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Ad-Hoc Query on 2022.22 Protection of Afghans in the EU

Requested by Christophe Van Hemelryck on 6 April 2022

Compilation produced on 29 November 2022

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden (23 in Total)

Disclaimer:

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## 1. BACKGROUND INFORMATION

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When the Taliban took over the control of Afghanistan in August 2021, the CGRS (the Belgian authority responsible for making decision on applications of international protection, ex art. 4 §1 Directive 2013/32/EU) decided to temporary suspend the decisions on international protection status of applicants from Afghanistan. They identified a lack of information about the situation in Afghanistan as the reason for the suspension.

The following decisions were suspended:

- Refusal of refugee status and subsidiary protection status,
- The granting of subsidiary protection status,
- The notification of the decision of inadmissibility for subsequent applications.

The following decisions were not suspended:

- The granting of refugee status,
- The decision of non-admissibility for a person who has already received a protection status in another Member State.

In March 2022, the CGRS announced to lift the suspension of the above-mentioned decisions. They further specified (for people coming from Afghanistan) that

- The CGRS will, in principle, no longer grant subsidiary protection ex Art. 15 (b) Directive 2011/95/EU (precarious humanitarian situation),
- The CGRS will, in principle, no longer grant subsidiary protection ex Art. 15 (c) Directive 2011/95/EU (indiscriminate violence),
- A larger number of profiles will be considered for refugee status.

Given that the CGRS, when she announced to lift the suspension of the decisions, referred to a comparable policy in other EU countries, EMN BE wishes to ask the other EMN Colleagues the following questions.

**We would like to ask the following questions:**

**1. Has your Member State suspended the decisions on applications for international protection from Afghan nationals?  
YES/NO.**

**2. If yes to Q1, can you please clarify which type of decisions regarding Afghan nationals are or were suspended?**

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- 3. Considering that the Taliban took over power in Afghanistan on 15th August 2021, does your Member State allow a new hearing for the applicants who were heard before that date? YES/NO. If yes, can you please explain your answer and whether the hearing is organised for all Afghan nationals who were heard before that date?**
- 4. Does the humanitarian situation in Afghanistan give rise to any type of protection in your Member State? YES/NO.**
- 5. If yes to Q4, is this protection granted under Directive 2011/95/EU or under national provisions?**
- 6. Does this protection apply to all Afghans or only to certain categories? Please explain and indicate if the protection is temporary or not.**

We would very much appreciate your responses by **6 May 2022**.

## 2. RESPONSES

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		<b>Wider Dissemination<sup>2</sup></b>	
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<sup>1</sup> If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

<sup>2</sup> A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed

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	<b>EMN NCP Austria</b>	<b>Yes</b>	<p>1. No, Austria has not suspended decision-making for Afghan nationals. --- Source: Ministry of the Interior</p> <p>2. n/a. --- Source: Ministry of the Interior</p> <p>3. Whether an applicant is re-interviewed depends on the circumstances of the individual case. If their testimony is necessary to establish the relevant facts of the application, a new interview will be scheduled. In certain cases, however, a new interview may not be required. --- Source: Ministry of the Interior</p> <p>4. Depending on the case-by-case examination and decision, afghan asylum-seekers may be granted a protection status. --- Source: Ministry of the Interior</p> <p>5. The protection is granted under national provisions based on the transposition of Directive 2011/95/EU. --- Source: Ministry of the Interior</p>
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and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."


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			<p>6. The protection applies depending on the outcome of a case-by-case examination and decision. Any protection status in Austria may be reviewed at any time depending on possible changes.</p> <p>---</p> <p>Source: Ministry of the Interior</p>
	<p><b>EMN NCP Belgium</b></p>	<p><b>Yes</b></p>	<p>1. Yes</p> <p>2. From August 2021 onwards negative decisions in first as well as in subsequent applications were suspended: until February only positive decisions with regard to refugee status were issued. CGRS set up a system to identify applications in the caseload for which it could be concluded that, despite the suspension and taking into account the human rights situation in the country after the Taliban takeover and the continuing targeting of certain groups, a risk can be assessed. App. 640 refugee status decisions were issued in this period.</p> <p>3. Applicants who were heard before the Taliban takeover are interviewed again if indications exist that the Taliban takeover has a relevant consequence on the assessment of the need of protection of the individual, or if the applicant/lawyer brings forward such elements in the months following the takeover. In other cases, where no such elements are present, it can be concluded that enough information on the specific individual case and profile, as well as information on the situation of this profile in the country of origin, is available to make a risk assessment.</p> <p>4. In general, it flows from article 6 QD that serious harm requires an actor. A general socio-economic or bad humanitarian situation is not considered to fall within the scope of inhuman or degrading treatment unless there is intentional conduct of an actor, such as the intentional deprivation of the applicant of appropriate healthcare. It is established that a complex interaction of objective elements (drought, disruption of trade, temporary suspension of humanitarian aid etc.) caused the current</p>


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			<p>socio-economic and humanitarian situation in Afghanistan, rather than actions or neglect of a certain actor.</p> <p>5. N/A</p> <p>6. N/A</p>
	<b>EMN NCP Bulgaria</b>	<b>Yes</b>	<p>1. No.</p> <p>2. N/A</p> <p>3. Yes. A new hearing is organised if it is necessary to clarify the circumstances of the application.</p> <p>4. Yes. The situation in the country of origin is taken into account, but the individual situation of each candidate must also be taken into account.</p> <p>5. The protection is granted under Directive 2011/95/EU, transposed in the Law on Asylum and Refugees.</p> <p>6.</p>



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			The individual situation of each candidate is taken into account and the applications for international protection are considered individually, objectively and impartially, with an assessment of refugee status being made first. In the event that refugee status is not granted, the need to grant humanitarian status is considered. Key attention is paid to persons from vulnerable groups, e.g. minor or underage persons, unaccompanied minor and underage persons, elderly people, pregnant women, single parents with underage children, victims of human trafficking, people with serious health problems, people with mental disorders, and people who are victims of torture, rape or other serious forms of mental, physical or sexual violence.
	<b>EMN NCP Croatia</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Yes.</li> <li>2. Refusal of refugee status and subsidiary protection status.</li> <li>3. Yes, in any asylum claim it is possible to organize as many hearings as necessary. Depending on reasons for asylum application of Afghan nationals new hearings are organized.</li> <li>4. Yes.</li> <li>5. Under Directive 2011/95/EU.</li> <li>6. To all Afghans for whom the procedure of assessing of an asylum application can be carried out in full (Croatia has a large number of suspension of procedures due to absconding of Afghan nationals before end of procedure). Duration of protection is in accordance with asylum legislation (same as for all categories of beneficiaries of international protection).</li> </ol>

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	<b>EMN NCP Cyprus</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. No</li> <li>2. N/A</li> <li>3. Only if a request for re-examination of the claim is submitted before the Asylum Service</li> <li>4. Yes</li> <li>5. Under Directive 2011/95/EU refugee status may be granted. If refugee status is not granted, the applicant is rejected.</li> <li>6. Each case is examined on its own merits. Protection is granted only to certain categories.</li> </ol>
	<b>EMN NCP Czech Republic</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. No</li> <li>2. N/A</li> <li>3. No</li> <li>4. No</li> <li>5. N/A</li> </ol>





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			<p>6. Asylum is mostly granted to those Afghan citizens and their families that are proved to have worked with the army of the Czech Republic, armies of NATO member states, or NGOs. Other relatives (elderly parents, adult sister etc.) of these individuals, who have not personally collaborated but who could be implicated and potentially experience persecution are mostly granted subsidiary protection.</p>
	EMN NCP Estonia	<b>Yes</b>	<p>1. NO</p> <p>2. N/A</p> <p>3. We haven't had such cases.</p> <p>4. NO</p> <p>5. N/A</p> <p>6. We have granted them a status of a refugee, which is not a temporary protection.</p>
	EMN NCP Finland	<b>No</b>	
	EMN NCP France	<b>No</b>	

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	<b>EMN NCP Germany</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Yes.</li> <li>2. Germany suspended some types of decisions until 30 November 2021. The suspension included negative decisions on international protection but not decisions where the situation in Afghanistan was not of relevance (for example, Dublin cases or where protection was granted in another member state). The suspension has been lifted after publication of the updated national guidance.</li> <li>3. No, not in general. A new hearing might be possible if a decision cannot be taken without such new hearing.</li> <li>4. Yes.</li> <li>5. In general, human rights violations resulting from a dire humanitarian situation in a country would be assessed under national protection norms – in particular under section 60 para. 5 German Residence Act - as there is no actor of serious harm within the meaning of article 6 QD (Dir. 2011/95/EU).</li> <li>6. In general, national protection according to section 60 para. 5 German Residence Act is individually assessed for any applicant. The German Federal Office for Migration and Refugees (BAMF) considers vulnerable persons as particularly affected by the humanitarian conditions in Afghanistan. Therefore, a so-called ban of deportation would be granted for such persons as a rule and a temporary residence permit valid for at least one year would be issued (section 25 para. 3 German Residence Act). The validity of the residence can be prolonged by the competent local foreigners' authority as long as the obstacles for returning to the country of origin exist, i. e. as long as the humanitarian conditions have not improved. A foreigner is to be granted a permanent settlement permit if he/she has held a temporary residence permit for five years and when further conditions are met (section 9 para. 2 German Residence Act).</li> </ol>
	<b>EMN NCP Greece</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Initially yes, but after a short period of time we started processing them.</li> </ol>


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			<p>2. Decisions granting subsidiary protection status were suspended after the takeover of Kabul by the Taliban on 15th August 2021 and are still suspended. The reasons are that the level of indiscriminate violence in the country is considered to be significantly lower than before (the Taliban takeover). Additionally, according to EUAA Country Guidance: Afghanistan (April 2022) and EUAA COI reports on Afghanistan (i.e., Security Situation June 2021, update September 2021 and Country Focus January 2022) there is a great information gap on the situation in the country and on the Taliban's intentions. Afghanistan is considered to undergo a transitional and highly volatile period for the time being and limitations with regard to reliable reporting should also be taken into account, as underreporting from Afghanistan or certain parts of the country is likely.</p> <p>As a result, it was decided to proceed with recognizing the asylum seekers that belong to specific profiles as refugees, taking into account that while the future behavior of the Taliban lacks certain predictability, profiles who were previously targeted by the Taliban may be at an increased risk, given their increased capabilities and territorial control (e.g., children, women, forced recruitment, "Westernised" behavior, collaboration with foreign military troops, Hazara/ Shia individuals etc.) For the time being the individuals who are granted refugee status belong to the following 15 profiles (for which decisions templates have been drafted):</p> <p>a. Individuals who have worked for foreign military troops or perceived as supporting them  b. Women perceived to have transgressed moral codes  c. Women in public roles  d. Women perceived as "Westernised"  e. Men perceived as "Westernised"  f. Single women and female heads of households (without male supportive network)  g. Women and harmful traditional marriage practices  h. Children: general profile  i. Child recruitment  j. Violence against children, child abuse and child trafficking  k. Children-girls in particular  l. Persons fearing forced recruitment by armed groups  m. Tajik individuals fearing forced recruitment by armed groups  n. Hazara, Shia individuals</p>
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			<p>who were born in Iran and/or who lived there for a long period of time without supportive network left in Afghanistan o. Hazara, Shia individuals</p> <p>3. No</p> <p>4. No</p> <p>5. N/A</p> <p>6. N/A</p>
	<p>EMN NCP Hungary</p>	<p><b>Yes</b></p>	<p>1. Yes</p> <p>2. Withdrawals of international protection and subsidiary protection have been suspended.</p> <p>3. A new hearing can take place if necessary; however, not in a general manner regarding Afghan nationals.</p> <p>4. Yes; however, we always conduct a case-by-case assessment</p> <p>5. Under national provisions.</p>


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			<p>6. No, we always conduct a case-by-case assessment. In Hungary, refugee status and subsidiary protection are temporary in a sense that both types of protection are to be revised after 3 years.</p>
	<b>EMN NCP Italy</b>	<b>Yes</b>	<p>1. No, we didn't suspend the decisions on applications for international protection from Afghan nationals.</p> <p>2.</p> <p>3. No, we do not allow a new hearing for those applicants who were heard before 15th August 2021.</p> <p>4. Yes. Indeed, in the period from August 2021 to January 2022 Territorial Commissions didn't issue negative decisions on Afghan nationals. In a small number of cases, in application of exclusion's causes, Territorial Commissions granted national protection (special protection).</p> <p>5. The protection granted to Afghan nationals is, depending on the individual case, foreseen by Directive 2011/95/EU or national law (see above).</p> <p>6. The protection is granted according to the individual international protection claim. As per the national special protection, it is granted for 2 years, that can be renewed.</p>


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	<b>EMN NCP Latvia</b>	<b>Yes</b>	<p>1. No.</p> <p>2. N/a</p> <p>3. Given that we had only a few asylum seekers from Afghanistan in asylum procedure at a time when the Taliban took power in August 2021, we did not need to hold a new hearing for them.</p> <p>4. Yes, no negative decisions have been made since the Taliban took over power in Afghanistan in August 2021.</p> <p>5. Until now refugee or subsidiary form of protection has been granted under Directive 2011/95/EU.          Since Taliban took over power in Afghanistan in August 2021 refugee status has been granted to persons (and their family members - applying the principle of family unity) who have arrived to Latvia as a result of evacuation measures carried out by the Ministry of Defense in co-operation with the Ministry of Foreign Affairs. If information on person regarding his/her cooperation with previous government in Afghanistan and/or allied forces had been confirmed in the context of individual case the decision on granting refugee status was taken without conducting a personal interview.          Subsidiary form of protection had been granted only in few cases.          There is no national protection status available according to the national legislation.</p>


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			6. In accordance with Asylum Law a permanent residence permit is issued to person whom refugee status has granted. A person to whom subsidiary form of protection has granted receives a temporary residence permit for period of 1 year. After that period if the situation in the country of origin has not changed and there are still exist grounds for subsidiary form of protection the person has a right to obtain new temporary residence permit for 2 years.
	EMN NCP Lithuania	Yes	<p>1. NO</p> <p>2. N/A</p> <p>3. NO</p> <p>4. YES</p> <p>5. Under national provisions. According to Article 40(1)(8) of the Law on the Legal Status of Foreigners, third-country nationals could be issued a temporary residence permit if</p> <ol style="list-style-type: none"> <li>1. the foreigner is an unaccompanied minor;</li> <li>2. the foreigner is unable to leave Lithuania for humanitarian reasons;</li> <li>3. the foreigner cannot be returned to a foreign state or expelled from Lithuania due to the principle of non-refoulment or during the reflection period granted to a victim of trafficking in human beings;</li> <li>4. the enforcement of the foreigner's expulsion from Lithuania is suspended because of the following circumstances:</li> </ol>

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			<ul style="list-style-type: none"> <li>• the foreign state to which the foreigner could be expelled refuses to accept the foreigner;</li> <li>• the foreigner requires essential medical assistance, the need for which has to be assessed by a hospital;</li> <li>• the foreigner cannot be expelled for objective reasons (e.g., the absence of valid travel documents, it is not possible to obtain travel tickets etc.).</li> </ul> <p>6. No distinctions are made on the basis of nationality. All persons who cannot be returned are issued a temporary residence permit for 1 year.</p>
	<b>EMN NCP Luxembourg</b>	<b>Yes</b>	<p>1. YES.</p> <p>2. Luxembourg briefly suspended negative decisions (July 2021- November 2021). However, positive refugee status decisions, as well as decisions on inadmissibility and incompetence continued to be issued.</p> <p>3. Yes. In order to allow a complete analysis of the applications for international protection lodged in Luxembourg, all Afghan nationals whose application for international protection had not yet been processed before August 2021 were given the opportunity to be heard once again so that they could complete their file with new elements allowing, if necessary, to a well-founded fear of persecution or serious harm in their case if they were to return to Afghanistan. In addition, a re-analysis of all the files in the hands of the administrative courts in which decisions to refuse to grant international protection had been taken before August 2021 was carried out. Hearings</p>




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			<p>to continue the proceedings were scheduled for the beginning of February 2022 as well as April and May 2022, but there are no decisions yet.</p> <p>4. No, the humanitarian situation in Afghanistan is not considered to be a ground to grant international protection. However, due to the dire situation currently no Afghan national, who received a negative decision, will be returned to Afghanistan. Even though, s/he was not granted international protection, s/he will be given the opportunity to stay in Luxembourg on other grounds (humanitarian status or work permit).</p> <p>5. N/A.</p> <p>6. N/A.</p>
♦ ■	EMN NCP Malta	Yes	<p>1. No, decisions on applications for international protection from Afghan nationals were not suspended. However, it is important to highlight the fact that in 2021 we only received 2 applications from applicants claiming to be Afghan nationals, while no applications for international protection were received for the period January – March 2022. Furthermore, during the same reference period no decisions on the merits were taken on Afghan cases, since with the exception of the aforementioned applications, we did not have any pending Afghan cases to process.</p> <p>2. N/A</p> <p>3. NO</p>


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			<p>4. NO</p> <p>5. N/A</p> <p>6. N/A</p>
	EMN NCP Netherlands	<b>Yes</b>	<p>1. Yes</p> <p>2. On the 11th of August 2021, the Dutch government decided on a decision and departure moratorium. In principle, the decision and departure moratorium applies for a period of six months and applies to foreign nationals with Afghan nationality.</p> <ul style="list-style-type: none"> <li>• With the introduction of the decision moratorium, pursuant to Article 43 of the Aliens Act 2000, the decision period for current asylum applications and for asylum applications submitted during the moratorium is extended by a period of one year, with a maximum decision period of 21 months.</li> <li>• With the departure moratorium, Afghan foreign nationals who have exhausted their legal remedies are not obliged to return to Afghanistan, and they are offered shelter and other facilities if they make a (new) application.[1]</li> </ul> <p>On the 23rd of February 2022, the decision and departure moratorium was extended with 6 months.[2]</p> <p>Excluded from this moratorium are Dublin claimants, persons against whom a safe third country is invoked, persons who already have international protection in another EU Member State or who have been recognized as a refugee in a third country or in a third country. otherwise enjoy adequate protection, persons who pose a serious threat to public order or national security, persons to whom Article 1F of the Refugee Convention applies or persons whose asylum application is not processed on the basis of Article 30c of the Aliens Act 2000.</p>


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			<p>[1] Letter to Parliament on decision and departure moratorium Afghans, 11-08-2021.                  [2] Letter to Parliament on extension decision and departure moratorium Afghans, 23-02-2022.</p> <p>3. The decision and departure moratorium, which is currently in place, implies that no new steps are generally taken in these cases. This means no extensive interview takes place on their asylum motives. This applies to new influx cases and also to cases which applied for asylum before the takeover by the Taleban.[1]</p> <p>[1] This information was provided by the Ministry of Justice and Security on 28 April 2022.</p> <p>4. The decision and departure moratorium, which is currently in place, implies that no decisions are taken – except for the asylum cases of evacuated persons and the categories mentioned above.[1]</p> <p>[1] This information was provided by the Ministry of Justice and Security on 28 April 2022.</p> <p>5. N/A</p> <p>6. N/A</p>
	<p>EMN NCP Poland</p>	<p><b>Yes</b></p>	<p>1. NO.                  2. n/a                  3.</p>



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			<p>Poland allows a new hearing in justified cases but we do not conduct such hearings on systematic basis for all Afghans.</p> <p>4. YES.</p> <p>5. Under Directive 2011/95/EU</p> <p>6. Protection granted in such circumstances is justified by humanitarian situation and on the basis of the Qualification Directive - if justified may granted to all Afghans and without any time limit set. The revision of the grounds for protection will be launched and conducted on a normal basis should the situation changes.</p>
	<b>EMN NCP Slovakia</b>	<b>Yes</b>	<p>1. No.</p> <p>2. NA</p> <p>3. No.</p> <p>4. No. Following the individual assessment of every case, in majority cases international protection (asylum/subsidiary protection) is granted, unless exclusion clauses are applied.</p> <p>5. NA</p> <p>6. NA</p>


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	<b>EMN NCP Slovenia</b>	<b>Yes</b>	<p>1. No.</p> <p>2. N/A</p> <p>3. If an applicant for international protection informs in writing (or via an authorised person) that there are new circumstances due to the aforementioned events, the applicant is provided another personal interview if deemed necessary. In general, however, such interviews are not provided to all applicants for international protection that were already interviewed before 15 August 2021.</p> <p>4. No.</p> <p>5. N/A</p> <p>6. N/A</p>
	<b>EMN NCP Spain</b>	<b>Yes</b>	<p>1. No</p> <p>2.</p> <p>3. No</p> <p>4. No</p> <p>5.</p> <p>6.</p>

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			<p>We follow the spanish asylum law and the Geneva Convention as well as EU directives. Most of afghan applicants who were already in Spain and claimed persecution by the taliban or fall into any of the profiles targeted by the taliban, have been granted asylum considering they are “sur place” refugees.</p>
	EMN NCP Sweden	<b>Yes</b>	<p>1. In July 2021 the Swedish Migration Agency decided to halt enforcement decisions and suspend negative decisions regarding applications for international protection pertaining to Afghanistan. In November 2021 Sweden resumed decisionmaking for all types of decisions (refugee status, subsidiary protection, negative decisions on the substance of the claim, exclusion decisions, etc.).</p> <p>2. See question 1</p> <p>3. According to our national policy from November 2021 all refused Afghan asylum cases which had entered into force where subjected to a fresh review in the context of the human rights situation in Afghanistan. Our current national policy from April 2022 states that all refused Afghan asylum cases which have entered into force with claims based on the Taliban are subjected to a fresh review.</p> <p>4. No</p> <p>5. Not applicable</p> <p>6. Not applicable</p>

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