Briefing

EU Legislation in Progress

February 2017

European Parliament

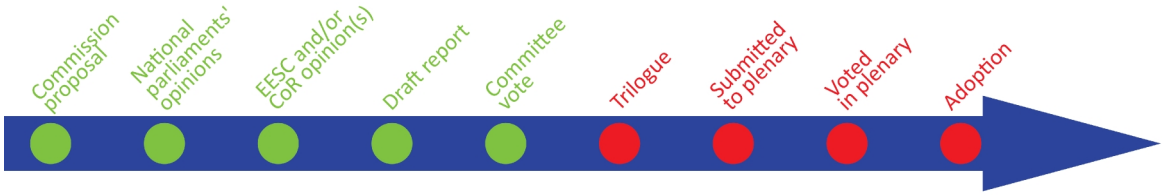
Safe countries of origin: Proposed common EU list

OVERVIEW

As part of the European Agenda on Migration, the Commission proposed a regulation on 9 September 2015 to establish a common EU list of safe countries of origin, initially comprising Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey. The aim is to fast-track asylum applications from citizens of these countries, which are considered 'safe' in full compliance with the criteria set out in the Asylum Procedures Directive 2013/32/EU and the principle of *non-refoulement*. Currently, lists are defined at national level and not coordinated, which can lead to different recognition rates of similar asylum applications, and thus create incentives for secondary movements and asylum-shopping.

Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU

Committee responsible:	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2015) 452 9.9.2015
Rapporteur:	Sylvie Guillaume (S&D, France)	2015/0211(COD)
Shadow rapporteurs:	Rachida Dati (EPP, France) Jussi Halla-Aho (ECR, Finland) Martina Anderson (GUE/NGL, UK) Jean Lambert (Greens/EFA, UK) Bodil Valero (Greens/EFA, Sweden) Kristina Winberg (EFDD, Sweden) Gilles Lebreton (ENF, France)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
Next steps expected:	Continuation of negotiation in trilogue	



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Introduction

On 9 September 2015, the European Commission adopted its second implementation package under the European Agenda for Migration in response to the unprecedented migrant flows arriving in the European Union. The new package includes a proposal for a regulation establishing an EU common list of safe countries of origin, as agreed by the European Council of 25-26 June 2015. Ireland and the UK may choose to opt in, while Denmark will not participate in the adoption of the regulation. The proposed list would initially comprise seven countries: Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey.

> As stated by President Juncker in his State of the Union Speech in 2015: 'we also need to separate better those who are in clear need of international protection and are therefore very likely to apply for asylum successfully; and those who are leaving their country for other reasons which do not fall under the right of asylum. This list will enable Member States to fast track asylum procedures for nationals of countries that are presumed safe to live in ... the list of safe countries is only a procedural simplification. It cannot take away the fundamental right of asylum for asylum seekers from Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia, and Turkey. But it allows national authorities to focus on those refugees which are much more likely to be granted asylum, notably those from Syria.'

Although the notion of a 'safe country of origin' is not regulated in the 1951 Convention Relating to the Status of Refugees it is not a new concept on the international scene. It can theoretically refer to the automatic exclusion from refugee status of nationals originating in safe countries of origin, or it can raise a presumption of safety that those nationals must rebut. The concept of a 'safe country of origin' (SCO) is used in migration management to define countries which, based on their **stable democratic system and compliance with international human-rights treaties**, are presumed safe to live in. Based on this presumption, the recast Asylum Procedures Directive 2013/32/EU, applicable since 21 July 2015, permits the use of an accelerated procedure, without prejudice to the final decision, when the applicant is from a 'safe country of origin'. The Asylum Procedures Directive and the recast Qualification Directive 2011/95/EU set standards for determining which asylum applicants qualify for international protection. These Directives rely on the refugee law requirements set out in the 1951 UN Convention (Geneva Convention) and the 1967 Protocol, which define a refugee as a person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country'. The definition of refugees was intended to exclude internally displaced persons, economic migrants, victims of natural disasters, or persons fleeing violent conflict but not subject to discriminatory persecution.[1]

However, procedures for returning asylum-seekers who do not meet the criteria must not violate the principle of *non-refoulement* enshrined in Article 33 of the Convention, which stipulates that 'no Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

The Geneva Convention and its Protocol relating to the status of refugees currently bind 142 contracting states, including all EU Member States. Turkey and all Western Balkan states except Kosovo are signatories to both the Convention and the Protocol.

The concept of safe country of origin should not be confused with the notion of safe third country. The first applies to a country whose own citizens are not persecuted, whereas the latter refers to a transit country considered safe for provision of international protection.

Context

The proposals for enhanced migration management were presented in September 2015, at the peak of migrant arrivals in the EU. The violent conflicts in Syria and Iraq, and instability and poverty in parts of Africa forced millions of people to flee their homeland in search of protection and a decent life elsewhere, many of them in the EU. According to Eurostat, the number of applications for international protection rose from 431 000 in 2013 to close to 1.3 million in 2015 in the EU. At the end of 2016, the number of asylum applicants in the EU remained close to the 1 million mark. This placed a heavy burden on national asylum systems, causing long delays and a backlog of applications.

According to the United Nations Refugee Agency (UNHCR), during mass movements of refugees, usually as a result of conflicts or generalised violence as opposed to individual persecution, there is no – nor ever will be – capacity to conduct individual asylum interviews for everyone who has crossed a border. Nor is it usually necessary, since in such circumstances it is generally evident why they have fled. As a result, such groups are often declared 'prima facie' refugees. The current migration flows are mixed, comprising both economic migrants and asylum-seekers. In reality, these groups can and do overlap, and this grey area is often exacerbated by the inconsistent methods with which asylum applications may be processed in the Member States. This has pointed to a need to better coordinate practices in order to avoid clear discrepancies within the EU when processing similar asylum applications.

Existing situation

National lists of safe countries of origin

At the moment, SCO lists are set by Member States who may apply the concept in accordance with the criteria laid down in Article 38(1) of the Asylum Procedures Directive. The concept is defined in Article 36(1) of the directive, whereas Article 36(2) leaves Member States discretion to 'lay down in national legislation further rules and modalities' on its application. Currently there is no obligation to use the concept. Some Member States (Greece, Spain, Italy, Poland and Sweden) do not apply it at all. The Commission in its proposal takes note that SCO lists are currently used in at least 12 Member States. Other countries either do not differentiate between asylum applications in this respect, as is the case in Lithuania, or apply the concept without a designated SCO list, as in the Netherlands. The Asylum Information Database (AIDA) 2014/2015 Annual Report suggests that the administrative practice may exist in countries with no formal SCO list.

In countries where the concept is used, the lists are homogenous (see Table 1) and, as pointed out in the AIDA 2013/2014 Annual Report, no country is on the safe list of all EU Member States. Turkey is currently defined as a safe country of origin only by Bulgaria. Kosovo, while currently recognised as safe by seven Member States, is not party to the Geneva Convention and its Protocol.

France withdrew Kosovo from its safe list as of 10 October 2014 but reintroduced it on 9 July 2015. This was enabled by the updated definition of a 'safe country of origin' in

the new law on asylum adopted on 29 July 2015. The insertion was challenged in the French Council of State, which gave a ruling on 30 December 2016 upholding the list, finding that Kosovo ensures satisfactory protection against persecution and serious harm.

Germany as the main destination country, receiving 72 % of the Western Balkan inflow in 2015, implemented several changes in legislation, including adding Western Balkan countries to the national SCO list (Serbia, Macedonia, and Bosnia and Herzegovina on 19 September 2014, and Albania, Kosovo and Montenegro on 24 October 2015), prioritising the processing of their applications and accelerating return procedures.

Table 1: Western Balkan countries and Turkey on EU Member States' SCO lists

	Austria	Belgium	Bulgaria	Czech Rep.	France	Germany	Ireland	Latvia	Luxembourg	Malta	Slovakia
Albania	●	●	●	●	●	●			●		
Bosnia and Herzegovina	●	●	●	●	●	●			●		
former Yugoslav Republic of Macedonia	●	●	●	●	●	●			●		
Kosovo	●	●		●	●	●			●		
Montenegro	●	●	●	●	●	●			●		●
Serbia	●	●	●	●	●	●			●		
Turkey			●								

Source: EMN Ad-Hoc Query, Statewatch information note, AIDA country reports.

The divergence can be explained by national differences in conducting safety assessments with regard to countries of origin. Currently, the Asylum Procedures Directive only sets the requirement of regular review in its Article 37. The new proposed Asylum Procedures Regulation would centralise the assessment, leaving the review of the situation in third countries to the Commission, assisted by the European Union Agency for Asylum, which is proposed to be created through extending the mandate of the European Asylum Support Office (EASO). While the proposals are pending, EASO **published in November 2016** new country of origin reports on the Western Balkan countries and Turkey to feed into the ongoing discussion and national assessments.

Accelerated procedure

Article 31(8)(b) of the Asylum Procedures Directive allows Member States to use a procedure that is accelerated and/or conducted at the border or in transit zones, when an applicant is from a safe country of origin. The Commission has consistently stressed that the fast-track approach should not compromise the obligation to examine applications case by case. Granting protection to a citizen from a country that is included in the SCO list is possible, but in that case the applicants needs to rebut the presumption of safety and demonstrate their individual need for protection.

Whereas the time limit for processing an application under a regular procedure is six months, extendable for up to 21 months, there are no minimum time limits for an

accelerated procedure. Article 31(9) of the Asylum Procedures Directive requires Member States to set 'reasonable' time limits for the first instance decision to be reached, and Article 39(2) leaves Member States discretion to set time limits for applicants to exercise their right to an effective remedy. Not surprisingly, the time frames for accelerated first and second instance asylum procedures vary significantly.[2] The Commission observes that the national time limits to process claims using accelerated procedures currently vary from between a few days to five months, whereas all the basic procedural rights, including the right to a personal interview still apply. The Court of Justice of the EU (CJEU) in its *Samba Diouf* judgment (2011) took a stand that a 15-day time limit is sufficient 'to prepare and bring an effective action and appears reasonable and proportionate in relation to the rights and interests involved'. In countries such as Bulgaria or Malta, where the maximum duration of accelerated procedure is 3 and 6 days respectively, the time frame left to applicants to prepare their case is extremely short and may not be sufficient. On the other hand, in most countries there are no procedural consequences if the time limit for accelerated procedure is not respected. Unfortunately, data on the use of accelerated procedures in Member States is not collected systematically, making it difficult to evaluate current practices. The AIDA 2014/2015 Annual Report draws attention to the risks of legal uncertainty and arbitrariness, as well as to the gap between acceleration as set out in law and in practice.

Recognition rates

The divergences in national SCO lists may lead to different recognition rates for asylum applications, especially for Western Balkan applicants which as a group have one of the lowest rates across the EU – just over 2% in 2015 according to EASO. In EU and associated countries where their recognition rates were higher (such as Italy, Switzerland and the UK), they were mostly granted humanitarian protection rather than refugee status. Regardless of low chances of recognition, Western Balkan nationals are increasingly applying for international protection in the EU: the number almost doubled in 2015 compared to 2014 (from 110 000 to 201 405), making them the second-largest group of applicants after Syrians, and ahead of Afghans and Iraqis. EASO takes note that, compared to other nationalities, the number of repeat applications is also particularly high for Western Balkan applicants.

Parliament's starting position

The European Parliament in three key resolutions of 17 December 2014, 10 September 2015 and 12 April 2016, reiterated:

- the need for a holistic EU approach to migration which would open up more legal channels for economic migration to counteract irregular migration, while bringing about a fairer system of burden-sharing across the EU regarding humanitarian protection in compliance with Article 80 TFEU;
- its commitment to open borders within the Schengen area, at the same time ensuring effective management of external borders;
- acknowledged the Commission proposal for a Union list of safe countries of origin, amending the Asylum Procedures Directive;
- observed that if such a list became obligatory for Member States it could, in principle, be an important tool for facilitating the asylum process, including return; regretted the current situation in which Member States apply different

lists, containing different safe countries, hampering uniform application and incentivising secondary movements; and,

- underlined that any list of safe countries of origin should not detract from the principle that every person must be allowed an appropriate individual examination of his or her application for international protection.

Council and European Council starting position

In view of the implementation of the European Agenda on Migration, the European Council of 25-26 June 2015 stressed the need for cooperation with countries of origin and transit to accelerate readmission negotiations. On 10 July, the Luxembourgish Presidency suggested to ensure rapidly a coordinated approach between Member States on the designation at national level of third countries as safe countries of origin.

Possible asylum misuse by citizens of Western Balkan countries that benefit from visa-free travel was addressed by the Justice and Home Affairs Council on 20 July 2015, which came to the conclusion that Western Balkan countries should be defined as safe countries of origin to enable fast-tracking of their asylum applications.

The European Council of 15-16 October 2015 welcomed the EU-Turkey Draft Action Plan, which Commission President Juncker presented to Turkish President Erdoğan on 5 October 2015. Member States confirmed their willingness to increase cooperation with Turkey. On 29 November 2015, at the meeting of EU Heads of State or Government with Turkey, a decision was reached to 'activate' the Joint Action Plan. The parties issued a joint statement to confirm their commitments. Turkey undertook to implement readmission agreements and immediately increase its cooperation with the EU on irregular migrants. The EU committed €3 billion for the refugee facility for Turkey. At the meeting of the EU Heads of State or Government with Turkey on 7 March 2016, the parties identified the principles for cooperation, in particular 'to resettle, for every Syrian readmitted by Turkey from Greek islands, another Syrian from Turkey to the EU Member States, within the framework of the existing commitments'. During the European Council meeting of 18 March 2016, an EU-Turkey Statement was agreed with Turkish Prime Minister Ahmed Davutoğlu on stopping the flow of irregular migration via Turkey to Europe, breaking the business model of smugglers and offering migrants an alternative to putting their lives at risk. The plan would remain conditional on Turkey's progress in fulfilling the requirements of its Visa Liberalisation Roadmap.

Preparation of the proposal

Establishing a minimum common EU list was previously attempted in 2005, but at the time the Member States failed to reach agreement on the countries to include in the list. This option, included in the 2005 Asylum Procedures Directive, was subsequently challenged by the European Parliament in the Court of Justice of the European Union (CJEU), which annulled it for lack of procedural conformity.

This time, the Commission is using the option for 'Union rules leading to a common asylum procedure in the Union' provided for in recital 4 of the recast Asylum Procedures Directive. The legal basis stated in the proposal is Article 78(2)(d) TFEU, providing for common procedures for the granting and withdrawing of uniform asylum and subsidiary protection status. The choice of countries was based on information provided by the European External Action Service (EEAS); Member States, EASO, the Council of Europe, UNHCR and other relevant international organisations. The proposal builds on the

premise that the majority of the suggested countries are already included in national SCO lists. However, commentators point out that Turkey was added to the list in 2015 on the Commission's initiative in preparation for closer cooperation that was sealed by the EU-Turkey statement reached on 18 March 2016.

The Commission states in its explanatory memorandum that there has been a sharp increase in asylum applications submitted by citizens of the proposed countries. All except Turkey and Kosovo have been exempt from EU visa requirements since 2010. In its assessment report published in February 2015, the Commission deplored that the number of asylum applications from the visa-free countries had been increasing constantly since visa liberalisation, while the recognition rates in the EU and associated countries continued to fall, leading to a large number of manifestly unfounded claims. The overarching aim of the new regulation would be to improve migration management, especially through reducing abuse of national asylum systems as well as the Common European Asylum System (CEAS).

In 2016, the Commission also proceeded to reform of the CEAS, presenting new proposals for all its instruments. On 13 July 2016, the Commission proposed to replace the Asylum Procedures Directive with a regulation. In addition to choosing a directly applicable instrument that does not require transposition in national law, one of the most significant changes of the proposal (COM(2016) 467) concerns precisely the use of the safe country concepts, which are to become mandatory in all Member States. The Commission explains that the aim is to achieve a fully harmonised designation of safe countries of origin, proposed by the Commission on the basis of assessments conducted by the proposed European Union Agency for Asylum. In line with this, Article 50(1) of the proposal includes a 'sunset' clause that would allow Member States to retain national designations of safe countries of origin for up to five years after the entry into force of the Asylum Procedures Regulation.

In the explanatory memorandum with the proposal, the Commission states that 'the EU common list of safe countries of origin should be an integral part of this draft Regulation' and, for this reason, the new text incorporates the proposal for a regulation establishing an EU common list of safe countries of origin, including the same list of countries. The Commission envisages the next steps as follows.

- Once the co-legislators have agreed on the proposal for establishing an EU common list of safe countries of origin, it should be adopted. The Commission has set it among its 34 priority pending proposals to be adopted in 2017.
- The text of the new regulation would then be incorporated in the Asylum Procedures Regulation as it is adopted.
- After that, the regulation establishing an EU common list of safe countries of origin should be repealed.

The changes the proposal would bring

The Commission has proposed to establish the EU list of safe countries so that all Member States would use procedures linked to this concept. The seven countries were chosen because their nationals account for around 17 % of the total number of applications lodged in the EU. Other countries may be added in the future after a thorough assessment by the Commission and adoption by the two co-legislators.

Moreover, the seven countries were selected as they are considered, in principle, to fulfil the requirements set out in the Asylum Procedures Directive. Rankings of countries of origin based on recognition rate (from low to high) and for which at least 1 000 applicants were registered in 2014 show that all six Western Balkan countries can be found in the top 10. The majority of these countries have also been designated as candidate countries by the European Council, fulfilling, again in principle, the Copenhagen criteria guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Candidates for EU membership can thus *a priori* be considered 'safe'. The Commission asserts that it will regularly review the situation in the countries concerned, and where necessary can propose to temporarily suspend countries from the list. The purpose of establishing the list of safe countries is to separate better those who are in clear need of international protection and are therefore very likely to succeed in their asylum applications, and those who are leaving their country for other reasons which do not fall under the right of asylum. This list will enable Member States to fast-track asylum procedures for nationals of countries that are presumed safe to live in. As the Commission President, Jean-Claude Juncker explained, 'the presumption of safety must certainly apply to all countries which the European Council unanimously decided meet the basic Copenhagen criteria for EU membership – notably as regards democracy, the rule of law, and fundamental rights'. It would also apply to the other potential candidate countries in the Western Balkans, in view of their progress made towards candidate status. President Juncker reiterated his support for this proposed regulation again in his State of the Union speech in 2016.

The common European list is also intended to reduce discrepancies among Member States in processing asylum claims. The list is meant to help eliminate potential 'loopholes' and deter secondary movements of applicants for international protection, who may currently seek to reach a specific Member State based on a perceived higher chance of being successfully granted protection. The 'safe countries of origin' list could also allow for swifter returns of those applicants who do not qualify for asylum. The establishment of the list should deter attempted abuses of the Common European Asylum System and allow Member States to devote greater resources to providing adequate protection to persons in genuine need.

Table 2: Comparison of countries to be included in the common safe country of origin list

Country	ECtHR rulings of violations of European Convention on Human Rights in 2014	Percentage of well-founded asylum applications in 2014	EU candidate country
Albania	4 of 150 cases	7.8%	✓
Bosnia and Herzegovina	5 of 1 196	4.6%	
former Yugoslav Republic of Macedonia	6 of 502	0.9%	✓
Kosovo	not party to ECHR	6.3%	
Montenegro	1 of 447	3.0%	✓
Serbia	16 of 11 490	1.8%	✓
Turkey	94 of 2 899	23.1%	✓

Source: European Commission fact sheet of 9 September 2015.

Advisory committees

The Committee of the Regions (CoR) adopted an opinion on the European Agenda on Migration on 3 December 2015. The Committee insisted that while EU candidate and pre-candidate countries are required to meet the EU's human rights standards to qualify as a 'safe country of origin', the situation of vulnerable groups in particular needs

to be carefully monitored. This would allow the identification of legitimate protection needs due to persecution on the grounds of, inter alia, gender, sexual orientation, gender identity or ethnicity. In its draft opinion Partnership Framework with third countries on Migration, due for adoption in plenary on 8 February 2016, the CoR agrees that the EU needs to reduce the possibilities for irregular migration and strengthen its readmission and return policies with third countries. To reduce the number of people taking dangerous trips to Europe, it recommends setting up hotspots in third countries. These would be managed by the EU and international bodies (UNHCR) and would assess the merits of asylum applications on the ground.

The European Economic and Social Committee adopted an opinion on the proposed regulation on 10 December 2015. The Committee welcomed the proposal and endorsed the initiative to establish a common EU list of safe countries of origin to offset the current differences between national lists. However, the Committee emphasised that the specific criteria for considering a country 'safe' for the purposes of the Qualification Directive and the Asylum Procedures Directive should be 'established in a more practical and secure way'. Moreover, the Committee considers that it might be premature to draw up a list of specific countries considered safe for those purposes. Regarding safeguards to applicants, the Committee insists that the concept has important practical consequences, such as the possibility to use accelerated procedures. The Committee recommends 'requiring a substantiated decision on the relevance of applying the concept' in each case after an individual assessment.

National parliaments

The subsidiarity deadline was 9 November 2015. No national parliament submitted a reasoned opinion on the proposal but political dialogue was opened by Czech Republic, Italy and Romania.

Stakeholders' views

According to some observers, the 'safe country of origin' concept still bears a number of substantial conceptual and procedural risks. Criteria such as the number of European Court of Human Rights (ECtHR) rulings finding violations, the Copenhagen criteria for EU accession or even the fact that a particular country is considered 'safe' by several Member States do not necessarily guarantee that the safety criteria in Annex I to the recast Asylum Procedures Directive are met. The Commission approached this issue by assessing the existence of human rights protection in the national legal orders.

A balance between efficiency and respect for the right to seek asylum needs to be sought: statistics show that there are still thousands of applicants from these states who demonstrate a genuine need for protection. The Commission's own explanatory memorandum notes that in all the states concerned, there was persecution on lesbian, gay, bisexual, transgender and intersex (LGBTI) grounds, as well as persecution in some states against Roma, women and children.

The attempted coup d'état which took place in Turkey in July 2016 and the ensuing instability call however for attention, and an ongoing re-assessment to ensure that all human rights safeguards and safety are ensured. According to observers, caution needs to be paid before the EU proceeds to conclude a further agreement similar to the EU-Turkey one with Libya, when it is not yet a politically stable democratic system and cannot as yet guarantee full compliance with international human-rights treaties.

FRA, the Fundamental Rights Agency, in its opinion presented to the EP's LIBE Committee, points out that designation of safe countries of origin can be a legitimate instrument to facilitate the processing of applications from persons whose claims for international protection are likely to be unfounded. Dealing with these claims in an effective manner can have a positive fundamental rights impact by allowing national asylum systems to focus on other persons whose applications are more likely to be well founded, thereby contributing to the reduction of processing times (where applicants remain in limbo) for all applicants for international protection. An EU common list of safe countries of origin would, however, need to be accompanied by sufficient safeguards ensuring, in particular, that it is not to the detriment of fundamental rights of persons in genuine need of international protection originating from the countries in question, namely on: (a) ensuring the right to seek asylum, *non-refoulement* and the prohibition of collective expulsion; (b) the right to an effective remedy; (c) non-discrimination; and (d) ensuring rights of children, determining the best interest of unaccompanied minors and the prevention of arbitrary detention of children.

UNHCR does not oppose the notion of 'safe country of origin' as long as it is used as a procedural tool to prioritise and/or accelerate examination of an application in very carefully circumscribed situations. UNHCR recognises the inherent difficulties in making an assessment of general safety. Displacement situations and general conditions can be volatile in many countries. Moreover, any assessment by states is susceptible to political, economic and foreign policy considerations. UNHCR considers it critical to ensure that: a) each application is examined fully and individually on its merits in accordance with certain procedural safeguards; b) each applicant is given an effective opportunity to rebut the presumption of safety of their country of origin in his or her individual circumstances; c) the burden of proof on the applicant is not increased; and, d) applicants have the right to an effective remedy in the case of a negative decision.

UNHCR's Executive Committee considers that 'notions such as "safe country of origin" ... should be appropriately applied so as not to result in improper denial of access to asylum procedures, or to violations of the principle of *non-refoulement*'. It has taken the view that SCO practices are permissible, provided that they are rooted in a proper assessment of the country's conditions and do not lead to the automatic rejection of claims from designated countries. UNHCR's approach has been to insist on safeguards, rather than to condemn these practices outright. Moreover, while they remind states of their obligations under Article 3 of the 1951 Convention relating to the Status of Refugees, that is, the non-discrimination guarantee, UNHCR has not argued that SCO practices are invariably discriminatory. In contrast, there is some authoritative opinion questioning the use of SCO mechanisms at all. For instance, the International Commission of Jurists (ICJ) has expressed its opposition to SCOs in general.

Michael Diedring, Secretary General of ECRE stated, at the launch of the AIDA 2014/2015 Annual Report, that the proposed regulation will enable EU countries to apply accelerated procedures, which in practice often significantly curtail asylum-seekers' rights to appeal a negative decision and to lawfully remain on the territory pending such an appeal. He warned that 'advocating for a common EU approach to "safe countries of origin" therefore runs the risk of a "race to the bottom" in protection standards by standardising presumptions'. Similar concerns were echoed by Amnesty International as well as Human Rights Watch. Amnesty International's Iverna McGowan underlined that 'refugee status is determined by individual circumstances, meaning no country of origin can be deemed "safe"'.

L'Association Européenne des Droits de l'Homme (AEDH), EuroMed Rights and the International Federation for Human Rights (FIDH) have stated that no country may be simply labelled as 'safe', arguing that the EU Member States will 'institutionalise' a system of refusing their responsibilities to asylum-seekers and international obligations. AEDH wrote, 'We oppose a notion which, we believe, is contrary to the principle of non-

discrimination on the grounds of nationality enshrined in international law. We call on the European Parliament and the Council to reject the adoption of this regulation.'

Legislative process

The proposal, COM(2015) 452, submitted by the Commission on 9 September 2015 was assigned to the EP Civil Liberties, Justice and Home Affairs (LIBE) Committee on 16 September 2015. On 7 July 2016, the LIBE Committee adopted the report by Sylvie Guillaume (S&D, France), together with opinions from the Committees on Foreign Affairs Committee (AFET) and Development (DEVE). The LIBE Committee also adopted a mandate enabling the opening of trilogue talks with the Council.

In the report, LIBE Members agreed that the future EU common list of safe countries of origin, which should help Member States to process certain asylum applications faster and more consistently, should replace today's national lists after a three-year transition period. During those three years, EU countries will be able to suggest to the Commission that other third countries be added to the common list, but they would not be allowed to consider as a 'safe country of origin' any country which has been suspended or removed from the European list. The Commission would assess which countries should be included, removed or temporarily suspended from the list.

In the Council, The Luxembourg Presidency suggested revisions to the Commission's proposal of 9 September 2015, feeding into the Justice and Home Affairs Counsellors meeting on 2 October 2015. The Justice and Home Affairs Council of 8-9 October 2015 confirmed the need for an effective return policy, which requires cooperation with countries of origin and transit. Additionally, increasing coherence between migration and development policy is being emphasised through the New Partnership Framework with Third Countries and the series of compacts being concluded to ensure that development assistance helps partner countries manage migration more effectively, and also incentivises them to effectively cooperate on readmission of irregular migrants. Work with the Commission proposal continued in the Asylum Working Party, with Coreper reaching a mandate on 23 March 2016 to open negotiations with Parliament.

Trilogue meetings took place on 13 September and 19 October 2016. The negotiations have been divided into four topics: methodology, means of suspension of country from the list; harmonisation of lists into a single list; and, fundamental rights safeguards. Agreement has been reached so far on the first two sections, but the latter two have been subject to disagreement.

While the co-legislators have agreed on the common list approach, there is no decision yet as to which countries should be on the list. The Parliament and Council agreed to postpone the evaluation of the list until new country information is available, as the Commission's methodology for drawing up the list came under criticism, in particular due to the inclusion of Turkey. On 16 November 2016, the delegations in the Council received a letter from José Carreira, Executive Director of EASO, containing new country of origin reports on the seven countries listed in the proposal. These new reports prepared by EASO are intended to feed into the on-going trilogue negotiation process, which should resume in early 2017.

EP supporting analysis

- European Parliament, EPRS Briefing on Common procedure for asylum, January 2017
- European Parliament, EPRS briefing on Vulnerability of unaccompanied and separated child migrants, December 2016
- European Parliament, EPRS Briefing on European Union Agency for Asylum, December 2016
- European Parliament, EPRS Briefing on Growing impact of EU migration policy on development cooperation, October 2016
- European Parliament, EPRS Briefing on Reform of the Dublin system, September 2016
- European Parliament, EPRS Briefing on Public expectations and EU policies - The issue of migration, June 2016
- European Parliament, Policy Department C study on The Implementation of the Common European Asylum System, May 2016
- European Parliament, EPRS briefing on Arbitrary detention of women and children for immigration-related purposes, February 2016
- European Parliament, EPRS briefing on EU legal framework on asylum and irregular immigration 'on arrival', March 2015
- European Parliament, Policy Department C study on New approaches, alternative avenues and means of access to asylum procedures for persons seeking international protection, October 2014

Other sources

International protection: EU common list of safe countries of origin / European Parliament, Legislative Observatory (OEIL).

Endnotes

[1] The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: a commentary, Andreas Zimmermann, Jonas Dörschner, Felix Machts, Oxford, Oxford University Press, 2011

[2] Marcelle Reneman, Speedy Asylum Procedures in the EU: Striking a Fair Balance Between the Need to Process Asylum Cases Efficiently and the Asylum Applicant's EU Right to an Effective Remedy, International Journal of Refugee Law, 2014

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