Country of Origin Information

Vogelaar, F.G.H.W.

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Chapter 6

Conclusions

1. Introduction

This PhD aimed to offer a better understanding of the evidentiary assessment of Country of Origin Information in guidance for decision-making: What COI quality standards have been set and how are these standards being given meaning in practice by judges and policy makers. For this purpose, the research examined the COI quality standards that have been set by the European Court of Human Rights (ECtHR), the Immigration and Asylum Chamber of the United Kingdom Upper Tribunal, by the UN agency for refugees (UNHCR), and by national policy makers of two (former) EU Member States. Also, the PhD examined how these COI quality standards are applied in practice in guidance for decision-making found in leading decisions by the ECtHR, in Country Guidance Determinations by the UK Upper Tribunal, in UNHCR Eligibility Guidelines, and in national policies regarding Safe Countries of Origin in the Netherlands and the United Kingdom.

This final chapter brings together the findings regarding the assessment of Country of Origin Information by the ECtHR, the UK Upper Tribunal, UNHCR and the Netherlands and the United Kingdom. It aims to uncover good practices regarding the evidentiary assessment of Country of Origin Information that could form the basis for recommendations on how the use of Country of Origin Information can be improved and better reflected in considerations concerning international protections needs. For this purpose, section 2 first examines how the different standards were influenced by, as well as how the standards relate to, one another.

The different standards and practices will be compared and set against the COI quality standards in the ACCORD training manual in section 3 and 4. The substantive norms in the COI quality standards set by the examined institutions will be brought together in section 3 and measured against the standards regarding relevancy, currency, accuracy, reliability and balance in the ACCORD training manual. Next, the procedural norms in the COI quality standards will be brought together and set against the standards regarding transparency and traceability in the ACCORD training manual in section 4.

The comparison of the standards and practices will serve as the basis for recommendations on how the evidentiary assessment of Country of Origin Information can be improved and better reflected in considerations concerning international protections needs in decisions, jurisprudence and policy guidelines in section 5. The first set of recommendations are addressed specifically to the first three institutions examined in this PhD: the ECtHR, the UK Upper Tribunal and UNHCR. The recommendations focus on the standards set by the institutions and provide suggestions for more detailed standards, where applicable, to improve the evidentiary assessment of Country of Origin Information in practice by the institutions itself. The second set of recommendations will focus on the application of the common standards on Country of Origin Information in the European Union as a whole (not only on the Netherlands and the United Kingdom), because any suggestions regarding the COI quality standard in the EASO COI Report Methodology ultimately concern the use of Country of Origin Information in all EU Member States.

2. How the COI quality standards relate

The following section examines how the different standards were influenced by, as well as how the standards relate to, one another. The section aims to establish whether a certain COI quality standard is considered of particular importance by the examined institutions or whether there are any substantive or procedural norms that can be considered legally binding. The examination focuses on any cross references in the examined jurisprudence of the ECtHR and the UK Upper Tribunal, the examined UNHCR Eligibility Guidelines and the practices of the (former) EU Member States. It will focus on references in relation to the setting of the COI quality standards and on references to particular practices of the other examined institutions.

The examination will show that the ECtHR has set its own standard whereas the UK Upper Tribunal follows the ECtHR's general approach to Country of Origin Information. The general approach to Country of Origin Information by the ECtHR is the only standard that can be considered legally binding. It should be followed by decision makers, national judges and policy makers to guarantee the same level of scrutiny of Country of Origin Information as that provided by the ECtHR in order to provide an effective remedy in respect of an alleged breach of Article 3 ECHR in the domestic system in accordance with Article 13 ECHR. Moreover, UNHCR's standard is mostly based on its own information strategy and experience in the field. UNHCR's standard is not recognised as a standard to which the ECtHR, the UK Upper Tribunal or the (former) EU Member States are bound. The COI quality standards applied by UNHCR are merely used to determine the weight or evidentiary value of the UNHCR Eligibility Guidelines in relation to all the available evidence on the situation in a country of origin. Finally, the EASO COI Report Methodology is influenced by the experiences of EU Member States as well as by UNHCR's COI quality standards and the ACCORD training manual. The EASO COI Report Methodology is not a legally binding document and EU Member States do not recognise the methodology as a particular standard they should follow in practice.

2.1 The approach of the European Court of Human Rights

The norms set by the ECtHR regarding the assessment of Country of Origin Information are not influenced by a particular standard. The Court's standard was formulated over time in its jurisprudence and on the basis of the Court's own experience with the assessment of Country of Origin Information. For example, already in 1977, the ECtHR noted that it would examine all the materials before it and, if necessary, it would obtain materials *proprio motu*.[1] In the case of *Cruz Varas and Others,* in 1991, the ECtHR emphasised that it was free to make its own appreciation of the facts on the basis of all the material before it.[2] It was in *Cruz Varas and Others,* that the ECtHR laid the basis for the principle of a full and *ex nunc* assessment of an alleged risk of treatment contrary to Article 3 in respect of aliens facing expulsion or extradition;

1 *Ireland v. The United Kingdom*, App No 5310/71 (ECtHR, 13 December 1977) para 160.
2 *Cruz Varas and Others vs. Sweden,* App no 46/1990/237/307 (ECtHR, 20 March 1991) para 74.

> Since the nature of the Contracting States' responsibility under Article 3 (art. 3) in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion; the Court is not precluded, however, from having regard to information which comes to light subsequent to the expulsion. This may be of value in confirming or refuting the appreciation that has been made by the Contracting Party or the well-foundedness or otherwise of an applicant's fears.[3]

In 1996 in the case of *Chahal*, the ECtHR further explained that, 'if the applicant has not been extradited or deported when the Court examines the case the material point in time must be that of the Court's consideration of the case.'[4]

Only in 2007, the ECtHR felt the need to formulate further standards with regard to the assessment of the accuracy of the information relied on by the respondent government. In *Salah Sheekh*, the ECtHR stated that it must be satisfied that the assessment by the respondent government is adequately and sufficiently supported by different kinds of sources, including information from other governments, UN agencies and NGOs.[5] The ECtHR has refined its standard along the way whenever the issues before it demanded further clarification. For example, in 2008 in the case of *NA*, the ECtHR elaborated on what sources it considers relevant and the importance of assessing a sources' independence, reliability and objectivity.[6] The Court's approach to Country of Origin Information from anonymous sources was set out in *Sufi and Elmi* in 2011.[7]

The subsidiary nature of the protection regime established by the European Convention on Human Rights (ECHR) demands that 'the national system as a whole should be constructed in such a way that it can provide at least the same level of judicial supervision as that provided by the Court.'[8] This is recognised by the UK Upper Tribunal in its jurisprudence which follows the ECtHR's general approach to Country of Origin Information as will be discussed in section 2.2.

The approach of the ECtHR to Country of Origin Information is not recognised by UNHCR as a particular standard that should be followed. However, UNHCR has endorsed certain aspects of the ECtHR's approach.[9] This also follows from UNHCR's reliance on ECtHR jurisprudence in the leading cases by the ECtHR in support of the identification of certain risk profiles.[10] UNHCR fails to take into account the Court's actual assessment of the

3 Ibid para 76.
4 *Chahal vs the United Kingdom,* App No 70/1995/576/662 (ECtHR, 15 November 1996) para 86; See also *Vilvarajah and Others vs. the United Kingdom,* App Nos 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87 (ECtHR, 30 October 1991) para 107; *H.L.R. v. France*, Application no. 24573/94 (ECtHR, 29 April 1997) para 37; *Mamatkulov and Askarov vs Turkey*, App Nos 46827/99 46951/99 (ECtHR, 4 February 2005) para 69.
5 *Salah Sheekh vs The Netherlands*, App No 1948/03 (ECtHR, 11 January 2007) para 136; See also, *Saadi vs Italy*, App No 37201/06 (ECtHR, 28 February 2008) paras 128 – 133.
6 *NA v. United Kingdom,* App No 25904/07 (ECtHR, 17 July 2008) paras 118 – 122.
7 *Sufi and Elmi v United Kingdom* App Nos 8319/07 and 11449/07 (ECtHR, 11 June 2011) paras 233 – 234.
8 Thomas Spijkerboer, 'Subsidiarity and 'Arguability': the European Court of Human Rights' Case Law on Judicial Review in Asylum Cases' (2009) 21 (1) *International Journal of Refugee Law* 48 – 74, at 51.
9 *MST and others (national service – risk categories) Eritrea CG*, [2016] UKUT 00443 (IAC) paras 163.
10 United Nations High Commissioner of Refugees (UNHCR), 'UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan,' UN doc HCR/EG/AFG/16/02 (19 April 2016) fn 551.

evidence it puts forward in support of its conclusions and/or fails to examine the quality of the Court's assessment of Country of Origin Information.

The EASO COI Report Methodology does not refer to the ECtHR's approach to Country of Origin Information as a standard that should be followed for its COI reports or national COI reports. However, the European Asylum Support Office (EASO) has included the Court's approach to anonymous sources and the assessment of the independence, objectivity and reliability of sources in the EASO judicial practical guide on Country of Origin Information.[11]

Finally, the ACCORD training manual states that the ECtHR has provided important guidance to Member States of the Council of Europe in *NA* regarding the assessment of the reliability of sources and the balancing of information. The ACCORD training manual does not identify the ECtHR's approach to Country of Origin Information as a legal requirement.

2.2 The approach of the UK Upper Tribunal

In *TK*, a case on the position of Tamils in Sri Lanka before the UK Asylum and Immigration Tribunal,[12] the disagreement on the relative value of the 2006 UNHCR position paper led the Tribunal to articulate in greater detail its view on the relevant criteria that decision makers should apply to Country of Origin Information. [13] In line with the subsidiary nature of the protection regime established by the ECHR, the Asylum and Immigration Tribunal determined that Country of Origin Information should be assessed according to the standards set by the ECtHR in the case of *NA.*[14] The Tribunal summarised the criteria as follows: accuracy, independence, reliability, objectivity, reputation, adequacy of methodology, consistency and corroboration.[15]

The UK Upper Tribunal has put limits on the extent to which the ECtHR's approach should be followed; While finding facts, the Tribunal *should follow* the Courts' general guidance to Country of Origin Information but only *take into account* the ECtHR actual approach to the same or similar evidence.[16] In *AMM and others*, a 2011 country guidance case concerning the security situation in Somalia, the UK Upper Tribunal considered that,

> [I]n a situation as multi-faceted and complex as Mogadishu and central and southern Somalia, it is doubtful whether a domestic court or tribunal, applying section 2 of the 1998 Act and the related jurisprudence, is necessarily obliged to draw exactly the same conclusions as regards risk to returnees, as were reached by the ECtHR in Sufi & Elmi, even where the raw evidence before the domestic court or Tribunal is precisely the same as that which was before the ECtHR.[17]

11 European Asylum Support Office (EASO), 'Judicial Practical Guide on Country of Origin Information' (2018) 15 – 16, 21 – 22.
12 Predecessor of the Asylum and Immigration Chamber of the UK Upper Tribunal.
13 *TK* (Tamils – LP updated) Sri Lanka CG [2009] UKAIT 00049, para 5.
14 *NA* (n 6)
15 *TK* (n 13) para 5.
16 *AMM and others* (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC) para 123.
17 Ibid para 109.

On the one hand, the UK Upper Tribunal in *AMM and others* confirmed the conclusions of the UK Asylum and Immigration Tribunal in *TK*. The UK Upper Tribunal stated that there was Court of Appeal authority for the proposition that domestic courts are required to follow the ECtHR's guidance in *NA*.[18] On the other hand, the Tribunal noted that the authority clearly 'demarcates between the need to apply the guidance and the ultimate duty of the Tribunal to reach its own view on the weight to be given to the totality of the evidence before it.'[19] *NA* provides authoritative guidance on the approach to Country of Origin Information but the UK Upper Tribunal should decide on the weight to be given to the information, as an expert fact finding tribunal, in the circumstances of the particular case.'[20] The Tribunal concluded,

> It is therefore evident that, whilst the Strasbourg Court's guidance as to the general approach to evidence is part of its jurisprudence, to be followed by United Kingdom courts and tribunals to the extent demanded by the House of Lords and Supreme Court authorities, the weighing of the evidence and the conclusions as to the relative weight to be placed on the items of evidence are ultimately matters for the tribunal. Whilst the factual finding the Strasbourg Court has made as a result of applying its own guidance is something to which the domestic tribunal must have regard, the tribunal is not bound to reach the same finding.[21]

In support of this argument, the Tribunal referred to the principle laid down in Practice Direction 12.2 which states that 'a Country Guidance case is authoritative in any subsequent appeal, so far as that appeal (a) relates to the Country Guidance issue in question and (b) depends upon the same or similar evidence.'[22] According to the Tribunal, this means that the Asylum and Immigration Chambers of the First-Tier Tribunal and the UK Upper Tribunal in their judicial fact-finding *would have to accept* 'the relative weight which the Tribunal giving the Country Guidance has seen fit to place upon the various pieces of evidence.'[23] Only newly uncovered or submitted evidence may change how much weight is attached to particular Country of Origin Information in relation to all the (newly) available evidence. The new evidence may further support the Country of Origin Information, or alternatively, contradict it. This can result in different findings of fact and emphasises that Country Guidance Determinations are not binding irrespective of the individual circumstances of the case.[24] However, the Tribunal concluded that the principle laid down in Practice Direction 12.2 should not be applied to section 2 of the Human Rights Act 1998, which states that UK courts and tribunals should take into account any relevant judgement by the ECtHR, because

18 *MD* (Ivory Coast) [2011] EWCA Civ 989, paras 41 – 54.
19 *AMM and others* (n 16) para 112.
20 *MD* (n 18) paras 46, 50, 53.
21 *AMM and others* (n 16) para 115.
22 Practice Directions for the Immigration and Asylum Chamber of the First-Tier Tribunal and the Upper Tribunal (December 2018) (Practice Directions) para 12.2.
23 *AMM and others* (n 16) para 117.
24 Hugo Storey, 'Consistency in Refugee Decision-Making: A Judicial Perspective' (2013) 32 (4) *Refugee Survey Quarterly* 112 – 125, at 123.

this would place the ECtHR in 'the position of supreme maker of Country Guidance' for the purposes of UK tribunals.[25]

In practice, the UK Upper Tribunal judgement in *AMM and others* failed to take into account the ECtHR actual approach to the same evidence. The conclusions of the Tribunal in *AMM and others* were taken in the context of a disagreement that centred on the evidentiary value of a UK Home Office report on a fact-finding mission to Nairobi in 2010. In *Sufi and Elmi*, the ECtHR considered that

> In the present case the Court observes that the description of the sources relied on by the fact-finding mission is vague. As indicated by the applicants, the majority of sources have simply been described either as "an international NGO", "a diplomatic source", or "a security advisor". Such descriptions give no indication of the authority or reputation of the sources or of the extent of their presence in southern and central Somalia. This is of particular concern in the present case, where it is accepted that the presence of international NGOs and diplomatic missions in southern and central Somalia is limited. It is therefore impossible for the Court to carry out any assessment of the sources' reliability and, as a consequence, where their information is unsupported or contradictory, the Court is unable to attach substantial weight to it.[26]

The Upper Tribunal in *AMM and others* stated that it would follow the ECtHR's general approach towards Country of Origin Information, in this case, the ECtHR's approach towards information from anonymous sources. The ECtHR recognised that certain sources may wish to remain anonymous where there are legitimate security concerns. However, it also noted that it will be impossible to assess the reliability of a source when there is no information about the nature of a source's operation in the relevant country of origin. The ECtHR's approach with regard to anonymous sources will therefore depend on the consistency of the sources' conclusions with the remainder of the available information:

> Where the sources' conclusions are consistent with other country information, their evidence may be of corroborative weight. However, the Court will generally exercise caution when considering reports from anonymous sources which are inconsistent with the remainder of the information before it.[27]

The UK Upper Tribunal considered that *Sufi and Elmi* was not binding so far as it concerned the assessment of facts. The Upper Tribunal in *AMM and others* concluded that it had before it considerably more evidence than the ECtHR, in particular, evidence of the situation in Somalia at a later date and evidence from two expert witnesses whose views were tested under cross-examination.[28] According to the UK Upper Tribunal, the additional evidence would justify attributing different evidentiary value to the report of the fact-finding mission in the findings of fact before the Tribunal. The Tribunal concluded that there were no legitimate reasons for limiting the weight of the report of the fact-finding mission as was done by the

25 *AMM and others* (n 16) para 117; See also, *CM (EM Country Guidance: disclosure) Zimbabwe* [2013] UKUT 00059 (IAC) paras 154 – 165; *MST and others* (n 9) paras 163 – 164.
26 *Sufi and Elmi* (n 7) para 234.
27 Ibid para 233.
28 *AMM and others* (n 16) paras 119 – 120.

ECtHR in *Sufi and Elmi*. The Tribunal argued that the descriptions of the sources were in accordance with the EU Common Guidelines on (Joint) Fact Finding Missions of November 2010. Additionally, the Tribunal adopted the approach that the value of the fact-finding mission report lay solely in the views and opinions expressed by the interviewees not in any summary or analysis. According to the Tribunal, 'the important thing is not precisely what a particular NGO is doing in Somalia, but what they observe about the situation in that country whilst they are doing it.'[29]

The UK Upper Tribunal failed to properly assess how the ECtHR applied its general approach in practice to the report of the fact-finding mission in *Sufi and Elmi*. It appeared from the ECtHR's reasoning in paragraph 234 of the decision in *Sufi and Elmi* that it limited the weight of the report of the fact-finding mission. However, in practice the Court attached substantial weight to some of the information in the report. The ECtHR considered that only 'a returnee with no recent experience of living in Somalia would be at real risk of being subjected to treatment proscribed by Article 3 in an Al-Shabaab controlled area.'[30] This conclusion was based solely on the views of three (out of fourteen) sources who told the fact-finding mission 'that areas controlled by al-Shabaab were generally safe for Somalis provided that they were able to "play the game" and avoid the attention of al-Shabaab by obeying their rules.'[31] The ECtHR does not reference any other corroborating information. The UK Upper Tribunal in *AMM and others* failed to appreciate the fact that one of the ECtHR's most important conclusions was based solely on the report of the fact-finding mission.[32] In the end, the ECtHR and the UK Upper Tribunal came to much the same conclusion regarding the risk assessment of returnees to Somalia. The UK Upper Tribunal did rely on considerably more sources of Country of Origin Information than the ECtHR in support of that conclusion.[33]

It appears that the ECtHR considers the Tribunal's approach to Country of Origin Information effective.[34] For example, in the case of *R.H.,* the ECtHR considered that, given the high volume of oral and written evidence examined by the UK Upper Tribunal in *MOJ and others*, the Tribunal's assessment must be accorded great weight.[35] However, the ECtHR neither discussed the UK Upper Tribunal's general approach to the oral and written evidence nor did the Court examine whether the Tribunal has correctly assessed the information in line with its own general approach.

The Tribunal's approach to Country of Origin Information is not specifically referenced by UNHCR, the EASO COI Report Methodology or the ACCORD training manual.

29 Ibid paras 163 – 164.
30 *Sufi and Elmi* (n 7) para 277.
31 Ibid para 275.
32 *AMM and others* (n 16) paras 453 – 473.
33 *AMM and others* (n 16) paras 372 – 413. The UK Upper Tribunal did point out that the risk assessment might be different when there is the possibility of a person suffering a flagrant breach of his or her right to freedom of religion in the context of the 1951 Refugee Convention and it cannot reasonably be asked of the person 'to play the game.'*AMM and others* (n 16) part H and paras 491 – 496.
34 See also *Sufi and Elmi* (n 7) paras 241 – 242.
35 *R.H. v. Sweden*, App No 4601/14 (ECtHR, 10 September 2015) para 67.

2.3 UNHCR's approach

Foremost, UNHCR analysis of objective COI evidence is informed by its wide field presence and significant status determination experience.[36] However, practices by national authorities have also influenced UNHCR's COI quality standards.[37] UNHCR's approach to Country of Origin Information is considered sound by the UK Upper Tribunal.[38] However, none of the examined institutions considered they should follow UNHCR's methodology.

The ECtHR and the UK Upper Tribunal do not refer to the COI quality standards used by UNHCR in support of their own approach to Country of Origin Information. The ECtHR and the UK Upper Tribunal only refer to the COI quality standards used by UNHCR as an aspect to be taken into consideration in the assessment of the weight to be attached to UNHCR position papers and Eligibility Guidelines. The ECtHR and the UK Upper Tribunal have both concluded that UNHCR Eligibility Guidelines should be accorded due weight but cannot be decisive in an independent assessment. Problematic is that the ECtHR and the UK Upper Tribunal do not clearly distinguish between UNHCR as a source of Country of Origin Information and UNHCR as a provider of an analysis of that country of origin information.

The ECtHR has recognised that in the context of Country of Origin Information it should consider 'the presence and reporting capacities of the author of the material in the country in question.' The ECtHR has observed that,

> [S]tates through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that same consideration must apply, a fortiori, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do.[39]

Therefore, the ECtHR considers UNHCR's strength to lie in its ability to carry out assessments in the field and its direct access to authorities of countries of origin. The weight attached to independent assessments 'must inevitably depend on the extent to which those assessments are couched in terms similar to Article 3.'[40] Therefore, the ECtHR has attached due weight to UNHCR's Refugee Status Determinations.[41] Moreover, the ECtHR attaches greater importance to Country of Origin Information that discusses the human rights situation in a country of origin and directly addresses the grounds for the alleged risk at ill-treatment. As a result,

36 UN High Commissioner for Refugees (UNHCR), 'UNHCR public statement in relation to AMM and others v. Secretary of State for the Home Department pending before the Upper Tribunal (Immigration and Asylum Chamber)' (6 June 2011) para 6.

37 E.g., Hans Thoolen, Chief of the Centre for Documentation on Refugees of UNHCR, 'Final Report, Consultancy on Country of Origin Information' ('Evian Report') (March 1990); United Nations High Commissioner for Refugees (UNHCR), 'Informed decision-making in protection: the role of information, Sub-committee on International Protection' EC/1993/SCP/CRP.6 (27 September 1993); UN High Commissioner for Refugees (UNHCR), 'Country of Origin Information: Towards Enhanced International Cooperation' (February 2004)

38 *AMM and others* (n 16) para 362.

39 *NA* (n 6) para 121.

40 Ibid para 122.

41 *Jabari v. Turkey*, App no 40035/98 (ECtHR 2000) para 41; *NA* (n 6) para 122.

the ECtHR has attached less weight to UNHCR concerns that focussed on general socio-economic and humanitarian considerations because 'such considerations do not necessarily have a bearing on the question of a real risk to an individual applicant of ill-treatment within the meaning of Article 3.'[42] With regard to UNHCR position papers and Eligibility Guidelines specifically, the ECtHR has reasoned that they should be accorded substantive weight but could not themselves be decisive in the assessment of the domestic authorities or the Court due to the fact that the position papers and guidelines contain general surveys of the varying risks to different groups of people.[43]

The UK Upper Tribunal has likewise recognised that UNHCR is in a good position to provide first-hand information as to the situation in a country of origin due to its observers in the field. It specifically noted that the methodology that transforms the observations into position papers would likely increase the objectivity and soundness of UNHCR's observations.[44] The UK Upper Tribunal considered that the limitations of UNHCR observations, especially those which go beyond the remit of the 1951 Refugee Convention, should be equally understood.[45] UNHCR's observations should be read for what they actually convey about 'the level of risk, of what treatment and of what severity and with what certainty as to the available evidence'[46] because UNHCR's language is, for example, not framed by reference to the obligations under the European Convention for Human Rights.[47] The UK Upper Tribunal concluded that UNHCR material is entitled to weight 'but may well not be decisive.'[48]

In *AMM and others,* the UK Upper Tribunal carefully considered UNHCR's approach to Country of Origin Information. In particular, its approach to the process of 'triangulation' and the assessment of the reliability of sources. The UK Upper Tribunal accepted UNHCR's COI quality standards as evidence of the authority of the UNHCR Eligibility Guidelines. However, it reasoned that it had before it much the same evidence as UNHCR and that it should accord its own weight to the evidence in the context of the particular case and in relation to all the available evidence before the Tribunal. The UK Upper Tribunal again emphasised that the conclusions reached by UNHCR on the basis of particular evidence are considered extremely helpful but not determinative.[49] The Tribunal considered that it cannot go beyond having careful regard to the Eligibility Guidelines and it cannot accept that UNHCR Eligibility Guidelines represent the most comprehensive analysis of the security situation in Somalia. The UK Upper Tribunal considered that UNHCR's methodology is sound, that it relies on a wide range of sources and is well-placed to give its highly informed view. However, the Tribunal concluded, 'the Guidelines nevertheless form only a part of the evidential matrix which the parties to the present proceedings have assembled.'[50]

42 *Salah Sheekh* (n 5) para 141; *NA* (n 6) para 122.
43 *NA* (n 6) paras 122, 127.
44 *NM (Lone women – Ashraf)* Somalia CG [2005] UKIAT 00076, para 108.
45 Ibid paras 109 – 115.
46 Ibid para 110.
47 Ibid para 114.
48 Ibid para 115; See also *LP (LTTE area – Tamils – Colombo – risk?) Sri Lanka* CG [2007] UKAIT 00076, paras 148, 203.
49 *AMM and others* (n 16) para 153.
50 Ibid para 362; See also, *HF (Iraq) v Secretary of State v Home Department* [2013] EWCA Civ 1276, para 44.

Finally, UNHCR was consulted in the process that resulted in the 2008 EU Common Guidelines on Processing COI and the EASO COI Report Methodology.[51] However, UNHCR's approach to Country of Origin Information was not a particular standard followed by the EU Member States in the establishment of their own standards. Moreover, EU Legislation only refers to UNHCR as a source of Country of Origin Information to be taken into consideration in the determination of a need for international protection not as a source on how this information should be assessed.[52]

2.4 The EASO COI Report Methodology

The COI quality standard against which the practices of the ECtHR, the UK Upper Tribunal and UNHCR are measured are set by the institutions themselves. Whereas the standard against which the practices of the Netherlands and the United Kingdom are measured, more specifically the EASO COI Report Methodology, is the result of practical co-operation at the EU-level. The project group that developed the EU Common Guidelines on Processing COI, the predecessor of the EASO COI Report Methodology, included representatives of COI units from immigration services from Belgium, Denmark, France, Germany, the Netherlands, Poland, Switzerland and the United Kingdom. The project group received input from all EU Member States, Canada, Norway, UNHCR, ACCORD, Refugee Documentation Centre Ireland as well as the European Commission.[53] The 2012 and 2019 EASO COI Report Methodology were also developed by representatives of EU Member States' COI units as well as UNHCR and ACCORD.[54] Therefore, like the ACCORD training manual, the EASO COI Report Methodology is a product of the collaboration of experts and expert organisations. However, the lack of a wide application of the common standards and principles in the EASO COI Report Methodology in EU Member States is problematic.

Initially, the common standards and principles laid down in the EU Common Guidelines on Processing COI, and later in the EASO COI Report Methodology, were developed for the purpose of applying the same standards at the national level aimed at ensuring a more harmonised application of Country of Origin Information. The EU Common Guidelines on Processing COI are indeed specifically aimed at 'improving the quality of decision making in the common European asylum system while contributing to the harmonisation of the asylum processes within the EU.'[55] Article 4(d) of the regulation establishing EASO tasked EASO with the organising, promoting and coordinating of activities relating to the development of a *common* methodology for presenting, verifying and using information on countries of origin. However, the EASO COI Report Methodology itself states that the methodology aims to support the development of EU-level Country of Origin Information. It is developed 'for the purpose of producing and publishing different types of EASO COI reports.'[56]

51 E.g., European Asylum Support Office, 'EASO Country of Origin Information report methodology' (EASO COI Methodology 2019) (June 2019) 6.
52 See article 10 (3) (b) of the recast APD and article 37 (3) recast APD.
53 European Union, 'Common EU Guidelines for Processing Country of Origin Information (COI)' (EU Common guidelines for Processing COI) [2008] JLS/2005/ARGO/GC/0, 3, 3.
54 European Asylum Support Office, 'EASO Country of Origin Information report methodology' (EASO COI Methodology 2012) (July 2012) 5; EASO COI Report Methodology 2019 (n 51) 6.
55 EU Common Guidelines for Processing COI (n 53)
56 EASO COI Report Methodology 2019 (n 51) 6.

The common standards and principles were considered a prerequisite for further practical co-operation on Country of Origin Information, in particular, for joint assessments of situations in countries of origin to adopt common approaches.[57] However, EU Member States have only been encouraged to apply the standards at the national level. There is no obligation for EU Member States to apply the EASO COI Report Methodology to national COI products but 'EU countries may wish to extend its application also to national COI products.' The relevant EU legislation refers to EASO only as a source of Country of Origin Information. For example, article 10 (3) (b) of the recast EU Asylum Procedures Directive requires Member States to obtain precise and up-to-date information from various sources, such as EASO. The only explicit reference to the EASO COI Report Methodology can be found in recital 46 of the recast Asylum Procedures Directive which states that Member States should take into account EASO's methodology where they apply the safe country concepts.

Indeed, Member States that made valuable contributions to the EASO COI Report Methodology, appear not to follow this methodology. The UK Home Office no longer refers to the methodology since the beginning of 2018. It now refers to the 2008 EU Common Guidelines on Processing COI and the 2013 ACCORD training manual in its Country Policy and Information Notes.[58] Interestingly, other countries that played a role in the development of the EU COI quality standards, such as Belgium and France, likewise refer to the 2008 EU Common Guidelines on Processing COI rather than the EASO COI Report Methodology.[59] Belgium, France and the UK don't provide reasons for their reliance on the EU Common Guidelines.[60] The EU Common Guidelines on Processing COI and the EASO COI Report Methodology hold the same COI quality standards.

The Netherlands has not publicly identified a particular COI quality standard that it applies to its national COI products or policies and decisions. Remarkably, the Dutch State Secretary recently requested an advice on COI quality standards from the Advisory Committee on Migration Affairs. The State Secretary notes in her request that there is an abundance of Country of Origin Information available but that it is not clear when a source can be used or when it cannot be used by decision makers. Moreover, the State Secretary wonders whether sources could possibly be ranked according to reliability. [61] The EASO COI Report Methodology, which the Dutch authorities co-developed, provides all the answers to the State Secretary's questions. In particular, that 'it is not possible to establish a hierarchy of sources, as it is not possible to state that individual sources will always be more reliable or useful than others.'[62]

The EASO COI Report Methodology is not a particular standard referred to by the ECtHR, the UK Upper Tribunal or UNHCR.

57 European Commission, 'Green Paper on the future Common European Asylum System' [2007] COM/2007/301 final (Green paper) 9.

58 United Kingdom Home Office, 'Country Policy and Information Note, Afghanistan: Unaccompanied minors' (April 2018) 2.

59 E.g., Commissariaat - Generaal Voor Vluchtelingen en Staatlozen (CGVS), 'Stijlgids voor de redactie van COI producten' (June 2015) 4; Les produits documentaires de la Division de l'Information, de la Documentation et des Recherches (DIDR), 'Irak : Situtation des Irakiens convertis de l'islam vers le christianisme' (Office français de protection des réfugiés et apatrides (OPFRA) May 2019) 1.

60 EU Common Guidelines for Processing COI (n 53) 2.

61 State Secretary for Justice and Security, 'Request for Advice on Country of Origin Information' (July 2019).

62 EASO COI Report Methodology 2019 (n 51) 14.

2.5 Conclusions

The analysis in section 2 shows that there is not a COI quality standard that is considered of particular importance and/or lies at the basis of all COI quality standards. The ECtHR approach to Country of Origin Information can be considered the only legally binding standard. This means that Member States of the Council of Europe should apply the same level of scrutiny to Country of Origin Information as the Court. However, this does not mean they have to apply the exact same criteria.[63] The ECtHR general approach to Country of Origin Information was of particular importance to the UK Upper Tribunal but not to UNHCR or the Netherlands and the United Kingdom. It appears all examined institutions are of the opinion that the institutions' particular features require them to develop and identify their own criteria for the evidentiary assessment of Country of Origin Information. The EASO COI Report Methodology is the only COI quality standard that brings together the experiences of EU Member States, UNHCR as well as the ACCORD training manual. Yet, section 3 and 4 will show, that the methodology was also developed based on the particular features of, first, the EU Member States[64] and, later, the European Asylum Support Office and leaves out important details regarding, for example, transparency.

3 The analysis of the substantive norms

The following section will bring together the findings with regard to the standards and practices that focus on establishing as much as possible, an accurate picture of the situation in a country of origin. The standards and practices regarding relevancy, currency, accuracy, reliability and balance of Country of Origin Information aim to ensure the quality of the information at the basis of a determination of a need for international protection. Section 4 will focus on the procedural norms transparency and traceability that aim to ensure that decision makers, judges and policy makers can account for the Country of Origin Information that lies at the basis of their decisions and guidance for decision-making.

The different standards and practices by the ECtHR, the UK Upper Tribunal, UNHCR, and the (former) EU Member States will be compared. The comparison aims to establish whether there is a consensus on certain standards and whether there are any relevant differences in COI quality standards. It also aims to establish whether there are similarities or differences in the manner in which standards are being given meaning in practice. Moreover, the standards and practices of the ECtHR, the UK Upper Tribunal and the Netherlands and the United Kingdom will be measured against the standards regarding relevancy, currency, accuracy, reliability and balance in the ACCORD training manual. These standards include the use of relevant information, the use of up-to-date information, the use of different types of

63 Spijkerboer (n 8) 52.
64 See the EU Common Guidelines for Processing COI (n 53).

sources, the use of primary sources, source assessment and the balancing or cross-checking of Country of Origin Information.

The analysis of the findings shows a consensus on the need for relevant, up-to-date, information from several different kinds of sources in support of the determination of a need for international protection. However, there are some differences in interpretation of what can be considered relevant information. Moreover, the judiciary appears to be unaware of the significance of the difference between primary and secondary sources. In practice, all four examined institutions fell short of 'using *three* different sources and different types of sources that independently provide information on the research issue at hand' as suggested by the ACCORD training manual.[65] Finally, the act of balancing or cross-checking information, comparing and contrasting the information from the different kind of sources, is often obscured in the examined COI quality standards as well as in the practice of the examined institutions.

3.1 Relevancy

There is a consensus among the examined institutions on relevance of information as an important consideration in the assessment information. However, relevancy is not specifically recognised by the ECtHR and the UK Upper Tribunal as a principle. Moreover, UNHCR and the EASO COI Report Methodology provide a different definition for relevancy than the ACCORD training manual. Finally, the use of relevant information has not been given proper meaning in the practices of the examined institutions: Relevancy is the most often referred to principle by the examined institutions but is not systematically assessed in practice according to a specific standard.

3.1.1 The standard

The ECtHR[66]

The ECtHR does not specifically identify relevancy as a principle. However, the ECtHR has held that the weight to be attached to a COI report depends on the extent to which its assessments are couched in terms similar to Article 3 ECHR. The ECtHR attaches importance to reports which consider the human rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before it. The ECtHR attaches less weight to reports which focus on general socio-economic and humanitarian considerations. The reason is that such considerations do not necessarily have a bearing on the question of a real risk to an individual applicant of ill-treatment within the meaning of Article 3 ECHR.

65 Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 'Researching Country of Origin Information: Training Manual' (November 2013) 134.

66 Chapter 2, para 6; *NA* (n 6) para 122; See also, for example, *NM* (n 44) para 114.

The UK Upper Tribunal[67]

The UK Upper Tribunal follows the ECtHR approach and summarised the ECtHR's criteria as follows: accuracy, independence, reliability, objectivity, reputation, adequacy of methodology, consistency and corroboration.[68] Clearly, relevancy is not identified as a specific standard. However, the UK Upper Tribunal also implicitly recognises relevancy where it states that information should be read for what it actually conveys about 'the level of risk, of what treatment and of what severity and with what certainty as to the available evidence'[69] Information framed by reference outside the remit of the 1951 Refugee Convention or the obligations under the ECHR can only be accorded limited weight.[70]

UNHCR[71]

UNHCR states that the process of collecting information involves the assessment of the relevance of the information. Information must be relevant with respect to the subject matter and time to be considered for inclusion in the Eligibility Guidelines.[72]

EASO COI Report Methodology[73]

According to the EASO COI Report Methodology, relevance should be the first consideration. If information is not relevant it should be immediately excluded. The EASO COI Report Methodology identifies relevance as a guiding principle and defines it as 'the quality of being closely connected to the matter, fact, event or situation at hand.'[74]

ACCORD training manual[75]

According to the ACCORD training manual, Country of Origin Information is relevant when it is specific and 'based on questions rooted in legal concepts of refugee and human rights law or on questions derived from an applicant's statements.'[76] The ACCORD training manual clearly links the relevancy of information to the legal issues arising from the assessment of an application for international protection. Likewise, the ECtHR and the UK Upper Tribunal accord weight to information that assesses a situation in a country of origin in similar terms to their own legal assessments. However, UNHCR and the EASO COI Report Methodology fail to make that link between information and the legal assessment that needs to be made on the basis of the information.

67 Chapter 3, para 5.3.
68 *TK* (n 13) para 5.
69 *NM* (n 44) para 110.
70 Ibid paras 109 – 115.
71 Chapter 4, para 4.1.
72 UNHCR public statement in relation to *AMM and others* (n 36) para 14.
73 Chapter 5, para 4.
74 EASO COI Report Methodology 2012 (n 54) 10, 20; EASO COI Report Methodology 2019 (n 51) 7, 12.
75 Chapter 1, para 5.3.1.1 (a)
76 ACCORD training manual (n 65) 31 – 32.

3.1.2 The practice

The ECtHR[77]

The ECtHR mostly refers to the adjective form of relevance to qualify information. This means that the Court generally refers to 'relevant information' indicating that it finds the information relevant. The issue of relevancy only explicitly came up in the examined leading cases in relation to UNHCR. The ECtHR considered that the weight to be attached to the UNHCR material 'must inevitably depend on the extent to which those assessments are couched in terms similar to Article 3.'[78] Moreover, what stood out in the examination of the lead cases was that the ECtHR did not always take into consideration all relevant sources and/or all relevant information that was available on the issues before it.

The UK Upper Tribunal[79]

A comparison of the lists of documents annexed to the Country Guidance Determinations by the UK Upper Tribunal with the documents available on Refworld, showed that in the more recent Country Guidance Determinations the UK Upper Tribunal had before it all the relevant Country of Origin Information available.

UNHCR[80]

The examination of the UNHCR Eligibility Guidelines showed that UNHCR generally relies on relevant information. However, there were examples were the relevancy of the information relied on by UNHCR was not always clear because the information was not specific and/or based on questions derived from the issues at hand.

The Netherlands and the United Kingdom[81]

The examination of the Dutch and British practices showed that sometimes information appeared closely connected to the matter at hand, but the information was not necessarily based on questions rooted in the applicable legal concepts of refugee and human rights law. For example, the Netherlands referred to information published by the UN Secretary-General on job creation for ethnic minorities in Kosovo in support of the designation of Kosovo as a Safe Country of Origin. The information does indeed concern the situation of a particular group, ethnic minorities, possibly at risk in Kosovo. However, how does information on job creation relate to the question of whether there is in general no persecution or if a country of origin is capable of providing appropriate protection against persecution or mistreatment? The information neither concerns the application of relevant laws and regulations of the country nor the observance of the human rights and freedoms, respect for the non-refoulement principle or effective remedies against violations of those rights and freedoms.

77 Chapter 2, para 4.2.
78 *NA* (n 6) para 122.
79 Chapter 3, para 4.1.
80 Chapter 4, paras 4.1.2, 4.1.3, and 4.2.1.
81 Chapter 5, paras 5.2.1 and 6.2.2.

2.2 Currency: The use of up-to-date information

There is a consensus on the need to gather up-to-date information, so that the collected information accurately reflects the situation in a country of origin at the time of researching or taking a decision on a need for international protection. In practice, the standard has not been given meaning in a consistent manner.

3.2.1 The standard

The ECtHR[82]

The ECtHR examines the foreseeable consequences of a removal of an applicant to the receiving country in light of the general situation in the country as well as his or her personal circumstances. As the situation in a country of destination may change over the course of time, a 'full and *ex nunc* assessment' is called for by the ECtHR. If the applicant has not been expelled, the material point in time will be that of ECtHR's consideration of the case. In case the applicant has been expelled, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the expulsion. In case the applicant has not been expelled, the historical position will be of interest in so far as it may shed light on the current situation and its likely evolution. However, it will be the present conditions which will be decisive, and it will therefore be necessary for the ECtHR to take into account information that has come to light after the final decision was taken by the domestic authorities. For the ECtHR to do a full and *ex nunc* assessment, it should have at its disposal the most recent information available at the time of its deliberations of a case.

The UK Upper Tribunal[83]

Likewise, the UK Upper Tribunal is required to consider all relevant Country of Origin Information at the time of the hearing of the case. The decisions by the UK Upper Tribunal are governed by the principle laid down by the Court of Appeal in the case of *Ravichandran*. In *Ravichandran*, the Court of Appeal concluded that in asylum cases the appellate structure is to be regarded as an extension of the decision-making process. As it is necessary to look to the future in asylum cases, the appellate authorities are not restricted to the facts at the date of the original decision.

82 Chapter 2, para 4.3.
83 See Chapter 3, para 4.2.

UNHCR[84]

UNHCR considers access to up-to-date information a key decision-making tool.[85]

EASO COI Report Methodology[86]

Currency is one of the guiding principles in the EASO COI Report Methodology. This means that information should be 'time-relevant, up-to-date and/or the most recent information available and where the events in question have not changed since the release of the information.'[87]

ACCORD training manual[88]

The ACCORD training manual states that Country of Origin Information that serves to support decision makers should be up to date; It should reflect the situation in a country of origin at the time of the guidance or the decision.[89]

3.2.2 The practice

The ECtHR[90]

The analysis of the Somali, Tamil and Iranian cases showed that the ECtHR did not always rely on the most up-to-date information in its assessment of an alleged violation of Article 3 ECHR. The study uncovered several examples where the ECtHR failed to take into account the most up-to-date information available at the time of its deliberations of the case. The more recent and/or up-to-date Country of Origin Information might not have changed the outcome of the individual cases. However, the Country of Origin Information would have definitely attributed to the soundness of the ECtHR's conclusions in its judgements.

The UK Upper Tribunal[91]

The study of the Country Guidance Determinations showed some concerns regarding the cut-off date for new information. The hearing before the UK Upper Tribunal is considered the cut-off date for the admission of evidence to be considered by the Tribunal. This is to make sure that the Tribunal is not overloaded with new information and arguments after

84 Chapter 4, para 6.
85 United Nations High Commissioner for Refugees (UNHCR), *Asylum Processes (Fair and Efficient Procedures)", 2nd meeting of the Global Consultations on International Protection* (EC/GC/01/12) (31 May 2001) para 39; UNHCR, 'Country of Origin Information: Towards Enhanced International Cooperation (UNHCR COI policy paper) (February 2004) (UNHCR COI policy paper) para 4.
86 Chapter 5, para 4.1.
87 EASO COI Report Methodology 2012 (n 54) 10; EASO COI Report Methodology 2019 (n 51) 12.
88 Chapter 1, para 5.3.1.1 (b).
89 ACCORD training manual (n 65) 34.
90 Chapter 2, para 4.3.
91 Chapter 3, para 4.2.

the hearing. The hearing as a cut-off point proved problematic where a decision was only published several months after the hearing, making the country guidance determination susceptible to becoming out of date and overtaken by the changes in a country of origin even more quickly. Moreover, the Tribunal's approach to the acceptance of new information, in between the hearing and its determination, proved inconsistent.

UNHCR[92]

The study of the UNHCR Eligibility Guidelines exposed two issues regarding the use of the most up-to-date information available by UNHCR. The first issue concerned what is considered 'the actual situation in the country of concern at the time of research' by UNHCR. In the executive summary of an Eligibility Guideline, UNHCR usually states that it has included the most up-to-date information available at the time of writing. The examination of the UNHCR Eligibility Guidelines showed an inconsistent handling of this cut-off date, UNHCR took into consideration certain Country of Origin Information from after the cut-off date while ignoring other relevant more recent information without any explanation. Second, there were specific concerns regarding how up to date the information was that was used by UNHCR. The examined guidelines included several examples were UNHCR should have taken into account more recent information to ensure the comprehensive reflection of the situation in the country of origin.

The United Kingdom and the Netherlands[93]

The use of outdated information was mostly a concern in the older UK Home Office Country Policy and Information Notes, not as much in the more recent notes.

The analysis of the Dutch policy on safe countries of origin revealed that it was impossible to establish whether the initial decisions to designate Albania and Kosovo as safe were based on up-to-date information. Moreover, the Country of Origin Information at the basis of the standard reasoning in individual decisions had not been updated by the State Secretary since 2015.

3.3 Accuracy: The use of different types of sources

There is a consensus on the need to gather information from a wide range of sources to ensure the inclusion of a variety of perspectives that will lead to a balanced assessment of the situation in a country of origin. However, the standards set by the examined institutions don't provide for a specific number of sources that should be used for the corroboration of information. The ACCORD training manual specifically states that all information that has a bearing on a conclusion on a need for international protection should be corroborated by using *three* different kind of sources. In practice, the ECtHR, UNHCR, and the Netherlands and the United Kingdom failed to show a consistent reliance on a wide range of sources in their assessments of international protection needs. The UK Upper Tribunal set an example

92 Chapter 4, paras 6.1 and 6.2.
93 Chapter 5, para 5.2, footnote 77 and para 6.2.1.

by constructing its assessments on a comprehensive range of sources of Country of Origin Information.

3.3.1 The standard

The ECtHR[94]

The ECtHR considered in *NA v the United Kingdom,* a case in which the ECtHR assessed the risk to Tamils returning to Sri Lanka, that

> [G]iven the absolute nature of the protection afforded by Article 3, it must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other, reliable and objective sources, such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non- governmental organisations.[95]

The ECtHR has not specified in its jurisprudence when exactly it considers an assessment to be *adequately and sufficiently* supported, for example, what minimum number of sources is required for a sound assessment. What is considered properly corroborated information? Moreover, how should this be presented in an assessment of the ECtHR or authorities of the Contracting State?

The UK Upper Tribunal[96]

The UK Upper Tribunal has also failed to specify how many sources are required for a decision to be considered adequately and sufficiently supported. It follows the reasoning of the Court of Appeal that 'a whole bundle of pieces of evidence' should be considered while deciding on a future risk.

UNHCR[97]

UNHCR believes that information should be collected from a variety of different sources to form an unbiased picture of prevailing conditions in countries of concern. UNHCR requires a 'triangulation' of sources for any one piece of information. The 'triangulation' of sources' involves 'guaranteeing that information from one type of source is corroborated by information from different kinds of sources, with the aim of minimising the effects of bias or inaccuracy.'[98] For example, UNHCR will seek to obtain information from each of the following independent sources: (i) UN or intergovernmental organisations, (ii) NGOs, (iii)

94 Chapter 2, para 5.2.
95 *NA* (n 6) para 119 referring to *Salah Sheekh* (n 5) para 136 and *Saadi* (n 5) paras 128 – 132.
96 Chapter 3, paras 5 and 6.
97 Chapter 4, para 4.1.
98 *AMM and others* (n 16) paras 34, 134–52, 155, 360–62; UNHCR public statement in relation to *AMM and others* (n 36) para 15.

government, and (iv) news or media organisations. UNHCR explained that it will not present information that has not been confirmed in this way as fact in the Eligibility Guidelines, even if the information is considered reliable. According to UNHCR:

> This means that all factual statements made in Eligibility Guidelines (whether a footnote reference appears or not) are assessed to be reliable and corroborated. It also means that the association of a factual statement in an Eligibility Guideline with a public source by a footnote reference does not mean that this reference is the only basis for the statement, in many cases it will stand for a corroboration of the statement.[99]

EASO COI Report Methodology[100]

The EASO COI Report Methodology recommends the use of different types of sources, such as, governmental sources, media, international organisations, and NGO's as this will help to ensure that a balance of information is obtained and presented in the report. The aim is to consult 'a well-balanced range of sources in order to reflect different perspectives.'[101] According to the EASO COI Report Methodology, '[c]orroborating information supports or strengthens the accuracy and reliability of information by finding matching information from multiple and different kinds of sources with accounts of what occurred that are independent of one another.'[102]

The corroboration of information was identified by EASO as in need of further clarification. Therefore, the 2019 EASO methodology now specifies that there is a strong need to corroborate information, if it concerns a core matter in the application for international protection or a core research question, when a major trend or a significant situation is described, when information does not fulfil some of the COI quality criteria or when information stems from anonymous sources. Where it concerns an obvious fact or 'illustrative events, facts or incidents that serve as a corroboration of a more general trend or development described by more general human rights sources,' there is a 'lower need' for corroboration.

Finally, the 2012 EASO COI Report Methodology stated that 'wherever possible the information provided by one source should be corroborated with information from another source (double-checked) and additional sources as appropriate (multi-checked).'[103] The multi-checking of information is no longer included in the 2019 updated version of the EASO COI Report Methodology other than as synonyms for cross-checking. Additionally, it is interesting to note that according to the 2019 EASO COI Report Methodology, the disclaimer no longer needs to state that 'all information presented, except for undisputed/ obvious facts, has been cross-checked, unless stated otherwise.'[104]

99 ibid.
100 Chapter 5, para 4.4.
101 EASO COI Report Methodology 2012 (n 54) 6; EASO COI Report Methodology 2019 (n 51) 7.
102 EASO COI Report Methodology 2012 (n 54) 8; EASO COI Report Methodology 2019 (n 51) 14.
103 EASO COI Report Methodology 2012 (n 54) 10.
104 Compare the EASO COI Report Methodology 2012 (n 54) 12 to EASO COI Report Methodology 2019 (n 51) 21.

ACCORD training manual[105]

According to the ACCORD training manual, Country of Origin Information should be collected from different types of sources, that provide different perspectives on the issues at hand, to create a comprehensive picture of the situation in a country of origin and to rule out as much as possible any biases in individual sources.[106] Information should be collected from international or intergovernmental organisations, government organisations, NGO's or other civil society organisations, the media, and the academia. Similar wording is being used by the ECtHR, the UK Upper Tribunal, UNHCR and in the EASO COI Report Methodology. Furthermore, ACCORD suggests that all information that has a bearing on a conclusion on a need for international protection should be corroborated by 'using *three* different sources and different types of sources that independently provide information on the research issue at hand.'[107]

The differences between standards set by the ECtHR, the UK Upper Tribunal, UNHCR and the EASO COI Report Methodology and the ACCORD training manual concern two details. First, the ECtHR and the UK Upper Tribunal don't refer to the media or academia as a type of source that should be collected. Moreover, UNHCR and the EASO COI Report Methodology don't include academia as a type of source. Second, none of the examined institutions has specified the number of sources needed for the corroboration of information.

3.3.2 The practice

The ECtHR[108]

Given that the ECtHR has not set a minimum number of sources required for an adequately and sufficiently supported assessment, the practice of the Court was not specifically examined for the use of *three* different types of sources. The examination focused on the use of information from *different types of sources* in support of an assessment. The ECtHR usually relied on several different sources to draw conclusions on the need for protection from expulsion. These sources included information from media organisations but no information from academia. There were a few examples where the ECtHR's conclusions were insufficiently corroborated by other sources inconsistent with the need to compare materials made available by the domestic authorities with materials from other reliable and objective sources.

The UK Upper Tribunal[109]

Remarkably, the UK Upper Tribunal relied on a much wider range of Country of Origin Information than the ECtHR to come to an effectively comprehensive analysis on the Country Guidance issues. The lists of documents attached to the Country Guidance Determinations, sometimes counting up to hundreds of documents, included Country of Origin Information

105 Chapter 1, para 5.3.1.1 (c).
106 ACCORD training manual (n 65) 32.
107 Ibid 134.
108 Chapter 2, para 5.2.
109 Chapter 3, para 4.1.

from sources such as Government sources, UN Agencies, NGOs, and news agencies. The UK Upper Tribunal also heavily relied on the contributions of country expert witnesses, often academia, who were notably absent in the examined assessments of the ECtHR. The examination of the practice of the UK Upper Tribunal did not find any examples of insufficiently supported conclusions.

UNHCR[110]

The examination of the UNHCR Eligibility Guidelines raised concerns regarding the application of the requirement to corroborate information using multiple sources. The study of the UNHCR Eligibility Guidelines found examples of statements that appeared to be fully unsupported or insufficiently supported by Country of Origin Information. There was even an example of a risk profile that appeared to be based on insufficient information. Interestingly, the strength of the Eligibility Guidelines is considered to lie in the contributions from UNHCR field offices. However, contributions from UNHCR field offices were extremely limited in the examined Eligibility Guidelines.

The Netherlands and the United Kingdom[111]

The national designations of Safe Countries of Origin were examined for the *use of different types of sources* as well as the corroboration by *three* sources. The practices of the Netherlands and the United Kingdom were examined against the 2012 EASO COI Report Methodology that still mentioned the need to multi-check information when appropriate. The examination of the national designations raised concerns regarding the application of the requirement to corroborate information using multiple sources. The study of the UK Home Office Country Policy and Information Notes showed that relevant issues often referred to a limited number of sources because most sources were only referenced once or twice, and a few sources were referred to disproportionately. Certain important issues were sometimes only covered by one or two sources, and there were examples of false corroboration.

The designations of Albania and Kosovo as Safe Countries of Origin in the Netherlands was the most poorly supported compared to all the other examined guidance for decision-making in jurisprudence and policy guidelines. The Dutch authorities only referenced one source in support each issue. Notably absent from the Dutch assessment were references to local sources (governmental or NGOs), the Council of Europe, international (human right) organisations, and the media.

3.4 Accuracy: The use of primary sources

The importance of distinguishing between primary and secondary sources is not recognised by all the examined institutions. Remarkably, the issue of the use of primary sources versus the use of secondary sources is neither addressed by the ECtHR nor by the UK Upper Tribunal in their jurisprudence. UNHCR and the EASO COI Report Methodology recognise the need

110 Chapter 4, para 4.1.
111 Chapter 5, paras 5.2.2 and para 6.2.3.

that, whenever possible, the primary source of information should be referenced. Although, the importance of the use of primary sources is recognised as a standard, in practice, the UNHCR Eligibility Guidelines and the national policies regarding Safe Countries of Origin at times failed to take into account primary sources where this was useful and possible. Therefore, the standard has not been given proper meaning in practice.

3.4.1 The standard

UNHCR[112]

UNHCR recognises that, because of limited resources and the need to enhance production, national authorities prefer information or assessments that already have been 'digested' or evaluated by a reputable source such as another government, UNHCR or an NGO. In this context, UNHCR points at the risk of secondary sources citing each other which can lead to round-tripping of information.[113] UNHCR cites a UK Home Office 2003 study which explained that 'reliance on secondary sources can draw producers into a false sense of pluralism (...) NGOs too are primarily reproducers of country information, which leads to information 'round-tripping.'[114]

EASO COI Report Methodology[115]

The EASO COI Report Methodology states that while researching country of origin information, every effort should be made to find and refer to the original or primary source of information. This will prevent round-tripping, false corroboration, and misquoting of information.[116] The EASO COI Report Methodology states that round-tripping may occur when secondary sources cite each other instead of referring to the original/primary source. The failure to identify round-tripping risks the use of information that is not up to date.[117] Moreover, false corroboration may occur when information appears to be supported by information from several different sources when in fact the information stems from the same original/primary source.[118]

The EASO COI Report Methodology defines a primary source as follows, 'a primary source is a person or institution closely or directly related to (i.e. having first-hand information of) an event, fact or matter.'[119] The EASO COI Report Methodology includes the definition of an 'original source' or 'the person or institution who documents the event, fact or matter for the first time. The original source can also be the primary source.' The secondary source 'is the person or institution, who/which reproduces the information documented by the original source.'[120] The methodology warns that 'it should be borne in mind that primary sources

112 Chapter 4, para 4.2.
113 UNHCR COI Policy Paper (n 85) 6.
114 Ibid fn 23.
115 Chapter 5, para 4.2.
116 EASO COI Report Methodology 2019 (n 51) 13.
117 EASO COI Report Methodology 2012 (n 54) 20 or EASO COI Report Methodology 2019 (n 51) 32.
118 EASO COI Report Methodology 2012 (n 54) 17 or EASO COI Report Methodology 2019 (n 51) 15.
119 EASO COI Report Methodology 2012 (n 54) 8 or EASO COI Report Methodology 2019 (n 51) 12.
120 ibid.

may inadvertently or intentionally provide false information, for instance due to language/translation problems or to political opinions. Therefore, even information provided by original/primary sources must be assessed.'[121]

ACCORD training manual[122]

The ACCORD training manual distinguishes between primary and secondary sources. According to ACCORD, one should always try to identify a primary source and trace information as far back as possible as secondary sources generally have a higher chance of being misleading resulting in round-tripping and false corroboration. A primary source is 'a person or institution providing first-hand testimony or observations on the event or issue in question.' A secondary source is 'a person or institution referring to primary or other secondary sources. It may reproduce, compile, or provide comments on primary or other secondary sources.'[123] The ACCORD training manual does not use the term 'original source,' like the EASO COI Report Methodology, as it considers an original source to be synonym for primary source.[124] The ACCORD training manual also warns that primary sources may not necessarily provide information of higher quality, they may provide false information, on purpose or by mistake. Therefore, it is equally important to assess primary and secondary sources.[125]

The ACCORD training manual speaks of round-tripping 'if a source refers to a secondary source rather than to the primary source or the source that first documented the information. This may lead to information getting distorted or lost or give a false impression of currency or authorship.'[126] With regard to false corroboration, the ACCORD training manual points to the fact that often a piece of information can be found in a number of sources. This piece of information may have been obtained from the same primary source, 'an impression of corroboration may arise where in fact there is none.'[127] In order to avoid the risks of round-tripping and false corroboration, one should be aware of 'who or what the primary source is and consult the source that first reported the information whenever possible.'[128]

UNHCR, the EASO COI Report Methodology and the ACCORD training manual agree on the importance of distinguishing between primary and secondary sources in an effort to collect as accurate information as possible on the situation in a country of origin. The fact that both the ECtHR and the UK Upper Tribunal are not consciously considering the difference between primary and secondary sources and the pitfalls of cross-checking mistakes, is concerning.

121 EASO COI Report Methodology 2012 (n 54) 8 or EASO COI Report Methodology 2019 (n 51) 13.
122 Chapter 1, para 5.3.1.1 (d).
123 ACCORD training manual (n 65) 85.
124 Ibid 85.
125 Ibid 85.
126 Ibid 136.
127 Ibid 137.
128 Ibid 136.

3.4.2 The practice

The jurisprudence of the ECtHR and the UK Upper Tribunal was not specifically examined for the use of primary sources because the courts did not identify the use of primary sources as a quality standard.

UNHCR[129]

The round-tripping of information was not a major issue in the Eligibility Guidelines, though the study did reveal a few clear examples of round-tripping. The possibility of false corroboration was certainly a concern due to UNHCR's reliance on unreferenced information from, for example, other United Nations agencies and the US Department of State.

The United Kingdom and the Netherlands[130]

In its Country Policy and Information Notes, the UK Home Office often referenced secondary sources rather than the source that first reported the information. Also, it often referred to information that was not referenced, leaving the primary source and origin of the information unknown. Regularly, quotes were taken out of executive summaries or abstracts rather than out of a report's body. Summary information was hardly ever sourced. Moreover, it missed the necessary context to properly verify the reliability of the information.
The sources referenced by the Netherlands in support of the national designations of Albania and Kosovo as Safe Countries of Origin were only secondary sources.

3.5 Reliability: Source assessment

There is consensus on the importance of the assessment of the reliability of sources and their information. The examined institutions as well as the ACCORD training manual are in agreement on what aspects of a source are relevant to determine a source's reliability. Yet, despite all the institutions' insistence on the importance of assessing a source's reliability, the aspects identified as relevant for the assessment are not systematically evaluated in practice by the examined institutions. The UK Upper Tribunal is the only exception.

3.5.1 The standard

The ECtHR[131]

In *NA,* the ECtHR stated that it requires to consider in particular the sources' independence, reliability and objectivity through determining the authority and reputation of its author, the method of investigating, the consistency of its conclusions with and corroboration by other

129 Chapter 4, para 4.2.
130 Chapter 5, paras 5.2.2 and 6.2.2.
131 Chapter 2, paras 5.1 and 6.

sources, and the presence and reporting capacity of the author of the material in the country in question. The ECtHR has provided examples of sources it finds important. It has specified to attach importance to information in recent reports from independent international human rights protection organisations such as Amnesty International, or governmental sources, including the US State Department.[132] It attaches greater importance to reports, which consider the human rights situation in the country of destination and directly address the grounds for the alleged real risk of ill-treatment in the case before the Court. Moreover, the ECtHR observed

> [T]hat states through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that same consideration must apply, a fortiori, in respect of agencies of the United Nations, particularly given their direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do.[133]

In the case of *Sufi and Elmi,* the ECtHR has further specified that it will not disregard a report simply on account of the fact that the author of the report did not visit the area in question and instead relied on information provided by sources. The ECtHR expresses its appreciation for the many difficulties faced by governments and NGOs when gathering information in dangerous and volatile situations. The ECtHR accepts that it will not always be possible for investigations to be carried out in the immediate vicinity of a conflict and, in such cases, information provided by sources with first-hand knowledge of the situation may have to be relied on. Where a report is wholly reliant on information provided by sources, the authority and reputation of those sources and the extent of their presence in the relevant area will be relevant factors for the ECtHR in assessing the weight to be attributed to their evidence.

The UK Upper Tribunal[134]

In line with *NA*, the UK Upper Tribunal considers in particular the sources' independence, reliability and objectivity, the authority and reputation of its author, the method of investigating, the consistency of its conclusions with and corroboration by other sources, and the presence and reporting capacity of the author of the material in the country in question.

UNHCR[135]

UNHCR has emphasised that it subjects both the source and the reporting of information to intense scrutiny, to ensure that it can have confidence in the reliability and veracity of the information. It assesses the source of information to establish reliability with regard to: (i) institutional or personal experience of the subject matter involved; (ii) objectivity; (iii)

132 *NA* (n 6) para 119
133 Ibid para 121.
134 Chapter 3, para 5.
135 Chapter 4, para 5.

observational capacity and proximity; and (iv) the methodology applied to gather and record data, conduct analysis, and so on. UNHCR states that, in general, to evaluate any particular source it is important to determine:

- Who produced the information and for what purposes (taking into account such considerations as the mandate and the philosophy of the information producer),
- Whether the information producer is independent and impartial,
- Whether the information producer has established knowledge,
- Whether the information produced is couched in a suitable tone (objective rather than subjective perspective, no overstatements, etc.),
- Whether a scientific methodology has been applied and whether the process has been transparent, or whether the source is overtly judgemental.[136]

EASO COI Report Methodology[137]

According to the EASO COI Report Methodology, sources need to be validated or assessed. Validation or assessment is 'the process of evaluation of a source by thoroughly and critically assessing it through the quality criteria.' [138] The process aims to assess the context in which a source operates and the extent to which the source is influence by its context. Moreover, it aims to assess the neutrality and reliability of a source. According to the EASO COI Report Methodology, the assessment of sources should be guided by the following questions,

- **Who** is providing the information? Is this clear or is the source anonymous? What is their reputation? Does the source have specific knowledge that makes them an 'expert' on the issue at hand? Does the source have a known bias?
- **What** information is provided? What is the real content/substance of the information produced? Is it delivered independently of the motivation of the source?
- **Why** are they providing this information? What is the agenda of the source? Does the source have a specific interest?
- **How** is the information presented? How is it formulated? Is it clear what research methods are used? How is the information gathered by the source? Is the material presented in an objective and transparent way?
- **When** was the information gathered and when was it provided?

136 UNHCR COI Policy Paper (n 85) para 26.
137 Chapter 5, para 4.4.
138 EASO COI Report Methodology 2012 (n 54) 9; EASO COI Report Methodology 2019 (n 51) 13.

ACCORD training manual[139]

In accordance with the ACCORD COI quality standards, the quality of information should be systematically assessed to be able to determine the weight that can be attached to the information. The assessment includes an assessment of the reliability of the source as well as the reliability of the information it is providing in a given context. The different aspects of a source, such as its role and authority, its reporting mechanism, and the nature of its products, should be thoroughly examined. The following questions shed light on the relevant aspects of a source and should always be considered while assessing a source, [140]

- **Who** provides the information?
- **What** information is provided?
- **Why** is the source providing this information?
- **How** was the information collected?
- **When** was the information collected and published?

The questions behind the source assessment scheme in the ACCORD training manual can be traced back to the 2004 UNHCR policy paper as well as the EU Common Guidelines on Processing COI.[141] The questions are copied word for word in the 2012 EASO COI Report Methodology. Where the 2008 EU Common Guidelines on Processing COI and 2012 EASO COI Report Methodology still refer to the 'validation of sources,' the 2019 EASO COI Report Methodology has adopted the term source assessment in line with the practices of UNHCR and ACCORD.[142]

The ECtHR and the UK Upper Tribunal have not adopted a similar source assessment scheme. However, the judiciaries state they will assess similar aspects; the authority and reputation of its author, the method of investigating, the consistency of its conclusions with and corroboration by other sources, and the presence and reporting capacity of the author of the material in the country in question.

139 Chapter 1, para 5.3.1.1 (e).
140 ACCORD training manual (n 65) 89, 93: The questions can be traced back to the ACCORD 2004 training manual, the UNHCR 2004 COI Policy Paper (n 85) and the EU Common Guidelines on Processing COI (n 53).
141 ACCORD training manual (n 65) 89.
142 Compare EU Common Guidelines on Processing COI (n 53) 8 – 9 and the EASO COI Report Methodology 2012 (n 54) 9 to EASO COI Report Methodology 2019 (n 51) 13.

3.5.2 The practice

ECtHR[143]

The analysis of the ECtHR's case law showed that, despite the Court's insistence that it can only attach weight to sources for which it has considered aspects of independence, reliability and objectivity, the ECtHR failed to present the assessment of the sources it relied on in its decisions. The ECtHR often appeared to assume the reliability of the sources. Even where the reliability of a particular source was called into question by either the national authorities or the applicant, the ECtHR did not necessarily proceed to assess that Country of Origin Information in its judgement. Where the ECtHR did proceed to assess such disputed Country of Origin Information, it would often limit itself to discussing the reasons why weight could or could not be attached to the information. It would not systematically discuss all the aspects of a source it considered relevant in determining that weight.

The UK Upper Tribunal[144]

The UK Upper Tribunal was much more thorough in its assessment of the reliability of the sources it relied on. The UK Upper Tribunal usually focused on one or more elements in the assessment of the reliability of a source. Elements that appeared in the examined Country Guidance Determinations included, for example, professional background and personal experience of an expert witness, research methods, the reliance of major country reports on a source and the funding of a source. However, the Tribunal's examination did lack a systematic approach. For example, the Tribunal did not always discuss why it considered certain elements to be important in relation to a specific source and less important in the assessment of another source.

UNHCR[145]

Despite UNHCR's insistence on subjecting its sources to intense scrutiny, it failed to report on this scrutiny in its Eligibility Guidelines. The fact that UNHCR uses a source as a reference indicated that UNHCR finds the source reliable. Most sources referenced by UNHCR in the Eligibility Guidelines are generally considered reliable by COI researchers and are widely used in COI reports. However, there were some examples of sources that are not widely used and were referenced by UNHCR only once or just a few times without accompanying assessments of their reliability or objectivity. Moreover, analysis of the Eligibility Guidelines showed examples of UNHCR reliance on a source over which concerns had been raised regarding its independence and credibility.

143 Chapter 2, paras 5.1, 6.
144 Chapter 3, paras 5, 6.
145 Chapter 4, para 5.

The United Kingdom and the Netherlands[146]

As regards to the efforts of the UK Home Office at assessing the reliability of sources, on rare occasions did the Country Policy and Information Notes 'country information section' include a short description of a source. However, the sources and their information were never discernibly assessed for reliability. The Dutch policy completely lacked any assessment of sources.

3.6 Balance: Cross-checking of information

As mentioned, there is a consensus on the need to obtain information from various kinds of sources to obtain a balance of information as to ensure the inclusion of different perspectives on the issues at hand in order to create a comprehensive picture of the situation in a country of origin and to rule out as much as possible any biases in individual sources. However, the act of balancing or cross-checking information, comparing and contrasting the information from the different kind of sources, is often obscured in the examined COI quality standards. Moreover, the principle of balancing information is repeatedly approached solely from the perspective of the COI researcher or COI service provider. This is the point where the function of the decision maker, judge and/or policy maker fundamentally differs from that of a COI researcher: The decision maker, judge or policy maker assigns *evidentiary value* to Country of Origin Information in the determination of a need for international protection. On the basis of the evidentiary value attached to the Country of Origin Information, a decision maker, judge and/or policy maker balances the information to come to a sound decision. Except for the UK Upper Tribunal, the examined institutions have not given the cross-checking of information proper meaning in practice.

3.6.1 The standard

The ECtHR[147]

The ECtHR has given detailed guidance on the considerations it takes into account to determine the weight or evidentiary value of the Country of Origin Information before it. However, the ECtHR has been less detailed about how information should be compared and contrasted to determine what information is corroborated and what information is contradictory. The requirement to balance information only follows implicitly from the requirement to use different types of sources.

146 Chapter 5, paras 5.2.3 and 6.2.4.
147 Chapter 2, para 6.

The UK Upper Tribunal[148]

The UK Upper Tribunal has more clearly set out its approach to the balancing or cross-checking of information. Any Country Guidance Determination by the UK Upper Tribunal should be effectively comprehensive, meaning that the Tribunal 'should address all the issues in the case capable of having a real as opposed to fanciful bearing on the result and explain what it makes of the substantial evidence going to each such issue.'[149] In the case of *Karanakaran*, the Court of Appeal clarified that, where in civil litigation one would exclude evidence that might hold some credence, a decision maker who is deciding on a future risk may have to consider a whole bundle of pieces of evidence. It would be wrong for the decision maker to exclude information from the balancing process because he or she believes it unlikely to be correct. According to the Court of Appeal, the decision maker is required to reach a well-rounded decision which 'may necessarily involve giving greater weight to some considerations than to others, depending variously on the degree of confidence the decision maker may have about them, or the seriousness of their effect on the asylum-seeker's welfare if they should, in the event, occur.'[150]

UNHCR[151]

UNHCR states that 'by comparing and contrasting information from a variety of different sources, decision makers are assisted in forming an unbiased picture of prevailing conditions in countries of concern.[152] UNHCR provides guidance on what determines the reliability of a source. However, it has provided limited guidance on what the reliability of a source means in terms of evidentiary value of Country of Origin Information or how Country of Origin Information should be compared and contrasted taking into account the different weights that have been attached to the information.

EASO COI Report Methodology[153]

The EASO COI Report Methodology also refers to balancing of information in the context of the use of different kind of sources. Moreover, it states that COI reports should present conclusions based on analysis of the collected information. These conclusions 'should take into account all relevant parameters, as well as their mutual interdependence and their individual importance in comparison with the whole.'[154]

The process of balancing or cross-checking information is clarified in the 2019 EASO COI Report Methodology. According to the 2019 methodology, cross-checking 'is a means to corroborate or contrast information.' The 2019 methodology introduced the term 'synthesising' of relevant information in its methodology to clarify what is meant by analysis which includes the cross-checking of information:

148 Chapter 3, para 5.
149 *S v Secretary of State for the Home Department* [2002] EWCA Civ 539, para 29.
150 *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11, 23; see also LP (n 48) para 21.
151 Chapter 4, para 5.1.
152 UNHCR COI Policy Paper (n 85) para 5.
153 Chapter 5, para 4.
154 EASO COI Report Methodology 2012 (n 54) 13.

> The synthesis reflects the analytical COI process and its components, namely the structuring of the content and the sorting of information along this structure, the source assessment and validation of information, including cross-checking of information. The drafter synthesises similar statements found in sources, presenting corroborating or contradictory information together, and makes the comparison clear for the reader.[155]

The 2019 methodology also introduces the term 'COI conclusions' which aim to highlight main patterns in the analysed information that can assist the user of a COI report to come to an informed conclusion relevant to their tasks. According to the 2019 EASO COI Report Methodology, a COI conclusion is

> A COI conclusion is a reasoned and consolidated evaluation of a particular event, matter or situation based on sources' combined information. It should take into account all relevant parameters, as well as their mutual interdependence and individual importance relative to the whole. A COI conclusion constitutes a 'new piece of information', compared to the information provided by the sources: A + B + C = D. D is the COI conclusion. COI conclusions cannot include legal assessments, policy or decision guidance[156]

ACCORD training manual[157]

According to the ACCORD training manual, the cross-checking process includes the corroboration and balancing of information. The term cross-checking involves a focus on details that stand out and on discrepancies between reports from different sources. Also, general and specific information should be combined to assess whether this results in a consistent or contradictory picture of the situation.[158] If the cross-checking process leads to contradictions, it becomes particularly important to check the reliability of the sources. The level of reliability of a source determines the weight the particular information should be given in the process of balancing all available information. The ACCORD training manual emphasises that the cross-checking of information is a key skill for anybody dealing with Country of Origin Information.[159]

UNHCR, EASO COI Report Methodology and the ACCORD training manual strongly focus on COI research rather than on the assessment of Country of Origin Information in the context of determining a need for international protection. The UK Upper Tribunal does address the approach to the balancing of information from the perspective of a decision maker, judge or policy maker. Although, the underlying principle is the same, the UK Upper Tribunal explains the meaning of balancing information in the context of the criteria for international protection.

155 EASO COI Report Methodology 2019 (n 51) 17 – 18.
156 Ibid 19.
157 Chapter 1, para 5.3.1.1 (f).
158 ACCORD training manual (n 65) 135.
159 Ibid 134.

3.6.2 The practice

ECtHR[160]

The ECtHR did not determine the weight to be given to information in relation to all the available COI. It would not discuss supporting or contradictory information.

The UK Upper Tribunal[161]

The UK Upper Tribunal has put much more effort in balancing Country of Origin Information in its Country Guidance Determinations. Still, not every decision concerning the Country Guidance issues was based on the balancing of all the available information.

UNHCR[162]

In general, UNHCR's assessment in its Eligibility Guidelines neither included an explicit determination of the weight that should be accorded to information or a balancing exercise of all the available supporting and contradictory information. There were examples were relevant and reliable contradictory information was available from sources referenced by UNHCR that was not included in the Guidelines.

The United Kingdom and the Netherlands[163]

Likewise, the UK Country Policy and Information Notes failed to compare and contrast information. The Dutch policy completely lacked any balancing of supporting and contradicting information.

3.7 Conclusions

As mentioned in section 2.5, it appears all examined institutions are of the opinion that the institutions' particular features require them to develop and identify their own criteria for the evidentiary assessment of Country of Origin Information. The examination of the use of Country of Origin Information by the ECtHR, the UK Upper Tribunal, UNHCR and the two (former) EU Member States shows that the examined institutions indeed use their own preferred terminology and order of addressing certain principles or standards. However, it also shows that there is largely a consensus on the guiding principles and general quality standards regarding the use of Country of Origin Information. The comparison of the COI quality standards, including the comparison with the ACCORD training manual, exposed some differences in interpretation regarding the standards relevancy and accuracy of information. These significant differences in quality standards cannot be justified by any particular features of the examined institutions.

160 Chapter 2, para 6.
161 Chapter 3, para 6.
162 Chapter 4, para 5.
163 Chapter 5, paras 5.2.3 and 6.2.4.

4 The analysis of the procedural norms

This section will bring together the standards and practices of the ECtHR, the UK Upper Tribunal, UNHCR and the Netherlands and the United Kingdom regarding transparency and traceability. The standards transparency and traceability aim to ensure that decision makers, judges and policy makers show what Country of Origin Information lies at the basis of their decisions and guidance for decision-making and how they have assessed and cross-checked the information. A transparent assessment of sources and cross-checking of information will lead to more accountability of why certain information is being used and why a certain weight is being attached to it. Especially when it concerns, for example, older information, information from secondary sources rather than primary sources or the use of only limited information. Moreover, it provides the opportunity for other available and/or new information to be put into perspective.

The standards and practices of the examined institutions will be compared and measured against the ACCORD training manual. There is no consensus on the level of reporting on or transparency of the process of assessing Country of Origin Information. As a result, it is difficult to determine how sources are assessed for reliability and the balancing or cross-checking of information is given meaning in practice. In current form, it appears that the reliability of information is not systematically reflected on in guidance for decision-making by the ECtHR, UNHCR and the Netherlands and the United Kingdom. Although, the UK Upper Tribunal was not consistent in its practice, it did show in some of the examined Country Guidance Determinations how information could be assessed and balanced in a proper manner in accordance with its own COI quality standards and the ACCORD training manual.

4.1 Transparency and traceability

Transparency is recognised as a COI guiding principle. However, there is no consensus on the level of transparency. There is agreement on using, as much as possible, publicly available information. However, some of the examined institutions set lower requirements with regard to the referencing of information compared to the ACCORD training manual. Most importantly, in practice, all of the examined institutions in this PhD, to a certain degree, failed to report on the cross-checking process followed during the research process at the basis of the assessment in their guidance for decision-making. As a result, it was not always possible to establish whether the guidance for decision-making in the jurisprudence and the policy guidelines was truly based on a wide range of sources. Moreover, it was not always possible to conclude that sources had been assessed for reliability. Finally, it was not always possible to establish whether the information had been cross-checked by corroborating and balancing the information within the set legal criteria for international protection.

4.1.1 The standard

The ECtHR and the UK Upper Tribunal have not identified a specific standard regarding transparency. However, both courts have to provide reasons for their decisions.[164]

UNHCR[165]

UNHCR explained it will not present information that has not been confirmed as fact in the Eligibility Guidelines, even if the information is considered reliable. According to UNHCR:

> This means that all factual statements made in Eligibility Guidelines (whether a footnote reference appears or not) are assessed to be reliable and corroborated. It also means that the association of a factual statement in an Eligibility Guideline with a public source by a footnote reference does not mean that this reference is the only basis for the statement, in many cases it will stand for a corroboration of the statement.[166]

EASO COI Report Methodology[167]

According to the 2012 EASO COI Report Methodology, transparency is 'the quality of information to be clear and unequivocal and intelligible.'[168] The 2019 EASO COI Report Methodology has added that 'the quality of being clear about the methods for how research decisions were made, including terms of reference, how information was obtained, assessed, and presented.[169] Traceability means,

> The degree in which a piece of information or a statement is presented in such a way that the end-user is capable of:
>
> 1. reconstructing the same information or statement based on the constituent parts; and/or
>
> 2. identifying the individual sources and their kind (primary, secondary, etc.) of each and every constituent part; and/or
>
> 3. evaluating the statement made.[170]

Transparency and traceability mean that, in general, the EASO COI Report Methodology only requires a description of sources when validity questions are raised in view of the quality standards or where it concerns lesser known sources.[171]

164 European Court of Human Rights, 'Rules of Court' (2020) Article 74; Chapter 3, para 6.
165 Chapter 4, para 4.
166 UNHCR Public Statement in relation to *AMM and others* (n 36) para 16.
167 Chapter 5, para 4.4.
168 EASO COI Report Methodology 2012 (n 54) 21.
169 EASO COI Report Methodology 2019 (n 51) 7, 9.
170 EASO COI Report Methodology 2012 (n 54) 21.
171 EASO COI Report Methodology 2012 (n 54) 13; EASO COI Report Methodology 2019 (n 51) 13.

Moreover, transparency and traceability mean that relevant and contradictory information on a certain subject should be presented. The sources of such information and the quality and reliability of the information should be carefully assessed. This assessment should be explicitly presented in the report in order to assist the reader in assigning weight to such information.[172] The 2019 EASO COI Report Methodology has added that a synthesis should reflect the analytical COI process and its components.' These components include the source assessment and validation of information, including cross-checking of information. The synthesis brings together similar statements found in consulted sources, presents corroborating or contradictory information, and makes the comparison clear.[173]

Where only one source can be found, which provides information that should normally be cross-checked and corroborated, the source should also be briefly described taking into account the context from which the source is providing information. For example, whether the country and/or situation is widely reported on, whether the country has an active and free press, whether (self)censorship takes place, and whether the source in question is uniquely placed to document the information at hand.[174] The fact that information could not be corroborated should be explicitly mentioned.[175]

Also, the EASO COI Report Methodology requires the reporting of the fact that no information has been found and the context should be explained, this includes referencing the sources that have been unsuccessfully consulted.[176]

Finally, the EASO COI Report Methodology requires that every piece of information is referenced by a minimum of one source, preferably the original/primary source. The EASO COI Report Methodology states that it is not necessary to mention all sources that have been consulted in the cross-checking process. It suffices to mention in the disclaimer that all information has been cross-checked with at least one other source.[177] Remarkably, the 2019 EASO COI report Methodology no longer mentions that that it is not necessary to mention all sources that have been consulted in the cross-checking process. Moreover, according to the 2019 EASO COI Report Methodology, the disclaimer no longer needs to state that 'all information presented, except for undisputed/ obvious facts, has been cross-checked, unless stated otherwise.'[178]

ACCORD training manual[179]

According to the ACCORD training manual, it is equally important to cross-check information as it is to report on the actual cross-checking process.[180] The ACCORD COI quality standard requires information to be presented in 'a clear, concise, unequivocal and retrievable manner.'[181] Every piece of information in a COI product should be completely and correctly referenced to enable users to independently verify and assess information relied on.

172 EASO COI Report Methodology 2012 (n 54) 11; EASO COI Report Methodology 2019 (n 51) 16.
173 EASO COI Report Methodology 2019 (n 51) 18.
174 EASO COI Report Methodology 2012 (n 54) 9; EASO COI Report Methodology 2019 (n 51) 16.
175 EASO COI Report Methodology 2012 (n 54) 10.
176 EASO COI Report Methodology 2012 (n 54) 11; EASO COI Report Methodology 2019 (n 51) 16.
177 EASO COI Report Methodology 2012 (n 54) 11; EASO COI Report Methodology 2019 (n 51) 20.
178 Compare the EASO COI Report Methodology 2012 (n 54) 12 to EASO COI Report Methodology 2019 (n 51) 21.
179 Chapter 1, para 5.3.1.2.
180 ACCORD training manual (n 65) 165.
181 Ibid 35.

Information that can be tracked and traced give authority to the COI product.[182] To that end, guidance for decision-making and decisions should:

- Include different kinds of sources that provide information on a given research issue.
- State clearly which source provided what kind of information.
- Explicitly point out where sources corroborate or contradict each other.
- Explicitly point out where corroboration was not possible.
- Explicitly point out where no information was found and let the reader know about the efforts that were made.
- In case no information or only information from dubious sources was found, make visible which sources were consulted unsuccessfully.[183]

The reporting on the cross-checking process should be neutral, done in a logical manner as to make sense the users of guidance or the applicant, include a short introduction to the most important sources, provide context to information, distinguish between facts and opinions, reflect all points of view including contradictions, and use appropriate quotes, re-phrasing and summaries.[184]

The minimum requirement of UNHCR and EASO that every piece of information is only referenced by one source, is at odds with the need for transparency and traceability. Transparency requires to be clear and open about the methods for how research decisions were made, information was obtained, assessed, and presented. It is not only important to keep a detailed record of all the sources and information gathered in the policy making process. It is also important to make the sources and information known in the guidance for decision-making itself for verification of the credibility of the policy making process, and therefore, the (continuing) applicability of the actual guidance for decision-making.

4.1.2 The practice

The ECtHR[185]

Previously, it was concluded that the ECtHR failed to include in the examined jurisprudence the assessment of the relevancy and reliability of Country of Origin Information and the comparing and contrasting of corroboratory and contradictory information. The evidentiary assessment of the Country of Origin Information against the obligations under Article 3 ECHR was not included in the leading decisions of the ECtHR that were examined for the purposes of this research. As a result, it is impossible to independently verify how the information was assessed by the ECtHR, or in other words, how careful and reliable the Courts' assessment is of the situation in a country of origin.

182 Ibid 35, 170, 193.
183 Ibid 165.
184 Ibid 162 – 164, 169 – 170, 193.
185 Chapter 2, paras 4, 5.3 and 6.

The UK Upper Tribunal[186]

In general, the UK Upper Tribunal assessed the evidence before it in a transparent manner. However, it was difficult to determine to what extent a UK Upper Tribunal's decision was truly based on an effectively comprehensive analysis at all times. Namely, (1) the UK Upper Tribunal was not always transparent about what available information was part of the balancing process and had a real bearing on the conclusions, (2) the Country Guidance Determinations did not follow a uniform structure which impacted the transparency of the balancing process, and (3) not every decision concerning the Country Guidance issues was based on the balancing of all the available information. Where the UK Upper Tribunal sorted the evidence by Country Guidance issue the Country Guidance Determinations became more legible and predictable. The UK Upper Tribunal worked directly towards a conclusion by conveniently bringing together all the available evidence on a particular issue. The information was easily assessed and balanced which resulted in a more evident as well as a shorter discussion. The Country Guidance Determinations, in which the UK Upper Tribunal systematically approached the evidence by sorting and discussing it along the lines of the guidance issues, should serve as examples of how Country of Origin Information can be used in guidance for decision-making in accordance with COI quality standards.

UNHCR[187]

The lack of transparency in UNHCR's practice concerns two aspects in particular: the contribution of the UNHCR field offices and the requirements for referencing. UNHCR Eligibility Guidelines are informed by UNHCR's wide field presence and significant status determination experience. In the production process of the Eligibility Guidelines, information is also collected from UNHCR field offices. The ECtHR and the UK Upper Tribunal base UNHCR's authority on this 'direct access to the authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do.'[188] In practice, the contributions of the UNHCR's field offices are hardly visible in the Eligibility Guidelines.

Furthermore, UNHCR should exercise more transparency with regard to the information that has been consulted during the production of the Eligibility Guidelines. UNHCR states that it will not present information that has not been confirmed in this way as fact in the Eligibility Guidelines, even if the information is considered reliable. According to UNHCR, this means that a footnote reference in many cases will stand for a corroboration of the statement.[189] The minimum requirement of one source is not in line with ACCORD's recommendation that the cross-checking process should be reported on in detail. In practice, it is very difficult to establish whether considerations and conclusions in the Eligibility Guidelines are supported by different types of sources. Also, it is difficult to establish whether there was any contradictory information, how sources were assessed and balanced to come to

186 Chapter 3, para 6.
187 Chapter 4, paras 4.1.
188 *NA* (n 6) para 121; *NM* (n 44) para 108.
189 AMM (n 16) para 145; UNHCR Public Statement in relation to *AMM and others* (n 36) para 16.

the conclusions. Therefore, independent verification and assessment of the information relied on by UNHCR was often very difficult.

The United Kingdom and the Netherlands[190]

The UK Home Office Country Policy and Information Notes neither include proper assessments of the reliability of sources nor the weighing and balancing of information against the criteria for Safe Country of Origin. The analytical or balancing process, of contradictory and supportive information, was not made visible. As a result, the analysis or guidance for decision-making[191] was not based on properly weighed Country of Origin Information and did not always support the conclusions by the UK Home Office.

The national designations of Albania and Kosovo as Safe Countries of Origin by the Dutch authorities were based on very limited, mostly secondary, sources. These sources were neither properly assessed nor balanced against the criteria for Safe Country of Origin.

4.2 Conclusions

This final chapter aimed to uncover good practices regarding the evidentiary assessment of Country of Origin Information. However, the most important finding is that the majority of the examined institutions failed to provide a proper evidentiary assessment of Country of Origin Information in accordance with their own COI quality standards. The lack of transparency regarding the process of the evidentiary assessment of Country of Origin Information is problematic, because as a result it appears that the institutions barely give meaning to the standards in practice. Exceptionally, the UK Upper Tribunal approached Country of Origin Information in a much more methodical manner. The Tribunal's approach to the evidentiary assessment of Country of Origin Information will serve as the only good practice.

5. The way forward

This final section will use the analysis in sections 2, 3 and 4 to make recommendations on how the evidentiary assessment of Country of Origin Information can be improved and better reflected in considerations concerning international protection needs in decisions and guidance for decision-making in jurisprudence and policy guidelines. The first set of recommendations in section 5.1 are specifically directed at the first three institutions examined in this PhD: the ECtHR, the UK Upper Tribunal and UNHCR. The recommendations focus

190 Chapter 5, para 6.2.4.

191 As a response to the criticism by the Independent Chief Inspector, in the more recent CPINs the 'Policy guidance section' has been replaced by an 'Analysis section.'

on the standards set by the institutions and provide suggestions for more detailed standards, where applicable, to improve the evidentiary assessment of Country of Origin Information in practice by the institutions itself. The second set of recommendations in section 5.2 will focus on the application of the common standards on Country of Origin Information in the European Union as a whole (not specifically on the Netherlands and the United Kingdom). The reason for this is that any suggestions regarding the COI quality standard in the EASO COI Report Methodology concerns the use of Country of Origin Information in all EU Member States.

5.1 Recommendations for the examined institutions

The following recommendations are made to the first three institutions examined in this PhD: the ECtHR, the UK Upper Tribunal and UNHCR. The recommendations aim to bring the standards and practices of the institutions in line with the COI quality standard in the ACCORD training manual.

5.1.1 The European Court of Human Rights

- **The ECtHR's approach should include the preference for the use of a source that first reported on a situation: the primary source. ECtHR's assessments should be consistently based on primary sources, where useful and possible.**

The ECtHR fails to differentiate between primary and secondary sources as is required by the ACCORD training manual. As a result, the Court appears to be unaware of risks of cross-checking mistakes. It is important that the decision makers, judge or policy maker is mindful of whether s/he is dealing with a primary or secondary source as secondary sources may refer to one another regarding a particular piece of information. This can lead to, for example, misleading or erroneous quotations, incorrect translations or out-of-date information that appears to be up to date. It is essential to identify the source or person that first documented the information to avoid these cross-checking mistakes. The fact that the ECtHR is not consciously considering the difference between primary and secondary sources and the pitfalls of cross-checking mistakes, is concerning. Therefore, the ECtHR should be visibly aware of whether a source is first reporting on a situation or whether it's referring to another source to ensure that their decisions are not based on information that has been round-tripped or is falsely corroborated.

- **The ECtHR should consider an assessment to be adequately and sufficiently supported only when the information that has a real bearing on an assessment is supported by three different types of sources.**

According the ACCORD training manual, the reasoning behind the use of multiple sources is that the chances that information is accurate increase the more sources you can find that

provide the same information independent from each other.[192] Additional supporting sources will add weight to the information.[193] This is especially important, where the information has a real bearing on the conclusions regarding the eligibility for international protection. The use of multiple sources will increase the authority of the conclusions. The requirement to use at least three different kinds of (primary) sources at all times would provide a minimum safety net against cross-checking mistakes and lead to truly reliable information. The requirement to use a minimum of three sources should be accompanied by a requirement to reference all the sources relied on.

- **The ECtHR's approach should be transparent and traceable.**

The ECtHR should present information in 'a clear, concise, unequivocal and retrievable manner.' Every piece of information should be completely and correctly referenced, to enable users to independently verify the evidentiary assessment of the information relied on by the ECtHR. In particular, the ECtHR should explicitly point out where sources corroborate or contradict each other, where corroboration was not possible, where no information was found and in case no information or only information from dubious sources was found, the ECtHR should make visible which sources were consulted unsuccessfully.

Most problematic was the ECtHR's application of the standards in practice. It fails to reflect the importance of Country of Origin Information as the essential foundation for a sound decision. The ECtHR does not always include all the relevant information or the most up-to-date Country of Origin Information available. Neither did the ECtHR discernibly assess the reliability of sources nor did the Court balance all the available information in support of its conclusions.

A proper level of transparency is particularly warranted in lead cases. The ECtHR has developed 'lead cases' or 'leading judgements' in an effort to achieve more consistency in the implementation of the absolute prohibition of torture through a common interpretation of the situation of countries of origin. However, for the lead cases to achieve more consistency, the ECtHR should invest in the collection of factual evidence from wide ranging sources of Country of Origin Information, including from expert witnesses. Considering the fact that the ECtHR attaches substantive weight to the conclusions of the UK Upper Tribunal, it could use Country Guidance Determinations as a good practice as the UK Upper Tribunal has before it a wide range of sources that it assesses in a mostly transparent manner. In particular, the Country Guidance Determination *MOJ,* which will be discussed in the next section, could serve as an example for the ECtHR.

5.1.2 The UK Upper Tribunal

- **The Tribunal's approach should include the preference for the use of a source that first reported on a situation: the primary source. Country Guidance Determinations should be consistently based on primary sources, where useful and possible.**

192 ACCORD training manual (n 65) 134.
193 EU Common Guidelines for Processing COI (n 53) 7; See also *NA* (n 6) paras 120 – 121.

See above section 5.1.1 for further explanation.

- **The UK Upper Tribunal should consider an assessment to be adequately and sufficiently supported only when the information that has a real bearing on an assessment is supported by three different types of sources.**

See above section 5.1.1 for further explanation.

- **The UK Upper Tribunal should adopt a more uniform, structured approach in its Country Guidance Determinations to improve the transparency of the assessment of the reliability of information and the cross-checking process of Country of Origin Information. This would ensure a visibly 'effectively comprehensive' decision.**

The examined Country Guidance Determination *MOJ*[194] could serve as an example for that uniform structure. In *MOJ*, which assessed the security situation in Central and Southern Somalia, the UK Upper Tribunal sorted the evidence by Country Guidance issue. The Tribunal first identified clear threads common to the expert evidence. Each expert's evidence was discussed along the lines of the five identified threads. The UK Upper Tribunal provided a thorough analysis of the expert witnesses' evidence in support of each thread or issue, visibly assessing the underlying COI and comparing it to other available information. As a result, it was immediately clear what expert evidence was supported and thus reliable. After the lengthy submissions, the Tribunal discussed the conclusions along the lines of the identified common threads in the evidence, summarising supportive and contradictory information. The conclusions followed logically from its earlier considerations regarding the evidence.

The UK Upper Tribunal could consider sorting the evidence by Country Guidance issues in all the Country Guidance Determinations. Those decisions in which the evidence was sorted by issue appeared more legible and predictable. The UK Upper Tribunal worked directly towards a conclusion by conveniently bringing together all the available evidence on a particular issue. The information was easily assessed and balanced, resulting in a more evident, as well as a shorter, discussion. Most importantly, it enabled users of the Country Guidance Determinations to independently verify and assess the information relied on.

5.1.3 UNHCR

The ACCORD training manual has been developed with the support of UNHCR. UNHCR considers the training manual an important tool and recommends 'it to everyone involved in decision-making as a resource for COI training and as a reference guide.'[195] It is especially surprising that some relevant details in the UNHCR's methodology are different from the COI quality standard in the ACCORD training manual. Therefore,

194 *MOJ* (Return to Mogadishu) Somalia CG [2014] UKUT 00442.
195 ACCORD training manual (n 65) 5.

- **UNHCR should consider information relevant when the information is based on questions rooted in legal concepts of refugee and human rights law or on questions derived from an applicant's statements.**

Currently, UNHCR states that information must be relevant to subject matter and time. UNHCR's assessment of the relevancy of information should also be clearly linked to the legal issues arising from the assessment of an application for international protection, both in their methodology and in practice.

- **UNHCR should corroborate all information that has a bearing on a decision or guidance by 'using three different sources and different types of sources that independently provide information on the research issue at hand.'**

UNHCR believes that information should be collected from a variety of different sources to form an unbiased picture of prevailing conditions in countries of concern. UNHCR requires a 'triangulation' of sources for any one piece of information. The 'triangulation' of sources' involves 'guaranteeing that information from one type of sources is corroborated by information from different kinds of sources, with the aim of minimising the effects of bias or inaccuracy.'[196] UNHCR should provide a more detailed guidance on how many sources are required in support of information that has a real bearing on the conclusions regarding a well-founded fear of persecution in accordance with the ACCORD training manual.

- **UNHCR's approach should be more transparent and traceable.**

UNHCR should present information in 'a clear, concise, unequivocal and retrievable manner.' Every piece of information should be completely and correctly referenced, to enable users to independently verify the evidentiary assessment of the information relied on by UNHCR. In particular, UNHCR should explicitly point out where sources corroborate or contradict each other, where corroboration was not possible, where no information was found and in case no information or only information from dubious sources was found, UNHCR should make visible which sources were consulted unsuccessfully.

In particular, the contributions of the UNHCR field offices to the UNHCR Eligibility Guidelines should be more transparent. Where such information has been used, the Guidelines should reflect the contributions of the field offices. Where information from field offices is not available, or is not included for a particular reason, UNHCR should provide an explanation in the Guidelines. This will allow for an independent verification of the contribution of the field offices and a proper assessment of the weight that should be accorded to the UNHCR Eligibility Guidelines on the basis of its reporting capabilities or doing on-site inspections.

Furthermore, UNHCR should exercise more transparency with regard to the information that has been consulted during the production of the Eligibility Guidelines. The minimum requirement of one source is not in line with ACCORD's recommendation that the cross-checking process should be reported on in detail.

Finally, although, UNHCR strongly disagreed with the findings of the examination of

196 *AMM and others* (n 16) paras 34, 134–52, 155, 360–62; UNHCR public statement in relation to *AMM and others* (n 36) para 15.

the Eligibility Guidelines in this PhD,[197] it is noteworthy that the most recent Eligibility Guidelines on Afghanistan showed that at least some statements that were criticised in this PhD were now supported by a wider range of sources. For example, in the 2016 Eligibility Guidelines on Afghanistan, UNHCR states:

> Persons with disabilities, including in particular persons with mental disabilities, and persons suffering from mental illnesses are reportedly subjected to ill-treatment by members of society, including their own family members, on the grounds that their illness or disability is a punishment for sins committed by the persons affected or by their parents.[198]

Regarding this statement, it was concluded in chapter 4 that the three sources relied upon by UNHCR neither provided specific enough information nor sufficiently relevant information, in particular, to persons suffering from mental illness and the treatment they may experience as a result. In addition, one of the reports dated back 10 years and could not be considered up to date. Therefore, the Country of Origin Information relied upon by UNHCR for its assessment did not adequately substantiate the existence of a possible risk of ill-treatment to persons with disabilities, especially to those suffering from mental illnesses.[199] In the 2018 Eligibility Guidelines on Afghanistan, UNHCR relies on six up-to-date and relevant reports to support the exact same statement.[200]

5.2 Recommendations regarding EU common standards

- **The harmonisation of the application of Country of Origin Information at the national level of EU Member States should be achieved through the adoption of common standards and principles in binding EU legislation:**

  1. **Future EU asylum legislation should include references to the most important common standards and principles: Relevancy, currency, accuracy, reliability, balance and transparency,**
  2. **The EASO COI Report Methodology, or the future EU Agency for Asylum common methodology, should be given the status of a legally binding document through references in the asylum acquis,**
  3. **An amended version of the EASO COI Report Methodology will have to be adopted in the common methodology that will be developed by the EU Agency for Asylum to bring it in line with the ACCORD training manual.**

197 UNHCR, email 12 July 2018.
198 United Nation High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan' HCR/EG/AFG/16/02 (2016) 65.
199 Chapter 4, para 4.1.3.
200 United Nation High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan' HCR/EG/AFG/18/02 (August 2018) 80.

The common standards and principles in the EASO COI Report Methodology, against which the practices of the United Kingdom and the Netherlands were measured, are the result of practical co-operation regarding Country of Origin Information in the European Union. Initially, the common standards and principles laid down in the EU Common Guidelines on Processing COI, and later in the EASO COI Report Methodology, were developed for the purpose of applying the same standards at the national level of the EU Member States to ensure a more harmonised application of Country of Origin Information.[201] The common standards and principles were also considered a prerequisite for further practical co-operation on Country of Origin Information, in particular, for joint assessments of situations in countries of origin to adopt common approaches.[202]

However, the research in this PhD shows that the EU practical co-operation on Country of Origin Information at least partly failed to achieve the application of the common standards and principles at the national level. The Netherlands and the United Kingdom apply different COI quality standards to their national COI reports and policies. Moreover, the examined (former) Member States failed to correctly apply Country of Origin Information to their Safe Countries of Origin policies, in particular, the Netherlands. Countries like Belgium and France also prefer to apply the EU Common Guidelines for Processing COI over the EASO COI Report Methodology. The lack of a wide application of the common standards and principles in the EASO COI Report Methodology in EU Member States is not surprising seeing as there is no obligation for EU Member States to apply the EASO COI Report Methodology to national COI products or decisions.

Considering the importance of Country of Origin Information as the essential foundation for decisions on international protection needs, it is remarkable that for the harmonisation of the application of Country of Origin Information the European Commission opted for (non-binding) practical co-operation rather than harmonisation through more detailed legislation. The main goal of practical co-operation is to improve convergence in decision-making by Members States within the framework of the rules set by EU asylum legislation.[203] However, the framework for the use of Country of Origin Information is only scarcely reflected in EU asylum legislation.[204] Asylum legislation should provide for a more detailed framework with regard to the evidentiary assessment of Country of Origin Information within which convergence in decision-making can be improved. This will ensure that, even when there is common Country of Origin Information in the form of COI reports or joints assessments in the form of Country Guidance Notes, decision makers will also apply the common standards and principles to the examination of the individual circumstances of an asylum application. Therefore, it is recommended that the harmonisation of the application of Country of Origin Information at the national level should be achieved through the adoption of common standards and principles in binding EU legislation.

201 European Commission staff working document - Annexes to the Communication from the Commission to the Council and the European Parliament on strengthened practical co-operation - New structures, new approaches: improving the quality of decision making in the common European asylum system {COM(2006) 67 final} /* SEC/2006/0189 */, Annex C (European Commission staff working document SEC(2006)) paras 25, 29.

202 Green paper (n 57) 9.

203 Commission communication SEC(2006) (n 201) para 4.

204 *AMM and Others* (n 16) para 112; Norma Fötsch, 'Landeninformatie en de Herziene Procedure Richtlijn' (2018) 8 *Asiel & Migratie Recht* 363 – 373, at 372 – 373.

The recommendation, that the harmonisation of the application of Country of Origin Information at the national level be achieved through the adoption of the common standards and principles in binding EU legislation, is three-fold. First, future EU asylum legislation should include references to the most important common standards and principles: Relevancy, currency, accuracy, reliability, balance and transparency. Second, the EASO COI Report Methodology, or the future EU Agency for Asylum common methodology, should be given the status of a legally binding document trough references in the asylum acquis. The inclusion of the common standards and principles and common methodology in EU asylum legislation should be done in a way to ensure that the methodology is equally applicable to the use of Country of Origin Information by national and EU-level COI service providers, policy makers and decision makers. Finally, or third, the standards in the EASO COI Report Methodology, or in the common methodology that will be developed by the EU Agency for Asylum, will have to brought in line with the ACCORD training manual. EU legislation should at the very least refer to the basic standards set by the ECtHR because EU Member States, as Member States of the Council of Europe, are to follow the ECtHR guidance to ensure the same level of scrutiny of Country of Origin Information as the Court. As mentioned in section 5.1.1, compared to the ACCORD training manual, the ECtHR's approach misses guidance on key aspects of Country of Origin Information. In particular, the ECtHR fails to provide proper guidance regarding the use of primary and secondary sources, corroboration of information and the level of transparency. Therefore, the EU common standards and principles should be brought in line with the detailed ACCORD training manual.

5.2.1. Binding common standards and principles in EU legislation

- **Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation should state that determining authorities should take into account,**

  Information relating to the situation prevailing in the country of origin of the applicant at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied, as well as any other relevant information. The information should be relevant, accurate, up-to-date, and obtained from different types of, preferably primary, sources, such as governmental, UN agencies or intergovernmental organisations, non-governmental organisation, news or media organisation and academics. In a transparent manner, the sources and their information should be assessed for reliability, in accordance with the EU Agency for Asylum's common methodology, and cross-checked against all available evidence to come to a sound decision on the application for international protection.

The following section will provide recommendations regarding the most important COI quality standards that should be included in EU asylum legislation. The recommendations are directed at the latest proposals by the European Commission to reform the Common European Asylum System. In July 2016, the European Commission presented it second set of proposals to reform the Common European Asylum System. For the proposals, the European Commission choose the form of a regulation because regulations are directly applicable to EU Member States. This will remove any elements of discretion for EU Member

States. The European Commission published in particular a proposal for a regulation that will establish a common procedure for international protection that would replace the recast Asylum Procedures Directive.[205] This proposal aims to establish a 'truly common procedure for international protection which is efficient, fair and balanced.' The Asylum Procedures Regulation aims to simplify, streamline and consolidate procedural arrangements in order to achieve a higher degree of harmonisation and greater uniformity in the outcome of asylum procedures across all Member States.[206]

The recommendations concern in particular Article 33 of the Proposal for the Asylum Procedures Regulation. Article 33 states that applications for international protection should be examined objectively, impartially and on an individual basis. Moreover, Article 33 (2) (b) states that decision makers should take into account,

> all **relevant, accurate and up-to-date information** relating to the situation prevailing in the country of origin of the applicant at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied, as well as any **other relevant information obtained from the European Union Agency for Asylum, from the United Nations High Commissioner for Refugees and relevant international human rights organisations, or from other sources.**

The following recommendations are made, in the context of the proposed Article 33 of the Proposal for the Asylum Procedures Regulation, with regard to the standards relevancy, the use of different types of sources, the use of primary sources, the use of up-to-date information, the assessment of the reliability of sources, the balancing or cross-checking of information and transparency.

(a) Relevancy

Fortunately, the importance of the use of relevant information has been recognised and article 33 of the Proposal for an Asylum Procedures Regulation now specifically refers to the 'relevancy requirement.'

Currently, the need to use relevant information is poorly reflected in European Union legislation. Relevancy is hidden in Article 4(5)(c) of the recast Qualification Directive which states that applicant's statements that are not supported by documentary or other evidence shall not need confirmation when 'the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information *relevant* to the applicant's case.' Relevancy is not mentioned in Article 10 of the recast Asylum Procedures Directive. The importance to collect relevant information as well as to use all relevant sources is, however, specifically laid down in Article 4(a) of the EU regulation establishing EASO which states that EASO 'shall organise, promote and coordinate activities relating to information on countries of origin, in particular,' gather *relevant*, reliable, accurate and up-

205 Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM/2016/0467 final - 2016/0224 (COD) (Proposal for Asylum Procedures Regulation) (July 2016).

206 Proposal for Asylum Procedures Regulation, para 1.

to date information on countries of origin of persons applying for international protection in a transparent and impartial manner, making use of all *relevant* sources of information.' It is a positive development that the requirement will be specifically included in the Asylum Procedures Regulation.

(b) Accuracy; The use of different types of sources

- **Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation should specifically mention the importance of the use of different types of sources by decision makers and should refer to sources such as governmental, UN or intergovernmental, NGOs, news or media organisations and academic**s.

The importance of the use different of sources is already recognised in EU legislation. Article 10(3)(b) of the recast Asylum Procedures Directive requires Member States to obtain information from *various sources* such as EASO and UNHCR and relevant international human rights organisation. It is up to the personnel, examining the application and taking the decision, to cross-check whether the information made available to them is originating from different sources. Moreover, the importance of the use of different types of sources in the context of applications for international protection needs is reflected in Article 4(a) of the EU regulation establishing EASO which states that EASO 'shall organise, promote and coordinate activities relating to information on countries of origin, in particular,' gather information making 'use of all relevant sources of information, including information gathered from governmental, non-governmental and international organisations and the institutions and bodies of the Union.'

Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation is no longer specific enough with regard to the use of different types of sources. The provision does not refer to 'various sources' anymore and provides examples of sources rather than examples of types of sources. Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation refers to information obtained from 'the European Union Agency for Asylum, from the United Nations High Commissioner for Refugees and relevant international human rights organisations, or from other sources.' It is recommended that article 33(2)(b) of the Proposal for the Asylum Procedures Regulation specifically mentions the importance of the use of *different types of sources* by decision makers and refers to sources such as governmental, UN or intergovernmental, and NGOs. News or media organisations and academics are sources, which are specifically identified in the ACCORD training manual and should also be included in article 33(2)(b) of the Proposal for the Asylum Procedures Regulation.

(c) Accuracy; The use of primary sources

- **Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation should include a reference to the use of primary sources**

Despite the fact that the preference of the use of primary source over secondary sources appears to be crucial to making sure that information used is accurate, the requirement is not explicitly mentioned in EU legislation. Of course, Article 10(3)(b) of the recast EU Asylum Procedures Directive and the future Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation do require Member States to obtain accurate information and the

use of primary sources can be derived from that provision.[207] The inclusion of 'preferably primary sources' would go a long way to making Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation more specific.

(d) Currency: The use of up-to-date information

The requirement for a decision maker to use up-to-date country of origin information is sufficiently enshrined in current and future EU asylum law. Currently, article 10(3)(b) recast Asylum Procedures Directive requires Member States to obtain precise and up-to-date information. According to Article 4(3)(a) recast Qualification Directive, the assessment of the application for international protection should take into account 'all relevant facts as they relate to the country of origin **at the time of taking** a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied.' The requirement to use up-to-date information will be merged from article 10(3)(b) recast Asylum Procedures Directive and article 4(3)(a) recast Qualification Directive into article 33(2)(b) of the Proposal for the Asylum Procedures Regulation.

(e) Reliability: Source assessment

- **Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation should specifically mention the need to assess the reliability of sources relied on in the examination of an application for international protection.**

EU legislation does not explicitly refer to the standard of independence, objectivity and impartiality in relation to the various sources that should be used in the examination of an application. It does, however, refer to objectivity and impartiality in relation to the examination of an application and the decision in Article 10(3)(b) recast Asylum Procedures Directive and in the future Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation.

The fact that an examination should be objective and impartial does not reflect the importance of the need to systematically assess the reliability of sources and the quality of information to be able to determine the weight that can be attached to the information in the considerations concerning the establishment of the facts and the legal implications of those facts. Therefore, it is recommended that Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation specifically mentions the need to assess the reliability of sources relied on in the examination of an application for international protection.

(f) Balance: The cross-checking of information

- **Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation should specifically mention that, in the examination of an application, sources and their information should be cross-checked against all available evidence, including the relevant elements brought forward by the applicant.**

207 Gábor Gyulai, 'Country Information in Asylum Procedures – Quality as a Legal Requirement,' Hungarian Helsinki Committee (2nd edition, 2011).

The need to balance Country of Origin Information is not properly reflected in EU legislation. The fact that *all* information, from a variety of sources, should be taken into account by the determining authorities implies that the information should be obtained from a balance of sources. However, the requirement to actively balance or cross-check should be more explicitly included in EU legislation, in particular, with regard to the examination of the application for international protection. Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation should specifically mention that, in the examination of an application, sources and their information should be cross-checked against all available evidence, including the relevant elements brought forward by the applicant.

(g) Transparency and traceability

- **Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation should specifically refer to the requirement to gather and use Country of Origin Information in a transparent manner.**

The requirement to use Country of Origin Information in a transparent manner is only scarcely reflected in the EU legislation that makes up the Common European Asylum System.[208] Article 11(2) of the recast Asylum Procedures Directive states that decisions should include *the reasons in fact as well as in law*. Article 35(2) of the Proposal for the Asylum Procedures Regulation will also state that decisions should include *the reasons in fact as well as in law*. Transparency is explicitly recognised in relation to the work of EASO which should 'organise, promote and coordinate activities relating to information on countries of origin, in particular, the gathering of relevant, reliable, accurate and up-to date information (...) in a *transparent* and impartial manner.'[209] Interestingly, the requirement for transparency regarding the work of the EU Agency for Asylum in relation to Country of Origin Information has disappeared from the Proposal for the EU Agency for Asylum. It is highly recommended that Article 33(2)(b) of the Proposal for the Asylum Procedures Regulation specifically refers to the requirement to gather and use Country of Origin Information in a transparent manner. A more detailed guidance on what transparency exactly entails in relation to the use of Country of Origin Information should be included in the common methodology to be developed by the EU Agency for Asylum. The recommendations with regard to transparency will be discussed in more detail in section 5.2.3.

5.2.2 References to the common methodology in the asylum acquis

- **Article 33 of the Proposal for the Asylum Procedures Regulation should be amended to include a direct reference to the common methodology to ensure that decision makers' evidentiary assessment is done in accordance with the common COI quality standards.**

208 Gyulai (n 207) 61, 67.
209 Article 4 (a) of the EASO Regulation.

As mentioned, there is no obligation for EU Member States to apply the EASO COI Report Methodology to national COI products. Only recital 46 of the recast EU Asylum Procedures Directive refers to the EASO COI Report Methodology in the context of the designation of Safe Countries of Origin. While recital 46 raises the expectation that EU Member States will apply the EASO COI Report Methodology to the national designations of Safe Countries of Origins, it doesn't create a legal obligation for the EU Member States to do so. If anything, it is confusing that the recast EU Asylum Procedures Directive includes a reference to the methodology in relation to the concept of Safe Country of Origin, but not in relation to the examination of an application for international protection.

The proposals by the European Commission for a new Asylum Procedures Regulation also fails to provide an obligation for Member States to apply common standards and principles to the Country of Origin Information in their national COI products, policies and decisions. Article 4(3)(b) of the recast Asylum Procedures Directive states that Member States shall ensure that Country of Origin Information is obtained and *made available* to the personnel responsible for examining applications and taking decisions. Article 33 of the Proposal for the Asylum Procedures Regulation is more specifically aimed at the determining authority or decision makers. As a result, the standards are also more directly applicable to decision makers. However, Article 33 of the Proposal for the Asylum Procedures Regulation refers to *what* should be taken into account by the determining authorities. Article 33 fails to specify *how* the relevant, accurate and up-to-date information from the EU Agency for Asylum, from the UNHCR and relevant international human rights organisations, or from other sources, should be taken into account by decision makers. Therefore, Article 33 of the Proposal for the Asylum Procedures Regulation should be amended to include a direct reference to the common methodology to ensure that decision makers' evidentiary assessment is done in accordance with the common COI quality standards.

5.2.3 Changes to the EASO COI Report Methodology

The European Commission also proposed a regulation setting up a EU Agency for Asylum that would replace EASO.[210] Article 8 of the proposal for the EU Agency for Asylum states that 'the Agency shall be a centre for gathering relevant, reliable, accurate and up-to date information on countries of origin of persons applying for international protection.' Furthermore, the EU Agency for Asylum shall in particular,

> (c) develop a common format and a common methodology including terms of reference, in line with the requirements of Union law on asylum, for developing reports and other products with information on countries of origin at the level of the Union.

While further developing the common methodology, the EU Agency for Asylum should follow EASO's guidance regarding the use of primary versus secondary sources, the use of up-to-date information and the reliability of sources. However, the EU Agency for Asylum should

210 Proposal for a Regulation of the European Parliament and the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, COM/2016/0271 final - 2016/0131 (COD) (Proposal for EU Agency for Asylum)

consider the following recommendations regarding the standards concerning relevancy, accuracy and transparency.

(a) Relevancy

- **The common methodology to be developed by the EU Agency for Asylum should consider information relevant when the information is based on questions rooted in legal concepts of refugee and human rights law or on questions derived from an applicant's statements.**

The EU Agency for Asylum will have to reconsider the current definition of relevancy used in the EASO COI Report Methodology. It is recommended that the common methodology to be developed by the EU Agency for Asylum includes a definition of relevance that incorporates a reference to the legal questions that Country of Origin Information should be able to answer. The EASO COI Report Methodology determines that 'relevance means the quality of being closely connected to the fact, event, or matter in question. COI should be relevant for the needs of the target users, mostly for the assessment of international protection needs.'[211] The definition of relevancy in the EASO COI report methodology is not specific enough to determine relevancy of information. The examination of the Dutch and British practices showed that sometimes information appeared closely connected to the matter at hand, but the information was not necessarily based on questions rooted in the applicable legal concepts of refugee and human rights law. The ACCORD training manual suggests that this is what makes information particularly relevant. The definition of relevance in the ACCORD training manual is more specifically aimed at the use of Country of Origin Information in the assessment of international protection needs.

(b) Accuracy: The use of different kind of sources

- **The common methodology, to be developed by the EU Agency for Asylum, should state that all information that has a bearing on a decision or guidance should be corroborated by 'using *three* different sources and different types of sources that independently provide information on the research issue at hand.'**

It is recommended that the common methodology to be developed by the EU Agency for Asylum provides a minimum number of sources to be used in support of information that has a real bearing on a decision or guidance. Currently, the EASO COI Report Methodology provides clear guidance on when corroboration of information is necessary. In principle, this is in accordance with the ECtHR's guidance on Country of Origin Information. However, the ACCORD training manual specifies that all information that has a bearing on a decision or guidance should be corroborated by 'using *three* different sources and different types of sources that independently provide information on the research issue at hand.'[212] Considering the fact that the research showed that the examined (former) EU Member States often relied

211 EASO COI Report Methodology 2019 (n 51) 7.
212 ACCORD training manual (n 65) 134.

on either secondary sources or unreferenced material, the requirement to use at least three different kinds of (primary) sources at all times in COI quality standards would provide a minimum safety net against cross-checking mistakes and lead to truly reliable information.

(c) Balance: The cross-checking of information

- **The common methodology, to be developed by the EU Agency for Asylum, should include particular guidance on the evidentiary assessment of information and the cross-checking of information within the criteria for international protection.**

The EASO COI Report Methodology states that validated sources and their information should be balanced in an analysis. The analysis should be a neutral assessment of the available information which can be done by breaking the central topic down into essential issues. The analysis should describe the different issues and how they relate to one another. The 2019 EASO COI Report Methodology introduced the term 'synthesising' of relevant information in its methodology to clarify what is meant by analysis. The 2019 methodology also introduces the term 'COI conclusions' which aim to highlight main patterns in the analysed information that can assist the user of a COI report to come to an informed conclusion relevant to their tasks. Therefore, the COI conclusions can be used by policy makers in their legal assessment in national policies regarding specific countries of origin. The common methodology developed by the EU Agency for Asylum should look beyond the use of the methodology for COI reports and fine tune the methodology, in particular with regards to the requirement to assess the probative value of information and to corroborate and balance the information accordingly. This will make the methodology more useful for policy makers and decision makers as well.

(d) Transparency

- **The common methodology, to be developed by the EU Agency for Asylum, should state that a determination of an international protection need should account for the Country of Origin Information relied on. Therefore, it should clearly indicate what sources have been used, how the sources and their information have been assessed, and how the available information has been balanced to come to sound determination on the international protection needs.**

Both, Article 33(2)(b) of the Proposal for an Asylum Procedures Regulation and Article 8 of the Proposal for the EU Agency for Asylum, should clearly refer to transparency in accordance with the principle of good administration. The principles of good administration enshrined in EU Administrative law and existing jurisprudence concerning the right to good administration could provide guidance on the extent of the duty to give reasons in decisions on international protections needs and thus the extent of transparency with regard to the Country of Origin Information that is relied on.

There are two types of rationales that are typically put forward in literature and by the courts regarding the obligation for administrators to give reasons; The instrumental rationales

and the fairness rationale.'[213] The instrumental rationales include the 'accuracy rationale,' the 'review rationale,' and the 'public confidence rationale.' The 'accuracy rationale' suggests that administrators will make better, more accurate, decisions when they are obligated to systematically think about and provide reasons for their decisions. The 'review rationale' suggests that the duty to provide reasons enables review, it will provide the reviewer with information on the expertise of the decision maker as well as contribute to a more careful decision-making at first instance due to the extra scrutiny of the review.'[214] The 'public confidence rationale' suggests that the obligation to provide reasons is crucial for showing that legislation is consistently and carefully applied.[215] The second type of rationale put forward for the obligation to provide reasons concerns the respectful treatment of the person that is the subject of the decision. On the basis of the reasons, a person should be able to understand why a certain decision has been made, particularly when those decisions have been made by the state sitting in a privileged position over the individual.[216] The aforementioned justifications for the duty to give reasons can also be found in the European Court of Justice's jurisprudence.[217]

Article 41 of the Charter of Fundamental Rights of the European Union[218] now explicitly recognises citizens' right to good administration which includes the obligation of the administration to give reasons for its decisions (Article 41(c) of the Charter). The obligation to give reasons was well established before it was finally codified in Article 41 of the Charter.[219] In 1998, the European Court of Justice stated that the statement of reasons:

> [M]ust be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question.[220]

213 Jarrod Hepburn, 'The Duty to Give Reasons for Administrative Decisions in International Law' (2012) 61 *International and Comparative Law Quarterly* 641 – 663, at 644: See also, Mariusz Baran, 'The Scope of EU Courts' Jurisdiction and the Review of Administrative Decisions – the Problem of Intensity Control of Legality,' 302 in Carol Harlow, Païve Leino, and Giancinto della Cananea, *Research Handbook on EU Administrative Law* (Edward Elgar Publishing, 2017): Herwig C.H. Hofmann, Gerard C. Rowe and Alexander H. Türk, *Administrative Law and Policy of the European Union and Policy of the European Union* (OUP 2011) 199 – 202.
214 Hepburn (n 213) 644.
215 Ibid.
216 Ibid.
217 *Commission v Sytraval*, Case C-367/95 (EUCJ, 1998) ECR I-1719, 1770, para 63.
218 European Union, Charter of Fundamental Rights of the European Union [2012] OJ L 326/391 – 326/407.
219 Henk Addink, *Good Governance: Concept and Context* (Oxford Scholarship, 2019) 246.
220 *Commission v Sytraval* (n 217) para 63.

In the *Kadi* case concerning the protection of fundamental rights, the Court emphasised the direct link between the duty to give reasons and the right to an effective remedy, a principle of European Community law reaffirmed in Article 47 of the Charter of Fundamental Rights[221] and explicitly recognised in relation to asylum in Article 46 of the recast Asylum Procedures Directive. According to the Court,

> Observance of the obligation to communicate the grounds (...) is necessary both to enable the persons to whom restrictive measures are addressed to defend their rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in their applying to the Community judicature and also to put the latter fully in a position in which it may carry out the review of the lawfulness of the Community measure in question which is its duty under the EC Treaty.[222]

The rules of good administration are not only rules for EU institutions, it establishes a more general principle of law that should be applied by the authorities of Member States.[223] In short, the reasons in fact and law need to be full, however, not exhaustive. The nature of the challenged act is significant[224] in the determination of the extent of the duty to give reasons as well as the particular facts of the case.[225] Considering what is at stake in the examination and decision-making on the need for international protection, a serious risk of harm upon return to a country of origin, policy makers and decision makers should strive for full transparency. This should include, at the very least, that policymakers and decision makers provide reasons behind the facts that have a real bearing on the determination of a need for international protection for an applicant to be able to defend his or her rights and for a court to be a in a position to carry out a review. The reasons should include the considerations on why certain facts are deemed true, probably true, probably not true or false on the basis of the weight attached to or the evidentiary value of the available Country of Origin Information.

The requirement for transparency in the common methodology should be tailored to the needs of (EU Agency for Asylums') policy makers and national decision makers. The reporting in detail of the research process at the basis of guidance for decision-making or decisions ensures that the research process can be independently verified for the use of up-to-date information from different kinds of (preferably primary) sources that have been assessed and weighed against one another to come to a balanced advice on the protection needs of certain groups of people or a decision on an individual need for international protection. Therefore, decisions and guidance for decision-making should clearly indicate what sources have been used, how the sources and their information have been assessed, and how the available information has been balanced to come to sound guidance for decision-making. The decisions and guidance for decision-making should account for the Country of Origin Information relied on, for example, it should justify why (out of date) information from (secondary) sources was used or why a certain weight was attached to a particular source over another, etc. The detailed reporting of the research process enables the different kind of users

221 *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council*, Joined Cases C-402/05 P and C-415/05 P (EUCJ, 2008) paras 334 and 351.
222 Ibid paras 8, 337.
223 Addink (n 219) 254.
224 Baran (n 213) 303.
225 Hofmann, Rowe and Türk (n 213) 202.

to determine the credibility of the legal assessment of the Country of Origin Information and/or (further) applicability of the guidance for decision-making in the assessment of an individual asylum claim.

5.2.4 Conclusion

The adoption of the common standards and principles in EU legislation, the reference to the common methodology in the EU asylum acquis as well as the changes to the EU common methodology should lead to a more systematic approach to Country of Origin Information by EU Member States such as the Netherlands. All EU Member States will be legally obligated to apply the common methodology to their approach to Country of Origin Information, leaving no room for discretion to apply any other COI quality standard. The binding common standards should lead EU Member States to be more conscious about the evidentiary assessment of Country of Origin Information. The information in decisions and guidance for decisions should be clearly structured along the lines of the legal questions that need answering after the example of the approach of the UK Upper Tribunal in its Country Guidance Determinations. This means that, for example, national policies designating countries of origin as safe should be structured along the lines of article 9 of the recast Qualification Directive to which annex I of the recast Asylum Procedures Directive refers. The national policies should address relevant information regarding all aspects of persecution (race, religion, nationality, particular social group and political opinion) as well as torture or inhuman or degrading treatment or punishment and a threat by reason of indiscriminate violence in situations of international or internal armed conflict. By showing what information has been relied on and how the information has been assessed, conclusions will have a firmer foundation and will be more evident from the visibly assessed and cross-checked Country of Origin Information. This will increase the likelihood that guidance for decision-making is considered to be reliable and will be taken it into account while determining individual asylum applications at the national level. Moreover, other available and/or new information can be put into perspective, by either the decision-maker, individual asylum applicant, advocacy groups, or the judiciary. This will allow for the determination of the further applicability of guidance for decision-making after other patterns have been identified or new patterns have emerged. Finally, a more systematic and transparent assessment of Country of Origin Information in decisions and guidance for decision-making will create opportunities for the achievement of the long-term objective of the harmonisation of the application of Country of Origin Information and more convergence in asylum decision-making.