Ad-Hoc Query on Réfugié sur Place

Requested by BE EMN NCP on 12th May 2010

Compilation produced on 1st July 2010

Responses from Belgium, Czech Republic, Finland, Germany, Hungary, Latvia, Lithuania, Malta, Poland, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom (14 in Total)

Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

1. Background Information

In 2004, the EU adopted a directive on the minimum standards relating to the qualification of third country nationals as beneficiaries of international protection, the Qualification Directive. For the first time in history, the concept of Réfugié Sur Place was mentioned in a legal text providing international protection, notably in the article 5. Not only was the concept explained, suggestions for its application were immediately made too, notably in articles 4.3(d) and 20.6-20.7.

In short, these clauses lay down the general rule that a well-founded fear for persecution is possible when the need for it arises only after the applicant has left his country of origin. Although the granting of protection to 'Réfugiés Sur Place' is thus possible, the directive also encourages the member states to scrutinize these applications thoroughly.

Belgium has some questions on the implementation of this directive and on the Réfugié Sur Place policy in the MS in general.
It would be very much appreciated if we could receive your answers by **4th June 2010**.

***Disclaimer**: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

The questions relate to the implementation of these clauses into the national legislation and its implications on the practice in the member states.

1. Have all related clauses (articles 4.3(d), 5 and 20.6-7) been fully transposed into national legislation? When? If not fully, can you explain the significant differences?

2. What was the practice related to the concept of 'Réfugié Sur Place' before the implementation of the Qualification Directive in your country? More specifically:

a) did applicants who submitted a claim solely based on sur-place elements, have access to standard procedures in asylum applications?
b) was the burden of proof higher for a 'Réfugié Sur Place' than for a regular asylum seeker
c) to what extent was the principle of 'good faith' involved in assessing the well-foundedness of a fear of persecution in "sur-place"-cases?
d) is there some relevant jurisdiction in your country on this subject, prior to the implementation of the EU directive?

3. Has the implementation of for mentioned clauses had a significant impact on the handling of asylum claims based on 'sur place' elements?
a) was a significant shift in policy needed because of the implementation of these clauses?
b) is there any significant jurisdiction in your country related to the subject of 'sur place'-claims since the implementation of the Qualification Directive?

4. Have you any further comments to make on this subject – the implementation of the EU-directive in your country and its consequences for the assessment of "sur-place"-elements?

2. Responses

		Wider Dissemination?	
	Belgium	**Yes**	1. Translation of the Qualification Directive in national legislation happened on 15th September 2006. Articles 4(3)(d), 5 and 20(6)-(7) have not been transposed into national legislation. The Qualification Directive provides minimum standards and Belgian protection exceeds these standards with regard to de Sur-place–claims. There has been a proposal in parliament to translate articles 5 (1) and (2), but this has not been adopted. This may seem conspicuous, as Belgian practice has long been along the lines of art.5. 2. a) did applicants who submitted a claim solely based on sur-place elements; have access to standard procedures in asylum applications? Yes indeed, no difference was made. Even when an applicant submitted a multiple (second, third…) claim, solely based on sur-place elements, these elements were considered as 'new elements' and scrutinized as such. Standard procedure was applied. There was no

			shorter or more restrictive procedure for multiple-asylum claims or claims based on sur-place elements. b) The burden of proof was, in practice, higher. Although the Commissioner-general, the central asylum-granting office in first instance, applied for a while the principal of 'good faith', jurisprudence did not follow this stance. Belgian judges (until 2006 of the Permanent Refugee Appeals Commission, since 2006 Aliens Litigation Council) instead followed the stance of the UNHCR, which was responsible for refugee status determination until 1987. A double check was performed: first, are the authorities aware of the claimant's activities 'sur place'? And if so, how do the authorities assess these activities? The Commissioner-general gradually adopted this policy. Intensity of the activities and the question whether they constitute a continuation of activities do play a role in this assessment. Implicitly, 'good faith' will have some influence too, but in assessing the general credibility of the claimant. False or fraudulent earlier applications do influence the general credibility of a claimant too. In these cases, the burden of proof indeed rises. The applicant will have to be very precise and concrete about his fear/risk. Statements and presumptions will generally not suffice. c) • Permanent Refugee Appeals Commission (VBC) judgment n° 02-0890/R11340 of 23rd March 2004 is considered very exemplary for the Belgian stance on sur-place claims. (Congolese national, second application, participation in manifestations and publication of articles etc.): As his first application was considered fraudulent, the VBC judged that his general credibility was harmed. This lack of credibility had a negative impact on the sincerity of his activities. His activities were neither very consistent nor was its intensity of the sort to presume he would be the target of his national authorities in case of return. His statements to be persecuted because of his sur-place activities were considered "hypothetical", "solely based on presumptions" and "stripped of any proof". • VBC judgment n° 97-2472/E391 of 5th July 2000 (Turkish Kurd participant of a hunger strike). In this judgment we notice the requirement that when sufficient proof is laid down to assume that the authorities are aware of the activities of claimant (his participation was broadcasted by Kurdish TV and he appeared in national newspaper together with a Belgian parliamentarian and critical opinions towards the Turkish government were expressed in the article) and in this case they constitute the continuation of his activities in the country of origin, refugee-status should be granted, when can be assumed that fore mentioned activities lead to persecution. • Ground braking was VBC judgment n°05-2006/E676 of 7th March 2006 (Iran, second application), where for the first time Belgian judges used the since then often applied reasoning that sur-place activities not necessarily lead to a well-founded fear, either because the national authorities are not aware of them, or because the opportunistic motive behind it is clear to everybody, including the national authorities in the country of origin. 3. a) Fore mentioned clauses have not been adapted into Belgian law; hence no policy shift was needed. b) Since there has not been a shift in policy, with regard to sur-place claims, there have not been significant arrests by the successor of the Permanent Refugee Appeals Commission: the Aliens Litigation Council

			4. No
	Czech Republic	**Yes**	1. Article 4.3(d) was fully transposed by provisions of the Rules of Administrative Procedure, which is valid from June 24, 2004 and came to force from January 1, 2006 As for Article 5, paragraphs 1 and 2 were transposed by provisions of the Asylum Act in 2006. However, the issue of well-founded fear had been already provided for in the act as adopted in 1999. Paragraph 3 was not transposed; still Czech authorities deal with the issue of activities of convenience. Article 20.6-7 was not transposed (we did not opt for reducing the benefits). 2 a) Yes, their applications are dealt with in standard procedure. b) No. c) The applicant must prove that his/her conduct was not of convenience. d) In 2002, the Prague High Court dealt with the definition of 'Réfugié Sur Place'. In substance, the interpretation of the Court is accordance with the Article 5 and the respective provision of the Alien Act. In 2003, the Supreme Administrative Court considered the risk factor of return to the country of origin. The risk was not assessed as sufficient enough to warrant asylum status. 3 a) No, the transposition did not mark any fundamental change in policy or interpretation of law. b) The risk factor of return was again dealt with by the Pilsen District Court in 2006 and by the Supreme Administrative Court in 2008. However, the nature of this case law is not fundamental and the interpretation of law before and after the transposition does not differ. 4. No.
	Finland	**Yes**	1. The Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted has been transposed into Finnish law. The amendments to the legislation entered into force on the 1st of June 2009. Article 4.3(d) In compliance with the Geneva Convention, the basic principle of the Aliens Act is that every individual in need for international protection is provided with protection. The purpose of the functions that led to the fact that the requirements for international

			protection were met is not essential. Neither is it essential whether the functions were carried out in the country of origin or after the person concerned left the country. The subsection of the article has not been considered to aim at restricting the provision of protection in sur place situations where the foreign national's need for protection has arisen after his or her departure from the country of origin. The subsection was not considered to cause any need to amend the Aliens Act. Article 5.1 and 5.2. A new section 88 b was added in the Aliens Act: The well-founded fear of being persecuted referred to in section 87b(4) or the real risk of being subjected to serious harm referred to in section 88(1) may be based on incidents after the applicant's departure from his or her home country or country of permanent residence or on acts that the applicant has participated in after his or her departure. Article 5.3. With regard to the established interpretation of the Geneva Convention the article was seen problematic. As the article was not binding on the Member States, it was not proposed that the Aliens Act should be amended. Article 20.6-7. The rights and benefits are equal despite the ground on which the person has been granted refugee status or residence permit on the basis of subsidiary protection. As the article was not binding on the Member States, it was not considered possible to change the principle of equal treatment followed in Finland. 2. a) If a claim was submitted solely on sur-place elements, it was usually investigated in the standard procedure. However, most of the sur-place elements have been brought up in subsequent applications which are dealt in accelerated procedure. b) The burden of proof was the same for both asylum seeker categories. c) Some years ago there was some discussion at the Finnish Immigration Service (prior Directorate of Immigration) on whether an asylum seeker could be "punished" for intentionally creating sur-place elements and in those cases be granted a weaker residence permit. The conclusion of the discussion was, however, that this would be against the Geneva convention on refugee status. d) There have only been a few sur-place cases in Finland. The majority of them have submitted subsequent applications and their applications have been rejected in accelerated procedure. These were mostly Iranian nationals, who had attended demonstrations or written political articles. There have been a couple of cases where a person was not considered to be in need of any protection when leaving their home country, but either the country situation or their personal situation had changed in Finland for different reasons. 3. a) There was no need to change the policy. b) The Finnish Immigration Service has not received any sur-place claims since the implementation of the Qualification Directive. 4. N/A

***Disclaimer**: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

	Germany	**Yes**	1. The Qualification Directive was implemented in national law by virtue of the Directives Implementation Act of 19 August 2007. The provisions contained in Art. 4 (3) (d) and Art. 5 essentially corresponded to the national law which already applied. Art. 20 (6) and (7) were not implemented. Post-flight reasons are of relevance solely in the asylum process. When protection status is established, no differences apply with regard to the subsequent rights. 2. a) There were no restrictions regarding access to the asylum process. b) Yes – the applicant was required to explain in plausible terms grounds for persecution which arose in the country of origin. More stringent standards were applied to evidence of grounds for persecution which the applicant had established himself/herself after leaving the country of origin, as substantiating such grounds was not subject to the same problems. c) The decisive factor for post-flight reasons was also the question as to whether a fear of persecution was plausibly presented as being well-founded. To this end, a comprehensive appraisal of all the available facts was undertaken. In addition to the situation in the country of origin, the applicant's statement played a vital role in assessing the question as to whether a risk of persecution actually existed. The applicant's entire statement was appraised in this connection, including any previous statement which might have contained contradictory information. d) The Federal Administrative Court has consistently ruled that subjective post-flight reasons are generally of no relevance under asylum law. Exceptions applied in the case of activities which were in keeping with a firm conviction to which the applicant recognisably adhered in the country of origin. A further exception applied where the applicant was unable to form a firm conviction in the country of origin due to his/her age and stage of personal development. 3. a) As the national provisions largely corresponded to the provisions of the Qualification Directive, no major changes arose in the mode of procedure. One change has occurred in that restrictions now only apply to post-flight reasons which are cited in a subsequent application. b) In a judgement dated 18 December 2008 (ref. 10 C 27.07) relating to the rule of law implementing Art. 5 (3) at national level, the Federal Administrative Court ruled that post-flight reasons which are established by the applicant himself/herself after completion of the first asylum process are to be assumed to constitute an abuse of process. The applicant is required to refute this assumed abuse of the law. 4. No.
	Hungary	**No**	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Latvia	**Yes**	1. New Asylum Law which came into force on 14 July, 2010 transposed the provisions of articles 4. (3) d) and 5. (1), (2) of Qualification Directive. The provisions of articles 5. (3) and 20. (6), (7) have not been transposed. From our point of view all elements, relevant facts and personal

***Disclaimer**: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

			circumstances of asylum claim are examined during the procedure and if the protection status had been granted there is no reason to reduce the benefits, for example as it is mentioned case of article 20. (6), (7). 2. a). Before the implementation of the Qualification Directive as well as when the New Asylum Law had come into force the asylum claims which are based on *sur-place* elements are examined under standard procedure; b). and c). There are no specific provisions set up in the national legislation for the examination of above mentioned cases. d). No. 3. Since asylum procedure was introduced in Latvia we have had just few cases where *sur-place* elements are appeared. Therefore there is no a significant impact on the handling of asylum claims. 4. No.
	Lithuania	**Yes**	The related clauses are transposed into national law, but we don't have any practice in this field.
	Malta	**Yes**	1. The Refugees Act was established by ACT XX of 2000 as amended by Act VII of 2004; Legal Notices 40 of 2005, 426 of 2007 and Act VII of 2008 which transposed the Qualification and Procedures Directive into national legislation. Article 4.3 (d) of the Qualification Directive has been transposed in Article 8 (2) of the Maltese Refugees Act "A well founded fear of persecution may be based on events which have taken place after the applicant has left his country of origin or activities engaged in by the applicant since leaving the country of origin, except when based on circumstances which the applicant has created by his own decision since leaving the country of origin". Articles 20 (6-7) of the Qualification Directive has not been transposed into national legislation. 2. a). Prior to the transposition of the Qualification Directive into national legislation, applicants who submitted an application solely based on sur place elements had access to the full standard procedure as in the case of a "normal" asylum application. b). The burden of proof would depend on the specific elements of the case, rather than on the fact that the applicant submitted a sur place case.

			c). Prior to the transposition of the Qualification Directive, the Office of the Refugee Commissioner still assessed the extent to which the applicant created the circumstances with the intention of being recognized as a refugee. d). No there is no relevant jurisprudence. 3. a). There was no significant shift in policy. b). No there is no significant jurisdiction in Malta related to this subject since the implementation of the Qualification Directive. 4. No
	Poland	**Yes**	1. Transposition of the Qualification Directive into the Polish legal order took place in May 2008, in the form of Amendment of 29th May 2008 modifying *Act of 13th June 2003 on granting protection to Aliens within the territory of the Republic of Poland*. On the bases of this amendment the substance of art. 5 of the Qualification Directive, concerning refugees sur place, was fully transposed into the Polish legal system. Lack of transposition of art. 4.3 (d) does not change the legal situation of persons conceived as refugees sur place, as the substance of this institution is basically regulated in art. 5 of the Directive. The content of art. 20 also has not been transposed into the Polish legal order, what in turn implies better social conditions for people who were granted the refugee status or the subsidiary protection status on the bases of sur place notions. To the moment of transposition of the Qualification Directive into Polish law, the regulation of the Geneva Convention constituted bases for the refugee proceedings in Poland, including the procedures for refugees sur place. 2. a) Up till implementation of the Qualification Directive into the Polish legal order no difference was made for applicants who submitted a claim solely based on sur-place elements and other asylum seekers. Refugees sur place have been granted an access to standard asylum procedures and the procedure was not shorter or more restrictive for claims based on sur place elements. b) There was no difference between the burden of proof for refugees sur place and regular asylum seekers. It is true that the burden of proof in cases of refugees sur place is, in practice, higher, but at the same time in many cases the evidentiary hearing is not that complicated as in the case of regular asylum seekers, because information given by applicants sur place is very often easier to verify by the determining authority (their activity took place outside a country of origin, very often in a country, where they apply for international protection, that is why it is easier to check and analyze such sort of information). c) The principle of “good faith” was involved in assessing the well-foundness of a fear of persecution in order to check and verify the credibility of an applicant.

			d**)** It is difficult to quote any relevant jurisdiction on the subject of refugees sur place in the Polish jurisprudence, as this issue does not constitute important aspect in the refugee proceedings in Poland and we are not dealing with such cases that often. 3. The implementation of discussed clauses did not have any significant impact on the handling of asylum claims based on sur place elements, as the practice before was the same and basically nothing has changed after the transposition. The most important modification in this respect was a transposition of art. 5.3, because thanks to this point we gained an official ground for refusing to grant the refugee status or the subsidiary protection status in case of a subsequent application, if the risk of persecution is based on circumstances which the applicant has created by his own decision since leaving the country of origin. Due to mentioned above circumstances, there was no need for a significant shift in the asylum policy in Poland after the transposition of discussed clauses. It is also difficult to evoke any significant jurisdiction related to the subject of sur place claims as it is not a frequent case in the applications for the international protection in our country. As it has been already mentioned above, the implementation of the Qualification Directive into the Polish legal order did not imply any significant consequences in the respect of refugees sur place, because the overall practice has not been changed.
	Portugal	**Yes**	1. Portugal has transposed into national legislation (Asylum Act Nº. 27/2008, of 30th June) the article 5 of the Qualification Directive on the protection *sur place*. Portugal did not transpose the articles 4, N.º 3 al. *d)* and 20, n.ºs 6 and 7 of the Qualification Directive. 2. a) The preceding Portuguese Asylum Act did not expressly provide protection *sur place*. Nevertheless, if the applicants submitted a claim based on events *sur place* before the implementation of the Qualification Directive, its application followed the same procedures that other applications for asylum. b) No, the burden of proof and the degree of demand is the same. c) This principle is only taken into account on the assessment that is made on the applicant's general credibility. d) No. 3. a) No. b) No. 4. No. It should be noted that Portugal has a very small number of asylum applications, where applicants submit events after they have left the country of nationality.

***Disclaimer**: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

<table>
<tr><td></td><td>Slovak Republic</td><td>No</td><td>This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.</td></tr>
<tr><td></td><td>Slovenia</td><td>Yes</td><td>1. International Protection Act – IPA (Official Gazette of the Republic of Slovenia No.111 Ljubljana of 5 December 2007), which entered into force on the thirtieth day following that of its publication in the Official Gazette (on the fourth (4) of January 2008) introduced for the first time in the Slovenian legislation provisions, expressly regulating "sur place refugees" area.

The IPA in Article 69 (refugee sur place) provides (exact translation):
"(1) A well-founded fear of persecution or real risk of suffering serious harm may be based on the events and activities which happened or in which the applicant participated after having left the country of origin. This fact shall be considered in particular where it is established that these activities constitute the expression and continuation of convictions or orientations which the applicant had already advocated for in the country of origin.

(2) If the applicant's activities since leaving the country of origin had the sole intention of creating the required conditions for acquisition of international protection under this Act, the applicant shall not be granted the international protection under this Act."

As seen from the above citation, the Qualification Directive – QD provisions 5.1 and 5.2 has been fully transposed into national legislation (Article 69, paragraph 1 of the IPA), save the consequences arising from the substitution of the term (convictions or orientations) "held" (5.2 QD) with the IPA (69.1) term "advocated for", which originate from the incorrect interpretation of this particular term in the Slovenian version of the QD.

The rest of the above mentioned QD provisions have not been fully transposed into national legislation, neither does the Article 69 of the IPA in the 2 paragraph fully conform to them.

Explanation of the significant differences:
<table>
<tr><th></th><th>QD</th><th>69.2 of the IPA</th></tr>
<tr><td>4.3(d)</td><td>Provides for taking into account (inter alia) whether activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection - IP, to assess a possible exposition of the applicant to persecution or serious harm, if returned</td><td>Provides for not granting the IP (R/SP status), if post leaving country of origin activities had the sole intention (purpose) of creating ...</td></tr>
<tr><td>5.3</td><td>Provides for MS's discretion that RS is not "normally" (according to the Slovenian QD version – "in principle") granted to the applicant whose risk of persecution is based on circumstances which he/she</td><td>Provides for not granting the IP (do not relate just to GC refugee status, like Article 5.3 of the QD does), if post leaving country of origin activities had the sole intention of creating the required conditions for ...</td></tr>
</table>
</td></tr>
</table>

				has created by her/his own decision since leaving the CO if following conditions are met: - If there is no prejudice to the GC; - If the subsequent application is filed	in all cases.
			20.6 **20.7**	Within the limits set out by the GC/International obligation provides for MS's discretion for reducing the benefits of this (VII) Chapter, granted to a refugee/person eligible for SP, whose R/SP status has been obtained on the basis of activities engaged in for the sole or main purpose of creating ...	If post leaving country of origin activities had the sole intention of creating the required conditions for ..., R/SP status shall not be granted.

2.
a) As far as decision makers are aware of, there were no such applicants (whose claim would be solely or even decisively based on sur-place elements), but if they would have been, their position in the first (asylum/IP) procedure would not be different, in the absence of previously finally decision in merit or final decision of discontinuation of the procedure on the ground of explicitly withdrawn application. If such decision would have existed, their position would not have been different from applicants who, after having final decision on merit or final decision of discontinuation of the procedure on the ground of explicitly withdrawn application, submit a new application. Sur place elements of the claims have been (and still are) assessed on an existence of a well-founded fear of being persecuted because of .../substantial grounds for believing ...

b). No.

c). Assessment of the "sur place" elements (please, see the answer 2.a) was not different (satisfactory explanation regarding lack of evidence; coherent and plausible statements and explanation; general credibility; ...).

d). No.

3.
a). No.

b). No.

4. No, but I would be very grateful for submission of any reasonable explanation or position regarding the meaning and purpose of the Article 5.3 QD, in particular:

1) What was the reason for limiting this provision just to "not granting RS" (and not also to SP);
2) Why is used a term "applicant" and not a refugee? If not a refugee according to a GC, how could then "prejudice to the GC" or

			"normally not granting a refugee status" be relevant? 3) How could, in the framework of the existent general interpretation of the GC (that the meaning of the GC protection is prospective) in the event of existent risk of persecution (linked to at least one of the 5 GC grounds) and in the absence of GC reasons because of which GC provisions does not apply, be relevant if the risk of persecution is based on created circumstances by own decision after leaving CO and enforcing in the subsequent application. What could be the legitimate reason for different (more favourable) treatment of that person, who also by own decision created such circumstances (just to be granted refugee or SP status), but already before the completion the first (initial) asylum procedure (either before or after leaving CO). 4) Is s a term "a subsequent application" only comprised of applications, lodged after leaving the CO and till returned to it, or it means all applications lodged in the same country of seeking international protection after the first one had been finally decided in merit or explicitly withdrawn (like in Slovenia) in this county – irrespective of returns to CO and living there again, or the conduct of Question Time. And in relation to this two questions, I see two problematic aspects: A) "Applicant" – refugee, whose risk of persecution is based on "by own decision created" circumstances which had been created since the last fleeing the CO, would first need to return to CO and expose him/herself to the risk of persecution (based on such own created circumstances) and then fleeing again would ALTER "by own decision created circumstances after leaving CO" INTO "by own decision created circumstances before leaving CO". The fact that those circumstances were created outside the CO could not be relevant for determining the RS, as for refugee determination in accordance to the GC, could not be relevant if the circumstances on which "well-founded fear of being persecuted for reasons of ..." is based on, were created inside or outside the CO (as long as the well-founded fear of .... exists in the CO for particular person – refugee). B) If returning to and fleeing again from CO and seeking protection again in the same EU MS country does not mean "a subsequent application", than 5.3 QD provision could not be applied either. If it does mean "a subsequent application", then such person could be in the "first (initial) application position" when, after fleeing again, seeks asylum in one of the EU MS, never lodged IP application before, or if he/she manages to establish conditions from Dublin Regulation (according to which he/she could not be returned anymore to the previously responsible MS), without even returning to the CO. But for the others, who are not so inventive (resourceful), the article 5.3 QD would apply.
	Sweden	**Yes**	1. No, none of them explicitly. However, the “sur place” principle is accepted within our definition of a refugee in the Aliens Act. Sweden does not apply the exemption for subsequent applications in 5.3. 2. Sweden has applied the principle of “sur place” in the same way long before the Qualification directive. a) Yes. b) No. The risk of persecution in the home country always has (and has had) to be assessed.

			c) The principle of the benefit of the doubt is applied d) Yes, the Aliens Appeal Board's decision UN 32-93 where a foreigner who outside his country of origin, through documentary films and other public means, had criticized the government in the country of origin was considered to be of need of protection as refugee. 3. a) Was a significant shift in policy needed because of the implementation of these clauses? b) Yes, the Migration Court of Appeal's decision MIG 2007:20 emphasized the importance not to reveal information in decisions that could otherwise cause need for protection for "sur place" reasons. 4. As mentioned above, Sweden applied the principle in line with the Qualification Directive even before this Directive existed.
	United Kingdom	**Yes**	1. Article 4(3)(d) – transposed by Immigration rule 339J(iv) on 9th October 2006. This was done by Statement of Changes to the Immigration Rules (Cm 6918) September 2006. Article 5 – only paragraphs (1) and (2) transposed by Immigration Rule 339P on 9th October 2006. Paragraph (3) was not transposed into UK law because the UK takes a more generous position than the QD permits. In particular, UK law does not provide that an applicant who files a subsequent application shall normally not be granted refugee status, if the risk of persecution is based on circumstances which the applicant has created by his own decision since leaving the country of origin. Articles 20(6) and 20(7) – these have not been transposed into UK law because the UK takes a more generous position than the QD permits. In particular, UK law does not draw any distinction with regards to entitlement to rights between those asylum seekers who have a claim based on sur place activities and those whose claims are not based on such activities. 2. a). Yes b). No c). It was regarded as relevant to an assessment of credibility until the Court decisions mentioned below clarified the law. d). Danian v Secretary of State for the Home Department [2000] Imm. A.R. 96. Although the Secretary of State disagreed with the special adjudicator's view that an asylum appeal could be dismissed solely because of the unreasonable conduct of the asylum seeker, he contended that, if an asylum seeker in bad faith took part in activities solely to enhance his asylum claim, his appeal could be rejected on that basis. The Court of Appeal disagreed, holding that although the applicant's credibility was damaged and his claim would be examined

			closely, he would nevertheless be entitled to protection against refoulement if he could establish a genuine and well founded fear of persecution if returned to his country of origin 3. a). was a significant shift in policy needed because of the implementation of these clauses? No b). YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360. The Court of Appeal held that The effect of *Danian (2000) (see above)* and of the change in the Immigration Rules brought about by the transposition of the Qualification Directive 2004/83/EC was that there was no principle that a claimant was not entitled to asylum if he had manufactured his claim by reason of his activities in the UK. Opportunistic activity sur place was not an automatic bar to asylum. Whether a claimant's consequent fear of persecution or ill-treatment was well-founded was an objective question. The purpose of art.4(3)(d) of the Directive was to assess whether such activities would expose the claimant to persecution or serious harm if returned. 4. No.

****