAA products may also be limited in countries which lack the tradition of national guidance and internal training. Several different approaches can be identified depending on the topic, the type of product (training, guidance, or information) and the existence of parallel national tools. To varying degrees, these approaches are likely to perpetuate differences in decision-making practices and outcomes or to contribute to convergence.

Each of these steps rely on the capacity of the EUAA to develop and implement the relevant activities and on the willingness of EU+ countries to take part in jointly shaping the CEAS, as well as to implement it via consistent policies, processes and practices. On that basis, two elements emerge as key to reaching greater convergence:

- Continuing to invest in the relevance and aptness of the EUAA products to support the examination of applications for international protection in a directive, structured manner and in accordance with common standards, and
- Making effective use of the available EUAA products at the national level.



Way forward

Taking into account the multiple, complex and interlinked factors which have been identified as main drivers of variations in recognition rates, the measures towards greater convergence should be designed in a comprehensive and holistic manner. A number of actions at different levels can contribute to reaching greater convergence towards high protection standards, including the following:

1

An important step towards greater convergence would be the **adoption and operationalisation of the New Pact on Migration and Asylum**. While the adoption of the Pact is the prerogative of the EU legislators, its consistent and effective operationalisation would require the collaborative efforts of the European Commission and a number of different authorities within Member States. In relation to the examination of applications for international protection, this would include national determining authorities and other policymaking bodies, as well as the appeal bodies responsible for international protection matters. These efforts can be enhanced with targeted and continuous support by the EUAA.

2

The **jurisprudence of the CJEU** is a key tool for fostering greater convergence. National appeal bodies are encouraged to continue to identify areas within national practice and jurisprudence where further convergence is necessary and to launch relevant requests for preliminary rulings. Furthermore, upon the issuance of a pertinent judgment, it should be fully and timely reflected in relevant guidance, training and decision-making practice. Member States, in efforts supported by the EUAA and with the oversight of the European Commission, should ensure that this is consistently done at the first instance as well as in decisions at appeal instances.

3

The **EUAA provides an array of tools**, which aim to foster greater convergence in the correct and efficient implementation of the EU legal framework. In order to realise the actual convergence potential of these tools, Member States should prioritise their use, where available, over national equivalents. In this regard, Member States and the EUAA should promote, enable and facilitate the direct use of EUAA products by practitioners. Simultaneously, the Agency, jointly with Member States, will continue to ensure that the EUAA tools are relevant and up-to-date, and offer clear, actionable guidance. Should resources permit, the EUAA jointly with Member States should also further expand the geographical scope of the EUAA country guidance documents.



The EUAA will, furthermore, continue to improve the **convergence analysis**. Upon the evaluation of the pilot study, the Agency, with input from the European Commission and Member States, will design a methodology for the regular monitoring of the progress made on the actions above, as well as other activities contributing to effective convergence in the examination of applications for international protection. The active contribution of Member States to this work would be paramount.



Methodology

The study was designed in a participatory manner, actively involving national determining authorities and appeal bodies in developing the pilot methodology. It employed innovative and holistic approaches and tools, unpacking the elements that constitute national decision-making and the factors that may lead to variations. On this basis, the analysis offers unprecedented insights into the current state of the CEAS and an evidenced-based roadmap to further convergence, while also underpinning aspects where future research would be helpful.

The focus of the pilot analysis is on the two main countries of origin at the EU+ level, **Afghanistan** and **Syria**. The remaining countries in the CG portfolio - **Iraq**, **Nigeria** and **Somalia** - are also addressed in various sections of the report, albeit not to the same extent of detail.

The pilot convergence analysis of 2023, upon its evaluation, will also serve as a basis for the design of the methodology for a future periodic convergence report. Conducting a convergence analysis on a regular basis will be instrumental in gaining further insights into the functioning of the CEAS. To facilitate the future analysis, there could be further improvement in several areas, in particular the building up of national information bases and the exchange of information on topics such as the main claims applicants present and the main reasons for decisions (e.g. persecution on specific grounds, ground for subsidiary protection, reason for rejection in relation to inadmissibility, credibility assessment, risk analysis or legal qualification).

Data analysis

The data analysis is primarily based on statistical data exchanged under the EPS. In addition and as specified in the respective sections of the analysis, statistical data from Eurostat (according to Regulation (EU) 2020/851 amending Regulation (EC) 862/2007) have been used to supplement the analysis in section [1.1](#) and for the analysis of convergence at the appeal instance ([2.1 Data analysis](#)). The data shared with the EUAA by the EU+ countries are provisional, unvalidated data and therefore might differ from validated data submitted at a later date to Eurostat. To avoid distortions in variations due to recognition rates based on few decisions issued, cut-offs have been introduced for the different target groups under review. The comparison of findings derived from different datasets should therefore be avoided.

Analysis concerning first-instance decisions

The approach to the analysis of convergence at first instance was designed jointly with EU+ countries via an initial survey, discussions during the kick-off meeting of the project in December 2022, and a dedicated advanced workshop in April 2023. It included the following constitutive elements.



INITIAL SURVEY AND KICK-OFF MEETING

An initial survey conducted in October – November 2022 and a kick-off online meeting in December 2022 allowed to design the analytical framework of the pilot convergence analysis jointly with EU+ countries. Initial insights into the reasons for variation in recognition rates were also collected.

See [Annex 3: Initial convergence survey](#).

ADVANCED WORKSHOP

The advanced workshop in April 2023 was an opportunity to finetune the methodology of the pilot with input from interested EU+ countries. It also allowed for further brainstorming and exchange of insights as to the main factors leading to possible variations in recognition rates.

SURVEYS ON NATIONAL CASELOAD

The composition of the caseload from a particular country of origin was often referred to as one of the main reasons for variation in recognition rates among EU+ countries. However, little information on the actual makeup of national caseloads was readily available for the study. Country-specific surveys were created with the aim to provide insights into the actual caseload of EU+ countries in 2022, complementing information available via EPS and Eurostat data. The surveys addressed the five countries of origin covered in the EUAA CG portfolio.

See [Annex 4: Caseload surveys](#).

ANALYSIS OF NATIONAL GUIDANCE

National guidance on various topics related to the examination of applications for international protection exists across EU+ countries. It plays an important role in the way decisions are made and for their outcome. While information on specific national guidance often becomes available through relevant queries and in the framework of developing EUAA guidance, the pilot study allowed for a first consolidated effort in the direct analysis of national guidance.

EU+ countries were asked to share their existing guidance, whether public or internal, on topics determinative for the outcome of applications. Topics included general and thematic guidance as well as country-specific guidance.

See [Annex 5: National guidance](#).

ANALYSIS OF CASE SAMPLES

The analysis of case samples was identified as a valuable tool in gaining an improved understanding of national practices in examining applications for international protection.

Jointly with EU+ countries, the EUAA identified the following key profiles for this exercise:



EU+ countries were invited to share 10 cases per sample, which had been decided in 2022. They were also encouraged to identify and share cases with varying outcomes, if this was representative of their national practice concerning the respective profiles.

See [Annex 6: First instance case samples](#).

MOCK CASE EXERCISE AND WORKSHOP

The aim of this exercise was to eliminate all elements related to the specifics of the cases EU+ countries examine, the factor which national determining authorities consider central for the variation of recognition rates. This approach allowed for a simulation of what would happen if the exact same case were to be examined across the EU+. On that basis, the EUAA explored *whether, to what extent, and for what reasons* variations in recognition rates would persist.

The mock case was designed as a realistic and balanced scenario, presented via an interview transcript. EU+ countries were asked to share observations on the interview itself, and, most importantly, to submit a decision on the case. The applicant was from **Afghanistan** and presented a main claim which could be broadly related to 'westernisation', or the adoption of values and behaviours typically associated with the 'West' in countries such as **Afghanistan**. The topic was chosen due to its relevance and complexity. At the same time, the availability of specific EUAA CG on the matter allowed for certain 'benchmarking' towards a common assessment. The matter is also subject to a request for a preliminary ruling pending at the CJEU.¹⁴

Following a preliminary analysis of the submitted documents, an online workshop was organised in August 2023 to further explore the underlying national policies and practice, which had resulted in different outcomes across the participating EU+ countries.

See [Annex 7: Mock case exercise](#).

ANALYSIS OF BACKGROUND INFORMATION AVAILABLE TO THE EUAA

In addition to the information collected specifically for the purposes of this study, the EUAA relied on available information, notably its records from the work on the joint development of common analysis and guidance on the respective countries of origin, as well as query replies

¹⁴ CJEU, Request for a preliminary ruling from the Rechtbank Den Haag, zittingplaats 's-Hertogenbosch (Netherlands) lodged on 25 October 2021 – K, L v Staatssecretaris van Justitie en Veiligheid, [Case C-646/21](#).

within the EUAA Query Platform. Notes from meetings and existing reports were also consulted.

Analysis concerning appeal decisions

The methodology underpinning the analysis of decision-making at the appeal instances mirrored that of the first instance to the extent this was relevant and appropriate.

MEETINGS AND CONSULTATIONS

An initial online thematic meeting of the members of the EUAA Courts and Tribunals Network (CTNet) was organised in March 2023. The meeting allowed for general reflections on convergence as well as a discussion on the approach of the study with regard to courts and tribunals. Participants came from 11 different countries and IARMJ.

Following the meeting, a consultation exercise was launched as to the approach the survey envisaged for the members of courts and tribunals would take.

The topic of convergence along with the findings of the survey were discussed during the annual meeting of the CTNet in June 2023.

SURVEY TO MEMBERS OF COURTS AND TRIBUNALS

In April 2023, the EUAA launched a dedicated survey addressed to the national contact points of the CTNet as well as to the members of the EUAA Judicial Experts' Pool (JEP). The survey collected input from 20 network contact points and judicial experts, coming from 11 countries. The input was compiled in a report, which helped frame the next steps of the project.

See [Annex 8: Convergence survey – appeal instances](#).

ADVISORY GROUP

To ensure full respect of judicial independence and consultation with members of courts and tribunals in finetuning the elements of the analysis pertaining to the appeal instances, an advisory group was formed.

The Advisory Group consists of six judges (and an equal number of alternates), nominated and selected on the basis of their experience and knowledge in international protection within their respective national contexts.

A meeting of the Advisory Group took place in July 2023, further shaping the methodology to be followed and the tools to be implemented.

ANALYSIS OF CASE SAMPLES

The analysis of case samples was identified as a valuable tool in gaining an improved understanding of the approach taken at the national level with regard to specific profiles of



applicants. It was also widely supported by the respondents to the survey addressed to members of courts and tribunals.

The analysis focused on the same key profiles as for the first instance, so as to be in a position to mirror the findings with regard to both instances. Thus, the network contact points were invited to share anonymised appeal decisions, which have been issued from 2022 onwards, representing the main trend(s) within their respective national context for **Afghan** Hazaras and **Syrian** draft evaders.

See [Annex 9: Appeals case samples](#)



1. Convergence at the first instance

1.1. Data analysis

1.1.1. Recognition rates at first instance in the EU+ in 2022

(a) Overall trend

In 2022, the EU+ recognition rate for EU-regulated types of protection at first instance increased by five percentage points and reached 40 %. The rise was mainly due to more positive decisions being issued to **Syrians**.

Most positive decisions at first instance granted refugee status (147 000 or 58 % of all positive decisions) and subsidiary protection was granted in the remaining 106 000 cases (42 %). As a result, the share of positive decisions granting refugee status declined for the second consecutive year.

Overall, the highest EU+ recognition rates¹⁵ were for **Syrians** (94 %, the most since 2016) and nationals from countries near the Union's eastern border: Belarusians (89 %) and Ukrainians (86 %), both with record high rates in 2022 (since at least 2014). In addition, several other citizenships had recognition rates at levels unseen for at least several years, including Eritreans (84 %, the most since 2017), Yemenis (84 %, since 2018) as well as Malians (70 %), Chinese (61 %) and Burkinabes (56 %), each with the highest rate on record. More than half of all issued decisions granted EU-regulated types of protection also for Palestinians (65 %), **Somalis** (59 %) and **Afghans** (54 %).

In contrast, recognition rates remained below 10 % for almost two fifths of the citizenships with most decisions in 2022.¹⁶ As previously, this group included applicants from visa-exempt countries in Latin America (Venezuela, Peru, Colombia and Brazil), the Western Balkans (North Macedonia, Bosnia and Herzegovina, Serbia, Albania and Kosovo),¹⁷ some countries in the Eastern Partnership (Moldova, Georgia and Armenia) and North Africa (Tunisia, Morocco, Egypt, Algeria) but also Indians, Vietnamese, Nepalese and Bangladeshis, among others.¹⁸ After a slight increase in 2021, recognition rates for Venezuelans (3 %) and Colombians (6 %) decreased in 2022, but they often received national form of protection for humanitarian reasons. Such national humanitarian protection statuses are not covered by EU-regulated types of protection and therefore, they are considered as negative decisions for the calculation of recognition rates.

¹⁵ On y c t zensh ps w th more than 1 000 dec s ons ssued n 2022 were cons dered.

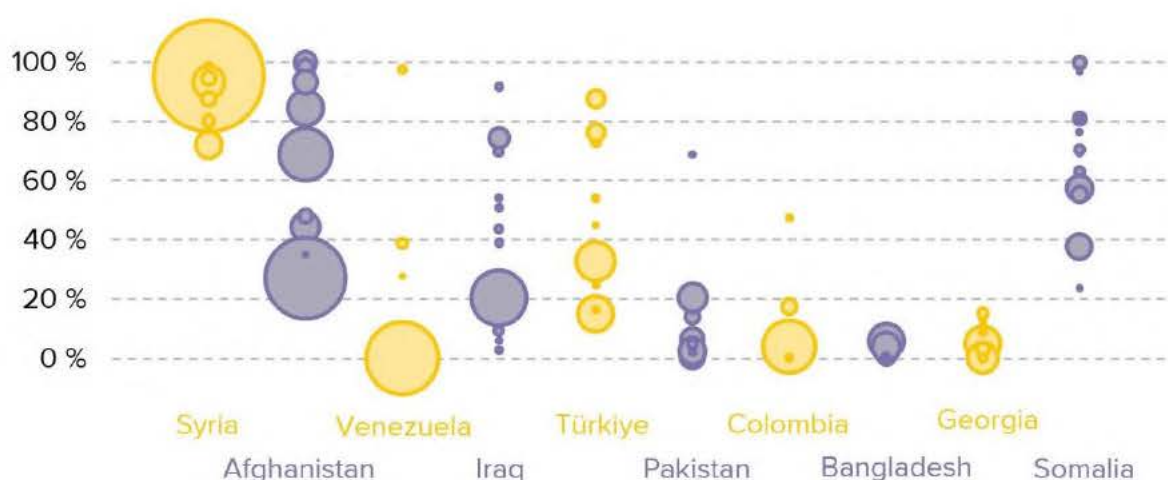
¹⁶ n 2022, over 1 000 dec s ons at frst nstance were ssued to 63 nat ona tes (represent ng 97 % of a dec s ons ssued n EU+ countr es), wh e at east one dec s on was ssued to 175 nat ona tes. f a frst- nstance dec s ons are cons dered (633 000 n 2022), then 205 000 (or one th rd) of them were ssued to c t zensh ps w th the EU+ recogn t on rates be ow 10 %.

¹⁷ The des gnat on "Kosovo" s w thout prejud ce to pos t ons on status and s n ne w th UNSCR 1244/1999 and the CJ Op n on the Kosovo dec arat on of ndependence.

¹⁸ C t zensh ps are sted depend ng on the r recogn t on rate – from the owest to the h ghest.

For some citizenships, the likelihood of obtaining protection continued to partially depend on where the application was examined. This was the case for nearly all top 10 citizenships with most decisions issued at first instance in 2022 (Figure 6). For instance, for **Afghans** the recognition rates varied from 27 % in **DE** to 100 % in **IT**, **PT** and **IE**; for Venezuelans from 8 % in **DE** to 98 % in **IT**; for Iraqis from 3 % in **PL** to 92 % in **IT**; and for Turks from 15 % in **FR** to 88 % in **CH**.¹⁹ While differences in the caseload composition across EU+ countries may explain some disparities, the extent of the variations reflects a lack of convergence.

Figure 6. Recognition rates for top citizenships (in terms of issued decisions at first instance) by EU+ countries, 2022



Source: EUAA EPS, [Annual Trend Analysis Report - 2022](#) [LIMITED]

Note: Each bubble represents a different EU+ country (that issued at least 200 decisions in 2022). The bubble size indicates the number of first instance decisions issued, while the placement on the vertical axis denotes the recognition rate.

(a) Recognition rates at first instance across adult females and males²⁰

In 2022, three fifths (61 %) of all first instance decisions issued to female applicants pertained to adult women (some 130 000). The EU+ recognition rate for adult female applicants was 37 % in 2022. More than half of all positive decisions granted refugee status (57 %). The recognition rate for adult female applicants across EU+ countries varied between 8 % (**CY**) and 96 % (**EE**).²¹

In 2022, more than three quarters (77 %) of all first instance decisions issued to male applicants pertained to adult males (some 332 000). The EU+ recognition rate for adult male applicants was 30 % in 2022. Slightly more than half of all positive decisions granted refugee

¹⁹ Only EU+ countries with at least 200 decisions issued at first instance on the given citizenship were considered.

²⁰ Eurostat data [migrasydcfst] as of 13 Apr 2023.

²¹ Only EU+ countries that issued at least 50 first instance decisions on adult female applicants in 2022 were considered.

status (52 %). The recognition rate for adult male applicants across EU+ countries varied between 0 % (HR) and 96 % (EE).²²

(b) Recognition rates at first instance across minors: accompanied and unaccompanied²³

Accompanied minors are asylum seekers younger than 18 years of age who are accompanied by an adult. The analysis on this group of asylum seekers draws on a combination of Eurostat data for all minors and unaccompanied minors.

Around 170 000 of all first instance decisions in the EU+ were issued to accompanied minors²⁴. The recognition rate for them was 56 %. The recognition rate for accompanied minors varied across EU+ countries between 9 % (MT) and 98 % (BG).²⁵ Almost 7 in 10 accompanied minors receiving protection were granted refugee status (69 %).

Around 13 000 of all first instance decisions in the EU+ were issued to unaccompanied minors. The EU+ recognition rate for unaccompanied minors was 53 %. In eight EU+ countries there were no first instance decisions issued to unaccompanied minors.²⁶ In the remaining EU+ countries, the recognition rate for unaccompanied children varied between 7 % (RO and CH) and 100 % (IE).²⁷ Slightly more than half of all unaccompanied minors receiving protection were granted refugee status (52 %).

1.1.2. Afghan applicants: recognition rates in 2022

(a) Overall trend

The recognition rate for **Afghans** was 54 % in 2022, down by 12 percentage points from the previous year when it peaked at 66 %. The high recognition rate for **Afghans** in 2021 (second only to that in 2015 when it climbed to 67 %) was particularly driven by the last quarter of the year, when – following the Taliban takeover of **Afghanistan** – the share of positive decisions issued to **Afghans** rose considerably (to 84 %). Then, in the first quarter of 2022, it dropped significantly (to 66 %) and went further down in the next two quarters, resulting in an annual recognition rate of 54 %.

DE issued 45 % of all decisions in the EU+ on **Afghan** applications in 2022 (over 38 000, more than five times the number it issued in 2021) and FR issued 20 % of all decisions (almost

²² Only EU+ countries that issued at least 50 first instance decisions on adult male applicants in 2022 were considered.

²³ Eurostat data [[m_gr_asydcfst](#); [m_gr_asyunaa](#)] as of 13 Apr 2023.

²⁴ Accompanied minors are not defined as a separate demographics group within Eurostat statistics. This information is based on a combination of data on decisions issued to accompanied minors and decisions issued to unaccompanied minors.

²⁵ Only EU+ countries that issued at least 50 first instance decisions on accompanied minors in 2022 were considered.

²⁶ These countries were: Croatia, Cyprus, Czechia, Estonia, Hungary, Lithuania, Malta and Poland.

²⁷ Only EU+ countries that issued at least 50 first instance decisions on unaccompanied minors in 2022 were considered.

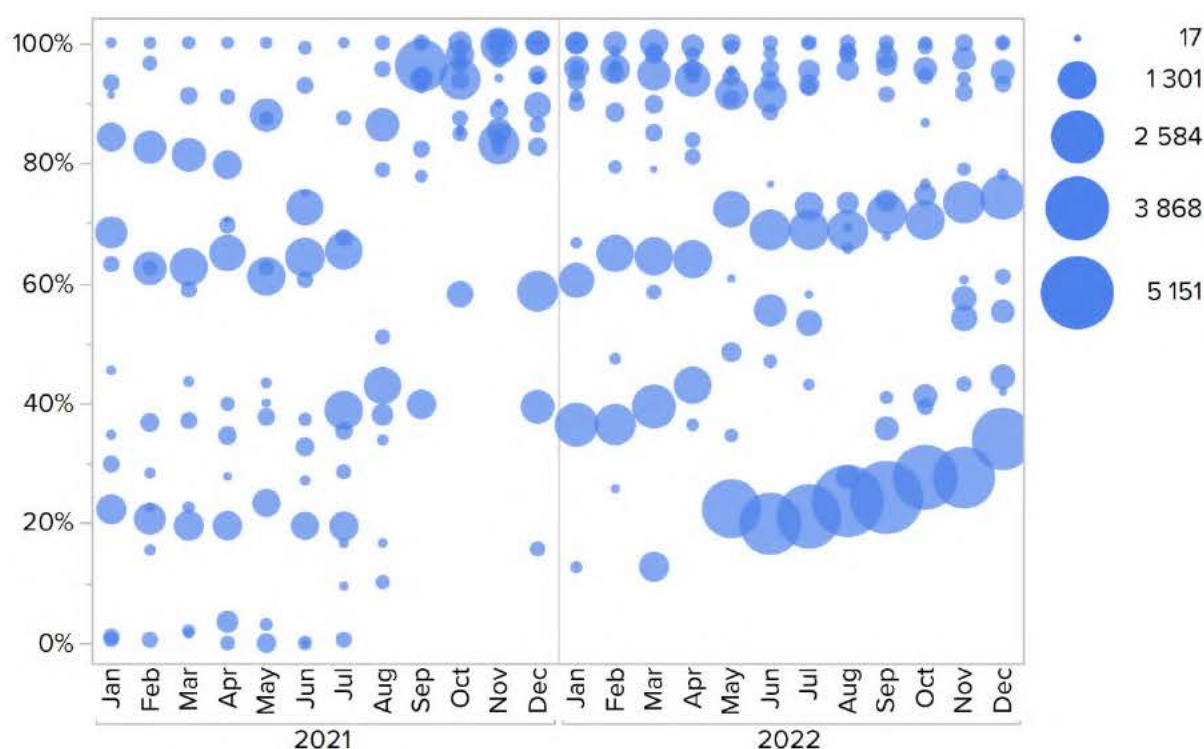
17 000). Overall, half of the EU+ countries (14) issued at least 200 decisions on **Afghan** applications in 2022.²⁸

(b) Patterns and trends across EU+ countries

For many years, **Afghan** applicants have been a typical example of variation in recognition rates across EU+ countries. Since 2015, the annual difference between the EU+ countries with the lowest and the highest recognition rates for **Afghan** applicants has not been smaller than 73 percentage points (in 2022) and has often been above 90 percentage points.

An exception to this high level of variation was, however, observed in the period following the Taliban takeover of **Afghanistan** (in August 2021), when – for approximately three months from September to November 2021 – recognition rates on **Afghan** applications aligned significantly (and at very high levels) across the EU+, before gradually diverging again (Figure 7). In fact, the recognition rates for **Afghan** applicants in October and November 2021 were the highest on record (91 %), with at least eight in 10 positive decisions granting refugee status and the remainder granting subsidiary protection. This was at least partially triggered by the fact that some EU+ countries temporarily suspended the issuing of negative decisions, thereby resulting in more convergence across EU+ countries towards the end of the year.

Figure 7. Recognition rates at first instance in selected EU+ countries with most decisions on Afghan applications, Jan. 2021 – Dec. 2022



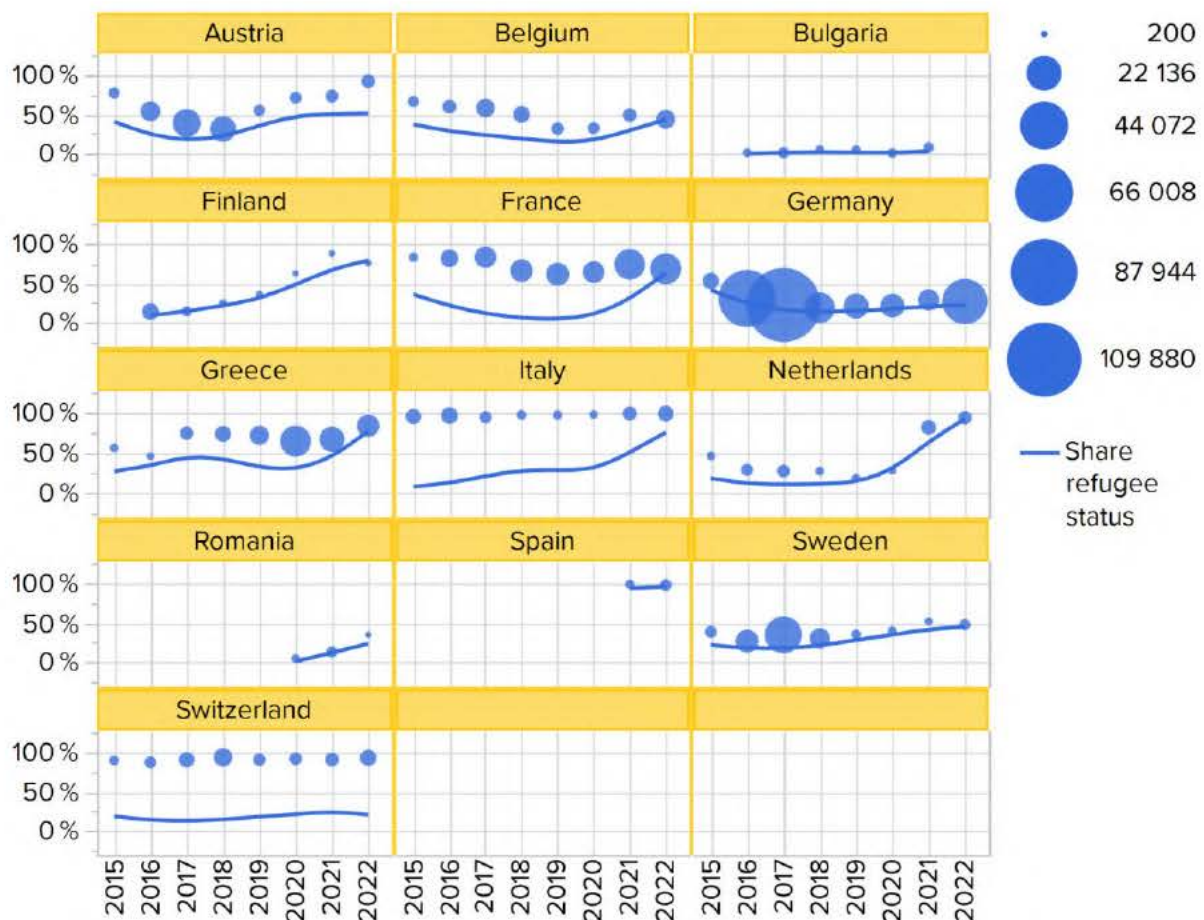
Source: EUAA EPS

²⁸ Those were (in order of the number of decisions issued): DE, FR, EL, BE, CH, IT, AT, NL, ES, SE, PT, FI, IE, RO.

Note: Each bubble represents a different EU+ country (that either issued at least 200 decisions in both 2021 and 2022 or issued at least 200 decisions on **Afghan** applications in either of these years and several previous years). Bubble size indicates the number of first instance decisions issued (according to the legend) and placement on the vertical axis denotes the recognition rate.

The period of this alignment notwithstanding, it is possible to identify several clusters of countries within which recognition rates on **Afghan** applications fluctuated mildly over the years. One cluster contains countries with constantly high recognition rates (between 85 % and 100 %), such as **IT** and **CH** (Figure 8) as well as **ES** (in 2021-2022 when it issued over 200 decisions on **Afghan** applications). Another cluster incorporates countries with moderately high recognition rates (between 60 % and 85 %), such as **FR** and, in the last six years, also **EL**. Other countries, in contrast, tended to grant protection for less than half of **Afghan** asylum seekers. In some of them, such as **SE** and **BE** (in the last five years), recognition rates fluctuated between around 30 % and 50 %. In others, the range was at a lower scale, between 20 % and 30 %. This final cluster included **DE** and **NL** since 2016 but in the last two years (2021 and 2022) **NL** dropped out and moved towards the high recognition rates cluster as will be explained below.

Figure 8. Recognition rates (bubbles) and share of refugee status out of all decisions (line) at first instance in EU+ countries with most decisions on Afghan applications, 2015-2022



Source: EUAA EPS



Note: The figure presents EU+ countries that issued at least 200 decisions in both 2021 and 2022 or issued at least 200 decisions on **Afghan** applications in either of these years and several previous years. Bubble size indicates the number of first instance decisions issued (according to the legend) and placement on the vertical axis denotes the recognition rate and the share of refugee status out of the total.

Furthermore, there are some countries with no explicit pattern in their recognition rates on **Afghan** applications or with a pattern which has visibly changed since or after 2021. This applies to **NL** where the recognition rate increased significantly to 83 % in 2021 and 95 % in 2022, even though it had never been above 30 % in the preceding five years before 2021 (Figure 8). In **AT**, the recognition rate rose to 93 % in 2022, whereas in the previous years it had fluctuated between 32 % and 78 %. In both **AT** and **NL**, the increases started after the Taliban takeover of **Afghanistan** and recognition rates have since remained at very high levels (except for a slight decrease in **NL** in the last quarter of 2022). In **RO**, which issued over 200 decisions on **Afghans** in the last three years, the recognition rate has increased from 5 % in 2020 to 35 % in 2022. Romania granted protection to almost all applicants in October 2021, but this did not turn into a consistent pattern after that (like it did in **AT** and **NL**). Another country with much fluctuation in recognition rates on **Afghan** applications over the years was **EL** (Figure 8). In 2022, **EL** granted some type of protection on 85 % of **Afghan** applications, which was one of the highest recognition rates among EU+ countries and the most on record for **Afghan** applications in **EL**. In previous years, the recognition rates there varied between 47 % (in 2016) and 75 % (in 2017).

In 2022, the recognition rate was at least 44 % in most EU+ countries that had issued over 200 decisions on **Afghan** applications. Still, there was a sizeable variation among them. In half of the 14 EU+ countries with more than 200 decisions on **Afghan** applications, the recognition rates were above 90 % (**CH**, **IT**, **AT**, **NL**, **ES**, **PT**, **IE**). At some distance followed **EL** (85 %) and **FI** (76 %). The lowest recognition rates among the 14 EU+ countries with most decisions on **Afghans** were in **DE** (27 %) and **RO** (35 %). However, **DE**, which accounted for 45 % of all decisions on **Afghan** applicants in 2022, had somewhat higher recognition rate than a couple of years ago (Figure 8), but it was still considerably below the rate at which **DE** granted protection in 2014-2015.

(c) Type of EU-regulated protection

An overwhelming majority of **Afghans** receiving positive decisions were granted refugee status (85 %). In fact, in 2022, an all-time high²⁹ number of **Afghan** asylum seekers were granted refugee status in the EU+ (over 39 000). Subsidiary protection was granted in the remaining 6 900 cases (15 % of all positive decisions).

There has been some variation across EU+ countries also in terms of the type of protection granted among the countries with at least 200 decisions issued in 2022 (Figure 8). In most countries, (almost) all positive decisions issued in 2022 granted refugee status (see the lines in Figure 8). In particular, this was the case in **BE**, **FI**, **FR**, **EL**, **IE**, **NL**, **PT** and **ES**, where between 95 % and 100 % of the positive decisions comprised refugee status. The proportion was slightly lower in **SE** (91 %), **DE** (82 %) and **IT** (78 %), and even lower in **RO** (68 %) and **AT**

²⁹ Since at least 2014.



(55 %). Only in **CH**, most positive decisions granted subsidiary protection and just 19 % refugee status.

Compared to the previous several years, in 2022 there was an increase in the share of refugee status (versus subsidiary protection) in **BE, FR, EL, IT** and, to a lesser extent, **FI, DE** and **SE**. In contrast, the rate of issuing subsidiary protection rose in **AT**, for example.

Furthermore, in 2022, nearly 30 000 **Afghan** asylum applicants were granted humanitarian status, which permits them to remain in the receiving country but is not counted towards positive decisions in the recognition rate. This was seven times the number of such cases in the previous year and the most since 2017.³⁰ **DE** mainly drove this increase as it granted the most humanitarian statuses to **Afghan** applicants on record,³¹ accounting for nine in 10 cases where such status was granted in the EU+ in 2022.³²

(d) Impact of admissibility procedures

Some aspects may 'distort' the estimation of the recognition rate at the level of individual EU+ countries. One of them is the consideration that not all negative decisions are equal in their nature. While protection rate is traditionally calculated using the total number of negative decisions, it must be noted that a rejection may have various grounds. Sometimes, protection is denied because of the claim's inadmissibility (for instance, in situations where an asylum seeker is already a beneficiary of international protection in another EU+ country). In other words, such negative decisions do not necessarily mean that the person applying for asylum does not have protection needs. In 2022, **EL, BE**, at a lower level, **AT** reported the most negative decisions issued in admissibility procedures.³³ If excluding such decisions, recognition rates in these countries would increase significantly). In particular, they would rise from 85 % to 98 % in **EL** and from 44 % to 52 % in **BE** (Figure 9).

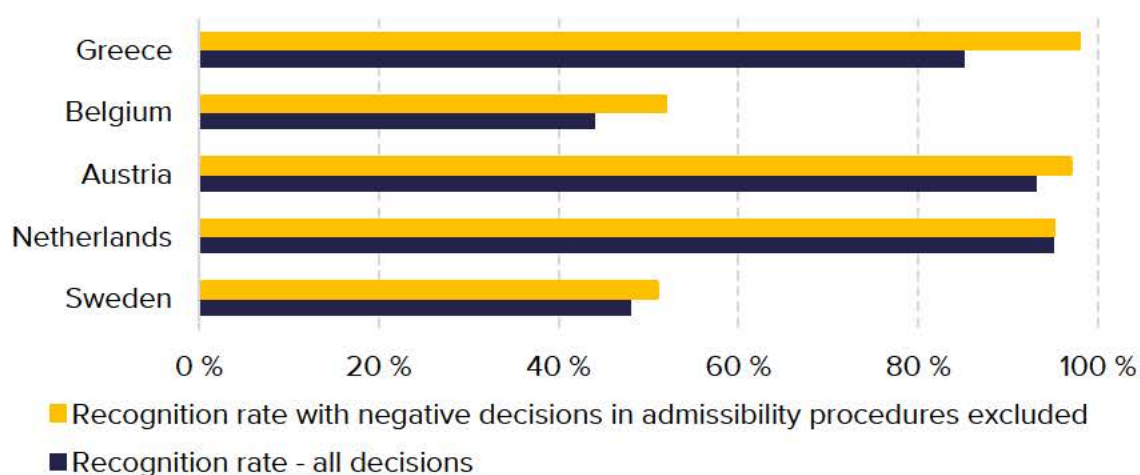
³⁰ Eurostat data: [migrasydcfst](#) as of 17 March 2023.

³¹ Since at least 2008.

³² Calculating the inclusive protection rates for Afghans taking into account national forms of protection leads to overall rates of 71 % in 2021 and 86 % in 2022. The variation between the inclusive protection rates among EU+ countries was slightly lower both in 2021 (standard deviation 29 pp vs 31 pp for the recognition rate based on EU-regulated forms of protection) and 2022 (standard deviation 22 pp vs 25 pp). The difference between inclusive and exclusive rates was especially significant for some countries, such as **DE** (32 pp in 2021 and 69 pp in 2022), **FI** (18 pp in 2022) and **SE** (10 pp in 2022).

³³ It should be taken into account that the type of procedure under which a first instance decision has been issued is not consistently reported by EU+ countries.

Figure 9. Recognition rates at first instance in EU+ countries with most Afghan applications rejected in admissibility procedures, 2022

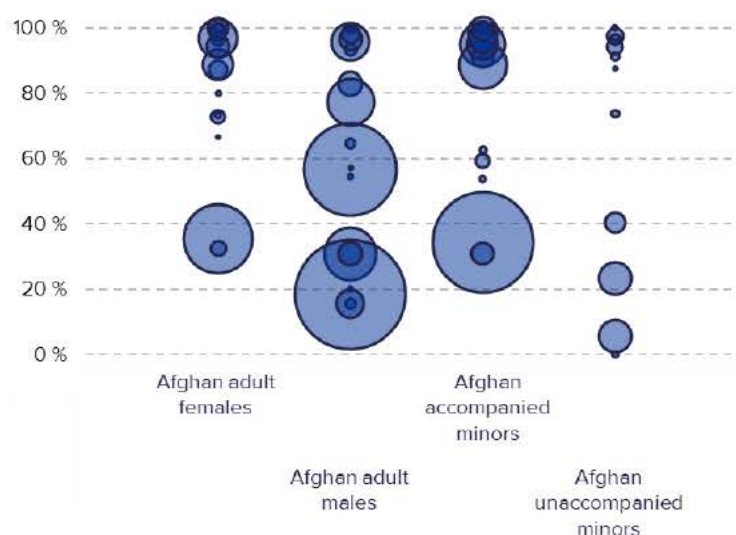


Source: EUAA EPS

(e) Recognition rates across age and sex groups

The data analysis concerning 2022 further desegregated decisions based on age and sex, based on available Eurostat data. The cut-offs introduced for these groups were 30 decisions per EU+ country.

Figure 10. Variation in recognition rates at first instance across EU+ countries for Afghan applicants: adult females, adult males, accompanied minors and unaccompanied minors, 2022



Source: Eurostat

Note: Each bubble represents a different EU+ country (that issued at least 30 first instance decisions on the respective group in 2022). Bubble size indicates the number of first instance decisions issued and placement on the vertical axis denotes the recognition rate.

Afghan adult male applicants

In 2022, 7 in 10 first instance decisions on Afghan male applicants were for adults (42 000) – i.e. those of 18 years of age or older. The recognition rate of such applicants was 43 %, just slightly lower than that of all Afghan male applicants. In 2022, there were 18 EU+ countries which issued at least 30 first instance decisions on adult Afghan male applicants. In these 18 EU+ countries, the recognition rate for adult male Afghans varied between 16 % (**RO** and **CH**) and 100 % (**LV** and **PT**). Almost nine in ten positive decisions issued to Afghan men granted refugee status (88 %).

Afghan adult female applicants

In 2022, slightly more than half of all Afghan female applicants were adults (13 000) – i.e. 18 years of age or older. The recognition rate of such applicants was 64 %. In 2022, there were 14 EU+ countries which issued at least 30 first instance decisions on adult Afghan female applicants. In these 14 EU+ countries, the recognition rate for adult female Afghans varied between 32 % (**CH**) and 100 % (**NL** and **PT**). Hence, the range of variation in recognition rates across EU+ countries was smaller for Afghan women compared to Afghan men. Close to all positive decisions issued to Afghan women granted refugee status (93 %).

Afghan accompanied minor applicants

In 2022, EU+ countries issued around 26 000 first instance decisions on Afghan accompanied minor applicants. This was, in fact, more decisions than issued on Afghan adult female applicants. The only EU+ countries with no decisions issued on Afghan accompanied minors were **MT**, **NO** and **SI**. The EU+ recognition rate for accompanied Afghan applicants younger than 18 years of age was 60 %. Among the EU+ countries that issued at least 30 decisions to Afghan unaccompanied minors, the recognition rate for accompanied Afghan minors varied between 31 % (**CH**) and 100 % (**LV**, **PL** and **PT**). Nine in 10 positive decisions issued to Afghan accompanied minors granted refugee status (91 %).

Afghan unaccompanied minor applicants

In 2022, EU+ countries issued some 4 900 first instance decisions to unaccompanied Afghan minors. The EU+ recognition rate for unaccompanied Afghan applicants younger than 18 years of age was 38 %, which was much lower than the recognition rate for Afghan accompanied minors. In nine EU+ countries there were no first instance decisions issued to unaccompanied Afghan minors.³⁴ From the remaining 20 EU+ countries, 12 issued at least 30 decisions to Afghan unaccompanied minors. Among them, the recognition rate varied between 0 % (**RO**) and 100 % (**AT** and **NL**). Of those unaccompanied Afghan minors who received EU-regulated forms of protection, almost 9 in 10 were granted refugee status (86 %).

³⁴ These countries were: Croatia, Cyprus, Czechia, Estonia, Hungary, Lithuania, Malta, Poland and Spain.



1.1.3. Syrian applicants: recognition rates in 2022

(a) Overall trend

The recognition rate for **Syrians** was 94 % in 2022, up by 22 percentage points from the previous year and the most since 2016. This was also the highest recognition rate among all countries of origin in the EU+ in 2022. In fact, the increase in the overall EU+ recognition rate (up by five percentage points from 2022) was primarily due to more positive decisions being issued to **Syrians**.

Syrians had a relatively high recognition rate for several years until in 2021 it dropped considerably due to negative decisions issued on a high number of subsequent applications in **DE**, which were submitted after a CJEU ruling on refusing to perform military service in the **Syrian** army as grounds for a well-founded fear of persecution.³⁵ In 2022, however, the recognition rate for **Syrians** bounced to high levels again, which can partially be related to the disappearance of this phenomenon in **DE**. In addition, the Commissioner General for Refugees and Stateless Persons (CGRS) in **BE** – another EU+ country where recognition rates for **Syrians** increased significantly compared to 2021 – prioritised certain files which had a likely positive outcome, and many of which belonged to **Syrian** applicants.

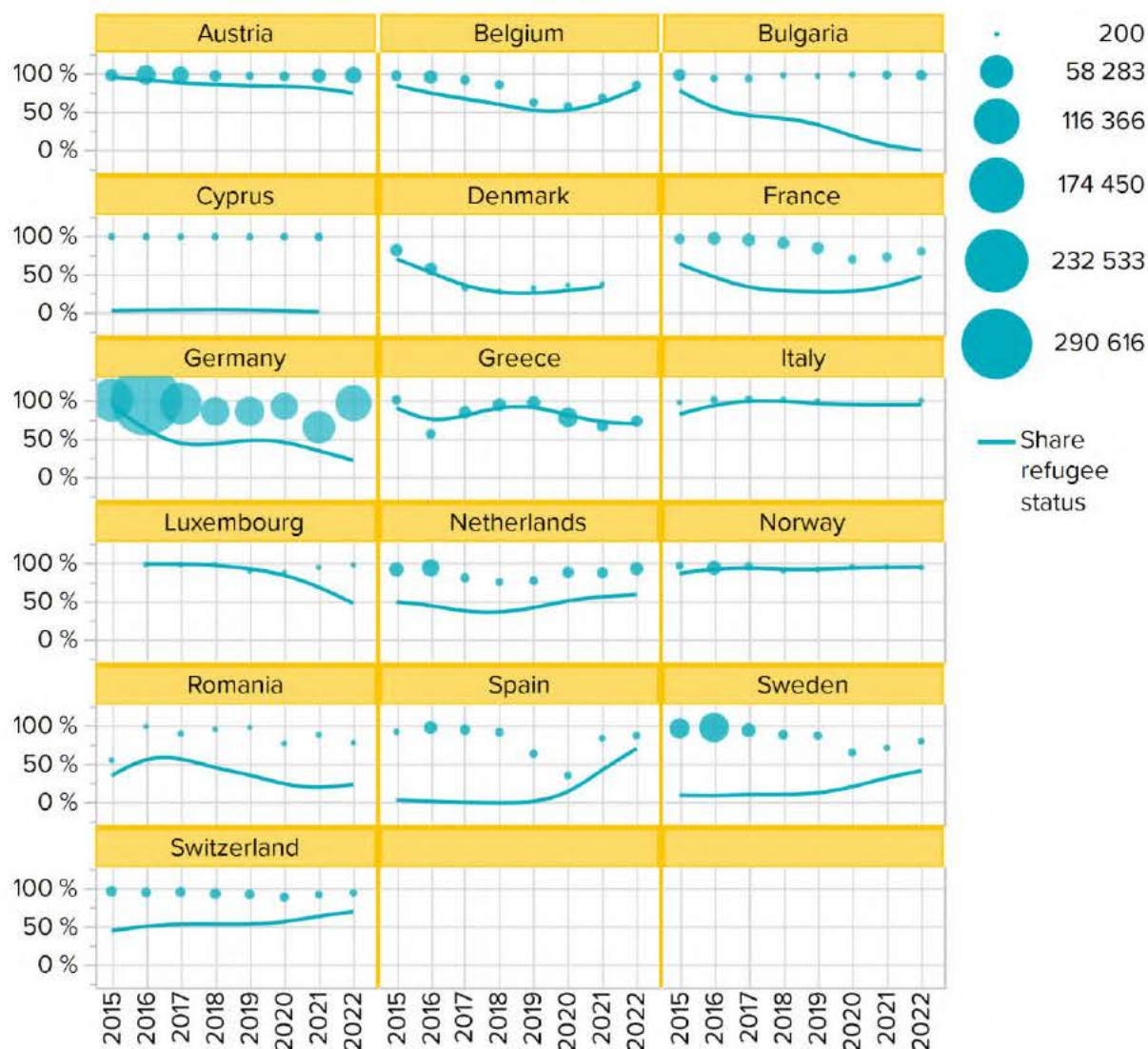
DE issued almost two thirds of all decisions in the EU+ on **Syrian** applications in 2022 (around 71 000, up by a quarter from 2021), in line with its share in the previous year. Other EU+ countries which issued many first instance decisions on **Syrian** applications were **AT** (11 000), **NL** (6 500), **EL** (4 700) and **BG** (3 800). In all of them – except for **EL** – decision-making increased significantly compared to 2021. Overall, half of the EU+ countries (14) issued at least 200 decisions on **Syrian** applications in 2022.³⁶

³⁵ CJEU, [Press Release No 142/20](#), 19 November 2020.

³⁶ Those were (in order of the number of decisions issued): **DE**, **Austria**, the Netherlands, **EL**, **Bulgaria**, **BE**, **FR**, **Spain**, **Switzerland**, **Sweden**, **Norway**, **Romania**, **Luxembourg** and **Italy**.



(b) Patterns and trends across EU+ countries

Figure 11. EU+ recognition rates (bubbles) and share of refugee status out of all decisions (line) at first instance in EU+ countries with most decisions on Syrian applications, 2015-2022

Source: EUAA EPS

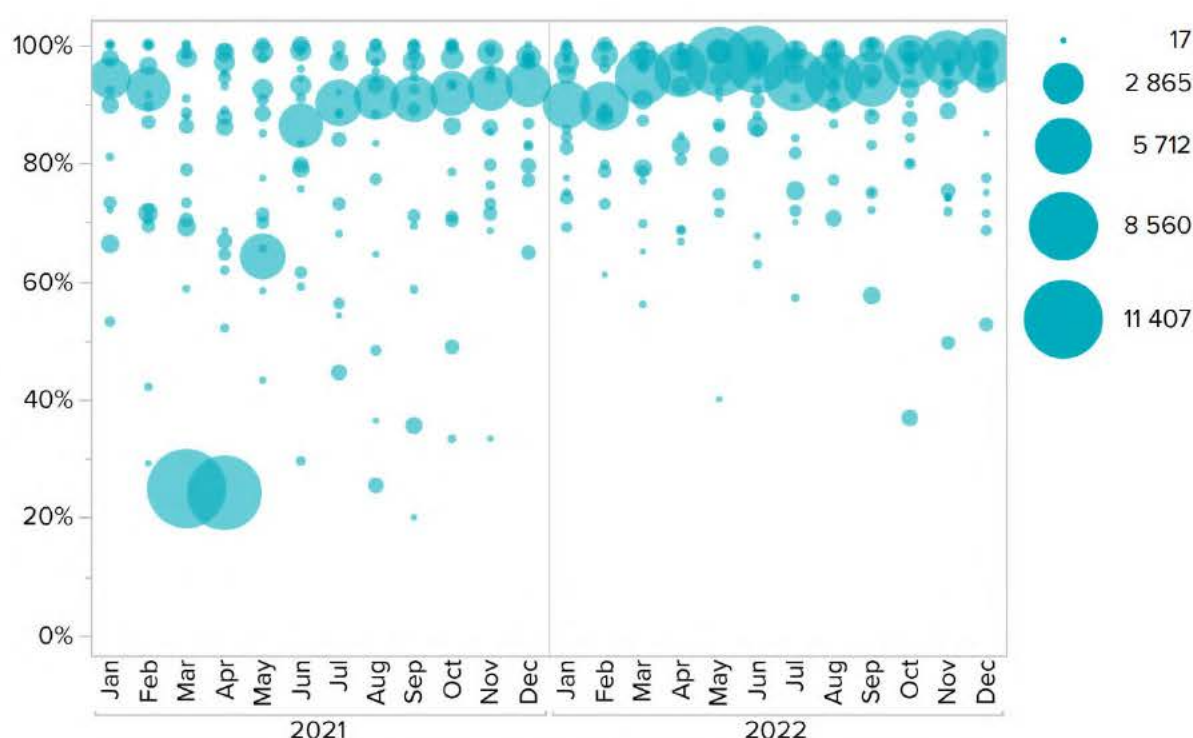
Note: The figure presents EU+ countries that issued at least 200 decisions in both 2021 and 2022 or issued at least 200 decisions on **Syrian** applications in either of these years and several previous years. Bubble size indicates the number of first instance decisions on **Syrians** issued and placement on the vertical axis denotes the recognition rate and the share of refugee status out of the total.

The recognition rates of **Syrian** applicants have also been subject of variation across EU+ countries, albeit at a somewhat smaller extent than **Afghan** applicants. The difference between the EU+ countries with the highest and lowest recognition rates for **Syrian** applicants was 27 percentage points in 2022 but varied from 62 to 73 percentage points between 2018 and 2021. However, the latter was the result of one or two outliers with especially low

recognition rates (mostly **DK** but also **ES** in 2020). When excluding these outliers, the differences between the highest and lowest recognition rates varied between 34 and 42 percentage points in the preceding four years before 2022.

Throughout 2022, many EU+ countries³⁷ consistently granted protection to at least nine of 10 **Syrian** applications that were issued a decision (Figure 12). The main exceptions were **EL**, **BE**, **FR**, **ES**, **SE** and **RO**, where recognition rates varied between around 70 % and 90 % and even reached lower values in **EL**. In fact, in **EL**, the trend went downwards in the last four months of the year.

Figure 12. Recognition rates at first instance in selected EU+ countries with most decisions on Syrian applications, Jan. 2021 – Dec. 2022



Source: EUAA EPS

Note: Each bubble represents a different EU+ country (that either issued at least 200 decisions in both 2021 and 2022 or issued at least 200 decisions on **Syrian** applications in either of these years and several previous years). Bubble size indicates the number of first instance decisions issued (according to the legend) and placement on the vertical axis denotes the recognition rate.

(c) Type of EU-regulated protection

Over a third of **Syrians** receiving positive decisions were granted refugee status (37 %), which was the smallest proportion on record,³⁸ even though the number of **Syrians** receiving refugee status (38 000) was higher than in 2021. Subsidiary protection was granted in the

³⁷ Those issuing at least 200 decisions on Syrian applications in 2022.

³⁸ Since at least 2014.

remaining 64 000 cases (63 % of all positive decisions) or the highest number of **Syrians** receiving this type of protection since 2017.

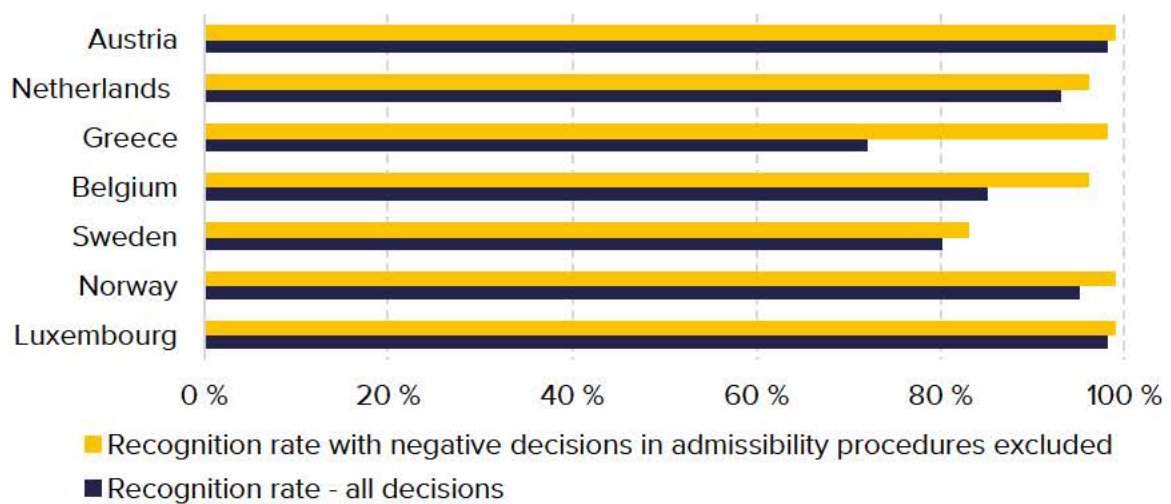
There has been considerable variation across EU+ countries also in terms of the type of protection granted among the countries with at least 200 decisions issued in 2022 (Figure 11). Refugee status accounted for (almost) all positive decisions issued in **BE, EL, NO** and 94 % of those in **IT** (compare the lines with the bubbles in [Figure 11](#)). In contrast, almost all positive decisions to **Syrians** in **BG** granted subsidiary protection and considerable shares of those issued in **DE** (77 %), **RO** (65 %), **LU** (53 %) and **SE** (51 %).

Compared to the past several years, in 2022 refugee status represented a larger proportion in **FR, RO, ES** and, to a lesser extent, **BE**. Conversely, the share of subsidiary protection among positive decisions grew in **AT, DE** and **LU**.

(d) Impact of admissibility procedures

When considering the effect that negative decisions due to inadmissibility may have had on recognition rates for **Syrians** in individual EU+ countries, the most visible impact appears to be for **EL** and **BE** as they rejected the largest number of applications in admissibility procedures in 2022. If such decisions were excluded, the recognition rate would rise from 72 % to 98 % in **EL** and from 85 % to 96 % in **BE** ([Figure 13](#))

Figure 13. Recognition rates at first instance in EU+ countries with most Syrian applications rejected in admissibility procedures, 2022



Source: EUAA EPS

Furthermore, in 2022, 760 **Syrian** asylum applicants were granted humanitarian status, which permits them to remain in the receiving country but is not counted towards positive decisions

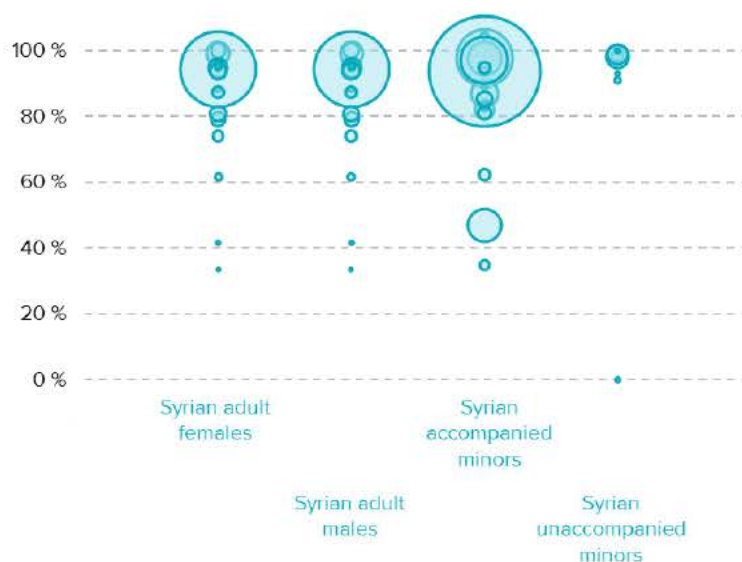


in the recognition rate. This was the least since 2013.³⁹ As in the previous year, **CH** and **DE** issued most of these decisions in 2022.

(e) Recognition rates at first instance across age and sex groups for Syrian applicants

The data analysis concerning 2022 further desegregated decisions based on age and sex, based on available Eurostat data. The cut-offs introduced for these groups were 30 decisions per EU+ country.

Figure 14. Variation in recognition rates at first instance across EU+ countries for Syrian applicants: adult females, adult males, accompanied minors and unaccompanied minors, 2022



Source: Eurostat

Note: Each bubble represents a different EU+ country (that issued at least 30 first instance decisions on the respective group in 2022). Bubble size indicates the number of first instance decisions issued and placement on the vertical axis denotes the recognition rate.

Syrian adult male applicants

In 2022, almost two thirds (64 %) of all first instance decisions on Syrian male applicants were for adults (45 000) – i.e. those of 18 years of age or older. The recognition rate of such applicants was 91 %, just slightly lower than that of all Syrian male applicants. In 2022, there were 18 EU+ countries which issued at least 30 first instance decisions on adult Syrian male applicants. In these 18 EU+ countries, recognition rate for adult male Syrians varied between

³⁹ Eurostat data: [migrasydcfst](#) as of 17 March 2023.



35 % (**CH**) and 100 % (**CY**). Just below a third (31 %) of all positive decisions issued to Syrian men granted refugee status.

Syrian adult female applicants

In 2022, less than half (45 %) of all first instance decisions on Syrian female applicants were issued to adult applicants (17 000) – i.e. those of 18 years of age or older. The recognition rate of such applicants was 93 %, just slightly above the rate for Syrian adult male applicants. In 2022, there were 16 EU+ countries which issued at least 30 first instance decisions on adult Syrian female applicants. In these 16 EU+ countries, the recognition rate for adult female Syrians varied between 33 % (**MT**) and 100 % (**BG**). Just over a fifth (22 %) of all positive decisions issued to Syrian women granted refugee status.

Syrian accompanied minor applicants

In 2022, EU+ countries issued around 44 000 first instance decisions on Syrian accompanied minor applicants. This was, in fact, more decisions than issued on Syrian adult female applicants. However, there were several EU+ countries that issued no decisions on Syrian minors (accompanied or otherwise): **EE, HU, SK** and **SI**. Nearly all accompanied Syrian minors were granted protection (96 %). The recognition rate for accompanied Syrian minors varied in EU+ countries that issued at least 30 decisions to this group between 14 % (**MT**) and 100 % (**AT, BG** and **CY**). Half of all accompanied Syrian minors receiving a positive decision were granted refugee status (51 %).

Syrian unaccompanied minor applicants

In 2022, EU+ countries issued some 3 000 first instance decisions to unaccompanied Syrian minor applicants. Almost all unaccompanied Syrian applicants younger than 18 years of age were granted some type of EU-regulated forms of protection (96 %), which corresponded to the first instance recognition rate of accompanied Syrian minors. However, nearly half of EU+ countries did not issue any first instance decisions to unaccompanied Syrian minors.⁴⁰ Therefore, the recognition rate is, in fact, based on the 16 EU+ countries which issued such decisions, of which nine issued at least 30 decisions. Among them, the recognition rate for unaccompanied Syrian children varies between 0 % (**CH**) and 100 % (**BE, BG** and **NO**). Seven in 10 of Syrian unaccompanied minors receiving EU-regulated forms of protection were granted subsidiary protection (73 %).

1.1.4. Conclusion: variation in recognition rates and convergence

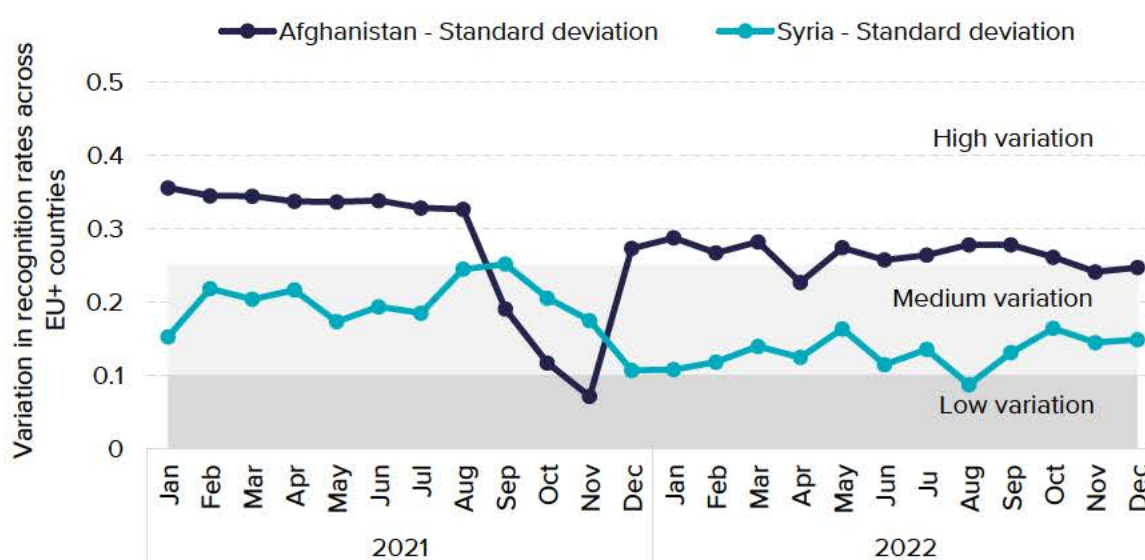
The above-described variation in recognition rates among EU+ countries and over time presents a complex picture. In order to reduce complexity, [Figure 15](#) presents variation scores in terms of standard deviation of first instance recognition rates across EU+ countries for **Afghan** and **Syrian** applicants. Only EU+ countries with most decisions on **Afghan** and **Syrian** applicants are considered. This means that the selected EU+ countries either issued at least 200 decisions in both 2021 and 2022 or they issued at least 200 decisions in any of these

⁴⁰ These countries were: Croatia, Cyprus, Czechia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, Slovenia and Spain.

years and several previous years. On a monthly basis, countries issuing fewer than 17 decisions (200 divided by 12 months) were excluded.

Variation is measured on the scale from 0 to 71 percentage points, whereby a standard deviation of 0 denotes no variation in recognition rates among the countries in the given period and 71 percentage points denotes the maximum extent of variation in recognition rates among the countries. Theoretically, scores up to this maximum are possible, but in practice such a score could only be reached if there would be two countries in the sample – one with a recognition rate of 100 % and the other one with a recognition rate of 0 %. Hence, the actual score could hardly reach a value higher than 60 percentage points. Generally, a standard deviation between 0 and 10 percentage points could be considered 'low', deviation between 10 and 25 'medium', and above 25 percentage points as 'high'.

Figure 15. Variation in the standard deviation of recognition rates at first instance across EU+ countries for Afghan and Syrian applicants, Jan. 2021 – Dec. 2022



Source: EUAA EPS

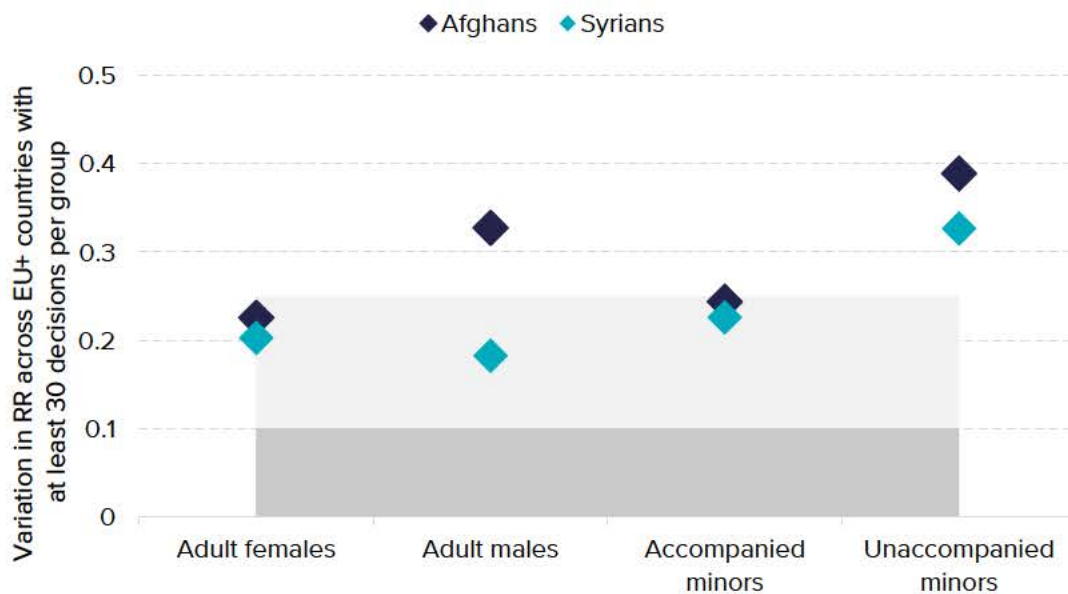
Note: EU+ countries are considered if they issued at least 200 decisions in both 2021 and 2022 or if they issued at least 200 decisions in either of these years and several previous years. On a monthly basis countries issuing fewer than 17 decisions (200 divided by 12 months) are excluded.

In line with the more detailed analysis above, [Figure 15](#) indicates that monthly variation in recognition rates for **Syrians** was at a medium level in 2021 and 2022, reaching slightly lower values within the medium range in 2022 and dropping to a low level in a single month (August 2022). In contrast, variation in recognition rates for **Afghans** was quite high until August 2021. Then, after the Taliban takeover of Afghanistan, it started dropping gradually towards medium and even low level in November 2021, hence showing strong signs of convergence. However, in December 2021 divergence began anew as the standard deviation increased to the high spectrum and largely remained within it during 2022, even though in some months and especially at the end of 2022 there was a medium level of variation.

To estimate the level of variation in first instance recognition rates of **Afghan** and **Syrian** applicants across women, men, accompanied minors and unaccompanied minors, we limited the scope of the analysis to EU+ countries which issued at least 30 first instance decisions on the respective group of interest for each of the two citizenships. The overall degree of variation was estimated based on standard deviation scores. In 2022, variation at first instance (Figure 16) was slightly lower for **Syrian** adult applicants (20 pp for females and 18 pp for males) compared to **Afghan** adult applicants (23 pp for females and 33 pp for males). For females, the extent of variation was very similar for both **Syrians** and **Afghans**, whereas there was a larger difference in variation between **Syrian** male and **Afghan** male applicants.

According to the applied classification, all sub-groups – except for **Afghan** adult males and unaccompanied minors from both **Afghanistan** and **Syria** – would be characterised by medium-level variation in recognition rates across EU+ countries. For **Afghan** males, and unaccompanied minors from both countries, however, variation in recognition rates would be of high level.

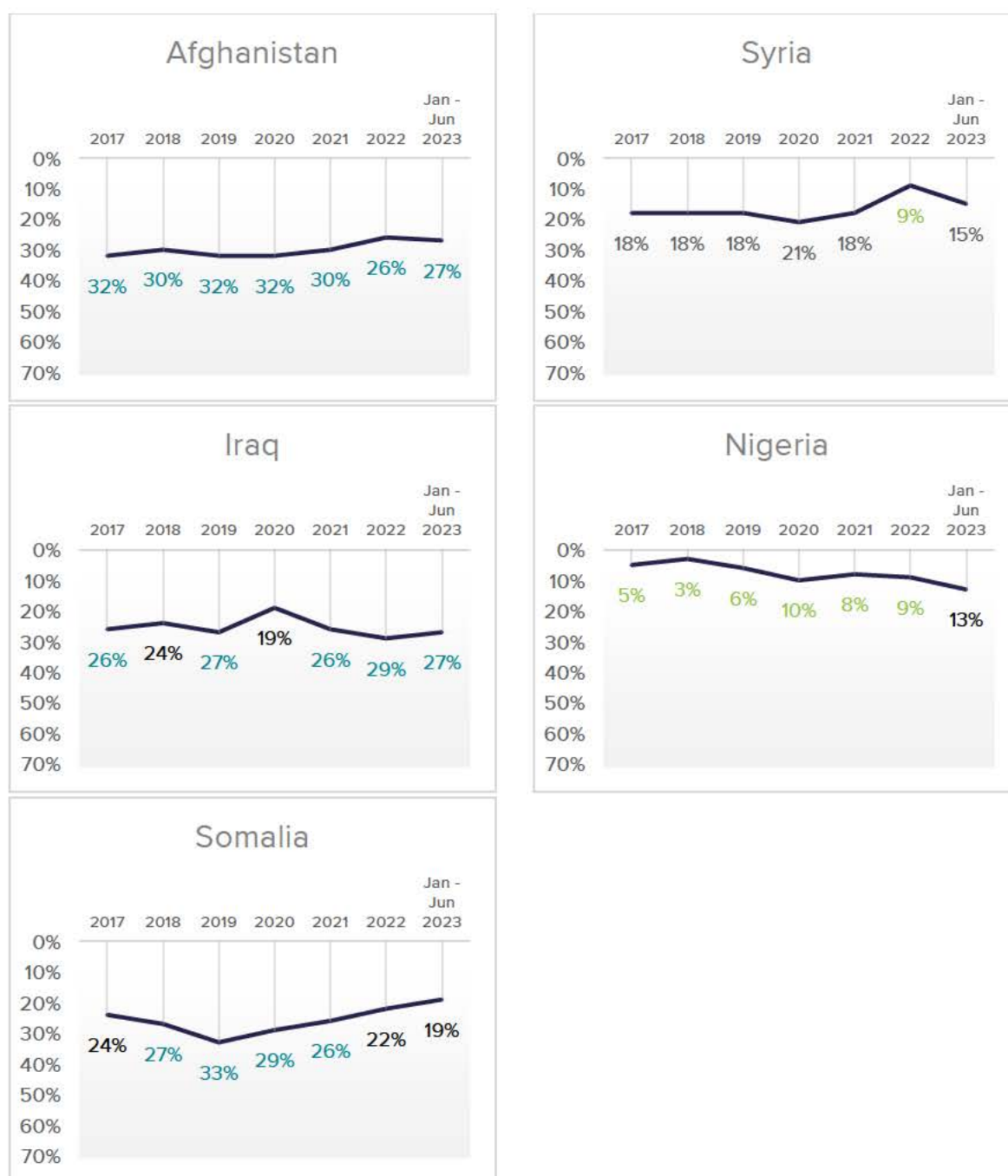
Figure 16. Variation in the standard deviation of recognition rates at first instance across EU+ countries for Afghan and Syrian applicants: adult females, adult males, accompanied minors and unaccompanied minors, 2022



Source: Eurostat

Furthermore, applying the standard deviation measure and the agreed threshold, the EUAA calculated the variation in recognition rates in first instance decisions since 2017 and for all CG countries of origin. The thresholds to include in each of the year's estimations were 200 decisions in the respective year and 100 decisions for the first six months of 2023.

Figure 17. Variation rates 2017 - June 2023 in decisions at first instance, country of origin covered in EUAA country guidance.



Source: Elaboration based on EPS data, January 2017 – June 2023

As seen in [Figure 17](#) above, the annual variation in recognition rates since 2017 remained high for **Afghanistan**. Some evidence of convergence was observed from 2020 to 2021 and especially from 2021 to 2022. For 2021 – 2022, the observed convergence could also be correlated with the takeover of the country by the Taliban and the suspension of the issuance of negative decisions in a number of EU+ countries. The latter coincided with increasing recognition rates overall.

At the other end of the spectrum, **Nigeria** consistently presented low variation in recognition rates at the first instance, with the exception of the first six months of 2023, when the variation could be characterised as medium. This low variation, indicative of high convergence at EU+ level, was correlated with relatively low recognition rates across the main receiving countries.

First-instance decisions on **Iraq** showed notable convergence from 2019 to 2020, coinciding with the first CG document published in June 2019. However, significant divergence was observed from 2020 to 2022 and variation remained high in the first six months of 2023.

In the case of **Somalia**, a convergence trend can be noted since 2019. In 2022 and the first six months of 2023, the variation in recognition rates was medium for the first time since 2017. This coincided with the publication of the first EUAA CG on Somalia in June 2022.

Lastly, looking at the main country of origin over the period from 2017, **Syria**, we can see that variation in recognition rates remained medium, with the exception of 2022, when it was classified as low. A notable convergence trend was observed from 2020 to 2022, coinciding with the publication of the first EUAA CG on Syria in 2020 and its annual updates since. However, the first six months of 2023 indicate a diverging trend.



1.2. Main drivers of variation in recognition rates

1.2.1. Overview

The observed variations in recognition rates are the result of the interplay of multiple complex and interlinked factors.

Some of these factors are inherent to the institution of asylum and the general legal framework. While they can be studied and explained, they do not need to be remedied in order to achieve effective convergence within the CEAS. The different elements pertaining to the national caseload are prime examples of such factors. In conjunction with the obligation to examine applications for international protection individually and objectively, these elements link to expected and justified variations in recognition rates.

Other drivers of variation in recognition rates, on the other hand, reflect differences among national systems and decision-making practices which may not be objectively necessary or even fully consistent with the EU legal framework. The convergence analysis confirms that national policies, guidance and jurisprudence may have a significant impact on recognition rates and that some differences between national approaches remain present in each main step of the decision-making process. Within this second category of factors, further efforts towards common standards, policies and practices can contribute to meaningful and effective convergence, in accordance with the existing legal framework and building on the support provided by the EUAA.

In surveys and discussions with EU+ countries, the specificities of the caseload examined at national level was commonly brought as a major reason for differences in recognition rates. The pilot analysis was designed largely to explore this factor, along with testing the assumption itself. The first was done primarily via dedicated surveys, while the latter was achieved through a number of different methods, including examination of national guidance, case sample analysis, and – most directly – a mock case exercise.

In the section [1.2.2. The role of caseload](#), the study zooms into the elements of the caseload which may be determinative for the outcome of the applications. It focuses on aspects related to the main claims EU+ countries may receive. Furthermore, it looks into the relevance of demographic factors, such as gender, age and family status. The significance of the ethno-religious background of the applicants and their common areas of origin are also touched upon. The analysis then looks into elements of the ‘procedural’ structure of the caseload, and highlights the relevance of subsequent applications, applications from beneficiaries of international protection in other Member States, and on the other hand, from applicants who have arrived in the country following relocation, resettlement or even direct evacuations, as in the case of **Afghanistan**.

Beyond exploring the relevant elements of the caseload, the study is primarily interested in the elements which go beyond the objectively justified and necessary variations in recognition rates and into variation drivers which could be addressed to foster greater convergence.



In [1.2.3. The role of special procedures and approaches](#), the analysis addresses the relevance of prioritisation and suspension of the examination of specific cases for overall recognition rates, inadmissibility decisions and the concepts of safe third country and safe country of origin.

In [1.2.4. The role of national policy and guidance](#), it looks into the differences in national guidance and their key role for introducing and maintaining variations in decision practices and outcomes. The section explores relevant general guidance, as well as country-specific guidance and policy.

The section [1.2.5. The role of jurisprudence](#) highlights the importance of courts and tribunals and the convergence at the appeal instances for ensuring consistent decision practices and outcomes at the first instance.

Finally, the chapter zooms into the topics of Hazara applicants from **Afghanistan**, Westernisation as a claim concerning **Afghanistan**, and draft evaders from **Syria** under [1.2.7. Case studies](#).

1.2.2. The role of caseload

A number of interlinked variables define the national caseload from a particular country of origin, including the age and gender makeup of the applicants, their areas of origin and main claims, etc. Apart from these substantive elements, factors such as the applicants' pathways to arrival in the country and the potential inadmissibility of their applications may also play a role.

While caseload and individual circumstances were often brought up as a main factor for differences in recognition rates, through the analysis it transpired that few countries have a clear and comprehensive overview of their actual caseload.

Information by age group and gender is available, as statistical data are collected via Eurostat. However, other demographic information, such as area of origin, ethnicity, religion, which can be directly related to the international protection claim of the applicant, is often not readily available for analysis. Moreover, the key aspect of the main reasons claimed by the applicants from the respective country remains largely unrecorded.

In the framework of the analysis, the EUAA addressed the topic of national caseload primarily via the initial survey, where Member States were asked *'Have you noticed any specifics of your asylum caseload, in particular from Afghanistan, Iraq, Nigeria, Somalia, and Syria (e.g. place of origin, ethno-religious background, common claims), which in your view impact recognition rates and lead to apparent variations?'* (see [Annex 3: Initial convergence survey](#)) and in dedicated country-specific surveys (see [Annex 4: Caseload surveys](#)).



(a) Identification of the applicant

The identity of the applicant, including the confirmation of their origin from the respective country, is a key element in the structure of the national caseload. However, the actual impact of finding the applicant's claimed country of origin not credible would depend on the data reporting practices of EU+ countries.

If reported correctly, under the respective established country of origin or as 'Unknown', such occurrences will have no impact on the recognition rates for the initially claimed countries of origin and will not distort the relevant data feeding into the analysis of variation in recognition rates and convergence.

A first step in defining the structure of the national caseload would be the actual confirmation of the applicant's nationality and identity.

In this regard, it should be clarified that for the purposes of data collection, applicants who applied as **Afghans** or **Syrians**, for example, but who were later established to not be of those nationalities, should not be reported under the respective countries. Instead, they should be reported under their established nationality, if such is considered substantiated, or as 'Unknown' otherwise. Nevertheless, in exploratory discussions a number of countries noted that this may not be the case in practice, especially where the actual nationality of the applicant had not been proven. Therefore, the relevance of this phenomenon was explored further via the caseload surveys.

From the caseload surveys

Few countries reported that they encountered cases in which the claimed country of origin of the applicant was not confirmed in 2022 overall.

- For **Afghanistan**, only two [BE and NO] out of the 11 responding countries noted they had few such cases.
- For **Iraq**, BE reported that the proportion of such cases was indeed of some relevance (between 4 % and 10 %), while no other EU+ countries identified this phenomenon as relevant to their caseload.
- For **Nigeria**, LU reported that this represented the majority of their cases, while BE also reported few cases.
- For **Somalia**, this represented between 10 % - 25 % of the BE caseload, while few cases were also reported in LU.
- For **Syria**, few cases were encountered in FI, LU, and NO.

It would appear that, at least among the countries which responded to the caseload surveys, the significance of this phenomenon for the recognition rates for **Afghanistan** and **Syria** would be minimal. On the other hand, for some EU+ countries, its impact may be significant when interpreting recognition rates concerning **Nigeria**, **Iraq** and **Somalia**, especially when comparing original applications to the decisions issued at first instance. Looking into **Somalia**, for example, we see that BE was among the main countries issuing decisions in 2022. With a first instance recognition rate of 63 %, it appeared among the countries with relatively lower



recognition rates, where it followed **SE, FR, EL** and **DE**. See [Annex 2: Statistical overviews - Somalia](#).

(b) Claim profile

The main claims EU+ countries examine would objectively determine their recognition rates. However, several challenges remain in the actual impact analysis for this factor.

First, it is important to note that few, if any, national authorities maintain a comprehensive overview of main claims. In this regard, future analyses could greatly benefit from reliable systematised information on the relevance of specific claims, ideally in accordance with the classification of profiles put forward in the respective CG documents following agreement among EU+ countries on the most relevant profiles of applicants for the respective country of origin.

Secondly, over countries of origin and claims, few profiles would merit a conclusion that a certain type of international protection should in general be granted or should in general not be granted. In most cases, a specific claim would have to be seen in conjunction with additional risk-enhancing circumstances, which remain subject to highly individualised assessment. This makes any general analysis juxtaposing the main claims and the recognition rates particularly challenging.

Thirdly and of utmost importance, the assumption that the same claims would be handled in a similar manner and with the same outcomes across EU+ countries was not confirmed by this analysis. On the contrary, the different methods employed in this study evidenced national policies and practices that would lead to different outcomes for largely similar caseloads, further complicating the analysis of the relevance of the applicants' claims to convergence.

In the surveys on national caseload, the EUAA focused on certain profiles which are addressed in the respective CG documents and which would be likely or highly likely to be granted refugee status in accordance with the common analysis and guidance.

The information collected via the surveys is limited to the replying countries and to their estimations. While only indicative, this information does suggest a different prevalence of some important claims across the EU+. This is explored by way of several specific examples concerning **Afghanistan** and **Syria**.

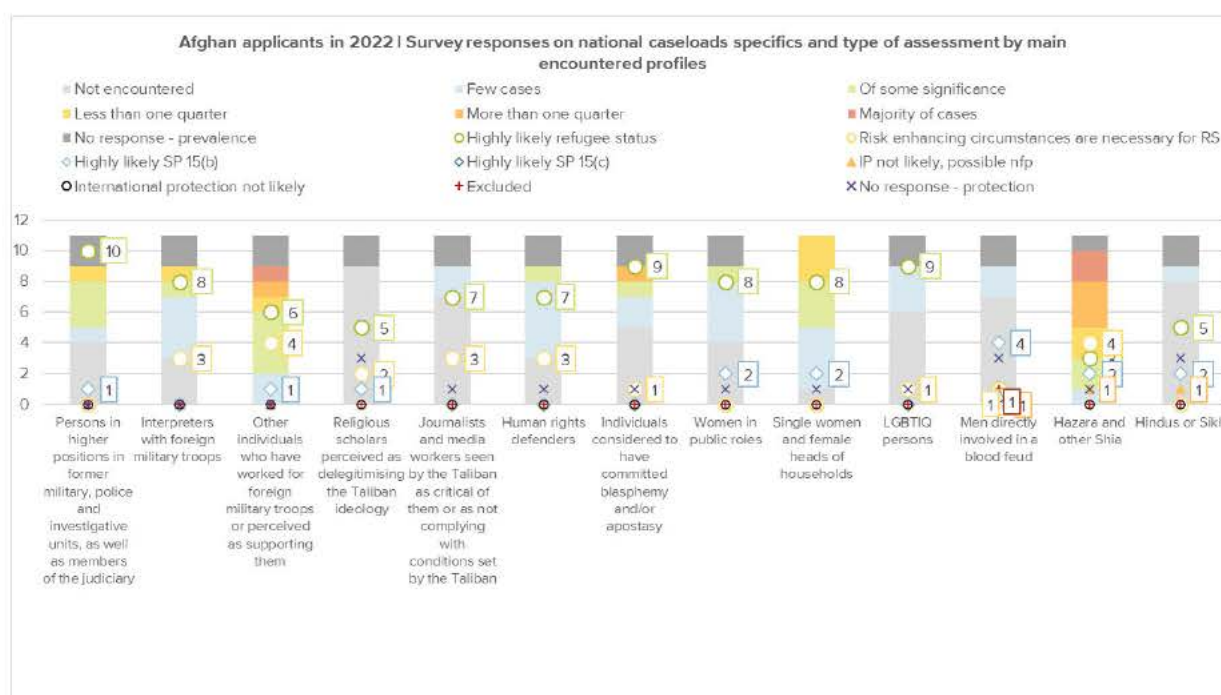
The analytical exercise juxtaposing prevalence of the profile in the national caseload and the likely outcome of the examination was replicated for all countries of origin addressed in EUAA CG. See [Annex 4: Caseload surveys](#).

Afghanistan: links to former government and foreign forces

Figure 18 below captures two important aspects: the relevance of a certain claim within the national caseload of responding countries (represented by the bars), along with the responding EU+ countries' likely assessment in such cases (marked by symbols).⁴¹

As a first observation, it must be noted that none of the profiles with high protection needs according to the EUAA CG on Afghanistan were commonly encountered in the caseloads of EU+ countries in 2022. Their prevalence varied by profile.

Figure 18. Afghan applicants in 2022



Source: Survey on national caseloads specifics and type of assessment by main encountered profiles (11 responses)

It appears that some of the profiles with general conclusions suggesting refugee status are rarely encountered by any of the responding countries, including religious leaders, men directly involved in blood feuds, Hindus and Sikh, LGBTIQ persons, journalists and media workers not complying with the Taliban restrictions. While important at the level of individual examinations, self-reported differences in the assessment of these profiles would have little overall impact on convergence of recognition rates.

Other more widely encountered profiles are, however, likely to have a noticeable impact on overall recognition rates and convergence. Hazara and other Shia applicants, single women and female heads of households, and profiles related to the former government and to foreign troops present relevant examples in this regard. Each of these profiles may justify an in-depth

⁴¹ For better visibility see [Figure 60. Afghan applicants in 2022. Survey responses on national caseloads specifics and type of assessment by main encountered profiles.](#)

assessment of relevance and convergence of assessment across the EU+. Some are indeed further addressed below under the topic of [Gender](#) (single women and female heads of households) and [Ethno-religious background](#) (Hazara and other Shia).

Here, for the purposes of illustrating the relevance of the main claims within a caseload, we focus on two profiles related to the previous government and to the foreign military troops which had presence in **Afghanistan**:

- **Persons in higher positions in former military, police and investigative units, as well as members of the judiciary**

In accordance with the CG from April 2022 and the CG from January 2023 (based on EUAA COI published in 2022), such individuals would in general have a well-founded fear of persecution, which is highly likely to be for reasons of (imputed) political opinion.

We can observe that among the nine responding countries, four had not encountered this profile in 2022, and one other country encountered only a few cases. It was of some significance to three countries (indicatively 4 % - 10 %) and represented a significant proportion (indicatively, 10 % - 25 % in another Member State). This showed important differences in the relevance of this profile to national caseloads. For more than half of the responding countries, the decision on such applications would have no or negligible impact on their overall recognition rates for **Afghanistan**. For several, it will have some impact, while for one, it will determine up to a quarter of its recognition rate.

This becomes important, seen in conjunction with the assessment of protection needs, where all respondents confirmed that a positive decision would be highly likely. The large majority of countries confirmed that refugee status would be highly likely to be granted, while one country indicated that subsidiary protection under Article 15(b) QD would be highly likely to be granted instead⁴² - a difference, which would, however, remain hidden in overall recognition rates.

Based on these responses, we can deduce that:

- The majority of countries would take decisions consistent with the CG on Afghanistan concerning the profile of persons in higher positions in former military, police and investigative units, as well as members of the judiciary.
- This will have a varying impact on actual recognition rates, depending on the prevalence of this profile in national caseload: ranging from none or negligible impact to determining the outcomes in up to one quarter of the examined cases.
- In one country, the outcome would not fully correspond to the CG on Afghanistan, which would impact up to 10 % of their decisions. The difference would, however, not be visible in overall recognition rates, as a form of protection would nonetheless be granted.

⁴² The same country indicated that this profile is found in 4 % - 10 % of the caseload.



- **Individuals who have worked for foreign military troops or perceived as supporting them (other than interpreters with military troops)**

In accordance with the CG from April 2022 and the CG from January 2023 (based on EUAA COI published in 2022), such individuals would in general have a well-founded fear of persecution, which is highly likely to be for reasons of (imputed) political opinion.

Among the nine responding countries, such claims represented the majority of cases in 2022 in one, and more than one quarter of the cases in another. Furthermore, they represented a proportion of some significance (4 % - 10 %) in four Member States. The remaining two countries reported few relevant cases. Compared to the profile above, individuals who have worked for foreign military troops or perceived as supporting them appear of greater overall significance across responding countries.

A common approach to the assessment of such claims would, therefore, substantially contribute to overall convergence in recognition rates. However, the self-reported assessment of EU+ countries showed notable variations. Six countries reported that refugee status is highly likely to be granted, which would be an outcome in accordance with the CG conclusion. On the other hand, four responded that additional risk-enhancing circumstances would be necessary to grant refugee status, making the outcome dependant on other specifics of the individual cases, and therefore less predictable in terms of impact on recognition rates. Furthermore, one country reported that applicants with this profile would be highly likely to be granted subsidiary protection under Article 15(b) QD.⁴³

Based on these responses, we can deduce that:

- The high protection needs identified by the CG **Afghanistan** would be confirmed in the practice of the majority of countries.
- This would have a notable impact on overall recognition rates for **Afghanistan**, with the exception of some countries where only few cases had been encountered.
- In some countries, the assessment would not be fully consistent with the CG **Afghanistan**, which may result in a different outcome, including the highly likely granting of a different type of protection in one responding country, and the possibility of negative decisions in four other countries.

SYRIA: DRAFT EVASION

In accordance with the CG on Syria from November 2021 and the CG on Syria from February 2023 (based on EUAA COI published in 2022), draft evaders would in general have a well-founded fear of persecution, which is highly likely to be for reasons of (imputed) political opinion. It is furthermore noteworthy that this profile refers to *'men who have refused or evaded conscription, including those who have not yet been confronted with conscription. It also includes reservists who may be called into military service.'* In terms of fear of (future) persecution, the claim cannot be limited to a precise age, however, the official draft age in Syria is 18-42 years.

⁴³ The same country reported that this profile represents 4 % - 10 % of the total case load.



The same analytical exercise juxtaposing the profiles' relevance in the national caseloads with the likely assessment of their protection needs was replicated for **Syria**, as per [Figure 19](#) below.⁴⁴

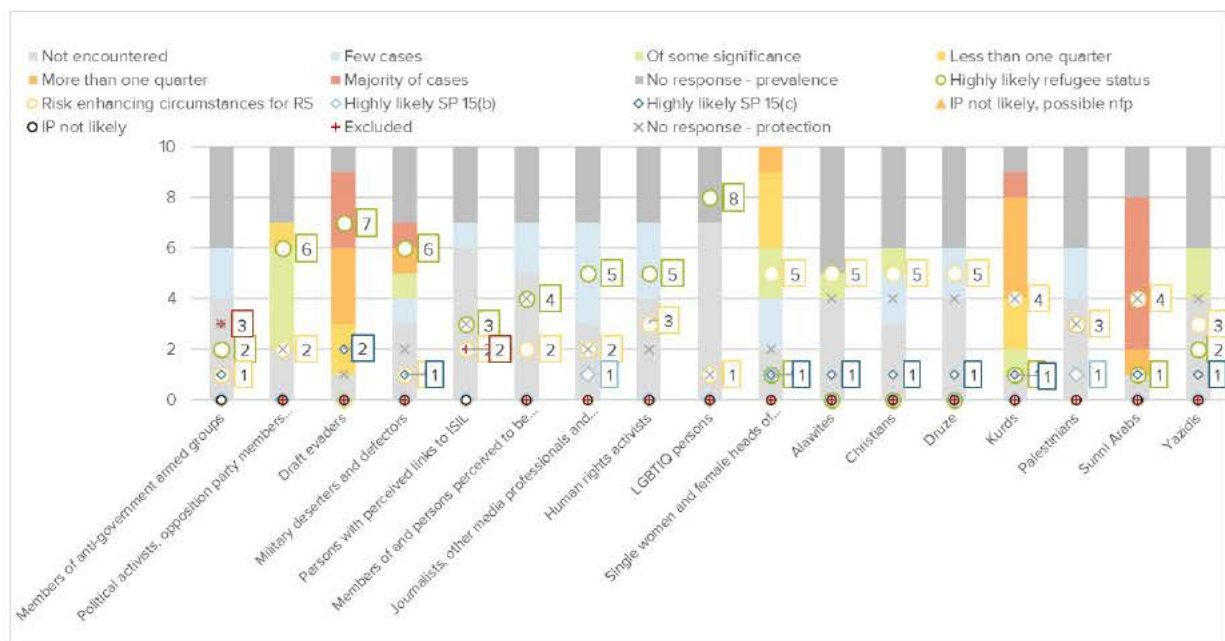
It is notable that among the considered claims, draft evaders were particularly prevalent and therefore likely to have a significant impact on the recognition rates in the EU+ overall. Other profiles of notable relevance for the overall recognition rates include military deserters and defectors and, to a lesser degree, single women and female heads of households.

Sunni Arabs were a highly prevalent profile as reported within the demographic questions. However, this profile is not considered to constitute a claim profile per se, as according to the CG findings, considerations would be likely to pertain to other issues, including draft evasion. Similarly, the CG on **Syria** indicates differentiated risk assessment for Kurds, depending on a number of additional circumstances.

Furthermore, the analysis shows that some of the profiles with high protection needs according to the EUAA CG on **Syria** had little actual impact on recognition rates in 2022, due to their limited relevance in national caseloads, e.g. LGBTIQ persons, members of anti-government armed groups, persons with perceived links to ISIL, human rights activists.

With this in mind, the analysis below focuses specifically on draft evaders.

Figure 19. Syrian applicants in 2022



Source: Survey on national caseloads specifics and type of assessment by main encountered profiles (10 responses)

⁴⁴ For better visibility see [Figure 64. Syrian applicants in 2022. Survey responses on national caseloads specifics and type of assessment by main encountered profiles.](#)



Zooming into the important topic of **draft evaders**, several aspects should be highlighted.

As a claim, draft evasion is most prevalent within the caseload of responding countries overall. Three reported that it represented the majority of cases in 2022, and further three estimated that draft evaders were more than a quarter of the cases they examined. For two, they were between 10 % and 25 %, while only one Member State, with a rather limited **Syrian** caseload overall, reported having encountered no such cases.

From Eurostat and EPS data

From available Eurostat data, it can further be noted that male applicants aged 18-34 (considered the most relevant age bracket for this analysis), represented a significant proportion of **Syrian** cases in 2022 overall, at 43 % at **EU+ level**. However, among countries which received more than 200 **Syrian** applications in 2022, this percentage varied from 22 % in **SE** to 60 % in **CY**.⁴⁵

This confirms the utmost significance of the profile for the overall recognition rates concerning **Syria**. Consequently, a common assessment of its protection needs is likely to have a significant impact in limiting variations in outcomes.

The impact of draft evaders on the national and EU+ recognition rate for **Syria** was also confirmed in 2021, when **DE** received a large proportion of subsequent applications from draft evaders who had been granted subsidiary protection. These applications were triggered by the new at that time ruling of the CJEU in *EZ* and, after a period of consideration, most such applications were rejected.⁴⁶ The impact of this can be clearly seen in [Figure 58. First-instance decisions and recognition rate in EU+ Top 10, Syria : January 2021 – December 2022](#). In this period, the **DE** decisions on **Syrian** applications showed an uncharacteristically low recognition rate, and their significant numbers brought the overall EU+ recognition rates for Syrians to 36 % and 39 % in these months, considerably lower than the 2021-2022 level of 84 %.

Reaching convergence in the approach to and assessment of protection needs for a prominent profile such as draft evaders from **Syria** would undoubtedly have a positive impact on convergence for the **Syrian** caseload overall. In this regard, it is important to note that all countries responding to the survey considered draft evaders likely to qualify for international protection. However, while seven Member States would be highly likely to grant refugee status in such cases, two reported that subsidiary protection under Article 15(c) QD would be highly likely instead. This important difference indicates that further efforts need to be made towards convergence in terms of the form of protection granted to **Syrian** applicants. This conclusion is further corroborated by the case sample analysis focusing on this profile (see [1.2.7. Case studies: \(c\) Syria – draft evaders](#)), as well as the analysis of national guidance and policy ([1.2.4. The role of national policy and guidance](#)), and the impact of national jurisprudence on convergence ([1.2.5. The role of jurisprudence](#)).

⁴⁵ EUAA elaborated on based on annual Eurostat data on applications in 2022, available at <https://ec.europa.eu/eurostat/databrowser/bookmark/cef29f32-2eb1-4cc9-b9f9-0a94fb2338ec?ang=en> and <https://ec.europa.eu/eurostat/databrowser/bookmark/748bc871-7c28-4b75-8ca7-217345dd307d?ang=en> <accessed 28 August 2023>

⁴⁶ Contextual information for this statistical data available from CGNet records.



Reaching a common assessment of the protection needs of particularly prevalent profiles, such as draft evaders from Syria, would have a significant positive impact on convergence in the EU+. Currently, indications show that protection would be granted across EU+ countries, as confirmed also by the overall high recognition rates for Syrian applicants. Nevertheless, important differences persist in terms of the type of protection granted to such applicants, depending on the EU+ country which examines their application.

For other profiles with high likelihood of being granted international protection according to the respective CG documents, national caseloads show considerably lesser overall prevalence. Some self-reported variations in the proportions these profiles represent at the national level may in principle account for differences in overall recognition rates. However, the analysis of their actual impact on recognition rates needs to take into account a number of additional complexities, most notably the differences in likely outcomes indicated by this analysis.

Moreover, certain profiles with high level of agreement concerning their protection needs (e.g. LGBTIQ applicants from Afghanistan or Syria), would have no or very limited actual impact on recognition rates and their observable convergence, due to the profiles' limited relevance within national caseloads.

In view of the above, while the main claims encountered in the national caseloads are the first determinative factors for recognition rates, variations in them cannot at this stage be directly correlated with the observed differences in recognition rates due to the limitations in available data and the multitude of additional factors that come into play.

(c) Gender, age and family status

Gender can be easily identified as an important factor and one which renders itself to statistical analysis. Gender is often further interlinked with age and family status, which together can represent important international protection considerations in relation to well-founded fear of persecution or real risk of serious harm, depending on the country of origin and the situation of specific groups of the population.

The factors of gender, age, and family status could be directly correlated with specific claims either as distinct factors (e.g. female applicants from **Afghanistan**) or in their intersection (e.g. men of conscription age from **Syria**, widowed or divorced women from **Syria**, young girls from **Somalia**). Furthermore, gender, age and family status would often have a substantial impact on the consideration of the availability of internal protection alternative in the country in view of Article 8 QD.

Depending on the country of origin, the **gender** of the applicant can be related to their claim or constitute an important risk-increasing circumstance. For example, being a woman or a girl in **Afghanistan** since the Taliban takeover would generally result in international protection needs, as confirmed in the CG from January 2023. In **Nigeria**, claims of trafficking would often

be brought by female applicants and gender would constitute a risk-impacting circumstance. On the other hand, being a man of a certain age in **Syria** could directly relate to claims linked to military service, as noted above.

The analysis of variation in recognition rates confirms the different standing of different population groups within the caseload of **Afghanistan** and **Syria**. See [1.1.4. Conclusion: variation in recognition rates and convergence](#).

Gender

Looking at gender, we see slightly less variation for adult **female Afghan applicants** (23 pp), compared to the overall applications from Afghanistan (26 pp) and to adult **male Afghan applicants** (33 pp).

Looking at **Syrian applicants**, we see slightly more variation displayed for adult **female applicants** (20 pp) than for adult **male** (18 pp).

For both countries, this can be correlated with the protection needs identified in accordance with the respective CG.

In **Afghanistan**, women historically suffered significant discrimination and persecution both at home and in society in general and the Taliban takeover significantly intensified the restrictions on women across the country. Therefore, currently, the joint assessment confirms that protection needs would in general be substantiated for female applicants from **Afghanistan**. See [Afghanistan: women and girls](#) below.

On the other hand, in **Syria**, men are often persecuted due to imputed political opinion. Draft evaders, military deserters and defectors - widely encountered profiles, for which the joint assessment finds refugee status would be highly likely to be granted - are closely linked to being a male applicant. See [Syria: draft evasion](#) above.

Age and family status

The findings with regard to age were further correlated with family status, which appeared to account for significant disparities between the respective groups.

Decisions issued to **accompanied children from Afghanistan**, similarly to women, showed a lower variation level at 24 pp. The variation for **unaccompanied children**, however, was the highest among those estimated for **Afghan** applicants, at 39 pp.

For **Syria**, they were similarly at 23 pp for **accompanied children** and at 33 pp for **unaccompanied children**.

The findings regarding the relatively high variation levels for **unaccompanied children** from both **Afghanistan** and **Syria** compared to the overall recognition rates could, to a certain extent be explained by the different data points included due to the threshold of 30 relevant decisions in 2022. For example, for **Syria**, excluding **CH**, which issued 65 (all negative) decisions for unaccompanied children, would bring the standard deviation score down to 4 pp. – lower than the overall variation for this country in 2022.

On the other hand, the decisions for unaccompanied minors from **Afghanistan** display a significant variation across EU+ countries. See [Figure 15. Variation in the standard deviation of recognition rates at first instance across EU+ countries for Afghan and Syrian applicants, Jan. 2021 – Dec. 2022](#)

The unexpectedly high variation for unaccompanied minors, especially for **Afghanistan**, requires further exploration, which was not possible within the time limits of the pilot convergence analysis.

For a better understanding of the potential importance of the gender makeup of a particular caseload, the example of **women and girls from Afghanistan** currently appears particularly relevant.

AFGHANISTAN: WOMEN AND GIRLS

Following the Taliban takeover of 2021, the situation of women and girls in Afghanistan deteriorated further. In accordance with the CG on Afghanistan from January 2023, based on COI published in 2022, women and girls from Afghanistan are highly likely to qualify for refugee status in view of the accumulation of Taliban restrictions. The CG from April 2022 addressed different considerations and claims from women separately, also concluding on high protection needs. In that document, the explicit conclusion for single women and female heads of households indicated well-founded fear of persecution in general, using a 'may' formulation with regard to the nexus to membership of a particular social group (MPSG).

According to Eurostat data, female applicants represented 19 % of the lodged applications for **Afghanistan** at EU+ level in 2022. However, the relevance of this demographic group varied significantly among countries which received more than 200 Afghan applications, ranging from close to none in **BG** (30 out of more than 7,000 applications) to 50 % in **ES**.⁴⁷ Therefore, the likely protection needs of this population would be expected to impact different countries' recognition rates to a different extent.

In the survey on national caseload, responding countries further specified the estimated proportion of cases of single women and female heads of households as well as married couples. As seen in [Figure 20](#) below, married couples represented the majority of cases in two of the responding countries and more than one quarter of the cases in another responding country. For the majority, five responding countries, they represented between 4 % and 10 % of their caseload. Single women and female heads of households were not or were rarely encountered in five of the responding countries in 2022, while three Member States reported that the proportion was of some significance in 2022 (4 % to 10 %) and other three estimated it between 10 % and 25 %).

⁴⁷ EUAA elaboration based on annual Eurostat data on applications in 2022, available at <https://ec.europa.eu/eurostat/databrowser/bookmark/d0b8e588-81db-45e2-aabd-1a2f18983b39?ang=en> and <https://ec.europa.eu/eurostat/databrowser/bookmark/0f63b919-c09b-473d-93e1-87ffe7fc2e9?ang=en> <accessed 28 August 2023>

Figure 20. Afghan applicants in 2022, survey responses on national caseload by family composition.



Taking into account the CG on **Afghanistan**, the relative proportion of applications from women, and especially from single women and female heads of households, would be likely to have had an impact on recognition rates in 2022, in view of their high protection needs.

For **single women and female heads of household**, eight of the responding countries confirmed they would be highly likely to grant refugee status. On the other hand, two countries reported a high likelihood of granting subsidiary protection under Article 15(b) QD. See [Figure 18. Afghan applicants in 2022](#). As with other important profiles, this indicated a need for further convergence with regard to the type of protection granted by EU+ countries.

Another profile concerning female **Afghan** applicants in the survey was **women in public roles**. As a specific claim, this was of relatively less significance, however, it is noteworthy that responses on qualification for international protection mirrored those for single women and female heads of households. The majority of responding countries indicated they would be highly likely to grant refugee status, while two indicated subsidiary protection under Article 15(b) QD as the highly likely outcome. See [Figure 18. Afghan applicants in 2022](#).

In March 2023, some persisting differences in the assessment were also confirmed by the EUAA Policy Query PCY.2023.004 concerning women and girls from **Afghanistan**. According to responses to this query, 12 responding countries [BE, DK, ES, FI, FR, IE, IT, LV, MT, PT, SE, SI] generally consider that women and girls from **Afghanistan** have a well-founded fear of persecution, in accordance with the CG on **Afghanistan**. Seven countries [AT, CH, DE, LU, NL, PL, SK] indicated that they assess the relevant cases individually, granting international protection in most. Despite the CG finding that a reason for persecution would be highly likely to be substantiated (notably, religion), the form of protection granted by the responding countries to women and girls from **Afghanistan**, varied between refugee status and subsidiary protection under Article 15(b) QD.⁴⁸

⁴⁸ EUAA Query Portal, [PCY.2023.004 - URGENT: Women and girls from Afghanistan](#) [restricted access].

Gender, age and family status can be important constitutive elements of commonly encountered profiles. In relation to Afghanistan and Syria, gender appears of paramount importance in accordance with the respective CG documents and as confirmed by the findings of this study.

In the case of Afghanistan, women and girls will be highly likely to be granted international protection. Due to the restrictions imposed by the Taliban, their gender would in fact be sufficient for a positive decision to be taken, while the situation of men from Afghanistan appears far more nuanced.

In the case of Syria, men of conscription age would be highly likely to qualify for international protection, while for women and girls further specific circumstances will have an impact on the outcome of the application.

In view of this, it can be concluded that the gender makeup of the Afghan and Syrian national caseloads can, to a certain extent, be correlated with an expectation for the respective national recognition rates. Countries with a substantial proportion of claims from women and girls from Afghanistan would be expected to have high recognition rates, similarly to those with high proportion of male applicants of a certain age from Syria. Overall differences will, however, depend on the remaining profiles in the respective EU+ countries' caseloads.

Another notable finding with regard to the profiles addressed above is that, while the positive decisions taken across EU+ countries will be consistent with the respective CG documents, further convergence is needed in relation to the types of protection likely to be granted.

(d) Ethno-religious background

Depending on the country of origin, the ethno-religious background of the applicants can be of paramount importance for their international protection needs. If EU+ countries' caseload includes a larger proportion of a minority group which experiences persecution, this is likely to significantly impact their overall recognition rates. Convergence in recognition rates can, therefore, be substantially influenced by the ethno-religious composition of EU+ countries' national caseloads. This can be especially visible where the protection needs of a particular ethnic and/or religious group are commonly agreed and recognised.

Afghanistan is a country where the ethno-religious background of an applicant can play an important role in the decision, along with their (imputed) political beliefs. The situation would be similar in **Iraq**, where ethno-religious minorities, including Christians and Yazidis, for example, face targeting by different actors of persecution. In **Somalia**, the clan affiliation defines the relationship between people and all actors and may impact international protection needs. On the other hand, in **Syria**, for example, the ethno-religious background of

a person would play a role primarily in relation to an imputed political stance. While it can be relevant for some claims, the ethno-religious background of the applicant would also be less determinative for **Nigerian** applicants.

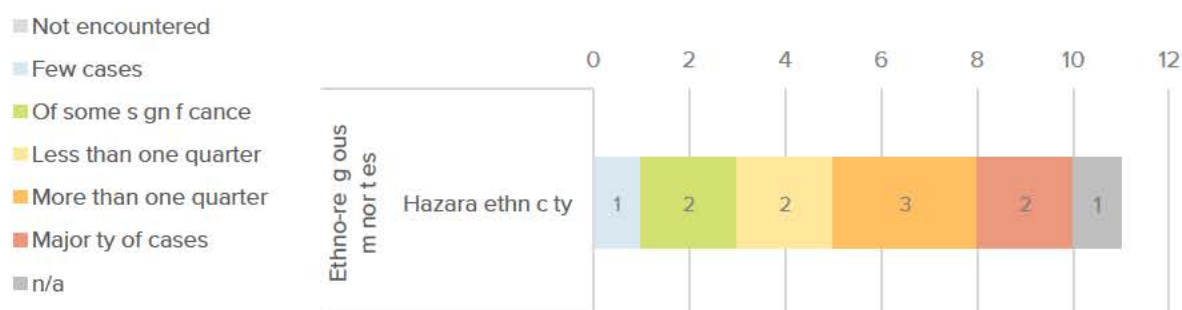
AFGHANISTAN: HAZARA APPLICANTS

The Hazara applicants, mainly in relation to their presumed Shia religion, have notable protection needs related to targeting by ISKP, which had continued to increase over the years. Those needs should be assessed individually. However, in accordance with the CG from January 2023, based on COI published in 2022, Hazara and other Shia from Hazara-dominated areas in larger cities are found to be particularly at risk.

In the initial survey, several countries commented on the main ethnicity of applicants in their **Afghan** caseload as of November 2022, which had direct impact on their recognition rates. A notable difference was identified between **BE**, which reported that most applications in this period originated from young *Pashtun* men ‘with weak claims’, while **SK**, for example, responded that a significant proportion of the applicants were of Hazara ethnicity and were granted refugee status based on nationality and religious grounds.

The different distribution of Hazara applicants across countries was also evidenced in the dedicated survey on national caseload.

Figure 21. Prevalence of Hazara cases in national caseload in 2022



Source: responses to the survey on national caseload, Afghanistan (11 responses).

According to the survey on national caseload, Hazara applicants represented the majority of cases in **FI** and **LU** in 2022, and more than 25 % in **PT**, **SI** and **SK**. At the same time, since the Taliban takeover, the CG has noted an increased risk for this population. The recognition rates for most of these Member States appeared consistent with such a finding, and were higher than the EU+ level (54 % for 2022), with **FI** and **LU** having a recognition rate of 76 % and 74 %, respectively, almost exclusively refugee status, and **PT**, with 368 decisions, having 100 % refugee status outcomes. The recognition rate of **SK** was also relatively high, at 91 %, however, it featured primarily subsidiary protection decisions, with a relatively low total number of

decisions in 2022 at 53. **SI** appeared to be an outlier in this regard, with 10 % recognition rate on 62 decisions.⁴⁹ See [Annex 2: Statistical overviews - Afghanistan](#).

The **case sample analysis** conducted in this pilot study allowed to further focus on the cases of Hazara applicants from **Afghanistan**. See [1.2.7\(a\) Afghanistan – Hazara](#).

(e) **Area of origin**

While the current impact of this factor is difficult to discern from available information on Afghanistan, Syria, Iraq, Somalia and Nigeria, the relevance of the area of origin and its implications for protection needs are undoubtful.

The area of origin was often highlighted by counterparts as an important individual factor affecting recognition rates. This correlates with the key topic of the **presence and capacity of different actors of persecution or serious harm** within the respective territory, important for assessing international protection needs in the first place and in the potential consideration of internal protection alternative (IPA).

The area of origin is also of particular importance when assessing the **risk of indiscriminate violence in all countries** of origin addressed by the CG.

One of the key achievements of the CG work to-date has been the elaboration of a methodology and indicators to assess the level of indiscriminate violence based on a holistic consideration of different qualitative and quantitative indicators, reflected in objective COI. This methodology allows for a consistent joint assessment of the situation in the respective countries. The assessment is agreed in the framework of the CGNet and confirmed with the endorsement of the EUAA Management Board. While some differences in approach and conclusions remain, the analysis of national guidance in the context of this pilot study confirmed that EU+ countries largely follow this assessment in their policies, making the latter a key tool for convergence.

⁴⁹ However, most first-instance decisions in 2022 in **SI** were taken in administrative procedures and therefore were not indicative of a different substantive assessment of the protection needs of Hazara applicants. With regard to the general impact of administrative decisions, see [1.2.3\(b\) administrative decisions](#).

Figure 22. Assessment of the level of indiscriminate violence in current EUAA country guidance.

The categorisation across the different countries of origin is applied consistently:

■ **Mere presence** would be considered sufficient in order to establish a real risk of serious harm under Article 15(c) QD.

■ Indiscriminate violence reaches a **high level** and a lower level of individual elements is required to establish a real risk of serious harm under Article 15(c) QD.

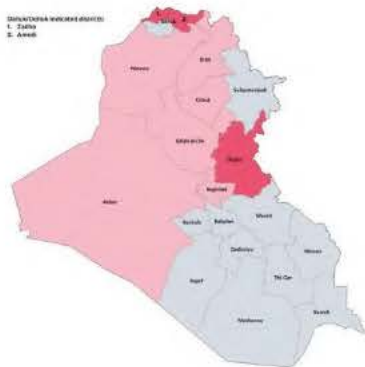
■ Indiscriminate violence is taking place, however **not at a high level**, and a higher level of individual elements is required to establish a real risk of serious harm under Article 15(c) QD.

■ In general, there is **no real risk** for a civilian to be personally affected within the meaning of Article 15(c) QD.

CG Afghanistan, January 2023



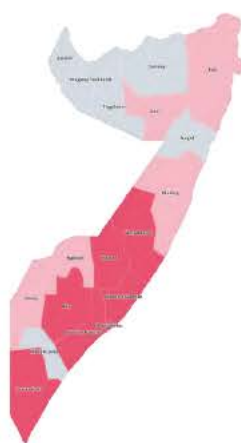
CG Iraq, June 2022



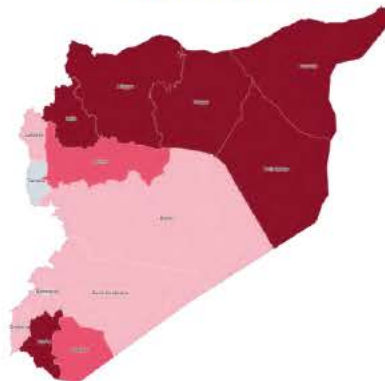
CG Nigeria, June 2021



CG Somalia, August 2023



CG Syria, February 2023



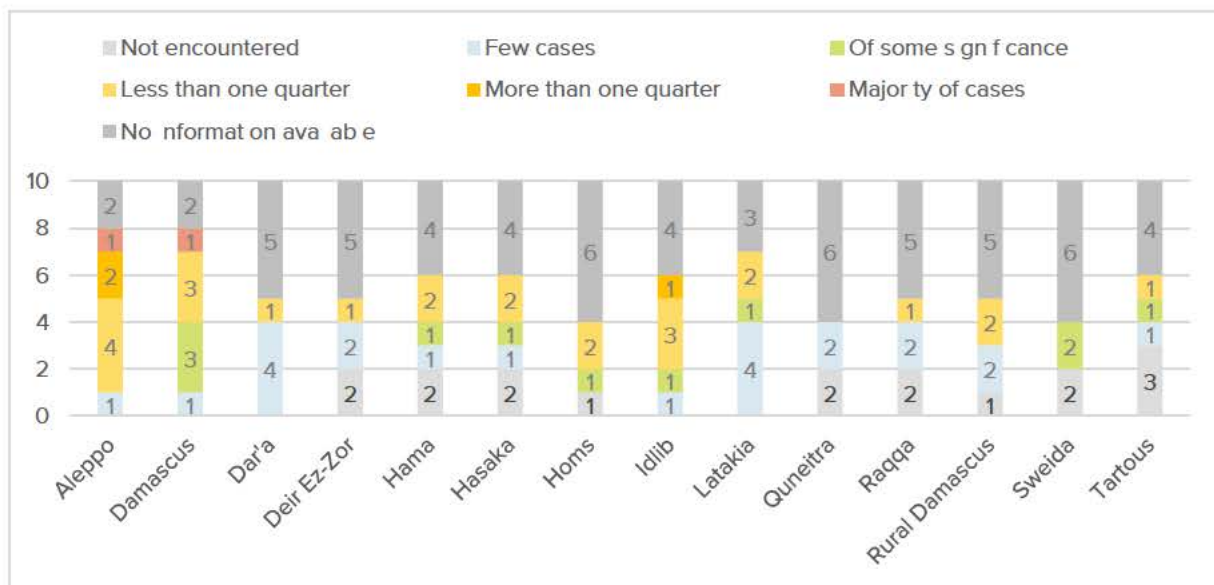
The importance of the area of origin would be lesser in nowadays **Afghanistan**, where the Taliban as an important actor of persecution and serious harm have control over the whole territory of the country, and where subsidiary protection needs under Article 15(c) QD have become less prominent.

For **Syria**, despite having certain governorates categorised as 'mere presence' in relation to Article 15(c) QD, it would also be of lesser significance, with the Government of Syria constituting a main actor of persecution for reasons of (imputed) political opinion, and due to the lack of effective protection.

On the other hand, in countries like **Nigeria**, **Iraq** and **Somalia**, the area of origin would be a paramount consideration for many of the relevant claims. Persecution by Boko Haram in **Nigeria**, for example, is generally limited in territorial scope. Similarly, risks related to Al-Shabaab would be far less prevalent in Somaliland than in the rest of **Somalia**.

In the responses to the surveys on national caseload few countries could provide information on the actual origin of applicants. Most input was provided for **Syria**, where from the 10 replies, eight EU+ countries could provide estimates in this regard.

Figure 23. Areas of origin, Syrian applicants 2022



Source: Survey on national caseload in 2022, Syria (10 responses).

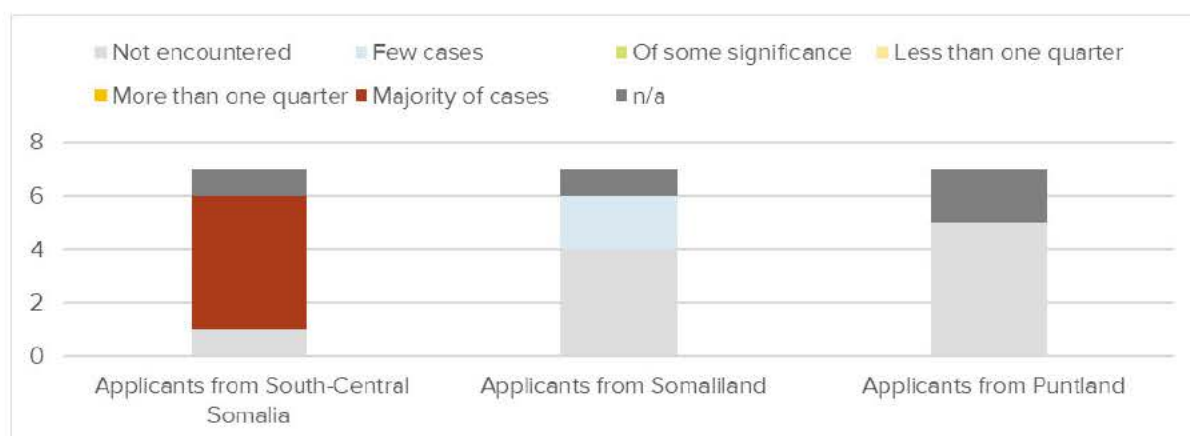
Overall, Aleppo, Damascus and Idlib seemed to be the most encountered areas of origin for **Syria**. While the assessment of the level of indiscriminate violence is contrasting between Aleppo and Idlib ('mere presence'), on the one hand, and Damascus ('no real risk under Article 15(c) QD') on the other. **BE** reported a significant proportion of cases from Aleppo and Idlib (more than 25 % each), and cases from Damascus representing some significance (under 10 %). The **BE** recognition rate in 2022 was 85 % refugee status, followed by 15 % negative decisions. This suggested that the exceptionally high levels of indiscriminate violence in the relevant areas had no actual impact on the recognition rates of **BE**, as protection was



exclusively in the form of refugee status. However, conclusions with regard to the importance of the area of origin across EU+ countries are difficult to draw on the basis of available information, primarily due to the relatively small caseload of other responding countries, combined with the overarching protection needs of applicants from **Syria**.

For **Somalia**, most of the seven responding countries stated that applicants mainly originate from South-Central Somalia, which is also overall most impacted by activities of Al-Shabaab and the ensuing indiscriminate violence, according to the CG on **Somalia**.

Figure 24. Areas of origin, Somali applicants 2022



Source: Survey on national caseload in 2022, Somalia (7 responses).

For **Iraq**, only two of the eight responding countries provided information on the area of origin, making an assessment of its significance difficult. It can, nevertheless, be noted that Baghdad represented more than 25 % of the caseload in both **BE** and **CZ**. In **CZ**, Erbil was the other most prominent area of origin, while in **BE** Ninewa was of some significance (under 10 %). While the dominant actors in these areas are different, the overall level of protection needs would appear to be similar and require a further individual assessment. Hence, it would be difficult to analyse it in direct correlation with the decision outcomes from those Member States (**BE**: 20 % recognition rate, predominantly refugee status; **CZ**: 24 % recognition rate, predominantly subsidiary protection). See [Annex 2: Statistical overviews - Iraq](#).

(f) Secondary movements of beneficiaries of international protection

A phenomenon which is reported to have gained significance across the EU+ is the issue of secondary movements of *beneficiaries* of international protection. This phenomenon has an impact on the statistical information concerning recognition rates, not only because of double counting of these applicants, but also because the outcome of the case in the second Member State may distort the findings on convergence, in particular when such applications are deemed inadmissible and therefore reported as rejections.

It should be noted that the movement of *applicants* would generally be addressed under implicit withdrawals and related discontinuation decisions and under the Dublin III Regulation.



Statistically, these movements would not have an impact on recognition rates, with such decisions recorded separately from rejections. On the other hand, the applications from *beneficiaries of international protection* in another Member State would have an impact on recognition rates. They would largely fall within negative decisions on admissibility (inadmissibility decisions), which impact recognition rates, but they may also lead to examination on the merits, depending on the first Member State and the conditions of the person there.

According to replies to the surveys on national caseload, this phenomenon affects several receiving countries, such as **BE**, **FI**, **SI** and **NO**.

The expected impact of this would be a trend towards lower recognition rates where the majority of cases are rejected as inadmissible, while the examination of the cases on the merits may be assumed to be more likely to lead to a positive outcome, as applicants were already recognised as being in need of international protection in another EU Member State.

For example, **BE** reported that a significant proportion of their **Syrian** applications in 2022 were from beneficiaries of international protection in another Member State. More than 8 % of their caseload therefore resulted in rejection of the applications as inadmissible on that ground. Another 4 % of the caseload, also concerning beneficiaries of international protection in the EU, was examined on the merits. As seen from [Figure 13. Recognition rates at first instance in EU+ countries with most Syrian applications rejected in admissibility procedures, 2022](#), the recognition rate of **BE** excluding inadmissibility decisions (12 % of all first instance decisions in **BE** in 2022) would indeed appear significantly higher, confirming the potential relevance of this factor when present in the makeup of national caseloads.

FI and **NO** reported that cases rejected as inadmissible for that reason represented some significance in their caseload from **Afghanistan**. This would, therefore, be an important factor explaining some of the negative decisions these countries issued in 2022. However, with the current variation rates observed for **Afghanistan**, their outcomes would remain comparable with other main receiving countries, and **FI** and **NO** would remain among the countries with relatively high recognition rates (76 % and 78 %, respectively).

From the surveys on national caseload

- For **Afghanistan**, five EU+ countries experienced the phenomenon of such applications. These applications were largely rejected as inadmissible.
- For **Iraq**, **BE** received a few cases, which were rejected on admissibility and few, which were examined on their merits. The majority of **SI**'s caseload constituted applications from beneficiaries of international protection rejected on admissibility, with none resulting in examination on the merits.
- For **Nigeria**, only **BE** reported a few cases, rejected on admissibility.

- For **Somalia**, **FI** reported a caseload of some significance in this regard, all rejected on admissibility. Similarly, **BE** rejected a proportion of some significance (4 % - 10 %) while also examining few cases on their merits.
- For **Syria**, **FI**, **NO**, **PL** and **PT** all reported a few cases rejected on admissibility. In **BE**, applications from beneficiaries of international protection rejected as inadmissible represented some significance, as did cases examined on their merits.

In 2022, in connection with an appeal submitted to it, **FI**'s Supreme Administrative Court had asked the Finnish Immigration Service for up-to-date information on how other EU+ countries have recently handled asylum applications from applicants who have already received international protection in **EL**.⁵⁰ 17 EU+ countries responded to the query launched by **FI** in this regard. The majority of responding countries confirmed that they applied a provision corresponding to Article 33(2)(a) APD [**BE**, **FI**, **FR**, **DE**, **LU**, **NL**, **PL**, **SI**, **SE**, **CH**, **DK** and **NO**].⁵¹ At the same time, five countries [**BE**, **DE**, **FR**, **NL** and **NO**] specified exceptions to the application of the inadmissibility ground, several explicitly mentioning the relevant judgment of the CJEU in *Ibrahim*.⁵² The results of this query were updated with an additional query in 2023, largely confirming the above findings.⁵³

Applications from beneficiaries of international protection in other countries may have some impact on recognition rates in relation to Article 33(2)(a) APD. It appears that the majority of such cases result in inadmissibility decisions, reported as part of the rejection decisions in the EU+ countries. However, the actual impact of this phenomenon would depend on additional personal circumstances, primarily related to certain vulnerabilities of the individual applicants.

⁵⁰ EUAA Query Portal, [PCY.2022.003 - Applicants who have already received international protection in Greece](#) [restricted access].

⁵¹ Article 33(1) and (2)(a) APD: 1. In addition to cases in which an application is not examined in accordance with [the Dublin III Regulation], Member States are not required to examine whether the applicant qualifies as a refugee in accordance with [the Qualification Directive] where an application is considered inadmissible pursuant to this Article. 2. Member States may consider an application for international protection as inadmissible only if: (a) another Member State has granted international protection; [...]

⁵² CJEU, *Ibrahim*, judgment of 19 March 2019 in [Joined Cases C-297/17, C-318/17, C-319/17 and C-438/17](#). In the responses to PCY.2022.003, the vast majority of countries mentioned vulnerability of the applicant as a ground, including the risk of a situation of extreme material deprivation [**BE**], medical or social reason [**BE**, **FI**], family grounds [**CH**] or family reunification [**DK**], and cases involving, for example, LGBT applicants who suffered physical attacks from the community without obtaining protection from the Greek authorities [**FR**].

⁵³ EUAA Query Portal, [PCY.2023.017 - Follow up: Applicants who have already received international protection in Greece](#) [restricted access].

(g) First vs subsequent applications

The examination of first vs subsequent applications may have a significant impact on recognition rates. There is a general expectation of a larger proportion of negative decisions for subsequent applications. However, other factors add complexity to this generalisation. For example, important developments in the country of origin may constitute new elements substantiating protection needs (e.g. the Taliban takeover in Afghanistan), or the reason for rejection in the first place may no longer apply when the person lodges a subsequent application (especially in relation to 'safe third country' and admissibility).

Nevertheless, the assumption that recognition rates would be higher for first-time applicants compared to repeated applicants is confirmed by EPS data across relevant countries of origin.

	First-time applicants: EU+ recognition rate in 2022	Repeated applicants: EU+ recognition rate in 2022
Afghanistan	58 %	30 %
Iraq	32 %	17 %
Nigeria	14 %	9 %
Somalia	61 %	26 %
Syria	95 %	61 %

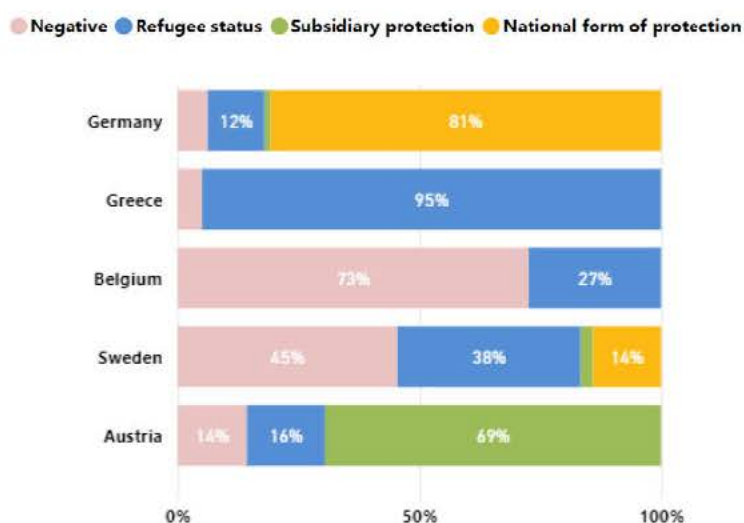
Based on this, it can be expected that countries with a larger share of repeated applications would be likely to issue a larger proportion of negative decisions for the respective country of origin.

AFGHANISTAN

According to EPS data, 15 458 decisions were issued on repeated applications from **Afghans** in 2022, the large majority of them in **DE** (10 576). The EU+ recognition rate for those cases was significantly below the overall recognition rate for **Afghan** applicants in 2022, at 30 % compared to 54 %, while the recognition rate for first-time applicants was at 58 %. However, significant variation could be observed among the main receiving countries, five of which decided on more than 200 subsequent applications from **Afghans** in 2022, as shown in [Figure 25](#) below.



Figure 25. Outcome of repeated applications from Afghan applicants in the main receiving countries in 2022



Source: EUAA EPS

As seen in [Figure 25](#) above, a large majority of the repeated applications were rejected as to EU forms of protection in **DE** (81 % national form of protection and approximately 6 % rejections) and **BE** (73 % rejections), while refugee status was granted in 95 % of the cases in **EL**, and **AT** granted predominantly subsidiary protection (69 %).

Therefore, in the case of **Afghanistan** in 2022, the assumption that repeated applications will largely result in negative decisions (rejections on admissibility) was not consistently confirmed by the available data. To a certain extent, this can be explained by the exceptional nature of the developments in **Afghanistan** in August 2021. The change in regime in the country constituted a significant development likely to have an impact across different profiles of applicants from the country. Additionally, in the case of **EL**, the prevalence of previous inadmissibility decisions based on the application of the ‘safe third country’ concept should be accounted for. In 2022, subsequent applications following such rejections appeared to generally result in examination on the merits and in higher-than-average recognition rates. See [1.2.3\(c\) Safe third country](#).

SYRIA

A notable example of the impact of subsequent applications was the case of **Syrian** draft evaders beneficiaries of subsidiary protection in **DE**, who subsequently applied for refugee status and for whom **DE** issued largely negative decisions, in contrast to their overall recognition rate for Syrian applicants. This had a considerable impact on recognition rates in March and April 2021 in particular ([Figure 13. Recognition rates at first instance in EU+ countries with most Syrian applications rejected in admissibility procedures, 2022](#)). See [Syria: draft evasion](#) in [\(b\) Claim profile](#).

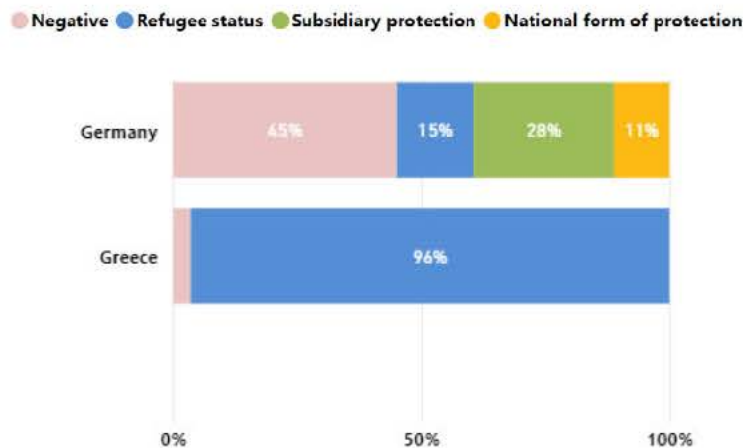
According to EUAA EPS data, 3 170 decisions in 2022 were issued for repeated applicants from **Syria**. The recognition rate in these cases was 61 %. The two countries which issued the



most decisions on repeated applications from **Syrians** in this period were **DE** (1 612 decisions) – where it could be linked to the prevalence of subsidiary protection being granted to first-time applicants, and **EL** (1 071 decisions) – where it could be linked to the application of the ‘safe third country’ concept, resulting in negative first-time decisions on admissibility.

A large variation between those two Member States can be observed in outcome (Figure 26).

Figure 26. Outcome of repeated applications from Syrian applicants in the main receiving countries in 2022



Source: EUAA EPS

While in **EL** the protection rate was higher compared to first-time applications (96 % refugee status compared to 65 %), for **DE**, the protection rate was much lower for repeated applications (only 44 % compared to 97 % for first-time applications). The outcomes of decisions in **DE** appeared consistent with those of other EU+ countries reporting decisions on repeated applications in 2022, where the proportion of negative decisions for all countries which decided on more than 10 subsequent applicants was considerably bigger than that of their negative decisions for first-time applicants from **Syria**.

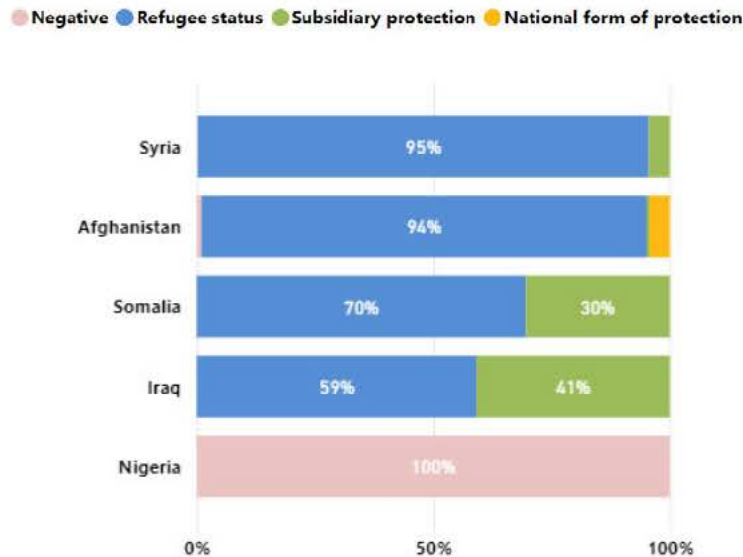
(h) Mode of arrival in the country

In addition to spontaneous applications from persons who arrive in the receiving EU+ country independently, other pathways can have a varying relevance in the composition of national caseloads. This section looks in particular at the issues of relocation and direct evacuation, as observed in the case of Afghanistan following the Taliban takeover of August 2021. These pathways are largely linked to cases where protection needs may be largely presumed, creating an expectation of generally higher recognition rates compared to ‘regular’ applicants. Their varying prevalence in the national caseloads can, therefore, have a notable impact on differences in recognition rates.

The topic of **relocation** is interesting to address in this regard, however, the overall number of applicants reported as ‘relocated’ is generally low across countries of origin. According to EPS

data, in 2022 it concerned a total of 451 decisions for **Syria**; 303 for **Afghanistan**, 23 and 22 for **Somalia** and **Iraq**, respectively, and only 5 decisions for **Nigerian applicants**. As expected, the overall recognition rates were significantly higher than those for overall applications decided at first instance, as illustrated in [Figure 27](#), with the exception of the decisions for Nigeria.

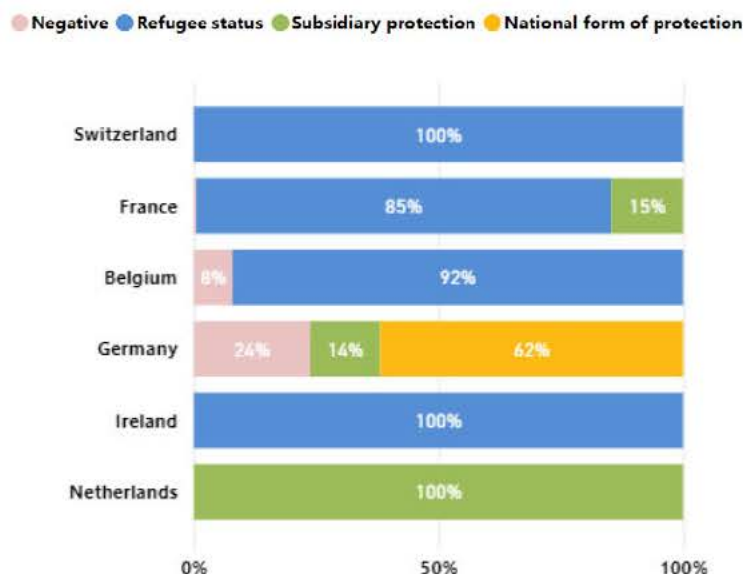
Figure 27. Outcome for relocated applicants in 2022, CG countries



Source: EUAA EPS

In terms of the EU+ countries that examined these applications, however, the outcomes presented variation ([Figure 28](#)).

Figure 28. Outcome for relocated applicants from CG countries in 2022 by receiving country



Source: EUAA EPS

The example of **evacuation efforts** of **Afghans** was also of particular interest in relation to its impact on overall recognition rates. Since the Taliban takeover, the caseload of applicants from **Afghanistan** changed significantly due to Member States' evacuation efforts. In the last months of 2021 as well as in 2022, some administrations dealt with this additional caseload via the regular asylum procedure, while others opted for alternative pathways. According to responses to the survey on national caseloads, evacuated **Afghan applicants** represented the majority of cases in **LV**, **PT** and **SK**, and a significant proportion in **CZ**.

As evacuation efforts focused on profiles of applicants for whom protection needs were to a certain extent presumed, this phenomenon could account for the predominantly positive decisions in the respective Member States, whose recognition rates were significantly above the EU+ level of 54 %. In **LV** and **PT**, refugee status decisions for 2022 reached 94 % and 100 %, respectively. In **CZ**, the recognition rate was at 76 %, with 69 % refugee status and 7 % subsidiary protection, while in **SK** decisions were 58 % subsidiary protection and 32 % refugee status. See [Annex 2: Statistical overviews - Afghanistan](#).

This confirmed that the arrival in the country through evacuation could significantly impact the overall recognition rates at the national level, especially in EU+ countries with otherwise small number of applications. However, the occurrence of this phenomenon is considered exceptional and closely linked to the specific circumstances of **Afghanistan** and the involvement of EU+ countries in the conflicts prior to summer 2021. Therefore, its overall relevance to convergence remains limited.

1.2.3. The role of special procedures and approaches

Some special procedures could result in negative decisions without examination of the merits of the application.

It is of note that not all such decisions would appear under the EUAA and Eurostat reporting as rejections. An important proportion of inadmissibility decisions would instead be reported separately in relation to the Dublin III Regulation. Moreover, decisions on discontinuation of the examination due to implicit or explicit withdrawal (Article 28 APD) would also be reported separately and not affect the standard representation of recognition rates. Both caseloads present an interest when comparing the overall number of applications with the beneficiaries of international protection in the respective country, however, these topics remain outside the scope of the convergence analysis as they do not concern the negative decisions reported as part of the considered recognition rates.

On the other hand, the analysis shows that the admissibility ground of 'safe third country' plays an important role, along with the examination of cases from beneficiaries of international protection in another Member State. The topic of the 'safe country of origin' concept is also examined below, as it presents a particular interest in verifying the impact of special procedures on recognition rates.



Other specific approaches, such as prioritisation and suspension, may also significantly impact recognition rates at a particular moment in time, notably when applications treated as manifestly unfounded or as manifestly well-founded are prioritised, or when issuing negative decisions is suspended for a period of time.

While the topic has not been explored in further details within the constraints of the pilot study, it is noted that the national approaches with regard to applying the possibility to omit the personal interview in accordance with Article 14(2) APD may also represent a relevant consideration in terms of overall convergence of policies, practices and outcomes.

(a) Prioritisation and suspension

Prioritisation, on the one hand, and suspension, on the other, are two possible approaches which may have a temporarily limited impact on recognition rates. Nevertheless, these do not represent special procedures as the same procedural rules remain applicable in accordance with the APD. Moreover, while they may be correlated with a certain expectation regarding the outcome of decisions, opting to apply prioritisation or suspension do not in themselves lead to a different outcome than the one expected should those approaches not have been applied.

Prioritisation is specifically addressed in Article 31(7) APD.⁵⁴ Under letter (a), this provision links prioritisation to an expectation of a positive outcome. However, the ‘may’ wording indicates that this is an optional provision, while the use of ‘in particular’ suggests that prioritisation can also be applied on other grounds, including, notably, the possibility to prioritise applications likely to be manifestly unfounded.

Article 31(7) APD

Member States may prioritise an examination of an application for international protection in accordance with the basic principles and guarantees of Chapter II in particular:

- (a) where the application is likely to be well-founded;
- (b) where the applicant is vulnerable, within the meaning of Article 22 of Directive 2013/33/EU, or is in need of special procedural guarantees, in particular unaccompanied minors.

At certain moments, depending on its underlying reasoning, prioritisation can have a noticeable impact on recognition rates. For example, following the evacuation efforts from **Afghanistan**, some EU+ countries reportedly prioritised the examination of applications from those evacuated from the country (e.g. **NO** and **PL**)⁵⁵, linked to overall higher recognition rates for the respective period of prioritisation.

⁵⁴ See also Recital 19 APD: ‘In order to shorten the overall duration of the procedure in certain cases, Member States should have the flexibility, in accordance with their national needs, to prioritise the examination of any application by examining it before other, previously made applications, without derogating from normally applicable procedural time limits, principles and guarantees’.

⁵⁵ See EUAA Policy Survey [PCYS.2021.004 - Afghan nationals](#) [restricted access].



The extensions of the timelines for the examination procedures may, on the other hand, be of some relevance to the topic of suspension (see Article 31(3) APD⁵⁶). Again, the exceptional situation in **Afghanistan** after August 2021 presented a relevant example. At this stage and for months to come a number of EU+ countries had suspended (some of) their decision-making on **Afghanistan**. Notably, the examination of **Afghan** applications was suspended by **DK, NL, NO** and **CH**, while in **CH, DE, FI, FR, LU, NO, PT** and **SE**, the issuance of negative decisions was suspended as of September 2021.⁵⁷

The impact of these specific circumstances was noticeable in the decision outcomes concerning **Afghanistan** for several months, and especially in September – November 2021 ([Figure 7. Recognition rates at first instance in selected EU+ countries with most decisions on Afghan applications, Jan. 2021 – Dec. 2022](#)). It reflected a common position, discussed by the EU+ countries in the framework of the CGNet and aligned with the period of the finalisation of an intermediary CG update, intended to account for the significant change in the situation in **Afghanistan**.

Nevertheless, following a temporary suspension of the issuance of negative decisions resulting in overall high recognition rates, EU+ countries returned to taking negative decisions. Recognition rates after November 2021 returned to levels comparable with those prior to the Taliban takeover, despite EU+ countries agreeing on a joint assessment which precluded a (negative) finding in relation to Article 15(c) QD due to the limited available information up until the update from January 2023.

(b) Inadmissibility decisions

As noted in the relevant sections above, some inadmissibility decisions would be reported as rejections in the overall recognition rates (see [1.2.2\(f\) Secondary movements of beneficiaries of international protection](#) and [1.2.2\(g\) First vs subsequent applications](#)).

Article 33(2) APD

2. Member States may consider an application for international protection as inadmissible only if:

- (a) another Member State has granted international protection;
- (b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35;

⁵⁶ Article 31(3) APD: Member States shall ensure that the examination procedure is concluded within six months of the lodging of the application.

[...]

Member States may extend the time limit of six months set out in this paragraph for a period not exceeding a further nine months, where:

- (a) complex issues of fact and/or law are involved;
- (b) a large number of third-country nationals or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit;
- (c) where the delay can clearly be attributed to the failure of the applicant to comply with his or her obligations under Article 13.

By way of exception, Member States may, in duly justified circumstances, exceed the time limits laid down in this paragraph by a maximum of three months where necessary in order to ensure an adequate and complete examination of the application for international protection.

⁵⁷ EUAA Policy Survey [PCYS.2021.004 - Afghan nationals](#).



- (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38;
- (d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU have arisen or have been presented by the applicant; or
- (e) a dependant of the applicant lodges an application, after he or she has in accordance with Article 7(2) consented to have his or her case be part of an application lodged on his or her behalf, and there are no facts relating to the dependant's situation which justify a separate application.

From the data analysis, it appears that for certain EU+ countries, inadmissibility decisions factor in significantly in the recognition rates for **Afghanistan** ([Figure 9. Recognition rates at first instance in EU+ countries with most Afghan applications rejected in admissibility procedures, 2022](#)) and **Syria** ([Figure 13. Recognition rates at first instance in EU+ countries with most Syrian applications rejected in admissibility procedures, 2022](#)). Their prevalence, therefore, may have a notable impact on the observed variations in recognition rates. This appears particularly relevant for **EL** and **BE**, where the share of inadmissibility decisions is of some significance for **Afghanistan** ([Figure 9](#)) and especially for **Syria** ([Figure 13](#)).

Information collected during this study suggests that the grounds for inadmissibility decisions in **BE** and **EL** differ. They illustrate the three main identified factors in this regard:

- **Subsequent applications:** In **BE**, a significant proportion of applications from **Afghan** applicants in 2022 were subsequent and have been rejected as inadmissible (see [1.2.2\(g\) First vs subsequent applications](#)).
- **Beneficiaries of protection in another Member States:** **BE** reported a non-negligible proportion of cases which are rejected as inadmissible due to being lodged by beneficiaries of international protection in another Member State, in particular in the case of **Syrian** applicants (see [1.2.2\(f\) Secondary movements of beneficiaries of international protection](#)).
- **Safe third country:** On the other hand, **EL** applies the 'safe third country' concept to a larger extent compared to other EU+ countries. The consideration of Türkiye as a safe third country therefore leads to a notable proportion of cases rejected as inadmissible, both for **Afghanistan** and for **Syria** (see [Safe third country](#) below).

(c) Safe third country

Depending on national caseload and the approach of the EU+ countries to defining the connection between an applicant and the third country in accordance with Article 38(2)(a) APD, the applicability of the 'safe third country' concept may have a significant impact on national recognition rates.

In the convergence survey of November 2022, 13 EU+ countries reported that they apply the 'safe third country' concept, 10 of them noting that such inadmissibility decisions also affected applicants from the CG countries. Those that were able to specify the third countries they apply the concept to indicated Norway and Switzerland as safe third countries [**BE** and **DE**]. **BE**



also applied the concept to Tibetans with former habitual residence in India. The United Kingdom was considered a safe third country by IE. EL replied that they apply the concept to Albania, North Macedonia, and to Türkiye for specific nationalities of applicants, among which notably **Syrians, Afghans, and Somalis**.

Most countries clarified that the concept is applied on a case-by-case basis and reported very limited application with regard to applicants from the CG countries. On the other hand, the negative decisions in EL for **Afghan** and **Syrian** applicants appear to largely correlate to inadmissibility decisions, with 'safe third country' rejections likely to constitute the majority of such decisions.

In 2022, EL's recognition rate for **Afghan** applicants was 85 %. Taking out the admissibility decisions, the recognition rate becomes considerably higher, at 98 %. Further taking into account that EL's decisions on subsequent applications were largely positive, this suggests that the negative decisions impacting the overall recognition rate of EL for **Afghanistan** were in their large majority 'safe third country' inadmissibility decisions. Similarly, in 2022, EL's recognition rate for **Syrian** applicants was 72 % overall. Taking out inadmissibility decisions brings the recognition rate to 98 %.

Looking at this in terms of variation in recognition rates, its impact appears different for **Afghanistan** and **Syria**. For **Afghanistan**, recognition rates across EU+ countries continue to vary significantly and a higher recognition rate in EL would not have a noticeable impact on their overall variation. On the other hand, the recognition rates for **Syrian** applicants are consistently high across EU+ countries and a higher recognition rate in EL would align with this trend, contributing to less variation overall.

Furthermore, the example of EL confirms that the systematic application of the 'safe third country' concept can have a considerable impact on recognition rates. It further highlights the importance of the consistent application of the concept for the overall convergence efforts.

(d) Safe country of origin

The designation of safe countries of origin introduces a presumption of safety with the aim to improve the efficiency of the asylum procedure in such cases. Nevertheless, the examination of the application remains individual and on its merits.

The concept of safe country of origin is likely to be introduced for countries with consistently low recognition rates, rather than to lead to lower recognition rates per se. Among the countries covered in the EUAA CG, only **Nigeria** appears as a 'safe country of origin' in some national lists. This is currently the case for **CY**⁵⁸ and **IT**.⁵⁹ The relevant months of introduction on the respective safe country of origin lists are May 2021 for **CY**, and in March 2023 for **IT**. While the extent of the actual use of accelerated or border procedures in accordance with

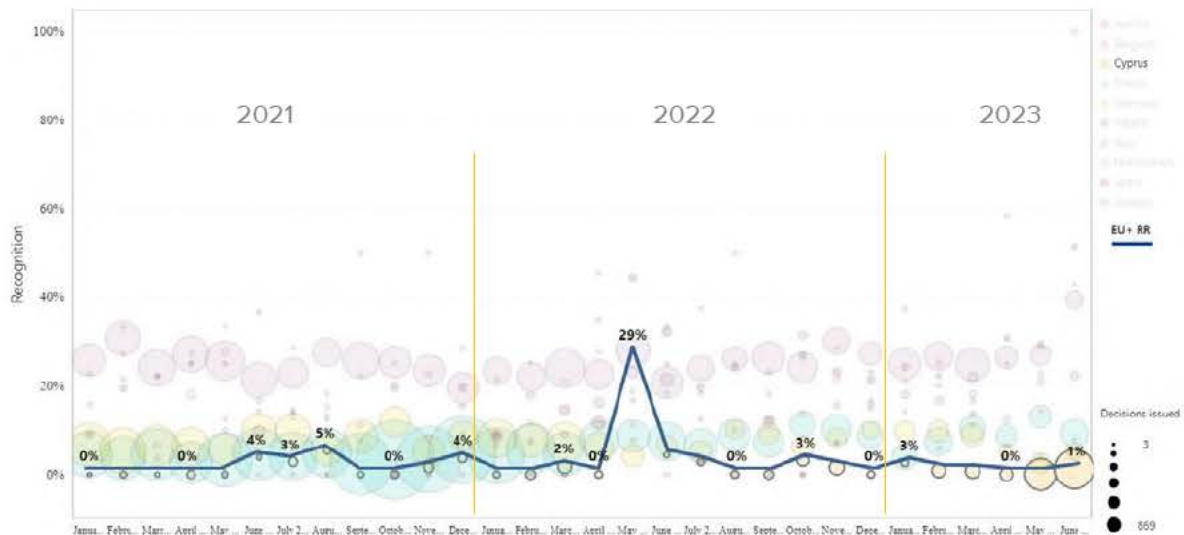
⁵⁸ EUAA, [Applying the concept of safe countries in the asylum procedure](#); A DA, [Safe country of origin – Cyprus](#) <accessed 1 September 2023>

⁵⁹ A DA, [Safe country of origin – Italy](#) <accessed 1 September 2023>

Article 31(8)(b) APD is unclear, with no such data reported to the EUAA EPS, it has been noted that in **CY**, the extent of its use has somewhat increased since September 2022.⁶⁰

What represents particular interest is whether and to what extent the recognition rates for **Nigerian** applicants may have been impacted by the introduction of the concept. In this regard, it is notable that **IT** and **CY** are among the main receiving countries of **Nigerian** applicants and that in 2022, they represented the lowest [**CY**] and highest [**IT**] recognition rates among the EU+ countries issuing more than 200 decisions. See [Annex 2: Statistical overviews - Nigeria](#). As illustrated in the figures below, no significant difference in recognition rates can be noticed at national level in relation to the introduction of **Nigeria** in the respective safe country of origin lists. On the contrary, recognition rates in **IT** appeared to increase, with the highest reported recognition rate since January 2021 recorded in June 2023 (39 %).

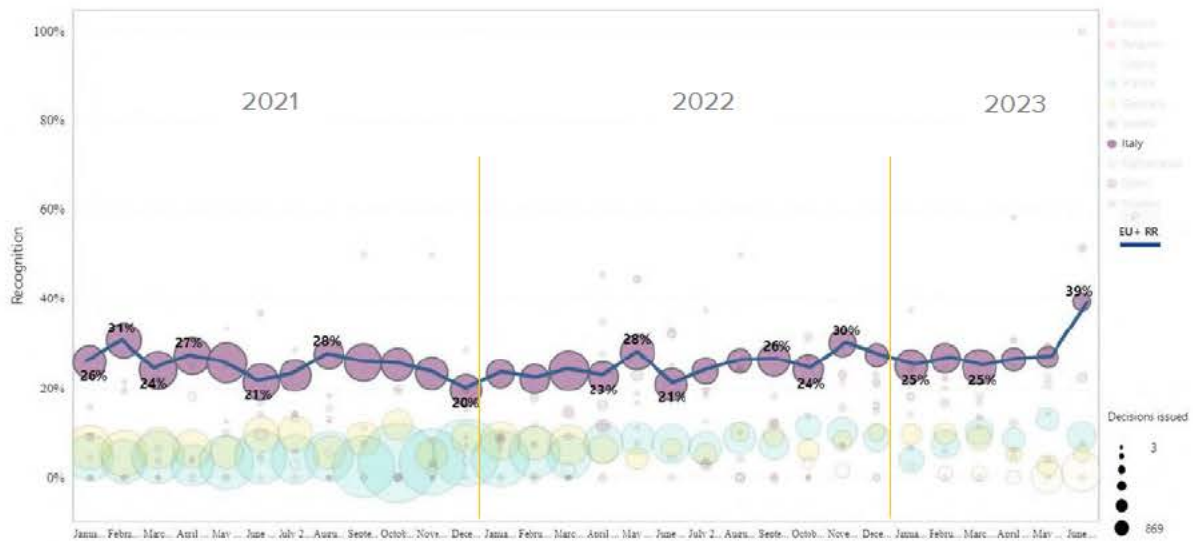
Figure 29. Cyprus - recognition rate for Nigerian applicants, January 2021 – June 2023.



Source: EPS monthly data

⁶⁰ A DA, Cyprus.

Figure 30. Italy - recognition rate for Nigerian applicants, January 2021 – June 2023.



Source: EPS monthly data

The relevance of the concept to the CG countries is overall limited and little information is available with regard to the impact of its application. However, the EPS data suggests that the recognition rate of **CY** for **Nigerian** applicants was particularly low prior to introducing the concept and remained at very low levels since, with the exception of May 2022, where a few positive decisions accounted for a recognition rate of 29 %. On the other hand, the data for **IT** is limited due to the very recent inclusion of **Nigeria** in the list of safe countries of origin.

Nevertheless, the examples above appear to corroborate the assumption that the use of the 'safe country of origin' concept in practice should not have a notable impact on recognition rates. Rather, it represents a procedural tool to improve efficiency in the asylum procedure.

1.2.4. The role of national policy and guidance

Some EU+ countries have a long-standing tradition of producing national guidance for their case officers. Where they continue to issue such guidance in parallel to existing EUAA guidance, this has been attributed mostly to reasons of preservation of 'national sovereignty' (see [Figure 40. For what reason\(s\) do you produce national guidance on countries covered by EUAA CG?](#)).

The national guidance analysed in the framework of this study was found to be largely in accordance with the EUAA general guidance and CG, whether the latter is referenced explicitly or not. Nevertheless, some notable differences persist. These differences largely stem from general approaches reflecting national traditions and jurisprudence. Not all identified specifics would have a significant impact on recognition rates, depending on the magnitude of the caseload they concern and their implications for the examination of the application. Some, however, merit a focused exploration.



The advantages of applying the existing EUAA guidance as national guidance are multiple and closely relate to its convergence potential. The EUAA guidance is anchored in the common standards of the EU asylum acquis and the relevant jurisprudence of the CJEU. It is largely developed in a joint effort among experts from EU+ countries and benefits from input from the European Commission, UNHCR, and – depending on the topic, other relevant organisations. Most guidance documents are also adopted or endorsed at the level of the EUAA Management Board. Hence, its relevance and quality are ensured at multiple levels. In some cases, existing national guidance has evolved to fully account for the EUAA guidance and incorporates the latter, especially in relation to CG.

On the other hand, in addition to allowing EU+ countries to maintain full unilateral control over the guidance provided to relevant asylum practitioners, a number of advantages pertaining to national guidance have been identified in the framework of this study. National guidance can be:

- directly linked to and relevant for the specific needs at the national level (e.g. main claims or main areas of origin in country-specific guidance may be addressed in more detail);
- more directive towards their target users, including by providing binding instructions and reaching clear singular conclusions (while the joint development of EUAA guidance may result in less clarity in an attempt to accommodate diverging views);
- more comprehensive and practical, as it responds to the needs in a particular asylum system: it can address a number of additional aspects, compared to EUAA guidance, such as specific procedural steps;
- more frequently updated: this is particularly relevant for country-specific guidance which is time-sensitive and which at the national level allows for more flexible processes and timely updates.

For those countries that shared national guidance, the EUAA observed its consistent application and impact in the shared case samples and input to the mock cases, confirming the key role of national policy and guidance for decisions in individual cases.

(a) General guidance of relevance to the examination of applications

General EUAA guidance on the examination of applications for international protection covers the core subjects of interviewing, evidence assessment, qualification. Specific thematic guidance is also available on some of the grounds under the definition of a refugee, on IPA, etc. Developed jointly with EU+ countries, such guidance is often deliberately open to accommodate for differing national practices.

In the context of the pilot study, the EUAA asked EU+ countries to share national guidance relevant to the examination of applications for international protection. Suggested topics included:

- **Personal interview** (general and/or on specific topics)
- **Evidence assessment** (general and/or on specific topics)
- **Application of the safe country concepts** (safe country of origin and safe third country)



- **(Other) guidance on inadmissibility**
- **(Other) guidance on manifestly unfounded applications**
- **Qualification for international protection (general or thematic)**
- Other topics which may have an impact on decision-making and, respectively, recognition rates.

Five EU+ countries shared a total of 40 documents, which were analysed for the purposes of this analysis. The following are some of the main observations based on the input provided by EU+ countries to the initial convergence survey and the direct analysis of shared national guidance.

For more details on the shared thematic national guidance, see [Annex 5: National guidance](#).

GENERAL OBSERVATIONS

National guidance on general or thematic aspects tends to be updated less frequently than country-specific guidance. Some documents shared in the framework of this study dated to 2015-2016 and had not been updated subsequently. Due to these timelines, national guidance may not always reflect relevant recent CJEU jurisprudence or EUAA guidance. Nevertheless, the documents appear to be largely consistent with existing EUAA guidance. Some more recent national documents also explicitly refer to relevant EUAA guidance.

National guidance is often based on UNHCR guidance, established national jurisprudence, and in some cases academic articles (e.g. **NO**) and jurisprudence from other jurisdictions (e.g. **SE, NL**). Depending on its scope and date, it may also refer to EUAA general guidance and/or in some cases the EUAA CG.

Overall, the analysed national thematic guidance appeared consistent with EUAA documents. When considering this finding, it is of note that the EUAA documents adhere to the applicable legal framework and introduce the relevant judgments of the CJEU. However, beyond that, they often leave space for national variations, some of which may lead to variations in recognition rates across EU+ countries.

ADMISSIBILITY: SAFE THIRD COUNTRY

The application of the concept of safe third country allows for some variation in interpretation and application. The requirements of safety are laid down by the APD. However, certain rules are left to national regulation in accordance with Article 38(2) APD. Policies and practices may vary depending on the emphasis placed on the other two elements in the application of the concept to a specific case, namely, the connection between the applicant and the third country; and the requirement for the applicant to be readmitted to that country.



From national guidance

In this regard, **BE**'s guidance introduces a structured three-step approach:

1. Does the applicant have a **connection** with the third country (factual questions and elements to consider the 'connection')?
2. Will the applicant be **(re)admitted** on the territory of the third state (readmission agreements; possession or possibility to obtain travel documents to the third country; possession or possibility to obtain another document allowing to access the territory of the third state; COI on entry conditions)?
3. Can the third country be considered as **safe for the applicant** (description of each condition under Article 38 APD (recast) separately, and section on the sources of information)?

In relation to this national guidance, it appears that the concept is applied on a strictly individual basis, frontloading the requirements to make the use of this concept efficient. In practice, this results in fewer cases where the application would be rejected as inadmissible on 'safe third country' grounds, in particular with regard to applicants from the CG countries, as confirmed in **BE**'s response to the initial convergence survey.

On the other hand, the situation in **EL** suggests a systematic examination of applications on admissibility and more open interpretation of the requirements put forward as first and second in **BE**'s approach. While **EL** did not share relevant national guidance, these conclusions can be drawn from the general designation of Türkiye as safe for **Syrian, Afghan and Somali** applicants, as well as the statistical data on inadmissibility decisions (see [1.2.3\(c\) Safe third country](#)), as well as the number of repeated applications and their largely positive outcome in **EL** (see [1.2.2\(g\) First vs subsequent applications](#)). The latter could be correlated with the phenomenon of rejected applicants who would bring forward the new element of not having been admitted to Türkiye (Article 38(4) APD).

Similarly, in **NO**'s guidance from 2022, readmission is not considered in the assessment. However, in the initial survey, **NO** reported that a total of 34 applicants from the CG countries had been rejected based on this concept, either because they had already received protection in a safe third country or because they had previously stayed in such country. **NO** further underlined that there was no list of safe third countries and examination was on a case-by-case basis. This appeared to have resulted in a relatively lower proportion of such cases and lesser impact on recognition rates overall.

Such differences would clearly impact recognition rates at a certain point in time. However, it is of note that, should the applicant lodge a repeated application, they may subsequently be mitigated, as exemplified in the case of **EL**.



PERSONAL INTERVIEW

The EUAA guidance and the corresponding core training module on the asylum interview promote a structured approach to interviewing, emphasising the importance of the free narrative and open questions, among other topics.

This approach appears directly reflected in some of the shared national guidance. Moreover, findings of the mock case exercise and the case sample analysis confirmed that the approach is then followed in practice. For example, in their feedback on the fictional interview, both **FI** and **NO** commented that the free narrative would have been introduced more thoroughly and more open questions would have been asked to the applicant in their national systems.

It is also of note that, according to **FI** national guidance, the completion of the core EUAA module on the asylum interview method is compulsory and the latter, along with the other core EUAA modules, should be followed by new case officers as soon as possible.

EVIDENCE ASSESSMENT

Evidence assessment in the asylum field is primarily addressed in Article 4 QD. It is an area requiring substantial knowledge and skills, due to its specificities. The EUAA practical guide on evidence assessment and the relevant training module promote a structured approach to evidence assessment, aimed to equip national asylum practitioners with knowledge, skills and competences to complete these challenging tasks in an objective and impartial manner.

Evidence assessment is an important aspect, which may be addressed in national guidance. Where this is not the case, it is likely subject to training and established practice at the national level and may be largely influenced by the organisational culture. The risk of subjectivity at this stage is prominent, as the assessment largely relies on the appreciation of the individual decision-maker of whether the applicable probative standards are met.

Some specific thematic guidance in EU+ countries also appears to shift the burden of proof to the applicant (e.g. individual circumstances in relation to Article 15(c) QD in **BE**'s thematic guidance) and/or to introduce a higher standard of proof in comparison to relevant EUAA guidance (**BE**'s thematic guidance on refugees *sur place*). These nuances may lead to different decisions based on evidence assessment.

An important specificity in approach was also noted in **SE**'s guidance, according to which '*If a specific area of origin cannot be established, the grounds for protection put forward shall be examined against the whole country*'.⁶¹ This approach was also demonstrated in the mock case exercise. Such a finding would have a notable impact on the assessment of protection needs in relation to the reach of the actor, the availability of protection, and especially in terms of IPA, as further evidenced by **SE**'s national guidance 'The concept of residence in asylum matters': '*In the absence of a residence in the home country or where no residence is deemed likely, the risk assessment shall be carried out against the whole country. This means that the issue of internal flight does not arise in such a case. The burden of proof never passes on the Migration Agency, but the applicant must make it probable that there is no part*

⁶¹ **SE**, investigation and examination of identity and nationality, residence and habitual residence in asylum cases, March 2021.



of the home country where he or she can be protected. This approach does not appear to correspond to the EUAA guidance on IPA, which puts forward a shift of the burden of proof towards the determining authority.

The above notes reflect some examples of guidance related to evidence assessment, which may have a direct impact on recognition rates. Further differences in approach were noted in the case samples and mock case analysis, both in terms of the exploration of different topics during the interview, and in terms of the thresholds introduced in the credibility and risk assessment according to the decision (see [Annex 7: Mock case exercise](#)).

The credibility analysis and risk analysis constitute crucial elements in the examination of protection needs. Ensuring a common approach in this regard, along with reliance on a consistent factual basis, are of utmost importance for convergence in terms of decision-making practices and outcomes.

REASONS FOR PERSECUTION

Thematic guidance in relation to qualification for international protection and in particular the different reasons for persecution has been developed since 2018, often in relation to needs identified in the work on specific countries of origin in the context of CG. This includes general EUAA guidance on qualification, as well as guidance addressing the specific reasons for persecution, such as MPSG, religion, and political opinion.

MPSG had been a topic of recurring debate in the CG work, often resulting in open formulations and the use of specific commonly agreed examples, rather than general conclusions for relevant categories. These differences were highlighted by **DE** and **NL** in the initial convergence survey of November 2022, where both responding countries qualified their approach as more restrictive than the EUAA guidance. This was also demonstrated in **NL**'s specific guidance on Westernised women, from November 2022, where it is noted that *'the Department considers that a Western lifestyle is not a religious or political opinion. According to the Department, women who have adopted a Western lifestyle in the Netherlands are not to be regarded as a specific social group. [...] They do not have an innate characteristic or a common background that cannot be changed. Nor do they share a characteristic or belief that is so fundamental to identity or moral integrity that they should not be required to give up.'* Some exceptions to this rule are included for political opinion and religion, but not with respect to MPSG.

While the EUAA does not provide general guidance on Westernisation, it is of interest to note that the CG on **Afghanistan**, for example, specifically concludes for profile 3.13. Individuals perceived as Westernised, that *'Available information indicates that persecution of this profile may be for reasons of religion and/or (imputed) political opinion or membership of a particular social group. The latter could be based on shared characteristic, such as a common background which cannot be changed (perceived past behaviour) and a distinct identity in the context of Afghanistan, linked to their stigmatisation by the surrounding society, or a belief that is so fundamental to identity or conscience that they should not be forced to*



renounce it (opposition to cultural, social or religious norms and the unwillingness to comply with them).'

On the other hand, some of the shared national guidance explicitly refers to the applicability of the MPSG concept. For example, **SE**'s guidance on the investigation and assessment of gender persecution of women, recalls that *'Sex may, alone or in conjunction with other characteristics, be found to belong to a particular social group. There is no requirement for cohesion or association between the members of the group. Furthermore, the size of the group lacks significance. Not everyone in the group is at risk of persecution.'* In addition, **NO**'s guidance on female genital mutilation concludes *'there will be no doubt that the risk is due to the applicant's membership in a particular social group.'*

Another important difference in approach to the reasons for persecution is noted in the consideration of **(imputed) political opinion**, in particular in the guidance and practice of **DE** concerning draft evaders from **Syria**. Over the years, this has accounted for significant differences in the type of protection granted in **DE** compared to most of the other main receiving countries for **Syrian** applicants.

Differences in the interpretation and application of the Convention grounds are considered likely to result in a different type of protection being granted, unless another ground is consistently considered as alternative. In this regard, **NL** noted in the survey that in cases where MPSG is not applied for a specific profile to which it is relevant according to CG, refugee status on the grounds of religion or political opinion could be considered. If this would not be the case (as the guidance on Westernised women seems to suggest, for example), subsidiary protection because of specific vulnerability could be considered.

The different interpretation and application of the reasons for persecution in accordance with national guidance or established practice is not likely to impact the overall recognition rates, however, it has a potentially significant impact on the type of protection granted and remains an important aspect of ensuring a truly consistent implementation of the EU legal framework. Further convergence in this regard is expected following the adoption of the Qualification Regulation.

ARTICLE 15(C) QD

EUAA general guidance and CG promote a holistic approach to the assessment of protection needs under Article 15(c) QD in accordance with the legal framework and CJEU judgments, such as *Elgafaji*, *Diakite* and *CF and DN*.

NL's approach to Article 15(c) QD is notably different than that of other countries and the EUAA CG, and this provision would only be applied in **NL** if their national guidance concludes that indiscriminate violence reaches exceptionally high levels. Instead, for the areas where additional personal circumstances would be required to substantiate protection needs under Article 15(c) QD (see [Figure 22. Assessment of the level of indiscriminate violence in current EUAA country guidance](#)), **NL** would not consider Article 15(c) QD.



This results in a significant difference in national decision-making practices. For example, several countries responding to the caseload surveys noted that they had applied Article 15(c) QD for **Syria, Iraq, Nigeria, and Somalia** in 2022, while the provision would as a rule not be applicable in **NL** for any of these countries at the moment (see [\(b\) Country-specific guidance](#) below).

In their response to the initial survey, **NL** put forward that, although the national framework is different, the level of indiscriminate violence is always taken into consideration in the assessment of risk in the individual case. It was further clarified in discussions that this may lead to subsidiary protection being granted in relation to Article 15(b) QD.

INTERNAL PROTECTION ALTERNATIVE

The application of IPA is key to recognition rates, as the concept introduces a decisive difference between positive and negative decisions for applicants found to have protection needs in their home area. The EUAA provides general guidance on IPA as well as a framework for its country-specific assessment in its CG documents.

Differences in legal stance, practical approach and the factual assessment of IPA have a potentially significant impact on recognition rates and the topic is key to convergence of decision-making practices and outcomes.

Notably, in the initial convergence survey **FR** responded that the national determining authority does not expressly analyse IPA in the examination of applications for international protection. Depending on the situation in the respective country of origin, this approach may result in a larger proportion of positive decisions in **FR** compared to EU+ countries which apply the concept consistently.

The threshold for the ‘reasonableness to settle’ in the respective part of the country represents a key element in the assessment, where some differences may be observed. As confirmed in EUAA guidance, the conditions for satisfying the ‘reasonableness test’ go beyond the guarantees of Article 3 ECHR. On the other hand, national guidance in **BE** from 2016, for example, introduces *‘must not be contrary to Article 3 ECHR as the appropriate test’*. Furthermore, this guidance appears stricter with regard to the travel and admittance requirement, where it is stated that *‘in practice, if there is no objective information to conclude that access to a given resettlement area is “impossible”, it will be assumed that the return to that area is “possible”*. The corresponding test according to EUAA guidance is ‘undue difficulty’.

In the initial convergence survey, **DE** also noted that they have identified certain differences to EUAA guidance with regard to IPA, resulting in a ‘slightly more restrictive’ approach. However, no additional details were provided and **DE** commented that the outcome of cases would generally be the same.

On the other hand, **BE**’s national guidance appears more explicitly protective for the category of unaccompanied children, while **NO**, for example, introduced certain protective considerations for women.



Identified differences in relation to IPA have the capacity to lead to variations in recognition rates. However, the availability of IPA is considered specifically for each country of origin addressed in EUAA CG, making it likely that the country-specific assessments, if effectively and consistently taken into account at the national level, would have a corrective convergence impact.

The question on the burden of proof, on the other hand, highlighted above in relation to SE's guidance, may be likely to impact recognition rates despite having a joint assessment with regard to the situation in specific areas of potential IPA.

(b) Country-specific guidance

The table below provides an overview of available national guidance on the countries subject to EUAA CG. The summary reflects the results of the initial survey on convergence, along with the analysis of guidance shared with the EUAA for the purposes of this analysis.

Table: National country-specific guidance, availability, and submission for the pilot convergence analysis.

★ - The national guidance has been shared with the EUAA for the purposes of this analysis.
○ - National guidance is reported to exist but has not been shared with the EUAA.

	Afghanistan	Iraq	Nigeria	Somalia	Syria
BE	★	★	★	★	★
CZ					
DE	○	○	○	○	○
DK					
EL	○	○		○	
FI	★	★		★	
FR	★	○	○	○	★
IE	○				
LT					
LU	○				○
LV					
NL	★	○	○	○	★
NO	★	★	○	○	★
PT					
RO					
SE	★	★		★	★
SI					
SK					

As seen from the table above, the pilot convergence analysis benefitted from access to the majority of available national guidance on **Afghanistan** (6 out of 10 reportedly available documents), **Syria** (5 out of 7), and **Iraq** (4 out of 7), while fewer documents were provided for the analysis on **Somalia** (3 out of 8) and **Nigeria** (1 out of 5).



While national guidance across the EU+ takes into account EUAA CG in accordance with Article 11(3) of the EUAA Regulation, the approach adopted by **SE** can be highlighted as a best practice in terms of making an efficient and comprehensive use of the CG while maintaining national guidance. This direct incorporation of the CG into national guidance also guarantees actual impact of the latter towards convergence.

Sweden: use of the EUAA country guidance in national guidance

The approach

Recent national guidance in **SE** directly refers to and links the respective EUAA CG document. National guidance documents are short and follow the structure of the CG, while adding some clarifications where relevant, as well as certain additional aspects specific to the national process.

In case of differences to the EUAA conclusions, **SE** provides specific reasoning.

The benefits

Efficiency: **SE** can directly rely on the EUAA product they have contributed efforts to, by developing short user-friendly documents at the national level, which benefit from the comprehensive analysis and guidance at EU level.

Timeliness: The full participation in the CG development and update process allows **SE** to publish the respective national guidance along with or shortly after the EUAA document.

Convergence: The direct reliance on the document allows to realise its full potential for convergence in decision-making.

Other Member States, such as **EL**, have also decided to rely directly on the EUAA CG with regard to specific countries, while maintaining national guidance for others. Further differences in approaches to taking the CG into account are addressed in the section [1.3.3 The use and impact of EUAA country guidance](#) below.

Differences in general approach

In many cases where differences are identified in the assessment of national authorities in comparison to the common analysis and guidance, this stems from differences in the interpretation and application of general legal concepts, rather than the factual assessment of the situation in the country of origin.

DE is a notable example. As highlighted in their survey response, differences between their national guidance and the EUAA CG mostly derive from horizontal aspects, such as their approach to the application of the MPSG ground, the consideration of executions by non-State actors under Article 15(b) QD vs Article 15(a) QD, a policy that assesses that prison conditions would generally not fall in the application of subsidiary protection but rather lead to the consideration of national forms of protection, not considering the indirect consequences of an armed conflict in the assessment under Article 15(c) QD, among others. These elements consistently and substantially impact the national country-specific guidance in **DE**.



In the framework of the CG work, **DE** has continuously clarified their national position on each of these topics. Nevertheless, acknowledging that the majority of other countries apply a different approach, they had not objected to the latter being reflected as a basis for the joint assessment. At the same time, no changes have been introduced in **DE** to bring national guidance closer to the common approach and national guidance and decision practices have remained different, mainly in view of national traditions and jurisprudence. Such differences are likely to result in different recognition rates (e.g. considering the topic of prison conditions) or in the granting of a different EU-regulated form of protection (e.g. the application of MPSG or of imputed political opinion for draft evasion).

In relation to refugee status, the general approach of the **NL** also introduces an important difference to the EUAA CG. **NL** differentiates between individuals considered to face 'group persecution' and others in 'risk groups'. For clarity:

- 'There is **group persecution** if a group of foreign nationals in a country of origin is systematically exposed to persecution on one of the grounds of Article 1A of the Refugee Convention. Situations involving group persecution are included in the country-specific policy. The individualisation requirement also applies to foreign nationals who invoke group persecution. The foreign national must make it plausible that he belongs to the group of foreign nationals for whom group persecution is assumed.'
- 'The State Secretary for Justice and Security can designate a population group as a **risk group** if it appears that persecution of aliens belonging to this population group occurs in the country of origin. This does not necessarily involve systematic forms of persecution of a population group. [...] The foreign national who belongs to a population group that has been designated as a risk group in country-specific policy by the State Secretary for Justice and Security can, if there are credible and individualizable statements, make it plausible with minor indications that his problems related to one of the grounds for persecution lead to a well-founded fear of persecution. The individualisation requirement continues to apply to the foreign national who belongs to a high-risk group.'

Neither of the latter categories can be directly equated to the wording used in the EUAA CG documents to highlight profiles at high risk of persecution. The EUAA CG always requires an individual assessment, including when noting that a profile would in general have a well-founded fear of persecution. That being said, the latter formulation underlines a high level of risk, with no additional risk-enhancing circumstances being required, apart from belonging to the category. Without being an automatic recognition of protection needs, this formulation is used to signify that this would be the assessment applicable in most cases, while still allowing for exceptional cases.⁶²

Another difference in general approach is found in the national guidance of **FI**, which addresses the assessment under Article 15(c) QD at a district level as a standard approach. This in itself is not considered to have a notable impact on consistency with the EUAA CG, as most territories would in any case require an individual assessment of risk.

⁶² See 'Country Guidance: explained', [Refugee status](#) and [Term no ogy notes](#).



Afghanistan: differences in assessment

Few differences have been identified between the EUAA CG on **Afghanistan**, January 2023, and the shared national guidance [BE, FI, FR, NL, NO, SE]. It is noteworthy that the EUAA document is explicitly referenced and linked in most national guidance documents [BE, FR, NO, SE], apart from FI and NL. EUAA COI reports are also largely mentioned.

Identified differences regarding **refugee status**:

- In **BE**, certain additional profiles or sub-profiles are categorised explicitly as having a well-founded fear in general, including for example: former employees of sensitive ministries, influencers or other people who claim gender equality, the rule of law and democratic freedoms, ethnic and religious minorities such as Christians, Salafi, and Hazara. This assessment would be in line with the EUAA CG, however, it goes a step further in providing direct guidance to national decision-makers, where EU+ countries in the CGNet were unable to reach agreement on 'well-founded fear in general' and instead introduced an individual assessment based on (broad) risk-impacting circumstances.
- Similarly, **FR** finds that Hazara and Shia would in general have a well-founded fear of persecution. Assessment on some additional profiles is provided by **FR**, including artists and legal professionals.
- Notably, the guidance of the **NL**, while highlighting the '*very worrying situation of women in Afghanistan*', only considers single women as a risk group. This is a significant difference with the EUAA CG, which finds that women and girls in Afghanistan in general have a well-founded fear of persecution, with religion being a likely nexus, possibly along with MPSG.
- In **NO**, the assessment of the protection needs of different profiles is largely in line with the CG. One difference of notice is that for women and girls, the nexus is qualified as MPSG.
- A similar difference is observed in the national guidance of **SE**, whose legislation also explicitly mentions 'gender' as an example under MPSG. The conclusion of **SE** is also worded in a stronger manner, as it states that '*an asylum-seeking woman or girl from Afghanistan must be assessed as a refugee on the grounds of belonging to a particular social group, i.e. gender*'.

Compared to the benchmark of direct application of the EUAA CG, these differences could potentially lead to more refugee status decisions in the case of **BE** and **FR**, should the respective profiles be encountered. While in the case of **NL**, they could be resulting in relatively fewer refugee status decisions.

Identified differences regarding **Article 15(c) QD**:

- While **FR** directly uses the map providing an overview of the level of indiscriminate violence in the EUAA CG, it should be noted that the reading of it differs, in particular for the category considered 'high level of indiscriminate violence'. For the latter, the CG notes that 'a lower level of individual elements would be required', while according to **FR**, the individualisation of risk can be presumed. This (difference in) assessment only applies to Panjshir in the context of the assessment of January 2023.



- One minor difference was identified with the national guidance of **FI** in relation to Article 15(c) QD. While in the **Afghanistan** guidance, **FI** largely follows a provincial approach, in the case of Balkh, the assessment differentiates between the capital Mazar-e Sharif (assessed in accordance with the CG as an area where the violence does not reach a high level) and the rest of the province (assessed as not presenting a risk under Article 15(c) QD in general).
- In relation to their general approach to Article 15(c) QD, **NL** does not find that the provision can be potentially applicable to any part of **Afghanistan**, unlike the CG documents, where some provinces are assessed as experiencing a low level of indiscriminate violence, and Panjshir is found to experience a high level of indiscriminate violence.

Compared with the benchmark of the EUAA CG in general, it is unlikely that the above differences in the assessment under Article 15(c) QD concerning **Afghanistan** would have significant impact on overall recognition rates. Compared to previous reporting periods, the relevance of the assessment under this provision has decreased, while persecution by the Taliban and other actors, and serious harm under Article 15(b) QD have become more prevalent.

Syria: differences in the assessment

A number of EU+ countries maintain a **general policy** regarding **Syria**, resulting in the granting of subsidiary protection as a minimum. This was reported by **FI** in November 2022, when they mentioned they found the whole territory of **Syria** to constitute a risk under Article 15(c) QD. Similarly, according to the policy of **NL**, applicants would generally be granted protection, with the exception of certain categories: *'The IND assumes that a foreign national from Syria runs a real risk of serious harm upon or after returning from abroad. Based on this, a foreign national from Syria is eligible for a temporary asylum residence permit on the basis of Article 29, paragraph 1, preamble and under b, Aliens Act. This general principle does not apply in the following cases: the foreigner is an active supporter of the regime; or the individual facts and circumstances have shown that the foreign national is no longer at risk of serious harm upon or after his return to Syria. This is particularly the case if the person concerned has travelled back to Syria after an earlier departure from Syria.'*

The large prevalence of subsidiary protection granted to **Syrian** applicants in some EU+ countries also suggests the existence of a formal or informal national policy, which favours this secondary type of protection. This observation is made in relation to the EUAA CG, which finds that well-founded fear of persecution in relation to a Convention ground would be likely to be substantiated for a large proportion of the caseload. On the other hand, in countries like **BG**, **CY**, **DE**, and **MT**, applicants are primarily granted subsidiary protection or rejected, while refugee status is recognised in few cases if any. In 2022, 97 % of the close to 3,800 decisions in **BG** were subsidiary protection. **DE** issued 74 % subsidiary protection decisions, followed by 22 % refugee status. **CY** and **MT** issued fewer decisions on **Syrian** cases, however the pattern of issuing subsidiary protection vs refugee status is also clearly observed (**CY**: 167 decisions, 95 % subsidiary protection; **MT**: 148 decisions, 56 % subsidiary protection and the remaining 44 % rejections). See [Annex 2: Statistical overviews - Syria](#).



The topic of **draft evasion** is key to the overall recognition rates concerning applicants from **Syria**, when it comes to the differences in form of protection granted. In accordance with EUAA CG, following a complex assessment of risk, and taking into account relevant jurisprudence on the nexus, draft evaders from **Syria** would be highly likely to qualify for refugee status.⁶³ This assessment should have a significant impact on the overall recognition rates, taking into account the large proportion of such cases in the **Syrian** caseload.

Here, according to the input shared by EU+ countries in the initial convergence survey and the analysis of presented national guidance, the approaches of **DE** and **NL** represent notable exceptions from the joint assessment above.

- Based on CGNet records, **DE** consider that the risk faced by draft evaders is not for reasons falling under the Convention grounds. Instead, unless specific individual circumstances substantiate the relevance of (imputed) political opinion, draft evaders are likely to qualify for subsidiary protection under Article 15(b) QD.
- On the other hand, **NL** finds that the 'In view of the changed situation in Syria, there is no longer reason to assume in general that Syrian boys/men who rely on refusal of service or desertion can simply be regarded as a treaty refugee. [...] This means that it is assessed on an individual basis whether it is plausible that the person concerned was/will be forced/will be compelled to carry out acts involving offences or acts that fall within the exclusion clause of Article 1F of the Refugee Convention, or that he/she should provide essential support for this.' This guidance should be viewed in the context of the general **NL** guidance on **Syria** (see below).

The national guidance documents shared for the purposes of this pilot analysis include documents from **BE, FR, NL, NO** and **SE**. All except **NL** make an explicit reference to the EUAA CG. The assessment of protection needs is also largely consistent, with the following notable differences.

Other refugee status differences identified in national guidance:

- **NO** explicitly concludes that applicants coming from governorates where the war between the regime and rebel groups is still ongoing or where control is disputed will have a well-founded fear of persecution because of (imputed) political opinion, while the EUAA CG refers to risk-impacting circumstances in this assessment.
- **BE** provides more explicit guidance on who should be considered an opponent by the **Syrian** government, as well as that men from the Kurdish-controlled areas, who are of certain age, would have a well-founded fear of recruitment by the Kurdish forces.
- On the other hand, LGBTIQ applicants are not found by **BE** to have a well-founded fear in general, in contrast to what is concluded by the CG.
- **FR** considers minorities from areas controlled by extremist groups to have a well-founded fear in general, while the CG does not make this explicit.

Identified differences regarding **Article 15(c) QD**:

⁶³ See 'Country Guidance: Syria', February 2023, [4.2.2. Draft evaders](#).



- **BE** designated areas within Latakia and Hama as 'mere presence' territories, while the CG keeps a governorate approach and considers Hama to experience overall a high level of indiscriminate violence, however not of such exceptional intensity, while Latakia is overall found to experience indiscriminate violence not at a high level.
- **FR** found Homs and Damascus to experience higher level of indiscriminate violence than that indicated in the CG.

No national guidance on **Syria** was shared by **FI**, but in response to the initial convergence survey **FI** mentioned that they consider all of Syria to be an area of extreme indiscriminate violence, in which the mere presence of a person would be considered sufficient to establish a real risk of serious harm (Article 15(c) QD). This would lead to subsidiary protection where refugee status is not granted, but in terms of recognition rates is unlikely to showcase significant differences, as the country of origin is characterised by high recognition rates overall. Furthermore, in the case of **FI** it does not appear to create a bias towards positive subsidiary protection decisions, as most decisions in 2022 granted refugee status (see [Annex 2: Statistical overviews](#)).

OTHER COUNTRY-SPECIFIC DIFFERENCES IN ASSESSMENT

The national guidance on **Iraq** shared with the EUAA included documents from **BE, FI, NO, SE**, all of which made explicit reference to the CG. Even though some differences were identified, national guidance of the responding EU+ countries appeared largely in accordance with the EUAA CG on **Iraq**.

Guidance on **Nigeria** was only shared by **BE**. It was observed that this guidance was also largely reflecting the CG, albeit with a more limited scope and some differences in the assessment, including introducing a more protective guidance with regard to IPA.

Similarly, the national guidance documents on **Somalia** shared by **FI** and **SE** were largely in line with the CG. While the **BE** guidance dates from January 2021, i.e. before the CG Somalia was issued, **BE** also noted that an upcoming update will fully reflect the current CG Somalia from August 2023.

For more details concerning the shared national country-specific guidance, see [Annex 5: National guidance](#).

1.2.5. The role of jurisprudence

National jurisprudence plays a determinative role in defining policy as well as practice in a number of EU+ countries.

- **BE, FR** and **LU** noted that their national policy would be aligned with national jurisprudence. However, they may opt to initially challenge some jurisprudence.
- **SK** noted that jurisprudence played a very important role, however, at the national level it was not always consistent.
- **SI** and **NL** commented that it was important for certain profiles from certain countries.



- On the other hand, **EL** and **SE** indicated that national jurisprudence did not play an important role in forming guidance and practices.

Where jurisprudence plays a key role for the approach of the determining authority, its relationship with EUAA products and especially CG would be particularly relevant for overall convergence.

In this regard, responses to the initial convergence survey presented further variation. **DE** noted the differences between national guidance and EUAA CG originate from national jurisprudence. The impact of jurisprudence on recognition rates can also be evidenced by the developments related to draft evaders from **Syria** in **DE** (see [1.2.4\(b\) Country-specific guidance](#)). **FI** also remarked that the more granulated approach to the assessment of indiscriminate violence they largely maintain is due to national jurisprudence.

FR explained that when the (confirmed) position of their appeal authority is more favourable to the asylum seeker than that of EUAA CG, they would favour the judicial body's position in their doctrine. Along similar lines, input provided by the appeal body in **FR** suggests that national jurisprudence has indeed contributed to the lack of application of IPA in the national system, despite the existence of the possibility to apply it in accordance with national legislation transposing the QD. It was noted that national benchmark case law on IPA requires 'a very high standard in terms of protection, living conditions, life expectations, etc.' in order to consider that a given part of the territory fulfils the conditions of IPA.⁶⁴

BE, on the other hand, noted that their jurisprudence was largely in line with the EUAA CG and explicit reference to the EUAA CG are made in decisions. This was also evidenced in the study on references to EUAA products in jurisprudence, incorporated in the findings of section [1.3.3. The use and impact of EUAA country guidance](#).

Another aspect on which national jurisprudence reportedly varies, leading to potentially different outcomes is the scope of Article 15(c) QD and in particular whether the indirect impact of the indiscriminate violence (breakdown in law and order, famine caused by closure of roads due to insecurity, etc.) should be taken into account in the assessment. According to CGNet records, **DE**'s approach in this regard stands out, as in accordance with established national jurisprudence of **DE**'s highest administrative court, the indirect impact of hostilities would not be considered in the assessment under Article 15(c) QD. On the other hand, **FI**'s jurisprudence has clarified that this is an important part of the assessment. This difference impacts national guidance as well as the stance of EU+ countries with regard to the joint assessment of the level of indiscriminate violence in CG for specific geographical areas.

1.2.6. Other factors

A number of other factors have been mentioned in the course of the pilot study. These include, for example, the availability of representation during the asylum procedure at first instance, the quality of available interpretation, the quality assurance mechanisms

⁶⁴ See CNDA GF 15 juin 2021 M. S. n° 20029676 R, [ur](#).



compensating for potential subjectivity, etc. Within the constraints of the pilot convergence analysis, these factors have not been explored in detail.

Other, less tangible, factors included implicit policies reflecting general attitudes in the respective EU+ country. Notably, one country remarked that due to the limited number of applications they receive, they could afford a 'more generous' approach to the recognition of protection needs. Similarly, the broader political context triggered the evacuation efforts from **Afghanistan** and the corresponding positive decisions when these cases were examined within the asylum procedure.

On the other hand, the high number of applications from countries like **Afghanistan** and **Syria** received by certain EU+ countries, or the fear of 'instrumentalization' of the asylum process, may be linked to high political scrutiny. The latter, in turn, may lead to less protective national asylum policies, resulting in lower recognition rates overall, including where national forms of protection are granted instead, or may result in differences in the type of protection granted – especially where this is linked to different rights of beneficiaries. The right to family reunification appears to be a main concern in this regard, as it entails a significant increase in the expected burden on the national asylum, reception, and integration systems.

The differences in the rights associated with the two types of EU-regulated forms of protection may correlate with a more restrictive approach in the granting of refugee status in comparison to subsidiary protection. As highlighted by the European Commission in the context of this study, it is expected that the New Pact on Migration and Asylum will address this current shortcoming, fostering greater convergence among Member States.

A recent study showed that **CY, DE, EL** and **MT**, for example, do not provide for the right to family reunification for beneficiaries of subsidiary protection.⁶⁵ The results of the impact analysis of this, however, remain inconclusive due to the small number of applications in some of these countries (**CY** and **MT**) and the significant differences in outcome in the others (**DE** and **EL**). Nevertheless, it is of note that in the case of **Syria** (the only CG country for which all four countries issued more than 100 decisions), three of those countries (**DE, CY, MT**) granted predominantly subsidiary protection, while most of the main receiving EU+ countries granted refugee status to **Syrian** applicants (see [Figure 59. First-instance decisions and recognition rate in EU+, Syria: January – December 2022](#)).

Increased scrutiny can generally be applied at the national level in correlation with the level of impact of certain caseloads.⁶⁶ Different scenarios and approaches can be deduced depending on the broader impact of a certain policy. In some cases, the impact of a specific policy decision would be limited, such as when the EU+ country receives a relatively small number of applicants from a particular country or origin, or with regard to less prevalent profiles within a larger caseload. In other cases, concerning main countries of origin and profiles of some statistical significance, the impact would be significant. These differences in impact

⁶⁵ European Council on Refugees and Exiles (ECRE), [Not there yet: Family reunification for beneficiaries of international protection](#), February 2023 <accessed 18 September 2023>

⁶⁶ See, for example, a recent article concerning a change in policy towards women and girls from **Afghanistan** in **CH**, and expressed opposition on due to fears that it and the attached family reunification right would trigger an influx of refugees: RTS, [Le SEM assouplit le droit d'asile des Afghanes, soulevant l'opposition de la droite](#) <accessed 25 September 2023>



assessment would call for a varying degree of scrutiny in the consideration of national asylum policies. Political scrutiny can be particularly high where the national asylum and reception systems experience significant pressure and has become a contentious topic and possible source of societal polarisation.

Another phenomenon encountered in the recent years was that of the instrumentalization of migration and asylum, witnessed in particular in **LV**, **LT** and **PL** as a result of Belarusian actions in 2021.⁶⁷ The impact of this was particularly visible in **LT**, which became one of the top 10 receiving countries for **Iraqi** applicants in 2021-2022, recording a notable increase in applications, associated with significantly lower than average recognition rates. See in particular the decisions reported in October and November 2021 in [Figure 52. First-instance decisions and recognition rate in EU+ Top 10 Iraq: January 2021 – December 2022](#).

To a certain extent, such considerations may explain some of the observed differences in national guidance and practice in comparison to EUAA approaches, making the broader topic of the national political context and scrutiny pertinent to that of convergence in decision-making practices and outcomes.

1.2.7. Case studies

The case studies below are based on the case samples analysis and mock case exercise designed for the purposes of the pilot convergence analysis. While the profile of the applicant and their claims certainly hold significance, as depicted in the section [1.2.2 The role of caseload](#), it is doubtful that they solely or even primarily account for the variations observed in recognition rates.

The analysis suggests that EU+ countries would arrive at divergent decisions when examining similar or identical facts. This underscores the significance of developing and agreeing on common guidance at an increasingly meaningful level of detail and conclusiveness and of effectively implementing this guidance within national decision-making processes.

In this regard, the aspects of the personal interview, evidence assessment, and legal analysis are closely interlinked. Therefore, efforts to reach greater convergence should be designed and implemented in a holistic and comprehensive manner addressing as a priority each of the core elements in the examination of applications for international protection.

(a) Afghanistan – Hazara

The relevance of the ethno-religious background of applicants was highlighted above under [1.2.2\(d\) Ethno-religious background](#). The profile presents particular interest as the CG has identified increased risk for this population, while joint agreement on well-founded fear of persecution in general could not be reached in the framework of the latest update of the CG from January 2023.⁶⁸

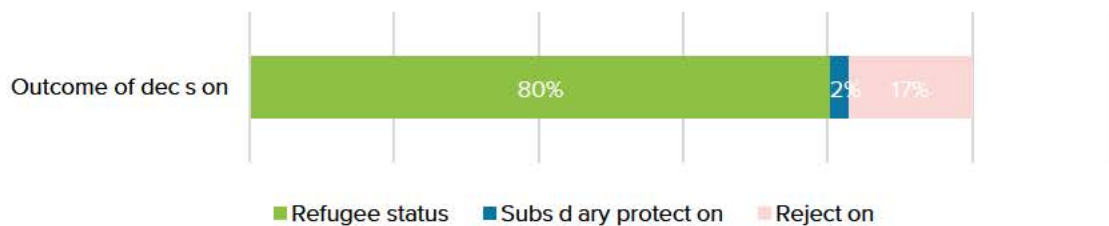
⁶⁷ See, for example, the European Parliament Research Service Briefing, [Instrumentalisation in the field of migration and asylum](#) <accessed 25 September 2023>

⁶⁸ See CG **Afghanistan**, January 2023, [3.14.2. Individual cases of Hazara ethnicity and other Shias](#).



In the case sample analysis, 41 anonymised files were shared by six EU+ countries. Among the submitted decisions, most granted refugee status (33), followed by rejections (7), which represented close to one fifth of the decisions. Only one decision granted subsidiary protection. Among the EU+ countries, **SK** and **FR** decisions were exclusively refugee status decisions. For **BE**, rejections (4) and refugee status (5) decisions were almost equally distributed, while **FI** shared 7 refugee status decisions and 3 rejections on the merits. **PL** shared 2 refugee status decisions and one granting subsidiary protection.

Figure 31. Case sample analysis – Afghanistan, decisions by outcome



In terms of the aspects identified as central to the outcome, the ethnic origin of the applicant was the primary element (83 % of the cases). Examination in relation to the Shia religion of the applicant was central in 54 % of the cases. Additional claims which were identified as key for the decisions were links to the former government (39 %), Westernisation (20 %), links to Western forces (15 %). Other claims brought up by the applicant were central in 41 % of the cases.

The credibility analysis played a key role and was assessed as central to the outcome in 44 % of the cases, in particular with regard to negative credibility findings.

The submitted cases were assessed as largely consistent with the EUAA guidance in terms of outcome. However, a number of differences were observed in relation to the approach adopted by the national authorities. The most notable examples included:

- No examination in relation to the (imputed) Shia religion of the applicant, taking into account that the Hazara ethnicity and Shia religion are closely connected in the perception of **Afghan** society, as consistently highlighted in the EUAA CG.
- Relying on negative credibility findings in the decisions, which had not been explored during the interview. This is found inconsistent with available EUAA guidance on evidence assessment as well as the core training module on the subject.

See [Annex 6: First instance case samples](#).

(b) Afghanistan – Westernisation

‘Westernisation’, used loosely to signify the adoption of seemingly ‘Western’ behaviours or appearances, often came up in discussions with counterparts as one of the topics on which approaches vary, both at first instance and at appeal level. The claim of fear due to perceived ‘Westernisation’ could be applicable to several CG countries and was brought up by respondents to the initial survey in particular regarding **Afghanistan** and **Iraq**.



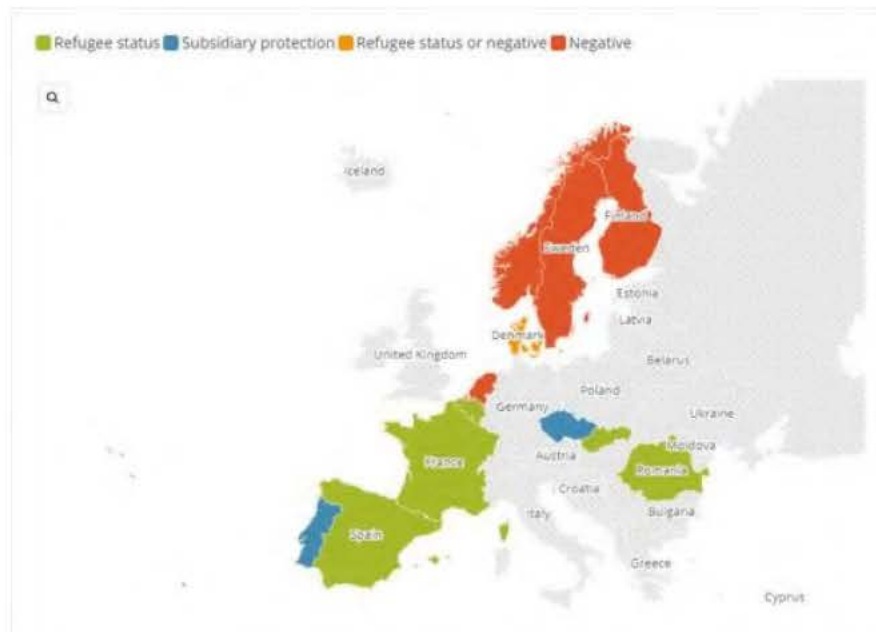
To gain direct insight into national approaches on this topic, the EUAA conducted a mock case exercise focusing on a male **Afghan** applicant with a potential 'Westernisation' claim. The mock case allowed to eliminate all factors related to the variables in national caseloads and presented decision-makers with the exact same facts as a starting point for their decision.

EU+ countries were to submit a decision on it in light of national guidance and practice. A total of 14 decisions were submitted by 13 EU+ countries.

In this mock case exercise, with the same facts, presented in the same way, EU+ countries took widely different decisions, suggesting that other factors beyond the specificities of the caseload may be determinative for the outcome of the examination at the national level, therefore contributing to the observed variations in recognition rates.



Figure 32. Outcome of mock case examination per country.



Furthermore, in discussions during the follow-up workshop on the mock case in August 2023, participating countries confirmed that they would largely expect decisions at the national level to be consistent, independent of the actual decision-maker in charge. This was attributed, notably to:

- directive national guidance and established practices, both on the topic and in general in relation, for example, to the credibility assessment approach;
- national set-up, in which few decision-makers are responsible for deciding on **Afghan** cases, further allowing for consultations among them;
- national set-up where decisions are reviewed and confirmed by senior staff.

The analysis identified considerable differences not only in the outcome of the decisions themselves, but also in the form and structure of decisions and the approach behind their underpinning reasoning.

Differences were identified in all core aspects of the examination.

Interview

- Differences in the way interviews are conducted across national administrations were initially identified in the anonymised interview transcripts submitted by EU+ countries for the preparation of the mock case exercise.
- While an effort was made to present a balanced fictional interview, building on those examples, a number of responding countries noted that they would have conducted the personal interview **significantly differently**.
- Several highlighted that more emphasis would have been given to the structured interview method relying on **free narrative and open questions**, also promoted by EUAA guidance and training.
- On the other hand, a number of countries replied that the **identity of the applicant and its credibility** would have been explored to a greater extent. This and other topics would have made a second interview necessary according to several of the participating countries.

Evidence assessment

- The **identification of material facts**, while not always explicit in the decision, appeared to vary across countries. The topic of 'Westernisation' itself featured differently in the decisions, as did the related change in the religious practices of the applicant. The added fictional reason for leaving Afghanistan was also addressed to varying degrees.
- Important differences were observed in the general approach to credibility assessment, starting with the **extent to which it would be developed** in the interview and within the decision or explanatory note. Several countries presented detailed reasoning in this regard, and some of them rejected the application on credibility grounds. At the same time, some that appeared to accept the credibility of the material facts moved directly to risk and legal analysis.
- Some differences in **standard and burden of proof** appeared to be introduced across responding countries.

Risk analysis

- Only one country included a dedicated section on risk analysis in the decision.
- Further differences included the assessment of the **applicant's visibility** in relation to the risk of persecution upon return.
- The analysis of **how fundamental** the current values and beliefs were for the applicant and to what extent they could be **expected to change** were central in a number of decisions. Different findings in this regard were determinative for the positive outcome in **BE** and **FR**, and on the other hand for the negative outcome in **SE**, **NO**, and **NL**.

Legal analysis

- Differences emerged in the determination of the potential link to a **Convention ground**, with most refugee status decisions identifying imputed political opinion and/or religion as applicable, and one country noting the potential relevance of MPSG in addition.
- On the other hand, several of the negative decisions explicitly mentioned that the feared treatment would not be connected to the grounds of political opinion and religion. One also explicitly noted there would be no MPSG.
- With regard to the **subsidiary protection decisions**, one was on the basis of Article 15(b) QD and one on the basis of Article 15(c) QD.

Other important specific elements of variation also included:

- **Use of COI:** Different COI sources may present the factual situation in a country differently. In the case of **Afghanistan**, the recency of the information would also play a significant role, in relation to the substantial changes in the country following the Taliban takeover. EU+ countries referred to different sources to a different extent. In particular, EUAA COI was used directly in less than half of the submitted documents (6 out of 14).
- **Use of CG:** Eight of the submitted documents included references to the CG on **Afghanistan** from January 2023. References were made in both positive and negative decisions, and to different sections of the common analysis.

It was also noted that none of the submitted documents included reference to the EUAA thematic guidance on religious-based claims and political opinion.

The topic of the mock case was selected for the complexities it presents and differences in outcomes were expected in view of previously available information. Moreover, EUAA CG on **Afghanistan** concludes that an individual assessment is necessary in such cases. Nevertheless, some approaches presented clear points of departure from relevant EUAA guidance. The latter may be of relevance to explore further in terms of quality, but also, importantly, in terms of convergence. Adhering to common approaches and structures is a prerequisite to consistent outcomes.

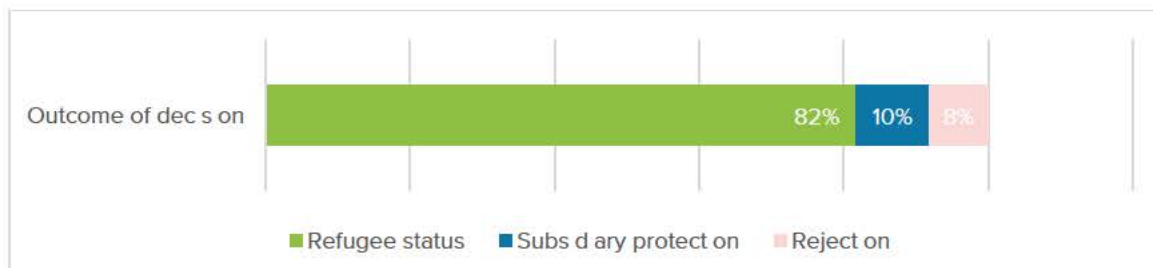
(c) Syria – draft evaders

Draft evasion for **Syrian** applicants is a particularly interesting example, which highlights the application of Article 9(2)(e) QD, and where national determining authorities in several countries disagree primarily on the nexus to a reason for persecution. Its relevance within the caseload of **Syrian** applicants within the EU+ countries makes it a key asylum claim for fostering greater convergence, especially in the type of protection granted.

The case sample analysis was based on 49 anonymised files shared by seven EU+ countries.

As previously observed on the basis of national guidance and information on established practice, the approach of most EU+ countries would be consistent with that of the CG on Syria in relation to the protection needs of draft evaders.

Figure 33. Case sample analysis – Syria, decisions by outcome





The case samples were also largely consistent with this legal assessment. However, notable differences of approach, which further impacted the outcome, related to the exploration of refugee status elements in the cases where subsidiary protection was granted instead. This could relate to not exploring the issue of draft evasion itself sufficiently and/or not examining the claim taking into account the treatment of draft evaders and the underlying perceptions of the government of **Syria** when considering the potential nexus.

The ground of imputed political opinion was explicitly substantiated in 33 of the 40 refugee status decisions. Among the subsidiary protection decisions, four granted protection under Article 15(c) QD and one under Article 15(b) QD.

(d) Conclusions from the case studies

The case samples analysis and the mock case exercise evidenced that a number of elements beyond the caseload specifics and the legal assessment in relation to a specific claim remain decisive for the outcome of the examination of protection claims across the EU+. Therefore, holistic and comprehensive convergence efforts should focus on:

- Encouraging consistent **interview practices** across EU+ countries: this could be achieved using EUAA guidance and training and integrating relevant internal quality control.
- Ensuring a common framework for **evidence assessment**, including structure, approach and applicable thresholds, in accordance with relevant EUAA guidance and training.
- Ensuring reliance on **relevant, objective, up-to-date COI**: EUAA COI on the countries of origin addressed in EUAA CG is regularly updated and follows a transparent methodology aimed at ensuring high quality. Therefore, and in relation to Article 10 APD, the consistent use of EUAA COI should be strongly encouraged.
- Reaching a conclusive **common understanding on complex factual and legal issues**: The topic of Westernisation, for example, presented important examples of areas where EU+ countries should further discuss and align national approaches, jointly working towards greater convergence. Similarly, the protection needs of draft evaders should be further discussed to reach convergence on the type of protection granted to such applicants.



1.3. The use and impact of EUAA products and activities

1.3.1. The Common European Asylum System

(a) EU legal framework

The EU legal framework is the first building block of the CEAS. The APD and QD currently regulate the examination of international protection needs, and along with the Geneva Convention, the Charter of Fundamental Rights and ECHR build up expectations of consistent national legal frameworks in the EU.

However, as noted in this analysis, the APD and QD allow for certain differences in transposition, which may have a significant impact on recognition rates. A notable example is the provision of Article 38(2) APD, which leaves important aspects for the application of the safe third country concept open to regulation at the national level. In relation to the assessment of qualification, the non-mandatory nature of the provision on IPA (Article 8 QD), is of relevance.

The new Pact would, therefore, be a key step in the path to greater convergence, not least by replacing the directives, which require transposition, with regulations, the implementation of which is direct. The actual impact of these changes on recognition rates and their variation would have to be explored in relation to the final text of the relevant provisions.

(b) Jurisprudence of the Court of Justice of the EU

The preliminary rulings of the CJEU are a constituent element of the CEAS, aiming to ensure a consistent interpretation of the EU legal framework across Member States. Rulings on asylum-related matters have been increasingly issued by the CJEU and pertinent questions continue to be referred to the Court.

The EUAA tools and guidance reflect those rulings thoroughly. They are at the core of the guidance the Agency provides on horizontal matters, as well as within the country-specific common analysis and guidance notes. New rulings have also been addressed by practitioners within dedicated meetings. Nevertheless, the understanding and application of some rulings continue to vary across countries and their impact appears to vary depending on the topic and the level of specificity of the interpretative guidance provided.

In cases where the judgment is specific, such as the application of the reason for persecution MPSPG in relation to the applicant's sexual orientation,⁶⁹ Member States' practices show no or negligible variation. In relation to other judgments, including the landmark case of *Elgafaji* and the more recent judgment in *EZ*, significant differences in interpretation appear to remain.

⁶⁹ CJEU, *Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel*, [joined cases C-199/12 to C-201/12 \(X, Y, Z\)](#), judgment of 7 November 2013, paras. 45-49.



The *Elgafaji* judgment established a common understanding among most Member States that Article 15(c) QD could be applied in cases of exceptionally high indiscriminate violence, when no additional elements pertaining to the personal circumstances of the applicant would be required, as well as in other situations of indiscriminate violence, where less or more weight would be placed on the personal situation of the applicant. This approach is transposed in general EUAA guidance and forms the backbone of the EUAA CG. However, **NL** has not adapted its national policy and guidance to reflect this approach. This has been consistently confirmed by the national authorities in **NL** in relevant queries and CG discussions.

Similarly, the CJEU affirmed a ‘strong presumption that refusal to perform military service under the conditions set out in Article 9(2)(e) of that directive relates to one of the five reasons set out in Article 10 of that directive’ in its *EZ* judgment and the majority of EU+ countries considered the nexus to (imputed) political opinion well substantiated in the case of draft evaders from **Syria**, as reflected in the respective CG conclusions. Nevertheless, the policy and practice of **DE** remained unchanged following confirmation from most of its high administrative courts and from the Federal Administrative Court in February 2023.⁷⁰

It appears that additional steps are needed to fully realise the convergence potential of CJEU’s jurisprudence. In this regard, the EUAA continues to engage decision-makers at first and at appeal instances in a constructive dialogue aiming to reach a common understanding and, ultimately, consistent implementation of the EU legal framework, in accordance with the guiding interpretation of the CJEU.

See also [2.2.4 The role of CJEU jurisprudence](#).

1.3.2. The role of EUAA

Since 2011, EASO had provided support to Member States in the implementation of their obligations under the CEAS and facilitated practical cooperation at EU+ level. The EUAA Regulation introduced an enhanced mandate for the agency, with the following main objectives (bold is added):

EUAA Regulation, Article 1 – Subject-matter and scope⁷¹

1. This Regulation establishes a European Union Agency for Asylum (the ‘Agency’). The Agency shall replace and succeed the European Asylum Support Office (EASO), established by Regulation (EU) No 439/2010.
2. The Agency shall **contribute to ensuring the efficient and uniform application of Union law on asylum** in the Member States in a manner that fully respects fundamental rights. The Agency shall facilitate and **support the activities of the Member States** in the implementation of the Common European Asylum System (CEAS), including by **enabling convergence** in the assessment of applications for international protection across the Union and by **coordinating and strengthening practical cooperation and information exchange**.

⁷⁰ Federal Administrative Court of Germany [Bundesverwaltungsgericht], *Applicants v Federal Office for Migration and Refugees (BAMF)*, [1 C 1.22 and other cases](#), 19 January 2023 <accessed 18 September 2023>

⁷¹ See also Recital 6 and Article 2 (Tasks) of the EUAA Regulation.



The Agency shall **improve the functioning of the CEAS**, including through the **monitoring mechanism** referred to in Article 14 and by providing **operational and technical assistance** to Member States, in particular where their asylum and reception systems are under disproportionate pressure.

3. The Agency shall be a **centre of expertise** by virtue of its independence, the scientific and technical quality of the assistance it provides and the information it collects and disseminates, the transparency of its operating procedures and methods, its diligence in performing the tasks assigned to it, and the information technology support needed to fulfil its mandate.

Some of the ways in which the EUAA implements these provisions and its assigned tasks (Article 2 EUAA Regulation) are highlighted in the sub-sections below.

- (a) [EUAA guidance](#)
- (b) [EUAA training](#)
- (c) [EUAA information and analysis portfolio](#)
- (d) [EUAA COI](#)
- (e) [EUAA practical cooperation activities](#)
- (f) [EUAA operational support](#)
- (g) [EUAA's future monitoring](#)

In addition, a separate section is dedicated to [1.3.3 The use and impact of EUAA country guidance](#).

It is of note that the EUAA guidance, training and practical tools often exist in parallel to national products. Where this remains the case, the latter naturally take precedence, limiting the convergence potential of the common tools. For the EUAA products to be an effective vehicle for convergence, they should be used fully. A number of enabling factors are considered key in this regard, including the inherent quality of the products and the dedicated outreach efforts, and most importantly – the will of EU+ countries to adopt and apply them in national practice.

(a) EUAA guidance

The EUAA issues guidance which aims to directly support asylum practitioners across the EU+. Its core framework includes guidance on qualification, interviewing and evidence assessment. Furthermore, guidance exists on exclusion and on special needs. All these elements are further consolidated in a quality assurance framework aimed to improve the implementation of the CEAS and to foster convergence.

Being developed with EU+ countries, EUAA products account for differences in national approaches, albeit to a varying degree. This often results in open and less conclusive formulations, and in products which need further adaptation to serve national purposes. Gradual progress towards more specificity and conclusiveness has been made in the common analysis and guidance on countries of origin, as well as in the design of operational standards



and indicators. However, as evidenced by this analysis, national practices remain largely different, while still being overall consistent with the respective EUAA guidance and tools.

To have the potential to foster greater convergence, the EUAA continues to provide guidance on all core topics of the examination of applications for international protection, including thematic guidance and country-specific guidance on the assessment of the situation in main countries of origin. At the same time, in particular in terms of EUAA CG, it is important to acknowledge the limitations of the current portfolio, which includes five main countries of origin. Therefore, the CG potential impact on convergence remains limited to **Afghanistan, Iraq, Nigeria, Somalia** and **Syria**, with its further growth being dependant on the capacity of the EUAA and EU+ countries to contribute additional resources to this work. Moreover, the EUAA jointly with EU+ countries should continue to strive for regular reviews and timely updates, in particular of the information, analysis and guidance on main countries of origin. The study confirmed that significant changes in the countries of origin have the potential to considerably increase convergence, as witnessed after the Taliban takeover of **Afghanistan** in August 2021. Such important developments can play a pivotal role for convergence, as EUAA and EU+ countries can prioritise EUAA COI production and CG development, as a starting point for adapting national policies and practice.

In addition, in view of the findings of this pilot study, the EUAA, together with EU+ countries, should further enhance the efforts to ensure that the guidance is concrete, conclusive and actionable and goes beyond the applicable legal provisions to effectively navigate the existing differences permitted by the current EU legal framework. This would promote a common understanding and a common practical approach, while ultimately necessitating changes in national policies and practice.

• EUAA thematic guidance

Thematic guidance of direct relevance for the examination of protection needs includes:

- Practical Guide on Personal Interview, October 2014
- Practical Guide on Evidence Assessment, March 2015
- Practical Guide on Exclusion, March 2015
- Practical Guide on Qualification for international protection, April 2018
- Quality Assurance Tool: Examining the application for international protection, July 2019
- Guidance on Membership of a Particular Social Group, May 2020
- Practical Guide on the use of country of origin information, December 2020
- Practical Guide on the internal protection alternative, May 2021
- Practical Guide on Exclusion for Serious (Non-Political) Crimes, December 2021
- Practical Guide on Interviewing applicants with religion-based asylum claims, November 2022
- Practical Guide on Political Opinion, December 2022



This portfolio continues to be developed with products which aim to support national asylum practitioners throughout the examination of protection needs.⁷²

The use of the EUAA general guidance is rarely visible in the decisions on the applications. In the mock case exercise, only one country [RO] referred to EUAA guidance on evidence assessment and qualification, while another [PT] referred to the EUAA COI methodology. Nevertheless, the use of general guidance is likely to impact national guidance as well as national practices.

Currently, guidance is largely developed with the participation of EU+ countries and aims to account for different national approaches, to the extent that those are consistent with the EU legal framework. For example, the EUAA guidance on MPSG – a topic where national approaches show considerable differences – specifically leaves dedicated space for EU+ countries to add national guidance on the application of the ‘common characteristic’ condition and on the application of the ‘distinct identity’ condition. This approach aims to ensure the correct implementation of the CEAS, it allows to reach swifter common agreement on the text and is tailored for easy direct use at the national level. However, its convergence potential remains more limited.

According to the outcomes of a survey conducted in 2022 on the use and impact of EUAA Practical Guides and Tools, in countries where the practical guides and tools are being used, they have reportedly been highly beneficial in terms of improving how the day-to-day work is carried out, improving working procedures, and improving efficiency. The relevance of the practical guides and tools in practice depends on the local context: the specificities of national legislation, the existence of national guidance or tools, and the caseload a country faces. While they are often used in their original form (usually a translated version, where available), several of the practical guides and tools have also been used to either make changes to existing guidance or develop national guidance.

- **EUAA country guidance**

With regard to the EUAA country-specific guidance, see [below](#).

- (b) **EUAA training**

The European asylum training curriculum is a key element in fostering convergence in decision practices across EU+ countries. Its core modules are instrumental for acquiring the fundamental competencies of a national asylum official. They provide a structured framework, which if applied in national practice, is expected to have a significant positive impact on convergence.

Through the provision of training and learning opportunities, the EUAA contributes to the development and strengthening of the knowledge, skills, responsibility and autonomy of

⁷² These and other EUAA documents providing thematic guidance for the examination of applications for international protection can be found at <https://euaa.europa.eu/practica-tools-and-guides>.



asylum and reception officials, upholding common standards, and enhancing the overall implementation of the CEAS. With the implementation of the EUAA Training and Learning Strategy,⁷³ the EUAA is committed to supporting Member States by providing training for members of relevant national administrations, and of national authorities responsible for asylum and reception, members of its own staff, and members of Asylum Support Teams. The EUAA's support in this area will be provided through the continuous development of the European asylum curriculum, which aims to promote best practices and high standards in the implementation of Union law on asylum and reception.

The use of the common training framework of the European asylum curriculum is one of the key elements of fostering convergence practices and, ultimately, outcomes. The core elements of this curriculum with regard to examination of applications for international protection are the modules:



Core modules are consistently delivered in the context of both permanent and operational support. They remain among the main modules for asylum case workers delivered since 2012. Until 2019, they remained the three top modules in terms of number of participants overall, while in 2021, Interviewing Vulnerable Persons ranked second, and in 2022, the modules 'Introduction to the legal framework' and 'Trafficking in human beings' were most delivered. Relatively less trainings in the core modules were delivered in 2022, when they accounted for 440, 526 and 670 participants, accordingly. Nevertheless, they remained among the most followed trainings for asylum officials.

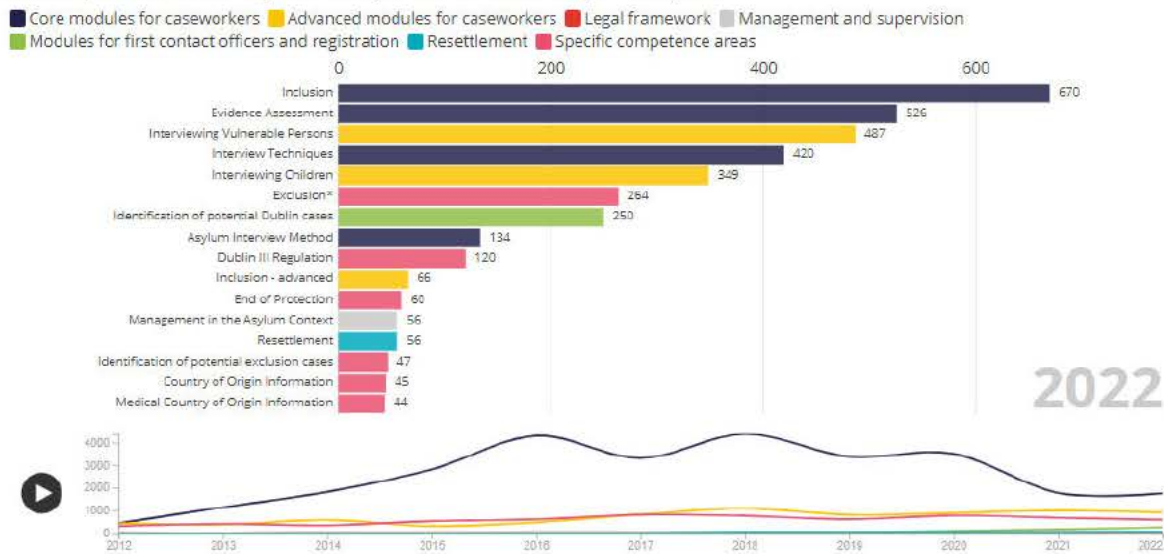
⁷³ [EUAA Training and Learning Strategy](#), March 2022.



Figure 34. Participation in EUAA training per module, modules for asylum officials 2022.⁷⁴

Modules for asylum officials: participations per year

Use the pause button to stop the race if you are interested in a particular year.



It is of note that the EUAA core modules cover the key elements of the induction to the work of a case officer. They are fundamental for new staff at national determining authorities. It is, therefore, likely that the current more experienced staff of national determine authorities has been trained in the core modules in previous years, while in 2022 they have followed more advanced modules, introducing additional thematically specific competencies.

Participants from **DE** and **NL** have been consistently receiving trainings on core modules in large numbers, followed by mainly **EL** and **SE**. Other Member States, such as **BG**, **EE**, **IE**, **PT**, **LV** have registered few participations in the core modules. A number of factors can determine participations in such training, including the size of the administration and the frequency of employing new staff. Therefore, depending on the national context, this may have different implications with regard to the overall training of relevant staff in the EUAA modules. In countries with a limited number of asylum personnel and a relatively low turnover level, few participations in a certain reporting period may nonetheless correspond to a high level of training of staff overall.

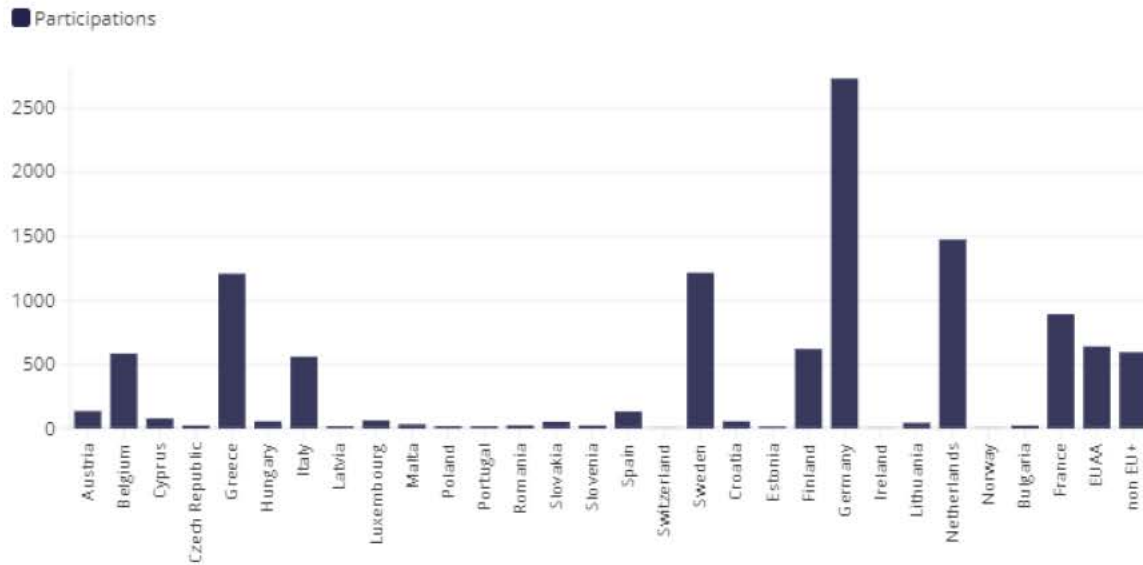
INCLUSION

The aim of the [Inclusion module](#) is to provide asylum officials with the knowledge and skills necessary to apply the refugee and subsidiary protection criteria in standard cases to determine whether an applicant is in need of international protection.

Participants from 25 Member States have received training on inclusion. **DE** has the most participations in inclusion trainings followed by **NL**, **EL**, and **SE**.

⁷⁴ See the an mated graph at https://euaa.europa.eu/de_very-european-asy-um-curr-cu-um.

Figure 35. Participation in Inclusion training module, 2012-2022.

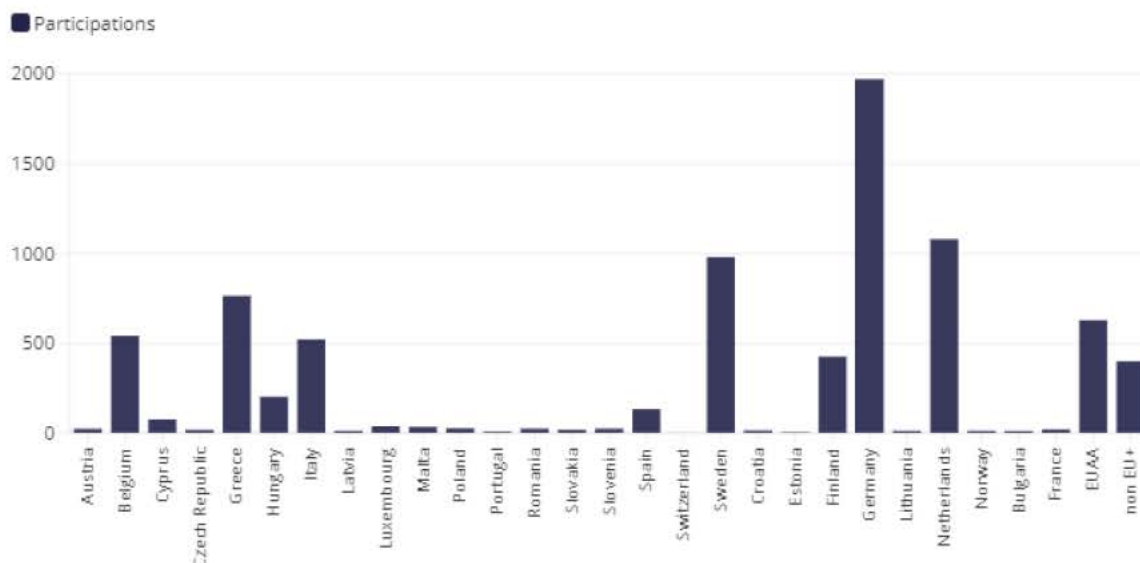


EVIDENCE ASSESSMENT

The aim of the [Evidence Assessment module](#) is to outline the knowledge, skills and attributes needed to apply the EUAA's structured method of evidence assessment when assessing an application for international protection so that the risk of subjectivity in individual cases is reduced.

Participants from 25 Member States have received training on evidence assessment. **DE** has the most participations, followed by **NL**, **SE** and **EL**. Other countries with high participation include **BE** and **IT**.

Figure 36. Participation in evidence assessment training module, 2012-2022.

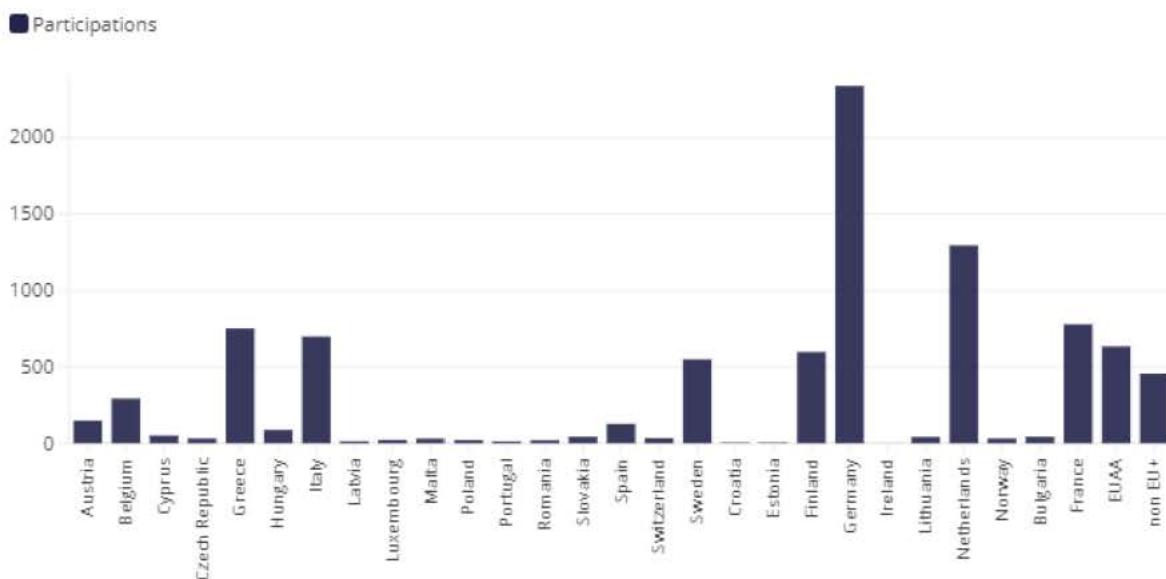


INTERVIEW TECHNIQUES (ASYLUM INTERVIEW METHOD)

This module, now replaced by the [Asylum Interview Method module](#), aims to prepare asylum officials to conduct a personal asylum interview using the asylum interview method to gather sufficient, relevant and reliable information to assess an application.

Participants from 27 Member States have received the training on interview techniques. **DE** has the most participations, followed by **NL**, **EL**, **FR** and **IT**.

Figure 37. Participation in interview techniques training module, 2012-2022.



(a) EUAA information and analysis portfolio

The EUAA information and analysis portfolio contributes to an evidence-based understanding of the state of the CEAS. It includes important products, such as data and analyses provided in the context of EPS, the annual Asylum Report, systematic case law updates (Case Law Database, CLD), the Information and Documentation System (IDS, publicly accessible soon), situational updates on specific topics of high relevance, etc.

EUAA tools enable EU+ countries to develop a common situational picture and situational awareness on the European level, and to compare data on asylum and reception. EU+ countries can exchange qualitative and quantitative information on topics of direct interest to them. The EUAA Query Portal is an invaluable instrument for situational awareness. Through the queries, EU+ countries identify the actual topics of importance, reflecting new developments and trends in the most-timely manner, and seek information from other countries.

While more often than not queries and situational analyses continue to identify differences in national approaches, the exchange of information and insights in itself has a great convergence potential.



(b) EUAA COI

Relying on relevant, recent, objective and impartial COI is paramount in the examination of international protection needs. It plays a role in the assessment of (external credibility) and risk assessment and allows for the correct legal qualifications.

In accordance with Article 9(1) EUAA Regulation:

The Agency shall be a centre for gathering relevant, reliable, objective, accurate and up-to-date information on relevant third countries in a transparent and impartial manner, making use of relevant information, including child-specific and gender-specific information, and targeted information on persons belonging to vulnerable and minority groups. The Agency shall draw up and regularly update reports and other documents providing information on relevant third countries at Union level, including on thematic issues specific to relevant third countries.

To fulfil its important mandate in this regard, the EUAA produces a portfolio of COI reports and queries, responding to the needs of the EUAA CG as well as decision-making and policymaking on other key countries of origin. The work of the EUAA in the provision of information on third countries is a key contributor to ensuring that the assessment of protection needs can start from a common high-quality factual basis.⁷⁵

(c) EUAA practical cooperation activities

As part of its core activities, the EUAA facilitates practical cooperation across different fields and topics. It coordinates a number of thematic networks, including – notably – the Asylum Processes Network, the Exclusion Network, the Country Guidance Network, a number of COI Specialist Networks, etc. Within these networks and in dedicated thematic working groups and thematic events, the EUAA brings together relevant practitioners from across the EU+ to discuss common challenges, national practices and possible common solutions.

This work, while not always culminating in a tangible published product, lays the foundation for fostering convergence on an array of different topics.

⁷⁵ For more information and relevant EUAA COI products, see <https://euaa.europa.eu/country-or-q n- nformat on>.



(d) EUAA operational support

The EUAA operational support is an important vehicle of convergence. While it focuses on supporting the asylum system in a singular Member State, it does so via the direct use of EUAA guidance, training and tools, whereby introducing coherent practices and high-quality standards across supported EU+ countries.

In 2022, a record 14 countries received operational support from EUAA: **AT, BE, BG, CY, CZ, EL, ES, IT, LT, LV, MT, NL, RO, SI**. Among them, six Member States benefitted from support measures related to the asylum procedure: **BG, CY, EL, IT, MT** and **SI**.

These measures included support regarding the access to the asylum procedure as well as regarding the processing of asylum applications in accordance with the CEAS. Efficient case management and enhanced quality in the asylum determination procedure have been identified as expected outcomes of several of these operating plans.

Country briefings and workshops on relevant CG featured as important elements in most of these operations in 2022. CG workshops were delivered in **EL, BG** and **SI** in 2022 – June 2023, to support the direct use of the respective documents in decision-making at the national level.

Further consistency and quality assurance in the provided operational support was ensured for example via coaching and quality reviews, such as those introduced in **EL**. In these exercises, cases were reviewed by EUAA quality experts, with input from EUAA staff responsible for thematic and country guidance. Dedicated reviews took place on specific topics (e.g. exclusion) as well as on specific countries (e.g. **Afghanistan** and **Iraq**).

(e) EUAA's future monitoring

The EUAA is currently preparing for its monitoring mandate under Article 14 EUAA Regulation. Without prejudice to the monitoring methodology, which is to be established by the Management Board, on a proposal of the Executive Director and in consultation with the European Commission, the relevance of the EUAA monitoring mechanism for convergence can be anticipated.

It can be noted that the monitoring mandate of the Agency does not explicitly mention convergence of decision-making practices as one of its objectives. Nevertheless, the monitoring mechanism will be of direct relevance to understanding the state of play in relation to the examination of applications for international protection and may help in the identification of factors hindering greater convergence in the implementation of the CEAS.

The monitoring the aspects related to the asylum procedures and the qualification for international protection will allow to detect practices and processes which depart from the common standards. Most importantly, it will identify the steps via which a Member State can ensure its processes are fully in accordance with the CEAS, thus supporting national administrations and gradually leading to true convergence in decision practices.



In light of Article 14(3)(a) EUAA Regulation read in conjunction with Article 11(3) EUAA Regulation, it may further be expected that an aspect of monitoring ‘the application of criteria for assessing the need for protection and the type of protection granted’, would relate to taking into account the EUAA guidance notes and common analysis on relevant countries of origin.

1.3.3. The use and impact of EUAA country guidance

The Agency’s work on CG was initiated in June 2016, following the Outcome of the 3461st Council meeting as a direct response to the need to foster greater convergence in the decisions on international protection.⁷⁶

The common analysis and guidance produced by the EUAA together with EU+ countries are currently regulated under Article 11 of the EUAA Regulation.⁷⁷

EUAA Regulation, Article 11

Common analysis on the situation in countries of origin and guidance notes

1. To foster convergence in applying the assessment criteria established in [the QD], the Agency shall coordinate efforts among Member States to develop a common analysis on the situation in specific countries of origin (the ‘common analysis’) and guidance notes to assist Member States in the assessment of relevant applications for international protection.

In the development of the common analysis and guidance notes, the Agency shall take note of the most recent UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from specific countries of origin.

2. The Executive Director shall, after consulting the Commission, submit guidance notes to the Management Board for endorsement. Guidance notes shall be accompanied by the common analysis.

3. Member States shall take into account the common analysis and guidance notes when examining applications for international protection, without prejudice to their competence to decide on individual applications for international protection.

4. The Agency shall ensure that the common analysis and guidance notes are regularly reviewed and are updated as necessary. Such a review and update shall be carried out where there is a change in the situation in a country of origin or where there are objective indications that the common analysis and guidance notes are not being used. Any review or update of the common analysis and guidance notes shall require consultation of the Commission and endorsement by the Management Board as referred to in paragraph 2.

⁷⁶ With its conclusions, the Council had noted ‘that considerable differences nonetheless persist between Member States in terms of the outcome of procedures, the recognition rates and the international protection status granted’; and ‘also that the need to reduce these divergences is ever greater in these times of high influx and secondary movements of migrants within the EU’. Furthermore it ‘[reaffirmed] its commitment to create a Common European Asylum System, so that, regardless of where an asylum applicant applies for international protection, the outcome of the asylum procedure will be similar’. See [Outcome of the 3461st Council meeting](#), 8065/16, 21 Apr 2016 <accessed 26 September 2023>

⁷⁷ See also Recital 17 EUAA Regulation.



5. Member States shall submit to the Agency any relevant information indicating that a review or an update of the common analysis and guidance notes is necessary.

CG is now available on several of the main countries of origin (**Afghanistan, Iraq, Nigeria, Somalia and Syria**) and the content of the CG documents is regularly reviewed and updated.

In 2023, the EUAA commissioned an external evaluation, looking into the use and impact of its COI and CG products across target groups, including national caseworkers, policymakers, decision-makers, COI researchers, judges and other judicial personnel and members of civil society. Some preliminary results from this evaluation, in particular the outcomes from a survey to the different target users, are outlined in the sections below.

(a) Overview

Consistent feedback from EU+ countries suggests that there are different ways in which Member States may fulfil their obligation to take the CG into account. Overall, it could be done by reflecting it in national guidance and policy and/or by referring national decision makers to use this guidance directly. Within these two broad categories, there are varying practices and outcomes. The actual impact of CG in fostering convergence can be considered in relation to a scale:

There is no evidence of actual consideration of CG in practice.	Policymakers consider the CG along with other sources when revising national guidance. However, differing national guidance is maintained or introduced.	Policymakers consistently review national guidance and there is evidence of some changes introduced in relation to taking CG into account.	Decision-makers are instructed to use CG in general, with minor exceptions in certain conclusions.	National guidance refers directly to the CG and adds certain topics outside the scope of CG.	Decision makers are instructed to use the CG directly as binding national guidance.

It is also interesting to note that in **NO**, which is not a party to the EUAA Regulation and to whom the QD does not apply, the national guidance highlights the EUAA CG as a non-binding source of law. It further states that *‘The weight to be given to the individual guidelines will depend on a concrete assessment of how up-to-date and well-founded the guideline is, including whether it is based on relevant case law, the quality of country information, and the extent to which comparable countries comply with the guidelines. In all cases, the UDI is obliged to make independent assessments of individual applications in light of all relevant legal sources and available and updated country information.*



The importance of regular updates with regard to country-specific guidance had been highlighted throughout the study. It is of note that in most cases, the CG updates appear to meet that need and national guidance is updated with similar or less frequency. On the other hand, EU+ countries may need a more regular update due, for example, to jurisprudence from their courts which pose such obligations (e.g. FI). In this regard, the CG documents themselves acknowledge their time sensitivity and reference period and highlight that in the individual examination, up-to-date relevant information should always be taken into account. Nonetheless, the CG documents underline that *'The guidance should be considered valid as long as current events and developments in the country are consistent with the trends and patterns described within the COI, on which the assessment at hand is based'*.⁷⁸

With this in mind, an update at the national level may nonetheless lead to a different assessment on a particular topic (usually in relation to the assessment of the level of indiscriminate violence in a particular territory), which would be substantiated by the use of more recent COI on the subject. Such differences would be taken into account and may in turn lead to updates of the common analysis and guidance, when those are reviewed.

(b) Perception of the role of the EUAA in the development of EU-level CG

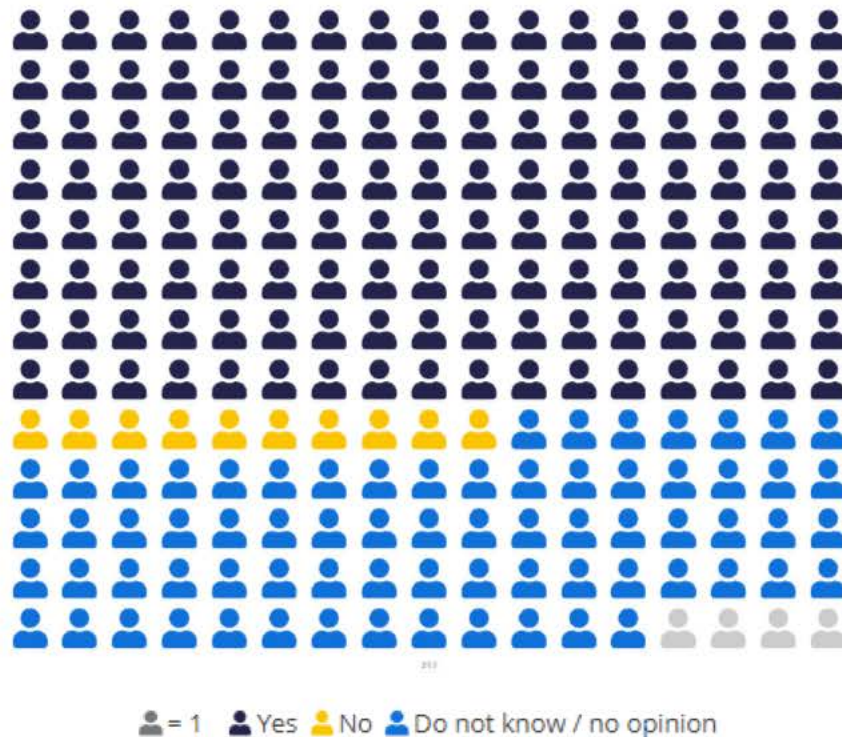
Among the EU+ countries, different practices have been observed in terms of production of national guidance and the use of EUAA CG by asylum practitioners.

In terms of perception of the role of EUAA in the development of common analysis and guidance on main countries of origin, the evaluation survey conducted in summer 2023, revealed that over 60 % of respondents believe that the EUAA should facilitate the development of EU-level CG documents, and less than 5 % believe the opposite. The survey was addressed to a broad range of target users, including policy officers, case officers, members of the judiciary, legal practitioners, COI researchers, and others.

⁷⁸ See EUAA, 'Country Guidance: explained', [Using country guidance](#).



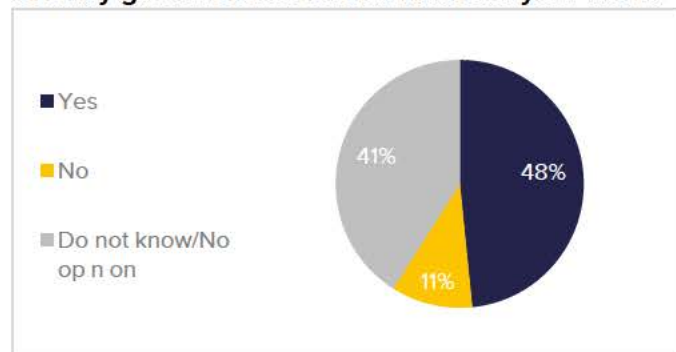
Figure 38. Do you believe the EUAA should facilitate the development of EU-level CG documents?



Source: Evaluation survey, July 2023 (217 responses across target groups)

However, the percentage of respondents who believe that EU-level country guidance has added value to their work is lower, namely 48 %, while 11 % believe the opposite (Figure 39). When looking at differences among respondent groups, policymakers and case officers appear to be the most convinced of the added value of EU-level CG documents.

Figure 39. Do you believe that having EU-level country guidance has added value for your work?



Source: Evaluation survey, July 2023 (217 responses across target groups)

This data could be read in conjunction with the 74 responses from asylum practitioners coming from EU+ not producing national guidance, where the most common reason for not doing so was identified as the existence of EUAA CG (over 45 % of respondents listed it as a reason), followed mainly by lack of resources (32 %), no CG in national legal tradition (20 %), and lack of expertise (11 %).



(c) Direct use in decision-making

In the CGNet, the topic of the use of CG was addressed in more detail in the strategic meeting of September 2022. Based on discussions with the representatives of 14 EU+ countries members of the CGNet, it was noted that EU+ practices in the implementation and dissemination of the CG varied.

From CGNet records – 2022

In some countries, decision-makers are advised to directly refer to the CG in their decisions [LU, RO, SK, SE]. In others, CG is taken into account and integrated in national guidance and case officers would therefore indirectly use CG in their decisions [AT, DE, FR, NL, NO]. For other countries, both scenarios may apply depending on the country of origin and to what extent the respective CG is consistent with the national guidance [EL, FI, MT, BE].

A few countries noted that after a new CG is published, an update of the national policy or practice may occur [FI, NO, RO], others said they consider CG documents when reviewing their national policy [DE, SE].

Furthermore, all participants stated that no changes were deemed necessary in view of the entry into force of the provision of Article 11 of the EUAA Regulation, most confirming that CG was already being taken into account.

CGNet confirmed they make their case officers aware of the new CG publications. Some members referred to the use of different channels, including intranet [BE, NL, SE], or email, together with the invitation to attend the respective launching event [AT, FI, LU, MT, NO, SK]. DE also noted that they inform case officers on the publication of a new CG document while also providing a comparison between CG and national assessment and reminding that only national guidance is binding for case officers.

The **case samples analysis** showed the following direct use in national decision-making.

- For **Afghanistan**: The EUAA CG was referenced and taken into account in 17 % of the 41 decisions, while the direct use of EUAA COI was far more prevalent at 51 %.
- For **Syria**, the EUAA CG was referenced and taken into account in 31 % of the 49 decisions, while for EUAA COI this was identified in 29 % of the decisions.

The **mock case exercise** concerning Westernisation (**Afghanistan**) demonstrated a more prevalent use of CG, with 8 of the 14 decisions (57 %) referring to the CG. However, some bias towards increased use of EUAA guidance due to the EUAA context of this exercise should be acknowledged.

In the course of this study, some **challenges** were identified in the use of the CG in practice.

Referring to outdated EUAA CG, superseded by new analysis and guidance could be particularly problematic. While every effort is made to ensure new CG is communicated to all relevant stakeholders, factors such as further communication at the national level and the latest existing translation may be hindering the awareness and use of the latest CG. This was evidenced, for example, in the case samples from one country, which referred to guidance



from 2021 regarding both, **Afghanistan** and **Syria**, despite the availability of more up-to-date analysis on both countries. Similarly, the decisions referred to the older COI reports, which had been updated in 2022.

The mock case and case samples analysis also highlighted the **use of CG for purposes beyond introducing consistency in the assessment**. Notably, the use of the COI summaries was considerably more prevalent than the references to the actual conclusions of the common analysis, blurring the lines between COI and CG.

(d) Use in national guidance

Among the shared national guidance documents, most made direct references and linked the respective EUAA CG. The respective documents are highlighted in green in the table below.

Table: Explicit references to EUAA country guidance in national country-specific guidance documents shared for the purposes of the pilot analysis.

	Afghanistan	Iraq	Nigeria	Somalia	Syria
BE	★	★	★	★	★
FI	★	★		★	
FR	★				★
NL	★				★
NO	★	★			★
SE	★	★		★	★

While **FI** did not make explicit references to the EUAA CG, but rather to the respective EUAA COI reports, the approach and conclusions in the national guidance were largely in line with the respective CG documents.

The guidance of **NO** on **Afghanistan** explicitly states that it is in line with the EUAA CG, while the guidance of **SE** notes that the CG forms its basis. The structure of the **SE** national guidance follows the structure of CG documents and links to the relevant sections of the EUAA guidance are directly included.

It is also of note that **NO**'s guidance on assessing the general security situation⁷⁹ incorporates the sliding scale representation of the EUAA CG and explicitly states that CG conclusions in this regard will be followed unless there is a reason to deviate from them.

In some cases, national guidance further advised decision-makers to directly refer to CG in decisions. For example, in **BE**'s guidance on **Afghanistan**, CG is suggested to be referenced in some cases along with COI reports, with specific paragraphs being indicated, mostly in case of negative findings.

⁷⁹ **NO**, UD 2020-015, [The general security situation in applications for protection](#) <accessed 4 September 2023>

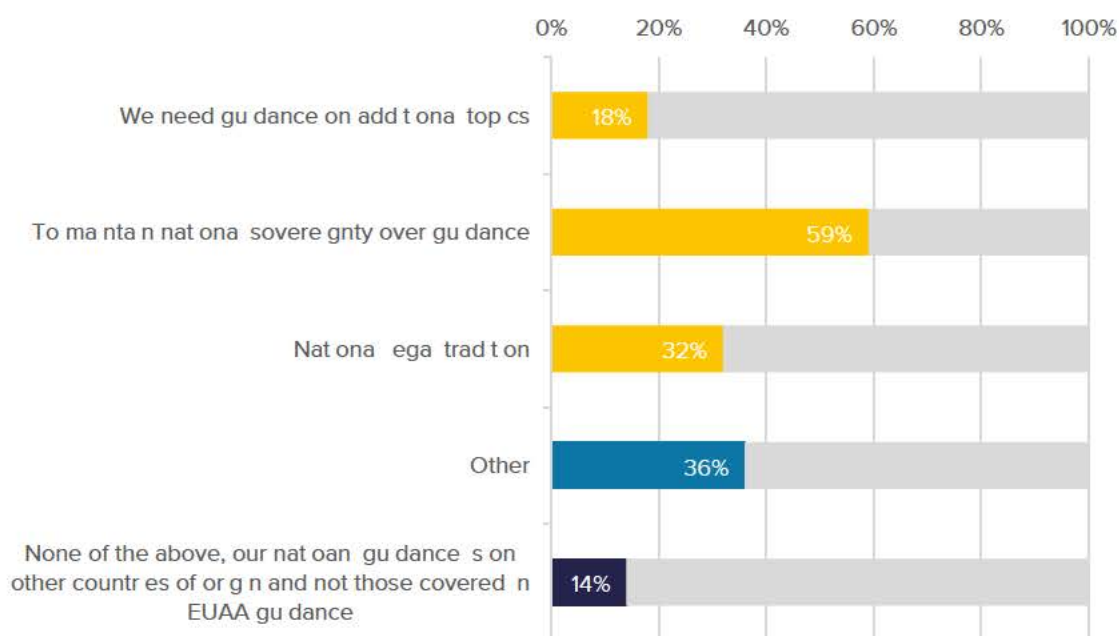


(e) Impact on convergence

For the CG to have a positive impact on convergence, it needs to be used. As mentioned earlier, one obstacle to its comprehensive use is the parallel existence of national guidance.

In the evaluation survey of July 2023, respondents addressed the question ‘*For what reason(s) do you produce national guidance on countries covered by EUAA CG?*’ The majority of the respondents (59 %) selected ‘national sovereignty’ as a reason, suggesting that the choice of keeping national guidance can be directly correlated with potential differences in assessment.

Figure 40. For what reason(s) do you produce national guidance on countries covered by EUAA CG?

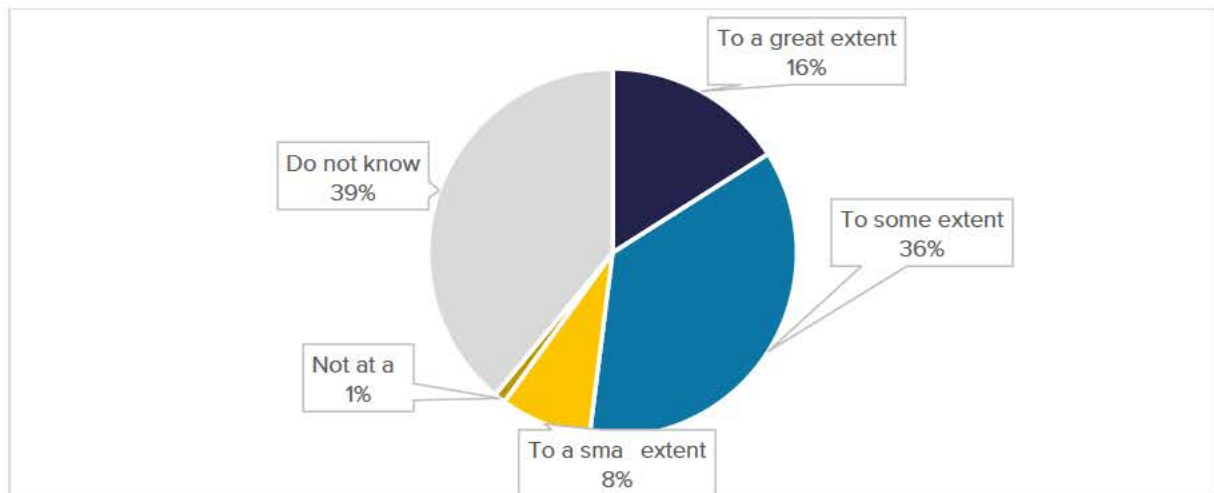


Source: Evaluation survey, July 2023 (44 responses)

On the other hand, according to the same survey on the use and impact of COI and CG products, about half of the respondents believe that CG documents have, to some and great extents (36 % and 16 %, respectively), contributed to convergence in the assessment of international protection needs across EU+ countries, while only 1 % of respondents believe that CG documents had no impact at all on convergence ([Figure 41](#)).



Figure 41. To what extent have CG documents contributed to convergence in the assessment of international protection needs across EU+ countries?



Source: Evaluation survey, July 2023 (217 responses across target groups)

Some respondents to the evaluation survey believe that the EUAA's CG products facilitate and speed up convergence in the assessment of international protection claims but find that these products alone are not considered sufficient. Common training, better alignment on the interpretation of joint reports and a mandatory nature of the products were some of the solutions identified by the respondents in this regard.

In terms of its content, CG is more likely to have a noticeable impact on convergence where conclusions are formulated in a clear and directive manner. While reaffirming that an individual examination is always needed and acknowledging that a high degree of individualisation is required in the majority of cases, the CG is most likely to contribute to convergence where:

- A profile is found to have a well-founded fear of persecution in general, which is highly likely to be for a reason under Article 10 QD.
- The situation in certain territories is assessed to reach an exceptionally high level of indiscriminate violence in relation to Article 15(c) QD.
- It is concluded that there is no actor providing protection that meets the requirements of Article 7 QD.
- It is concluded that IPA is in general not applicable to any place in the country.

All of these examples can be observed in the CG on **Afghanistan** and/or **Syria** and some have been used throughout the study in order to analyse the actual impact of CG for convergence.

It is also possible to imagine significant convergence impact of conclusions that protection would in general not be substantiated, or that IPA in a particular area of the country is generally applicable. However, due to the chosen countries of origin and the topics explored in the CG, few such conclusions are reached and therefore this could not be explored further in the study.



2. Convergence at the appeal instances

2.1. Data analysis

2.1.1. Recognition rates at second or higher instances in the EU+ in 2022

In 2022, the EU+ recognition rate for EU-regulated types of protection at second or higher instances was 21 %, in line with the previous three years.⁸⁰ In fact, in most EU+ countries, recognition rates at second or higher instances remained more or less stable compared to 2021.

In total, there were 221 000 decisions issued at second or higher instances, of which 45 000 were positive. Of the positive decisions, three in five decisions granted refugee status (27 000 or 60 % of all positive decisions at second or higher instances), with the remainder granting subsidiary protection (18 000 cases or 40 %).

In 2022, just 10 nationalities⁸¹ had recognition rates at higher instances above the EU+ average (21 %). Among the citizenships which received the most decisions at second or higher instances, **Syrians** (76 %) had the highest recognition rate in 2022, followed by Ukrainians (62 %). Other groups with recognition rates above the overall EU+ level included nationals of Mali (40 %), Eritrea and Iran (39 % each), Sudan (35 %), **Afghanistan** (31 %), **Somalia** (29 %) and Türkiye (25 %).

In contrast, recognition rates remained below 10 % for two fifths of the citizenships with most decisions at higher instances in 2022.⁸² Recognition rates were especially low for nationals of India, Moldova and North Macedonia (1 % each), Georgia and Serbia (2 % each), Comoros and Haiti (3 % each) as well as Albania, Colombia and Armenia (4 % each).

As was the case at first instance, for some citizenships, the likelihood of obtaining protection partially depended on where the application was examined. Of the top 10 citizenships with most decisions issued at second or higher instance in 2022, this was especially the case for **Syria**, **Afghanistan**, Iran, Pakistan and **Iraq** (Figure 42). For instance, for **Syrians**, the recognition rates varied from 2 % in **BE** to 97 % in **AT**; for **Afghans** from 4 % in **CH** to 94 % in

⁸⁰ The EU+ recognition rate of 21 % excludes authorisations to stay for humanitarian reasons. If such authorisations were included, the recognition rate for 2022 at second or higher instances would hike to 34 % (but still lower than the average EU+ recognition rate at first instance in 2022).

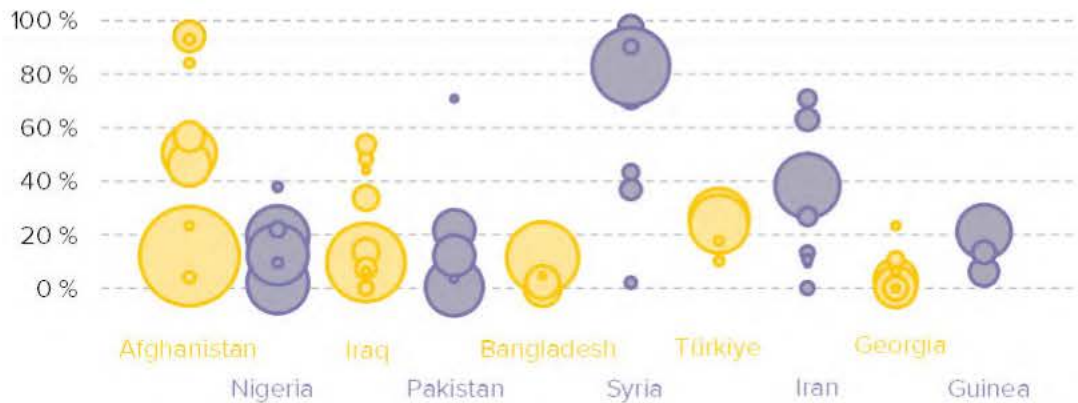
⁸¹ Only citizenships with more than 1 000 decisions issued at second or higher instances in 2022 were considered. In 2022, over 1 000 decisions at second or higher instances were issued to 44 nationalities (representing 91 % of all decisions issued in EU+ countries at higher instances), while at least one decision was issued to 139 nationalities.

⁸² This represented some 61 000 cases.



AT; for Iranians from 0 % in BE to 71 % in NL; for Pakistanis from 0 % in EL and CY to 71 % in NL; and for Iraqis from 0 % in PL to 54 % in FR.⁸³

Figure 42. Recognition rates at second or higher instances for the top 10 citizenships (in terms of issued decisions at second or higher instances) by EU+ countries, 2022



Source: Eurostat [migr_asydcfina], as of 13 April 2023

Note: Each bubble represents a different EU+ country (that issued at least 100 decisions in 2022). The bubble size indicates the number of second or higher instance decisions issued and placement on the vertical axis denotes the recognition rate.

2.1.2. Afghan applicants: recognition rates at second or higher instances in 2022

(a) Overall trend

The recognition rate for **Afghans** at second or higher instances was 31 % in 2022, down by 4 pp from the previous year, but still higher than in the period 2016-2020.

As in the previous years, **DE** issued the most decisions on **Afghan** applications at second or higher instances in the EU+. In 2022, this accounted for over half of all decisions in the EU+ on **Afghan** applications (around 13 000). **DE** was followed by **FR**, which issued 17 % of all decisions on **Afghan** applications in the EU+ (3 900) and **EL** (11 % of the total or 2 600).

(b) Patterns and trends across EU+ countries

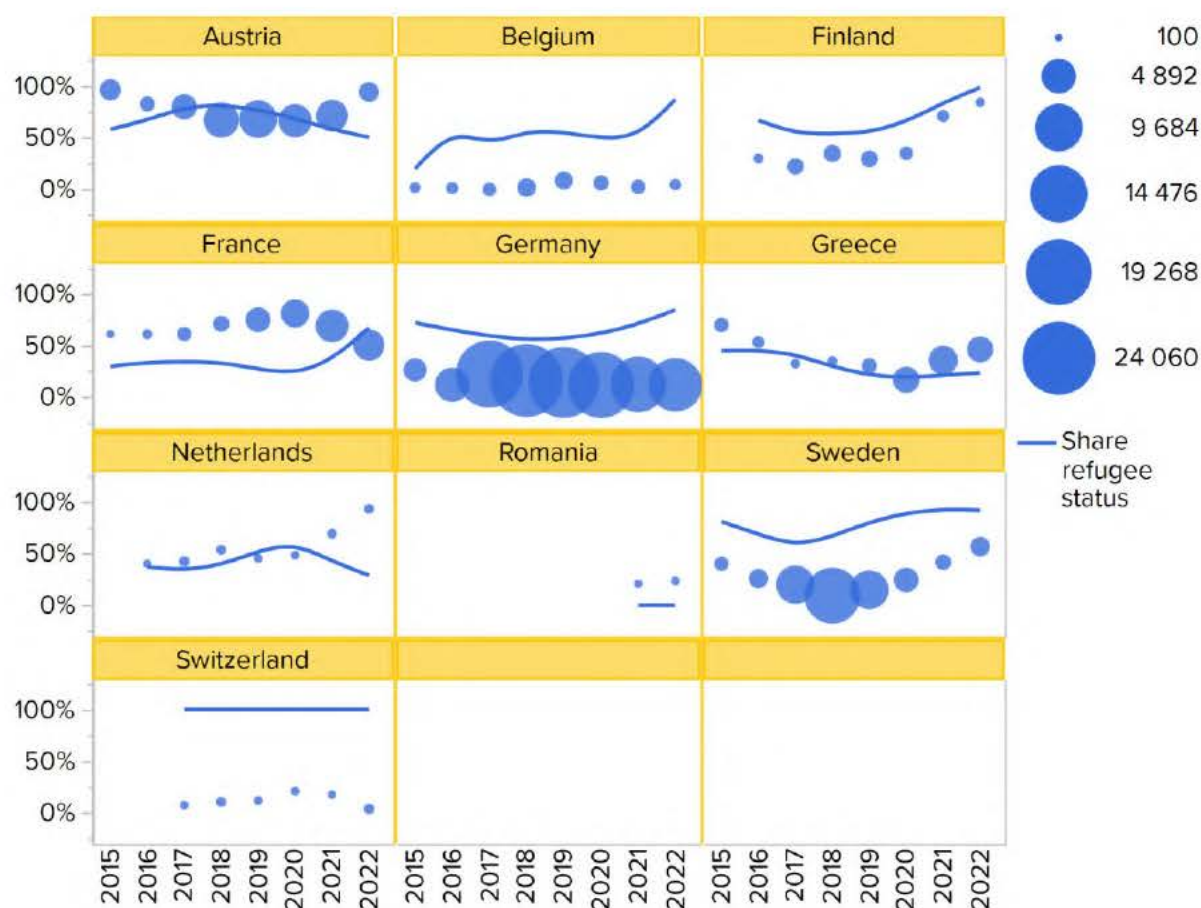
As was the case with recognition rates at first instance, **Afghan** applicants have been a typical example of variation across EU+ countries. The gap in recognition rates in different EU+ countries is similar to that observed at first instance. Since 2014, the annual difference between the EU+ countries with the lowest and the highest recognition rates for **Afghan**

⁸³ Only EU+ countries with at least 100 decisions issued at second or higher instances on the given citizenship were considered.

applicants at second or higher instances has not been smaller than 66 pp (in 2019) and has often been even higher (Figure 43).⁸⁴

In 2022, there were 10 EU+ countries with more than 100 decisions on **Afghan** applications at second or higher instances.⁸⁵ There was a sizeable variation among them. In three of them, the recognition rates were above 80 % (**AT, NL, FI**). They were followed by **SE, FR** and **EL**, with recognition rates for **Afghan** applications at higher instances varying between 57 % and 46 %. In **RO** and **DE**, recognition rates were 23 % and 12 %, respectively. The two countries with the lowest recognition rates were **BE** (5 %) and **CH** (4 %).

Figure 43. Recognition rates (bubbles) and share of refugee status out of EU-regulated forms of protection (line) at second or higher instances in EU+ countries with most decisions on Afghan applications, 2015-2022



Source: Eurostat [migr_asydcfina], as of 13 April 2023

Note: The figure presents EU+ countries that issued at least 100 decisions in both 2021 and 2022 or issued at least 100 decisions on **Afghan** applications in either of these years and several previous years. The bubble size indicates the number of second or higher instances decisions issued (according to the legend), while the placement on the vertical axis denotes the recognition rate and the share of

⁸⁴ Only EU+ countries with at least 100 decisions issued on Afghans at second or higher instances were considered.

⁸⁵ Those were (in order of the number of decisions issued): DE, FR, EL, Austria, Sweden, BE, Switzerland, the Netherlands, Finland and Romania.

refugee status out of the total. Positive decisions refer to decisions granting refugee or subsidiary protection status.

(c) Type of EU-regulated protection

In 2022, two thirds of **Afghans** receiving positive decisions were granted refugee status (65 % of all positive decisions at second or higher instances). Hence, around 4 700 decisions granted refugee status, while 2 500 decisions subsidiary protection (35 % of all positive decisions).

The variation across EU+ countries persisted also in terms of the type of protection granted. In six of the 10 countries with most decisions on Afghan applications around three quarters or more of all positive decisions issued in 2022 granted refugee status. This was the case in **FR, DE, SE, FI, BE** and **CH** (see the lines in Figure 2). In three countries the proportion varied between 23 % (**EL**) and 51 % (**AT**). Finally, in **RO**, all positive decisions at the appeal instances (35) granted subsidiary protection.

(d) National forms of protection

Furthermore, in 2022, approximately 9 700 **Afghan** asylum applicants were granted a national form of protection, mostly humanitarian status, which permits them to remain in the receiving country but is not counted towards positive decisions in the recognition rate. Almost all of such decisions (97 %) were issued by **DE**.

2.1.3. Syrian applicants: recognition rates at second or higher instances in 2022

(a) Overall trend

The recognition rate for **Syrians** at second or higher instances was 76 % in 2022, up by 8 pp from the previous year and the most in the last three years. This was also the highest recognition rate among the main countries of origin in the EU+ in 2022.⁸⁶

Since 2012, at least 66 % of all decisions on **Syrians** at higher instances have granted some type of EU-regulated protection. In 2017 and 2018, the recognition rates even exceeded 90 %, but then dropped to 84 % in 2019 and below 70 % in 2020 and 2021, only to slightly increase to 76 % in 2022.

As in the previous years, **DE** issued the most decisions on **Syrian** applications at second or higher instances in the EU+. In 2022, this accounted for over two thirds of all decisions on **Syrian** applications in the EU+ (around 7 800). No other country in 2022 issued more than 1 000 decisions at appeal instances on **Syrian** applications.

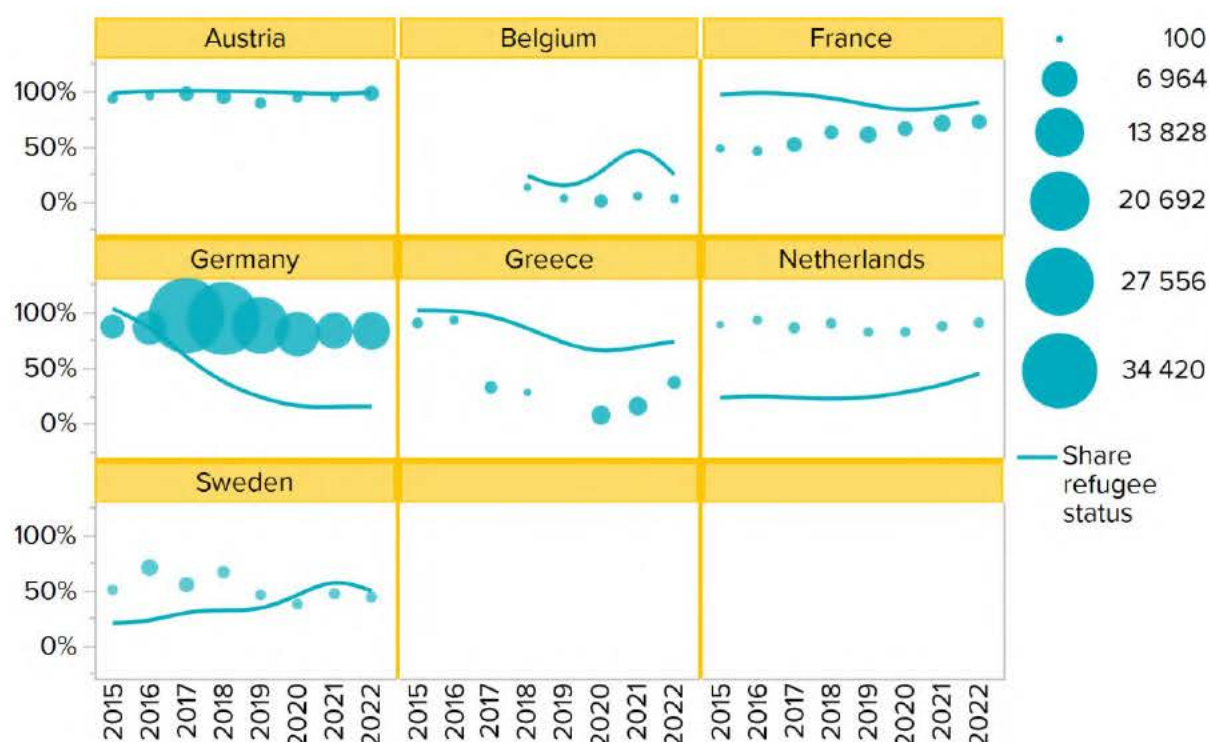
⁸⁶ Only citizens with more than 1 000 decisions issued at second or higher instances in 2022 were considered.

(b) Patterns and trends across EU+ countries

The recognition rates of **Syrian** applicants have also been subject of variation across EU+ countries. The difference between the EU+ countries with the highest and lowest recognition rates for **Syrian** applicants was 95 pp in 2022.⁸⁷ In fact, the annual difference between the EU+ countries with the lowest and the highest recognition rates for **Syrian** applicants at second or higher instances since 2014 has never been smaller than 50 percentage points (in 2016), but especially from 2018 onwards it expanded and has mostly been 90 percentage points and more since then (Figure 44).

In 2022, there were seven EU+ countries with more than 100 decisions on **Syrian** applications at second or higher instances.⁸⁸ In four of them, the recognition rate was at least 72 %⁸⁹ but it was lower in **SE** (43 %), **EL** (37 %) and **BE** (2 %).

Figure 44. EU+ recognition rates (bubbles) and share of refugee status out of EU-regulated forms of protection (line) at second or higher instances in EU+ countries with most decisions on Syrian applications, 2015-2022



Source: Eurostat [migr_asydcfina], as of 13 April 2023

Note: The figure presents EU+ countries that issued at least 100 decisions in both 2021 and 2022 or issued at least 100 decisions on **Syrian** applications in either of these years and several previous years. The bubble size indicates the number of second or higher instances decisions on **Syrians** issued, while

⁸⁷ Only EU+ countries with at least 100 decisions issued on Syrians at second or higher instances were considered.

⁸⁸ Those were (in order of the number of decisions issued): **DE**, **AT**, **FR**, **EL**, **SE**, **NL** and **BE**.

⁸⁹ in **AT**, **NL**, **DE** and **FR**.

the placement on the vertical axis denotes the recognition rate and the share of refugee status out of the total. Positive decisions refer to decisions granting refugee or subsidiary protection status.

(c) Type of EU-regulated protection

In 2022, just one third of **Syrians** receiving positive decisions were granted refugee status (33 % of all positive decisions at second or higher instances). Hence, around 2 900 decisions granted refugee status, while 5 900 decisions subsidiary protection (67 % of all positive decisions).

As was the case with decisions on **Afghan** applications at higher instances, the variation across EU+ countries persisted also in terms of the type of protection granted for **Syrians**. Almost all positive decisions at higher instances granted refugee status in **AT** (99 %), and in **FR** that was the case for nine of ten positive decisions (90 %). Roughly three quarters of positive decisions at second or higher instances granted refugee status in **EL** (73 %), whereas in **NL** (46 %) and **SE** (39 %), the proportion represented less than half of all positive decisions. The lowest recognition rates on **Syrian** applications at higher instances were in **DE** at 15 % and in **BE**, where all five positive decisions granted subsidiary status.

(d) National forms of protection

Furthermore, in 2022, some 290 **Syrian** asylum applicants – the least since 2015 – were granted a national form of protection (e.g. humanitarian status), which permits them to remain in the receiving country but is not counted towards positive decisions in the recognition rate. Three quarters of such decisions were issued by **DE**.

2.1.4. Conclusion: variation in recognition rates of Afghan and Syrian applicants at second or higher instances

To estimate the level of variation at second and higher instances, we selected EU+ countries which either issued at least 100 decisions in both 2021 and 2022 or which had issued at least 100 decisions in any of these years and several previous years (similar to the analysis of variation at first instance, yet with a lower threshold – 100 instead of 200 decisions). In addition, data on decision-making at higher instances are available only on Eurostat⁹⁰ on an annual basis⁹¹ and not on a monthly basis. Therefore, the variation of recognition rates of **Afghan** and **Syrian** applicants at second and higher instances can only be established on an annual basis.

In 2021 and 2022, variation at second and higher instances (measured via the standard deviation – for details see the analysis at first instance) was high for both **Afghans** (27 pp in 2021 and 35 pp in 2022) and **Syrians** (36 pp in 2021 and 34 pp in 2022). For **Syrians**, this result contrasts with the findings on first instance variation, according to which monthly

⁹⁰ Eurostat [[migrasydcfna](#)], as of 13 Apr 2023.

⁹¹ EUAA EPS data on decisions in appeal or review are incomplete to allow portraying a picture at the EU+ level.



variation in recognition rates for **Syrians** was mostly at a medium level. For **Afghans**, the extent of variation at higher instances in 2022 was somewhat higher than at first instance.⁹²

⁹² A better conclusion might be affected if one decides to reconsider the underlying assumptions about what levels of standard deviation are categorized as low/medium/high variation (for more details see the analysis on recognition rates at first instance).



2.2. Main drivers of variation in recognition rates

2.2.1. Overview

A number of the factors explored with regard to the first instance would similarly impact the recognition rates at appeal instances. To the extent that variation exists in the first instance, it is likely to be amplified in the statistical data referring to appeals, as confirmed by the findings in [2.1. Data analysis](#).

In terms of caseload of the appeal bodies across the EU+, its first defining factor is the outcome of the assessment conducted at the first instance, in that the caseload largely depends on the approach followed by the first instance and what types of cases are rejected or granted subsidiary protection (if the latter can be appealed).

A number of additional systemic factors are likely to further impact the recognition rates at appeal instances, including the national set-up, the degree of specialisation of the competent courts, and the existence of interpretative guidance provided by higher national courts.

The manner in which the relevant CJEU jurisprudence is reflected in national jurisprudence appears highly relevant for several key topics, among which draft evasion for **Syrians** and the application of the sliding scale in relation to Article 15(c) QD. Finally, the appreciation and use of EUAA and UNHCR guidance can also play an important role in the examination of appeals on their merits. This can be further related to the professional development of judicial personnel and their specialisation on asylum cases.

2.2.2. The caseload at appeal instances

The size of the caseload in itself can have an impact on convergence at the appeal instances. This would further relate to the structure of this caseload (which types of decisions are subjected to appeal) and to the national set-up.

The analysis below mentions some of the caseload-related factors which may play a role in defining the recognition rates at appeal instances and their variation across EU+ countries.

(a) Recognition rate at first instance

If the determining authority in the EU+ country issues primarily refugee status decisions on a particular country of origin, fewer cases would be subject to appeal. For example, an appeal instance survey respondent from **IT** noted that cases from **Afghanistan, Iraq, Somalia** and **Syria** would rarely reach the appeal instance in view of the high recognition rates at first instance. This is also the case for a number of other EU+ countries in relation to **Syria**, as evidenced in [Figure 59. First-instance decisions and recognition rate in EU+, Syria: January – December 2022](#) and in [Figure 44](#) above. In this context, it would appear more likely for the cases rejected by the first instance to also result in negative decisions on appeal.

On the other hand, where at the first instance a comparatively larger proportion of applications results in negative decisions, the appeal instances may be expected to play a more prominent



corrective role, therefore potentially issuing a larger share of positive decisions. These factors should be further correlated with the composition of the cases examined by the first instance authorities.

(b) Rights associated with the different types of protection

Generally, a negative refugee status decision can be appealed even where subsidiary protection has been granted. However, *'where the subsidiary protection status granted by a Member State offers the same rights and benefits as those offered by the refugee status under Union and national law, that Member State may consider an appeal against a decision considering an application unfounded in relation to refugee status inadmissible on the grounds of insufficient interest on the part of the applicant in maintaining the proceedings'* (Article 46(2) APD). Furthermore, the likelihood of appeals against subsidiary protection decisions will greatly depend on the specific rights attached to each status.

As previously noted, **CY**, **DE**, **EL** and **MT**, for example, do not provide for the right to family reunification for beneficiaries of subsidiary protection.^{93, 94} In **DE**, this contributed to a significant number of appeals against subsidiary protection decisions, shaping the specifics of its caseload at the appeal instances to a large extent. The **DE** appeals caseload for **Syrians**, therefore, presents significant differences to the appeals in other Member States, which either primarily grant refugee status (e.g. **EL**), or which provide identical rights to beneficiaries of both types of protection (e.g. **NL**). While in **EL**, in 2022, 72 % of decisions granted refugee status and there were no subsidiary protection decisions, in **NL**, for example, subsidiary protection decisions accounted for 35 % of all first instance decisions in 2022. However, beneficiaries of subsidiary protection in **NL** have identical rights to those of recognised refugees and have no standing in court according to Dutch legislation and jurisprudence. On the other hand, in **BG**, for example, beneficiaries of subsidiary protection have very similar rights to recognised refugees, including the right to family reunification. Therefore, although subsidiary protection was granted almost exclusively in 2022, beneficiaries would have limited interest in appealing the rejections of refugee status.

This appears to confirm that, apart from the overall recognition rate and the type of protection granted by the first instance, the content of protection and the rights of beneficiaries of subsidiary protection can play an important role in defining the specifics of the national caseload. For data concerning first instance decisions see [Annex 2: Statistical overviews](#).

(c) Characteristics of the caseload reaching the appeal instances

Similarly to their relevance in the first-instance examination, factors such as the main claims, the age, gender and family status, the ethno-religious background of the applicant, and their area of origin could impact recognition rates at the appeal instances. The phenomena of

⁹³ European Council on Refugees and Exiles (ECRE), [Not there yet: Family reunification for beneficiaries of international protection](#), February 2023 <accessed 18 September 2023>

⁹⁴ For **CY** and **MT**, this correlation has not been explored further for the purposes of this analysis, due to the low overall number of first instance decisions.



applications lodged by beneficiaries of international protection in another Member State and of subsequent applications could also play a role. See [1.2.2. The role of caseload](#).

Some illustrative examples of how these elements present at the appeal instance were identified by respondents to the convergence survey concerning appeals:

- **Identification of the applicant**

A respondent from **BE** noted that in most cases concerning **Somalia**, the applicant's claimed region of origin was not found to be credible.

- **Claim profile**

A respondent from **DE** noted that diverging jurisprudence with regard to westernised women from **Afghanistan** and **Iraq** may be an important factor impacting recognition rates at appeal instances.

- **Gender, age and family status**

A respondent from **BE** noted that newly submitted appeals from **Afghan** applicants were exclusively from male individuals, due to the recognition of women and girls by the determining authorities at the first instance.

For **IT**, the issue of gender was also relevant for the key profile of **Nigerian** women victims of human trafficking.

- **Area of origin**

A respondent from **FR** noted that the area of origin would be highly relevant for example for **Afghanistan**, in reference to the provinces to which Article 15(c) QD could apply according to the assessment of the CG from January 2023.

A respondent from **SE** noted that the area of origin would also be key for applicants from **Syria**.

- **Beneficiaries of international protection in another Member State**

According to a **DE** respondent, in cases of applications by beneficiaries of international protection in another Member State, there is a certain degree of divergence in the assessment of the human rights situation in the Member State concerned (e.g. Hungary, Italy, Greece) for the purpose of finding a violation of Article 4 of the EU Charter of Fundamental Rights, applying the criteria set out by CJEU in the judgment of 19 March 2019, C-297/17, *Ibrahim*.

In a response to a query on secondary movements of beneficiaries launched to the first instance determining authorities),⁹⁵ **DE** had noted that their case law has consolidated to the

⁹⁵ EUAA Query Platform, [PCY.2023.017 - Follow up: Applicants who have a ready received international protection in Greece](#) [restricted access].



extent that a large number of higher courts have ruled against a return to Greece because of a threatened violation of Article 3 ECHR (or Article 4 of the Charter).⁹⁶

An overview and analysis of relevant case law across the EU+ countries can be found in the EUAA report '**Jurisprudence on Secondary Movements by Beneficiaries of International Protection**' from June 2022.⁹⁷

2.2.3. The set-up of appeal instances

Members of courts and tribunals highlighted the national judicial set-up as an important factor in relation to variation in recognition rates. They noted that in some cases, where the asylum judicial system is highly decentralised, significant variations could be observed already at the national level. On the other hand, having binding jurisprudence from a higher court is likely to foster convergence in lower appeal instances.

When the analysis is transposed to the EU-level, however, the binding guidance of a higher national court may account for actual differences between Member States. The judgments of the Federal Court in **DE** are an important example in this regard, impacting national courts as well as the first instance decisions. This may account for decision practices and outcomes which would not be consistent with EUAA CG, which in turn reflects the assessment adopted by the majority of Member States. Examples in this regard are referenced in the analysis pertaining to the first instance above and refer to topics such as draft evaders from **Syria**, the applicability of MPSG, considering the indirect impact of indiscriminate violence in relation to Article 15(c) QD, etc.

The degree of specialisation of the members of the appeal instances competent in asylum matters can also play an important role. In this context, their exposure to training and guidance originating from UNHCR and the EUAA can have an impact, as well as the composition of the panels (e.g. one or three members, appointment of non-professional judges like in **FR, IE, IT** or **SE**).

Other important aspects related to the national set-up could include, for example, the time limits to lodge the appeal, whether the decision of the appeal body is final or may be subject to a further appeal, the availability of interpretation, etc.

2.2.4. The role of CJEU jurisprudence

The CJEU ensures that EU law is uniformly interpreted and applied in all EU countries, which makes its jurisprudence one of the cornerstones of the CEAS and a key building block for

⁹⁶ For example, the higher administrative court (Oberverwaltungsgericht [OVG]) Berlin-Brandenburg (judgement of 23.11.2021 - OVG 3 B 53/19), the Saxon OVG (judgement of 27.04.2022 - 5 A 492/21 A), the OVG North Rhine-Westphalia (judgement of 21.01.2021 - 11 A 1564/20.A), the OVG Bremen (judgement of 16.11.2021 - 1 LB 371/21), the Verwaltungsgerichtshof (VGH) Baden-Württemberg (judgement of 27.01.2022 - A 4 S 2443/21), the OVG Lüneburg (judgement of 19.04.2021 - 10 LB 244/20) and the OVG Saarland (judgement of 15.11.2022 - Az.: 2 A 83/22).

⁹⁷ EUAA, [Jurisprudence on Secondary Movements by Beneficiaries of International Protection](#).



convergence. However, it appears that its impact at the national level largely depends on the stance of the judicial authorities in the respective Member State.

It is of note that CJEU judgments also directly impact policies and practices of the determining authorities at the first instance, often confirming or clarifying existing approaches. However, it appears that the impact of CJEU judgments may differ from one Member State to another. The courts requesting a preliminary ruling often do this due to diverging decisions within their national context. However, the judgments of the CJEU do not always lead to more consistency due to persistent diverging opinions.

An interesting point was put forward by a respondent to the convergence survey, who noted that recognition rates might be influenced by the dilemma faced by certain judges between following the relevant case law of their national supreme court or instead directly applying the case law of the CJEU, where these may not be fully consistent. To add further complexity to this dilemma, the respondent highlighted that in some systems, the regular performance review of judges is conducted by judges in their supreme court, suggesting a '*contentious issue of the performance evaluation system and internal judicial independence*'.

A notable example regarding persistent interpretative differences is the **DE** jurisprudence related to the *EZ* judgment. In the convergence survey, several respondents from **DE** noted that the question of whether the refusal to perform military service in **Syria** can be seen as a reason for international protection, and in particular refugee status, remained treated controversially by the first-degree appeal instances (the administrative courts of first instance). Following the *EZ* judgment, courts of first and second instance (both appeal instances) held that this judgment introduced a reversal of the burden of proof with regard to the connection between reason and the persecution, while in February 2023, the Federal Administrative Court of Germany – Bundesverwaltungsgericht, BVerwG – held that the judgement of the CJEU did not lower the standard of conviction.⁹⁸

With regard to leading cases, a respondent from **DE** further noted that the lower courts (first appeal instance) mostly follow the judgments of their respective higher administrative court (second appeal instance). The respondent commented that this would generally not result in differences in decisions, as the 15 higher administrative courts largely agree upon the factual circumstances leading to the granting of refugee or subsidiary protection status. However, the issue of draft evasion for **Syrian** applicants represents a notable exception, where there appear to be a divergent interpretation of facts. In this regard, the respondent mentioned that a minority of the higher administrative courts would grant refugee status, while the vast majority denies this status.

2.2.5. Other factors

Several other factors were indicated as relevant in the framework of the pilot study:

- **Relations with the first instance determining authorities**

⁹⁸ Federal Administrative Court of Germany [Bundesverwaltungsgericht], *Applicants v Federal Office for Migration and Refugees (BAMF)*, [1 C 1.22 and other cases](#), 19 January 2023 <accessed 18 September 2023>



Appeal bodies and national determining authorities have different relations depending on national set-ups and traditions. In many cases, these would be clearly separate and have little exchanges. At the same time, in certain countries these bodies enjoy closer cooperation. Interestingly, the national guidance developed by the first instance may be used by the appeal bodies as well, as noted by a respondent from **SE**.

- **Legal aid provision**

The set-up of legal aid provision in the country would also largely define the process at the appeal instance. Depending on the investigative mandate of the judiciary, this aspect could be decisive for the elements considered in the framework of the appeal, including the use of EUAA COI and CG. For example, a respondent to the survey from **PL** noted that they only referred to EUAA COI and guidance if presented by the parties in the proceedings.

A **DE** respondent to the survey also indicated that the provided legal aid may be a relevant factor. The respondent clarified that in **DE**, for example, there is a comparably high number of lawyers specialised in asylum and migration law who are willing to provide legal aid. In addition, applicants get support from NGOs (e.g. charity organisations, refugee law clinics at universities, etc.), which act as legal assistants and provide legal information and counselling at first instance and at the appeal stages.

- **Judicial culture, subjectivity and judicial independence**

Several respondents to the survey (**BE, DE, IE, SE**) mentioned that variations are common when assessing the credibility and the evidence of the case, as well as when performing the individual risk assessment and in general when assessing the individual facts of each case. In their view, this is inherent to the activity of judges as it derives from their judicial independence.

Other aspects mentioned in response to the survey and in discussions during the thematic meeting of the EUAA CTNet included the judicial culture in the country and a certain amount of subjectivity possible at the level of the individual judge.

These notions are less tangible and, thus, challenging to explore in the context of this study. Nevertheless, they can be correlated to the national set-up, the professional development of judges and other judicial personnel, and the respective use of UNHCR and EUAA guidance.

2.2.6. Case studies

Mirroring to the analysis pertaining to the first instance, the EUAA engaged in case samples analysis to examine the decision practices and related reasons for variations in recognition rates at appeal instances. The selected topics corresponded to those of the first instance case samples analysis: Hazara applicants from **Afghanistan** and **Syrian** male applicants between 18 and 42 years of age, in relation to a potential draft evasion claim.

Similarly to the first instance case samples analysis, the study showed significant differences in approach and outcome in the appeal of similar cases across the contributing EU+ countries.



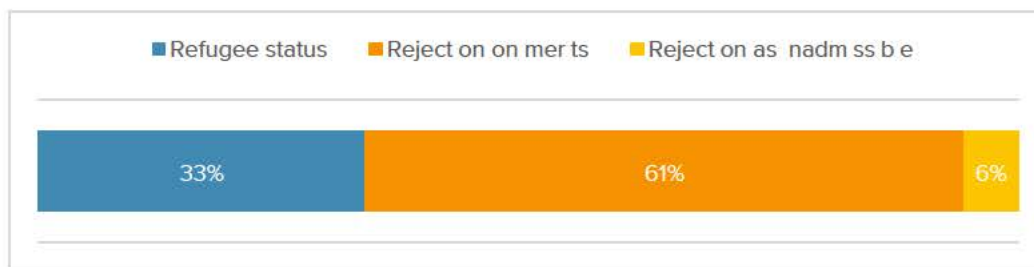
Differences were identified across various aspects of the examination and merit a holistic, comprehensive approach to fostering convergence at the appeal instances.

(a) Afghanistan – Hazara

In the framework of this pilot analysis, members of courts and tribunals identified and shared 29 relevant cases pertaining to the profile of Hazara applicants, to be reviewed by the EUAA. The case sample analysis by the EUAA eventually included 18 of the shared cases.

Among the submitted decisions, most were rejections on merits (61 %), followed by granting of refugee status, which represented one third of the decisions. Among the EU+ countries, **FR** and **BE** decisions mostly granted refugee status, with only one negative decision for each country. **DE** and **AT** decisions were exclusively rejections on the merits, but while the **DE** cases concerned negative or inadmissible decisions at the first instance level, the **AT** cases concerned decisions where the first instance authority had granted subsidiary protection to the applicants. **CZ** only shared one decision rejecting the appeal on the merits.

Figure 45. Case sample analysis – Appeal, Afghanistan, decisions by outcome.



In terms of the aspects identified as central to the outcome, the ethnic origin of the applicant was the primary element (83 % of the cases). Examination in relation to the Shia religion of the applicant was central in 72 % of the cases. Additional claims which were identified as key for the decisions were links to the former government (17 %) and Westernisation (28 %). Other claims brought forward by the applicant were central in 39 % of the cases, amongst which conversion to Christianity.

The credibility analysis played a key role and was assessed as central to the outcome in 22 % of the cases, in particular with regard to negative credibility findings.

The submitted cases were assessed as mainly consistent with the EUAA guidance in terms of outcome (63 %). However, a number of differences were observed in relation to the approach adopted by the national judicial authorities.

The following remarks can be drawn from the case-sample analysis of the decisions above:

- **Identification of material facts**

The scope of the examination varied among countries. Notably, the **CZ** judgment and some **SE** judgments did not examine the cases as a mixed profile (Hazara ethnicity and (imputed) Shia religion), but only limited the consideration to the Hazara ethnicity of the applicant.



Sometimes, even if explicitly mentioned by the applicant, the Shia element remained unexamined. Similarly, the risk by ISKP as an actor of persecution was not always addressed.

- **Differences in the use of COI**

There are also differences in the use and interpretation of COI. The **FR** appeal authority considered the lack of COI as an element connected to the difficulty to document the situation in **Afghanistan** and assessed that the situation is worse than actually documented. The **CZ** and **SE** judgments on the other hand referred to limited, not updated COI or unreferenced COI.

- **Assessment of the fear of persecution in relation to the ethno-religious background of the applicant**

It could be observed that the **FR** appeal authority goes beyond the CG on **Afghanistan** and considers that there is a general persecution of Shia Hazaras in **Afghanistan** after the Taliban takeover, due to which refugee status is being granted. On the other hand, the **CZ**, **AT**, **DE**, **BE** and **SE** appeal authorities considered that there is no general persecution of Shia Hazaras in **Afghanistan**, instead some of these judicial bodies noted that their situation has improved. In case of additional personal circumstances and cumulative risk-impacting circumstances, some appeal bodies considered there was a risk of persecution for the applicant and granted refugee status.

- **Assessment of the general situation**

According to the findings in one decision issued by a **DE** appeal authority, it was considered that there was no longer an internal armed conflict in **Afghanistan** following the Taliban takeover.

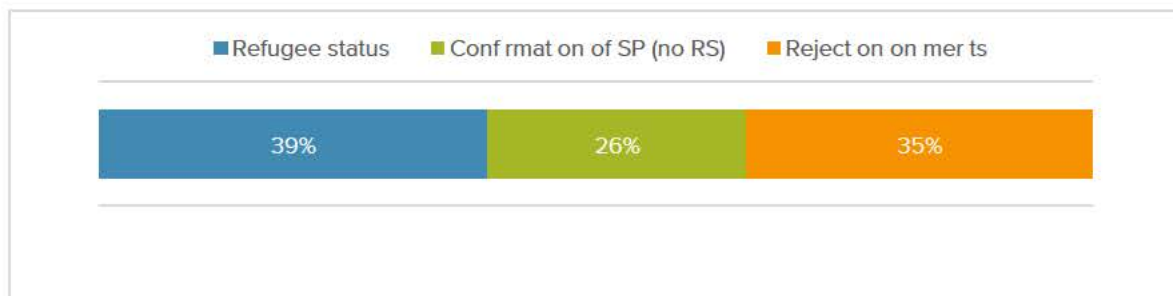
(b) Syria – draft evaders

In the framework of the case sample analysis, 23 appeal decisions on **Syrian** applicants of conscription age (18-42) issued by five countries were reviewed by the EUAA.

Among the submitted decisions, most were granting refugee protection (39 %), followed by the decisions rejecting the claim on its merits (35 %) and those confirming the subsidiary protection granted at first instance (26 %). All of the appeal decisions by **FR** and **AT** reviewed were granting refugee protection, while all of the appeal decision of **BE** and **SE** were not granting any form of protection. The decisions of **DE** were all the result of a second appeal (issued by a higher administrative court) and, with the exception of one, which confirmed the applicant's eligibility for refugee protection, the rest confirmed the subsidiary protection granted by the first-instance authorities, some even reversing first appeal decisions granting refugee protection.



Figure 46. Case sample analysis – Appeal, Syria, decisions by outcome.



Whether the appeal was examined in relation to draft evasion, along with whether the appeal decision explored the perception of draft evaders by the **Syrian** authorities, were identified as central to the outcome most often (43 % of cases each), closely followed by whether the appeal decision addressed the treatment of draft evaders (35 %).

Based on the findings of the appeal instance review, 35 % of the fields pointed towards an approach overall inconsistent with EUAA guidance and tools, 29 % of the elements looked into were adopting a different approach which was not necessarily affecting the outcome and 26 % were overall consistent.

The following remarks can be drawn from the case sample analysis of the 23 appeal decisions on **Syrian** men of conscription age:

- **Identifying the material facts and credibility assessment**

With the exception of the decisions shared by **AT**, for most of the reviewed decisions, the appeal bodies did not perform a credibility assessment of the claimed facts. The credibility of the statements was either not explicitly tackled within the appeal decision or the appeal body relied on the findings of the first instance authority in its own factual assessment. Furthermore, in the context of decisions with overall negative credibility findings, it was not clear whether the appeal body had taken into account the individual circumstances of the applicant when assessing the credibility of their statements or confirming such findings stemming from the first instance.

In addition, even though certain material facts were either established or at least not in doubt (most prominently, **Syrian** nationality and age within the 18-42 range), they do not seem to have affected the outcome at all and still led to rejection on the merits⁹⁹ in some cases. Several decisions were referring to risk-impacting circumstances, but did not consider them cumulatively and in view of other personal circumstances.

- **Use of COI and country-specific guidance**

For the most part, the level of reliance on COI and country-specific guidance documents seems to be a point of convergence for decisions coming from the same national context. In the **AT** decisions, there was in general extensive use of COI reports, while in decisions from

⁹⁹ Not because of the existence of internal protection or the availability and reasonableness of an internal flight alternative or even exclusion.



DE the use was more limited and the references and sources quoted were not as varied. In the appeal decisions from **FR**, the COI references were specific and stemming from older reports (though that does not necessarily mean the quoted information was no longer valid) and in the case of **SE**, the decisions mainly referred to the existing national guidance by the Swedish Migration Agency. There were decisions where the use of COI led to some speculation as to the intents and focus of the **Syrian** State, used in the respective risk assessment.

When it comes to references to EUAA CG, these were present although not common in the sample. Interestingly, most **DE** decisions (71 %) referenced EUAA CG documents but did not necessarily take the entirety of them into account. The reviewed decisions from **FR** and **SE** made no reference to the EUAA CG documents.

- **The EZ judgment**

According to the explanatory note accompanying the sample from **DE**, while two high administrative courts saw the presumed link to a persecution ground in general and for this granted refugee status, the rest of the high administrative courts in **DE** required the establishment of such a link in each individual case and mainly refused the claims. The Federal Administrative Court in its judgments of 19 January 2023 clarified that under German procedural law, despite the "strong presumption" noted by the CJEU, there must be a full conviction of the judge if there is a nexus in each individual case.¹⁰⁰

Of the seven **DE** decisions reviewed, with the exception of one, the rest concluded either that there was no persecutory act to be feared or that no nexus was established because of the applicant being a 'simple' draft evader, who would not be attributed affiliation with the opposition.

¹⁰⁰ Federal Administrative Court of Germany [Bundesverwaltungsgericht], *Applicants v Federal Office for Migration and Refugees (BAMF)*, [1 C 1.22 and other cases](#), 19 January 2023 <accessed 18 September 2023>



2.3. The use and impact of EUAA products and activities

The use of common EUAA products and participation in EUAA professional development activities are likely to have a positive convergence impact across courts and tribunals. Some of the available information, especially in relation to the use of EUAA COI and CG products by members of courts and tribunals, is outlined below.

(a) Overview

In the convergence survey for members of courts and tribunals, 18 of the 20 respondents answered that they make use of the available EUAA judicial publications, with the Judicial Analyses on Qualification for International Protection and on Evidence and Credibility Assessment being the most widely consulted.

The vast majority of the respondents to the survey (85 %) also answered that they utilise the available EUAA COI reports to varying degrees. The same number of respondents reported that they made use of CG documents and/or country-specific guidelines.

From the case sample analysis

The case samples analysed for the purposes of this study demonstrated a wide use of EUAA COI:

- In the decisions on **Syria**, EUAA COI was used in 61 % of the cases and mentioned or partially used in another 17 %.
- In the decisions on **Afghanistan**, EUAA COI was used in 39 % of the cases and mentioned or partially used in another 6 %

The references to EUAA CG were generally more limited:

- In the decisions on **Syria**, EUAA CG was used in 22 % of the cases and partially used in another 4 %.
- The findings with regard to **Afghanistan** mirrored this of the use of COI, with EUAA CG used in 39 % of the cases and partially used in another 6 %.

Due to the small sample size, these findings should be considered purely indicative.

The increasing use of EUAA CG was also noted by the study on references to EUAA products in jurisprudence and confirmed in discussions during relevant CTNet events.

Importantly, an increasing use of EUAA products is noted at the level of the CJEU, where they appear especially in recent opinions of the Advocates General.

(b) EUAA products used at the level of CJEU

With the increasing volume of asylum-related jurisprudence by the CJEU, references to the products of the Agency also appear more frequently and include relevant judicial analyses



publications as well as, more recently, EUAA CG and COI, as well as other products. Some of the identified examples include:

- C-369/17 (*Ahmed*): The judgment refers to the Judicial Analysis 'Exclusion: Articles 12 and 17 of the Qualification Directive (2011/95/EU)'.¹⁰¹
- C-901/19 (*CF and DN*): The Advocate General Opinion refers to the Judicial Analyses 'Article 15(c) Qualification Directive – a judicial analysis' and 'Qualification for international protection'.¹⁰²
- C-663/21 & 8/22 (*AA*): The Advocate General refers to the Judicial Analysis 'Ending International Protection: Articles 11, 14, 16 and 19 Qualification Directive (2011/95/EU)'.¹⁰³
- C-621/21 (*WS*): The Advocate General refers to a number of EUAA products, including the EUAA CG on **Afghanistan**, an EUAA COI report concerning FGM and a factsheet on the same topic, and an EUAA country focus report on Türkiye.¹⁰⁴
- C-646/21 (*K,L*): The Advocate General makes several references to the EUAA CG on **Iraq** and refers to one of the COI reports on the country.¹⁰⁵

The use of EUAA products is a testament to their relevance and expert quality. At the same time, it increases their potential to lead to convergence, as they feed into the considerations of the CJEU and the binding interpretative guidance the Court provides.

(c) Study on the references to EUAA products in jurisprudence (2019- 2020)

A study on the references to EUAA products in jurisprudence was completed in 2022 with reference to the period 2019-2020. The findings below present excerpt from the final report of this study.

Overall, across all EU+ countries, COI reports were the most frequently mentioned EUAA products in 2019 and 2020 (8 478 cases) followed by CG documents (3 890) (see Figure 47).

⁰¹ CJEU, *Shajin Ahmed v Bevándorlási és Menekültügyi Hivatal*, [C-369/17](#), judgment of 13 September 2018.

⁰² See the [Opinion of the Advocate General](#).

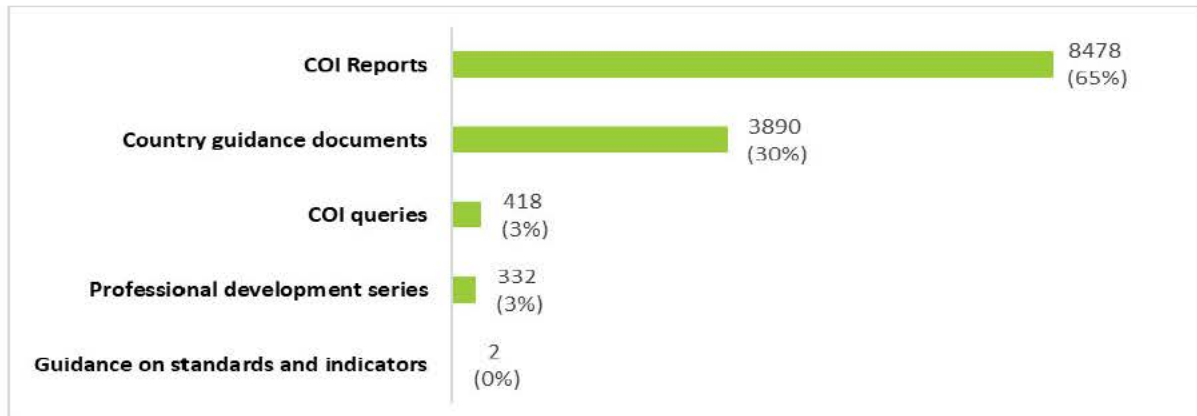
⁰³ See the [Opinion of the Advocate General](#).

⁰⁴ See the [Opinion of the Advocate General](#).

⁰⁵ See the [Opinion of the Advocate General](#).



Figure 47: Number of references to different types of EUAA products across EU+ countries

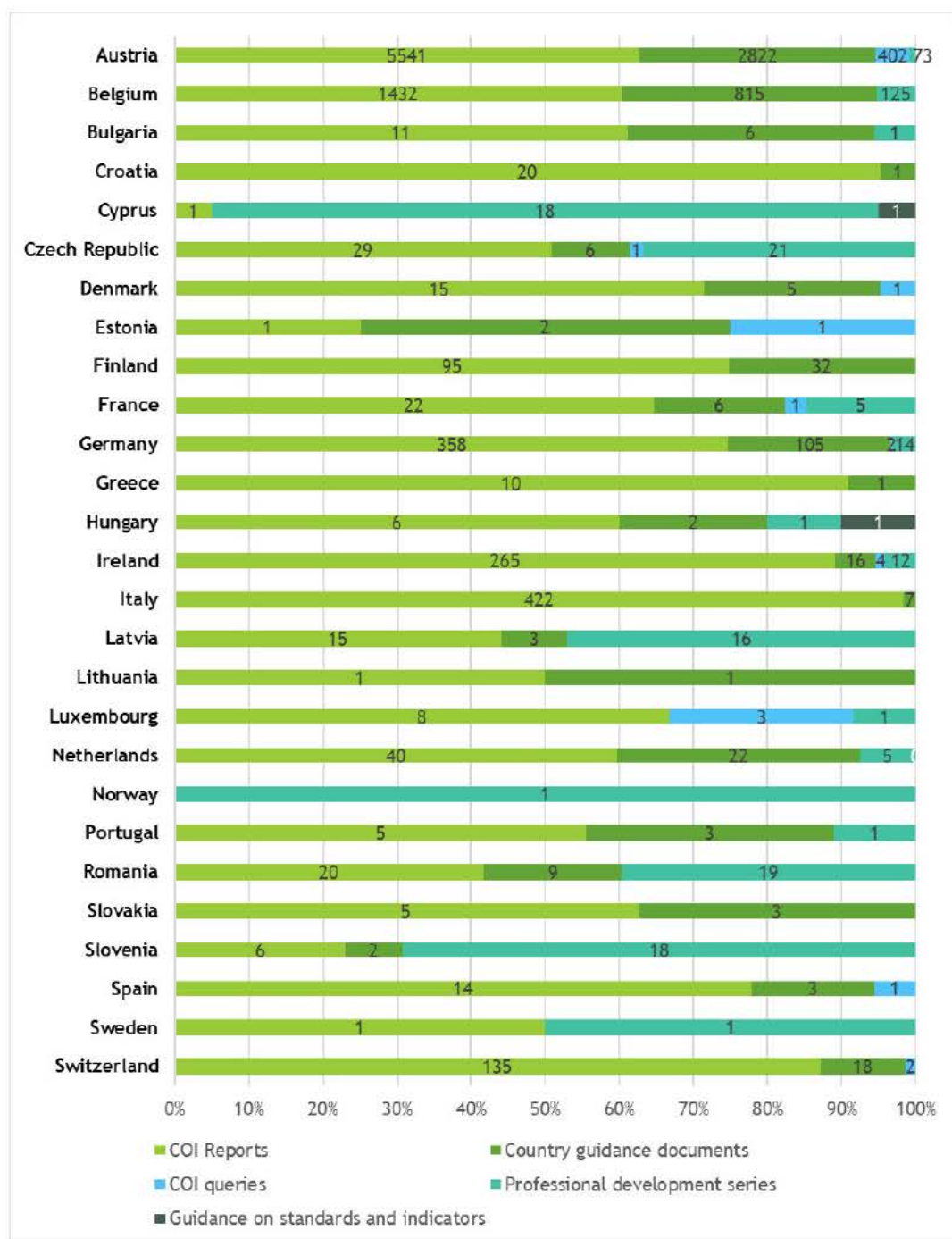


Source: Study on references to EUAA products in national jurisprudence (2019 – 2020)

[Figure 48](#) below shows the proportion of the different types of EUAA products mentioned in each Member State's jurisprudence. The figure notably shows the extensive use of COI reports, while courts in **CY**, **LV**, and **SI** made more frequent use of Professional Development Series documents compared to other EU+ countries. The figure also shows the large representation of **AT** and **BE**, with 8 838 and 2 372 number of references respectively.



Figure 48: Number and proportion of references to different EUAA products by EU+ country

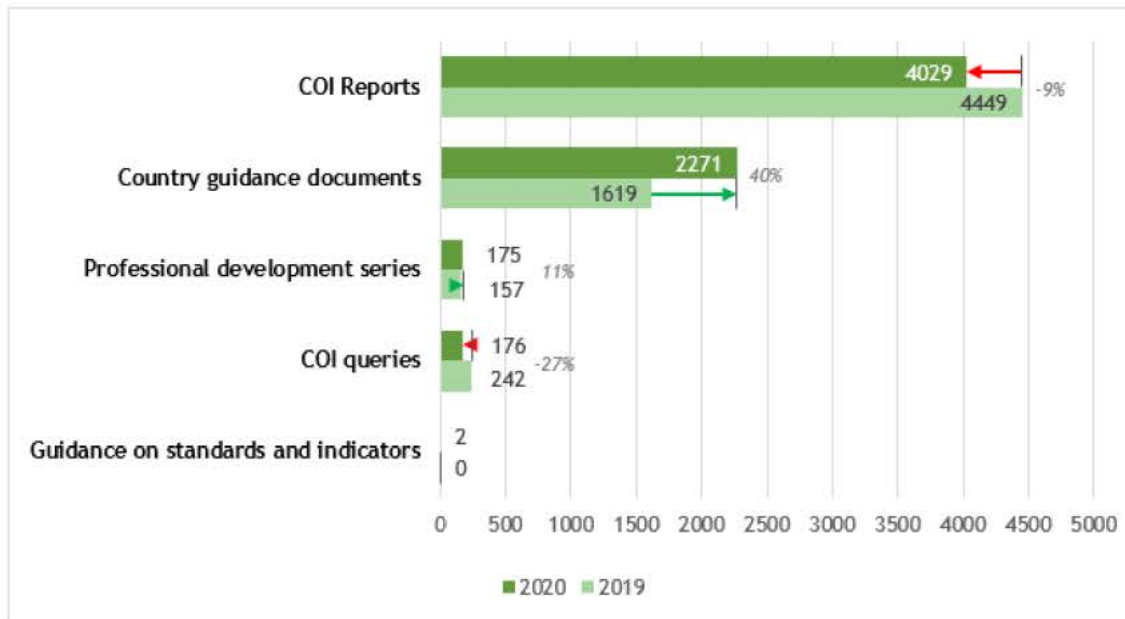


Source: Study on references to EUAA products in national jurisprudence (2019 – 2020)

[Figure 49](#) below shows that there has been a significant increase in the number of references to CG documents (40 % more references in 2020 relative to 2019), and a slight increase in the number of references to Professional Development Series and Guidance on standards and indicators. On the other hand, the number of references to COI reports and COI queries slightly decreased in 2020.



Figure 49: Number of references to different EUAA products in 2020 compared to 2019



Source: Study on references to EUAA products in national jurisprudence (2019 – 2020)

This study presented a number of limitations, particularly linked to its predominantly quantitative nature and its temporal scope, including only 2019 and 2020. Nevertheless, it provided for relevant observations, in particular in relation to the increasing references to EUAA CG. This was a notable development, which preceded the EUAA Regulation and indicated a readiness at the level of EU+ appeal bodies to consider these documents, aimed to assist decision-making and to foster convergence in the assessment of applications in accordance with the QD. While the next iteration of a study on references to EUAA products in jurisprudence is not yet available, it is expected that more references to EUAA products would be identified, especially with regard to the CG in relation to the publication of additional guidance and in view of the new obligation for Member States to take the common analysis and guidance notes into account (Article 11(3) EUAA Regulation), but also in view of the increased visibility of the EUAA products overall.

(d) Survey responses

The responses to the convergence survey further confirmed a broad use of the CG by courts and tribunals. For example, it was clearly considered and taken into account in **FR** and **SE**. Notably, a respondent from **FR** commented that *'In Afghanistan, we do not differ in our landmark case judged the 14th February 2023. In two Somalia's landmark cases (22nd July 2022, 7th April 2023), we slightly differ, for some provinces (like Hiraan) because we have precise COI documents from UN, and NGOs.'* A respondent from **SE** specified that with regard to the **Syrian** applicants from Hassaka, they followed the EUAA CG which differed from the **SE** national legal position.

The following table outlines the responses to the 2023 convergence survey in relation to the use of EUAA COI and CG and that of UNHCR guidance.

Table 1. Positive responses to the questions ‘1.5 In the examination of cases from the above-mentioned countries, do you refer to COI reports published by the EUAA? If yes, please specify which’; and ‘1.6 In the examination of cases from the above-mentioned countries, do you take into account the EUAA common analysis and guidance notes (country guidance documents) and/or relevant country-specific UNHCR guidelines? If yes, please specify which.’¹⁰⁶

Country of respondent	COI Reports	EUAA Country Guidance	UNHCR country guidelines
BE	<ul style="list-style-type: none"> • Afghanistan Security Situation, Key indicators, Targeting (08/2022), EUAA Query (11/2022), Country Focus (01/2022) 	<ul style="list-style-type: none"> • Afghanistan Guidance (01/2023) • Somalia Guidance (06/2022) 	
CZ	<ul style="list-style-type: none"> • Yes, we do refer to COI reports published by the EUAA, i.e. EASO COI Report - Iraq - Security situation (Information Report, October 2020), EASO – Syria – Security situation (Information Report, July 2021), EASO: Eritrea National Service and illegal exit (September 2019), EASO – Syria – Security situation (Information Report, July 2021), EASO Country focus Afghanistan (January 2022). 	<ul style="list-style-type: none"> • We do take into account EUAA and UNHCR guidelines in the examination of international protection cases, i. e. UNHCR eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan (30. 8. 2018); EASO Country Guidance Afghanistan (November 2021). 	
DE	<ul style="list-style-type: none"> • EUAA COI-Report, Afghanistan, Security Situation (August 2022) • e.g. Afghanistan, Dokumentation from COI-Webinar 	<ul style="list-style-type: none"> • EUAA Country Guidance Afghanistan (February 2023), which is very useful. • Yes. 	

¹⁰⁶ The table below reflects the original wording of the responses.

	<p>with Katja Mielke und Emran Feroz, March 2022, EUAA, Afghanistan, Targeting of Individuals, August 2022, S. 51); Afghanistan Country focus, Col-Report, Januar 2022, COI-CMS Afghanistan, Iran COI-CMS Armenien 2021; see above.</p> <ul style="list-style-type: none"> • Yes, all recent COI regarding Syria. • Rarely. 	<ul style="list-style-type: none"> • Yes, all recent guidance notes/guidelines regarding Syria. • Rarely. 	
FR	<ul style="list-style-type: none"> • Yes, every "Security Report"; "Targeting Individuals" 	<ul style="list-style-type: none"> • If available "Country Guidance" is analysed. We have three Landmark Cases about how to "take into account" the Guidance Notes, as it is written in the article 11 (3) of the 15th December 2021 Regulation transforming EASO into EUAA. We took into account the country guidance about Afghanistan (January 2023) and the two last Country Guidance documents on Somalia in our three landmark cases. 	
HR	<ul style="list-style-type: none"> • Yes, they are easy to find and contain the relevant information I need. 	<ul style="list-style-type: none"> • Yes, they are easy to find and contain the relevant information I need. 	
IE	<ul style="list-style-type: none"> • Yes. The EUAA Security Situation reports on Afghanistan and Iraq. 	<ul style="list-style-type: none"> • Yes - Afghanistan in particular – Country Guidance (EUAA) • I have used the EUAA Country 	<ul style="list-style-type: none"> • Guidance Note on internal relocation in Afghanistan



		<p>Guidance report on Afghanistan.</p> <ul style="list-style-type: none"> • EUAA Common Analysis & Guidance Notes 	
IT	<ul style="list-style-type: none"> • All the 10 COI reports on Nigeria published from 2015 to 2022. • Yes, we use the reports published by EUAA. • Last COI Report published about each country and Guidance Note. 	<ul style="list-style-type: none"> • Yes, both (EUAA and UNHCR) • Yes, We use also the material provided by UNHCR • Yes surely, but not in order to final assessment but for the news collected. Judgment about security charge on the administrative decisors and judges. 	<ul style="list-style-type: none"> • Yes, both (EUAA and UNHCR) • Yes, We use also the material provided by UNHCR • Yes surely, but not in order to final assessment but for the news collected. Judgment about security charge on the administrative decisors and judges.
PL	<ul style="list-style-type: none"> • Yes, however only if the parties to the proceedings refer to above mentioned COI reports in their statements. 		<ul style="list-style-type: none"> • We take into account e.g. country – specific UNHCR guidelines in indirect way, if the relevant authority, whose decision has been challenged before the court (Office for Foreigners), refers in the COI prepared by its internal unit – COI Division to these guidelines. The COI Division of the Office for Foreigners also relies on EUAA reports in its work.
SE	<ul style="list-style-type: none"> • Of course we refer to COI reports published by the EUAA. The most frequent are reports from Afghanistan, Syria, Iraq and Iran where most of our asylum seekers come from. 	<ul style="list-style-type: none"> • Yes and yes! It depends on why the asylum seekers claim for protection. • Yes, all of them, if relevant to the case. 	<ul style="list-style-type: none"> • Yes and yes! It depends on why the asylum seekers claim for protection. • Yes, all of them, if relevant to the case.



	<ul style="list-style-type: none"> • Yes, we do. All of them, if relevant to the case. 		
SI	<ul style="list-style-type: none"> • Yes, all of them. 	<ul style="list-style-type: none"> • I take into account both, but I evaluate their sources and methodologies. 	<ul style="list-style-type: none"> • I take into account both, but I evaluate their sources and methodologies.

Several other EUAA products were mentioned by some respondents as tools that guide their decision-making and can, potentially, contribute to convergence, in particular the judicial publications, such as the *Judicial Analyses on Qualification for International Protection* and on *Evidence and Credibility Assessment*. One respondent at the appeals level also mentioned the EUAA quarterly overview of asylum case law.



Annex 1: EUAA Reference materials

The following documents have been used as primary reference materials when defining the 'EUAA approach' for benchmarking purposes in the framework of this comparative analysis.

Practical guides and tools

- Qualification for international protection, 04/2018, [Link, and the flowchart](#)
- Quality Assurance Tool: Examining the application for international protection, 07/2019, [Link](#), [added on 12.7.23]
- Evidence assessment, 03/2015, [Link](#)
- Personal interview, 10/2014, [Link](#)

Others: you may consult the [EUAA website](#) for more specific guidance [e.g. Political opinion, 12/2022, [Link](#)]

Country Guidance documents

General

- Country Guidance: explained, 01/2023, in [html](#) and [pdf](#)

Afghanistan

- Country Guidance: Afghanistan, 01/2023, in [html](#) and [pdf](#)
- Country Guidance: Afghanistan, 04/2022, in [html](#) and [pdf](#)
- Country Guidance: Afghanistan, 11/2021, in [html](#) and [pdf](#)

Syria

- Country Guidance: Syria, 02/2023, in [html](#) and [pdf](#)
- Country Guidance: Syria, 11/2021, in [html](#) and [pdf](#)

Others: For CG on Iraq, Nigeria and Somalia, see <https://euaa.europa.eu/asylum-knowledge/country-guidance>.

Training modules

1. Inclusion: [key information](#)
2. Inclusion advanced: [key information](#)
3. Evidence: assessment: [key information](#)
4. Asylum interview method: [key information](#)



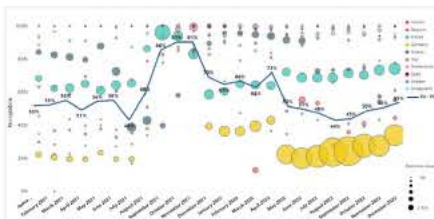
Annex 2: Statistical overviews

The overviews in this section present the trends in the recognition rates concerning the five countries of origin subject to EUAA country guidance, namely Afghanistan, Iraq, Nigeria, Somalia and Syria.

Unless otherwise indicated this presentation is based on data shared by EU+ countries under EUAA's Early warning and Preparedness System (EPS). Such data are provisional and unvalidated and therefore might differ from national statistics or the validated data submitted at a later date to Eurostat (according to Regulation (EU) 2020/851 amending Eurostat (EC) 862/2007).

The reference period for the data presented is January 2021 – December 2022 as available as of 15 May 2023.

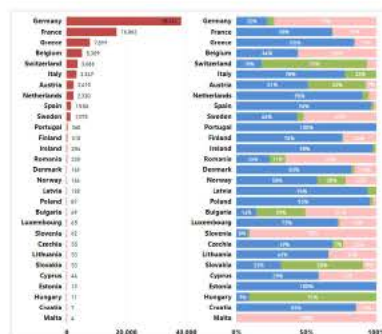
Under each country section, the overview presents:



An overview of first-instance decisions and recognition rate in **the top 10 EU+ countries** issuing decisions on applications from the respective country of origin.

The reference period is **January 2021 – December 2022**.

In these graphs, the vertical position of the bubble corresponds to the recognition rate, and the size of the bubble represents the number of decisions issued.



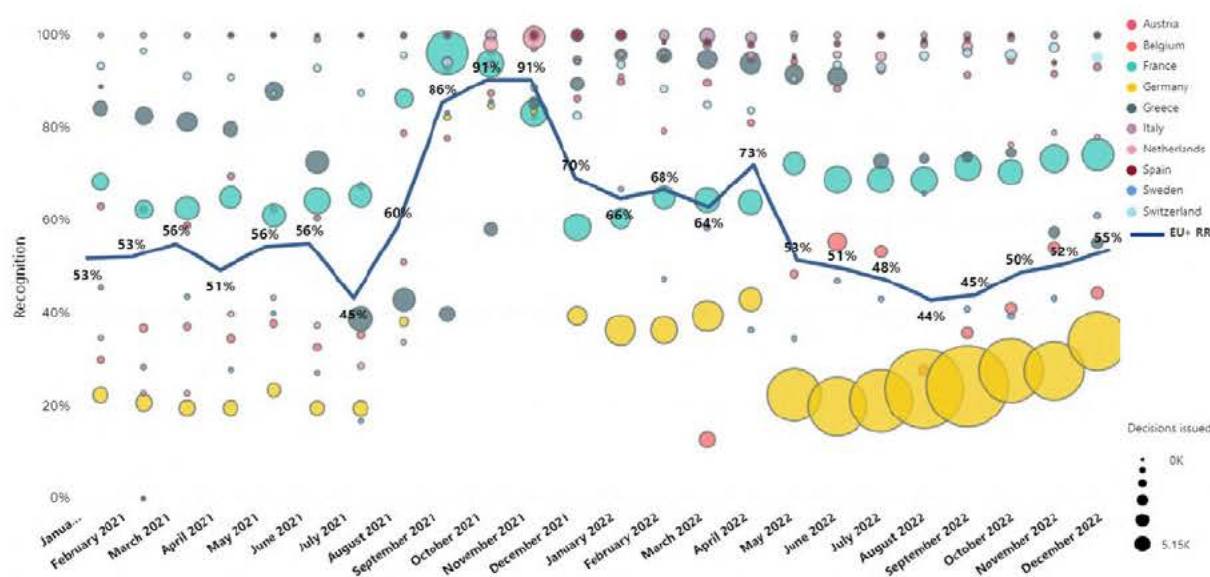
A detailed representation of the decisions issued by **all EU+ countries, including number of decisions disaggregated by type of decision (refugee status, subsidiary protection or rejection)**.

The reference period is **January – December 2022**.

Afghanistan

The **EU+ average recognition rate** before the Taliban takeover fluctuated between 45 % and 61 %. In September 2021, it rose temporarily for three months to some 86 %, to follow later the downward trend with numbers coming back to 'business as usual' from May 2022.

Figure 50. First-instance decisions and recognition rate in EU+ Top 10 Afghanistan: January 2021 – December 2022



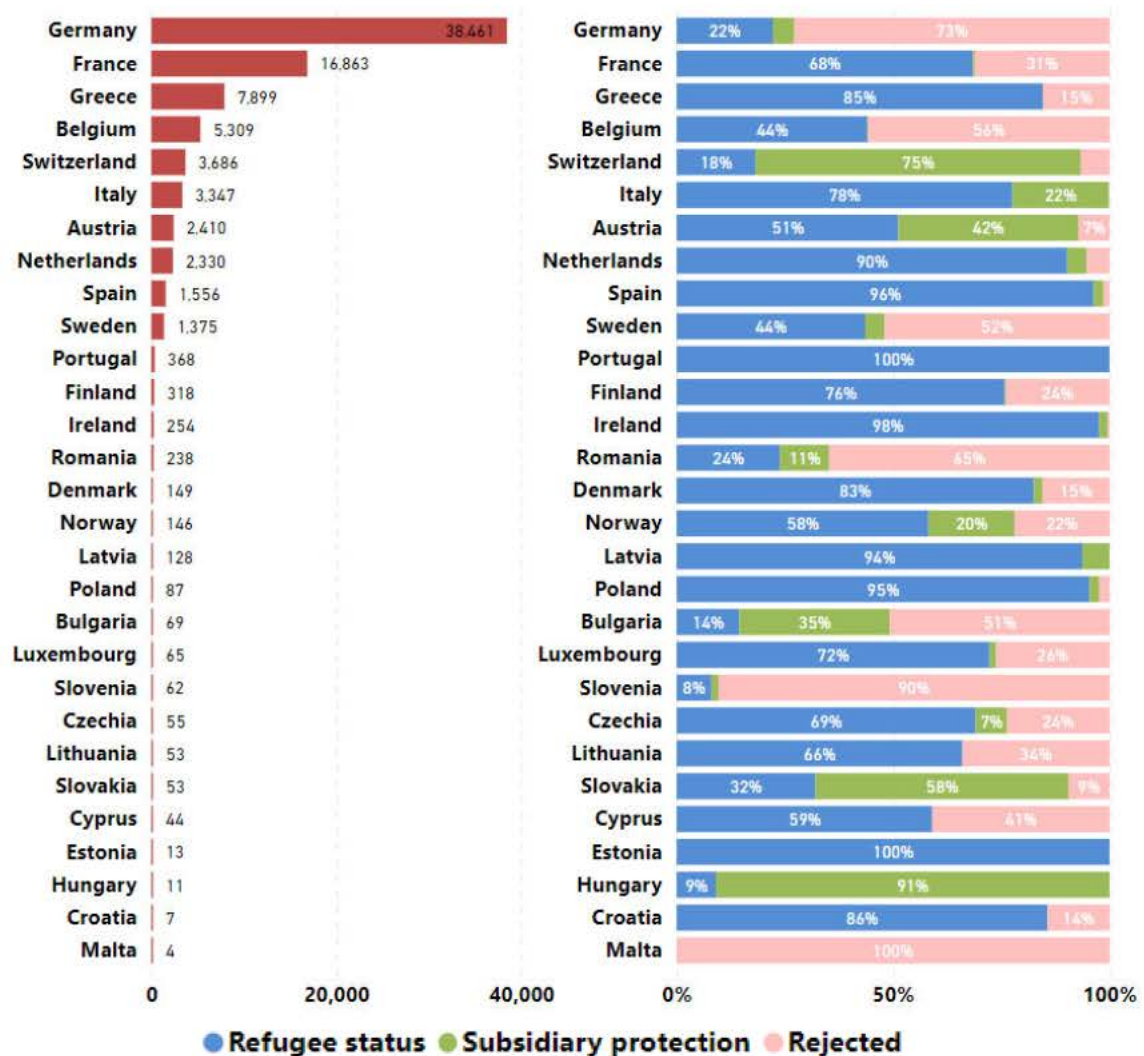
In **Germany** (yellow bubbles), which accounted for 33 % of the total decisions issued in the EU+ since January 2021 up to the end of 2022, the RR, was generally below the average for most Member States.

In **France** (green bubbles), accounting for another 24 % of the total decisions, the RR for Afghans was higher **than the EU+ average**.

In **Greece** (dark grey bubbles), with 13 % of EU+ asylum applicants' volume, the RR for Afghans was **in general above the EU+ average**.

In 2022, **Germany, France, and Greece** were the top three countries issuing decisions concerning Afghan applicants, accounting for 70 % of all decisions.

Figure 51. First-instance decisions and recognition rate in EU+, Afghanistan: January – December 2022



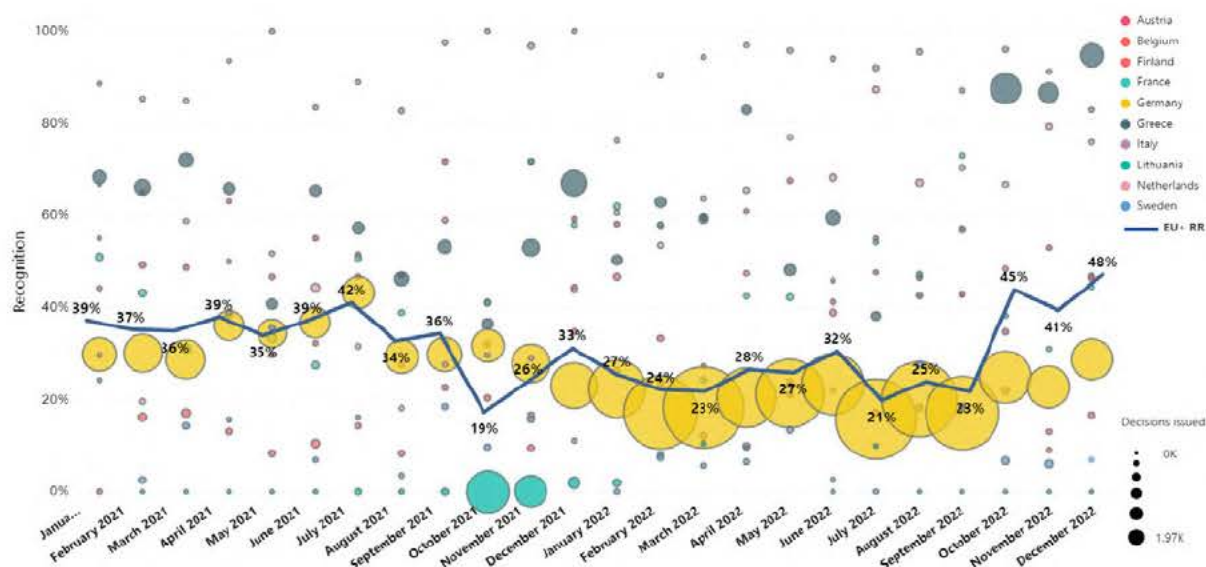
In 2022, **Germany** represented 45 %, **France** 20 %, and **Greece** 9 % of all decisions taken. **Germany** issued 22 % decisions granting refugee status, 5 % subsidiary protection, and 73 % rejections. **France** issued 68 % decisions granting refugee status, 1 % subsidiary protection, and 31 % rejections. **Greece** issued 85 % decisions granting refugee status, and 15 % rejections.

Italy, Spain and **the Netherlands** had a high share of decisions for refugee status, while, **Belgium, Sweden,** and **Romania** had a high share of rejections.

Iraq

The EU+ average RR for Iraqis fluctuated between 19 % and 48 %, with an average of 31 % for the period January 2021 – December 2022.

Figure 52. First-instance decisions and recognition rate in EU+ Top 10 Iraq: January 2021 – December 2022



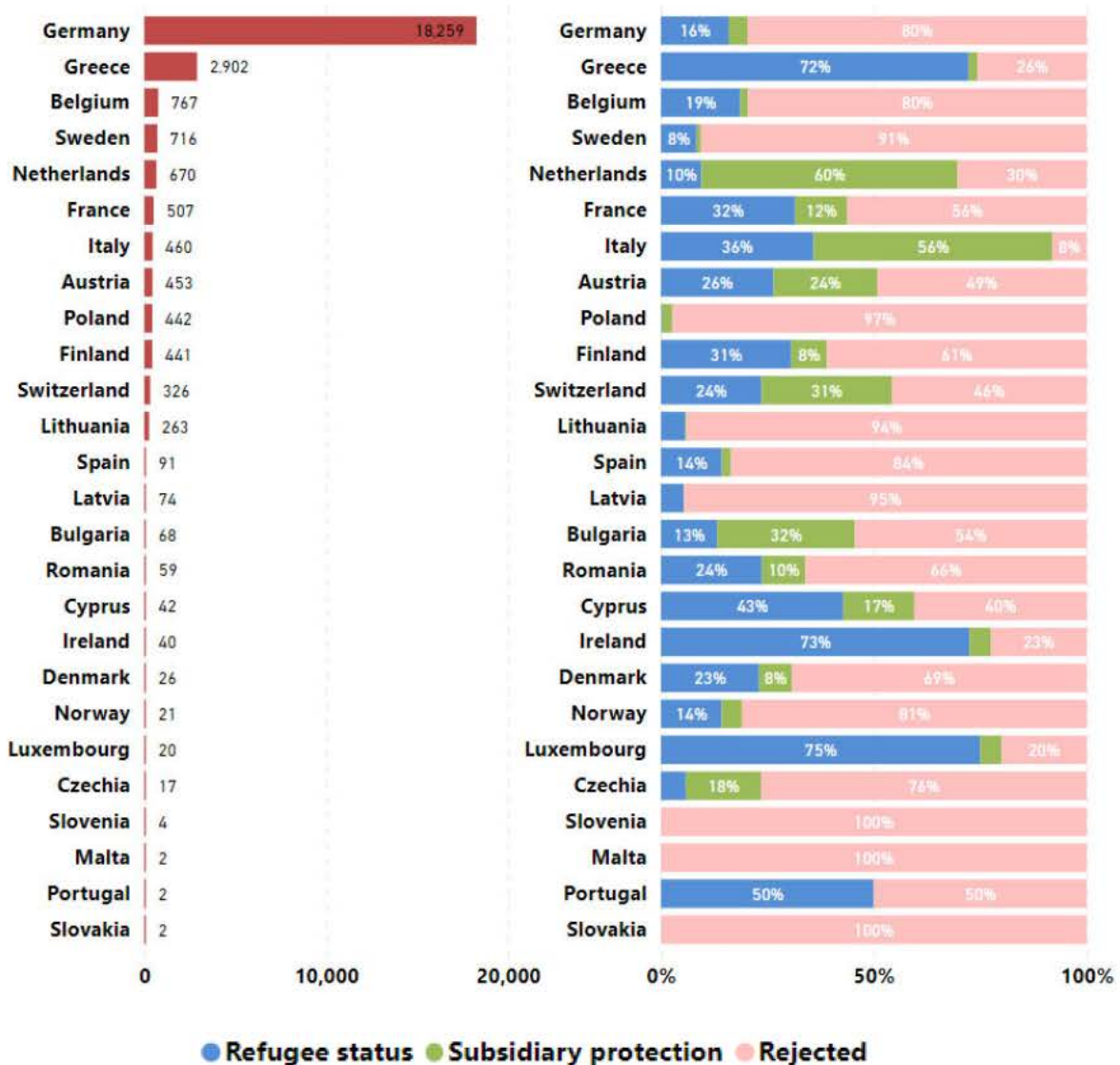
Germany (yellow bubbles), accounting for 59 % of the total decisions, had a RR on average of 24 % which was slightly lower than EU+ average.

Italy (purple bubbles) had the highest RR on average with 92 %. **Lithuania** (green bubbles) had the lowest average RR of 1 %.

Greece (grey bubbles), where decisions issued accounted for 13 % of the total decisions issued in the EU+, the RR was on average 67 %, which was **above the average** across all Member States.

In 2022, **Germany**, **Greece**, and **Belgium** were the top three countries issuing decisions in 2022, accounting for more than **four fifths** (82 %) of all decisions, with the following distribution: **Germany 68 %**, **Greece 11 %**, and **Belgium 3 %**.

Figure 53. First-instance decisions and recognition rate in EU+, Iraq: January – December 2022



Germany issued 16 % decisions granting refugee status, 4 % subsidiary protection, and 80 % rejections.

Greece issued 72 % decisions granting refugee status, 2 % subsidiary protection, and 26 % rejections.

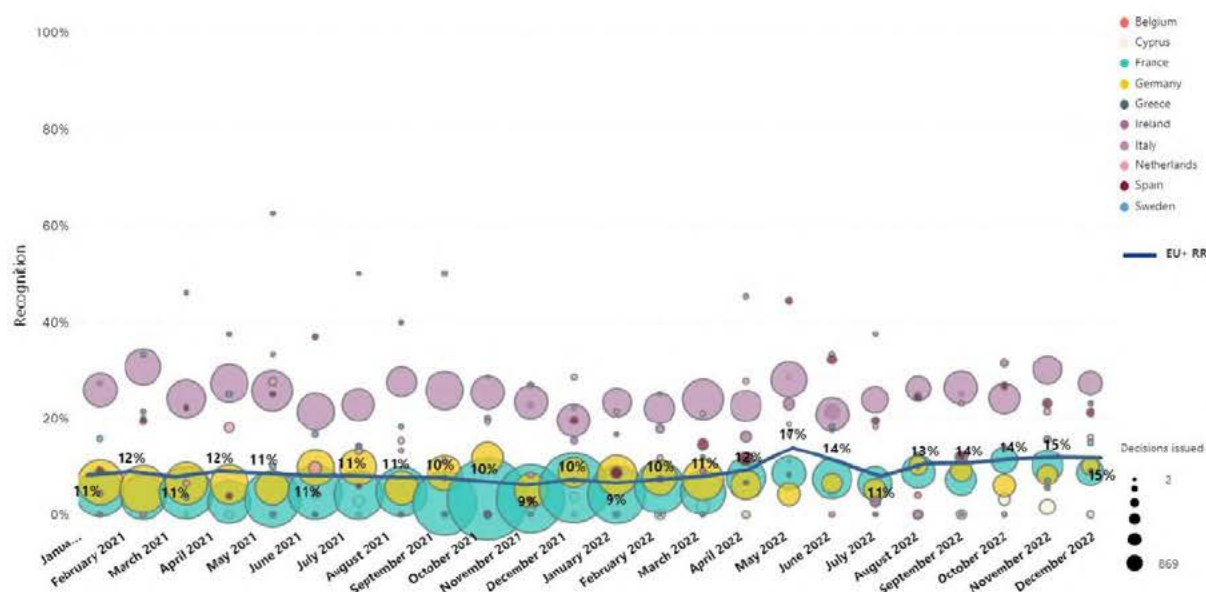
Belgium issued 19 % decisions granting refugee status, 1 % subsidiary protection, and 80 % rejections.

Italy and **France** had a high share of decisions for refugee status, while, **Sweden** and **Poland** had a high share of rejections.

Nigeria

The EU+ average RR for Nigerians fluctuated between 9 % and 17 %, with an average of 11 % for the period January 2021 – December 2022.

Figure 54. First-instance decisions and recognition rate in EU+ Top 10, Nigeria: January 2021 – December 2022



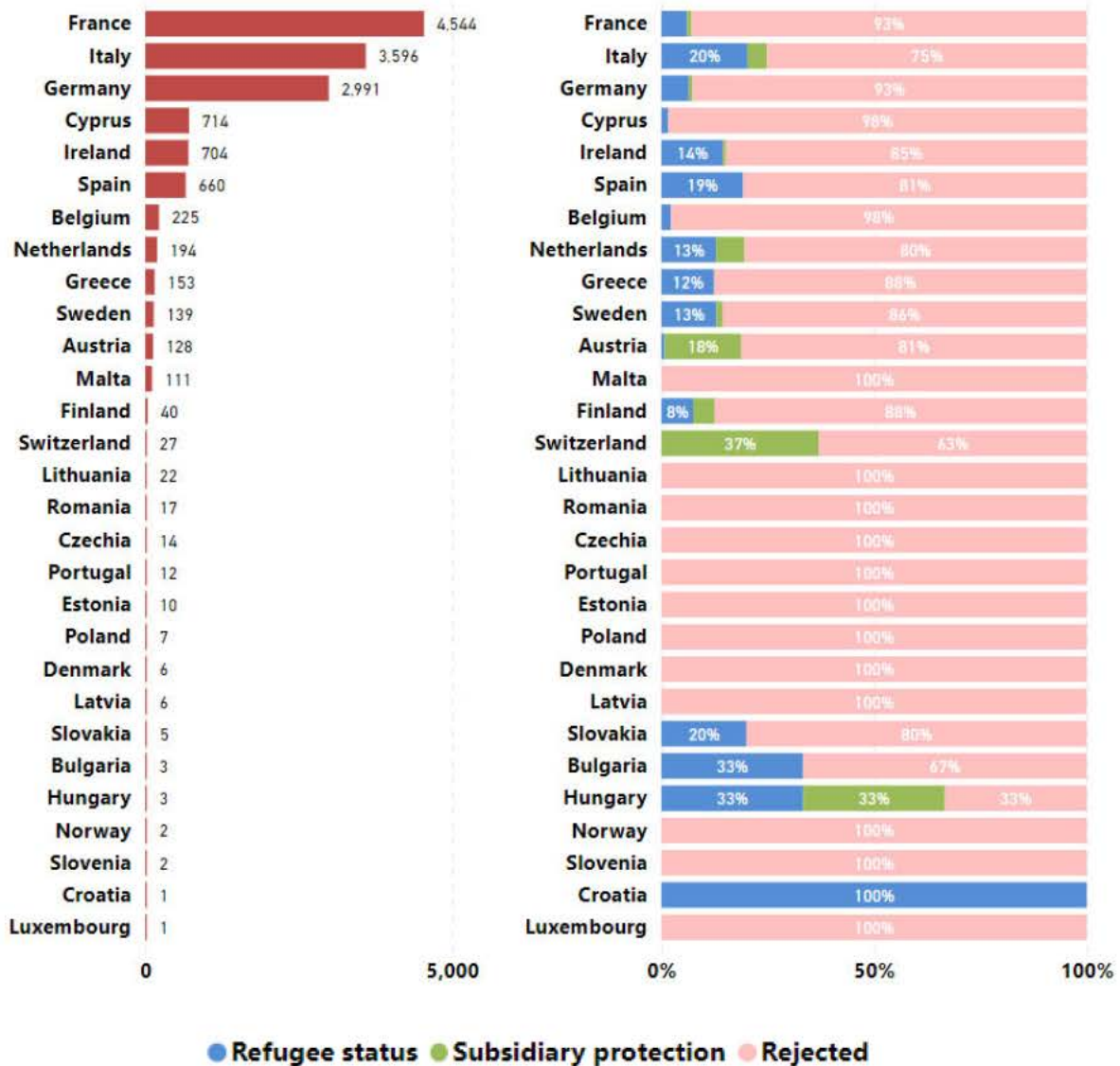
In **France** (green bubbles), decisions issued accounting for 36 % of the total decisions, the RR for Nigerians was also lower than the EU+ average (5 %).

In **Italy** (purple bubbles), decisions issued accounting for 24 % of the total decisions, had also the highest RR on average, with 25 %.

In **Germany** (yellow bubbles), where decisions issued accounted for 23 % of the total decisions issued in the EU+, the RR, was generally slightly below the average (7 %) across all EU+ countries.

In 2022, **France, Italy, and Germany** were the top three countries, accounting for 76 % of all decisions with the following distribution: **France 32 %, Italy 25 %, and Germany 21 %**.

Figure 55. First-instance decisions and recognition rate in EU+, Nigeria: January – December 2022



France issued 6 % decisions granting refugee status, 1 % subsidiary protection, and 93 % rejections.

Italy issued 20 % decisions granting refugee status, 5 % subsidiary protection, and 75 % rejections.

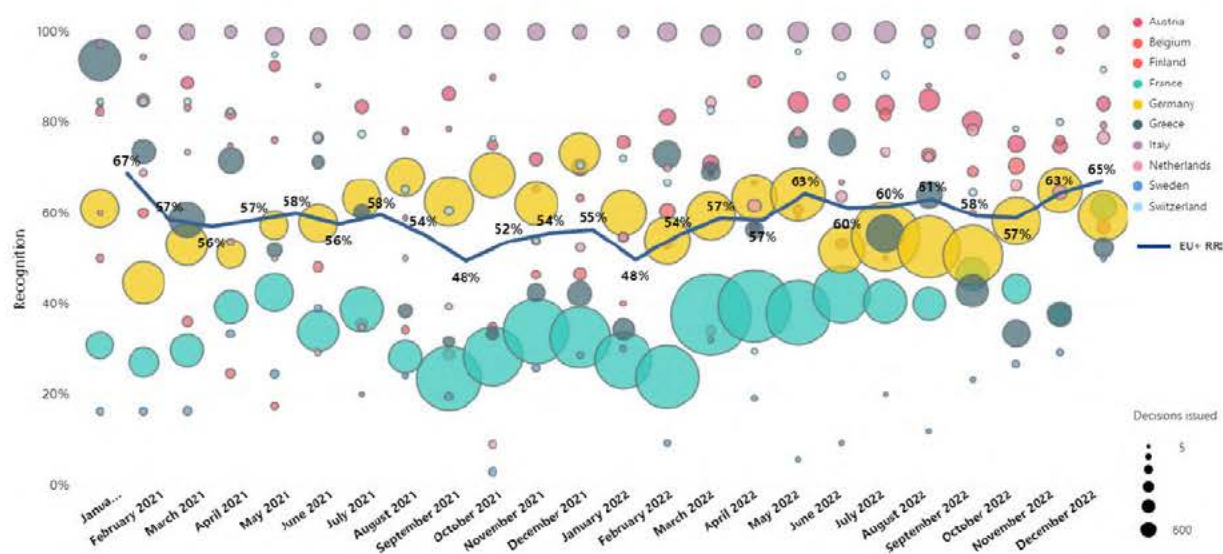
Germany issued 6 % decisions granting refugee status, 1 % subsidiary protection, and 93 % rejections.

Switzerland and **the Netherlands** had a high share of decisions for refugee status, while **Cyprus** and **Ireland** had a high share of rejections.

Somalia

The EU+ average RR for applicants from Somalia fluctuated between 48 % and 67 %, with an average of 57 % for the period January 2021 to December 2022.

Figure 56. First-instance decisions and recognition rate in EU+ Top 10, Somalia: January 2021 – December 2022



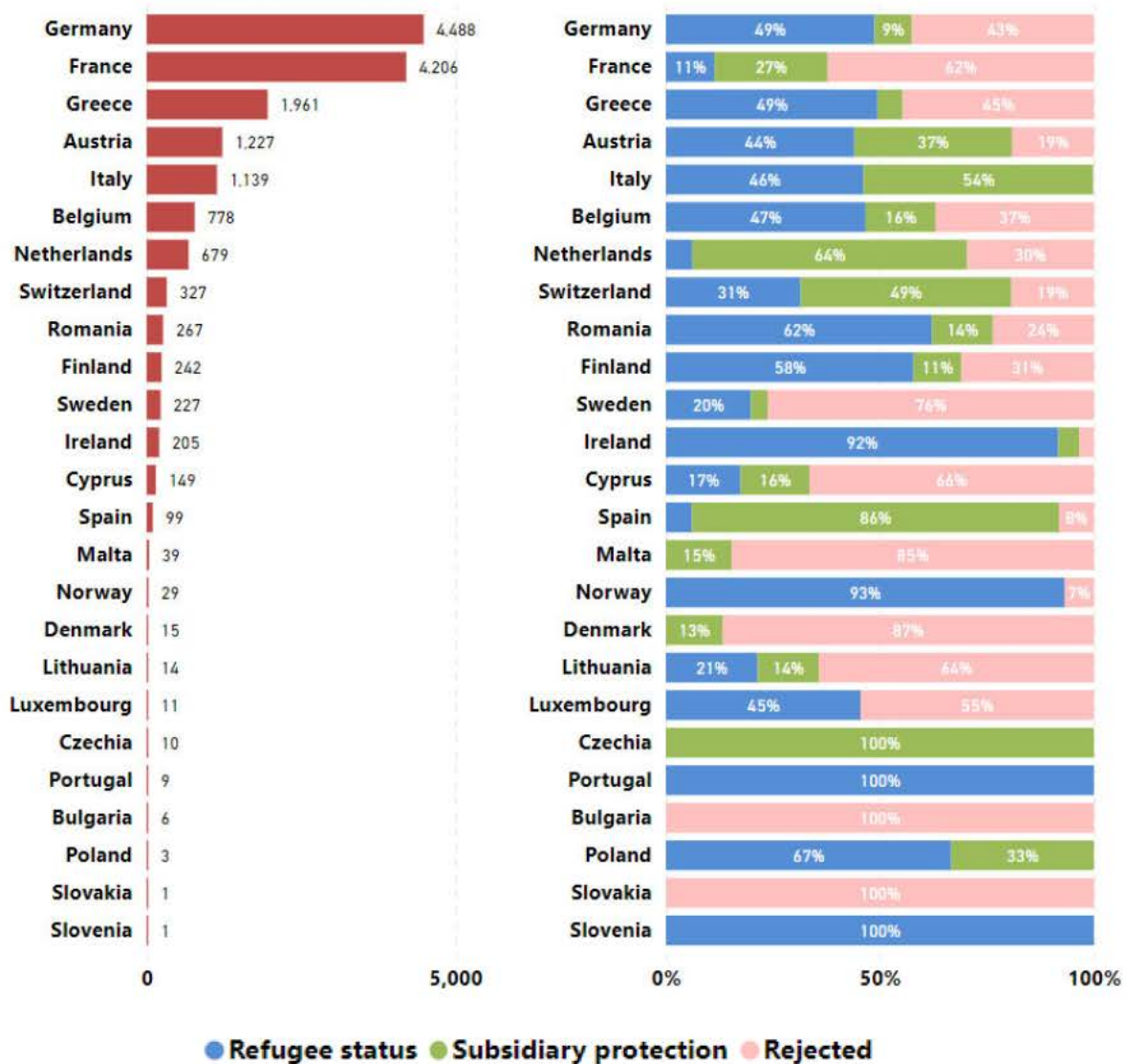
In **Italy** (purple bubbles) and **Ireland** RR was almost 100 % on average. **Sweden** (blue bubbles) had the lowest average RR of 23 %.

In **France** (green bubbles), decisions issued accounting for 27 % of the total decisions, the RR for applicants from Somalia was lower than the EU+ average.

In **Germany** (yellow bubbles), decisions issued accounted for another 27 % of the total decisions issued in the EU+, the RR was generally slightly above the average (59 %) across all EU+ countries.

In 2022, **Germany**, **France**, and **Greece** were the top three countries, accounting for two thirds (65 %) of all decisions. **Germany 27 %**, **France 26 %**, and **Greece 12 %**.

Figure 57. First-instance decisions and recognition rate in EU+, Somalia: January – December 2022



Germany issued 49 % decisions granting refugee status, 9 % subsidiary protection, and 43 % rejections.

France issued 11 % decisions granting refugee status, 27 % subsidiary protection, and 62 % rejections.

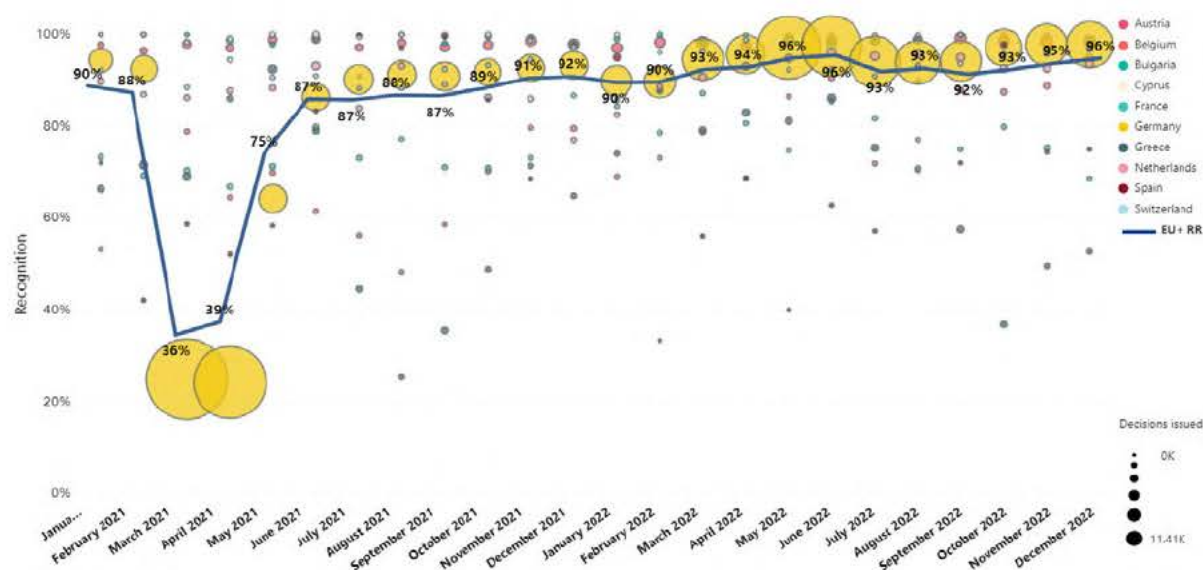
Greece issued 49 % decisions granting refugee status, 6 % subsidiary protection, and 45 % rejections.

Austria and **Italy** had a high share of decisions for refugee status, while **Belgium** and the **Netherlands** had a high share of rejections.

Syria

The EU+ average RR for Syrians fluctuated between 36 % and 96 %, with an average of 84 % for the period January 2021 – December 2022

Figure 58. First-instance decisions and recognition rate in EU+ Top 10, Syria: January 2021 – December 2022.



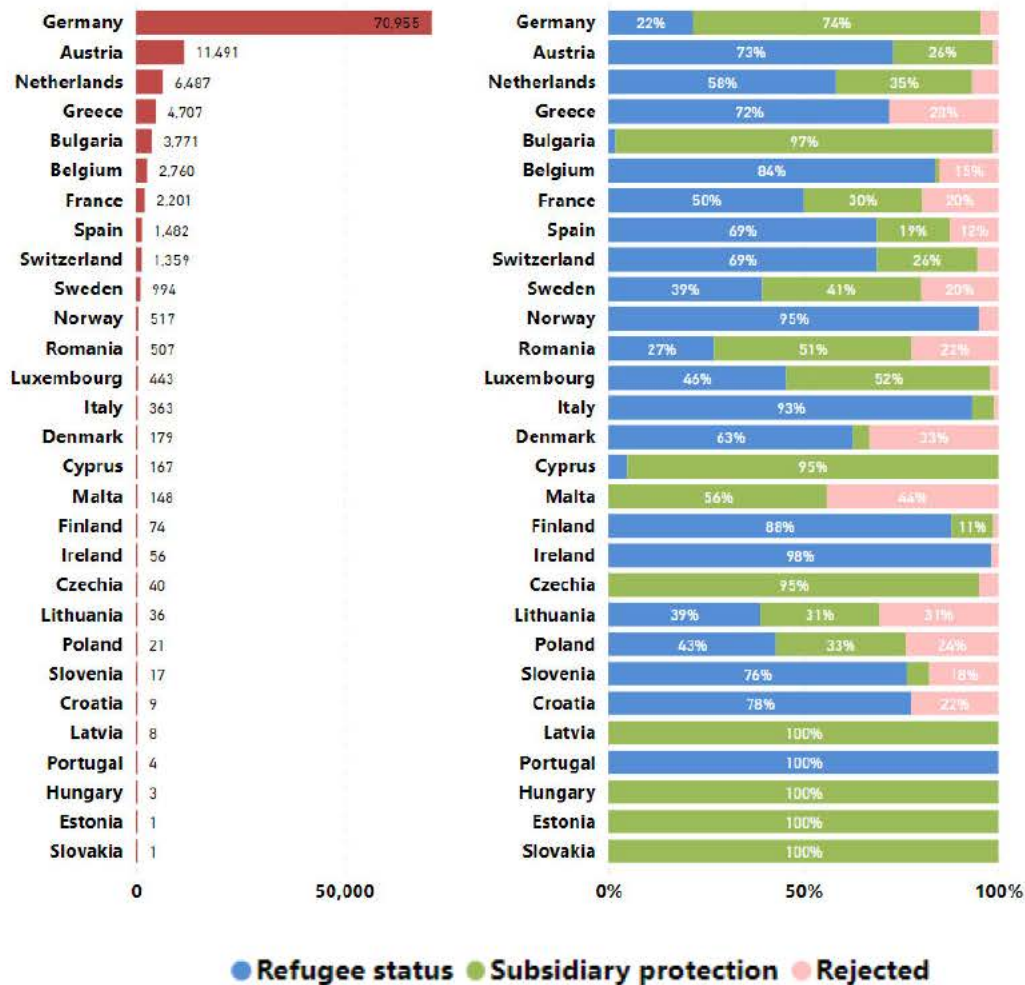
In **Germany** (yellow bubbles), which accounted for 65 % of the total decisions issued in the EU+ since January 2021 up to the end of 2022, the RR, was **generally above the EU+ average**.

In **Austria** (red bubbles), accounting for another 10 % of the total decisions, the RR for **Syrians** was higher **than the EU+ average**.

In **Greece** (dark grey bubbles), with 5 % of EU+ asylum applicants' volume, the RR for **Syrians** was **in general below the EU+ average**.

In 2022, **Germany, Austria, and the Netherlands** were the top three countries accounting for more than four fifths (82 %) of all decisions, with the following distribution: **Germany 65 %, Austria 11 %, and the Netherlands 6 %**.

Figure 59. First-instance decisions and recognition rate in EU+, Syria: January – December 2022



Germany issued 22 % decisions granting refugee status, 74 % subsidiary protection, and 5 % rejections.

Austria issued 73 % decisions granting refugee status, 26 % subsidiary protection, and 2 % rejections.

The Netherlands issued 58 % decisions granting refugee status, 35 % subsidiary protection, and 6 % rejections.

Belgium, France and **Spain** had a very high share of decisions for refugee status, while **Greece, Sweden** and **Romania** had a high share of rejections.



Annex 3: Initial convergence survey

An initial survey aiming to inform the pilot convergence analysis was launched on 31 October 2022 [timeline 31 October – 21 November 2022]. The objectives of the survey were two-fold:

- Generate insight into the different factors which impact recognition rates (refugee status, subsidiary protection, negative decisions) at national level, and
- Exchange reflections and suggestions regarding the approach of the pilot study

The survey was launched to the EUAA Asylum Processes Network (APNet) and the members of the EUAA Country Guidance Network (CGNet).

18 national administrations responded: **BE, CZ, DE, DK, EL, FI, FR, IE, LT, LU, LV, NL, NO, PT, RO, SE, SI, SK.**

This input constituted the basis for the kick-off meeting of the pilot, held online on **5 December 2022.**

The compilation of responses was further shared with national determining authorities on 16 March 2023.

Questions

National approach to convergence

1. Does your national administration have experience with conducting an analysis of variation in decision practices and outcomes at national level?
2. If you have conducted such an analysis, please share relevant information on the topics below:
 - The files that were selected (specific type of procedure, specific country, specific profile, etc.)
 - The reasons for conducting the analysis and for the selected scope
 - The elements in the file you analysed (interview, COI used, decision, etc.)
 - The main factors you identified as leading to variation in decision practices and outcomes, if any
 - Any lessons learned from the process of the convergence analysis itself (methods that worked well, things you would do differently, etc.)
 - If variation in practices was identified, follow-up measures you took to address them, if any

Procedural aspects

3. Do you apply an admissibility procedure based on the **safe third country concept**? If so, which third countries do you apply this concept to?
4. If you apply the safe third country concept, do such inadmissibility decisions affect applicants from Afghanistan, Iraq, Nigeria, Somalia, and Syria?



5. Do you observe a significant number of implicitly or explicitly withdrawn applications in your caseload from Afghanistan, Iraq, Nigeria, Somalia, and Syria?
6. Are there other aspects related to the legal framework and the procedures followed at national level which in your opinion impact recognition rates and may lead to variation at EU+ level? Please elaborate.

Caseload

7. Have you noticed any specifics of your asylum caseload, in particular from Afghanistan, Iraq, Nigeria, Somalia, and Syria (e.g. place of origin, ethno-religious background, common claims), which in your view impact recognition rates and lead to apparent variations? Please elaborate.

Examination of the merits of the application

8. Do you have national guidance on conducting the personal interview and on credibility assessment? Please specify.
9. Have you noticed that on any of the topics you address in this guidance, your approach differs from available EUAA guidance or training and/or from the approach of other EU+ countries? Please elaborate.
10. Do you have **general guidance on qualification for international protection** (e.g. on the different grounds within the refugee definition, on internal protection alternative)? Please elaborate.
11. Have you noticed that on any of the topics you address in general guidance on qualification for international protection, your approach differs from available EUAA guidance and/or from the approach of other EU+ countries? Please elaborate.
12. Do you have national country-specific guidance on qualification for international protection concerning the [CG countries]?
13. Have you noticed that on any of the topics you address in your national country-specific guidance, your approach differs from available EUAA country guidance and/or from the approach of other EU+ countries? Please elaborate.
14. If you do not have formal guidance on qualification of international protection, have you noticed that **in practice** you approach certain elements regarding the qualification for international protection or certain countries of origin and/or specific profiles differently than the EUAA guidance and/or practice in other EU+ countries? Please elaborate.
15. What has been the **role of the appeal instance** in forming your guidance and/or practice on the topics above? In particular, have they confirmed the approaches you note as differing from EUAA guidance and/or other EU+ countries' practice?

Implementation of the pilot study on convergence

16. Which elements do you think should be included in the **scope of the pilot EUAA convergence analysis** in order to provide a meaningful insight into the reasons for existing variation in recognition rates?
17. Would your national administration be available to take an **active part** in the pilot study on convergence?
18. In particular, would it be possible for your administration to contribute to this analysis by providing **case samples** (including as a minimum the personal interview and decision)?



19. What safeguards should be put in place or other actions taken by the EUAA or your national administration to make it possible to conduct a case sample analysis (e.g. removal of personal data)?
20. In order to define meaningful case samples, the analysis needs to focus on comparable cases across different EU+ countries. In your opinion, what would be suitable profiles?
21. How many cases per profile would you consider a meaningful sample to be provided by your national administration?
22. Do you have **any other comments** on the implementation of the pilot convergence analysis and your availability to participate in it?



Annex 4: Caseload surveys

The composition of the caseload from a particular country of origin was often referred to as one of the main reasons for variation in recognition rates among EU+ countries. However, little information on the actual makeup of national caseloads was readily available for the study. These surveys were created with the aim to provide insights into the actual caseload of EU+ countries in 2022, complementing information available via EPS and Eurostat data. The surveys addressed the five countries of origin covered in the EUAA CG portfolio.

Reference period	2022
Scope	First-instance decisions Afghanistan Iraq Nigeria Somalia Syria
Timeline	12 May - 9 June 2023

The surveys were designed in reference to the CG documents of the EUAA. They were tailored for the respective country of origin, building on existing knowledge of the topics of interest and challenges identified in relation to national caseloads.

Firstly, each survey focused on questions which were demographic in nature and/or information on which was expected to be more readily available in national databases or other compiled information. Secondly, it looked into procedural aspects defining the caseload (proportion of family reunification cases, applications from beneficiaries of international protection in another Member State, relevance of the 'safe third country' concept, etc.).

Thirdly and primarily, questions focused on the nature of the claims the EU+ country examined in 2022. Rather than being exhaustive in this section, the survey addressed primarily the profiles which were identified as highly likely to be recognised as refugees in accordance with the respective CG document. To confirm and complement information available in the context of the CGNet, the survey also asked EU+ countries to indicate the likely outcome of the examination of such cases.



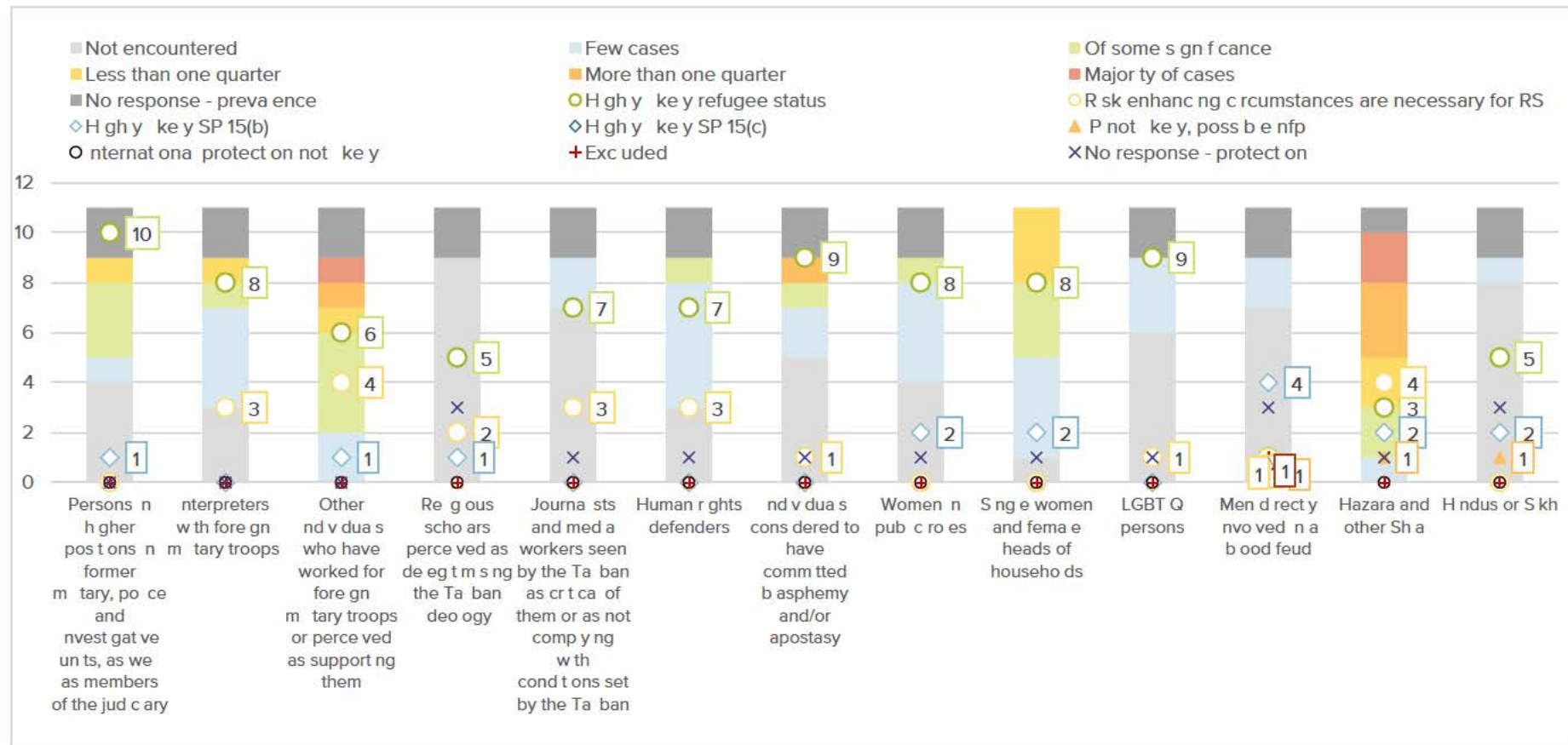
It is important to highlight that respondents were asked to provide estimates and not precise numbers in response to these surveys.

In total, 42 replies were collected, equal to 8 EU+ replies per country as an average. The extracts below present selected findings referring to the frequency with which specific profiles were encountered in 2022 and the likely outcome of such applications.

Afghanistan

EU+ respondents [11] BE, CZ, FI, LU, LV, NO, PL, PT, SE, SI, SK

Figure 60. Afghan applicants in 2022 | Survey responses on national caseloads specifics and type of assessment by main encountered profiles.

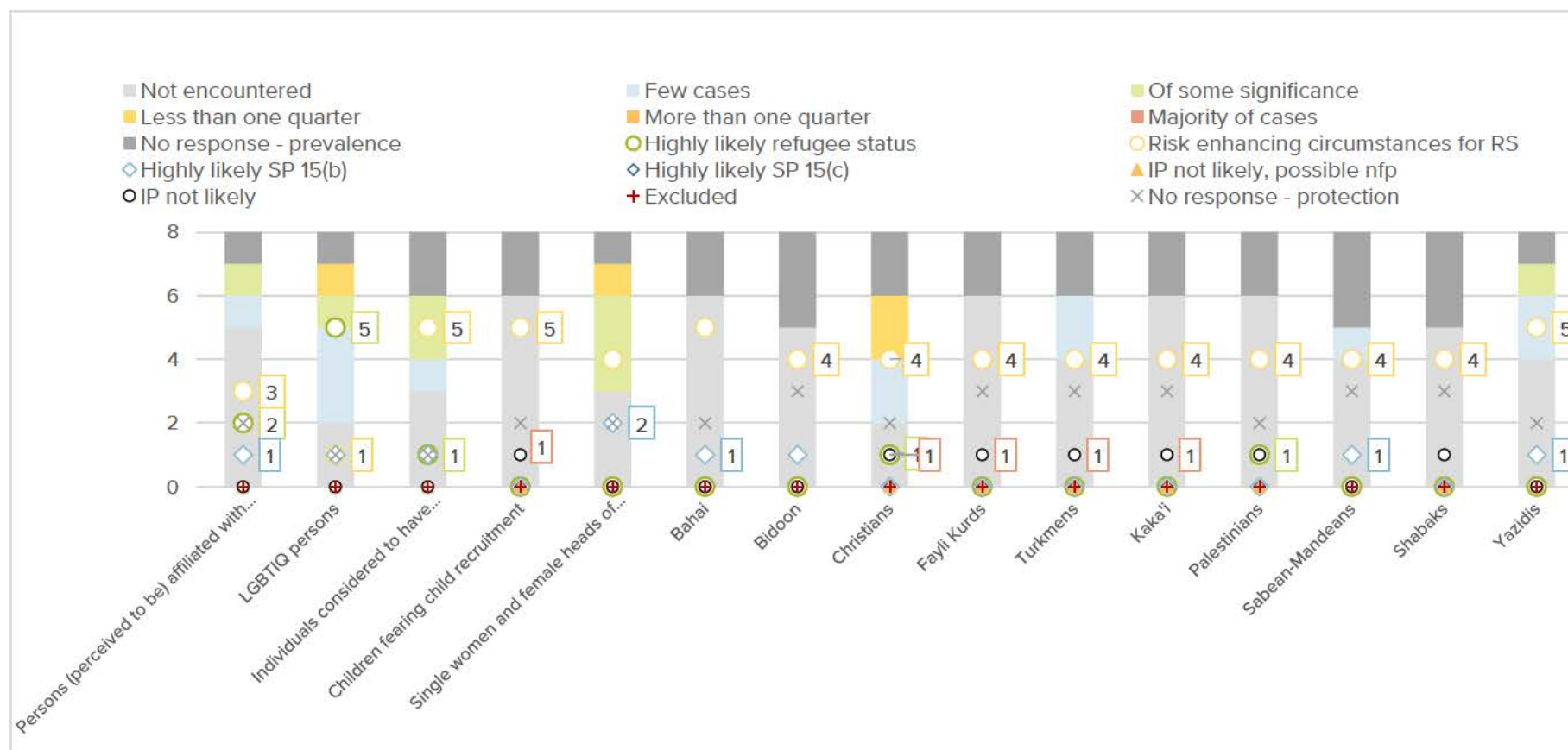




Iraq

EU+ respondents [8] BE, CZ, FI, LU, LV, PL, SE, SI

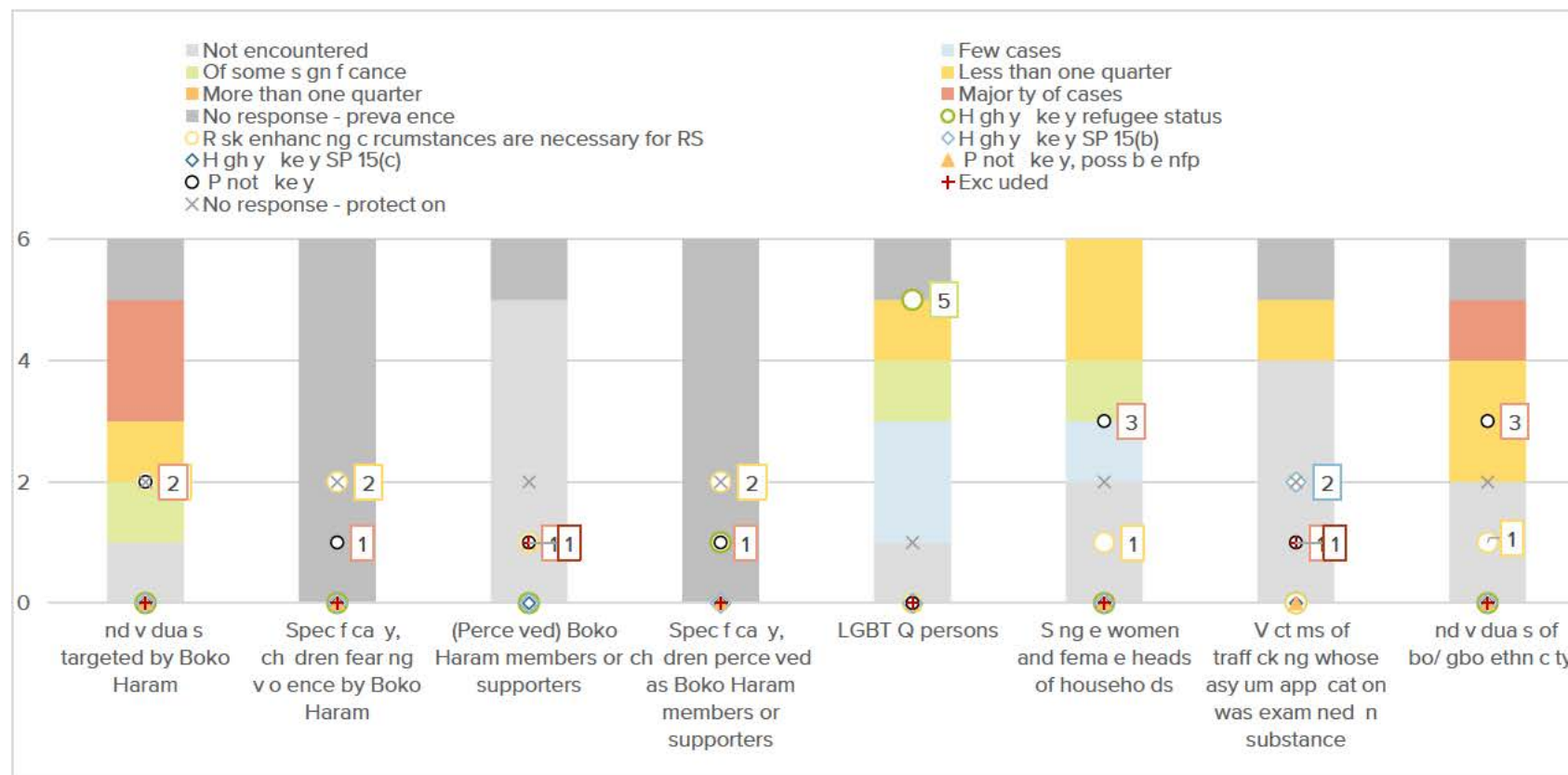
Figure 61. Iraqi applicants in 2022 | Survey responses on national caseloads specifics and type of assessment by main encountered profiles.



Nigeria

EU+ respondents [6] BE, CZ, LU, PL, SE, SI

Figure 62. Nigerian applicants in 2022 | Survey responses on national caseloads specifics and type of assessment by main encountered profiles.

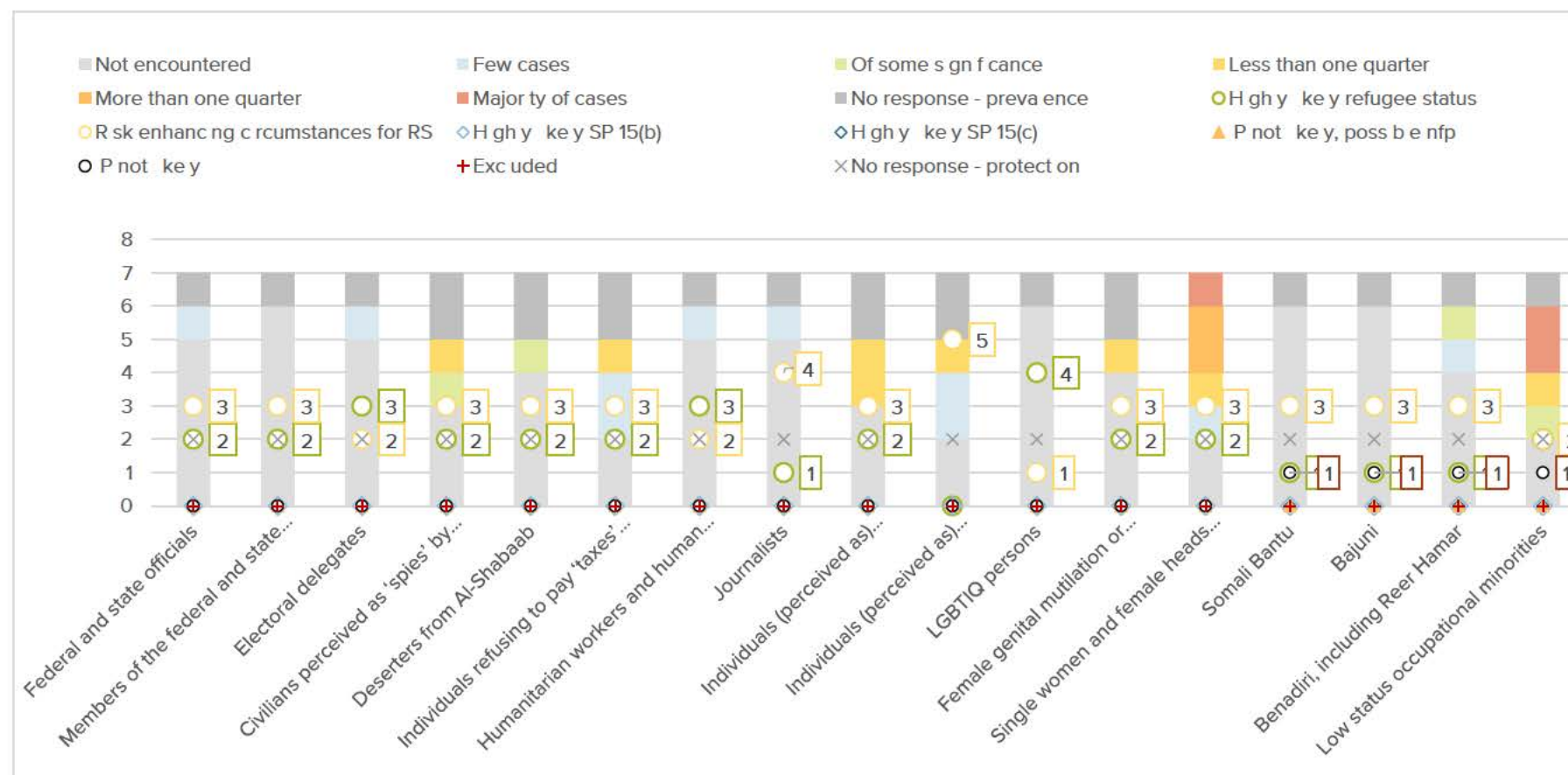




Somalia

EU+ respondents [7] BE, FI, LU, PL, PT, SE, SI

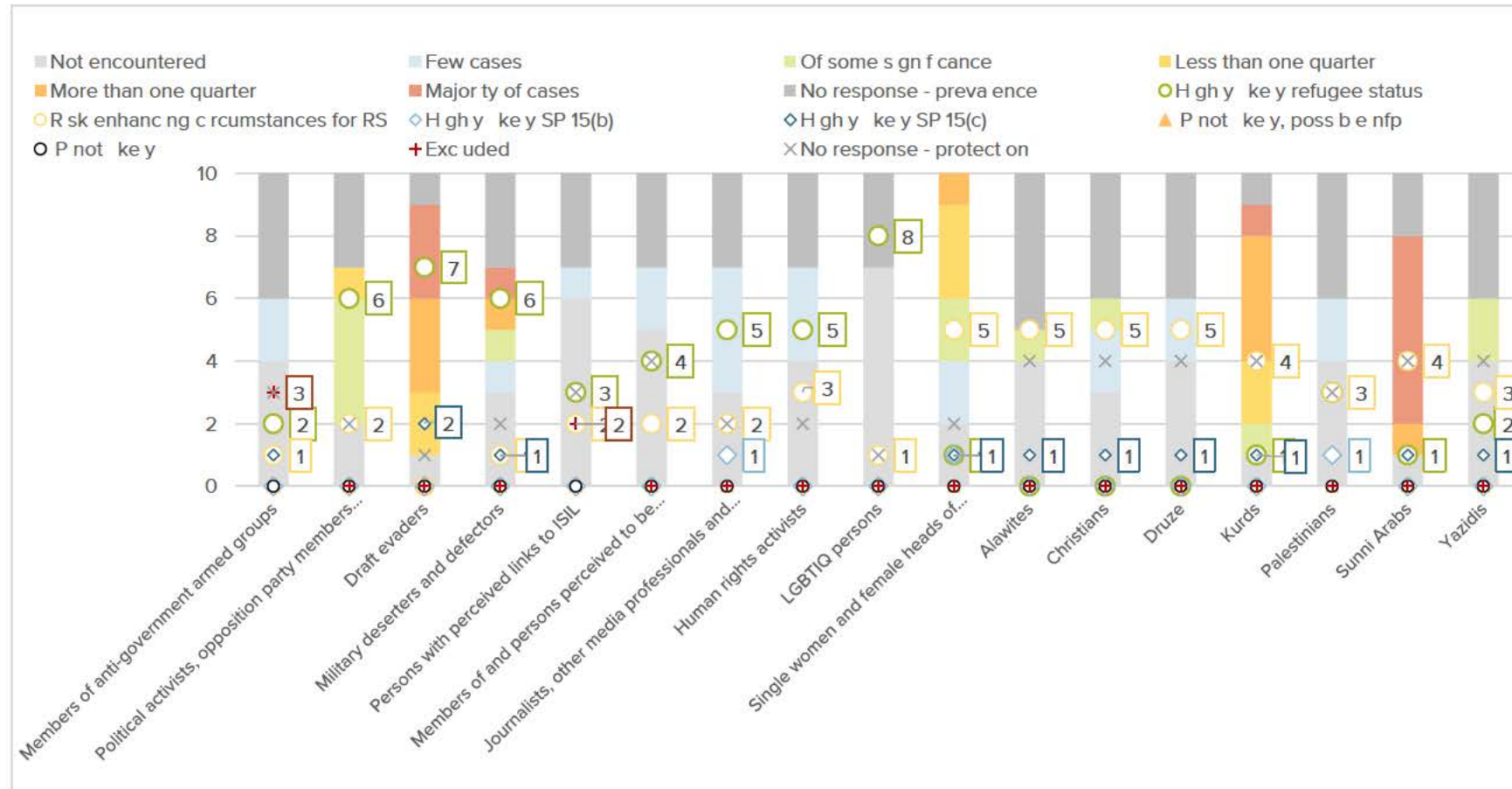
Figure 63. Somali applicants in 2022 | Survey responses on national caseloads specifics and type of assessment by main encountered profiles.



Syria

EU+ respondents [10] BE, CZ, FI, LU, LV, NO, PL, PT, SE, SI

Figure 64. Syrian applicants in 2022 | Survey responses on national caseloads specifics and type of assessment by main encountered profiles.





Annex 5: National guidance

Relevant documents included guidance on:

General and thematic guidance

40 documents were submitted

- Personal interview
- Evidence assessment
- Subsequent applications
- Manifestly unfounded applications
- Safe country concepts
- Religion
- Sexual orientation and gender identity
- Gender-related persecution
- Westernisation
- Internal protection alternative
- Refugee Convention article 1 D
- General security situation
- Exclusion
- Etc.

Country-specific guidance

28 documents were submitted

- Afghanistan
- Iraq
- Nigeria
- Somalia
- Syria

The analysis was of comparative nature and focused on the differences in conclusions and guidance compared to the EUAA guidance, when such was available on the particular topic, and/or to other national guidance. It aimed to identify which elements differ, in what way, and to what extent this may have an impact on recognition rates.

National guidance was submitted in its original language and translated via an automated tool of the European Commission.

Thematic guidance

The analysed documents included:

Belgium

	Date	Link
<i>Identification of special procedural needs and provision of adequate support measures – Applicants with medical and psychological problems</i>	May 2022	Non-public
<i>Actors likely to provide protection</i>	August 2013	Non-public





<i>Compulsory military service, forced enrolment, draft evasion and desertion</i>	May 2016	Non-public
<i>Subsidiary protection – The personal circumstances of the applicant</i>	July 2020	Non-public
<i>Flight alternative and internal resettlement</i>	July 2016	Non-public
<i>Refugee sur place</i>	February 2016	Non-public
<i>First country of asylum</i>	July 2015	Non-public
<i>Safe third country</i>	June 2018	Non-public
<i>Subsequent applications for international protection – Legal framework for the preliminary examination of special cases</i>	January 2022	Non-public
<i>Manifestly unfounded applications</i>	February 2018	Non-public
<i>Exclusion based on Article 1F of the Geneva Convention – Personal Interview</i>	December 2022	Non-public
<i>Exclusion based on Article 1F of the Geneva Convention and inclusion</i>	December 2022	Non-public
<i>Quality handbook</i>	June 2019	Non-public

Finland

	Date	Link
<i>Guidance on the processing and deciding on asylum seekers' applications for international protection</i>	June 2020	Non-public
<i>Asylum Instructions (SOPs)</i>	December 2021	Non-public

France

	Date	Link
<i>The fundamentals and the modalities of the personal interview with the asylum applicant in the French Office for the Protection of Refugees and Stateless persons (OFPRA)</i>	January 2015	Non-public

Netherlands

	Date	Link
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<i>Work instructions 2022/3 on conversion and apostasy</i>	November 2022	https://puc.overheid.nl/nd/doc/PUC_1284774_1/1/
<i>Work instructions 2019/1 on reviewing asylum applications from Westernised women</i>	January 2019	https://puc.overheid.nl/nd/doc/PUC_9908660000_1/1/

Norway

	Date	Link
<i>Interview in applications for protection</i>	January 2023	UD_2013-011 (ud rege verk.no)
<i>Evidence and credibility assessments in applications for protection</i>	January 2023	UD_2020-006 (ud rege verk.no)
<i>Guidelines for processing asylum cases where fear of persecution on the grounds of religion is stated</i>	December 2020	G-36/2020 (ud rege verk.no)
<i>Guidelines on the interpretation of the Immigration Act section 28 first paragraph letter a – persecution due to sexual orientation and gender identity</i>	June 2012	G -07/2012 (ud rege verk.no)
<i>Guidelines on gender-related persecution</i>	June 2012	G-08/2012 (ud rege verk.no)
<i>Guidelines on the handling of immigration cases where genital mutilation is a topic</i>	June 2012	G -03/2012 (ud rege verk.no)
<i>Internal protection alternative</i>	November 2019	UD_2016-019 (ud rege verk.no)
<i>Guidelines on the application of the Immigration Act § 31 first paragraph, cf. the Refugee Convention art. 1 D</i>	May 2021	G -03/2021 (ud rege verk.no)
<i>The general security situation in applications for protection</i>	November 2022	UD_2020-015 (ud rege verk.no)
<i>Instructions on the interpretation of the Immigration Act section 32 first paragraph letter d - refusal of substantive processing with reference to a safe third country and return access to a safe third country</i>	February 2022	G -02/2022 (ud rege verk.no)
<i>Assessment of the conditions for asylum in the Immigration Act section 28 first paragraph when the applicant already has a residence permit in Norway</i>	September 2022	G -15/2022 (ud rege verk.no)
<i>Revised instructions that the Norwegian Directorate of Immigration can refrain from conducting an asylum interview in certain cases</i>	February 2023	G - 02/2023 (ud rege verk.no)



Sweden

	Date	Link
<i>Effective public authority protection</i>	April 2021	https:// fos.migrationsverket.se/dokument?documentSummaryId=45491
<i>Application of Article 3 of the ECHR where sickness is invoked</i>	January 2019	https:// fos.migrationsverket.se/dokument?documentSummaryId=46195
<i>Best interests of children test</i>	July 2021	https:// fos.migrationsverket.se/dokument?documentSummaryId=44519
<i>Investigation and assessment of gender persecution of women</i>	July 2021	https:// fos.migrationsverket.se/dokument?documentSummaryId=45493
<i>Investigation and examination of identity and nationality, residence and habitual residence in asylum cases</i>	March 2021	https:// fos.migrationsverket.se/dokument?documentSummaryId=45320
<i>Hearing children</i>	July 2021	https:// fos.migrationsverket.se/dokument?documentSummaryId=44520
<i>Method of examination where religion, including conversion and atheism, etc. is invoked as grounds for asylum</i>	March 2021	https:// fos.migrationsverket.se/dokument?documentSummaryId=45318
<i>Rejection with immediate enforcement to the home country including safe countries of origin</i>	May 2021	https:// fos.migrationsverket.se/dokument?documentSummaryId=45549
<i>The concept of residence in asylum matters</i>	March 2021	https:// fos.migrationsverket.se/dokument?documentSummaryId=45317
<i>Assessment of safe itinerary in asylum cases</i>	March 2021	https:// fos.migrationsverket.se/dokument?documentSummaryId=45314
<i>Investigation and examination of the forward-looking risk to persons relying on protection grounds on grounds of sexual orientation, transgender identity or gender expression</i>	July 2021	https:// fos.migrationsverket.se/dokument?documentSummaryId=45289
<i>Refugee and protection needs assessments concerning applicants belonging to particularly vulnerable groups</i>	April 2021	https:// fos.migrationsverket.se/dokument?documentSummaryId=45289



Country-specific guidance

The analysed documents included:

Belgium

<i>Country of origin</i>	<i>Scope</i>	<i>Length</i>	<i>Date</i>	<i>Link</i>
<i>Afghanistan</i>	<ul style="list-style-type: none"> • Risk profiles • Credibility and evidence assessment 	30 pages	December 2022	Non-public
<i>Iraq</i>	<ul style="list-style-type: none"> • Risk profiles • Subsidiary protection • IPA • Exclusion • Credibility and evidence assessment • Procedural aspects 	9 pages	September 2020	Non-public
<i>Nigeria</i>	<ul style="list-style-type: none"> • Article 15(c) QD • Internal protection alternative 	24 pages	June 2022	Non-public
<i>Somalia</i>	<ul style="list-style-type: none"> • Risk profiles • Subsidiary protection • IPA • Exclusion • Credibility and evidence assessment 	28 pages	January 2021	Non-public
<i>Syria</i>	<ul style="list-style-type: none"> • Risk profiles • Subsidiary protection • IPA • Exclusion • Credibility and evidence assessment • Procedural aspects 	71 pages	March 2023	Non-public

Finland

<i>Country of origin</i>	<i>Scope</i>	<i>Length¹⁰⁷</i>	<i>Date</i>	<i>Link</i>
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¹⁰⁷ Page count excludes bibliography.





<i>Afghanistan</i>	<ul style="list-style-type: none"> Article 15(c) QD Actors of protection IPA 	87 pages	February 2023	url
<i>Iraq</i>	<ul style="list-style-type: none"> Article 15(c) QD Actors of protection IPA 	120 pages	January 2023	
<i>Somalia</i>	<ul style="list-style-type: none"> Article 15(c) QD Actors of protection IPA 	111 pages	June 2022	

France

<i>Country of origin</i>	<i>Scope</i>	<i>Length</i>	<i>Date</i>	<i>Link</i>
<i>Afghanistan</i>	<ul style="list-style-type: none"> Risk profiles Subsidiary protection Exclusion Credibility and evidence assessment 	98 pages	June 2023	Non-public
<i>Syria</i>	<ul style="list-style-type: none"> Risk profiles Subsidiary protection Exclusion Credibility and evidence assessment 	84 pages	June 2023	Non-public

Netherlands

<i>Country of origin</i>	<i>Scope</i>	<i>Length</i>	<i>Date</i>	<i>Link</i>
<i>Afghanistan</i>	<ul style="list-style-type: none"> Risk profiles Subsidiary protection Actors of protection Internal protection alternative 	Available online, appr. 5 pages	Continuously reviewed	https://wetten.overheid.nl/BWBR0012288/2023-05-31#Crcuare.d.v.s.eC7_Crcuare.d.v.s.e2
<i>Syria</i>	<ul style="list-style-type: none"> Risk profiles Subsidiary protection Actors of protection 	Available online,	Continuously reviewed	https://wetten.overheid.nl/BWBR0012288/2023-06-22#Crcuare.d.v.s



- Internal protection alternative

appr. 5
pages

[eC7_Crcuare.dv
se33](#)

In addition, the following instructions were analysed:

<i>Information message on Syrian draft evaders and deserters</i>	November 2022	https://puc.overheid.nl/nd/doc/PUC_1296394_1/1/
<i>Information message 2020/135 The Article 1D test in Syrian Palestinian affairs</i>	September 2020	https://puc.overheid.nl/nd/doc/PUC_1261999_1/1/

Norway

Country of origin	Scope	Length	Date	Link
Afghanistan	<ul style="list-style-type: none"> • Risk profiles • Subsidiary protection • Actors of protection • IPA • Exclusion • Credibility and evidence assessment • Humanitarian considerations • Procedural aspects 	18 pages	2023	UD_2023-002 (ud regj verk.no) And G-09/2023 (ud regj verk.no)
	<ul style="list-style-type: none"> • Risk profiles • Subsidiary protection • Actors of protection • IPA • Exclusion • Credibility and evidence assessment • Humanitarian considerations • Procedural aspects 			UD_2016-011 (ud regj verk.no)
Iraq	<ul style="list-style-type: none"> • Risk profiles • Subsidiary protection • Actors of protection • IPA • Exclusion • Credibility and evidence assessment • Humanitarian considerations • Procedural aspects 	25 pages	January 2021	UD_2016-011 (ud regj verk.no)
Syria	<ul style="list-style-type: none"> • General remarks • Risk profiles • Subsidiary protection • Actors of protection • IPA • Exclusion 	26 pages	September 2021	UD_2021-013 (ud regj verk.no)

- Credibility and evidence assessment
- Humanitarian considerations
- Procedural aspects

Sweden

Country of origin	Scope	Length	Date	Link
Afghanistan	<ul style="list-style-type: none"> • Actors of persecution • Risk profiles • Subsidiary protection • Actors of protection • IPA • Exclusion • Humanitarian considerations • Withdrawal of status • Return 	11 pages	January 2023	https://fos.migrationsverket.se/dokument?documentSummaryId=47090
Iraq	<ul style="list-style-type: none"> • Actors of persecution • Risk profiles • Subsidiary protection • Actors of protection • IPA • Exclusion • Return 	11 pages	July 2022	https://fos.migrationsverket.se/dokument?documentSummaryId=46593
Somalia	<ul style="list-style-type: none"> • Actors of persecution • Risk profiles • Subsidiary protection • Actors of protection • IPA • Exclusion • Return 	11 pages	June 2022	https://fos.migrationsverket.se/dokument?documentSummaryId=46588
Syria	<ul style="list-style-type: none"> • General remarks • Actors of persecution • Risk profiles • Subsidiary protection • Actors of protection • IPA 	12 pages	February 2023	https://fos.migrationsverket.se/dokument?documentSummaryId=47122



- Exclusion
- Withdrawal of status
- Return



Annex 6: First instance case samples

The case sample analysis was an integral part of the pilot convergence analysis. It relied on the voluntary contributions from EU+ countries which were asked to submit 10 anonymised cases for each of the two selected profiles.

Afghanistan: Hazara applicants

41 cases submitted by BE (9), FI (10), FR (10), PL (3), SI (1) and SK (8).

Syria: men between 18 and 42 years of age (in relation to draft evasion claims)

49 cases submitted by BE (10), FI (10), FR (10), NO (2), PL (9), SI (4) and SK (4).

The elements to be included in each case file included the interview record, supporting documents, the actual decision, as well as the explanatory note or opinion that preceded it, where relevant. Cases were to be anonymised by the countries before sharing with the EUAA. The documents were then translated into English by the EUAA via an automated translation tool of the European Commission.

A dedicated case-sample analysis tool was developed by the EUAA and adapted for both **Afghanistan** and **Syria**. The respective tools were designed for comparative analysis, using the benchmarks of available EUAA guidance. The tools were consulted with EU+ countries during the advanced workshop in April 2023.

Case samples were shared in May – June 2023 and their analysis was completed in August 2023. A total of 90 cases submitted by 7 EU+ countries were included in this analysis.

The cases were reviewed in June – August 2023 by EUAA experts. Each case was analysed by one main analyst and then peer reviewed to ensure reliability and consistency.

Relevant EUAA guidance, tools and training were used for consistent benchmarking in the analysis.

Dedicated Excel-based tools were designed, tailor-made and used for the analysis and the processing of results.

For both groups, the case sample analysis tools collected the following **meta data**, where available: Country Ethnicity Sex Place of origin Claimed age at time of application Age at time of decision Family status Legal adviser or other counsellor Legal guardian Date of decision Outcome of decision.

As a next step, the questions included in the analysis tool helped to **understand the cases**, their differences and similarities. Therefore, a general response was envisaged for each of the questions: Yes / No / Partially / Not possible to say / Not applicable.

As a final step, the analysis considered each question in relation to **relevant EUAA guidance as a benchmark** of a common approach. The analysts were asked to indicate whether for each question, the examination of the case was as follows:

Not consistent with EUAA approach leading to different outcome	Different approach with similar outcome	Consistent with EUAA approach and outcome	N/A
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Furthermore, they were asked to identify the **elements which were central to outcome** of the case.

Afghanistan

Analysis tool

The case sample analysis tool addressed the following specific questions in reference to the indicated elements of the provided case file.

Interview record	COI and other supporting documents	Decision (including reasoning for RS decisions if not part of the formal decision)	Question
			1. Was documentary / written evidence available?
			2. Is the application examined in relation to the ethnic background of the applicant?
			3. Is the application examined in relation to Shia religion (either actual or potentially imputed to the applicant)?
			4. Is the application examined in relation to potential links of the applicant with the former government or imputation thereof?
			5. Is the application examined in relation to links to Western forces?
			6. Is the application examined in relation to Westernisation?
			7. Were other claims relevant?
			8. Is the threat by ISKP explored and addressed in the decision?
			9. Is a threat by other actors explored and addressed in the decision?

			10. Does the decision provide a credibility analysis?
			11. If the decision relies on negative credibility findings, are those explored during the interview?
			12. Are refugee status needs examined first?
			13. Does the decision explicitly assess whether the (feared) acts amount to persecution?
			14. Does the decision refer to potential risk-impacting circumstances?
			15. Does the decision establish a nexus to a reason for persecution?
			16. If yes, what nexus was established?
			17. If the findings concerning refugee status are negative, are subsidiary protection needs under Article 15(b) QD analysed?
			18. If the findings concerning refugee status are negative, are subsidiary protection needs under Article 15(c) QD analysed?
			19. Is the availability of protection in Afghanistan examined?
			20. Is internal protection examined?
			21. Are exclusion considerations explored?
			22. Is relevant EUAA COI referenced and taken into account?
			23. Is the EUAA CG referenced and taken into account?

Case samples

Total no. of decisions:	41
Countries:	6
No. of decisions by country:	
Belgium	9 ¹⁰⁸
Finland	10
France	10
Poland	3
Slovakia	8
Slovenia	1

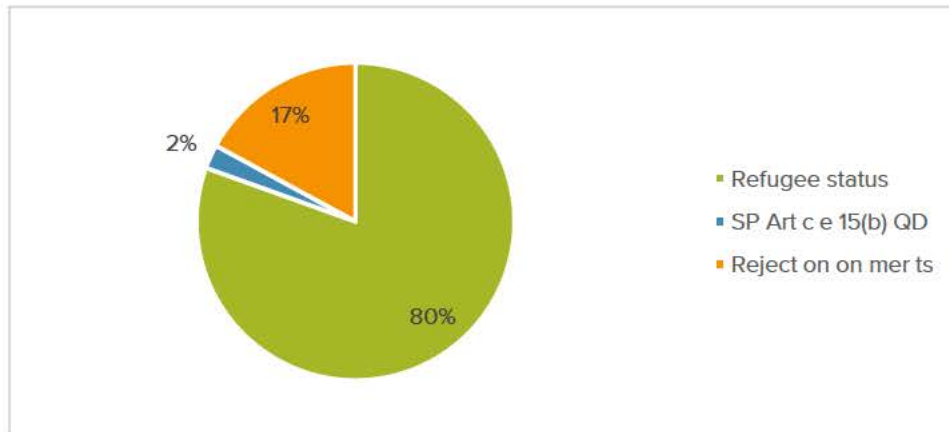
¹⁰⁸ BE provided 10 files, however one appeared to include documents replicating another of the shared case files.



Overview of findings

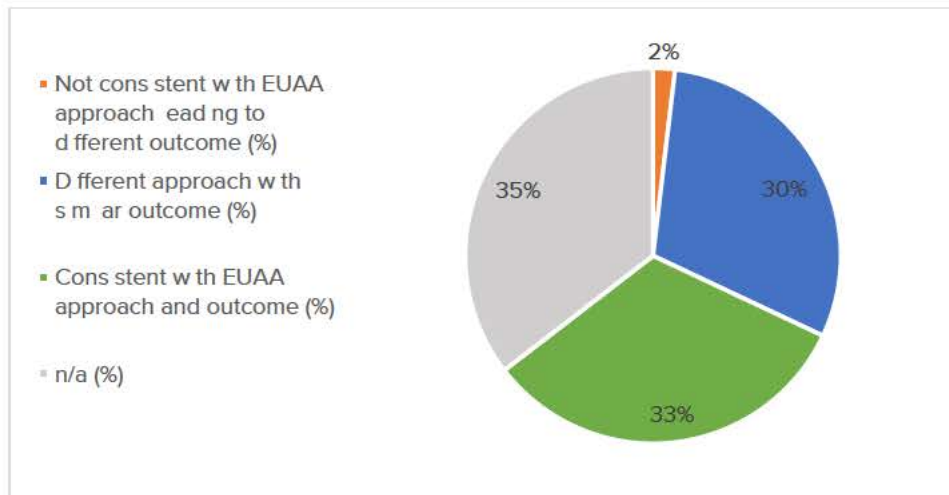
While this sample could not be considered representative, it is of note that it presented a variation in outcome. This allowed to explore national approaches to both positive and negative decisions.

Figure 65. Case sample analysis | Afghanistan | Decisions by outcome



The overall consistency with available EUAA guidance was assessed as follows:

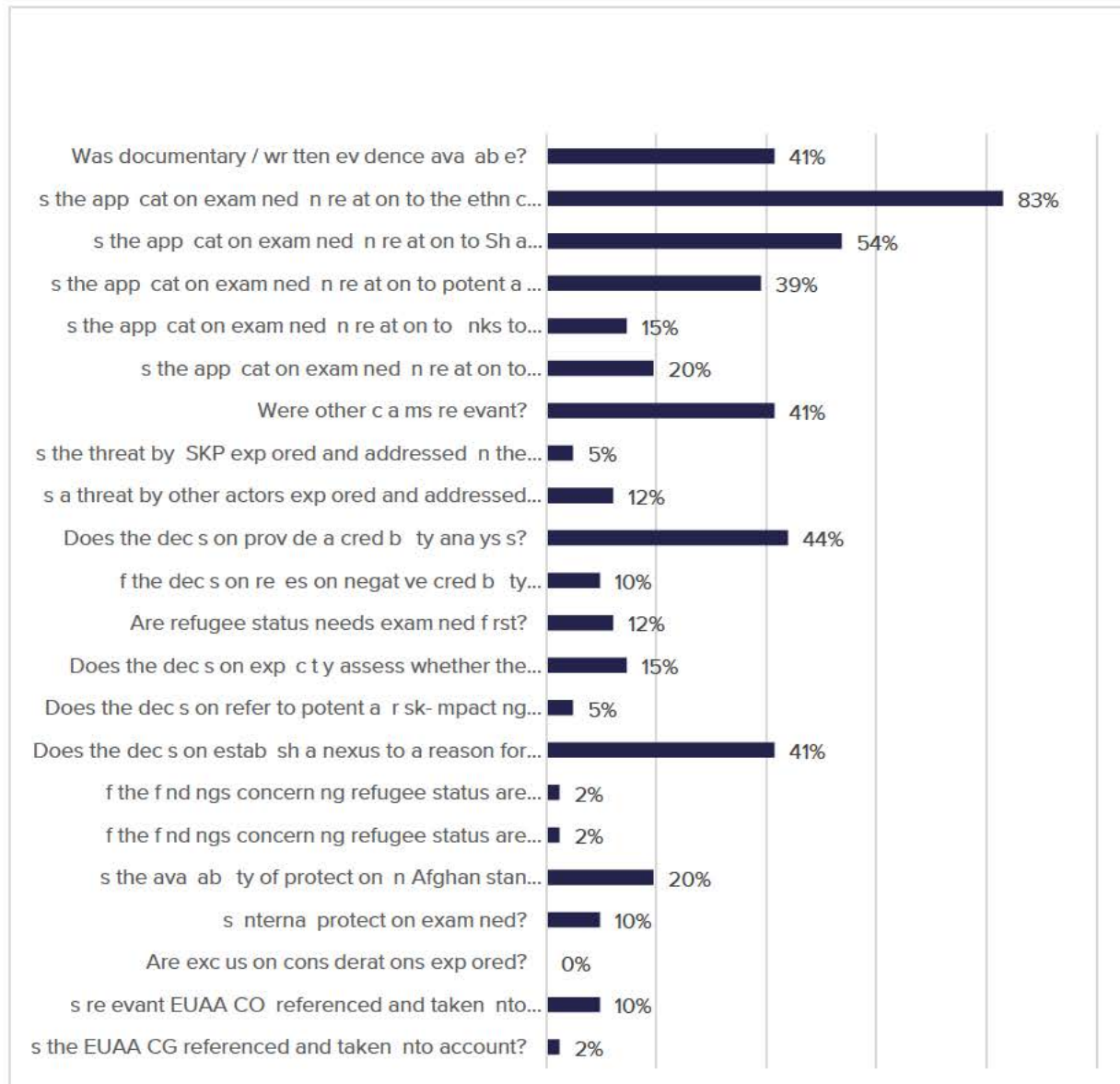
Figure 66. Case sample analysis | Afghanistan | Consistency with EUAA approach.



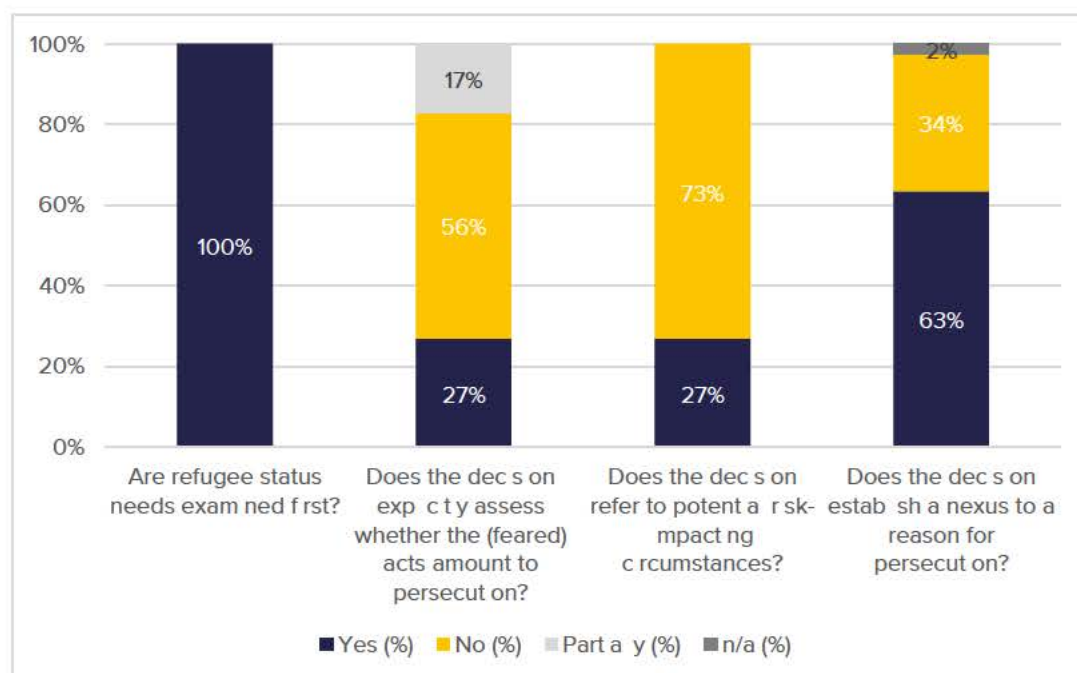
In terms of factors decisive for the outcome of the decision, the following was identified by the analysis:



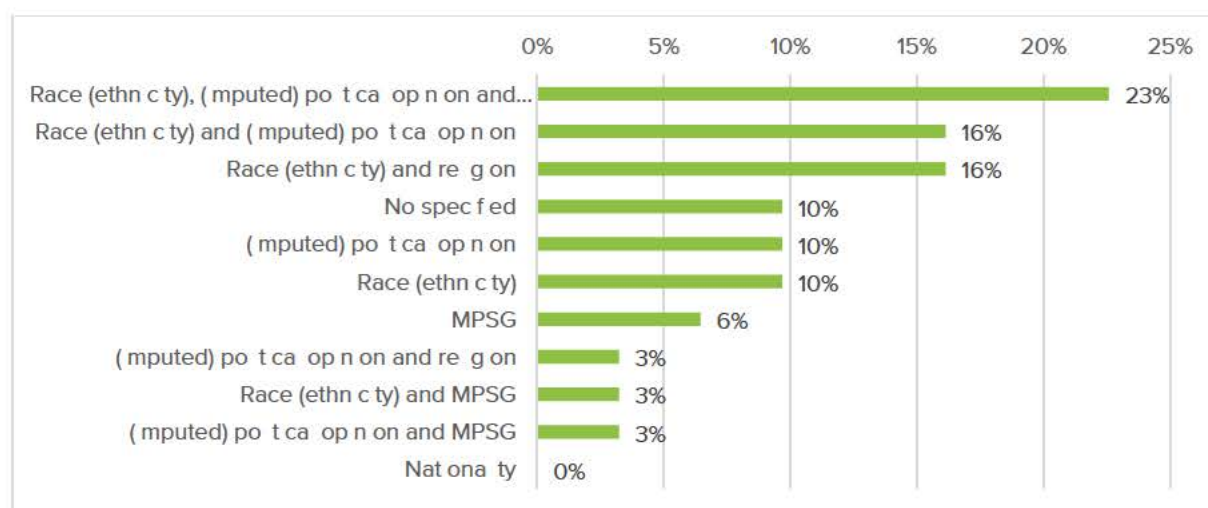
Figure 67. Case sample analysis | Afghanistan | Was this central to the outcome? (%)



Furthermore, the refugee status analysis differed among cases in the following manner:

Figure 68. Case sample analysis | Afghanistan | Focus on refugee status.

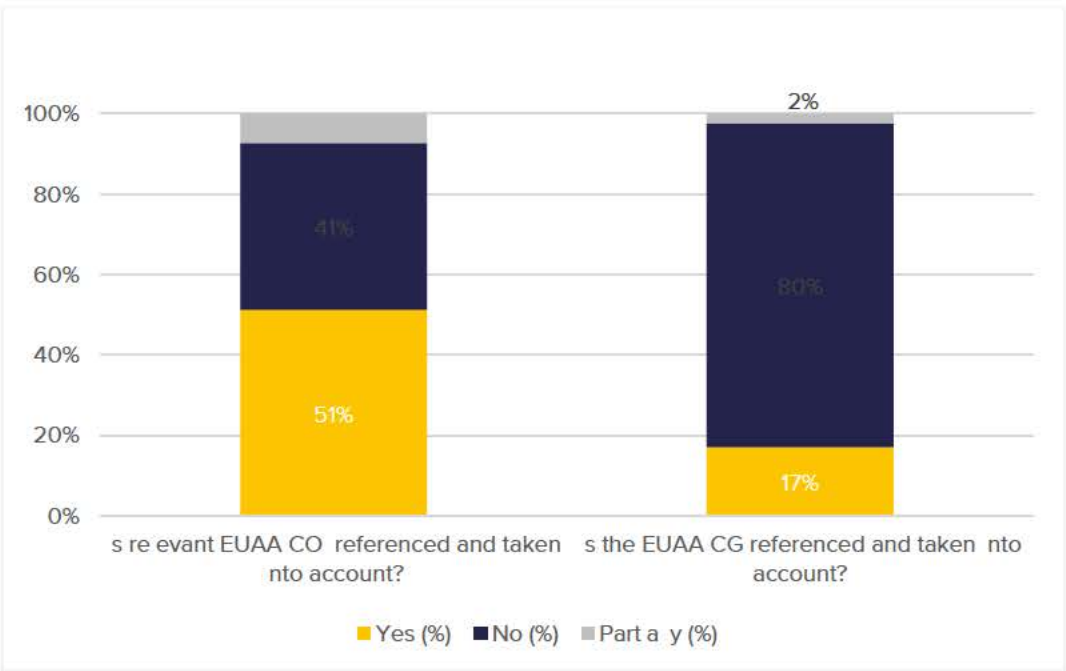
In terms of grounds, the following were indicated:

Figure 69. Case sample analysis | Afghanistan | RS decisions by ground.¹⁰⁹

In terms of references to EUAA COI and CG, the following was observed:

⁰⁹ Ethnicity should be understood under 'race'.

Figure 70. Case sample analysis | Afghanistan | Focus on references to EUAA products in the decisions.



Syria

Analysis tool

The case sample analysis tool addressed the following specific questions in reference to the indicated elements of the provided case file.

Interview	COI and other supporting documents	Decision (including reasoning for RS decisions if not part of the formal decision)	Question
			1. Was documentary / written evidence available?
			2. Is a draft evasion claim brought up by the applicant/their legal adviser?
			3. Is the topic of evasion of military service explored during the interview?

			4. Does the applicant express reasons for refusal to perform military service during the interview?
			5. Is the perception of the Government of Syria of draft evaders explored during the interview?
			6. Are other claims brought forward by the applicant/their legal adviser during the interview?
			7. Are these claims explored during the interview?
			8. Is the security situation in the applicant's area of origin explored during the interview?
			9. Is the application examined in relation to the committing excludable acts during military service?
			10. Is the application examined in relation to the treatment of draft evaders?
			11. Is the application examined in relation to conscientious objection to military service?
			12. Is the application examined in relation to potential exemptions or deferrals from military service?
			13. If relevant, are other threats explored and addressed in the decision?
			14. Does the decision provide a credibility analysis?
			15. If the decision relies on negative credibility findings, are those explored during the interview?
			16. Are refugee status needs examined first?
			17. Does the decision explicitly assess whether the (feared) acts amount to persecution?
			18. Does the decision refer to potential risk-impacting circumstances?
			19. Does the decision establish a nexus to a reason for persecution?
			20. If yes, what nexus was established?
			21. If the findings concerning refugee status are negative, are subsidiary protection needs under Article 15(a) QD analysed?
			22. If the findings concerning refugee status are negative, are subsidiary protection needs under Article 15(b) QD analysed?
			23. If the findings concerning refugee status are negative, are subsidiary protection needs under Article 15(c) QD analysed?
			24. Is the availability of protection in Syria examined?
			25. Is internal protection examined?
			26. Are exclusion considerations explored?
			27. Is relevant EUAA COI referenced and taken into account?
			28. Is the EUAA CG referenced and taken into account?
			29. Is the CJEU judgement E.Z v Federal Republic of Germany (C-238/19) referenced and taken into account?

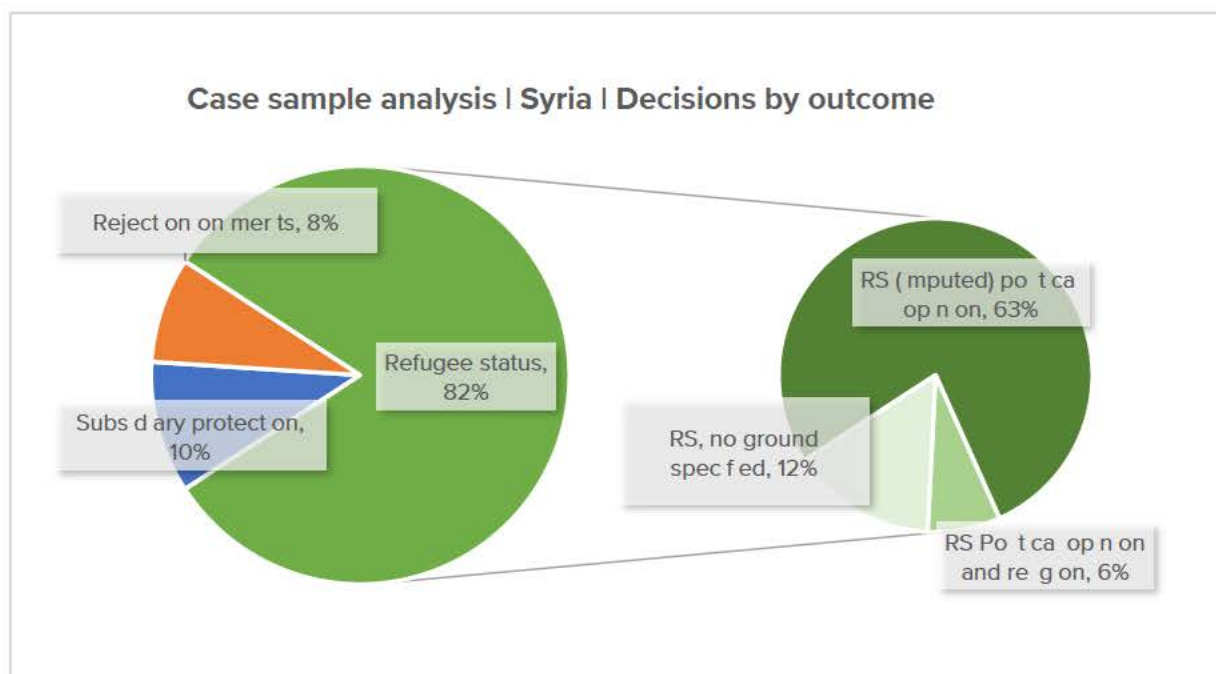
Case samples

Total no. of decisions:	49
Countries:	7
No. of decisions by country:	
Belgium	10
Finland	10
France	10
Norway	2
Poland	9
Slovakia	4
Slovenia	4

Overview of findings

The majority of decisions granted refugee status in relation to imputed political opinion. 10 % granted subsidiary protection and 8 % represented rejections on the merits.

Figure 71. Case sample analysis | Syria | Decisions by outcome.¹¹⁰

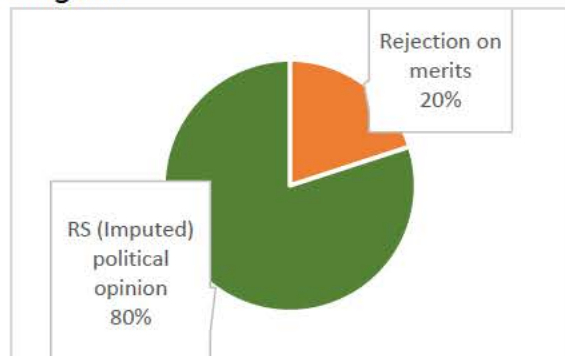


¹¹⁰ FR noted that while the decisions do not consistently specify the reason for persecution, the practices to grant refugee status on the ground of political opinion when conscientious objectors established, and imputed political ground when conscientious objectors not established.

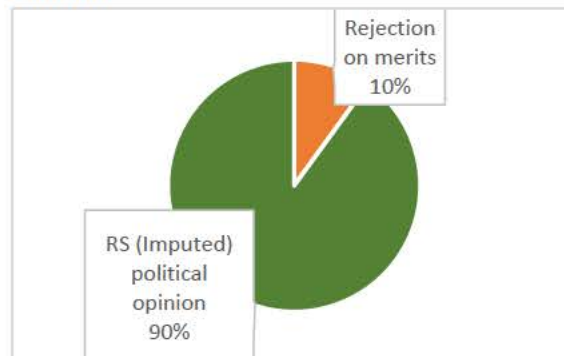
While the case sample was relatively limited, variation among EU+ countries was notable:

Table 2. Outcome of decisions in the case samples by EU+ countries

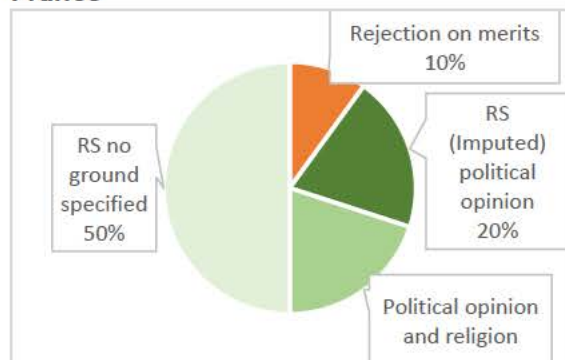
Belgium



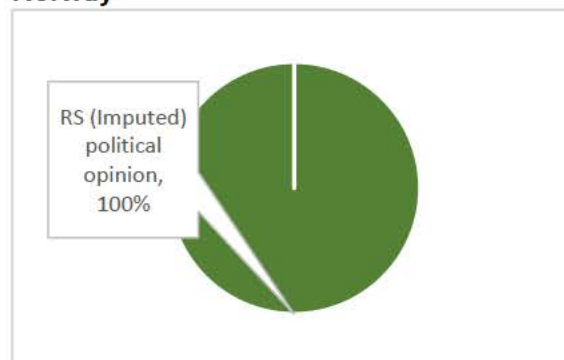
Finland



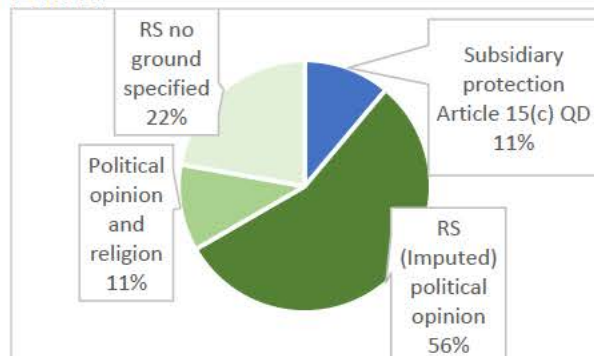
France



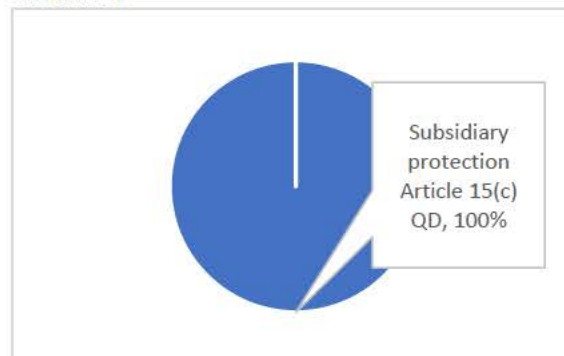
Norway



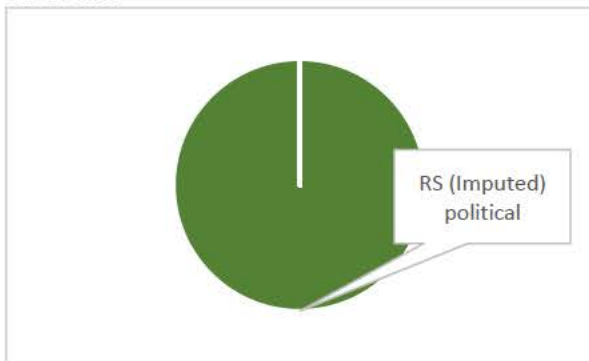
Poland



Slovakia

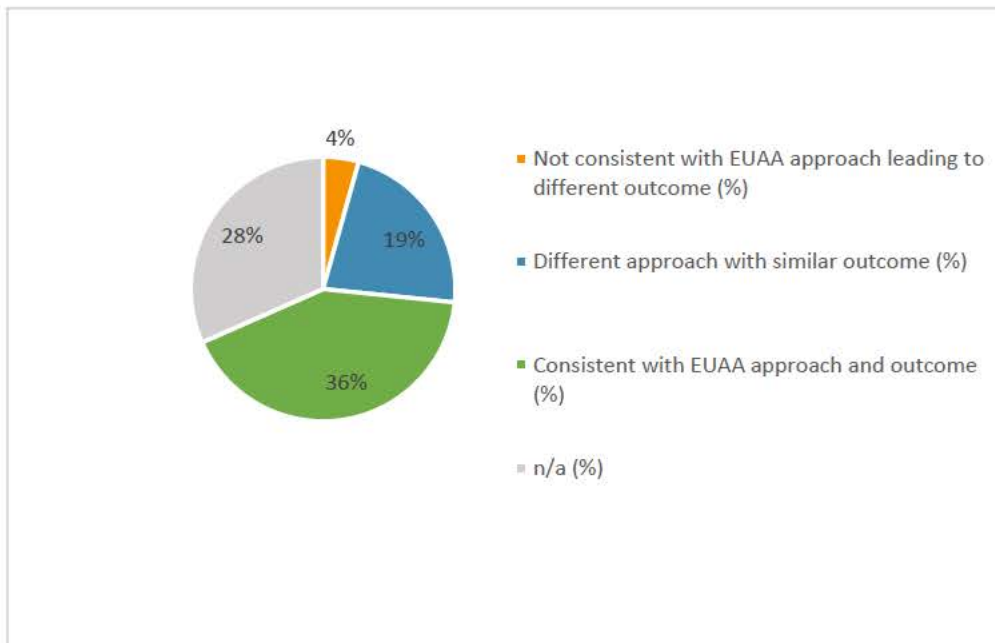


Slovenia



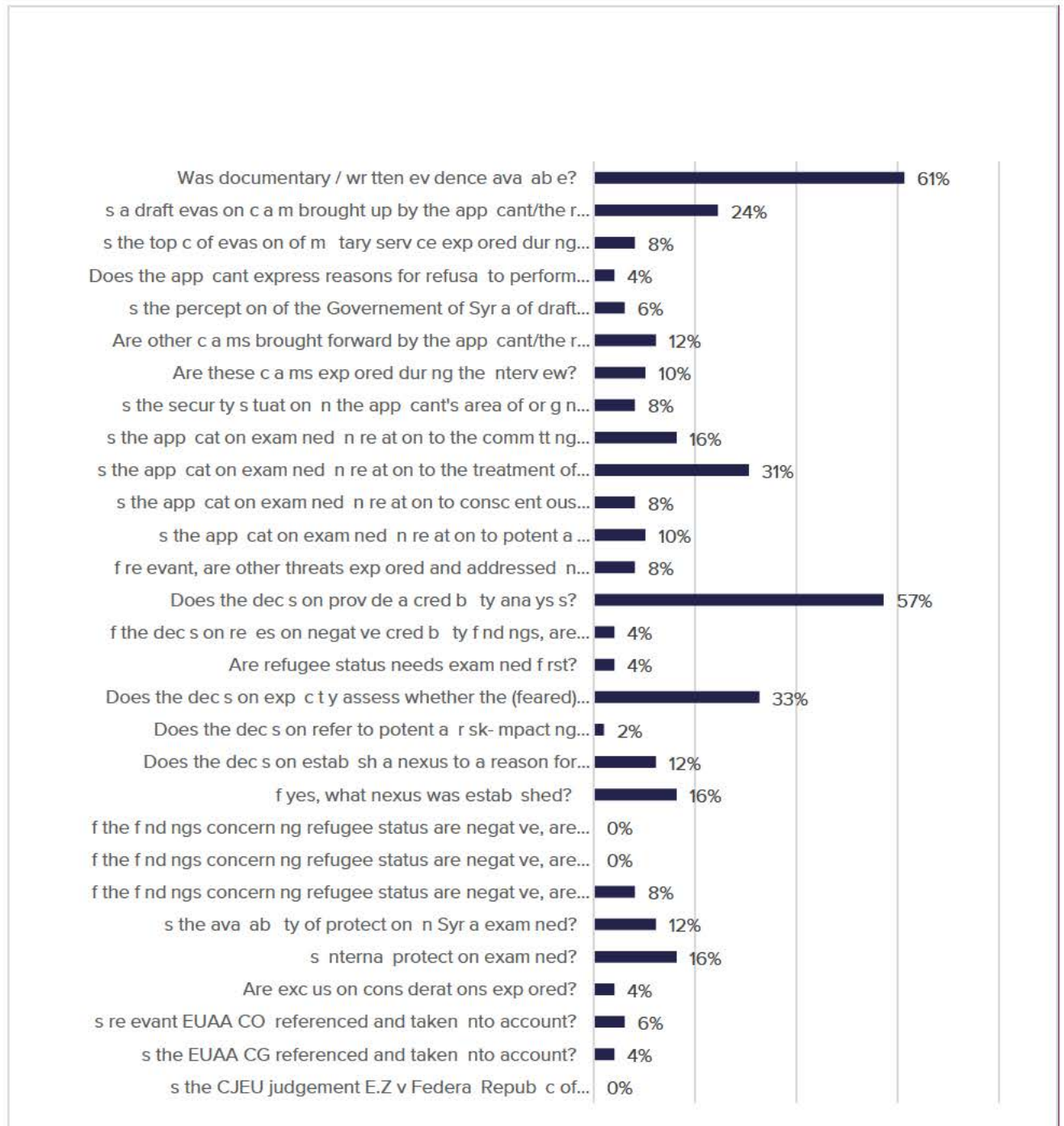
In terms of overall consistency with EUAA guidance, the following conclusions were reached in the analysis:

Figure 72. Case sample analysis | Syria | Consistency with EUAA approach.



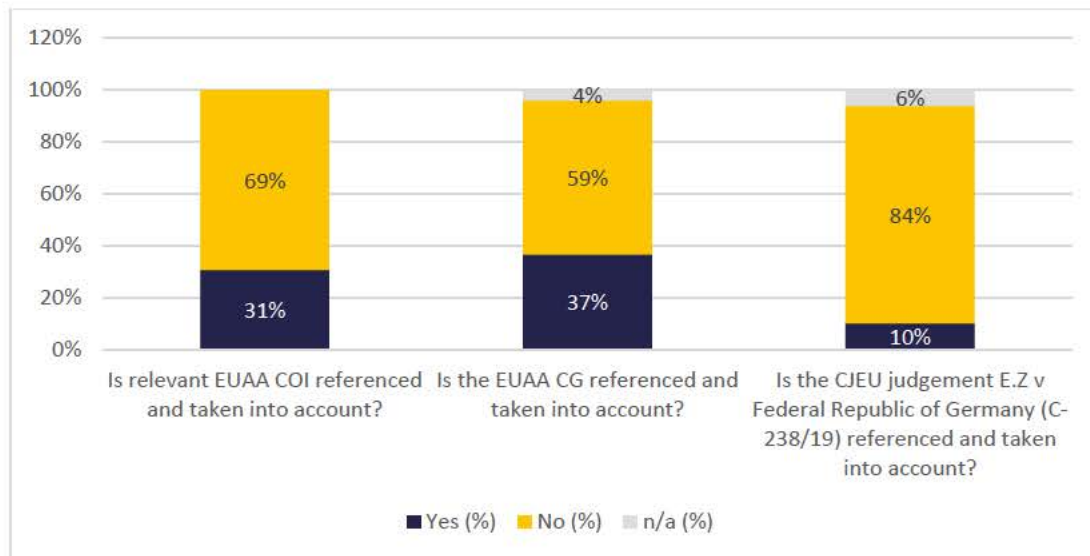
The following was concluded in terms of factors which had been central to the examination:

Figure 73. Case sample analysis | Syria | Was this central to the outcome? (%).



The chart below provides a further overview of relevant references.

Figure 74. Case sample analysis | Syria | Focus on references to EUAA products and EZ judgement.





Annex 7: Mock case exercise

The mock case exercise was one of the integral elements of the pilot convergence analysis, which presented an innovative way of exploring existing differences in national decision practices. The aim of this exercise was to eliminate all elements related to the specifics of the cases EU+ countries examine, the factor which national determining authorities consider central for the variation of recognition rates. Removing all variables related to the specificities of the caseload allowed for a simulation of what would happen if the exact same case were to be examined across the EU+. On that basis, the EUAA explored *whether, to what extent, and for what reasons* variations in recognition rates would persist.

Case reference: MC01/23

Date of application: 28 January 2023

Name: Ahmad

Country of origin: Afghanistan

Place of origin: Gardi Ghos, Nangarhar

Sex: male

Civil status: unmarried

Ethnicity: Pashtun

Religion: Sunni

The mock case was designed as a realistic and balanced scenario, presented via an interview transcript. The interview itself was designed on the basis of actual interview transcripts shared by EU+ countries. The applicant was from Afghanistan and presented a main claim which could be broadly related to 'westernisation', or the adoption of values and behaviours typically associated with the 'West' in countries such as Afghanistan. The topic was chosen due to its relevance and complexity. At the same time, the availability of specific EUAA guidance on the matter allowed for certain 'benchmarking' towards a common assessment, as well as actual analysis of the use and impact of the existing country guidance. However, it should be noted that the topic was selected precisely because of the need for a complex individual assessment, and due to known differences of interpretation between EU+ countries on the issue at stake. The matter is also subject to pending cases at the CJEU.¹¹¹

CJEU, Request for a preliminary ruling from the Rechtbank Den Haag, zittingplaats 's-Hertogenbosch (Netherlands) lodged on 25 October 2021 – K, L v Staatssecretaris van Justitie en Veiligheid ([Case C-646/21](#)).



Relevance	Complexity	Guidance
'Westernisation' is a commonly encountered claim not only in relation to Afghan applicants, but across other countries of origin as well, including Iraq and Somalia .	<p>The examination of such claims often presents challenges in terms of credibility and risk assessment, as it relates to personal values and behaviours.</p> <p>The legal analysis is also not without complexities, in particular when addressing the topic of nexus to a reason for persecution.</p>	The EUAA 'Country Guidance: Afghanistan' from January 2023 includes a dedicated section '3.13. Individuals perceived as 'Westernised' as well as other guidance which was relevant to the case.

EU+ countries were asked to share observations on the interview itself, and, most importantly, to submit a decision on the case.

Certain bias due to the simulation nature of the exercise should be expected and acknowledged. The very context of the exercise, i.e. undertaking it within the EUAA pilot convergence analysis, is likely to have contributed to a wider than usual use of and reference to EUAA materials, for example.

Following a preliminary analysis of the submitted documents, an online workshop was organised in August 2023 to further explore the underlying national policies and practice, which had resulted in different outcomes across the participating EU+ countries.

13 EU+ countries shared a total of 14 outcomes¹² of the case examination on the basis of a mock interview record and notes on additional available documents within the case file: **BE, CZ, DK, ES, FI, FR, LU, NL, NO, PT, RO, SE, SK**.

The notes below reflect some of the identified differences, without aiming to be exhaustive. Excerpts from the translations of the submitted documents have been included to illustrate certain differences. These should be read with caution, noting that these quotations are often presented without their contextual placement.

Credibility assessment and risk analysis

The approach to credibility assessment varied significantly. Some decisions focused extensively on credibility assessment [e.g. **NL, RO, SE**] while others moved directly to the legal analysis [e.g. **BE, DK, PT**].

With regard to the **burden of proof**, **SE** concludes, for example 'The country information above shows that there may be a risk that returnees who have stayed for a long time in Western countries will be considered non-Muslim or non-Afghan. The Migration Agency's assessment is that this is not something that everyone who returns to Afghanistan after a long time abroad would risk. The burden of proof lies primarily on the applicant to make probable

² **DK** shared two possible outcomes.

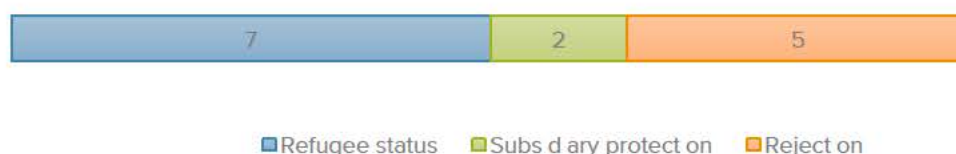
that such a risk exists, in the same way as the applicant needs to make probable other grounds for protection.'

Other countries relied on the available COI in this regard, without placing additional expectations on the applicant beyond what was expressed in the personal interview. **SK**, for example, specifically mentioned in the explanatory note to the decision '*Given that the burden of proof in the asylum procedure is shared equally between the applicant and the authority examining his or her application, the Migration Office provided information on the applicant's country of origin and other relevant evidence into the procedure.*'

Same facts – different assessments

The mock case exercise was designed to remove all variables in terms of caseload specificities and to explore *whether, to what extent and for what reasons* variations in recognition rates would persist. Decision-makers received the same information about the case in the form of an interview record and information on supporting documents. From this common starting point, the 13 EU+ countries presented four different outcomes in 14 decisions¹¹³.

Figure 75. Outcome of the mock case exercise: overview



The table below highlights the extracts of the shared documents outlining the main reasons for the taken decisions:

Country	Refugee status	Subsidiary protection	Rejection	Main reason
BE				<i>In view of the foregoing, in particular the applicant's profile, his young age, the young age upon departure from Afghanistan and his individual circumstances, judged cumulatively, a well-founded fear of persecution can be assumed upon return to Afghanistan; whereby in his case a connection can be made between the feared persecutions and an imputed political or religious conviction.</i>
CZ				No reasoning shared.

¹¹³ **DK** shared two possible outcomes, the likelihood of which would depend on the content of the lyrics of the songs performed by the band the applicant took part in.

DK (positive)				Applicant's western lifestyle , which he expresses through the way he dresses and through his songs, place him in risk of being perceived as an opponent of the regime under the Taliban .
DK (negative)				<p>Your fear of the Taliban due to your westernization cannot lead to asylum.</p> <p>you have lived in Afghanistan for the first 14 years of your life.</p> <p>you still consider yourself a Muslim and you speak Pashto fluently</p> <p>you left due to economic circumstances</p> <p>The fact that you have changed and become more inspired by western culture does not on its own put you in risk of personal persecution</p> <p>your songs do not have critical content that would catch the attention of the Taliban.</p> <p>Conflict with people of village not qualify for asylum (long time ago and no direct harm)</p>
ES				In case of return, he would be perceived as an atheist, and a person who supports the western authorities, which is clearly a target for the Taliban .
FI				<p>'Your activities that refer to Westernisation [...] have not been particularly visible or public'</p> <p>'You are still a religious Muslim. Therefore, adapting back to the cultural environment would not be contrary to your beliefs either'</p> <p>'There is no indication in the COI that persons returning specifically to Afghanistan have been subjected to systematic violations of their rights, precisely because of their asylum application'</p> <p>Residence permit granted because return to Afghanistan is not actually possible'</p>
FR				<p>...taking into account the information available in the above-mentioned note (EUAA Targeting 2022), the sincere and credible acquisition of an ideology, way of life or practice in Europe may give rise to fears of persecution where the person concerned cannot be expected to renounce it or refrain from practicing them in the event of his return to Afghanistan, such a waiver or abstention would amount to a violation of his fundamental rights.'</p> <p>'Furthermore, in a third step, the Office observes that it has also made it clear that his religious views and the way in which he lives his religion expose him to persecution, not only on the part of the Taliban, but also on the part of the most conservative fringes of Afghan society, who impose a</p>

				strict practice of Islam and might consider it to be non-believers'
LU				In this context, it follows from the Country Guidance: Afghanistan' of the European Union Agency for Asylum ('AUEA') that Afghans who identify with Western values may also be targeted by armed groups, as they may be perceived as non-Islamic, as supporting the former government or as spies'
NL				<p>2. Your ordained Westernisation is unbelievable</p> <p>2.1 There is no religious or political opinion</p> <p>2.2 You have no characteristics that are virtually impossible to change and which you cannot hide.</p> <p>2.2.1 You have explained briefly and generally about your westernisation</p> <p>2.2.2 Love making music is not a deep-rooted belief</p> <p>2.2.3 Believing in science is not a deep-rooted belief</p> <p>2.3 You have stated vaguely about your integration in the Netherlands</p> <p>2.4 Your clothing style and freedom to shave off your beard do not count as expressions of a deep-rooted westernisation.</p> <p>3. Your alleged apostasy is unbelievable</p> <p>3.1 You are not now in the negative attention of the Taliban</p> <p>3.2 You still believe in Islam and practice your faith as well.</p> <p>3.3 You do not express a dissenting religious belief</p> <p>3.4 The Taliban is not aware of your lifestyle in the Netherlands</p> <p>4. The bank robbery is considered credible</p>
NO				<p>While it will be stressful for you to have to adapt the way you dress, refrain from playing music and shave, these are not violations of your basic human rights or measures that, in an overall assessment, have such serious consequences for you that it constitutes persecution.</p> <p>[...] The UDI therefore believes that the general security situation in your home in Nangarhar province does not as such prevent you from travelling there.</p>
PT				<p>'Nor has it been possible to establish any objective factual situation showing that he has been persecuted in his country of nationality, nor has it been possible to establish any causal link between the fear invoked and any reason associated with [...]'</p> <p>'The Afghan nationality of the applicant and taking into account the guidelines of the European Asylum Support Office –EASO Country of Origin Information Report Methodology have been established.</p> <p>In view of the above, we are led to conclude that there is a</p>

				<i>serious risk of serious harm to the applicant in the event of a return to the country of nationality, namely a serious threat to life or physical integrity in the face of a widespread and indiscriminate violation of human rights, due to the inability of the State to provide effective protection.</i>
RO				<i>We consider that people who have acquired moral, social and political values different from those of the Taliban are at future risk of being subjected to certain violations of fundamental human rights.'</i> <i>The person in question falls within the definition of the refugee 'sur place'.</i>
SE				<i>Your case is therefore assessed in relation to the whole of Afghanistan'</i> <i>'The Swedish Migration Agency finds that an adaptation of lifestyle, values and religious practice during a stay in a secular society cannot in itself be regarded as worthy of protection based on the refugee grounds mentioned in the fourth chapter of the Aliens Act or in Article 10 of the Qualification Directive. In our finding, for so-called Westernisation to lead to a well-founded fear of being persecuted, it needs to be based mainly on political or religious motives, which is, according to the assessment above, not the case with you.</i> <i>'You have not provided reliable information that your family owned a savings bank and that it was robbed. You have therefore not made probable that there exists an individual threat against you upon return for this reason.'</i>
SK				<i>...in the event of return, he could face persecution on religious grounds, which does not exclude the available information on the country of origin, while at the same time the decision is fully in line with the national case law of the Slovak Republic as well as with the usual practice in similar cases.'</i>

It should be noted that the outcomes also varied in form. In some cases, EU+ countries presented an explanatory note, a recommendation for decision or a similar accompanying document, which would be the basis for the formal decisions, but not a part of it, which is shared with the applicant. This was the case in particular for positive refugee status decisions [BE, ES, LU, SK].



The role of the personal interview

The mock interview record was developed specifically for the purposes of the pilot convergence analysis. It is based on actual anonymised transcripts shared by EU+ countries¹¹⁴ and aimed to present a balanced and realistic case.

While the mock case could not directly identify national practices in relation to the personal interview, the responding authorities were asked to share their observations in relation to the interview record.

- Three countries replied that the interview would not be conducted in a significantly different way than the one of the mock case in their national context: **BE, PT, RO**.
- Some formal aspects were noted as different by **FI** (differences in rights and obligations read in the beginning of the interview and in the structure/order of the interview).¹¹⁵
- Topics which would have been explored further by some countries included:
 - Identity and personal background: **FR, NO, SE, SK**
 - Health and current medication: **FI**
 - Family profile: **FR, LU**
 - Journey: **FR, SK**
 - Ideas and views: **BE, NO** (whether a Western lifestyle is fundamental to his identity), **SE**
 - Religious convictions: **FI** (and attitudes towards Islam), **NL**
 - Ability to adapt to Afghan society: **NO**
 - The banking activity: **FR, NO, SE**
 - Possible violence or threats in Afghanistan: **FI**
 - Activities in host country: **BE, FI** (visibility of social media activities from abroad), **LU** (and reasons for not applying earlier)
 - Security situation in the district: **FR** (in relation to credibility and potentially exclusion)
- Two countries (**FI, NO**) specified that they would give the applicant more thorough instructions for the free narrative and ask more open questions.
- Additional standard questions would be asked in **SK**: mutual understanding among interpreter and applicant; regarding possible political activities, military service, whether he/she has been subject to criminal proceedings; questions about documents other than those presented (to verify identity);
- **FI** would confirm the understanding between the applicant and the interpreter at the end of the interview and whether they disclosed all reasons for applying. **FI** would also provide the applicant with an estimate on the processing time of his application.
- **SE** noted that they would have conducted a follow-up interview to collect further information on the topics they found not explored sufficiently. **FR** also noted that the applicant should be subject to a second interview in order to clarify some elements.

¹¹⁴ Interview transcripts were shared by **BE, DK, FI, RO, SI**.

¹¹⁵ It is key that those standard parts vary further across countries.



Reference to EUAA information and guidance

The direct use of EUAA documents varied across countries ([Figure 76](#)).

Figure 76. Explicit reference to EUAA guidance and information: overview.



In addition to the 8 countries referring to CG in the decision and the 6 referring to EUAA COI, one other country noted that relevant EUAA COI and CG were used when preparing their conclusion; however, the document were not explicitly mentioned in the submitted document.

Additionally, it can be observed that the references to the EUAA CG on Afghanistan pertain to various sections, including most notably [3.12. Individuals perceived to have transgressed religious, moral and/or societal norms](#) and [3.13. Individuals perceived as 'Westernised'](#).

Establishing identity

Starting with the **identity of the applicant**, it would appear that a different probative value was given to the applicant's *tazkira*. For example, **NO** remarked 'We note that Afghan documents on a general basis have very low notoriety'. **FI** and **LU** also noted that further investigations would be part of standard practice. On the other hand, **RO** stated 'On the occasion of the application for international protection, the applicant stated that the name was AHMAD, an Afghan national, born on 28/04/2000 in Gardi GHOS, Afghanistan, presenting Original I.D.(tazskira) for the purpose of proof of identity. Therefore, the identity of the applicant is proven.' In **FR**, the establishment of identity would require more details from the applicant, referring to his place of origin, life in Afghanistan, etc. Similar remarks were made by **SE**. Others did not appear to put the identity of the applicant in question [e.g. **BE**, **PT**].

The applicant's age and experiences

For **BE**, the years spent outside Afghanistan during adolescence appeared decisive for the outcome of the examination and his young age was assessed as a key risk-enhancing circumstance. **BE** concluded 'In view of the foregoing, in particular the applicant's profile, his young age, the young age upon departure from Afghanistan and his individual circumstances, judged cumulatively, a well-founded fear of persecution can be assumed upon return to Afghanistan'.

On the other hand, the negative decision of **DK** stated ‘we found it important that you are a young, healthy man that is capable of finding a job and making a life for yourself in Afghanistan’. The reasoning in the decision of **NO** was similar to that of **DK**.

SE also concluded that ‘[...] you have lived your formative years in Afghanistan and five years in Turkey, which can also be considered to be a predominantly Muslim country. You should therefore be familiar with Afghan society, its customs and traditions, even taking into account that the Taliban took power after you left the country. The Migration Agency therefore finds that it should not imply significant difficulties for you to reintegrate yourself into an Afghan context, nor can you be seen as unfamiliar with the cultural and religious expectations that you will face upon return.’

The latter can be directly contrasted to **BE**’s assessment, which reads: ‘It should be noted that the applicant spent part of his adolescence, an important and special phase in the development of a young person, outside Afghanistan. These formative years are essential in the formation of a world view and the adoption of values and norms, as a result of which, given the exposure to Belgian society, he may have unconsciously adopted “Western” behaviours and characteristics.’

Visibility of the applicant’s activities and associated risk

EU+ countries also had a different, and in some cases decisive appreciation of the visibility of the applicant’s artistic activities. For example, **FI** stated: ‘The Finnish Immigration Service notes that your activities that refer to Westernisation when you live outside your home country have not been particularly visible or public. You’re not sure if your social media posts are visible to people other than your friends. In addition, you told that you have few friends living in Afghanistan or contact them on social media. In view of the above, the Finnish Immigration Service considers it unlikely that your social media posts would have attracted special attention in your home country.’

In the assessment of the **NL** it was emphasized that it had not been shown that the activities had already become known to the Taliban, ‘Finally, it has not been shown that the Taliban are already aware of your lifestyle in the Netherlands, insofar as this would be contrary to their interpretation of Islamic regulations. You have stated that you have published videos on Youtube in which you make music, but it has not been plausible that these videos are already known to the Taliban.’ It was further clarified during the workshop that as a standard practice **NL** would also look into the risk of this information becoming known to the Taliban in a future-oriented analysis.

On the other hand, the decision of **FR** highlights ‘However, it is apparent from his remarks that he regularly uses social networks, through public personal accounts, on which he has already published his musical performances, and that he also plans to publish new videos on the YouTube shared content platform, thus ensuring a certain visibility for his artistic activities. The Office observes in this respect that it is apparent from the video sent by the interested party after his hearing that he plays guitar with several individuals, including a woman singing in the English language, thus opposing numerous Taliban standards (EUAA Country of Origin Information report, “Afghanistan: Targeting of individuals”, 08/2022).’

It is interesting to note that, while some countries, like **FR** above, found ‘playing guitar with several individuals, including a woman singing in English’, would be sufficient to oppose ‘numerous Taliban standards’, **DK** considered it decisive what the actual content of the songs was. They commented *‘We cannot conclude a decision from the case, due to lack of details in the interview. We have however drafted two possible outcomes. One is asylum granted in case the applicant had informed that his English songs included lyrics that expressed pro-western culture. The other is a refusal of asylum in case the applicant had stated details about the song lyrics being of irrelevant/random content’.*

‘Fundamental to identity or conscience’

The topic of ‘westernisation’ is intrinsically linked to the notion of ‘characteristic or belief that is so **fundamental to identity or conscience** that a person should not be forced to renounce it’, reflected in the QD under Article 10(1)(d). Several countries referred to this notion, with different consequences, due to the threshold which they appear to apply in this regard. **BE**, for example, explains *‘Not every Afghan who returns from Europe will actually be Westernized. There must be characteristics or beliefs that are so fundamental to the identity or moral integrity of an applicant that should not be asked to give it up’*, making a reference to the judgment of CJEU in C-71/11 and C-99/11. **SK** also made a direct reference to this judgment.

FR, in particular, noted *‘taking into account the information available in the above-mentioned note (EUAA Targeting 2022), the sincere and credible acquisition of an ideology, way of life or practice in Europe may give rise to fears of persecution where the person concerned cannot be expected to renounce it or refrain from practicing them in the event of his return to Afghanistan, even though such a waiver or abstention would amount to a violation of his fundamental rights’.*

On the same topic, **NL** concluded *‘2.2 You have no characteristics that are virtually impossible to change and which you cannot hide. You have not demonstrated that personal characteristics are extremely difficult or almost impossible to change, which cannot be concealed either. After all, you do not have any of these characteristics. You have stated that you love music and believe in science, wear Western clothing and want the freedom to shave your beard short. These are not personally extremely difficult or virtually impossible to change characteristics. According to WI2019/1, you are therefore expected to adapt to the way of life in Afghanistan upon return.’*

For **FI**, key element in the risk assessment would be firstly, whether the adapted values and beliefs be such a fundamental part of the applicant’s identity that changing and adapting to the religious norms of the Taliban be a serious violation of his rights. As stated in the decision, merely adapting to a more western lifestyle and values is not, as such, considered so fundamental that a person could not be expected to adapt to the norms of his home country.

NO also noted *‘However, it does not appear from your explanation that you cannot or will not comply with the injunctions and limitations that apply. While it will be stressful for you to have to adapt the way you dress, refrain from playing music and shave, these are not violations of your basic human rights or measures that, in an overall assessment, have such serious consequences for you that it constitutes persecution.’*



SE noted that *'The UNHCR Guidelines on Religious-Based Asylum Applications state that religious belief, identity or lifestyle can be considered as such fundamental elements of human identity that one cannot be forced to conceal, alter or renounce in order to avoid persecution (p. 13). [...] In order to determine whether it is persecution, it must be examined how important or central the belief is for the asylum seeker (paragraph 16) (see The Swedish Migration Agency. Legal position regarding the method of examination when religion, including conversion and atheism, etc. [...])'.* **SE** also noted *'The Migration Agency therefore concludes that you would probably be perceived as different from the norm if you returned to Afghanistan with the same appearance and with the same behaviour as in Sweden. However, in the assessment above the Migration Agency found that you have not made it probable that the Westernisation process you have undergone has become such a central and important part of your identity that you cannot be expected to adapt or adjust it. You are thus expected to adapt in terms of appearance and in your actions upon return in such a way that you do not expose yourself to risk.'* In terms of expected behaviour upon return, **SE** further remarks *'it can be expected of you to take the measures required upon return to reduce the risk of ill-treatment, which includes deleting any social media accounts that could be considered problematic.'*

In addition, **NL** appeared to require that such a belief is a *'deep-rooted inner religious or political belief'*. In a similar vein, **SE** noted *'The Swedish Migration Agency finds that an adaptation of lifestyle, values and religious practice during a stay in a secular society cannot in itself be regarded as worthy of protection based on the refugee grounds mentioned in the fourth chapter of the Aliens Act or in Article 10 of the Qualification Directive. In our finding, for so-called Westernisation to lead to a well-founded fear of being persecuted, it needs to be based mainly on political or religious motives, which is, according to the assessment above, not the case with you.'*

Nexus to a reason for persecution

Among the positive decisions, there were also some differences in the analysis. In refugee status decisions, countries identified a different reason for persecution:

- Imputed political opinion: **RO**
- Religion: **SK**
- Imputed political opinion and/or religion: **BE** and **FR**
- Imputed political opinion, religion, and/or membership of a particular social group: **LU**

While their decision on the mock case was negative, **FI** specified that in case of a positive decision on the ground of 'Westernisation', the reason for persecution would be religion and that imputed political opinion and MPSG could in some cases be considered.

The ground was not clearly specified by **DK** and **ES**.

Some of the negative decisions also analysed the topic of nexus. For example, the analysis of **NL** included the following points: *'2. Your ordained Westernisation is unbelievable - 2.1 There is no religious or political opinion [...] 3. Your alleged apostasy is unbelievable [...] - 3.3 You do not express a dissenting religious belief [...]'.*



SE also addressed religion and political opinion. *'From your own account, the Migration Agency finds that you have not made probable that your current approach to religious belief and religious practice is of such importance to you that it can be seen as an individual characteristic that cannot be changed. This assessment takes into account that you grew up in Afghanistan with a religious practice similar to what you will encounter upon return. You are, therefore, not a refugee based on religious beliefs. [...] Your political values are influenced by the values that come from living in a democratic country. However, you have not showed that you have your own personal political opinion or are politically active in any way in relation to your new way of thinking. You express criticism of the Taliban's way of governing Afghanistan and criticism of the way Islam is interpreted and implemented in society there. However, the Migration Agency considers that the views you have expressed regarding the Taliban in Afghanistan are not sufficiently developed or substantiated in order to be assessed as a political opinion in accordance with the directive. Therefore, you cannot be seen as a refugee based on political opinion.'*

With regard to nexus, **SE** further concluded in a section titled 'Westernisation': *'The Migration Agency also finds that the group of Afghans who have lived in Europe and return to Afghanistan cannot be seen as a particular social group; there is no nexus. The reasons for this being that they do not share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it. The reason being that a person's Westernisation process can be very different and contain different elements of both cultural, political and religious nature and change over time'.*

Subsidiary protection ground

The ground for granting subsidiary protection also appeared to differ between the two responding countries. **CZ** referred to protection under '*§ 14a odst. 2 písm. b) zákona o azylu*', i.e. in relation to Article 15(b) QD. **PT**, on the other hand, concluded that there was '*serious threat to life or physical integrity in the face of a widespread and indiscriminate violation of human rights, due to the inability of the State to provide effective protection*', wording that suggests reference to Article 15(c) QD.

Actor of protection

There were also different approaches to the issue of actor of protection. While several countries explicitly state that the Taliban are not considered an actor of protection [e.g. **LU**, **PT**, **RO**], **NL** instead highlighted the fact that the applicant did not seek protection in relation to threats from his community before fleeing Afghanistan: *'When asked, you stated that the police were looking for the persons who had committed the bank robbery, but not that you sought further protection. Since you are afraid of persecution by these persons, that should have been expected of you'.*

Structure and format of decisions

The **structure and approach of decisions** also varied among countries. While the latter should not directly impact the outcome, it is also likely to play a role in terms of directing the



examination by requiring the decision-maker to address and reason different elements and to a different extent.

Few followed an approach that clearly differentiated the steps of the assessment, i.e. *identification of material facts - credibility assessment - risk assessment - legal analysis*. In particular, the differentiation of risk analysis as a separate step was only explicitly done by **FI**.

It is also interesting to note that several countries appeared to start their analysis from the requirement of nexus to a reason for persecution, rather than the feared acts.

In terms of the elements of the refugee definition explicitly addressed in the decision, most countries addressed persecution and nexus. Several of them also addressed the topic of actor of protection [e.g. **ES, LU, PT, RO**]. **RO** addressed this differently, having a separate determination on the requirement 'outside the country of origin', while subsuming the analysis on acts of persecution, nexus to a reason for persecution, and actor of protection, all as '*cumulative conditions for an act to constitute persecution*'. The requirement of actor of persecution was also addressed within the same section.

Among the 14 submitted decisions, the average length was 6.6 pages, ranging from **DK**, where a positive decision was 1.5 pages and a negative one was 2 pages, to **RO**, where the positive decision was 16 pages.

Some decisions addressed the substance of the case at hand directly and exclusively [e.g. **DK**]. Others included general guidance. For example, **RO** included several paragraphs with general explanation with regard to the subjective and objective elements of well-founded fear, as well as on credibility assessment, sur place claims, the ground of imputed political opinion. Some countries included more contextual COI, in addition to COI directly relevant to the case, including **FI, PT, RO**. The approach to COI further varied among countries. There was no explicit reference to COI sources in some decisions [**BE, LU**], while others included an extensive list of consulted sources, also referenced within the decision [**FI**].

The **writing style** also varied significantly, with some countries sharing a document drafted in simple language and addressing the narrative directly to the applicant [**DK, FI, NL, NO, SE**], while others adopted a more formal writing style [e.g. **PT, RO**].



Annex 8: Convergence survey – appeal instances

Following the initial survey to national determining authorities, the EUAA developed a corresponding survey to members of courts and tribunals.

Timeline	4 - 26 April 2023
Objectives of the survey	<p>This survey aimed to inform the pilot convergence analysis performed by the EUAA in relation, specifically, to the appeal instance.</p> <p>It included two aspects:</p> <ul style="list-style-type: none">▶ Insight into the different factors which impact recognition rates (refugee status, subsidiary protection, negative decisions) at national level▶ Reflections and suggestions regarding the approach of the pilot study.
Responses	<p>20 from 11 Member States:</p> <p>BE, DE, PL, PT, FR, CZ, HR, SE, IE, IT, SI</p> <p>The survey was addressed to the members of the EUAA CTNet and the EUAA Judicial Experts Pool. Thus, multiple answers from the same member state were received on certain occasions.</p>

Questions

1. Which national judicial authority do you currently work at? Please indicate the name of court/tribunal and the country.

Reasons for variation in recognition rates

2. Has your court/tribunal or another relevant authority in your country conducted an analysis of variation in decision practices and outcomes at the appeal instance?
3. If yes, please share relevant information on the topics below:
The cases that were selected (specific type of procedure, specific country, specific profile, etc.):
 - The reasons for conducting the review and for the selected scope
 - The elements in the file that were analysed (contents of the 1st instance file, hearing recording/transcript, COI used, decision issued at the appeal instance, etc.)



- The main factors you identified as leading to variation in decision practices and outcomes, if any
 - Any lessons learned from the process of the review (methods that worked well, aspects that could be ameliorated, etc.)
 - If variation in practices was identified, follow-up measures taken to address them, if any
4. Have you noticed any specifics in the international protection cases which reach the appeal instance in your country, in particular from Afghanistan, Iraq, Nigeria, Somalia, and Syria (e.g. place of origin, ethno-religious background, common claims), which in your view impact recognition rates and lead to apparent variations? Please elaborate.
5. Are there landmark cases or other national (judicial) guidance that you apply or otherwise take into consideration in the examination of cases from Afghanistan, Iraq, Nigeria, Somalia and Syria at your national level?
6. In the examination of cases from the above-mentioned countries, do you take into account some other form of guidance (national or peer/coming from within the judicial body you work for)? If yes, please specify.
7. In the examination of cases from the above-mentioned countries, do you refer to COI reports published by the EUAA? If yes, please specify which.
8. In the examination of cases from the above-mentioned countries, do you take into account the EUAA common analysis and guidance notes (country guidance documents) and/or relevant country-specific UNHCR guidelines? If yes, please specify which.
9. Have you noticed that with regard to any particular topic or profile your current approach is different from the assessment put forward in the respective EUAA country guidance documents? If yes, please elaborate on how they differ.
10. In your practice, do you consult the EUAA judicial publications? If yes, please specify.
11. Do you find that established judicial procedures and/or jurisprudence in your country are generally in line with EUAA judicial publications? If not, please specify.
12. Are you aware of appeals against the application of the safe third country concept in your Member State? If known, please specify the most common outcome of such appeals.
13. Are you aware of appeals against the application of the safe country of origin concept in your Member State? Towards which countries of origin? If known, please specify the most common outcome of such appeals.
14. Are there any other specifics of your national system, either at first instance or at appeal level, which in your view may contribute to differences in recognition rates compared to other EU Member States? If yes, please specify.



15. Are you aware of diverging decisions on the same topic (related to international protection) within the judicial institution you currently work for or among courts at your national level? If yes, what do you believe is the reason behind their divergence?

Implementation of the pilot study on convergence

16. Would your national authority responsible for the appeal instance be available to take an **active part** in the pilot study on convergence? If unsure, please provide contact details of whomever might be able to provide an answer on behalf of your national authority.

17. Would it be possible for your national authority responsible for the appeal instance to contribute to this analysis by providing **case samples**?

18. In order to define meaningful case samples, the analysis needs to focus on comparable cases across different EU+ countries. In your opinion, what would be suitable profiles?

19. How many cases per profile would you consider a meaningful sample for your country at appeal level?

20. Do you have any additional comments regarding a potential case sample analysis of appeal decisions?

21. Are there any other tools that you would consider relevant to the convergence analysis project at appeal level (e.g. workshops, thematic surveys, interviews, etc.)?



Annex 9: Appeals case samples

The case sample analysis was an integral part of the pilot convergence analysis. It relied on the voluntary contributions from EU+ countries which were asked to submit at least 5 anonymised recent cases for each of the two selected profiles. Case samples were collected in June – July 2023.

Afghanistan: Hazara applicants

29 cases submitted by **AT** (6), **BE** (5), **CZ** (1), **DE** (6), **FR** (6) and **SE** (5), of which 18 were reviewed.

Syria: men between 18 and 42 years of age (in relation to draft evasion claims)

26 cases submitted by **AT** (7), **BE** (3), **DE** (7), **FR** (4) and **SE** (5), of which 23 were reviewed

Eventually, for the appeal instance the EUAA proceeded with the case sample analysis of 41 of the shared relevant cases. The cases were reviewed in July – August 2023 by EUAA experts on the basis of a case analysis tool developed for the first instance, which was adapted to the specifics of the appeal instance level and made the object of a consultation with the advisory group.

Finally, bilateral clarifications were asked with regard to some of the submitted cases.

For both groups, the case sample analysis tools collected some **meta data**, where available.

As a next step, the questions included in the analysis tool helped to **understand the cases**, their differences and similarities. Therefore, a general response was envisaged for each of the questions: Yes / No / Partially / Not applicable (N/A).

As a final step, the analysis considered each question in relation to **relevant EUAA guidance as a benchmark** of a common approach. The analysts were asked to indicate whether for each question, the examination of the case was as follows:

Not consistent with
EUAA approach
leading to different
outcome

Different approach
with similar
outcome

Consistent with
EUAA approach
and outcome

N/A

Furthermore, they were asked to identify the **elements which were central to outcome** of the case.

An overview of some of these aspects is provided below.



Afghanistan

Figure 77. Case sample analysis | Appeal | Afghanistan | Was this central to the outcome?

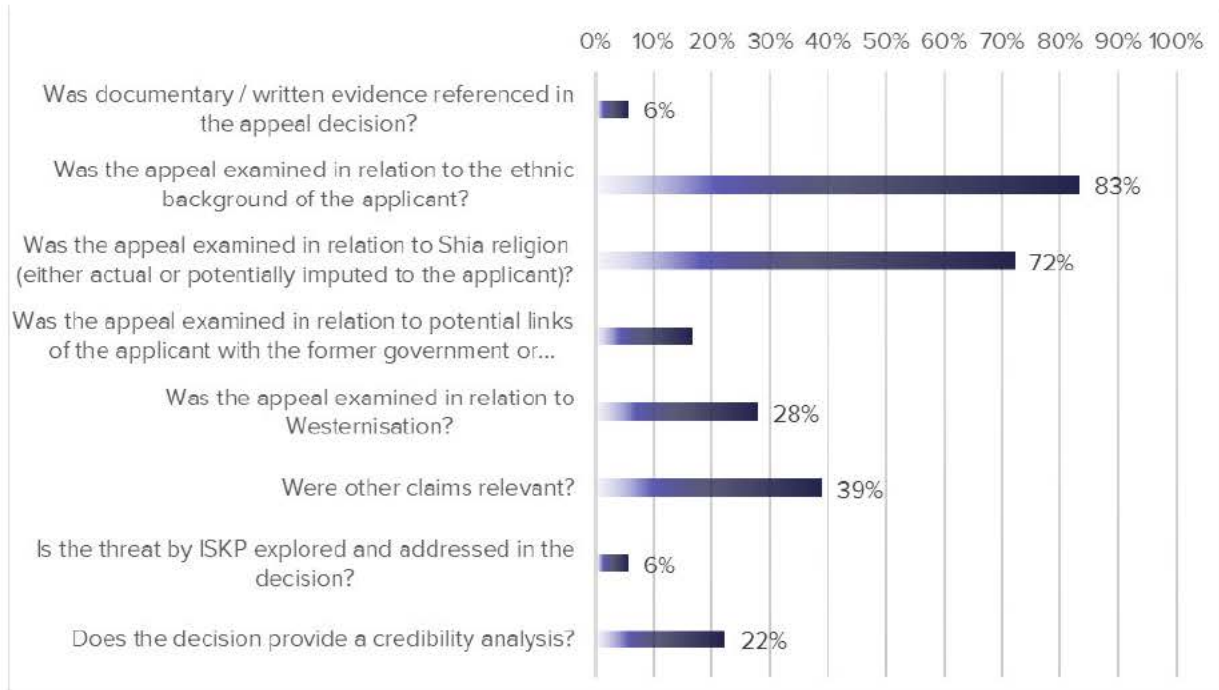
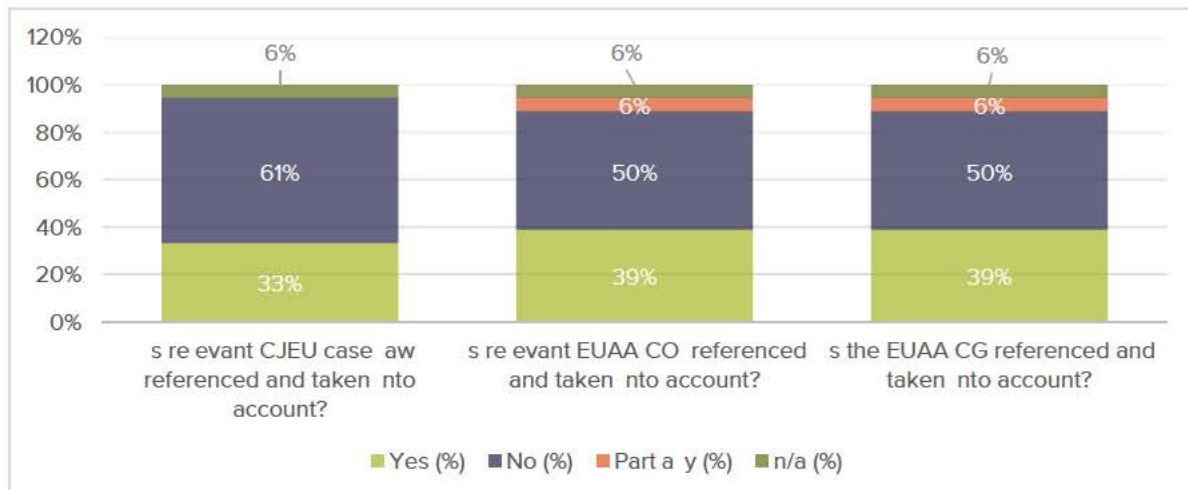


Figure 78. Case sample analysis | Appeal | Afghanistan | Focus on references to CJEU and EUAA products



Syria

Figure 79. Case sample analysis | Appeal | Syria | Was this central to the outcome?

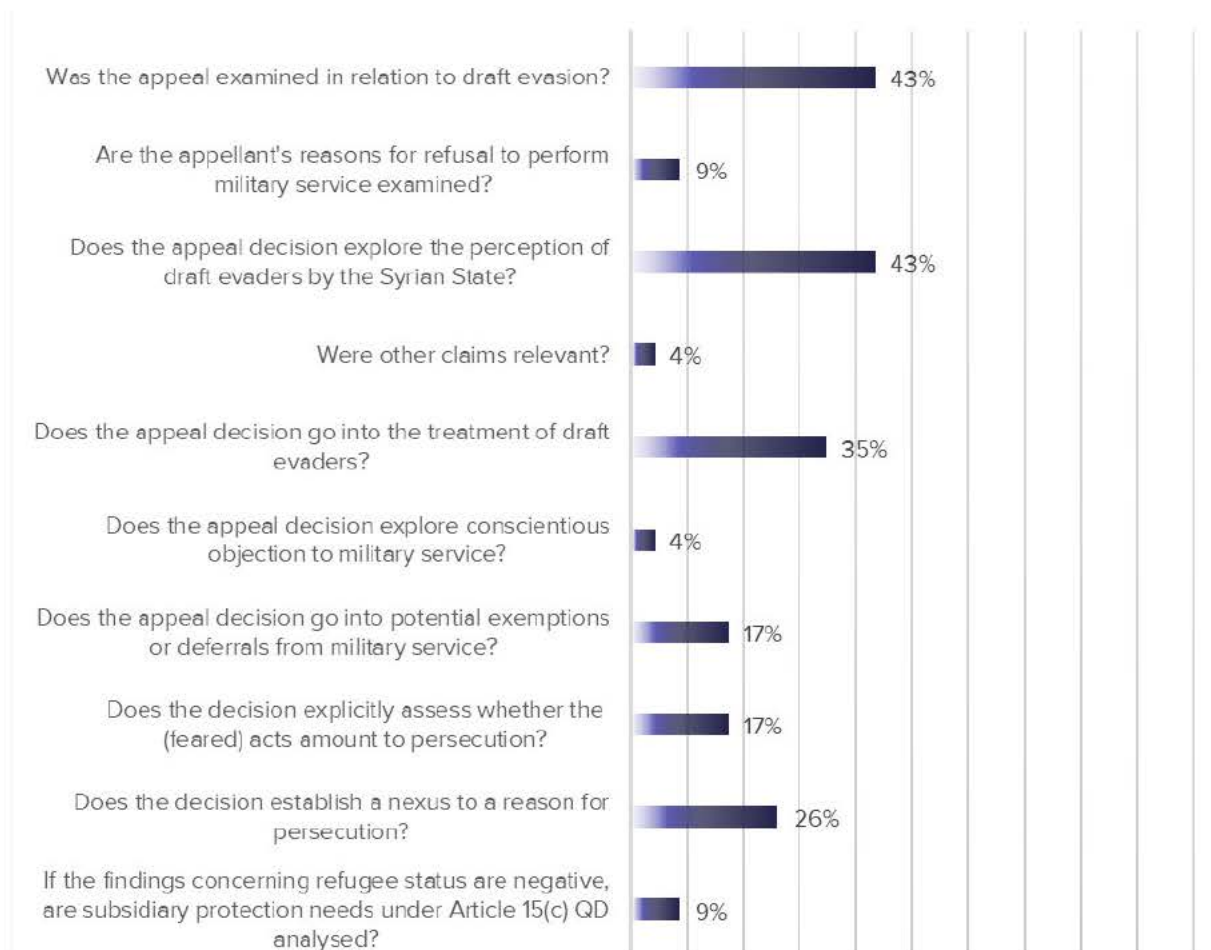
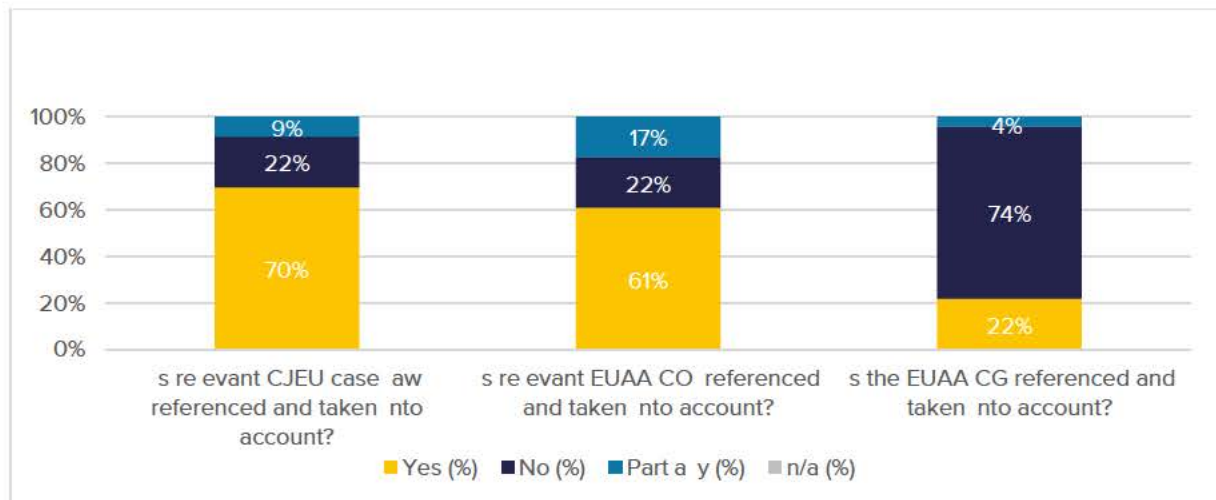


Figure 80. Case sample analysis | Appeal | Syria | Focus on references to CJEU and EUAA products





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