



EASO

The Implementation of Article 15(c) QD in EU Member States

EASO Practical Guides Series

July 2015



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Acronyms

AMISOM	African Union Mission in Somalia
CJEU	Court of Justice of the European Union
COI	Information on Countries of Origin
EASO	European Asylum Support Office
ECHR	European Court of Human Rights
EU	European Union
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
ICRC	International Committee of the Red Cross
IDPs	Internally Displaced Persons
ISIS	Islamic State of Iraq and the Levant
MS	EU Member States, plus Norway and Switzerland
QD	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)
UN	United Nations
UNAMA	UN Assistance Mission in Afghanistan
UNHCR	UN High Commissioner for Refugees

Introduction

Article 15(c) of the Directive 2011/95/EU (Qualification Directive, QD) is the provision where the most diverging interpretations and practices could be identified in the Member States (MS)¹.

Article 15(c) QD

Serious harm consists of serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

EASO has mapped the range of different interpretations and practices across the EU and strived to provide a common understanding of this key provision when addressing eligibility to international protection.

The information presented in this report has been provided by MS in the context of the EASO Quality Matrix initiative, of EASO Practical cooperation meetings as well as through a specific information gathering exercise conducted by EASO in the last quarter of 2014.

The content of the trend analysis is structured as follows:

- Part I presents an analysis of trends in MS' policy and practice in applying the core elements of Article 15(c) QD.
- Part II provides case studies MS' application of Article 15(c) QD for four countries of origin, for which the legal provision was found to be most relevant, namely on **Afghanistan, Iraq, Somalia** and **Syria**.

It is also to be noted that EASO has produced together with its network of members of courts and tribunals a judicial analysis of Article 15(c) QD and its related jurisprudence:

Article 15(C) Qualification Directive (2011/95/EU). A Judicial Analysis.²

With the purpose of supporting quality and harmonising (quasi-)judicial decisions made in asylum cases across the EU, and in line with the mandate contained in the founding Regulation, EASO provides training support for members of courts and tribunals in Member States and Associated Countries that includes the development and publication of professional development materials.

Article 15(c) Qualification Directive (2011/95/EU) - A Judicial Analysis, developed by a working group composed of court and tribunal members, is the first chapter of such materials created.

Its purpose is to put at the disposal of courts and tribunals dealing with international protection cases, a helpful tool for the understanding of protection issues, in this chapter, Article 15(c) QD. It provides the analysis of constituent elements of Article 15(c) and examines how the provision is to be applied in practice.

The analysis also includes a **compilation of key relevant jurisprudence** from European and national courts related to issues identified in the judicial analysis as an annex.

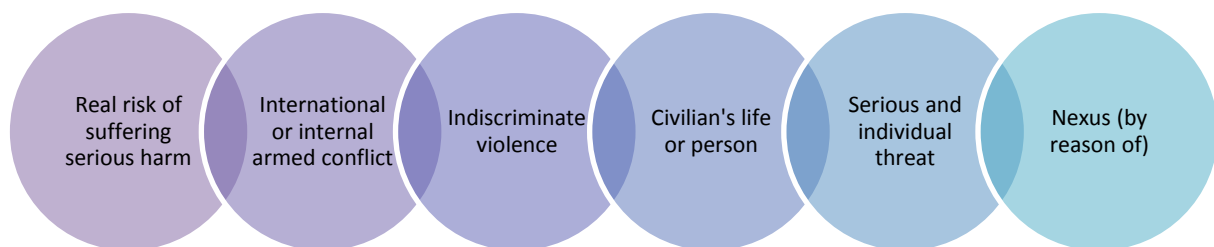
¹ For the purposes of the Report, the term Member States (MS) refers to 28 EU Member States, plus Norway and Switzerland.

² <http://easo.europa.eu/wp-content/uploads/Article-15c-Qualification-Directive-201195EU-A-judicial-analysis.pdf>

The Implementation of Article 15(c) QD in EU Member States

Part I: Trends in MS' policy and practice in applying the core elements of Article 15(c) QD³

Core elements of Article 15(c)



Real risk of suffering serious harm

Article 2(f) QD

'Person eligible for subsidiary protection' means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

The 'real risk' element determines the standard of proof required for eligibility for subsidiary protection. In other words, it denotes the degree of likelihood that the situation of indiscriminate violence will be one that gives rise to serious harm. The 'serious harm' element characterises the nature and intensity of interference with a person's rights; for that interference to be serious it must be of sufficient severity.⁴

MS in general rely on the QD definition, UNHCR guidelines and/or relevant jurisprudence and do not apply any specific interpretation for the elements of 'real risk' and 'serious harm'. Only four MS have developed specific guidelines on the interpretation of Article 15(c).

³ This Part of the Report is based on information provided by the MS within EASO Quality Matrix initiative, namely in the mapping on Eligibility and Evidence Assessment. The mapping process on Evidence Assessment took place in May and June 2013 and the key findings are summarised on the basis of responses from 25 MS (AT, BE, BG, CY, CZ, EE, EL, ES, FI, FR, DE, HU, IE, LV, LT, LU, MT, NL, NO, PL, RO, SI, SK, SE, UK). The mapping process on Eligibility took place from July to September 2013 and the key findings are summarised on the basis of responses from 22 MS (AT, BE, BG, CY, DE, EE, EL, FI, FR, HU, IE, LV, LT, LU, MT, NL, PL, RO, SI, SK, SE, UK). The findings were verified by MS in a follow-up verification process in accordance with the QM methodology.

⁴ Article 15(C) Qualification Directive (2011/95/EU). A Judicial Analysis. December 2014.

<http://easo.europa.eu/wp-content/uploads/Article-15c-Qualification-Directive-201195EU-A-judicial-analysis.pdf>

Some divergences in interpretations may result from certain differences in the transposition of the QD, such as in the following examples:



Internal or international armed conflict

MS in general do not apply any specific interpretation of the element of armed conflict or, in the case of four MS would rely on the definitions provided by International Humanitarian Law. It is still too early to assess the impact of the *Diakité* judgement from the Court of Justice of the European Union (CJEU)⁵ on the latter practice. The position of international organisations such as the UN or the ICRC regarding the nature of the conflict is also regularly taken into account.

Moreover, quantitative indicators based on objective facts and figures, such as number of casualties, are not perceived to be conclusive criteria by most national authorities.

In at least two MS, a formal assessment of the type of conflict is not required as focus is put on the level of violence rather on the nature of violence in order to apply Article 15(c) QD.

According to national policies, twelve MS may determine that an armed conflict is only taking place in parts of countries of origin. In this respect, they rely on relevant COI.

Indiscriminate violence

'Indiscriminate violence' refers to the source of the specific type of serious harm identified in Article 15(c). In its judgment in *Elgafaji* case, the CJEU has held that the term 'indiscriminate' implies that the violence 'may extend to people irrespective of their personal circumstances'⁶.

⁵ CJEU, judgment of 30 January 2014, case C-285/12, *Aboubacar Diakité v Commissaire général aux réfugiés et aux apatrides*. In this case the Court has held that: "[...] on a proper construction of Article 15(c) of Directive 2004/83, [...] an internal armed conflict exists, for the purposes of applying that provision, if a State's armed forces confront one or more armed groups or if two or more armed groups confront each other. **It is not necessary for that conflict to be categorised as 'armed conflict not of an international character' under international humanitarian law**; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict".

⁶ Case C-465/07, *Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie*, Judgment of the Grand Chamber of 17 February 2009. Op. cit., fn. 5, para 34.

The CJEU *Elgafaji* case was explicitly mentioned by several MS as providing an operational definition for the concept of 'indiscriminate violence'. Moreover a number of MS referred to the wording of the ruling when they specified that violence could be considered indiscriminate when the sole presence in the country would endanger a civilian. Finally, as a consequence of the CJEU *Elgafaji* ruling, some other MS assess the level of violence according to the classification low – moderate – high.

Most MS take specific indicators into consideration in order to assess the level of violence and/or its indiscriminate nature. Some MS specify that incidents or violence has to be 'conflict-related'. The indicators include, for example:

Security incidents

- number of security incidents
- type of security incidents
- intensity of security incidents (also in comparison with other parts of the country)
- frequency or persistence of security incidents
- localities or places where security incidents take place
- methods or weapons used (improvised explosive devices (IEDs), artillery, aerial bombings, heavy weapons)
- road security.

Victims of security violence

- widespread human rights violations
- targets of violent acts
- number of deaths
- number of injured
- civilian victims
- victims among security forces
- capacity/failure of security forces to protect.

Other:

- displacements
- situation of the returnees/ failed asylum seekers / internally displaced persons upon return
- freedom of movement
- voluntary returns
- access to basic services and other socio-economic indicators.
- inability of government to control the situation in the country and to protect its citizens, including minorities.

Numbers of violent incidents and number of casualties are often considered in the context of the total number of the population in an area (proportional level of violence/casualties).

Some MS have formally defined sets of indicators to be looked at together when assessing the level of violence and/or its indiscriminate nature. Following examples from practice may be presented:

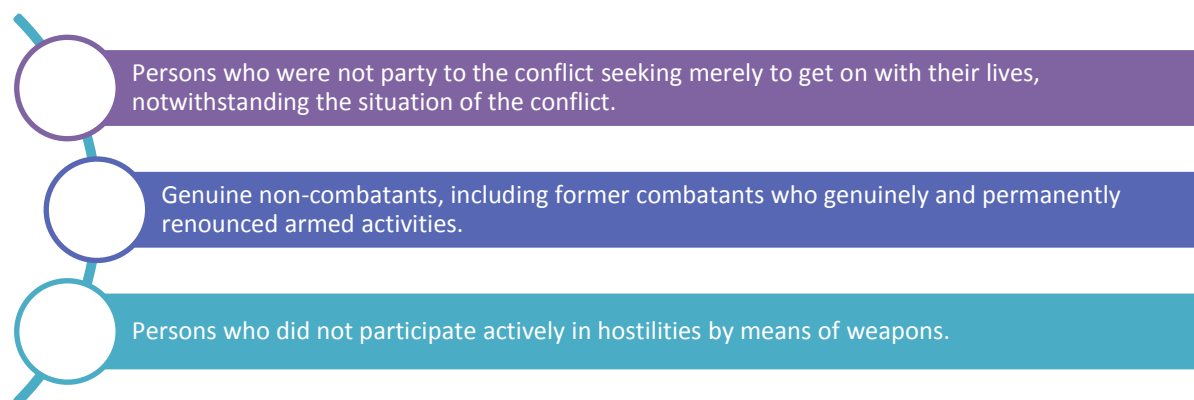
Example I	Example II	Example III
<ul style="list-style-type: none">•the number of civilian casualties•the number of incidents•the intensity of incidents•the parties in the conflict•the targets•the suicide attacks in city quarters•aerial bombardments, etc.	<ul style="list-style-type: none">•number of armed forces killed in the conflict•number of civilians killed in the conflict•number of people displaced• failure of state to action	<ul style="list-style-type: none">•attacks against military and civil objectives equally•use of weapons and fighting methods which put at risk the civilian population disproportionately•attacks on purpose against civilians

Civilian's life or person

While a limited number of MS provide specific formalised guidance (binding or non-binding) or non-formalised interpretation of the element, most MS do not provide any specific interpretation of who may qualify as a civilian or refer to International Humanitarian Law.

One MS did not incorporate the requirement that the beneficiary of subsidiary protection is a civilian into its national law.

The following general definitions may serve as examples of MS interpretations:

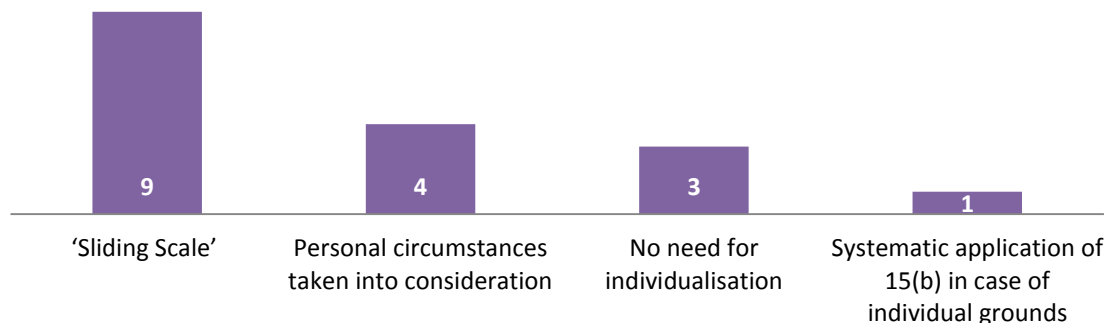


MS generally consider that being unarmed is an important but not determinative criterion. Role and tasks of an individual in the organisation, the question if he/she acted voluntarily or under duress as well as his/her attitude (i.e. neutrality in the conflict) should be explored and taken into consideration as well. The MS practices thus illustrate, that the issue of whether an applicant is a civilian or not requires a holistic approach and is closely connected to exclusion considerations.

Serious and individual threat

MS apply different interpretations of the correlation between the level of indiscriminate violence and the ability of an applicant to show that s/he is specifically affected by reason of factors particular to his/her personal circumstances. Therefore the issue of individualisation of the risk under Article 15(c) QD shows a wide spectrum of practices.

At least nine MS indicated that the *'Sliding Scale'* test provided by the CJEU *Elgafaji* ruling (the higher the level of violence the lesser individualisation is required) is used to assess the correlation. Some other MS take the personal circumstances into account when applying Article 15(c) QD, while a similar number of MS considers that there is no need for individualisation.



Nexus ('by reason of')

When mapping possible applications of the nexus (*'by reason of'*) between the harm and the indiscriminate violence in situations of armed conflicts, eleven MS provide for the possibility to take into account indirect effects of the conflict, such as situations where the threat does not come from a party to the conflict (e.g. violent crime resulting from the breakdown of law and order arising out of the conflict). In absence of a nexus, two MS reported that they would apply Article 15(b) QD.

Article 15(b) QD

Serious harm consists of torture or inhuman or degrading treatment or punishment of an applicant in the country of origin.

For the application of Article 15(b) QD in the case of a situation of indiscriminate violence, criteria were established by the ruling of the ECHR in the case of *Sufi and Elmi*⁷. They include parties to the conflict; methods; are civilians affected; number of civilians killed; geographical spreading of the violence.

In at least three MS there is a hierarchy within the Article 15 QD or at least a practice of going down the listed provisions. They would first (after considering Geneva Convention status) assess the need to grant protection based on provision (a), then (b) and finally (c). In at least two countries there is no such order or hierarchy and in one country Article 15(c) QD would be assessed first, based on the general situation in the region of origin.

Standard of proof in applying Article 15(c) QD

When assessing the elements of the application in relation to subsidiary protection, the most commonly applied standard with regard to subsidiary protection risk assessment is again 'reasonable degree of likelihood'.

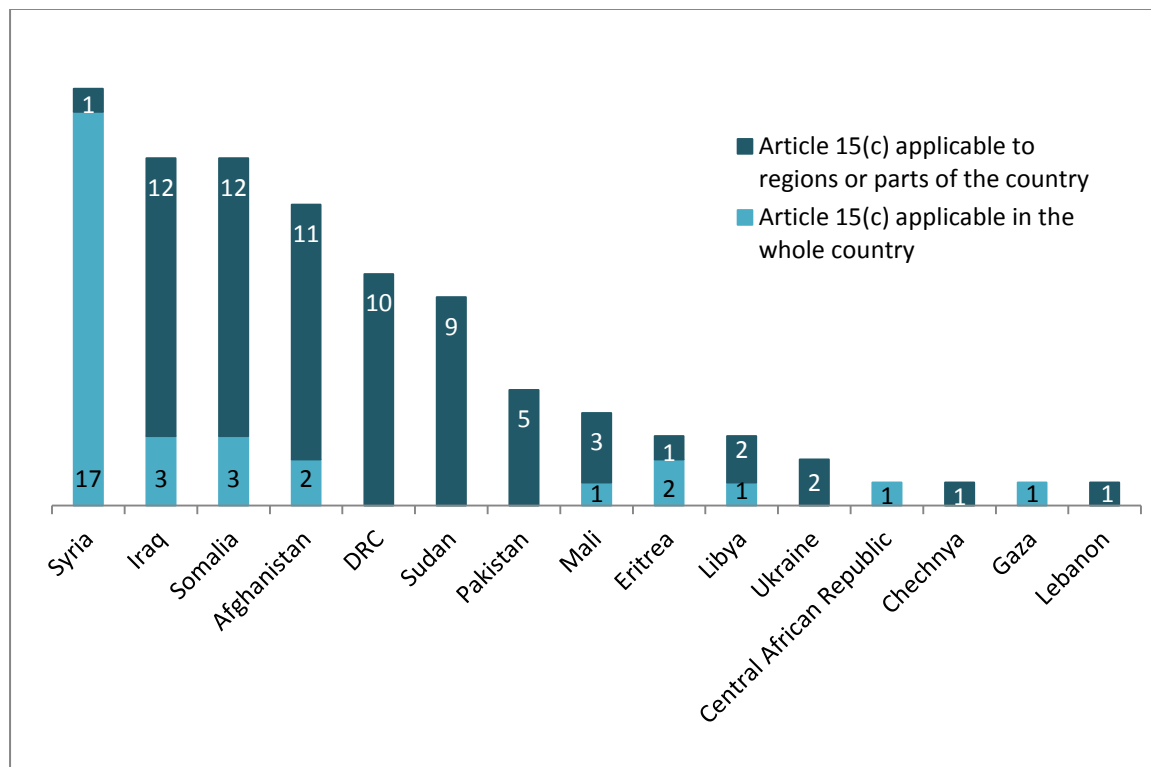
⁷ Judgement of the ECHR *Sufi and Elmi v the United Kingdom*, applications no 8319/07 and 11449/07, 28 June 2011.

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In relation to the application of Article 15(c) QD, the standard of proof may, due to the availability of objective COI, be lower than the standard applied to Article 15(a) and (b); and lesser than a 'reasonable degree of likelihood'.

Part II – Practical applications of Article 15(c) QD. Case studies⁸

The following table summarises the countries or region of origin for which Article 15(c) QD was found to be applicable in March 2015 by MS:

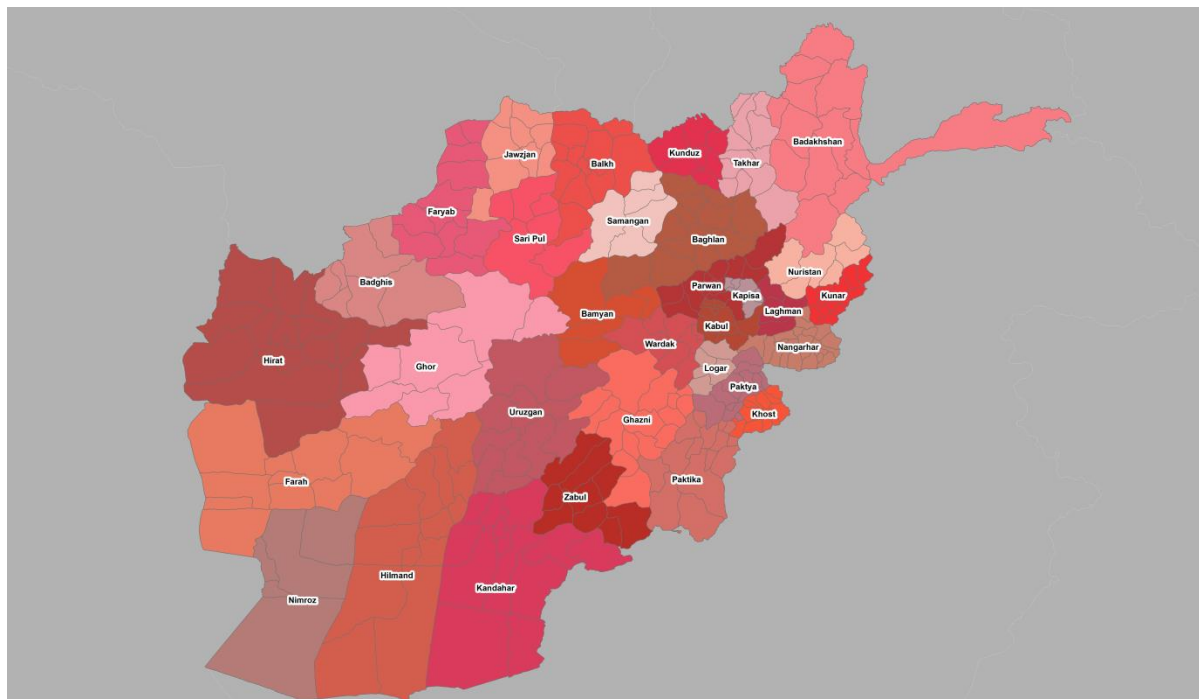


The following case studies provide more detailed information on application of Article 15(c) QD in the countries of origin, for which the legal provision was found to be most relevant:



⁸ This Part of the analysis is based on information provided during interviews conducted in November and December 2014 with officials from 17 MS (BE, CY, FI, FR, DE, EL, HU, IE, LU, MT, NL, NO, RO, SK, SI, SE, UK), responsible for decision or policy making on the practical application of Article 15(c) QD, and consequently verified by the MS. Country-specific information was also retrieved in relevant EASO Practical cooperation meetings and conferences, listed in the particular sections below.

Afghanistan⁹



In March 2015, two MS applied Article 15(c) QD for the whole territory of Afghanistan. Eleven MS considered Article 15(c) QD applicable for certain regions or parts of the country only, thus making a distinction between different regions, provinces or even areas within provinces. In this regard, the following regions and provinces were mentioned most often:

South



Kandahar

Hilmand

South-East



Khost

Ghazni

East



Kunar

Situation of international or internal armed conflict

At the end of 2014, all interviewed MS assessed the situation in Afghanistan as a **situation of armed conflict**.

Fourteen MS considered the situation as an **internal armed conflict**. The perception of its extension however differed: whereas four MS considered the internal armed conflict to take place in the whole

⁹ This chapter is also based on information provided in the framework of *Conference on Afghanistan – Country of Origin Information and Beyond*, organised by EASO in Malta on 8 and 9 November 2012 and in the *Practical Cooperation Meeting on Afghanistan*, organised in Brussels on 18 and 19 March 2015 with participation of 19 MS and UNHCR.

territory, four other only considered it to take place in some parts of the country, mainly in the regions South, South-East and East.

At least two MS considered the situation also to be an **international armed conflict**. The main elements for this consideration were the following:

Internal armed conflict	International armed conflict
<ul style="list-style-type: none">• Fighting between the security forces and organised armed groups• Fighting among the armed groups• Violence not occurring randomly or occasionally	<ul style="list-style-type: none">• The international military intervention• The role of Pakistan

Indiscriminate violence

In order to assess level of violence and/or its indiscriminate nature, following indicators are considered particularly relevant in the case of Afghanistan¹⁰:

- Government presence, including security forces, and control over the territory;
- Accessibility of an area, including road security and access to airports;
- The impact of the violence on the daily life of the population, including indirect effects, such as limited access to health care and education and/or restrictions on women's participation in public life (on the condition that the indiscriminate violence was the effective cause that triggered them).

Long-lasting effects of decades of war in Afghanistan, hampered economic development and living standards and consequent negative outlook or prospect for the future are taken into consideration as well, especially in comparison with situations in other parts of the world (e.g. Iraq and Syria).

Some MS compare the level of violence and/or its indiscriminate nature with previous periods and/or with other regions or provinces in Afghanistan. Thus, provincial or district capitals, especially some main urban centres (Kabul, Mazar-e Sharif, Hirat, Ghazni), are usually considered to be safer than other areas. However, it has to be noted, that areas with less security incidents can also reflect a retreat or absence of security forces.

Examples from MS practice: Situation of armed conflict	
Ghazni	In March 2015, a district in the province of Ghazni was generally considered stable. One MS however applied Article 15(c) QD solely because of the insecurity of the only access road that would have to

¹⁰ Important sources of information include UNAMA, UNHCR, UN Special Rapporteur on Afghanistan, Global Intake's security ratings and the EASO COI report on the security situation in Afghanistan (<https://easo.europa.eu/wp-content/uploads/Afghanistan-security-situation-EN.pdf>).

	be used by people returning to that district.
Nuristan	Although there were not many violent incidents documented for the province of Nuristan itself, the conflict and general situation of indiscriminate violence in Afghanistan allowed the insurgents to take full control of the remote and mountainous territory of the province. Consequently, human rights violations became widespread and access to basic services limited. These elements were decisive in one MS for providing protection based on Article 15(c) QD to all Afghans originating from Nuristan, without the requirement of establishing individual elements to support the claim of a real risk to suffer serious harm from indiscriminate violence.

Serious and individual threat

In March 2015, two MS assessed the level of violence as sufficiently high for a civilian to face a real risk of serious harm **solely by being present** in the territory of Afghanistan. Eight MS consider that this is the case in certain most volatile regions, provinces or districts in Afghanistan only. For six MS the level of violence was nowhere in Afghanistan sufficiently high for such conclusion, two of them clarifying that only an exceptional situation would qualify for this, meaning the most extreme situation of violence.

Elements leading to the conclusion that such threshold was not met include:

- armed conflict not being durable and widespread;
- incidents happening with low frequency; occasional fighting;
- government or groups controlling the territory in a durable way;
- the violence being more concentrated in areas and more targeted (such as on troops, supporters of government, foreigners, etc.) and not very indiscriminate in its intention;
- number of victims and IDPs not being so high, compared to other conflicts (e.g. Iraq and Syria).

Example from MS practice: Kabul City

<p>MS A:</p> <p>The threat by indiscriminate violence is not serious enough to apply Article 15(c) QD</p>	<p>MS B:</p> <p>The threat by indiscriminate violence is serious enough to apply Article 15(c) QD</p>
<ul style="list-style-type: none"> •Kabul is a very big city, which grew a lot over the past ten years and has high population numbers and where the assassinations are mostly targeted and where a large number of security services is present. 	<ul style="list-style-type: none"> •Kabul is a city characterised by: <ul style="list-style-type: none"> •persistent armed conflict and presence of international armed forces; •instable security situation and inability of Afghan security forces to control the area, so that individual security of every citizen cannot be guaranteed; •targeted assassinations and attacks aim not only military, but also civilians; •lack of effective and qualified police, low infrastructure and information techniques, all having an influence on the criminal proceedings.

In most MS, the application of Article 15(c) QD would therefore require individualisation of the serious threat, thereby applying the 'sliding scale' from the *Elgafaji* ruling of the CJEU. Individual circumstances or indicators that can increase the risk include:

- **being a vulnerable persons** (e.g. unaccompanied minors, single women, etc.);
- **belonging to a specific group or occupation** (e.g. persons working for a foreign organisations);
- **living and/or working in a region and neighbourhood** which is, for example:
 - in the proximity of the line of fire;
 - in the proximity of government buildings (e.g. police stations) which are likely to be a target of insurgents;
 - in the proximity of a road or public places that are targeted by attacks and explosions (such as markets, etc.).

Examples from MS practice: Persons belonging to specific occupation

Example 1: A teacher

- A teacher working in a school in Afghanistan might fall under the scope of Article 15(c) QD, because schools are targeted, but the teachers as such not.

Example 2: A truck driver

- A truck driver might be eligible for protection based on Article 15(c) QD, due to the road insecurity on different highways in Afghanistan.

Example 3: A taxi driver in Kabul

- Taxi driver in Kabul might be exposed on a daily basis to road insecurity and dangerous places (e.g. hotels, government buildings, etc.). On the other hand, driving by dangerous points does not constitute a continuous threat, compared to living in in close proximity of such places. Taxis, alike military and high profile vehicles are not a direct target of insurgents.
- Taxi drivers has a choice as to which customers and which routes/places/times to choose in order to avoid exposure. Moreover, they can also quit the job in order to avoid exposure, as in a city like Kabul, it is not to have different means of access to livelihood.

Geographical classifications of the threat

In March 2015, six MS mentioned to have a (two- or three-level) classification system of the threat in regions, provinces or districts in Afghanistan. Most of the MS made this assessment on the provincial level, except for one MS that distinguishes the situation in Ghazni province on district level.^{*11} In one other MS, such classification is currently being developed. For people originating from areas

¹¹ High risk for following districts: districts of Nawa, Andar, Qarabagh, Giro, Ab Band, Muqur, Waghaz, Gilan, Zana Khan, Rashidan, Wali Muhammadi Shahid, Dih Yak and Ajristan.

classified in the highest levels, either no or lesser individualisation of the threat is required, depending on the policy of the respective MS.

Example from MS practice: Three-level classification system of indiscriminate violence

Highest level	Intermediate level	Lowest level
<ul style="list-style-type: none">• A civilian is at risk solely by his presence on the territory and there is no need to establish individual elements. <p>Examples of provinces: Kandahar Helmand Khost Kunar Nangarhar Uruzgan Paktika Ghazni*</p>	<ul style="list-style-type: none">• Individual elements need to be established to support the claim of an individual and serious threat. <p>Examples of provinces: Laghman Parwan Badghis</p>	<ul style="list-style-type: none">• Even individual elements cannot lead to granting SP based on Article 15(c) QD, because the general situation of indiscriminate violence is not severe enough <p>Examples of provinces: Bamyan Daykundi Panshjir Samangan</p>

Example 1: Kandahar province

In March 2015, Kandahar was classified as the highest level of indiscriminate violence for at least six MS due to the following elements:

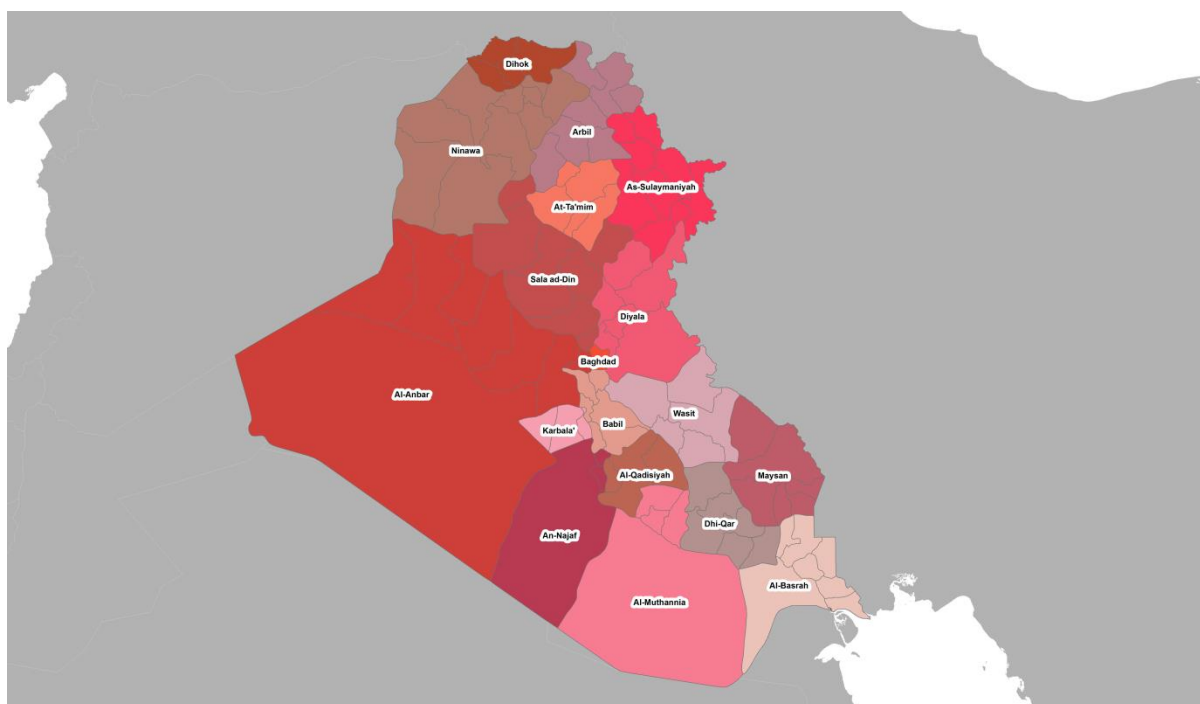
- Taliban stronghold
- Open combat
- High numbers of civilian casualties
- Indiscriminate and less targeted violence .

Example 2: Kabul City

In March 2015, no MS assessed Kabul City as an area of the highest level of indiscriminate violence due to following reasons:

- very large city with a high number of inhabitants
- mainly targeted violence
- better prospects for future
- government control of the city
- presence of high number of security forces.

Iraq¹²



In March 2015, three MS applied Article 15(c) QD for the whole territory of Iraq. Twelve MS considered Article 15(c) QD applicable for certain regions or parts of the country only, thus making a distinction between different regions, provinces or even areas within provinces. In this regard, the following central and northern areas were explicitly mentioned: Al-Anbar, Baghdad, Sala ad-Din, Ninawa (Mosul), Diyala, At-Ta'mim (Kirkuk) and Babil and other regions of Iraq that are (at the time of writing) under control of the Islamic State of Iraq and the Levant (ISIS).

Situation of international or internal armed conflict

In the beginning of 2014, three MS assessed the situation on the whole territory of Iraq as a situation of **internal armed conflict**. One other MS considered the internal conflict to take place in the some parts of the country only, namely the governorates of Baghdad, Al-Anbar, Sala ad-Din, At-Ta'mim (Kirkuk), Ninawa (Mosul) and Diyala. Two MS explicitly mentioned they did not consider the situation in Iraq to be an armed conflict.

At the end of 2014, five MS identified the situation in the whole territory of Iraq as an internal armed conflict. One MS considered it to be both an internal and international armed conflict at the same time. Eight MS considered the internal conflict to take place in some parts of the country only, namely the governorates of Baghdad, Al-Anbar, Sala ad-Din, At-Ta'mim (Kirkuk), Ninawa (Mosul) and Diyala.

¹² This chapter is also based on information provided in the framework of *EASO Practical Cooperation meeting on Iraq*, held in Malta on 23 and 24 January 2014.

Examples from MS practice: Situation of armed conflict	
Kurdish autonomous region	Only one of the eight MS considered the situation in the three autonomous Kurdish governorates (Dihok, Arbil and As-Sulaymaniyah) to be an internal armed conflict. The remaining others excluded this region.
Southern governorates	Six MS excluded the situation in the southern governorates (An-Najaf, Al-Muthannia, Al-Basrah, Dhi-Qar, Maysan, Wasit, Babil, Karbala', Al-Qadisiyah) from the qualification of an armed conflict. However, for one MS, the situation in governorate Babil qualified as an armed conflict.
Baghdad	One of the eight MS excluded the situation in Baghdad from the definition of armed conflict.

The following table indicates which indicators of armed conflict were considered as the most relevant for the situation on Iraq:

Indicators of Armed Conflict	Very Relevant	Relevant	Not Relevant
Belligerent parties			
Ideologies and pursued goals	2	4	4
Hierarchy/leadership	4	4	2
Number of combatants	3	7	1
Structure		8	3
Political wing/military wing	2	7	1
Discipline	2	4	4
Military police		8	3
Actions: types, coordination	6	4	
Weaponry and tactics used	5	5	1
External support	2	6	2
Positions/control/occupied territories	10	1	
Violent incidents			
Urban combat	6	4	
Bombardments	9	2	
Guerrilla	8	2	1
Siege	7	4	
'Terre brûlée'	8	1	1
Snipers	7	2	1
Death squads	7	4	
Direct attacks on civilians	10	1	
Attacks in public places	9	1	

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Attacks on civilian leaders	8	2	
Lootings	3	6	1
Terrorism	6	2	1
Severity of the incidents	10	1	
Frequency of the incidents	10	1	
Continuity of the incidents	10	1	
Localities and timing	9	2	
Arms used			
Conventional or classic	5	5	1
Non-conventional	5	5	1
Targets			
Civilians	9	1	
Combatants	1	7	2
Residential or mixed zones	6	2	
Humanitarian organisations	3	4	1
Victims			
Victims and wounded (civilians and combatants)	10	1	
Use of child soldiers	6	3	1
Displacements	7	4	
Conflict			
Point of view of the UN Security Council	4	7	
Length and evolution of the conflict	8	3	
Stable or permanent evolution	9	2	

Indiscriminate violence

In order to assess level of violence and/or its indiscriminate nature, following indicators are considered particularly relevant in the case of Iraq:

Indicators of Indiscriminate Violence	Very Relevant	Relevant	Not Relevant
Nature of the violent incidents			
Urban combat	5	4	
Bombardments	8	2	
Guerrilla	7	2	1
Siege	6	3	1
'Terre brûlée'	8	1	1
Snipers	6	3	1

Death squads	7	2	1
Direct attacks on civilians	9	1	
Attacks in public places	9	1	
Attacks on civilian leaders	6	4	
Lootings	4	5	1
Terrorism	6	3	
Arms used			
Conventional or classic	5	4	1
Non-conventional (mass destruction, chemical...)	5	4	1
Targets			
Civilians	8	2	
Combatants		7	2
Residential or mixed zones	8	1	1
Humanitarian organisations	3	7	
Civilian victims			
Number (deaths and wounded)	7	3	
Tendency (increase or decrease)	7	3	
Region	7	3	
Civilians directly targeted or collateral damage	8	2	
Circumstances in which they were victims	7	2	1
Displacement			
Concerned populations	6	4	
Number of IDPs	5	4	1
Number of refugees	6	3	1
Areas of refuge	5	4	1
Voluntary returns	3	6	1

For certain MS the activities of ISIS, causing constant fighting and shelling, displacements and civilian victims, were considered as an important indicator.

Serious and individual threat

Example from MS practice: Baghdad

In 2014, there was an increase of the number of incidents in the city. The acts of violence aimed at creating the atmosphere of fear, by targeting places where a lot of civilians were present. Due to the increased number of blockades by the army, people became locked up in their respective quarters, which has a large impact on the socio-economic life of the city.

Individual elements that would increase the risk may include living in a quarter of Baghdad and commuting to the market for livelihood (compared to living in a green zone).

The Implementation of Article 15(c) QD in EU Member States

In January 2014, three MS considered that the level of indiscriminate violence reached in some central governorates of Iraq the threshold for a civilian to face a real risk solely or merely by their presence in the territory. Five other MS required that the serious threat to harm by indiscriminate violence would be individualised or established by individual elements in the case. One MS explicitly confirmed that the level of violence was not sufficient to be assessed as an exceptional situation of indiscriminate violence in terms of Article 15(c) QD.

In December 2014, only one MS assessed the level of violence as sufficiently high for a civilian to face a real risk of serious harm solely by being present in the whole territory of Iraq, thus no individual elements need to be established while eight MS considered that this is the case in certain governorates of Iraq only.

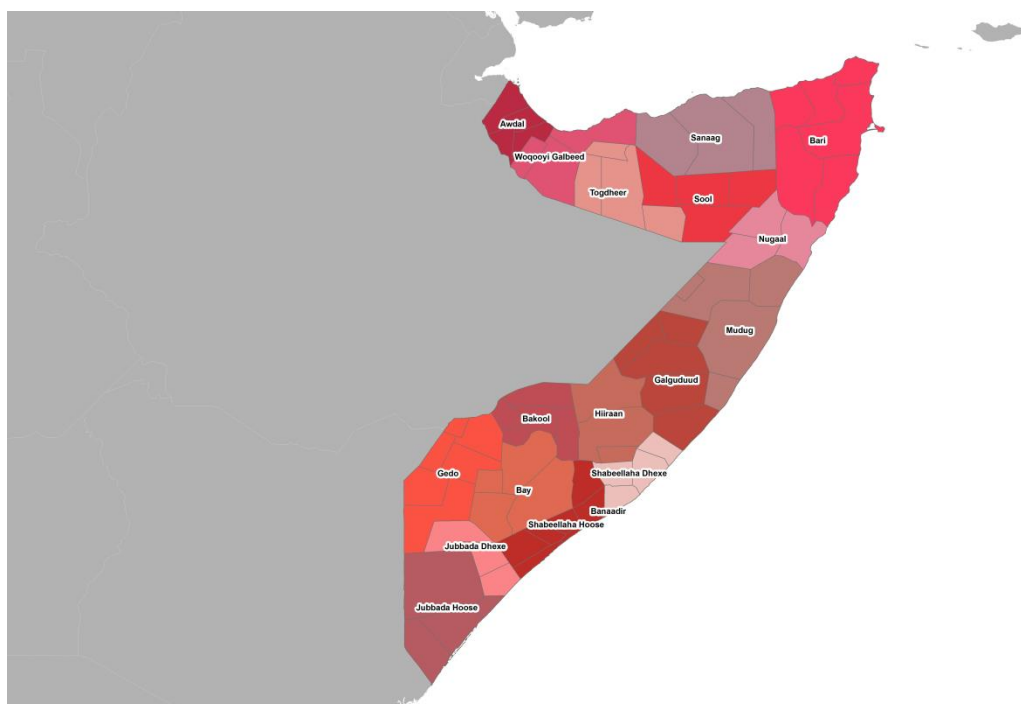
For other governorates, MS require individualisation of the serious threat, which would lead to the application of Article 15(c), thereby applying the 'sliding scale' from the *Elgafaji* ruling of the CJEU. For one MS, the level of violence was nowhere in Iraq sufficiently high for reaching such conclusion.

None of the MS decided to apply subsidiary protection based on Article 15(c) QD for the regions controlled by the Kurds.

Governorates of Iraq, for which the threshold for a civilian to face a real risk solely or merely by their presence in the territory was reached

	January 2014	December 2014
Baghdad	3 MS	4 MS
Sala ad-Din	3 MS	2 MS
Diyala	3 MS	3 MS
Ninawa (Mosul)	2 MS	3 MS
Al-Anbar	2MS + 1 MS suspended decisions	3 MS
At-Ta'mim (Kirkuk)	1 MS	5 MS
Southern provinces (Babil)	1 MS	1 MS

Somalia



In March 2015, three MS applied Article 15(c) QD for the whole territory of Somalia. Thirteen MS considered Article 15(c) QD applicable for certain regions or parts of the country only, thus making a distinction between different regions, provinces or even areas within provinces. In this regard, the region of South and Central Somalia, including Mogadishu, were explicitly mentioned.

Situation of international or internal armed conflict

At the end of 2014, at least fourteen MS assessed the situation in South and Central Somalia as a **situation of internal armed conflict**, eleven of them considering it to take place in the whole territory of South and Central Somalia.

The main elements for this consideration were the following:

- the actions of Al-Shabaab in a large part of the country;
- government having lost control of the situation;
- inability of the government to protect people.

Examples from MS practice: Situation of armed conflict

Mogadishu	One MS considered the situation to be an internal armed conflict in Mogadishu only. On contrary, two others MS considered it to be the the case for all other parts of South and Central Somalia, except for Mogadishu.
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Two MS considered the situation in South and Central Somalia also to be an international armed conflict. For one MS, situation of internal and international armed conflict may also be considered for some limited territories of the autonomous regions of Somaliland and Puntland near the borders.

Indiscriminate violence

According to certain MS, Somalia may be considered as a perfect example of a situation where the assessment of the notion of ‘armed conflict’ is only secondary to the assessment of the notions of ‘indiscriminate violence’ and ‘real risk’, taking into account the dramatic impact of the violence on civilian’s lives.

Assessing the level of violence and/or its indiscriminate nature, the element of ‘prolonged conflict’ appeared to be particularly important in the case of Somalia. Especially in Mogadishu, the warfare was considered to be widespread and prolonged. In other regions outside Mogadishu, the violence was found to be more ad hoc and sporadic.

Another important element for assessment are the long-lasting effects of the conflict in which the indiscriminate violence have been absolutely devastating for a number of years already, without any prospect of recovery in the near or distant future. Even though certain developments were noticed in the security situation in Mogadishu, they are generally not considered to be sufficiently sustainable to change the policy.

There are differences among MS in assessing the level of violence in the regions of Somalia. The following examples provide sets of indicators that, in the one MS led to the conclusion that the level of violence in Somalia is not so high and in the other country that the level is (at least in some regions) very high:

Example 1 Set of indicators for assessment of low level of violence	Example 2 Set of indicators for assessment of high level of violence
<ul style="list-style-type: none">• the security situation in areas under Al Shabaab control is relatively stable;•clashes occur seldom;•the violence in larger cities is targeted and civilians are not much affected;•however, there are still human rights violations, high level of criminality and humanitarian situation of concern.	<ul style="list-style-type: none">• chronic strikes;• roadside and car bombs;• terror attacks,•limited ability of the government and the army to provide security;•human rights violations also from the side of government

Other indicators relevant for assessment of the level of violence and/or its indiscriminate nature in Somalia include:

- Control over the territory (by Somali or African security forces) and ability to ensure public order and security of the civilian population;

- Ongoing asymmetric warfare and armed attacks against the African Union Mission in Somalia (AMISOM) and the Somali National Army and their frequency (almost on weekly basis);
- Security incidents (such as guerrilla and terrorist tactics by Al-Shabaab and/or crossfire between government forces and Al-Shabaab, bombings etc.), which often resulted in civilian casualties.

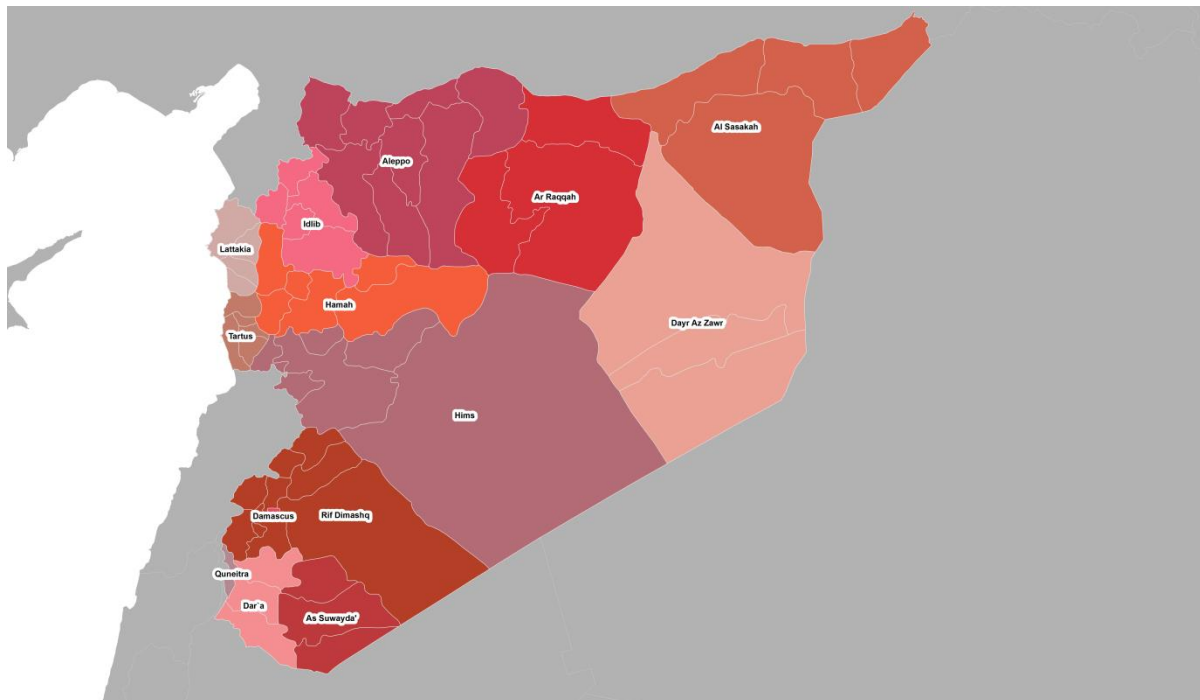
Serious and individual threat

Example I	Example II
<ul style="list-style-type: none">• In Mogadishu, the level of violence is considered to be sufficiently high for a civilian to face a real risk of serious harm solely by being present in the territory.• For the rest of South and Central Somalia the situation is assessed as not reaching a sufficient high level of violence. However, applicants have to be able to return from Mogadishu to their region of origin. As the roads are considered unsafe, subsidiary protection is granted based on 15(c) QD for all people coming from South and Central Somalia due to this.	<ul style="list-style-type: none">• The level of violence is not considered to be sufficiently high for a civilian to face a real risk of serious harm solely by being present in the territory. Individual circumstances therefore have to be considered.

Individual circumstances or indicators that can increase the risk of serious and individual threat may include:

- Travel by land across southern and central Somalia to a home area or proposed place of relocation (risk from from Al Shabaab checkpoints);
- Women travelling without male relatives (risk of sexual violence);
- Persons belonging to a minority clan who have no clan or family support, are not receiving remittances from abroad and have no real prospect of securing access to a livelihood in Mogadishu apart from makeshift accommodation within an internally displaced persons (IDP) camp, where there is a real possibility of having to live in conditions that fall below acceptable humanitarian standards;
- Persons with no recent experience of living in Somalia returning to, or travelling through, areas in south and central Somalia outside of Mogadishu controlled by Al Shabaab (risk of persecution based on actual or imputed religious or political opinion).

Syria¹³



In March 2015, seventeen MS applied Article 15(c) QD for the whole territory of Syria. Only one MS considered Article 15(c) QD applicable for certain regions or parts of the country only.

Situation of international or internal armed conflict

The recognition rate for subsidiary protection based on Article 15 QD significantly increased already before the UN and the ICRC officially declared that the situation in Syria was a civil war or armed conflict (June – July 2012). This means that MS did not wait for the main relevant international organisations to define the situation, but based their interpretation of the situation on their own analysis.

At the end of 2014, thirteen MS considered the situation in the whole territory of Syria to be an internal armed conflict (four MS did not make this assessment, because other protection considerations were prevalent over the subsidiary protection based on Article 15(c) QD).

Indiscriminate violence

In order to assess level of violence and/or its indiscriminate nature, the following indicators are considered particularly relevant in the case of Syria:

- ongoing civil war;
- security situation, involving fights, conflict and high rate of violence;

¹³ This chapter is also based on information provided in the framework of *EASO Practical Cooperation Meeting on Syria*, organised in Malta on 29 April 2013 with participation of 17 MS participated, and from *Practical Cooperation Workshop on Syria*, held in June 2012, in which participated 21 MS and the USA.

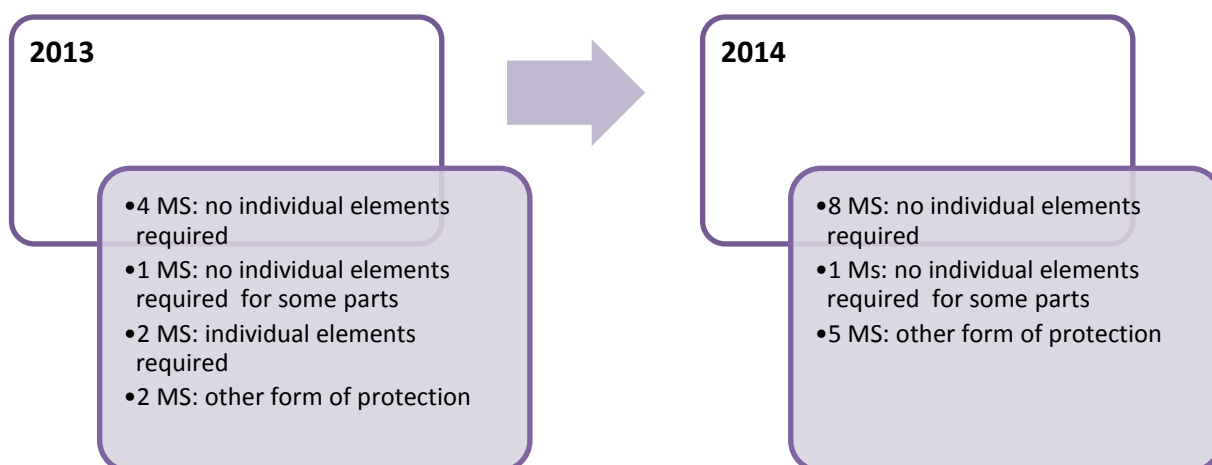
- indiscriminate attacks (air bombing, artillery strikes, etc.) by the Syrian army, armed and/or radical groups;
- number of people who have fled Syria and internally displaced;
- presence and activities of ISIS;
- violation of International Humanitarian Law.

Serious and individual threat

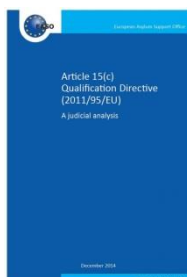
Since the start of the uprising in Syria in early 2011 onwards, during the development of the situation into a larger scale conflict, at least six MS had suspended decisions of Syrian applicants in order to be able to collect COI, see how the situation evolved, revise its policy or develop internal guidelines.

In April 2013, it became clear that due to the intensification of the violence in Syria the recognition rate for subsidiary protection based on Article 15 QD increased. In at least four MS, subsidiary protection based on Article 15(c) was granted to all Syrian applicants without requiring individual elements to be established. One MS considered that the level of indiscriminate violence reached the threshold in some regions of Syria only, namely in provinces Idlib, Aleppo, Rif Dimashq, Deir Az Zohr, Hama and Homs. At least two MS required individual elements to be established in case of every Syrian applicant. In at least two MS this consideration was not made because other protection considerations (protection based on art. 15(b) QD or the Geneva Convention refugee status) were prevalent.

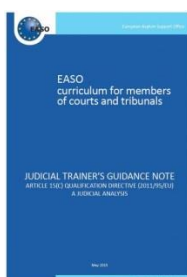
At the end of 2014, at least eight MS considered that the level of indiscriminate violence in the whole territory of Syria had reached the threshold for a civilian to face a real risk solely or merely by their presence in the territory. For one MS this was the case in the main cities of Syria and in fighting areas only, whereas in other areas, individual elements would be required. In at least five other MS this consideration was not made because other protection considerations (protection based on Article 15(b) QD or the Geneva Convention refugee status) were prevalent.



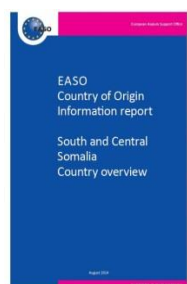
List of relevant EASO publications



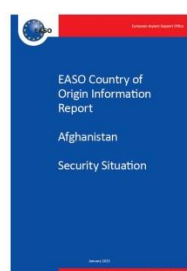
Article 15(c) Qualification Directive (2011/95/EU) – A judicial analysis (December 2014). The purpose of this judicial analysis is to put at the disposal of courts and tribunals dealing with international protection cases, a helpful tool for the understanding of protection issues, in this chapter, Article 15(c) of the Qualification Directive (QD).
[\[DE\]](#) [\[EN\]](#) [\[ES\]](#) [\[FR\]](#) [\[IT\]](#)



Article 15(c) Qualification Directive: Judicial Trainer's Guidance Note (May 2015). The European Asylum Support Office (EASO) published a Judicial Trainer's Guidance Note to support the consistent and coherent use of the Judicial Analysis on the same topic. The Guidance Note should be read and understood in conjunction with the Judicial Analysis. It introduces the objectives and aims of the professional development sessions to potential national Judicial Trainers as well as illustrating some tools at their disposal when conducting an efficient professional development meeting. It also suggests different practical case examples or scenarios that may be used.
[\[EN\]](#)



COI Report: South and Central Somalia Country overview (August 2014). The Somalia report aims to provide information to support COI researchers; first and second instance decision makers; and policymakers active in the national procedures for the assessment of asylum applications from Somali nationals. Topics covered in the report include: general country information, the clan system and ethnic groups, the security situation, Al Shabaab, Human Rights, migration, mobility, and displacement.
[\[EN\]](#)



COI Report: Afghanistan: Security Situation (January 2015). The report provides a comprehensive overview of the security situation in Afghanistan, and provides information relevant for the protection status determination of Afghan asylum seekers. Amongst other things, the report reveals that armed insurgent groups, such as the Taliban and Hezb-e Islami Afghanistan, have increasingly conducted large scale attacks on the Afghan National Security Forces (ANSF).
[\[EN\]](#)



COI Report: Insurgent strategies. Intimidation and targeted violence against Afghans (December 2012). This is a second EASO COI report on Afghanistan dealing with insurgent strategies. The topic of this report is intimidation and targeted violence against Afghans' perceived as enemies by Taliban.
[\[DE\]](#) [\[EN\]](#) [\[ES\]](#) [\[FR\]](#) [\[IT\]](#)



COI Report: Afghanistan: Taliban Strategies Recruitment (July 2012). The report gives an overview of the historical developments leading to the current situation in Afghanistan. It describes the organisation of the Taliban, its structures and modus operandi. It discusses insurgent group recruitment in detail and, where possible, with a regional approach.

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